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Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
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David L. Armstrong  
Chairman

James Gardner  
Vice Chairman

John W. Clay  
Commissioner

September 2, 2010

Mr. Chris A. Stewart  
HMB Professional Engineers, Inc.  
3 HMB Circle, U.S. 460  
Frankfort, Kentucky 40601

**PSC STAFF OPINION 2010-020**

Re: Western Lewis-Rectorville Water & Gas District  
HMB Project No. 4144.00

Dear Mr. Stewart:

Commission Staff acknowledges receipt of your letter of July 23, 2010, in which you request an opinion regarding the need for a certificate of public convenience and necessity for the construction of a new office building and a water line replacement project in Lewis County, Kentucky.

Based upon your letter and subsequent communications, Commission Staff understands the facts as follows:

Western Lewis-Rectorville Water & Gas District ("WLR"), a water district organized pursuant to KRS Chapter 74, provides water service to approximately 2,200 customers in Lewis and Mason counties, Kentucky. It proposes to replace and upgrade approximately 3,500 feet of 4-inch and 6,700 feet of 3-inch polyvinylchloride water main along Dearing Lane in Lewis County and along Hilltop Circle, Crestview Drive, Locust Drive, KY 1237, Overlook Lane, Kennedy Creek Road, KY 1449, KY 10, and Kansas Creek Road in Mason County. WLR also proposes to construct a new office building at 8044 KY Hwy 3161 in Maysville.

These projects are estimated to cost \$598,685.52. Of this amount, the water main replacement and upgrade project is estimated to cost \$257,372.47 and the new office

building is estimated to cost \$341,313.05. WLR proposes to pay for the projects with grant funding from the Kentucky Infrastructure Authority in the amount of \$735,000. WLR will not issue any evidences of indebtedness, and the proposed construction will not require a rate adjustment.

Your letter presents the following question: Must WLR 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 projects appear to be in the ordinary course of business and would not require a certificate of public convenience and necessity. According to its Annual Report, WLR had total water utility plant of \$10,554,707.<sup>1</sup> The proposed water line replacement and new office building projects represent an increase in WLR's total water utility plant of 5.7 percent. Individually, the projects represent an increase in WLR's total water utility plant of 2.4 percent and 3.2 percent, respectively. Such small

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<sup>1</sup> Annual Report of Western Lewis-Rectorville Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2009, at 7.

increases in utility plant are 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, the effect of the construction on the utility's financial condition appears minimal. The utility will not incur additional debt to finance the cost of the proposed construction, nor will the project require an immediate adjustment in the utility's rates.

Recent legislative action further supports Commission Staff's position that the proposed projects do not require a certificate of public convenience and necessity.<sup>2</sup> In its recent extraordinary session, the Kentucky General Assembly enacted legislation that provides:

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.

As WLR had annual water revenues in calendar year 2009 of \$720,496, it is a Class B water utility<sup>3</sup> and falls within the class of water utilities subject to the exemption. Because the proposed projects are not scheduled to commence until after July 1, 2010 and WLR will not as a result of the proposed construction projects incur any obligations

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<sup>2</sup> Based on the description of the projects, it would appear that the water line extension and construction of a new office building are independent and should be considered separately. To compare projects that are dependant and require join consideration of convenience and necessity, see Case No. 9021, *Oldham County Water Dist.* (Ky. PSC Oct. 23, 1984) (finding that construction of water mains, storage facilities, and pumping stations are "interdependent" and should not be considered separately).

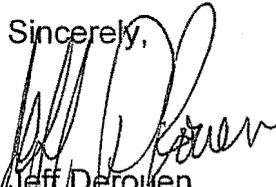
<sup>3</sup> The Kentucky Public Service Commission's Uniform System of Accounts defines a Class A water utility as a utility "having annual water operating revenues of \$250,000 or more but less than \$750,000." National Association of Regulatory Utility Commissioners, *Uniform System of Accounts for Class A and B Water Districts and Associations* at 14 (2002), available at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>.

Mr. Chris Stewart  
September 2, 2010  
Page 4

that require Commission approval pursuant to KRS 278.300 or a rate adjustment, the Act expressly exempts the proposed projects from any requirement to obtain a certificate of public convenience and necessity.<sup>4</sup>

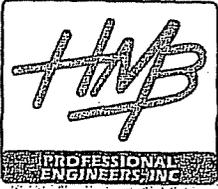
We also note that 807 KAR 5:003 requires a utility to file updated information, including its address, within ten days of the change. When WLR moves to its new office building, WLR should comply with the regulatory requirements.

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

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<sup>4</sup> The Commission has implicitly determined that the scope of the provisions in this Act potentially include the construction of office buildings. See Case No. 2007-00301, *Bracken County Water District*, at 1 n.3 (Ky. PSC July 31, 2007).



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July 21, 2010

Mr. Jeff Derouen, Executive Director  
 Kentucky Public Service Commission  
 PO Box 615  
 211 Sower Blvd.  
 Frankfort, KY 40602-0615

RECEIVED  
 JUL 23 2010  
 PUBLIC SERVICE  
 COMMISSION

RE: Western Lewis-Rectorville Water & Gas District  
 Water System Improvements Project/New Office Building  
 HMB Project No. 4144.00

Dear Mr. Derouen:

Western Lewis-Rectorville Water & Gas District (WLR) is in the process of a water system improvements project consisting of the replacement and upgrade of approximately 3,500' of 4" and 6,700' of 3" PVC water main and appurtenances to improve service to approximately 58 customers whose service is regularly interrupted due to leaks in the existing lines. WLR also proposes to construct a new office building as part of the project.

Both portions of the project have been publicly and competitively bid for construction with a total bid price of \$593,685.58. Funding for the project is being provided by KIA grants with a total in excess of \$735,000.00 of available grant funding. There is no loan or debt service associated with this project.

The existing financial condition of the District is not anticipated to be impacted and no customer rate increase is expected or proposed as a result of this project. We request a waiver of the requirement for a Certificate of Convenience and Necessity, or other prior approval of the PSC of the project, so that WLR may proceed with construction as quickly as possible. We make this request based upon KRS 278.020(1) and 807 KAR 5:001, Section 9(3).

Should you have any questions regarding this matter, or if additional information is required, please do not hesitate to contact me at (502)695-9800. Thank you.

Sincerely,  
 HMB Professional Engineers, Inc.

Chris A. Stewart, PE  
 Water/Wastewater Division Manager

cc: Mr. Rick Hilterbrandt, General Manager - WLR  
 Mr. Jeff Schumacher - Schumacher Law Office  
 File

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- Highway Engineering
- Structural Engineering
- Water & Wastewater
- Site Development
- Master Planning
- Environmental Planning
- Surveying
- Project Management
- Cost Estimation
- Construction Inspection
- Aviation Services
- Environmental Remediation
- Landscape Architecture

**Osterloh, Todd (PSC)**

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**From:** Chris Stewart [castewart@hmbpe.com]  
**Sent:** Tuesday, August 17, 2010 9:15 AM  
**To:** Osterloh, Todd (PSC)  
**Cc:** 'Pauline Bickley'; 'Jeff Schumacher'  
**Subject:** RE: Western Lewis-Rectorville Water and Gas District

Mr. Osterloh:

Thank you for looking into our request. In response to your questions, I can offer the following additional information:

The water lines are proposed to be built along all, or portions of, the following roads:  
Dearing Lane in Lewis County  
Hilltop Circle, Crestview Drive, Locust Drive, KY 1237, Overlook Lane, Kennedy Creek Road, KY 1449,  
KY 10 and Kansas Creek Road in Mason County

The new office building will be located in Mason County at:  
8044 KY 3161  
Maysville, KY 41056

In reviewing you last question, I found a typo in my original letter. The total bid construction cost of the project is **\$598,685.52**, rather than the \$593,685.58 stated in the 7/21/10 letter. The total construction cost of \$598,685.52 is broken down into:  
\$341,313.05 for the office building, and  
\$257,372.47 for the water line replacements

Should you have any questions, or need any additional information, please do not hesitate to contact me and I will attempt to provide whatever you might need.

We look forward to your response. Thank you.

Chris Stewart  
HMB Professional Engineers, Inc.

-----Original Message-----

**From:** Osterloh, Todd (PSC) [mailto:Todd.Osterloh@ky.gov]  
**Sent:** Monday, August 16, 2010 9:50 AM  
**To:** castewart@hmbpe.com  
**Subject:** Western Lewis-Rectorville Water and Gas District

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Chris,

I have a few questions related to Western Lewis-Rectorville Water and Gas District's project on which you sent a letter requesting a PSC Staff opinion letter. It is HMB Project No. 4144.00.

For the 3,500' of 4" and 6,700 of 3" PVC water mains, what road(s) or areas of the district's system will this replacement occur? Also, do you know if that is in Lewis County or Mason County?

9/2/2010

Where will the new office building be located?

Both projects are estimated to total \$593,685.58. Can you separate the total planned costs between (1) the new building and (2) the main replacement?

Thanks,

Todd

Todd Osterloh

Staff Attorney

Public Service Commission of Kentucky

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Office: (502) 564-3940, ext. 439

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