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February 17, 2020

PSC STAFF OPINION 2020-007

Steven P. Bailey
Bailey Law Office, PSC
181 East Court Street
Prestonsburg KY 41653

Re: Southern Water and Sewer District Request for Staff Advisory Opinion
Regarding Replacement of Mink Branch Water Tank

Dear Mr. Bailey:

The Commission acknowledges receipt of your February 3, 2020 letter on behalf Southern Water and Sewer District (Southern District) requesting an advisory opinion. This opinion represents Commission Staff's (Staff) 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 be formally presented for Commission resolution.

A copy of your letter that sets forth the entirety of the facts is attached to this letter. You request a legal advisory opinion whether Southern District is required to obtain a Certificate of Public Convenience and Necessity (CPCN) to replace the Mink Branch water storage tank (Mink Branch Water Tank). The summary of relevant facts and advisory opinion follow.

You state that Mink Branch Water Tank is an aging and deteriorating 150,000-gallon water storage tank. You further state that Southern District publicly and competitively bid for construction of a new 250,000-gallon water storage tank to replace the current Mink Branch Water Tank at a cost of \$648,391.00. You state the Appalachian Regional Commission will fund 100 percent of the cost of the project in the form of a grant that will be administered by the Big Sandy Administration District in Prestonsburg, Kentucky. You also state that there is no loan or debt service associated with this project, Southern District's financial condition will not be impacted, and no customer rate increase is expected or proposed as a result of this project. Finally, you request a Staff Opinion whether a CPCN is necessary so that Southern District may proceed with construction as soon as possible.

The Commission analyzes construction projects on an individual basis to determine whether a project is exempt from the requirement in KRS 278.020(1) to obtain a CPCN. As with all legal opinion requesting a determination of the exemption from the requirement of a CPCN, 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 other non-rate cases, the cost of the project can be denied recovery in a rate case if found to be unreasonable or unnecessary.

KRS 278.020(1) provides, in relevant part, as follows:

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 retail electric suppliers for service connections to electric consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

Regarding the exception to the CPCN requirement, Administrative Regulation 807 KAR 5:001 , Section 15(3) provides, in full, as follows:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

In analyzing whether the proposed Mink Branch Water Tank project would material affect Southern District's financial condition, Staff notes that you stated that the cost of the project was funded entirely by a grant, and that no loan or debt service is associated with the project.

Based upon the statement that the cost of the project is funded entirely by grants, the Mink Branch Water Tank project will not have any effect on Southern District's rates. Thus, the project is considered to be an extension in the ordinary course of business. Additionally, the Mink Branch Water Tank would not result in wasteful duplication of

facilities or conflict with the service of other utilities because it is a replacement of an existing water tank that is deteriorating. Thus, Staff is of the opinion that the proposed Mink Branch Storage Tank project as described in your letter satisfies the ordinary course of business exemption from CPCN requirement.

This letter 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 herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Nancy J. Vinsel, Assistant General Counsel, at 502-782-2582.

Sincerely,



J.E.B. Pinney
Acting General Counsel

NJV/kg

Attachment

RECEIVED

FEB 03 2020

PUBLIC SERVICE
COMMISSION

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January 31, 2020

Ms. Gwen Pinson
Executive Director
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602

Re: Southern Water and Sewer District
Replacement of Mink Branch Water Tank

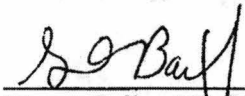
Dear Ms. Pinson:

My office represents Southern Water and Sewer District. The district is in the process of replacing an aging and deteriorating 150,000-gallon water storage tank with a new 250,000-gallon water storage tank.

The project has been publicly and competitively bid for construction with the total bid price of \$648,391.00. Funding for the project is being provided in the form of a One Hundred Percent (100%) grant from the Appalachian Regional Commission. The grant is being administered by The Big Sandy Administration District in Prestonsburg, Kentucky. There is no loan or debt service associated with this project.

The existing financial condition of the district is not anticipated to be impacted and no customer rate increase is expected or proposed as a result of this project. The district hereby requests a waiver of the requirement for Certificate of Convenience and Necessity, or other prior approval of the PSC for the project, so that the district may proceed with construction as quickly as possible. This request is made in accordance with KRS 278.020(1) and 807 KAR 5:001, Section 9(3).

If you have any question regarding this matter, or if additional information is required, please do not hesitate to contact my office at (606) 263-4913.



Steven Bailey J.D., M.B.A.