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March 12, 2014

PSC STAFF OPINION 2014-002

Hon. Harold M. Johns
Law Offices of Harold M. Johns
12 Public Square
P. O. Box 746
Elkton, KY 42220-0746

RE: Todd County Water District CPCN Application for Proposed Construction of Office and Maintenance Facility

Dear Mr. Johns:

Commission Staff acknowledges receipt of your letter dated February 6, 2014, on behalf of Todd County Water District ("Todd County"), in which you request an opinion as to whether the construction of a new office building and an adjacent maintenance facility requires a Certificate of Public Convenience and Necessity ("CPCN"). Additionally, you attached to your letter an Application for a CPCN.

This letter represents Commission Staff's opinion, which is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution.

As part of its Application, Todd County states that it sells "portable" water in the unincorporated areas of Todd County and a portion of Logan County, Kentucky. It avers that, for many years, it has rented an office building from the city of Elkton, Kentucky, for its administrative offices, but does not have a maintenance facility for its operations. Todd County proposes constructing an approximately 2,500 square foot building to provide administrative office space, with an adjacent maintenance and warehouse facility on property owned by Todd County. Todd County estimates the cost of the construction project to be \$800,000. It currently has \$1,856,886 available in existing funds, and proposes paying for construction of the facility from those funds. Todd County requests that the Commission issue an Order authorizing it to construct a new office and maintenance facility.

KRS 278.020(1) and 807 KAR 5:001, Section 15(2) govern new construction projects of a utility.

KRS 278.020(1) provides, in relevant part, that:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

807 KAR 5:001, Section 15(2), provides, in relevant part:

New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed new construction or extension is or will be required by public convenience or necessity.

Under KRS 278.020(1), no person, partnership, public or private corporation, or combination thereof can commence construction of any property until it has received a CPCN. There are two exceptions to this requirement: (1) the applicant is a retail electric supplier and the construction is for service connections to electric-consuming facilities located within its certified territory; or (2) the construction is an ordinary extension of existing systems in the usual course of business. Todd County is not a retail electric supplier; therefore, a CPCN is unnecessary only if Todd County's proposed project is an ordinary extension of existing systems in the usual course of business. The Commission has previously determined that the construction of office buildings is not an ordinary extension of existing systems in the usual course of business, and has required the Applicant to file an Application requesting a CPCN before beginning construction on

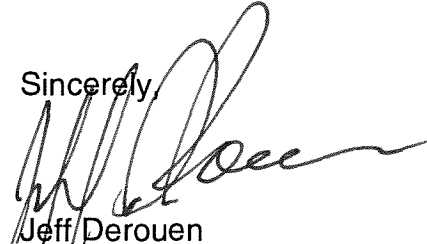
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these facilities.¹ Thus, Todd County would need to file an Application for a CPCN before beginning construction on a new office building and maintenance facility.

In anticipation that a CPCN would be required prior to constructing a new office building and maintenance facility, you attached to your letter an Application requesting a CPCN. A review of your CPCN application indicates that it does not contain all of the information required by KRS 278.020(1), KRS 322.340, and 807 KAR 5:001, Sections 4, 7, 14, and 15(2), and it cannot be accepted for filing. By separate letter you will be formally notified of the specific deficiencies that will need to be cured before your CPCN application can be accepted for filing.

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 at (502) 782-2591.

Sincerely,



Jeff Derouen
Executive Director

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¹ Case No. 92-136, *Henderson-Union Rural Electric Cooperative Corporation Alleged Failure to Comply with KRS 278.020(1)* (Ky. PSC Nov. 2, 1992); and Case No. 94-182, *Columbia Gas of Kentucky, Inc. Alleged Failure to Comply with Kentucky Revised Statutes Chapter 278* (Ky. PSC Jul. 18, 1994).