

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RECEIVED

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)

JAN 07 2013
PUBLIC SERVICE
COMMISSION
CASE NO 2012-00470

JESSAMINE-SOUTH ELKHORN WATER DISTRICT’S MOTION TO LIMIT
EVIDENTIARY HEARING TO RELEVANT EVIDENCE AND ISSUES

Comes now the Applicant, Jessamine-South Elkhorn Water District (“JSEWD”), by counsel, and for its Motion to Limit Evidentiary Hearing to Relevant Evidence and Issues, states as follows.

On January 4, 2013, the Intervenors, Forest Hills Residents Association, Inc. and William Bates (“Intervenors”) tendered for filing a document stated to have been prepared by an entity named Photo Science, as a supplemental response on behalf of the Intervenors. The report is entitled *Jessamine South Elkhorn Water District Siting Report* (“Report”). The Report purports to compare various hypothetical alternative sites for a water storage tank on the JSEWD system, and to evaluate the appropriateness of such hypothetical alternative sites by “visual impact”, which it states without attribution to be “an important concern of the public”. Report, redacted version at page 7¹. The Report also states that although it is based on a methodology used to site high voltage electric transmission lines, the environmental impact of such lines and water storage

¹ The Report apparently makes this blanket statement for the public in general, although no member of the public who is not directly associated with the Intervenors has raised any concern about this proposed tank.

tanks is “similar”, and that the methodology can therefore be applied to siting a water storage tank. Report, redacted version at page 3.

JSEWD first objects to this response as not complying with the provisions of the Order of the Kentucky Public Service Commission (“PSC”) dated November 27, 2012. In that Order, the PSC stated as follows:

4. a. All responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness who will be responsible for responding to the questions related to the information provided, with copies to all parties of record and five copies to the Commission.

The Report is not submitted in compliance with this Order. There is no witness identified to respond to questions relating to the information provided. Further, although the Report is stated to be supplementing earlier responses, there is no identification of what, if any responses, the Report is purported to supplement. Particularly in light of the very late date for the filing of this “supplemental response”, JSEWD objects to admitting this document as evidence of anything that is relevant to this proceeding.

In addition to this objection, the Report is so speculative as to be useless in supporting any relevant claim in this proceeding. Merely placing hypothetical points on a map as alternative sites for a proposed facility is not evidence, but speculation. Further, stating without citation to any authority or precedent that a method for siting of routes and passages for high voltage electric transmission lines and related facilities that likely encumber many miles of properties is the equivalent to siting a single water storage facility is simply absurd. Neither the PSC nor JSEWD should be burdened with considering or responding to such an obviously inaccurate comparison.²

² The Intervenor's cite three PSC decisions in support of their siting objection. See, Intervenor's Response to JSEWD First Request No. 7. Each of the three cited Orders involve a certificate request for high voltage electric transmission

Even assuming *arguendo* that a methodology for evaluating routes for high voltage electric lines and facilities could somehow be equivalent to siting a single water storage tank, and viewing the Report in the light most favorable to the Intervenors, the information presented is irrelevant to the actual issues before the PSC. JSEWD requests that the PSC take administrative notice of a 2007 report from the LRC entitled Siting of Electric Transmission Lines, and available at the LRC web site at <http://www.lrc.ky.gov/lrcpubs/rr348.pdf>. This extensive study of issues in siting electric transmission lines included input as stated by the LRC:

Legislative Research Commission Foreword
Program Review and Investigations

Foreword

The authors of this report appreciate the cooperation of the commissioners of the Kentucky Public Service Commission: Chairman Mark David Goss, Vice Chairman John W. Clay, and Commissioner Caroline Pitt Clark. David S. Samford and many other Public Service Commission staff were very helpful. A.W. Turner took the time to meet with Program Review staff even after leaving the Public Service Commission's employ.

Representatives from several companies provided helpful information on electric transmission and how their companies are affected by Kentucky's siting process. Mary Jane Warner, Nick Comer, Sherman Goodpaster III, Brandon Grillon, Joe Settles, and other staff of East Kentucky Power Cooperative; David A. Spainhoward of Big Rivers Electric Corporation; Lonnie E. Bellar, Ed Staton, and other staff of E.ON U.S.; and Errol Wagner and other staff of American Electric Power were especially helpful.

Staff thank (sic) attorneys Robert W. Griffith, Jennifer Swyers, and Tom Fitzgerald for taking time to discuss the siting process, especially its provisions for public participation.

lines. The requested lines involved a 6.9 mile, 41.9 mile and 12.4 mile high voltage electric transmission line, respectively. Each Order references the special provisions for such lines, including a mandate in KRS 278.020 that a local public hearing be held for such applications; this requirement does not apply to the JSEWD Application. Each Order references the need for a utility to consider alternative routes for these very invasive lines and structures, including existing rights of way. No "route" is involved in JSEWD's Application, only a single, discrete site for a single, discrete structure that does not have any direct physical impact on any other property. The Orders cited by the Intervenors create very difficult issues concerning multiple sets of rights-of-way and a cluttering of the land with poles and wires, particularly given the extent of property affected by such very long and intrusive structures. Once again, this is not an issue in the JSEWD Application. While the subdivision developer granted an access easement to JSEWD for the "Switzer" property, no permanent structure or portion of such structure will physically encroach on any subdivision property, whether underground, on the ground, or above the ground. The only physical impact of the proposed tank will be on land owned by JSEWD.

Finally, the cooperation of Carroll and Doris Tichenor in providing a detailed description of their experience as intervenors in a siting case is appreciated.

Robert Sherman
Director
Legislative Research³

The LRC Report clearly is an extensive review of the entire process and issues in siting electric transmission lines, and is very useful in evaluating the Intervenor's claim that siting a water storage tank is "similar" to siting a high voltage electric transmission line. However, directly supportive of this Motion are the findings of the LRC, based on input from the PSC legal staff, as to the relevance of siting complaints to the certificate of convenience process:

Commonly Expressed Public Concerns

Based on Program Review staff's review of case files, the most commonly expressed opposition by landowners to proposed construction was that they did not want an unsightly transmission line crossing their property. The certificate process is a legal process and landowners have the burden of proving that the negative impact to them outweighs the greater public need and necessity. **According to PSC legal staff, arguing that an individual does not want a line on his or her property or that the utility could just as easily locate the line somewhere else does not satisfy evidentiary standards.** Another commonly expressed public concern was that the construction of an electric transmission line would greatly diminish the value of a landowner's property. Under most circumstances, this would not play a role in PSC's decision of whether or not to certify a project. Ultimately, negotiations about property value occur between landowners and transmission companies. If the landowners believe that the price offered for their land is unfair, they can take the issue before the Circuit Court.⁴ (Emphasis added)

³ Siting Report at Page i

⁴ LRC Report at page 24.

As noted in the LRC Report, and per the PSC legal staff, the fact that a landowner does not want a facility near them or that a utility could “just as easily locate the line somewhere else” **does not satisfy evidentiary standards.** This is precisely the claim being made by the Intervenors in this report – that JSEWD could “just as easily” locate the tank somewhere else out of their view. This claim “does not satisfy evidentiary standards”.

The other point put forward by the Intervenors is proposed testimony from a property appraiser in the Intervenors’ Response to JSEWD’s Supplemental Information Request No. 20(a). In this response, the Intervenors tendered expert on residential real estate appraisals alleges that that the proposed siting of the storage tank may diminish property values in the Forest Hills subdivision by an unspecified amount. Again, even assuming *arguendo* that such a claim was true, this is not an issue for a certificate of convenience hearing before the PSC.⁵

JSEWD did not object to the Intervenors being made a party to this case, based on the Intervenors’ representation that they would not unduly delay or complicate this proceeding. JSEWD did object to having a hearing to explore siting complaints that have no evidentiary value as to the issues before the PSC and that were best treated as public comment. The PSC rejected that objection at the time, and has been very forthcoming to the Intervenors in permitting them to present any information that they choose. However, JSEWD again strongly objects to

⁵ As the uncontradicted record in this proceeding convincingly demonstrates, JSEWD worked diligently with interested parties, including the subdivision developer and the current Intervenors, to consider alternative sites which were technically feasible and would not impose unreasonable additional costs on JSEWD’s ratepayers. Indeed, JSEWD specifically advised the subdivision developer that he needed to inform any potential purchaser of the intended use of the JSEWD property. **See Exhibit “B” to Answer filed in Case No. 2011-00138 attached as Exhibit “A” hereto.** Further, an easement from the developer and within the subdivision and running to JSEWD’s property is in fact a part of the subdivision plat. See, JSEWD’s Response to Intervenors’ Supplemental Information Request No. 20. In asserting any damage claim in any forum, a purchaser in the subdivision would have constructive notice under longstanding Kentucky case law that the site in question was utility property, not farm property that would not be developed, and would have to explain why it did not conduct a reasonable inquiry to determine the purpose of the easement and the planned use of JSEWD’s property.

wasting both the PSC's and JSEWD's time and resources in an evidentiary hearing to consider information and argument that **clearly** has no evidentiary value.

The procedural schedule in this case includes a telephone conference on January 9, 2013, in which the parties are instructed to consider the simplification of issues. JSEWD respectfully requests that the PSC advise the Intervenors that the evidentiary hearing in this case will not be a forum for presenting additional allegations or argument about siting preferences that have no evidentiary value in resolving the actual issues before the Commission.

WHEREFORE, JSEWD respectfully moves that the PSC limit the evidentiary hearing in this proceeding to relevant evidence and issues as stated above.

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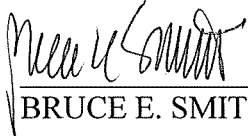
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CO-COUNSEL FOR WATER DISTRICT



CERTIFICATE OF SERVICE

I hereby certify that the foregoing Jessamine-South Elkhorn Water District's Motion to Limit Evidentiary Hearing to Relevant Issues and Evidence served by first class mail, postage prepaid, and e-mail, this the 7th day of January, 2013, to:

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ENGINEERS • LAND SURVEYORS • PLANNERS
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November 11, 2005

Barry Mangold
Forest Hills Development, LLC
555 West Fourth Street
Lexington, KY 40508

Re: Forest Hills Subdivision
Harrodsburg Road
Jessamine South Elkhorn Water District

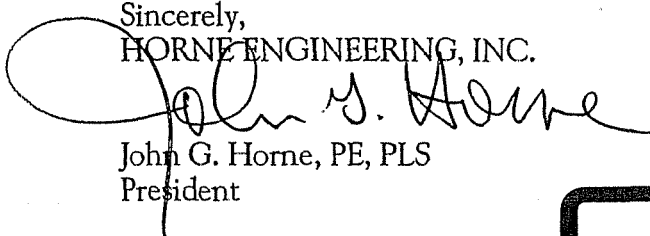
Dear Mr. Mangold:

In the process of reviewing the construction plans for the water distribution system for your subdivision, it came to light that perhaps you were unaware of the Jessamine South Elkhorn Water District plan for construction of an elevated storage tank on adjacent properties. I base this assumption on the fact that the initial submittal of your construction plans did not show the Jessamine South Elkhorn Water District as an adjacent property owner. In fact, the District presently owns an acre of property immediately adjacent to the southeasterly corner of your development.

In the process of your engineer completing the submittals of the construction plans, they have shown the location of this property. My purpose in bringing this to your attention is to alert you to the fact that the District has plans to complete construction of a 1.0 million gallon elevated storage tank on this property in the year of 2006. Consequently, you should apprise all purchasers of these lots that this is planned and will happen. This should help to mitigate the later complaints of the property owners that they were unaware that such was going to occur. The fact that you will be required to show the adjoining property owner on your final plat, and since the property is owned by the Jessamine South Elkhorn Water District, one would assume that any person of normal intelligence would be put on notice that this property would be utilized most likely for an elevated storage tank. However, you probably would want to reinforce this by ample notification in your purchase contracts.

In the meantime, if you have any questions or wish to discuss this matter, please contact me at (859) 885-9441.

Sincerely,
HORNE ENGINEERING, INC.


John G. Horne, PE, PLS
President

JGH/jt

cc: Board of Commissioners
Bruce E. Smith
Glenn T. Smith
Engr/3683
Engr/3625
Corr.

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