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October 7, 2011

Hon. J. Christopher Hopgood
Dorsey, King, Gray, Norment & Hopgood
318 Second Street
Henderson, Kentucky 42420

PSC STAFF OPINION 2011-010

RE: Request for Staff Opinion

Dear Mr. Hopgood:

Commission Staff acknowledges receipt of your letter of August 24, 2011, in which you request an opinion regarding the need for a certificate of public convenience and necessity ("CPCN") for a proposed project to systematically accelerate the replacement of certain cutouts in Kenergy's system. The letter states that it is Kenergy's belief that the proposed "project is replacement of existing plant that does not exceed the budget in the CWP" and thus, would not require the issuance of a CPCN by the Commission. However, as stated in the letter, because the project represents an accelerated replacement of cutouts, Kenergy submits this issue for an opinion as to whether an application for CPCN is necessary.

The following facts are presented in your letter: Kenergy currently has 5,962 A.B. Chance cutouts installed on its system. Approximately 20.9 percent of these cutouts have failed since they have been installed between 1989 and 1998. In conjunction with Alcan Aluminum, Kenergy undertook a study which found that systematically accelerating the replacement of the A.B. Chance cutouts would result in a cost effective resolution to this issue. The replacement project would involve the participation of two in-house crews replacing 61 cutouts per week over a 1.8 year period. The total cost under this approach, including the cost of the in-house man hours, would be \$1,872,068. The direct cost would be \$441,188. By comparison, the traditional alternative approach of replacing the cutouts as they fail would cost \$6,020,863, with a direct cost of \$3,142,068.63.

The letter further states that Kenergy's 2010-2013 construction work plan was approved in Case No. 2010-00110.¹ Included in the 2010-2013 construction work plan were expenses for minor construction, i.e., replacing miscellaneous conductors (Code 608). Cutout replacement falls within Code 608. Also attached to Kenergy's letter was a May 17, 2011 letter from the Rural Utilities Service ("RUS") to Kenergy, which stated that RUS had completed its review of Amendment No. 1 to Kenergy's 2010-2013 construction work plan. The RUS letter noted that the amendment provided for "the addition of project Code 608," the replacement of approximately 6,000 defective cutouts.

KRS 278.020(1) 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.

¹ Application of Kenergy Corp. for a Certificate of Convenience and Public Necessity Authorizing Certain Proposed Construction Identified as the 2010-2013 Construction Work Plan (Ky. PSC, June 22, 2010).

The Commission has, in several recent cases, made the determination that construction work plans are required to be certificated pursuant to KRS 278.020.² In Case No. 2009-00010, the Commission found that Owen Electric Cooperative, Inc.'s periodic construction work plans involved significant capital expenditures for new facilities. Thus, Owen's construction work plan could not be exempt as ordinary extensions in the usual course of business from the requirements to obtain a CPCN pursuant to KRS 278.020(1). In that same case, the Commission placed all jurisdictional electric cooperatives on notice that they were required to obtain a CPCN for all work plans prior to beginning construction of the facilities contained in those plans.

Given that construction work plans are required to be certificated by the Commission pursuant to KRS 278.020, any subsequent amendments to a previously authorized construction work plan would necessarily require Commission review and approval as well. Kenergy's 2010-2013 construction work plan was approved by the Commission on June 22, 2010. Any amendment to that previously approved construction work plan, such as the accelerated replacement of cutouts project, will require Commission review and approval pursuant to KRS 278.020.

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.

² Case No. 2009-00010, Application of Owen Electric Cooperative, Inc. for an Order Pursuant to KRS 278.300 and 807 KAR 5:001, Section 11 and Related Sections, Authorizing the Cooperative to Obtain a Loan under the RUS/CoBank Co-Lending Program not to Exceed \$28,083,000 at any one Time from Rural Utilities Service and CoBank (Ky. PSC, August 5, 2009); Case No. 2010-00316, Application of Owen Electric Cooperative, Inc. for a Certificate of Public Convenience and Necessity for its 2010-2011 Construction Work Plan (Ky. PSC, June 21, 2011); Case No. 2011-00441, Application of Grayson Rural Electric Cooperative Corporation for a Certificate of Convenience and Necessity Pursuant to KRS 278.020 and 807 KAR 5:001, Section 9, and Related Sections Authorizing Certain Proposed Construction (Ky. PSC, September 23, 2011); Case No. 2011-00518, Application of Nolin Rural Electric Cooperative Corporation for a Certificate of Public Convenience and Necessity to Construct Facilities According to the Applicant's 12/01/10-11/30/13 Construction Work Plan (Ky. PSC, September 6, 2011).

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Questions concerning this opinion should be directed to Quang D. Nguyen, Staff Attorney, at (502) 564-3940, extension 256.

Sincerely,



Jeff Deraven
Executive Director

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