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December 11, 2012

VIA HAND DELIVERY

Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: 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 Improvement Project Pursuant to KRS 278.020 and 278.300 – Case No. 2012-00470

Dear Mr. Derouen:

Enclosed please find and accept the original and ten copies of Forest Hills Residents' Association, Inc.'s and William Bates' Response in Opposition to Jessamine-South Elkhorn Water District's Motion for Full Disclosure of Intervenors' Relationship to Kentucky American Water Company.

Please acknowledge receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return them to me. Should you have any questions please contact me at your convenience.

Sincerely,

Stoll Keenon Ogden PLLC

Monica H. Braun

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**FOREST HILLS RESIDENTS' ASSOCIATION, INC.'S AND WILLIAM BATES'
RESPONSE IN OPPOSITION TO JESSAMINE-SOUTH ELKHORN WATER
DISTRICT'S MOTION FOR FULL DISCLOSURE OF INTERVENORS'
RELATIONSHIP TO KENTUCKY AMERICAN WATER COMPANY**

Forest Hills Residents' Association, Inc. and William Bates, (collectively, "Intervenors") by counsel, respectfully requests the Kentucky Public Service Commission ("Commission") to deny Jessamine-South Elkhorn Water District's ("JSEWD") Motion for Full Disclosure of Intevenors' Relationship to Kentucky American Water Company ("Motion"). As set forth more fully below, the Motion should be denied for two principal reasons. First, the data requests on which the Motion is based were propounded as a result of JSEWD's prior filings with the Commission. Second, JSEWD's Motion subverts the procedural schedule entered on November 27, 2012 by seeking to conduct discovery in a manner inconsistent with the Commission's order.

I. The Allegations in the Motion Regarding a Relationship Between Intervenors and Kentucky American Water Company ("Kentucky American") Are Without Merit and Irrelevant.

JSEWD's Motion requests the Commission to order the Intervenors not only to "fully disclose" their alleged relationship with Kentucky American, but also to permit JSEWD to "file

further motions or requests for information on this subject,” which would be in addition to the three supplemental requests for information accompanying the Motion.¹ The extraordinary and unrestricted relief JSEWD seeks is based upon the fact that two of the Intervenor’s data requests inquired into (1) the periods of time in which Kentucky American provided water storage for JSEWD and (2) any communications JSEWD has had with Kentucky American regarding the storage of water for JSEWD.² Because of these two requests, JSEWD claims that “Intervenors have not to date disclosed any relationship between their group, its agents and representatives, and KAWC.”³ JSEWD alleges that such a relationship exists because of these two data requests and because Stoll Keenon Ogden PLLC, which is the firm with whom undersigned counsel practices, represents Kentucky American in certain matters before the Commission.⁴

The suggestion that the Intervenor’s propounded data requests relating to Kentucky American because of a “relationship,” “common representation,” or any of the other terms JSEWD uses is without merit. The Intervenor’s propounded these two data requests because of JSEWD’s April 13, 2006 filing with the Commission in Case No. 2006-00156. In that proceeding, JSEWD sought approval of a system development charge that would be used, in part, to repay a loan JSEWD had applied for with the United States Department of Agriculture to finance the construction of a 1.0 million gallon elevated storage tank,⁵ which appears to be the same tank proposed in this proceeding. An exhibit to the application in Case No. 2006-00156 was a Capital Improvement Program – System Storage report from March 2006, which was prepared by Horne Engineering, Inc., which is the same firm JSEWD is utilizing in this

¹ Motion, p 3-4.

² *Id.* at 2; Intervenor’s First Set of Data Requests to JSEWD.

³ *Id.* at 2.

⁴ *Id.*

⁵ *In the Matter of: The Application of Jessamine South Elkhorn Water District for Approval of a System Development Charge Pursuant to 807 KAR 5:090 (Case No. 2006-00156).*

proceeding.⁶ Page six of the report states, “*Prior too [sic] this time, the District had relied on the available storage of its supplier, Kentucky American Water Company, and had found it adequate.*”⁷ Because of JSEWD’s filing, the Intervenors learned that JSEWD had previously utilized Kentucky American for water storage. Because the Intervenors are investigating alternate locations for the tank proposed in this proceeding, as well as whether JSEWD properly considered alternative options, the Intervenors propounded the two data requests with which the Motion takes issue. To be clear, the requests had nothing to do with advancing any interest on behalf of Kentucky American.

Further, the existence of any relationship between any of the representatives of the Intervenors and Kentucky American has absolutely no relevance to the issues in this proceeding. JSEWD’s motion is simply a distraction and should be summarily denied by the Commission.

II. The Motion Seeks Discovery Inconsistent with the Commission’s November 27, 2012 Order.

On November 27, 2012, the Commission entered a procedural schedule in this matter that set forth the timelines for two rounds of discovery.⁸ Responses to the first requests for information are due December 11, 2012, and supplemental data requests must be propounded by December 18, 2012. While JSEWD describes its pleading as a “motion,” in actuality, it seeks to require the Intervenors to respond to supplemental discovery requests in a manner inconsistent with the timelines set forth in the Commission’s procedural schedule. The allegations in the Motion, as explained in Part I, are without merit and consequently do not provide any reasoned basis for the Commission to permit JSEWD to issue a set of data requests not called for in the procedural schedule.

⁶ *Id.*

⁷ *Id.*

⁸ The procedural schedule was modified by orders dated December 7 and December 10, 2012.

In addition to requesting that the Intervenors be required to respond to the three data requests included in the Motion, “**JSEWD further moves that it be permitted to examine the responses and file further motions or requests for information on this subject as appropriate.**”⁹ JSEWD is thus asking the Commission for unfettered permission “to submit follow up interrogatories or motions” in contravention of the procedural schedule.¹⁰ This broad request is not only unwarranted because of the erroneous allegation on which the Motion is based, but would provide JSEWD the ability to engage in immaterial discovery that is not relevant to the dispositive issue, which is whether JSEWD can satisfy its burden of proof with regard to the project proposed in this proceeding.

III. Conclusion.

The broad relief sought by JSEWD’s Motion is based upon an erroneous premise that is belied by JSEWD’s previous filings with the Commission and contravenes the procedural schedule in this case. For the foregoing reasons, the Intervenors respectfully request the Commission deny the Motion.


⁹ Motion, p. 4 (emphasis in original).

¹⁰ *Id.*

Dated: December 11, 2012

Respectfully submitted,

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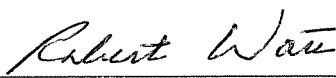
By: 
Counsel for Intervenors

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading has been served by e-mail and by mailing a copy of same, postage prepaid, to the following person on this the 11th day of December 2012:

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