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COMMONWEALTH OF KENTUCKY  
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**Ronald B. McCloud, Secretary**  
Public Protection and  
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**Helen Helton**  
Executive Director  
Public Service Commission

November 29, 1999

Jason P. Thomas, Esq.  
Stites and Harbison  
400 West Market Street  
Suite 1800  
Louisville, Kentucky 40202-3352

Dear Mr. Thomas:

Commission Staff has reviewed your letter of September 29, 1999<sup>1</sup> concerning a proposed loan agreement between Kentucky Turnpike Water District ("Kentucky Turnpike") and Salt River Electric Cooperative Corporation ("Salt River ECC").

Your letter sets forth the following facts: The Rural Business-Cooperative Service ("RBS") has issued a grant of \$250,000 to Salt River ECC under the Department of Agriculture's Rural Economic Development Loan and Grant Program. See 7 C.F.R. Part 1703. Under the terms of this grant, Salt River ECC will lend Kentucky Turnpike \$250,000 to finance the construction of water lines in Bullitt County, Kentucky or to reimburse short-term financing expenditures for these water lines. Kentucky Turnpike must repay the loan within 9 years. The proposed loan agreement between Salt River ECC and Kentucky Turnpike does not require the payment of any interest.

You present the following question: Does KRS 278.300 require Kentucky Turnpike to obtain Public Service Commission authorization to execute the loan agreement?

Public utilities are generally required to obtain Commission authorization prior to executing any evidence of indebtedness that exceeds 2 years in duration. KRS 278.300(1) provides:

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<sup>1</sup> Although your letter is dated September 29, 1999, Commission Staff did not receive it until November 10, 1999 when a copy was transmitted by facsimile to the Commission's Office of General Counsel. The Commission's mail logs do not indicate receipt of your mailed letter.



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No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

See also KRS 278.300(8). As Kentucky Turnpike is a water district organized pursuant to KRS Chapter 74, it is a public utility and must comply with KRS 278.300. See KRS 278.015.

KRS 278.300 exempts from the requirement of Commission authorization those financing transactions that are subject to federal government review and approval. Section 10 of that statute provides:

This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.

KRS 278.300(10).

Commission Staff is of the opinion that the proposed loan agreement is subject to the supervision and control of the RBS<sup>2</sup> and is therefore exempt from the requirements of KRS 278.300(1). 7 CFR §1703.30 expressly provides that the RBS Administrator must approve the agreement between Salt River ECC and Kentucky Turnpike.<sup>3</sup>

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<sup>2</sup> The federal regulations that govern the Rural Economic Development Loan and Grant Program refer to the Rural Utilities Service as the administering agency. As a result of a reorganization within the Department of Agriculture. However, the Rural Business-Cooperative Service now administers this program. See 7 C.F.R. §2.48.

<sup>3</sup> 7 CFR §1703.30 provides:

(a) The Administrator must approve any agreements between the borrower and the owner(s) of the project, those undertaking the project, or any intermediary that will re-lend or transfer the proceeds of the RUS funds, that the Administrator deems necessary.

(b) Borrowers must obtain the Administrator's approval of any loan, grant or security agreement, mortgage or note between the borrower and the owner(s) of the project, those undertaking the project or any intermediary that will re-lend or transfer the

(Footnote continued on next page . . .)

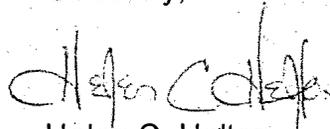
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Several provisions of the loan agreement also require Kentucky Turnpike to provide documents necessary for RUS's review of the proposed loan agreement, to make its records and facilities available for RUS inspection, to comply with all actions required by RUS as a condition to the advancement of the proceeds, and to comply with RUS restrictions upon the use of the loan proceeds. See, e.g., Loan Agreement §§ 6.05, 6.15, 6.16.

The proposed loan agreement presents an unusual situation. KRS 278.023 requires Commission approval of any agreement between a water district and the U.S. Department of Agriculture, of which the RBS is an agency, involving the construction of new facilities. Because the RBS is not a signatory to the proposed loan agreement, KRS 278.023 is not applicable. However, as the loan agreement is subject to RBS's supervision, KRS 278.300(10) relieves Kentucky Turnpike from any obligation to obtain Commission authorization to execute the loan agreement.

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,



Helen C. Helton  
Executive Director

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proceeds of the RUS funds, prior to the advance of RUS zero-interest loan or grant funds to the borrower. The borrower must receive the Administrator's approval of the final draft version of the documents prior to their execution.

(c) Borrowers must obtain the Administrator's written approval prior to revising or amending any loan, grant or security agreement, mortgage or note that has been reviewed and approved by the Administrator pursuant to paragraph (b) of this section. Additionally, the borrower must obtain the Administrator's written approval prior to executing, revising or amending any other agreement, in connection with the project, between the borrower and the owner(s) of the project, those undertaking the project or any intermediary that will re-lend or transfer the proceeds of the RUS funds.