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February 1, 2016

PSC STAFF OPINION 2016-002

Nick Morris
Engineering Manager
Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065-1714

RE: Shelby Energy Cooperative, Inc. Amendment 2015-1 to 2014-2017 Construction Work Plan

Dear Mr. Morris:

Commission Staff acknowledges receipt of your letter dated January 14, 2016, on behalf of Shelby Energy Cooperative, Inc. ("Shelby Energy") in which you request an opinion as to whether Amendment 2015-1 ("Amendment") to Shelby Energy's 2014-2017 Construction Work Plan ("CWP") falls within the "ordinary course of business" exemption and, therefore, does not require a Certificate of Public Convenience and Necessity ("CPCN").

Pursuant to the Commission's 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 proposed Amendment to Shelby Energy's 2010-2014 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 exemption from the requirement of a CPCN, Commission Staff's review does not consider the reasonableness or the need for each project. Therefore, because reasonableness and need are not considered herein, or in other non-rate cases, the cost of such a project can be denied recovery in a rate case if found to be unreasonable or unnecessary.

On February 24, 2014, Shelby Energy requested a Staff opinion as to whether any or all projects contained in its 2014-2017 CWP requires a CPCN or whether the projects were exempted from the CPCN requirement. The estimated total cost of Shelby Energy's 2014-2017 CWP was \$20,606,335. Following a review of Shelby Energy's 2014-2017 CWP, Commission Staff issued a letter opinion finding that the each of the projects contained in the CWP satisfies the "ordinary course of business" exemption from the CPCN requirement.

Shelby Energy is now amending its 2014-2017 CWP to include a line conversion and replacement project. Specifically, the project involves replacing 3.5 miles of single-phase and two-phase #2 ASCR and #4 ASCR lines to three-phase 1/0 ASCR line. The project also involves converting 2.3 miles of single-phase #6A and #8A Cu to single-phase 1/0 ASCR line. The estimated cost for this project is \$363,000 and would be funded from the budget set aside in the 2014-2017 CWP.

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 15(3) provides, in full, as follows:

Extensions in the ordinary course of business: A certificate of public convenience and necessity shall not 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 or contiguous area in which the utility renders service, 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.

In analyzing whether the proposed Amendment would materially affect Shelby Energy's financial condition, Commission Staff takes notice of Shelby Energy's 2014 Annual Report, which shows Shelby Energy has a net utility plant of approximately \$67,545,203 as of December 31, 2014. The Amendment, based on the estimated costs, would not materially impact Shelby Energy's existing financial condition. Therefore, the Amendment is generally considered to be an extension in the ordinary course of business and the construction proposed therein will not have an immediate or significant impact on Shelby Energy's rates. Further, the Amendment would not result in wasteful duplication of facilities or conflict with the service of other utilities. Thus, Commission Staff is of the opinion that Shelby Energy's proposed Amendment satisfies the "ordinary course of business" exemption from CPCN requirement.

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 at (502) 782-2586.

Sincerely,



Jeff Derouen
Executive Director

QN/ph