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November 8, 2006

James S. Secret, Sr., Esq.
Secret & Secret
210 West Main Street
Post Office Box 35
Scottsville, Kentucky 42164-0035

Re: Riverbend Ridge Subdivision Extension

Dear Mr. Secret:

Commission Staff acknowledges receipt of your letter of June 5, 2006 regarding a request that Allen County Water District has received for a proposed water main extension to the Riverbend Ridge Subdivision in Allen County, Kentucky. I apologize for the delay in responding.

In your letter, you present the following facts:

Allen County Water District ("ACWD") is a water district organized pursuant to KRS Chapter 74. It provides water to the unincorporated areas of Allen County, Kentucky.

Riverbend Ridge, Inc. is a real estate subdivision developer that is developing a subdivision in Allen County. ACWD presently supplies water to Phase I of the Riverbend Ridge Subdivision from a 3-inch water distribution main that extends approximately 3 miles from Port Oliver Road along Erwin Road to the end of Erwin Road. Phase I consists of 10 tracts.

Riverbend Ridge, Inc. has applied to ACWD for water service for Phase II of the Riverbend Ridge Subdivision. Phase II consists of 32 tracts. ACWD's engineering consultant advises that the existing 3-inch distribution main that serves Phase I is inadequate to serve the new tracts and maintain water pressure at acceptable levels. He advises that approximately 14,000 feet of 4-inch

reinforcement water distribution main must be installed along Erwin Road and connected to both ends of the existing 3-inch water distribution main to ensure adequate water service to customers in both phases of the development.

ACWD has in its rate schedule a "Line Enlargement Charge" that requires "[t]he developer of each residential development on an existing distribution line . . . to pay to the utility a Line Enlargement Charge . . . equal to the number of feet of road frontage of the residential development on the existing distribution line multiplied by ½ of the average cost of installing the utility's minimum size distribution main.

ACWD takes the position that Riverbend Ridge, Inc. should pay the cost of the installation of the new 4-inch reinforcement main. Reluctant to assume this cost, Riverbend Ridge, Inc. has advised ACWD that the City of Glasgow, a municipal utility that is not subject to Commission jurisdiction, is willing to provide service to Phase II if Riverbend Ridge assumes the cost of installing a water distribution main across the Barren River. The cost of installing a 4-inch water distribution main across the Barren River is significantly less than the installation of a 4-inch reinforcement main.

You present two questions for Commission Staff's consideration:

1. Does existing law require ACWD to install the 4-inch reinforcement water distribution main at its own expense?
2. If ACWD refuses to install the 4-inch reinforcement water distribution main at its own expense and Glasgow agrees to serve Phase II of the Riverbend Ridge Subdivision, must ACWD cede Phase II to Glasgow?

In responding to your first question, Commission Staff assumes that the area in which Phase II of the Riverbend Ridge Subdivision is located entirely in ACWD's territory.¹ In Kentucky every utility has the duty to "render adequate, efficient and reasonable service . . . within the scope or area of service provided for in its certificate of convenience and necessity." City of Bardstown v. Louisville Gas & Electric Co., 383

¹ A water district's territory is established in the fiscal court ordinance that created the water district. After the water district's creation, the county judge/executive of the county in which the water district is located or an adjoining county may expand the water district's territory. See KRS 74 110-.115

S.W.2d 918, 920 (Ky.1964).² For water districts, which are public utilities,³ this duty to serve extends to all inhabitants within their territories.⁴

This duty to serve also requires that a public utility expand its services to meet increased customer demand. In Board of Fire Com'rs of Fire Dist. No. 3, Piscataway Tp. v. Elizabethtown Water Co, 142 A.2d 85, 87 (N.J. 1958) (citations omitted), the New Jersey Supreme Court noted that a utility's obligation extended to future demands:

The franchise thus created constituted a contract between the utility and the municipality, subject, of course, to the state regulatory power. The burden assumed thereby was a community service; it was not limited to the establishment of a system suitable only to the then current needs. Included also was the utility's duty to keep in view the probable growth of the township, both in population and in structural development, and to make gradual extensions of its mains to meet the reasonable demands that would inevitably result.

ACWD is obligated to serve Phase II of the Riverbend Ridge Subdivision and to install the facilities necessary to meet its demands. Absent any provisions in its filed rate schedules to the contrary, ACWD must bear the cost of the installation of all facilities necessary to ensure adequate service.

Commission Staff notes that ACWD's filed rate schedule provides for a "Line Enlargement Charge" Rate⁵ and that the charge appears to be applicable to the proposed subdivision. KRS 278.160(2)⁶ requires ACWD to assess Riverbend Ridge, Inc. a charge consistent with the formula set forth in the "Line Enlargement Charge" Rate Schedule. Based upon the limited information provided in your letter, Commission

² See also KRS 278.030(3); KRS 278.280.

³ KRS 278.015.

⁴ The Attorney General has opined that a "water district is under an obligation to serve all inhabitants . . . within its geographical area of service as fixed under KRS 74.010 and as defined by the certificate of convenience and necessity"

⁵ The developer of each residential development on an existing distribution line shall be required to pay to the utility a Line Enlargement Charge. Such charge shall be equal to the number of feet of road frontage of the residential development on the existing distribution line multiplied by 1/2 of the average cost of installing the utility's minimum size distribution water main. The charge will normally be charged only for the frontage of lots less than 15 acres. However, if a development contains lots both less than and greater than 15 acres, then the charge will be assessed for the footage of the entire development if more than 1/2 of the frontage is occupied by lots of less than 15 acres. No charge will be made for the frontage of any tract served by an existing meter in front of that lot. However, such tract will be considered under the preceding sentence for the purpose of determining whether to charge for the remaining frontage of the development.

⁶ No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules

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Staff is unable to ascertain whether this charge is equal to the cost of the required 4-inch reinforcement water distribution main.

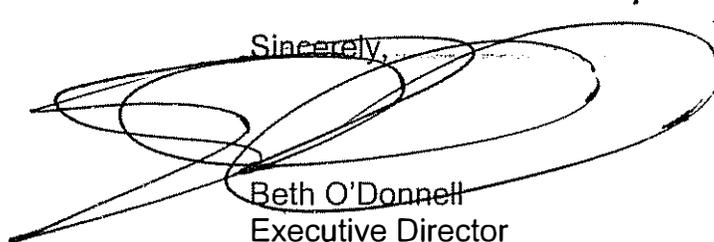
As to your second question, Commission Staff disagrees with its implied premise that ACWD may refuse to serve the proposed development or construct the necessary facilities to ensure that adequate water service is available within its territory. Notwithstanding this issue, Commission Staff is of the opinion that Glasgow lacks any legal authority to serve the territory in question without ACWD's consent. KRS 96.150(1) provides in pertinent part:

Any city that owns or operates a water supply or sanitary sewer system may extend the system into, and furnish and sell water and provide sanitary sewers to any person within, any territory contiguous to the city, and may install within that territory necessary apparatus; **provided, however, that the extension of a water supply or sanitary sewer system shall not enter into any territory served by an existing water supply or sanitary sewer district unless such district requests the extension of water or sewer services from a city** [emphasis added].

Moreover, since ACWD currently has loans with the U.S. Department of Agriculture, 7 U.S.C.A. §1926(b) also prevents Glasgow from extending service into any territory that ACWD presently serves without the water district's consent.

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 large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Beth O'Donnell
Executive Director