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December 4, 2012

RECEIVED

DEC 7 2012

PUBLIC SERVICE  
COMMISSION

**VIA U.S. MAIL – FIRST CLASS**

Mr. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

Re: **Case No. 2012-00470**

Dear Mr. Derouen:

Enclosed for filing is an original and 10 copies of my client's **First Set of Requests for Information to Forest Hills Residents' Association, Inc. and William Bates** for filing in the above case.

Thank you.

Sincerely,



Bruce E. Smith

Enclosure(s)

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**  
DEC 7 2012  
PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

**APPLICATION OF JESSAMINE-SOUTH ELKHORN )  
WATER DISTRICT FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY TO )  
CONSTRUCT AND FINANCE A WATERWORKS ) CASE NO 2012-00470  
IMPROVEMENTS PROJECT PURSUANT TO KRS )  
278.020 AND 278.300 )**

**JESSAMINE-SOUTH ELKHORN WATER DISTRICT’S FIRST SET OF REQUESTS  
FOR INFORMATION TO FOREST HILLS RESIDENTS’ ASSOCIATION, INC. AND  
WILLIAM BATES**

Comes the Jessamine-South Elkhorn Water District (“JSEWD”), by counsel, and for its First Set of Requests for Information to the Forest Hills Residents’ Association, Inc. (“Forest Hills”, or “Residents’ Association”) and William Bates (“Bates”), propound as follows:

DEFINITIONS

1. The terms “document” or “documents” mean anything which would be a “writing” or “recording” as defined in Rule 100(1) of the Federal Rules of Evidence on a “document” as defined in Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, every original (and every copy of any original or copy which differs in any way from my original because of notations thereon or attachments thereto or otherwise) of every writing or recording of every kind of description, whether handwritten, typed, drawn, sketched, printed or recorded by any physical, mechanical, electronic or electrical men whatsoever, including without limitation, memoranda, correspondence, electronic mail, electronic data compilations, notes, books, records, papers, pamphlets, brochures, circulars, advertisements, specifications, blueprints, maps, plats, surveys, drawings, sketches, graphs, charges, plans, laboratory or

engineering reports, notebooks, worksheets, reports, lists, analyses, ledger accounts, audits, inventories, tax returns, financial statements, profit and loss statements, cash flow statements, balance sheets, annual or other periodic reports, prospectuses, registration, solicitations, minutes, appointment books, diaries, telephone bills and toll call records, expense reports, commission statements, itineraries, agenda, payroll records, checkbooks, canceled checks, receipts, contracts, agreements, instrument assignments, applications, offers, acceptances, proposals, financing statements, documents of title, appraisals, purchase orders, invoices, bills of lading, written memorials of oral communications, forecasts, photographs, photographic slides or negatives, films, filmstrips, x-rays, video or audio tapes and recordings.

2. The terms “thing” or “things” mean any tangible item, and shall be construed as broadly as possible.

3. The term “relating to” or “relate to” means alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, evidencing, showing, describing, reflecting, analyzing and/or constituting.

4. “And”, “or”, as well as “and/or”, shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which otherwise might be construed to be outside its scope.

5. The terms “any” and “all” shall be red to mean each and every.

6. The term “person” means a natural or judicial person, including any corporation, proprietorship, partnership, agency, or business association of any type.

## INSTRUCTIONS

1. In producing documents and things responsive to these requests, you shall respond in accordance with the requirements set for in the Kentucky Public Service

Commission's ("PSC") November 27, 2012 Order and the production shall be organized and labeled to correspond with the information to which they are responsive, regardless of whether these documents and things are possessed directly by you or by your present or past agents, employees, companies, licenses, representatives, investigators, or attorneys.

2. If the attorney-client privilege or work product immunity is asserted as to any documents or thing, or if any documents or thing is not produced in full, produce the document or thing to the extent the request for production is not objected to, and, in so doing, state the following:

(a) the specific ground(s) for not producing the document or thing in full;

(b) the basis for such a claim of privilege or immunity and the facts supporting that basis; and

(c) fully identify the information or material contained within the document or thing for which such privilege or immunity is asserted, including as applicable, the name of any document or thing; its date; the name, address and job title of each author or other person involved in its preparation, each addressee and each person to whom a copy of the document or thing has been sent or received; and the general nature of the document or thing (e.g., memoranda, letter).

3. Where an objection is made to a request, state all grounds upon which your objection is based.

4. If, after exercising due diligence, you are unable to determine the existence of any documents or things falling within a specific request, you shall so state in your written response.

5. With respect to each of the following requests, you shall identify and/or produce all documents which are known to you or which can be located or discovered by you through

diligent effort on your part, including, but not limited to, all documents which are in your business, personnel, and/or personal files or those of your present or past employees or contained or stored within a computer in your possession or those of your present or past representatives, attorneys, or accounts, or accessible to you or your present and past employees, or its representatives, attorneys, or accountants.

6. Whenever used herein, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular and the disjunctive shall be deemed to include the conjunctive and the conjunctive shall be deemed to include the disjunctive so as to elicit all information potentially responsive to the request for production and all of its context.

### **REQUESTS**

**REQUEST NO. 1.** Please provide the current Bylaws of Forest Hills. If the Bylaws have been revised or amended at any time from January 1, 2011, through the current date, please also provide a copy of the Bylaws that were amended.

#### **RESPONSE:**

**REQUEST NO. 2.** Forest Hills and Bates (“Intervenors”) state in their Motion to Intervene that there are 29 one acre lots and two five acre lots in Forest Hills Subdivision (“Subdivision”). In Intervenors’ Complaint in Case No. 2011-00138, they stated that as of April 15, 2011, “[f]ifteen lots within the subdivision have occupied residences constructed on them.” Please state whether there are still fifteen occupied residences in the subdivision. If that number has increased or decreased, please provide the current number of occupied residences in the

Subdivision. Please also provide how many of the occupied residences are occupied by owners, and how many are occupied by renters. Further, please provide the following:

a. A Subdivision map that legibly notes which lots in the Subdivision were occupied as residences in May of 2011, and which lots are currently occupied as residences;

b. Please state whether any lots in the Subdivision are owned by banks or mortgage companies or in the process of foreclosure. If any such exist, please indicate whether any bank-owned properties are currently occupied;

c. Please state how many property owners in the Subdivision are members of the Residents' Association, and whether such membership is voluntary or mandatory. If any property owner owns more than one property, please so indicate;

d. A copy of any resolution, motion or other authorization for either the prior Complaint action or the Motion to Intervene in the instant proceeding that was enacted by the Residents' Association;

e. Please state how many property owners in the Subdivision authorized either the Complaint action or this Motion to Intervene, and provide any documentation of this approval;

f. The names and positions of the current officers of the Residents' Association and their terms of service;

g. A copy of any written materials or electronic communications to Subdivision property owners or other residents that in any way reference the prior Complaint action or this Application proceeding.

h. A copy of all of the minutes of the membership and the board of directors of the Residents' Association; and

**REQUEST NO. 3:** Please state on behalf of each property owner or resident of the Subdivision whether they made any inquiry into the ownership or intended use for any adjoining or adjacent property prior to agreeing to purchase a lot or lots in the Subdivision. “Inquiry” includes, but is not limited to, reviewing property maps, plats or other recorded documents, any inquiry to the subdivision developer or realtor, or other property owners in the Subdivision concerning the ownership and potential use of adjoining or adjacent properties.

a. If such inquiries were made, please state for each inquiry when, to whom and how such an inquiry was made, and the results of such inquiry;

b. Please state if any lots in the Subdivision are currently owned or retained by the developer of the Subdivision or any of his successors, assigns, or heirs. If so, please designate which lots are so owned;

c. Please state whether any other lot or reserved area in the Subdivision is “adjacent” to the property owned by JSEWD, other than the lot designated as 733 Chinkapin Drive and referenced in Intervenors’ Motion to Intervene at page 2, paragraph 4. If any other lot or designated area is “adjacent” to the property owned by JSEWD, please mark same on a map of the Subdivision and identify any such lot that is currently occupied as a residence;

d. Please define “adjacent” as applied in the location of the lot at 733 Chinkapin Drive relative to the property proposed as the tank site that is owned by JSEWD; if any other property for any other use is located between 733 Chinkapin lot and the JSEWD property, please describe any such property and note same on the Subdivision plat requested above; and

e. Please state whether the property owners in the Subdivision have any duty to investigate public records concerning the ownership or potential use of adjacent or adjoining properties prior to purchasing a property in the Subdivision. If so, state in full said property

owners' duties. If not, is it the Intervenor's position that a property owner may institute an action to prevent a lawful use of an adjacent or adjoining property when such potential use is a matter of public record merely because the use is adjacent or adjoining that owner's property? Please provide any legal authority that Intervenor has reviewed that supports this position.

**RESPONSE:**

**REQUEST NO. 4:** Please provide the rationale, basis and support, including any existing study, investigation or other inquiry that the Intervenor has conducted, commissioned, or reviewed, for any or all of the Intervenor's allegations that:

- a. The proposed water tank is not needed;
- b. The proposed water tank is excessive in size to meet current and future needs of the JSEWD system;
- c. The proposed site for the water tank is inappropriate other than that it is adjacent or adjoining the Subdivision;
- d. The proposed water tank is wastefully duplicative;
- e. A superior alternative exists to the proposed tank that is technically superior, less costly, and more efficient than the proposed water tank;
- f. System operation characteristics on the JSEWD system have changed so significantly since 2003 such that the proposed site is no longer unreasonable;
- g. If no such study, investigation or inquiry exists, please so state.

**RESPONSE:**



**REQUEST NO. 5:** Please state each and every alternative to the proposed water tank that Intervenor are prepared to offer or propose, with a full and complete statement of the rationale, basis and support for such an alternative as superior either technically or financially to the proposed water tank and proposed site the location of the proposed site and the owner of the proposed site.

**RESPONSE:**

**REQUEST NO. 6:** Please state whether the Intervenor have contacted, discussed or otherwise sought advice from any other person or entity with respect to this proposed project. If so, please identify the person or entity; whether such person or entity has been engaged as a consultant; or whether such individual or entity has an interest in this proceeding that has not heretofore been disclosed.

**RESPONSE:**

**REQUEST NO. 7:** Please provide a citation to any statute, regulation, policy or order known to the Intervenor that would support a contention that the PSC has the authority to order the relocation of a proposed facility at the expense of all ratepayers to meet the siting concerns of an intervening person or entity. Such citation should include prior PSC Orders or other decisions or policies, and any relevant court orders, including without limitation where a proposed facility has been relocated in the absence of any physical encroachment on, under or over any adjoining or adjacent property as a result of the proposed project.

**RESPONSE:**

**REQUEST NO. 8:** Please provide the full rationale, basis and support for the Intervenor’s allegation “that the Application in this case is facially insufficient to demonstrate that public convenience and necessity requires the construction of the water tank at the chosen location.” In particular, specify and state in detail each and every element of the Application that is alleged to be “facially insufficient”, and provide any authority (whether prior PSC order, statute, regulation, policy or court order) that supports each and every allegation that the Application, or any part thereof, is “facially insufficient” to support the granting of a certificate of convenience.

**RESPONSE:**

**REQUEST NO. 9:** Please provide in detail the rationale, basis and support for the Intervenor’s allegation that they “believe that the construction of a 1,000,000 gallon above-ground water storage tank in a lot that abuts their Subdivision would damage them significantly.”

In particular:

- a. Provide the rationale, basis and support for the allegation that the Intervenor will suffer significant damage if this project is completed, including specifying each alleged injury the Intervenor believe might occur;
- b. Provide any evidence that the presence of JSEWD property adjoining or adjacent to the Subdivision has not previously been factored in to lot prices by the Subdivision developer;
- c. State all authority known to the Intervenor that the PSC has the authority, or should as a wise assertion of public policy attempt to exert the authority, to make granting a certificate of public convenience and necessity contingent upon showing that no conceivable economic injury could be asserted by any adjoining or abutting land owner; and

**RESPONSE:**

**REQUEST NO. 10:** Assuming *arguendo* for the purposes of this question that the proposed water tank is necessary, please state whether the Intervenors allege that the chosen site for this project is inappropriate for any reason other than the Intervenors' concern about the site being near their properties. If so:

- a. State with specificity all objections to the suitability of the selected site, and any studies or evidence that the Intervenors claim support such objection(s); and
- b. If the Intervenors do not object to the site other than due to its proximity to the Subdivision, please so state.

**RESPONSE:**

**REQUEST NO. 11:** Please state whether the Intervenors agree that the availability of a \$1,000,000 grant to fund approximately 40% of this project is a significant benefit to both JSEWD and its customers, including those owning lots in the Subdivision.

**RESPONSE:**

**REQUEST NO. 12:** Please state whether Intervenors agree with the history and background of this project as set forth in JSEWD's Answer to the Complaint filed by Forest Hills in Case No. 2011-00138, which was further set forth as an attachment to JSEWD's Response to the Intervenors' Motion for Hearing in the instant case, Case No. 2012-00470:

- a. If the Intervenors accept the history and background as set forth therein as correct, please so state; and

b. If the Intervenor's allege that the history and background is inaccurate in any respect, please state with specificity any statement that the Intervenor's allege is inaccurate, and provide a complete statement of any correction that the Intervenor's believe should be made to correct any such inaccuracy, with a rationale, basis and support for any such recommended correction.

**RESPONSE:**

**REQUEST NO. 13:** Please state whether or not the officers and/or directors of the Residents' Association, including but not limited to William Bates, have currently or in the past notified or advised prospective or actual purchasers of lots in the Subdivision of the proposed construction of the water tank by JSEWD on the subject site.

**RESPONSE:**

W. Randall Jones, Esq.  
450 South Third Street  
Louisville, KY 40202  
(502) 569-7534  
wrjones@rubinhays.com

**and**

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201 South Main Street  
Nicholasville, KY 40356  
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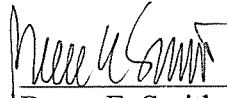
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**CO-COUNSEL FOR JSEWD**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing has been served on the following by email and U.S. Mail, First Class on December 4, 2012.

Robert M. Watt, III, Esq.  
300 West Vine Street, Ste. 2100  
Lexington, KY 40507-1801  
(859) 253-1093  
robert.watt@skofirm.com

  
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Bruce E. Smith