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**Executive Director**  
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**Commissioner**

September 19, 2001

Thomas R. Nienaber, Esq.  
Busald Funk Zeveryly, P.S.C.  
Post Office Box 6910  
Florence, Kentucky 41022-6910

Re: Bullock Pen Water District

Dear Mr. Nienaber:

Commission Staff is in receipt of your letter of September 17, 2001 regarding the need for a certificate of public convenience for a proposed water main construction.

Your letter and Bullock Pen Water District's most recent annual report to the Public Service Commission present the following facts:

Bullock Pen Water District ("Bullock Pen"), a water district organized pursuant to KRS Chapter 74, provides water service to approximately 5,194 customers in Boone, Gallatin, Grant, Kenton, and Pendleton Counties, Kentucky. As of December 31, 2000, it had net utility plant of \$9,109,024. For the year ending December 31, 2000, Bullock Pen had operating revenues of \$1,683,506 and operating expenses of \$1,404,048.

Bullock Pen intends to construct approximately 2,235 linear feet of 12-inch polyvinyl chloride ("PVC") water main in Grant County, Kentucky from the intersection of US Highway 25 and Shady Lane to Miller Road within the Crittenden Industrial Park to connect two 8-inch water mains. The proposed main will improve water transmission facilities in the general vicinity and better facilitate the transmission of water from Northern Kentucky Water District to Bullock Pen's service area. The proposed water main will not serve additional customers.

Bullock Pen also intends to replace 16,950 linear feet of 4-inch water main along Kentucky Highway 491 in Grant County, Kentucky with



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6-inch PVC water main to correct low-pressure conditions and remove asbestos-based mains.

The estimated total cost of this construction, including related appurtenances, is \$408,088. Bullock Pen will finance the proposed construction with a low interest loan of \$355,660 from the Drinking Water State Revolving Fund ("DWSRF")<sup>1</sup> and with internally generated funds of \$52,428. It does not intend to adjust its existing rates for water service. The proposed facilities will not provide water service in areas served by other utilities. There are no allegations that construction of the proposed facilities will result in wasteful duplication of existing facilities.

In your letter, you pose the following question: Does KRS 278.020(1) require Bullock Pen to obtain a certificate of public convenience and necessity for the proposed construction?

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 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 that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

Administrative Regulation 807 KAR 5:001, Section 9(3) further provides:

Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the

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<sup>1</sup> In its request, Bullock Pen did not state the term of the proposed loan or the interest rate. For Fiscal Year 2001, the standard interest rate on a DWSRF loan was 3.8 percent per annum.

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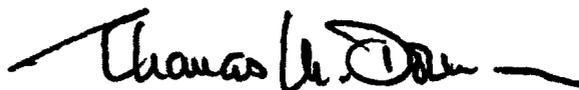
existing financial condition of the utility involved, or will not result in increased charges to its customers.

Based upon the facts set forth above, Commission Staff is of the opinion that the proposed construction is an extension in the ordinary course of business and does not require a certificate of public convenience. The proposed construction represents an increase of approximately 4.5 percent in Bullock Pen's net utility plant. Moreover, the proposed construction will not provide water service in areas currently receiving water service or duplicate existing water facilities. Finally, as the proposed construction will not require Bullock Pen to adjust its rates for water service and will result only in minimal increases in its utility operating expenses, it is not expected to materially affect Bullock Pen's existing financial condition.<sup>2</sup>

Commission Staff notes that, while no certificate of public convenience and necessity is required for the proposed water main construction, the issuance of any evidence of indebtedness for a period exceeding two years, as appears to be contemplated with the DWSRF loan, will require Commission authorization. See KRS 278.300(1).

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, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,



Thomas M. Dorman  
Executive Director

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<sup>2</sup> Assuming a 50-year service life for the proposed facilities, Bullock Pen's total annual utility operating expenses will increase approximately \$9,601, or approximately 0.6 percent over Bullock Pen's reported Calendar Year 2000 utility operating expenses.