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December 11, 2000

Mr. David Vance
Hargrove Baker, PSC
Lexington Financial Center
250 W. Main Street, Suite 2800
Lexington, Kentucky 40507-1757

Re: Huntington Woods

Dear Mr. Vance:

Commission Staff is in receipt of your letter in which you request an opinion as to whether adding an additional customer would jeopardize Huntington Woods Neighborhood Association, Inc.'s ("HWNA") jurisdictional status.

As you know, on June 14, 2000, the Commission entered an Order approving the transfer of the Huntington Woods Sewage Treatment Plant from John Fehsal to HWNA. The Commission was required in that case also to determine whether or not HWNA would, after transfer, remain a jurisdictional utility. The Commission turned to KRS 278.010(3)(f) to resolve the jurisdictional issue. KRS 278.010(3)(f) states that "any person except a city who owns, controls, or operates or manages any facility used or to be used for or in connection with [t]he treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district." Most pertinent to the question was whether or not HWNA would be providing service "to the public." HWNA stipulated that it would not extend service to any person or commercial entity outside the boundaries of the subdivision other than the one adjacent land owner that the previous owners had permitted to access the plant, i.e. Fast Break Shell, and stipulated that Fast Break Shell would be allowed to become a full member of the neighborhood association. Based on the stipulation, the Commission found that



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HWNA would be providing service to a defined, privileged and limited group rather than to the public and thus would not be a utility subject to Commission jurisdiction. The Commission stated, however, that any subsequent change in HWNA's membership policies or its provision of service to persons or entities other than those it stipulated to serve could subject it to the Commission's jurisdiction.

You state in your letter that Fast Break Shell has constructed an additional development on property adjacent to its service station and wishes to connect this development to the plant. You also state that the development is currently listed for sale. You point out in your letter that HWNA did not give Fast Break Shell any assurance that it could tap on to the plant, but that it may have been given some sort of assurance from the previous owner of the plant. The record before the Commission in the transfer case did not reflect any assurance by the previous owner. In fact, the Asset Purchase Agreement entered between the previous owner and HWNA stated on page 3, subsection "(2) Non-subdivision tap-ons" under "(D) Representations and warranties of the sellers" that:

The sellers have not permitted nor agreed to permit any tap-on to the plant for properties or developments located outside the boundaries of Huntington Woods Subdivision as platted in Plat Book 2, page 10, as recorded in the office of the Franklin County Clerk, with the exception of the previous tap-on granted to Fast Break Shell on Hwy. 151.

[Emphasis Added].

Commission Staff believes that the proposed tap-on of the new development, or any new development or property not within the subdivision, would be considered a new tap-on and not the "previous tap-on" specifically considered by the Commission in rendering its decision in the transfer case. In the event that HWNA serves any additional property not within the boundaries of the Huntington Wood Subdivision, it is Commission Staff's opinion that HWNA would qualify as a "utility" under KRS 278.010(3)(f) and be jurisdictional to this Commission as it would not be serving a defined, privileged and limited group.

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.



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Questions concerning this opinion should be directed to Anita Mitchell, Staff Attorney,
(502) 564-3940 extension 258.

Sincerely,



Thomas M. Dorman
Executive Director

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