

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)
COMMISSION OF THE APPLICATION OF THE)
FUEL ADJUSTMENT CLAUSE OF BIG RIVERS) CASE NO. 94-458-C
ELECTRIC CORPORATION FROM)
NOVEMBER 1, 1995 TO APRIL 30, 1996)

O R D E R

Big Rivers Electric Corporation ("Big Rivers") has moved for dismissal of these proceedings. In support of its motion, Big Rivers states that the requested relief is necessary to implement the Plan of Reorganization approved by the U.S. Bankruptcy Court¹ and is mandated by that Court's decision to discharge all claims related to Big Rivers' fuel adjustment clause. No responses to the motion have been received.

* * * * *

By our Order of October 6, 1996 in this proceeding, the Commission found that Big Rivers incurred unreasonable fuel costs during the review period as a result of its decision to enter the Andalex Substitution Agreement and Amendment No. 1 to Contract No. 527. We disallowed these unreasonable fuel costs and ordered Big Rivers to refund \$326,757 to its ratepayers. In the same Order, we rejected the contentions of Kentucky Industrial Utility Customers ("KIUC") that Big Rivers incurred unreasonable fuel costs as a result of its decision to enter Contracts No. 527 and No. 865.

¹ In Re: Big Rivers Electric Corporation, No. 96-41168 (Bankr. W.D. Ky. June 1, 1998), at 12-13.

The October 16, 1996 Order is based upon the Commission's findings and methodology in our Order of July 21, 1994 in Case No. 90-360-C ("the July 21, 1994 Order").² After reviewing the operation of Big Rivers' fuel adjustment clause ("FAC") for the period from November 1, 1990 to April 30, 1993 and all fuel procurement contracts in effect during that period, the Commission in the July 21, 1994 Order found, inter alia, that Big Rivers had not incurred any unreasonable fuel costs from its decisions to enter Contracts No. 527 and No. 865 and that Big Rivers' decisions to enter Amendment No. 1 and the Andalex Substitution Agreement were unreasonable fuel procurement practices that resulted in unreasonable fuel costs.

Big Rivers and KIUC³ brought actions for review of the July 21, 1994 Order.⁴ On October 20, 1995, Franklin Circuit Court entered judgment against the Commission and Big Rivers and remanded the July 21, 1994 Order to the Commission with instructions to determine whether Contracts No. 527 and No. 865 complied with Administrative Regulation 807 KAR 5:056, whether the fuel costs associated with these contracts were the result of

² Case No. 90-360-C, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1991 to April 30, 1992 (July 20, 1994).

³ NSA, Inc., Alcan Aluminum Corporation, and Commonwealth Aluminum were joint plaintiffs with KIUC.

⁴ Big Rivers Electric Corp. v. Pub. Serv. Comm'n, No. 94-CI-01184 (Franklin Cir. Ct. Ky. filed Aug. 9, 1994); Kentucky Industrial Utility Customers v. Pub. Serv. Comm'n, No. 94-CI-01263 (Franklin Cir. Ct. Ky. filed Aug. 19, 1994).

imprudent fuel procurement practices, and whether such costs were prudent.⁵ After the Kentucky Court of Appeals⁶ and the Kentucky Supreme Court⁷ refused to review the Judgment, the July 21, 1994 Order returned to the Commission on January 14, 1998.

While the July 21, 1994 Order was pending judicial review, Big Rivers brought an action for review of the October 16, 1996 Order.⁸ On May 22, 1998, Franklin Circuit Court, upon the Commission's motion, remanded the October 16, 1996 Order to the Commission with instructions to consolidate Case No. 94-458-C with Case No. 90-360-C for further proceedings consistent with the Franklin Circuit Court Judgment of October 20, 1995.⁹ The Commission had sought the remand for reasons of judicial and administrative economy. Since the October 16, 1996 Order relied upon the findings and conclusions of the July 21, 1994 Order, its continued validity depended upon the results of the renewed administrative proceedings in Case No. 90-360-C. Remand permitted the consolidation of all litigation involving Big Rivers' FAC issues and the end of piecemeal litigation.

⁵ Big Rivers Electric Corp. v. Pub. Serv. Comm'n, No. 94-CI-01184 (Franklin Cir. Ct. Ky. Oct. 21, 1995). This judgment consolidated all actions seeking review of the Commission's Orders in Cases No. 90-360-C, 92-490-B, and 92-490-C.

⁶ Pub. Serv. Comm'n v. Big Rivers Electric Corp., No. 95-CA-3079-MR (Ky.App. July 11, 1997).

⁷ Pub. Serv. Comm'n v. Big Rivers Electric Corp., No. 97-SC-610-D (Ky. Jan. 14, 1998).

⁸ Big Rivers Electric Corp. v. Pub. Serv. Comm'n, No. 96-CI-01124 (Franklin Cir. Ct. Ky. filed Aug. 12, 1996)

⁹ Big Rivers Electric Corp. v. Pub. Serv. Comm'n, No. 96-CI-01604 (Franklin Cir. Ct. Ky. May 22, 1998)

Following the remand of the October 16, 1996 Order to the Commission, Franklin Circuit Court first stayed all proceedings in Case No. 90-360-C¹⁰ and then recalled and vacated the October 20, 1995 Judgment and dismissed the consolidated actions with prejudice.¹¹

* * * * *

Having considered Big Rivers' motion and taking administrative notice of the Franklin Circuit Court Orders of July 13, 1998 and July 29, 1998, the Commission finds that Big Rivers' motion should be granted. As the need for any proceedings in this case is based upon the directives contained in the October 20, 1995 Judgment and as Franklin Circuit Court has recalled and vacated that Judgment, no further proceedings are required and this case should be closed.

IT IS THEREFORE ORDERED that:

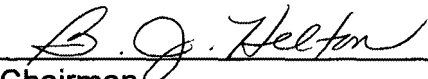
1. Big Rivers' Motion for Stay and Dismissal of Proceedings is granted.
2. These proceedings are closed and shall be removed from the Commission's docket.

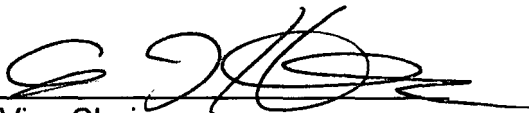
¹⁰ Big Rivers Electric Corp. v. Pub. Serv. Comm'n, No. 94-CI-01184 (Franklin Cir. Ct. Ky. July 13, 1998)

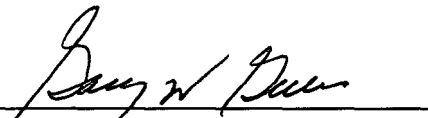
¹¹ Big Rivers Electric Corp. v. Pub. Serv. Comm'n, No. 94-CI-01184 (Franklin Cir. Ct. Ky. July 29, 1998)

Done at Frankfort, Kentucky, this 10th day of August, 1998.

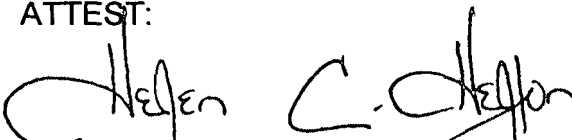
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director