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Commonwealth of Kentucky
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

July 13, 2009

Mr. William Ballard
East Clark County Water District
Post Office Box 112
Winchester, Kentucky 40392-0112

Re: East Clark County Water District

PSC STAFF OPINION 2009-00007

Dear Mr. Ballard:

Commission Staff acknowledges receipt of your letter of July 2, 2009 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a proposed water improvements project in Clark County, Kentucky.

In your letter and a telephone conversation with Commission Staff, you present the following facts: East Clark County Water District, a water district organized pursuant to KRS Chapter 74, proposes to replace and extend certain water mains in Clark County, Kentucky. It proposes the replacement of approximately 6,700 linear feet of 3-inch water main along Schollsville Road in Clark County with 6-inch polyvinylchloride ("PVC") water main and the construction of approximately 6,500 linear feet of 4-inch PVC water main along Mina Station and Stewarts Mill Roads in Clark County. Estimated cost of this project is \$523,000. East Clark County Water District will finance the proposed project with a \$525,000 appropriation from the Kentucky General Assembly.¹ It will not issue any evidences of indebtednesses nor increase its rates for water service. The proposed construction will not conflict with service of other public utilities operating in the same area.

Your letter presents the following question: Must East Clark 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

¹ 2008 Ky. Acts 191. The project is referenced in this Act as WX21049021.

Mr. William Ballard

July 13, 2009

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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.

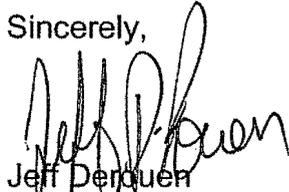
Administrative Regulation 807 KAR 5:001, Section 9(3) further provides:

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 proposed construction does not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2008, East Clark County Water District had utility plant of \$10,672,669.² The proposed construction, therefore, represents an increase of approximately 4.91 percent in East Clark County Water District's utility plant. Such an increase in utility plant is generally considered 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, the proposed construction will not require the issuance of any evidence of indebtedness; result in any increase in the water district's rates, or conflict with the existing certificates or services of other jurisdictional utilities.

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 Gerald Wuetcher, Executive Advisor, at (502) 564-3940, Extension 259.

Sincerely,


Jeff Derouen
Executive Director

² Annual Report of East Clark County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2008 at 13.

**EAST CLARK COUNTY WATER DISTRICT
P.O. BOX 112
WINCHESTER, KY 40392
859-745-1458**

RECEIVED

JUL 08 2009

PUBLIC SERVICE
COMMISSION

July 2, 2009

Executive Director
Mr. Jeff Derouen
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

Dear Mr. Derouen:

This letter is to request a legal opinion from the Public Service Commission with regards to a certificate of convenience and necessity for a proposed construction project.

The East Clark County Water District is proposing a project to replace a 3" water line on Schollsville Road with a 6" water line. The district would also bore under the Mountain Parkway to loop this part of the system. The district would also loop the Mina Station Road back to KY 89. Final section of work is an extension to Stewarts Mill Road.

The total projected cost of the project is approximately \$522,000. The project is being funded by a \$525,000 grant from the KY General Assembly House Bill 608 of the 2008 Session.

The construction will not result in a rate increase to East Clark County Water District customers.

Public Service Commission 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.

According to its Annual Report for Calendar Year 2008, East Clark County Water District had net utility plant of \$7,722,390. The proposed construction therefore, represents an increase of approximately 6.76 percent in East Clark County Water District utility plant.

East Clark County Water District will be seeking bids for this project soon, therefore the District is requesting expedited response.

Your assistance in this matter is greatly appreciated. If you have questions, or need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "William Ballard".

William Ballard, Manager
East Clark County Water District

Schollsville Road, Mina Station
Stewarts Mill

Opinion of Probable Costs
Construction Only

Schollsville Road	\$237,850
Mina Station	\$94,250
Stewarts Mill	\$42,400
	\$374,500

Schollsville Road, Mina Station
Stewarts Mill

Opinion of Probable Costs
Total Project

Administration	\$11,235
Legal	\$7,490
Land, Appraisals, Easements	\$20,000
Relocation Expense	\$0
Planning	\$0
Engineering Fees-Design	\$32,477
Engineering Fees-Construction	\$8,119
Engineering Fees-Inspection	\$30,709
Construction	\$374,500
Equipment	\$0
Subtotal	\$484,530
Contingencies	\$37,450

Total \$521,980

* Calculated from RD Design and Inspection Fees