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September 12, 2006

Stephen Reeder, Esq.
Kentucky River Authority
70 Wilkinson Boulevard
Frankfort, Kentucky 40601

Dear Mr. Reeder:

In response to the Kentucky River Authority's request, Commission Staff has tentatively scheduled a meeting on September 19, 2006 to discuss generally the procedures and issues that are addressed in any Commission proceeding in which a public utility applies for a certificate of public convenience and necessity to construct a water treatment facility. By this letter, Commission Staff provides some general information regarding such proceeding.

KRS 278.020(1)¹ requires a public utility² to obtain a certificate of public convenience and necessity prior to constructing any facility for furnishing water to the public for compensation. To obtain such certificate, the public utility must demonstrate a need for the proposed facilities and an absence of wasteful duplication. Need is demonstrated by showing:

¹ 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.

² A public utility is any person, except a city, "who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation" KRS 278.010(3)(d). Please note that Kentucky-American Water Company is a public utility. The Bluegrass Water Commission, which is a joint water source commission, is not a public utility. KRS 74 510.

A substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated. . . the inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.³

Wasteful duplication is defined as "an excess of capacity over need" and an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity.⁴

In determining whether a need for the proposed facilities exists, the Public Service Commission will examine the public utility's present and future demand for water. It will consider the facilities of all utilities in the general vicinity regardless of their jurisdictional status. For example, in determining whether Kentucky-American Water Company requires additional water production facilities, the Public Service Commission will examine the facilities and surplus capacity of municipal utilities in the central Kentucky area and the expected native customer demand on those facilities.

Similarly, the Public Service Commission will consider those facilities and any planned facilities in assessing whether construction of the public utility's proposed facilities will result in "excessive investment" or "excess capacity." For example, the Public Service Commission may examine alternative sources of supply to determine whether use of those sources might be more cost-effective than construction of the proposed facilities. While a public utility is not required to select a source of supply that is the least costly, it must demonstrate that its selection of a different source of supply or facility is reasonable under the existing circumstances.

Administrative Regulation 807 KAR 5:001, Section 9, identifies the contents of a public utility's application for a certificate of public convenience and necessity. Generally, the public utility would in its application describe the need for the proposed facilities, their estimated cost, the method of financing these costs, and the alternatives considered. The application may contain the written testimony of the public utility's witnesses and *all* studies and reports that support the proposed facilities.

Administrative Regulation 807 KAR 5:001, Section 3(8), permits all interested parties the opportunity to intervene in any Commission proceeding in which a public utility is seeking a certificate of public convenience and necessity. A party that is seeking to intervene in such proceeding must demonstrate that it has a special interest in the proceeding which is not otherwise adequately represented or that its intervention is likely to present issues or to develop facts that assist the Public Service Commission in

³ Kentucky Utilities Co. v. Pub. Serv. Comm'n, 252 S.W 2d 885, 890 (Ky 1952)

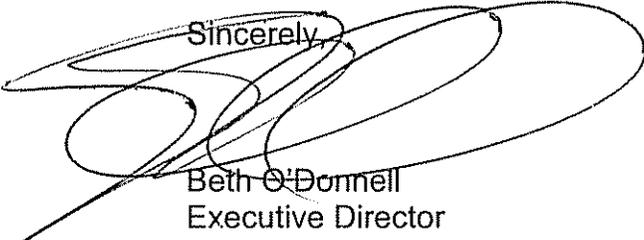
⁴ Id.

fully considering the matter without unduly complicating or disrupting the proceedings. Once permitted to intervene in the proceeding, the intervening party is entitled to be served with filed testimony, exhibits, pleadings, correspondence and all other documents submitted by parties, and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review.

Once an application for a certificate for public convenience and necessity is filed with the Public Service Commission, the Commission generally establishes a procedural schedule for reviewing the application. This schedule generally provides for discovery by all parties, the filing of written testimony by the applicant and intervening parties, a public hearing for the cross-examination of witness, and the submission of written briefs. There is no statutory time limit for the Commission proceeding. Such proceedings generally run from three to six months.

As this letter has addressed the general questions regarding Public Service Commission proceedings on applications for a certificate of public convenience and necessity, Commission Staff assumes that a meeting between Commission Staff and Kentucky River Authority representatives is no longer necessary. If the Kentucky River Authority still requires a meeting to discuss general procedural questions, please advise me not later than September 15, 2006. If no response is received by that date, the scheduled meeting will be cancelled.

The information contained in this letter represents Commission Staff's interpretation of existing law and should not be construed as the official position of the Public Service Commission or as binding upon the Public Service Commission in any formal proceeding. Questions concerning this letter should be directed to Gerald Wuetcher, Deputy General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

Beth O'Donnell
Executive Director

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