

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

January 26, 2012

LETTER OF TRANSMITTAL

RECEIVED
JAN 30 2012
PUBLIC SERVICE
COMMISSION

TO: Mr. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602-0615

RE: Jessamine-South Elkhorn Water District
Case No. 2011-00198

ENCLOSED PLEASE FIND: The original and eight (8) copies of my client's Responses To Commission Staff's Requests For Information as regards the above referenced matter. Upon receipt and review, please call Bruce Smith with any questions.

- | | |
|--------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> For your file | <input type="checkbox"/> For your review |
| <input type="checkbox"/> As requested | <input type="checkbox"/> Please sign and return |
| <input type="checkbox"/> File original(s) | <input type="checkbox"/> Return file stamped copy |
| <input type="checkbox"/> Envelope provided | <input type="checkbox"/> Please call |
| <input type="checkbox"/> Other: | |

Thank you,

Pat Simpson

Pat Simpson, Legal Assistant

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 30 2012

PUBLIC SERVICE
COMMISSION

In the Matter of:

PROPOSED REVISIONS TO)
JESSAMINE-SOUTH ELKHORN)
WATER DISTRICT'S RULES) CASE NO. 2011-00198
REGARDING THE PROVISION OF)
SEWER SERVICE)

RESPONSES TO COMMISSION STAFF'S
REQUESTS FOR INFORMATION

Comes the Jessamine-South Elkhorn Water District ("JSEWD"), by counsel, and for its responses to the informational requests made by the Kentucky Public Service Commission Staff ("Staff") states as follows:

1. Refer to Jessamine-South Elkhorn Water District's proposed Tariff Sheet No. 2, Rule 4 and Tariff Sheet No. 2A, Rule 5.

REQUEST 1 (a) Explain why Jessamine-South Elkhorn District seeks to impose responsibility for obtaining easements upon applicants for service.

RESPONSE: **It is the rare occasion when JSEWD receives an application from a single homeowner or small group of homeowners for the extension of sewer service. The overwhelming majority of applications for such service have been from developers constructing multi-lot subdivisions. In those instances involving an application from a single homeowner or small group of homeowners, acquiring the necessary easements to provide such service has never been a problem. Either the easement was already in place by virtue of a recorded plat or an easement has been provided voluntarily by an adjoiner.**

JSEWD has always been proactive in assisting the homeowner in acquiring any needed easements.

In recognition of the unfairness of taxing the entire customer base for the cost of extensions which benefit only the developer, it became the policy of the JSEWD to impose on the prospective applicant all costs of extension, including the cost of the acquisition of easements. It appears to be only fair that the individual or entity (i.e., the developer) that will directly benefit from the extension of service pay all costs, rather than imposing such costs on the entire rate base who never benefits directly from the extension and who most often does not even benefit indirectly. Furthermore, the developer has a mechanism for recovery of such costs [discussed below in Response 3(b)] by apportioning such costs amongst the lots to be sold. This is the basis for Rules 4 and 5.

REQUEST 1 (b): Describe an applicant's recourse under the proposed tariff sheet if he or she is unable to obtain an adjoining landowner's voluntary agreement to provide an easement.

RESPONSE: Although there has never been an instance in the history of JSEWD's operation where an applicant has been unable to obtain the needed easements for service, the applicant's recourse would be to bear the expense of the condemnation proceeding to acquire the necessary easement or forego the extension of service. There have been only three (3) condemnation lawsuits filed by the JSEWD with regard to providing water or sewer service and these particular lawsuits were filed to advance projects funded by state and federal government where the costs of the proceedings were paid from the project budget.

REQUEST 1 (c): Explain why, as a water district has the power of eminent domain, responsibility for obtaining an easement should not be placed on Jessamine-South Elkhorn District.

RESPONSE: See response to 1(a) above. Furthermore, JSEWD does not object to exercising the power of eminent domain so long as the expenses are borne by the applicant who benefits from the proceeding.

REQUEST 2: State whether Jessamine-South Elkhorn District takes the position that proposed Rules 4 and 5 are consistent with 807 KAR 5:006, Section 5(3). Explain.

RESPONSE: The proposed Rules are inconsistent with 807 KAR 5:006, Section 5(3).

REQUEST 3 (a): State whether Jessamine-South Elkhorn District believes a deviation from 807 KAR 5:006, Section 5(3) is required to approve and authorize proposed Tariff Sheets No. 2 and No. 2A.

RESPONSE: A deviation from 807 KAR 5:006, Section 5(3) is required to approve and authorize proposed Tariff Sheets No. 2 and No. 2A as regards acquisition of easements from adjoining property owners.

REQUEST 3 (b): If Jessamine-South Elkhorn District believes a deviation is required, state the reasons why a deviation is appropriate.

RESPONSE: Most of the extensions of sewer service have been made to developers of multi-lot subdivisions. Developers have always apportioned the costs of a project, including without limitation the expenses of land acquisition, rezoning, grading, erosion control, public infrastructure construction, landscaping and legal and engineering fees. These expenses are then reflected in the pricing of the lots sold by the developer.

JSEWD does not see any distinction between including the cost of constructing road and storm water improvements in the lot purchase price as opposed to including the cost of sanitary sewer infrastructure therein. JSEWD considers it unfair to its existing customer base to impose the costs of an extension, including the acquisition of easements on adjoining properties, where the applicant is the only party that will directly benefit from the extension and where, in most cases, the applicant is a real estate developer who can factor the easement acquisition cost into land sales thereby passing this cost along to the prospective purchaser who also directly benefits from the extended service.

REQUEST 4 (a.): Explain why an applicant for service must retain Jessamine-South Elkhorn District's attorney to prepare any easement.

RESPONSE: Based on its prior experience over the past 40+ years, JSEWD has determined that requiring the applicant to pay the expense for JSEWD's attorney to prepare the easement not only saves time and expense for the applicant in this process, but also insures an easement instrument of better quality. Permitting the applicant's legal counsel to prepare the easement inevitably leads to protracted discussions between the applicant's counsel and JSEWD's counsel as to the format and content of the document. Furthermore, JSEWD has also learned through experience that the final product of this easement preparation requirement is a more consistent legal document that better protects JSEWD's interests with regard to the maintenance and/or replacement of the service extension in the future.

REQUEST 4 (b): State the current fee that Jessamine-South Elkhorn District's attorney charges to prepare an easement for the water district.

RESPONSE: JSEWD's attorney charges JSEWD an hourly rate of \$125.00 per hour for services required in the preparation of an easement. This rate is significantly less than the usual hourly rate charged by other lawyers for similar services.

REQUEST 4 (c): State whether the fee that Jessamine-South Elkhorn District's attorney's would charge to a prospective applicant for service to prepare an easement differs from that which he or she would charge to the water district.

RESPONSE: The aforementioned legal fee would not differ. Furthermore, JSEWD's attorney bills JSEWD for his fees, not the applicant. JSEWD then bills the applicant for the precise amount that it paid its attorney.

REQUEST 5: Refer to Jessamine-South Elkhorn District's proposed Tariff Sheet No. 54, Rule 55. Explain why Rule 55 does not require an applicant for service to use the water district's attorney to prepare an easement and the proposed Rule 5 does.

RESPONSE: The absence of such a requirement was an oversight and JSEWD thanks the Commission Staff for noticing this error. JSEWD will submit an amendment to Rule 55 that addresses the matter.

REQUEST 6: State whether, when an applicant for service is required to provide an easement over his or her property, the water district presently requires the applicant to use the water district's attorney to prepare the applicant's easement. Explain.

RESPONSE: The applicant does not directly engage JSEWD's attorney. JSEWD's attorney prepares the easement after being directed by JSEWD to do so.

REQUEST 7: Describe how authorization for the water district's attorney to initiate legal proceedings is related to the water district's rates and conditions of service.

RESPONSE: To insure that expenses reflected in rates charged to the customer base are minimized, JSEWD's counsel may only initiate legal proceedings upon the specific authorization of JSEWD's Board of Commissioners after a cost-benefit analysis is performed. When authorized, such legal proceedings are generally related to violations by customers of JSEWD's tariff, the collection of delinquent accounts owed by JSEWD's customers and applicants for extension, the pursuit of damages by JSEWD from any liability producing incident caused by any individual or entity, the theft of services from JSEWD by individuals and entities and Kentucky Public Service Commission administrative proceedings.

REQUEST 8: State whether Jessamine-South Elkhorn District has a standard contract for the provision of sewer service that it requires all applicants to enter. If such a contract exists, provide a copy.

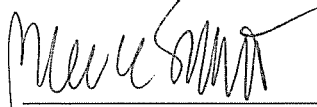
RESPONSE: See the list of standard contracts, previously submitted to the Kentucky Public Service Commission and included in JSEWD's Sewer Service tariff, which are titled as follows in the Appendix to said tariff:

- Sewer System Evaluation Agreement (LFUCG)
- Site Specific Agreement /Single Phase (LFUCG)
- Site Specific Agreement/Multiple Phase (LFUCG)
- Site Specific Agreement/Single User (LFUCG)
- Sewer System Evaluation Agreement (Wilmore)
- Site Specific Agreement/Single Phase (Wilmore)
- Site Specific Agreement/Multiple Phase (Wilmore)
- Site Specific Agreement/ On-Site
- On-Site Sanitary Sewer User Agreement

In reviewing its Sewer Service tariff, JSEWD became aware of its failure to file with the Commission a copy of its Sanitary Sewer User Agreement which is attached hereto. JSEWD will take immediate steps to submit this contract to the Commission for approval.

CERTIFICATION

The foregoing Responses were prepared by the undersigned and the Responses are true and accurate to the best of the undersigned's knowledge, information and belief formed after reasonable inquiry.



BRUCE E. SMITH
BRUCE E. SMITH LAW OFFICE, PLLC
201 SOUTH MAIN STREET
NICHOLASVILLE, KENTUCKY 40356
(859) 885-3393
ATTORNEY FOR JSEWD

SANITARY SEWER USER AGREEMENT

This agreement is made this ____ day of _____, 20__, between _____, (hereinafter "Customer"); and the Jessamine-South Elkhorn Water District, (hereinafter "District").

In consideration of the mutual covenants contained herein and subject to the District's Sanitary Sewer Rates, Rules and Regulations, (hereinafter "Sewer Tariff"), the regulations of the Kentucky Public Service Commission, and the regulations of the entity treating the effluent, as all may be amended from time to time, the District and the Customer agree as follows:

1. The District will provide sanitary sewer collection and treatment service to the Customer's property identified below (hereinafter "Property") and the Customer will be responsible for and pay the rate for such service on a monthly basis as provided in the District's Tariff until a new Sanitary Sewer User Agreement is executed by another party for the Property or a disconnect request is accepted by the District.

2. If the Customer violates the terms of this Agreement and the District expends funds to rectify same, or if a claim is made against or the District is held responsible for damages or injuries to persons or property caused by or resulting from the act or failure to act of the Customer, a member of the Customer's household, if applicable, or Customer's employee or agent in relation to the District's property or facilities, then, and in such events, the Customer shall fully indemnify and hold the District completely harmless from all such loss, cost and expense so incurred, including but not limited to attorney's fees and court costs.

3. The Customer agrees to grant the District, its successors and assigns, a perpetual access easement in, over, under and upon the Property owned by Customer, with the right to erect, construct, install and lay, and thereafter use, inspect, maintain, replace and remove sanitary sewer pipelines and appurtenant facilities, together with the right to utilize adjoining lands belonging to Customer for the purpose of ingress to and egress from the Property.

4. It is understood and agreed that if service is disconnected by the District due to the Customer's failure to timely pay the District's charges, service will not be reconnected and the deposit will not be refunded so long as the Customer or any member of the Customer's household, if applicable, still occupies the Property and the bill remains unpaid.

5. This Agreement constitutes the entire contract between the parties hereto, superseding and canceling all prior discussions, understandings and agreements, and this Agreement shall not be changed or supplemented unless done in writing and signed by both parties hereto.

CUSTOMER SIGNATURE

DISTRICT SIGNATURE

ADDRESS OF PROPERTY SERVED

CUSTOMER'S BILLING ADDRESS

CUSTOMER'S CELL TELEPHONE

CUSTOMER'S HOME TELEPHONE

CUSTOMER'S WORK TELEPHONE

CUSTOMER'S EMPLOYER

ADULT MEMBERS OF CUSTOMER'S HOME

CUSTOMER'S DRIVER'S LICENSE NO.

ADULT MEMBERS' EMPLOYER(S)

CUSTOMER'S Federal ID NO.