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June 29, 2016

PSC STAFF OPINION 2016-016

Transmitted via Fax and U.S. Mail

Donta Evans
Wood Creek Water District
P.O. Box 726
London, Kentucky 40743-0726

Re: Request for Legal Staff Opinion

Wood Creek Water District,
East Laurel Water District,
West Laurel Water Association, Inc.

Dear Ms. Evans:

The Commission acknowledges receipt of your April 5, 2016 letter on behalf of Wood Creek Water District ("Wood Creek"), East Laurel Water District ("East Laurel") and West Laurel Water Association, Inc. ("West Laurel") (collectively, "Water Utilities") in which you request an opinion as to whether any changes are necessary to the Water Utilities' tariffs in order to collect a 911 service fee on customers' monthly utility bills. 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.

Commission Staff understands the facts to be as follows: Wood Creek and East Laurel are water districts organized pursuant to KRS Chapter 74, which own and operate facilities that treat and distribute water to approximately 5,234 and 5,449 customers, respectively, in Laurel County, Kentucky.¹ West Laurel is a water association organized pursuant to KRS Chapter 273, which owns and operates facilities that treat and distribute water to approximately 5,068 customers in Laurel County,

¹ *Annual Report of Wood Creek Water District to the Kentucky Public Service Commission for the Year ended December 31, 2014 ("Annual Report")*, at 53; *Annual Report of East Laurel Water District to the Kentucky Public Service Commission for the Year ended December 31, 2014 ("Annual Report")*, at 53.

Kentucky.² The Laurel County Fiscal Court has passed Ordinance No. 321.0 (“Ordinance”) that will require the Water Utilities to collect a service fee on each customer’s monthly utility bill to fund 911 emergency telephone services (“911 service fee”) in Laurel County, Kentucky. The Ordinance directs the Water Utilities to collect a 911 service fee in the amount of \$3.50 from each active water service customer. The Water Utilities distribute the collected funds, less a one percent (1%) administrative fee, to the Laurel County Fiscal Court. The 911 service fee takes effect on July 1, 2016.

Your letter presents the following question:

1. Whether any changes are necessary to the Water Utilities’ tariffs in order to comply with collection of the 911 service fee as required by the Laurel County Fiscal Court Ordinance No. 321.0.

The impact upon the filed tariffs depends upon whether the fee is imposed directly on customers, with the Water Utilities acting as collection agents, or whether the fee is imposed upon the Water Utilities, who then pass the expense onto the customer. Here, the Ordinance is ambiguous whether the 911 service fee is imposed upon the Water Utilities’ service, and thus the Water Utilities, or whether the 911 service fee is imposed upon the Water Utilities’ customers, with the Water Utilities acting merely as collection agents. In the second paragraph on page 2 of the Ordinance, the language appears to indicate that the 911 service fee is imposed upon the Water Utilities’ customers and that the Water Utilities merely act as collection agents. However, in the third paragraph on page 2 of the Ordinance, the 911 service fee is imposed upon “active water services,” which would be indicative of a fee imposed upon the Water Utilities.

If the Ordinance is read to impose a fee on the Water Utilities and the Water Utilities intend to collect the fee from customers as part of the Water Utilities’ revenue, then the fee would be an expense which would have to be covered through a rate. KRS 278.010(2) defines a rate as:

[A]ny individual or joint fare, toll, charge, rental, or other compensation for service rendered by any utility, and any rule, regulation, practice, act, requirements, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff therefor.

If the fee is to be recovered through a rate, then, pursuant to Commission statutes and regulations, the Water Utilities must either pay the fee out of their existing revenues or file a rate case pursuant to 807 KAR 5:001, Section 16, or alternative rate filing to increase rates pursuant to 807 KAR 5:076. If the Ordinance is read to impose a fee

² *Annual Report of West Laurel Water Association to the Kentucky Public Service Commission for the Year ended December 31, 2014 (“Annual Report”), at 53.*

directly on the Water Utilities' customers with the Water Utilities acting merely as collection agents, then the Water Utilities can charge the 911 service fee without increasing existing rates, but should revise their tariffs to pass through the government-imposed fee pursuant to KRS 278.160(1) and 807 KAR 5:011, which requires regulated utilities to submit a complete tariff with the Commission setting forth, among other things, the utility's rates, charges, regulations and conditions of service over which the Commission has jurisdiction.

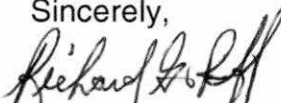
Because the answer to your question involves interpretation of a county ordinance, Commission Staff is unable to address that issue because it is beyond the scope of the Commission's jurisdiction pursuant to KRS Chapter 278.

This discussion of the 911 service fee is limited solely to Commission Staff's opinion as to the content of the Water Utilities' tariffs. Commission Staff notes that there is pending litigation regarding the imposition of 911 service fees on a water meters. In October 2015, the Kentucky Supreme Court held that a fiscal court's imposition of 911 service fees on residential and commercial units within that county was a constitutional and statutorily valid exercise of the fiscal court's authority. *Greater Cincinnati/Northern Ky. Apt. Assoc. v. Campbell Co. Fiscal Court*, 479 S.W.3d 603 (2015). Prior to that decision, the Kentucky Court of Appeals found that a 911 service fee imposed by Garrard County Fiscal Court on water meters was not valid. However, in February 2016, the Kentucky Supreme Court vacated that decision and remanded that matter to the Court of Appeals for further consideration in light of *Greater Cincinnati. City of Lancaster v. Garrard County*, No. 2013-CA-000716 (Ct. App. July 3, 2014). (discretionary review granted, decision vacated Feb. 18, 2016). The Court of Appeals has not rendered a decision yet.

Again, Commission Staff points to this information only as precautionary for any potential effect on 911 fees in the future; it has no present effect on the issue presented by the Water Utilities herein, regarding sufficiency of their tariffs to collect the 911 fee imposed upon them pursuant to the Ordinance.

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 Jennifer Fell, Staff Attorney, at (502) 782-2585.

Sincerely,



Richard G. Raff
General Counsel

JF/ph