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January 4, 2012

Ryan D. Morrow, Esq.
Jay McShurley Law Office
Post Office Box 1827
Somerset, KY 42502

PSC STAFF OPINION 2012-002

Re: Western Pulaski County Water District
Construction of Office Building and Warehouse

Dear Mr. Morrow:

Commission Staff acknowledges receipt of your letter of October 5, 2011 in which you request on behalf of Western Pulaski County Water District ("Western Pulaski District") an opinion regarding the need for a certificate of public convenience and necessity for the construction of a new office building and storage warehouse in Pulaski County, Kentucky.

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

Western Pulaski District, a water district organized pursuant to KRS Chapter 74, provides water service to 3,688 customers in the Kentucky counties of Pulaski, Russell, and Wayne.¹

Western Pulaski District currently leases its office and storage facilities at a monthly cost of \$1,200. The water district's board of commissioners has determined that the water district requires larger and more efficiently designed office and storage space to serve its customers. It proposes to construct new facilities on a vacant and unimproved tract of property that the water district owns. The initial estimated cost of constructing these new facilities is approximately \$200,000. Western Pulaski District proposes to finance the construction of the proposed facilities through a long-term loan. The interest rate for the first five years of this loan will be approximately 2.75 percent per annum. The interest rate

¹ Annual Report of Western Pulaski County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010 ("Annual Report"), at 5 and 27.

is subject to adjustment after the first five years of the loan. Based upon an initial interest rate of 2.75 percent per annum, the monthly debt service payment will be \$1,084. Western Pulaski District does not intend to adjust its rates to finance the proposed project.

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

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.

Based upon the facts presented in your letter, Commission Staff is of the opinion that the proposed construction is not an extension in the ordinary course of business and requires a certificate of public convenience. The proposed construction does not extend any existing facility, but involves the construction of a new facility. Moreover, the construction of office facilities to replace an existing office appears to be an unusual event. Your letter presents no facts to suggest that such construction is a normal

occurrence for Western Pulaski District. Please note that the Commission has historically viewed the construction of utility offices as construction outside the ordinary course of business requiring a certificate of public convenience and necessity. See, e.g., *Columbia Gas of Kentucky*, Case No. 94-182 (Ky. P.S.C May 5, 1994); *Henderson-Union RECC*, Case No. 92-136 (Ky. P.S.C Nov. 2, 1992); *Wood Creek Water District*, Case No. 89-223, (Ky. P.S.C Aug. 15, 1989). The Commission has further taken the position that any construction requiring a utility's issuance of long-term debt materially affects the utility's financial condition and requires a certificate. See *Northern Kentucky Water Service District*, Case No. 98-079 (Ky. PSC June 9, 1998).

Commission Staff's position is unaffected by the Kentucky General Assembly's recent enactment of legislation exempting certain construction from the requirement of a certificate. This law 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. As this Act applies only to waterline extension and improvement projects, Commission Staff does not view Western Pulaski District's proposed construction as falling within the Act's coverage.

In addition to obtaining a certificate of public convenience and necessity, Western Pulaski District must also obtain Commission approval to enter the proposed loan. KRS 278.300(1) provides:

No 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 commission.

Ryan D. Morrow, Esq.

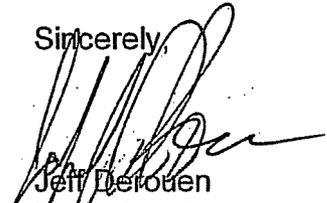
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While KRS 278.300(8) exempts short-term notes from this requirement, the proposed loan agreement's term of 20 years would prevent Western Pulaski District from claiming such an exemption.²

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.

Sincerely,



Jeff DeRouen
Executive Director

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This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.