



Andy Beshear  
Governor

Rebecca W. Goodman  
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

January 28, 2020

## PSC STAFF OPINION 2020-004

Mr. Albert P. Marks  
Marks, Shell and Maness  
233-A Dunbar Cave Road  
Clarksville TN 37043

Re: Cumberland Electric Membership Corporation  
Clarksville, Tennessee

Dear Mr. Marks:

Commission Staff acknowledges receipt of your letter on January 21, 2020, in which you request an opinion regarding the jurisdiction of the Kentucky Public Service Commission to regulate Cumberland Electric Membership Corporation (Cumberland Electric) in connection with Cumberland Electric obtaining a Rural Utilities Service (RUS) loan and/or in connection with its repayment of RUS notes in conjunction with loans. Your letter further notes that in connection with Cumberland Electric repaying certain notes in its existing loans and it obtaining a new RUS loan, RUS is requiring Cumberland Electric to provide an opinion as to whether or not Cumberland Electric is required to obtain a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission. This letter represents Commission Staff's opinion, which is advisory in nature, and not binding on the Commission should the issues herein be formally presented for Commission resolution.

According to your letter, Cumberland Electric is an electric cooperative located in Clarksville, Tennessee and provides electric service to five counties in northern middle Tennessee adjacent to the Kentucky border. It is also noted that Cumberland Electric serves approximately 36 customers in the Kentucky counties of Allen, Logan, Simpson, Todd, and Trigg. Lastly, the letter informs that Cumberland Electric is wholly served by the Tennessee Valley Authority (TVA).

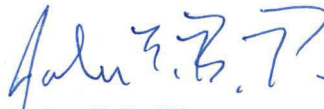
As an initial matter, for those utilities subject to the Commission's jurisdiction, KRS 278.020 prohibits the construction of utility facilities without first obtaining a Certificate of

Public Convenience and Necessity and KRS 278.300 prohibits the issuance of any evidence of indebtedness by a utility without prior Commission approval.

Because Cumberland Electric is an electric cooperative whose exclusive source of electricity is the TVA, the Commission is preempted on rate regulation by the TVA, a federal agency, pursuant to the United States District Court for the Western District of Kentucky's decision in *TVA et al. v. Energy Regulatory Commission*, Civil Action No. 79-0009-P (W.D. Ky. Sept. 27, 1979). The Commission subsequently concluded that TVA's service requirements similarly preempts those of Kentucky, leaving no aspect of a TVA distribution cooperative's operations subject to our jurisdiction.<sup>1</sup> Accordingly, Cumberland Electric is not required to obtain a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission in connection with the issuance of indebtedness.

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 Quang D. Nguyen at (502) 782-2586.

Sincerely,



John E.B. Pinney  
Acting General Counsel

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<sup>1</sup> Case No. 8858, *Application of Hickman-Fulton Counties Rural Electric Cooperative Corporation for an Order Authorizing Said Corporation to Borrow One Hundred Eighty-Nine Thousand Dollars (\$189,000.00) from the National Rural Utilities Cooperative Finance Corporation for the Purpose of Construction, Improvement and Operation of Electric Distribution and Service Facilities in Hickman, Fulton, Graves and Carlisle Counties, Kentucky* (Ky. PSC June 27, 1983). See also, Case No. 2005-00090, *An Assessment of Kentucky's Electric Generation, Transmission and Distribution Needs* (Ky. PSC Sept. 15, 2005) (Noting that TVA supplied distribution cooperatives are not subject to the Commission's jurisdiction).