



Ernie Fletcher
Governor

Mark David Goss
Chairman

LaJuana S. Wilcher, Secretary
Environmental and Public
Protection Cabinet

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
psc.ky.gov

Teresa J. Hill
Vice Chairman

Christopher L. Lilly
Commissioner
Department of Public Protection

Gregory Coker
Commissioner

October 20, 2005

Ms. Deborah T. Eversole
Stoll Keenon and Park, LLP
2650 Aegon Center
400 West Market Street
Louisville, Kentucky 40202-3377

Re: Peaks Mill Water District

Dear Ms. Eversole:

Commission Staff acknowledges receipt of your letter of October 13, 2005 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a proposed water improvements project in Franklin County, Kentucky.

In your letter, you present the following facts: Peaks Mill Water District, a water district organized pursuant to KRS Chapter 74, proposes to construct a water storage tank at the intersection of U.S. Highway 127 and Shadrick Ferry Road in Franklin County, Kentucky. This project consists of the construction of a 300,000 gallon water storage tank, with telemetry vault, telemetry system, foundation, fencing, and access area. Its estimated cost is \$397,491. Peaks Mill will finance the proposed project entirely from the proceeds of an appropriation from the Kentucky General Assembly. It will not issue any evidences of indebtednesses nor increase its rates for water service. Peaks Mill had total water operating revenues of \$325,911 in calendar year 2004.¹

Your letter presents the following question: Must Peaks Mill Water District obtain a certificate of public convenience and necessity for the proposed project?

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

¹ Annual Report of Peaks Mill Water District to the Public Service Commission for the Calendar Year Ended December 31, 2004 at 27.

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

Under the method of analysis that Commission Staff has historically employed, the proposed construction would likely require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2004, Peaks Mill Water District had net utility plant of \$2,640,006. The proposed construction, therefore, represents an increase of approximately 15.1 percent in Peaks Mill Water District's utility plant. Such a large increase in utility plant cannot be considered ordinary. See, e.g., City of Covington v. Board of Commissioners of Kenton County Water District No. 1, 371 S.W.2d 20 (Ky. 1963).

The Kentucky General Assembly, however, has recently enacted legislation that provides:

Water Districts and Water Associations: A water district created pursuant to KRS Chapter 74 and a water association created pursuant to KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity pursuant to KRS 278.020(1) if the water district or water association is a Class A or B utility as defined in the Uniform System of Accounts established by the Public Service Commission, pursuant to KRS 278.220, as the system of accounts prescribed for utilities in Kentucky, and either: (a) The water line extension or improvement project will not cost in excess of \$500,000; or (b) The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring Public Service Commission approval pursuant to

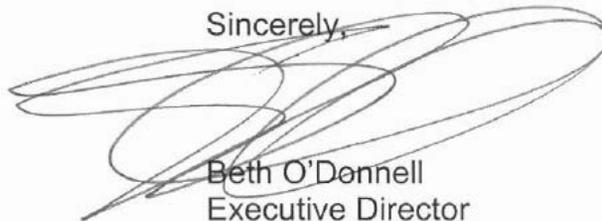
KRS 278.300. In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers.

2005 Ky. Acts Chapter 173.

Based upon the facts presented in your letter and its interpretation of this Act, Commission Staff is of the opinion that the proposed construction is exempt from any requirement to obtain a certificate of public convenience and necessity. As Peaks Mill Water District had annual revenues in calendar year 2004 of \$325,911, it is a Class B water utility.² The cost of the proposed extension is \$397,491. The proposed extension will not require the issuance of any evidence of indebtedness that requires Commission authorization or result in any increase in the water district's rates.

This letter represents Commission Staffs 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 light gray circular stamp or watermark.

Beth O'Donnell
Executive Director

² The Kentucky Public Service Commission's Uniform System of Accounts defines a Class B water utility as a utility "having annual water operating revenues of \$250,000 or more but less than \$750,000." Uniform System of Accounts for Class A/B Water Districts and Associations at 14 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).