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October 28, 2005

Mr. Charles Hoke
Dexter-Almo Heights Water District
3351 Almo Road
Almo, Kentucky 42020

Re: Cole Campground Road Extension/Flint & West Fork Road
Projects No. WX21035012 and WX21035014

Dear Mr. Hoke:

Commission Staff acknowledges receipt of your letter of September 12, 2005 in which you request an opinion regarding the need for a certificate of public convenience and necessity for proposed water improvements projects in Calloway County, Kentucky.

In your letter, you present the following facts: Dexter-Almo Heights Water District, a water district organized pursuant to KRS Chapter 74, proposes to extend its water mains in Calloway County, Kentucky. These extensions, which consists of two separate extension projects, involve the construction of 23,250 linear feet of 4-inch and 8-inch water main. Estimated cost of these projects is \$361,075. Dexter-Almo Heights Water District will finance the proposed project with an \$185,000 appropriation from the General Assembly and a loan of \$176,075 from private sources. Dexter-Almo Heights intends to procure the \$176,075 through a line of credit and subsequently convert that line of credit to a 15-year promissory note. Dexter-Almo Heights Water District did not state its intention to increase its rates for water service. Dexter-Almo Heights Water District had total water operating revenues of \$161,896 in calendar year 2004.¹

Your letter presents the following question: Must Dexter-Almo Heights 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

¹ Annual Report of Dexter-Almo Heights Water District to the Public Service Commission for the Calendar Year Ended December 31, 2004 at 27.

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.

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 does not appear to be in the ordinary course of business and would require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2004, Dexter-Almo Heights Water District had net utility plant of \$328,470.² The proposed construction, therefore, represents an increase of approximately 109 percent in Dexter-Almo Heights 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). Moreover, as the amount of long-term debt that Dexter-Almo Heights Water District must issue to finance the proposed extensions is twice the amount of its existing long-term debt,³ the proposed project costs will materially affect Dexter-Almo Heights Water District's existing financial condition.

Commission Staff notes that the General Assembly recently enacted legislation that that exempts certain water improvement projects from any requirement to obtain a certificate of public convenience and necessity. This provision 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

² Id. at 7.

³ Id. at 8.

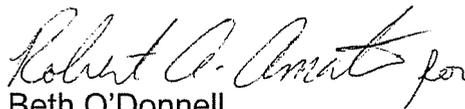
required to obtain a certificate of public convenience and necessity pursuant to KRS 278.020(1) if the water district or water association is a Class A or B utility as defined in the Uniform System of Accounts established by the Public Service Commission, pursuant to KRS 278.220, as the system of accounts 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 Act does not exempt the proposed construction from any requirement to obtain a certificate of public convenience and necessity. As Dexter-Almo Heights Water District had annual revenues in calendar year 2004 of \$161,896, it is a Class C water utility⁴ and is not subject to the exemption. The proposed construction, therefore, would require 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,


Beth O'Donnell
Executive Director

⁴ The Kentucky Public Service Commission's Uniform System of Accounts defines a Class C water utility as a utility "Utilities having annual water operating revenues of less than \$250,000 or less than 400 customers." 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>).