

Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet



Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James Gardner
Vice-Chairman

John W. Clay
Commissioner

June 20, 2008

Mr. Chris Wilcutt
McGhee Engineering, Inc.
Post Office Box 267
Guthrie, Kentucky 42234

Re: East Logan Water District
Rockwell Water Project – Contract No. 1

Dear Mr. Wilcutt:

Commission Staff acknowledges receipt of your letter of May 14, 2008 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a water distribution main upgrade project in Logan County, Kentucky.

Based upon your letter and your telephone conversation with Commission Staff, Commission Staff understands the facts as follows:

East Logan Water District, a water district organized pursuant to KRS Chapter 74, provides water service to 2,793 customers in Logan County, Kentucky. It proposes to replace approximately 11,300 linear feet of existing 6-inch water distribution main with 6-inch polyvinylchloride ("PVC") water main. The existing water distribution main consists of a grey, irrigation-like pipe material that is generally considered inferior to PVC and that has contributed to significant operation and maintenance expense. East Logan Water District also proposes to construct an additional 17,300 linear feet of 6-inch PVC water main. The water main extension will permit more effective use of a water storage tank located northeast of Lewisburg, Kentucky.

Total estimated cost of the project is \$531,250. The construction cost is estimated at \$300,000. East Logan Water District plans to publish requests for proposals on May 20 and May 27, 2008, to receive proposals no later than June 5, 2008, and to begin construction in mid-July 2008. East Logan Water District will finance the cost of the project with the proceeds of a court settlement. The proposed construction will not require a rate adjustment. East Logan Water District will not issue any evidences of indebtedness.

Your letter presents the following question: Must East Logan Water District 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 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 distribution main upgrade 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, East Logan Water District had net utility

plant of \$5,390,569.¹ The proposed water distribution main upgrade represents an increase in East Logan Water District's net utility plant of 9.9 percent. While such an increase is significant, the effect of the construction on the utility's financial condition appears minimal. The utility will not incur additional debt to finance the cost of the proposed construction. The construction will increase the utility's annual depreciation expense by \$26,562.² As the utility had total utility operating income of \$102,927 for the year ending December 31, 2007,³ the increased expense will not result in the utility operating at a loss or require an immediate adjustment in the utility's rates.

In 2006 the Kentucky General Assembly 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. This Act expires on June 30, 2008.

Based upon the facts presented in your letter, Commission Staff is of the opinion that, assuming that the proposed construction commenced **prior to July 1, 2008**, the Act would exempt the proposed construction from the requirement to obtain a certificate of public convenience and necessity. As East Logan Water District had annual

¹ Annual Report of East Logan Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2007, at 7.

² Commission Staff assumes that the useful life of the proposed facilities is 20 years. We further assume that the water mains that will be replaced have been fully depreciated. If the replaced mains have not been fully depreciated, the estimated increase in annual depreciation expense will less than \$26,562.

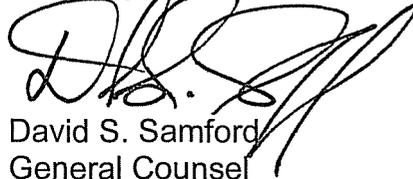
³ Annual Report of East Logan Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2007, at 11.

Mr. Chris Wilcutt
June 18, 2008
Page 4

revenues in calendar year 2007 of \$1,516,168, it is a Class A water utility⁴ and therefore falls within the class of water utilities subject to the exemption. Moreover, East Logan Water District will not as a result of the proposed construction project incur any obligations that require Commission approval pursuant to KRS 278.300. Please note, however, that as the proposed construction project will commence after June 30, 2008, the exemption established by the Act will no longer be available.

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, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. S. Samford', written over a printed name and title.

David S. Samford
General Counsel

cc: East Logan Water District

⁴ 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 and B Water Districts and Associations* at 14 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).