

LAW OFFICE OF  
**JOHN J. SCOTT, PSC**

108 EAST POPLAR STREET  
P.O. BOX 389  
ELIZABETHTOWN, KENTUCKY 42702-0389

**RECEIVED**

NOV 7 2011

PUBLIC SERVICE  
COMMISSION

TELEPHONE 270-765-2179  
FAX 270-765-2180

**JOHN J. SCOTT**  
ATTORNEY AT LAW

November 3, 2011

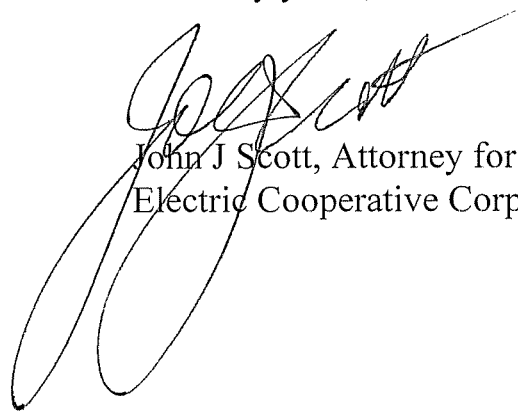
Mr. Jeff R. Derouen  
Executive Director  
Public Service Commission  
211 Sowers Boulevard  
P.O. Box 615  
Frankfort, KY 40602-0615

Re: In the matter of Nolin Rural  
Electric Cooperative Corporation  
Case No. 2011-00376

Dear Mr. Derouen:

On behalf of Nolin Rural Electric Cooperative Corporation, please find enclosed an original and ten (10) copies of Nolin's Response to the Order of the Commission entered October 17, 2011.

Sincerely yours,



John J Scott, Attorney for Nolin Rural  
Electric Cooperative Corporation

JJS/clt

Enclosures

RECEIVED

NOV 7 2011

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOLIN RURAL ELECTRIC )  
COOPERATIVE CORPORATION )

\_\_\_\_\_ )

CASE NO. 2011-00376

ALLEGED FAILURE TO COMPLY )  
WITH KRS 278.020 )

RESPONSE OF NOLIN RURAL ELECTRIC COOPERATIVE  
CORPORATION TO ORDER

Comes Nolin Rural Electric Cooperative Corporation (hereinafter referred to as "Nolin") and in response to the Order of the Commission entered October 17, 2011, hereby files its written Response to the allegations contained in said Order:

1. On December 9, 2010, Nolin's Board of Directors adopted a Resolution which approved the three (3) year construction work plan dated 2011-2013 in the amount of \$12,916,338.00. (Exhibit A attached hereto).

Subsequently, the United States Department of Agriculture, Rural Utilities Service, approved that construction work plan and on December 17, 2010, Nolin mailed its work plan to the Public Service Commission and that work plan was considered filed as of December 22, 2010. Nolin asserts that there were no items or

expenditures in the work plan other than “ordinary extensions of existing systems in the usual course of business”.

2. The Rules of Procedure set forth in 807KAR5:001, Section 9(3) state that:

“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.”

Nolin asserts that this section of the Kentucky Administrative Regulations applies in this instance and that in actuality, no certificate of public convenience and necessity (hereafter CPCN) was required for the items set forth in the 2010-2013 construction work plan. However, out of an abundance of caution and in compliance with a letter from the Commission to Nolin dated November 12, 2009 (Exhibit B), Nolin did file its Application for a Certificate of Convenience and Necessity. Nolin, in response to the Commission’s letter of November 12, 2009 informed the Commission by its letter dated December 1, 2009 that the work that Nolin was doing was considered “work efforts to be extensions of the existing system and in the usual course of

business”. (see Nolin’s letter of December 1, 2009 as Exhibit C).

3. By letter of the Commission dated October 14, 2011, the Commission has acknowledged that it is attempting to identify areas in which its regulations are deficient and changes should be made to correct these deficiencies. Nolin asserts that the stance currently being taken by the Commission that substantially all work done by a cooperative under its work plan falls within the purview of the Commission is one of those matters needing change and such change would “promote and foster an effective and efficient administrative process” if the regulation were interpreted differently. (Letter of Commission dated October 14, 2011 – Exhibit D).
4. In its letter of September 8, 2011 from the Commission to Nolin, the Commission admits that review of Certificates of Convenience and Necessity are statutory but some construction projects remain statutorily exempt. (Letter from the Executive Director of the Commission dated September 8, 2011 - Exhibit E). However, in this instance, the Commission has taken the position that the work being done by Nolin in its 2010 – 2013 work plan prior to the obtaining of a CPCN is in violation of KRS 278.020(1).
5. In its letter of September 8, 2011, the Executive Director of the Commission asserts that there is a differentiation between investor/owned utilities making capital investments without obtaining PSC approval versus co-ops doing the same. Nolin can

find no such differentiation in the law, especially in light of the fact that KRS 278.020 is a statutory requirement that applies to all public or private corporations and does not allow the Commission to make any such differentiation. Therefore, there is unequal application of the statutory law being utilized by the Commission in not requiring PSC approval of capital investments made by investor owned utilities as opposed to cooperatives.

6. For the Commission to require prior approval of work to be done in a work plan that is an ordinary extension of existing systems is simply not feasible when the timetable for obtaining such approval is such that Nolin has experienced before the Commission. In the instant case, Nolin's work plan was filed of record on December 22, 2010 and the approval of that work plan came on September 6, 2011, some 8½ months later. For cooperatives in Kentucky to meet the deadlines put upon them by new construction in progressive counties such as those serviced by Nolin, it is unrealistic to have to wait eight to nine months to do work that the members of the cooperative are demanding be done within a matter of days or weeks.
7. Nolin asserts that there is considerable uncertainty and confusion among many of the cooperatives as to what construction projects are being considered statutorily exempt and which are requiring the review of the Commission. Nolin agrees that capital expenditures involving Automated Meter Reading projects and the

construction of headquarter facilities and other such expenditures would certainly be within the purview of KRS 278.020. However, none of the work set forth in Nolin's work plan is of such a nature and does amount to ordinary extensions of existing systems. Therefore, Nolin would request the Commission to set forth what type of construction and what amount of expenditures are required for the filing of a CPCN. In addition, in cooperation with the spirit of the letter of the Commission dated October 14, 2011 wherein the Commission is seeking the input of all jurisdictional utilities concerning deficiencies in the regulations, Nolin would question whether the requirements for the filing of CPCN's are being consistently applied for all such jurisdictional utilities and if not, then on what statutory basis are the inconsistencies based?

8. As requested by the Commission, Nolin will be prepared to present evidence on the adequacy and reasonableness of its practices relating to CPCN filings at the scheduled hearing in this matter.
9. Nolin does request that an informal conference be scheduled with Commission Staff to clarify the issues that will be addressed at the hearing on January 10, 2012.

In summary, Nolin did file its Certificate of Convenience and Necessity, although in retrospect, since all of the work set forth therein should be exempt from both KRS 278.020 as well as the regulations stated above, it most likely was not required to do so. Therefore, Nolin requests that the Commission find

that it should not be subject to any penalties since it did not violate either the statute or the regulations in regard to this filing.

WITNESS the signatures of the President of Nolin Rural Electric Cooperative Corporation and its attorney this 3<sup>rd</sup> day of November, 2011.

**NOLIN RURAL ELECTRIC  
COOPERATIVE CORPORATION**

BY: Michael L. Miller

**MICHAEL L. MILLER,  
PRESIDENT  
NOLIN RURAL ELECTRIC  
COOPERATIVE CORPORATION  
411 RING ROAD  
ELIZABETHTOWN, KY 42701**

John J. Scott  
**JOHN J. SCOTT  
JOHN J. SCOTT, P.S.C.  
108 E. POPLAR STR., P.O. BOX 389  
ELIZABETHTOWN, KY. 42702-0389  
ATTORNEY FOR NOLIN RURAL  
ELECTRIC COOPERATIVE  
CORPORATION  
Phone No. (270) 765-2179  
Fax No. (270) 765-2180  
Email: john@johnscottlaw.org**

**CERTIFICATE**

This is to certify that on November 3<sup>rd</sup>, 2011, an original and ten (10) copies of the attached Response was sent by first class mail, postage prepaid and addressed for delivery to:

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40602-0615

  
\_\_\_\_\_  
**JOHN J. SCOTT**  
**ATTORNEY FOR NOLIN RECC**



The regular meeting of the Board of Directors of Nolin RECC was held at 8:00 a.m., Thursday, December 9, 2010, at the office of the Cooperative.

Present – David P. Brown, Gene Straney, Rick Thomas, A. L. Rosenberger, Linda Grimes, and Lawrence Ireland, Directors; John J. Scott, Attorney; Mickey Miller, President & CEO; Rick Ryan, O. V. Sparks, Vince Heuser, and Cheryl Thomas, Staff.

David P. Brown called the meeting to order.

Lawrence Ireland gave the invocation.

Gene Straney moved that the agenda be adopted as presented and that the minutes of the previous meeting be approved as mailed. Motion carried.

O. V. Sparks presented and discussed the financial reports for the cooperative.

Mickey presented and reviewed new memberships and applied memberships. He also reviewed capital credits totaling \$7,679.56 to be paid to estates of deceased consumers. He reported on the Fresh Look Committee meeting that he attended on November 12<sup>th</sup>.

Linda Grimes moved that the President's Report be received. Motion carried.

Vince Heuser presented the Safety Report for November 2010. Rick Thomas moved the Safety Report be received, motion carried.

Vince Heuser reported on projects at Fort Knox and the Operations and Engineering Department.

O. V. Sparks reported on the Administration and Finance Department.

003705

Cheryl Thomas reported on the Office Services Department and Operation Round-Up.

Rick Ryan reported on the Marketing and Member Services Department. Rick reported that a Nolin member had filed a complaint with the PSC and Better Business Bureau regarding surge protection. Rick stated that he had responded to the PSC complaint and would be responding to Better Business Bureau as well.

John Scott reported on legal work he performed on behalf of the Cooperative in the past month.

Vince Heuser presented the 2011-2013 Construction Work Plan. After discussing the three-year plan, Gene Straney moved that the following resolution be approved. Motion carried.

WHEREAS, a Three-Year Construction Work Plan dated 2011-2013 in the amount of \$12,916,338 has been prepared by Nolin Rural Electric Cooperative Corporation Engineering Department Staff and Envision Energy Services, Roger Wilson, PE.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of Nolin Rural Electric Cooperative Corporation hereby approves the 2011-2013 Work Plan as a plan of action, to be followed or until amended with approval of RUS.

O. V. Sparks discussed the 2011 Operating and Capital Budget. After much discussion, Linda Grimes moved that the budget be approved as presented. Motion carried.

The inventory of work orders for September was presented in the amount of \$213,499.21 with minor projects totaling \$4,631.81 and

special equipment totaling \$93,736.33. Gene Straney moved that the work orders be approved. Motion carried.

The uncollectible accounts were presented in the amount of \$6,903.95. After reviewing the accounts, Rick Thomas moved the accounts be transferred from Account 142 to account 144.1. Motion carried.

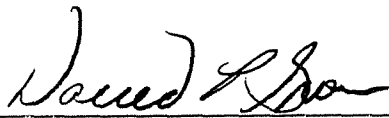
Mickey Miller presented a proposed amendment to Nolin's 125 Flex Spending Plan. He also presented a resolution to amend the 125 Plan. Gene Straney moved that the 125 Flex Spending Plan be amended as proposed and that the resolution regarding the amendment be adopted. Motion carried. A copy of the amendment and a copy the resolution are attached to and made a part of these minutes.

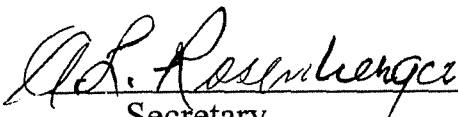
The Board of Directors reviewed expenses and compensation for each director.

The next regularly scheduled board meeting will be Monday, January 17, 2011, at 9:00 a.m.

The Board adjourned into an executive session.

There being no further business to come before the Board the meeting was adjourned.

  
\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Secretary



Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

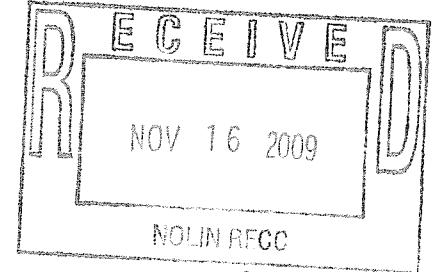
Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Charles R. Borders  
Commissioner

November 12, 2009



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OV  
VH  
BH*

Mr. Michael L. Miller  
President and Chief Executive Officer  
Nolin Rural Electric Cooperative Corporation  
411 Ring Road  
Elizabethtown, Kentucky 42701-6767

Dear Mr. Miller:

The Commission recently found in Case No. 2009-00010<sup>1</sup> that Owen Electric Cooperative, Inc.'s periodic construction work plans involve significant capital expenditures for new facilities, cannot be deemed ordinary extensions in the usual course of business, and are not exempt from the requirements to obtain a certificate of convenience and necessity ("Certificate") pursuant to KRS 278.020(1). In that Order, the Commission further advised 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.

Based on a review of Commission records, it appears that Nolin Rural Electric Cooperative Corporation ("Nolin RECC") last requested and was granted a Certificate for its 2003-2005 Construction Work Plan in December 2004.<sup>2</sup>

<sup>1</sup> Case No. 2009-00010, Application of Owen Electric Cooperative, Inc. for an Order Pursuant to KRS278.300 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 August 5, 2009).

<sup>2</sup> Case No. 2004-00160, Application of Nolin Rural Electric Cooperative Corporation for a Certificate of Convenience of Necessity for the 2003-2005 Construction Work Plan (Ky. PSC December 22, 2004).

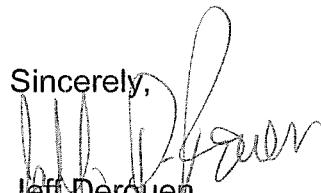
Letter to Nolin RECC  
November 12, 2009  
Page 2 of 2

Within 30 days from the date of this letter, Nolin RECC is requested to provide information to the Commission identifying the time period covered by its current work plan, when its next work plan will be proposed and what period of time it will cover.

This letter is to serve as a reminder that Nolin RECC is required to obtain a Certificate for all future work plans. An application requesting a Certificate should be filed after each plan has been approved by Nolin RECC's Board of Directors and before any construction is commenced on any projects in the work plan.

If you have any questions or concerns, please contact Aaron D. Greenwell or Jeff Shaw of my staff at 502-564-3940.

Sincerely,



Jeff Derouen,  
Executive Director



**Rural Electric Cooperative Corporation**

A Touchstone Energy® Cooperative 

December 1, 2009

Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
PO Box 615  
Frankfort, KY 40602-0615

Dear Mr. Derouen:

This is in response to your letter of November 12, 2009, concerning the request to provide the following information:

1. The time period covered by the current work plan.
2. The proposed start time of the next work plan.
3. The expected period of time it will cover.

The answers to the above statements are:

- I. 2008-2009.
- II. We expect the next plan to be started by June 2010.
- III. The next work plan will be for 2 or 3 years.

You stated in your letter that Nolin RECC should obtain a Certificate of Convenience and Necessity on all subsequent work plans. Nolin RECC will honor this request. We would like to note that most of our construction work plan is comprised of new power lines, services to members, installing transformers and meters, and upgrading the existing system because of deteriorated materials or areas needed for system improvement of voltage drop or service reliability. There are occasions that we are required to relocate lines due to road relocation or new construction, which improves our system. We do consider these work efforts to be extensions of the existing system and in the usual course of business.

Our work plans are based on past history of growth and the expectation of new or proposed projects. The variables are subject to change and projects are sometimes postponed, making it difficult to place a firm time line on the work plan's end date. As requested, we will not commence work on any work plan project until the work plan's Certificate of Convenience and Necessity is issued. Therefore, it will be of the utmost importance that the Certificates fall in a priority category for approval in order for service to be rendered to our members in a timely manner.

If you have any questions about this information or our work plan please contact me or the Vice President of System Operations Vince Heuser at (270) 765-6153.

Sincerely,

A handwritten signature in black ink that reads "Michael L. Miller".

Michael L. Miller  
President & CEO

Exhibit "C"



**Steven L. Beshear**  
Governor

**Leonard K. Peters**  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
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psc.ky.gov

**David L. Armstrong**  
Chairman

**James W. Gardner**  
Vice Chairman

**Charles R. Borders**  
Commissioner

October 14, 2011

## TO ALL JURISDICTIONAL UTILITIES AND INTERESTED PARTIES

The Public Service Commission has begun a review of 807 KAR 5:001 (Rules of Procedure) and 807 KAR 5:011 (Tariffs) for revision. These regulations were last revised in 1993 and 1984 respectively. Since their last revision, several changes in statutory law and the utility industry have occurred. Moreover, advances in technology have led the Public Service Commission to consider whether revisions to these regulations would result in a more efficient and effective administrative process.

The Public Service Commission anticipates this review to take several months and would like to involve all stakeholders at all stages in this process. To begin this process, it requests all stakeholders to submit written comments and suggestions on the regulations in question. It strongly encourages all members of the public to identify areas in which the regulations are deficient and changes that would correct these deficiencies or otherwise improve the performance of the regulation. Written comments should be submitted no later than November 15, 2011 and may be submitted by e-mail to [psc.regulations@ky.gov](mailto:psc.regulations@ky.gov) or by mail to: Administrative Regulations Working Group, Kentucky Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602-0615. For your reference, a copy of 807 KAR 5:001 and 807 KAR 5:011 is attached.

The Public Service Commission is also establishing an advisory group of stakeholders who would meet periodically with Commission Staff to discuss proposed revisions and to provide feedback and direction. Nominations for this advisory group should be submitted to the Executive Director no later November 15, 2011. Members of the advisory group will be selected no later than November 30, 2011.

The Public Service Commission believes that this review should be a joint effort of this agency and all stakeholders to develop regulations that promote and foster an effective and efficient administrative process. To ensure that stakeholders are kept fully abreast of these efforts and have the widest opportunity to participate, the Public Service Commission has developed a webpage (<http://psc.ky.gov/home/pscregulations>) devoted to regulations review and will shortly unveil a Facebook page for

Steven L. Beshear  
Governor

Leonard K. Peters  
Secretary  
Energy and Environment Cabinet

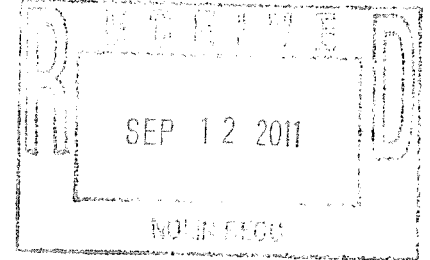


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David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Charles R. Borders  
Commissioner



*file  
C.M.M.  
GH*

September 8, 2011

Michael L. Miller, President  
Nolin RECC  
411 Ring Road  
Elizabethtown, KY 42701-6767

Dear Mr. Miller:

On August 17, Vice Chairman Jim Gardner and Deputy Executive Director Aaron Greenwell were present at a meeting of the Kentucky Association of Electric Cooperatives (KAEC). The Kentucky Public Service Commission (PSC) is appreciative of the opportunity to meet with KAEC and is very interested in continually advancing our working relationship with Kentucky's jurisdictional electric cooperatives.

Aaron Greenwell and Stephanie Bell, the PSC's two deputy executive directors, and I met recently with Bill Corum to discuss a number of matters that arose at the KAEC meeting. We had a good discussion.

The PSC acknowledges your collective concern with respect to the requirement that electric distribution cooperatives obtain Certificates of Public Convenience and Necessity (CPCNs) from the PSC for their Construction Work Plans (CWPs) prior to beginning work on any project included in a distribution cooperative's CWP.

The requirement to obtain a CPCN is set forth in Kentucky statute, KRS 278.020(1). Specifically, that statute provides that no person shall "begin the construction of any plant, equipment, property, or facility for furnishing to the public any [utility service] until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction." The statute also provides for two exemptions, one for retail electric suppliers for service connections to electric-consuming facilities located within its certified territory, and the other for ordinary extensions of existing systems in the usual course of business.



Because the review of CPCNs is statutory, the PSC is required to review CPCNs prior to the commencement of a construction project that is not statutorily exempt. Should you have any questions with regard to this statute, please contact my office.

Due to the size, scope, and relative cost of the multi-year projects included in a cooperative's CWP, neither of the exceptions is applicable. The PSC has similarly held on many occasions that the construction of a new headquarters or service building, or the installation of Automated Meter Reading (AMR) equipment or Advanced Metering Infrastructure (AMI) is not in the usual course of business and must be preceded by the issuance of a CPCN.

The requirement for cooperatives to obtain a CPCN prior to beginning the construction of CWPs (or other projects not in the usual course of business) provides a significant degree of financial protection to both the coops and their ratepayers. Only by reviewing these projects before construction has begun can the PSC objectively determine the need for the projects and that their costs are appropriate for rate recovery.

If an investor-owned utility makes a capital investment without obtaining PSC approval, and the PSC subsequently disallows rate recovery of the cost, the utility's shareholders – not the customers - will absorb the cost. However, for an electric cooperative, as you well know, due to its unique structure, its customers are also its owners/shareholders. Thus, as both customers and shareholders, they will absorb the cost of a project in the event the PSC disallows rate recovery. Similarly, obtaining a CPCN protects the cooperative, since absent a determination of need, a subsequent rate disallowance could result in the cooperative's inability to meet mortgage TIER requirements. While the PSC trusts Rural Electric Cooperatives to manage their own affairs, the oversight provided by the CPCN statute provides the customer-owners, the PSC, and the cooperatives with an additional measure of protection.

However, the PSC also recognizes and agrees with the KAEC that CPCN applications for CWPs have not been processed as expeditiously as is desirable. We are making a commitment to revising our internal processes in order to improve the manner in which these cases are reviewed and adjudicated.

In order to help us expedite the processing of CPCNs for CWPs, we suggest that electric cooperatives take the following steps as appropriate:

- ❖ File the CPCN applications as soon as they have been approved by the cooperative's board of directors and the Rural Utility Service, whichever comes later.
- ❖ Inform the PSC of any internal deadlines for the completion of projects included in the CWP. This can be done in the CPCN application or by separate letter. Doing so will enable the PSC to adjust its internal work flow process in order to attempt to meet your target dates.

- ❖ Consider separate submission of CPCNs for special projects, such as system-wide AMR/AMI or building construction. This will permit the PSC to conduct a thorough review of more complex projects without delaying the consideration of the remainder of the CWP.

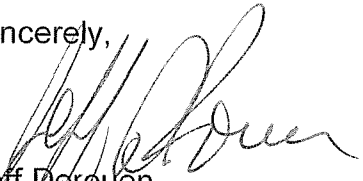
If there is any question about the need for a CPCN in a specific circumstance, please request a staff opinion or contact Stephanie Bell, Aaron Greenwell, or me.

With your help, the PSC will be able to conduct careful and expeditious reviews of CWPs without impairing your ability to make necessary infrastructure improvements in a timely manner.

Let me again emphasize that the PSC is committed to maintaining open lines of communication with electric cooperatives and all other jurisdictional utilities. We want to work with you to resolve matters of mutual concern and to find ways to better serve all Kentuckians.

Thank you for your consideration. I look forward to hearing from you again. Feel free to contact me at any time if you have questions or concerns.

Sincerely,



Jeff Derouen  
Executive Director

JD/pa