



**Ernie Fletcher**  
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**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  
psc.ky.gov

**Mark David Goss**  
Chairman

**Teresa J. Hill**  
Vice Chairman

**Gregory Coker**  
Commissioner

December 22, 2005

Mr. Walt Beasley  
Ohio County Water District  
P.O. Box 207  
Hartford, Kentucky 42347

Re: Contract between Ohio County Water District and Perdue Farms, Inc.

Dear Mr. Beasley:

Commission Staff acknowledges receipt of your letter of October 27, 2005 requesting guidance on a proposed agreement for water service between Ohio County Water District ("Ohio District") and Perdue Farms, Inc. ("Perdue Farms").

In your letter and your subsequent telephone conversations with Commission Staff, you presented the following facts:

In 1994, Ohio District entered into an agreement with Perdue Farms and several other governmental entities related to the location of a manufacturing facility for the processing of poultry products in Ohio County, Kentucky. This agreement provided, inter alia, that Perdue would construct a water plant and donate to Ohio District the daily capacity of this plant up to 1,000,000 gallons. In return, Ohio District assumed the cost of the electricity and chemicals necessary to treat and pump this water into its distribution system.

Perdue Farms now wishes to expand its operations. It has negotiated an amendment to the 1994 Agreement that reduce the amount of water that Perdue is required to provide to Ohio District to 550,000 gallons daily until the earlier of Ohio District expanding its daily treatment capacity by 550,000 gallons or until February 1, 2009. The amendment further provides that Ohio District will provide water to Perdue Farms in the event of an emergency at the lowest authorized rate.

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As an incentive to encourage Ohio District's acceptance of the proposed amendment, the Ohio County Fiscal Court has represented to Ohio District that it will provide Ohio District with \$1,000,000 for use in upgrading existing water treatment facilities or constructing new water treatment facilities. These funds are contingent upon Ohio District's acceptance of the amendments to the 1994 Agreement.

Based upon its review of these documents and the facts set forth above, Commission Staff offers the two points of guidance: First, if Ohio District executes the proposed amendment to the 1994 Agreement, a copy of the executed amendment should be submitted to the Commission. KRS 278.160(2) provides that a utility "shall file with the Commission . . . showing all rates and conditions of service established by it and collected and enforced." The proposed amendment contains provisions related to the provision of emergency standby service to Perdue Farms and the rate for such service.

Second, Ohio District should carefully document the transaction's circumstances to permit a thorough review of the transaction in any future rate proceeding before the Commission. The proposed amendment reduces the maximum amount of water that Ohio District may daily draw from Perdue Farms from 1,000,000 gallons to 550,000. In your letter, you state that this reduction will result in increased expenses to Ohio District. Because the proposed agreement does not appear to contain any corresponding concession to Ohio District in exchange for this reduction, the reasonableness of Ohio District's entry into the amended agreement and its resulting increased expenses are likely to be examined in a future rate proceeding. To the extent that Ohio Fiscal Court is offering incentives to Ohio District to enter the proposed amendment and that these incentives would offset any increased expenses, they will play a significant role in any Commission review of the transaction and, therefore, should also be carefully and thoroughly documented. Given the limited information provided, Commission Staff is unable to assess the reasonableness of the proposed amendment.

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 me at (502) 564-3940, Extension 259.

Sincerely,



Gerald Wuetcher  
Acting General Counsel