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February 26, 2016

Mr. Dean M. Hall
Southern Water & Sewer District
P.O. Box 610
245 KY Rt. 680
McDowell, KY 41647

Re: Southern Water & Sewer District
Request for a Staff Opinion

PSC STAFF OPINION 2016-006

Dear Mr. Hall:

The Commission acknowledges receipt of your letter dated January 26, 2016, requesting a Staff Opinion as to the type of approval needed for a special contract with a water and sewer customer. 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.

With your letter you enclosed a draft contract between Southern Water & Sewer District ("Southern Water") and the Board of Education of Floyd County, Kentucky ("Board"). The contract states that the Board is constructing a new high school in Floyd County, Kentucky and the Board originally intended to construct water and sewer lines to serve only the school. However, Southern Water and the Board have agreed that the Board will size and build the project to serve the school, as well as present and future residents in the nearby vicinity. Upon completion, the Board will transfer title of the new assets to Southern Water. In return, Southern Water will not charge the Board any connection fees for the new high school and will provide service to the school at Southern Water's wholesale water and sewer rates for as long as necessary for the Board to recoup a credit of \$600,000. The Board has provided supplemental information indicating that the \$600,000 rate reduction accounts for approximately half of the Board's cost for the water and sewer lines. In your letter you request an opinion as to whether Commission approval of the contract is required and whether Southern Water would be allowed to charge its wholesale rate to the Board.

807 KAR 5:011, Section 13 states:

Each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.

807 KAR 5:011, Section 6 further states that a new tariff may be placed into effect by order of the Commission or by issuing and filing the new tariff with the Commission and giving proper notice to the Commission.

In previously examining the propriety of special contracts Commission Staff has stated that when proper circumstances exist "a utility may enter into a special contract tailored to the needs of that specific customer."¹ The proposed contract between Southern Water and the Board seeks to impose specific rates and conditions of service upon an individual customer. It is therefore a special contract that must be filed with the Commission in accordance with the Commission's established tariff filing procedures as set forth in 807 KAR 5:011.

Southern Water currently provides wholesale water service to three customers at three separate rates. Your letter does not state which, if any, of the existing and Commission approved wholesale rates will be applicable to the Board. KRS 278.030(1) requires that rates be "fair, just and reasonable" and KRS 278.170(1) further provides that a utility shall not give any unreasonable preference. Absent information regarding the rate and documentation in support of the rate, Staff is unable to render an opinion as to the reasonableness of the rate to be assessed by contract to the Board. Therefore, Staff recommends that when Southern Water files the special contract through the Commission's electronic tariff filing system, Southern Water should provide additional information including the rates that will be assessed for each service and support for the reasonableness of the proposed rates.

This letter represents 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 letter should be directed to Jonathan Beyer, Staff Attorney, at (502) 782-2581.

Sincerely,



Richard G. Raff
General Counsel

¹ PSC Staff Opinion 2015-002.