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January 13, 2017

## PSC STAFF OPINION 2017-001

Allen Anderson, President & CEO  
South Kentucky Rural Electric Cooperative Corp.  
925-929 North Main Street  
P.O. Box 910  
Somerset, KY 42502-0910

Re: Sale of Existing Headquarters Facility

Dear Mr. Anderson,

The Commission received on November 9, 2016, your letter dated November 9, 2016, in which you request on behalf of South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") an opinion regarding whether South Kentucky must obtain Commission approval prior to selling its existing headquarters facility. This opinion is advisory in nature and not binding on the Commission should the issues addressed herein be formally presented for Commission resolution.

Based upon your letter and prior proceedings before the Commission, Commission Staff ("Staff") understands the facts are as follows:

- South Kentucky, a rural electric cooperative corporation organized pursuant to KRS Chapter 279, provides electric service to approximately 66,763 customers in Adair, Casey, Clinton, Cumberland, Lincoln, McCreary, Pulaski, Rockcastle, Russell, Wayne Counties, Kentucky.<sup>1</sup>
- South Kentucky's existing headquarters facility is located on approximately 9.75 acres of land it owns at 925-929 North Main Street, Somerset, Kentucky. The

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<sup>1</sup> Annual Report of South Kentucky Rural Electric Cooperative Corp. to the Public Service Commission for the Year Ended December 31, 2015 ("2015 Annual Report") at 36 and 56 of 62.

headquarters facility includes ten buildings, and has been renovated or expanded several times.<sup>2</sup>

- In Case No. 2008-00371, South Kentucky applied for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a new headquarters facility on property it owned located on Norwood Road in Pulaski County, Kentucky.<sup>3</sup> On October 15, 2009, the Commission issued an Order in which it found that a new facility was needed, but that the proposed new facility would result in wasteful duplication of facilities due to excess capacity over need and excessive cost. The Commission denied the application, but permitted South Kentucky to elect to revise its application.<sup>4</sup>
- On January 22, 2010, South Kentucky filed a revised application for a less expensive, smaller headquarters facility.<sup>5</sup> On May 11, 2010, the Commission granted South Kentucky a CPCN to construct a new headquarters as proposed in the revised application,<sup>6</sup> but due to economic conditions, South Kentucky did not construct the facility.<sup>7</sup> Pursuant to KRS 278.020(1), the authority conferred by the CPCN granted South Kentucky in Case No. 2008-00371 became void when South Kentucky did not commence construction within one year of the date of issuance of the CPCN.
- In Case No. 2014-00355, South Kentucky filed another application in which it requested a CPCN to construct a new headquarters at the former Somerset Houseboats facility in Somerset, Kentucky.<sup>8</sup> By Order issued March 27, 2015, the Commission found that a new headquarters facility was still needed, and granted South Kentucky a CPCN to construct the proposed headquarters facility. The

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<sup>2</sup> *Id.*, at 2-3.

<sup>3</sup> Case No. 2008-00371, *Application of South Kentucky Rural Electric Cooperative Corporation for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility in Somerset, Kentucky* (filed September 5, 2008), Application.

<sup>4</sup> *Id.* (Ky. PSC Oct. 15, 2009).

<sup>5</sup> *Id.* (filed Jan. 22, 2010), Application.

<sup>6</sup> *Id.* (Ky. PSC May 11, 2010).

<sup>7</sup> 2014 Case (Ky. PSC March 27, 2015), at 2.

<sup>8</sup> Case No. 2014-00355, *An Application of South Kentucky Rural Electric Cooperative Corporation for a Certificate of Public Convenience and Necessity to Construct New Headquarters Facility and For Approval to Transfer Ownership of Certain Assets or, In the Alternative, A Determination that Such Approval is not Necessary* (“2014 Case”) (filed October 8, 2014), Application at 2.

Commission directed South Kentucky to file quarterly written reports detailing the status of the construction of the new facility. In its most recent report, South Kentucky stated that the revised projected completion date was December 1, 2016.<sup>9</sup>

In your letter, you state that because of the new headquarters facility authorized by the Commission in Case No. 2014-00355, South Kentucky no longer needs the buildings and land located at 925–929 North Main Street in Somerset, Kentucky, and that the buildings and land will not be used to provide any services to the utility or its customers. You further state that the original book value of the old headquarters facility is approximately \$1,818,216.63.

Your letter presents the following question: Must South Kentucky obtain Commission approval to sell its old headquarters facility buildings and land?

Under prescribed circumstances, prior Commission approval is required for the transfer of an electric utility's assets. KRS 278.218 provides in pertinent part:

(1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:

(a) The assets are to be transferred by the utility for reasons other than obsolescence; or

(b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

Your letter indicates that the original book value of the old headquarters facility assets (buildings and land) exceeds the threshold set forth in KRS 278.218(1).

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<sup>9</sup> Letter, Allen Anderson, President and CEO of South Kentucky, to Executive Director of Kentucky Public Service Commission (filed Nov. 9, 2016).

Commission approval of the transfer of these assets is thus required if the transfer is for a reason other than obsolescence of the assets, or if the assets will continue to be used to provide the same or similar service to the utility or its customers.

In construing KRS 278.218(1), the Commission previously has cited the Merriam-Webster Dictionary's definition of "obsolete" as "no longer in use or no longer useful."<sup>10</sup> Here, once South Kentucky moves its operations to the new facility authorized in Case No. 2014-00355, it does not appear that the old headquarters buildings and land will be used by or useful to South Kentucky in providing electric service to its customers, in which case these assets would be considered obsolete within the meaning of KRS 278.218(1)(a). Additionally, South Kentucky will not use the old headquarters facility to provide the same or similar utility service that South Kentucky had provided in the past. Based on the foregoing, it is Staff's opinion that Commission approval is not required for South Kentucky to transfer these assets.

Staff advises, however, that the Commission expects the sale of the old headquarters facility to be at fair market value, as established by at least one appraisal prepared by a real estate appraiser licensed in the State of Kentucky. The Commission will review the reasonableness of the sale in South Kentucky's next rate case.

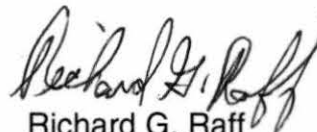
This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution.

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<sup>10</sup> Case No. 2013-0005, *Petition of East Kentucky Power Cooperative, Inc. for a Declaration of its Authorization to Sell the Smith Unit 1 Assets Without a Transfer of Control Filing Under KRS 278.218* (Ky. PSC March 5, 2013), at 4-5.

Questions concerning this opinion should be directed to John B. Park,  
Commission Staff Attorney, at (502) 782-2589, or John.Park@ky.gov.

Sincerely,

  
Richard G. Raff  
General Counsel

JBP/ph