

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPLICATION OF JESSAMINE-SOUTH)
ELKHORN WATER DISTRICT FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND) CASE NO.
NECESSITY TO CONSTRUCT AND FINANCE A) 2014-00084
WATERWORKS IMPROVEMENT PROJECT)
PURSUANT TO KRS 278.020 AND 278.300)

ATTORNEY GENERAL'S RESPONSE TO
MOTION OF FOREST HILLS RESIDENTS'
ASSOCIATION, INC. AND T. LOGAN DAVIS
FOR LEAVE TO INTERVENE

Comes now the Attorney General of the Commonwealth of Kentucky ("AG"), by and through his Office of Rate Intervention, and in response to the motion for leave to intervene filed in the instant matter by Forest Hills Residents' Association, Inc. and T. Logan Davis (jointly "Forest Hills" or "the Movants") states as follows:

(1) The Attorney General is the only party entitled by statute to intervene in matters before the Commission "to represent and be heard on behalf of consumers' interests; and to be made a real party in interest ... whenever deemed necessary and advisable in the consumers' interest by the Attorney General."¹

(2) In this proceeding, the Attorney General has sought and been granted intervention by Order of the Commission dated March 24, 2014.

¹ KRS 367.150(8).

(3) Intervention by all others is permissive and is within the sound discretion, of the Commission.²

(4) A person seeking permissive intervention by the Commission “must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the [Commission].”³

(5) Moreover, the Commission’s regulations require a person seeking discretionary intervention to demonstrate either “a special interest in the case that is not otherwise adequately represented,” or “that his intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.”⁴

(6) The Forest Hills Movants state that they “would be directly and adversely affected” by this proceeding because the proposed storage tank, which is the subject of Jessamine-South Elkhorn Water District’s application for a certificate of public convenience and need (“CPCN”) will be located “on a tract of land that is adjacent to a lot that is designated green space for the Forest Hills Subdivision”⁵, and that “Forest Hills and Mr. Davis therefore have a special interest in this proceeding under 807 KAR 5:001, Section 4(11)(b) that is not otherwise adequately represented.”⁶

² *In the Matter of: Application of Atmos Energy Corporation For An Adjustment in Rates and Tariff Modifications*, Case No. 2013-00148, Order (September 3, 2013) at 4; *see also* 807 KAR 5:001 Section 4(11)(b).

³ *EnviroPower, LLC v. Public Service Com’n of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. Ct. App. 2007), *unpublished opinion*, citing KRS 278.040(2).

⁴ 807 KAR 5:001 Section 4(11)(b).

⁵ Motion to Intervene at 2.

⁶ Motion to Intervene at 3.

(7) In matters such as this proceeding, in which the Attorney General deems it necessary and advisable in the consumers' interest to intervene, it is the Attorney General's ordinary practice to accept from ratepayers and other stakeholders any and all reasonable opportunities for consultation. This includes but is not limited to accepting comments from interested consumers and, as time permits, coordinating meetings and consultations with interested stakeholders wishing to communicate their concerns to the Attorney General. Consistent with this ordinary practice, the Attorney General is willing and capable to adequately represent the interests of all ratepayers and consumers with an interest in this proceeding, including but not limited to the Movants.

(8) Further, even if the Commission elects to deny the Movants leave to intervene in this matter, Movants will be entitled to tender written comments and present oral comments at public hearing, which shall be filed to the case record.⁷

(9) Finally, the Attorney General notes that the Jessamine-South Elkhorn Water District has requested expedited consideration of its CPCN application and a final decision "no later than June 1, 2014 because the funds allocated under HB 608 (\$1,000,000.00) and the three (3) legislative grants (355N-2007, 356N-2007 and 357N-2007) totaling \$440,000.00 are on the agenda for re-authorization in this year's state legislative session and could be lost by the District on June 30, 2014 if progress towards the commencement of this Project is not made."⁸ To this end, Jessamine-South Elkhorn

⁷ 807 KAR 5:001 Section 4(11)(e).

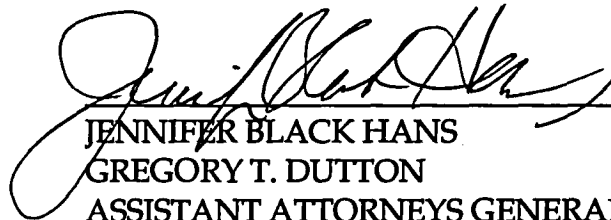
⁸ Jessamine-South Elkhorn Water District Application at 6.

Water District requested and the Commission granted⁹ incorporation of the record in Case No. 2012-00470, which includes prior testimony and pleadings tendered by the Movants. A formal scheduling order is pending Jessamine-South Elkhorn Water District's filing of supplemental data to support its application.¹⁰ While an accommodation by the Commission of an expedited schedule, which affords a complete and thorough review of the application, seems reasonable, it will necessitate strict administrative economy.

WHEREFORE, the Attorney General respectfully requests that the Commission consider the factual and legal arguments as well as the statements of the Attorney General provided herein.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL



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⁹ Order (March 24, 2014) at 5 ¶1.

¹⁰ *Id.* at 5 ¶7.

Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

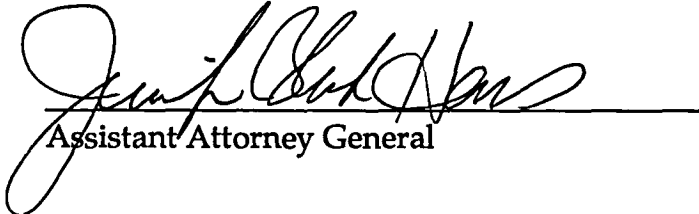
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this 2nd day of April, 2014


Assistant Attorney General