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July 28, 2010

Mr. Jeffrey L. Lee  
Lee Engineering, LLC  
P.O. Box 500  
Lawrenceburg, Kentucky 40341

Re: Judy Water Association

**PSC STAFF OPINION 2010-017**

Dear Mr. Lee:

Commission Staff acknowledges receipt of your letter of May 14, 2010 in which you request on behalf of Judy Water Association an opinion regarding the need for a certificate of public convenience and necessity to construct and install a water distribution main extension in Montgomery County, Kentucky.

Based upon your letter and your telephone conversation with Commission Staff, Commission Staff understands the facts as follows:

Judy Water Association, a water association organized pursuant to KRS Chapter 273, provides water service to 1,837 customers in Bath, Bourbon, Clark, Montgomery and Nicholas Counties, Kentucky. It proposes to install approximately 13,789 linear feet of 4-inch polyvinylchloride ("PVC") water main and 2,762 linear feet of 3-inch PVC water main along Rogers Mills, Cecil, Oldson and White & Turley Roads in Montgomery County.<sup>1</sup> Two additional customers will be added as a result of the proposed extension. The primary purpose of the extension is to loop existing water distribution mains and thus improve water pressure and the reliability of water service to existing customers.

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<sup>1</sup> The Kentucky Water Resource Information System identifies this project as Project No. WX21173079. See <http://wris.ky.gov/portal/DwPrjData.aspx?PNUM=WX21173079> (last visited July 27, 2010).

Total estimated cost of the project, including engineering, legal and equipment expenses and contingencies is \$175,000. It will finance the cost of the project with an appropriation from the General Fund.<sup>2</sup> The proposed construction will not require a rate adjustment. Judy Water Association will not issue any evidences of indebtedness to finance the proposed construction.

Your letter presents the following question: Must Judy Water Association 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.

Under the method of analysis that Commission Staff has historically employed, the construction of the proposed water distribution main upgrade appears to be in the ordinary course of business and would not require a certificate of public convenience and necessity. According to its Annual Report, Judy Water Association currently has

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

total utility plant of \$8,980,582.<sup>3</sup> The proposed water distribution main upgrade represents an increase in Judy Water Association's net utility plant of 1.94 percent. Such an increase in total utility plant is considered as 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, as the funds for the proposed construction will not require the issuance of additional debt or any adjustment in rates, the proposed construction does not appear to materially affect Judy Water Association's existing financial condition.

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 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 became effective on July 1, 2010.

Since the proposed construction will not cost in excess of \$500,000, nor require Judy Water Association to incur obligations requiring Commission approval pursuant to KRS 278.300, the Act would exempt the proposed construction from the requirement to obtain a certificate of public convenience and necessity. As Judy Water Association had annual revenues in calendar year 2009 of \$1,187,998, it is a Class A water utility<sup>4</sup> and falls within the class of water utilities subject to the exemption.

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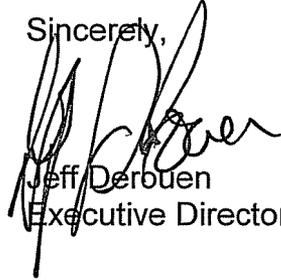
<sup>3</sup> *Annual Report of Judy Water Association to the Kentucky Public Service Commission for the Year Ended December 31, 2009*, at 13.

<sup>4</sup> 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>).

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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 Derbuen  
Executive Director