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July 12, 2005

Mr. Paul Napier  
Wood Creek Water District  
Post Office Box 726  
London, Kentucky 40743-0726

Dear Mr. Napier:

Commission Staff is in receipt of your letter of April 14, 2005 regarding the need for a certificate of public convenience for Wood Creek Water District's "Highway 25 North 2004 Sewer Project" that is planned for northern Laurel County, Kentucky.

Based upon your letter and other sources,<sup>1</sup> Commission Staff understands the facts as follows: Wood Creek Water District proposes to construct 163,152 linear feet of polyvinyl chloride ("PVC") sewer main in northern Laurel County, Kentucky. The estimated total cost of this project, including related appurtenances, is approximately \$2,000,000. Wood Creek Water District estimates 820 households to be served through the proposed project. The water district will not issue any evidences of indebtedness or securities to finance any portion of the construction nor does it intend to adjust existing rates for water service. It intends to finance the proposed project through grant funds from the Kentucky Infrastructure Authority. The proposed facilities will not provide wastewater treatment services in areas that other utilities are presently serving.

Your letter poses the following issue: Is Wood Creek Water District required to obtain a certificate of public convenience and necessity for the proposed extension?

KRS 278.020(1) provides:

No person, partnership, public or private corporation, or combination thereof shall 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

<sup>1</sup> Commission Staff obtained additional information on the proposed project from the Water Resource Information System (<http://wris.ky.gov/wris/>). The project is listed as WRIS Project SX21125154.

of business, until such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such 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 project would require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2004, Wood Creek Water District's Wastewater Division had net utility plant of \$3,039,623. The proposed construction, therefore, represents an increase of 65.7 percent in Wood Creek Water District's sewer utility plant. Moreover, as of December 31, 2004, Wood Creek Water District had approximately 579 customers. Therefore, proposed project, which will add approximately 820 households, will more than double Wood Creek Water District's existing customer base. Such a large increase in net utility plant and customer base cannot be 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, a law that the Kentucky General Assembly recently enacted does not remove the proposed project from the requirement for a certificate of public convenience and necessity. That law 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

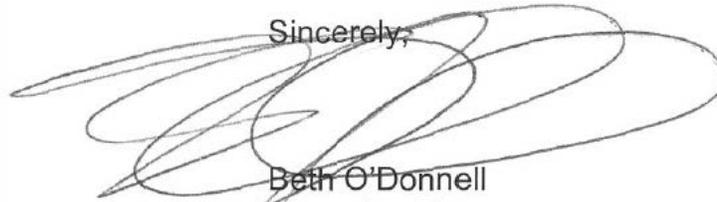
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Public Service Commission approval pursuant to KRS 278.300. In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers.

2005 Ky. Acts Chapter 173 (emphasis added). As the law applies only to waterline extension or improvement project and does not expressly address sewer line extensions, the proposed project would not fall within the law's coverage.

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, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above the typed name.

Beth O'Donnell  
Executive Director