

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY AUTHORIZING THE)
CONSTRUCTION OF APPROXIMATELY 49,000 FEET) CASE NO. 91-359
OF 12" MAIN, 240 FEET OF 8" MAIN, WITH)
ASSOCIATED VALVES AND FITTINGS, KNOWN AS)
THE "JACKS CREEK PIPELINE")

O R D E R

On January 21, 1992, Lexington South Elkhorn Water District, Jessamine County Water District No. 1, Spears Water Company, Inc., and the city of Nicholasville (collectively referred to as the "Intervenors") filed a motion to dismiss Kentucky-American Water Company, Inc.'s ("Kentucky-American") application for authority to construct a water transmission pipeline on the grounds that: the Commission previously rejected the same facilities in Case No. 90-249¹ and any reconsideration of that decision is barred by principles of res judicata; and the proposed facilities will result in wasteful duplication due to their location within the territorial boundaries of the Intervenors.

¹ Case No. 90-249, Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Approximately 51,900 Feet of 24" Main, 3,250 Feet of 12" Main, With Associated Valves and Fittings, Known as the "Jack's Creek Pipeline."

On January 21, 1991, Kentucky-American filed a response in opposition to the motion to dismiss. Kentucky-American contends that while res judicata has some application to decisions of an administrative agency, res judicata is not applied when there have been changed circumstances since the prior decision or when the issues raised in the subsequent proceeding were not ruled upon in the prior one. In addition, Kentucky-American argues that the Intervenors have failed to establish the existence of any exclusive service territories or that the transmission line proposed in this case will actually result in any wasteful duplication.

Based on the motion and response, and being advised, the Commission hereby finds that res judicata has no application to this case. In Case No. 90-249, the Commission rejected Kentucky-American's proposed pipeline upon finding that Kentucky-American did not refute evidence of an alternate route that was shorter and less expensive. In subsequently denying rehearing in that case, the Commission stated that, "New evidence relating to a relocation of the proposed facilities should be filed in a new application pursuant to KRS 278.020(1)."² Kentucky-American has followed the directive set out in that case by filing evidence on alternative routes in this case.

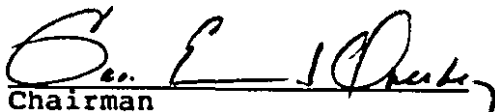
On the issue of the Intervenors' claims to exclusive service territories, the Commission finds that no decision can be rendered on the merits of this issue absent a hearing.

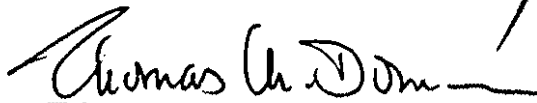
² Case No. 90-249, Order dated May 3, 1991, page 2.

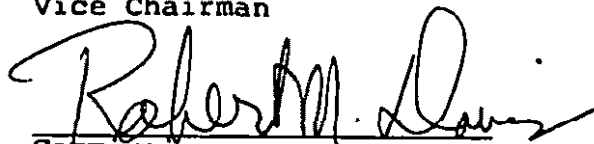
IT IS THEREFORE ORDERED that the Intervenors' motion to dismiss be and it hereby is denied.

Done at Frankfort, Kentucky, this 31st day of January, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:



Executive Director