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March 19, 2013

Mr. David R. Clark  
General Manager  
Paducah Power System  
1500 Broadway  
P.O. Box 180  
Paducah, KY 42002-0180

**PSC STAFF OPINION 2013-005**

RE: Electric Plant Board of the City of Paducah, Kentucky d/b/a Paducah Power System

Dear Mr. Clark:

Commission Staff acknowledges receipt of your letter of February 21, 2013, in which you request an opinion regarding whether providing the delivery of natural gas through the Electric Plant Board of the city of Paducah d/b/a Paducah Power System's ("Plant Board") pipeline to a private company that would provide compressed natural gas ("CNG") for vehicle fueling purposes would subject the Plant Board to additional regulation by the PSC under KRS 278.508(2).

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.

The following facts are presented in your letter: The Plant Board is a municipal electric company created by ordinance of the City Commission of Paducah, Kentucky adopted in 1945. The Plant Board was organized and operates as a municipal corporation under the statutory scheme commonly referred to as the "Little TVA Act" (KRS 96.550 through 96.901). Currently, the Plant Board does not serve any retail or wholesale gas customers from its pipeline. The gas transmission line has been dedicated solely to delivering fuel to the Plant Board's peaking plant. Now the Plant Board is considering an arrangement for the delivery of natural gas through its pipeline to a private company that would provide CNG for vehicle fueling purposes at a location near the Plant Board's pipeline. However, the Plant Board wants to ensure that this

arrangement would not be subject to “any greater regulation by the PSC than is already the case.”<sup>1</sup>

Your letter presents the following issues: (1) Would entering the proposed arrangement for delivery of natural gas to a CNG filling station operator subject the Plant Board to PSC regulation of its rates, terms of service, construction, financing, contract terms, accounting practices, periodic reporting and/or filings beyond the federal and state pipeline safety regulations and statutes than are already applicable to the Plant Board as an intrastate pipeline transmission company, and (2) Does KRS 278.508(2) require the Public Service Commission to regulate the Plant Board’s transportation, distribution, and/or delivery of gas to the proposed CNG vehicle fueling facility in addition to the regulation already imposed on the Plant Board under federal and state pipeline regulation.

KRS 278.040(2) provides, in relevant part, that “[t]he jurisdiction of the commission shall extend to all utilities in this state.” KRS 278.010(3)(b) defines “utility,” in relevant part, as follows:

“Utility” means any person except, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses.

Commission Staff is of the opinion that the Plant Board, being a municipal electric company, will not be subject to additional regulation by the Commission if the Plant Board engages in the proposed delivery of natural gas through its pipeline to a CNG filling station operator. As stated above, KRS 278.010(3), specifically exempts “a city” from the definition of “utility” “for the purposes of paragraph . . . (b) . . . which explicitly references the “. . . distribution . . . of natural or manufactured gas . . . for compensation, for light, heat, power, or other uses.” However, it remains subject to the jurisdiction of the Commission for gas pipeline safety.

KRS 278.495(2) states in pertinent part:

Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:

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<sup>1</sup> Letter from David R. Clark, Paducah Power System to Jeff R. Derouen, Executive Director, Public Service Commission (February 21, 2013).

(a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail . . . .

The commission may exercise this authority in conjunction with, and pursuant to, its authority to enforce any minimum safety standard adopted by the United States Department of Transportation pursuant to 49 U.S.C. sec. 60101 et seq., or any amendments thereto, and may promulgate administrative regulations consistent with federal pipeline safety laws in accordance with provisions of KRS Chapter 13A as are necessary to promote pipeline safety in the Commonwealth . . . .<sup>2</sup>

Your second question is whether KRS 278.508(2) would increase the Commission's regulation of the Plant Board, given its proposal to deliver natural gas through its pipeline to a private company that would provide CNG for vehicle fueling purposes. As you correctly stated, KRS 278.508(1) specifically exempts from Commission regulation the rates, terms, and conditions of service for the sale of natural gas to a CNG fueling station for use as a motor vehicle fuel. Commission Staff notes that while each section of KRS 278.508 references actions that may be taken by a "utility" and the regulations that may apply regarding those actions, as previously noted, the Plant Board is not a "utility" as defined by KRS 278.010(3)(b), and is not subject to the provisions that specifically apply to utilities.

Specific language in KRS 278.508(2) that does apply to the Plant Board's proposed project includes:

The transportation, distribution, or delivery of natural gas to any compressed natural gas fuel station, retailer, or any end-user for use as a motor vehicle fuel, shall continue to be subject to regulation by the Kentucky Public Service Commission.

Even with this applicability, however, it is Commission Staff's opinion that "shall continue to be subject to regulation" by the Commission, describes the current authority of the Commission to regulate safety aspects of natural gas facilities, as provided for in KRS 278.495(2) and as previously discussed, rather than the imposition of any additional regulations on the Plant Board.

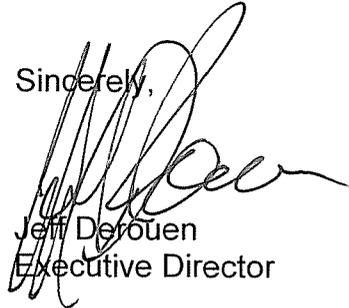
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<sup>2</sup> KRS 278.992(1) provides penalties for violations of the federal pipeline safety laws or any regulation adopted and filed by the Commission governing the safety of pipeline facilities or the transportation of gas as those terms are defined in the Natural Gas Pipeline Safety Act, shall be subject to a civil penalty to be assessed by the Commission not to exceed one hundred thousand dollars (\$100,000) for each violation for each day that a violation persists, not to exceed one million dollars (\$1,000,000).

Mr. David R. Clark  
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As stated earlier, 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 Aaron Ann Cole, Staff Attorney, at (502) 782-2591.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen", written over the word "Sincerely,".

Jeff Derouen  
Executive Director

AAC/kar