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September 4, 2009

Ms. Teresa Shields
Gateway Area Development District
110 Lake Park Drive
Morehead, Kentucky 40351

Dear Ms. Shields:

PSC STAFF OPINION NO. 2009-012

Commission Staff is in receipt of your letter of August 11, 2009 regarding the need for a certificate of public convenience for the construction of a new office building for Montgomery County Water District No. 1 ("Montgomery District").

In your letter, you present the following facts: Montgomery District currently rents 450 square feet of office space from the City of Camargo. While the water district's need for office space has increased over the last several years, the city has reduced the amount of available space to provide space for an expanded city library. Montgomery District proposes to construct an office building in Camargo, Kentucky at an estimated cost of \$175,000. The proposed building will have approximately 1,500 square feet of office space and further allow for a drive-thru for customer payments and customer parking. Montgomery District will fund this construction with an appropriation of \$175,000 from the General Assembly.¹ 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. The proposed facility will not compete with the water service that other utilities presently provide.

Your letter poses the following issue: Is Montgomery District required to obtain a certificate of public convenience and necessity for the proposed office building?

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

¹ H.B. 608, 2008 Gen. Assembly. The Gateway Area Development District is serving as the administrator of the appropriated funds.

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.

Based upon the facts presented in your letter, Commission Staff is of the opinion that the proposed construction is an extension in the ordinary course of business and does not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2008, Montgomery District had total utility plant of \$2,309,522. The proposed construction, therefore, represents an increase of 7.6 percent in Montgomery District's utility plant. As the proposed construction will not require in an increase in utility rates or the issuance of additional debt, it does not appear to materially affect the financial condition of the utility.²

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, at (502) 564-3940, Extension 259.

Sincerely,

Jeff Derouen
Executive Director

cc: Montgomery County Water District No. 1

² According to its 2008 Annual Report, Montgomery District incurred annual rental expense of \$3,762 for its current office space in 2008. Assuming a 40 year useful life for the proposed building, Montgomery District will incur annual depreciation expense of \$4,375 for the proposed building. This annual increase in expenses of \$613 represents an increase of less than 0.3 percent in Montgomery District's total operating expenses for calendar year 2008. Commission Staff expects Montgomery District to incur additional purchased power