



Raff

COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

December 20, 1995

Mr. Sid Stewart  
Morgan County Judge/Executive  
Morgan County Government  
450 Prestonsburg Street  
West Liberty, Kentucky 41472

Dear Mr. Stewart:

The Commission Staff has reviewed your request for a legal opinion as to the need for a Certificate of Convenience and Necessity for the construction of new water lines, pumps, and a water storage tank in Morgan County, Kentucky.

The facts as set forth in your letter are that the construction will be under the supervision, control, and direction of the Morgan County Fiscal Court and will be financed by a \$500,000 grant from the Federal Office of Surface Mining and a \$250,000 contribution from the Fiscal Court. Upon completion of construction the water facilities will be turned over at no cost to the Morgan County Water District which will be responsible for operation and maintenance of the water facilities and billing and collecting from new customers.

The jurisdiction of the Commission extends to all utilities within the Commonwealth. KRS 278.040. The Morgan County Water District is a utility subject to the Commission's jurisdiction. KRS 278.015. Unless otherwise acting as a utility, the Morgan County Fiscal Court is not subject to the Commission's jurisdiction.

The controlling statute, KRS 278.020(1), provides, in pertinent part, that:

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 of business, until such person has obtained from the Public Service Commission a

Mr. Sid Stewart  
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certificate that public convenience and necessity require such construction.

By definition, the terms "facility" and "service" are limited to the operation of a utility. KRS 278.010(9) and (11). The services enumerated in KRS 278.010 includes the "pumping, impounding, distributing, or furnishing of water to or for the public, for compensation." KRS 278.010(3)(d).

The Morgan County Fiscal Court will receive no compensation from either the Morgan County Water District or any water customer for the use of the facilities constructed. Rather, the Fiscal Court will allow the facilities to be used by the Water District at no cost and the Water District will receive all compensation from water customers for the service rendered.

Applying the law to these facts, the Morgan County Fiscal Court will not be furnishing a service enumerated in KRS 278.010 and therefore will not be a utility under the jurisdiction of the Commission. Since the Fiscal Court will not be constructing facilities to provide a service enumerated in KRS 278.010, the Fiscal Court is not required to obtain a Certificate of Convenience and Necessity under KRS 278.020(1). Furthermore, the Morgan County Water District would be required to obtain a Certificate of Convenience and Necessity only if it participates in the construction or has a direct or indirect role in the supervision or control of the construction.

This letter represents the Legal Division's interpretation of the law as applied to the facts presented in your letter. This opinion is advisory in nature and not binding on the Commission should these issues be formally presented for Commission resolution. Should you have any questions concerning this opinion, please contact our staff attorney Richard Raff at (502) 564-3940.

Sincerely,



Don Mills  
Executive Director

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**MORGAN COUNTY GOVERNMENT**  
450 PRESTONSBURG STREET  
WEST LIBERTY, KENTUCKY 41472

SID STEWART  
CO. JUDGE/EXECUTIVE  
December 5, 1995

PHONE  
(606) 743-3898

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PUBLIC SERVICE  
COMMISSION

Mr. Don Mills, Executive Director  
Public Service Commission  
730 Schenkel Lane  
PO Box 615  
Frankfort, KY 40602

Dear Mr. Mills:

Plans for a water line project have recently been completed for the Morgan County Fiscal Court. The consultant for the project design is Baker Engineering Unlimited, Inc. (BEU), a firm out of Frankfort, KY, under authorization by the Division of Abandoned Mine Lands, Frankfort, KY. This project is being financed through the Federal Office of Surface Mining with grant money of \$500,000 and Morgan County Fiscal Court contributing \$250,000. Approval of the project by the Public Commission is not a prerequisite to financing.

The project includes: tying onto the existing water line as its current termination point on Old KY 172 and installing a booster pump station with 2-7 1/2 hp pumps. Approximately 40,500 feet of 8. C900 pipe will be used and a 106,000 gallon glass-coated steel storage tank will be installed. The project ends at the new East Valley Elementary School. The plans and specifications for the project have been designed to meet the minimum construction and operating requirements set out in 807 KAR 5:066, Section 5(3), Section 6(1), Section 7 & 8, Section 9(1) through (3), Section 10(1) and Section 11.

Once the project has been completed, the county will turn the water lines and tank over to the Morgan County Water District, who will be responsible for all billings, maintenance and operation of the lines and related equipment.

It has been brought to my attention that a Certificate of Public Convenience and Necessity must be obtained for this project. However, it is not clear to me whether Morgan County Fiscal Court should be the entity filing this petition or whether Morgan County Water District should file after construction when the extension is turned over to them.

I would like your opinion on how the county should proceed with this matter. Bids will be opened for this project on December 13, 1995. If there are any other Public Service Commission requirements which need to be addressed, or further information the county needs to supply, please list those so we may comply in a timely manner.

Sincerely,



Sid Stewart  
Co. Judge/Executive