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March 10, 2015

PSC STAFF OPINION 2015-006

William Ballard, Manager
East Clark County Water District
P. O. Box 112
Winchester, KY 40392

Re: East Clark County Water District
Request for an Advisory Opinion

Dear Mr. Ballard:

Commission Staff acknowledges the receipt of your letter dated January 27, 2015, in which you request an Opinion regarding whether an application for a Certificate of Public Convenience and Necessity ("CPCN") is necessary for a construction project proposed by the East Clark County Water District ("East Clark"). 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, Commission Staff understands the facts to be as follows:

East Clark is proposing a project to replace 8,000 feet of 6" class 160 PVC water line on Ecton Road with 8" C-900 PVC water line. The project will require a bore under the Mountain Parkway. The work also includes replacing 2,500 feet of 3" class 200 water line on the Little Stoner Rd. with 6" C-900 water line.

The total projected cost of the project is approximately \$707,000, and the project will be funded by internal funds from the East Clark. The construction will not result in a rate increase to East Clark's customers. For the calendar year ending December 31, 2013, East Clark had [gross] utility plant of \$12,395,269. The proposed construction represents an increase of approximately 5.7% in East Clark's utility plant.

Your letter presents the following question: Is a CPCN required for this project?

KRS 278.020(1) states, in pertinent part:

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(3) states:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

Pursuant to House Bill 235 passed during the 2014 Regular Session of the Kentucky General Assembly, the legislative instructions for CPCNs for water districts and water associations, effective through June 30, 2016, also include the following:

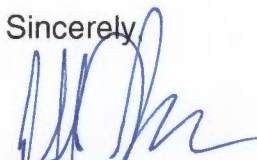
A water district created pursuant to KRS Chapter 74 and a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project shall not be required to obtain a certificate of public convenience and necessity, notwithstanding KRS 278.020(1), if the water district or water association is a Class A or B utility as defined in the Uniform System of Accounts established by the Public Service Commission, pursuant to KRS 278.220, as the system of accounts prescribed for utilities in Kentucky, and either: (a) The water line extension or improvement project will not cost in excess of \$500,000; or (b) The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring Public Service Commission approval pursuant to KRS 278.300. In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers.¹

¹ 2014 Ky. Acts Ch. 117.

East Clark had operating revenues in the amount of \$1,367,696 for the calendar year ending December 31, 2013.² East Clark, pursuant to the Uniform System of Accounts, is classified as a Class A utility.³ East Clark reported a total net utility plant balance of \$8,295,756 as of December 31, 2013.⁴ Therefore, a project costing \$707,000 represents approximately 8.52% of East Clark's net utility plant balance. Based upon the facts as presented, East Clark will not incur any financial obligations requiring the Commission's approval pursuant to KRS 278.300, and East Clark will not, as a result of the project, increase rates to its customers. Accordingly, the proposed project falls within the scope of the legislative exemption to KRS 278.020(1), and a CPCN is, therefore, not required for this project.

This letter represents the 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 David Spenard, Staff Attorney at (502) 782-2580.

Sincerely



Jeff Derouen
Executive Director

DS/ph

² *Annual Report of East Clark County Water District for Year Ended December 31, 2013* ("2013 Annual Report") at page 24 of 71.

³ The Kentucky Public Service Commission's Uniform System of Accounts defines a Class A water utility as a utility "having annual water operating revenues of \$750,000 or more." Uniform System of Accounts for Class A and B Water Districts and Associations at 15 (2002), <http://psc.ky.gov/agencies/psc/forms/usoa/0600ab02.pdf>

⁴ Net utility plant is derived from gross utility plant of \$12,395,269 less depreciation of \$4,099,513.