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August 30, 2013

Hon. J. Christopher Hopgood  
Dorsey, King, Gray, Norment & Hopgood  
Attorneys at Law  
318 Second Street  
Henderson, KY 42420

**PSC STAFF OPINION 2013-010**

Re: Kenergy Corp.  
2013-2017 Construction Work Plan

Dear Mr. Hopgood:

Commission Staff acknowledges receipt of your letter dated August 14, 2013 requesting a staff advisory opinion that a Certificate of Public Convenience and Necessity ("CPCN") is not required for any part of Kenergy Corp.'s ("Kenergy") 2013-2017 Construction Work Plan ("CWP") as all of the items in the CWP are replacement items in the ordinary course of business. You stated that Kenergy proposes to commence this work on August 1, 2013 and acknowledge that the request for a staff opinion on the CWP was submitted after the proposed start date.

This letter responds to your request. Pursuant to the Commission's 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 CPCN, Commission Staff has reviewed the projects outlined in Kenergy's 2013-2017 CWP. This letter represents the 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.

Commission Staff understands the facts as follows:

Kenergy's CWP and the Addendum thereto, filed August 16, 2013, outlines the scope of work Kenergy proposes to complete during the 2013-2017 time frame. The Addendum to the 2013-2017 CWP indicates that the projected system peak load and number of customers served used in the report were originally based on the 2011 Load Forecast

Energy and Peak Demand Projections (“LF”) for 2011-2025, developed by GDS Associates, Inc. in cooperation with Big Rivers Electric Corporation and Kenergy. However, due to economic issues related to potential closure of the Century Aluminum Smelter in Hancock County, a new LF forecast was developed in March, 2013, which occurred after the CWP had already been completed. This created the need for an Addendum. The effect that the 2013 LF had on the CWP was to lower the projected number of new customers and to lower the projected KW demand. The number of new customers served during the CWP period was lowered from 2,699 to 2,259. The 2016 summer peak load was lowered from 312.0 to 305.6 MW and the 2016-2017 winter peak load was lowered from 318.3 to 308.8 MW. The amount of total CWP improvements was lowered from \$46,540,977 to \$43,092,948.

Kenergy's 2013-2017 CWP consists of 42.4 miles of new underground lines and 84.2 miles of new overhead lines. Various distribution line changes are proposed for 142.3 miles. Kenergy proposes additional meters and transformers to be used in the construction of facilities for new members.

The 2013-2017 CWP also identifies the installation, upgrade, and relocation of regulators, and the relocation of regulator banks. The CWP also includes pole replacements and the purchase of security lights.

As with all legal opinions requesting a determination of the “ordinary extensions of existing systems in the usual course of business” exemption from the requirement of a CPCN, Commission Staff’s review does not consider the reasonableness or the need for the project. Therefore, because reasonableness and need are not considered herein, nor in other non-rate cases, such a project can be denied recovery in a rate case if found to be unreasonable or unnecessary.

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 15(3), provides, in full, as follows:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not 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 or contiguous area in which the utility renders service, 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.

In analyzing whether the proposed projects would materially affect Kenergy's financial condition, Commission Staff takes notice of Kenergy's 2012 Annual Report which shows Kenergy has a net utility plant as of December 31, 2012 of approximately \$189,351,231.80. When reviewed separately, each proposed construction project based on its estimated cost would not materially impact Kenergy's existing financial condition. Therefore, each construction project is generally considered to be an extension in the ordinary course of business. Likewise, the cost estimate of each project considered separately in the 2013-2017 CWP will not have an immediate or significant impact on Kenergy's rates. Thus, Commission Staff is of the opinion that each of the proposed projects set out in Kenergy's 2013-2017 CWP satisfies the "ordinary course of business" exemption from the CPCN requirement.

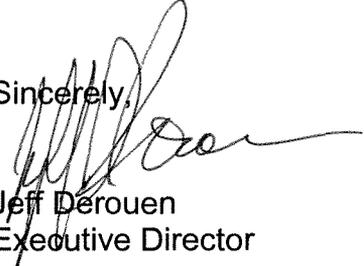
Your letter indicates that Kenergy proposes to commence work on the CWP projects prior to obtaining a legal opinion on whether those projects could be exempt from the CPCN requirement. While the commencement of work by Kenergy in this instance would not be in violation of KRS 278.020 due to Staff's determination herein that those projects satisfy the "ordinary course of business" exemption, the Commission has not looked favorably upon a utility's commencement of work prior to its obtaining a

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CPCN.<sup>1</sup> The better practice is not to commence any work prior to obtaining either a CPCN, or a Commission Staff opinion that the applicable CWP or project satisfies 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 Richard G. Raff, General Counsel, at (502) 564-3940.

Sincerely,



Jeff Derouen  
Executive Director

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cc: Mr. Bill Corum  
President and CEO  
Kentucky Association of Electric Cooperatives, Inc.  
4515 Bishop Lane  
Louisville, KY 40218

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<sup>1</sup> See Case No. 2012-00219, *Clark Energy Cooperative, Inc. Alleged Failure To Comply with Administrative Regulations* (Ky. PSC Nov. 20, 2012).