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May 8, 2009

Lindsey W. Ingram
Stoll Keenon Ogden
300 West Vine Street
Suite 2100
Lexington, Ky 40507-1801

PSC STAFF OPINION 2009-005

Re: Advisory Letter in Case No. 2007-00134

Dear Mr. Ingram:

Commission Staff acknowledges receipt of your letter of May 4, 2009 in which you request a Staff advisory opinion on behalf of Kentucky-American Water Company ("KAWC"). Commission Staff also acknowledges the Kentucky Transportation Cabinet ("KYTC") letter of April 10, 2009 and the letter from KAWC to KYTC dated February 16, 2009, both of which accompanied your letter of May 4, 2009.

Based upon these letters, the Commission Staff understands the facts as follows:

On April 25, 2008, the Commission issued a Certificate of Public Convenience and Necessity ("CPCN") in Case No. 2007-00134 permitting KAWC to build a new water facility, transmission line and associated facilities at Pool 3 of the Kentucky River. The CPCN was granted based on construction plans submitted by KAWC. Installation of the pipeline was commenced after KAWC received an encroachment permit from KYTC for work along the roadways set out in the construction plans.

The original encroachment permit issued by the KYTC limited road closures to one lane only. The permit application was issued after the Commission granted the CPCN and after the project had been bid. After KAWC awarded the contract, the contractor identified several concerns about permit limitations. Based on safety concerns, KAWC requested KYTC reconsideration of the encroachment permit to allow road closures which had not been previously requested in KAWC's original encroachment permit application.

KYTC has expressed concerns that KAWC's request for road closures may constitute a material change in the project approved in the CPCN. As a result, KYTC instructed KAWC to obtain approval from the Commission.

As such, the Commission Staff interprets these letters as presenting the following question:

Whether KAWC's road closure request is a material change from the construction project approved by the Commission when it granted KAWC a CPCN for the project.

Paragraph 3 of the Commission's Order authorizing the CPCN in Case No. 2007-00134 states "[a]ny material deviation from the construction approved shall be undertaken only with prior approval of the Commission."

Having reviewed the Commission's Order, the request submitted by KAWC to KYTC, and the application submitted in Case No. 2007-00134, the Commission Staff is of the opinion that the request for road closures does not represent a deviation and, therefore, does not violate Paragraph 3 of the Commission's Order. The Commission, in granting the CPCN, determined that the route selected by KAWC was reasonable¹ and that construction of the facilities was a reasonable solution to KAWC's water supply and treatment capacity deficits.

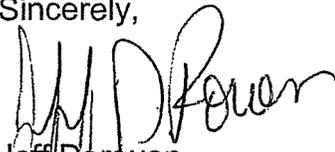
The road closures in question are along the route approved by the Commission in its April 25, 2008 Order. In the opinion of Commission Staff, KAWC's request to change the terms of its encroachment permit does not constitute a material change in the CPCN issued by the Commission. Moreover, it appears that granting the encroachment permit amendment may alleviate some of the frustrations of local residents by allowing KAWC to complete this portion of the project more quickly. Of course, the Commission Staff realizes that KYTC has sole discretion in the encroachment permitting process.

¹ Findings of Fact and Conclusions of Law paragraph 15 states "[t]he transmission main and attendant storage and booster pump facilities proposed by Kentucky-American are appropriately sized and by taking advantage of the existing rights-of-way, the route selected by Kentucky-American is reasonable.

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This letter represents the Commission Staff's interpretation of the law as applied to the facts presented. The 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 Helen Helton, General Counsel, at 502. 564.3940 ext. 244.

Sincerely,



Jeff Derouen
Executive Director

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Copies to Parties of Record