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October 27, 1999

COPY

William M. Dishman, Jr., Esq.
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Post Office Box 850
Danville, Kentucky 40423-0850

Dear Mr. Dishman:

Commission Staff is in receipt of your letter of October 20, 1999 in which you inquired whether a rural electric cooperative must obtain Public Service Commission approval to enter a loan agreement with the Federal Financing Bank.

As a rural electric cooperative is subject to the provisions of KRS Chapter 278, see KRS 279.210(1), it generally must obtain the Public Service Commission's approval before issuing any evidence of indebtedness. 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.

An exception to this general requirement is "where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof." KRS 278.300(10).

In West Kentucky RECC v. Energy Regulatory Commission, No. 80-CI-1747 (Franklin Cir. Ct. Ky. Nov. 12, 1982), Franklin Circuit Court held that the Rural Electrification Administration was an agency of the federal government and that a rural electric cooperative's agreement to borrow funds from that agency did not require Public Service Commission approval. Following the decision in West Kentucky RECC, the Public Service Commission held that "the FFB [Federal Financing Bank] is an arm of REA and, therefore no approval by the Commission of financing through the FFB is either necessary or allowable under the circuit court's decision." Big Rivers Electric Corp., Case No. 7990 (Ky. P.S.C. Mar. 27, 1984) at 1 - 2; but see Nolin RECC, Case



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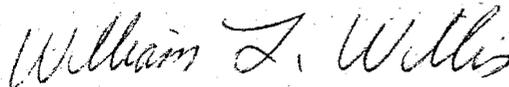
No. 91-252 (Ky. P.S.C. Dec. 6, 1991) (wherein the Public Service Commission expressly approved a rural electric cooperative's loan agreement with the Federal Financing Bank).

Based upon its review of the present law, Commission Staff is of the opinion that any loan agreement between a public utility and the Federal Financing Bank is exempted from the requirements of KRS 278.300. The Federal Financing Bank is "subject to the general supervision and direction of the Secretary of the Treasury" and is "an instrumentality of the United States Government." 12 U.S.C. §2283. It is an agency of the United States. U.S. v. Conover, 772 F.2d 765, 771 (11th Cir. 1985). Any loan agreement between the Federal Financing Bank and a rural electric cooperative, therefore, is subject to the supervision or control of a federal agency.

For your convenience, I have enclosed a copy of the legal authority that is referred to in this letter.

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, Staff Attorney, at (502) 564-3940, Extension 259.

Sincerely,



William L. Willis
General Counsel

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