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October 4, 2011

James D. Bridges, P.E.  
VP Engineering (DSS)  
Owen Electric Cooperative  
8205 Hwy 127 N  
P.O. Box 400  
Owenton, KY 40359-0400

**PSC STAFF OPINION 2011-009**

RE: Owen Electric Cooperative

Dear Mr. Bridges:

Commission Staff acknowledges receipt of your letter of September 15, 2011, in which you request an opinion regarding the need for a certificate of public convenience and necessity ("CPCN") for the first phase of a proposed four phase Volt-Var Optimization (VVO) project. The first stage consists of field data gathering and verification in two substation areas. The letter states that it is Owen Electric's belief that this proposed field data gathering work would not require a CPCN because "there are no facilities being constructed or added to the Distribution System."

The following facts are presented in your letter. The proposed project is broken down into four phases. The first phase consists of field data gathering and verification in two substation service areas. This field inventory phase will be competitively bid to outside contractors at an estimated cost of \$115,000. Each subsequent phase of the VVO project hinges on favorable results from the prior phase, thus if a prior phase reveals negative results then the entire VVO project might be aborted.

Commission Staff conducted a teleconference with James Bridges, Vice President of Engineering at Owen Electric Cooperative, on September 23, 2011 to clarify some details of the Volt-Var Optimization project. Mr. Bridges explained that the total cost of the entire VVO project is estimated to be \$748,507. The Department of Energy cost sharing grant will provide fifty percent of the total cost of the project and Owen Electric will cover the other fifty percent.

KRS 278.020 provides, in relevant part, as follows:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

Regarding the exception to the CPCN requirement, Administrative Regulation 807 KAR 5:001, Section 9(3) provides, in full, as follows:

Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

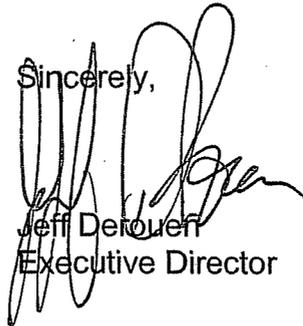
Thus, the regulation provides for three areas of inquiry: (1) whether there will be wasteful duplication of plant, including interference with another utility's certificates or services; (2) whether the capital required is so minimal that it will not "materially" affect the financial condition of the utility in question; and (3) whether the rates will increase as a result of the construction.

With respect to the first area of inquiry, a proposed construction is not a wasteful duplication of plant when it is established that the construction does not interfere with another utility's certificate and that it does not unnecessarily duplicate plant. The court in *City of Covington v. Board of Commissioners of Kenton County Water District*, 371 S.W.2d 20, 23 (Ky. 1963) explained that a facility is not "duplicative" unless there is an existing facility that is "reasonably available for the present and future needs of those who will be served by it. The mere existence of a similar physical plant is not enough." Based on the description of Owen Electric's current facilities and the proposed project, it does not appear that the proposed project would result in a wasteful duplication of plant. Additionally, Owen Electric's proposed project will not interfere with other utilities services or certificates.

In determining whether the proposed field data gathering phase would materially affect Owen Electric's financial condition, Commission Staff takes notice of Owen Electric's net utility plant investment of \$133 million as of January 1, 2010. Owen Electric's share of the investment of \$374,253.50 into the proposed VVO project represents approximately 0.3% of the company's total net plant investment. The proposed project would have an insignificant impact on Owen Electric's utility plant and is therefore generally considered to be an extension in ordinary course.<sup>1</sup> Likewise, given its relatively limited scope, the proposed project would not have an immediate or significant impact on Owen Electric's rates. Therefore, based on the facts presented herein, Commission Staff is of the opinion that the first phase of Owen's VVO project is exempt from the CPCN requirement as it would be considered an ordinary extension of existing system in the usual course of business.

This letter represents the Commission Staff's interpretation of the law as applied to the facts presented. The Opinion is advisory in nature and is not binding on the Commission should the issue(s) herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Steven Bailey, Staff Attorney, at 502-564-3940, Ext. 262.

Sincerely,



Jeff Detouef  
Executive Director

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<sup>1</sup> See, e.g., *City of Covington*, supra.