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February 8, 2018

PSC STAFF OPINION 2018-003

Mr. Jimmie Tubbs
Chairman of the Board of Commissioners
7564 US Hwy 68 E
P.O. Box 414
Benton, KY 42025

Re: Jonathan Creek Water District
Requirement for CPCN

Dear Mr. Tubbs:

On November 20, 2017, the Commission received your letter dated November 15, 2017, in which you request a Staff Opinion regarding the legal issues related to the requirement for a Certificate of Public Convenience and Necessity ("CPCN") for the Water District's project of replacing approximately ten miles of existing water lines.

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

Jonathan Creek Water District ("JCWD") a water district organized pursuant to KRS Chapter 74 provides water service to 2,408 customers in Marshall County, Kentucky.¹

On November 20, 2017, the Public Service Commission received a letter from Jonathan Creek Water District dated November 15, 2017. The letter stated that JCWD had plans to replace ten miles of existing water distribution mains. Planning had ascertained that a loan of \$300,000 from a local bank for two years or less would be sufficient to finance the project. The cost quoted for the project only included the cost of materials as JCWD

¹ Annual Report of Jonathan Creek Water District to Public Service Commission for the year ending December 31, 2016 ("2016 Annual Report") at 48.

planned on using its own labor and equipment.² Supplemental information later provided by JCWD showed that the labor cost of the project would be \$120,543.20.³ Therefore, the total cost to replace the ten miles of existing water lines would be \$420,543.20.

Your letter asks the following question: Is JCWD required to file an application for a CPCN for the proposed project?

KRS 278.020(1) provides:

No person, partnership, public or private corporation....shall....begin the construction of any plant, equipment, property or facility....until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

However, recent legislative action specifically exempts the proposed construction from the requirement for a CPCN. In the 2016 Regular Session, the Kentucky General Assembly enacted legislation that provides:

Water Districts and Water Associations: A water district created pursuant to KRS Chapter 74...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...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...will not, as a result of the water line extension or improvement project, incur obligations requiring the Public Service Commission approval pursuant to KRS 278.300. In either case, the water district...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.

As JCWD had annual operating revenue of \$888,753.00 in 2016,⁴ it is a Class A water utility⁵ and falls within the class of water utilities subject to the exemption. Because the construction costs of the proposed project are under \$500,000, the Act exempts JCWD

² Letter of November 15, 2017, from Jimmie Tubbs, on behalf of JCWD.

³ Letter from Christopher Burnett on behalf of JCWD.

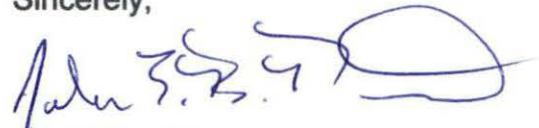
⁴ 2016 Annual report at 48.

⁵ 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 (2002), at 14 (found at <https://psc.gov/agencies/psc/forms/usoa/0700ab02.pdf>.)

from the requirement to obtain a CPCN. Although the proposed construction only needs to meet one of the requirements in order to be exempt for the need for a CPCN, the Act also appears to exempt the proposed project under the second requirement since the loan for the project is payable in two years or less and, thus, Commission approval is not required under KRS 278.300(8).

This letter represents the 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 Jenny L. Sanders, Commission Staff Attorney, at (502) 782-2581 or Jenny.Sanders@ky.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E.B. Pinney", with a large, stylized flourish at the end.

John E.B. Pinney,
Acting General Counsel

JLS/kg