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September 13, 2006

Mr. Walt Beasley
Ohio County Water District
130 East Washington Street
Hartford, Kentucky 42347

Re: Askins-Ky Highway 629 Water Main Extension
Tetra Tech Project No. 0584

Dear Mr. Beasley:

Commission Staff acknowledges receipt of your letter of August 21, 2006, in which you request an opinion regarding the need for a certificate of public convenience and necessity for a proposed water improvements project in Ohio County, Kentucky.

In your letter, you present the following facts: Ohio County Water District ("Ohio District"), a water district organized pursuant to KRS Chapter 74, proposes to extend its water mains to serve an area along Kentucky Highway 629 and west of the Askins community in northeast Ohio County, Kentucky. This project consists of the construction of 8,000 linear feet of 3-inch polyvinylchloride water main. Its estimated cost is \$60,000. Ohio County Fiscal Court will assume the entire cost of the proposed project. Ohio District will not issue any evidence of indebtedness nor increase its rates for water service. The proposed project will allow service to approximately three new residences and will serve an area that is not currently receiving water service. Ohio District served approximately 5,497 customers and had total water operating revenues of \$3,226,927 in calendar year 2005.¹

Your letter presents the following question: Must Ohio 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,

¹ Annual Report of Ohio County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2005 at 27.

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 appears to be in the ordinary course of business and would not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2005, Ohio District had net utility plant of \$18,184,087.² The proposed construction, therefore, represents an increase of only 0.33 percent in Ohio District's utility plant. As the funds for the proposed construction will come from outside sources and will not require the issuance of additional debt or any increased charges to customers, the proposed construction does not appear to materially affect Ohio District's existing financial condition.

The Kentucky General Assembly, furthermore, 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

² Id. at 7.

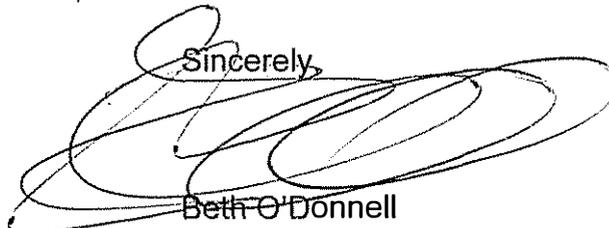
either: (a) The water line extension or improvement project will not cost in excess of \$500,000; or (b) The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring Public Service Commission approval pursuant to KRS 278.300. 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.

2006 Ky. Acts Chapter 252.

Based upon the facts presented in your letter and its interpretation of this Act, Commission Staff is of the opinion that the Act exempts the proposed construction from any requirement to obtain a certificate of public convenience and necessity. As Ohio District had annual revenues in calendar year 2005 of \$3,341,701, it is a Class A water utility.³ The cost of the proposed extension is \$60,000. 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 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, Deputy General Counsel, at (502) 564-3940, Extension 259.

Sincerely,



Beth O'Donnell
Executive Director

³ The Kentucky Public Service Commission's Uniform System of Accounts defines a Class A water utility as a utility "having annual water operating revenues of \$750,000 or more." 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>)