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July 17, 2019

## **PSC STAFF OPINION 2019-007**

Kenny Barber  
Bath County Water District  
P.O. Box 369  
Salt Lick, Kentucky 40371

Re: 2-inch Water Main Extension  
Utcheck Road

Dear Mr. Barber,

Commission Staff acknowledges receipt of your letter dated April 9, 2019, on behalf of Bath County Water District (Bath District), in which you request an opinion as to whether the project contained in Bath District's Utcheck Road Water Main Extension plan requires a Certificate of Public Convenience and Necessity (CPCN) or whether the project falls within the "ordinary course of business" exemption and, therefore, does not require a CPCN. This opinion represents Commission Staff's interpretation of the law as applied to the facts presented. This letter is advisory in nature, and not binding on the Commission should the issues herein be formally presented for Commission resolution.

Pursuant to the Commission's decision that each construction project contained in a construction work plan (CWP) should be analyzed on an individual basis to determine whether that individual project is exempt from the requirement in KRS 278.020(1) to obtain a CPCN, Commission Staff has reviewed the project contained in Bath District's Utcheck Road Water Main Extension plan.

As with all legal opinions requesting a determination of the exemption from the requirement of a CPCN, Commission Staff's review does not consider the reasonableness or the need for the project. Therefore, because reasonableness and need are not considered in this opinion, or in other non-rate cases, the cost of the project can be denied recovery in a rate case if found to be unreasonable or unnecessary.

According to its Utcheck Road Water Main Extension plan, Bath District proposes to install 425 LF of 2-inch water main in a planned development to three (3) customers on this extension.

KRS 278.020(1) provides, in relevant part, as follows:

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.

Regarding the exception to the CPCN requirement, Administrative Regulation 807 KAR 5:001, Section 15(3) provides, in full, as follows:

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.

In analyzing whether the proposed projects would materially affect Bath District's financial condition, Commission Staff notes that Mr. Barber informed Staff that the cost of the project was estimated to be approximately \$3,000. Staff requests Bath District file supplemental material to confirm the approximate cost of the project.

Bath District's 2017 Annual Report shows a total net utility plant of approximately \$10,497,460.00 Total Utility Plant. Based upon its estimated cost, the proposed construction project will not materially impact Bath District's existing financial condition. Based upon on the materials submitted, the construction project is considered to be an extension in the ordinary course of business. Likewise, based upon the estimated costs, the project will not have any effect on Bath District's rates. Lastly, the construction project would not result in wasteful duplication of facilities or conflict with the service of other utilities. Thus, Commission Staff is of the opinion that the proposed project set out in Bath District's 2-inch Water Main Extension plan satisfies the "ordinary course of business" exemption from CPCN requirement.

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 Brittany H. Koenig at (502) 782-2591.

Sincerely,



John E. B. Pinney  
Acting General Counsel

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