

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED TARIFF OF BOONE COUNTY WATER) CASE NO.
AND SEWER DISTRICT FOR SEWER CAPACITY FEE) 91-374

O R D E R

On May 19, 1992, Americoal Corporation ("Americoal") filed a motion to introduce designated portions of transcripts of evidence, exhibits, and pleadings from Case No. 90-108;¹ a motion to compel or, in the alternative, motion to strike pleadings, limit proof or impose sanctions; a motion to strike portions of prefiled testimony of Paul Kroger; and a motion to strike expert testimony of William G. Stannard and Paul Kroger. On May 20, 1992, Boone County Water and Sewer District ("Boone District") filed its response to these motions.

Motion to Introduce Designated Portions of Transcripts
of Evidence, Exhibits and Pleadings From Case No. 90-108

Americoal, in its motion, fails to specifically identify which portions of the record from Case No. 90-108 it desires to presently submit to the record in this case. Hence, the Commission is unable to determine whether the evidence is relevant to this proceeding. Moreover, Americoal possesses the right to

¹ Case No. 90-108, Americoal Corporation vs. Boone County Water and Sewer District.

introduce all evidence it deems relevant at the scheduled hearing and the Commission will consider the merits of each exhibit.

Motion to Compel, Or In The Alternative, Motion to Strike Pleadings, Limit Proof Or Impose Sanctions

Vague and unresponsive answers during discovery are improper. However, in this case in response to Americoal's interrogatories, Boone District (1) identified the witnesses having knowledge of the sewer capacity fee issue; (2) submitted to Americoal the Prefiled Testimony of its two expert witnesses; and (3) informed Americoal of the documents it intends to utilize at the hearing. In light of the foregoing, the Commission finds Boone District's responses are adequate and responsive and that thereby Americoal has been placed on notice of the evidence Boone District intends to introduce at the hearing.

Motion To Strike Portions Of Prefiled Testimony Of Paul Kroger and William Stannard

The purpose of the case at hand is to determine the reasonableness of the rate schedule proposed by Boone County. The Commission shall give the proper weight to any evidence presented regarding the refunds required of Boone District. Therefore, striking the testimony of Paul Kroger concerning the ordered refunds would be improper.

As aforementioned, Boone District has filed the Prefiled Testimony of both Paul Kroger and William Stannard, which serves as an adequate response to Americoal's interrogatories and enables Americoal adequate means to prepare for cross-examination of Boone District's witnesses. Additionally, the procedural schedule

ordered by the Commission permitted Americoal ample opportunity to conduct discovery on the bases of both expert witnesses' opinions.

In regard to Americoal's objection to Paul Kroger's designation as an expert, the Commission finds that this objection relates more to the weight of the evidence rather than its admissibility. The Commission will give the appropriate weight to a witness' testimony in light of their qualifications.

Based upon the foregoing and the Commission being otherwise sufficiently advised, IT IS THEREFORE ORDERED that:

1. Americoal's motion to introduce designated portions of transcripts of evidence, exhibits and pleadings from Case No. 90-108 is hereby denied.


2. Americoal's motion to compel or in the alternative motion to strike pleadings, limit proof, or impose sanctions is hereby denied.

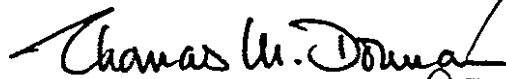
3. Americoal's motion to strike portions of prefiled testimony of Paul Kroger is hereby denied.

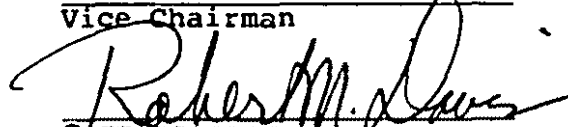
4. Americoal's motion to strike expert testimony of William G. Stannard and Paul Kroger is hereby denied.

Done at Frankfort, Kentucky, this 2nd day of June, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director, Acting