

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

OWEN ELECTRIC COOPERATIVE,)
INC.)
_____) CASE NO. 2011-00160
)
ALLEGED FAILURE TO COMPLY WITH)
KRS 278.020 AND COMMISSION)
ORDER)

ORDER

On January 6, 2011, in Case No. 2010-00316,¹ Owen Electric Cooperative, Inc. ("Owen") filed its application for a Certificate of Public Convenience and Necessity ("CPCN") to construct certain improvements and additions to its existing plant. Owen filed a copy of its 2010-2011 Construction Work Plan ("CWP") in support of its application. The CWP describes improvements and additions to Owen's plant that are required over the two-year period in order for Owen to serve its load. Following its review of the application and concurrent with this Order, the Commission is issuing an Order granting Owen a CPCN for the construction projects described in the CWP.

KRS 278.020, provides, in pertinent part, that:

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

¹ 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, filed Jan. 6, 2011.

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.

Owen drafted its 2010–2011 CWP during the fall of 2009 and submitted it to the Rural Utility Service (“RUS”) for its approval on November 4, 2009, and approval was granted on November 15, 2009.² Owen did not file its CPCN application to the Commission until December 2010. However, Owen had already begun construction on a number of the projects described in the 2010-2011 CWP as early as March 2010.³

In its initial data request in Case No. 2010-00316, Commission Staff asked Owen why it did not file its CPCN application until over a year after it had received RUS’s approval. In its response, Owen stated:

Owen Electric’s engineering department has historically been responsible for the filing with the Commission any necessary documentation relating to its construction work plans. In late 2009, Owen hired a new Vice President of Engineering. The new Vice President of Engineering believed that the filing was being taken care of by the Corporate Services department. The Corporate Services department assumed that the filing was being coordinated in the Engineering group, as it had been historically. The result was that the filing did not take place timely.

The failure to file for the CPCN was discovered in early August 2010. Owen began the process of preparing for the filing and notified the Commission of its intent to file electronically. The request to file electronically was granted by the Commission in its order dated August 24, 2010. It took considerable time to convert the existing work plan files into an appropriate format for electronic filing, and the application was finally filed successfully on December 10, 2010.

² Id., Owen’s Response to Commission Staff’s First Data Request, Item 1.

³ Id. at Item 3.

Owen recognizes its responsibility to timely file for a CPCN for its CWP and has put procedures in place to ensure timely filing for all future work plans.⁴

The Commission acknowledges Owen's proffered explanation. However, this explanation and Owen's acknowledgement of its error does not obviate our obligation to determine whether there has been a violation of KRS 278.020 and, if so, whether penalties should be assessed under KRS 278.990.

The Commission notes that this is not the first instance in which it has put Owen on notice that it must file an application for a CPCN before undertaking any work described in a new CWP. In Case No 2009-00010,⁵ Owen requested loan approval under the RUS/CoBank Co-Lending Program to finance construction activity. The Commission approved the financing from CoBank; but, in the process of discovery in that matter, the Commission found that Owen had neglected to file CPCN applications for its two most recent CWPs.

In its August 5, 2009 Final Order in that matter, the Commission put Owen (and all other jurisdictional electric cooperatives) on notice that they are required to obtain a CPCN for all work plans prior to beginning construction of the facilities contained in those plans:

Upon review of Owen's work plans, the Commission finds that they involve significant capital expenditures for new facilities and, therefore, cannot be deemed ordinary extensions of existing systems in the usual course of

⁴ Id. at Item 2.

⁵ 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 Aug. 5, 2009).

business. Accordingly, we find that the subject work plans are not exempt from the Certificate requirements set forth in KRS 278.020(1). The Commission further advises all of the electric cooperatives subject to its jurisdiction that they are required to obtain a Certificate for all work plans prior to beginning construction of the facilities contained in those plans.

Since Owen apparently failed to obtain a CPCN before undertaking the construction described in its 2010-2011 CWP, the Commission finds it necessary to investigate this matter further. The Commission finds that a prima facie case has been made that Owen violated KRS 278.020(1) and the Commission's August 5, 2009 Order in Case No. 2009-00010 by beginning construction without first obtaining a Certificate of Public Convenience and Necessity. Therefore, the Commission establishes this investigation into Owen's apparent failure to comply with KRS 278.020 and the August 5, 2009 Order in Case No. 2009-00010 in order to determine whether it is appropriate to assess a civil penalty pursuant to KRS 278.990 for Owen's apparent violation of KRS 278.020.

The Commission, on its own motion, HEREBY ORDERS that:

1. Owen shall submit to the Commission, within 20 days of the date of this Order, a written response to the allegations contained in this Order.
2. Owen shall appear on August 2, 2011, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard in Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violations of KRS 278.020 and the Commission's August 5, 2009 Order in Case No. 2009-00010, and to show cause why it should not be subject to the penalties prescribed in KRS 278.990(1) for these alleged violations.

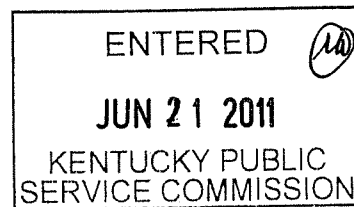
3. At the scheduled hearing in this matter, Owen shall be prepared to present evidence on the adequacy and reasonableness of its practices related to ensuring that CPCN filings are timely and properly made and whether such practices require revision.

4. The August 2, 2011 hearing shall be recorded by videotape only.

5. Any request for an informal conference with Commission Staff shall be set forth in writing and filed with the Commission within 20 days of the date of this Order.

6. The record of Case No. 2010-00316 shall be incorporated herein by reference.

By the Commission



ATTEST:

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Executive Director

Mark Stallons
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