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October 20, 2021

STAFF OPINION NO. 2021-005

Marks, Shell and
Maness 233-A Dunbar
Cave Road P.O. Box
1149
Clarksville, TN 37041

Dear Mr. Marks:

Commission Staff acknowledges receipt of your letter on October 1, 2021, 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. Your letter further notes that in connection with Cumberland Electric 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.

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 28 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.

However, 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.¹ 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 Andrew Bowker at (502) 782-2580.

Sincerely,



Nancy J. Vinsel
General Counsel

¹ 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).