

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY-AMERICAN WATER)	
COMPANY FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY AUTHORIZING)	
THE CONSTRUCTION OF APPROXIMATELY)	CASE NO. 91-359
49,000 FEET OF 24" MAIN, 400 FEET OF)	
12" MAIN, 240 FEET OF 8" MAIN, WITH)	
ASSOCIATED VALVES AND FITTINGS, KNOWN)	
AS THE "JACK'S CREEK PIPELINE")	

O R D E R

On May 6, 1992, Jessamine County Water District No. 1 ("Jessamine No. 1"), Lexington-South Elkhorn Water District ("Lexington-South Elkhorn"), Spears Water Company ("Spears") and the City of Nicholasville (collectively referred to as "Intervenors") filed a petition for rehearing of the Commission's April 17, 1992 Order granting Kentucky-American Water a certificate to construct the Jack's Creek pipeline in Jessamine County along Route A. The petition alleges two grounds: (1) a certificate to construct Route A is barred by principles of res judicata due to the Commission's prior Order dated March 27, 1991 in Case No. 90-249¹ denying such a certificate; and (2) the April 17, 1992 Order lacks specific findings that construction of Route A will result in an absence of wasteful duplication of facilities.

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."

The Intervenor urge the Commission to reconsider its decision in light of the Dissenting Opinion of Vice Chairman Thomas M. Dorman and request that Kentucky-American be restricted from providing water service within the areas of Route A, at least until the retirement of Spears' debt. In support of this argument, the Intervenor have attached a number of exhibits to their petition for rehearing. Except for Exhibit A, which is an excerpt from a prior Commission Order, the other exhibits do not qualify under KRS 278.400 as newly discovered evidence and thus cannot be considered on rehearing.

The Commission finds no merit in the Intervenor's request for economic protectionism until Spears has retired its present debt. The debt discussed in the Dissenting Opinion and the petition for rehearing is the type that cannot be issued absent our prior approval under KRS 278.300. The purpose of this approval process is to ensure that such debt is for a lawful object within the corporate purposes of the utility and is reasonably necessary and appropriate. Taking administrative notice of our records, we find that Spears has neither requested nor been granted approval to issue the referenced debt. We note that this is not the first time that Spears has failed to comply with KRS 278.300.² Having so failed to receive the requisite prior approval, this debt should not be considered as a basis for the requested economic protectionism.

² See, Case No. 9067, An Adjustment of Rates of the Spears Water Company, Inc., 104 Maple Street, Nicholasville, Kentucky, 40356.

As to the res judicata issue, the intervenor previously raised the identical argument in a motion to dismiss filed on January 21, 1992. In denying that motion the Commission stated in its January 31, 1992 Order that the certificate was denied in Case No. 90-249 because Kentucky-American failed to refute evidence that there was an alternate route that was shorter and less expensive. However, in denying Kentucky-American's request for rehearing to keep the record in that case open for addition evidence on alternatives routes, the Commission directed such new evidence to be filed in a new certificate case. Consequently, Kentucky-American followed the exact procedure established by the Commission for a review of the alternative routes.

In addition, the evidence in Case No. 90-249 on the cost of the alternative route consisted solely of an extrapolation based on the cost of Route A. In this case, Kentucky-American presented detailed cost estimates, supported by contractor bids, for each of the alternative routes. This evidence demonstrates that all the alternative routes are more expensive, not less expensive, than Route A. Rehearing should be denied on this issue.

On the wasteful duplication issue, the April 17, 1992 Order discussed the two alternative transmission lines that were suggested by the Intervenor and Kentucky-American's criticism of those lines. Further, the Order stated that, "Route A is the most feasible and least costly alternative for Kentucky-American to satisfy the demands of its customers." Implicit in this finding of least cost for Route A is the absence of wasteful duplication. However, being presented with this opportunity to modify our April

17, 1992 Order, the Commission will grant a rehearing to make the following additional findings based on the existing evidence of record.

There currently exists no transmission facilities that are capable of satisfying Kentucky-American's needs for increased water quantities and pressure in the southwest portion of its service territory. None of the Intervenor's challenged Kentucky-American's need for additional service facilities and the Commission finds that additional facilities are needed.

The two alternative transmission lines proposed by the Intervenor's are not feasible on an engineering basis and thus cannot be considered as viable alternatives to meet Kentucky-American's service needs.

Kentucky-American's proposed Routes B through E, while shorter in length than Route A, are more expensive by at least \$223,000. There are no alternative facilities that could be installed at a lower cost or that would produce greater efficiencies and still adequately satisfy Kentucky-American's service needs. Although Route A is longer in length than proposed Routes B through E, Route A will result in a minimization of investment while achieving the greatest degree of efficiency. In addition to allowing Kentucky-American to correct its service deficiencies, Route A will enable a significant area of southern Fayette County and northern Jessamine County to receive fire protection service, a valuable utility service which no other water purveyors have the ability to provide.

Construction of Route A will create no duplication of existing water transmission facilities. While there is a potential that Route A could, in the future, result in some duplication of distribution facilities, this factor must be weighed against the additional investment of at least \$223,000 to be borne by Kentucky-American's customers if the pipeline is constructed on an alternative route. Since the legislature has not seen fit to grant either water districts or private water companies exclusive service territories, the potential for competition and duplication of distribution facilities exists irrespective of the route selected for the proposed transmission line.

Despite the potential for duplication of distribution facilities, Kentucky-American has stated that it will not serve any customer within the territorial boundary of Jessamine No. 1 as long as the district has outstanding financing secured from or guaranteed by the Farmers Home Administration. This commitment by Kentucky-American also extends to Lexington-South Elkhorn even though none of the proposed transmission facilities will lie within that district's boundary. With respect to Spears, Kentucky-American has stated that it will not solicit any existing customers of Spears.


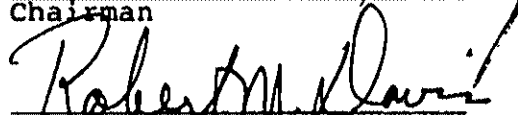
The current known savings of \$223,000 to Kentucky-American's ratepayers under Route A outweigh the speculative harm to the Intervenor due to the mere potential for duplicate distribution facilities in the indefinite future. Under the circumstances of this case, construction of Route A will neither result in an

excessive investment in relation to efficiency nor a multiplicity of physical properties. Thus, there is an absence of wasteful duplication and a need for Kentucky-American to construct a pipeline on Route A.

IT IS THEREFORE ORDERED that the Intervenor's petition for rehearing be and it hereby is granted for the sole purpose of modifying the April 17, 1992 Order as provided in the findings set forth above.

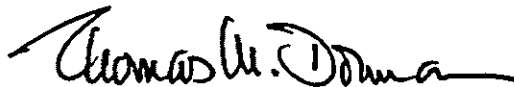
Done at Frankfort, Kentucky, this 26th day of May, 1992.

PUBLIC SERVICE COMMISSION


Chairman

Commissioner

DISSENT OF VICE CHAIRMAN THOMAS M. DORMAN

I reaffirm my previous dissent in the Commission Order dated April 17, 1992.



Thomas M. Dorman
Vice Chairman
Kentucky Public Service Commission

ATTEST:


Executive Director, Acting