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Mark David Goss
Chairman

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Commissioner

July 19, 2007

Phillip Branden Gross, Esq.
Wyatt, Tarrant & Combs, LLP
250 West Main Street
Suite 1600
Lexington, Kentucky 40507-1746

Re: Red Barn Waste Management Sewage Treatment Plant

Dear Mr. Gross:

Commission Staff acknowledges receipt of your letter of April 19, 2007 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a proposed sewage collection main.

In your letter, you present the following facts: Red Barn Waste Management, LLC ("Red Barn") operates a sewage collection main system and treatment plant in Mercer County, Kentucky that serves approximately 18 customers. It is currently negotiating with Chimney Rock Marina ("Marina") to provide sewer service. This service would require the construction of a 2-inch polyvinylchloride sewer collection main to transport sewage from Marina's sewage holding tanks to Red Barn's collection system. The estimate cost of the proposed sewer main is \$14,000. Marina has agreed to pay the construction costs.

Your letter presents the following question: Must Red Barn obtain a certificate of public convenience and necessity for the proposed sewer collection main?

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.

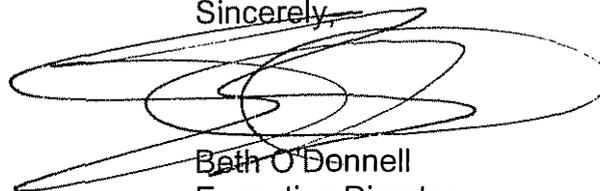
Administrative Regulation 807 KAR 5:001, Section 9(3) further provides:

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 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 2006, Red Barn had net utility plant of \$25,971.¹ The proposed construction, therefore, represents an increase of 56.2 percent in Red Barn's utility plant. Such an increase in net utility plant is not considered as within the ordinary course of business. See, e.g., City of Covington v. Board of Commissioners of Kenton County Water District No. 1, 371 S.W.2d 20 (Ky. 1963).

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. The signature is somewhat stylized and overlaps the text below it.

Beth O'Donnell
Executive Director

¹ Annual Report of Red Barn Waste Management LLC to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2006 at 4.