



Paul E. Patton
Governor

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX-615
FRANKFORT, KENTUCKY 40602
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-1582

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

August 26, 1999

David A. Koenig, Esq.
Dallas, Neace & Koenig
Post Office Box 6205
Florence, Kentucky 41042

Dear Mr. Koenig:

Commission Staff acknowledges receipt of your letter of July 6, 1999 in which you request an opinion on whether an Interlocal Cooperative Agreement among Boone County Water District, the City of Florence, Kentucky, the Boone-Florence Water Commission, and the City of Cincinnati, Ohio requires Public Service Commission approval.

Your letter presents the following facts: Boone County Water District ("Boone District") has entered an Interlocal Cooperative Agreement with the City of Florence, Kentucky ("Florence"), the Boone-Florence Water Commission ("Water Commission"), and the City of Cincinnati, Ohio ("Cincinnati") to provide for the supply of water to the Boone County area. Under the terms of this agreement, the parties agree that Cincinnati will provide wholesale water service to Boone District and Florence through the Water Commission. Boone District, Florence and the Water Commission have agreed to design, finance, build, own, maintain and operate the capital improvements for water distribution from the point of delivery where Cincinnati will sell the water to the Water Commission. Boone District and Florence further agree to contract with the Water Commission as the exclusive water supplier for their water distribution systems.

You pose the following question: Is Public Service Commission approval of the Interlocal Cooperative Agreement required?

KRS 65.300 provides:

In the event that an agreement made pursuant to KRS 65.210 to 65.300 shall deal in whole or in part with the provisions of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a



condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by such officer or agency as to all matters within the jurisdiction of such officer or agency in the same manner and subject to the requirements governing the action of the Attorney General pursuant to subsection (2) of KRS 65.260. The requirement of this section shall be in addition to and not in substitution for the requirement of submission to and approval by the Attorney General under subsection (2) of KRS 65.260.

The Public Service Commission has jurisdiction over only one of the parties to the Interlocal Cooperation Agreement. As water district created pursuant to KRS Chapter 74, Boone District is subject to the Public Service Commission's jurisdiction. See KRS 278.040(1) and (2). The Public Service Commission does not have jurisdiction over the other parties to the Agreement. The Legislature has declared that water commissions and municipalities are not utilities.¹ See KRS 74.510; 278.010(3). While the Public Service Commission exercises limited jurisdiction over municipal utilities that provide wholesale water service to public utilities, Simpson County Water District v. City of Franklin, Ky., Ky., 872 S.W.2d 460 (1994), that jurisdiction is not present in this case as Cincinnati is not providing wholesale water service to a public utility.²

None of the matters presented in the Interlocal Cooperation Agreement appear within the Public Service Commission's jurisdiction. That jurisdiction extends only to Boone District's rates and services. See KRS 278.040(1) and (2). The Agreement does not address these areas. The Agreement also does not require the construction of specific facilities or the issuance of any evidences of indebtedness – actions that require express Commission approval. KRS 278.020(1); KRS 278.300. While the Agreement will permit Boone District to change its water supplier, the Commission is without any jurisdiction to determine a utility's choice of a water supplier. See *City of Newport, Kentucky v. Campbell County Water District*, Case No. 89-014 (Ky.P.S.C. Jan. 31, 1990) at 17-20. As none of the matters of the Interlocal Cooperation Agreement are within the Public Service Commission's jurisdiction, Commission Staff is of the opinion that KRS 65.300 does not require Public Service Commission approval.

¹ While it operates a water distribution system, Florence provides only retail water service and does not provide wholesale utility service to any public utility. Simpson County Water District, therefore, is not applicable.

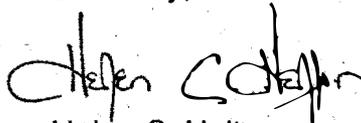
² Under the holding of Cincinnati is not a municipal utility proposes of KRS Chapter 278. If the Water Commission were its only customer in Kentucky, however, Cincinnati would not be considered as providing utility service to the public for compensation and would not meet the definition of utility.

David Koenig, Esq.
August 26, 1999
Page 3

Please note that the Public Service Commission retains authority over rate and service issues. To the extent that Boone District's decision to enter the agreement may affect its rates for service, the Public Service Commission may review the reasonableness of its decision at Boone District's next rate proceeding or any proceeding in which Boone District requests a Certificate of Public Convenience and Necessity to construct facilities to receive service from the Water Commission. The Public Service Commission may also consider the issue as part any proceedings that may arise concerning the early termination of Boone District's current water supply agreement with Northern Kentucky Water District.

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 Gerald Wuetcher, Commission counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Helen C. Helton". The signature is stylized and cursive.

Helen C. Helton
Executive Director