



Ernie Fletcher  
Governor

LaJuana S. Wilcher, Secretary  
Environmental and Public  
Protection Cabinet

Christopher L. Lilly  
Commissioner  
Department of Public Protection

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460

Mark David Goss  
Chairman

Ellen C. Williams  
Vice Chairman

Gregory Coker  
Commissioner

March 28, 2005

Ms. Diana Moran  
Bracken County Water District  
Post Office Box 201  
Brooksville, Kentucky 41004

Dear Ms. Moran:

Commission Staff acknowledges receipt of your letter of February 22, 2005 regarding Bracken County Water District's proposed purchase of real estate and construction of an office facility.

In your letter, you present the following facts: Bracken County Water District ("Bracken District"), a water district organized pursuant to KRS Chapter 74, owns and operates water distribution facilities that serve approximately 1,858 customers in Bracken, Mason, Pendleton, and Robertson Counties, Kentucky. Bracken District currently leases the building in which its offices are located. The lease on this building expires in December 2005. Bracken District is considering purchasing real estate upon which to construct a new office facility and a maintenance/storage facility. If Bracken District proceeds with this option, it would finance the purchase and construction costs through short-term debt and subsequently convert this debt to long-term revenue bonds.

Your letter presents the following issues: Must Bracken District obtain a certificate of public convenience and necessity to purchase real estate upon which the proposed facilities will be located or to construct the proposed facilities?

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 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. Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement.

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.

Commission Staff is of the opinion that Bracken District is not required to obtain a certificate of public convenience and necessity to purchase real estate upon which to locate its new office facility. KRS 278.020(1) refers only to the construction of new facilities, not to the purchase of real property. Please note that if the purchase requires the issuance of evidences of indebtedness, KRS 278.300(1) requires Bracken District to obtain Commission authorization before issuing such instruments:

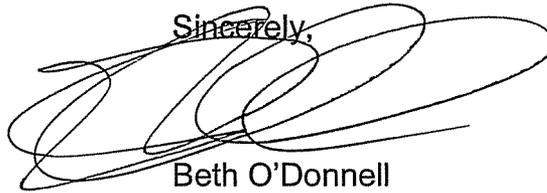
Based upon the limited information provided in your letter, Commission Staff cannot provide a definitive response to the proposed construction of an office facility. The Commission has generally regarded the construction of an office building as outside the scope of the ordinary course of business. See, e.g., Henderson Union RECC, Case No. 92-136 (Ky. PSC Nov. 2, 1992). Its determination, however, is generally based upon the cost of construction and a comparison of this cost with the utility's net utility plant. If the proposed construction exceeds five percent of net utility plant, the Commission will more closely review the proposed construction project to determine the need for a certificate of public convenience and necessity. Moreover, in those instances where the utility will issue new debt instruments to finance the construction, Administrative Regulation 807 KAR 5:001, Section 9(3), suggests that the construction is **not** an extension in the ordinary course of business and requires a certificate of public convenience and necessity. In your letter, you suggest that the proposed construction will require Bracken District to issue long-term debt. In that

Ms. Diana Moran  
Page 3  
March 28, 2005

circumstance, Administrative Regulation 807 KAR 5:001, Section 9(3) requires Bracken District to obtain a certificate of public convenience and necessity.

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,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned over the word "Sincerely,".

Beth O'Donnell  
Executive Director