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September 16, 2013

Mr. Cletus Greer
403 Morgantown Road
Whitesville, Kentucky 42378

PSC STAFF OPINION 2013-011

Re: Ohio County Water District
Eligibility to Serve as Member of Board of Commissioners

Dear Mr. Greer:

Commission Staff acknowledges receipt of your letter of July 17, 2013 in which you requested an opinion as to whether you are eligible for appointment to Ohio County Water District's Board of Commissioners. 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 be formally presented for Commission resolution.

Commission Staff understands the facts as follows:

Ohio County Water District ("Ohio District"), a water district organized pursuant to KRS Chapter 74, provides water service to 5,848 customers in Breckinridge, Daviess, Grayson, and Ohio counties, Kentucky.¹ It is governed by a seven-member board of commissioners.

You are being considered for a vacancy on Ohio District's Board of Commissioners. You are a resident of Ohio County. Your primary residence is located at 403 Morgantown Road, Whitesville, Kentucky. East Daviess County Water Association provides water service to your primary residence. 403 Morgantown Road is located within the Ohio County Water District's boundary.²

¹ *Annual Report of Ohio County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2012*, at 5, 27.

² Ohio County Court, Order Approving Petition to Enlarge Territorial Limits of the Ohio County Water District (Nov. 21, 1978).

In your letter, you pose the following question: Are you eligible for appointment to Ohio District's Board of Commissioners despite being a customer of another water utility?

KRS 74.020(1)(b) provides:

Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in one (1) or more adjacent counties, as provided by KRS 74.115, the board of commissioners shall be appointed by the appropriate county judges/executive, with the approval of the respective fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the respective fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner.

KRS 74.020(1) does not require that a water district commissioner be a customer of the water district. Only residency within the water district's boundaries is required. The Attorney General has also opined that, while a member of a water district's board of commissioners must reside within the water district's territory, he or she is not required to be a customer of the water district.³

In addition to residing with a water district's territory, Kentucky law requires that to serve as a water district commissioner a person must also be at least 18 years of age,⁴ never have fought a duel or been a second in a duel, never been convicted of a felony for which a pardon has not been issued,⁵ or hold an incompatible office.⁶

Based upon the information provided in your letter, Commission Staff is of the opinion that your receipt of water service from East Daviess County Water Association does not disqualify you from serving as a member of Ohio District's Board of Commissioners. Commission Staff lacks sufficient information to determine whether

³ OAG 84-228 (June 22, 1984).

⁴ KRS 2.015.

⁵ Ky. Const. § 239; KRS 61.100.

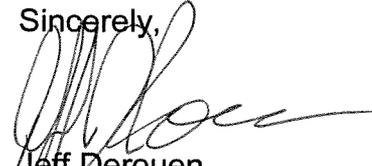
⁶ Ky. Const. § 165. See also Ky. Const. § 237; OAG 84-279 (Aug. 8, 1984); OAG 82-635 (Dec. 20, 1982); OAG 80-234 (Apr. 24, 1980); OAG 78-651 (Sept. 12, 1978).

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you meet the other qualifications to serve in that position or are disqualified from such service.

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 Ann Ramser, Staff Attorney, at (502) 782-2585.

Sincerely,



Jeff Derouen
Executive Director

cc: Ohio County Water District