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January 20, 2017

PSC STAFF OPINION 2017-002

Shelia Murphy, Office Manager
Beech Grove Water System
445 Highway 56 N
Calhoun, KY 42327

Re: KY 256 Booster Pump Station

Dear Ms. Murphy,

The Commission received on August 19, 2016, your letter in which you request on behalf of Beech Grove Water System, Inc. ("Beech Grove") an opinion regarding the need for a Certificate of Public Convenience and Necessity ("CPCN") for a booster pump station. 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 Public Service Commission should the issues be formally presented for Commission resolution.

Beech Grove is a water association incorporated under KRS Chapter 273 that provides water service to 616 customers in Daviess and McLean counties, Kentucky.¹ Beech Grove's rates and service are subject to the jurisdiction of the Commission.

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

The Kentucky Division of Water has approved plans and specifications for a project that will increase the water pressure to four underserved customers along Kentucky Highway 256 ("KY Hwy 256") in order to meet minimum pressure requirements. A new check valve will be installed on a line serving KY Hwy 256 to prevent boosted water from entering the remainder of the system.

¹ *Annual Report of Beech Grove Water System, Inc. to the Public Service Commission for the Year Ended December 31, 2015* ("2015 Annual Report") at 12 and 53.

Additionally, the project will increase the pressure to one customer and future customers on Kentucky Highway 1587 ("KY Hwy 1587") which Beech Grove currently maintains at approximately 30 psi [pounds per square inch]. Beech Grove will install a pressure reducing valve on the 3-inch water line below this customer to avoid over-pressurizing the remaining customers on KY Hwy 1587. The customers at issue on KY Hwy 1587 are on a dead-end line; therefore, no other pressures in the system will be affected by this project.

Commission Staff notes the following additional facts:

807 KAR 5:066, Section 5, is the Commission's administrative regulation addressing pressures for a water utility. 807 KAR 5:066, Section 5(1), states, in pertinent part, "[i]n no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig." In Case No. 2014-00306 the Commission determined that evidence filed into the record by Beech Grove in that proceeding raised an issue as to whether Beech Grove was in compliance with 807 KAR 5:001, Section 5(1).²

Per additional documentation supplied by Beech Grove, the project will include the construction of approximately 300 linear feet of 2-inch PolyVinyl Chloride ("PVC") line and a hydro-pneumatic pump station with two pumps.

Your letter presents the following question:

Is Beech Grove required to obtain a CPCN for the proposed KY Hwy 256 Booster Pump Station ("Booster Pump Station")?

Staff Analysis

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

² *Application of Beech Grove Water System, Inc. Requesting Deviation from Requirements of 807 KAR 5:066, Section 4(4)*, (Ky, PSC Dec. 5, 2014) at 6.

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 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.

Your letter does not indicate the total cost of the project or whether Beech Grove will, as a result of the project, increase rates to its customers or incur financial obligations requiring Commission approval pursuant to KRS 278.300 as a result of the project. According to its most recent Annual Report, as of December 31, 2015, Beech Grove had utility plant of \$658,771 and net utility plant of \$175,102.³ Based upon its net utility plant, if Beech Grove were to increase rates to its customers or incur financial obligations requiring Commission approval pursuant to KRS 278.300 as a result of the project, then Staff is of the view that the project would not be an extension in the ordinary course of business.

In the 2016 Regular Session, the Kentucky General Assembly enacted legislation (the "Budget Bill Exemption") 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

³ 2015 Annual Report at 20.

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.

2016 Ky. Acts Ch. 149. This Act became effective on April 28, 2016.

Thus, through the Budget Bill Exemption, the General Assembly has further defined when a CPCN is required. Beech Grove as a water association and Class B utility⁴ falls within the purview of the legislation. Therefore, Staff must analyze whether Beech Grove's proposed Booster Pump Station falls within the category of projects that do not require a CPCN as a result of the Budget Bill Exemption.

The purpose of the Booster Pump Station project is to address low-pressure conditions in a portion of Beech Grove's service territory. It includes the construction of 300 linear feet of 2-inch PVC line and the installation of a new check valve on a line serving KY Hwy 256 and a pressure reducing valve on a 3-inch line on KY Hwy 1587. The latter portion of the project is necessary because the 3-inch line has a dead end.

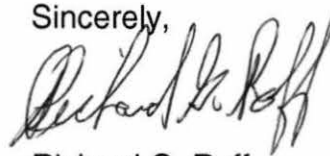
It is Staff's view that the project improves existing water lines and qualifies as a "water line extension or improvement project" for purposes of the Budget Bill Exemption. Consequently, Staff opines that Beech Grove's proposed Booster Pump Station project is exempt from the CPCN requirement pursuant to the Budget Bill Exemption as long as Beech Grove does not, as a result of the project, increase rates to its customers and either: 1) the project's cost does not exceed \$500,000; or 2) Beech Grove does not incur any financial obligations that require Commission approval under KRS 278.300. If Beech Grove increases rates to its customers as a result of the project, then a CPCN is required because the Booster Pump Station project will not be an extension in the ordinary course of business and will not qualify for an exemption from the CPCN requirement pursuant to the Budget Bill Exemption.

⁴ Case No. 2016-00255, *Application of Beech Grove Water System, Inc. for a Certificate of Public Convenience and Necessity and to Incur Indebtedness of \$100,000 for the Purchase of a Metering System*, (Ky. PSC Aug. 3, 2016) at 2.

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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 David Spenard, Commission Staff Attorney, at (502) 782-2580.

Sincerely,



Richard G. Raff
General Counsel

DES/ph