

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE SOURCES OF SUPPLY)
AND FUTURE DEMAND OF KENTUCKY-AMERICAN) CASE NO. 93-434
WATER COMPANY)

O R D E R

On January 10, 1995, the Attorney General's office, by and through his Public Service Litigation Branch, ("AG") filed a motion requesting the Commission to compel Kentucky-American Water Company ("Kentucky-American") to include in future billings the AG's response to a Kentucky-American bill insert discussing the need for a pipeline to the Louisville Water Company. The AG claims that Kentucky-American's use of a bill insert was an attempt to influence public opinion on an issue on which the AG has taken a contrary position and since ratepayers have paid for the cost of Kentucky-American's bill inserts, fairness requires the AG be provided an equal opportunity to respond.

Chetan Talwalkar filed a complaint against Kentucky-American alleging that the bill insert discussing the pipeline constitutes political advertising, the cost of which is not recoverable in rates pursuant to 807 KAR 5:016, Section 4. Talwalkar requests the Commission to investigate the propriety of Kentucky-American's pipeline advertising, prohibit any further expenditures for such advertising or require that the expenditures be recorded in a

separate account pending investigation, and impose punitive measures to discourage similar violations in the future.

The Commission, having considered the motion to compel and the complaint, the responses thereto, and being sufficiently advised, hereby finds that Kentucky-American has an absolute right under the first amendment to the United States Constitution to express its opinions on the pipeline issue to its ratepayers and the public. Further, courts have held that it is a violation of a utility's right to free speech to be compelled to distribute a bill insert expressing views and opinions of others. See Pacific Gas and Electric Company v. Public Utilities Commission of California, 475 U.S. 1, 89 L.Ed.2d 1 (1986).

The Commission agrees that expenditures for advertising to promote the pipeline constitute political advertising that cannot be charged to ratepayers. However, there has been no showing that such expenditures are included in existing rates and the timing of the advertising demonstrates otherwise. The expenditures occurred after Kentucky-American filed its last rate case on June 29, 1994.¹ The AG, Talwalkar and all other parties entered into a stipulation and settlement of that rate case and any advertising not chargeable to ratepayers was presumably considered during their negotiations. However, to ensure that expenditures on political advertising are not included in future rates, Kentucky-American should isolate such

¹ Case No. 94-197, Notice of Adjustment of the Rates of Kentucky-American Water Company.


expenditures so they are readily identifiable should they appear in a subsequent rate case base period or test period.

IT IS THEREFORE ORDERED that:

1. The AG's motion to compel be and it hereby is denied.
2. Talwalkar's complaint be and it hereby is dismissed.
3. Kentucky-American shall keep its books and records in such form that any expenditures for political advertising can be readily identified.

Done at Frankfort, Kentucky, this 3rd day of March, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director