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February 24, 2015

## PSC STAFF OPINION 2015-004

Brendon D. Miller, Esq.  
1149 Main Street  
Jackson, KY 41339

Re: Breathitt County Water District  
Request for an Advisory Opinion

Dear Mr. Miller:

Commission Staff acknowledges receipt of your letter dated January 26, 2015, in which you request an exemption from filing an application for a Certificate of Public Convenience and Necessity ("CPCN") for the Breathitt County Water District's ("BCWD") Kentucky Highway 205 and Roark Branch Waterline Extension project. This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Based upon your letter, Commission Staff understands the facts to be as follows:

BCWD is a water district organized pursuant to KRS Chapter 74 that owns and operates water distribution facilities in Breathitt county that serve 1,459 customers.<sup>1</sup>

On November 22, 2006, the Commission issued an Order granting BCWD a CPCN to proceed with proposed construction of a \$2,368,000 water

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<sup>1</sup> Annual Report of Breathitt County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2013 at 12 and 53.

improvements project in Case No. 2006-00437.<sup>2</sup> The Commission also issued an Order on June 9, 2009 in Case No. 2009-00183 granting BCWD a CPCN to proceed with proposed construction of a \$1,962,800 water works improvement project and approval of BCWD's plan of financing the project.<sup>3</sup> BCWD now proposes a Kentucky Highway 205 and Roark Branch Waterline Extension project. This project is an extension of the projects approved in Case Nos. 2006-00437 and 2009-00183.

The Kentucky Highway 205 and Roark Branch Waterline Extension project consists of construction and installation of approximately 650 linear feet of 8-inch polyvinyl ("PVC") waterline, 2,200 linear feet of 4-inch PVC waterline, 13,300 linear feet of 2-inch PVC waterline, a hydropneumatic pump station and 26 residential service meters.

The approximate cost of the Kentucky Highway 205 and Roark Branch Waterline Extension project is \$317,210. The project will be funded with \$300,000 from Coal Severance Funds and \$17,210 from Breathitt County Fiscal Court. BCWD asserts that the project does not create wasteful duplication of plant, equipment, property or facilities, does not 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 will not involve sufficient capital outlay to materially affect the existing financial condition of the utility and will not result in increased charges to its customers.

KRS 278.020(1), in part, 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 15(3), further states:

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<sup>2</sup> Case No. 2006-00437, *Application of Breathitt County Water District for a Certificate of Public Convenience and Necessity to Construct a Waterworks Improvement Project* (Ky. PSC Nov. 22, 2006).

<sup>3</sup> Case No. 2009-00183, *Application of Breathitt County Water District for a Certificate of Public Convenience and Necessity to Construct and Finance Pursuant to the Provisions of KRS 278.023*. (Ky. PSC June 9, 2009).

A certificate of public convenience and necessity shall not 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 or contiguous area in which the utility renders service, 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.

In its 2014 General Session, the Kentucky General Assembly enacted legislation that is effective through June 30, 2016 which further defines when a certificate is required. The legislation 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.<sup>4</sup>

According to its Annual Report, BCWD has a total net utility plant of \$32,426,069.<sup>5</sup> The Kentucky Highway 205 and Roark Branch Waterline Extension project, at a projected cost of \$317,210, represents an increase in BCWD's total utility plant of .98 percent. Based on the facts as presented, BCWD, a Class A water utility,<sup>6</sup> will not incur any financial obligations requiring the Commission's approval pursuant to KRS 278.300. In addition, BCWD asserts the Kentucky Highway 205 and Roark Branch Waterline Extension project will not cost in excess of \$500,000. Therefore, the proposed project falls within the recent legislative exemption to the CPCN requirement.

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<sup>4</sup> 2014 Ky. Acts. Ch. 117.

<sup>5</sup> Annual Report at 20.

<sup>6</sup> 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." Uniform System of Accounts for Class A and B Water Districts and Associations at 14 (2002), <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>.

This letter represents the Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Questions concerning this opinion should be directed to Ann Ramser, Staff Attorney at (502) 782-2585.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Derouen", is written over the typed name and title.

Jeff Derouen  
Executive Director

ALR/ph