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January 4, 2012

Mr. Kenny Barber
Bath County Water District
Post Office Box 369
Salt Lick, Kentucky 40371

PSC STAFF OPINION 2012-001

Re: Bath County Water District
Starshader Lane Water Main Extension

Dear Mr. Barber:

Commission Staff acknowledges receipt of your letter of December 5, 2011 in which you request on behalf of Bath County Water District ("Bath District") an opinion regarding the need for a certificate of public convenience and necessity for a water distribution main extension in Bath County, Kentucky.

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

Bath District, a water district organized pursuant to KRS Chapter 74, provides water service to 3,688 customers in the Kentucky counties of Bath, Menifee, Montgomery, and Rowan.¹

Bath District proposes to install 4,585 linear feet of 2-inch polyvinylchloride (PVC) water main along Starshader Lane in Bath County to serve one customer. It plans no additional connections to the proposed main. The estimated total cost of the project is \$33,475. The prospective customer will contribute the total project cost. The water district will not issue any evidences of indebtedness or adjust its rates to finance the proposed project.

The Kentucky Division of Water has approved the proposed project's plans and specifications with respect to sanitary features of design. It granted its approval on the condition

¹ *Annual Report of Bath County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010 ("Annual Report")*, at 5 and 27.

that no extensions be made to the proposed main and expressly reserved to require 3-inch water distribution mains if further extensions are made.²

Your letter presents the following question: Is Bath District required to obtain a certificate of public convenience and necessity for the proposed extension?

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 main appears to be in the ordinary course of business and does not require a certificate of public convenience and necessity. According to its Annual Report, Bath District currently has total net utility plant of \$11,222,361.³ The proposed change represents an increase in Bath District's total utility plant of 0.3 percent. Such 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 do not

² Letter from Mark Rasche, Professional Engineer, Water Infrastructure Branch, Kentucky Division of Water, to Kenney Barber, Co-Manager, Bath County Water District (Nov. 18, 2011).

³ *Annual Report* at 7.

require the issuance of additional debt or any adjustment in rates, the proposed construction does not appear to affect materially Bath District'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 extraordinary session in 2010, 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.

Since the construction projects do not require Bath District to incur obligations requiring Commission approval pursuant to KRS 278.300, the Act exempts the construction from the requirement to obtain a certificate of public convenience and necessity. As Bath District had annual revenues in calendar year 2010 of \$1,671,424 and as it had average annual revenues of \$1,587,968 for the past three calendar years, it is a Class A water utility⁴ and falls within the class of water utilities subject to the exemption.

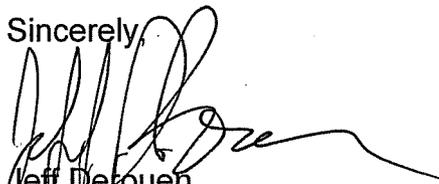
⁴ The Kentucky Public Service Commission's Uniform System of Accounts defines a Class A water utility as a utility "having annual water operating revenues of more than \$750,000." *Uniform System of Accounts for Class A and B Water Districts and Associations* at 14 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).

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While the proposed project does not require a certificate of public convenience and necessity, Commission approval of the extension is still required due to the diameter size and length of the proposed water main. 807 KAR 5:066, Section 10, limits the length of any 2-inch water main to 500 feet for circulating mains and to 250 feet for non-circulating mains. It permits extensions of rural water mains in excess of these lengths where hydraulic studies indicate that the proposed extension can provide water service at acceptable pressures and the Commission expressly authorizes the extension. Accordingly, I have forwarded your letter of December 1, 2011 to the Commission's Division of Filings with instructions to docket it as a request for such approval.

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

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