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Teresa J. Hill
Vice Chairman

September 18, 2006

Mr. Jesse Ross
Cannonsburg Water District
1606 Cannonsburg Road
Ashland, Kentucky 41102

Re: Briarwood Water Storage Tank Relocation

Dear Mr. Ross:

Commission Staff acknowledges receipt of your letter of August 11, 2006, in which you request an opinion regarding the need for a certificate of public convenience and necessity to relocate an existing water storage tank.

In your letter, you present the following facts: Cannonsburg Water District ("Cannonsburg District"), a water district organized pursuant to KRS Chapter 74, proposes to relocate its existing Briarwood Water Storage Tank to a new location to place that tank at an elevation that is 120 feet higher than its present elevation. Estimated cost of the relocation is \$60,000. The cost of this relocation will be financed through a grant of \$60,000 from the Kentucky Infrastructure Authority. Cannonsburg District will not issue any evidence of indebtedness nor increase its rates for water service. The relocation will not enable the water storage tank to serve any additional customers, but will enable the water district to provide water at a greater water pressure. Cannonsburg District served approximately 3,434 customers and had total water operating revenues of \$1,536,436 in calendar year 2005.¹

Your letter presents the following question: Must Cannonsburg District obtain a certificate of public convenience and necessity for the proposed relocation?

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

¹ Annual Report of Cannonsburg Water District to the Public Service Commission for the Calendar Year Ended December 31, 2005 at 27

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 relocation does not require a certificate of public convenience and necessity. It does not involve the construction of any plant, equipment, property, or facility. The proposed relocation will not reduce the effectiveness of the water storage tank or otherwise reduce the quality or level of service that the water storage tank provides.

Assuming arguendo that the proposed relocation constituted the construction of a new facility, the proposed relocation would, under the method of analysis that Commission Staff has historically employed, be considered in the ordinary course of business and not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2005, Cannonsburg District had net utility plant of \$2,694,651.² The proposed relocation, therefore, would represent an increase of only 2 percent in Cannonsburg District's utility plant. As the funds for the proposed construction 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 Cannonsburg District's existing financial condition.

The Kentucky General Assembly, furthermore, has recently enacted legislation that 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 water line extension or improvement project shall not be

² Id. at 7

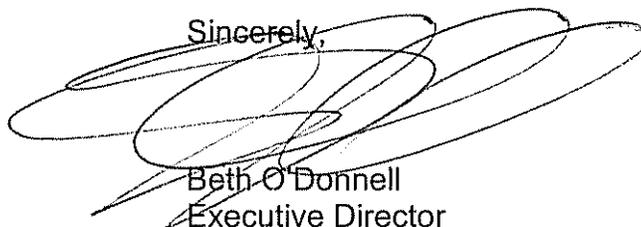
required to obtain a certificate of public convenience and necessity pursuant to KRS 278.020(1) if the water district or water association is a Class A or B utility as defined in the Uniform System of Accounts established by the Public Service Commission, pursuant to KRS 278.220, as the system of accounts 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 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.

2006 Ky. Acts Chapter 252.

Based upon the facts presented in your letter and its interpretation of this Act, Commission Staff is of the opinion that the Act exempts the proposed relocation from any requirement to obtain a certificate of public convenience and necessity. As Cannonsburg District had annual revenues in calendar year 2005 of \$1,536,436, it is a Class A water utility.³ The cost of the proposed relocation is \$60,000. The proposed relocation will not require the issuance of any evidence of indebtedness that requires Commission authorization or result in any increase in the water district's rates.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell", is written over the typed name and title. The signature is somewhat stylized and overlaps the text below it.

Beth O'Donnell
Executive Director

³ 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/B Water Districts and Associations at 14 (2002) (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0700ab02.pdf>)