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January 19, 2001

Mr. Donnie Beavers
Crittenden-Livingston County Water District
620 East Main Street
P.O. Box 495
Salem, Kentucky 42078

Dear Mr. Beavers:

Commission Staff is in receipt of your letter of November 6, 2000 in which you request an opinion upon a customer's request for free water service.

Your letter presents the following facts: Crittenden-Livingston County Water District ("Crittenden-Livingston District") is a water district which is organized pursuant to KRS Chapter 74 and which provides water service to approximately 2,004 customers in Crittenden and Livingston Counties, Kentucky. During negotiations for easements for water facilities, a landowner offered to provide the easements in exchange for free water service.

Your letter poses the following issue: May a water district provide free water service in change for an easement?

A water district organized pursuant to KRS Chapter 74 is a public utility and is subject to the jurisdiction of the Public Service Commission in the same manner and same extent as any other public utility. KRS 278.015. KRS 278.170 specifies the instances under which a public utility may provide free service. It provides:

Any utility may grant free or reduced rate service to its officers, agents, or employees, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents, and employees of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may



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grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity. The terms "officers" and "employees," as used in this subsection, include furloughed, pensioned, and superannuated officers and employees, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.

KRS 278.170(2). KRS 278.170(3) permits the provision of free water service to fire departments for fire protection and fire fighting training purposes.

Commission Staff is of the opinion that neither Section 2 or Section 3 of KRS 278.170 authorizes Crittenden-Livingston District to provide free water service under the facts set forth in your letter. The recipient of the free service is neither an employee nor officer of the water district. He is not a fire department and the purpose of the service is not for fire protection or fire fighting training. None of extraordinary circumstances set forth in KRS 278.170(2) are present.

Assuming arguendo that recipient's grant of an easement to Crittenden-Livingston District would constitute payment for water service, KRS 278.170(1) would prohibit the transaction. That statute provides:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

It appears unlikely that the compensation that the recipient would be paying for water service (i.e., the value of the easement) would be the same as the compensation that other customers would pay for the same amount of water. Thus similarly situated customers would not be treated in a similar fashion.

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

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concerning this opinion should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas M. Dorman
Executive Director