

BRUCE E. SMITH LAW OFFICES, PLLC

201 SOUTH MAIN STREET
NICHOLASVILLE, KENTUCKY 40356
(859) 885-3393 + (859) 885-1152 FAX

BRUCE E. SMITH
bruce@smithlawoffice.net

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January 25, 2013

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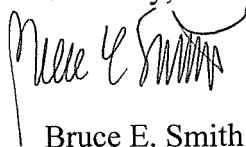
Mr. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Re: **Case No. 2012-00470**

Dear Mr. Derouen:

Enclosed for filing are an original and ten (10) copies of my client's **Objection and Response to the Intervenor's Sur-reply to the JSEWD's Motion to Limit Evidentiary Hearing.**

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce E. Smith", with a stylized flourish at the end.

Bruce E. Smith

Enclosures

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)
CONSTRUCT AND FINANCE A WATERWORKS) CASE NO 2012- 00470
IMPROVEMENTS PROJECT PURSUANT TO KRS)
278.020 AND 278.300)

**JSEWD’S OBJECTION AND RESPONSE TO THE INTERVENORS’
“SUR-REPLY” TO THE JSEWD’S MOTION TO LIMIT EVIDENTIARY HEARING**

Forest Hills Residents’ Association, Inc. and William Bates (collectively, “Intervenors”) have filed a document that they entitle “sur-reply” to Motion to Limit Evidentiary Hearing (“Motion”) filed by Jessamine-South Elkhorn Water District (“JSEWD”) in this proceeding on January 7, 2013. The Commission’s rules permit the following pleadings with respect to a Motion: the Motion; a Response; and a Reply by the movant. The rules do not permit the filing of any other pleadings with respect to a motion, at least without Commission approval. 807 KAR 5:001, Section 5. Specifically, there is no provision for a “sur-reply”.

The document filed by the Intervenors, however characterized, is for the most part a rehash of previous claims and mischaracterizations of JSEWD’s position on a range of issues. JSEWD nevertheless does object to the Intervenors trying to have another bite at the apple on JSEWD’s Motion by way of an unauthorized pleading. Even if the Commission should choose to review this pleading, JSEWD respectfully requests that the Commission review JSEWD’s

Motion and Reply as presented, and not as distorted or mischaracterized by the Intervenors in this pleading.

As this sur-reply has already been filed of record, however, one claim therein must be addressed, without waiver of objection. The Intervenors imply that the water tank site owned by JSEWD cannot be considered to be a “facility”¹, and therefore cannot be considered to be relocated. Such an interpretation is not consistent with KRS 278.010(11), which defines “facility” as follows²:

(11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

As is clear from the statutory definition for “facility”, **all** property (not limited to exclude real property) owned, operated, or used for, by or in connection with the business of any utility is a “facility”. The lot purchased by JSEWD almost ten years ago for use for a water tank site meets all of these requirements, and is clearly a facility. The Intervenors want to render this facility useless, and waste all of the costs put into using this facility for its open and intended purpose, so as to relocate the proposed water tank to another site at the cost of JSEWD or its ratepayers.

Recently, the Intervenors have developed an extreme discomfort with the term “relocation”, as they apparently now understand that such a facility relocation, even if agreed to by JSEWD, must be paid for by the customers requesting it. However, they themselves previously stated, by counsel, as follows:

¹ Intervenors’ “sur-reply”

² This definition applies to KRS 278.010 – 450, including, for instance, KRS 278.160

8. *Forest Hills continued efforts to persuade the Water District to consider **relocating** the tank through the summer and fall of 2010. The Water District consistently took the position that it would not absorb any cost in connection with constructing the tank on a site different than the one adjacent to Forest Hills subdivision.*³ **[Emphasis added]**

The Intervenors are mistaken in failing to recognize that the lot owned by JSEWD is a utility facility by statutory definition. In attempting to relocate the site for this tank, the Intervenors are requesting that both the proposed tank **and** the site be relocated to meet the Intervenors' aesthetic concerns. Should such a relocation occur at the request of the Intervenors, they are responsible for the costs of such a facility relocation. Any other result would be contrary to JSEWD's Relocation of Water Facility tariff. Even if the tariff did not exist, requiring other customers to pay all of the costs for such a relocation for the private convenience of the Intervenors would be unreasonable and contrary to the public interest.

JSEWD is of course aware that the Intervenors' membership includes JSEWD customers. Unlike the Intervenors, however, JSEWD has an obligation to protect the interests of **all** of its customers, not only those who reside in a particular subdivision.

JSEWD respectfully requests that the Commission strike the Intervenors' sur-reply and refuse further pleadings on this Motion, as the Intervenors have already filed two responses to the Motion. JSEWD further requests that the Commission consider JSEWD's arguments as presented and not as distorted or mischaracterized by the Intervenors; apply the applicable statutory definitions; and expeditiously grant the relief requested by JSEWD in the Motion.

³ Forest Hills Residents' Association and William Bates' Complaint, Case No. 2011-00415 at page 3 (incorporated in the record of this case by the agreement of the parties).

W. Randall Jones, Esq.
Rubin & Hays
Kentucky Home Trust Building
450 South Third Street
Louisville, Kentucky 40202
wrjones@rubinhays.com

and

Bruce E. Smith, Esq.
Bruce E. Smith Law Offices, PLLC
201 South Main Street
Nicholasville, Kentucky 40356
bruce@smithlawoffice.net
CO-COUNSEL FOR WATER DISTRICT



CERTIFICATE OF SERVICE

I hereby certify that the foregoing Jessamine-South Elkhorn Water District's Objection and Response to Intervenors' Sur-reply to JSEWD's Motion to Limit Evidentiary Hearing served by first class mail, postage prepaid, and e-mail, this the 25th day of January, 2013, to:

Robert M. Watt, III, Esq.
Monica H. Braun, Esq.
Stoll Keenon Ogden, PLLC
300 West Vine Street, Ste. 2100
Lexington, KY 40507-1801
robert.watt@skofirm.com
monica.braun@skofirm.com



BRUCE E. SMITH