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APR 24 2015

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April 24, 2015

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

RE: *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 Improvement Project Pursuant to KRS 278.020 and 278.300 – Case No. 2014-00084*

Dear Mr. Derouen:

Enclosed please find and accept for filing the original and ten copies of Forest Hills Residents' Association, Inc.'s Response to Objection and Motion to Strike in the above-captioned matter.

Please acknowledge receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return it to me. Should you have any questions please contact me at your convenience.

Sincerely,

Stoll Keenon Ogden PLLC

Monica H. Braun

Enclosure

cc: Counsel of Record (w/encl.)

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APR 24 2015

PUBLIC SERVICE
COMMISSION

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)	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 RESPONSE TO OBJECTION
AND MOTION TO STRIKE**

Forest Hills Residents' Association, Inc. ("Forest Hills") requests that the Kentucky Public Service Commission deny Jessamine-South Elkhorn Water District's (Water District") Objection and Motion to Strike ("Motion") portions of Forest Hills' Post-Hearing Brief ("Brief") and disregard the Water District's rebuttal arguments therein. The Motion is a thinly disguised rebuttal brief that condemns the use of simple arithmetic and ignores the evidence that was introduced in the case by alleging that sections of the Brief constitute Forest Hills' counsels' "testimony" regarding issues that must be resolved by expert testimony.¹

The Motion objects to the arguments in Forest Hills' Brief regarding the Water District's: (1) demand projections; (2) population projections; and (3) citations to a Commission order regarding safety. The Water District claims that Forest Hills' analysis of the evidence constitutes

¹ It is unclear why the Water District repeatedly targets Forest Hills' attorneys. This is the third such pleading. See Motion for Full Disclosure of Intervenors' Relationship to Kentucky American Water Company (filed December 7, 2012 in Case No. 2012-00470) and JSEWD's Response to Motion to Strike (filed April 8, 2013 in Case No. 2012-00470). The Commission rejected the Water District's efforts in this regard in both instances. See March 8, 2013 and April 3, 2013 Orders.

expert testimony that is being provided by counsel and violates the Kentucky Rules of Evidence. In fact, Forest Hills' Brief is proper analysis and proper advocacy of its positions.

The Water District's Motion, if granted, would deny parties the right to analyze the evidence in a case and present their arguments, which is the purpose of filing a brief. Virtually every page of the Motion claims that Forest Hills is precluded from analyzing evidence submitted by the Water District unless Forest Hills had engaged an expert witness on the issue.² As Bob Dylan aptly noted, "You don't need a weatherman to know which way the wind blows."³ Similarly, expert testimony is not necessary to see the contrived nature of the Water District's Storage Analysis and population projections. Moreover, the Water District's position contradicts the Commission's order in this case that "Forest Hills has the right to question [the Water District's] witnesses on all relevant issues at the hearing. Furthermore, information may develop during the course of cross-examination that would lead Forest Hills to refocus its efforts on different issues."⁴ The post-hearing brief is the final step in the procedural schedule that affords parties the opportunity to present their analysis and arguments, including regarding issues that arose during cross-examination. A contrary ruling would lead to absurd results; for example, the entire brief of the Office of the Attorney General would be stricken because it did not call any witnesses. The citations in the Brief demonstrate that Forest Hills' arguments are derived solely on the evidence the Water District and Forest Hills placed into the record.

I. Demand Projections

The Water District claims that Forest Hills' analysis of the average daily demand calculation constitutes "unsworn opinion and conclusion," and that had the Water District known that Forest Hills would argue that the demand figure utilized is erroneous, the Motion would not

² Motion at 1, 2, 3, 4, 5, 6, 7, 8, and 10.

³ Bob Dylan, *Subterranean Homesick Blues* (Columbia Records) (1965).

⁴ Case No. 2014-00084, January 7, 2015 Order.

be necessary.⁵ With respect to the 2010 average daily demand calculation on which the Water District based its application, Forest Hills: (1) asked three of the Water District's witnesses during the hearing how the demand figure was calculated; (2) questioned witnesses regarding the Commission's Order that listed a different figure for 2010 usage; and (3) introduced as an exhibit the Water District's data request that also listed a different figure.⁶ The Water District takes umbrage with Forest Hills' calculation of the percentage difference between the two average daily demand calculations. Forest Hills is aware of no Commission precedent barring the use of simple arithmetic. The Water District also takes issue with Forest Hills' analysis and calculation of the storage capacity components that were likewise thoroughly addressed during the hearing as demonstrated by the record citations in the Brief.⁷ Notably, the evidence with which the Water District is uncomfortable was produced by its own witnesses.

The Water District follows its unsupported allegations with improper rebuttal regarding why it believes its average daily demand is correct by citing the Commission's 2012 demand calculation figure, instead of the 2010 figure that corresponds to the year on which the Water District's Application is based.⁸ The Water District likewise provides improper rebuttal arguments regarding the components of its storage analysis.⁹

II. Population Projections

The Water District claims that Forest Hills' counsel presents a "long exposition of their testimony," regarding Mr. Harper's population projections, but fails to allege what this purported testimony entails, other than wrongly claiming that Forest Hills' counsel has admitted not

⁵ Motion at 4.

⁶ See footnotes 22 -30 in the Brief; Forest Hills Exhibit 9.

⁷ See footnotes 31-37 in the Brief.

⁸ Motion at 4.

⁹ Id. at 6-7

understanding the basics of population studies.¹⁰ Presumably, the Water District is referring to Forest Hills' description of Mr. Harper's population projections as confusing.¹¹ That characterization was based on Mr. Harper's work product, testimony at the hearing and response to a post-hearing data request, as demonstrated by the record citations regarding same. As Forest Hills demonstrated in its Brief, Mr. Harper's incomprehensible response to his post-hearing data request undermines his credibility. This is not improper "testimony" by counsel, but rather appropriate analysis of Mr. Harper's evidence.

The Water District follows its unfounded allegations with more improper rebuttal in defense of Mr. Harper and his post-hearing data response.¹²

III. Commission Order in Case No. 2015-00037

Forest Hills raised a number of safety issues during the hearing regarding the close proximity of the proposed tank to nearby residences. Forest Hills' Brief, in one sentence, mentioned a Commission order regarding a recent catastrophic water tank collapse. In context, the sentence reads:

As Mr. Ritchie explained at hearing, even if the residences are not physically struck by the tank should the tank fail, release of 750,000 gallons of stored water would demolish the residences. This is a real concern; less than a week ago the Commission issued an order regarding a recent catastrophic water tank collapse that destroyed a nearby church and maintenance shed despite being a ground tank that only held 177,000 gallons of water.¹³

¹⁰ Id. at 7.

¹¹ Forest Hills Brief at 10.

¹² Motion at 8.

¹³ Brief at 35-36 (internal citations omitted).

The Water District claims that Forest Hills' counsel has suggested that "this proposed tank, or all ground and elevated tanks under the Commission's jurisdiction, are unsafe."¹⁴ This characterization is obviously inaccurate.

After berating Forest Hills for referencing this order, the Water District provides more improper rebuttal regarding the relevancy of the case by setting forth additional facts and referring to the utility's response to the order.¹⁵

IV. Conclusion

The Water District's Motion has no basis in law and little and fact and should therefore be denied. The Motion introduces rebuttal arguments that are not permitted under the procedural schedule in this case and Forest Hills requests the Commission disregard same.

Dated the 24th day of April 2015.

Respectfully submitted,

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¹⁴ Motion at 10.

¹⁵ Id. at 9.

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 24th day of April 2015:

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