

BRUCE E. SMITH LAW OFFICES, PLLC  
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BRUCE E. SMITH  
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August 24, 2011

**VIA FACSIMILE: (502) 564-3460**  
**AND U.S. MAIL, FIRST CLASS**

Mr. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
Frankfort, Kentucky 40602-0615

Re: **Case No. 2011 00297**  
**Motion to Hold in Abeyance**

Dear Sir:

Enclosed for filing is an original and eleven (11) copies of the above referenced document. Upon receipt and review, please call with any questions.

Sincerely,

  
Bruce E. Smith

Enclosures

g:\JSEWD\Forest Creek\PSC Proceeding\Derouen ltr 091911

RECEIVED  
SEP 19 2011  
PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FOREST CREEK, LLC	)	
COMPLAINANT	)	
	)	
VS.	)	CASE NO. 2011-00297
	)	
JESSAMINE SOUTH ELKHORN	)	
WATER DISTRICT	)	
	)	
DEFENDANT	)	

MOTION TO HOLD IN ABEYANCE

Comes the Jessamine-South Elkhorn Water District ("District"), by counsel, and moves the Public Service Commission of Kentucky ("PSC") to hold this administrative action in abeyance until the Kentucky Court of Appeals, or higher appellate court, finally determines whether or not the PSC has the jurisdiction to hear the Complaint filed by Forest Creek, LLC ("FC").

On December 17, 2010, the District filed a Petition for Declaration of Rights against FC in the Jessamine Circuit that is designated as Civil Action No. 10-CI-1394. FC responded by answering this Petition and asserting a Counterclaim against the District. On June 23, 2011, the PSC served motions to not only intervene in this action, but also to dismiss it for lack of subject matter jurisdiction. On August 15, 2011, the Jessamine Circuit Court entered its Order permitting the PSC to intervene as a party defendant, and on August 24, 2011, the Court entered its final and appellate Order dismissing the action on the basis of a lack of subject matter

jurisdiction. The District timely filed a Notice of Appeal to the Kentucky Court of Appeals of the Order dismissing on September 16, 2011 (See Exhibit "A" attached).

Consequently, here is now pending in the Kentucky Court of Appeals a review which directly affects the PSC's authority to proceed and the PSC's jurisdiction is directly dependent upon the appellate court's decision. The PSC has found it prudent and appropriate in past proceedings before it to suspend action while there is a parallel proceeding or an issue determinative of the PSC's actions posed by another lawsuit pending before the Courts of this Commonwealth. See *In the Matter of: Crestbrook Properties, LLC v. Northern Kentucky Water District*, Case No. 2001-00202; *In the Matter of: Southeast Telephone, Inc.'s Motion to Compel BellSouth Telecommunications Response Thereto*, Case No. 2007-0071; and *In the Matter of: Application of New Singular Wireless PCS, LLC for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility at 114 Rising Son Lane, Prestonsburg, Floyd County, Kentucky, 41653*, Case No. 2009-00093.

The District respectfully requests the PSC to hold this matter in abeyance pending a final determination as to its jurisdiction from the Courts of this Commonwealth.

Respectfully Submitted,




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bruce@smithlawoffice.net  
**ATTORNEY FOR DEFENDANT**

**CERTIFICATE OF SERVICE:**

The undersigned hereby certifies that a true copy of the foregoing Answer was served on the following by U.S. Mail, first class, postage prepaid, on September 19th, 2011:

Robert C. Moore, Esq.  
P.O. Box 676  
Frankfort, Kentucky 40602-0676  
**Counsel for Complainant**

  
\_\_\_\_\_  
Bruce E. Smith

g:\\_LISEWD\Forest Creek\PSC Proceeding\Motion to Hold In Abeyance 91911

COMMONWEALTH OF KENTUCKY  
THIRTEENTH JUDICIAL DISTRICT  
JESSAMINE CIRCUIT COURT  
CIVIL ACTION NO. 10-CI-01394

FILED  
SEP 16 2011  
DOUG FAIN, JESSAMINE CIRCUIT CLERK  
BY: \_\_\_\_\_ D.C.

JESSAMINE-SOUTH ELKHORN  
WATER DISTRICT

PLAINTIFF/APPELLANT

v. NOTICE OF APPEAL

FOREST CREEK, LLC and PUBLIC SERVICE  
COMMISSION OF KENTUCKY

DEFENDANTS/APELLEES

\*\*\* \*\*

Comes the Plaintiff/Appellant, Jessamine-South Elkhorn Water District, and hereby appeals to the Kentucky Court of Appeals the Order of the Jessamine Circuit Court, entered August 24, 2011 (attached).

The Plaintiff/Appellant, Jessamine-South Elkhorn Water District, is represented by Bruce E. Smith, Esq., 201 South Main Street, Nicholasville, Kentucky 40356.

The Defendant/Appellee, Forest Creek, LLC, is represented by Robert L. Gullette, Jr., Esq., P.O. Box 915, Nicholasville, Kentucky 40340-0915.

The Defendant/Appellant, Public Service Commission of Kentucky, is represented by Helen C. Helton, Esq. and Gerald E. Wuetcher, Esq., P.O. Box 615, Frankfort, Kentucky 40602-0615.



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ATTORNEY FOR PLAINTIFF/APPELLANT

EXHIBIT  
"A"

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Notice of Appeal was served this 16th day of September, 2011, by mailing same, postage prepaid, to the following:

Robert L. Gullette, Jr., Esq.  
P.O. Box 915  
Nicholasville, Kentucky 40340

Helen C. Helton, Esq.  
Gerald E. Wuetcher, Esq.  
Public Service Commission of Kentucky  
P.O. Box 615  
Frankfort, Kentucky 40602-0615



BRUCE E. SMITH

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COMMONWEALTH OF KENTUCKY  
THIRTEENTH JUDICIAL CIRCUIT  
JESSAMINE CIRCUIT COURT  
CIVIL ACTION NO. 10-CI-1394

ENTERED  
AUG 24 2011  
DOUG FAIN, JESSAMINE CIRCUIT CLERK  
BY *[Signature]* S.C.

JESSAMINE-SOUTH ELKHORN WATER DISTRICT

PLAINTIFF

v.

ORDER

FOREST CREEK, L.L.C.

DEFENDANT

\*\*\*\*\*

The Public Service Commission of Kentucky ("Commission"), having been permitted to intervene in this matter, has moved to dismiss this action for lack of subject matter jurisdiction. Having heard the motion and being sufficiently advised, the Court FINDS that the Plaintiff's Petition for Declaration of Rights involves issues of utility rates and service that, pursuant to KRS 278.040(2), are within the Commission's exclusive jurisdiction, and that this Court lacks subject matter jurisdiction.

IT IS THEREFORE ORDERED that:

1. The Commission's Motion to Dismiss is granted.
2. Plaintiff's Petition for Declaration of Rights is dismissed for lack of subject matter jurisdiction.

This is a final and appealable order. There is no just reason for delay.

So ordered this 24 day of August, 2011.

*[Signature]*  
\_\_\_\_\_  
JUDGE, Jessamine Circuit Court

A TRUE COPY ATTEST:  
DOUG FAIN, JESSAMINE CIRCUIT CLERK

*[Signature]* DEPUTY  
DATE: 8/24/11

DISTRIBUTION LIST

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