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May 4, 2010

Mr. James C. Thompson  
Kentucky Engineering Group, PLLC  
Post Office Box 1034  
Versailles, Kentucky 40383

Re: Bath County Water District

**PSC STAFF OPINION 2010-008**

Dear Mr. Jones:

Commission Staff acknowledges receipt of your letter of April 14, 2010 in which you request an opinion on behalf of Bath County Water District regarding the need for a certificate of public convenience and necessity for a proposed interconnection with the city of Frenchburg, Kentucky.

In your letter, you present the following facts: Bath County Water District, a water district organized pursuant to KRS Chapter 74, proposes to construct a connection to the City of Frenchburg water system.<sup>1</sup> This project consists of the construction of approximately 4,805 linear feet 6-inch polyvinylchloride ("PVC") water main, 2,510 feet of 3-inch PVC water main, and related appurtenances. The project is intended to ensure an emergency source of water for both water systems. No new customers will result from the construction. Estimated cost of this project, including construction contingency, design costs, engineering construction and resident inspection services costs, and administration fees, is \$171,877. Bath County Water District intends to finance the proposed project with a \$206,250 appropriation from the General Assembly.<sup>2</sup> The water district does not intend to 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 Bath County Water District obtain a certificate of public convenience and necessity for the proposed project?

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<sup>1</sup> The Water Resource Information System has assigned the proposed construction Project Number WX21011017.

<sup>2</sup> 2008 Ky. Acts Chapter 191.

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 extension in the ordinary course and will not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2009, Bath County Water District has a utility plant of \$14,404,261.<sup>3</sup> The proposed construction, therefore, represents an increase of approximately 1.19 percent in Bath County Water District's utility plant. Such an increase in utility plant is generally considered an extension in the ordinary course.<sup>4</sup> Moreover, as 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 any debt, it does not appear to materially affect the financial condition of a utility.

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

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<sup>3</sup> *Annual Report of Bath County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2008* at 13.

<sup>4</sup> See, e.g., *City of Covington v. Board of Commissioners of Kenton County Water District No. 1*, 371 S.W.2d 20 (Ky. 1963).

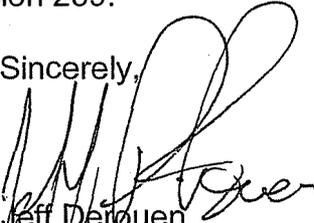
Mr. James C. Thompson

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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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