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January 22, 2013

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JAN 22 2013

PUBLIC SERVICE
COMMISSION

HAND DELIVERED

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

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' Sur-Reply to the Water District's Motion to Limit Evidentiary Hearing to Relevant Evidence and Issues 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.)

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 AND NECESSITY TO)
CONSTRUCT AND FINANCE A)
WATERWORKS IMPROVEMENT)
PROJECT PURSUANT TO KRS 278.020)
AND 278.300)

CASE NO. 2012-00470

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**FOREST HILLS RESIDENTS' ASSOCIATION, INC.'S AND WILLIAM BATES' SUR-
REPLY 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 Sur-Reply to the Motion of Jessamine-South Elkhorn Water District ("Water District") to Limit Evidentiary Hearing to Relevant Evidence and Issues. The Intervenors have filed a Sur-Reply to resolve the material misconceptions in the Water District's Reply; namely, to clarify that the Water District is the party that requested postponement of the hearing to discuss settlement and that because the water tank proposed in this proceeding is not yet constructed, there are no facilities to "relocate." In addition, Intervenors will address a few of the mischaracterizations of the Intervenors' position made by the Water District in its Reply.

I. The Water District Requested Postponement of the Hearing to Discuss Settlement.

The Water District filed its Application for a Certificate of Public Convenience and Necessity ("CPCN") on October 16, 2012, and later claimed that an order must be issued by January 2, 2013, which is when the bids on the project would expire.¹ Because of the Water

¹ See the Water District's Response to Motion for Hearing.

District's stated urgency, the Commission issued a procedural schedule that allowed for "expedited review" of the case, with an evidentiary hearing scheduled for January 10, 2013.² Since issuance of the procedural schedule, the Intervenors have diligently issued discovery, responded to discovery requests, and interviewed and retained expert witnesses in order to be prepared for the January 10, 2013 hearing.

On the afternoon of January 6, 2013, four days before the scheduled hearing, counsel for the Water District e-mailed counsel for the Intervenors and requested such counsel's agreement to a postponement of the January 10 hearing. Thereafter on January 7, 2013, a conference call was held among Commission Staff Counsel and counsel for the parties. The Commission's Intra-Agency Memorandum dated January 8, 2013, recounted the Water District's request as follows:

Mr. Smith stated that, notwithstanding its intention to move to strike the Siting Study which Forest Hills Residents' Association filed on January 4, 2013, Jessamine-South Elkhorn Water District would like additional time to review the contents of the study and ascertain the suitability of the proposed alternative sites. If one or more of the sites were found suitable, Jessamine-South Elkhorn may wish further discussions with Forest Hills Residents' Association. He suggested the scheduled hearing be postponed 30 days. Mr. Watt stated that Forest Hills Residents' Association had no objection to the postponement.

Thereafter, the Water District filed its Motion to Postpone and Re-Schedule Hearing.

As such, the Water District's claim on page 10 of its Reply that the Intervenors' supplemental discovery has "already resulted in a delay in the scheduled hearing in this proceeding" is erroneous. The hearing was delayed solely at the Water District's request to "give JSEWD an opportunity to evaluate additional tank sites and for the parties to discuss

² See the November 27, 2012 Order in Case No. 2012-00470.

resolution of the Intervenors' concerns,"³ which the Intervenors believed at the time to have been made in good faith.

II. Because the Water Tank Has Not Been Constructed, There Are No Facilities to "Relocate."

The Water District's Reply states its tariff prohibits the Water District from paying to relocate facilities.⁴ The Water District's reliance on this tariff provision is inapposite because the Water District cannot move a water tank that presently does not exist. Repeated use of the term "relocate" presupposes that either (1) the water tank is already constructed; or (2) the Commission has granted the Water District permission to construct the tank on the proposed site. Neither is true.

The Intervenors will not respond, in this Sur-Reply, to the Water District's claim that it is unfair for the Water District to pay for the costs of constructing the water tank on an alternative site.⁵ The Intervenors, however, welcome the opportunity to testify to the demands the Water District has attempted to place on the Intervenors, who are its *customers*, at the hearing in this matter.

III. Water Tank Siting Methodology.

At pages 1 through 7 of the Reply, the Water District argues that the siting methodology utilized by Photo Science in the Jessamine South Elkhorn Water District Water Tank Siting Study prepared by Photo Science ("Siting Study") and certain so-called procedural requirements attributed to the Intervenors should not be used in this proceeding. At page 1 of the Reply, the Water District states, "Intervenors argue that the EPRI/GTI siting methodology is appropriate for water tank siting, and that the procedural requirements for high voltage electric transmission

³ See the Water District's Motion to Postpone and Re-Schedule Hearing, p. 1.

⁴ See the Water District's Reply, p. 9.

⁵ The Intervenors believe the Commission should closely examine the prudence of the Water District's conduct in the selection of the Switzer Site and the expenditure of funds to utilize the site.

siting should be applied to water storage tank siting approvals.” Intervenors do not make such arguments. Intervenors argue that the siting methodology utilized in the Siting Study should be utilized. The Siting Study does not apply the EPRI/GTI siting methodology to water storage tank siting; its methodology is “patterned after” the EPRI/GTI siting methodology.⁶ The Siting Study further states that “general principles from the EPRI/GTI Methodology can be applied to the siting of large above ground water tanks.”⁷ Thereafter, the Siting Study clearly sets forth how the methodology was utilized. Clearly, there was no analysis of corridors required for electric transmission lines, as the Water District suggests. Instead, the analysis focused on the appropriate site for a tank approximately 150 feet tall and 70 feet in diameter requiring a one acre lot.

The Water District also argues that further study of the methodology similar to that employed when the Kentucky Transmission Line Siting Model was developed should be conducted before it is applied in a CPCN case.⁸ If this approach is followed, then the Water District should dismiss this case and await the results of such study before selecting a site for its proposed water tank. Of course, the Water District would still be required to obtain a CPCN before beginning construction of the proposed water tank.

Contrary to the assertion of the Water District, the Intervenors have not argued for any particular procedural requirements in this proceeding other than the setting of a procedural schedule and a hearing. The Intervenors have fully complied with every part of the procedural schedule in this case and have suggested no different procedures. Indeed, it has been the Water District, not the Intervenors, that has requested alterations in the procedural schedule. It moved to change the dates for discovery responses and the filing of briefs. As noted above, it moved for

⁶ Siting Study, p. 3.

⁷ *Id.*

⁸ See the Water District’s Reply, p. 6.

the postponement of the hearing so that it could evaluate alternative sites and discuss settlement.

The Intervenors objected to neither of these motions.

IV. The Water District Seeks to Unduly Limit the Intervenors' Participation in this Case.

The Water District has asked the Commission to exclude all of the evidence the Intervenors have described that will be offered from their expert witnesses, Mike Ritchie and E. Clark Toleman. While the Water District is certainly free to cross examine these gentlemen at hearing and make any argument the Water District deems appropriate in its post-hearing brief, to claim that the evidence Mr. Ritchie and Mr. Toleman have presented should be excluded is unreasonable. The issues regarding (1) whether the Water District's proposed site is appropriate; (2) whether there are other alternatives that should have been considered; and (3) the effect on the property values in the Forest Hills Estates Subdivision if the water tank is constructed at the proposed site are not only relevant, but are material, to the Commission's determination of whether a certificate of public convenience and necessity should be granted. For these reasons, the Intervenors respectfully request that the Water District's Motion be denied.

Dated the 22^d 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 22^d day of January 2013:

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