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January 25, 2010

Mr. Harold Wester  
Muhlenberg County Water District No. 1  
Post Office Box 348  
Greenville, Kentucky 42345

Re: Purchase of Generators

**PSC STAFF OPINION 2010-002**

Dear Mr. Wester:

Commission Staff acknowledges receipt of your letter of January 8, 2010 in which several questions are posed regarding the possible purchase of generators for use in Muhlenberg County Water District No. 1's ("Muhlenberg District") operations.

Commission Staff understands the facts as follows: Muhlenberg District is a water district organized pursuant to KRS Chapter 74. It provides water service to approximately 6,048 customers in Muhlenberg County, Kentucky. It is considering the purchase of four 60-KW portable electric generators and one 100-KW portable electric generator for use at the water district's pumping stations in the event of emergencies. Muhlenberg District intends to finance the purchase of the generators through a two-year note that may be renewed for two successive two-year terms. Muhlenberg District has not adopted the Local Model Procurement Code.

You present the following questions:

**1. Is the water district required to make its purchase of electric generators through an electric contractor?**

No provision of KRS Chapter 278 or Public Service Commission regulations requires the purchase of the generators through an electrical contractor. Commission staff is not aware of any statutes or administrative regulation that imposes such requirement.

**2. What obligations, if any, does the water district have to make newspaper advertisement for bids on the proposed purchase?**

Muhlenberg District must advertise for bids on the proposed purchase if the cost of the purchase exceeds \$20,000. KRS 424.260(1) provides:

Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than twenty thousand dollars (\$20,000) without first making newspaper advertisement for bids.

The requirement for bidding applies to purchase of generators and to any subsequent purchase of services. For example, if the water district purchases generators without automatic throw switches and subsequently determines that such switches are necessary and the total cost to purchase and install the services exceeds \$20,000, the contract for the purchase and installation of such switches must be advertised for bids.

Unless a valid and reasonable basis exists for purchasing the generators separately, the water district may not evade the requirements of KRS 424.260 by dividing the purchase into several purchases. See *Bd. of Education of Floyd County v. Hall*, 353 S.W.2d 194 (Ky.1962). See also OAG 84-274. Moreover, if, at the time of purchasing the generators, the water district intends to install additional equipment on the generators, the cost of the purchase and installation of the additional equipment cannot be considered a separate item but must be included in the total purchase cost for the purpose of determining if the purchase must be advertised for bids.

**3. What requirements does the Commission have regarding the type, location, nature and features of the generators?**

The Commission's regulations do not contain any requirements regarding the nature, type, location or features of electric generators. Commission Staff recommends that the generators be designed to reasonably, effectively, and safely operate to meet the water district's needs. It suggests that the water district make its decision after consultation with the water district's engineer and its servicing electrical utilities.

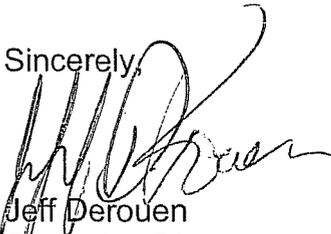
**4. Must Muhlenberg District obtain Commission approval of any notes issued to finance the purchase of the proposed electric generators?**

No Commission approval of the proposed issuance is required. While KRS 278.300(1) requires a utility to obtain Commission authorization prior to issuing any evidence of indebtedness, KRS 278.300(8) expressly exempts notes that are payable at periods of not more than two years from the date of issuance or renewals of such notes not exceeding in the aggregate six years from the date of the original note's issuance. Muhlenberg proposes to finance its purchase of the generators with the issuance of a two-year note that may be renewed for two successive two-year terms.

Please also note that KRS 278.020(1) requires a person before beginning the construction of any plant or equipment, except ordinary extensions in the usual course of business, without first obtaining a certificate of public convenience and necessity from the Public Service Commission. Because your letter does not state the total estimated cost of the proposed purchase and installation of the generators and Muhlenberg District did not request an opinion on whether a certificate is required, Commission Staff has not addressed this question. If the total cost of the proposed purchase and installation exceeds five percent of Muhlenberg District's present utility plant, however, Commission Staff recommends that the water district request an opinion on whether a certificate for the purchase and installation is required.

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

Sincerely,



Jeff Derouen  
Executive Director