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September 15, 2014

VIA UPS

Mr. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602

RECEIVED

SEP 16 2014

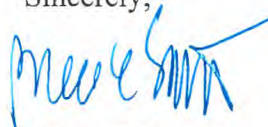
PUBLIC SERVICE
COMMISSION

Re: Case No. 2014-00084
Jessamine-South Elkhorn Water District
Notice of Filing – Deficiency Letter

Dear Mr. Derouen:

Delivered under cover of this letter is an original and ten (10) copies of **Applicant's Response to Forest Hills Residents' Association, Inc.'s Request for Hearing** and an original and ten (10) copies of **Applicant's Response to Forest Hills Residents' Association, Inc.'s Motion for Clarification**.

Sincerely,



Bruce E. Smith

Enclosures

cc: Robert M. Watt, III, Esq.
Jennifer Black Hans, Esq.

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

SEP 16 2014

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

PUBLIC SERVICE
COMMISSION

CASE NO 2014 -00084

APPLICANT’S RESPONSE TO
FOREST HILLS RESIDENTS’ ASSOCIATION, INC.’S REQUEST FOR HEARING

Comes now the Applicant, Jessamine – South Elkhorn Water District (“JSEWD” or the “District”), by counsel and for its Response to the Request for Hearing filed by Intervenor Forest Hills Residents’ Association, Inc. (“Forest Hills”) states as follows.

Forest Hill’s request for a hearing is very perfunctory, and does not specify any particular reason why, under the unusual circumstances of this Application, a hearing is required, or what issues require such a hearing.

The Public Service Commission (“PSC”) has already conducted an exhaustive public hearing on the District’s previous request for a Certificate of Public Convenience and Necessity (“CPCN”) for a one million gallon above ground storage tank to be constructed on the same site as the 750,000 gallon tank proposed to be constructed in this Application.¹ At the District’s request, the entire

¹ Case No. 2012-00470

record in that prior proceeding has already been incorporated by reference in this proceeding.

Neither KRS 278.020 nor KRS 278.300 requires that the PSC conduct an evidentiary hearing in a CPCN application. Whether a hearing is to be held is within the PSC's sound discretion.

In Case No. 2012-00470, the PSC recognized that a hearing is not required by KRS 278.020 or KRS 278.300, but permitted a hearing anyway. The PSC cited its concern "that the intervenors should be afforded the opportunity to present their arguments and evidence regarding the need for the proposed facilities and the reasonableness of the proposed site for the proposed facility".²

The hearing in Case No. 2012-00470 included the oral presentation of direct testimony by all parties in addition to cross-examination, as there was no provision for pre-filed testimony in the procedural schedule of that case. A great deal of time was spent allowing Forest Hills to attack the site for the proposed tank, including extensive direct testimony, cross-examination, real estate market value speculation, suggestion of theoretical other sites for the proposed tank, and similar "no tank on this site, ever" issues that are barely relevant, if at all, to a water tank CPCN case. JSEWD spent a great deal of time and effort in investigating alternatives suggested by Forest Hills (including a lengthy delay requested by JSEWD in that proceeding solely to investigate Forest Hills' proposed alternative sites), and presented voluminous evidence as to why the selected site was the best site for this project. The site proposed in this Application is the same site, and there is no purpose to be served by allowing further hearing or evidence on this already more than fully developed issue. As the PSC stated in Case No. 2012-00470, such issues are not primary considerations in a CPCN proceeding. Despite the tangential at best relevance of such claims, a full record has already been developed with respect to them. There is no reasonable basis for further hearing or argument on any

² *Ibid*, Order of Nov 27, 2012 at pp. 3-4

of these issues.

With respect to the actual relevant issues in this CPCN application, the PSC should not permit a hearing merely to replicate the record that was established in Case No. 2012-00470. Further, JSEWD submits that it is premature under these circumstances determine whether an evidentiary hearing will be necessary or what the scope of such a hearing might be. While recognizing that the PSC wants to provide a reasonable opportunity for all parties to present their evidence and argument, the District notes the following:

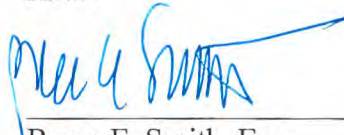
- The procedural schedule already provides a full opportunity for Forest Hills to conduct reasonable discovery as to the District's Application and pre-filed testimony. Thus Forest Hills already has the opportunity to conduct reasonable discovery to help prepare its testimony and evidence.
- Unlike Case No. 2012-00470, Forest Hills will have the opportunity to present its evidence and argument in pre-filed direct testimony. The opportunity to conduct discovery and prepare relevant testimony based on the District's responses provides a reasonable opportunity for Forest Hills to present relevant evidence and argument in accordance with the PSC's stated policy, without requiring a hearing, thereby obviating the need for cross-examination.
- Until discovery and testimony is complete, there is no rational basis to determine whether an evidentiary hearing is required, or to determine the scope of said hearing and the issues to be addressed therein that have not already been exhaustively covered in the evidentiary hearing in Case No. 2012-00470.

The District respectfully submits that no need or purpose for an evidentiary hearing has been shown by Forest Hills; that whether there is the need for such a discretionary evidentiary hearing (limited to primary considerations and issues in a CPCN case) will be better determined after the completion of discovery and testimony; and that Forest Hills' request for a hearing should be rejected as premature, but the request of any party for a hearing may be reconsidered upon adequate showing of necessity when testimony and discovery is complete.

Respectfully submitted,

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AND



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CO-COUNSEL FOR DISTRICT

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Response to Request for Hearing was mailed to the following individuals, postage prepaid, on September 15, 2014.

Robert M. Watt, III, Esq.
Monica H. Braun, Esq.
300 West Vine Street, Suite 2100
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Bruce E. Smith

COMMONWEALTH OF KENTUCKY

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278.020 AND 278.300)**

CASE NO 2014 -00084

**APPLICANT’S RESPONSE TO
FOREST HILLS RESIDENTS’ ASSOCIATION, INC.’S
MOTION FOR CLARIFICATION**

Comes now the Applicant, Jessamine – South Elkhorn Water District (“JSEWD” or the “District”), by counsel and for its Response to the Request for Hearing filed by Intervenor Forest Hills Residents Association Inc. (“Forest Hills”) states as follows:

While Forest Hills’ Motion is stated to be one for clarification, it actually moves that the Public Service Commission (“PSC”) reject the District’s Application for approval of financing for the Catnip Hill project as incomplete. Forest Hills moves for this interpretation although the PSC accepted the Application for filing (including the KRS 278.300 application) by letter dated August 22, 2014. Forest Hills does not appear to be seeking a clarification, but rather moving for further relief.

The PSC Order of September 8, 2014 finds that it cannot further consider the KRS 278.300

Application “until JSEWD finalizes the waterworks project costs and submits specific information regarding the terms of the loan from Kentucky Rural Water Finance Corporation.” Forest Hills moves that the PSC specifically state whether it has rejected the financing portion of the Application, even though it is clear that the PSC has not done so. It has merely stated that it cannot consider and approve the financing until such time as the District is able to finalize the project costs and provide specific terms for the KRWFC loan. This time will logically be when the PSC approves a CPCN for the proposed water tank.

Forest Hills states that KRS 278.300 requires the issuance of an order within 60 days after application is filed”.¹ KRS actually requires that a financing application be “disposed of promptly” within 60 days of filing. KRS 278.300(2) further states that such time schedule shall be followed “**unless** it is necessary for good cause to continue the application for longer than sixty (60) days, in which case the order making the continuance shall state fully the facts that make it necessary. **[emphasis added]**” There is no limitation on how long such a continuance may last.

The statute thus specifically recognizes that financing applications may well take longer than 60 days to decide, and that the PSC in its sound discretion determines when that is the case. The PSC has determined that it will not further consider the financing application until such time as the District can provide final information on project costs and final approval from KRWFC. Its action is fully consistent with KRS278.300, and does not provide any basis for rejecting an application that has already been accepted for filing. Further, by accepting the financing application for filing after extensive review, the PSC has already determined that the Application is sufficient to meet the PSC’s filing requirements, and that decision should not now be subject to collateral attack seeking

¹ Motion at Page 1.

rejection of the Application.

While the PSC will eventually consider for approval the final costs and financing agreement if a CPCN is granted, the only result of granting Forest Hills' Motion for additional relief would be undue delay and waste of resources.

As stated previously by the PSC:

KRS 278.300(2) requires the Commission to render a decision regarding a utility's request to issue securities or to obtain financing within 60 days, unless it is necessary for good cause to continue the application for a longer time. Since the proceeds of the proposed revenue bond issuance will be used to fund the proposed water main extension projects, our decision on the proposed issuance is dependent upon our action on Hardin District's application for a Certificate of Public Convenience and Necessity. As we have not completed our review of the proposed water main extension projects and do not expect to do so before December 15, 2001, the Commission finds that good cause exists to continue the application for authority to issue revenue bonds for a period longer than 60 days.²

Wherefore, JSEWD respectfully requests that the PSC deny Forest Hills' request that the District's Application under KRS 278.300 be rejected.

Respectfully submitted,

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AND

² Application of Hardin County Water District No. 1, Case No. 2001-00211, Order of December 14, 2001.



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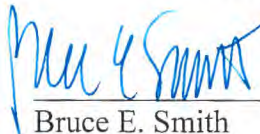
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