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PSC STAFF OPINION 2016-011

John E. Newland, P.E.
Vice President of Engineering
Kenergy Corp.
6402 Old Corydon Rd.
P.O. Box 18
Henderson, KY 42418-0018

Re: Kenergy Corp. 2016-2020 Construction Work Plan

Dear Mr. Newland:

Commission Staff acknowledges receipt of your letter dated March 7, 2016, on behalf of Kenergy Corp. ("Kenergy"), in which you request an opinion as to whether any or all projects contained in Kenergy's 2016-2020 Construction Work Plan ("CWP") 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 in Kenergy's 2016-2020 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 its 2016-2020 CWP, Kenergy proposes construction identified by the following RUS Codes: (1) Code 100 construction for new services at an estimated total cost of \$11,382,928; (2) Code 200 new tie lines at an estimated cost of \$20,092; (3) Code 300 line conversion and replacement at an estimated total cost of \$10,852,724; (4) Code 500 increased substation capacity at an estimated cost of \$1,175,000; (5) Code 600 for miscellaneous distribution equipment at an estimated total cost of \$21,662,630; and (6) Code 701 security lights at an estimated total cost of \$3,572,047.

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 Kenergy's financial condition, Commission Staff takes notice of Kenergy's 2015 Annual Report which showed that Kenergy had net utility plant of approximately \$203,105,988 as of December 31, 2015. When reviewed individually, each proposed construction project based on its estimated cost would not materially impact Kenergy'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 2016-2020 CWP will not have immediate or significant impact on Kenergy's rates. Lastly, 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 Kenergy's 2016-2020 CWP satisfies the "ordinary course of business" exemption from CPCN requirement.

Although Commission Staff is of the opinion that none of the projects contained in the CWP is subject to the CPCN requirement, Commission Staff would like clarification on the following items contained in the CWP.

(1) In the Executive Summary, page 1-1, the last sentence of the last paragraph discusses the projected 2019 summer non-coincident peak ("NCP") load and the projected 2019-2020 winter NCP load and that such peak loads were "projected in accordance with the 2015 BREC Load Forecast, including the Tyson, Valley Grain, and future spot loads." Provide an explanation as to what is meant by "future spot loads."

(2) Refer to the Executive Summary, pages 1-1 and 1-9. Explain why the 2019 summer and 2019 winter NCP loads in the last full paragraph on page 1-1 are roughly 30 MW greater than the comparable loads in Table 1-4 on page 1-9.

(3) Refer to the Executive Summary section of the 2016-2020 CWP, Table 1-4 on page 1-9. Explain the general increase in energy loss percentages since 2011 and why continued increases are projected beyond 2016.

(4) Refer to the Design Criteria section of the 2016-2020 CWP, page 2-2. Paragraph 8 states that SAIDI, CAIDI, and SAIFI targets are among the factors used to identify the worst performing circuits. This is the only mention of SAIDI, CAIDI, and SAIFI in the CWP. Explain how these indices were used in determining which projects would be included in this CWP.

(5) The CWP only includes the cost of meters for new members. In February 2015, the Commission granted Kenergy a CPCN to implement a new Advanced Metering Infrastructure ("AMI") at an estimated cost of \$9.7 million. Confirm that the cost of the new AMI system was included in Kenergy's amended 2013-2017 CWP and that those costs are not included in the 2016-2020 CWP.

(6) Refer to the Construction Program section of the 2016-2020 CWP, page 3-2, which provides the status of the projects contained in Kenergy's 2013-2017 CWP. The time period for the 2013-2017 CWP overlaps the time period for the 2016-2020 CWP in years 2016 and 2017. Provide an explanation as to whether it is permissible by

the Rural Utilities Service for a distribution cooperative to submit construction work plans that have overlapping time periods.

The information requested herein should be provided within seven days from the date of this letter.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is 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

QDN/pa