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January 17, 2013

VIA UPS OVERNIGHT
Mr. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

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

Dear Mr. Derouen:

Enclosed for filing are an original and ten (10) copies of my client's **Reply to the Intervenors' Response to Motion to Limit Evidentiary Hearing to Relevant Evidence and Issues.**

Sincerely,

Bruce E. Smith

Enclosures

g:\...\USEWD\Forest Hills\Cert. Proceeding – Catnip Hill Tank\Derouen ltr 011713

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMMISSION

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 IMPROVEMENTS PROJECT PURSUANT TO KRS 278.020 AND 278.300	))))))	**CASE NO 2012-00470**

JESSAMINE-SOUTH ELKHORN WATER DISTRICT'S REPLY TO THE INTERVENORS' RESPONSE TO MOTION TO LIMIT EVIDENTIARY HEARING TO RELEVANT EVIDENCE AND ISSUES

Applicant Jessamine-South Elkhorn Water District ("JSEWD"), by counsel, respectfully submits this Reply to the Response of Forest Hills Residents' Association and William Bates (collectively, "Intervenors") to JSEWD's Motion to Limit Evidentiary Hearing to Relevant Evidence and Issues ("Motion"). For the reasons stated below and despite the Intervenors' Response, JSEWD's Motion should be granted by the Commission.[1]

1. Inapplicability of the EPRI/GTC Transmission Line Methodology to Water Tank Siting

Intervenors argue that the EPRI/GTC siting methodology is appropriate for water tank siting, and that the procedural requirements for high voltage electric transmission siting should be applied to water storage tank siting approvals. A substantial portion of the Intervenors' Response to the Motion is devoted to explaining why the standards involved in high voltage

[1] JSEWD's Motion is hereby incorporated by reference herein.

transmission line siting are appropriate and valuable in such proceedings. It is interesting to note that the Intervenors do not cite a single statute, regulation, administrative policy or case decision that even hints at applying the standards that are applicable to high voltage electric transmission line siting to water tank siting. JSEWD has repeatedly sought from the Intervenors a citation to any authority for the contention that the Commission should reject an obviously suitable site for a water tank because a small group (no more than 16) of customers **may** be able to view the tank or some portion thereof from their residence. The Intervenors have not cited any authority, whether statutory, regulatory, administrative case proceeding or prior case decision, to support their contention that a site is unsuitable because some residents in a subdivision may be able to see part of a proposed tank.[2]

The standards for high voltage transmission line siting have been mandated by legislation due to the great potential for disruptive impact of such lines. KSR 278.020 has two subsections (KRS 278.020(2) and (8)) that apply only to proceedings involving high voltage transmission line applications, and requires that electric transmission lines that are to operate at 138kV or more and are more than 5280 feet long cannot be constructed without the granting of a certificate of public convenience and necessity. The Commission has adopted a special set of regulations, 807 KAR 5:120, entitled "*Applications for certificate and public convenience and necessity for certain electric transmission lines*" to implement these two KRS subsections, The "certain electric transmission lines" language in this regulation refers to any "electric transmission line of 138 kilovolts or more **and** of more than 5,280 feet in length. [emphasis added]" This regulation "establishes procedures and minimum filing requirements" for applications to construct such

[2] The Intervenors rely solely upon Orders issued in high voltage electric transmission line siting cases to support their allegations. See, Response to JSEWD's Supplemental Request No. 4 and Initial request No. 7. See also Response at page 2.

lines. Such structures are obviously not only very high voltage lines, but also **at a minimum** more than one mile in length by definition[3]

Neither the statutory nor the regulatory provisions noted above apply to water tank siting, only to high voltage transmission line siting. The requirements that the Intervenors would impose on this water district are simply not applicable to water tank siting. Indeed, the provisions of the cited statutory section and regulation do not apply to transmission lines that are less than 138kV **or** less than 5280 feet in length. A 5000 foot 138kV line would not require a certificate of public convenience and necessity.

JSEWD has applied for this certificate of public convenience and necessity, not because of its intrusive impact on the landscape for many miles, or because it is required by KRS 278.020(2) or (8), but because in JSEWD's judgment this tank at least arguably constitutes more than an extension in the normal course of business as stated in KRS 278.020(1). For a relatively small utility such as JSEWD, the addition of the proposed storage tank will significantly increase the amount of storage on the system. This Application, however, certainly does not in any way rival the impact on the environment of even the smallest 138kV or above transmission line for which a certificate is required. Indeed, many lines that do not meet the standard in KRS 278.020(2) or (8) can be built without any need for PSC approval at all, *and have far more* impact on the environment than this proposed water tank. There is no rational regulatory or statutory basis for the Intervenors' comparison of the environmental impact of a 138 kV line that runs for many miles and a water tank sitting on a very small site.

Attached are two pages from Georgia Transmission Corporation's[4] web page that show various illustrative sizes and configurations of electric lines. The photos show typical

[3] As the Commission is well aware, most applications for such lines are for structures that are **many** miles in length. See Motion , footnote 2 at pp. 2-3.
[4] Georgia Transmission Company is the "GTC" in EPRI/GTC.

installations of electric lines at various voltages. Under Kentucky law, only the two largest installations depicted (500 kV and 230 kV) would even require a certificate of public convenience and necessity, and then only if they extended for more than 5280 feet. Furthermore, none of the other installations pictured would require an application for PSC approval, no matter how many miles of land they might encumber either in their own right or in easements and access.

These photos, of course, only show a very small section of transmission lines and structures that typically extend for many miles. The **total** impact of these structures must be understood when considering the environmental impact of such lines. These photos of a small portion of high voltage (greater that 138kV) lines should be compared to the photo of a water storage tank on the cover of the Photo Science Report. The total absurdity of analogizing the environmental impact of high voltage transmission lines and the proposed water tank is eminently apparent from this comparison.

Although the requirements of KRS 278.020(2) and (8) and 807 KAR 5:120 are clearly applicable only to high voltage transmission line cases, the Intervenors and their expert nevertheless attempt to impose similar requirements on the applicant for a water storage tank approval. Indeed, the author of the Report states that the environmental impact of a water tank is similar to that of high voltage transmission line. The Commission should not waste its time on such nonsense, nor should it require JSEWD or any other water utility to follow the procedures mandated by statute and regulation for routing many miles of high voltage transmission lines in siting a water storage tank. The proposed water tank here does not have a "route"; it does not pass on, over or under any property in the Forest Hills subdivision. There is no evidence

presented that this "EPRI/GTC" model is useful, or for that matter has ever been used, to site a water tank.

The EPRI/GTC model is discussed at length at the Georgia Transmission Company (the "GTC" of "EPRI/GTC[5]") web site, http://www.gatrans.com/PlanningConstruction/index.htm. No mention is made of using this approach for any purpose other than siting electric lines. The purpose of this planning model is to establish routes and corridors for electric lines, not to site a single structure (such as a water storage tank). Issues in power line siting are discussed at length, including the need to establish a corridor that may run for many miles, environmental issues with path clearing, tree removal, use of herbicides, safety requirements, and numerous other issues that bear little or no relationship to the proposal in this Application. Interestingly, one of the topics on the web site is **dispelling** misconceptions arising from what GTC describes as "NIMBY" (Not In My Back Yard) complaints. Unfortunately, the Intervenors' proposal to use the EPRI/GTC methodology in this case **creates** misconceptions about the purpose of that approach and its applicability to water tank siting.

It is further very significant that the Intervenors are arguing that "[a] study or investigation similar to the Siting Study should have been performed by the Water District before it decided to propose placing the water tank on the Switzer Site."[6] The uncontested evidence in this case is that JSEWD did in fact engage in not one, but numerous efforts to identify alternatives to the Switzer Site, including substantial efforts with the Intervenors themselves.[7] However, the Intervenors are further suggesting that any application for a water tank approval that does not include the use of the Intervenors' siting study methodology is defective and incomplete. While the Intervenors' continue to rely on a baseless allegation that JSEWD's site

[5] EPRI is the **Electric** Policy Research Institute [emphasis added].,
[6] Intervenors' Response at page 2.
[7] These efforts are discussed in detail in Section 2, below.

selection process was unreasonable, their own suggestion is that an inflexible process that has never been reviewed by anyone for its applicability to a water tank siting should not only disqualify the site proposed in this Application, but also be adopted as a regulatory requirement for any application for approval of a water tank that requires Commission approval.

While the Intervenors go on at length about the extensive process used to review the Kentucky Transmission Line Siting Model, they would have the Commission mandate the use of the Model in this case, and by implication in any case in which approval of a water tank site is sought, without any review process. The Intervenors propose this despite the lack of **any review** (let alone an **extensive** review process) as to whether such a model is applicable, reasonable, desirable, cost efficient, or useful in water tank siting. The basis for this claim is that a contractor whose business is to conduct such studies states that high voltage transmission lines and water tanks have similar impacts on the environment.

The Commission should not apply this unproven method of water tank siting in this case. If it believes that there is any merit to further study for such a proposal, the proper course would be to receive input from all affected parties as to whether this methodology, or some variant of it, should be applicable at all to **future** water tank applications. An important part of the review would be what regulatory changes might be required before such modified standards should be imposed. Only after such a review and sufficient notice to water utilities should any revised standards be applied, and only to future applications where sufficient notice was given of such standards. Applying this methodology as suggested by the Intervenors so as to reject the Switzer Site and impose a new site at the expense of JSEWD or its ratepayers, without any prior notice of the required application of the EPRI/GTC approach advocated here, would indeed create significant due process issues.

It should also be noted that a significant purpose of the extensive regulations and procedures for siting high voltage electric transmission lines is to ensure overall least cost planning for such lines.[8] If the Report is used as planned by the Intervenors, the result in this case would be a significant cost increase in the project. Such an approach could best be described as "most-cost" planning if JSEWD or its customers must bear the cost of an alternative that is adopted merely to meet the Intervenors' preferred viewshed standards (not to mention potential "viewshed" complaints from other customers as to some new site)".

Certainly if the Intervenors want to try to convince the legislature that additional requirements should be imposed on the siting of water tanks, they are free to do so, but the requirements of these statutes, regulations and case decisions on high voltage transmission line applications cannot and should not be imposed on an *ad hoc* basis on JSEWD, without notice or proper authority, to meet the siting preference of a small group of customers.

2. Continued Baseless Allegation that JSEWD's Site Selection Process was Unreasonable

The Intervenors continue to claim that JSEWD's site selection process was unreasonable. Despite the Intervenors' allegations to the contrary, the undisputed evidence in this record is that JSEWD has made repeated efforts to work with the developer of this subdivision and the very Intervenors who now are demanding that the Commission order a new site for this project in order to preserve the Intervenors' preferred view. Even the evidence offered by the Intervenors

[8] See, for instance, http://psc.ky.gov/agencies/psc/press/092011/0902_r01.PDF, - the Kentucky Electric Transmission line processes are designed to assure reliable service to customers at the lowest price.

in this proceeding confirms that JSEWD met with this very group, not in 2003-2004, but in 2010, to investigate an option that might be reasonably available for siting this water tank.[9]

Despite repeated requests from JSEWD, the Intervenors have not identified any error in the History of this project filed by JSEWD as part of its answer in Case No. 2011-00138, and incorporated by reference herein. The uncontested History completely dispels the Intervenors' allegation that JSEWD has not reasonably considered alternative sites. As noted and documented in the History and in its Answers to Information Requests, JSEWD reviewed at least six other sites prior to purchasing the Switzer Site. It negotiated for a suitable relocation site for almost a year with the Forest Hills developer. It engaged in a year of discussions with the Intervenors in this case over three other alternative sites.[10] As noted in that History, "[f]or the Complainants to charge the District with "summarily" rejecting their efforts at finding an alternative is an outright distortion of the events which occurred".[11]

The Intervenors' Complaint in Case No. 2011-00138 asked the Commission to reject the Switzer Site and to impose an as yet unidentified alternative site on this project. The Intervenors' Complaint referred in detail to a further good faith effort by JSEWD to work with the Intervenors to identify an appropriate alternative site. The discussions about this site, known as the McMillen site, are described in detail in JSEWD's Answer in Case No. 2011-00138 at pages 5-8. As admitted in the Intervenors' Complaint in Case No. 2011-00138, the Complainants refused to execute a proposed letter agreement concerning this site. Complaint at Page 5, Paragraph 15

Following the filing of this Application, and the Intervenors' continued baseless allegations that alternatives were not reasonably explored, JSEWD attempted repeatedly to

[9]See for instance, FH-BATES-R-JSEWD1#2h, which describes negotiations between the Forest Hills Neighborhood Association and JSEWD for an alternative site, known as the "Brown" site.
[10] See JSEWD Answer, Case No. 2011-00138, particularly at pp. 10-11, and related documentation, particularly as to the Brown site investigation referred to in footnote 7, above.
[11] JSEWD Answer, Case No. 2011-00138 at page 10.

ascertain what acceptable alternative, if any, that the Intervenors might offer. The Intervenors repeatedly refused to answer the requests, citing their ongoing investigation. This lack of response frustrated any additional good faith effort that JSEWD might have been able to investigate any proposed alternative in a timely manner. As late as January 2, 2013, the Intervenors continued to refuse to offer any such alternative for consideration, citing their "ongoing investigation". Two days later, the Intervenors offered this Report dated January 3, 2013. The Intervenors failed in this Application (which was filed in October, 2012) to propose alternatives to the selected site until four business days before the previously scheduled hearing in this matter.

In the event that a suitable alternative site could be identified, the Intervenors refuse to bear the cost of relocating a perfectly appropriate tank site even though their only real objection is their own private interest in not having a water tank visible from any of their residences. JSEWD does not relocate facilities for the private interest of any customer without requiring that such customer bear the costs of the relocation. This principle is specifically stated, for example, in JSEWD's filed tariff for relocating facilities at a customer's request[12], which requires that a customer pay all expenses related to such relocation. So that there is no misunderstanding, JSEWD is still willing to consider an alternative site that is appropriate for this project, and that will not raise similar objections from some other customer group or other entity; however, JSEWD will not voluntarily agree to such a site relocation if the cost of satisfying the Intervenors' private desires is to be borne by either JSEWD or its customers. JSEWD respectfully submits that any such result would not be in the public interest.

[12] JSEWD Tariff, PSC KY No. 2, Original Sheet No. 14B, Rule No. 22.

3. Continuing Undue Complication and Disruption

While the Response addresses the LRC study proffered by JSEWD at length as to the study's applicability to electric power line siting (and its alleged relevance to water tank siting), the Response does not address the LRC study's most relevant findings as to this Motion. JSEWD will not restate its argument from its Motion, but does point out that the LRC study concludes that even in actual high voltage transmission line siting cases, neither a customer's desire for an alternative site nor a complaint about real estate values are sufficient to require an alternative siting.[13]

The filing of the Report, and the "supplemental " response that states an opinion about real estate values[14], have already resulted in a delay in the scheduled hearing in this proceeding, so that JSEWD could properly evaluate the filings. If this sort of evidence (which is clearly of minimal at best relevance or evidentiary value) is accepted, JSEWD will be forced to conduct additional discovery, file rebuttal testimony and otherwise waste time and resources responding to issues that are not properly before the Commission or that do not meet minimal evidentiary standards pursuant to the LRC report. This is exactly the sort of undue complication and disruption of this proceeding about which JSEWD expressed concern when the Intervenors proposed a full scale procedural process in which to present their siting concerns. JSEWD respectfully moves that the PSC limit this proceeding as requested in JSEWD's Motion.

4. Lack of Compliance with Filing Requirements and Timeliness

As noted by the Intervenors' in their Response, the January 4, 2013, filing did reference specific previous information responses in the Notice of Filing that preceded the supplemental

[13] See JSEWD's Motion at pp.3-6 for full discussion of this finding.
[14] Intervenors' Response to JSEWD's Supplemental requests no. 3(a), filed January 2, 2013.

response, although not in cover letter or on the face of the response itself. To that extent, JSEWD's statement about the lack of a specific reference was in error. However, the actual Response itself has no reference to any previous response, nor any indication of its identity at all except as a Report filed prepared by a company known as Photo Science. As noted in JSEWD's Motion, neither the cover letter, Notice of Filing, nor the Report itself identified any individual as responsible for sponsoring the report or responding to questions about the report. No individual was named as the respondent for this Report until the filing of a Witness List on January 7, 2013. The witness listed for this allegedly supplemental response has not been identified as the respondent on any previous response, including those responses to which this filing is stated to be supplemental. Neither the Report itself nor the January 7, 2013 Witness List (or for that matter, the Response) provides any identifying information for this individual other than his name and his affiliation with Photo Science. As of three business days before the previously scheduled hearing in this matter, the Intervenors' siting witness had not even been identified by name to JSEWD.

5. Conclusion

For all of the reasons stated in the Motion and above, there is no proper evidentiary or relevance purpose for either the Report or the real estate value testimony offered by the Intervenors. JSEWD has, nonetheless and without waiver, agreed to consider the alternatives proposed by the Intervenors in one more good faith effort to resolve the Intervenors' complaints. However, JSEWD does not intend to agree to an alternative that imposes significant costs on the District or its ratepayers. The sites proposed by the Intervenors have no apparent advantage other

than that the proposed tank may not be as visible to some of the Intervenors, at least from their residences.

WHEREFORE, JSEWD moves that the Commission grant its Motion and issue an Order limiting the evidentiary proceeding in this matter as requested in the Motion.

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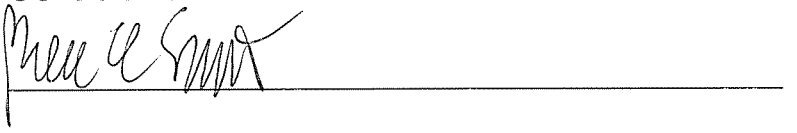
CO-COUNSEL FOR WATER DISTRICT



CERTIFICATE OF SERVICE

I hereby certify that the foregoing Jessamine-South Elkhorn Water District's Reply to the Intervenors' Response to Motion to Limit Evidentiary Hearing to Relevant Evidence and Issues was served by first class mail, postage prepaid, and e-mail, this the 17th day of January, 2013, to:

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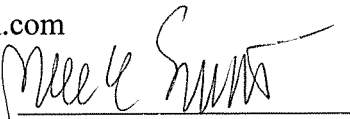


BRUCE E. SMITH

g/bes/JSEWD/Forest Hills/Certificate Proceeding/Reply to Response of FH to Motion to Limit Final

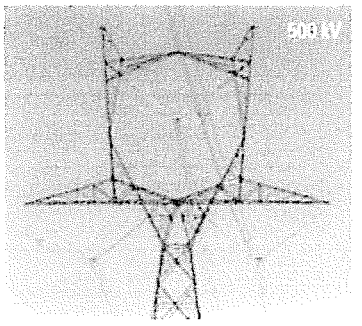
What the Lines Look Like

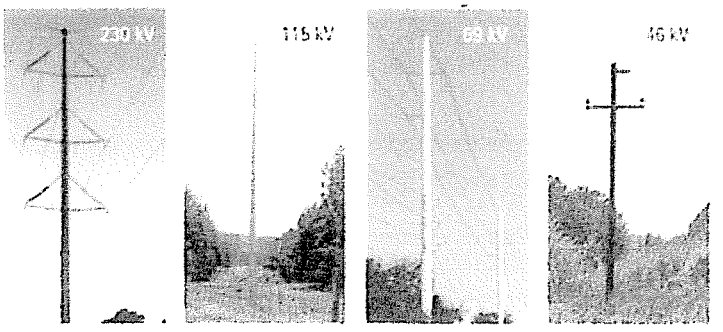
Georgia's most common power lines

Power lines are defined by their voltage. If a power line were a garden hose, the volume flowing through it would be current and the pressure in the line would be voltage. A kilovolt, 1000 volts, is abbreviated kV.

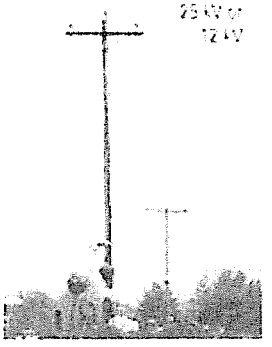
The power trip from plant to customer is actually a continuous relay between power lines of decreasing voltages. It begins with the heavy weights (500 kV in Georgia) and ends with 120- and 240-volt lines that run to homes.

Transmission lines carry power from plants to local utilities. In Georgia, power travels down a series of different size transmission lines: 500 kV, 230 kV, 115 kV and some 69 kV and 46 kV. Transmission lines are often thought of as the large cross-country variety, but lines of 230 kV and lower voltages are common along roadsides too.





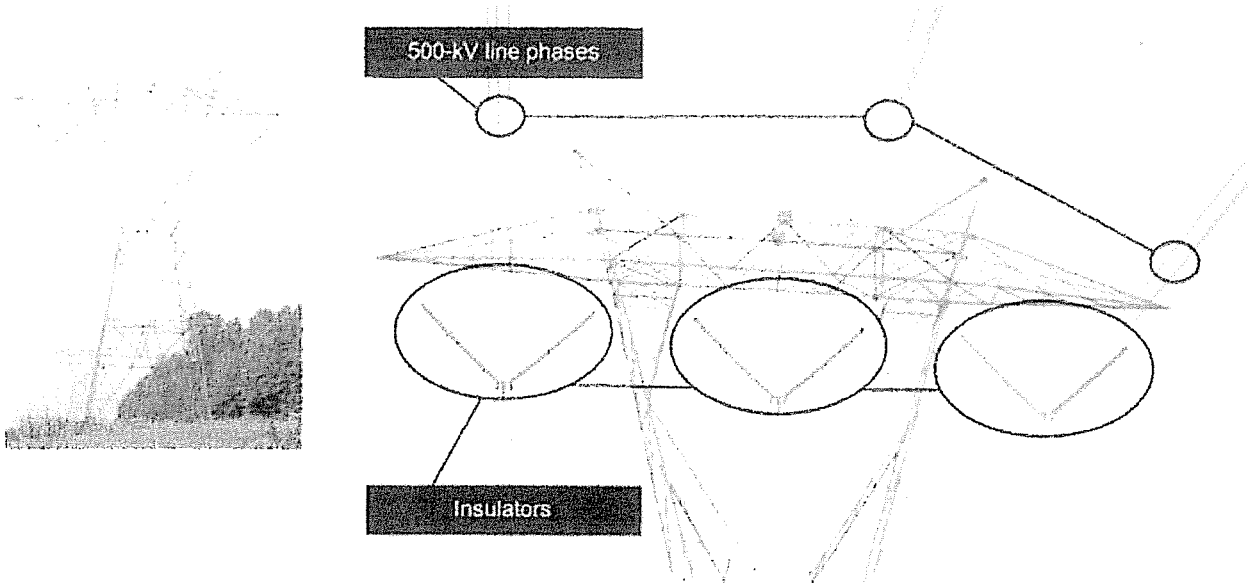
Distribution lines, typically 25,000 and 12,000 volts, are networks of local power lines that EMCs and other utilities use to deliver electricity to homes, businesses, schools and so on. In some cases, industrial customers take service directly from a transmission line. While distribution lines are often thought of as the ones on wooden poles along neighborhood streets, they are also built on metal and concrete poles. Unlike their transmission counterparts, these lines are commonly built underground. The most common distribution lines in Georgia are 25 kV and 12 kV.



Georgia Transmission Corporation 2100 East Exchange Place Tucker, GA 30084

What's on Those Lines?

500-kV transmission line



230-kV transmission line and distribution line