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September 27, 2019

PSC STAFF OPINION 2019-011

Brandon Baxter
HMB Professional Engineers, Inc.
3 HMB Circle
US 460
Frankfort, KY 40601

Re: Jessamine County Water District No. 1
US 27 Water System Improvements
HMB project No. 4099.00

Dear Mr. Baxter:

Commission Staff acknowledges receipt of your letter dated August 15, 2019, on behalf of Jessamine County Water District No. 1 (Jessamine District No. 1), in which you request an opinion as to whether Jessamine District No. 1's proposal to upgrade approximately 2,300 feet of water line along US Highway 27, using its own reserve funds and residual Rural Development (RD) funds from a previously approved completed project, requires a Certificate of Public Convenience and Necessity (CPCN), or whether the requirement for a CPCN can be waived on the basis that a CPCN was granted by the Commission in Case No. 2015-00127 for expenditure of RD funds on the proposed construction of a water storage tank (Tank Project). 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 Commission should the issues herein be formally presented for Commission resolution.

As with all legal opinions requesting a determination of the exemption from the requirement of a CPCN, Commission Staff's review does not consider the reasonableness or the need for the project. Therefore, because reasonableness and need are not considered in this opinion, or in any other non-rate cases, the cost of the project can be denied recovery in a rate case if found to be unreasonable or unnecessary.

In a letter dated September 9, 2019, you further clarify the proposed construction is a replacement of an existing water line, and not an extension into a previously unserved area. According to your September 9, 2019 letter the total projected cost of the construction is \$269,494.44. Of that amount \$140,000 will be funded by the residual RD

funds from the Tank Project, and the remaining \$129,494.44 will be paid out of Jessamine District No. 1's reserve funds.

In its Order in case 2015-00127, dated May 14, 2015, the Commission granted Jessamine District No. 1 a CPCN for its proposed Tank Project. The Commission also ordered that if surplus funds remained after the approved construction was completed, Jessamine District No. 1 could use the surplus to construct additional plant facilities if RD approved of use and the additional construction would not result in a change in Jessamine District No. 1's rates for service. The Commission further ordered Jessamine District No. 1 to provide written notice of this additional construction in accordance with 807 KAR 5:069, Section 4.

Administrative Regulation 807 KAR 5:069, Section 4 provides in full, as follows:

If surplus funds remain after the approved construction project has been completed, the water utility may construct additional facilities without prior commission approval if no change in existing rates will result. The water utility shall notify the commission in writing of additional construction proposed under this section and shall attach to the notice a statement of the federal lending agency authorizing the water utility to use the remaining project funds in the manner proposed.

Your August 15, 2019 letter indicates no customer rate increase is expected or proposed as a result of the proposed water line upgrade along US Highway 27. Therefore, Jessamine District No. 1 may use the \$140,000 remaining of the RD funds to upgrade water lines along US Highway 27 without obtaining a CPCN, provided Jessamine District No. 1 notifies the Commission in writing and attaches a statement from the federal lending agency authorizing the use of the funds. The written notice should reference Case No. 2015-00127.

As to whether using \$129,494.44 of the utility's reserve funds for the proposed upgrade requires a CPCN, the analysis proceeds under KRS 278.020(1)(a)(3), which reads:

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 . . .
(3) A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project 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 commission according to KRS 278.220 and:
a. The water line extension or improvement project will not cost more than five hundred thousand dollars (\$500,000); or

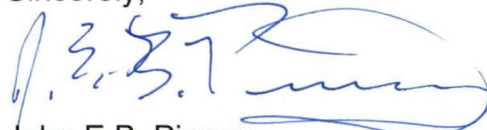
b. The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring commission approval as required by KRS 278.300.

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

Jessamine District No. 1 is a water district created under KRS Chapter 74 and is a Class A utility. The proposed project is a water line improvement costing no more than \$500,000, and no rate increase is expected as a result of the project. Therefore, the exception in KRS 278.020(1)(a)(3) applies and the expenditure of \$129,494.44 of the utility's reserve funds to improve water lines along US. Highway 27 does not require a CPCN.

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. Questions concerning this opinion should be directed to Tina Carson Frederick, Staff Attorney, at (502) 782-2042.

Sincerely,



John E.B. Pinney,
Acting General Counsel

TCF/kg