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January 4, 2006

Regina Rapier Beckman, Esq  
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P.O. Box 88  
Bardstown, KY 40004-0088

Re: Acquisition of Lock 7 Hydroelectric Plant

Dear Ms. Beckman:

Commission Staff acknowledges receipt of your letter of December 15, 2005 in which you request an opinion on whether Salt River Electric Cooperative Corporation's ("Salt River") purchase of 50 percent ownership of the Lock 7 Hydroelectric Plant requires Commission approval.

Based upon your letter and the record of Case No. 2005-00405,<sup>1</sup> Commission Staff understands the facts are as follows:

Salt River, a rural electric cooperative organized pursuant to KRS Chapter 279, owns and operates facilities used for the transmission and distribution of electricity to the public for compensation. It serves approximately 42,235 customers in Nelson, Spencer, Bullitt, Washington, Marion, Mercer, Shelby, Anderson, Jefferson, and Larue counties, Kentucky. Salt River currently owns a 50 percent interest in Lock 7 Hydro Partners, LLC, a limited liability company organized pursuant to KRS Chapter 275.

The Lock 7 Project is a 2.04 megawatt generating plant that is located on the Kentucky River in Mercer County, Kentucky. It was constructed in 1927 and began commercial operation in 1928. It uses surplus water from Kentucky River Lock and Dam No. 7 to generate electricity. Kentucky Utilities Company ("KU") acquired the Lock 7 Project from

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<sup>1</sup> *Kentucky Utilities Company*, Case No. 2005-00405 (Ky. PSC Dec. 22, 2005)

Kentucky Hydro Electric Company on December 31, 1928 and has continuously owned the license to operate the hydroelectric plant. The Lock 7 Project represents approximately 0.04 percent of KU's current installed generation and less than 0.0018 percent of its net utility plant. The original cost of the Lock 7 Project is \$853,508.<sup>2</sup> KU considers the plant's current value to be \$35,965.

On September 26, 2005, KU and Lock 7 Hydro Partners executed an Asset Purchase Agreement that provides for the transfer of all assets of the Lock 7 Project to Lock 7 Hydro Partners. Under the Agreement's terms, KU will, by quitclaim deed, transfer its interest in any real property associated with the Lock 7 Project to Lock 7 Hydro Partners for \$35,965. On September 27, 2005, KU and Lock 7 Hydro Partners applied to the Federal Energy Regulatory Commission ("FERC") for approval to transfer the license to the Lock 7 Project. On November 23, 2005, FERC approved the application. Lock 7 Hydro Partners intend to refurbish the plant and continue to use it to generate electricity.

In your letter, you ask: Must Salt River obtain Commission approval for its acquisition of 50 percent interest of the Lock 7 Project?

Based upon the facts set forth above, Commission Staff is of the opinion that no provision of KRS Chapter 278 requires Commission approval of Salt River's acquisition of the Lock 7 Project. KRS 278.020(5) and (6) require Commission approval before the transfer of ownership or control of a utility. As the current transaction involves the transfer of less than 0.0018 percent of KU's total net utility plant and does not confer any ownership interest in KU's remaining assets, it does not constitute a transfer of control or ownership as defined in those two sections.

KRS 278.218 prohibits any person from acquiring ownership of or control of any assets that are owned by a utility without prior Commission approval if the assets have an original book value of \$1 million or more and will continue to be used to provide the same or similar service to the utility or its customers. As the original book value of the Lock 7 Project is less than \$1 million, the statute's requirements are not triggered.

Finally, KRS 278.300(1) requires a utility to obtain prior Commission authorization before the issuance of securities or evidences of indebtedness or the assumption of any obligation or liability in respect to securities or evidences of indebtedness. Nothing in your letter suggests that Salt River is issuing securities or

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<sup>2</sup> See Kentucky Utilities Company, FERC Form 1 (Mar. 31, 2004) at 410.

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evidences of indebtedness to finance the acquisition of the Lock 7 Project. Assuming that Salt River will not issue any securities or evidences of indebtedness as part of this transaction, KRS 278.300(1) also appears inapplicable.

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 Linda Mattox, Staff Attorney, at (502) 564-3940, Extension 407.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell", is written over the typed name and title.

Beth O'Donnell  
Executive Director