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March 3, 2009

Mr. James C. Thompson  
110 Delaney Ferry  
Versailles, Kentucky 40383

Re: Water System Extension

**PSC STAFF OPINION 2009-002**

Dear Mr. Thompson:

Commission Staff acknowledges receipt of your letter of February 17, 2009 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 Bath County, Kentucky.

Commission Staff understands the facts as follows: Bath County Water District, a water district organized pursuant to KRS Chapter 74, proposes to install approximately 16,000 linear feet of 3-inch polyvinylchloride water distribution main in Menifee County, Kentucky to serve approximately 15 unserved residences.<sup>1</sup> No water utility is presently providing water service in the general vicinity of proposed distribution main. Bath County Water District has contracted for the construction of the proposed distribution main at a cost of approximately \$70,000. Total cost of the proposed extension is approximately \$101,000. Bath County Water District will finance the proposed project entirely with an appropriation of \$225,231 from the General Assembly and the Kentucky Infrastructure Authority.<sup>2</sup> 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 Bath 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,

<sup>1</sup> For purposes of the Water Resource Information System, the Kentucky Infrastructure Authority has designated this project as Project No. WX21165012.

<sup>2</sup> 2008 Kentucky Acts Ch. 191 (HB 608).

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, Bath County Water District had total utility plant of \$13,460,296.<sup>3</sup> The proposed construction, therefore, represents an increase of approximately 0.7 percent in Bath County Water District's gross utility plant. Such a small increase in 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 Bath County Water District's existing financial condition.<sup>4</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

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<sup>3</sup> Annual Report of Bath County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2007 at 7.

<sup>4</sup> Assuming that the proposed assets have a 20-year useful life, Bath County Water District's annual depreciation expense will increase by \$5,050. Assuming a monthly usage of 5,000 gallons for each new residence that the proposed extension will service, Bath County Water District will receive additional annual revenues of \$4,798 and incur additional expenses (exclusive of depreciation for new facilities) of \$3,877. When the annual depreciation for the new facilities is considered, the new facilities will decrease Bath County Water District's annual operating income by \$4,129. For the calendar year ending December 31, 2007, Bath County Water District reported total operating income of \$85,523.

James C. Thompson  
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Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Commission counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen". The signature is fluid and cursive, with the first name "Jeff" being more prominent than the last name "Derouen".

Jeff Derouen  
Executive Director