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January 10, 2013

HAND DELIVERED

RECEIVED

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

JAN 10 2013

PUBLIC SERVICE
COMMISSION

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. 2012-00470***

Dear Mr. Derouen:

Enclosed please find and accept the original and ten copies of Forest Hills Residents' Association, Inc.'s and William Bates' Response to the Water District's Motion to Limit Evidentiary Hearing to Relevant Issues and Evidence in the above-captioned case.

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

Sincerely,

Robert M. Watt, III

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

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COMMONWEALTH OF KENTUCKY

JAN 10 2013

BEFORE THE PUBLIC SERVICE COMMISSION 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. 2012-00470
CONSTRUCT AND FINANCE A)
WATERWORKS IMPROVEMENT)
PROJECT PURSUANT TO KRS 278.020)
AND 278.300)

FOREST HILLS RESIDENTS' ASSOCIATION, INC.'S AND WILLIAM BATES'
RESPONSE TO JESSAMINE-SOUTH ELKHORN WATER DISTRICT'S MOTION TO
LIMIT EVIDENTIARY HEARING TO RELEVANT EVIDENCE AND ISSUES

Forest Hills Residents' Association, Inc. and William Bates (collectively, "Intervenors"),
by counsel, respectfully submit this Response to the Motion of Jessamine-South Elkhorn Water
District's ("Water District") to Limit Evidentiary Hearing to Relevant Evidence and Issues.
While the Intervenors agree that the hearing in this case should focus on relevant evidence and
issues, they do not agree with the Water District's assertion that either the Jessamine-South
Elkhorn Water District Siting Study ("Siting Study") prepared by Photo Science and filed herein
on January 4, 2013, or the Intervenors' evidence that the presence of the proposed water tank on
the border of Forest Hills Estates subdivision will diminish the value of the property therein are
irrelevant.

First, the Water District claims that the filing of the Siting Study did not comply with the
procedural order in this case. Contrary to the Water District's assertion, the Siting Study was
filed with a Notice of Filing that clearly stated which responses to requests for information that it
supplemented. The Water District knows from the Intervenors' witness list filed on January 7,

2013, that Mike Ritchie is the witness responsible for testifying about the Siting Study. The Siting Study was filed in the format in which it was filed because it contains information for which the Water District has requested confidential treatment.

The Siting Study was not filed late as the Water District claims; it was filed as soon as it was completed. The Intervenors did not receive the Water District's distribution system map, which was necessary to complete the Siting Study, until December 17, 2012. The Siting Study was filed 18 days later.

Second, the Siting Study is not speculative. The alternative sites identified in the Siting Study are not hypothetical; they were selected based on the criteria set forth in the study: engineering criteria (located near existing or proposed pipelines, co-location with existing utility facilities), impact on the natural environment (proximity to wetlands, etc.), and impact on the built environment (proximity to residences). A study or investigation similar to the Siting Study should have been performed by the Water District before it decided to propose placing the water tank on the Switzer Site. As the Commission concluded in denying a certificate of public convenience and necessity in Case No. 2005-00154, "The Commission finds KU's study of alternative routes in this case was not sufficiently comprehensive, as demonstrated by the Concerned Citizens' identification of a route the Company had not thoroughly analyzed."¹ Similarly, the Siting Study in this case identifies six alternative sites not considered by the Water District, demonstrating that it did not conduct a "sufficiently comprehensive" study of alternative sites.

The Water District's assertion that the methodology utilized in the Siting Study should not apply to above-ground water tanks is unavailing. The author of the Siting Study said, "Given

¹ Case No. 2005-00154, *In the Matter of: Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Anderson, Franklin and Woodford Counties, Kentucky*, Order dated September 8, 2005, at 8.

that electric transmission structures and large above ground water tanks can have similar impacts on the environment in which they are placed, general principles from the EPRI/GTC Methodology can be applied to the siting of large above ground water tanks.”² According to the plans and specifications filed by the Water District in this case, the proposed water tank will be more than 148 feet tall and 70 feet in diameter. The drawings of sample electric transmission structures filed with the Application in Case No. 2005-00154 demonstrate that the largest sample structure for the proposed 345 kV line was 150-180 feet tall and 56 feet wide.³ Thus, the electric transmission structures and the proposed water tank have similar dimensions and their proposed locations should be analyzed using similar criteria.

The Water District’s citation to Research Report No. 348, “Siting of Electric Transmission Lines,” prepared by the Legislative Research Commission (“LRC Report”) is interesting. The authors of the LRC Report set forth a summary of the elements of a CPCN for electric transmission lines that is applicable here. The first element is “need” and the second element is “absence of wasteful duplication.”⁴ The authors explained the second element as follows:

To demonstrate an absence of wasteful duplication, an applicant for a transmission line CPCN must establish two factors:
-- it has conducted a thorough review of all reasonable alternatives, and
-- its choice of the proposed route was reasonable (PSC Case No. 2005-00207, Oct. 31, 2005).

To do this, the applicant must show that it comprehensively considered the use of existing utility corridors and other rights-of-way (PSC Case No. 2005-00089, Aug. 19, 2005).

One way an applicant can provide evidence establishing the two factors is by using the Kentucky Transmission Line Siting Model

² Siting Study at 3.

³ Case No. 2005-00154, Application, Exhibit 3.

⁴ LRC Report at 32.

to develop the best route for the proposed transmission line (PSC Case No. 2006-00463, Sept. 19, 2007).⁵

Here, the Water District has not and cannot establish that it needs a 1,000,000 gallon above-ground water storage tank.⁶ It has clearly failed to demonstrate an absence of wasteful duplication by the choice of the Switzer Site for the proposed water tank. According to the Water District's responses to requests for information, the primary criteria utilized to select the Switzer Site for the proposed water tank were cost and the willingness, in 2004, of Ms. Switzer to sell it to the Water District.⁷ Now that the Water District wants to construct the tank, it refuses to consider the impact of the tank on the built environment that was constructed after the purchase. Again, the LRC Report is instructive.

The Kentucky Transmission Line Siting Model, mentioned above, was developed through an extensive workshop that included local utility companies, GIS specialists, most of the team members who developed the EPRI-GTC method and other stakeholders.⁸ Essentially, the EPRI-GTC method was calibrated to make it "Kentucky-centric." Values are assigned to various features along proposed routes where a value of 1 is the most suitable for the location of utility facilities and 9 is the least suitable.⁹ In the Kentucky Transmission Line Siting Model, the following values were assigned to certain features in the Built Environment Perspective: (i) proximity of facilities to buildings 300-600 feet away – 8; proximity of facilities to buildings 0-300 feet away - 9; (ii) building density 1-4 buildings per acre – 8.5; (iii) proposed development – 9; and (iv) residential land use – 9.¹⁰ In other words, the proposed site for the water tank would

⁵ LRC Report at 33.

⁶ The Water District apparently believes that its need proof is contained in the "Capital Improvement Program" document prepared nearly seven years ago. Water District's Responses to Intervenor's Requests for Information Nos. 16 and 24. It does not establish the need for the proposed water tank.

⁷ See Water District's Responses to the Intervenor's Requests for Information Nos. 3, 4 and 5.

⁸ LRC Report at 59.

⁹ LRC Report at 52.

¹⁰ LRC Report at 61.

be one of the least suitable sites for the construction of utility facilities from the Built Environment Perspective in the Kentucky Transmission Line Siting Model.

Since the Siting Study utilized general principles based on the foregoing methodology and model, as well as hard evidence from the numerous sources listed on page 18 of the Study, it contains information “having [a] tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”¹¹ It demonstrates that the Water District did not conduct a thorough review of all reasonable alternatives. It demonstrates that the proposed site for the water tank is not reasonable. It is, thus, relevant.

Evidence of diminished value of the Intervenors’ property is also relevant in this proceeding. Such evidence supports the position of the Intervenors that the proposed site for the water tank is not reasonable. If the scant evidence of need for the water tank is weighed against the significant damage the water tank will cause the Intervenors, the only conclusion is that the Water District should go back to the drawing board and determine if it really needs the tank and, if so, what is a reasonable location for it. In other words, the application for a CPCN should be denied. The evidence of diminished value is, thus, relevant.¹²

Conclusion

The Intervenors agree that relevant evidence and issues should be presented at the hearing in this case. The evidence in the Siting Study and the evidence of the impact of the water tank on the value of the Intervenors’ property are undoubtedly relevant to the issue of whether the Water District should be granted a certificate of public convenience and necessity.

¹¹ KRE 401.

¹² What is not relevant is the Water District’s suggestion that the residents of Forest Hills Estates somehow should have known prior to their purchases that the Water District wanted to construct a water tank on the vacant lot adjoining the subdivision. Motion, n.5.

Dated the 10th day of January 2013.

Respectfully submitted,

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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 the 10th day of January 2013:

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