



Steven L. Beshear  
Governor

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Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Linda K. Breathitt  
Commissioner

July 31, 2013

Brendon D. Miller, Esq.  
Office of Breathitt County Attorney  
1149 Main Street  
Jackson, Kentucky 41339

**PSC STAFF OPINION 2013-007**

Re: Breathitt County Water District  
Bethany Road Waterline Extension Project

Dear Mr. Miller:

Commission Staff acknowledges receipt of your letter of June 20, 2013 in which you request on behalf of Breathitt County Water District an opinion regarding the need for a certificate of public convenience and necessity for a water distribution main extension in Breathitt County, Kentucky.

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

Breathitt County Water District, a water district organized pursuant to KRS Chapter 74, provides water service to 1,286 customers in Breathitt County, Kentucky.<sup>1</sup> It has undertaken a water distribution main construction project that involves the installation of 4,250 linear feet of 4-inch polyvinyl chloride (PVC) water main, 300 linear feet of 2-inch PVC water main, a master meter, and 14 5/8-inch x 3/4-inch meters along Bethany Road in Breathitt County, Kentucky, to serve approximately 14 households.<sup>2</sup> The estimated total cost of the project is \$200,000. This project will be totally funded through an appropriation from the General Assembly.<sup>3</sup> The water district will not issue any evidences of indebtedness or adjust its rates to finance the proposed construction.

<sup>1</sup> *Annual Report of Breathitt County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2012* ("Annual Report") at 21.

<sup>2</sup> The project is identified in the Water Resource Information System as WRIS Project No. WX21025025.

<sup>3</sup> 2012 Ky. Acts Ch. 144.

The proposed construction will not conflict with service of other utilities that are operating in the same area and are under Commission jurisdiction. There is currently no public water supplier in the area that Breathitt County Water District proposes to serve. Residents in the area that the proposed construction will serve currently obtain their water from wells, springs or from water haulers.

Your letter presents the following question: Is Breathitt County Water District required to obtain a certificate of public convenience and necessity for the proposed addition?

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 15(3), further provides:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not 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 or contiguous area in which the utility renders service, 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 be in the ordinary course of business and does not require a certificate of public convenience and necessity. According to its Annual Report, Breathitt County Water District currently has total utility

plant of \$27,542,038.<sup>4</sup> The proposed change represents an increase in Breathitt County Water District's total utility plant of 0.7 percent. Such increases in total 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).

Recent legislative action, furthermore, specifically exempts the proposed construction from the requirement for a certificate of public convenience and necessity. In the 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.

2012 Ky. Acts Ch. 144. This Act became effective on July 1, 2012.

Since the construction project costs are not in excess of \$500,000 and will not require Breathitt County Water 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 Breathitt County Water District had annual revenues in calendar year 2012 of \$702,725 and as it had average annual revenues of \$560,025 for the past three calendar years, it is a Class B water utility<sup>5</sup> and falls within the class of water utilities subject to the exemption.

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<sup>4</sup> *Annual Report* at 7.

<sup>5</sup> 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 14 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).

Brendon D. Miller, Esq.

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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) 782-2590.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen". The signature is fluid and cursive, with the first name "Jeff" and last name "Derouen" clearly distinguishable.

Jeff Derouen  
Executive Director