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February 17, 2011

**PSC STAFF OPINION NO. 2011-002**

Hon. Sherman Goodpaster, III  
Senior Corporate Counsel  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Rd.  
P.O. Box 707  
Winchester, KY 40392-0707

**Re: Request for Staff Opinion**

Dear Mr. Goodpaster:

Commission Staff acknowledges receipt of your letter of April 26, 2010, in which you request an opinion regarding the need for a certificate of public convenience and necessity ("CPCN") for a proposed office space expansion at East Kentucky Power Cooperative Inc.'s ("EKPC") H. L. Spurlock Generating Station. The letter states that it is EKPC's belief that this proposed expansion constitutes an ordinary extension in the usual course of business pursuant to KRS 278.020(1) and 807 KAR 5:001, Section 9(3) and thus does not require the issuance of a CPCN by the Commission. Accordingly, EKPC requests that Commission Staff issue a Staff Opinion to that effect.

The following facts are presented in your letter: The proposed expansion consists of a two-story 55' x 32' attached addition to the Spurlock Station office area. The expansion will include an expanded and relocated locker room, new laundry facilities, a janitor closet, a utility room and eight new offices. Since 2005, EKPC has added two circulating fluidized bed units and two scrubbers. EKPC's work force has also increased by 37 people in the last five years. According to EKPC, the current office space is not large enough to accommodate the increased staff, and the existing shower facilities are now inadequate to accommodate employee use and need. EKPC plans to begin construction in 2011. The preliminary cost estimate for this is between \$2.0 and \$2.5 million, which includes the expansion itself as well as building safety upgrades (stairs for ingress and egress, a new sprinkler system, and elevator renovation), a relocation of the kitchen, the relocation of document and record storage and minor modifications to the existing office area to improve functionality and productivity.

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 9(3) provides, in full, as follows:

Extensions in the ordinary course of business. 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.

Thus, the regulation provides for three areas of inquiry: (1) whether there will be wasteful duplication of plant, including interference with another utility's certificates or services; (2) whether the capital required is so minimal that it will not "materially" affect the financial condition of the utility in question; and (3) whether the rates will increase as a result of the construction.

With respect to the first area of inquiry, a proposed construction is not a wasteful duplication of plant when it is established that the construction does not interfere with another utility's certificate and that it does not unnecessarily duplicate plant. The court in *City of Covington v. Board of Commissioners of Kenton County Water District*, 371 S.W.2d 20, 23 (Ky. 1963) explained that a facility is not "duplicative" unless there is an existing facility that is "reasonably available for the present and future needs of those who will be served by it. The mere existence of a similar physical plant is not enough."

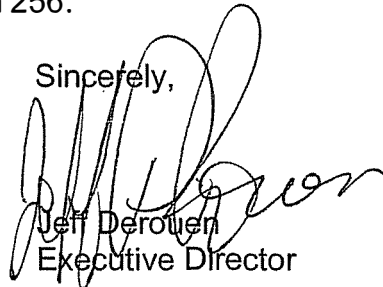
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Based on the description of EKPC's current facilities and the proposed expansion, it does not appear that the proposed construction would result in a wasteful duplication of plant.

In analyzing whether the proposed construction project would materially affect EKPC's financial condition, Commission Staff takes notice of EKPC's 2009 Annual Report, which shows EKPC had total utility plant of \$3.08 billion. The proposed construction would have an insignificant impact on EKPC's utility plant and is therefore generally considered to be an extension in the ordinary course.<sup>1</sup> Likewise, given its relatively limited scope, the proposed construction would not have an immediate or significant impact on EKPC's rates.

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 Quang D. Nguyen, staff attorney, at (502) 564-3940, extension 256.

Sincerely,



Jeff Derouien  
Executive Director

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<sup>1</sup> See, e.g., *City of Covington*, supra.