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February 13, 2008

Mr. James D. Sensabaugh
Laurel County Water District No. 2
3910 South Laurel Road
London, Kentucky 40744

Re: Project No. 0238-12-07-03

Dear Mr. Sensabaugh:

Commission Staff acknowledges receipt of your letter of January 25, 2008 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a proposed water main extension project in Laurel County, Kentucky.

In your letter and subsequent telephone conversation with Commission Staff, you present the following facts: Laurel County Water District No. 2, a water district organized pursuant to KRS Chapter 74, proposes to extend its water mains in Laurel County, Kentucky. This project consists of the construction of 1,000 linear feet of 4-inch polyvinylchloride water main to provide water service to no more than 5 residences. Estimated cost of this project is approximately \$5,327. Laurel County Water District No. 2 will finance the proposed project entirely from a contribution from the real estate subdivision developer. It will not issue any evidence of indebtedness nor increase its rates for water service. Laurel County Water District No. 2 had total water operating revenues of \$1,493,085 in calendar year 2006.¹

Your letter presents the following question: Must Laurel County Water District No. 2 obtain a certificate of public convenience and necessity for the proposed project?

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

¹ Annual Report of Laurel County Water District No. 2 to the Public Service Commission for the Calendar Year Ended December 31, 2006 at 27.

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, Laurel County Water District No. 2 had net utility plant of \$4,006,569. The proposed construction, therefore, represents an increase of less than 0.13 percent in Laurel County Water District No. 2'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 Laurel County Water District No. 2's existing financial condition.

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 Laurel County Water District No. 2 had annual revenues in calendar year 2006 of \$1,493,085, it is a Class A water utility.² The cost of the proposed extension is approximately \$5,327. 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 Laurel County Water District No. 2 advise Commission Staff when the proposed construction is completed. It further requests that Laurel County Water District No. 2 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.

Commission Staff advises Laurel County Water District No. 2 that fire hydrants may be installed upon the proposed water main extension only if a professional engineer with a Kentucky registration certifies that the system can provide a minimum fire flow of 250 gallons per minute and the system supporting this flow has the capability of providing this flow for a period of not less than two hours plus consumption at the maximum daily rate.

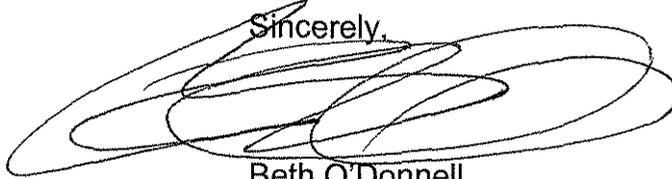
This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution.

² 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>).

James D. Sensabaugh
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Questions concerning this opinion should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and curves, positioned above the printed name.

Beth O'Donnell
Executive Director