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April 13, 2009

Brendon D. Miller, Esq.  
1149 Main Street  
Jackson, Kentucky 41339

Re: Water Main Extensions

**PSC STAFF OPINION 2009-004**

Dear Mr. Miller:

Commission Staff acknowledges receipt of your letter of March 10, 2009 regarding two proposed water main extension projects in Breathitt County, Kentucky.

Commission Staff understands the facts as follows:

Breathitt County Water District ("Breathitt District"), a water district organized pursuant to KRS Chapter 74, proposes to undertake two water main extension projects.

The Highway 30 West Waterline Extension Project involves the construction of 8.5 miles of primarily 8-inch water distribution main in Breathitt County, Kentucky to serve approximately 79 unserved residences.<sup>1</sup> Based upon bids that have been received, Breathitt District estimates the cost of construction, excluding contingencies and legal, engineering, and other fees, to be \$570,000. Total cost of this project is estimated to be \$750,000.

The Canoe Project involves installation of 2.83 miles of mostly 8-inch water distribution main to serve to approximately 56 households in Breathitt County.<sup>2</sup> The total estimated cost of the project is \$345,479. Based upon bids that have been received, Breathitt District estimates the cost

<sup>1</sup> For purposes of the Water Resource Information System (WRIS), the Kentucky Infrastructure Authority ("KIA") has designated this project as Project No. WX21025011.

<sup>2</sup> For WRIS purposes, KIA has designated this project as Project No. WX21025021.

of construction, excluding contingencies and legal, engineering, and other fees, to be \$250,000.

Total cost of both projects is not anticipated to exceed \$1,095,749. Breathitt District will finance both proposed projects entirely with appropriations from the General Assembly and the Kentucky Infrastructure Authority that have been made to Breathitt County Fiscal Court.<sup>3</sup> It will not issue any evidences of indebtedness nor will it increase its rates for water service to finance the proposed projects.

Your letter presents the following question: Must Breathitt County Water District obtain a certificate of public convenience and necessity for either of the proposed projects?

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.

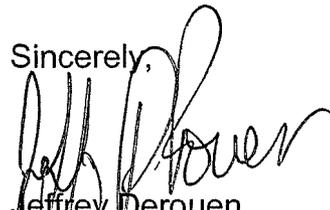
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<sup>3</sup> During the 2008 Regular Session, the General Assembly appropriated funds to Breathitt County Fiscal Court for the Highway 30 West Waterline Extension Project in House Bill 608. See 2008 Kentucky Acts Ch. 191. Appropriations for the Canoe Project were made in the same session in House Bill 410. See 2008 Kentucky Acts Ch. 123. See also <http://wris.ky.gov/KIAProjWeb/> (last visited Apr. 13, 2009).

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 2008, Breathitt District had total utility plant of \$13,881,781.<sup>4</sup> The proposed construction projects, therefore, represent an increase of approximately 7.9 percent in Breathitt District's gross utility plant. Such an increase in-utility plant is generally 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 projects 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 Breathitt District's existing financial condition.<sup>5</sup>

This letter represents Commission Staffs 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 Virginia Gregg, Staff Attorney, at (502) 564-3940, Extension 407.

Sincerely,



Jeffrey Derouen  
Executive Director

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<sup>4</sup> Annual Report of Breathitt County Water District to the Public Service Commission for the Calendar Year Ended December 31,2008 at 7.

<sup>5</sup> Breathitt District reports that the proposed facilities will have a 40-year service life. Assuming such a service life, Breathitt District's annual depreciation expense will increase by no more than \$27,394. Assuming a monthly usage of 3,000 gallons for each new residence that the proposed extension will service, Breathitt District will receive additional annual revenues of \$48,357 and incur additional operating expenses (purchased power and purchased water) of \$15,795. When the annual depreciation for the new facilities is considered, the new facilities will increase Breathitt District's annual operating income by \$5,168 (\$48,357 - (\$15,795 + \$27,394)). For the calendar year ending December 31, 2008, Breathitt District had total utility operating income of (\$372,719).