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February 13, 2012

Mr. L. Nicholas Strong
Ms. Diana Clark
Jessamine-South Elkhorn Water District
P. O. Box 731
Nicholasville, Kentucky 40340-0731

Bruce E Smith, Esq.
201 South Main Street
Nicholasville, Kentucky 40356

Mr. John Horne
Horne Engineering, Inc.
216 South Main Street
Nicholasville, Kentucky 40356

Re: Case No. 2011-00198
Jessamine-South Elkhorn Water District

Ms. Clark and Gentlemen:

The enclosed memorandum has been filed in the record of the above-referenced case. Any comments regarding this memorandum's contents should be submitted to the Commission within five days of receipt of this letter. Any questions regarding this memorandum should be directed to Gerald Wuetcher, Executive Advisor/Attorney, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

gw

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File No. 2011-00198

FROM: Gerald Wuetcher **GEW**
Executive Advisor/Attorney

SUBJECT: Conference of August 22, 2011

DATE: February 10, 2012

On August 22, 2011, the Commission convened a conference in the Commission's offices at Frankfort, Kentucky to discuss Jessamine-South Elkhorn Water District's ("Jessamine-South Elkhorn") proposed tariff revisions. Present were:

John G. Horne – Jessamine-South Elkhorn
Bruce E. Smith - Jessamine-South Elkhorn
L. Nicholas Strong - Jessamine-South Elkhorn
Sam Bryant – Commission Staff
Brent Kirtley – Commission Staff
Sam Reid – Commission Staff
Gerald Wuetcher – Commission Staff

Jessamine-South Elkhorn requested the conference.

In response to Mr. Smith's request that Commission Staff identify the provisions that raised concerns, Commission Staff noted the tariff revisions that allowed for collection of legal fees and that required applicants for service to obtain easements from private landowners.

Mr. Smith noted that Jessamine-South Elkhorn's water service contract provides for the payment of attorney's fees and court costs. Mr. Kirtley and Mr. Wuetcher stated that the Commission has previously permitted language that permits utilities to recover **court-awarded** attorney's fees and court costs. The language should not imply or suggest that the Commission would determine the reasonableness or level of attorney's fees and costs. Mr. Kirtley offered to provide some examples of language that the Commission has accepted.

Mr. Wuetcher noted that Jessamine-South Elkhorn's provisions related to the acquisition of easements conflict with 807 KAR 5:006. Section 5(3) of that regulation provides that "[o]btaining easements and rights-of-way necessary to extend service shall be the responsibility of the utility." It further provides a utility may not require a customer to obtain easements on property not owned by the customer as a condition of service.

Mr. Horne and Mr. Smith responded that requiring the utility to obtain the easements would lead to increased costs to existing customers and unfairly benefit developers. Mr. Wuetcher responded that the cost of easement acquisition may be added to the cost of any extension and assessed to the developer or applicant for service. He noted that, unlike the water or sewer utility, the applicant does not have the power of eminent domain.

Mr. Horne and Mr. Smith asked if a deviation could be obtained from the Commission's regulation. Mr. Wuetcher stated that 807 KAR 5:006, Section 27, permits deviation from the Commission's general rules where good cause is shown. The utility would have to demonstrate why a deviation is appropriate.

When the conference concluded, Mr. Smith stated that he would contact Mr. Kirtley for examples of accepted language regarding court costs, attorney's fees, and easement acquisition. The water district will advise the Commission of any amendments to its proposed tariff as soon as possible. Mr. Wuetcher advised that Commission Staff would likely serve a request for information upon the water district to document Jessamine-South Elkhorn's position for the record. c

The conference then adjourned.