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December 1, 2008

David T. Wilson II, Esq.  
Skeeters, Bennett, Wilson, and Pike  
550 W. Lincoln Trail Blvd.  
Radcliff, KY 40160

Dear Mr. Wilson:

Commission Staff acknowledges receipt of your letter of August 29, 2008, in which Hardin County Water District No. 1 ("Hardin District") requests guidance on the assessment of fire protection fees. I apologize for the delay in responding.

Commission Staff understands the facts as follows:

A private developer is developing a 40-tract gated community in Radcliff, Kentucky. A homeowners association will privately maintain the streets within this community, but all other infrastructure will be dedicated to the appropriate utilities. The plans for the development currently provide for fire hydrants within the subdivision. Hardin District will provide water service to the gated community.

Hardin District charges a fee for a private fire line or hydrant. According to the utility's tariff, this fee recovers the cost of providing higher flow rates than would be otherwise required, as well as the cost of maintaining, testing, and replacing meters, valves, vaults, hydrants, and back-flow prevention devices associated with this service. The tariff also states that the fee shall only be charged for private fire lines and hydrants that "must be installed in a location that only provides fire protection to a private structure or building and is not available to the general public or to the local fire department for general public use."

Hardin District provides private fire line or hydrant service most commonly to large retail, commercial, or industrial properties. It also has a significant number of hydrants within its system that are located on public rights-of-way that are not treated as private hydrants. The cost of these "public hydrants" is shared by all ratepayers.

Your letter poses the following issue: Should the hydrants in this gated community development be treated as private hydrants, which would require Hardin District to charge a fee for each hydrant?

Public water utilities differ in their approaches to fire protection services.<sup>1</sup> Some utilities do not provide public fire protection service but will install and maintain fire hydrants for a fee for public authorities and private users. Others will install and maintain fire hydrants for no charge and recover the cost of installation and maintenance through general service rates. Others install and maintain at no charge fire hydrants that will be available for public use, but assess a fee for hydrants and fire protection mains that serve only private users..

Hardin District's Private Fire Line or Hydrant Fee is designed to recover the cost of fire protection service whose coverage is limited to one structure or affiliated structures from that structure's owner rather than from all ratepayers.<sup>2</sup> In general, a gated community limits access to its subdivision. Property owners in these closed subdivisions are typically bound by strict homeowners' requirements, which are not enforceable for areas outside of the gated communities. As such, Commission Staff is of the opinion that fire hydrants within a gated community fall within the designed purpose of the private hydrant fees because the fire protection coverage is limited to a narrow class of customers. If there are no buildings or facilities in the general vicinity of the gated community that could benefit from the existence of hydrants in the subdivision, the fire hydrants may not be considered as being available to the public.

KRS 95.500, which states that the chief of a fire department in cities of the second class "shall have access to and use of . . . the waters of the waterworks," does not alter this analysis. While Hardin District's tariff excludes hydrants that are "available to the general public or to the local fire department for general public use" from the private hydrant fee, Commission Staff interprets the tariff language "for general public use" to limit the scope of the exclusion in relation to geographical proximity of the private hydrant to a structure outside the effective coverage area of the hydrant. To hold otherwise would require us to interpret KRS 95.500 as prohibiting a water utility from providing private fire protection for a fee in cities of the second class or within a fire protection district.<sup>3</sup> Such a result is not reasonable.

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<sup>1</sup> For a discussion of the fire protection practices of public utilities within the Commission's jurisdiction, see *Final Staff Report on Water Utility Responses to Commission Interrogatories* (Dec. 7, 2001) (filed in Administrative Case No. 385, [An Investigation into Fees for Fire Protection Services](#) (Ky. PSC)).

<sup>2</sup> See Letter from Thomas M. Dorman, Executive Director, Public Service Commission, to David T. Wilson II, Attorney for Hardin County Water District No. 1 (Sept. 20, 2002).

<sup>3</sup> KRS 75.180.

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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 Todd Osterloh, Staff Attorney, at (502) 564-3940, Extension 439.

Sincerely,

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

David S. Samford  
General Counsel/Deputy Executive Director