

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SOUTHERN OHIO TELEPHONE)
COMPANY TO CONSTRUCT A CELL SITE IN) CASE NO. 91-150
CAMPBELL COUNTY, KENTUCKY)

O R D E R

On February 7, 1992, Southern Ohio Telephone Company ("SOTCo") filed a motion to strike the testimony tendered by Intervenor and to terminate the proceedings on a rehearing and to reenter the Commission's Order granting authority for SOTCo to construct cell site facilities in Campbell County, Kentucky. On February 21, 1992, Larry and Mary Twehues ("the Intervenor"), filed by counsel a response to SOTCo's motion to strike their tendered testimony.

In support of its motion to strike the tendered testimony of the Intervenor, SOTCo contends that the Intervenor did not limit the testimony filed February 6, 1992, to the introduction of evidence which could not with reasonable diligence have been offered on the former hearing citing KRS 278.400. SOTCo states that this statute is an express limitation on the scope of matters the Commission may consider on rehearing. The Intervenor's February 6, 1992 filing contained an appraisal of property values, but made no showing that an appraisal was not available at the time of the former hearing. Additionally, SOTCo argues that Intervenor should be barred from introducing any additional

testimony at the rehearing because the Intervenors have not produced sworn testimony pursuant to the January 17, 1992 Order establishing a procedural schedule. Further, SOTCo argues that the Intervenors' statement that they plan to present testimony at the reconvened hearing constitutes a failure to comply with the Commission's procedural Order.

SOTCo argues that the Intervenors, having failed to produce any admissible evidence on rehearing, have provided no evidence with which the Commission could modify its December 6, 1991 Order. Therefore, according to SOTCo, the Commission's December 6, 1991 Order should be reinstated at this time.

The Intervenors, in response to SOTCo's arguments, contend that KRS 278.310 should be determinative of the Commission's obligation to adhere to technical rules of evidence. KRS 278.310 states:

All hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission, and in the conduct thereof neither the commission nor the commissioner shall be bound by the technical rules of legal evidence.

In addition, Intervenors assert that they relied on certain statements made prior to the hearing by the adjoining property owner which, if true, would have alleviated the need for the production of evidence concerning property appraisals at the original hearing.

The Commission, having considered SOTCo's motion to strike Intervenors' tendered testimony and the Intervenors' response thereto, finds that the motion should be denied. The Commission

is not bound by the technical rules of legal evidence in conducting its hearings and investigations. The rehearing will provide to SOTCo and the Intervenors an opportunity to present all views on the relevant issues. The Commission prefers that prefiled testimony be sworn, but SOTCo has not been prejudiced by the Intervenors' unsworn prefiled testimony. The February 6, 1992 filing lists the Intervenors' issues and the substance of their testimony.

Having denied SOTCo's motion to strike the Intervenors tendered testimony, the motions to terminate the proceedings on rehearing and reenter the December 6, 1991 Order granting SOTCo authority to construct a cellular tower and antennae at 25A Lower Eight Mile Road near Melbourne, Kentucky, are moot.

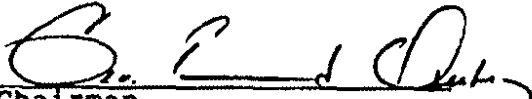
On February 4, 1992, SOTCo filed a contingent motion for continuance of the rehearing based on a witnesses' lack of availability for the March 3, 1992 Order.

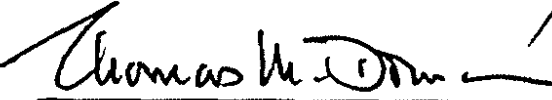
IT IS HEREBY ORDERED that:

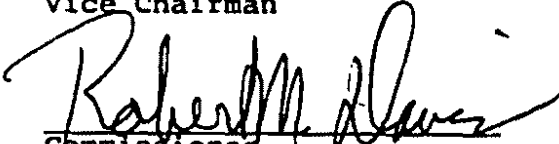
1. SOTCo's motion to strike shall be and it hereby is denied.
2. The rehearing currently scheduled for March 3, 1992 is hereby rescheduled to March 10, 1992, at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 28th day of February, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director