

**STOLL  
KEENON  
OGDEN**

PLLC  
300 WEST VINE STREET  
SUITE 2100  
LEXINGTON, KY 40507-1801  
MAIN: (859) 231-3000  
FAX: (859) 253-1093

**MONICA H. BRAUN**  
DIRECT DIAL: (859) 231-3903  
Monica.Braun@skofirm.com  
**RECEIVED**

April 8, 2014

APR 8 2014

PUBLIC SERVICE  
COMMISSION

***HAND DELIVERED***

Hon. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

Jessamine-South Elkhorn Water District  
Case No. 2014-00084

Dear Mr. Derouen:

Please find enclosed for filing an original and 10 copies of the Reply of Forest Hills Residents' Association, Inc. and T. Logan Davis for Leave to Intervene in the above-captioned case. Thank you in advance for your assistance.

Sincerely,

Stoll Keenon Ogden PLLC

*Monica H. Braun*

Monica H. Braun

MHB/dgr  
Enclosures

cc: Mr. T. Logan Davis (w/encl.)  
Counsel of Record (w/encl.)

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**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**  
APR 8 2014  
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. 2014-00084**  
**CONSTRUCT AND FINANCE A )**  
**WATERWORKS IMPROVEMENT )**  
**PROJECT PURSUANT TO KRS 278.020 )**  
**AND 278.300 )**

**FOREST HILLS RESIDENTS' ASSOCIATION, INC.'S AND T. LOGAN DAVIS'**  
**REPLY TO JESSAMINE-SOUTH ELKHORN WATER DISTRICT'S RESPONSE TO**  
**MOTION FOR LEAVE TO INTERVENE**

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Forest Hills Residents' Association, Inc. ("Forest Hills") and T. Logan Davis ("Davis") (collectively, "Movants") tender this Reply to support their Motion for leave to intervene and to address Jessamine-South Elkhorn Water District's ("JSEWD") Response to same. Because the Commission has already found that the Movants satisfy the regulatory standards for intervention regarding the proposed project, and because JSEWD fails to cite any relevant authority requiring a contrary result, the Movants respectfully request the Kentucky Public Service Commission ("Commission") grant their Motion for leave to intervene.

**I. The Commission Has Already Found that the Movants Satisfy the Standards for Intervention.**

JSEWD's plan to build an elevated water storage tank on the Switzer site was first brought to the Commission's attention through the formal complaint that Forest Hills and one its

residents, William Bates, brought against JSEWD in Case No. 2011-00138<sup>1</sup> because of JSEWD's unreasonable conduct in connection with the proposed water tank. After JSEWD filed an application requesting a certificate of public convenience and necessity ("CPCN") to construct a one-million gallon elevated water tank on the Switzer site ("2012 CPCN Case"),<sup>2</sup> the complaint case was dismissed and its record was incorporated into the 2012 CPCN Case by order dated November 15, 2012. Forest Hills and Mr. Bates sought leave to intervene in the 2012 CPCN Case and the Commission granted the motion on November 5, 2012, specifically finding that their "intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings." The Commission ultimately denied JSEWD's requested CPCN.

In the present case, JSEWD again seeks a CPCN to build an elevated water storage tank at the Switzer site. The only difference between this proceeding and the 2012 CPCN Case is the volume of the tank. JSEWD has acknowledged the similarity between the cases by asking that the record of the 2012 CPCN Case be incorporated into this proceeding. As such, the Movants' interest in this matter, as well as its ability to present issues and develop facts that will assist the Commission without complicating the proceedings, remains unchanged. By requesting that the Commission deny the Movants' Motion, JSEWD is essentially asking the Commission, without cause, to reverse its prior findings.

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<sup>1</sup> Case No. 2011-00138, *In the Matter of: Forest Hills Residents' Association, Inc. and William Bates v. Jessamine South Elkhorn Water District.*

<sup>2</sup> Case No. 2012-00470, *In the Matter of: Application of Jessamine-South Elkhorn Water District for a Certificate of Public Convenience and Necessity to Construct and Finance a Water works Improvement Pursuant to KRS 278.020 and 278.00470.*

**II. The Attorney General's Intervention Does Not Alter the Regulatory Standards for Intervention or Eliminate the Movants' Special Interest in this Proceeding.**

JSEWD claims this case is different from the 2012 CPCN Case because the Attorney General has intervened. Throughout its Response, JSEWD suggests that if the Attorney General intervenes in a Commission proceeding, at worst, other parties are precluded entirely from intervening or, at best, proposed intervenors have a more stringent burden of proof. Neither is true.

While the Attorney General is the only party with a statutory right to intervene, other parties – such as Movants – are not barred from participating in cases such as this one when they have clearly satisfied the regulatory standards for intervention. JSEWD cites a number of orders in support of its argument that the Commission is reticent to allow individual or customer intervention when the Attorney General has intervened.<sup>3</sup> Out of the seven cases JSEWD cites, only *one* involves a CPCN - the other six pertain to rate cases; Integrated Resource Plan cases; the transfer of a park to the Lexington-Fayette Urban County Government; and a proposed Home Energy Assistance program for an electric utility. In the CPCN case JSEWD cites<sup>4</sup>, none of the proposed intervenors were nearby landowners affected by the proposed project. Moreover, in none of these cases does the Commission imply that the regulatory standards for intervention are changed because of the Attorney General's intervention.

The intervention of the Attorney General is relevant to the proposed intervention of other parties only in limited circumstances. For example, in a rate case residential customers may seek to intervene because they do not want higher electric rates. The interest of that residential customer may be the same as the interests of all of the other residential customers the Attorney General represents. In contrast, a group of large industrial customers may seek to intervene

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<sup>3</sup> JSEWD Response at 3-5.

<sup>4</sup> Case No. 2014-00002.

because the electric utility has proposed rate design revisions that impact their usage. Those types of customers are routinely granted intervention, along with the Attorney General, because of the special nature of their interests.

The intervention of the Attorney General is even less relevant in evaluating the proposed intervention of nearby landowners in a CPCN case. Here, the Movants are *not* requesting intervention because they do not want to pay the higher rates that will result from the capital project – an interest that may be common to all JSEWD customers – but because they are directly and uniquely impacted by the proximity of the proposed elevated water tank to their residences. While many Forest Hills residents are JSEWD customers, it is their status as nearby landowners, instead of their status as only customers, that is their special interest in this proceeding.<sup>5</sup> This direct and unique impact has caused the Movants to attend several JSEWD Board meetings, repeatedly attempt to work with JSEWD officials, file a complaint against JSEWD, participate vigorously in the 2012 CPCN Case, and seek intervention in this proceeding. As such, JSEWD’s contention that “Movants do not assert an interest that is any different from the interests of all other customers” is simply incorrect.<sup>6</sup>

The Commission would be breaking from a long-established line of cases if it denied intervention to Movants in this case because the Commission has routinely allowed nearby landowners to intervene in CPCN cases regardless of the Attorney General’s intervention. Such is the purpose of allowing intervention when a party has a “special interest that is not otherwise adequately represented.”<sup>7</sup> An instructive example is the landowners’ intervention in cases involving Louisville Gas and Electric Company’s and Kentucky Utilities Company’s requested

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<sup>5</sup> Although irrelevant, JSEWD makes much of the fact that the customer associated with Mr. Davis’ residence is Distinctive Custom Homes LLC. Mr. Davis is the sole member of the LLC. JSEWD should be mindful to not publicly disclose customer-identifying information.

<sup>6</sup> JSEWD Response at 8.

<sup>7</sup> 807 KAR 5:001, Section 4(11)(b).

CPCN to construct transmission facilities.<sup>8</sup> The Commission granted intervention to affected landowners, including Cathy and Dennis Cunningham.<sup>9</sup> The Commission ultimately denied the utilities' requested CPCN because the utilities failed to consider other reasonable alternatives.<sup>10</sup> The two utilities then filed a second CPCN application regarding the transmission facilities.<sup>11</sup> The Commission again allowed landowners Cathy and Dennis Cunningham to intervene, along with roughly *forty-five* other nearby landowners.<sup>12</sup> The same result is commanded here.

### **III. The Movants Will Present Issues and Develop Facts that Will Assist the Commission.**

JSEWD claims that the Movants have failed to demonstrate they will present issues and develop facts that will assist the Commission in fully considering this matter. JSEWD argues that the Movants have not asserted an interest “that they have not already thoroughly explored with the Commission in Case No. 2012-00470” and that “[a]ny issues presented by the Movants are clearly in support of their primary interest, which, as conclusively demonstrated in the prior Case, is assuring that no elevated tank of any kind is built on the Switzer site.”<sup>13</sup> These statements are remarkably telling.

The idea that incorporating the record of Case No. 2012-00470 into the record of this proceeding eliminates the ability of Movants to present issues and develop facts that will assist the Commission in this case is without merit. If the Commission accepts this argument, the Commission must likewise accept the converse, which is that JSEWD is unable to satisfy their

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<sup>8</sup> Case No. 2005-00142, *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*.

<sup>9</sup> *Id.* (Ky. PSC Sept. 8, 2005).

<sup>10</sup> *Id.*

<sup>11</sup> Case Nos. 2005-00467, *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*; Case No. 2005-00472, *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Alternative Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*.

<sup>12</sup> *Id.* (Ky. PSC May 26, 2006).

<sup>13</sup> JSEWD Response at 8.

burden of proof in this case for obtaining a CPCN because their application was denied in Case No. 2012-00470. Moreover, while JSEWD questions the “primary interest” of the Movants in not building an elevated tank on the Switzer site, it is equally apparent that JSEWD will consider building an elevated water tank *only* on the Switzer site, despite bearing the burden of proof to consider other reasonable alternatives, including the site they currently own that contains an elevated tank that would have sat empty under JSEWD’s prior proposal.

While the Movants do not personally possess water utility planning or storage experience, if granted leave to intervene, the Movants will conduct themselves in the same manner as the 2012 CPCN Case in which they presented qualified and credible expert witnesses. As explained in Movants’ motion to intervene, Movants will assist the Commission in developing facts and issues that are relevant to the case; namely, whether JSEWD needs a 750,000 gallon above-ground water storage tank, whether JSEWD conducted a thorough and proper review of all reasonable alternatives for the location of the above-ground water storage tank, whether the decision making process of JSEWD in the selection of the proposed site was reasonable, and whether the proposed site is a reasonable site. Although JSEWD urges the Commission to discount several of these issues, each is within the Commission’s jurisdiction and relevant to the Commission’s decision in this matter.

#### **IV. The Movants Will Not Unduly Complicate or Disrupt the Proceeding.**

JSEWD claims that the Movants will unduly complicate or disrupt the proceeding from a “time perspective” and that the record is the 2012 CPCN case “illustrates how allowing the full intervention of a person or entity with a limited and rigid interest in a particular result can unduly complicate and disrupt a proceeding.”<sup>14</sup> Neither allegation is true.

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<sup>14</sup> JSEWD Response at 4, 9.

With regard to the “time perspective” claim, JSEWD filed this case on March 7, 2014 and requests a final order by June 1, 2014, which would allow the Commission to utilize roughly 85 days to investigate and evaluate the application. This is similar to JSEWD’s conduct in the 2012 CPCN case when it requested the Commission enter a final order within 46 days after its application was filed for fear of losing its grants. In that case, at JSEWD’s behest, the Commission issued a compressed procedural schedule. The Movants complied with all deadlines, including procuring expert testimony and reports, and unlike JSEWD, did not ask the Commission to extend the procedural schedule.

JSEWD has again filed an application and requested expedited treatment on the basis that it may lose the same grants it feared losing two years ago.<sup>15</sup> JSEWD, as the applicant, had complete control over the timing of this case. Because of the history between the parties regarding the Switzer site, JSEWD was fully aware that the Movants would seek to intervene. It is unfair for JSEWD to repeatedly file applications they claim merit expedited treatment, and then rely on that purported need as a basis to exclude any party that may challenge whether a CPCN should be granted. As such, any harm from a “time perspective” is self-created by JSEWD. Moreover, it is unclear how any investigation could be completed by June 1, 2014, because JSEWD’s application is currently incomplete, as the Commission denied JSEWD’s request for a deviation from filing plans and specifications, permits, and specific financing arrangements.<sup>16</sup>

Any suggestion that the record in Case No. 2012-00470 illustrates that the Movants unduly complicated and disrupted the proceeding is false. The Movants abided by all Commission orders, as it would in this case. The Movants presented fact and expert testimony,

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<sup>15</sup> Counsel for Movants has been advised by a person at the Kentucky Infrastructure Authority that JSEWD’s grants do not need to be reauthorized by June 30, 2014, as JSEWD alleges.

<sup>16</sup> Case No. 2014-00084 (Ky. PSC March 24, 2014).



had relevant cross-examination questions for JSEWD's witnesses, and submitted a thorough brief that summarized the evidence and framed important questions for the Commission's consideration. As in this proceeding, Movants were represented by counsel with experience at the PSC who are cognizant of and adhere to the expected level of conduct. All of Forest Hills' witnesses in the 2012 CPCN Case, including Mr. Davis, conducted themselves professionally at all times. In fact, Commissioner Gardner concluded the hearing in the 2012 CPCN Case by complimenting the parties, specifically the witnesses, on their professionalism.<sup>17</sup>

**V. Conclusion.**

The Commission previously found that the Movants satisfy the regulatory standards for intervention regarding the project JSEWD has proposed. The fact that the Attorney General has intervened in this proceeding does not eliminate the Movants' special interest as nearby landowners directly and uniquely impacted by the proposed elevated tank, nor does the Movants' prior intervention eliminate their ability to present issues and develop facts that will assist the Commission in this proceeding. For these reasons, the Movants respectfully request the Commission to grant their Motion for leave to intervene.

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<sup>17</sup> See the March 14, 2013 Video Record in Case No. 2012-00470 at 16:33:33-16:33:55.

Dated: April 8<sup>th</sup>, 2014.

Respectfully submitted,

Robert M. Watt, III  
Monica H. Braun  
Stoll Keenon Ogden, PLLC  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507  
859-231-3000  
robert.watt@skofirm.com  
monica.braun@skofirm.com

By Monica H. Braun

*Counsel for Forest Hills Residents'  
Association, Inc. and T. Logan Davis*

**Certificate of Service**

This is to certify that the foregoing pleading has been served by mailing a copy of same, postage prepaid, to the following person on this 8<sup>th</sup> day April 2014:

Bruce E. Smith, Esq.  
Henry E. Smith, Esq.  
Bruce E. Smith Law Offices, PLLC  
201 South Main Street  
Nicholasville, KY 40356

Jennifer Black Hans, Esq.  
Gregory Dutton, Esq.  
Assistant Attorneys General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601

Anthony G. Martin, Esq.  
P.O. Box 1812  
Lexington, KY 40588

Monica H. Braun

*Counsel for Forest Hills Residents'  
Association, Inc. and T. Logan Davis*

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