

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On December 15, 2014, Jessamine South-Elkhorn Water District (“JSEWD”) filed a motion to submit its pending Application for a decision based on the record, or, in the alternative, (1) to compel Forest Hills Residents’ Association, Inc. (“Forest Hills”)¹ to respond to Items 16 through 19 of JSEWD’s November 12, 2014 Request for Information; (2) for the Commission to identify which issues will be addressed at the hearing, including limiting or excluding the siting and real estate valuation issues; and (3) for the postponement of the date for JSEWD to file its rebuttal testimony (“JSEWD’s December 15, 2014 Motion”). Pursuant to the procedural schedule in the Commission’s October 15, 2014 Order, JSEWD’s rebuttal testimony should have been filed no later than December 15, 2014.

Forest Hills filed a response on December 18, 2014, to JSEWD’s December 15, 2014 Motion (“Forest Hills’ December 18, 2014 Response”).² In Forest Hills’ December

¹ The Commission issued an Order on April 16, 2014, granting Forest Hills’ March 27, 2014 motion to intervene.

² The Attorney General of the Commonwealth of Kentucky also intervened in this case, but has not filed a response to JSEWD’s December 15, 2014 Motion.

18, 2014 Response, it requests the Commission to deny JSEWD's December 15, 2014 Motion in its entirety. Forest Hills further requests that the Commission proceed with the February 10, 2015 Hearing as scheduled.

On December 23, 2014, JSEWD filed a reply to Forest Hills' December 18, 2014 Response. JSEWD'S reply specifically disputes several of Forest Hills' arguments, and states generally that JSEWD's December 15, 2014 Motion speaks for itself.

For the reasons set forth below, we deny in part and grant in part JSEWD's December 15, 2014 Motion.

JSEWD's Request to Submit the Pending Application for a Decision Based on the Record

Referencing the Commission's April 30, 2013 Order in Case No. 2012-00470,³ JSEWD believes the primary issues the Commission should consider for a Certificate of Public Convenience and Necessity ("CPCN") for the construction of a water tank are: (1) Population growth; (2) Demand growth; (3) Fire protection needs; and (4) Suitability of the tank size.⁴ JSEWD states that it addressed each of these issues in its Application and prefiled testimony, but that Forest Hills has not addressed any of these issues in prefiled testimony, nor has it provided evidence related to these issues.⁵ JSEWD further argues that Forest Hills refuses to indicate if it disagrees with or has any concerns regarding the evidence presented by JSEWD.⁶ JSEWD argues that along

³ 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* (Ky. PSC Apr. 30, 2013).

⁴ JSEWD's December 15, 2014 Motion at 3.

⁵ *Id.*

⁶ *Id.* at 4.

with Case No. 2012-00470, which has been incorporated into this case,⁷ the record is complete on "the primary issues" and the Application should be submitted on the record.⁸

In its December 18, 2014 Response, Forest Hills specifically identified nine separate issues about which it intends to cross-examine JSEWD's witnesses. Forest Hills indicated that the nine issues identified are not an exhaustive list of issues on which it may cross-examine JSEWD's witnesses.⁹ At least two of the nine issues, the March 1, 2014 storage analysis and the Population Projections for Jessamine County South Elkhorn Water District 2015-2050,¹⁰ directly relate to issues that JSEWD believes are the primary issues that the Commission should consider in determining whether to grant a CPCN for the construction of a water tank.

Forest Hills specifically identified relevant issues of concern that it wants to further develop during an evidentiary hearing. The Commission finds that Forest Hills should have the opportunity to cross-examine JSEWD's witnesses on all relevant issues.

⁷ See Mar. 24, 2014 Order in this case.

⁸ JSEWD's December 15, 2014 Motion at 4.

⁹ Forest Hills' December 18, 2014 Response at 4.

¹⁰ JSEWD provided the March 1, 2014 Storage Analysis prepared by Horne Engineering, Inc. with its Application. The Population Projections for Jessamine County South Elkhorn Water District 2015-2050 was included as Appendix A to the March 1, 2014 Storage Analysis.

JSEWD's Request to Compel Forest Hills' Response to JSEWD's Request for Information, Items 16 through 19

Items 16 through 19 of JSEWD's November 12, 2014 Request for Information, in summary, request that Forest Hills identify issues or criticisms with the population projections or the storage analysis and identify any expert assistance or consultant Forest Hills used to develop the issue or criticism. In its November 26, 2014 Response to JSEWD's November 12, 2014 Request for Information, Forest Hills claimed attorney work privilege and did not provide the information requested in Items 16 through 19.

JSEWD claims that it could be subject to an "ambush" at the evidentiary hearing if it has no prior knowledge of Forest Hills' objections or concerns.¹¹ JSEWD contends that it will be prejudiced because it will not have any basis on which to file rebuttal testimony or respond to such objections if Forest Hills is permitted to not disclose the basis of its objections. JSEWD avers that this process would be fundamentally unfair.

Additionally, JSEWD seeks to limit what Forest Hills can ask during cross-examination by requiring that Forest Hills identify now its concerns with the studies.

Forest Hills contends that JSEWD wants Forest Hills' attorneys to provide their cross-examination outlines so JSEWD can be prepared for cross-examination.¹²

Based on a review of the arguments, the Commission finds that JSEWD's motion to compel Forest Hills' response to Items 16 through 19 of JSEWD's November 12, 2014 Request for Information should be denied. JSEWD filed direct testimony of John G. Horne and Christopher Horne, the authors of the March 1, 2014 storage analysis,

¹¹ JSEWD's December 15, 2014 Motion at 8.

¹² Forest Hills' December 18, 2014 Response at 5.

and the direct testimony of Dallam B. Harper, the author of the Population Projections Jessamine County South Elkhorn Water District 2015-2050. The authors of these two studies are being presented as expert witnesses and they should be well versed in how each study was prepared and assumptions made in preparing the studies.

JSEWD has not shown that it is entitled to be informed prior to the hearing of the specific issues that Forest Hills wants to explore at the hearing. As the applicant, JSEWD has the burden of proof, and Forest Hills has the right to question JSEWD's witnesses on all relevant issues at the hearing. Furthermore, information may develop during the course of cross-examination that would lead Forest Hills to refocus its efforts on different issues. With respect to JSEWD's request for identification of those persons assisting Forest Hills, JSEWD did not provide any authority for requiring a party to identify experts who will not present testimony but were merely consulted by a party.

JSEWD's Request that the Commission Identify the Issues to be Addressed at the Evidentiary Hearing and Limit or Exclude the Siting and Real Estate Valuation Issues

JSEWD argues that an extensive record of the siting complaints and real estate valuation issues already exists in Case No. 2012-00470.¹³

This is not the first time JSEWD has sought to prevent Forest Hills from developing its siting and real estate valuation issues regarding construction of a water tank.¹⁴ As stated in our March 8, 2013 Order in Case No. 2012-00470, all relevant factors must be balanced when determining whether to grant or deny a CPCN.¹⁵ Siting

¹³ JSEWD's December 15, 2014 Motion at 5-7.

¹⁴ See Case No. 2012-00470, JSEWD's Motion to Limit Evidentiary Hearing to Relevant Evidence and Issues, filed Jan. 7, 2013.

¹⁵ Case No. 2012-00470, Order (Ky. PSC Mar. 8, 2013) at 3. (Cites omitted.)

and real estate valuation issues are relevant issues, although these issues are not given equal weight with that of paramount considerations.¹⁶

Based on a review of the arguments, the Commission finds that JSEWD's motion to limit or prevent Forest Hills from developing evidence related to siting or real estate valuation issues should be denied. Although the siting complaints and real estate valuation issues were raised by the parties in Case No. 2012-00470, the Commission's decision in that case focused only on the failure to prove a need for a million-gallon storage facility.¹⁷ Therefore, the siting complaints and real estate valuation issues were not addressed in the Final Order in Case No. 2012-00470.¹⁸

JSEWD acknowledges that Forest Hills has filed additional information in the current case regarding siting and real estate valuation issues.¹⁹ Forest Hills has not had the opportunity to question JSEWD's witnesses regarding this new information.

JSEWD's Request for Postponement of the Date to File Rebuttal Testimony

JSEWD requests postponement of the date of its submission of rebuttal testimony until after the Commission issues an order deciding JSEWD's pending motion.²⁰ JSEWD contends that the resolution of its motion will help JSEWD determine the necessity of any rebuttal testimony, and noted that there would be no need for a

¹⁶ *Id.* at 3-4.

¹⁷ Case No. 2012-00470, Final Order (Ky. PSC Apr. 30, 2013), footnote 42 at 12.

¹⁸ *Id.*

¹⁹ JSEWD's December 15, 2014 Motion at 5-6.

²⁰ *Id.* at 9.

delay in the scheduled hearing because the hearing in this matter is set for February 10, 2015.²¹

Forest Hills argues that JSEWD should not have waited until the day its rebuttal testimony was due to request an extension of time to file rebuttal testimony. Forest Hills claims that it will suffer prejudice if its time to prepare for the hearing is limited by postponement of JSEWD's rebuttal testimony.²²

The Commission finds that JSEWD's request for postponement of the date to submit its rebuttal testimony should be granted. JSEWD should have until January 14, 2015, to file its rebuttal testimony. Forest Hills will still have more than three weeks in which to prepare for the February 10, 2015 Hearing.

IT IS THEREFORE ORDERED that:

1. JSEWD's request to submit its Application for a CPCN for a decision on the record is denied.
2. JSEWD's request to compel Forest Hills to respond to Items 16 through 19 of JSEWD's November 12, 2014 Request for Information is denied.
3. JSEWD's request for the Commission to identify issues to be addressed during the February 10, 2015 Hearing, including the limitation or exclusion of siting and real estate valuation issues, is denied.
4. JSEWD's request for postponement of the date to file its rebuttal testimony is granted.
5. JSEWD shall file its rebuttal testimony no later than January 14, 2015.

²¹ *Id.*

²² Forest Hills' December 18, 2014 Response at 7.

By the Commission

ENTERED
JAN 07 2015
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2014-00084

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