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January 10, 2013

W. Randall Jones, Esq.  
Rubin & Hays  
450 South Third Street  
Louisville, Kentucky 40202-1410

Re: Kentucky Rural Water Finance Corporation      **PSC STAFF OPINION 2013-002**  
Pooled Financings

Dear Mr. Jones:

This letter responds to your inquiry of December 5, 2012 on behalf of the Kentucky Rural Water Finance Corporation ("KRWFC") as to whether KRS 278.300 requires prior Commission approval before Assistance Agreements between the KRWFC and several water utilities may be modified to reflect the lower interest costs achieved through the refinancing of KRWFC bonds. This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Public Service Commission should the issues herein be formally presented for Commission resolution.

Commission Staff understands the facts as follows:

KRWFC is a public nonstock and nonprofit corporation organized pursuant to KRS Chapters 58 and 273. Created in 1995 in response to a resolution of the Kentucky Rural Water Association ("KRWA"), the KRWFC's stated purpose is to finance public projects for and on behalf of KRWA members. The KRWA is a statewide association that offers membership to water and wastewater utilities throughout Kentucky. It has over 300 voting members.

In 2001 KRWFC established a flexible term loan program to make low interest, tax-exempt loans to cities, water districts and water associations. To fund the loans to its borrowers, KRWFC issues bonds in the open market at the prevailing interest rates. When KRWFC has had a loan to a water

district or water association member, that member has sought prior approval of the loan from the Commission pursuant to KRS 278.300.

Current interest rates in the financial market have declined to a level that allows KRWFC to issue bonds to refinance and refund its pooled bonds issued from 2001 to 2004. KRWFC proposes to issue such bonds and to pass the substantial interest cost savings achieved from the refinancing to borrowers who borrowed funds from KRWFC from 2001 to 2004. Approximately fifteen of the affected borrowers are water districts or associations.

KRWFC's proposed refunding program would lower the interest rate that borrowers are currently paying. The original maturity date of a borrower's loan would not be extended nor would the original face amount of the loan be exceeded. Each borrower would amend its existing Assistance Agreement with KRWFC to provide funds to refinance its outstanding principal balance and to cover its portion of the costs of issuance of the refunding pooled bonds. Borrowers would not execute a new Assistance Agreement with KRWFC, but would execute an amendment to the original Assistance Agreement to reflect the new loan interest rate, current call provisions, and the adjusted principal amount.

In your letter, you pose the following question: Does KRS 278.300 require a borrower who is a water district or water association to obtain Commission authorization prior to executing an amendment to its Assistance Agreement to reflect the results of the KRWFC proposed refinancing?

Water districts and water associations are utilities and are subject to the Commission's jurisdiction in the same manner as any other utility.<sup>1</sup> 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.

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<sup>1</sup>. KRS 278.010(3)(d); KRS 278.012; KRS 278.015.

KRWFC takes the position that the proposed amendments to the Assistance Agreements do not create a new security or evidence of indebtedness for purposes of KRS 278.300. It asserts that the terms of the Assistance Agreement have not changed significantly enough to constitute a new security. You note that the original maturity date remains unchanged and that the original loan amount will not be exceeded. While some terms of the Assistance Agreement will be revised, the consequence of such revision is to lower the borrower's debt service and thus ease the borrower's cash flow requirements.

While Commission Staff concedes that, as presented in your letter, the proposed amendment will result in benefits to the borrowers, the revisions will also modify material terms of each original Assistance Agreement – its interest rate, call provisions and principal amount. The Commission has previously found that agreements modifying such revisions, even though to the material benefit of a utility, are evidences of indebtedness and that KRS 278.300(1) requires Commission approval of such agreements.<sup>2</sup> Accordingly, Commission Staff is of the opinion that the proposed amendments to the Assistance Agreements will require Commission approval.

While Commission approval of the amendments is required, precedent exists to permit KRWFC to file a consolidated application on behalf of all water districts and water associations that will be executing amendments to previously approved Assistance Agreements.<sup>3</sup> In the most recent case in which the Commission permitted a consolidated application, the applicant appearing on behalf of the affected utilities identified each of the affected utilities, described the amendments to be made to each utility's Assistance Agreement, included in its application a power of attorney from each utility authorizing the applicant to act on the utility's behalf, and provided a detailed estimate of the savings that the amendment would produce. Commission Staff respectfully recommends that KRWFC consider a similar format.<sup>4</sup>

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<sup>2</sup> See, e.g., Case No. 2005-00058, *Kentucky Infrastructure Authority's Joint Application on Behalf of Certain Water Districts for Authority to Borrow Funds to Refinance Certain Indebtedness to the Kentucky Infrastructure Authority* (Ky. PSC Aug. 26, 2005).

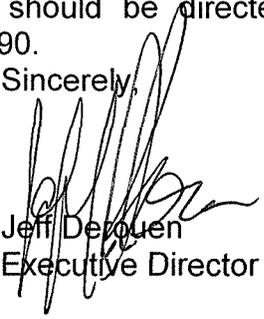
<sup>3</sup> *Id.*; Case No. 93-101, *Kentucky Infrastructure Authority's Joint Application on Behalf of Certain Water Districts for Authority to Borrow Funds to Refinance Certain Indebtedness to the Kentucky Infrastructure Authority* (Ky. PSC Apr. 1, 1993).

<sup>4</sup> For a copy of this application, see [http://psc.ky.gov/pscscf/2005%20cases/2005-00058/KIA\\_App\\_Refinance\\_020205.pdf](http://psc.ky.gov/pscscf/2005%20cases/2005-00058/KIA_App_Refinance_020205.pdf) (last visited Jan. 9, 2013).

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Questions concerning this opinion should be directed to Gerald Wuetcher,  
Executive Advisor/Attorney, at (502) 782-2590.

Sincerely,



Jeff Derouen  
Executive Director