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February 20, 2023

Staff Opinion 2023-001

Thomas H. Goff
Goff & Goff, PSC
53 Public Square
Leitchfield, KY 42754

Dear Mr. Goff,

Commission Staff acknowledges receipt on February 10, 2023, of your letter in which you request an opinion on behalf of Edmonson County Water District (Edmonson District).

The facts, as you present them, are as follows. You state that Edmonson District was created in the late 1960s to serve part of Edmonson County, Kentucky, and that, since it was established, Edmonson District's service area has extended further into Edmonson County, and into Hart and Grayson Counties, Kentucky. You state that Grayson County asserts that 25 percent of Edmonson District's distribution assets are in Grayson County. You further state that Grayson County requests to appoint two commissioners to Edmonson District's board, in accordance with KRS 74.020(1)(c). As is discussed below, KRS 74.020(1)(c) addresses whether to add additional board members for a water district that extends into more than one county depending upon the percentage of the water district's distribution assets that are located in a particular county.

Your question is what constitutes 25 percent of the total assets of a water district's distribution system: (1) the number of miles of lines and meters with adjustments for the size of the lines; (2) the cost of assets less depreciation; or (3) some other methodology.

KRS 74.020(1)(c) states:

If a district acquires an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into one (1) or more additional counties, or if a district extends its area to include territory in one (1) or more adjacent counties as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, without adding additional board members, if the new area to be served shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county

containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within any particular county included in the territorial boundaries of the district, it shall be conclusively presumed, with respect to that particular county, that the district comes within the terms of this subsection.

Commission Staff notes that KRS Chapter 74 does not include a statutory definition of or methodology for calculating the “total assets” of a water district distribution system that are located in a particular. Thus, your request is for an interpretation of the meaning and scope of KRS 74.020(1)(c) by Commission Staff, which would then be applied to Grayson County’s request to Edmonson District.

Commission Staff notes that a Staff Advisory Opinion is not binding upon the Commission and cannot be cited as precedent in any future matters. 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, and cannot provide legal advice or legal conclusions. Because your request is for a statutory interpretation, Commission Staff is of the opinion that a Staff Advisory Opinion is not the appropriate forum to obtain binding confirmation regarding the Commission’s interpretation of the meaning and scope of KRS 74.020(1)(c).

Commission Staff is of the opinion that, to obtain a binding decision regarding the statutory interpretation of KRS 74.020(1)(c) by the Commission, Edmonson District should file an application for a declaratory order in accordance with 807 KAR 5:001E, Section 19, regarding the meaning and scope of KRS 74.020(1)(c).

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 Nancy J. Vinsel, General Counsel, at 502-782-2582, or nancy.vinsel@ky.gov.

Sincerely,



Linda Bridwell, PE
Executive Director