

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

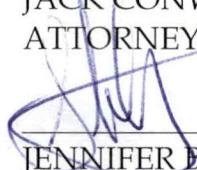
APPLICATION OF JESSAMINE-SOUTH ELKHORN)
WATER DISTRICT FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO)
CONSTRUCT AND FINANCE A WATERWORKS)
IMPROVEMENT PROJECT PURSUANT TO)
KRS 278.020 ABD 278.300)

Case No.
2014-00084

ATTORNEY GENERAL'S POST HEARING BRIEF

Respectfully submitted,

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ATTORNEY GENERAL'S POST HEARING BRIEF

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and states as follows for his post-hearing brief in the above-styled matter

I. INTRODUCTION

Jessamine-South Elkhorn Water District ("JSEWD" or "the District") filed an Application for a certificate of public convenience and necessity ("CPCN") to construct a waterworks improvement project and approval to finance the project¹ This application by JSEWD builds upon the foundation set in a prior case, where the PSC determined that JSEWD demonstrated the need for additional storage capacity, but denied the proposal for construction of a one million gallon water storage tank² JSEWD's original application filed on March 7, 2014 sought approval for one of two options a 500,000 gallon elevated take or, a 750,000 gallon elevated storage tank After an initial review by the Commission, the District subsequently

¹ *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*, Application p 1, 7 March 2014, Case No 2014-00084

² *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 30*, Order p 15, 30 April 2013, Case No 2012-00470

submitted the formal proposal with sealed specifications for a 750,000 elevated water storage tank, namely the Catnip Hill Pike 750,000 Gallon Elevated Storage Tank³ The Chairman of JSEWD Board of Commissioners, Mr Nicholas Strong, stated throughout this proceeding that the construction costs will not substantially impact the rates, as the construction will be almost wholly supported by grants received through the legislature paired with this CPCN Application⁴ In this proceeding, both the Office of the Attorney General, by and through his office of Rate Intervention, and the Forest Hills Resident Association, Inc , were granted full intervention rights for the proceeding

Forest Hills objects to the construction of the tank on the proposed land, referred to as the Switzer site, as that land lies adjacent to the homes at one end of the Forest Hills subdivision on Chinkapin Drive The intervenor argues that the proposed construction is having a negative effect on the property values in the sight line of the tank, and the surrounding neighborhood⁵

A hearing was held on February 10 and 11, 2015, before the Public Service Commission Several members of Forest Hills were in attendance to submit their public comments in opposition of the Application by JSEWD Post hearing Data Request responses were filed by both parties, and all evidence now stands submitted

II. ARGUMENT

Jessamine-South Elkhorn Water District has met its burden under KRS 278 020 and KRS 278 300, and should be granted a CPCN for its proposal to build a water works project consisting of a 750,000 gallon elevated water tank at Catnip Hill

A. LEGAL STANDARD FOR REVIEW OF CPCN

The legal standard for obtaining a certificate of public convenience and necessity can be

³Case No 2014-00084, *Notice of Filing of Signed and Sealed Specifications*, page 4 of 181, 21 August 2014

⁴Public Hearing, February 11, 2015, Nicholas Strong, Testimony at 11 16 11 a m

⁵Forest Hills Residents Association, Inc , Response to Hearing Data Request 1, Amended Plat

found at KRS 278 020 The PSC has determined that an applicant for a CPCN must demonstrate a need for the project and an absence of wasteful duplication of the services provided by the proposed project⁶ A “need” is established upon

[A] showing of substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business, or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service ”⁷

Once a utility has established that it has a need, the analysis turns to whether or not the service is duplicated, and tailored to not exceed the established need “Wasteful duplication” is defined in this context as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency” of the applicant⁸ Secondary to the analysis of wasteful duplication is a showing that the applicant has undergone a “thorough review of all alternatives,” and the applicant can demonstrate why the particular project was selected from the alternatives which were reviewed in the process⁹ So, the two prong test that must be met is that the applicant has a demonstrated need, and the project does not commit a wasteful duplication of services, before the Commission may grant a CPCN for new construction

**i. JSEWD HAS ESTABLISHED THE NEED FOR
ADDITIONAL CAPACITY**

⁶ Case No 2007-00134, *In the Matter of The Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main*, , April 25, 2008, Order page 29

⁷ *Kentucky Utilities Co v Public Service Commission*, 252 S W 2d 885, 890 (Ky 1952)

⁸ *Id* at 890

⁹ Case No 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin counties, Kentucky* (Ky PSC Sept 8, 2005)

Since 2000, JSEWD has been looking for a location to build additional storage capacity for its water system, and this application is the culmination of 15 years of planning for this project¹⁰ Storage minimums are set by Commission regulations, and the Commission has determined that “[t]he minimum storage capacity for systems shall be equal to the average daily consumption”¹¹ In the case of JSEWD, their average daily consumption, set at the 2010 base year, is 743,659 gallons, which is the minimum level required under PSC regulation¹² The applicants currently maintain 550,000 gallons in storage¹³ Therefore, JSEWD is both out of compliance with Commission administrative regulation 807 KAR 5 066 4(4) and has an inadequacy based on “a substantial deficiency of service facilities”¹⁴

The minimum standard set forth by the PSC does not account for either emergency storage or fire flow demand, which the applicant argues should be included for best practices in consideration for building additional capacity¹⁵ Setting aside the additional amounts advocated by JSEWD, and considering only the minimum required by the PSC, the applicant remains far below the target of 743,659 gallons Specifically, this places JSEWD at a current deficit of at least 193,569 gallons below what it needs to comply with Commission regulations These figures also do not account for the continued projected population growth for Jessamine County and for JSEWD¹⁶

At the time of this application, JSEWD does not have sufficient water storage to meet the needs of its community, nor does it have enough storage to meet the minimum requirements set

¹⁰ Case No 2012-00470, *Application of Jessamine-South Elkhorn Water District for a Certificate of Public Convenience and Necessity to Construct and Finance a Waterworks Improvements Project Pursuant to KRS 278 020 and 278 300*, Jessamine-South Post-Hearing Brief page 7, April 3, 2013

¹¹ 807 KAR 5 066 4(4)

¹² Case No 2014-00084, Application, Exhibit A, Storage Analysis, page 32

¹³ *Id* at 31

¹⁴ *Supra* n 6

¹⁵ Case No 2014-00084, Application, Exhibit A, Storage Analysis, page 9

¹⁶ Case No 2014-00084, Application, Appendix A, page 2

forth by the Public Service Commission in 807 KAR 5 066 4(4) But the District is not seeking approval for a project that meets the bare minimum or its requirements under the law, but instead looks to follow best practices for water services that are set forth by the leaders in the industry through different trade associations such as the American Water Works Association (AWWA), or the Insurance Services Office (ISO) For the applicant to consider following the guidance of the AWWA or ISO, additional capacity would be required Horne Engineering's Storage Analysis reported that to meet the needs of the community, for all three water uses (equalization, fire, and emergency storage) the storage level for the District should be at 1,261,190 gallons¹⁷ That recommendation would leave JSEWD with a 711,190 gallon deficit under its current capacity levels

While Forest Hills argues many finer points of the analysis presented in the application, the crux of Forest Hills' complaint lies not with the need for the tank, but its location on the Switzer site No evidence was presented by the intervenor to refute the assertion that the applicant needs the additional capacity

ii. NO DUPLICATION OF SERVICES DEMONSTRATED AND SUFFICIENT REVIEW OF ALTERNATIVES WAS CONDUCTED

There are currently no available water storage alternatives for JSEWD to meet its current storage capacity needs No other public utility or private company can provide for the needs of the District Forest Hills has proffered at different stages of this proceeding that alternative sources for additional capacity may be found with either Kentucky American Water or the City of Nicholasville¹⁸ JSEWD, through its Responses to Data Requests and other filings, has

¹⁷ *Id* at 31

¹⁸ Case No 2014-00084, Response to Forest Hills Data Request 1-20, Letter from Director, City of Nicholasville Public Utilities, and Case No 2014-00084, Written Statement of Kentucky American Water Company President, March 3, 2014

answered unequivocally that neither of those options are viable at this time¹⁹ The remaining question for duplication of services is if the capacity created is excessive of the need Not one party has contradicted the evidence that JSEWD is currently operating outside of Commission regulations and outside the realm of best practices for fire flow and emergency storage The capacity gained through the project as developed would allow JSEWD to recover that deficit, and allow additional storage capacity for continued population growth

To demonstrate that a proposed facility does not result in wasteful duplication, the applicant must also demonstrate that a thorough review of all alternatives has been preformed²⁰ JSEWD has a responsibility to conduct an examination into reasonable alternatives, which in the last 15 years have included 11 other sites, 7 of which were requested assessed by Forest Hills in the last CPCN Application request²¹ At this juncture in the proceedings, \$20,000 has been expended to purchase the land,²² and the estimate of costs expended on the project in total “is well into six figures”²³ Should the Commission deny the current application for a CPCN for the 750,000 gallon elevated tank at Catnip Hill, the Chairman for the District believes it to be “very likely” that a rate increase would be the only way to finance yet another location for the capacity that is needed²⁴

Forest Hills Resident’s Association argues that there are better and cheaper sites available that are not in the view shed of their homes²⁵ Forest Hill’s argues that the monetary injury to the real property, and the aesthetic issues that the proposed water tower creates, is sufficient reason

¹⁹ *Id*

²⁰ Case No 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin counties, Kentucky* (Ky PSC Sept 8, 2005)

²¹ Case No 2014-00084, Rebuttal Testimony of John G Horne pages 3-4, filed January 20, 2015

²² Public Hearing, February 10, 2015, John G Horne, Testimony at 2 43 46 p m

²³ TE, February 10, 2015, John G Horne, Testimony at 2 43 46 p m

²⁴ TE, February 11, 2015, L Nicholas Strong, Testimony at 11 23 50 a m

²⁵ Public Hearing, February 11, 2015, JSEWD Exhibit No 3, Siting Study by Photo Science

to relocate the project off the Switzer site. And while their witness have offered much evidence about the financial impact to the homeowners over time, the evidence presented does not outweigh the costs already expended by the District and the additional costs and future impact that another siting process would have upon all the other ratepayers of the District.²⁶

The Attorney General is sympathetic to the arguments made by Forest Hills, that the developer was not forthcoming with the information on the intended use for the plot owned by JSEWD, and that failure has caused potential damages. However, the venue for this dispute lies with the Jessamine County courts and the real source of potential remedy lies with the developer and Forest Hills Development.²⁷

Forest Hills provided testimony to establish the monetary loss of the homeowners that they argue is a direct result of the proposed elevated storage tank. Forest Hills witness, E Clark Toleman, presented the Commission with his assessment at the hearing, and he opined that the proposed tower had reduced the values of the homes by 20%.²⁸ After the hearing, Mr Toleman provided his work papers demonstrating how he calculated the 20% diminution of value of homes in Forest Hills.²⁹ The Attorney General has reviewed the calculations, and heard the testimony of the witness that in his opinion there are no other factors³⁰ to consider for the damage study, but disagrees with his assessment that the housing market and recession did not play a more significant role in the diminution of home values in Jessamine County, and the Commonwealth as a whole in the time frame reviewed of 2006-2015.³¹

²⁶ Case No 2014-00084, Forest Hills Response to Commission Post Hearing Data Request, No 2, March 11, 2015

²⁷ Public Hearing, February 10, 2015, Comm Staff Exhibit No 1, Letter to Barry Mangold

²⁸ Public Hearing, February 11, 2015, E Clark Toleman, Testimony at 14:09:15

²⁹ Case No 2014-00084, Forest Hills Response to Commission Post Hearing Data Request, No 2, March 11, 2015

³⁰ TE, E Clark Toleman, at 16:08:11-16:09:03

³¹ *Id*

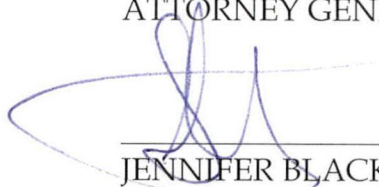
JSEWD has applied for a CPCN to increase its storage capacity, and the Commission must determine if the District has demonstrated a need that is not duplicated by services elsewhere. The Attorney General argues that the review should end there. If the Commission determines that the District has met its burden, and chooses to grant the CPCN, the Commission should not then extend its reach and authority to choose for the District a different location for the tank. JSEWD has vetted the alternatives, and the Switzer site for the proposed 750,000 gallon elevated tank, is appropriate and meets the needs of the community served by JSEWD, and the CPCN should be approved for that site as stated in the application.

III. CONCLUSION

The Attorney General argues that JSEWD has met its burden, and requests that the Commission grant the Application for the 750,000 gallon water tank, at the Catnip Hill location in Jessamine County. The District has demonstrated a need for additional storage capacity, and the moving the location of the proposed tank at this stage of the proceedings would be an undue burden on the ratepayers of JSEWD.

Respectfully submitted,

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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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