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PUBLIC SERVICE
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June 3, 2013

VIA UPS OVERNIGHT

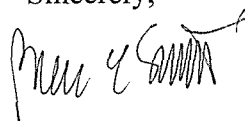
Mr. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

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

Dear Mr. Derouen:

Enclosed for filing are an original and ten (10) copies of JSEWD's Reply to Forest Hills Residents' Association, Inc.'s and William Bates' Response to 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

Enclosure(s)

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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 REPLY TO FOREST HILLS RESIDENTS’ ASSOCIATION, INC’S AND
WILLIAM BATES’ RESPONSE TO JSEWD’S APPLICATION AND PETITION FOR
REHEARING INCLUDING APPLICATION AND PETITION FOR DECLARATORY
ORDERS AND MOTIONS TO STAY AND FOR A PROCEDURAL CONFERENCE

Comes the Jessamine-South Elkhorn Water District (“JSEWD”), by counsel, and for its Reply to the Response of the Intervenors to the Application and Petition for Rehearing Including Application and Petition for Declaratory Orders and Motions to Stay and for a Procedural Conference of JSEWD (“Response”), states as follows¹.

1. APPLICABILITY OF 807 KAR 5:066, SECTION 18

The Intervenors contend that it is improper for JSEWD to seek declaratory opinions from the Kentucky Public Service Commission (“PSC”). The Intervenors speculate (“it would seem that the section is designed”)² that 807 KAR (18) is similar to such declarations in court proceedings, and that JSEWD seeks an impermissible “advisory opinion”. The only support cited

¹ JSEWD’s Application for Rehearing, etc. of May 23, 2013 is hereby incorporated by reference into this pleading; this Reply addresses certain contentions made by the Intervenors, but makes no waiver with respect to any matter, issue or contention not specifically addressed herein.

² Response at page 1.

by the Intervenors for this claim is a case that did not involve a declaration of rights, but rather a writ of mandamus.³

The actual language of 807 KAR 5:066 does not support the Intervenors' claim. The scope of 807 KAR 5:066 is set forth as follows:

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 (emphasis added).**

The scope of the regulation is very broad, and JSEWD's requests for declarations are well within the parameters established by this regulation.

The Intervenors also claim that the PSC did not intend for a declaratory judgment application to be made as part of, or in conjunction with, an application for rehearing. Neither 807 KAR 5:066(18) nor KRS 278.400 imposes such a restriction.

JSEWD does not seek declarations with respect to the **application** of consistent standards to two different water storage tank applications. The declarations are needed because the standards **themselves** as applied in the instant case and Case No. 2012-00096 are both inconsistent and contradictory. As the Intervenors admit, they were successful in convincing the PSC in this case that "storage capacity should be based on average daily consumption using an annual period."⁴ However, this absolute standard imposed on JSEWD was not even considered in concurrent Case No. 2012-00096. Although the PSC determined in Case No. 2012-00096 that 900,000 gallons of new storage capacity was needed for KAW's Northern Division, it made no analysis whatsoever of how that new storage related to average daily consumption. There is no

³ Citation at Response, page 2, footnote 3.

⁴ Response at page 2.

indication that average daily consumption was even calculated for KAW's Northern Division. Further, the Order does not indicate that any specific type of "factual" growth and demand study was required or submitted to justify the storage capacity approved for KAW's Northern Division, as the Intervenor's claim is required for approval of additional storage.⁵

The Intervenor's state that this discrepancy is not significant because no intervenor raised the question in Case No. 2012-00096, and because the proposed storage tanks were "ancillary" to a larger project. The standards to be applied to determining reasonable storage capacity are not dependent on whether a particular intervenor prefers one standard or the other. Either the standard is that storage must not exceed the minimum, or it is not. The standard itself should not change merely because an intervenor with siting concerns proposes a standard that will prevent the construction of any significant new storage. Such a shifting standard dependent on the private interests of an intervenor is arbitrary and unreasonable. Utilities such as JSEWD have the right to have notice of the standards to be applied to their applications, and are denied due process if the standards shift completely merely on the basis of an intervenor's preference or interests.

PSC statutes and regulations make no distinction between an application for a CPCN for new water storage capacity and an "ancillary" application for materially similar projects. KAW specifically sought approval for two new elevated water storage tanks.⁶ Characterizing the CPCN for 900,000 gallons of new elevated storage capacity as "ancillary" has no legal significance.

⁵ While the Intervenor's claim that the PSC requires "fact-based demand projections" for approval of new water storage tanks (Response at page 5), it does not cite any statute or regulation for this requirement, and further objects to any guidance from the PSC as to what precisely might be required in this regard. The Intervenor's further make no effort to explain the failure of KAW to meet this "requirement" in Case No. 2012-00096.

⁶ Case No. 2012-00096, Order of February 28, 2013 at page 1.

2. CLAIMED DISTINCTIONS IN CASE NO. 2012-00096

The Intervenors claim that Case No. 2012-00096 is not very similar to JSEWD's proposal. While it is true that JSEWD has been very prudent and responsible in meeting its customer demands without system pressure problems, neither JSEWD nor its customers should be punished for its exemplary service by denying storage capacity that is needed for JSEWD to continue to meet its customers' needs under all relevant conditions, not merely on an average day.

The order in Case No. 2012-00096 specifically references the value of storage in emergency situations and for redundancy.⁷ JSEWD has the same need for redundancy in the case of potential outages as does KAW's Northern Division. Should JSEWD's 500,000 gallon tank be unavailable, the proposed tank would provide needed redundancy. Without a new storage tank, JSEWD would have only 50,000 gallons of storage capacity available in such a circumstance. No consideration was given to this issue in the JSEWD Order⁸, although redundancy was considered to be a significant standard in Case No. 2012-00096.

The Intervenors further state that KAW plans to decommission a water storage facility at some point. It does not state that the planned decommissioned storage is a 117,000 gallon standpipe.⁹ Assuming that this storage facility is decommissioned as planned, KAW still received approval for an additional 783,000 gallons of elevated storage over its current storage capacity of 1.096MGD without any demonstration that any of it was needed to meet the "minimum storage capacity" standard that the Intervenors argue is controlling in determining the need for new storage.

⁷ Case No. 2012-00096, Order of February 28, 2013 at page 14.

⁸ PSC Order on merits in Case No. 2012-00470, entered April 30, 2013.

⁹ Case No. 2012-00096, Order of February 28, 2013 at page 9.

JSEWD does not believe that the Intervenor's proposed mechanical standard should be applied to any utility – the determination should be based on assuring that sufficient capacity is available to permit the utility to meet **all** of its service obligations, as stated in JSEWD's Brief and Rehearing Application. However, whatever standard is to be applied, it is unreasonable and arbitrary to employ inconsistent standards merely because the water storage is characterized as "ancillary" to another project, or because a very restrictive and inconsistent standard is proposed by an intervenor.

3. JSEWD IS ENTITLED TO REASONABLE GUIDANCE FROM THE PSC

The Intervenor's disparage JSEWD's requests for declarations as requests for guidance as to how to "win" their case. This is not a civil contest between private entities. It is a matter of significant public interest. JSEWD has an obligation to all of its customers, not just the Intervenor's. Playing a guessing game as to the standards to be applied for a CPCN application is not in the public interest. The PSC has already determined that JSEWD needs additional storage. If JSEWD is expected to meet its system obligations, it is entitled to reasonable guidance from the PSC as to what the PSC considers to be reasonable and consistent standards in judging such applications, as well as guidance on what type and extent of studies will be required to support a proposed project.

4. CONSIDERATION OF SMALLER TANK

The Intervenor's criticize JSEWD for its willingness to consider a smaller tank as part of the rehearing process in this case. The Intervenor's clearly oppose any use of the Switzer site for any size water tank. However, the PSC specifically recommended that JSEWD consider as part

of a rehearing request the “suitability of smaller water storage facilities for that area”. JSEWD has done so as part of this request. The public interest and administrative efficiency is better served by considering this possibility as suggested by the PSC and as requested herein by JSEWD.

WHEREFORE, JSEWD respectfully requests that the PSC grant the relief requested by JSEWD in its May 23, 2013 Applications and Motions.

Respectfully Submitted,

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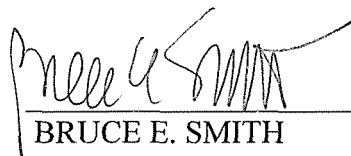


CO-COUNSEL FOR WATER DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing JSEWD'S Reply to Forest Hills Residents' Association, Inc's and William Bates' Response to Jessamine-South Elkhorn Water District'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 3rd day of June, 2013, to:

Robert M. Watt, III, Esq.
Monica H. Braun, Esq.
Stoll Keenon Ogden, PLLC
300 West Vine Street, Ste. 2100
Lexington, KY 40507-1801



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