

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)	CASE NO.
AND NECESSITY TO CONSTRUCT AND)	2014-00084
FINANCE A WATERWORKS IMPROVEMENT)	
PROJECT PURSUANT TO KRS 278.020 AND)	
278.300)	

ORDER

On March 27, 2014, the Forest Hills Residents' Association, Inc. ("Forest Hills")¹ and T. Logan Davis, a member of the Board of Directors of Forest Hills (collectively, the "Movants"), filed a motion requesting leave to intervene in the instant proceeding. In support of their motion, the Movants state that Forest Hills and a resident of Forest Hills, William Bates, were granted full intervention in Case No. 2012-00470,² in which the Commission denied Jessamine-South Elkhorn Water District's ("Jessamine-South Elkhorn") prior application for a Certificate of Public Convenience and Necessity ("CPCN") for a one million-gallon elevated water storage tank.³ Although Mr. Davis did not individually intervene in the prior proceeding, he did testify at the hearing on behalf of Forest Hills. The Movants assert that the current CPCN application is for approval of an above-ground water storage tank to be located on the same site as the proposed

¹ Forest Hills is incorporated in Kentucky.

² Case No. 2012-00470, *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* (Ky. PSC Jan. 3, 2014).

³ Motion of Forest Hills Residents' Association, Inc. and T. Logan Davis for Leave to Intervene (filed Mar. 27, 2014), p. 2.

tank that was the subject of Case No. 2012-00470. They state that the proposed site is adjacent to green space that abuts the Forest Hills subdivision, and that the homeowners within the Forest Hills subdivision would be directly and adversely affected by the construction of the proposed 750,000-gallon elevated water storage tank.⁴ They further assert that they have a special interest in the instant proceeding, pursuant to 807 KAR 5:001, Section 4(11)(b),⁵ that is not otherwise adequately represented.⁶

Additionally, the Movants state that they will present issues or develop facts that will assist the Commission in fully considering the instant matter without unduly complicating or disrupting the proceedings, specifically: (1) whether Jessamine-South Elkhorn needs a 750,000-gallon elevated water storage tank; (2) whether Jessamine-South Elkhorn conducted a thorough and proper review of all reasonable alternatives for the location of the water storage tank; (3) whether Jessamine-South Elkhorn engaged in a reasonable decision-making process in the selection of the proposed site; and (4) whether the proposed site is a reasonable site.⁷

On April 2, 2014, the Attorney General of the Commonwealth of Kentucky ("AG"), by and through his Office of Rate Intervention, filed a response objecting to the

⁴ *Id.* at p. 3.

⁵ 807 KAR 5:001, Section 4(11)(b) states: The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

⁶ Motion of Forest Hills Residents' Association, Inc. and T. Logan Davis for Leave to Intervene (filed Mar. 27, 2014), p. 3.

⁷ *Id.* at p. 3.

Movants' motion.⁸ The AG states that he is the only party entitled by statute to intervene on behalf of the consumers' interest, and that he has already been granted intervention in this matter.⁹ Additionally, the AG states that he is willing and capable of representing the Movants' (and all consumers') interests in this proceeding, and would be willing to meet and consult with the Movants.¹⁰ He also notes that the Movants will be able to tender written comments and present oral comments even if they are not granted intervention.¹¹ Finally, the AG states that Jessamine-South Elkhorn has requested that the Commission issue an Order in this proceeding no later than June 1, 2014, because Jessamine-South Elkhorn could lose funds allocated under House Bill 608 and three legislative grants for construction of the water storage tank if progress on the project is not made.¹² The AG believes Jessamine-South Elkhorn's request for an expedited schedule is reasonable, but necessitates strict administrative economy throughout this proceeding.¹³

On April 3, 2014, Jessamine-South Elkhorn also filed a response asking the Commission to deny Movant's intervention motion.¹⁴ Jessamine-South Elkhorn states that neither Forest Hills nor Mr. Davis are customers of Jessamine-South Elkhorn, and therefore, do not have an individual interest in the rates or services in this proceeding.

⁸ Attorney General's Response to Motion of Forest Hills Residents' Association, Inc. and T. Logan Davis for Leave to Intervene (filed Apr. 2, 2014).

⁹ *Id.* at p.1.

¹⁰ *Id.* at p. 3.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.* at 4.

¹⁴ Applicant's Response to Motion to Intervene of Forest Hills Residents' Association, Inc. and T. Logan Davis (filed Apr. 3, 2014).

(Although Mr. Davis resides in Forest Hills, water service to his residence is not in his name.)¹⁵ Jessamine-South Elkhorn contends that the Movants are not eligible for intervention and lack standing to be made parties to this matter.¹⁶ Additionally, Jessamine-South Elkhorn avers that even if the Movants had standing to intervene, their motion does not demonstrate a special interest that is not adequately represented by the AG.¹⁷ Moreover, Jessamine-South Elkhorn avers that, based on the testimony rendered by Forest Hills in Case No. 2012-00470, the Movants do not have special expertise to offer on the need for a 750,000-gallon water storage tank and that they have nothing new to offer on the remaining issues, which were thoroughly explored in their prior testimony.¹⁸ Jessamine-South Elkhorn notes that the record in Case No. 2012-00470 has been incorporated by reference into this proceeding, and included in the record is extensive argument and evidence regarding Forest Hill's siting concerns.¹⁹

On April 8, 2014, the Movants filed a reply to Jessamine-South Elkhorn's Response to Movants' motion for leave to intervene.²⁰ The Movants contend that they should be granted intervention in this matter because the Commission allowed Forest Hills and Mr. Bates to intervene in Case No. 2012-00470.²¹ The Movants aver that Jessamine-South Elkhorn's request in the instant proceeding is identical to Jessamine-

¹⁵ *Id.* at p. 3.

¹⁶ *Id.*

¹⁷ *Id.* at p. 4

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Forest Hills Residents' Association, Inc.'s and T. Logan Davis' Reply to Jessamine-South Elkhorn Water Districts' Response to Motion for Leave to Intervene (filed Apr. 8, 2014).

²¹ *Id.* at 2.

South Elkhorn's request in Case No. 2012-00470, except that in the instant proceeding Jessamine-South Elkhorn is seeking to build a 750,000-gallon tank instead of a one million-gallon tank.²² Therefore, the Movants argue that their interest in this matter is unchanged, and that they should be granted intervention in the instant proceeding.²³

Moreover, the Movants contend the fact that the AG intervened in this matter does not preclude Jessamine-South Elkhorn's participation. The Movants aver that, although the AG is the only party with a statutory right to intervene, the Movants are not barred from invention when they have satisfied the regulatory standards for intervention. The Movants also argue that they are "directly and uniquely impacted by the proximity of the proposed elevated water tank to their residences."²⁴ As nearby landowners, the Movants contend that they have a special interest in the proceeding and should be granted leave to intervene. Additionally, the Movants state they will present issues and develop facts that will assist the Commission, specifically: (1) whether Jessamine-South Elkhorn needs a 750,000-gallon above-ground water storage tank; (2) whether Jessamine-South Elkhorn conducted a thorough and proper review of all reasonable alternatives for the location of the above-ground water storage tank; (3) whether Jessamine-South Elkhorn's decision-making process in the selection of the proposed site was reasonable; and (4) whether the proposed site is a reasonable site.²⁵ Further, Movants assert that the Commission has granted intervention to affected landowners in

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 4.

²⁵ *Id.* at 6.

prior CPCN cases involving the construction of electric transmission lines. Finally, the Movants state they will not unduly complicate or disrupt the proceeding.

On April 11, 2014, Jessamine-South Elkhorn filed a motion for authorization to file a surreply, along with a tendered copy of its surreply, and a motion to incorporate certain documents that are on file in other Commission CPCN cases. Jessamine-South Elkhorn states that the Commission has previously allowed adjoining property owners to intervene in CPCN cases only when a specific statute provides them a right to intervene, and no such statute creates a right for affected property owners to intervene when a water utility is proposing to construct a water storage tank.

In analyzing the instant petition to intervene, the Commission finds that the only person who has a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.²⁶

The Commission, being otherwise sufficiently advised, finds that we previously determined in Case No. 2012-00470 that Forest Hills demonstrated a special interest in that proceeding which was not otherwise adequately represented, and that its intervention was likely to present issues or develop facts that assisted the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. The AG was not an intervenor in that prior case. The issues now raised in this case are essentially a continuation of the issues raised in the prior CPCN case. In this case, just as in Case No. 2012-00470, the primary issues before the Commission are the need for a water storage facility and whether there will be any wasteful duplication in such

²⁶ *Inter-County Rural Elec. Coop. Corp. v. Pub. Serv. Comm'n of KY*, 407 S.W.2d 127, 130 (Ky. 1996).

proposed facility. In Case No. 2012-00470, the Commission did not deny Jessamine-South Elkhorn's application on the basis that it had no need for additional water storage facilities. Rather, the application was denied on the basis that Jessamine-South Elkhorn failed to carry its burden of proof to justify the construction of a one million-gallon storage facility.²⁷ And although evidence was filed in that prior case on the issue of the site for the proposed water storage tank, the Commission made no findings in that case on the appropriateness of the proposed site.

In the instant proceeding, Jessamine-South Elkhorn has filed a new application requesting a CPCN to build a water storage tank at the same location, and now the Commission must examine the merits of the need for this tank. Although the AG has intervened on behalf of all ratepayers in this new case, we are compelled to find that Forest Hills' interests, on behalf of the property owners in the residential development, remain unchanged from such in Case No. 2012-00470. Thus it should be allowed to intervene and be granted full rights of a party in this proceeding to present evidence on the merits of the issues before the Commission.

Mr. Davis, on the other hand, did not seek leave to intervene in the prior proceeding. Although he was a witness and presented testimony on behalf of Forest Hills in that proceeding, he is not a customer of Jessamine-South Elkhorn, and he has not now shown that he has a separate special interest apart from all of the property owners who are members of Forest Hills; nor has he demonstrated that he will present issues or develop facts that would assist the Commission separately from those to be presented or developed by Forest Hills. Based upon these facts, the Commission finds

²⁷ Case No. 2012-00470, *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* (Ky. PSC Jan. 3, 2014).

that Mr. Davis does not meet the regulatory definition under 807 KAR 5:001, Section 4(11), and intervention in the proceeding should be denied. However, Mr. Davis will have ample opportunity to participate in this proceeding even though he is not granted intervenor status. Forest Hills may sponsor him as a witness; he can review all documents filed in this case; and he can monitor the proceedings via the Commission's website at the following web address:

[http://psc.ky.gov/Home/Library?type=Cases&folder=2012 cases/2012-00578.](http://psc.ky.gov/Home/Library?type=Cases&folder=2012%20cases/2012-00578)

Mr. Davis may also file comments as frequently as he chooses, and those comments will be entered into the record of this case. Finally, the Commission will provide an opportunity at the beginning of the evidentiary hearing for Mr. Davis and any other interested persons who are not sponsored as witnesses to make statements and present information for the Commission's consideration in this matter.

IT IS HEREBY ORDERED that:

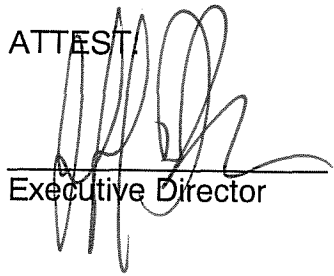
1. Forest Hills' request for intervention in the instant proceeding is granted.
2. Mr. Davis's request for intervention is denied.
3. Forest Hills shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
4. Should Forest Hills file documents of any kind with the Commission in the course of these proceedings, Forest Hills shall also serve a copy of said documents on all other parties of record.

5. Jessamine-South Elkhorn's motions for leave to file a surreply and to incorporate certain documents that are on file in other Commission CPCN cases are granted.

By the Commission

ENTERED
APR 16 2014
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST



Executive Director

Case No. 2014-00084

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