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August 7, 2008

Mr. David Moore  
Henderson County Water District  
P.O. Box 655  
Henderson, Kentucky 42419

Re: Water System Improvements

Dear Mr. Moore:

Commission Staff acknowledges receipt of your letter of July 24, 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 Henderson County, Kentucky.

In your letter and in a subsequent telephone conversation between Commission Staff and Brent Tippey, the following facts were presented: Henderson County Water District, a water district organized pursuant to KRS Chapter 74, proposes a water improvements project in Henderson County, Kentucky. This project consists of the construction of 77,000 linear feet of 4-inch through 8-inch polyvinylchloride water main, a booster pump station and related appurtenances. The project is intended to upgrade and improve existing water distribution mains and to provide water service to approximately 40 customers. Estimated cost of this project, including engineering, administrative and property acquisition costs, is approximately \$1,036,304. Henderson County Water District will finance the proposed project entirely with an appropriation from the General Assembly and the Kentucky Infrastructure Authority. It will not issue any evidences of indebtedness nor will it increase its rates for water service to finance the proposed project.

Your letter presents the following question: Must Henderson County 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.

Commission Staff is of the opinion that the proposed construction is 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 2007, Henderson County Water District had total utility plant of \$17,136,982 and net utility plant of \$11,599,341.<sup>1</sup> The proposed construction, therefore, represents an increase of approximately 6 percent in Henderson County Water District's gross utility plant and approximately 8.9 percent of its net 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

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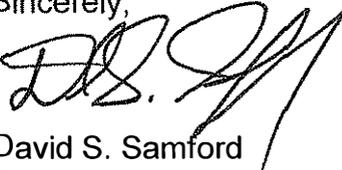
<sup>1</sup> Annual Report of Henderson County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2007 at 7.

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issuance of additional debt or any increased charges to customers, the proposed construction does not appear to materially affect Henderson County Water District's existing financial condition.<sup>2</sup>

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 horizontal line.

David S. Samford  
General Counsel

cc: Mr. Brent Tippey

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<sup>2</sup> Assuming that the proposed assets have a 20-year useful life, Henderson County Water District's annual depreciation expense will increase by \$51,815. Assuming the addition of 40 new households, each of which consumes 5,000 gallons of water monthly, approximately \$14,126.40 in additional annual revenues would be generated (40 customers x \$19.43 per month x 12 months). The project would thus result in a decrease of \$37,688.40 in Henderson County Water District's annual operating income. For the calendar year ending December 31, 2007, Henderson County Water District reported net operating income of \$143,069.