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February 21, 2018

PSC STAFF OPINION 2018-004

Charles Burns
North Manchester Water Association, Inc.
7362 N HWY 421
Manchester, KY 40962

Re: North Manchester Water Association, Inc.

Dear Mr. Burns:

Commission Staff acknowledges receipt of your letter requesting an opinion regarding whether elections are required for certain board members of the North Manchester Water Association, Inc. ("NMWA"). This opinion 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 be formally presented for Commission resolution.

Commission Staff understands the facts as follows: NMWA is a water association established under Kentucky Revised Statute ("KRS") Chapter 273. NMWA currently has a 7-member board, of which five members were recently appointed. You seek an opinion as to whether these recently appointed members can remain on the board for what would have been the full term of the individuals they replaced, or whether they must stand for special election. You also ask if NMWA can amend its articles of incorporation, bylaws, or other organizational documents to allow these members to remain for what would have been the full term of the individuals they replaced.


KRS 278.012 states that water associations established under KRS Chapter 273 are public utilities and, with certain exceptions, are "subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility as defined KRS 278.010." KRS 278.040 describes the Commission's jurisdiction to regulate utilities, and that jurisdiction includes enforcing the provisions of KRS Chapter 278. In

particular, the Commission has "exclusive jurisdiction over the regulation of rates and service of utilities."¹

Although the Commission has jurisdiction over NMWA under these statutes, there is no statute or regulation specifically providing the Commission with jurisdiction over the elections of water association board members.² Without an applicable statute or regulation to interpret and apply, Commission Staff understands your questions to turn on the interpretation of NMWA's organizational documents, including its articles of incorporation and bylaws. Although there may be instances where questions of rates, services, or other areas within the Commission's jurisdiction require the Commission to interpret organizational documents, Commission Staff does not believe the questions presented in your letter are within the Commission's jurisdiction. Therefore, Commission Staff must decline your request to interpret NWMA's organizational documents as they apply to the facts presented. You may wish to have a private attorney interpret these documents in an attempt to answer your questions.

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 Kyle Melloan, Staff Attorney, at (502) 782-2585.

Sincerely,



John E.B. Pinney,
Deputy General Counsel

KM/kg

¹ KRS 278.040(2).

² KRS 74.025 governs the Commission's removal of water association board members under certain circumstances, but does not address board member elections.