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February 1, 2017

PSC STAFF OPINION 2016-003

Hon. Pat White, Jr.
Whitley County Judge/Executive
P.O. Box 237
Williamsburg, KY 40769

Rep. Regina Bunch
State Representative, 82nd District
1051 Old Corbin Pike Road
Williamsburg, KY 40769

Re: Water Service in Whitley County, Kentucky

Dear Judge White and Representative Bunch,

The Commission received your letters dated November 28, 2016, and December 23, 2016, respectively, in which you request an opinion regarding the lack of Whitley County representation on the Board of the Knox County Utilities Commission ("KCUC"), the territory of which includes a portion of Whitley County. You also ask what percentage of Whitley County is being served by Knox County. You request an informal hearing with Whitley County Water District, KCUC and Governor Matthew Bevin, and request advice regarding the best way to serve the citizens of Whitley County. 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:

- KCUC, a water district organized pursuant to KRS Chapter 74, provides water service to approximately 2,808 customers in Bell, Knox and Whitley Counties, Kentucky.¹ KCUC was formed by the merger of East Knox County Water District ("East Knox") and Dewitt Water District ("Dewitt").

¹ Annual Report of Knox County Utilities Commission to the Public Service Commission for the Year Ended December 31, 2015 ("2015 Annual Report") at 12 and 53 of 62.

- On September 12, 2000, East Knox filed with the Commission an application pursuant to KRS 278.023 for a Certificate of Public Convenience and Necessity (“CPCN”) to construct and finance a waterworks improvement project, known as the Brush Creek Project, consisting of the installation of 43 miles of water lines to serve 736 potential new customers, the construction of one 100,000 gallon storage tank and one 180,000 gallon storage tank, and the installation of three booster pump stations.² East Knox also sought an increase in rates, including the assessment of a monthly surcharge of \$4.00 on customers served by the Brush Creek Project.³ The Preliminary Engineering Report submitted with the application includes a map that shows the proposed water line connecting with an existing line of Dewitt at its termination at the town of Siler in Whitley County in the Poplar Creek area,⁴ and extending along Highway 92 into Bell County. A copy of this map is enclosed with this Staff Opinion. By Order issued October 6, 2000 the Commission granted East Knox a CPCN for the Brush Creek Project, authorized East Knox to issue indebtedness to finance the Brush Creek Project, and approved new rates for service, including the assessment of a \$4.00 per month surcharge on customers of the Brush Creek Project.⁵
- On October 16, 2000, the County Judge/Executive of Whitley County, Kentucky, entered an order pursuant to KRS 74.115 approving the annexation of territory within Whitley County to East Knox.⁶ The area in Whitley County annexed to East Knox is described in the order as follows:

Beginning at a point on Highway 904 approximately 0.5 miles west of Highway 92 in Whitley County, continuing east along the south side of Highway 92 to intersection of Highway 1595 and Highway 92, thence due south to Whitley County and Bell County line, thence with Bell County and

² Case No. 2000-427, *The Application of East Knox County Water District for a Certificate of Public Convenience and Necessity to Construct, Finance, and Increase Rates Pursuant to KRS 278.023* (Application filed Sept. 12, 2000).

³ *Id.*

⁴ In Case No. 1994-323, the Commission granted Dewitt a CPCN to construct a waterworks improvement project in the Poplar Creek area. Case No. 94-323, *In the Matter of the Application of Dewitt Water District of Knox and Whitley Counties, Kentucky, for a Certificate of Public Convenience and Necessity to Construct, Finance and Increase Water Rates Pursuant to KRS 278.023* (Ky. PSC Sept. 19, 1994).

⁵ Case No. 2000-427, *The Application of East Knox County Water District for a Certificate of Public Convenience and Necessity to Construct, Finance, and Increase Rates Pursuant to KRS 278.023* (Ky. PSC Oct. 6, 2000).

⁶ Whitley County, Kentucky, Order Book 23, Page 537.

Whitley County line to Highway 92, thence northwest with the Whitley County/Knox County line approximately 3.0 miles to Puncheon Branch, thence southwest to point at Highway 904 and Highway 92 in Whitley County.

The area in Whitley County approved by the Whitley County Judge/Executive for annexation to East Knox encompasses the portion of the proposed Brush Creek Project water line extension that is located in Whitley County. A copy of this order is enclosed with this Staff Opinion.

- On October 16, 2000, the County Judge/Executive of Bell County, Kentucky, entered an order pursuant to KRS 74.115 approving the annexation of territory within Bell County to East Knox.⁷
- On November 30, 2000, East Knox and Dewitt filed a Joint Petition for Commission approval of their proposed merger into a single district to be known as "Knox County Utility Commission."⁸ In support of their Joint Petition, East Knox and Dewitt submitted the Merger Agreement between the two districts. The Merger Agreement, a copy of which is enclosed with this Staff Opinion, provides that the then serving commissioners of East Knox and Dewitt shall serve collectively as the governing body of the district resulting from the merger for a period of one year after the Commission's approval of the merger. The Merger Agreement provides that thereafter:

Knox County Utility Commission shall consist of seven (7) Water Commissioners two (2) of whom shall reside in Knox County in the area formerly constituting the East Knox Water District; two of whom shall reside in Knox County in the area formerly constituting the Dewitt Water District; two (2) of whom shall reside in Whitley County in the area served by Knox County Utility Commission; and one (1) of whom shall reside in Bell County in the area served by Knox County Utility Commission. Each of the Water Commissioners shall be appointed by the judge/executive of the county in which the respective commissioners reside.⁹

⁷ Bell County, Kentucky, Order Book 46, Page 48.

⁸ Case No. 2000-530, *The Joint Application of East Knox Water District and Dewitt Water District for Approval of Merger Agreement* (Application filed Nov. 30, 2000).

⁹ *Id.*

- On January 29, 2001, the Commission issued an Order granting East Knox and Dewitt's Joint Petition for approval of the proposed merger.¹⁰ In its Order approving the proposed merger, the Commission noted that East Knox then served customers in Knox County, and that Dewitt then served customers in both Knox and Whitley Counties.
- In response to a request from Commission Staff as part of an effort to develop a territorial boundaries database for water districts, KCUC submitted by letter dated May 17, 2012, a map of its boundaries, as well as the above-referenced October 16, 2000 Order of the Whitley County Judge/Executive approving annexation of territory within Whitley County to East Knox. A copy of this map is enclosed with this Staff Opinion.
- According to a request for a formal Staff Opinion by KCUC received by the Commission on May 23, 2016, regarding collection of a 911 fee on water bills passed by the Whitley County Fiscal Court, KCUC served 185 customers in Whitley County as of the date of the request. According to your letters, Whitley County has been trying for years without success to get KCUC to extend its lines within its territory in Whitley County to serve residents who lack water service, and that Whitley County provided funds last year to KCUC to extend these lines. You also state that Whitley County Water District ("Whitley District") would be willing to make the necessary improvements to serve these residents if this area were within its territory.

The first request in your letters is for an informal hearing with Whitley County Water District, KCUC and Governor Bevin to discuss KCUC's provision of water service in Whitley County. Staff advises that the Commission has no authority to arrange meetings with the Governor, and that you would need to make this request directly to the Governor's office. Staff, however, is available to schedule a meeting at our offices with both of you, the Judge/Executive of Knox County, KCUC, the Whitley County Water District and any other appropriate parties, such as the Kentucky Department of Local Government and the Kentucky Infrastructure Authority, to discuss potential alternatives for providing water service in Whitley County. If you would like to schedule such a meeting, please let us know and we will do so.

Your second request is for a legal opinion regarding the legality of Whitley County's lack of representation on KCUC's board of commissioners. As noted, KCUC was formed by the merger of Dewitt and East Knox. At the time of the Commission's approval of the proposed merger, Dewitt provided water service to customers in Knox and Whitley Counties, and East Knox provided water service to customers in Knox County. Additionally, portions of Whitley and Bell Counties had been annexed to the

¹⁰ *Id.* (Jan. 29, 2001), Order.

territory of East Knox. The territory of merged districts therefore included property lying within both Knox and Whitley Counties.

KRS 74.363(1) authorizes two or more water districts to merge into a single district upon approval of a majority of commissioners on the board of each district. KRS 74.363(2) governs the membership of the board of the water district created by the merger of districts:

The members of the boards of commissioners of the merged water districts shall serve as members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commissioner. Thereafter, the board shall be composed as follows:

- (a) If the boundaries of the resulting district lie wholly within a single county, the board of commissioners shall be composed of between three (3) and seven (7) members as agreed upon by the merged water districts in their merger documents.
- (b) If the boundaries of the resulting district lie within two (2) or more counties, the board of commissioners shall be composed of six (6) or more members as agreed upon by the merged water districts in their merger documents.

KRS 74.363(3) provides:

Each appointment to the board of commissioners of the resulting district shall be made by the appropriate county judge/executive with the approval of the fiscal court. Each member of the board shall be a resident of the county from which he or she is appointed.

Upon merger of East Knox and Dewitt, the boundaries of the resulting district, KCUC, included portions of three counties, Knox, Whitley and Bell. Staff advises that pursuant to KRS 74.363(2)(b), the board of KCUC should therefore be composed of at least six members as agreed upon by the Merger Agreement between East Knox and Dewitt.

As noted, the Merger Agreement between East Knox and Dewitt provides that one year after the Commission's approval of their proposed merger, the board of the resulting district shall consist of seven commissioners, comprised as follows: two commissioners who reside in Knox County in the area formerly constituting the East

Knox Water District; two commissioners who reside in Knox County in the area formerly constituting the Dewitt Water District; two commissioners who reside in Whitley County in the area served by KCUC; and one commissioner who resides in Bell County in the area served by KCUC. The Merger Agreement further provides that each commissioner shall be appointed by the judge/executive of the county in which the commissioner resides. Accordingly, Staff is of the opinion that pursuant to KRS 74.363(2)(b), the board of KCUC should include two commissioners who reside in the portion of KCUC's territory that lies within Whitley County, and that these commissioners should be appointed by the Whitley County Judge/Executive.

Your third request asks what percentage of Whitley County is served by KCUC. The order of the County Judge/Executive of Whitley County entered October 16, 2000, delineates the area of Whitley County annexed to East Knox prior to its merger with Dewitt. Additionally, Dewitt served a portion of Whitley County at the time of the merger.¹¹ Staff, however, has no information to indicate the area in Whitley County that was actually being served by Dewitt. Staff is unaware of any order of the County Judge/Executive of Whitley County approving annexation of territory within Whitley County to Dewitt. The preliminary engineering report for the Brush Creek Project submitted by East Knox in Case No. 2000-00427 does show a water line of Dewitt extending into Whitley County to the town of Siler in the Poplar Creek area, but contains no details as to specific areas or customers being served.¹²

Your fourth request is for advice as to the best way for you to help residents of Whitley County within KCUC's service territory who currently lack water service. Staff reiterates that it is available to schedule a meeting at our offices to discuss potential alternatives for providing water service in Whitley County. If you would like to schedule a meeting, please let us know.

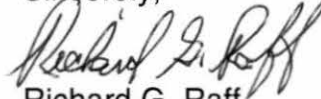
¹¹ The Commission in its Order approving the merger between East Knox and Dewitt in Case No. 2000-530, however, found that Dewitt served customers in both Knox and Whitley Counties. Case No. 2000-530, *The Joint Application of East Knox Water District and Dewitt Water District for Approval of Merger Agreement* (Ky. PSC Jan. 29, 2001).

¹² Case No. 2000-427, *The Application of East Knox County Water District for a Certificate of Public Convenience and Necessity to Construct, Finance, and Increase Rates Pursuant to KRS 278.023* (Application filed Sept. 12, 2000).

Hon. Pat White, Jr.
Rep. Regina Bunch
February 1, 2017
Page 7

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 John B. Park, Commission Staff Attorney, at (502) 782-2589, or John.Park@ky.gov.

Sincerely,



Richard G. Raff
General Counsel

JBP/ph