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Commissioner

December 29, 2022

Staff Opinion 2022-013

Sent electronically to brittany@hloky.com

Brittany Hayes Koenig
Honaker Law Office
1795 Alysheba Way
Ste. 6202
Lexington KY 40509

Dear Ms. Koenig:

Commission Staff acknowledges receipt on December 19, 2022, of your letter in which you request an opinion on behalf of Burkesville Gas Company, Inc. (Burkesville) regarding the applicability of KRS 278.300(10) to a Small Business Administration (SBA) loan awarded through the COVID Economic Injury Disaster Loan (COVID EIDL).

The facts, as you present them, are as follows. Burkesville and Apache Gas Transmission Company, Inc. filed a request for a declaratory order in Case No. 2020-00085¹ on March 11, 2022. In that motion, Burkesville requested the Commission enter an Order stating whether KRS 278.300(10) exempted Burkesville from having to obtain Commission approval before entering the SBA loan. As stated in your request, evidences of indebtedness, such as the SBA loan at issue in your request, generally require prior Commission approval under KRS 278.300. Your further stated that KRS 278.300(10) provides an exception that evidences of indebtedness subject to the supervision or control of a federal government agency, such as the SBA, do not require Commission approval prior to executing the evidences of indebtedness.

You stated that the Commission did not rule upon the motion for a declaratory order and that Burkesville understood the lack of a Commission Order to indicate that Burkesville was not required to seek financing approval under KRS 278.300. You further stated that Burkesville was awarded a \$363,200 SBA COVID EIDL loan that Burkesville intends to use to expand its customer base. You stated that the SBA loan has an interest rate of 3.75 percent and a 30-year payback period. You stated that the SBA loans were available for a limited time, that the deadline to apply for the SBA loans has passed, and that the loan program is no longer available.

¹ Case No. 2020-00085, *Emergency Docket Related to the Novel Coronavirus COVID-19* (filed Mar. 11, 2022).

December 28, 2022

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You requested that Commission Staff confirm that Commission approval is not required for the SBA loan executed by Burkesville because the loan falls within the exception set forth in KRS 278.300(10) and therefore is not subject to the Commission's jurisdiction.

Commission Staff notes that a Staff Advisory Opinion is not binding upon the Commission and cannot be cited as precedent in any future matters. Because your request was for confirmation whether the SBA loan executed by Burkesville is subject to the Commission's jurisdiction, such a request requires Commission Staff to provide a legal conclusion that applies the cited facts to the applicable law. Because the request calls for Staff to render a legal conclusion, Commission Staff is of the opinion that the request falls outside the scope of a Staff Advisory Opinion because a Staff Advisory Opinion is not the appropriate forum to obtain binding confirmation. Consistent with Kentucky Bar Association Ethics Opinion KBA E-445 (issued March 16, 2018), Commission Staff may provide generalized information regarding the Commission's procedures, rules and regulations. Commission Staff cannot provide legal advice or legal conclusions, such as the applicability of specific facts to applicable law.

Commission Staff is of the opinion that, to obtain a binding decision regarding the Commission's jurisdiction regarding the SBA loan, Burkesville should file an application for a declaratory order in accordance with 807 KAR 5:001, Section 19. Commission Staff notes that 807 KAR 5:001, Section 19(1) states that a declaratory order may be requested "with respect to the jurisdiction of the [C]ommission."

This letter represents Commission Staff's interpretation of the law as applied to the facts as presented. The opinion is advisory in nature and not binding on the Commission should the issues addressed in this letter be formally presented for Commission resolution. Questions concerning this opinion should be directed to Nancy J. Vinsel, General Counsel, at 502-782-2582 or Nancy.vinsel@ky.gov.

Sincerely,



Linda Bridwell, PE
Executive Director