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Commissioner

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Commissioner  
Department of Public Protection

October 18, 2006

Mr. Donald Willingham  
Tetrattech, Inc.  
800 Corporate Drive  
Suite 200  
Lexington, Kentucky 40503

Re: Ohio County Water District  
KY 110 Water Main Extension  
KIA Project No. WX21183015

Dear Mr. Willingham:

Commission Staff acknowledges receipt of your letter of September 18, 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 and Breckinridge Counties, Kentucky.

In your letter and subsequent telephone conversation with Commission Staff, you present the following facts: Ohio County Water District, a water district organized pursuant to KRS Chapter 74, proposes to extend its water mains in portions of Ohio and Breckinridge Counties, Kentucky. This project consists of the construction of 26,800 linear feet of 6-inch, 4-inch, and 3-inch polyvinylchloride water main that will run along KY Highway 110 and certain side roads in Ohio and Breckinridge Counties. It will make water service available to approximately 35 households that are not currently receiving water service. Estimated cost of this project is approximately \$363,250. Ohio County Water District will finance the proposed project entirely from grants from funds that the Kentucky General Assembly appropriated to Ohio County Fiscal Court and Breckinridge County Fiscal Court. It will not issue any evidence of indebtedness nor increase its rates for water service. In calendar year 2005, Ohio County Water District had total water operating revenues of \$3,341,701 and served 5,495 customers.<sup>1</sup>

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

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

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 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 County Water District had net utility plant of \$18,184,087.<sup>2</sup> The proposed construction, therefore, represents an increase of two percent in Ohio County Water District's utility plant. Such a small increase in net utility plant is considered as 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 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 County Water District's existing financial condition.<sup>3</sup>

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<sup>2</sup> Id. at 7.

<sup>3</sup> Assuming a useful service life of 20 years for the proposed water distribution mains, utility's annual depreciation expense will increase by \$18,163 as a result of the proposed extension. Based upon the utility's operating expenses in calendar year 2005, this expense represents an increase of 0.8 percent in the utility's total operating expenses.

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 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 County Water District had annual revenues in calendar year 2005 of \$3,341,701, it is a Class A water utility.<sup>4</sup> The cost of the proposed extension is approximately \$363,250. 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.

While Commission Staff is of the opinion that no certificate of public convenience and necessity is required, it requests that Ohio County Water District advise Commission Staff when the proposed construction is completed. It further requests that Ohio County Water District provide Commission Staff with a copy of the "as-built" drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the substantial completion of the proposed construction project.

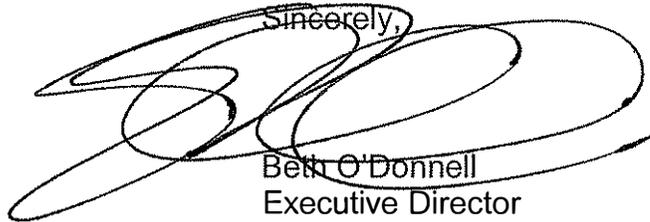
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<sup>4</sup> The Kentucky Public Service Commission's Uniform System of Accounts defines a Class A water utility as a utility "having annual water operating revenues of \$750,000 or more." System of Accounts for Class A/B Water Districts and Associations at 14 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).

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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,

A handwritten signature in black ink, appearing to read "Beth O'Donnell", is written over the typed name and title. The signature is fluid and cursive, with the first name "Beth" being particularly prominent.

Beth O'Donnell  
Executive Director