

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

**In the Matter of:**

**FOREST CREEK, LLC** )  
**COMPLAINANT** )  
 )  
**VS.** )  
 )  
**JESSAMINE SOUTH ELKHORN** )  
**WATER DISTRICT** )  
 )  
**DEFENDANT** )

**CASE NO. 2011-00297**

**RECEIVED**

**APR 26 2012**

**PUBLIC SERVICE  
COMMISSION**

**RESPONSE TO FOREST CREEK'S REQUEST  
FOR EXTENSION OF TIME AND MOTION  
TO ADJUST AND EXTEND PROCEDURAL SCHEDULE**

**RESPONSE**

Comes the Jessamine-South Elkhorn Water District ("District"), by counsel, and for its Response to Motion of Forest Creek, LLC for Extension of Time to Answer Jessamine-South Elkhorn's Requests for Information, states as follows:

Unlike Forest Creek, LLC ("FC")<sup>1</sup>, the District will not respond to FC's motion by asking the Kentucky Public Service Commission ("PSC") to reduce the requested extension period. However, the District will make a number of observations about the matter prefatory to its Motion:

1. Without questioning FC's counsel's representation that he did not receive the mailed version of the District's Requests for Information, to the District's counsel's best

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<sup>1</sup> At the outset of this proceeding, the District moved the PSC for an extension period of two (2) weeks in which to respond to FC's Complaint. FC objected to the District's motion by asking the PSC to limit the extension to four (4) days.

knowledge and belief, a copy of the Requests, properly addressed to FC's counsel, was placed in the U.S. Mail on Friday, March 30, 2012.

2. The District's Requests filing was posted to the PSC's website on the following Monday, April 2, 2012.

3. The District's counsel telephoned FC's counsel on April 9, 2012, to introduce himself and to offer to exchange electronic versions of the respective parties' Requests. It was during this conversation that the District's counsel was advised that the District's mailed copy of the Requests had never been delivered to FC's counsel. The District's counsel was further advised that he (FC's counsel) had been out of the office on vacation during the week of April 2, 2012. Although this filing was already posted to the PSC website and available to FC, the District's counsel emailed the District's Requests for Information to FC's counsel at his request on the day that they talked.

4. On April 13, 2012 (the due date for the responses), the District's counsel initiated another call to FC's counsel in an effort to facilitate an exchange of each party's responses to the other's Requests. The District's counsel was advised by FC's counsel that FC had filed a motion that morning for an extension of time in which to file FC's responses.

5. Notwithstanding that FC would receive the District's Responses prior to the District's receipt of FC's responses, the District timely filed its Responses on April 13, 2012.

6. FC did not file its Answers to the District's Requests until April 20, 2012, or two (2) days after FC's requested extension date of April 18, 2012. Once again, the District did not discover that FC would be defaulting on its requested extension date until the District's counsel

telephoned FC's counsel's office on April 19, 2012, and was advised that the Answers would be filed late.<sup>2</sup>

7. The Answers filed by FC on April 20, 2012 were not complete in that there was no Attachment B appended to the Answers as referenced therein. A portion of Attachment B was mailed to the District on Friday, April 20, 2012<sup>3</sup>, and the remainder of Attachment B was served by email on the following Monday, April 23, 2012. In other words, FC did not complete the filing of its Answers until five (5) days after the extension date requested by it.

8. The timing of the foregoing filing by FC left the District with approximately four (4) days, ten (10) days less than originally allotted, in which to disseminate Attachment B to the District's staff and engineer, review the documents and compose and file Supplemental Requests for Information by April 27, 2012 as required by the PSC scheduling order.

The point of the foregoing observations is that a simple request from FC on either April 9, 2012 or April 13, 2012, could have resulted in a joint motion and agreement with the District to extend FC's response date due to the delivery failure of the U.S. Mail and an adjustment of the next two (2) procedural deadlines (Supplemental Requests due on April 27, 2012 and Responses thereto due May 11, 2012) such that the District (and presumably FC) would not be prejudiced by FC's late completion of the filing of its Answers on April 23, 2012. Consequently, the District's Motion follows.

### **MOTION**

Comes the District and moves the PSC to adjust its procedural schedule and extend the deadlines in which both the District and FC are to file their Supplemental Requests for

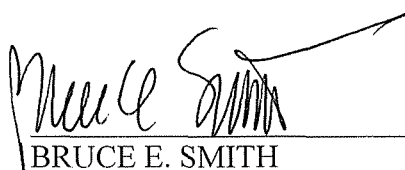
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<sup>2</sup> FC's counsel did email the unsigned Answers (without Attachments) to the District's counsel on April 19, 2012, and the hard copy of the Answers with Attachment A was delivered by mail on April 20, 2012.

<sup>3</sup> The District received the paper documents on April 23, 2012.

Information from April 27, 2012 to May 3, 2012 and to extend the time in which both the District and FC are to file responses to the Requests from May 11, 2012 to May 18, 2012. This Motion is based on the foregoing facts which have combined to reduce the District's preparation time as originally granted in the PSC's procedural schedule and because the Motion requests the same relief for FC, it will not result in prejudice to either party. Before filing this Motion, the District's counsel contacted FC's counsel on Monday, April 23, 2012, and asked if FC would agree to an extension or adjustment of the PSC's scheduling order with regard to the two (2) deadlines mentioned above. Apparently FC would not permit its counsel to agree to such an extension since the District's counsel did not receive a response from FC's counsel prior to the filing of this Motion on Thursday afternoon, April 26, 2012.

This Motion does not waive the relief requested in the previously filed: (1) Motions for Rehearing/Reconsideration, to Stay Procedural Schedule and/or to Bifurcate and/or Modify Procedural Schedule to Provide for Informal Conference<sup>4</sup>; and (2) Motion to Dismiss Complaint and Alternatively, Motion to Suspend Proceedings and Supplement the Record<sup>5</sup>, both now pending before the PSC.



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**Attorney for District**

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<sup>4</sup> Filed April 6, 2012.

<sup>5</sup> Filed April 25, 2012

**CERTIFICATE OF SERVICE:**

The undersigned hereby certifies that a true copy of the foregoing Response to Forest Creek's Request for Extension of Time and Motion to Adjust Procedural Schedule was served on the following by U.S. Mail, first class, postage prepaid, on April 26, 2012:

Robert C. Moore, Esq.  
P.O. Box 676  
Frankfort, Kentucky 40602-0676  
**Counsel for Complainant**

  
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BRUCE E. SMITH

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