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April 10, 2000

Donald T. Prather, Esq.  
Mathis, Riggs & Prather, P.S.C.  
500 Main Street  
P.O. Box 1059  
Shelbyville, Kentucky 40066-1059

Re: Indian Hills Subdivision

Dear Mr. Prather:

Commission Staff is in receipt of your letter of March 23, 2000 regarding U.S. 60 Water District's need for a certificate of public convenience and necessity to purchase certain water distribution mains from the city of Taylorsville, Kentucky ("Taylorsville").

In your letter, you stated the following facts: U.S. 60 Water District proposes to purchase from Taylorsville approximately 6.5 miles of water mains in Shelby County, Kentucky that currently serve approximately 77 customers. It further proposes to pay Taylorsville \$6,930 per year for 15 years for a total of \$103,950, or at the city's option, a lump-sum payment of \$71,931.

Your letter poses the following questions:

1. Is U.S. 60 Water District required to obtain a certificate of public convenience and necessity for the proposed purchase?
2. Is Commission approval of the purchase agreement required?

As to the first question, no certificate of public convenience and necessity must be obtained to purchase the proposed facilities. KRS 278.020(1) provides:

No person, partnership, public or private corporation, or combination thereof shall begin the **construction** of any plant, equipment, property or facility for furnishing to the



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public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such construction. [Emphasis added.]

The statute refers only to construction and does not refer to the purchase of utility facilities or plant that is already constructed. The Commission has previously held that the purchase of existing assets does not require a certificate of public convenience. See Carroll County Water District No. 1, Case No. 95-062 (Ky.P.S.C. Feb. 22, 1995) (addressing the purchase of real estate); Goshen Utilities, Inc., Case No. 8151 (Ky.P.S.C. Sept. 2, 1981) ("no certificate under K.R.S. 278.020 is required for the purchase of additional assets by a utility.").

As to the second issue, KRS 278.300(1) requires U.S. 60 Water District to obtain Commission authorization to enter the proposed purchase arrangement. That statute provides:

No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

As the proposed purchase agreement requires U.S. 60 Water District to make payments over a 15-year period, it is an evidence of indebtedness.

The facts presented are similar to those of Campbell County Kentucky Water District, Case No. 90-219 (Ky.P.S.C. Oct. 2, 1990). In that case, Campbell County Kentucky Water District executed an agreement to purchase the water distribution system of the city of Crestview, Kentucky. The agreement provided, inter alia, that the water district would pay the city \$210,000 over a nine-year period in annual installments. Upon reviewing the transaction, the Commission found:

The written agreement for the acquisition of Crestview's water distribution system evidences a form of long-term capital indebtedness and therefore constitutes an evidence of indebtedness requiring Commission approval. Red Star

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Transportation Co. v. Silverman, 186 N.E. 460 (Ohio Ct.App.  
1933). KRS 278.300.

Id. at 2-3.

While the proposed agreement provides Taylorsville with the option of demanding a lump-sum payment, this provision does not eliminate the requirement for Commission authorization. Should Taylorsville elect not to exercise its option, the agreement would be an evidence of long-term indebtedness. In the absence of clear evidence of Taylorsville's intentions, the Commission must consider the proposed agreement as requiring annual payments over a 15-year period.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Commission counsel, at (502) 564-3940, Extension 259.

Sincerely,



Deborah T. Eversole  
General Counsel

cc:  Company Correspondence File