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April 3, 2014

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PUBLIC SERVICE
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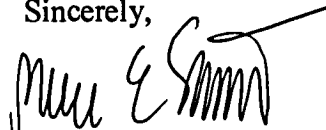
Mr. Jeff R. DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Re: Jessamine-South Elkhorn Water District Response

Dear Mr. Derouen:

Delivered under cover of this letter is an original and ten (10) copies of my client's Response to Motion to Intervene of Forest Hills Residents' Association, Inc. and T. Logan Davis.

Sincerely,



Bruce E. Smith

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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APR 3 2014

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 2014 -00084

**APPLICANT’S RESPONSE TO MOTION TO INTERVENE OF FOREST HILLS
RESIDENTS’ ASSOCIATION, INC. AND T. LOGAN DAVIS**

Applicant Jessamine-South Elkhorn Water District (the “District”) respectfully requests that the Kentucky Public Service Commission (“Commission”) deny the March 27, 2014 Motion of Forest Hills Residents’ Association, Inc. (“Association”) and T. Logan Davis (collectively, the “Movants”) for full intervention (“Motion”).

The Movants request permissive intervention under 807 KAR 5:001, Section 4(11). Under that regulation, a timely motion for intervention shall be granted only if:

1. The movant has a “special interest in the case that is not otherwise adequately represented”;

or

2. The movant’s “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.”¹

¹ 807 KAR 5:001, Section 4(11)(b)

In analyzing recent contested permissive intervention claims, the Commission has stated the following:

In analyzing the instant petition to intervene, the Commission finds that the only person that has a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. [fnt. omitted] In the recent unreported case of EnviroPower, LLC v. Public Service Commission of Kentucky, No. 2005-CA-001 792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 4(11)(b) requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.²

The Movants assert that they have a direct interest in this proceeding because the proposed storage tank will be located “on a tract of land that is adjacent to a lot that is designated green space for the Forest Hills Subdivision”³, 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.”⁴

² *In the Matter of: Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, Order of July 19, 2013 at page 4 (Permissive Intervention request by individual customer and corporate entity denied).

³ Motion to Intervene at page 2.

⁴ Motion to Intervene at page 3. The proposed Switzer site does not in any way impinge on any green space, or any other physical part or lot, in the Forest Hills subdivision. Indeed, the “green space” referred to by the Movants is a buffer between any actual residence in Forest Hills subdivision and the Switzer lot. As is very clear from the record in Case No. 2012-00470, the District acquired the Switzer lot to use for this purpose long before the Forest Hills

The extent and nature of the alleged opposition to the site is unclear from the allegations in the Motion. Mr. Davis, who is not himself a customer of the District⁵, is clearly opposed to the construction of any elevated water tank on the site, even a scaled down tank as proposed in this Application. The Association itself is also not a District customer, and no other actual District customer either inside or outside of Forest Hills Subdivision is specifically alleged to oppose the Switzer site. The Commission has previously found that “[o]nly persons who have an interest in a utility’s rates and service are eligible to be granted intervenor status. SEC Customer Group is not a customer of Columbia Gas and, thus, has no individual interest in the rates or service at issue in this case.”⁶ The Movants as non-customers also have no individual interest in the rates or service involved in this case. They are accordingly not eligible for intervention as parties and lack standing to be made parties to this proceeding or raise any issue as parties.⁷ The Motion must therefore be dismissed.

Even if the Movants had standing to intervene, the Motion does not meet either standard for permissive intervention. The Motion does not demonstrate a special interest that is not adequately represented because the Movants’ stated interests are adequately represented by the Attorney General. The Motion further does not demonstrate that the Movants will present relevant issues or develop relevant facts that will assist the Commission in the resolution of this matter. Further, the Motion demonstrates that the Movants’ intervention will unduly complicate and disrupt this proceeding. Because neither the Association nor Mr. Davis have satisfied any of the

subdivision was even in the planning stage. The developer chose to configure and market the subdivision with full knowledge of the ownership and planned use of the Switzer site.

⁵ The District’s water customer at 724 Chinkapin Drive is, and has been, Distinctive Custom Homes, LLC.

⁶ Case No. 2007-00477 (Ky. PSC July 15, 2009) at page 4.

⁷ Movants have ample opportunity to present any views that they might have on this application by written comments per 807 KAR 5:001(4)(11)(e).

requirements for permissive intervention under 807 KAR 5:001, Section 4(11)(b), the District respectfully requests that the Commission deny the Movants' Motion to Intervene.

The Association and one of its other members were permitted to intervene in Case No. 2012-00470. In that case, the Attorney General was not a party. Because those parties were granted intervention and fully participated in that proceeding, the Commission is in a unique position, based on the issues raised and evidence presented by the Intervenors, to judge whether the Movants have any special interest in this application beyond purely subjective aesthetic concerns or speculation as to the proposed tank's possible impact on property values in Forest Hills Subdivision. The Commission can also accurately assess the value of Movants' claim of assisting in the determination as to the issues of need, a thorough and proper review of sites, a reasonable decision-making process and the reasonableness of the site. The Commission has already found from the evidence presented in Case No. 2012-00470, that there is need for storage. Whether or not the evidence warrants a 750,000 gallon tank or something smaller, the Movants have no special expertise to offer. Likewise, the Movants have nothing new to offer regarding the remaining issues, all of which were thoroughly explored from the Movants' perspective in the prior case. Notwithstanding the Movants' intentions in desiring to intervene, the record in Case No. 2012-00470 demonstrates that allowing the Movants to intervene as parties in the present application will be unduly complicating and disruptive from a time perspective alone, as well as by consuming the time and resources of the Commission and the current parties in responding to marginal (at best) claims.

The Commission has on numerous occasions rejected requests for permissive intervention by customers, customer representatives, interested individuals or groups because the proposed

intervenors did not satisfy 807 KAR 5:001(11)(b) (or its equivalent regulation at the time), particularly where the Attorney General is a party.⁸ As the Commission stated in one such Order:

Movant will have an ample opportunity to participate in this proceeding, even though he is not granted intervenor status. Movant can review all public documents filed in this case and monitor the proceedings via the Commission's website [web address omitted].

The Commission notes that Movant may file comments as frequently as he chooses, and that these comments will be entered into the record of this case.⁹

The assurance that Movants whose intervention motion is denied will have ample opportunity to participate in Commission proceedings is found at 807 KAR 5:001(4)(11)(e). The Movants herein will similarly have ample opportunity to make their views known.

I. Neither the Association nor Mr. Davis Has a Special Interest in This Proceeding That Is Not Otherwise Adequately Represented.

The Movants do not satisfy the first basis for permissive intervention under 807 KAR 5:001, Section 4(11)(b), which requires that a movant must demonstrate a special interest in a proceeding that is not otherwise adequately represented.

⁸ See, for example, Case No. 2004-00304 (Ky. PSC Sept. 30, 2004)(Individual customer denied intervention); Case No. 2005 (Ky. PSC Dec. 16, 2005)(Corporate nonprofit membership organization denied intervention); Case No. 2008-00148 (Ky. PSC July 18, 2008)(denying intervention to three separate Movants); Case No. 2009-00141, Ky. PSC July 15, 2009)(denied intervention to customer group); Case No. 2013-00221 (Ky. PSC July 19, 2013)(intervention denied to joint Movant that included an individual customer and a customer representative/interest group); Case No. 2014-00002 (Ky. PSC March 18, 2014)(individual customer denied intervention in a CPCN application); see, however, Case No. 2014-00002(Ky. PSC March 12, 2014)(intervention granted to another Movant).

⁹ Case No. 2014-0002, *ibid*, at page 3.

By Order dated March 24, 2014, the Commission approved the intervention of the Attorney General as a full party to this case pursuant to KRS 367.150(8). In addition to being the statutory representative for consumers, the Attorney General has intervened and participated fully in numerous CPCN proceedings. The Movants make no effort to demonstrate that the Attorney General cannot or will not adequately represent a material interest that the movant would like to espouse.

The “direct interest” that the Movants purportedly seek to represent is whether the proposed site for the proposed tank is reasonably suited for the proposed purpose. The Movants do not provide any evidence, or even a claim, that the Attorney General cannot, or will not, adequately represent consumers or non-customers such as the Movants with respect to any material issue concerning the proposed site for this water tank. The Motion simply fails to demonstrate that any legitimate siting issues will not be adequately represented by the Attorney General. In Case No. 2012-00470, the Commission determined that aesthetic concerns such as suggested in this Motion are not irrelevant to a CPCN application. However, the Commission specifically found that “[s]ervice quality and reliability, as well as economic efficiency and cost, remain **paramount considerations [emphasis added].**” The Commission further cautioned that its relevance finding “...should not be interpreted as giving aesthetic concerns equal weight with other considerations”.¹⁰ The alleged direct interest that the Movants seek to represent is simply not a paramount consideration in this application.

The Forest Hills Subdivision is alleged to contain 29 one acre lots and 2 five acre lots.¹¹ The Motion does not assert how many, if any, other lot owners in the Forest Hills Subdivision

¹⁰ Case No. 2012-00470, Order of March 8, 2013 at page 4.

¹¹ Motion at page 1.

actually join Mr. Davis in opposing the Switzer site for an elevated water tank.¹² The District has approximately 2300 current customers in its Northwest Territory. It is certainly possible, if not likely, that some of these landowners or another group of landowners or customers in the District's Northwest service area would be equally vehement in their opposition to another proposed site, particularly since an alternative site would either be a previously undesignated utility property or would have to be acquired by eminent domain. The Attorney General is uniquely situated to represent the interests of all landowners and customers (including the Movants) with respect to the siting interest, to the extent that such an interest might even be relevant or material to this application.¹³ The Commission is certainly already well aware that Mr. Davis objects to the Switzer site for an elevated water tank. The aesthetic site objection is not a paramount consideration, but to the extent that an aesthetic consideration is relevant to this application, the Attorney General adequately represents the interests of all affected persons in the Northwest service area, including the Movants. The Commission has recognized that the mere fact that someone has a position on an issue does not support that person's intervention as a party.¹⁴

The Motion fails on this prong of the permissive intervention standard of 807 KAR 5:001, Section 4(11)(b).

¹² To the District's information and belief, membership in the Association is automatic for lot owners in the Forest Hills subdivision. The Motion does not identify which of those automatic members support the Association's position in this case, or oppose that position, or have no interest in this project. The Association is not a customer, but is asserting a position as a customer representative. It would be unreasonable to merely assume that all lot owners in Forest Hills fully support the position asserted by the Association in this Motion, particularly when such lot owners automatically become members of the Association as a condition of ownership.

¹³ As noted above, the fact that neither named Movant is actually a customer of the District removes both even further from a "direct interest" of any kind in this proceeding, and raises a serious issue as to the proper standing of non-customers to intervene as parties in this proceeding. See footnote 8 above.

¹⁴ See, for example, Case No. 2004-00304(Ky. PSC Sept. 30, 2004) at page 4; Case No. 2005-00214(Ky. PSC Dec. 16, 2005) at page 2.

II. The Movants Have Not Demonstrated That They Will Present Issues or Develop Facts That Will Assist the Commission Without Unduly Complicating the Proceeding.

The Movants' claim their intervention will result in their presenting issues or developing facts that will assist the Commission without unduly complicating or disrupting the proceedings.¹⁵ With respect to the paramount issues in this application as defined by the Commission¹⁶, the Movants do not assert an interest that is any different from the interests of all other customers of the District or any interest that they have not already thoroughly explored with the Commission in Case No. 2012-00470. Neither Mr. Davis nor the Association asserts any expertise in water utility planning. Any issues presented by the Movants are clearly in support of their primary interest, which, as conclusively demonstrated in the prior Case, is assuring that no elevated tank of any kind is built on the Switzer site.

The utility planning concerns asserted by the Movants are not an appropriate basis for intervention in this proceeding. Mr. Davis objects to new elevated storage on the Switzer site. Other customers or property owners could as easily object to any site but the Switzer site, and could also request to intervene to support the need for new storage on the District's system. The Motion does not demonstrate any expertise on the part of the Movants in water utility planning or storage planning. The Attorney General is fully qualified and statutorily empowered to address all of the issues that the Movant propose to develop.

The record in Case No. 2012-00470 has been incorporated by reference into this proceeding. The record is voluminous. Included in the record is extensive argument and evidence presented by the Association on its siting concerns. The District in good faith requested a

¹⁵ Motion at page 3, Paragraph 7.

¹⁶ Service quality and reliability, as well as economic efficiency and cost. Case No. 2012-00470, Order of March 8, 2013 at page 4.

substantial procedural delay in that case to conduct an extensive investigation of the Association's claims that alternative sites should be investigated. The record in that case establishes that all of that effort and expense was on an issue that is not even a paramount consideration in a CPCN application.¹⁷

The Movants now propose to intervene to rehash their minimally relevant claims in this case. The record in Case No. 2012-00470 illustrates how allowing the full intervention of a person or entity with a limited and rigid interest in a particular result can unduly complicate and disrupt a proceeding – and the Movants now propose to reargue the same issues that so unduly complicated Case No. 2012-00470. To the extent that the Movants have any information that is at all relevant to this case, it is already in the record of Case No. 2012-00470.

III. Conclusion

The Attorney General is a party to this application. Neither the Association nor Mr. Davis is a customer of the District. The Movants have not satisfied either basis for permissive intervention as set forth in 807 KAR 5:001, Section 4(11)(b). Neither has articulated any special interest that is not adequately represented by the Attorney General. Nor have they shown that they will present issues or develop facts that will assist the Commission in considering this application without unduly complicating or disrupting the proceeding. Neither has shown, or alleged, that they have any special expertise in water utility planning or the paramount issues of service quality and reliability, as well as economic efficiency and cost. To the extent that the Movants wish to further express their views on any issue, they have the same opportunity as all other interested members

¹⁷ The record also fully supports the District's view that the Switzer site is completely appropriate for an elevated water storage tank.

of the public to submit written comments upon the record. The District respectfully requests that the Commission deny the Movants' Motion to Intervene.

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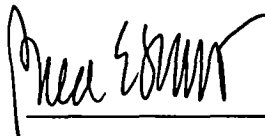
CO-COUNSEL FOR DISTRICT

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Response was mailed to the following individuals, postage prepaid, on April 3, 2014.

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