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October 13, 2010

Mr. W. Randall Jones
Rubin & Hays
450 South Third Street
Louisville, KY 40202-1410

Re: Pendleton County Water District
Waterworks Improvement Project

PSC STAFF OPINION 2010-025

Dear Mr. Jones:

Commission Staff acknowledges receipt of your letter of August 5, 2010, in which you request an opinion regarding the need for a certificate of public convenience and necessity for a water line replacement project in Pendleton County, Kentucky.

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

Pendleton County Water District ("Pendleton District"), a water district organized pursuant to KRS Chapter 74, provides water service to 2,188 customers in Pendleton, Campbell, and Grant counties, Kentucky. It proposes to install a water booster pump station, electrical facilities, telemetry, 400 feet of 8-inch ductile iron water main, 1,600 feet of 8-inch polyvinyl chloride water main, and appurtenances.

The project is estimated to cost \$200,000, and Pendleton District proposes to pay for the project from funds appropriated in the 2008 House Bill 608. Pendleton District will not issue any evidences of indebtedness, and the proposed construction will not require a rate adjustment.

Your letter presents the following question: Must Pendleton 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 appears to be in the ordinary course of business and would not require a certificate of public convenience and necessity. According to its Annual Report, Pendleton District had total utility plant in service valued at \$11,058,467.¹ The proposed water line extension project represents an increase in Pendleton District's net utility plant of 1.8 percent. Such a small increase in net utility plant is considered as ordinary.² Moreover, the effect of the construction on the utility's financial condition appears minimal. The utility will not incur additional debt to finance the cost of the proposed construction, nor will the project require an immediate adjustment in the utility's rates.

Recent legislative action further supports Commission Staff's position that the proposed construction does not require a certificate of public convenience and

¹ Annual Report of Pendleton County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2009, 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 (Ky. 1963).

necessity. In its recent extraordinary session, 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 formed under KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity, notwithstanding 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.

2010 Ky. Acts 1st Spec. Sess. Ch. 1. This Act became effective on July 1, 2010.

As Pendleton District had annual revenues in calendar year 2009 of \$1,188,274, it is a Class A water utility³ and falls within the class of water utilities subject to the exemption. Because the proposed construction project did not commence until after July 1, 2010 and Pendleton District will not as a result of the proposed construction project incur any obligations that require Commission approval pursuant to KRS 278.300 or a rate adjustment, the Act expressly exempts the proposed construction from any requirement to obtain a certificate of public convenience and necessity.

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 Todd Osterloh, Staff Attorney, at (502) 564-3940, Extension 439.

Sincerely,



Jeff Derouen
Executive Director

³ The Kentucky Public Service Commission's Uniform System of Accounts defines a Class A water utility as a utility "having annual water operating revenues of \$750,000 or more." National Association of Regulatory Utility Commissioners, *Uniform System of Accounts for Class A and B Water Districts and Associations* at 14 (2002), available at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>.