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May 4, 2012

**VIA ELECTRONIC FILING**

Mr. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort, Kentucky 40602

RECEIVED

MAY -7 2012

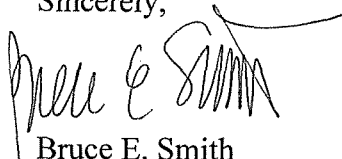
PUBLIC SERVICE  
COMMISSION

Re: Case No. 2011-00297  
Supplemental Requests for Information  
to Forest Creek by Water District

Dear Sir:

Transmitted herewith is my client's Supplemental Requests for Information to Forest Creek by Water District as referenced above.

Sincerely,

  
Bruce E. Smith

Enclosures

*mailed 5/5/12 per  
Wuetcher email instruction*

*BES*

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                         |   |                     |
|-------------------------|---|---------------------|
| FOREST CREEK, LLC       | ) |                     |
| COMPLAINANT             | ) |                     |
|                         | ) |                     |
| VS.                     | ) | CASE NO. 2011-00297 |
|                         | ) |                     |
| JESSAMINE SOUTH ELKHORN | ) |                     |
| WATER DISTRICT          | ) |                     |
|                         | ) |                     |
| DEFENDANT               | ) |                     |

**SUPPLEMENTAL REQUESTS FOR INFORMATION  
TO FOREST CREEK FROM WATER DISTRICT**

Comes the Defendant, Jessamine-South Elkhorn Water District (“District”), by counsel, and without waiving its objection to the jurisdiction of the Kentucky Public Service Commission (“PSC” or “Commission”) or any other issue previously raised or motion filed by it, submits its Supplemental Requests for Information to the Complainant, Forest Creek, LLC (“Forest Creek”), as follows:

**INSTRUCTIONS**

As used herein, “documents” include all correspondence, memoranda, e-mail, computer data or records, notes, the term “document”, means written, recorded (on magnetic tape or otherwise), transcribed, printed, impressed or graphic matter of whatever kind, however produced or reproduced, irrespective of the preparer, including, but not limited to, sound or pictorial recordings, computerized information, computerized notices, books, pamphlets, handwritten and/or typed letters, memoranda, telegrams, electronic or mechanical transmissions, communications of all kinds, reports, working papers, handwritten and/or typed notations, charts,

papers, writings, transcriptions, tapes and records of any kind, regardless of origin and location, in the possession, custody or control of, or accessible to Forest Creek, its witnesses or its counsel. "Document" includes drafts or copies of documents which contain any information different from the original, and includes documents prepared at your direction, or on your behalf.

As used herein, the term "identify," when used herein in reference to a person, means to provide the following information:

a.) the person's full name and any and all assumed names or former names, including, if a corporation, all predecessors and successors in interest;

b.) the person's last known principal business address, and telephone numbers, and, if an individual, residence addresses and phone numbers;

c.) if an individual, the name and address of the person's employer, the person's job title and job description at all times pertinent to the pending action, including any changes therein and dates thereof, and a description of the branch, office, division, region, etc., with which that person was or is affiliated; and

d.) if other than an individual, a description of the type of entity involved including any form of organization or entity.

As used herein, the term "identify," when used herein with reference to a document or an oral communication or statement, means to:

a.) identify the author or speaker and the date thereof;

b.) identify the parties thereto, the addresses thereof, and the actual and the intended recipients thereof;

c.) if a document describe its character and state the number of pages therein;

d.) if an oral communication, identify the type of communication, state the place(s) where the communication or statement was issued and received, and identify all witnesses to the communication; and

e.) if a document, state its title and other identifying data, and identify all persons who have possession, custody or control over the document and copies of the document.

As used herein, the term “identify,” when used herein with reference to a fact or circumstance, means:

a.) to identify, as defined above, any occasion and occurrence, oral communication or document, and to describe precisely and fully any other circumstance or manifestation of facts which, in whole or in part, led to or is believed in any way to support a particular allegation, whether or not admissible into evidence or intended to be offered into evidence; and

b.) to set forth fully and precisely any inference, construction, interpretation, relation, opinion or contention that relates to the fact or circumstance, or to the application of law to the fact or circumstance, and which in whole or in part led to or is believed in any way to support a particular allegation.

These requests shall be deemed continuing so as to require further and supplemental responses if Forest Creek receives or generates additional information within the scope of these requests between the time of the response and the time of any hearing herein.

If any request is considered or claimed to be vague, unclear or confusing in any way, Forest Creek is requested to contact counsel for the District for further explanation or discussion before merely objecting to the request on said grounds. To the extent that Forest Creek disagrees with or objects to any of the definitions set forth above or the requests set forth below, Forest

Creek is requested to state such objection, including the full grounds therefore, but to nonetheless proceed to fully respond to the following requests.

Please repeat the question to which each response is intended to refer, to be followed by the response.

To the extent that the specific document, workpaper or information as requested does not exist, but a similar document, workpaper or information does exist, provide the similar document, workpaper or information.

For any document withheld on the basis of privilege, state the following: date; author; addressee; indicated or blind copies; all persons to whom distributed, shown or explained; and the nature and legal basis for the privilege asserted.

#### **SUPPLEMENTAL REQUESTS FOR INFORMATION**

1. With respect to the District's initial Information Request No. 3 and Forest Creek's answer thereto:

(a) Please state the specific language of 807 KAR 5:066 that Forest Creek contends "requires" prior approval of a request for extension or an interim water service agreement.

(b) Please provide any and all Public Service Commission or Kentucky Court decision, orders, opinions or other rulings that support Forest Creek's contention that approval of a request for extension or an interim water agreement is required by 807 KAR 5:066 or any other statute or regulation.

(c) Please state the specific language of 807 KAR 5:066 that Forest Creek claims "requires" prior approval of Option II other than by filing Option II as part of the Water District's tariff.

(d) Please provide any and all Public Service Commission or Kentucky Court decision, orders, opinions or other rulings that support Forest Creek's contention that prior approval of Option II is required by 807 KAR 5:066 or any other statute or regulation.

2. With respect to Forest Creek's answers to the District's initial Request for Information No. 5 (a)<sup>1</sup>, (b)<sup>2</sup>, (c)<sup>3</sup> and (e)<sup>4</sup>:

(a) As originally requested in 5 (a) and (b), please provide the dates and names of **all** participants to the discussions with the PSC and please state who initiated each of the contacts (*The Answer to 5(a) and 5(e) indicate there were discussions with multiple representatives of the PSC.*);

(b) As related to the answer to 5 (c), were the emails appended as Attachment A to Forest Creek's answer void of content as provided? If not, please provide the full content of the emails, and an explanation of why the provided emails were blank other than the heading.

(c) As related to the answer to 5(c), what attachments, if any, were received with these emails? Please provide a copy of all attachments that were received.

(d) As related to the answer to 5(e), please provide a narrative of all *exchanges of communication, electronically or otherwise*, which Forest Creek had with representatives of the Public Service Commission as to Option I, the availability of Option I after a prior election of Option II, or any other matter related to this Complaint. Provide all documents that may relate to such advice. If no such documents exist, so state.

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<sup>1</sup> "Forest Creek states that it first learned that Option I was a valid option for it with respect to the construction of a water line extension to serve its development during **discussions with representatives** of the Public Service Commission in May of 2010." (Emphasis added)

<sup>2</sup> "The discussions with the Public Service Commission concerning the availability of Option I to construct a water line extension to its development occurred in telephone conversations with Gerald Wuetcher with the Public Service Commission in May of 2010."

<sup>3</sup> "Please see Attachment A."

<sup>4</sup> "The Public Service Commission or its **representatives** did not provide advice to Forest Creek or its representatives." (Emphasis added)

3. Provide a record of all contacts between Forest Creek (including any person directly or indirectly representing Forest Creek's interests) and representatives of the Public Service Commission, that are in any way related to the extension of water service to Forest Creek, from 2007 to the present. Include the dates of such contacts, who initiated the contacts, all participants, a complete statement of the content of the communications, any documents that either were exchanged or provided as part of or a result of these communications, and any notes or memoranda that discuss any such contacts.

4. Admit or deny that the issue or disagreement between the District and Forest Creek relative to the location corridor for the proposed water main for the project along KY 29 and US 68 has been resolved and is now moot pursuant to the letter from the District's Chairman (L. Nicholas Strong) to Forest Creek's engineer (Jihad A. Hallany) and dated March 27, 2012<sup>5</sup>. If denied, please provide a full explanation of why this issue has not been resolved, and a complete statement of any issues that remain unresolved as to the location of the water main along these two roads.

5. Admit or deny that Forest Creek's application for an extension of water service (Request for Extension signed by James A. Kelley on April 27, 2007) was accepted by the District. If denied, please provide a full explanation of the factual basis for Forest Creek's denial.

6. Admit or deny that Forest Creek has yet to submit a complete set of construction plans for the water infrastructure for its project.<sup>6</sup> If denied, please provide a full explanation of the factual basis for the denial.

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<sup>5</sup> This letter was last filed in the record as Exhibit "B" to the Response by Water District to Forest Creek's Motion to Compel (served May 2, 2012).

<sup>6</sup> A "complete set of construction plans" as the term is used herein would include, but not be limited to, at least the level of detail as set forth in the Water District's answer to Forest Creek's Request for Information No. 9 contained in the Water District's Responses to First Information Requests Served by Forest Creek served and filed on March 29, 2012. Reference is hereby made to the detail contained in said answer and same is incorporated herein.

7. Admit or deny that Forest Creek was represented by attorney Robert L. Gullette, Jr., Esq. (“Gullette”) and engineer, Jihad A. Hallany (“Hallany”), at the time Forest Creek’s representative submitted the Request for Extension to the District for acceptance and thereafter through at least March 27, 2012. If denied, please provide a full explanation of the factual basis for the denial.

8. Did Forest Creek seek the advice of either Gullette or Hallany or both prior to signing the Request for Extension on April 27, 2007 and submitting this application to the District?

9. Admit or deny that Forest Creek would have been unable to proceed with and/or complete the development approval process for its project before the Jessamine County-City of Wilmore Joint Planning Commission without the signature of the District’s representative’s inscribed on the Certificate of Availability of Water Supply on Forest Creek’s preliminary plat. If denied, please provide a full explanation of the factual basis for the denial.

10. Did Forest Creek seek the advice of Gullette prior to its representative signing the Interim Water Service Agreement on May 2, 2007, or thereafter through June 6, 2007, when the District’s Chairman signed the said Agreement?

11. Did Forest Creek authorize and/or direct its counsel in this PSC proceeding and/or its counsel in the Jessamine Circuit Court Civil Action No. 12-CI-00081 to exchange discovery and/or Open Records request responses by the District?

12. Included in Attachment B to Forest Creek’s answers to the initial Requests for Information from the District were copies of “Transmittals” from Hallany to John Horne and/or Horne Engineering, Inc. (collectively “Horne”) dated from April 23, 2007 to and including



December 17, 2009. As to the aforementioned Transmittals, please answer and/or respond to the following:

(a) Identify and produce the attachments or documents referenced on the face of each of the dated Transmittals;

(b) Was a complete set of construction plans<sup>7</sup> for the water infrastructure proposed by Forest Creek for its project attached to any of these transmittals? If the answer to this question is yes, please identify the date of the Transmittal and produce the “complete set of construction plans”.

13. State with specificity the facts which connect the letter from Hallany to Nick Strong, dated April 30, 2007 and included by Forest Creek in its Attachment B, to Forest Creek’s Complaint herein and state with specificity how this letter supports or relates to Forest Creek’s claims stated within its Complaint?

14. State with specificity the facts which connect the letter from Betty L. Taylor to “To Whom It May Concern”, dated July 18, 2007 and included by Forest Creek in its Attachment B, to Forest Creek’s Complaint herein and state with specificity how this letter supports or relates to Forest Creek’s claims stated within its Complaint?

15. State with specificity the facts which connect the letter from Betty L. Taylor to “To Whom It May Concern”, dated November 15, 2007 and included by Forest Creek in its Attachment B, to Forest Creek’s Complaint herein and state with specificity how this letter supports or relates to Forest Creek’s claims stated within its Complaint?

16. State with specificity the facts which connect the letter from Horne to Hallany, dated December 19, 2008 and included by Forest Creek in its Attachment B, to Forest Creek’s

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<sup>7</sup> See Footnote No. Six (6) for definition.

Complaint herein and state with specificity how this letter supports or relates to Forest Creek's claims stated within its Complaint?

17. Were there any attachments to the letter from Horne to Hallany, dated February 28, 2009, and included by Forest Creek in its Attachment B? If so, please produce these attachments.

18. Were there any attachments to the letter from Horne to Hallany, dated June 23, 2009, and included by Forest Creek in its Attachment B? If so, please produce these attachments.

19. Please produce the attachments included with the letter from Horne to Hallany, dated November 3, 2010 and included by Forest Creek in its Attachment B.

20. Admit or deny that Forest Creek has yet to submit to the District or its representative a set of "on-site"<sup>8</sup> construction plans for the water infrastructure for its project. If denied, please provide a full explanation of the factual basis for the denial.

21. Admit or deny that Forest Creek has yet to submit to the District or its representative a complete set of "off-site" construction plans<sup>9</sup> for the water infrastructure for its project.

22. Admit or deny that Forest Creek has already paid the Francis Asbury Society a sum of money to reimburse the Society for Forest Creek's share of upsizing the water main that was constructed by the Society leading from the City of Wilmore which will be connected to the proposed water main extension leading to Forest Creek's project to be constructed by it. If denied, please provide a full explanation of the factual basis for the denial.

23. What was the precise amount of money paid by Forest Creek to the Francis Asbury Society?

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<sup>8</sup> As detailed in Footnote No. Six (6) along with the components for "on-site" construction plans.

<sup>9</sup> As detailed in Footnote No. Six (6) along with the components for "on-site" construction plans.

24. Provide copies of all of the plans submitted by Hallany to Horne which reflect Horne's notes thereon.

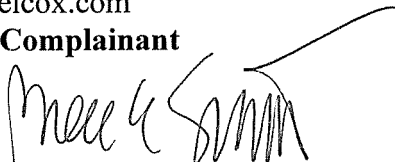


Bruce E. Smith  
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Fax: (859) 885-1152  
**Attorney for District**

**CERTIFICATE OF SERVICE:**

The undersigned hereby certifies that a true copy of the foregoing Supplemental Requests for Information to Forest Creek from Water District was served on the following email on May 4, 2012:

Robert C. Moore, Esq.  
rmoore@hazelcox.com  
**Counsel for Complainant**



Bruce E. Smith