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March 4, 2005

Mr. Jeff Reynolds  
HMB Professional Engineers, Inc.  
3 HMB Circle  
Frankfort, Kentucky 40601

Re: Fleming County Water Association  
Mount Carmel Emergency Water Line Relocation

Dear Mr. Reynolds:

Commission Staff is in receipt of your letter of January 17, 2005 regarding the need for a certificate of public convenience for certain water line replacements planned for the Mount Carmel area.

In your letter and in your conversations with Commission Staff, you presented the following facts: Fleming County Water Association is proposing to replace approximately 1,000 linear feet of 6 inch polyvinyl chloride ("PVC") water main with 6-inch ductile iron water main. The proposed cost of this replacement is approximately \$133,095. The proposed replacement will be financed with a grant of \$133,095 from the Petroleum Storage Tank Environmental Assurance Fund. The replacement is required due to contaminated soil from leaking gasoline storage tanks. The water association will not issue any evidences of indebtedness or securities to finance any portion of the construction nor does it intend to adjust existing rates for water service. The proposed facilities will not provide water service in areas that other utilities are presently serving.

Your letter poses the following issue: Is Fleming County Water Association required to obtain a certificate of public convenience and necessity for the proposed replacement?

KRS 278.020(1) provides:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or 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

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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.

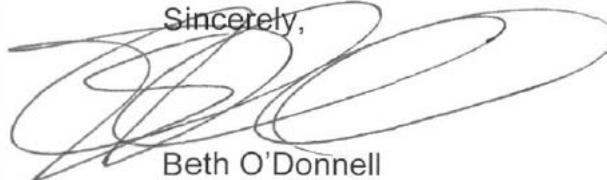
Administrative Regulation 807 KAR 5:001, Section 9(3) further provides:

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

Based upon the facts presented in your letter, 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 and necessity. According to its Annual Reports for Calendar Year 2003, Fleming County Water Association had net utility plant of \$6,578,066. The proposed construction, therefore, represents an increase of 2 percent in Fleming County Water Association's net utility plant. It will not require the issuance of any evidences of indebtedness, have a significant effect on the water association's financial condition<sup>1</sup> or require an adjustment in rates for water service.

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,



Beth O'Donnell  
Executive Director

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<sup>1</sup> Assuming a service life of 40 years for the replacement main and that mains replaced have exhausted their service life, the new main will increase the water association's expenses by \$3,327 annually. Based upon Fleming County Water Association's operating expenses of \$1,284,463 for Calendar Year 2003, this additional expense represents less than .25 percent of its annual operating expenses.