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Commonwealth of Kentucky
Public Service Commission
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John W. Clay
Vice Chairman

Caroline Pitt Clark
Commissioner

May 27, 2008

Mr. Chris Wilcutt
McGhee Engineering, Inc.
Post Office Box 267
Guthrie, Kentucky 42234

Re: North Logan Water District
Rockwell Water Project – Contract No. 1

Dear Mr. Wilcutt:

Commission Staff acknowledges receipt of your letter of May 19, 2008 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a water distribution main upgrade project in Logan County, Kentucky.

Based upon your letter and your telephone conversation with Commission Staff, Commission Staff understands the facts as follows:

North Logan Water District, a water district organized pursuant to KRS Chapter 74, provides water service to 538 customers in Logan County, Kentucky. It is planning to replace approximately 17,000 linear feet of existing 6-inch water distribution main along Kentucky Highway 3519 and US Highway 431 with 6-inch polyvinylchloride ("PVC") water main. The existing water distribution main consists of a grey, irrigation-like pipe material that is generally considered inferior to PVC and that has contributed to significant operation and maintenance expense.

Total estimated cost of the project is \$437,000. The construction cost is estimated at \$350,000. North Logan expects to issue a request for bids on the proposed project in mid-June 2008, to select a contractor for the proposed project in early July 2008, and to begin construction in mid-July 2008. North Logan Water District will finance the cost of the project with the proceeds of a court settlement. The proposed construction will not require a rate adjustment. North Logan Water District will not issue any evidences of indebtedness.

Your letter presents the following question: Must North Logan Water District obtain a certificate of public convenience and necessity for the proposed project?

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, 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 construction of the proposed water distribution main upgrade does not appear to be in the ordinary course of business and would require a certificate of public convenience and necessity. According to its Annual Report, North Logan Water District had net utility plant of \$983,368.¹ The proposed water distribution main upgrade represents an increase in North Logan Water District's utility plant of 44.4 percent. Such an increase in net utility plant is not generally considered as ordinary.²

In 2006 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

¹ Annual Report of North Logan Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2007, at 7.

² See, e.g., City of Covington v. Board of Commissioners of Kenton County Water District No. 1, 371 S.W.2d 20, 22 (Ky. 1963).

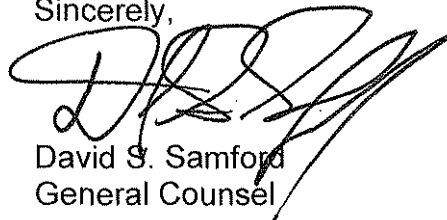
created pursuant to KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity pursuant to KRS 278.020(1) if the water district or water association is a Class A or B utility as defined in the Uniform 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.

2006 Ky. Acts Chapter 252. This Act expires on June 30, 2008.

Based upon the facts presented in your letter, Commission Staff is of the opinion that, **if construction begins prior to July 1, 2008**, the Act would exempt the construction of the proposed water distribution main upgrade from any requirement to obtain a certificate of public convenience and necessity. As North Logan Water District had annual revenues in calendar year 2007 of \$444,750, it is a Class B water utility³ and therefore falls within the class of water utilities subject to the exemption. Moreover, the cost of the water distribution main upgrade is less than \$500,000 and will not require the issuance of any evidence of indebtedness that requires Commission authorization. As the proposed water distribution main upgrade will commence after June 30, 2008, the exemption established by the Act will no longer be available.

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,



David S. Samford
General Counsel

cc: North Logan Water District

³ 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>).

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May 19, 2008

Ms. Stephanie Stumbo, Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RECEIVED

MAY 21 2008

PUBLIC SERVICE
COMMISSION

RE: North Logan Water District
Rockwell Water Project – Contract No. 1

Dear Ms. Stumbo:

The North Logan Water District proposes to undertake a water line upgrade project that will include the replacement of approximately 17,000 LF of water line along KY Highway 3519 and US Highway 431, between the Cities of Russellville and Lewisburg. The project will benefit the entire water system as it replaces the remaining sections of known troublesome waterlines, which currently consists of a grey, irrigation-like pipe material. These sections of inferior pipe material have been a tremendous burden upon the District's O&M Expenses. The project is tentatively scheduled to be advertised in mid-June 2008 with bids to be received around the first of July. The District proposes to pay for the project (Construction Estimate = \$350,000) with settlement funds received from the recent *Rockwell vs. Commonwealth of Kentucky* litigation. No interim financing will be needed for the project.

On behalf of the East Logan Water District, we request a waiver of the Certificate of Public Convenience and Necessity because the project is an extension in the ordinary course of business as defined by Statute 807 KAR 5:001, Sect. 9 (3). Additionally, the total estimated project cost is only a small portion of the District's annual revenue.

If you need any other information or have any questions, please feel free to give our office a call. I appreciate your assistance with this matter and look forward to your response.

Sincerely,



Chris Wilcutt, PE
Design Engineer

Enclosures

Cc: North Logan Water District