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December 19, 2002

John N. Hughes, Esq.
124 W. Todd Street
Frankfort, KY 40601

Re: Acquisition of an Existing Commercial Building

Dear Mr. Hughes:

Commission Staff is in receipt of your letter concerning the acquisition of an existing commercial building and the financing thereof.

You state in your letter that NKWD is attempting to purchase an existing commercial building to convert to offices. You also state that NKWD initially plans to issue a BAN to finance the acquisition and then plans to convert the BAN into long term financing. You request a staff opinion as to whether NKWD is required to obtain prior Commission approval for the acquisition of the building, the issuance of a BAN, and the conversion of the BAN to long-term debt.

As to the acquisition of the building, Commission approval is not required. However, before NKWD will be allowed recovery of the costs associated with the purchase of the building, the Commission will have to make a determination that the acquisition was reasonable.

As to the issue of financing, it is staff's opinion that the issuance of a BAN may not require Commission approval, but that the conversion of the BAN to long-term debt will require approval. The Commission's authority to regulate financing transactions is set forth in KRS 278.300. Specifically, KRS 278.300(1) provides that:

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.



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However, there are exemptions to this requirement. KRS 278.300(8) provides a limited exception:

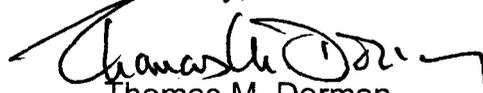
This section does not apply to notes issued by a utility, for proper purposes and not in violation of the law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay 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.

BANS are generally short-term notes that are issued for a period that does not exceed 2 years. Therefore, they generally do not require Commission authorization. Therefore, if NKWD issues a BAN that does not exceed the 2-year period, it is staff's opinion that no approval is required.

You stated that NKWD plans to convert the BAN to long-term financing by a bond issuance. Since revenue bonds are generally issued for periods that exceed 2 years, it is our opinion that Commission approval is required for this action. As stated above, prior Commission approval of the acquisition of the building is not required. However, if NKWD issues bonds to finance the acquisition of the building, the Commission will review the purpose of the issuance to determine whether it is reasonable.

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 Anita Mitchell, staff attorney, at (502) 564-3940, ext. 258.

Sincerely,



Thomas M. Dorman
Executive Director

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