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September 24, 2010

Mr. Chris Wilcutt
McGhee Engineering, Inc.
P.O. Box 267
Guthrie, Kentucky 42234

Re: South Logan Water Association
2010 System Expansion Project

PSC STAFF OPINION 2010-021

Dear Mr. Wilcutt:

Commission Staff acknowledges receipt of your letter of August 30, 2010 in which you request on behalf of South Logan Water Association an opinion regarding the need for a certificate of public convenience and necessity for a water distribution main extension in Logan County, Kentucky.

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

South Logan Water Association, a water association organized pursuant to KRS Chapter 273, provides water service to 1,649 customers in Logan County, Kentucky. It recently completed a water distribution main construction project that consisted of three main extensions. These extensions involved the construction and installation of 300 linear feet of 4-inch polyvinylchloride ("PVC") water main within Russellville, Kentucky to improve water flow, Kentucky, of 100 linear feet of 4-inch PVC water main within the Schochoh community to improve water flow, and of 3,000 linear feet of 4-inch PVC water main to replace a smaller diameter main along Kentucky Highway 663. No additional customers were added as a result of the proposed extension.

Total cost of the project, including engineering, legal and equipment expenses and contingencies is \$37,060. South Logan has financed the cost of the project with internal funds. The construction in question did not require a rate adjustment. South Logan Water Association did not issue any evidences of indebtedness to finance the proposed construction.

Your letter presents the following question: Was South Logan Water Association required to 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 water distribution mains appears to have been in the ordinary

course of business and did not require a certificate of public convenience and necessity. According to its Annual Report, South Logan Water Association currently has total utility plant of \$6,062,750.¹ The water distribution mains represent an increase in South Logan Water Association's total utility plant of 0.6 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 construction did not require the issuance of additional debt or any adjustment in rates, the construction did not appear to materially affect South Logan Water Association's existing financial condition.

Recent legislative action further supports Commission Staff's position that the construction did 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.

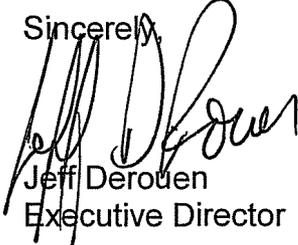
2010 Ky. Acts 1st Spec. Sess. Ch. 1. This Act became effective on July 1, 2010.

Since the construction did not cost in excess of \$500,000 or require South Logan Water Association to incur obligations requiring Commission approval pursuant to KRS 278.300, the Act exempted the construction from the requirement to obtain a certificate of public convenience and necessity. As South Logan Water Association had annual

¹ *Annual Report of South Logan Water Association to the Kentucky Public Service Commission for the Year Ended December 31, 2009*, at 13.

revenues in calendar year 2009 of \$1,046,729, it is a Class A water utility² and falls within the class of water utilities subject to the exemption.

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

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>).