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December 10, 2002

Eldred E. Adams, Jr., Esq.  
Adams & Adams  
Post Office Box 606  
Louisa, Kentucky 41230

Re: Martin County Water District

Dear Mr. Adams:

Commission Staff acknowledges receipt of your letter of September 17, 2002 in which you inquire whether an agreement between Martin County Water District ("Martin District") and American Water Services, Inc. requires the approval of the Public Service Commission.

Commission Staff understands the facts as follows:

Martin District is a water district organized under the provisions of KRS Chapter 74. It owns and operates water treatment and distribution facilities that provide water service to approximately 3,254 customers in Martin County, Kentucky. A five member board of commissioners controls and manages its affairs. Prior to October 1, 2002, Martin District directly employed approximately seven persons to operate and manage its facilities.

American Water Services, Inc. ("AWS") is a Delaware corporation that provides contract water and wastewater operation services to municipal, industrial and military entities. It is a subsidiary of American Water Works Company and currently holds a certificate of authority to operate within Kentucky.

On October 1, 2002, Martin District and AWS entered into an "Agreement for Operations, Maintenance and



Management Services." Under the terms of this Agreement, AWS assumes responsibility for operating, maintaining and monitoring Martin District's water treatment and distribution facilities and providing customer service and billing and collection services. It will offer employment to Martin District's existing employees. AWS further assumes responsibility for operating and maintaining equipment, performing laboratory testing and sampling, collecting and hauling treatment plant sludge, and providing certain financial reports to Martin District's Board of Commissioners. AWS will also assume responsibility for payment of all costs incurred in normal water utility operations.

The Agreement provides that Martin District will compensate AWS for the services provided through an annual fee. The Agreement has a five-year term and is subject to automatic renewal unless either party provides written notice of non-renewal at least 90 days prior to the contract expiration date.

These facts present the following issue: Does the "Agreement for Operations, Maintenance and Management Services" constitute a transfer of control of Martin District's operations that requires prior Public Service Commission approval?

Kentucky law prohibits the transfer of control of a utility without prior approval of the Public Service Commission. KRS 278.020(4) provides in pertinent part:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission.

KRS 278.020(5) states:

No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect.

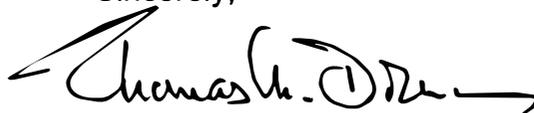
Elred E. Adams, Jr., Esq.  
December 10, 2002  
Page 3

KRS 278.010(19) defines "control" as "the power to direct the management or policies of a person through ownership." See also KRS 278.020(5) ("control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility").

Based upon its review of the Agreement, Commission Staff is of the opinion that the Agreement will not result in a transfer of control and does not require Public Service Commission approval. Notwithstanding the Agreement, Martin District's Board of Commissioners retains sole control of the water district's rates and regulations.<sup>1</sup> It has final authority over any capital expenditure or improvement that exceeds \$2,000. The Board retains its control over the water district's finances. The Agreement makes clear that AWS's role in Martin District's financial affairs is purely advisory and is limited to providing various reports and engaging in planning activities. AWS acquires no ownership rights or property interest as a result of the Agreement. It merely serves as a contractor providing services to Martin District.

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 PSC should the issues herein be formally presented for Commission resolution. Furthermore, nothing contained in this letter should be construed as an acknowledgement on Commission Staff's part that the Agreement's terms are reasonable. 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>1</sup> While the Agreement provides that Martin District's failure to file for rates or obtain other revenue sources sufficient to fund its facilities' operation and maintenance, capital improvements, and debt service would constitute a material breach of the Agreement and permit AWS to terminate the Agreement, Para. 9.4, it does not limit Martin District's ratemaking authority. Martin District's Board of Commissioners retain complete discretion to establish rates although its exercise of such discretion may adversely affect the Agreement. This term is no different than provisions in bond ordinances that require rates sufficient to generate a certain debt service coverage.