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October 15, 2007

Mr. Chris A. Stewart
HMB Professional Engineers, Inc.
3 HMB Circle
U.S. Highway 60
Frankfort, Kentucky 40601

Re: Jessamine County Water District No. 1
Baker Lane Water Line Upgrade
HMB Project No. 4096.00

Dear Mr. Stewart:

Commission Staff acknowledges receipt of your letter of October 5, 2007 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a proposed water main extension project in Jessamine County, Kentucky.

In your letter, you present the following facts: Jessamine County Water District No. 1, a water district organized pursuant to KRS Chapter 74, proposes to construct approximately 6,000 linear feet of 6 inch polyvinyl chloride (PVC) water main along Baker Lane in Jessamine County, Kentucky. This project is intended to improve water pressures and water flows in the area and to permit the provision of fire protection service. Jessamine County Water District No. 1 has requested and received bids for the construction of the proposed project. The lowest bid received is \$116,470. Jessamine County Water District No. 1 will finance the proposed project with a grant of \$210,000 from the Kentucky Infrastructure Authority ("KIA"). The total project cost is not expected to exceed this amount. The water district will not issue any evidence of indebtedness nor increase its rates for water service. In calendar year 2006, Jessamine County Water District No. 1 had total water operating revenues of \$873,336 and served 1,695 customers.¹

Your letter presents the following question: Must Jessamine County Water District No. 1 obtain a certificate of public convenience and necessity for the proposed project?

¹ Annual Report of Jessamine County Water District No. 1 to the Public Service Commission for the Calendar Year Ended December 31, 2006 at 27.

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 proposed construction 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 for Calendar Year 2006, Jessamine County Water District No. 1 had net utility plant of \$3,260,551.² Assuming that the cost of the proposed construction is equal to the amount of the KIA grant, the proposed construction represents an increase of 6.4 percent in Jessamine County Water District No. 1's utility plant. Such an increase in net utility plant is considered to be within the ordinary course of business. 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 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 Jessamine County Water District No. 1's existing financial condition.³

² Id. at 7.

³ Assuming a useful service life of 20 years for the proposed water distribution mains, the water utility's annual depreciation expense will increase by \$10,500 as a result of the proposed extension. Based upon the utility's operating expenses in calendar year 2006, this expense represents an increase of 1.2 percent in the utility's total operating expenses. Id. at 11.

The Kentucky General Assembly, however, 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 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 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 construction from any requirement to obtain a certificate of public convenience and necessity. As Jessamine County Water District No. 1 had annual revenues in calendar year 2006 of \$897,365, it is a Class A water utility.⁴ The cost of the proposed water main replacement is approximately \$210,000. The proposed extension 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.

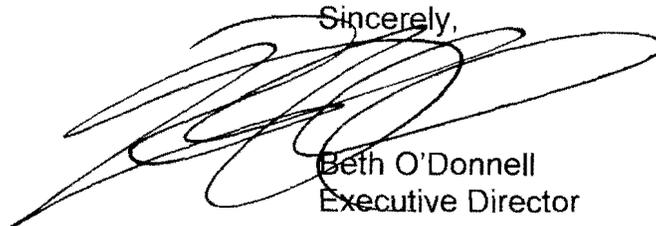
While Commission Staff is of the opinion that no certificate of public convenience and necessity is required, it requests that Jessamine County Water District No. 1 advise Commission Staff when the proposed construction is completed. It further requests that Jessamine County Water District No. 1 provide Commission Staff, within 60 days of the substantial completion of the proposed construction project, with a copy of the "as-built" drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications.

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

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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, Assistant 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 stylized with several loops and a long horizontal stroke extending to the left.

Beth O'Donnell
Executive Director