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October 23, 2014

Mr. Michael Eaves
218 West Main Street
P.O. Box 300
Richmond, KY 40476

Re: Irvine Municipal Utilities
Request for an Advisory Opinion

PSC STAFF OPINION 2014-013

Dear Mr. Eaves:

Commission Staff acknowledges receipt of your September 26, 2014 letter in which you request an opinion concerning the Commission's jurisdiction over a proposed asset transfer between Estill County Water District No. 1 ("Estill District") and Irvine Municipal Utilities ("Irvine Utilities"). 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 Commission should the issues herein be formally presented for Commission resolution.

Based upon your letter and the included Memorandum Settlement Agreement ("Settlement Agreement"), Commission Staff understands the facts as follows:

In 2005 Estill County and the City of Irvine adopted a plan to address deficiencies with their respective wastewater systems. In 2009 Estill District and Irvine Utilities entered into a joint agreement for the treatment of both entities' wastewater. The parties agreed that Irvine Utilities would construct and operate a treatment plant, to which Estill District would send its wastewater.

Subsequent to the construction of the new treatment facility, a dispute arose regarding Estill District's obligation to divert all wastewater to the new treatment facility as well as the fee Estill District would pay to Irvine Utilities for use of the treatment facility.

Estill District and Irvine Utilities have resolved the dispute as memorialized in the Settlement Agreement. The Settlement Agreement provides that Estill District will transfer all equipment, customers, customer records, accounts receivable, lines, collection systems, pump stations and easements associated with its wastewater division to Irvine Utilities.

You have requested a legal opinion regarding whether the Commission has jurisdiction over the transfer, whether Commission approval is required and whether any other state or federal agency approval is required.

Estill District is a joint water district and sewer utility. Estill District's sewer division provides wastewater service to approximately 472 customers.¹ KRS 278.015 provides in part that, "any water district, combined water, gas, or sewer district ... shall be a public utility and shall be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined in KRS 278.010...." Thus, as a combined water and sewer district, Estill District is a utility subject to the Commission's jurisdiction.

The transfer of a regulated utility is governed by KRS 278.020, which states in part:

(5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

(6) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect.

¹ *Annual Report of Estill County Water District #1- Sewer Division to the Kentucky Public Service Commission for the Year Ended December 31, 2012* at 12.

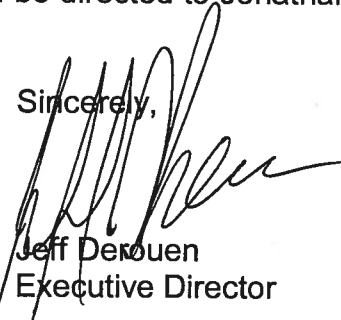
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The Settlement Agreement seeks to effectuate a transfer of Estill District's sewer division to Irvine Utilities. As Estill District is a regulated utility subject to the Commission's jurisdiction, transfers are subject to the requirements set forth within KRS 278.020. Accordingly, prior Commission approval of any transfer or acquisition is required. Estill District must submit an application to the Commission for authority to effectuate the terms of the Settlement Agreement prior to the transfer of its sewer division to Irvine Utilities. A filing requirement checklist specifying the documents and information required to submit a transfer application is enclosed.

Finally, as it is outside the scope of the Commission's jurisdiction, Commission Staff is unable to render a legal opinion as to whether any other state or federal agency may possess jurisdiction over this matter.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Jonathan Beyer, Staff Attorney, at (502) 782-2581.

Sincerely,



Jeff Derouen
Executive Director

Enclosure