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December 19, 2012

David Wilson II, Esq.
Skeeters, Bennett, Wilson & Pike
550 W. Lincoln Trail Boulevard
Radcliff, Kentucky 40160

PSC STAFF OPINION 2012-024

Re: Hardin County Water District No. 1
Louisville Water Company-Fort Knox Interconnect

Dear Mr. Wilson:

Commission Staff acknowledges receipt of your letter of September 17, 2012 in which you request on behalf of Hardin County Water District No. 1 ("Hardin District") an opinion as to whether a Certificate of Public Convenience and Necessity ("Certificate") must be obtained prior to the construction of certain facilities.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution

Commission Staff understands the facts as follows:

Hardin District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that produce and distribute water for compensation to 9,980 customers in Breckenridge, Hardin, and Meade Counties.¹ It also provides wholesale water service to the City of Vine Grove and Meade County Water District.

On May 15, 2012, Hardin District executed a Water Purchase Agreement with Louisville Water Company to purchase exclusively from Louisville Water Company its total

¹ Annual Report of Hardin District No. 1 to the Kentucky Public Service Commission for the Year Ended December 31, 2011 ("Annual Report") at 5, 27.

water supply for the Fort Knox Military Installation.² Pursuant to the Water Purchase Agreement, Hardin District may purchase up to a maximum of 3.5 million gallons of water daily³. It further requires Hardin District to pay a system development charge for each meter and a monthly service charge.⁴ The Water Purchase Agreement has a term of 40 years with an option for Hardin District to renew the Agreement for an additional 40 years.⁵

To implement the contract, Louisville Water Company and Hardin District have agreed to the construction of a 16-inch finished water transmission main, a master meter, a pump station, and related facilities along US Highway 31W from Louisville Water Company's existing 16-inch transmission main at Kathryn Station Road to Hardin District's existing 14-inch transmission main at the base of Muldraugh Hill. The Water Purchase Agreement have provides for the contingency of a 20-inch or 24-inch transmission main in lieu of a 16-inch transmission main.⁶

Upon completion of the facilities, Louisville Water Company will own the master meter and vault and the transmission main from Kathryn Station Road to the master meter and vault. Hardin District will own the transmission main and

² Letter from Mr. Jim Bruce, General Manager, Hardin County Water District No. 1, to Jeff Derouen, Executive Director, Kentucky Public Service Commission (June 7, 2012) (contract enclosed), available at http://psc.ky.gov/trf/uploadedFiles/22500_Hardin_County_Water_District_1/06132012 (last visited Dec. 15, 2012). The use of the purchased water extends beyond the Fort Knox Military Installation. In his letter, Mr. Bruce stated that the purchased supply would replace the water that Hardin District currently purchases from the U.S. Government to serve areas outside the Fort Knox Military Installation and would result in a reduction in purchased water costs. The purchased water will allow Hardin District to close an aging water treatment plant that is located on the military installation. See Press Release, Louisville Water Company, Louisville Water and Hardin County Water District No. 1 Expand Partnership (May 25, 2012) available at <http://www.louisvilleky.gov/LWC/News/2012/Louisville+Water+and+Hardin+County+Water+District+No+1+Expand+Partnership.htm> (last visited Dec. 15, 2012).

³ Water Purchase Agreement at ¶ 3a.

⁴ *Id.* at ¶ 5.

⁵ *Id.* at ¶ 8.

⁶ *Id.* at ¶ 1a. According to a description of the project that Hardin District provided the Water Resource Information System, the proposed project involves the construction of a new 24-inch water transmission main and a 10 million gallon per day booster pump station. Water Resource Information System Portal, Project No. WX21093042, <http://wris.ky.gov/portal/DwPrjData.aspx?PNUM=WX21093042> (last visited Dec. 16, 2012).

pump station from the master meter to the connection with its existing 14-inch transmission main.⁷

The Water Purchase Agreement does not specify the total cost of the proposed facilities but specifies that Hardin District will not contribute more than \$4.5 million to their construction⁸. Hardin District's portion of the proposed facilities' cost will be funded through a grant of \$4.5 million from the Kentucky Economic Development Finance Authority to Hardin County Fiscal Court for the benefit of Hardin District.⁹

In your letter, you present the following issue: Must Hardin District obtain a Certificate prior to constructing the proposed facilities?

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

⁷ *Id.* at ¶ 1f.

⁸ *Id.* at ¶ 1d.

⁹ During its 2010 Extraordinary Session, the Kentucky General Assembly appropriated \$112 million to support projects related to the Base Realignment and Closure activities in and around Fort Knox. 2010 First Ex. Session Ch. 3. On February 9, 2011, the Kentucky State Property and Buildings Commission approved the grant of \$4.5 million in proceeds from the issuance of Economic Development Revenue Bonds to Hardin County Fiscal Court to Hardin District "to complete the Louisville Water-Fort Knox Interconnect Project" which included "the construction of a 24-inch transmission line and pump station to provide a regional water supply connection with the Louisville Water Company and Fort Knox." Minutes of February 9, 2011 Meeting of Kentucky State Property and Buildings Commission at 3, available at http://finance.ky.gov/services/ofm/Documents/SPBC%20Meeting%20Agendas%20and%20Minutes/2911_SPC_C_Min.pdf (last visited Dec. 15, 2012).

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 customers.

Under the method of analysis that Commission Staff has historically employed, the construction of the proposed facilities would not be in the ordinary course of business and would require a certificate of public convenience and necessity. According to its Annual Report, Hardin District currently has total net utility plant of \$29,288,167.¹⁰ The proposed construction represents an increase in Hardin District's total utility plant of 15.36 percent.¹¹ Such an increase in total utility plant is not considered as ordinary.¹²

In its 2012 General Session, the Kentucky General Assembly enacted the legislation that further defines when a Certificate is required. It 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 \$500,000.00; 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

¹⁰ *Annual Report at 7.*

¹¹ This calculation assumes that the total cost of the project is \$4,500,000. If the cost is only \$4,000,000, the proposed construction would represent an increase of only 13.66 percent of Hardin District's existing total net utility plant.

¹² See, e.g., *City of Covington v. Board of Commissioners of Kenton County Water District No. 1*, 371 S.W.2d 20 (Ky. 1963). See also *Hardin County Water District No. 1*, Case No. 2011-0416 (Ky. PSC Dec. 4, 2012) (holding that each of seven construction projects, ranging in cost from \$1.1 million to \$6.6 million, involved sufficient capital outlay to require a Certificate).

as a result of the water line extension or improvement project, increase rates to its customers.¹³

While Hardin District is a Class A Water District,¹⁴ construction of the proposed facilities does not qualify under the Act for an exemption. The proposed facilities are not "a waterline extension or improvement project" as they do not extend or improve an existing waterline. They involve the construction of a new water transmission main and a booster pump station to establish a new water source. Moreover, as the Water Purchase Agreement obligates Hardin District to take water service from the Louisville Water Company for a period of 40 years to supply the Fort Knox Military Installation's total water requirements,¹⁵ it is an evidence of indebtedness that, pursuant to KRS 278.300, requires Commission approval.¹⁶

Based upon the discussion above, Commission Staff is of the opinion that Hardin District must obtain a Certificate prior to construction of the facilities that are described in its Water Purchase Agreement with Louisville Water Company.

Questions concerning this opinion should be directed to Gerald Wuetcher, Executive Advisor/Attorney, at (502) 782-2590.

Sincerely,

Jeff Derouen
Executive Director

¹³ 2012 Ky. Acts. Ch. 265.

¹⁴ 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>). For the calendar year ending December 31, 2011, Hardin District has water operating revenues of \$3,985,701. *Annual Report* at 11.

¹⁵ Based upon the term of the Water Purchase Agreement and Louisville Water Company's present monthly service charge and assuming that Louisville Water Company will provide service through a 6-inch meter, Hardin District is obligating itself to pay \$260,064 over the term of the Agreement. If a 16-inch meter is used, this amount increases to \$2,136,240.

¹⁶ The Commission has held on numerous occasions that supply contracts containing minimum take requirements constitute an evidence of indebtedness and, pursuant to KRS 278.300, require Commission authorization. See, e.g., *East Kentucky Power Cooperative, Inc.*, Case No. 2011-00125 (Ky. PSC Dec. 1, 2011); *Kentucky Power Co.*, Case No. 2009-00245 (Ky. PSC June 28, 2010); *Kentucky Utilities Co.*, Case No. 2004-00395 (Ky. PSC Dec. 30, 2004); *Louisville Gas & Electric Co.*, Case No. 2004-00396 (Ky. PSC Dec. 30, 2004); *Consideration and Determination of the Appropriateness of Implementing a Ratemaking Standard Pertaining to the Purchase of Long-Term Wholesale Power by Electric Utilities*, Adm. Case No. 350 (Oct. 25, 1993).