

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

FOREST CREEK, LLC)

COMPLAINANT)

VS.)

JESSAMINE SOUTH ELKHORN)
WATER DISTRICT)

DEFENDANT)

CASE NO. 2011-00297

**ANSWERS OF FOREST CREEK, LLC TO
JESSAMINE SOUTH ELKHORN'S REQUESTS FOR INFORMATION**

Comes the Complainant, Forest Creek, LLC (hereinafter "Forest Creek"), by counsel, and for its Answers to Jessamine-South Elkhorn Water District's (hereinafter "Water District") Requests for Information, states as follows:

ANSWERS TO REQUESTS FOR INFORMATION

REQUEST FOR INFORMATION NO.1. With respect to the Request for Extension (a copy of which is attached hereto as Exhibit "A") referred to in Paragraph 4 of Forest Creek's Complaint:

(a) Admit or deny that the Request for Extension was executed by a responsible authorized official for Forest Creek on April 27, 2007;

(b) Admit or deny that the Request for Extension executed on April 27, 2007 consists of 12 pages, with Forest Creek's executed signature appearing on Page 12 of the document;

(c) Admit or deny that the Request for Extension at Sheet 2 of 12 sets out fully and accurately both Option I and Option II as set forth in JSEWD's tariffs on file with the Public Service Commission;

(d) Admit or deny that the Request for Extension executed by Forest Creek (including the actual Option request on Sheet 1 of 12, the recital of Rule 26 on Sheet 2 of 12, the Mainline Extension Checklist on sheets 3 and 4 of 12, the Summary of Costs on Sheets 5 and 6 of 12, and the Extension Policy Procedure on sheets 7-12 of 12) were in fact received by Forest Creek and were part of the document which Forest Creek executed on April 27, 2011. If any of the above is denied, state in full the basis for the denial;

(e) Admit or deny that the Interim Water Service Agreement (a copy of which is attached hereto as Exhibit "B")¹ was executed by a responsible authorized official for Forest Creek on May 2, 2007.

ANSWER TO REQUEST FOR INFORMATION NO. 1:

(a) Objection. Forest Creek objects to this Request for Information on the basis that it requires speculation as to the meaning of the phrase "responsible authorized official". However, without waiving this objection, Forest Creek states that as a member of Forest Creek, James A. Kelley was authorized to sign the Request for Extension on behalf of Forest Creek on April 27, 2007.

(b) Forest Creek admits that the Request for Extension executed on April 27, 2007 consists of 12 pages, but states that James A. Kelley, a member of Forest Creek, LLC, signed the Request for Extension on behalf of Forest Creek.

(c) Forest Creek admits that the language of Option I and Option II set forth on Sheet 2 of 12 of the Request for Extension form is the same as the language of Option I and Option II set forth on Sheet No. 16 of the Water District's Tariff. Forest Creek denies that Option I and Option II set forth in the Request for Extension fully and accurately sets forth all of the terms and conditions of the options.

(d) Forest Creek admits that James A. Kelley, a member of Forest Creek, LLC, executed the Water District's Request for Extension on April 27, 2007, and that the Request for Extension consisted of 12 sheets.

(e) Objection. Forest Creek objects to this Request for Information on the basis that it requires speculation as to the meaning of the phrase "responsible authorized official". However, without waiving this objection, Forest Creek states that as a member of Forest Creek, James A. Kelley was authorized to sign the Water Service Agreement on behalf of Forest Creek on May 2, 2007.

REQUEST FOR INFORMATION NO. 2. State with specificity the facts which support the claim in Paragraph 7 of the Complaint that the District has "arbitrarily and capriciously prohibited Forest Creek from obtaining an extension to provide potable water to its development."

ANSWER TO REQUEST FOR INFORMATION NO. 2. The Water District failed to indicate that Forest Creek could proceed to obtain the water line extension to its development using Option I instead of Option II. Forest Creek has submitted plans to the Water District for the construction of the water line extension to its development on multiple occasions, and the Water District has failed to timely review and approve said plans. Where the Water District did not approve the plans submitted on behalf of Forest Creek, it has failed to fully explain the basis

of its refusal to approve the plans. At the request or direction of John Horne, the Water District delayed the review and approval of the on-site construction plans until the off-site construction plans were to be reviewed and approved. The Water District has failed to allow Forest Creek to obtain the needed water line extension using Option I. Despite the fact that the Water District failed to approve Forest Creek's construction plans, it has required Forest Creek to pay exorbitant and burdensome legal and engineering fees to the Water District. The Water District refused to allow Forest Creek to install its water lines in Transportation Cabinet right of way, when Forest Creek had presented the Water District with a letter from the Transportation Cabinet granting Forest Creek permission to place its lines in the Transportation Cabinet right of way. Forest Creek advised the Water District to show Forest Creek where its off-site lines should be placed and the Water District refused to do so. The Water District has failed to provide Forest Creek with written rules governing the construction of water line extensions. The Water District failed to advise Forest Creek where to install or place the off-site water lines when requested to do so by Forest Creek.

REQUEST FOR INFORMATION NO. 3. With respect to Paragraph 8 of Forest Creek's Complaint, is it Forest Creek's position that it is entitled to switch between Option I and Option II despite the existence of an Agreement to proceed under Option II unless specifically prohibited from doing so? If this is Forest Creek's position, please provide in your answer any statute, regulation, Commission Order or case law that you claim supports this answer. If no such statute, regulation, Commission Order or case law supports your answer, please so state.

ANSWER TO REQUEST FOR INFORMATION NO. 3. Forest Creek states that it should be entitled to obtain its water line extension under Option I for the following reasons: The Water District failed to indicate to Forest Creek that it had the option to proceed under

Option I in constructing its water line and instead lead Forest Creek to believe that Option II was the only option available to Forest Creek to construct its water line extension, the Water District arbitrarily and capriciously failed to timely review and approve Forest Creek's construction plans for water line extension, the Water District failed to explain to Forest Creek why its construction plans for water line extension were denied, the Water District's tariff does not indicate that an entity constructing a water line extension is prohibited from selecting Option I to construct its water line extension after initially selecting Option II, and the Water District's Request for Extension and the Interim Water Service Agreement have not been approved by the Public Service Commission, as required by 807 KAR 5:066. Additionally, Option I refers to 807 KAR 5:066E, which is no longer in effect. Furthermore, it is unknown whether Option II received prior approval from the Commission as is required by 807 KAR 5:066, Section 11, or that Option II complies with the requirements of 807 KAR 5:066, and therefore it may be illegal and in violation of 807 KAR 5:066 to implement Option II.

REQUEST FOR INFORMATION NO. 4. State with specificity the facts on which Forest Creek relies to support the claim in Paragraph 10 of the Complaint that the District's regulations, measurements, practice and actions with regard to Forest Creek were unreasonable and unjust.

ANSWER TO REQUEST FOR INFORMATION NO. 4. See Answer to Request for Information No. 2 and No. 3.

REQUEST FOR INFORMATION NO. 5. In its Answer to Petition for Declaration of Rights and Counterclaim of Defendant in Jessamine Circuit Court Case No. 10-CI-01394, Forest Creek claimed that it "learned of the second option (Option 1) through discussions with representatives of the Public Service Commission. Defendant then made Plaintiff aware that it

sought to discuss the possibility of selecting Option II [sic] as the method for the subject project.” Answer at page 7, Paragraph 6. With respect to this allegation:

(a) Please state whether Forest Creek intends to allege as part of its Complaint in Case No 2011-00297 that it first learned of Option I through discussions with representatives of the Public Service Commission, and if so, when Forest Creek alleges that it first learned about Option I.

(b) Please provide the dates, times and places of the discussions with representatives of the Public Service Commission that are referred to by this paragraph, and identify all participants to these discussions;

(c) Please provide any correspondence or documents of any kind that relate to these discussions with representatives of the Public Service Commission;

(d) Please provide any documents, notes or memoranda prepared by Forest Creek, its employees or its agents that refer to or discuss these discussions with representatives of the Public Service Commission. If a claim of privilege is made for any requested item, please state the nature of each claim of privilege and the specific item to which it refers.

(e) Please provide a narrative of all advice which Forest Creek received from representatives of the Public Service Commission as to Option I, the availability of Option I after a prior election of Option II, or any other matter related to this Complaint. Provide all documents that may relate to such advice. If no such documents exist, so state.

ANSWER TO REQUEST FOR INFORMATION NO. 5.

(a) Forest Creek states that it first learned that Option I was a valid option for it with respect to the construction of a water line extension to serve its development during discussions with representatives of the Public Service Commission in May of 2010.

(b) The discussions with the Public Service Commission concerning the availability of Option I to construct a water line extension to its development occurred in telephone conversations with Gerald Wuetcher with the Public Service Commission in May of 2010.

(c) Please see Attachment A.

(d) Forest Creek does not have any such documents.

(e) The Public Service Commission or its representatives did not provide advice to Forest Creek or its representatives.

REQUEST FOR INFORMATION NO. 6. Produce all documents supporting or in anyway connected with Forest Creek's response to numerical paragraph 1 above.

ANSWER TO REQUEST FOR INFORMATION NO. 6: Please review Exhibit A and Exhibit B attached to the Water District's Requests for Information.

REQUEST FOR INFORMATION NO. 7. Produce all documents supporting or in anyway connected with Forest Creek's response to numerical paragraph 2 above.

ANSWER TO REQUEST FOR INFORMATION NO. 7: Please see Attachment B.

REQUEST FOR INFORMATION NO. 8. Produce all documents supporting or in anyway connected with Forest Creek's response to numerical paragraph 4 above.

ANSWER TO REQUEST FOR INFORMATION NO. 8: See Answer to Request for Information No. 7.

REQUEST FOR INFORMATION NO. 9. Produce all documents or exhibits which you intend to offer as exhibits, or use for any evidentiary, testamentary, demonstrative or illustrative purpose, during the scheduled hearing in this matter. As with all requests, this is a continuing request.

ANSWER TO REQUEST FOR INFORMATION NO. 9: Forest Creek has not yet identified the documents or exhibits that it will use offer as exhibits, or use for any evidentiary, testamentary, demonstrative or illustrative purpose, during the scheduled hearing in this matter. Such documents will be provided to the Water District pursuant to the Orders of the Public Service Commission.

REQUEST FOR INFORMATION NO. 10. Provide the name, position and vita of any witness for whom Forest Creek intends to offer testimony in this proceeding. If such witness is a consultant not employed or otherwise associated with Forest Creek, please so advise and provide complete information as to the witness' professional associations and prior testimony either in this jurisdiction or any other regulatory jurisdiction.

ANSWER TO REQUEST FOR INFORMATION NO. 10: Forest Creek has not yet identified the individuals that will testify on its behalf during the scheduled hearing in this matter. At this time Forest Creek believes that James A. Kelly, Jihad Hallany, John Horne, and Neil Strong will be called to testify as witnesses in this matter.

REQUEST FOR INFORMATION NO. 11. Provide a full citation to any Kentucky PSC Order or court opinion, ruling or decision which has in any way directly addressed or discussed a demand by a developer to be relieved from a service agreement with a water district. If none, so state.

ANSWER TO REQUEST FOR INFORMATION NO. 11: At this time, Forest Creek has no knowledge of a Kentucky PSC Order or court opinion, ruling or decision which has in any way directly addressed or discussed a demand by a developer to be relieved from a service agreement with a water district.

REQUEST FOR INFORMATION NO. 12. Produce all documents which in any way support, or in any way provide evidence relating to, any and all of your responses to the foregoing requests or to the allgations in Forest Creek’s Complaint, to the extent not otherwise requested or produced.

ANSWER TO REQUEST FOR INFORMATION NO. 12: See Attachments A and B.

REQUEST FOR INFORMATION NO. 13. Admit or deny that the letter (a copy of which is attached as Exhibit “C” hereto) was written on behalf of Forest Creek and that it contains a statement which advises the District that Forest Creek instructed the author of the letter (Robert L. Gullette, Jr.) to “immediately file a declaration of rights lawsuit against the District in the Jessamine Circuit Court” unless the District verifies in writing by close of business on December 1, 2010 that it will honor Forest Creek’s request to proceed under Option One.”

ANSWER TO REQUEST FOR INFORMATION NUMBER 13. Forest Creek admits Request for Information No. 13, and further states that the letter attached as Exhibit “C” to the Water District’s Requests for Information speaks for itself.

REQUEST FOR INFORMATION NO. 14. Admit or deny that Forest Creek filed Jessamine Circuit Court Civil Action No. 08-CI-00147 on February 15, 2008, against the Jessamine County-City of Wilmore Joint Board of Adjustment, et al.

ANSWER TO REQUEST FOR INFORMATION NO. 14: Forest Creek admits that it filed Jessamine Circuit Court Civil Action No. 08-CI-00147 against the Jessamine County-City of Wilmore Joint Board of Adjustment and others.

REQUEST FOR INFORMATION NO. 15. Admit or deny that Jessamine Circuit Court Civil Action No. 08-CI-00147 is still pending and is an active case on the Jessamine Circuit Court’s docket.

ANSWER TO REQUEST FOR INFORMATION NO. 15: Forest Creek admits that Civil Action No. 08-CI-00147 filed in the Jessamine Circuit Court is still pending. Forest Creek does not know whether it is still listed as an active case on the Jessamine Circuit Court's docket.

REQUEST FOR INFORMATION NO. 16. Admit or deny that the resolution of Jessamine Circuit Court Civil Action No. 08-CI-00147 directly affects Forest Creek's ability to develop 63.75 acres of the 458.60 acres that Forest Creek owns which is located off Murphy's Lane and Harrodsburg Road/US 68 in Jessamine County, Kentucky ("Property").

ANSWER TO REQUEST FOR INFORMATION NO. 16: Objection. Forest Creek objects to this Request for Information on the basis that it seeks information that is completely irrelevant to the above styled action. Without waiving this objection, Forest Creek further states that the outcome of Civil Action No. 08-CI-00147 would not directly affect its ability to complete its development.

REQUEST FOR INFORMATION NO. 17. Admit or deny that Jessamine Circuit Court Civil Action No. 06-CI-00908 was filed on October 23, 2006, and that this action challenged the City of Wilmore, Kentucky's passage of An Ordinance of Intent of the City of Wilmore to Annex Real Property which included the 458.60 acres owned by Forest Creek.

ANSWER TO REQUEST FOR INFORMATION NO. 17: Objection. Forest Creek objects to this Request for Information on the basis that it seeks information that is completely irrelevant to the above styled action, and furthermore, this action has been settled.

REQUEST FOR INFORMATION NO. 18. Admit or deny that Jessamine Circuit Court Civil Action No. 06-CI-00908 was not dismissed until February 6, 2009.

ANSWER TO REQUEST FOR INFORMATION NO. 18: Objection. Forest Creek objects to this Request for Information on the basis that it seeks information that is completely

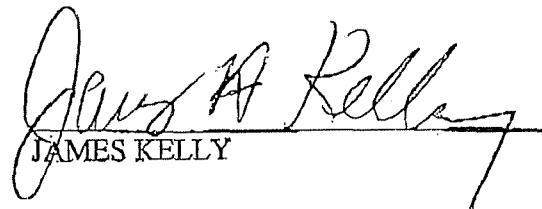
irrelevant to the above styled action, and furthermore, this action has been settled. Without waiving this objection, Forest Creek states that Civil Action No. 06-CI-00908 pending in the Jessamine Circuit Court was dismissed on or about February 6, 2009.

REQUEST FOR INFORMATION NO. 19. Admit or deny that Jessamine Circuit Civil Action No. 07-CI-00116 was filed on February 7, 2007, and that this action challenged the actual annexation and rezoning of the Property by the City of Wilmore, Kentucky which directly affected Forest Creek's ability to develop the Property.

ANSWER TO REQUEST FOR INFORMATION NO. 19: Objection. Forest Creek objects to this Request for Information on the basis that it seeks information that is completely irrelevant to the above styled action, and furthermore, this action has been settled. Without waiving this objection, Forest Creek states that the complaint filed in Civil Action NO. 07-CI-00116 speaks for itself.

REQUEST FOR INFORMATION NO. 20. Admit or deny that Jessamine Circuit Civil Action No. 07-CI-00116 was not dismissed until February 6, 2009.

ANSWER TO REQUEST FOR INFORMATION NO. 20: Objection. Forest Creek objects to this Request for Information on the basis that it seeks information that is completely irrelevant to the above styled action, and furthermore, this action has been settled. Without waiving this objection, Forest Creek states that Civil Action No. 06-CI-00908 pending in the Jessamine Circuit Court was dismissed on or about February 6, 2009.

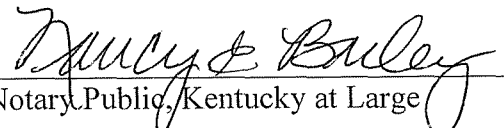

JAMES KELLY

STATE OF KENTUCKY

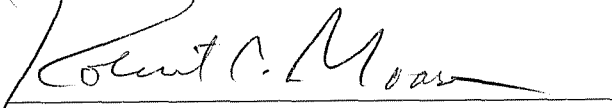
COUNTY OF FAYETTE

Subscribed and sworn to before me by James Kelley, a member of Forest Creek, LLC,
this 19th day of April, 2012.

My commission expires: 3-11-14


Notary Public, Kentucky at Large

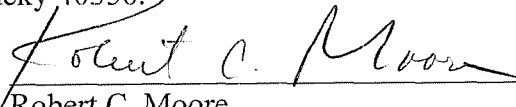
Respectfully submitted,



Robert C. Moore
Hazelrigg & Cox, LLP
415 West Main Street, 1st Floor
P. O. Box 676
Frankfort, KY 40602-0676
Counsel for Forest Creek, LLP

CERTIFICATE OF SERVICE

19th I hereby certify that the foregoing was served by first class mail, postage prepaid, this the
day of April, 2012, to, Hon. Bruce E. Smith, **BRUCE E. SMITH LAW OFFICES, PLLC**,
201 South Main Street, Nicholasville, Kentucky 40356.


Robert C. Moore

Robert Moore

From: James Kelley [james@vomhausekelleman.com]
Sent: Thursday, April 19, 2012 10:46 AM
To: Robert Moore
Subject: FW:
Attachments: 807_KAR_5_066.pdf

From: Wuetcher, Jerry (PSC) [mailto:JWuetcher@ky.gov]
Sent: Wednesday, May 12, 2010 11:15 AM
To: james@vomhausekelleman.com
Subject:

ATTACHMENT A

Robert Moore

From: James Kelley [james@vomhausekelleman.com]
Sent: Thursday, April 19, 2012 10:46 AM
To: Robert Moore
Subject: FW: Jessamine South Elkhorn WD Tariff
Attachments: Pages from Tariff.pdf - Adobe Acrobat Pro Extended.pdf

From: Wuetcher, Jerry (PSC) [mailto:JWuetcher@ky.gov]
Sent: Wednesday, May 12, 2010 11:07 AM
To: james@vomhausekelleman.com
Subject: Jessamine South Elkhorn WD Tariff