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Daniel E. Logsdon Jr.
Vice Chairman

April 18, 2016

PSC STAFF OPINION 2016-010

Mr. Nick Morris
Engineering Manager
Shelby Energy Cooperative
620 Old Finchville Rd.
Shelbyville, Kentucky 40065-1714

Re: Shelby Energy Cooperative's Amendment to its 2014-2017 Construction Work Plan

Dear Mr. Morris:

Commission Staff acknowledges receipt of your letter dated March 28, 2016, on behalf of Shelby Energy Cooperative ("Shelby Energy"), in which you request an opinion as to whether an amendment to Shelby Energy's 2014-2017 Construction Work Plan ("CWP") requires a Certificate of Public Convenience and Necessity ("CPCN") or whether the amendment falls 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 the amendments to Shelby Energy's 2014-2017 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.

According to the letter, Shelby Energy is proposing an amendment to its current CWP. The amendment is identified as Project 381 with a Rural Utility Services ("RUS") Code 740c. The letter indicates that East Kentucky Power Cooperative, Inc., Shelby

Energy's wholesale power supplier, is building a new distribution substation located in Shelby Energy's territory. In order to connect to the new substation, Shelby Energy proposes the following changes:

- Construct four new underground circuit risers;
- Convert approximately 2.67 miles of three phase #2 ACSR to 336.4 ACSR;
- Convert approximately 0.50 miles of three phase #2 ACSR to 336.4 ACSR; and
- Convert approximately 0.70 miles of three phase #2 ACSR to DC 336.4 ACSR.

Shelby Energy states that the new substation is needed to cost effectively meet the projected load growth in the area, which is outpacing the capacity of the existing distribution system for this particular area. Shelby Energy also states that the new substation will also reduce line losses and improve reliability by decreasing the amount of distribution line service in the area. The estimated cost for this project is \$836,000 and will be funded from the budget set aside in Shelby Energy's 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 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.

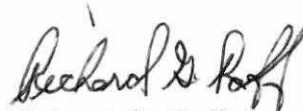
Thus, the regulation provides for three areas of inquiry: (1) whether there will be wasteful duplication of plant, including interference with another utility's certificates or services; (2) whether the capital required is so minimal that it will not "materially" affect the financial condition of the 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." Based on the description of Shelby Energy's current facilities and the proposed expansion, it does not appear that the proposed amended project would result in a wasteful duplication of plant.

In analyzing whether the proposed project would materially affect Shelby Energy's financial condition, Commission Staff takes notice of Shelby Energy's 2014 Annual Report, which shows Shelby Energy had net utility plant of approximately \$67.5 million. The proposed construction would have an insignificant impact on Shelby Energy's utility plant and is therefore generally considered to be an extension in the ordinary course.¹ Likewise, given its relatively limited scope and cost, the proposed construction would not have an immediate or significant impact on Shelby Energy's rates. Thus, Commission Staff is of the opinion that the proposed amended project to Shelby Energy's current CWP satisfies the "ordinary course of business" exemption from the 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, Staff Attorney, at (502) 782-2586.

Sincerely,



Richard G. Raff
General Counsel

QN/ph

¹ See, e.g., *City of Covington*, supra.