



Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Daniel E. Logsdon Jr.  
Commissioner

September 3, 2015

**PSC STAFF OPINION 2015-013**

Cynthia L. DeReamer Rollins, General Counsel  
Hogan Real Estate  
9300 Shelbyville Road, Suite 1300  
Louisville, Kentucky 40222

RE: Request for Advisory Opinion Regarding Top Flight Landing  
Subdivision Waste Water Treatment Plant

Dear Ms. Rollins:

Commission Staff acknowledges receipt of your letter of August 18, 2015, in which Hogan Real Estate, as agent for PBI Bank, Inc., requests an Opinion as to whether the waste water treatment plant ("WWTP") located within the Top Flight Landing Subdivision ("Top Flight Subdivision") is subject to the jurisdiction of the Kentucky Public Service Commission. This opinion represents the Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Based upon your letter, Commission Staff understands the facts and your legal position to be as follows:

The Top Flight Landing Subdivision is a development owned by PBI Bank, Inc. and located within or near the city of Taylorsville, Kentucky. The development includes a waste water treatment plant located within the subdivision. While the WWTP is providing sewer service, no person is being charged for the sewer service. You state that the Kentucky Public Service Commission does not have jurisdiction over the WWTP because no person is being charged for service.

Commission Staff notes that KRS 278.040(2) states:

The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

KRS 278.010 provides the definitions for KRS Chapter 278 and KRS 278.010(3) states:

"Utility" means any person except a regional wastewater commission established pursuant to KRS 65.8905 and, 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:

KRS 278.010(3)(f) further provides:

The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220.

Consequently, pursuant to KRS 278.010(3) and KRS 278.010(3)(f), there are a number of criteria that must be met for the collection, transmission, or treatment of sewage to be subject to the Commission's jurisdiction. One of those criteria is that the collection, transmission, or treatment of sewage be provided "for compensation." From the facts that you convey, no person is being charged for the service provided by the Top Flight Subdivision WWTP and related facilities. Therefore, per the facts you convey, the service is not being provided "for compensation" and the facility does not fall within the definition of a "utility" and is not subject to the jurisdiction of the Kentucky Public Service Commission.

If any person who owns, controls, operates, or manages the Top Flight Subdivision WWTP and related facilities decides to seek compensation for the collection, transmission, or treatment of sewage, then the "for compensation" requirement of KRS 278.010(3)(f) would be met. However, even assuming compensation is charged for the collection, transmission, or treatment of sewage, the service would only be subject to the Commission's jurisdiction if all other statutory

criteria are met, including the requirement that the service be provided "for the public." Since the facts in your letter and the subject of your request were limited to the issue of providing service at no charge, Staff is unable to express an opinion as to whether or not the Top Flight Subdivision WWTP and related facilities satisfy the other statutory criteria for Commission jurisdiction.

The letter represents Commission Staff's interpretation of the law as applied to the facts presented. The 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 David Spenard, Staff Attorney at (502) 782-2580.

Sincerely,



Jeff Derouen  
Executive Director

DS/ph