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January 26, 2010

Mr. Joseph F. Sisler
Sisler-Maggard Engineering, PLLC
220 East Reynolds Road, Suite A3
Lexington, Kentucky 40517

Re: Big Sandy Water District

PSC STAFF OPINION 2010-003

Dear Mr. Sisler:

Commission Staff acknowledges receipt of your letter of January 20, 2010 on behalf of Big Sandy Water District in which you request an opinion regarding the need for a certificate of public convenience and necessity for a proposed water improvement project in Boyd and Lawrence Counties, Kentucky and a reduction in the water district's tap/connection fee.

In your letter, you present the following facts: Big Sandy Water District, a water district organized pursuant to KRS Chapter 74, proposes to rehabilitate, replace or extend its water mains along State Route 3 in Lawrence County, Kentucky and construct a stream crossing in Boyd County, Kentucky. This project consists of the construction of approximately 7,900 linear feet 4-inch polyvinylchloride ("PVC") water main, 400 linear feet of 4-inch ductile iron water main, 46,650 feet of 3-inch PVC water main, and 3,500 linear feet of 2-inch PVC water main. It is expected to extend water service to approximately 54 customers. Estimated project construction cost, excluding administrative, legal, and engineering fees, is \$669,150. Other costs are currently budgeted at \$250,000. Big Sandy Water District intends to finance the proposed project with a \$1,000,000 in grants from the Kentucky Infrastructure Authority and the Kentucky Division of Abandoned Mine Lands. It will not issue any evidences of indebtedness nor increase its rates for water service. The proposed construction will not conflict with service of other utilities operating in the same area and under Commission jurisdiction.

Your letter presents the following question: Must Big Sandy Water District 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.

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 is an ordinary extension in the usual course of business and will not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2008, Big Sandy Water District had total utility plant of \$16,416,063.¹ The proposed construction, therefore, represents an increase of approximately 5.6 percent in Big Sandy Water District's utility plant. Such an increase in utility plant is generally considered an extension in the ordinary course.² Moreover, the proposed construction will not result in any increase in the water district's rates, conflict with the existing service of other jurisdictional utilities or require the issuance of evidences of indebtedness.

In your letter, you also indicate that Big Sandy Water District wishes to reduce its tap/connection fee from \$835 to \$625 for persons who connect to the proposed extension during the course of construction. As KRS 278.160 requires a utility to

¹ *Annual Report of Big Sandy Water District to the Public Service Commission for the Calendar Year Ended December 31, 2008* at 13.

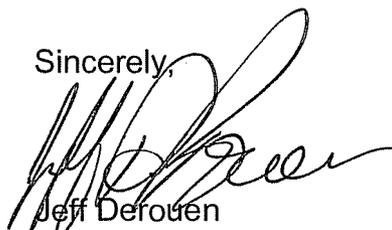
² See, e.g., *City of Covington v. Board of Commissioners of Kenton County Water District No. 1*, 371 S.W.2d 20 (Ky. 1963).

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charge only the rates that are set forth in its filed rate schedules, Big Sandy Water District cannot assess a lower fee unless it amends its filed rate schedule. The Public Service Commission has previously allowed a water district to reduce its meter connection fee for connections to a water main while under construction based upon the premise that the cost of connection to a water main is significantly less while the water main is under construction. See, e.g., *Wood Creek Water District*, Case No. 2006-00497 (Ky.PSC June 1, 2007). Commission Staff recommends that Big Sandy Water District submit as soon as possible a revised rate schedule that contains the proposed reduced meter connection fee for the project and provide supporting evidence for the reduced fee.

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 for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Executive Advisor/Attorney, at (502) 564-3940, Extension 259.

Sincerely,



Jeff Derouen
Executive Director

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