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February 7, 2017

PSC STAFF OPINION 2017- 005

Kasey K. Emmick
General Manager
East Daviess County Water Association, Inc.
9210 State Route 144
Knottsville, Ky. 42366

Re: Request for PSC Staff Opinion regarding Construction of Workshop

Dear Mr. Emmick,

The Commission received on January 26, 2017 your letter in which you request, on behalf of East Daviess County Water Association, Inc. ("East Daviess"), an opinion regarding the need for a Certificate of Public Convenience and Necessity ("CPCN") for the construction of a building to be used as a workshop. 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 Public Service Commission should the issues be formally presented for Commission resolution.

East Daviess is a water association incorporated under KRS Chapter 273 that provides water service to 4,496 customers in Daviess, Hancock, and Ohio counties, Kentucky.¹ East Daviess's rates and service are subject to the jurisdiction of the Commission.

Based upon your letter, Commission Staff understands the facts are as follows:

The workshop will be a 40' X 60' steel building with room to store a utility truck and trailer, along with tools and pipe.

¹ *Annual Report of East Davies Water Association, Inc. to the Public Service Commission for the Year Ended December 31, 2015* ("2015 Annual Report") at 12 and 53.

East Daviess has put the construction project out for bid and has accepted the low bid of \$102,900.

East Daviess will fund the construction out of general funds and will not be issuing any financing in connection with the project.

Construction of this project will not result in increased charges to customers of East Daviess.²

Your letter presents the following question:

Is East Daviess required to obtain a CPCN for the proposed construction of a workshop?

Staff Analysis

KRS 278.020(1) provides:

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.

Administrative Regulation 807 KAR 5:001, Section 15(3), further provides:

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.

The Commission has interpreted this statute and regulation to mean that a CPCN is not necessary "for facilities that do not result in the wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a

² Electronic mail message sent by Mr. Emmick on February 3, 2017.

sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.”³

In the 2016 Regular Session, the Kentucky General Assembly enacted legislation (the “Budget Bill Exemption”) that provides:

Water Districts and Water Associations: 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.

2016 Ky. Acts Ch. 149. This Act became effective on April 28, 2016.

Thus, through the Budget Bill Exemption, the General Assembly has further defined when a CPCN is required for a waterline extension or improvement project. However, the construction of a workshop building cannot be characterized as a “waterline extension or improvement project,” as that term is utilized in the Budget Bill Exemption, since the construction now proposed by East Daviess will neither extend a waterline nor improve service through an existing waterline. Consequently, the budget Bill Exemption is unavailable to East Daviess for this project.

Historically, the Commission has held that the construction of headquarters buildings, regional (satellite) office buildings, and warehouses is not in the ordinary course of business and does require a CPCN.⁴ However, the Commission has also

³ Case No. 2000-00481, *Application of Northern Kentucky Water District (A) For Authority to Issue Parity Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) A Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

⁴ See, e.g., Case No. 2013-00343, *Application of Salt River Electric Cooperative Corporation for a Certificate of Convenience and Necessity Authorizing Certain Proposed Construction Identified as the Headquarters Construction and District Renovations* (Ky. PSC Oct. 25, 2013), Order granting Salt River’s request for a CPCN to construct a new warehouse/operations center; Case No. 2011-00196, *Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 19, 2011), Order granting Kenergy a CPCN to construct a new district office and service facility; Case No. 2010-00244,

frequently found that the construction of a proposed facility whose cost represents less than two percent of the utility's net utility plant and will not require financing approval by the Commission is in the ordinary course of business and does not require a CPCN.⁵

As to whether the construction of the proposed workshop building is an ordinary extension in the usual course of business, Staff notes that as of December 31, 2015, East Daviess had utility plant of \$11,872,417 and net utility plant of \$6,948,672.⁶ The construction of a workshop costing \$102,900 will represent an increase of 1.48 percent in East Daviess's net utility plant. Based on prior Commission precedent on the issue of the need for a CPCN, Staff is of the opinion that the facility proposed here does not

Application of Shelby Energy Cooperative, Inc. for a Certificate of Convenience and Necessity for its 2010-2014 Construction Work Plan (Ky. PSC Aug. 3, 2011), Order holding that a CPCN was required for Shelby's AMI program since the AMI project was not in the ordinary course of business; Case No. 2008-00371, *Application of South Kentucky Rural Electric Cooperative Corporation for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility in Somerset, Kentucky* (Ky. PSC May 11, 2010), Order granting South Kentucky a CPCN to construct proposed headquarters facilities; Case No. 2004-00416, *Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for 2004-2007 Construction of Work Plan* (Ky. PSC Feb. 25, 2005), Order holding that in the event Kenergy or Big Rivers desires to proceed with a headquarters construction, a separate CPCN will have to be filed; Case No. 2001-178, *Application of the Big Sandy Water District for a Certificate of Public Convenience and Necessity to Construct an Improvement Project and to Issue Securities in the Approximate Principal Amount of \$822,000 for the Purpose of Financing Said Project and Refunding Certain Outstanding Revenue Bonds of the District Pursuant to the Provisions of KRS 278.020, 278.300 and 807 KAR 5:001* (Ky. PSC Dec. 20, 2001), Order finding that prima face evidence exists that Big Sandy violated KRS 278.020(1) by its construction of the proposed tank facilities without first obtaining a CPCN from the Commission; Case No. 94-182, *Columbia Gas of Kentucky, Inc. Alleged Failure to Comply with KRS Chapter 278* (Ky. PSC June 27, 1994), Order initiating an investigation into Columbia's construction of a new headquarters and customer service facility prior to obtaining a CPCN.

⁵ See, e.g., Case No. 2015-00284, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Expansion of the Bavarian Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Nov. 20, 2015), Order; Case No. 2012-00269, *Tariff Filing of Warren County Water District to Establish the Rockfield School Sewer Capital Recovery Fee* (Ky. PSC Nov. 19, 2012), Order; Case No. 2007-00058, *Application of Big Rivers Electric Corporation for Approval of an Interconnection Agreement with Kentucky Utilities Company* (Ky. PSC Apr. 16, 2007), Order; Case No. 2002-00474, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Green Valley and Laurel Ridge Landfill Gas to Energy Projects to Be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 3, 2003), Order; Case No. 98-508, *Application of Kentucky Turnpike Water District for a Declaration that a Certificate of Public Convenience and Necessity Is not Required or, in the Alternative, for the Issuance of Such a Certificate of Public Convenience and Necessity* (Ky. PSC Nov. 19, 1998), Order; Case No. 92-028, *Application of Kenton County Water District No. 1 for Authority to Perform Maintenance at its Taylor Mill Treatment Plant by Replacing Filer Valves at a Total Cost of Approximately \$700,000* (Ky. PSC Feb. 18, 1992), Order. But see also Case No. 2013-00365, *Application of Delta Natural Gas Company, Inc. for an Order Declaring that it is Authorized to Construct, Own and Operate a Compressed Natural Gas Station in Berea, Kentucky* (Ky. PSC Mar. 30, 2015), Order.

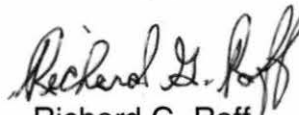
⁶ 2015 Annual Report at 20.

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represent a materially capital expenditure and does qualify as an ordinary extension in the usual course of business. Consequently, no CPCN is needed.

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 Richard G. Raff, General Counsel, at (502) 782-2588.

Sincerely,


Richard G. Raff
General Counsel

RR/kg