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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

April 15, 2009

PARTIES OF RECORD

Re: Case No. 2007-00455
Big Rivers Electric Corporation

Attached are copies of Staff memoranda and email correspondence from Southwire Company to Commission Staff and responses thereto. If you have any questions, please contact Richard Raff at 502/564-3940, Extension 263.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File

FROM: Richard G. Raff *RGR*
Staff Attorney

DATE: April 15, 2009

SUBJECT: Case No. 2007-00455
Big Rivers Electric Corporation et al.

Attached hereto are copies of emails that I have received from, and sent to, a representative of the Southwire Company regarding its position on the Unwind Transaction.

Raff, Richard (PSC)

From: Raff, Richard (PSC)
Sent: Tuesday, April 07, 2009 11:21 AM
To: 'Russell Klepper'
Cc: Jim Miller; Samford, David S (PSC); Riggs, Kendrick R.; Sturgeon, Allyson; John N. Hughes; dmeade@pcmmmlaw.com; Howard, Dennis (KYOAG); Adams, Paul (KYOAG); Cook, Larry (KYOAG); Brown, David; Michael Kurtz; Frank King; myates@dklaw.com; Beresford, Douglas L.; Tyson Kamuf
Subject: RE: Informal Conference

Russell,
 None of the parties have objected to Southwire's attendance at tomorrow's informal conference, so you are welcome to attend.
 Richard.

From: Russell Klepper [<mailto:russellklepper@mindspring.com>]
Sent: Friday, April 03, 2009 7:28 PM
To: Raff, Richard (PSC)
Cc: Jim Miller; Samford, David S (PSC); Riggs, Kendrick R.; Sturgeon, Allyson; John N. Hughes; dmeade@pcmmmlaw.com; Howard, Dennis (KYOAG); Adams, Paul (KYOAG); Cook, Larry (KYOAG); Brown, David; Michael Kurtz; Frank King; myates@dklaw.com; Beresford, Douglas L.; Tyson Kamuf
Subject: Re: Informal Conference

Richard,

Thanks for your reply. First, I understand that informal conferences generally are limited to the parties in the case. If the parties to the case object to Southwire Company's appearance, then of course, Southwire will not appear. However, the question of whether Southwire is allowed to attend and participate in the informal conference will not alter the facts that (1) Southwire is a party to that certain retail Agreement for Electric Service dated July 15, 1998 between Southwire and Century on one hand and Kenergy on the other hand, and such contract and the corresponding Southwire Smelter Tariff have both been duly authorized by the KPSC; (2) at this time, Southwire is unwilling to agree to the termination of the above referenced Agreement for Electric Service, and any action to terminate such agreement absent Southwire's consent would be a contractual breach which should not be tolerated by the KPSC; and (3) Southwire and Kenergy have not yet been able to reach agreement on a new electric service agreement under which electric service would continue to be supplied to Southwire's Rod and Cable Mill even if Southwire were to agree to a termination of the now existing Agreement for Electric Service. Moreover, if Southwire is not allowed to appear and participate in the informal conference, then I would request as a matter of simply courtesy that there be no discussion of any issue involving Southwire because Southwire would then be unable to provide its perspective to the KPSC on any matter pertaining to that company.

Second, I appreciate your invitation to clarify my role in the Unwind Transaction, and I am pleased to do so. Since November 2004, the time of the first meeting among Big Rivers, Kenergy and the Smelters to discuss the potential Unwind Transaction, I have served as a consultant to both smelters and have actively participated in contract negotiations, contract development and other related tasks from that time until the present. In each and every such meeting in which I participated, including the informal conferences at the KPSC and the formal hearings at the KPSC, I was present on behalf of, and only on behalf of, the Smelters.

In order to understand my role as a consultant to Southwire, a bit of background will be useful. As explained below, Century and Southwire, on behalf of the Smelter and the Rod Mill, respectively, are joint purchasers of energy from Kenergy under the Agreement for Electric Service. The Master Agreement, discussed below, provides for this joint service relationship and also specifically provides for Century to act as Southwire's agent with respect to the administration of rates and services under the Agreement for Electric Service.

To my recollection, in or around June 2005, Big Rivers and the Smelters entered into a Memorandum of Understanding (MOU) with respect to the Unwind Transaction. One element of the MOU was that, as a result of the Unwind Transaction, electric service to the Century Smelter would be separated from electric service to the Southwire Rod Mill, and for rate purposes, the Rod Mill would be accorded the existing large industrial rate (rather than Big Rivers' market based rate which the KPSC had previously approved for direct serve industrial customers with a load in excess of 5,000 kW).

On two separate occasions, as a consultant to Century in the matter of the Unwind Transaction, I travelled with Peter McGuire, a Century officer and its Associate General Counsel, to Southwire's headquarters in Carrollton, Georgia, to meet with members of Southwire's senior management and to discuss the status of Unwind Transaction and the implications of such transaction to

4/14/2009

Energy Services Group, LLC
770-751-8379

----- Original Message -----

From: Raff, Richard (PSC)

To: Russell Klepper

Cc: Jim Miller ; Samford, David S (PSC) ; Riggs, Kendrick R. ; Sturgeon, Allyson ; John N. Hughes ; dmeade@pcmmmlaw.com ; Howard, Dennis (KYOAG) ; Adams, Paul (KYOAG) ; Cook, Larry (KYOAG) ; Brown, David ; Michael Kurtz ; Frank King ; myates@dklaw.com ; Beresford, Douglas L. ; Tyson Kamuf

Sent: Friday, April 03, 2009 4:17 PM

Subject: RE: Informal Conference

Russell,

Informal conferences in docketed cases are typically limited to the parties to that case. However, if none of the parties to the unwind case objects to Southwire's attendance, you will be able to attend. I will by separate e-mail ask the parties to indicate by the close of business on Monday if there are any objections, and then let you know by Tuesday morning.

It would be helpful to me, and possibly the other parties, if you could clarify your role in the unwind transaction. I believe that you attended a few of the informal conferences last year and identified yourself as a consultant to the smelters. Please indicate whether you are still a consultant to the smelters, and whether you were a consultant to Southwire at the time you attended the conferences on behalf of the smelters. Thanks. Richard.

From: Russell Klepper [<mailto:russellklepper@mindspring.com>]

Sent: Thursday, April 02, 2009 6:15 PM

To: Raff, Richard (PSC)

Cc: Jim Miller

Subject: Informal Conference

Richard -

I am sending this message to you in my capacity as a consultant to Southwire Company. As you know, I am not a lawyer, and I may not be communicating with you in the most appropriate manner, so I apologize in advance. Moreover, Southwire is not a party to the KPSC proceeding involving the Unwind Transaction. For that reason, I am sending a copy of the message to Jim Miller, with whom I have been working on contractual matters involving Southwire, with the request that Jim forward this message to any and all parties who would be appropriate recipients in order to avoid any implication that this is an ex parte communication.

Nevertheless, as explained below, Southwire is an indispensable party to the Unwind Transaction. Southwire wishes for the KPSC to be aware of certain material information that may affect the Unwind Transaction. You may deem that such information should be discussed at the Informal Conference, which I believe is scheduled for 1:00 PM on Wednesday, April 8th. (In the alternative, you may deem that discussion of such information is not necessary.)

You are probably aware of Southwire, but a brief review may be helpful. Southwire is the owner and operator of a Rod and Cable Mill in Hawesville. Previously, Southwire was also the owner and operator of the aluminum smelter located in Hawesville, Kentucky. Southwire was the original party to the retail Agreement for Electric Service dated July 15, 1998, between Southwire and Kenergy's predecessor, Green River Electric Corporation (the 1998 Retail Agreement), and to all related agreements. In turn, Southwire was a third party beneficiary of the corresponding wholesale Agreement for Electric Service dated July 15, 1998, between Green River Electric and LG&E Energy Marketing (now WKE). The 1998 Retail Agreement and the corresponding wholesale agreement both specifically provide that the power and energy sold under those agreements are for consumption at both the Smelter and the Rod Mill.

The Hawesville Smelter was sold by Southwire to Century Aluminum Company on April 1, 2001. In conjunction with that transaction, Southwire and Century entered into a Master Assignment Agreement dated November 22, 2000, as amended, which Master Assignment Agreement bears the written consent of Kenergy and was filed with the KPSC for its approval or acceptance. (I can provide a KPSC stamped copy at your request.) Pursuant to this Master Assignment Agreement, Southwire made a partial assignment of the 1998 Retail Agreement to Century with respect to the Smelter, but Southwire specifically retained all contractual rights and interests under the 1998 Retail Agreement with respect to the Rod Mill. Southwire remains a party to the 1998 Retail Agreement and many related agreements, and a third party beneficiary of the 1998 Wholesale Agreement with WKE. Accordingly, for the Unwind Transaction to proceed, it will be necessary for Southwire to agree to a termination of the now-existing 1998 Retail Agreement. Correspondingly, Southwire would not be able to agree to terminate the 1998 Retail Agreement until a new retail electric service agreement has been reached between Southwire and Kenergy.

As of this date, Southwire has not yet reached an agreement with Kenergy for a new retail electric service agreement, and

4/14/2009

Raff, Richard (PSC)

From: Raff, Richard (PSC)
Sent: Tuesday, April 14, 2009 4:03 PM
To: 'Russell Klepper'; 'Jim Miller'; Samford, David S (PSC); 'Riggs, Kendrick R.'; 'Sturgeon, Allyson'; 'John N. Hughes'; 'dmeade@pcmmlaw.com'; Howard, Dennis (KYOAG); Adams, Paul (KYOAG); Cook, Larry (KYOAG); 'Brown, David'; 'Michael Kurtz'; 'Frank King'; 'myates@dklaw.com'; 'Beresford, Douglas L.'; 'Tyson Kamuf'
Subject: Big Rivers Unwind Case No.07-455

Russell,

It is not appropriate for me to provide a definitive legal response at this time to the statements in your April 10, 2009 e-mail that the arrangement under which Southwire buys power "is an appropriate and legal transaction," and that "there can be no question regarding the legality of the arrangements..." A determination of the legality of the Century/Southwire billing arrangements would require an analysis of certain facts that do not appear to be known to the Commission at this time. However, the absence of such a response should not be interpreted as an agreement with your position. To the contrary, as I stated at last week's conference, Commission regulations (807 KAR 5:041, Section 9(2)) state that, "The utility shall regard each point of delivery as an independent customer and meter the power delivered at each point." The documents filed by Kenergy on November 27, 2000, consisting of a cover letter and a Master Assignment Agreement, discuss assigning certain rights and interests in certain existing agreements, and Century being Southwire's agent for the "acquisition of electric service." The term "co-purchasers of electric service," as used in your e-mail, does not appear in those documents.

Since there are parties to this case that did not receive your e-mail, I am including them on this distribution and will also file copies of all e-mails from Southwire in the record of this case. Any further correspondence from Southwire to me (or any other staff member) should be sent to all parties to this case. Richard.

Raff, Richard (PSC)

From: Raff, Richard (PSC)
Sent: Tuesday, April 14, 2009 4:11 PM
To: 'Jim Miller'; Samford, David S (PSC); 'Riggs, Kendrick R.'; 'Sturgeon, Allyson'; 'John N. Hughes'; 'dmeade@pcmmlaw.com'; Howard, Dennis (KYOAG); Adams, Paul (KYOAG); Cook, Larry (KYOAG); 'Brown, David'; 'Michael Kurtz'; 'Frank King'; 'myates@dklaw.com'; 'Beresford, Douglas L.'; 'Tyson Kamuf'
Subject: FW: Informal Conference

Attached is the April 9, 2009 e-mail from Mr. Klepper which is referenced in my response sent a few minutes ago to him and the parties to this case. Richard.

From: Russell Klepper [mailto:russellklepper@mindspring.com]
Sent: Friday, April 10, 2009 3:19 PM
To: Raff, Richard (PSC)
Cc: Frank King; Jim Miller; Brown, David
Subject: Informal Conference

Richard -

I have been advised that during the KPSC Informal Conference held on April 8, 2009, you raised the issue of whether Century may be participating in an improper transaction by buying power from Kenergy and re-selling that power to Southwire. I was not in attendance and do not know the context of your question, or whether your inquiry was accurately described to me, but I do wish to assure you that the purchase of energy by Southwire for the Rod and Cable Mill is made directly from Kenergy and is an appropriate and legal transaction, as previously described to you and as described below in detail.

On July 15, 1998, Southwire and Kenergy's predecessor entered into that certain Agreement for Electric Service, as later amended, for electric service to both the Smelter and the Rod Mill (the 1998 Retail Agreement). By a Master Assignment Agreement dated November 22, 2000, between Southwire and Century, with the express written consent to Kenergy, effective as of April 1, 2001, Southwire assigned to Century its rights and interests in the 1998 Retail Agreement, but such assignment was specifically limited to such rights and interests with respect to only the Smelter, and in the Master Assignment Agreement, Southwire specifically retains its rights and interests with respect to the purchase of electric service for the Rod Mill.

Accordingly, if you will review the subject Master Assignment Agreement, which was filed with and accepted by the KPSC, you will see that it is designed such that Southwire and Century become co-purchasers of electric service from Kenergy. Accordingly, Century does not purchase energy for resale to Southwire, nor does Southwire purchase energy for resale to Century.

Moreover, in the Master Assignment Agreement, Century is appointed as Southwire's agent for purposes of administering the 1998 Retail Agreement. As a matter of such contract administration, Southwire makes a monthly payment to Century as its agent, and Century in turn makes all electric service payments to or for the benefit of Kenergy. The payment from Century to Kenergy is comprised of two portions, the first being for Century's acceptance from Kenergy of electric services at the Smelter, and the second being for Southwire's acceptance from Kenergy of electric service at the Rod Mill. This second component is paid by Century, acting in its capacity as Southwire's agent.

The arrangement for the co-purchase of energy by Southwire and Century under the 1998 Retail Agreement has been in effect for the past eight years and the legality of such arrangement has not been questioned at any point during that time. Moreover, I feel certain that Mr. King would not have allowed his client, Kenergy, to sign the Master Assignment Agreement if there had been any question about its legality. Further, the Master Assignment Agreement was submitted by Kenergy to the KPSC and accepted at that time. Accordingly, there can be no question regarding the legality of the arrangements set forth therein.

Further, I understand that there was some question during the informal conference as to whether the KPSC was adequately informed as to the importance of Southwire's agreement to the Unwind Transaction. As I believe may have been explained during the informal conference earlier this week, the applicants acknowledge that Southwire remains a party to the 1998 Retail Agreement and several related agreements, as evidenced by the proposed Termination and Release Agreement (Century Parties), to which Southwire Company would be an essential party. As you are well aware, Southwire has never been a party to the KPSC proceeding for the Unwind Transaction, so it can hardly be construed that Southwire had any responsibility for making the KPSC aware of the essential nature of Southwire's consent. That responsibility properly falls on the applicants.

4/14/2009