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March 30, 2005

M. Greg Rains, Esq.
Post Office Box 958
Paducah, Kentucky 42002-0958

Re: North Marshall Water District

Dear Mr. Rains:

Commission Staff acknowledges receipt of your letter of March 22, 2005 regarding potential refunds related to a water main extension.

In your letter, you present the following facts: Tri Star Land Development Company, LLC ("Tri Star") owns and is developing a real estate subdivision in Marshall County, Kentucky. In 1999 Tri Star assumed the cost of the installation of water mains within this real estate development. These water mains have been connected to North Marshall Water District's distribution system. North Marshall Water District is apparently providing water service to the real estate subdivision. Tri Star is now considering the voluntary assignment of its right to any refund related to the cost of this water main extension to a third party. As your letter does not mention any written agreement between Tri-Star and North Marshall Water District, Commission Staff assumes that no such agreement exists.

You present the following question: Does any statute or regulation for which the Commission has responsibility for enforcing prohibit the voluntary assignment of a real estate subdivision developer's right to refunds resulting from the construction of water mains within a real estate subdivision.

North Marshall Water District; a water district organized pursuant to KRS Chapter 74, is a utility subject to Commission jurisdiction. KRS 278.010(3)(d); KRS 278.015; KRS 278.040. The Commission's jurisdiction extends to North Marshall Water District's rates and service. KRS 278.040(2). The Commission has authority to prescribe rules for North Marshall Water District's delivery of water service. KRS 278.280(2). The Commission also has the statutory duty to enforce the provisions of KRS Chapter 278 and its administrative regulations. KRS 278.040(1) and (3).

Pursuant to its statutory authority, the Commission has promulgated Administrative Regulation 807 KAR 5:066. Section 11(3) of this regulation provides:

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An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund **to the applicant** who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends [emphasis added].

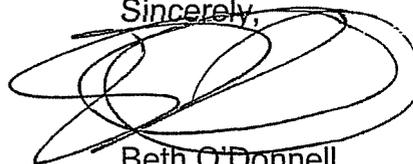
This regulation clearly provides that payments are to be made to the real estate subdivision developer who applied for initial service and paid the cost of the water main extension. The regulation, however, contains no restrictions upon an applicant's right to assign voluntarily his or her right for refund to a third party.

KRS 278.160 requires that utilities enforce the provisions of its filed rate schedules. Commission Staff has reviewed North Marshall Water District's filed rate schedules and has not located any provision that prohibits or restricts the assignment of a real estate subdivision developer's right to refunds. North Marshall Water District's rate schedules appear to restate the general rule set forth in Administrative Regulation 807 KAR 5:066, Section 11(3).¹ Commission Staff has no knowledge of any agreement between Tri Star and North Marshall that would restrict Tri Star's right to assign this right.

Based upon the above, Commission Staff is of the opinion that no provision in KRS Chapter 278 or the Commission's administrative regulations currently prohibits Tri Star from assigning its rights to a refund for a water main extension to a third party.

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, appearing to read "Beth O'Donnell", written over a circular scribble.

Beth O'Donnell
Executive Director

¹ North Marshall Water District's current rate schedule includes a form agreement for water main extensions to real estate subdivisions. The form agreement specifically refers to assignees of the real estate subdivision developers. Such reference suggests that the utility has not prohibited any assignment of rights from the real estate subdivision developer to a third party.