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August 24, 2011

RECEIVED

SEP 21 2011

PUBLIC SERVICE
COMMISSION

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**
ANSWER

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

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)	

ANSWER

Comes the Defendant, Jessamine-South Elkhorn Water District (“District”), by counsel, and for its Answer to the Complaint of Forest Creek, LLC (“FC”), states as follows:

1. The Public Service Commission of Kentucky (“PSC”) is without jurisdiction to decide the complaints under KRS 278.040 and KRS 278.260 *et seq.* and all other applicable statutory and case law.

2. Alternatively and without waiving the foregoing, FC has waived its right to file a complaint with the PSC by fully submitting, without challenge, to the jurisdiction of the Jessamine Circuit Court as a Defendant in *Jessamine-South Elkhorn Water District, Plaintiff v. Forest Creek, LLC, Defendant*, Jessamine Circuit Court Civil Action No. 10-CI-01394.¹ Further, FC not only failed to raise a defense of lack of jurisdiction in the aforementioned action, it filed a Counterclaim therein in which it requested compensatory and punitive damages and injunctive relief.

¹ To further reinforce the FC’s commitment to the jurisdiction of the Jessamine Circuit Court, its Second Defense in that action asserted that by filing the Petition for Declaration of Rights, the District “...has waived its right to be heard before said [Public Service] Commission and has voluntarily submitted itself to the jurisdiction and authority of this [Jessamine Circuit] Court.”

3. Alternatively and without waiving the foregoing, the PSC should refrain from proceeding on FC's Complaint because the action filed in the Jessamine Circuit Court, to which PSC is a party Defendant, is ongoing by reason of the District's appeal to the Kentucky Court of Appeals of the Circuit Court's dismissal of the action, which was filed September 16, 2011. See attached Notice of Appeal marked as Exhibit "A".

4. Alternatively and without waiving the foregoing, the factual allegations of FC's Complaint are inaccurate and incomplete as regards the following:

a. by failing to state that FC voluntarily chose Option II relative to the construction of the water line extension while being represented by legal counsel and an engineer;

b. by stating that FC "worked diligently to comply with the requirements of the Option II procedure" when in fact, FC's efforts to submit plans for its proposed extension were replete with mistakes, oversights and inaccurate assumptions that demonstrated a complete lack of the exercise of due diligence on the part of FC;

c. by stating that the District's regulations did not preclude or prohibit FC from changing from Option II to Option I when in fact, the District's regulations do not expressly permit switching Options once the choice has been made and a binding contract has been signed committing to such choice;

d. by accusing the District of arbitrary and capricious action in filing the *Petition for Declaration of Rights* in the Jessamine Circuit Court when FC voluntarily and under advice of counsel submitted to the jurisdiction of said Court without challenge or defense and proceeded further to request relief from the Circuit Court; and

e. by accusing the District of unreasonable, unjust and discriminatory actions in spite of the fact that FC was not compelled to choose Option II and freely chose and committed to Option II by signing a contract under advice of legal counsel and an engineer.

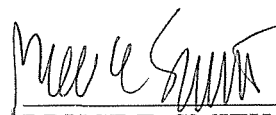
5. Alternatively and without waiving the foregoing, the District affirmatively pleads as a complete or partial bar to FC's Complaint the defenses of laches, estoppel, waiver and election of remedies.

6. Alternatively and without waiving the foregoing, that FC's Complaint is barred in whole or in part by all applicable statutes of limitation, applicable case law and other statutory law.

7. Alternatively and without waiving the foregoing, FC's Complaint is barred in whole or in part by its own negligence.

8. The District reserves the right to assert additional defenses by amendment of this Answer as this administrative action progresses.

WEHREFORE, the District requests immediate dismissal of the Complaint and all other relief to which it may appear entitled.



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ATTORNEY FOR DISTRICT

CERTIFICATE OF SERVICE:

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

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



BRUCE E. SMITH

**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/APPELLEES

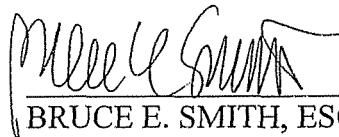
* * * * *

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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(859) 885-3393
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]* D.C.

JESSAMINE-SOUTH ELKHORN WATER DISTRICT

PLAINTIFF

v.

ORDER

FOREST CREEK, LLC

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
8/24/11 DEPUTY
DATE

DISTRIBUTION LIST

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