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November 27, 2012

PSC STAFF OPINION 2012-030

Brandon Hunt, PE
System Engineer
Fleming-Mason Energy Cooperative
1449 Elizaville Road
P. O. Box 328
Flemingsburg, KY 41041

RE: Fleming-Mason Energy's Request for Review of 2013-2015 Construction Work Plan

Dear Mr. Hunt:

Commission Staff acknowledges receipt of Fleming-Mason Energy's (FME) Construction Work Plan (CWP) for the period of January 1, 2013 through December 31, 2015. Although FME did not submit a letter requesting a staff opinion as to whether any or all projects proposed in its 2013-2015 CWP would require a Certificate of Public Convenience and Necessity ("CPCN") or whether those projects fall within the "ordinary course of business" exemption and, therefore, do not require a CPCN, Commission Staff will treat the submission as such and will issue this staff opinion for FME's 2013-2015 CWP. Commission Staff advises that a letter requesting a Commission Staff opinion should accompany future CWPs submitted by FME.

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 projects set forth in FME's 2013-2015 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 "ordinary extensions of existing systems in the usual course of business" exemption from the requirement of

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a CPCN, Commission Staff's review does not consider the reasonableness or the need for the project. Thus, it is possible for a project not previously approved in a CPCN or other case to be denied recovery in a rate case if found to be unreasonable or unnecessary.

According to its CWP, FME proposes the following construction identified by RUS codes: (1) Code 100 projects consisting of line construction for new services with an estimated cost of \$2,866,600; (2) Code 300 projects consisting of line conversions and line changes with an estimated cost of \$1,690,875; (3) Code 600 projects consisting of miscellaneous distribution equipment including meters¹ with an estimated cost of \$7,494,982; and (4) Code 700 projects consisting of distribution items including security lights with an estimated cost of \$327,768. The total estimated cost of all projects contained in FME's 2013-2015 CWP is \$12,380,225.

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

¹ Commission granted a CPCN for FME's AMI meters by order dated 10/11/12 in Case No. 2012-00361.

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.

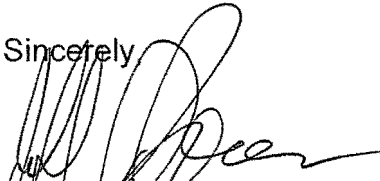
Thus the regulation provides for three areas of inquiry: (1) whether there will be wasteful duplication of plant, including interference with another utility's certificates or services; (2) whether the capital required is so minimal that it will not "materially" affect the financial condition of the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

In analyzing whether the proposed projects would materially affect FME's financial condition, Commission Staff takes notice of FME's 2011 Annual Report which shows FME has a net utility plant of approximately of \$63,449,071. When reviewed separately, each proposed construction project based on the estimated cost would not materially impact FME's existing financial condition. Therefore, each construction project is generally considered to be an extension in the ordinary course of business. Likewise the cost estimate of each project considered separately in the 2013-2015 CWP will not have an immediate or significant impact on FME's rates. Thus, FME's 2013-2015 CWP satisfies the "ordinary course of business" exemption from the CPCN requirement.

With regard to the replacement of existing meters with AMI meters project in Code 600, the Commission granted a CPCN for FME's AMI system in Case No. 2012-00361. Commission Staff acknowledges FME's action to anticipate and timely file its CPCN application as a best practice and encourages this practice to continue for each of the electric cooperatives. Therefore, Commission Staff finds it unnecessary to address the AMI meter replacement project.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. The 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 Helen C. Helton, General Counsel, at (502) 564-3940.

Sincerely



Jeff Derouen
Executive Director

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