

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

DEC 07 2012

PUBLIC SERVICE  
COMMISSION

APPLICATION OF JESSAMINE-SOUTH ELKHORN )  
WATER DISTRICT FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY TO )  
CONSTRUCT AND FINANCE A WATERWORKS )  
IMPROVEMENTS PROJECT PURSUANT TO KRS )  
278.020 AND 278.300 )

CASE NO 2012-00470

**MOTION FOR FULL DISCLOSURE OF INTERVENORS' RELATIONSHIP TO  
KENTUCKY AMERICAN WATER COMPANY**

Comes the Jessamine-South Elkhorn Water District ("JSEWD" or "District"), by counsel, and hereby respectfully moves the Kentucky Public Service Commission ("PSC") that the intervenors, Forest Hills Residents' Association, Inc. and William Bates ("Intervenors"), supplement the record in this proceeding with a full disclosure of the Intervenors' relationship to the Kentucky American Water Company ("KAWC"). In support of this Motion, JSEWD states as follows.

This case involves an Application for a Certificate of Public Convenience and Necessity ("CPCN" or "Application") for the construction of a new water storage tank by JSEWD. The Intervenors have raised various siting concerns about the proposed water storage tank, as well as allegations that JSEWD did not adequately investigate alternatives to constructing the proposed water tank. The Intervenors have also alleged that the tank is either too large or not needed at all.

By Order dated November 27, 2012, the PSC granted the Intervenors' Motion for a Procedural Schedule, and as part of the schedule ordered that the parties should submit a first set

of information requests to each other on or before December 4, 2012. JSEWD received the Intervenor's first set of requests, consisting of some 48 requests, on December 4, 2012.

The Intervenor has not yet stated with any specificity the alternatives that it alleges that JSEWD should have considered prior to applying for the CPCN for the proposed water tower. However, in their Information Requests, and particularly in Requests Nos. 29 and 30, the Intervenor has requested information concerning communications between JSEWD and the KAWC concerning "provision of storage of water for the District by KAWC" and any periods "during which the District utilized KAWC for the provision of storage of water for the District."

By these requests, the Intervenor has injected questions relating to KAWC into their intervention. The Intervenor has not to date disclosed any relationship between their group, its agents and representatives, and KAWC. Given the contractual relationship between the District and KAWC, and the representation of both the Intervenor and KAWC by the same law firm, Stoll Keenon Ogden PLLC ("SKO"), as well as at least the potential for KAWC to assert its own interests indirectly through the Intervenor in this proceeding, the District moves that all relevant relationships of the parties herein be fully disclosed as soon as possible.

The Intervenor is represented by counsel whose law firm regularly represents the interests of KAWC in matters before the PSC. As an example, the firm is currently representing KAWC before the PSC in KAWC's own request for a certificate of convenience to construct improvements to connect its new Kentucky River Station treatment plant to its newly acquired water system at Owenton, KY, in order to provide water for its new Owenton customers from that plant.<sup>1</sup> Indeed, KAWC is a longtime client of SKO, as the PSC can easily affirm through administrative notice.

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<sup>1</sup> PSC Case No. 2011-00138

KAWC is also a water supplier to the District, through a long-standing water supply contract that is on file with the PSC.<sup>2</sup> SKO thus represents the interests of both the Intervenors herein and JSEWD's water supplier, and that same water supplier is also the subject of inquiry by the Intervenors as an apparent candidate as an alternative storage supplier. As the Intervenors are now apparently throwing KAWC's hat into the ring as an alternative storage provider as part of their attempt to defeat JSEWD's Application, the District respectfully moves that the Intervenors be Ordered to fully disclose all relationships between the Intervenors and KAWC, including relationships established by common representation, to allow both the District and the PSC to fully understand on whose behalf certain allegations are being advanced.

In particular, the District moves that at least the following information be provided by the Intervenors, with a sponsoring witness who vouches for the information and who is prepared to respond to follow-up requests for information if necessary:

1. Details of any and all communications, conversations or discussions between the Intervenors, or any contractors, agents or representatives of the Intervenors and any officials, agents, contractors or representatives of KAWC, that involve any reference whatsoever to this Application, the Intervenors' prior complaint in Case no. 2011-00138, or any other issue or aspect related to the subject water tank, including the dates, participants and subjects of such communications, conversations and discussions. Included in the response should be any documents, electronic conversations or other written documents that in any way reference this case. Should any claim of privilege be asserted, the Intervenors should state the date and nature of the contact and the full rationale and basis asserted for such a privilege;

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<sup>2</sup> Contract is attached hereto as Exhibit 1.

2. Details of the full relationship between any member of the Forest Hills Residents' Association, Inc. and KAWC or any employee, agent or contractor of KAWC. The same information should be provided for any resident or property owner in the Forest Hills Subdivision who is not formally a member of the Forest Hills Residents' Association, Inc. This should include any financial interests held by the above in KAWC or SKO; whether any resident or family of any resident is employed by KAWC either as an employee, contractor or otherwise; and any other information that is relevant to determining the nature and the extent, if any, of the relationship between KAWC and the Intervenors.

3. Details of all assistance, if any, that has been provided or is planned to be provided by KAWC to the Intervenors or residents and owners in the Forest Hills Subdivision or their representatives in preparing or pursuing the Intervenors' position in this proceeding or in preparing and pursuing the interest that the Intervenors asserted in PSC Case No. 2011-00138. As used herein, "assistance" includes financial, technical, consulting, advice or any other form of assistance.


**JSEWD further moves that it be permitted to examine the responses and file further motions or requests for information on this subject as appropriate.**

**WHEREFORE**, the District herein respectfully moves that the PSC Order that the Intervenors fully disclose their relationship with KAWC as stated above, and that the District be permitted to fully examine that disclosure and submit follow up interrogatories or motions as required by the disclosure.

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**and**

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bruce@smithlawoffice.net



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**CO-COUNSEL FOR JSEWD**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing has been served on the following by email and U.S. Mail, First Class on December 7, 2012.

Robert M. Watt, III, Esq.  
Stoll Keenon Ogden, PLLC  
300 West Vine Street, Ste. 2100  
Lexington, KY 40507-1801  
(859) 253-1093  
robert.watt@skofirm.com



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Bruce E. Smith

AGREEMENT

THIS AGREEMENT, made and entered into this 25<sup>TH</sup> day of FEBRUARY, 1986, by and between KENTUCKY-AMERICAN WATER COMPANY, a Kentucky corporation having its office at 2300 Richmond Road, Lexington, Kentucky (hereinafter sometimes called "COMPANY"), Party of the First Part, and LEXINGTON-SOUTH ELKHORN WATER DISTRICT, a Water District duly organized and existing under and by virtue of the laws of Kentucky, having an office at 200 W. Maple Street, Nicholasville, Kentucky 40356 (hereinafter sometimes called "DISTRICT"), Party of the Second Part;

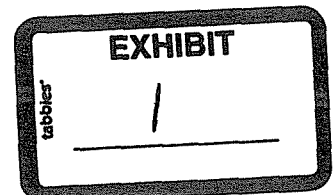
W I T N E S S E T H:

THAT, WHEREAS, the District has been formed for the purpose of supplying water for the inhabitants of District, and wishes to purchase, upon the terms and conditions hereinafter set forth, water in the quantities hereinafter mentioned from the Company for resale by District to its customers, and

WHEREAS, the Company is willing to sell water, in the quantities and upon the terms and conditions hereinafter stated, to District for resale by District to inhabitants of said District, and

WHEREAS, the parties entered into an Agreement on the 15th day of April, 1970, for the purchase and sale of water, and

WHEREAS, Company and District have mutually agreed to increase the amount of water to be supplied by the Company to the District,



NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto as hereinafter contained, it is hereby agreed by and between the parties hereto as follows, to-wit:

1. Company agrees to sell to District, and District agrees to purchase from Company at the rates hereinafter mentioned, such quantities of water as the District may hereafter from time to time require, not to exceed an average of Eight Hundred (800) gallons per minute, said water to be furnished at two connections to the water mains of the Company at:

(1) A point on the Harrodsburg Road Five Hundred (500) Feet North of the Fayette-Jessamine County line. The amount to be supplied at this connection shall not exceed an average of Six Hundred (600) gallons per minute, and

(2) At a point on the Keene Road Five Hundred (500) feet North of the Fayette-Jessamine County line, in Fayette County, Kentucky. The amount to be supplied at this connection shall not exceed an average of Two Hundred (200) gallons per minute.

2. It is understood and agreed by the parties hereto that all of the limitations on consumption by District as set forth in paragraph 1 are of the essence, as well as the limitations contained in this paragraph. The per minute average limitations mentioned in paragraph 1 shall be computed using the entire consumption at each meter for a regular billing period of Kentucky-American Water Company for these types of connections, one month, and dividing by the number of minutes in the billing

period. In addition, the consumption at the meter near Harrodsburg Road, paragraph 1(1), shall never exceed 900 gallons for any one minute and the consumption at the meter near Keene Road, paragraph 1(2), shall never exceed 300 gallons for any one minute. In the event either or both of the consumption limitations contained herein are exceeded, then and in that event, Company shall have the right, in addition to such remedies as may be otherwise provided, to place such consumption restrictive devices in its system as will regulate District's demands within the limitations contained herein, both as to averages and per minute consumption.

3. It is understood by the parties hereto that District has constructed and is maintaining within said District a system of water works for the purpose of supplying inhabitants of the District with water for domestic, farm, public and manufacturing purposes and that District shall have its water distribution system connected with existing water mains of the Company at the delivery points referred to in Paragraph 1 above, each such connection to be a single meter connection. All such master meters, including vaults, shall be furnished, installed, operated, and maintained by the Company.

4. It is further understood and agreed by the parties hereto that Company shall not be required to provide uniform flows or maintain pressures to District and that District shall provide such elevated tanks or standpipes as may be necessary to provide adequate service to its customers; however, Company



shall endeavor to maintain <sup>30</sup>~~25~~ pounds per square inch of pressure at District's service connections under normal conditions.

5. It is understood and agreed that Company does not by this agreement undertake or contract that the service rendered through these connections shall include fire protection or sufficient quantities of water for fire extinguishment; and that District is fully aware that if it or its customers desire fire protection or sufficient quantities of water for fire extinguishment, that District must provide the same by the erection of elevated tanks, standpipes or ground storage with booster pumps for such service.

6. The obligation of Company to supply water hereunder is further limited by the understanding that Company shall undertake to use reasonable care and diligence in order to prevent and avoid interruptions and fluctuations in the supply of water, but that it cannot and does not guarantee or warrant that such interruptions and fluctuations will not occur, or that because of emergencies due to breaks, leaks, defects, construction or necessary repairs in its facilities, or caused by fires, strikes, acts of God, or other causes, there may not be periods during which the supply may be curtailed or interrupted. In event of such interruptions or fluctuations, no liability of any nature shall be imposed upon Company. Notwithstanding the foregoing, however, Company will not, in event of water shortages, discriminate against District and its customers by unreasonably curtailing service to District.

7. District agrees to pay to Company for water furnished under the terms of this agreement in accordance with the rates established by Company from time to time and approved by the Public Service Commission of Kentucky. All statements rendered by Company to District for water furnished under this agreement shall be paid at the offices of the Company within ten (10) days from date rendered. This agreement is specifically made subject to the Rules and Regulations of the Company as approved by the Public Service Commission of Kentucky, as the same now exist or may hereafter be amended. Company shall not increase its rates to District without obtaining approval of the Public Service Commission of Kentucky or instituting appropriate proceedings seeking approval of any revision in its rate schedule.

8. If at any time hereafter any statement for water furnished hereunder is not paid within ten (10) days from date rendered, Company shall have the right to discontinue service hereunder.

9. Unless terminated sooner as hereinabove set forth this contract shall be for a period of forty (40) years, with an option in District to renew the same thereafter for an additional term of thirty (30) years.

10. During the term of this Agreement, Company shall have the right of first refusal to purchase all of the assets of the District should District determine that it is for sale. Company shall be notified in writing of any bona fide offer that District may have and Company shall have ninety (90) days thereafter to meet any such offer.

11. In the event all or any part of the waterworks plant and facilities of the Company which are used in the furnishing of water hereunder are hereafter acquired by a municipal corporation or other governmental entity, then the Company shall be relieved of its obligations hereunder, and, in such event, this agreement shall be binding upon the municipality or governmental entity making such acquisition. This contract may be assigned by District to the United States of America, acting through the Farmers Home Administration, U.S. Department of Agriculture, or to the bondholders of said District, or to a receiver for their benefit in event of default of any payment of bond interest or principal, but any such assignment shall be subject to the terms and conditions herein stated.

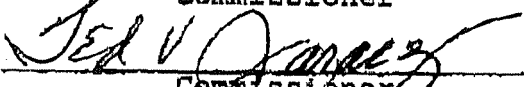
IN WITNESS WHEREOF, the parties hereto have caused their corporate signatures to be affixed hereto by their duly authorized officers, all the day and year first above written.


KENTUCKY-AMERICAN WATER COMPANY


BY:   
Vice President

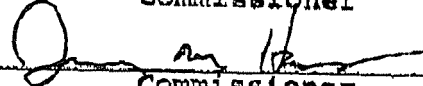
LEXINGTON-SOUTH ELKHORN WATER DISTRICT

BY:   
Commissioner

BY:   
Commissioner

BY:   
Commissioner

BY:   
Commissioner

BY:   
Commissioner