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Chairman

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Commissioner

May 4, 2007

Mr. Carl Waits, Chairman  
Jessamine County Water District No. 1  
200 West Maple Street  
Nicholasville, KY 40356

Re Request for Opinion Regarding Relocation of Water Service Line

Dear Mr. Waits:

Commission Staff acknowledges receipt of your March 19, 2007 letter, in which you request an opinion regarding an extension project anticipated by the Jessamine County Water District No. 1 ("JCWD").

In your letter, you present the following facts:

Jessamine County Water District No. 1 is in the process of replacing some old 3" line with an 8" line to provide better water service and fire hydrants out in the county. Some of the old line is located behind the property Owners' houses which are where our meters are located. The water district would like to replace the existing line and move it to the front of the homes parallel with the road. We have several reasons for this; easier to maintain lines, read meters, and serve opposite side of road. Fire hydrants would also need to be placed near the road for fire fighting purposes.

Your letter presents the following question: How should the JCWD handle the reconnection of the existing customers? You have suggested two possible solutions:

1. Obtain a per foot cost estimate of running the customer's line from the new meter location to the resident's present plumbing and to tie in the lines. The water district would use this figure as a basis to reimburse the customer to reconnect their water service. They could use their own plumber or hire water district personnel and be reimbursed on the reconnection.
2. The water district would replace the customers' service line from the new meter location to the existing plumbing and bare [sic] the expense of the reconnection. The water district would guarantee the line for 2 years and dedicate the line to the property owners for their ownership and future maintenance.

Finally, you noted that the water district does not want the responsibility of maintaining a private water line on private property but believes that the water district should be financially responsible for reconnecting its customers to the moved line.

Prior to addressing the reconnection of existing customers, the issue of whether a certificate of public convenience and necessity is required for the proposed project should be reviewed.

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 9(3), further provides:

Extensions in the ordinary course of business. No certificate of public convenience and necessity will 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 area in which the utility renders service or contiguous thereto, 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 indicates that the new line would increase the size of the line from 3 inches to 8 inches to provide better water service, that maintenance and reading the meters would be easier as a result of placing the new line parallel with the road, and that the new line would also serve the opposite side of the road.

Without more specific information regarding the anticipated cost, Commission Staff is unable to determine whether the proposed relocation of the line could be considered in the ordinary course of business and thus exempt from the requirement for a certificate of public convenience and necessity. This determination is based in part on the question of whether the expenditure would "involve sufficient capital outlay to materially affect the existing financial condition" of JCWD.<sup>1</sup>

Even if the proposed project does not qualify for an exemption under the statutory and regulatory provisions above, JCWD may still be exempt under recently enacted legislation that provides:

Water Districts and Water Associations: A water district created pursuant to KRS Chapter 74 and a water association created pursuant to KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity pursuant to 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.

2006 Ky. Acts Chapter 252.

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<sup>1</sup> KRS 278.020(1); 807 KAR 5:001, Section 9(3).

JCWD has been classified by the Public Service Commission as a Class A utility, thus meeting the first requirement.<sup>2</sup> Without more detail, however, Commission Staff cannot make a determination as to either (a) or (b) above. If the second requirement is met, however, JCWD would not be required to obtain a certificate of public convenience and necessity.

Another consideration is whether either of the possible solutions described in your letter is consistent with JCWD's filed tariff, which clearly defines the rights and responsibilities of JCWD and its customers pertaining to service lines, connections, ownership, and maintenance of these lines.<sup>3</sup> By specifically requiring the applicant/customer to install, own, and maintain the necessary pipe to make the connection from the point of service to the point of usage, the issue of using public funds for private use is avoided.<sup>4</sup> Although strict construction of these provisions appears to directly contradict either of the proposed solutions, it is likely that the proposed project and the concerns raised were not anticipated at the time the tariff was filed. In the matter at hand, the customer already has a private line on private property that is currently being used. It is only due to JCWD's proposed project that the existing service line(s) would become obsolete.

A final preliminary consideration is whether or not JCWD already has a utility right of way along the land running parallel to the roadway, in front of the homes in question, on which the new line would be located. The Kentucky Constitution provides

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<sup>2</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 Water District and Associations (2002) at 14 (found at <http://psc.ky.gov/agencies/PSC/forms/USOA/0600ab02.pdf>).

<sup>3</sup> See JCWD's Tariff (PSC Ky. No. 1, Sheet No. 35, effective March 15, 2002).

V. Service Lines and Connections

5. The applicant/customer must furnish and lay the necessary pipe to make the connection from the point of service to the point of usage and be financially responsible for all costs associated with the installation and maintenance of his/her service line plumbing, including a shut-off valve and one-way check valve, installed on his/her property beginning at the outlet side of the water meter. The service lines must be kept in good repair and in accordance with utility and Public Service Commission rules and regulations.

<sup>4</sup> Id. at 38.

X. Ownership of Main, Services and Appurtenances

3. The customer shall install, own and maintain his/her service line from the meter (or point of delivery) to the point of usage.

that private property shall not be taken for public use unless just compensation is paid.<sup>5</sup> If it is necessary for JCWD to use private land to relocate the line, the owners would be entitled to compensation for the property taken. This may provide a basis to offset the cost of replacing the private meters and service lines.

Whether JCWD can constitutionally shoulder the cost of replacing existing customer service lines depends on meeting the requirements of Section 3 of the Kentucky Constitution, which provides in pertinent part that "All men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services. . . ."

As to the duties and obligations, generally, of a municipal utility to render service, it is stated in 64 Am.Jur.2d, Public Utilities 38 as follows:

A public utility is under a legal obligation to serve the members of the public to whom its use extends, impartially and without unjust discrimination. Whether or not treatment or service accorded to different patrons of a public utility amounts to unjust or improper discrimination depends upon the surrounding circumstances. A public utility must serve alike all who are similarly circumstanced with reference to its system, and favor cannot be extended to one which is not offered to another, nor can a privilege given one be refused to another. Furthermore, a municipal corporation which operates a public utility is subject to the same strictures against discrimination as are binding on a private corporation.<sup>6</sup>

The proposed project involves JCWD extending its ability to better serve its current and future customers by upgrading the size of its line and relocating the line for easier access. The project as a whole does not favor any particular customers. To the contrary, it will disfavor those customers who currently are served by lines located behind their homes. Once the project is complete, with the existing line replaced by a new line in front of the homes, these customers would no longer have access to water service unless new meters and service lines are installed. Either proposed solution would simply serve to make these customers whole. Should either of the solutions mentioned (or any other solution that would be outside the filed tariff) be pursued by JCWD, Commission Staff's opinion is that the tariff should be amended to provide for the facts in the current situation. Should these same facts occur again, it is important that future customers be treated similarly.

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<sup>5</sup> Kentucky Constitution § 242.

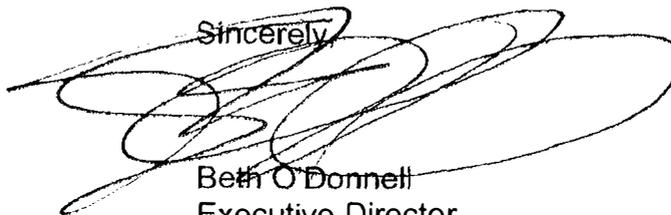
<sup>6</sup> 97 Op. Att'y Gen. 14 (1997).

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Based upon the facts presented in your letter and its interpretation of the applicable provisions of the Kentucky Constitution, the Kentucky Revised Statutes, and JCWD's filed tariff, Commission Staff is of the opinion that either of your proposed solutions would meet constitutional requirements. It is recommended that JCWD first investigate the right of way issue to determine whether or not compensation would be owed to the affected property owners to offset the expense of JCWD's replacement of the customer meters and service lines. Finally, Commission Staff recommends that JCWD review its tariff and make necessary adjustments to resolve any inconsistencies.

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 here be formally presented for Commission resolution. Questions concerning this opinion should be directed to Virginia Gregg, Staff Attorney, at (502) 564-3940, Extension 407.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Beth O'Donnell', is written over the word 'Sincerely,'.

Beth O'Donnell  
Executive Director