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January 30, 2007

Ms. Alice G. Ritchie
Knott County Water and Sewer District
P.O. Box 884
Hindman, Kentucky 41822

Dear Ms. Ritchie:

Commission Staff acknowledges receipt of your letter of January 22, 2007 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a water treatment plant in Knott County, Kentucky.

Based upon your letter and a review of other sources of information, Commission Staff understands the facts as follows:

Knott County Water and Sewer District, a water district organized pursuant to KRS Chapter 74, provides water service to 273 customers in Knott County, Kentucky. It is planning to construct a water treatment plant with a 2 million gallon per day (MGD) capacity at Carr Creek Lake.

This plant, which can be expanded to 6 MGD, will serve as a regional source of treated water to the Knott County Water and Sewer District, the Letcher County Water and Sewer District, the City of Hindman, the City of Vicco, with the potential to serve southern Floyd County and southeastern Breathitt County.

Estimated cost of the proposed plant is \$10,000,500. Approximately \$9,900,500 of the total cost will be financed through appropriations of the Kentucky General Assembly and grants from various state and federal agencies. Approximately \$100,000 of the total cost will be financed through a loan from Rural Development, an agency of the U.S. Department of Agriculture. The proposed construction is not expected to require a rate adjustment.

Your letter presents the following question: Must Knott County Water and Sewer District obtain a certificate of public convenience and necessity for any of the proposed projects?

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 construction of the proposed water treatment plant does not appear to be in the ordinary course of business and would require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2005, Knott County Water and Sewer District had net utility plant of \$2,583,313.¹ The proposed water treatment plant represents an increase in Knott County Water and Sewer District's utility plant of 387 percent. Such an increase in net utility plant is not generally 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 some of the funds for the proposed projects will come from the issuance of debt instruments, the proposed construction appears to materially affect Knott County Water and Sewer District's existing financial condition.

¹ Id. at 7.

The Kentucky General Assembly 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, Commission Staff is of the opinion that the Act does not exempt the construction of the proposed water treatment plant from any requirement to obtain a certificate of public convenience and necessity. As Knott County Water and Sewer District had annual revenues in calendar year 2005 of \$157,158 and less than 400 customers, it is a Class C water utility² and therefore does not fall within the class of water utilities subject to the exemption. Moreover, the cost of the water treatment plant exceeds \$500,000 and will require the issuance of evidence of indebtedness that requires Commission authorization.

Please note that, as the proposed project will be financed in part under the terms of an agreement with Rural Development, KRS 278.023 is applicable. This statute requires the Commission to implement the terms of an agreement between a water district and Rural Development, including the issuance of a certificate of public convenience and necessity, within 30 days of the filing of the agreement and all necessary documents with the Commission. While Knott County Water and Sewer District must apply for a certificate of public convenience and necessity, the Commission's review of the application will be limited and must be completed within 30 days. Moreover, the evidence that the water district must submit in support of its

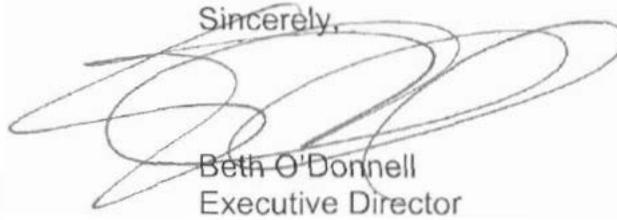
² The Kentucky Public Service Commission's Uniform System of Accounts defines a Class C water utility as a utility "having annual water operating revenues of less than \$250,000 or less than 400 customers." Uniform System of Accounts for Class C Water Districts and Associations at 8 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700c02.pdf>).

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application will be significantly less than that required for applications filed pursuant to KRS 278.020.

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 word "Sincerely,". The signature is fluid and cursive, with several loops and a long horizontal stroke extending to the right.

Beth O'Donnell
Executive Director