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MAY 23 2013

PUBLIC SERVICE  
COMMISSION

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May 22, 2013

**VIA UPS OVERNIGHT**

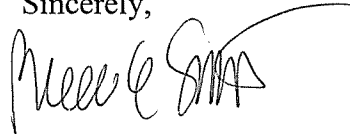
Mr. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

Re: **Case No. 2012-00470**

Dear Mr. Derouen:

Enclosed for filing are an original and ten (10) copies of JSEWD's Application and Petition for Rehearing Including Application and Petition for Declaratory Orders and Motions to Stay and for a Procedural Conference .

Sincerely,



Bruce E. Smith

Enclosures

RECEIVED

MAY 23 2013

PUBLIC SERVICE  
COMMISSION

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 ) CASE NO 2012-00470  
 IMPROVEMENTS PROJECT PURSUANT TO KRS )  
 278.020 AND 278.300 )

**JSEWD’S APPLICATION AND PETITION FOR REHEARING**  
**INCLUDING APPLICATION AND PETITION FOR DECLARATORY ORDERS**  
**AND MOTIONS TO STAY AND FOR A PROCEDURAL CONFERENCE**

Comes now the Applicant, Jessamine-South Elkhorn Water District (“JSEWD”), by counsel, and pursuant to KRS 278.400 applies for rehearing and reconsideration with respect to certain matters that were determined by two orders of the Kentucky Public Service Commission (“PSC”). Both orders at issue are dated April 30, 2013. One order (hereinafter the “Order”) made substantive determinations with respect to JSEWD’s Application for a Certificate of Public Convenience and Necessity (“Application”) and financing approval for a proposed one million gallon water storage tank to serve JSEWD’s Northwest Service Area. The second order (hereinafter the “Motion Order”) granted in part and denied in part a Motion to Strike portions of JSEWD’s Post-Hearing Brief (“Brief”).

Pursuant to KRS 278.400, any party to a proceeding may apply for a rehearing with respect to any matter determined by the PSC after a hearing, and shall specify the matters on

which a rehearing is sought.<sup>1</sup> As part of this Application and Petition for Rehearing, JSEWD requests reconsideration and declaratory orders by the PSC on the following matters.<sup>2</sup>

1. Declaratory Orders on the standards to be applied to a determination as to the need for and the proper sizing of a water storage tank<sup>3</sup> including the following proposed resolutions and conclusions:

a. As “average daily consumption” is not defined in any PSC statute or regulation, the term “average daily consumption” may be calculated on either an annual or monthly basis consistent with the current language of 807 KAR 5:066(4)(4);

b. Once a decision is made that a water district’s installed storage capacity is not in compliance with PSC minimum requirements pursuant to 807 KAR 5:066(4)(4), this **minimum** requirement is not the sole standard in determining the proper amount of capacity to be constructed;

c. The proper amount of storage capacity to be constructed or needed should take into consideration the factors of average annual daily consumption, average monthly daily consumption, peak daily consumption, significant variations in seasonal or periodic demand, the adequacy of service under both normal and drought conditions and redundancy for outages, emergencies, maintenance, fire and system reliability;

d. Grant funds available to a water district for construction under a Certificate of Public Convenience and Necessity (“CPCN”) application should be considered to

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<sup>1</sup> Required information with respect to JSEWD, including address and description of the entity, has previously been filed as part of the original Application for a CPCN, which is incorporated herein by reference. JSEWD’s electronic address is [jessaminesouth@windstream.net](mailto:jessaminesouth@windstream.net).

<sup>2</sup> JSEWD specifically reserves all objections to the PSC’s prior Orders and determinations in this case, and failure to raise an objection herein does not constitute a waiver of any and all objections to any matter previously determined by the PSC in Case No. 2012-0470.

<sup>3</sup> All facts upon which the Application is based; JSEWD’s interest in the proposed declarations; and statutes, administrative regulations, and orders to which the application relates are identified in Section I, below.

be a significant and beneficial element in determining whether or not the project is an “economically efficient investment”,

e. A specific statement is required as to the type and extent of demographic and demand capacity analysis that is needed in order to support a CPCN for new water storage, including a reasonable standard for expenditure for such analysis in relation to the cost of the proposed project;

f. The PSC may not order a water district to enter into contract negotiations with another entity as a precondition to approval of a CPCN for water storage capacity;

g. The magnitude alone of the amount by which the proposed storage capacity exceeds the **minimum** standard of 807 KAR 5:066(4)(4), however defined or interpreted by the PSC, does not permit a presumption or initial determination or conclusion as to whether or not an applicant’s CPCN constitutes an “unnecessary and excessive investment”;

h. JSEWD can rely upon prior PSC orders and make reference to documents that are already in the PSC’s permanent records with regard to the criteria considered or ignored as to KAW storage facilities applications.

2. Rehearing of the denial of the Application for the proposed one million gallon tank;

3. Rehearing as to the suitability of a smaller water storage facility for JSEWD’s Northwest Service Area, and whether the PSC should approve a smaller water facility in the event it continues to reject the one million gallon tank proposed in this Application<sup>4</sup>;

4. Rehearing as to the PSC’s finding that JSEWD failed to adequately consider the availability of water storage capacity based on mere speculation that Kentucky-American Water Company (“KAW”) might have available storage capacity to reserve for JSEWD<sup>5</sup>;

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<sup>4</sup> See Order at page 12.

5. Rehearing as to the impact of line losses on the need for new storage capacity;  
and

6. Rehearing as to the PSC's Order striking portions of JSEWD's Brief that referred to documents that are part of the PSC's permanent records.

**I. Declaratory Order – Consistent Standards for Water Tank CPCN's**

As part of this Application for Rehearing and pursuant to 807 KAR 5:001, Section 18, JSEWD also applies and petitions for declaratory orders from the PSC that will clarify the standards to be applied in determining the reasonable capacity of a proposed water storage tank once it has been decided that a utility needs additional storage. On the face of the Orders in this Case and Case No. 2012-00096<sup>6</sup>, the PSC has applied inconsistent standards in determining the need for and the capacity of very similar storage proposals in concurrent cases.

807 KAR 5:001, Section 18, provides as follows:

Section 18. Application for Declaratory Order. (1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, **the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.**

(2) An application for declaratory order shall:

- (a) Be in writing;
- (b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;
- (c) Fully disclose the applicant's interest;
- (d) Identify all statutes, administrative regulations, and orders to which the application relates; and

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<sup>5</sup> See Order at page 11, footnote 41.

<sup>6</sup> In the Matter of: APPLICATION OF KENTUCKY-AMERICAN WATER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING CONSTRUCTION OF THE NORTHERN DIVISION CONNECTION, Case No. 2012-00096, Order of April 30, 2013 ("KAW Northern Division").

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials. (emphasis added)

JSEWD, as a person substantially affected by the PSC's Order herein and by the PSC's interpretations of its regulations and statutes in that Order as compared to the application of such regulations and statutes in other CPCN cases, seeks declaratory orders with respect to the proper standards to be applied to determining reasonable storage capacity.

In the Order in this case, the PSC tied proper capacity for a proposed water storage tank to its interpretation of 807 KAR 5:066(4)(4), which states as follows:

*(4) Storage. The minimum storage capacity for systems shall be equal to the average daily consumption.*

The plain language of this regulation is to determine a minimum storage capacity requirement. Further, the plain language does not define “average daily consumption” as being determined only with respect to an annual basis. Nonetheless, the PSC Order treats this regulation and its interpretation thereof not merely as a minimum requirement, but as the standard for reasonable capacity for storage, subject only to possible adjustment for future growth and fire protection. The PSC apparently accepts the Intervenors’ reasoning that the only significant issue in sizing a water tank is the ability to meet the PSC’s interpretation of the minimum required by 807 KAR 5:066(4)(4) over time, plus a possible reservation for fire protection.

JSEWD submits that the PSC’s interpretation as stated in the Order is inconsistent with the regulation itself, and is unreasonable and creates a significant issue with respect to the ability of a utility such as JSEWD to provide adequate service to its customers as defined by PSC statutes and regulations. Further, the imposition of this strict standard on JSEWD is inconsistent with the order of February 28, 2013 in Case No. 2012-00096, and clarification as to the standards to be applied to all utilities for storage tank CPCN’s is required.

The February 28, 2013 order in Case No. 2012-00096 approved a CPCN for construction of two new storage tanks specifically to provide service in KAW’s Northern Division.<sup>7</sup> The two new tanks will add 900,000 gallons of additional storage capacity for this purpose<sup>8</sup>, in addition to the current Northern Division storage capacity of 1.096 million gallons<sup>9</sup>. The approved storage will provide storage capacity that more than doubles the average daily production of water in the Northern Division.<sup>10</sup> There is no way to compare the approved capacity to average daily

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<sup>7</sup> Although the February 28, 2013 order was in effect unless modified or overturned, the Order was subject to appeal until at least April 3, 2013, and therefore was not final in that sense until after the evidentiary hearing in Case No. 2012-00470.

<sup>8</sup> Case No. 2012-00096, Order of February 28, 2013 at page 9.

<sup>9</sup> *Ibid* at page 8.

<sup>10</sup> *Ibid* at page 4, see also footnote 17 at the same page.

consumption, whether determined on an annual or monthly basis, since there was no effort whatsoever to determine whether the proposed storage capacity equals or exceeds average daily consumption. However, there is certainly a very large discrepancy between approved capacity and average day production.

There is no mention, let alone analysis, of the “average daily consumption” in the KAW Northern Division for these tanks, including any determination as to whether the KAW Northern Division has any current storage deficiency at all as defined by 807 KAR 5:066(4)(4). The chief criteria imposed in the Order in the JSEWD case to deny a storage application was not even considered in the KAW Northern Division case. Despite this complete failure to consider the “standard” for sizing that is being imposed on JSEWD, 900,000 gallons of new storage capacity was approved for the KAW Northern Division.

The KAW Northern Division Order also discusses other factors that support granting a CPCN for the storage tanks proposed in that case, including the need for redundancy.<sup>11</sup> The same need applies to JSEWD, but there is no mention of the need for redundancy in the Order in the JSEWD Application.

In its Brief in this case<sup>12</sup>, JSEWD identified other regulatory requirements that it believes are relevant in determining (once a storage deficiency has been established) the proper capacity for a new storage tank and interpretation of 807 KAR 5:066(4)(4). These include 807 KAR 5:066, Section 10; KRS 278.030(2); KRS 278.010(14); and 807 KAR 5:066, Section 10(4). JSEWD then identified some of the criteria that must be addressed:

In determining the proper sizing for a proposed water tank, then,  
the Commission should properly consider at least the following

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<sup>11</sup> *Ibid* at pages 8 and 14.

<sup>12</sup> See JSEWD Brief at pages 14-18.



factors as reasonable for a particular system pursuant to its existing regulations and statutes:

- Average annual daily consumption
- Average monthly daily consumption
- Peak daily consumption, particularly where such peaks regularly exceed average daily usage and installed capacity by significant amounts
- Significant variations in seasonal or periodic demand
- Planning to provide adequate service under both normal and drought conditions
- Redundancy for outages, emergencies, maintenance and system reliability<sup>13</sup>

In addition to these factors, the following are clearly relevant as well:

- Future growth
- Financing

JSEWD seeks a declaration that all of these factors are both relevant and necessary criteria in determining the proper capacity for needed new water storage, and should be specifically addressed when determining whether a proposed water storage project is reasonable and necessary.

In addition, JSEWD seeks a declaration that approved grant funds for a project should specifically be considered as a significant and beneficial element of the standards for determining whether the proposed project is an “economically efficient investment”. Such grant funds are not chargeable to ratepayers and increase the economic efficiency of the

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<sup>13</sup> JSEWD Brief at page 18.

proposed project, particularly where, as here, they will pay for almost 50% of the total cost of the proposed project. The Order does not address this issue at all as part of the determination that the proposed project is not an economically efficient investment.

JSEWD further seeks a declaration as to the type and extent of demographic and demand capacity analysis that will be required as part of the standards to support a new water storage tank for JSEWD. JSEWD is willing to perform a reasonable analysis required by the PSC as long as it has some idea of what will be required to satisfy the PSC that a proposed storage project is reasonable. The Order does not cite any cases in which the lack of a specific study projecting water demands has previously resulted in the rejection of a request by another water district for a CPCN for a water storage tank. JSEWD also notes that water districts do not earn an equity return or other profit on capital investments, and have no reason other than providing adequate service to request approval of a large capital project.

JSEWD also seeks a declaration that KRS 278.040 prohibits the PSC from ordering JSEWD to enter into a contract for storage with KAW as a precondition to approval of its Application for a new storage facility. JSEWD also seeks a declaration that it may rely upon the validity of prior PSC orders with respect to KAW storage facilities, and in particular that such orders have not approved excess storage capacity that KAW may reserve for JSEWD. If any such issue was ever raised in a KAW storage tank case, JSEWD was not informed or advised in any manner that the PSC was considering sufficient storage capacity to serve both KAW's storage needs and JSEWD's storage needs.

807 KAR 5:001(18)(8) specifically provides as follows:

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the

application and requiring the production of additional documents and materials.

In accordance with 807 KAR 5:001(18)(8), JSEWD also moves that the PSC order that the entire record in Case No. 2012-00096, as well as other recent KAW CPCN or water storage cases<sup>14</sup>, be incorporated by reference into this proceeding so as to assure a complete record for review of this Application for Declaratory Orders.

JSEWD also requests that the PSC hold Case No. 2012-00470 in abeyance pending a final PSC decision on the Application and Petition for Declaratory Orders, so as to assure that any further proceedings, appeals, or consideration of options such as a smaller storage tank are conducted in accordance with the standards established by such Declaratory Orders. No prejudice will enure to the Intervenors by such an action, as no work will proceed on the project to which they object while these important issues are thoroughly reviewed and resolved. 807 KAR 5:001(18) specifically provides for an adequate opportunity for the Intervenors to respond to this Application, and the PSC may order further review if necessary.

## **II. Denial of Application for the Proposed One Million Gallon Tank**

In denying JSEWD's Application for a one million gallon storage tank, the PSC made the following findings<sup>15</sup>:

- The "storage standard" to be used for tank capacity is limited to an average daily use determined on an annual basis;

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<sup>14</sup> Case Nos. 1994-00292; 2003-00270; 2004-00254; 2005-00039; 2005-00546 (a portion of which has already been incorporated by reference, see footnote 21); and 2007-00134.

<sup>15</sup> Order at pages 10-11.

- Such a standard “reflects normal operations and ameliorates the effects of peak and minimal use periods”;
- The PSC rejected a position which it attributed to JSEWD that 807 KAR 5:066(4)(4) alone requires construction of the proposed storage tank;
- JSEWD failed to prove that the proposed storage facility is necessary and will not result in excessive or wasteful investment, or that a smaller facility could easily address these concerns;
- JSEWD’s evidence regarding system growth was inadequate.

Without waiver of any and all other objections to the PSC’s determinations on this Application, JSEWD requests rehearing and reconsideration as to these findings as not consistent with the evidence of record and as inconsistent with past PSC determinations and requirements with respect to approval of CPCN’s with respect to other utilities.

#### **A. Storage Standard**

807 KAR 5:066(4)(4) states in its entirety:

*(4) Storage. The minimum storage capacity for systems shall be equal to the average daily consumption.*

On its face, the regulation establishes only a **minimum** storage requirement. It does not specify that “average daily consumption” is limited to average daily consumption as determined on an annual basis. While the PSC may have assumed in some past cases that this regulation is based on an annual determination, the regulation itself does not state this limitation, and does not give any utility such as JSEWD any notice that it will be limited in a CPCN to minimum capacity as determined on an annual basis. The Order does not cite any case in which another

water district utility has had a CPCN for water storage rejected because the request was not limited to the minimum standard as determined on an annual basis.

In Case No. 20121-00096, the PSC determined that KAW was entitled to construct 900,000 gallons of new storage capacity without any mention whatsoever or apparent consideration of how such new capacity for KAW's Northern Division related to 807 KAR 5:066(4)(4).<sup>16</sup> The "standard" being applied to JSEWD herein was not only not applied, it wasn't even an issue. Such inconsistent application of standards is arbitrary and unreasonable. Further, the application of an interpretation of a regulation as the standard that includes terms not stated in the regulation did not give JSEWD sufficient notice of the standards to be applied to its Application.

JSEWD has service obligations that go beyond the minimum storage standard stated in Section 4(4). While the interpretation asserted by the PSC herein may be useful in determining a minimum storage standard, this standard does not fully address the needs of the JSEWD system. JSEWD is not limited to merely providing adequate service on an average day as determined on an annual basis.<sup>17</sup> Its service obligations are far broader than recognized in the standard being applied by the PSC herein, even for **current** use. JSEWD must have sufficient storage capacity to meet demands on an annual average day, on a monthly average day, reasonable use on peak days, reasonable use during drought periods, and redundancy in the event of planned and unplanned outages or emergencies and for system requirements. The uncontroverted evidence of record is that JSEWD already needs the proposed tank to meet all of its service obligations, not merely sufficient capacity to meet a hypothetical average annual day. The JSEWD system has already experienced on a regular basis customer usage that exceeds the total installed storage

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<sup>16</sup> See further discussion in Paragraph I above.

<sup>17</sup> See, JSEWD Brief at pages 14-18 for all of the relevant requirements.

capacity that would be available even with the addition of the proposed one million gallon tank proposed herein (1,550,000 gallons).<sup>18</sup>

While the Order denies (as do the Intervenors) that meeting peak demands (even average daily consumption calculated on a monthly basis) has any relevance in sizing storage, prior storage orders consistently refer to peak demands. For instance, the PSC recited maximum demand information for KAW in approving new storage in both 2004 and 2005.<sup>19</sup> As far back as 1994, the PSC recognized that storage is needed to adequately address pressure requirements for maximum day demand.<sup>20</sup> KAW's internal discussions with respect to storage needs over many years have continually referred to the need for adequate storage to meet peak demands.<sup>21</sup> For example:

- Page 19 of 108 – new tanks are “critical to reliability, meeting peak demands and security of the system
- Page 22 of 108 – Russell Cave Tank needed to meet peak demand and allows maintenance of other tank; new elevated tank needed to meet peak demand and provide critical reliability
- Page 25 of 108, particularly the statements in bold:

Kentucky-American Water Company has worked diligently to determine the appropriate level of storage that is cost effective and meets the objectives of health, safety and reliability for its customers. In previous analysis, it was determined that reliability would be provided through storage and standby power capabilities at the treatment plants. The recent power outage during peak demands demonstrated that immediate and short-term

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<sup>18</sup> JSEWD Response to FH2#27; demand on the JSEWD system has already exceeded 1,550,000 gallons on at least 38 occasions from 2006 through November 2012.

<sup>19</sup> Case No. 2004-00254, Order at page 2; Case No. 2005-00039, Order at page 3.

<sup>20</sup> Case No. 1994-00292, Order of December 1, 1994.

<sup>21</sup> Case No. 2005-00546, KAW RESPONSE TO COMMISSION STAFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DATED AUGUST 3, 2006, Item No. 2. This response was incorporated by reference into Case No. 2012-00470 without objection at the evidentiary hearing of March 14, 2013, video record at 13:22.

reliability cannot be met with the existing operational capabilities. **Although existing storage and standby power capabilities were sufficient to provide reliability until the power was restored, it took a brief period of time to activate both. Because demands were so high during that brief period, system pressure was lost before the tanks and diesel capabilities could be implemented.**

Kentucky-American has reviewed alternatives to improve the ability to implement those capabilities, which are being proposed in another Investment Project. **However, it was determined that the most cost effective and reliable method to assure sustained system pressure during peak demands is with additional elevated storage.** It is proposed that this elevated storage tank be built at this time instead of the additional pumped storage originally specified in the 1993 Storage Analysis. Kentucky-American in conjunction with System Engineering has recently updated the 1993 Storage Analysis and recommends that an additional 3.0 million gallon pumped storage facility be constructed between 2005 and 2010. (emphasis added)

- Page 32 of 108 – 2001 memo re: planned 3 million gallon storage tank – purpose of the project was to “equalize demands during **peak periods**, provide fire flows and improve system reliability within the distribution network. (emphasis added)
- Page 33 of 108 – serious peak day issues, including storage – “based on the operations during the latest peak day event and **continued growth within the system**, it is imperative that Kentucky-American increase its storage capacity...” (emphasis added)
- Pg 40 of 108 – proposed ground storage “Peak system demands in the northwestern and western sections of the distribution system caused low pressure for numerous residential and commercial customers. The **continued residential growth** in this area will only increase system demands during **hot and dry weather. This additional tank is critical to meeting system reliability and is the most efficient way to meet peak period demands** while providing fire protection. (emphasis added)
- Page 106 of 108 – all the way back to 1990 – 3.0 million ground storage – needed for equalization, fire protection and reliability, but “also help the entire Kentucky-American system maintain the hydraulic gradient necessary to reliably meet the system’s **peak demands**”. (emphasis added)

- Page 108 – a proposed tank (1990 or so) “will provide benefit to the overall system to operate at higher and more stable pressures during **peak demand conditions**”. (emphasis added)

807 KAR 5:066(4)(4) in and of itself does not specify anything other than the **minimum** storage capacity that a system must have. Once a shortfall in minimum capacity is established, the actual capacity of a new tank must be based on the particular needs and service characteristics of the particular utility, including meeting average and peak demands, anticipated growth, redundancy, and the service obligation of that utility under both normal and drought conditions. A standard that ignores the system’s service obligations by the mechanical application of an interpretation of the minimum storage requirement does not adequately address the needs of this utility or its customers.

The PSC appears to have presumed on the face of this Application for the CPCN that the magnitude of the proposed increase compared to the PSC’s interpretation of 807 KAR 5:066(4)(4) in and of itself demonstrated unnecessary and excessive investment.<sup>22</sup> No such presumption was stated in Case No. 2012-00096, where proposed storage twice the extent of average produced water was approved and total storage capacity was almost doubled, or in Case No. 2005-00039, where KAW proposed to increase the amount of floating storage in the center portion of its Central Division by 260 percent.<sup>23</sup> While JSEWD has the burden of proof in its Application, there is nothing stated in the PSC’s statutes, regulations or rules that a request creates a presumption of unnecessary or excessive investment merely by the magnitude of a proposed project.

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<sup>22</sup> Order at page 6.

<sup>23</sup> Case No. 2005-00039, Order of April 21, 2005 at page 5.



JSEWD needs sufficient capacity to meet its service obligations under **all** relevant and reasonably required service conditions, not merely on an annual average day.

**B. The Proposed Investment is Neither Wasteful nor Excessive**

The record in this case does not support the PSC's finding that the proposed tank and investment therein by JSEWD is either wasteful or excessive. On the contrary, the proposed investment is an exceptionally prudent and cost efficient investment to meet both the current and future needs of JSEWD's Northwest Service Area.

The record reveals that JSEWD did consider an alternative to the proposed tank which was to construct two 500,000 gallon tanks to serve two pressure zones. This alternative was rejected in favor of constructing a single one million gallon tank.<sup>24</sup> The cost of a 500,000 gallon tank is estimated to be \$1,325,500.00 while the cost of the proposed one million gallon tank is estimated to be \$1,624,700.00. Even ignoring cost inflation, if JSEWD had opted for two 500,000 gallon tanks, the cost for one million gallons of new storage capacity would be \$2,650,000.00 or \$1,025,300.00 more than a single one million gallon tank.<sup>25</sup> Further, two or more tanks to provide the same capacity would unnecessarily require the purchase of more land than for one tank and entail more maintenance and operation expense going forward. The proposed one million gallon tank, which is the first addition of storage to the JSEWD system in almost twenty years, is a very good investment to meet all of JSEWD's service obligations, both current and future.

Further, although apparently not considered in the PSC's finding of excessive investment, JSEWD has prudently sought and received a \$1,000,000.00 grant for this project. This lowers

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<sup>24</sup> JSEWD Amended Response of January 11, 2013 to FH1#45.

<sup>25</sup> JSEWD Exhibit 11.

JSEWD's investment in this project by almost 50%, to \$1,192,000.00.<sup>26</sup> Investment that should be of concern to the PSC in this regard is the investment required by a utility for a project from its own funds that may eventually have some impact on ratepayers (although JSEWD has already stated that no rate increase will be required as a result of this project). Contrary to the finding that investment in the proposed project would be excessive, JSEWD's prudent planning and preparation assures that the proposed project is not only not excessive, but is a very prudent and cost efficient investment, and rejection of the proposed project will eventually result in higher costs. JSEWD is confident that if the PSC compares the required investment to that approved for other utilities for even a 500,000 gallon tank, JSEWD's proposed investment is in fact a great bargain for JSEWD and its ratepayers.

**C. Both Current Demands and Growth Projections Support the Proposed Project**

JSEWD updated the CIP provided in 2006 with actual growth in residential households in the Northwest Service Area. Substantial growth has continued in that service area since 2006, despite the complete collapse of the residential real estate market in recent years. The PSC criticizes the growth projections in the CIP because the projections were somewhat higher prior to the housing collapse than what actually occurred afterwards. What is in fact remarkable, and should be recognized by the PSC, is the extent to which the projections in the CIP came to fruition despite the housing collapse. JSEWD should at least be given some credit for having correctly projected that residential development in the Northwest Service Area would continue at a significant level. Indeed, the record herein reveals a substantial number of new meters in the Forest Hills subdivision as the housing market slowly returns to normal.

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<sup>26</sup> Attachment 1 to Application at page 2.

To the extent that the PSC requires that JSEWD provide additional information with respect to growth and demand projections, the information already presented demonstrates that substantial growth has continued during the worst of times. Projections are subject to the same vagary of events that have occurred between 2006 and 2013, and will add little to the informed and credible judgments formed by Mr. John G. Horne in this proceeding. However, JSEWD is willing to conduct such further growth or demand studies as required by the PSC as part of a rehearing process, but requests guidance from the PSC as to the scope and extent of such studies with respect to the size and scope of the requested project. In this regard, as noted above, JSEWD is also requesting that this proceeding be held in abeyance pending the completion of JSEWD's Declaratory Order requests. In the event that further proceedings are required to approve JSEWD's tank request after the completion of the Declaratory Order process, JSEWD requests that a procedural conference be scheduled at that time to identify and narrow issues to be reviewed on rehearing and to establish a process for such review, including a schedule for prefiled testimony by the parties as necessary.

### **III. Suitability of a Smaller Water Storage Facility**

The Order suggests that JSEWD address the potential suitability of a smaller water storage facility for its Northwest Service Area. JSEWD has previously considered the suitability of two 500,000 gallon tanks in two pressure zones, and has determined that the proposed one million gallon tank is superior and more cost efficient. However, in light of the Order, JSEWD is

reconsidering the reasonableness of constructing a 500,000 gallon tank now as an alternative to its one million gallon tank proposal.<sup>27</sup>

While JSEWD continues to believe that a one million gallon tank is needed for its system, a 500,000 gallon tank would give some assistance in meeting JSEWD's service obligations. The evidence already of record would even more convincingly demonstrate the need for a 500,000 gallon facility. With the addition of a 500,000 gallon tank, JSEWD's total installed storage would equal 1,050,000 gallons. Daily demands on the JSEWD system exceeded this capacity 364 times from 2001 through November 2012.<sup>28</sup> Average daily demand on a monthly basis exceeded this capacity in both June and July, 2012.<sup>29</sup> Even before considering growth, drought, redundancy, fire protection and emergencies or any other relevant issues, a 500,000 gallon tank is fully justified.

In an effort to assure that at least a portion of the system's needed storage can be available in the reasonably foreseeable future, JSEWD is open to consideration of a 500,000 gallon tank as an alternative to the proposed one million gallon tank. To the extent that the PSC were to recognize that a 500,000 gallon tank would be reasonable, JSEWD would suggest that a procedural conference be scheduled to identify any additional information that would be needed to support such a tank, and to identify any other issues that would need to be resolved. This issue again could be held in abeyance pending the PSC's determination with respect to JSEWD's requested Declaratory Orders.

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<sup>27</sup> Neither this reconsideration nor any statement herein should be construed as a waiver of any claim by JSEWD with respect to the proposed one million gallon tank or an admission as to any issue with respect to the requested CPCN for that tank.

<sup>28</sup> Response to FH2#27.

<sup>29</sup> Exhibit 10-JSEWD at page 2.

#### IV. KAW Alternative

The uncontested evidence in this case demonstrates that KAW is not a viable alternative for JSEWD's needed storage capacity. JSEWD's witnesses described in detail the technical issues that would preclude the use of KAW's 3 million gallon storage tanks (located on Clay's Mill Road) as a source of storage capacity for JSEWD. There is no evidence in this record that KAW has any excess storage capacity to provide to JSEWD. Indeed, it is very clear from prior Commission Orders<sup>30</sup> that KAW has since 1994 been under instructions from the PSC to construct sufficient storage capacity by year end 2005 to have 50% of its required minimum storage capacity under 807 KAR 5:006(4)(4), as defined by annual average daily consumption. KAW has not constructed any storage for its Central Division that is for any other purpose (including, for instance, reserving capacity for other utilities such as JSEWD).<sup>31</sup> The Intervenors raised this issue only on cross-examination, and presented no evidence that KAW was an actual alternative storage supplier for JSEWD. The PSC's prior Orders for KAW storage remain in effect, and none even suggests that the PSC has approved excess capacity that would be available on a long term basis to JSEWD. The supply contract between KAW and JSEWD that has been in effect since 1986 mandates that JSEWD maintain its own storage sufficient to provide adequate service to its customers. JSEWD further submits that any effort to require JSEWD to offer to contract with KAW for such capacity (even if available) as a precondition to consideration of its CPCN raises serious concerns under KRS 278.040(2).

Storage capacity for JSEWD from KAW is purely a self-serving conjecture on the part of the Intervenors. It is not technically feasible. It is prohibited by contract. Unless the PSC Orders

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<sup>30</sup> See, for instance, Case No. 2005-00039, Order of April 21, 2005.

<sup>31</sup> The storage approved for KAW's Northern Division in Case No. 2012-00096 is an exception to this rule, since it was not related at all to 807 KAR 5:066(4)(4), but in any event KAW Northern Division storage is not available to JSEWD.

approving storage for KAW are manifestly in error, KAW has no excess storage capacity to serve JSEWD.

## V. Line Losses

The Intervenors conjecture that a line loss prevention program could have an impact on JSEWD's need for new storage capacity. The evidence of record does not support this claim. JSEWD's line losses were 15.85% in 2010 and 19.57% in 2011<sup>32</sup>. Per JSEWD's 2012 annual report to the PSC, line losses for 2012 were only 12.5%. JSEWD is, in accordance with PSC directives, making substantial efforts to address this issue.

Even considering the highest reported line loss percentage in 2011, bringing the losses down to the 15% allowed by the PSC for rate making purposes would only result in at most 34,000 GPD being available to meet customer demand.<sup>33</sup> This maximum impact is not sufficient to significantly affect either the storage capacity deficit or the alternatives reasonably proposed to address such a deficit.

## VI. Motion Order

JSEWD also seeks rehearing on the PSC's Motion Order. The references cited by JSEWD that have been ordered stricken are already part of the PSC's permanent records, and are material to the issues and standards to be applied by the PSC in Case No. 2012-00470. JSEWD further moves that all of the questioned references cited in the Motion Order be incorporated by reference into the record of this case, and that the Intervenors be given the opportunity to state why any of the cited references are inaccurate or inapplicable to the issues in this proceeding and should be disregarded by the Commission. While the Intervenors claim that they have had no opportunity to confront KAW's witnesses or counsel's statements in previous cases (including

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<sup>32</sup> Exhibit 2-PSC.

<sup>33</sup> Intervenors' Post Hearing Brief at page 10.

concurrent Case No. 2012-00096), they have not stated any instance in which the references are inaccurate or in which KAW misstated or misled the PSC with respect to any factual statement or legal issue.

JSEWD also seeks rehearing of the PSC's determination that the relationship between the Intervenor's counsel and KAW is the same as any other case where a law firm may have more than one counsel representing two clients with differing case perspectives. This particularly applies to Case No. 2012-00096, in which KAW was arguing, and the PSC was fully reviewing, many of the references that were stricken from JSEWD's Brief, and the PSC approved without exception KAW's entire storage proposal. There was nothing hidden from either the PSC or Intervenor's counsel about that record. Further, as early as December, 2012, JSEWD referred to the ongoing proceeding in Case No. 2012-00096 and the relationship in the concurrent cases between Intervenor's counsel and KAW's counsel in Case No. 2012-00096. The idea that these cases are merely unrelated cases handled by the same law firm is incomplete if not illogical. They are concurrent cases involving the imposition of entirely different standards on the same issues before the same administrative body. KAW is JSEWD's water supplier. The Intervenor raised (but not until cross-examination at the hearing) the supposition that KAW should supply any needed storage, that such storage was available, and that JSEWD's contractual limitation with KAW should be disregarded. The references by JSEWD to the positions taken by KAW in the concurrent proceeding and with respect to KAW's own storage principles and positions are entirely proper, and should not have been stricken by the PSC. This CPCN Application is not for storage to serve merely the particular interests of the named individual and the neighborhood association opposing it, however many members of the Forest Hills neighborhood actually agree with the opposing position taken. Additional storage is needed to serve **all** of the customers of

JSEWD. The Intervenor did not seek class representative status, nor should such status be granted or assumed. The Motion Order strikes relevant references as to how such storage should be provided according to the largest private water supplier in the Commonwealth, to the detriment of the record herein and the ultimate detriment of all of JSEWD's customers in having such information considered in meeting the public interest. To the extent that the Intervenor disagrees at all with KAW's positions and evidence in previous cases, the opportunity to actually state how KAW erred in its presentations can be given as part of the rehearing process.

With respect to the specific stricken references:

1. **Footnote 36-** this study has been reviewed and cited with approval by the PSC in at least two previous KAW storage tank approvals.<sup>34</sup> There is no rational basis to limit referral to this study for its appropriate weight in similar applications. Also, this footnote refers to consideration of maximum day demands. –The orders in several previous KAW cases specifically referred to maximum day demands on the KAW system as part of the analysis for approving new storage.<sup>35</sup> The orders themselves support JSEWD's statements in its Brief – the PSC considered peak demands in reviewing and approving CPCN's for other storage tanks.

2. **Footnote 38** is a truthful and accurate statement of KAW's position in Case No. 2012-00096. The alternative considered by KAW is discussed in the Order of Case No. 2012-00096<sup>36</sup>; the referenced response merely specifies the actual capacity of the alternative storage proposal.

3. **Footnotes 40-41** cite to KAW's standards for storage sizing. The citations are perfectly appropriate in light of the acceptance of KAW's proposal in Case No. 2012-00096 using different standards than were imposed on JSEWD.

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<sup>34</sup> Case No. 2004-00254, Order of September 7, 2004; Case No. 2005-00039, Order of April 21, 2005.

<sup>35</sup> Case No. 2004-00254, Order at page 2; Case No. 2005-00039, Order at page 3.

<sup>36</sup> Order of February 28, 2013 at pages 15-17.



4. **Footnote 42** refers to a purely factual response to a PSC data request in Case No. 2012-00096. If the Intervenors believe that KAW provided false or misleading information to the PSC in that case, they should so state.

5. **Footnote 44** refers to the same factual information provided and described in paragraph 4 above. It further directly quotes KAW's brief in Case No. 2012-00096, filed by the same counsel of record as the Intervenors' counsel in this case in a concurrent matter on a relevant and material issue related to the standards to be applied to water storage CPCN issues.

6. **Footnote 48** was stricken even though it refers to the Order of February 28, 2013. The need for redundancy in storage (at least for KAW) is clearly stated in that Order. Footnote 49 is also supported by the Order in that case.

7. **Footnote 50** merely demonstrates that the storage proposed (and eventually approved) in Case No. 2012-00096 is only for the needs of KAW's Northern Division. If the Intervenors' believe that erroneous or misleading information was provided to the PSC in this regard, they should so state.

8. **Footnote 51** merely confirms that utilities may obtain needed permits prior to filing for a CPCN. The Order in Case No. 2012-00096 also confirms this point, as do other PSC Orders.<sup>37</sup> Indeed, the PSC has previously held that the choice of when and whether to obtain necessary permits prior to filing a CPCN Application is entirely up to the applying utility.<sup>38</sup>

9. **Footnotes 52, 64 and 65** contradict the Intervenors' claim that JSEWD should have to consider options or alternatives even if they are not viable as a precondition to filing a CPCN application. If the Intervenors believe that KAW provided false or misleading information in this regard to the PSC in Case No. 2012-00096, they should so state.

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<sup>37</sup> For example, see Case No. 2007-00134, Order of April 25, 2008 at pages 78-79

<sup>38</sup> Case No. 2005-00142, Order of September 8, 2005 at pp. 3-4.

10. **Footnote 67** merely recites KAW's claim in Case No. 2007-00134 that timeliness and minimization of risk are relevant considerations in CPCN applications. The order in that case confirms that these are relevant considerations<sup>39</sup>, although they were not applied in the PSC's Order of April 30, 2013 with respect to JSEWD's application.

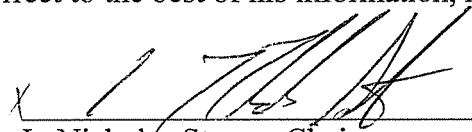
The remaining stricken footnotes relate to the Intervenor's allegations with respect to aesthetic, real estate market, and siting process. As the PSC has not made any determinations with respect to these marginal (at best) allegations in the Order, JSEWD does not specifically address these items at this time, but does generally object to having these material references stricken and reserves the right to address such items more specifically if it should become necessary.

### CONCLUSION

JSEWD needs significant additional storage to provide adequate service in meeting the needs of all of its customers. JSEWD respectfully requests that the PSC grant rehearing and reconsideration as requested above including the Application for Declaratory Orders and Motions to Stay and for a Procedural Conference.

### VERIFICATION

The undersigned, L. Nicholas Strong, being duly sworn, deposes and says that he is the Chairman of the Jessamine-South Elkhorn Water District; that he has reviewed the foregoing; and that he verifies the foregoing to be true and correct to the best of his information, knowledge and belief.

  
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L. Nicholas Strong, Chairman

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<sup>39</sup> *Ibid* at page 80.

COMMONWEALTH OF KENTUCKY  
COUNTY OF JESSAMINE, SCT...

Acknowledged, subscribed and sworn to me, a Notary Public in and before said County and State by L. Nicholas Strong, Chairman, this the 22nd day of May, 2013.

My Commission expires: 12-21-2014.

  
\_\_\_\_\_  
NOTARY PUBLIC

433464  
NO.

Respectfully Submitted,


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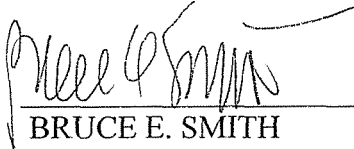
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CO-COUNSEL FOR WATER DISTRICT

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing JSEWD'S Application and Petition for Rehearing Including Application and Petition for Declaratory Orders and Motions to Stay and for a Procedural Conference was served by first class mail, postage prepaid, this the 22nd day of May, 2013, to:

Robert M. Watt, III, Esq.  
Monica H. Braun, Esq.  
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\_\_\_\_\_  
BRUCE E. SMITH

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