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March 28, 2016

PSC STAFF OPINION 2016-003A

Todd Peyton
Manager of Engineering
Clark Energy Cooperative
2640 Iron Works Rd.
Winchester, KY 40391

Re: Clark Energy Cooperative's 2016-2019 Construction Work Plan

Dear Mr. Peyton:

On February 22, 2016, Commission Staff issued PSC Staff Opinion 2016-003 regarding Clark Energy Cooperative's ("Clark Energy") 2016-2019 Construction Work Plan ("CWP") wherein Commission Staff was not able to determine, based upon information provided at that time, whether the individual projects contained in Clark Energy's 2016-2019 CWP satisfy the "ordinary course of business" exemption to the Certificate of Public Convenience and Necessity requirement. Commission Staff requested Clark Energy to provide certain additional information concerning the load forecast, the security lights project, and the automated metering infrastructure ("AMI") upgrade.

On February 29, 2016, Clark Energy submitted a letter providing additional information as requested. In the February 29, 2016 letter, Clark Energy stated that the mild winter load growth projections support the 154 MW winter peak demand, but that Clark Energy also factored in an extreme weather scenario reflecting a projected peak load of 167 MW at minus 15 degrees. Clark Energy states that, after discussions with its RUS Field Services Agent, it chose the minus 15 degrees assumption and 167 MW as its planning criteria and that this had no impact on its 2016-2019 CWP as Clark Energy developed its plan based on the 167 MW projected winter peak. As to the security lights project, Clark Energy indicates that the 2,525 lights as shown in Table 2-7 of its 2016-2019 CWP reflects the accurate number of lights projected to be installed during the CWP period. Clark Energy further indicates that the projected per unit cost of the security lights has increased due to the switch to more energy efficient LED lighting fixtures, which are approximately 2.5 times more than traditional lighting fixtures.

Regarding the upgrade to a new Radio Frequency ("RF") based AMI platform, Clark Energy states that it currently uses a hybrid Power Line Carrier ("PLC") system consisting of Landis+Gyr TS1 and TS2 meters. As part of its 2010-2014 CWP, Clark Energy began replacing its TS1 meters with TS2 meters because replacement components for the TS1 meters were no longer available. Clark Energy subsequently learned that it would not be able to offer all energy efficiency, demand reduction, and prepay programs due to limitations with the PLC technology. Clark Energy then began looking at RF AMI technology to support the company's desire to improve its demand-side management offerings to its customers. Clark Energy noted that RF technologies are becoming more reliable and cost effective with better long term functionality as compared to TS2 meters. Clark Energy further noted that RF-based equipment does not have the limitations in bandwidth, ready delay, and communications bottlenecks as compared to PLC technology. Lastly, Clark Energy states that newly installed meters would operate utilizing RF technology and that the proposed deployment of the Landis+Gyr RF-based AMI system would also allow it to fully utilize existing TS1 and TS2 meters and equipment until the end of their useful lives.

According to its 2016-2019 CWP, Clark Energy proposes construction identified by the following RUS Codes: (1) Code 100 construction for new services at an estimated total cost of \$4,438,720; (2) Code 300 line conversion and replacement at an estimated total cost of \$3,639,000; (3) Code 600 for miscellaneous distribution equipment, including AMI meter replacements and upgrading meters with remote service switch devices at an estimated total cost of \$11,708,712; (4) Code 702 security lights at an estimated total cost of \$1,450,789; and (5) Code 705 for upgrading all substation areas to radio frequency capability at an estimated total cost of \$999,000.

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 projects would materially affect Clark Energy's financial condition, Commission Staff takes notice of Clark Energy's 2014 Annual Report, which shows Clark Energy has a net utility plant of approximately \$87,333,005 as of December 31, 2014. With the exception of the Code 601 and Code 705 projects, each proposed construction project when reviewed individually based on its estimated cost would not materially impact Clark Energy's existing financial condition. Therefore, each construction project, except for the Code 601 and Code 705 projects, is generally considered to be an extension in the ordinary course of business. Likewise, the cost estimate of each project considered separately in the 2016-2019 CWP, with the exception of the Code 601 and Code 705 projects, will not have an immediate or significant impact on Clark Energy's rates. Lastly, except for the Code 601 and Code 705 projects, the individual construction projects would not result in wasteful duplication of facilities or conflict with the service of other utilities. Thus, Commission Staff is of the opinion that each of the proposed projects set out in Clark Energy's 2016-2019 CWP satisfies the "ordinary course of business" exemption from CPCN requirement with the exception of the Code 601 and Code 705 projects.

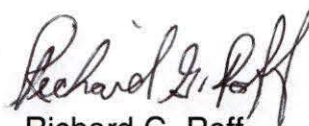
Based on the information provided in the CWP and in Clark Energy's February 29, 2016 letter, Commission Staff is of the opinion that the Code 601 project involving, among other things, purchasing 10,638 new AMI meters and 1,920 new upgraded meters with built-in remote service switch devices, and the Code 705 project involving upgrading all substation areas to RF-based AMI technology do not satisfy the "ordinary course of business" exemption and would, therefore, require a CPCN authorization from the Commission prior to commencing these two projects. Consistent with Commission Staff's position when the new CWP review process was being developed, the replacement of a significant amount of existing meters would require an electric utility proposing the CWP to obtain a CPCN prior to engaging in the project.¹ Likewise, the associated Code 705 project involving the transition from a communications platform based on PLC technology to one based on RF technology is interrelated to the meter

¹ See, PSC Staff Opinion 2014-016 at 3, is attached as an Appendix to this letter.

replacement project and would, therefore, also require CPCN authorization before Clark Energy could engage in the implementation of that project.²

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,



Richard G. Raff
General Counsel

QN/ph

Attachment

² See, Case No. 2016-00077, *Application of Licking Valley Rural Electric Cooperative Corporation for an Order Issuing a Certificate of Public Convenience and Necessity* (Application for system wide implementation of RF-based AMI metering technology filed February 15, 2016). See also, Case No. 2014-00436, *Application of Nolin Electric Cooperative Corporation for an Order Pursuant to 807 KAR 5:001 and KRS 278.020 Requesting the Granting of a Certificate of Public Convenience and Necessity to Install an AMI System* (Ky. PSC Feb. 13, 2015).

APPENDIX



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Vice Chairman

Linda Breathitt
Commissioner

November 14, 2014

PSC STAFF OPINION 2014-016

Mrs. Carol Ann Fraley
President and CEO
Grayson Rural Electric Cooperative Corporation
109 Bagby Park
Grayson, KY 41143

RE: Grayson Rural Electric Cooperative Corporation 2015-2018 Construction Work Plan

Dear Mrs. Fraley:

Commission Staff acknowledges receipt of your letter dated October 27, 2014, and received by the Commission on October 29, 2014, on behalf of Grayson Rural Electric Cooperative Corporation ("Grayson"), in which you request a Staff Opinion on Grayson's 2015-2018 Construction Work Plan. Although the letter did not specifically set forth the purpose of the request, Commission Staff will consider this a request as to whether any or all projects contained in Grayson's 2015-2018 Construction Work Plan ("CWP") will require a Certificate of Public Convenience and Necessity ("CPCN") or whether the projects fall within the "ordinary course of business" exemption and, therefore, do not require a 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 projects contained in Grayson's 2015-2018 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 requirements 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.

Mrs. Carol Ann Fraley
November 14, 2014
Page 2

According to the 2015-2018 CWP and based upon the summary of the construction projects, Grayson proposes construction identified by the following RUS Codes: (1) Code 100 construction for new services at an estimated total cost of \$3,261,906; (2) Code 300 line conversion and replacement at an estimated total cost of \$2,853,380; (3) Code 600 for miscellaneous distribution equipment and pole changes at an estimated total cost of \$13,225,105; (4) Code 701 security lights at an estimated total cost of \$563,880; and (5) Code 1501 geographic information systems at an estimated total cost of \$800,930.

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 projects would materially affect Grayson's financial condition, Commission Staff takes notice of Grayson's 2013 Annual Report, which shows Grayson has a net utility plant of approximately \$51,474,078 as of December 13, 2013. With the exception of the Meter Replacements project (identified in the CWP as Code 601 at an estimated cost of \$1,988,382), each proposed construction project when reviewed individually based on its estimated cost would not materially impact Grayson's existing financial condition. Therefore, each construction project, except for the Meter Replacements 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 2015-2018 CWP, with the exception of the Meter Replacements project, will not have immediate or significant impact on Grayson's rates. Lastly, except for the Meter Replacement project, the individual construction projects would not result in wasteful duplication of facilities or conflict with the service of other utilities. Thus, Commission Staff is of the opinion that each of the proposed projects set out in Grayson's 2015-2018 CWP satisfy the "ordinary course of business" exemption from CPCN requirement with the exception of the Meter Replacements project.

Based on the information provided in the CWP, Commission Staff is unable to conclude whether the project designated as Meter Replacements satisfies the "ordinary course of business" exemption. In Section 2.2, page 2-3, the CWP states that "[Grayson] will need to replace approximately 12,408 of their existing AMI meters during the 2015-2018 CWP period, because the manufacturer has discontinued the production and support of this model." This statement could be interpreted to mean that Grayson is replacing a significant amount of its existing AMI meters. If so, consistent with Staff's position when developing the new CWP review process, Grayson would be required to obtain a CPCN prior to engaging in this project. If this was not Grayson's intent, Grayson will need to clarify its intention and provide additional information supporting Grayson's proposal to replace 12,408 existing AMI meters, including, but not limited to, the manufacturer, type, and model of meter, the total amount of existing meters Grayson has in inventory, the reason why the manufacturer has discontinued production and support of these AMI meters, and when was such information made known to Grayson. In addition, provide how the cost information was derived for the Average Cost/Meter Replacement for each year of the 2015-2018 CWP period, including the derivation of the \$149 average cost for 2012-2013, as reflected in Section 2.2 of the CWP, at page 2-4.

Although Commission Staff is of the opinion that all of the projects contained in the CWP, with the exception of the Meter Replacements project, are not subject to the CPCN requirement, Commission Staff would like clarification on the information provided in Table 1-3 of the CWP. According to the CWP, Table 1-3 reflects historical and projected annual energy, demand, and consumer data based on the 2012 Load

Mrs. Carol Ann Fraley
November 14, 2014
Page 4

Forecast performed by East Kentucky Power Cooperative, Inc. for Grayson. Table 1-3 shows Grayson's winter non-coincident peak demand for 2011, 2012, 2013 and 2014 as being 70 MW, 60 MW, 63.3 MW, and 81.7 MW, respectively. Is the source of this data entirely from the 2012 Load Forecast? Or, is the peak demand data as presented in Table 1-3 a combination of the 2012 Load Forecast that has been adjusted to account for the actual winter peak that occurred during January 2014?

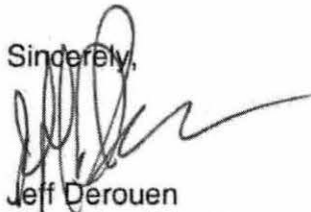
Within seven days from the date of this letter, Grayson shall submit either:

- 1) Written confirmation that the intent of the Meter Replacement project is to replace a significant amount of its existing AMI meters and that Grayson will file an application requesting a CPCN for that project; or
- 2) Clarification of what it intends to do with respect to the Meter Replacement project and provide the supporting information as previously mentioned in this letter.

The clarification concerning the peak demand data as contained in Table 1-3 should also be provided within seven days from the date of this letter. As a reminder, before the Meter Replacement project can be implemented, a CPCN must be granted or a staff opinion issued determining the project an "ordinary course of business" exemption.

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/ch