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May 29, 2012

Mr. Chris Wilcutt
Post Office Box 267
Guthrie, Kentucky 42234

Re: North Logan Water District
Kingsford Road Area Upgrade Project

PSC STAFF OPINION 2012-012

Dear Mr. Wilcutt:

Commission Staff acknowledges receipt of your letter of March 30, 2012 in which you requested on behalf of North Logan Water District ("North Logan District") an opinion regarding the need for a certificate of public convenience and necessity for the construction of a water distribution main in Logan County, Kentucky.

Commission Staff understands the facts as follows:

North Logan District, a water district organized pursuant to KRS Chapter 74, owns and operates a water distribution system that provides water service to 557 customers in Logan County, Kentucky.¹

North Logan District proposes to install 8,875 linear feet of 3-inch polyvinylchloride ("PVC") water main, 635 feet of 2-inch PVC water main, and 100 linear feet of high-density polyethylene water main to replace approximately 8,375 linear feet of existing 3-inch water main and 500 linear feet of 1-inch water main along Kingsford Road in Logan County. The water district describes the existing water main as "aged and inferior" and attributes numerous service interruptions to the present main's condition. The proposed replacement will not result in additional customers for the water district, but will improve service to approximately 31 customers served through the existing water main. The proposed water distribution main is estimated to cost \$57,121.

¹ Annual Report of North Logan Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010, at 5, 27.

The project will be funded with internal funds. North Logan District will not issue any evidences of indebtedness or adjust its rates as a result of the proposed water main replacement.

Your letter presents the following question: Must North Logan District 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 proposed construction appears to be in the ordinary course of business and will not require a certificate of public convenience and necessity. According to its Annual Report, North Logan District currently has total utility plant of \$1,935,314.² The proposed construction represents an increase in North Logan District's total utility plant of 2.95 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). The lack of any need to issue additional debt

² *Id.* at 7.

instruments or adjust rates to finance the proposed construction is further evidence that the proposed construction will not materially affect North Logan District's financial conditions.

Recent legislative action further supports Commission Staff's position that the construction did not require a certificate of public convenience and necessity. In its 2010 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.

Since the construction project will not cost in excess of \$500,000, the Act exempts the construction from the requirement to obtain a certificate of public convenience and necessity. As North Logan District had annual revenues in calendar year 2010 of \$474,591,³ it is a Class B water utility⁴ and falls within the class of water utilities subject to the exemption.

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 5066, Section 10, limits the length of any 2-inch water main to 500 feet for circulating mains and to 250 feet for

³ *Id.* at 11.

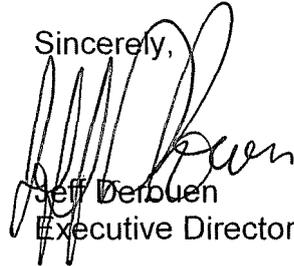
⁴ The Kentucky Public Service Commission's Uniform System of Accounts defines a Class B water utility as a utility "having annual water operating revenues of \$250,000 or more but less than \$750,000." Uniform System of Accounts for Class A and B Water Districts and Associations at 15 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).

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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.

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,

A handwritten signature in black ink, appearing to read "Jeff Derbuen". The signature is fluid and cursive, with a large loop at the end of the last name.

Jeff Derbuen
Executive Director