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October 12, 2012

Ms. Carol Fraley
President and CEO
Grayson Rural Electric Cooperative Corporation
169 Bagby Park
Grayson, KY 41143-1292

PSC STAFF OPINION 2012-0025

Re: Grayson RECC's Amendment to the 2009-2012 Construction Work Plan

Dear Ms. Fraley:

Commission Staff acknowledges receipt of your letter dated September 25, 2012, on behalf of Grayson Rural Electric Cooperative Corporation ("Grayson"), in which you request an opinion as to whether certain amendments to Grayson's 2009-2012 Construction Work Plan ("CWP") would "need further review by the PSC."

Pursuant to the Commission's recent decision that each construction project contained in a CWP should be analyzed on an individual basis to determine whether that individual project is exempt from the requirement in KRS 278.020(1) to obtain a Certificate of Convenience and Necessity ("CPCN"), Commission Staff has met and reviewed the amended projects to Grayson's 2009-2012 CWP. This letter represents Commission Staff's opinion, which is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution.

According to the letter, Grayson is proposing two changes to its current CWP, which is characterized as involving "modification of existing lines as part of our ordinary course of business." The first change is identified as Project 373 with a Rural Utility Service ("RUS") Code 740c. This change involves a modification to an existing project in which Grayson will extend the transition from a single phase line to a multi-phase line along State Highway 784 in Carter County. Originally, the project called for approximately 2.2 miles of single phase line to be replaced. After conducting further field analysis, Grayson determined that it would be more cost effective to replace an additional two miles of aging copper conductor, which would provide better phase balancing capabilities. The estimated cost for this project is \$243,000.

The second change is identified as Project 386 and was not originally included in Grayson's 2009-2012 CWP. This project involves upgrading approximately five miles of aging single phase copper line on State Highway 719 in Elliot County. Grayson noted that under snow load, the conductor would break easily and was difficult to sleeve. The upgrade would also include some pole changes along this span. Existing funds from the RUS loan for this CWP would be used to pay for the estimated cost of \$175,000.

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.

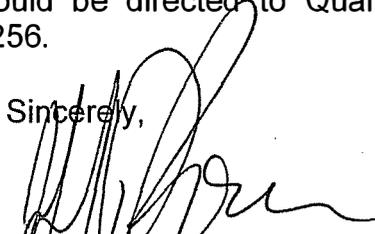
Thus, the regulation provides for three areas of inquiry: (1) whether there will be wasteful duplication of plant, including interference with another utility's certificates or services; (2) whether the capital required is so minimal that it will not "materially" affect the financial condition of the 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 Grayson's current facilities and the proposed expansion, it does not appear that the proposed amended projects would result in a wasteful duplication of plant.

In analyzing whether the proposed projects would materially affect Grayson's financial condition, Commission Staff takes notice of Grayson's 2011 Annual Report, which shows Grayson had net utility plant of approximately \$50.4 million. The proposed construction would have an insignificant impact on Grayson's utility plant and is therefore generally considered to be an extension in the ordinary course.¹ Likewise, given its relatively limited scope, the proposed construction would not have an immediate or significant impact on Grayson's rates. Thus, Commission Staff is of the opinion that the proposed amended projects to Grayson's current CWP satisfy the "ordinary course of business" exemption from the CPCN requirement.

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 Quang D. Nguyen, Staff Attorney, at (502) 564-3940, Extension 256.

Sincerely,



Jeff Derouen
Executive Director

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¹ See, e.g., *City of Covington*, supra.