



Matthew G. Bevin  
Governor

Charles G. Snavely  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

James W. Gardner  
Chairman

Daniel E. Logsdon, Jr.  
Vice Chairman

J. Roger Thomas  
Commissioner

February 25, 2016

## PSC STAFF OPINION 2016-005

Dawn R. Watts, Esq.  
15 Howell Lane  
P.O. Box 944  
Jackson, KY 41339

Re: Breathitt County Water District  
Frozen Creek Water Extension, Phase IV

Dear Ms. Watts,

The Commission received on January 6, 2016, your letter dated January 4, 2016, in which you request on behalf of Breathitt County Water District ("BCWD") an opinion regarding the need for a Certificate of Public Convenience and Necessity ("CPCN") for a water line extension in Breathitt County, Kentucky.

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

BCWD, a water district organized pursuant to KRS Chapter 74, provides water service to 1,605 customers in Breathitt County, Kentucky.<sup>1</sup>

On October 30, 2012, BCWD filed an Application for "Frozen Creek Phase I Project." Said Project was to consist of the construction and installation of approximately 57,800 linear feet of 8-inch PVC waterline; 4,060 linear feet of 4-inch PVC waterline; 760 linear feet of 2-inch PVC waterline; various sized HDPE directionally drilled waterline; a duplex pump station; a 132,000 gallon water storage tank, and all appurtenances. The project was to be totally funded through a Grant Agreement titled "Federally Funded Memorandum of Agreement Between the Commonwealth of Kentucky Environmental and Public Protection Cabinet and Breathitt

---

<sup>1</sup> Annual Report of Breathitt County Water District to the Public Service Commission for the Year Ended December 31, 2014 ("2014 Annual Report") at 53 of 71.

County Water District" administered by the Kentucky Division of Abandoned Mine Lands (AML). Said Application was granted pursuant to Order entered January 17, 2013, in Case No. 2012-00481.<sup>2</sup>

BCWD subsequently proposed to construct Phase II of the Frozen Creek Waterline Extension Project to an area where residents were relying on wells, springs, and hauled water for their domestic needs. BCWD informed Commission Staff that the project was expected to cost approximately \$2,040,062, and was to be totally paid for with Federal Abandoned Mine Lands funds. BCWD further informed Commission Staff that the project would not create wasteful duplication of plant, equipment, property or facilities; would not conflict with existing operations of utilities in the same area; would not materially affect the existing financial condition of the utility; and would not result in increased charges to its customers.<sup>3</sup> Based on this information, Commission Staff advised BCWD that its implementation of the proposed project would not require a Certificate of Public Convenience and Necessity.<sup>4</sup>

BCWD subsequently proposed to construct Phase III of the Frozen Creek Waterline Extension Project to an area where residents were relying on wells, springs, and hauled water for their domestic needs. BCWD informed Commission Staff that the project was expected to cost approximately \$799,666, and was to be totally paid for with Federal Abandoned Mine Lands funds. BCWD further informed Commission Staff that the project would not create wasteful duplication of plant, equipment, property or facilities; would not conflict with existing operations of utilities in the same area; would not materially affect the existing financial condition of the utility; and would not result in increased charges to its customers.<sup>5</sup> Based on this information,

---

<sup>2</sup> *Application of the Breathitt County Water District for a Certificate of Public Convenience and Necessity to Construct Pursuant to KRS 278.020, Case No. 2012-00481 (Ky. PSC Jan. 17, 2013).*

<sup>3</sup> Letter of March 21, 2014 from Hon. Brendon D. Miller, Breathitt County Attorney, on behalf of the BCWD.

<sup>4</sup> PSC Staff Opinion 14-007 (May 16, 2014).

<sup>5</sup> Letter of August 11, 2014 from Hon. Brendon D. Miller, Breathitt County Attorney, on behalf of the BCWD.

Commission Staff advised BCWD that its implementation of the proposed project would not require a Certificate of Public Convenience and Necessity.<sup>6</sup>

BCWD now proposes to construct Phase IV of the Frozen Creek Waterline Extension Project to an area where residents currently rely on wells, springs or hauled water for their domestic needs. According to your letter, the Phase IV Project will cost approximately \$1,017,299, to be totally paid for with Federal Abandoned Mine Lands funds. You further state that the project will not create wasteful duplication of plant, equipment, property or facilities; will not conflict with existing operations of utilities in the same area; will not materially affect the existing financial condition of the utility; and will not result in increased charges to its customers.<sup>7</sup>

Your letter presents the following question: Is BCWD required to obtain a Certificate of Public Convenience and Necessity for the proposed Phase IV 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 15(3), further provides:

Extensions in the ordinary course of business. 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

---

<sup>6</sup> PSC Staff Opinion 2014-011 (Sept. 3, 2014).

<sup>7</sup> Letter of January 4, 2016, from Hon. Dawn R. Watts on behalf of BCWD.

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.

Under this definition, the proposed Phase IV Project as described in your letter would be an extension in the ordinary course of business that would not require a Certificate of Public Convenience and Necessity. The water line extension will be to an area not currently served by a water distribution system and thus will not conflict with the service of a jurisdictional utility or result in a wasteful duplication of plant. Further, because the project is to be paid for with Federal Abandoned Mine Lands funds, the project will not involve a capital outlay that would materially affect BCWD's financial condition or require an increase in its rates. According to its most recent Annual Report, BCWD currently has net utility plant of \$34,669,698.<sup>8</sup> The proposed project represents an increase in BCWD's net utility plant of 2.9%. The Commission traditionally has considered such an increase in total utility plant to be ordinary.<sup>9</sup>

Recent legislative action, furthermore, specifically exempts the proposed construction from the requirement for a Certificate of Public Convenience and Necessity. In the 2014 Regular 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,

---

<sup>8</sup> 2014 Annual Report, at 20 of 71.

<sup>9</sup> See, e.g., Case No. 2014-00171, *Application of Northern Kentucky Water District for Approval of Dixie Highway Water Main Improvements, Issuance of a Certificate of Convenience and Necessity and Approval of Financing* (Ky. PSC Aug. 4, 2014).

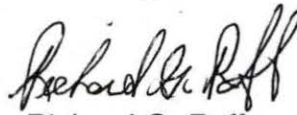
as a result of the water line extension or improvement project, increase rates to its customers.

2014 Ky. Acts Ch. 117. This Act became effective on April 12, 2014.

As BCWD had average annual water operating revenues of \$739,389 for the past three calendar years,<sup>10</sup> it is a Class B water utility<sup>11</sup> and falls within the class of water utilities subject to the exemption. Although the construction costs of the proposed project are in excess of \$500,000, the projected total of \$1,017,299.00 will be paid in full by the Federal Abandoned Mine Lands funds, and hence the project will not require BCWD to incur obligations requiring Commission approval pursuant to KRS 278.300. Therefore, the Act exempts the construction from the 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 John B. Park, Commission Staff Attorney, at (502) 782-2589, or [John.Park@ky.gov](mailto:John.Park@ky.gov).

Sincerely,



Richard G. Raff  
General Counsel

JP/ph

---

<sup>10</sup> 2014 Annual Report, at 53 of 71; *Annual Report of Breathitt County Water District to the Public Service Commission for the Year Ended December 31, 2013* at 53 of 71; and *Annual Report of Breathitt County Water District to the Public Service Commission for the Year Ended December 31, 2012* at 49 of 67.

<sup>11</sup> 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 (2002), at 15 (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).