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February 22, 2024

PSC STAFF OPINION¹ 2024-002

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

Re: Cumberland Electric Membership Corporation
Clarksville, Tennessee

Dear Mr. Marks:

The Kentucky Public Service Commission (the "Commission") is in receipt of your letter dated February 6, 2024, requesting an opinion regarding the jurisdiction of the Commission to regulate Cumberland Electric Membership Corporation (Cumberland Electric) in connection with Cumberland Electric obtaining a loan from CoBank. Your letter notes that Cumberland Electric's prospective lender, CoBank, has requested an opinion as to whether 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. Your letter also notes that Cumberland Electric serves approximately 28 customers in the Kentucky counties of Allen, Logan, Simpson, Todd, and Trigg. Lastly, your letter indicated that Cumberland Electric is wholly served by the Tennessee Valley Authority (TVA).

Because your request was for confirmation that Cumberland Electric is not 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. Due to ethical concerns regarding Commission Staff's ability to offer legal opinions to regulated or potentially regulated entities, Commission Staff is no longer able to offer such legal conclusions. In contrast, Commission Staff may provide generalized information regarding the Commission's procedures, rules and regulations.

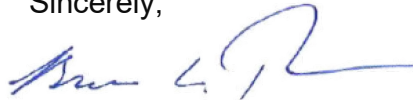
While Commission Staff is unable to provide you with the requested opinion, Cumberland Electric may request a declaratory order from the Commission regarding the Commission's jurisdiction by filing an application for a declaratory order in accordance with

¹ The "PSC Staff Opinion" designation is for tracking purposes only as the information provided on this correspondence is advisory in nature and is neither binding on the Commission, nor does it constitute legal advice; instead, the contents of this correspondence are intended for general informational purposes only.

Section 19 of 807 KAR 5:001. Paragraph (1) of Section 19 states that a declaratory order may be requested “with respect to the jurisdiction of the [C]ommission.” Commission Staff anticipates that the Commission will respond to a request for a declaratory order within about twenty days of Cumberland Electric filing a completed application.

Questions concerning this correspondence should be directed to Andrew Bowker, Staff Attorney, at 502-782-2580 or Andrew.Bowker@ky.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian Thomas", with a stylized flourish extending to the right.

Brian Thomas
General Counsel

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February 6, 2024

Mr. Brian Thomas
General Counsel
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Public Service Commission
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P.O. Box 615
Frankfort, KY 40602-0615

brian.thomas@ky.gov

VIA email and USPS

RE: Cumberland Electric Membership Corporation (CEMC)
Clarksville, Tennessee

Dear Mr. Thomas:

My name is Albert P. Marks. I am a practicing attorney in Clarksville, Tennessee and represent Cumberland Electric Membership Corporation (CEMC), an electric cooperative, in connection with it obtaining a loan from CoBank, in the amount of fifteen (\$15,000,000) million dollars for improvement to its electric system. CEMC is an electric cooperative serving five counties in Northern Middle Tennessee adjacent to the Kentucky border. CEMC also serves approximately twenty-eight customers located in the following Kentucky counties, Allen, Logan, Trigg, Todd, and Simpson. These customers, who are served in Kentucky, are located well within the three miles of the Tennessee Kentucky line. CEMC concludes the furnished properties by the Tennessee Valley Authority (TVA) which is also CEMC's regulator.

In connection with CEMC obtaining a new loan, which is a construction work plan loan for physical plant improvements over the next five years, the lender CoBank is requiring that our office issue an opinion as to whether or not CEMC is required to obtain a certificate of convenience and necessity from the Kentucky Public Service Commission as to it obtaining the CoBank loan, pursuant to KRS 278. We would appreciate very much if you would furnish us

Mr. Brian Thomas

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with an opinion regarding jurisdiction of the Kentucky Public Service Commission, if any, to regulate CEMC, a rural electric distribution cooperative, whose exclusive source of supply is the TVA if you conclude the source of supply is the TVA which regulates CEMC and whether or not CEMC would need to obtain a certificate of convenience and necessity in connection with its obtaining the above described CoBank loan. I am enclosing herewith a copy of an opinion from Ms. Nancy J. Vinsel dated October 20, 2021, in which she gave an opinion regarding whether or not CEMC was required to obtain its certificate of public convenience and necessity with the Kentucky Public Service Commission. That opinion was in reference to my request in connection with another loan that CEMC was obtaining at that time.

I would appreciate very much if you would furnish your opinion to the foregoing along the same lines of the one that Ms. Vinsel provided as shown in the letter dated October 20, 2021 (Ms. Vinsel's letter is enclosed.).

Thank you in advance for your consideration in this matter.

If you have any questions regarding this request, please feel free to give me a call. Your anticipated assistance in this matter is most appreciated.

Very truly,



Albert P. Marks

APM/mc

Enclosure