



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

June 22, 2010

Mr. Riley Sumner
Kentucky Engineering Group, PLLC
P.O. Box 1034
Versailles, KY 40383

Dear Mr. Sumner:

PSC STAFF OPINION NO. 2010-011

Commission Staff is in receipt of your letter of May 10, 2010, regarding the need for a certificate of public convenience for two construction projects by Martin County Water District ("Martin District").

In your letter, you present the following facts: Martin District is planning two construction projects for its water system. The first project will replace and upgrade existing water mains and service lines, construct approximately 7,000 feet of 3-inch water main to serve new customers, and construct approximately 9,800 feet of water main to loop two sections of Martin District's system. The utility will replace deteriorating water lines to reduce line loss and replace smaller lines with larger lines to improve the hydraulics of the system. The estimated cost for this project is \$684,010. In a second project, Martin District will replace an undersized 150,000 gallon water tank with a 500,000 gallon tank. The estimated cost for this project is \$536,491.

Martin District will fund both projects through coal severance funding in the amount of \$1,500,000. Martin District will not issue any evidences of indebtedness or securities to finance any portion of the construction nor does it intend to adjust existing rates for water service. The proposed facility will not compete with the water service that other utilities presently provide.

Your letter poses the following issue: Is Martin District required to obtain a certificate of public convenience and necessity for the proposed waterline extension?

KRS 278.020(1) provides:

No person, partnership, public or private corporation, or combination thereof shall 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 such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such 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.

Based upon the facts presented in your letter, Commission Staff is of the opinion that the proposed construction is an extension in the ordinary course of business and does not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2009, Martin District had total net utility plant of \$19,108,413.¹ The proposed projects, therefore, represent an increase of 2.8 percent and 3.58 percent in Martin District's utility plant. Such increase is generally considered ordinary. See, e.g., *City of Covington v. Bd. of Comm'rs of Kenton County Water Dist. No. 1*, 371 S.W.2d 20 (Ky. 1963). Moreover, the proposed construction will not require an increase in utility rates, materially affect the financial condition of the utility, or conflict with other utilities operating in the same area.

Recent legislative action further supports Commission Staff's position that the proposed construction does not require a certificate of public convenience and necessity. In its recent extraordinary session, the Kentucky General Assembly enacted legislation that provides:

Water Districts and Water Associations: A water district created pursuant to KRS Chapter 74 and a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity, notwithstanding KRS 278.020(1), if the water district or water association is a Class A or B utility as defined in the Uniform System of Accounts established by the Public Service

¹ Annual Report of Martin County Water District to the Kentucky Public Service Commission for the Calendar Year Ending December 31, 2009 at 7.

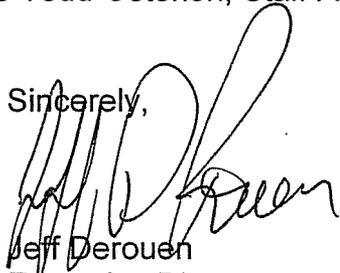
Commission, pursuant to KRS 278.220, as the system of accounts prescribed for utilities in Kentucky, and either: (a) The water line extension or improvement project will not cost in excess of \$500,000; or (b) The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring Public Service Commission approval pursuant to KRS 278.300. In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers.

2010 Ky. Acts 1st Spec. Sess. Ch. 1. This Act becomes effective on July 1, 2010.

As Martin District had annual revenues in calendar year 2009 of \$1,862,263, it is a Class A water utility² and falls within the class of water utilities subject to the exemption. If the proposed construction projects are not scheduled to commence until after July 1, 2010 and Martin District will not as a result of the proposed construction project incur any obligations that require Commission approval pursuant to KRS 278.300 or a rate adjustment, the Act expressly exempts the proposed construction from any requirement to obtain 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 for Commission resolution. Questions concerning this opinion should be directed to Todd Osterloh, Staff Attorney, at (502) 564-3940, Extension 439.

Sincerely,



Jeff Derouen
Executive Director

² The Kentucky Public Service Commission's Uniform System of Accounts defines a Class A water utility as a utility "having annual water operating revenues of \$750,000 or more." *Uniform System of Accounts for Class A and B Water Districts and Associations* at 14 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).