



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

June 22, 2010

Mr. Riley Sumner
Kentucky Engineering Group, PLLC
P.O. Box 1034
Versailles, Kentucky 40383

Re: Rowan Water, Inc.
Kentucky Highway 377 Improvements

PSC STAFF OPINION 2010-012

Dear Mr. Sumner:

Commission Staff acknowledges receipt of your letter of May 4, 2010 in which you request on behalf of Rowan Water, Inc. an opinion regarding the need for a certificate of public convenience and necessity for a proposed water main improvement project.

Based upon your letter and your telephone conversation with Commission Staff, Commission Staff understands the facts as follows:

Rowan Water, Inc., a water association organized pursuant to KRS Chapter 273, provides water service to 6,796 customers in Carter, Elliott, Fleming, Morgan and Rowan Counties. It proposes to install approximately 32,210 linear feet 8-inch and 3,200 linear feet of 10-inch polyvinylchloride ("PVC") water main along Kentucky Highway 377 to replace existing 4-inch and 6-inch water mains, to replace 94 existing water meters and to upgrade and refurbish two pumping stations.¹ No additional customers will be added as a result of the proposed extension.

Total cost of construction, to include design, engineering, inspection and legal costs and contingencies, is estimated at \$1,271,735. Rowan Water expects to begin construction after June 30, 2010. It will finance the cost of the project

¹ This project is identified in the Water Resource Information System as Project No. WX21205031.

with an appropriation of \$1,381,800 from the Kentucky General Assembly.² The proposed construction will not require a rate adjustment. Rowan Water will not issue any evidences of indebtedness to finance the proposed construction.

Your letter presents the following question: Must Rowan Water 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.

Under the method of analysis that Commission Staff has historically employed, the construction of the proposed water distribution main upgrade appears to be in the ordinary course of business and would not require a certificate of public convenience and necessity. According to its Annual Report, Rowan Water had total utility plant of \$16,708,410.³ The proposed water distribution main upgrade represents an increase in

² 2008 Ky. Acts 191.

³ *Annual Report of Rowan Water, Inc. to the Kentucky Public Service Commission for the Year Ended December 31, 2009*, at 13.

Rowan Water's net utility plant of 7.6 percent. Such an increase in total utility plant is 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 will not require the issuance of additional debt or any adjustment in rates, the proposed construction does not appear to materially affect Rowan Water's existing financial condition.

Recent legislative action further supports Commission Staff's position that the proposed construction does not require a certificate of public convenience and necessity. In its recent extraordinary session, the Kentucky General Assembly enacted legislation 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 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.

2010 Ky. Acts 1st Spec. Sess. Ch. 1. This Act becomes effective on July 1, 2010.

Since the proposed construction is not scheduled to commence until **after July 1, 2010** and Rowan Water will not as a result of the proposed construction project incur any obligations that require Commission approval pursuant to KRS 278.300 or a rate adjustment, the Act expressly exempts the proposed construction from any requirement to obtain a certificate of public convenience and necessity. As Rowan Water had annual revenues in calendar year 2009 of \$2,303,937, it is a Class A water utility⁴ and falls within the class of water utilities subject to the exemption.

⁴ 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 and B Water Districts and Associations* at 14 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>).

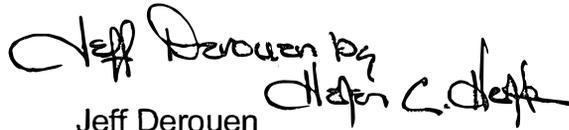
Mr. Riley Sumner

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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 Gerald Wuetcher, Executive Advisor/Attorney, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen by Helen C. Jeff". The signature is written in a cursive, somewhat stylized font.

Jeff Derouen
Executive Director