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March 17, 2010

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

Brendon D. Miller, Esq.
1149 Main Street
Jackson, Kentucky 41339

Re: Water Main Extension-Panbowl Area

PSC STAFF OPINION 2010-007

Dear Mr. Miller:

Commission Staff acknowledges receipt of your letters of January 26 and February 24, 2010 regarding a proposed water main extension project in Breathitt County, Kentucky.

Commission Staff understands the facts as follows:

Breathitt County Water District ("Breathitt District"), a water district organized pursuant to KRS Chapter 74, proposes to undertake a water main extension project.

The Panbowl Area Waterline Extension involves the installation of 10,526 linear feet of 6-inch water main, 1,500 linear feet of 4-inch water main and 1,010 linear feet of 2-inch water main to serve to approximately 55 households in the Panbowl area of Breathitt County along Kentucky Highway 1812. The total estimated cost of the project is \$756,000. Based upon bids that have been received, Breathitt District estimates the cost of construction, excluding contingencies and legal, engineering, and other fees, to be \$562,000. This project will be funded through grant from Breathitt County Fiscal Court.

Breathitt District will not issue any evidences of indebtedness nor will it increase its rates for water service to finance the proposed projects. The proposed projects will

not compete with the facilities of other utilities operating in Breathitt County.¹

Your letter presents the following question: Must Breathitt County Water District obtain a certificate of public convenience and necessity for the proposed 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 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.

Commission Staff is of the opinion that the proposed construction is in the ordinary course of business and would not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2008, Breathitt District had total utility plant of \$13,881,781.² The proposed construction projects, therefore, represent an increase of approximately 5.45 percent in Breathitt District's gross utility plant. Such an increase in utility plant is generally considered as ordinary. See, e.g., City of Covington v. Board of Commissioners of Kenton County Water District No. 1, 371 S.W.2d 20 (Ky. 1963). Moreover, as the funds for the proposed construction

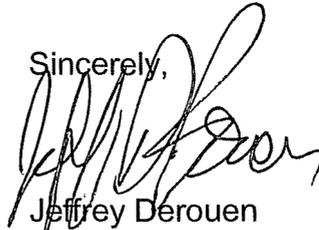
¹ Breathitt District reports that these funds are part of funding that the Kentucky Infrastructure Authority ("KIA") provided for Water Resource Information System Projects No. WX 21025009 and 21025023.

² Annual Report of Breathitt County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2008 at 7.

projects will come from outside sources and will not require the issuance of additional debt or any increased charges to customers, the proposed construction does not appear to materially affect Breathitt District's existing financial condition.³

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 Gerald Wuetcher, at (502) 564-3940, Extension 259.

Sincerely,



Jeffrey Derouen
Executive Director

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³ Assuming a 40-year service life for the proposed facilities, Breathitt District's annual depreciation expense will increase by no more than \$18,900. Assuming a monthly usage of 3,000 gallons for each new residence that the proposed extension will service, Breathitt District will receive additional annual revenues of \$19,701 and incur additional operating expenses (purchased power and purchased water) of \$6,553.80. When the annual depreciation for the new facilities is considered, the new facilities will decrease Breathitt District's annual operating income by \$5,752.80 (\$19,701 - (\$18,900 + \$6,553.80)). For the calendar year ending December 31, 2008, Breathitt District had total utility operating income of (\$372,719).