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August 7, 2009

Mr. Hank Stanfield  
South 641 Water District  
P.O. Box 126  
Hazel, KY 42049

**PSC STAFF OPINION 2009-009**

Re: South 641 Water District Construction Project

Dear Mr. Stanfield:

Commission Staff acknowledges receipt of your letter of June 4, 2009, in which you request an opinion regarding whether South 641 Water District needs approval from the Commission for construction projects to its sewer facility.

In your letter, telephone conversations, and e-mails with Commission Staff, you present the following facts: South 641 Water District, a water district organized pursuant to KRS Chapter 74, is planning construction projects to its sewer facility. The proposed construction will be completed in two phases. Phase I will consist of improvements to the waste water treatment facility and lift station construction, and its initial estimated cost is approximately \$365,000 with contingencies. The project's cost will likely be reduced by approximately \$50,000 because the initial estimate included funding for ground water protection and subsequent studies have indicated that no protective measures will be necessary. Phase II will consist of sewer rehabilitation, including slip lining of old sewer lines, to reduce inflow and infiltration. This second phase is estimated to cost approximately \$479,000 with contingencies. Both projects will be funded by various grants, including a Community Development Block Grant of \$440,000, an EPA Special Appropriations Grant of \$240,600, and KIA grant funds from House Bills 380 and 608 in the amount of \$260,000.

Your letter presents the following question: Must South 641 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 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.

At least one Kentucky court decision has interpreted the exception to the certificate requirement for ordinary extensions. See, City of Covington v. Bd. of Commissioners of Kenton County Water Dist. No. 1, 371 S.W.2d 20 (Ky. 1963). In City of Covington, Kentucky's highest court determined that a proposed project that would double a utility's service capacity and increase its plant value by 40% "is not an 'ordinary' one [extension] in the contemplation of KRS 278.020." Id. at 22.

According to its Annual Report for the Calendar Year 2008, South 641 Water District had an original sewer plant value of \$410,657. At a cost of \$315,000, Phase I would represent an increase of 77% of the utility's current sewer net plant.<sup>1</sup> Phase II's cost of \$479,000 would represent an increase of 66% of the utility's sewer plant plus the Phase I project costs. Both phases of the proposed project represent an increase of 193% in South 641 Water District's utility plant. Such an increase in utility plant is not considered ordinary under the analysis of City of Covington.

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.

South 641's proposed project involves sufficient capital outlay to materially affect the existing financial condition of the utility involved and could result in increased charges to its customers. The approximate cost of \$794,000 would be added to the plant value and depreciated based on the average service lifetime of the various components. Without knowing more details of the project, it is impossible to identify the term of depreciation for the entire project. Lagoon facilities have an average lifetime of 5-20

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<sup>1</sup> This percentage is derived using the total costs of both projects less \$50,000 that was initially estimated to be used for ground water protection but that is unlikely to be spent after subsequent studies have demonstrated that such measures are unnecessary.

Mr. Hank Stanfield

August 3, 2009

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years. Lift station pumps average 7 years of useful life. Most other components' useful life would range from 5-50 years.

Even if the analysis was based on an extremely ambitious useful life of 50 years for the components, this would add approximately \$16,000 to the annual depreciation costs of South 641. South 641's recorded depreciation for the 2008 calendar year was only \$8,697. A nearly three-fold increase in annual depreciation would have a material impact on the financial condition of the utility and could support increased rates. See Pub. Serv. Comm'n v. Dewitt Water Dist., 720 S.W.2d 725, 732 (Ky. 1986)(holding that depreciation should be allowed to be collected on facilities acquired without cost to the public water district in its rates).

Accordingly, Commission Staff is of the opinion that the proposed construction will require a certificate of public convenience and necessity. 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 to the Commission for resolution. Questions concerning this opinion should be directed to Todd Osterloh, Staff Attorney, at (502) 564-3940, extension 439.

Sincerely,



David S. Samford  
Deputy Executive Director



## South 641 Water District

PO Box 126, Hazel, KY 42049  
(270)492-8857

June 4, 2009

Jeff Devron, Executive Director  
Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40602

Dear Jeff,

My name is Hank Stanfield, and I work with South 641 Water District in Hazel, KY. I am writing you this letter to inform you of some construction to our waste water lagoon and lift station. I need to know if there is anything we need to do, or any approval we need from PSC (I was told we may need a CPCN).

We are receiving grant money for the construction project therefore it is not going to affect our rates to the customer. We are just about ready to start taking bids so if there are any requirements that need to be met with PSC, please let me know as soon as possible.

We are planning to build a new Influent lift station and change over the chlorination system at the lagoon along with some modifications to the contact chamber, and the way we measure the stream.

Again, please let me know as soon as possible. I can be reached at (270)492-8857 (office), (270)293-0117 (cell), or by email at [so641@wtk.net](mailto:so641@wtk.net).

Thank You,

Hank Stanfield