

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On September 10, 1997, the Attorney General's Office of Rate Intervention ("AG") filed an application for rehearing of the Commission's August 21, 1997 Order. That Order set forth numerous findings relating to Kentucky-American Water Company's ("Kentucky-American") sources of supply including the following: 1) during an extreme drought Kentucky-American would experience a water supply deficit; and 2) a reasonable estimate of Kentucky-American's total annual supply deficit is 3.489 billion gallons for the planning horizon through the year 2020.

First, the AG requests modification and extension of the Order to specifically indicate how drought response and demand management are incorporated into the planning criteria. Kentucky-American has developed a detailed water shortage response plan which is designed to restrict water consumption during drought conditions. This plan was necessitated by Kentucky-American's current inability to meet its customers' unrestricted demand for water under drought conditions. This inability to meet unrestricted demand is contrary to Commission regulation 807 KAR 5:066, Section 10(4), which states, "The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption." Thus, for

planning purposes a drought response plan is not a substitute for adequate sources of supply to meet customers' maximum consumption.

The issue of demand management was investigated and decided by the Commission in its March 14, 1995 Order. In that Order, Kentucky-American's demand model, which considered numerous variables including demand management, and the demand projections sponsored by Intervenor Talwalkar, which reflected greater reductions due to demand management programs, were both found to be within a realm of reasonableness. After including the projected impacts of demand management programs, the Commission found a supply deficit to exist under a drought of record.

Kentucky-American's demand projections, including demand management programs, were provided to the Kentucky Water Resources Research Institute ("KWRRRI") for use in its analysis of the Kentucky River's ability to supply water. In addition, the KWRRRI examined the potential impacts of demand-side alternatives designed to reduce or manage future water supply deficits. Those alternatives included long-term conservation pricing, short-term demand management strategies, and simply curtailing demand during a drought to eliminate anticipated future deficits. Based on its examination, the KWRRRI concluded, "[I]t is clear that the overall water shortage problem in the Kentucky River Basin cannot be solved through conservation or demand management. . . ."¹ Therefore, the impact of demand management has been fully reflected in the planning criteria.

¹ KWRRRI Report, Executive Summary, p. 6-7.

Second, the AG objects to the Commission's adoption of Kentucky-American's proposed adjustments to the KWRRRI baseline projection to reflect transmission losses and expansion of coverage. The AG requests modification of the August 21, 1997 Order to reject these adjustments. Kentucky-American proposed five adjustments to the KWRRRI baseline projection, the net effect of which reduced the estimated total annual supply deficit in Pool 9 of the Kentucky River from 6.579 billion gallons to 3.489 billion gallons. Kentucky-American's withdrawals from the Kentucky River are from Pool 9. The Commission found these adjustments to be reasonable and adopted them. The AG asserts that Kentucky-American had a full and fair opportunity to present these adjustments to the KWRRRI and, having failed to do so, such adjustments are not proper for consideration by the Commission.

The Commission does not accept this argument. The purpose of our investigation and review of the KWRRRI study was to give all interested parties an opportunity to support or challenge the study's findings. The Commission has exclusive jurisdiction over the rates and service of Kentucky-American. In determining the magnitude of Kentucky-American's supply deficiency, the Commission appropriately considered evidence that supports modifications to the KWRRRI projections. All parties, including the Kentucky River Authority participated in the rehearing and had an opportunity to respond to Kentucky-American's evidence and proposed adjustments. The Commission found Kentucky-American's adjustments to be reasonable and the AG's application does not cite any evidence to persuade us to the contrary.

Third, the AG requests modification of the Order to indicate the basis of the finding in the August 21, 1997 Order, at page 5, that the Kentucky River Authority's proposed activities would be insufficient to provide an adequate and reliable water supply. The KWRRRI in its Task V Report to the Kentucky River Authority presented supply-side alternatives to satisfy the water supply deficits upstream of Pool 9, the river pool utilized by Kentucky-American. KWRRRI concluded that the installation of valves in dams 9 through 14, as well as the construction of temporary crest-gates on these same dams, would be needed to meet the 2020 high demand projection in Pool 9 under 1930 drought conditions. The AG's witness, Scott J. Rubin, testified that he was aware that the Kentucky River Authority did not plan to construct temporary crest-gates on dams 11 and 12.² Thus, the absence of crest-gates on dams 11 and 12 will render the other activities by the Kentucky River Authority insufficient to provide an adequate and reliable supply at Pool 9.

In addition, the AG requests the Commission to clarify whether a water utility is obligated to obtain a source of supply to meet unrestricted demand during a drought of record. As the Commission stated in response to the AG's first issue for rehearing, 807 KAR 5:066, Section 10(4) requires a utility to have a water supply sufficient to meet the reasonable requirements of its customers under maximum consumption. The regulation includes no exception for drought conditions. While a utility may not at all times be in compliance with this regulation due to the utility's particular circumstances, for planning

² Transcript of Evidence, May 21, 1997, p. 122.

purposes a utility is obligated to make every effort and take all steps necessary to be in compliance.

Fourth, the AG asks the Commission to request comment from the Kentucky River Authority on the August 21, 1997 Order because the findings therein affect water supply planning for both regulated and unregulated water utilities in the Kentucky River Basin. The Commission notes that the Kentucky River Authority was a full intervenor in this case, responded to information requests, was represented at the May 21, 1997 public hearing, and was afforded every opportunity to fully participate in this case to the degree it deemed necessary and appropriate. The Kentucky River Authority has not filed an application for rehearing or a response to the AG's application. Furthermore, the Kentucky River Authority has not requested an opportunity to file comments on the findings set forth in the August 21, 1997 Order. Under these circumstances the Commission is not convinced that there is any need to solicit comments and the AG's request for rehearing of this issue should be denied.

Finally, the AG's application amounts to a request for a "rehearing on a rehearing." The Commission previously ruled in Case No. 10201³ that KRS 278.400 does not authorize the filing of a "rehearing on rehearing." The AG was a party to that case and has cited no authority to now support his application for a second rehearing. KRS 278.410 provides that when rehearing has been granted, any party may, within 20 days after service of the final Order on rehearing, bring an action against the

³ Case No. 10201, An Adjustment of Rates of Columbia Gas of Kentucky, Inc., Order dated September 26, 1989, attached hereto as Appendix A.

Commission in the Franklin Circuit Court. Thus, once a final Order on rehearing has been issued, any further relief must be sought from the court, not the Commission. The Commission also believes that granting a "rehearing on rehearing" would seriously undermine the finality of Commission Orders.


IT IS THEREFORE ORDERED that the AG's application for rehearing is denied.

Done at Frankfort, Kentucky, this 29th day of September, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 93-434 DATED SEPTEMBER 29, 1997

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF RATES OF)
COLUMBIA GAS OF KENTUCKY, INC.) CASE NO. 10201

O R D E R

By petition filed September 8, 1989, Columbia Gas of Kentucky, Inc. ("Columbia") requests the Commission reconsider that portion of its August 23, 1989 final Order on rehearing that sets forth the appropriate level of nominated gas balances to be included in Columbia's rate base.

On November 10, 1988, Columbia petitioned for rehearing in this proceeding. Rehearing was granted on November 30, 1988, a hearing was held on February 23, 1989 and the parties filed briefs. The final order on rehearing, issued August 23, 1989, forms the basis for the request under consideration.

The issue raised by Columbia herein was initially raised and addressed by the Commission in the original hearing on this matter. Additionally, the issue was raised by Columbia on rehearing and addressed by the Commission in its rehearing Order of August 23, 1989. After reviewing the petition and the joint response filed by the Attorney General of Kentucky and the Lexington-Fayette Urban County Government, the Commission is of the opinion and finds that the record in this case is sufficient to support the Commission's decision regarding the appropriate

level of nominated gas balances to be included in rate base and Columbia's request for limited reconsideration of this issue should be denied.

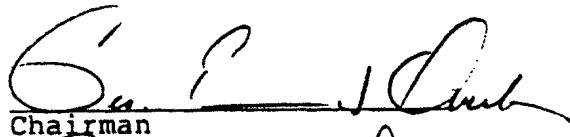
Furthermore, Columbia has cited no authority by which the Commission could undertake "rehearing on rehearing." KRS 278.410 provides that when rehearing has been granted, any party or utility affected by an Order of the Commission may, within 20 days after service of the Order, take an appeal to Franklin Circuit Court. Thus, Columbia's remedy in this proceeding lies with the courts.

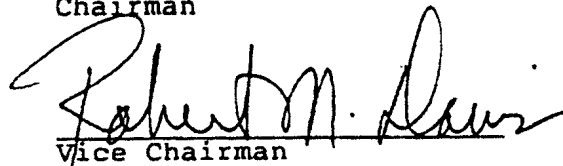
The Commission has an additional concern that granting the requested reconsideration herein would seriously undermine the finality of Commission Orders and would encourage parties to crowd the Commission's dockets with endless requests to reconsider its actions.

IT IS THEREFORE ORDERED that Columbia's petition for limited reconsideration is denied.

Done at Frankfort, Kentucky, this 26th day of September, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director