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July 11, 2005

Mr. Carlos Miller  
Kenvirons, Inc.  
452 Versailles Road  
Frankfort, Kentucky 40601

Dear Mr. Miller:

Commission Staff is in receipt of your letter of June 6, 2005 regarding the need for a certificate of public convenience and necessity for water line extensions planned for Jackson County, Kentucky.

In your letter, you presented the following facts: Jackson County Water Association proposes to construct 29,125 linear feet of 4 inch polyvinyl chloride ("PVC") water main and 32,515 linear feet of 3 inch PVC water main in Jackson County, Kentucky. The estimated total cost of these water main extensions, including related appurtenances, is \$408,806. The water association will not issue any evidences of indebtedness or securities to finance any portion of the construction nor does it intend to adjust existing rates for water service. It intends to finance the proposed project through grant funds from the Appalachian Regional Commission and the Kentucky Infrastructure Authority. The proposed facilities will not provide water service in areas that other utilities are presently serving.

Your letter poses the following issue: Is Jackson County Water Association 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 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 such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such 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 would not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2004, Jackson County Water Association had net utility plant of \$11,988,651. The proposed construction, therefore, represents an increase of only 3.4 percent in Jackson County Water Association's utility plant.

Moreover, the Kentucky General Assembly recently enacted legislation that provides:

Water Districts and Water Associations: A water district created pursuant to KRS Chapter 74 and a water association created pursuant to KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity pursuant to 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.

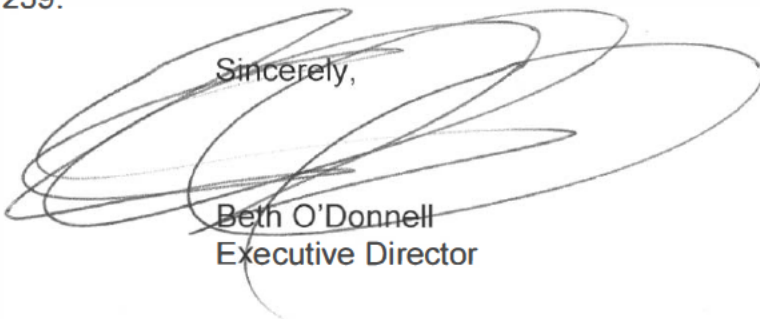
2005 Ky. Acts Chapter 173.

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Based upon the facts presented in your letter and its interpretation of this Act, Commission Staff is of the opinion that the proposed construction is exempt from any requirement to obtain a certificate of public convenience and necessity. As Jackson County Water Association had annual revenues in calendar year 2004 in excess of \$750,000, it is a Class A water utility.<sup>1</sup> The cost of the proposed extension is \$408,806. The proposed extension will not require the issuance of any evidence of indebtedness that requires Commission authorization or result in any increase in the water district's rates.

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, Acting General Counsel, at (502) 564-3940, Extension 259.

Sincerely,



Beth O'Donnell  
Executive Director

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<sup>1</sup> National Association of Regulatory Utility Commissioners, Uniform System of Accounts for Class A/B Water Companies (1996) 15, <http://psc.ky.gov/agencies/psc/forms/usoa/0600ab02.pdf>.