

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF JESSAMINE-SOUTH ELKHORN)
WATER DISTRICT FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO) CASE NO. 2012-00470
CONSTRUCT AND FINANCE A WATERWORKS)
IMPROVEMENTS PROJECT PURSUANT TO KRS)
278.020 AND 278.300)

ORDER

Jessamine-South Elkhorn Water District ("Jessamine-South Elkhorn") has moved for an order requiring that Forest Hills Residents' Association, Inc. and William Bates ("Intervenors") supplement the record in this proceeding with a full disclosure of their relationship to Kentucky American Water Company ("KAWC") and for order to exclude any evidence related to visual effect of the proposed water storage on the surrounding area. The Intervenors have filed responses in opposition to the motions and Jessamine-South Elkhorn has replied to those responses. For the reasons stated below, we deny the motions.

As to its first motion, Jessamine-South Elkhorn seeks to require the Intervenors to disclose their relationship with KAWC. It notes that Intervenors in their requests for information have sought information regarding Jessamine-South Elkhorn's use, potential or actual, of KAWC storage facilities. "By these requests," Jessamine-South Elkhorn asserts, "the Intervenors have injected questions relating to KAWC into the intervention."¹ It raises the specter of the Intervenors' acting as a proxy for KAWC. The

¹ Jessamine-South Elkhorn's Motion for Full Disclosure at 2.

actions of Jessamine-South Elkhorn and the Intervenors have rendered Jessamine-South Elkhorn's motion for disclosure of Intervenors' relationship to KAWC moot.

We find no need to address directly the merits of this motion. After making its motion, Jessamine-South Elkhorn submitted requests for information to the Intervenors that sought the same information as sought in its motion. The Intervenors have responded that: no member of the Forest Hills Resident Association has any relationship with KAWC; no representative of the Intervenors has had any communication with KAWC representatives regarding Jessamine-South Elkhorn's application; and, the Intervenors were aware of no assistance provided or planned to be provided by KAWC to the them.² As the Intervenors have provided the information that Jessamine-South Elkhorn originally requested in its motion, the motion is moot.

Jessamine-South Elkhorn has also moved to "limit the evidentiary hearing to relevant evidence and issues." In this motion, it seeks generally to exclude any evidence related to the visual impact of the proposed water storage tank's siting. More specifically, it seeks to exclude a report titled *Jessamine South Elkhorn Water District Siting Study*, which examines alternative site locations within 1.25 miles of the proposed site for the proposed water storage tank using a methodology that is frequently used to site electric transmission lines, and the testimony of a property appraiser regarding the effects of the siting on the values of surrounding properties..

As to the report, Jessamine-South Elkhorn argues that it is speculative and irrelevant. It states the report fails to place the alternative sites in context to Jessamine-South Elkhorn's distribution and transmission facilities. It further notes that the

² Intervenors' Responses to Jessamine-South Elkhorn's Supplemental Request for Information, Items 9-11.

Intervenors have failed to demonstrate that the siting of an electric transmission facility and a water storage tank are comparable and that the use of methodologies to locate electric transmission facilities has any relevance to the present proceeding. Jessamine-South Elkhorn seemingly suggests that permitting the report into evidence will establish the precedent that such studies are required for the siting of a water storage tank and that the Commission should study the issue and determine whether such requirement should be imposed upon future applications for a Certificate of Public Convenience and Necessity, but not impose such requirement on the current application.

As to the Report and to the testimony regarding property values, Jessamine-South Elkhorn asserts that any evidence on the preferences of nearby landowners or the effect of the siting of the water storage tank on the views of on nearby landowners or the value of surrounding properties is irrelevant. The sole consideration, it argues, is the need for the proposed facility.

Our review of past Commission decisions does not indicate that aesthetic considerations or the visual effects of a proposed facility are irrelevant. KRS 278.020(1) provides that no utility facility or service should be constructed or provided unless the “public convenience and necessity require the service or construction. “Public convenience and necessity” pertain primarily to the service needs of utility customers.³ The Commission, however, has recognized that in determining whether a Certificate of Public Convenience should be granted, we “must balance all relevant factors.”⁴ There are

³ *Public Service Comm’n v. City of Paris*, 299 S.W.2d 811, 816 (Ky. 1957) (Demand and need for service “is to be gauged from the point of view of the consumers.”).

⁴ Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138KV Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005) at 6 (considering the effect of an electric transmission line on a forest and scenic area).

several cases in which the Commission has considered evidence on the effects of proposed facilities on adjacent landowners and the aesthetics of the surrounding area.⁵ Given this precedent, we find no basis to exclude the Intervenors' proposed study or testimony on grounds of relevance.

As to Jessamine-South Elkhorn's other arguments for excluding the study and testimony,⁶ we find these arguments go to the weight of the evidence and provide no basis for excluding the evidence from the record. Jessamine-South Elkhorn will have adequate opportunity to cross-examine the Intervenors' witnesses on these points, to present evidence in rebuttal, and to submit a written brief to address the appropriate weight to be afforded the report and testimony.⁷

We caution all parties that our decision should not be interpreted as giving aesthetic concerns equal weight with other considerations. Service quality and reliability, as well as economic efficiency and cost, remain paramount considerations.

⁵ See, e.g., Case No. 96-268, *Application of Kentucky CGSA, Inc. for Issuance of a Certificate of Public Convenience and Necessity to Construct an Additional Cell Site in Louisville, Kentucky for the Provision of Domestic Public Cellular Radio Telecommunications Service to the Public in Jefferson County, Kentucky and* (Ky. PSC Feb. 6, 1997); Case No. 94-061, *Application of Kentucky CGSA, Inc. for Issuance of a Certificate of Public Convenience and Necessity to Construct an Additional Cell Site in Louisville, Kentucky for the Provision of Domestic Cellular Radio Telecommunications Service to the Public in Jefferson County, Kentucky* (Ky. PSC July 20, 1994); Case No. 91-312, *Application of Southern Ohio Telephone Company to Construct Facilities for a Cell Site in Fort Wright, Kentucky* (Ky. PSC Feb. 20, 1992); Case No. 91-150, *Application of Southern Ohio Telephone Company to Construct a Cell Site in Campbell County, Kentucky* (Ky. PSC Dec. 6, 1991); Case No. 91-132, *Application Of Kentucky RSA #4 Cellular General Partnership for Issuance of a Certificate of Public Convenience and Necessity to Construct Additional Cell Sites for Use In Connection with the Applicant's Operation of a Cellular Telecommunications System in Rural Service Area #4 of the Commonwealth of Kentucky* (Ky. PSC Aug. 8, 1991). But see Case No. 95-480, *Crisp/Cannon Development Co., Inc. v. Owen Electric Cooperative, Inc.* (Mar. 11, 1996).

⁶ Jessamine-South Elkhorn has also alleged that Intervenors failed to comply with the Commission's procedural orders regarding responses to information requests. Having reviewed the record, we find that Intervenors have substantially complied with those Orders and no basis exists to exclude the study in question on that ground.

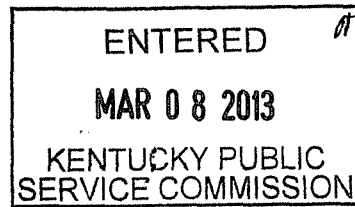
⁷ The procedural schedule in this matter was suspended to permit Jessamine-South Elkhorn to review Intervenors' suggested alternative sites. Jessamine-South Elkhorn has advised that it will present witnesses who will address the suggested alternative sites and the methodology used to prepare the Intervenors' study.

IT IS THEREFORE ORDERED that:

1. Jessamine-South Elkhorn's Motion for Full Disclosure of Intervenors' Relationship to Kentucky American Water Company is denied.

2. Jessamine-South Elkhorn's Motion to Limit Evidentiary Hearing to Relevant Evidence and Issues is denied.

By the Commission



ATTEST:


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