



Matthew G. Bevin
Governor

Charles G. Snively
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Michael J. Schmitt
Chairman

Robert Cicero
Vice Chairman

Talina R. Mathews
Commissioner

July 9, 2018

PSC STAFF OPINION 2018-010

Michael L. Stephens
Adair County Judge Executive
424 Public Sq., Ste. 1
Columbia, KY 42728

Re: Adair County Judge Executive Michael Lee Stephens' Request for a Staff Opinion concerning the Establishment of a Gas Distribution System in Adair County, Kentucky

Dear Mr. Stephens:

Commission Staff acknowledges receipt of your letter on April 23, 2018 ("letter"), in which you requested Commission Staff to determine whether Columbia-Adair Utilities District ("Columbia-Adair Utilities") can create a new public natural gas system in Adair County, Kentucky ("Adair County"). This opinion represents Commission Staff's ("Staff") interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues addressed herein be formally presented for Commission resolution.

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

- Columbia-Adair Utilities is a jurisdictional water district pursuant to KRS Chapter 74 that serves 7,858 customers in Adair County.¹
- Columbia-Adair Utilities currently provides water service for all of Adair County, including the City of Columbia.
- In addition to water service, Columbia-Adair Utilities also maintains the local sanitary sewer system that is primarily within the city limits of Columbia.

¹ *Annual Report of Adair County Water District to the Public Service Commission for the Year Ended December 31, 2016*, at 48 of 66.

- Columbia-Adair Utilities have been approached by both residents and commercial farmers requesting natural gas service be provided because they are located beyond the City of Columbia's service boundary.
- It is Columbia-Adair Utilities' understanding that the City of Columbia is either unable or unwilling to extend its natural gas system in order to provide service outside of the current service boundary.
- The residents and farmers currently utilize propane fuel for heating their homes and businesses, and propane fuel prices are volatile. Providing natural gas could provide a more stable source of fuel at a more economical price.
- Although there is no natural gas produced in Adair County, there are two major natural gas transmission mains running diagonally through the county – Columbia Gulf Transmissions and Texas Eastern. Each of the natural gas transmission mains have existing and available unused taps within Adair County.
- Columbia-Adair Utilities asserts that the need for natural gas in Adair County justifies investing in the construction of distribution lines to connect to the transmission mains.
- Columbia-Adair Utilities admits that KRS 74.401 may be a hindrance to its desire to provide natural gas service to Adair County.

Your letter presents the following questions: Whether Columbia-Adair Utilities can provide natural gas service to Adair County pursuant to current Kentucky statutes and regulations, and if not, whether the county can establish a new entity for gas distribution.

Staff Analysis

KRS 74.400, provides as follows:

- (1) Any county judge/executive, except in counties containing a city of the first class, upon petition of seventy-five (75) resident freeholders of a water district organized under the provisions of KRS 74.010, may authorize said water district to acquire, develop, maintain, and operate a system for the distribution of gas to the citizens of the county. The petition shall describe the territory intended to be included in the area to be served and shall set out the reasons a gas distribution system is needed.
- (2) When the petition is filed, the county judge/executive shall give notice of the filing by publication as provided in KRS

Chapter 424. Within thirty (30) days after the publication, any resident of the district may file objections, and the county judge/executive shall set the matter for hearing within ten (10) days. If the county judge/executive finds the establishment of a gas distribution system by such district reasonably necessary for the public health, convenience, and comfort of the residents, he shall make an order authorizing the establishment or acquisition of the gas distribution system.

- (3) The county judge/executive may in his order strike off any part of the territory that the testimony shows will not be benefited by the creation of the distribution system. If the county judge/executive does not find that the gas distribution system is necessary he shall dismiss the petition. Either party may appeal the order to the Circuit Court.

Further, KRS 74.401 provides in relevant part:

All other provisions of this chapter to the contrary notwithstanding, no water district created under this chapter shall establish a gas distribution system unless the primary source of the gas to be distributed is natural gas produced from within the territorial limits of the district or of a county in which the district is located . . .

In Staff's analysis, even if Columbia-Adair Utilities can comply with KRS 74.400 by having 75 residents of the water district file a petition requesting natural gas service, based upon the facts presented in the letter, Columbia-Adair Utilities will be unable to satisfy the requirements of KRS 74.401. As stated above, KRS 74.401 provides that, "...no water district created under this chapter shall establish a gas distribution system unless the primary source of the gas to be distributed is natural gas produced from within the territorial limits of the district or of a county in which the district is located." Columbia-Adair Utilities admits in its letter that no natural gas is produced in Adair County, which is in direct contravention of KRS 74.401. Columbia-Adair Utilities' assertion that there are two major natural gas transmission mains that run through Adair County is not sufficient to comply with the statute. KRS 74.401 clearly contemplates a water district only establishing a gas distribution system if the gas is produced within the district or county. Hence, even though gas is transported through Adair County via pipelines, the fact still remains that the gas contained in the major transmission mains is produced outside of the district and county. Thus, in Staff's analysis, as a water district, Columbia-Adair Utilities will be unable to establish a gas distribution system because the primary source of the gas is not produced within the district or Adair County.

Furthermore, if Columbia-Adair Utilities intends to create a new entity to provide natural gas to Adair County, then it will need to comply with KRS 278.020 and all other applicable statutes and regulations.

KRS 278.020(1) provides in relevant part:

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...until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction...

Therefore, Staff concludes that based on the present facts, Columbia-Adair Utilities will be unable to establish a gas distribution system, since it would be in direct violation of KRS 74.401. If Columbia-Adair Utilities decides to create a new entity to provide gas service then it will need to comply with KRS 278.020, as well as all other applicable statutes and regulations.

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 Angela M. Goad at (502) 782-2562.

Sincerely,



John E.B. Pinney,
Acting General Counsel

AMG/kg