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November 9, 2012

HAND DELIVERED

Hon. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RECEIVED

NOV 09 2012

PUBLIC SERVICE
COMMISSION

Re: Jessamine South Elkhorn Water District
Case No. 2012-00470

Dear Mr. Derouen:

We enclose for filing an original and ten (10) copies of the Intervenors' Motion for a Hearing the Establishment of a Procedural Schedule in the above-captioned case. Please place it in the file and bring it to the attention of the Commission. Thank you in advance for your assistance.

Sincerely,

Robert M. Watt, III

rmw:rmw
Enclosure
cc: Counsel of Record (w/encl.)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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NOV 09 2012

PUBLIC SERVICE
COMMISSION

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. 2012-00470

**MOTION OF FOREST HILLS RESIDENTS’
ASSOCIATION, INC. AND WILLIAM BATES
FOR A HEARING AND THE ESTABLISHMENT
OF A PROCEDURAL SCHEDULE**

Forest Hills Residents’ Association, Inc. (“Forest Hills”) and William Bates (“Mr. Bates”) (collectively the “Intervenors”) respectfully move the Commission for the entry of an order setting a formal hearing and establishing a procedural schedule in this proceeding. In support of the foregoing motion, the Intervenors state as follows.

On April 15, 2011, the Intervenors filed a Complaint¹ against Jessamine South Elkhorn Water District (the “Water District”) alleging, inter alia, that the proposed site of the 1,000,000 gallon above-ground water storage tank that is now the subject of this proceeding is unreasonable, that the Water District conducted an unreasonable site selection process for the water tank and that it acted unreasonably in the treatment of the Intervenors when they attempted to persuade the Water District to place the water tank in a different location. That case was dismissed by order dated October 30, 2012, and the Commission said, “The issues posed in the

¹ Case No. 2011-00138, *In the Matter of: Forest Hills Residents’ Association, Inc. and William Bates v. Jessamine South Elkhorn Water District.*

Complaint, namely the need for the proposed facility, the suitability of the proposed facility's location, and that location's effect on the proposed facility's operation, are more appropriately addressed in the Commission proceeding in which Jessamine South Elkhorn District's application [for a CPCN] is reviewed."² It then gave the Intervenors 14 days to apply for intervention, which was done.³

The Water District has the burden of demonstrating that public convenience and necessity require the construction of the proposed water tank at the site selected by the Water District. KRS 278.020(1). The Water District's Application herein contains only bare conclusory allegations regarding convenience and necessity. As the Intervenors stated in their Response to the Motion to Dismiss the Complaint in Case No. 2011-00138,

Before it may begin construction of the tank, the Water District must obtain a CPCN. In order to obtain a CPCN for the construction of new facilities, a utility must prove that the public convenience and necessity require the construction. KRS 278.020(1). There is a serious question about the need for a one million gallon tank. According to the Water District, it has two existing tanks with storage capacity of 550,000 gallons and average daily usage of 760,000 gallons. The proposed tank is five times larger than the shortfall. In addition, in Case No. 2006-00156, the Water District sought approval of a system development charge to pay for a one million gallon above-ground storage tank, but the proceeding was dismissed for failure to comply with the Commission's filing requirements. Prior to dismissal, the Water District appeared at an informal conference at the Commission. The Commission's Intra-Agency Memorandum of the informal conference in the case dated May 3, 2006, notes, "Staff's position is that the present [capital improvement plan] filed in the application was long on history and short on future projections as to growth and need." (Internal footnotes omitted).⁴

The Intervenors further stated in the same Response,

² Case No. 2011-00138, Order dated October 30, 2012, at 2.

³ *Id.*

⁴ Case No 2011-00138, Complainants' Response to Motion to Dismiss at 6.

The other part of a CPCN proceeding is the consideration of the public convenience, which includes the propriety of the location of the proposed facilities. In determining whether a particular location for new facilities is appropriate, the Commission has relied on the seminal decision of the Kentucky Court of Appeals in *Kentucky Utilities Company v. Public Service Commission*. (Internal footnote omitted).

* * *

In its Answer, the Water District argues that it conducted a reasonable evaluation⁵ of alternative locations for the tank site. Unfortunately, all the analyses occurred between 2001 and 2003, when the agreement to acquire the Switzer Site was made. Now, in 2011, when the Water District says it wants to construct the tank, conditions have changed significantly. What may have been reasonable in 2003, when the Switzer Site was in the interior of Ms. Switzer's farm, is not reasonable today, when it is connected to a residential subdivision. The Water District's refusal to conduct any additional evaluation, or, indeed, to even seriously consider suggested alternative sites, is manifestly unreasonable in light of the governing authorities.⁶

The Intervenors have urged the selection of a different location for the water tank since 2010 and, indeed, sought the intervention of the Commission to direct the Water District to select a different location in Case No. 2011-00138 in April of 2011. Now, the Water District has filed this proceeding on October 16, 2012, and counsel for the Water District, on November 8, 2012, has advised the Commission Staff it needs a certificate of public convenience and necessity by December 1, 2012, because its bid expires on that date. The Commission should not deny the due process rights of the Intervenors because of the Water District's poor planning. Rather than resolving the crucial issue framed by KRS 278.020, the Water District would have the Commission rush to judgment without having heard from the Water District about why public convenience and necessity requires the construction of the water tank in the chosen location or without having heard from the Intervenors about why the water tank should be constructed

⁵ Intervenors do not concede that the evaluation was reasonable.

⁶ Case No. 2011-00138, Complainants' Response to Motion to Dismiss at 6-7.

elsewhere, if in fact it is needed at all. Indeed, when the Commission dismissed Case No. 2011-00138, it anticipated that these issues would be addressed in this proceeding.⁷

Therefore, the Commission should enter an order setting a date for a formal hearing in this proceeding and establishing a procedural schedule. The procedural schedule should direct the Water District to file testimony addressing the issues of public convenience and necessity and describing specifically the Water District's site selection process and why the chosen location for the water tank is reasonable. The procedural schedule should provide a reasonable opportunity for discovery and should give the Intervenors the opportunity to file testimony after the Water District has filed its testimony and after discovery from the Water District has concluded.

During a November 8, 2012, conference call with Commission Staff and counsel for the Water District, the Intervenors were asked to suggest an alternative to the foregoing request for a hearing and procedural schedule. Unfortunately, there is no feasible alternative. The Intervenors believe that the construction of a 1,000,000 gallon above-ground water storage tank in a lot that abuts their subdivision would damage them significantly. They are entitled to be heard by the Commission and to present evidence in support of their position, particularly in light of the fact that the Application in this case is facially insufficient to demonstrate that public convenience and necessity requires the construction of the water tank at the chosen location.

WHEREFORE, the Intervenors, Forest Hills Residents' Association, Inc. and William Bates, respectfully request that the Commission set a date for a formal hearing and establish a procedural schedule in this proceeding.

⁷ See Case No. 2011-00138, Order dated October 30, 2012, at 2.

Dated: November 9, 2012

Respectfully submitted,

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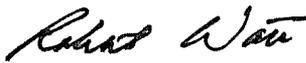
By: 
Counsel for Intervenors

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading has been served by e-mail and by mailing a copy of same, postage prepaid, to the following person on this 9th day of November 2012:

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