

evidence was persuasive, what evidence was not credible, and, based on that assessment, issued the only correct decision it could – that the public convenience and necessity require the construction of the facilities KAW sought in this case (“the Facilities”). Therefore, there is no reason to reconsider or rehear any issue or matter in this case.

CAWS’ Application does not meet the standard necessary for rehearing. In numerous recent orders, the Commission has held that no rehearing should occur when the applicant has not “offered additional evidence on rehearing that could not have been offered originally.”² When a party had a “full and fair opportunity in this proceeding to propose” an argument and include evidence relating to an issue and failed to do so, its application for rehearing was denied.³ When a party seeks rehearing on an issue that was fully explored and briefed in a case, a petition for rehearing on those issues is “unpersuasive.”⁴ In Case No. 2006-00136, certain intervenors moved for a rehearing when the Commission issued an order they did not like. The opponents to the motion made the same argument KAW makes here – that the application fails to include anything not previously considered by the Commission. In denying the motion for rehearing, the Commission held “the Intervenors have raised no evidence or arguments not

² See November 8, 2004 Order, p. 3, in Case No. 2004-00235, *Adoption of Interconnection Agreement between BellSouth Telecommunications, Inc. and Cinergy Communications Company by SouthEast Telephone, Inc.*

³ See October 17, 2005 Order, p. 6, in Case No. 2005-00068, *Application of Kentucky Power Company for Approval of an Amended Compliance Plan.*

⁴ See July 6, 2006 Order, p. 2, in Case No. 2003-00266, *Investigation into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.* The Commission made similar rulings in its May 10, 2007 Order, p. 4, in Case No. 2006-00316, *Petition of SouthEast Telephone, Inc. for Arbitration* and in its January 18, 2008 Order, p. 2, in Case No. 2004-00427, *Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket.*

previously considered by the Commission.”⁵ Therefore, the Commission denied the motion. In sum, when no new evidence or new arguments are made in an application for rehearing, the motion should be denied.

Well over a year ago, KAW filed its Application. Since that time, extensive discovery took place, numerous experts provided multiple opinions, the initial procedural schedule was amended five times to allow for more evidence, three different public hearings occurred, more than three full days of testimony was given at the November 2007 evidentiary hearing, two full days of testimony were given at the March 2008 evidentiary hearing, seven long and detailed post-hearing briefs were submitted, and the Commission issued an extraordinarily long order (which included the Commission’s own detailed present value analysis) that addressed every issue that was part of this case. The lengths to which the Commission went to develop the record in this case are unprecedented. Indeed, CAWS had as recently as February 11, 2008, to file any new evidence it wanted the Commission to consider and as recently as the March 2008 hearing to provide oral testimony in furtherance of its arguments. Every party in this case had more than ample opportunity to present any and all evidence and argument for Commission consideration. Although the Commission’s decision is not the result CAWS wanted, CAWS has provided no reason to rehear this case or reconsider the decision.

CAWS seeks “rehearing” on six grounds. None of the grounds warrants a response because, again, none of them offers anything “new” or worthy of rehearing. CAWS simply complains that the Commission construed evidence in a way that CAWS does not like. Even though it is not necessary to respond in kind to each ground asserted in CAWS’ Application, a

⁵ See August 26, 2006 Order, p. 2, in Case No. 2006-00136, *Joint Application for Approval of the Indirect Transfer of Control Relating to the Merger of AT&T Inc. and BellSouth Corporation*.

basic consideration of CAWS' arguments shows them to be insufficient. First, CAWS complains that the Commission's discussion of progress KAW has made towards completion of the Facilities somehow jeopardized the Commission's ability to fairly evaluate all alternatives to the source of supply problem. On the contrary, the progress shows the clear viability of the Facilities as opposed to the impossibility, difficulty and/or lack of viability of alternate solutions. Indeed, the governing regulation⁶ required KAW to file copies of the necessary permits it had obtained when it filed its application. In other words, the law requires significant progress to have been made *before* an application is filed. Under CAWS' theory, an application for a certificate of public convenience and necessity should be filed the moment somebody first conceives the idea for a solution. Of course, the law does not require that, and, in fact, requires just the opposite.

CAWS also complains that the Commission "summarily" rejected: (1) CAWS' arguments regarding aggressive leak detection, conservation and the purchase of treated water from Versailles;⁷ and (2) Dr. Solomon's testimony regarding future demand. Webster's New World Dictionary defines "summarily" as "hastily or arbitrarily." The Commission did absolutely *nothing* in this case summarily, hastily or arbitrarily. The brief summary of the proceedings set forth above proves that everything the Commission did in this case was done deliberately and with the goal of allowing every party to have every opportunity to present its

⁶ 807 KAR 5:001, Section 9(2)(b).

⁷ CAWS asserts that, on rehearing, KAW should be required to "explore more completely" purchasing finished water from Versailles. This statement is a perfect example of CAWS' misunderstanding of the rehearing process. KAW has not requested a rehearing and does not need or seek to submit any more evidence. It has already proven its case to the Commission's satisfaction. To the extent CAWS wanted more evidence regarding Versailles considered, it should have made that evidence part of the record long ago. It chose not to, presumably because it realized that purchasing water from Versailles is wrought with all the problems set forth in KAW's March 20, 2008 Post-Hearing Brief at pp. 29-31.

evidence and arguments. CAWS disagrees with the correct conclusions the Commission made regarding Dr. Solomon's extrapolations⁸ and alternate source of supply solutions, but that disagreement does not constitute the legal basis for rehearing or reconsideration.

CAWS also asserts that the Commission should have considered the issue of KAW's power of eminent domain. While that argument is completely wrong and is based on a most tortured reading of the applicable statutes, it is, more importantly, not properly before this Commission. To the extent CAWS seeks to challenge KAW's power of eminent domain, the courts have the jurisdiction – not the Commission – to decide that issue. KRS 416.570.⁹

Finally, CAWS makes the argument that the Commission's discussion of the regional advantages of the Facilities and the positive benefits to the Kentucky River Authority's ("KRA") budget that will be created by the Facilities is somehow inappropriate. This argument demonstrates perfectly the unreasonableness of CAWS' Application. CAWS raised numerous issues that are related to whether a certificate should have been issued in only a most tangential way. Prime examples are the plethora of environmental issues in the record. Here, however, when the Commission merely noted another non-core issue, the KRA fee and budget, CAWS claims the whole order is flawed by that brief reference. CAWS' Application, however, quotes the Commission as stating that part of its discussion "does not enter into our consideration of

⁸ CAWS offered Dr. Solomon as an expert witness even though he has no expertise in the subject area of water demand forecasting and was not even aware of the existence of Commission cases on the issue of KAW's demand forecasting and source of supply solutions that were incorporated into this case. See KAW's March 20, 2008 Post-Hearing Brief, pp. 13-14, for a more detailed discussion of the inadequacies of Dr. Solomon's opinions.

⁹ See also the Commission's October 22, 1992 Order in Case No. 92-395 in which the Commission stated, "the Commission has jurisdiction over complaints as to rates or service of a utility, but possesses no jurisdiction to adjudicate a claim arising out of a condemnation proceeding."

‘need’ and ‘wasteful duplication.’” As such, it is mere dictum; the remainder of the opinion is more than sufficient to uphold this strong order.

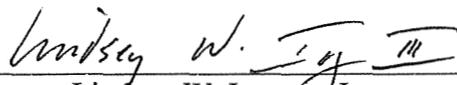
Therefore, neither a rehearing nor reconsideration should occur. Instead, the Commission should deny CAWS’ Application.

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