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June 11, 2015

PSC STAFF OPINION 2015-010

James M. Crawford
Crawford & Baxter, P.S.C.
P. O. Box 353
Carrollton, Kentucky 41008

Re: Owen Electric Cooperative, Inc.
Request for an Advisory Opinion

Dear Mr. Crawford:

Commission Staff acknowledges the receipt of your letter dated February 20, 2015, in which you request an Opinion as to whether or not an end-use consumer or customer's threatening conduct or behavior falls within the definition of "dangerous conditions," as that term is used in 807 KAR 5:006, Section 15(1)(b), for the purpose of authorizing a utility to refuse or terminate service without advance notice to that customer.

Based upon your letter, Commission Staff understands the facts and your legal position to be as follows:

In November 2014, Owen Electric Cooperative, Inc. ("Owen Electric") sent a letter to a member/customer indicating that his payment was delinquent and that his electric service would be disconnected unless he paid by a certain date. On November 21, 2014, Owen Electric received a social media threat from this member that included an allegation that Owen Electric had damaged his property in 2007 and unless Owen Electric paid him \$12.5 million "things would not go well" (paraphrased in the original to omit an expletive). Owen Electric made numerous attempts to contact this member, both by telephone and by certified letter, to understand the nature of the alleged property damage; however, the member did not answer the calls and refused to accept the certified letter. The Kentucky

State Police ("KSP") and the county sheriff visited this member, and Owen Electric believed that the threat was resolved.

In January 2015, the same member/customer was delinquent again. After several attempts to contact the member by telephone, on February 6, 2015, Owen Electric sent two employees to replace the member/customer's existing meter with a meter having remote disconnect capabilities. Because the customer/member had given Owen Electric concerns in the past, the KSP and a sheriff's deputy were nearby when the meter was changed-out. During the meter change out, the customer/member threatened Owen Electric's employees by stating, "You're lucky I don't put a bullet in your head." The meter was fully functioning when Owen Electric employees left the customer/member's house. Later that same day, Owen Electric's automated meter reading system could not communicate with the new meter, and Owen Electric suspected that the customer/member had disabled the meter.

An Owen Electric employee drove by the customer/member's residence and, with the aid of binoculars, determined that the customer/member had cut Owen Electric's lock and pulled the meter. Because the open meter socket created a public safety hazard, Owen Electric personnel had to disconnect the service at the transformer. The action mitigated any potential public safety hazards and the possibility of theft of service by the customer/member. The KSP was on-site and detained the member during the time that Owen Electric's crew disconnected the service. As of February 20, 2015, the customer/member's service remains terminated because of non-payment.

You state that 807 KAR 5:006, Section 25, requires each utility to adopt and execute a safety program appropriate to the size and type of its operations. Within this regulation is a requirement for utilities to instruct their employees in safe methods of performing their work. Owen Electric has a strong safety program in place and instructs each and every employee to avoid situations perceived as dangerous.

You state that it is Owen Electric's belief that, in situations where performing basic utility work requires the presence of law enforcement because of the member/customer's threatening conduct, dangerous conditions exist within the context of 807 KAR 5:006, Section 15(1)(b). In such circumstances, Owen Electric believes it has the right to refuse and/or terminate service without advance notice.

Commission Staff notes the following additional facts:

Owen Electric's rules and regulations include the following provisions regarding the refusal or termination of service for dangerous conditions:

If a dangerous condition relating to the Cooperative's service which could subject any person to imminent harm or result in substantial damage to the property of the Cooperative or others, is found to exist on the member's premises, the service shall be refused or terminated without advance notice. The Cooperative shall notify the member immediately in writing and, if possible, orally of the reasons for the termination or refusal. Such notice shall be recorded by the Cooperative and shall include the corrective action to be taken by the member or cooperative before service can be restored or provided. However, if the dangerous condition can be effectively isolated or secured from the rest of the system, the Cooperative need discontinue service only to the affected member.¹

Additionally, Owen Electric's rules and regulations include the following provision regarding refusal or termination of service for refusal of access by a customer/member.

When a member refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of Cooperative property, the Cooperative may terminate or refuse service. Such action shall be taken only when corrective action negotiated between the Cooperative and member has failed to resolve the situation and after the member has been given at least ten (10) days' written notice of termination pursuant to 807 KAR 5:006.²

Your letter presents the following questions: Is a member/customer's threatening conduct a dangerous condition within the meaning of 807 KAR 5:006, Section 15(1)(b)? May Owen Electric refuse and/or terminate service based upon a member/customer's threatening conduct?

807 KAR 5:006, Section 15 is the Commission's administrative regulation addressing a utility's authority to refuse or terminate service.

807 KAR 5:006, Section 15(1)(b) addresses dangerous conditions and states:

If a dangerous condition relating to a utility's service that could subject a person to imminent harm or result in substantial damage to the property of the utility or others is found to exist on the customer's premises, the service shall be refused or terminated without advance notice.

¹ *Owen Electric Cooperative, Inc., Rates, Rules and Regulations for Furnishing Electricity*, P.S.C. KY. No. 6, Original Sheet No. 45, 20(1)(B), effective Aug. 15, 1997.

² *Owen Electric Cooperative, Inc., Rates, Rules and Regulations for Furnishing Electricity*, P.S.C. KY No. 6, Original Sheets No. 45 and 46, 20(1)(C), effective Aug. 15, 1997.

1. The utility shall notify the customer immediately in writing and, if possible, orally of the reasons for the termination or refusal.
2. The notice shall be recorded by the utility and shall include the corrective action to be taken by the customer or utility before service can be restored or provided.
3. If the dangerous condition, such as gas piping or a gas-fired appliance, can be effectively isolated or secured from the rest of the system, the utility need discontinue service only to the affected piping or appliance.

The safety of Owen Electric's employees is of utmost concern, and contacting law enforcement authorities to be present while utility employees perform necessary service work is appropriate when threats have been made. In addition, instructing employees to avoid situations perceived as dangerous due to the actions of customers or members of the public is also appropriate. Commission Staff notes that its review of your request is limited to consideration of the proper construction of 807 KAR 5:006, Section 15(1)(b) because it presents a question that falls within the Commission's jurisdiction over rates and service. Commission Staff expresses no opinion as to any other aspects of the facts that you present such as other options or remedies that may be available and appropriate for Owen Electric to pursue. The Opinion should in no way be construed as commenting upon the steps that Owen Electric has taken or should take to protect its employees from personal threats.

In Case No. 2001-00142,³ the Commission addressed the issue of a utility's responsibility to reconnect service to an individual who is alleged to have engaged in threatening actions towards a utility and its employees. The facts of Case No. 2001-00142 include the following:

After Mr. Marcum [a Western Pulaski County Water District employee] drew the sample of water, Complainant allegedly exited his home armed with a firearm and asked Mr. Marcum to leave his property. Mr. Marcum then drove to a driveway near Complainant's property.

...

Later that day, Mr. Marcum returned to Complainant's property with a police officer and David Kingsley, another Western Pulaski employee. Once again, Complainant's truck was parked over the meter box, and Complainant moved the truck at the police officer's behest. Mr. Marcum

³ *In the Matter of: Louie Encil Dalton, Complainant v. Western Pulaski County Water District, Defendant*, (KY P.S.C. Jan. 29, 2002).

claims that an inspection of the meter box revealed that the plug Western Pulaski had installed had marks on it, indicating that it had been removed and replaced, and that a pin on the meter box was positioned backwards. Mr. Marcum claims that these conditions varied from the conditions of the meter box and plug when Western Pulaski disconnected service, indicating that someone had removed and then replaced the plug. At some later date, Western Pulaski simply filled the meter box with concrete.⁴

The utility in Case No. 2001-00142 took the position that the alleged threatening actions towards the utility and its employee caused a dangerous condition to exist on the property, and it refused to reconnect service.⁵ The Commission stated, “[i]f a dangerous condition exists on a customer’s property, a utility has the right to refuse or disconnect service until the dangerous condition is remedied.”⁶ The Commission, however, went on to state:

Nevertheless, Complainant resides in Western Pulaski’s service territory and, therefore, Western Pulaski must extend him service barring the aforementioned circumstances. See KRS 278.160, 278.170. Complainant must comply with Western Pulaski’s tariff. The alleged dangerous condition exists, it appears, primarily because Western Pulaski disconnected Complainant’s service. Thus, if Western Pulaski reconnects service, it seems unlikely that Complainant would pose a threat to Western Pulaski. Accordingly, once Complainant complies with Western Pulaski’s tariff, Western Pulaski must reconnect service. If Western Pulaski believes a dangerous condition continues to exist on Complainant’s property, it may take reasonable measures, as it previously has, to protect its employees when reconnecting Complainant’s service.⁷

In Case No. 2001-00142, the Commission ordered the utility to restore service once the individual complied with the utility’s tariff.⁸ Additionally, the Commission ordered the utility to take prudent measures to ensure the safety of its employees when restoring service.⁹ In Case No. 2001-00142, the Order required the person seeking service, the complainant in that proceeding who was a party to the case, to remove

⁴ *Id.* at pages 4 and 5.

⁵ *Id.* at page 6.

⁶ *Id.*

⁷ *Id.* at page 7.

⁸ *Id.* at page 8.

⁹ *Id.*

himself from the property when the utility was restoring service.¹⁰ Although the Commission in that case found that a “dangerous condition” existed on the premises because of the customer’s threatening conduct, our primary focus was on whether there was theft of service at the customer’s premises and whether the utility was alleging prior theft of service at a different location as a pretext to deny complainant service.

Thus, the Commission’s Order in Case No. 2001-00142 provides some measure of guidance on the questions that you ask. Although 807 KAR 5:006 does not contain a definition for “dangerous condition,” the Commission has recognized that a customer’s threatening conduct can constitute a dangerous condition, and the utility should take prudent measures to ensure the safety of its employees. As noted above, 807 KAR 5:006, section 15(1)(b), prescribes the termination notice and actions the utility must take if there is a dangerous condition, such as a customer’s threatening behavior. Because of the risk of imminent harm, no advance notice is required when a customer acts in a threatening manner. Rather, the notice prescribed occurs after the customer’s service is terminated or refused. This procedure is in contrast to the advance termination notice required by 807 KAR 5:006, Section 15(1)(c), which must be given when there is a mere “refusal of access” by the customer, as opposed to threatening behavior by the customer.

Finally, in the facts that you provide, Commission Staff notes that the existence of an open meter socket is an example of a dangerous condition warranting termination without advance notice because it presents a risk of imminent harm or substantial damage to persons and property relating to the continued provision of electric service. Therefore, per the facts that you provide, the open socket also met the criteria of being a dangerous condition.

This letter represents the Commission Staff’s interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to David Spenard, Staff Attorney at (502) 782-2580.

Sincerely,



Jeff Derouen
Executive Director

DS/ph

¹⁰ *Id.*