



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

Linda K. Breathitt
Commissioner

May 21, 2012

John O. Hicks, Esq.
Post Office Box 64
Calhoun, Kentucky 42327

Re: North McLean County Water District
KY 136/KY 250 Water Line Project
WX21149025

PSC STAFF OPINION 2012-011

Dear Mr. Hicks:

Commission Staff acknowledges receipt of your letter of April 5, 2012 in which you requested on behalf of North McLean County Water District ("McLean District") an opinion regarding the need for a certificate of public convenience and necessity for the construction of a water distribution main in McLean County, Kentucky.

Based upon your letter and its review of Water Resource Information System documents,¹ Commission Staff understands the facts as follows:

McLean District, a water district organized pursuant to KRS Chapter 74, owns and operates a water distribution system that provides water service to 1,307 customers in McLean County, Kentucky.²

McLean District proposes to construct 11,684 linear feet of 10-inch polyvinylchloride water main to connect a master meter located near the Calhoun Water Works water storage tank to a 10-inch PVC water main located on Kentucky Highway 250. It will run mostly along Kentucky Highway 136. The proposed water distribution main is estimated to cost \$737,871. Approximately \$583,336 of this cost is related to construction. The remaining \$154,535 is related to engineering fees, administrative expenses and

¹ See <http://wris.ky.gov/Portal/PrjData.aspx> (last visited May 18, 2012).

² *Annual Report of North McLean County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010* at 5, 27.

contingencies. The project will be funded with \$450,000 of appropriated funds from the General Assembly,³ a loan of \$250,000 from the Kentucky Infrastructure Authority ("KIA"), and \$37,871 of internal funds. McLean Fiscal Court will enter the loan agreement with KIA for the benefit of McLean District and McLean District will enter into an agreement with McLean County Fiscal Court to pay an amount equal to the annual debt service payments on the KIA loan.⁴ The KIA loan provides for 80 percent loan principal forgiveness. The period of the KIA loan is 20 years. McLean District will not adjust its rates to as a result of the loan agreement.

Your letter presents the following question: Must McLean 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

³ See 2008 Ky. Acts Ch. 191 (allocating \$200,000 to McLean County Fiscal Court for waterline extensions); 2006 Ky. Acts Ch. 252 (allocating \$250,000 to McLean County Fiscal Court for water and sewer improvements).

⁴ Kentucky Infrastructure Authority, Minutes of Full Board Meeting for March 3, 2011 at 7 (approved Apr.7, 2011).

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 proposed does not appear to be in the ordinary course of business and will require a certificate of public convenience and necessity. According to its Annual Report, McLean District currently has total utility plant of \$ 2,195,932.⁵ The proposed construction represents an increase in Henderson District's total utility plant of 33.6 percent. Such an increase in total utility plant is not 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 funding for the proposed construction will require the issuance of additional debt, the proposed construction appears to materially affect McLean District's existing financial condition.

Recent legislative action does not appear to relieve McLean District of the need to obtain a certificate of public convenience and necessity for the proposed construction. In its 2010 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. Since the proposed construction costs are in excess of \$500,000 and requires McLean District to incur obligations requiring

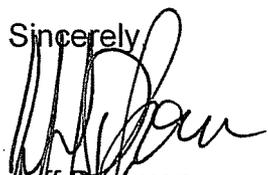
⁵ *Annual Report of North McLean County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010*, at 7.

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Commission approval pursuant to KRS 278.300,⁶ the Act does not exempt the construction.

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. If McLean District desires assistance in the preparation of an application for a certificate of public convenience and necessity or for authorization of the issuance of an evidence of indebtedness, contact Mr. Wuetcher.

Sincerely,



Jeff Derouen
Executive Director

⁶ KRS 278.300(1) provides that "[n]o utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the [C]ommission." Any loan agreement with KIA to borrow the funds or an agreement with McLean County Fiscal Court to pay to McLean County Fiscal Court an amount equal to the debt service payments of McLean County Fiscal Court's agreement with KIA is an "evidence of indebtedness" and requires Commission approval.