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July 11, 2005

Mr. Howard Downing, Esq.
109 South First Street
Nicholasville, Kentucky 40356

Dear Mr. Downing:

Commission Staff is in receipt of your letter of July 5, 2005 regarding the need for a certificate of public convenience for a water line extension planned for Jessamine County, Kentucky.

In your letter, you presented the following facts: Jessamine County Water District No. 1 ("Jessamine District") proposes to construct 11,000 linear feet of 8-inch polyvinyl chloride ("PVC") water main and 400 linear feet of 12-inch water main at Brannon Road and Ashgrove Loop in Jessamine County, Kentucky. The estimated total cost of these water main extensions, including related appurtenances, is \$281,475. The water district 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 a grant of \$285,000 from 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 Jessamine District 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 require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2004, Jessamine District had net utility plant of \$2,888,413. The proposed construction, therefore, represents an increase of 9.8 percent in Jessamine District's utility plant. Such a large increase in net utility plant cannot be 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 Kentucky General Assembly, however, 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.

Mr. Howard Downing

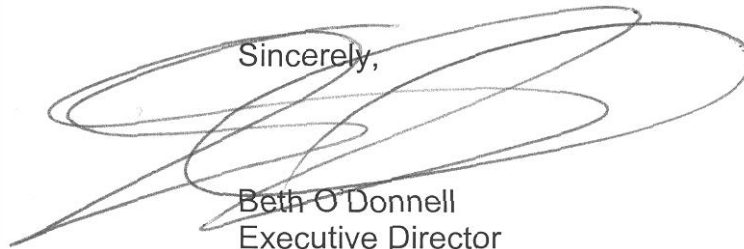
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Based upon the facts presented in your letter and its interpretation of this Act, Commission Staff is of the opinion that the proposed construction is exempt from any requirement to obtain a certificate of public convenience and necessity. As Jessamine District had annual revenues in calendar year 2004 in excess of \$750,000, it is a Class A water utility.¹ The cost of the proposed extension is \$281,475. 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, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Beth O'Donnell', is written over the typed name and title.

Beth O'Donnell
Executive Director

¹ 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>.