

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)	CASE NO. 2007-00134
AUTHORIZING THE CONSTRUCTION OF)	
KENTUCKY RIVER STATION II, ASSOCIATED)	
FACILITIES AND TRANSMISSION MAIN)	

O R D E R

Citizens for Alternative Water Solutions (“CAWS”) has applied for rehearing on the Commission’s Order of April 25, 2008 in which we granted a Certificate of Public Convenience and Necessity to Kentucky-American Water Company (“Kentucky-American”) to construct a water treatment plant near Pool 3 of the Kentucky River and a water transmission main. Kentucky-American and Bluegrass Water Supply Commission have submitted responses in opposition to the application. Having considered the application, we deny.¹

CAWS alleges that the Order of April 25, 2008 is unlawful and unreasonable because the Commission: (1) improperly accorded significant weight to the status of the development of the Pool 3 Project; (2) failed to consider the “combined” alternative

¹ KRS 278.400 authorizes rehearing when a party has “additional evidence that could not with reasonable diligence have been offered on the former hearing.” CAWS neither presents new evidence nor makes any allegation that such evidence exists. It instead raises issues relating to factual determinations set forth in the Order of April 25, 2008. While styled an application for rehearing, it is similar to a motion to alter, amend, or vacate a judgment. See Kentucky Civil Rule 59.05; see also *Gullion v. Gullion*, 163 S.W.3d 888 (Ky. 2005). While neither KRS Chapter 278 nor the Commission’s Rules of Procedure makes provision for such motions, the Commission has generally considered such motions and applied standards similar to those found in Civil Rule 59.05. *But see* Case No. 2000-00417, *Blaine City Gas Company* (Ky. PSC Jan. 23, 2002) (holding that motions for rehearing before the Commission must be filed pursuant to KRS 278.400, instead of Civil Rule 59.05).

solution of conservation measures, leak detection, and purchases from the city of Versailles as interim measures; (3) failed to give adequate consideration to landowner opposition to construction of the proposed transmission main over private lands; (4) erroneously concluded that the project is consistent with regional planning efforts; (5) erroneously considered the effect of the use of Ohio River water on the Kentucky River Authority; and (6) summarily rejected the testimony of Dr. Martin Solomon.

As to the first alleged error - that significant weight was accorded to the developmental status of the Pool 3 Project - we find nothing within the Order to support this contention. As an initial matter, KRS 278.020 and 807 KAR 5:001 require utilities to present a well-developed proposal when seeking a Certificate of Public Convenience and Necessity. Yet, nowhere in the Order does the Commission state that any weight should be accorded to the mere fact that the Pool 3 Project was at a more advanced stage of development than the Louisville Water Company ("LWC") proposal. To the contrary, in conducting our net present value ("NPV") analysis of the Pool 3 Project and the LWC proposal, we used conservative assumptions that mitigated the financial impact of the LWC proposal having a later operational date.²

CAWS misinterprets the reference in the Order to the developmental status of the two proposals. In the Order, the Commission performed an independent NPV analysis of the two proposals.³ Using assumptions that were most favorable to the LWC proposal, we found that the LWC proposal had a slightly lower NPV⁴ and that the

² For example, see Order of April 25, 2008 at 58 n. 211 and accompanying text.

³ Order of April 25, 2008 at 51 - 77.

⁴ *Id.* at 75 - 76.

difference between the NPV of the two proposals was not materially significant.⁵ To ensure the reliability of our results, we then assessed the likelihood that the inputs to our analysis would change. In the case of the Pool 3 Project, where firm bids on the contracts for the proposed construction proposal had already been received, we found the probability of significant change to these inputs to be low. In the case of the LWC proposal, where many of the project's details had yet to be determined and where bids on the project would not be solicited until 2009 or 2010, we found the probability of changes in the inputs to be much greater. This higher probability of change inherent in the LWC proposal reduced the evidentiary weight that could reasonably be afforded to the difference in the two projects' NPVs.

CAWS argues that this risk review is unreasonable, unfair and is weighted in favor of an applicant for a Certificate. Failing to conduct such a review, however, equates to making an assumption that the risk of changes in the inputs for the NPV analysis is the same for both projects. The Commission must take into account the relative risk of change associated with estimated construction costs for which no bids are expected to be solicited for at least 12 months versus the construction costs associated with a legally enforceable contractor's bid. The risk is not the same. To find otherwise ignores existing economic conditions.⁶

We further find CAWS's position that "fair consideration of alternatives . . . require[s] that the applicant provide comparable investigation of routing,

⁵ *Id.* at 77.

⁶ This review, moreover, is not weighted in favor of an applicant for a Certificate. Changes in inputs of the NPV generally will have a significant effect only when the differences in the NPV of the proposed project and its alternatives are small to begin with.

permitting requirements, easement acquisition, and design” is unreasonable and unworkable. The Bluegrass Water Supply Consortium identified more than 40 water supply alternatives. If CAWS’s position were accepted, then Kentucky-American would be required to devote the same level of resources and effort to review **each** of these alternatives as it did to prepare and support its application for the Pool 3 Project. Such action would result in unreasonable and unproductive costs that the utility’s ratepayers would ultimately bear. While a utility must exercise reasonable efforts to review each alternative and must fully document and explain its reasoning for the alternative’s non-selection, it is not required to provide the same level of review and preparation for all alternatives.

As to the second alleged error, we find no merit to the allegation that inadequate consideration was given to a combination of alternative solutions. The Order addressed these solutions both individually and collectively. The proposed combination could not reasonably produce sufficient quantity of water to meet Kentucky-American’s supply deficit during a drought of record.⁷

As to the issue of landowner opposition to the proposed project and its effect on Kentucky-American’s ability to construct the proposed water transmission main, we find no reason to grant rehearing. After questioning Kentucky-American’s witnesses on the

⁷ CAWS suggests that the Commission acted inconsistently in failing to consider whether Versailles could obtain temporary modifications in its withdrawal permits to permit larger withdrawals, while expressly noting the possibility of such modifications to Kentucky-American’s withdrawal permit for the proposed Pool 3 water treatment plant. The two situations are readily distinguishable. In the case of Versailles, the Commission was referring to the ability of Versailles to withdraw water during a drought of record. In the Case of the Pool 3 Project, the Commission was referring to operations during a non-drought of record. Moreover, the record clearly indicated that more than 20 million gallons of water could be safely withdrawn from Pool 3 daily even in a drought of record. See Order of April 25, 2008 at 43 - 45.

issue of condemnation at hearing,⁸ but then failing to raise that issue in its written brief, CAWS may not now properly raise it. Moreover, as the Order reflects, we addressed landowner opposition to the proposed water transmission main and the LWC proposal in our NPV analyses.⁹

As to the fourth alleged error, the Order of April 25, 2008 contains a lengthy discussion of the history of efforts to resolve the water supply deficit that currently exists in central Kentucky and how the proposed facilities are an outgrowth of these efforts. CAWS provides no fact or arguments to dispute this discussion or our findings regarding the proposed facilities in relation to regional planning efforts.

As to the remaining alleged errors, we find no basis to alter our Order or conduct further proceedings. We noted in our Order of April 25, 2008 that the effect of the proposed facilities on the Kentucky River Authority did not enter into our consideration of “need” and “wasteful duplication.”¹⁰ As for our refusal to accept the testimony of CAWS’s witness on water usage projections, the record firmly supports the Commission’s findings regarding the witness’s qualifications and his methodology.

IT IS HEREBY ORDERED that CAWS’s application for rehearing is denied.

⁸ Transcript of 11/27/2007 Hearing at 41 - 42.

⁹ Order of April 25, 2008 at 59 and 76. As the Commission lacks jurisdiction to determine the applicability of KRS 96.080 to Kentucky-American’s efforts to condemn easements across private lands for the proposed water transmission main, that issue cannot serve as the basis for granting CAWS’s application for rehearing. The Commission similarly lacks jurisdiction to resolve any issues arising out of KRS Chapter 416 regarding condemnation and eminent domain.

¹⁰ *Id.* at 82.

Done at Frankfort, Kentucky, this 5th day of June, 2008.

By the Commission

ATTEST:


Executive Director

Case No. 2007-00134