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**Mark David Goss**  
Chairman

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Commissioner

May 9, 2007

Ms. Wanda H. Land  
West Shelby Water District  
7101 Shelbyville Rd.  
P.O. Box 39  
Simpsonville, KY 40067

Re: West Shelby Water District  
Construction of Maintenance Shop

Dear Ms. Land:

The Commission has received your letter dated May 3, 2007, in which you request an opinion regarding whether West Shelby Water District ("West Shelby") should obtain a certificate of public convenience and necessity for construction of a proposed maintenance shop in Shelby County.

Based on the information conveyed in your letter, Commission Staff understands that West Shelby has outgrown its present storage facilities and seeks to build an additional maintenance shop on property that it owns. The estimated cost of the project is \$99,000.00, which will come from internally generated funds, and not result in increased rates to its customers.

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 2006, West Shelby had net utility plant of \$7,503,513.00. The proposed construction, therefore, represents an increase of 1.3 percent in West Shelby's utility plant. Such a small increase in net utility plant is generally considered to be within the ordinary course of business. See American Dist. Tele. Co. v. Utility Regulatory Comm'n, 619 S.W.2d 504, 506 (Ky. App. Ct. 1981).

Moreover, we note that the Kentucky General Assembly 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.

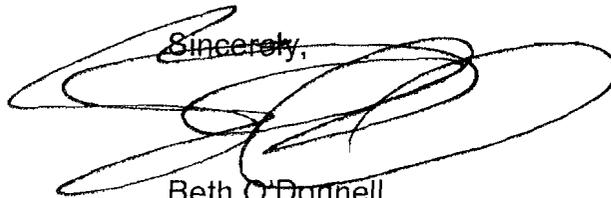
2006 Ky. Acts Chapter 252 (the "Act").

Based upon the facts presented and our 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 West Shelby Water District had annual revenues in calendar year 2006 of \$1,107,938, it is a Class A water utility.<sup>1</sup> The cost of the proposed maintenance shop is approximately \$99,000.00. The proposed construction 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.

Thus, based on the approach historically used or the recent legislative enactment, Commission Staff is of the opinion that West Shelby Water District does not need a certificate of public convenience and necessity to construct the proposed maintenance shop.

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 to the Commission for resolution. Questions concerning this opinion should be directed to Todd Osterloh, Staff Attorney, at (502) 564-3940, extension 439.

Sincerely,

A handwritten signature in black ink, appearing to read 'Beth O'Donnell', is written over the word 'Sincerely,'. The signature is stylized and somewhat illegible due to overlapping loops.

Beth O'Donnell  
Executive Director

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<sup>1</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." 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>).