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December 19, 2012

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

PSC STAFF OPINION 2012-033

Re: Martin County Water District
Trace Fork/Spicy Ridge Water System Improvements

Dear Mr. Sumner:

Commission Staff acknowledges receipt of your letter of November 30, 2012 in which you request on behalf of Martin County Water District ("Martin District") an opinion regarding the need for a certificate of public convenience and necessity for a water distribution main extension in Martin County, Kentucky.

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.

Based upon your letter, Commission Staff understands the facts as follows:

Martin District, a water district organized pursuant to KRS Chapter 74, provides water service to 3,567 customers in Martin County, Kentucky.¹

It proposes to construct and install approximately 3,500 feet of 3-inch polyvinylchloride water main on Trace Fork Road in Martin County, Kentucky, to serve two households and to install a water hauling station in Spicy Ridge area of Martin County to serve eleven households. It also proposes to construct a 1,000 gallon fiberglass cistern and install a one-horsepower electric pump for each of these eleven

¹ *Annual Report of Martin County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010* at 5, 27. As of the date of this letter, Martin District had yet to file in financial and statistical report for the year ending December 31, 2011 as 807 KAR 5:006, Section 3, requires.

households. The Kentucky Division of Water has approved the proposed project's plans and specifications with respect to sanitary design.² The estimated total cost of the project, without consideration of contingencies, is \$356,008. This project will be totally funded through a grant of \$405,000 from Kentucky Department of Abandoned Mine Lands. The water district will not issue any evidences of indebtedness or adjust its rates to finance the proposed construction.

The proposed construction will not conflict with service of other utilities that are operating in the same area and are under Commission jurisdiction. There is currently no public water supplier in the area that Martin District proposes to serve.

Your letter presents the following question: Is Martin District required to obtain a certificate of public convenience and necessity for the proposed facilities?

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

² Letter from Mark Rasche, Supervisor, Kentucky Division of Water, to John Mills, Manager, Martin County Water District (Aug. 7, 2012) (approving the project plans and designs). For a copy of the project's plans and drawings, see http://www.lynnimaging.com/kyeng/View/ViewFiles.aspx?file_id=83617 (last visited Dec. 14, 2012)

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 water distribution mains would be in the ordinary course of business and would not require a certificate of public convenience and necessity. According to its Annual Report, Martin District currently has total utility plant of \$20,604,648.³ The proposed change represents an increase in Martin District's total utility plant of 1.94 percent.⁴ 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).

Recent legislative action, furthermore, exempts the proposed construction project from the requirement for a certificate of public convenience and necessity. In the 2012 General 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.⁵

Since the cost of proposed water improvement project does not exceed \$500,000 and will not result in Martin District increasing its rates to its customers, the Act exempts the proposed construction project from the requirement to obtain a certificate of public convenience and necessity.

³ *Annual Report* at 11.

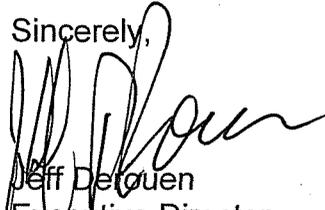
⁴ This calculation assumes that the total cost of the project is \$400,000.

⁵ 2012 Ky. Acts Ch. 144.

Riley Sumner
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Questions concerning this opinion should be directed to Gerald Wuetcher,
Executive Advisor/Attorney, at (502) 782-2590.

Sincerely,



Jeff DeGuen
Executive Director