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December 18, 2013

PSC STAFF OPINION 2013-021

Debra J. Martin
President & CEO
Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065-1714

RE: Shelby Energy Cooperative, Inc. Amendment 2013-1 to 2010-2014 Construction Work Plan

Dear Ms. Martin:

Commission Staff acknowledges receipt of your letter dated December 4, 2013, on behalf of Shelby Energy Cooperative, Inc. ("Shelby Energy") in which you request an opinion as to whether Amendment 2013-1 ("Amendment") to Shelby Energy's 2010-2014 Construction Work Plan ("CWP") falls within the "ordinary course of business" exemption and, therefore, does not require a Certificate of Public Convenience and Necessity ("CPCN").

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 CPCN, Commission Staff has met and reviewed the proposed Amendment to Shelby Energy's 2010-2014 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.

As with all legal opinions requesting a determination of the exemption from the requirement of a CPCN, Commission Staff's review does not consider the reasonableness or the need for each project. Therefore, because reasonableness and need are not considered herein, or in other non-rate cases, the cost of such a project can be denied recovery in a rate case if found to be unreasonable or unnecessary.

Shelby Energy's 2010-2014 CWP was filed with the Commission on July 23, 2010. After conducting an investigation, the Commission entered an Order on August 3, 2011, granting a CPCN for all of the projects in that CWP at a total cost of

\$19,645,739.¹ Shelby Energy is now amending that CWP to include a new commercial development, at a total cost to Shelby Energy of \$2,101,863, to be funded from the budget set aside in the 2010-2014 CWP. The Amendment is to extend service to a new development, known as the Outlet Shoppes at Louisville, which is wholly located within Shelby Energy's service territory. According to the Amendment, Shelby Energy proposes construction identified by the following RUS Codes: (1) Code 101, construction of a new underground double circuit line for new service at an estimated total cost of \$1,546,380; (2) Code 102, new overhead triple circuit line for new service at an estimated total cost of \$147,500; (3) Code 601, for transformers and meters at an estimated total cost of \$374,298; (4) Code 602, increase service capacity at an estimated total cost of \$9,813; and (5) Code 612, step up/step down transformers at an estimated total cost of \$23,872.

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

¹ Case No. 2010-00244, *Application of Shelby Energy Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Its 2010-2014 Construction Work Plan* (Ky. PSC Aug. 3, 2011).

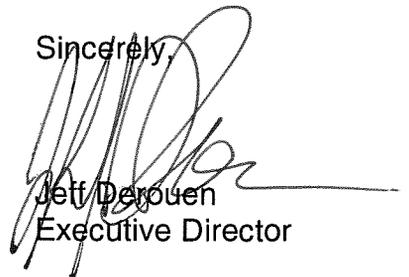
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involved, or will not result in increased charges to its customers.

In analyzing whether the proposed Amendment would materially affect Shelby Energy's financial condition, Commission Staff takes notice of Shelby Energy's 2012 Annual Report, which shows Shelby Energy has a net utility plant of approximately \$63,563,073 as of December 13, 2012. Neither the individual components of the Amendment, nor the Amendment itself, based on the estimated costs, would materially impact Shelby Energy's existing financial condition. Therefore, the Amendment is generally considered to be an extension in the ordinary course of business and the construction proposed therein will not have an immediate or significant impact on Shelby Energy's rates. Thus, Commission Staff is of the opinion that Shelby Energy's proposed Amendment satisfies the "ordinary course of business" exemption from 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 at (502) 564-3940.

Sincerely,



Jeff Derouen
Executive Director

RGR/kar