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October 31, 2016

PSC STAFF OPINION 2016-019

Mr. Robert Spragens, Jr.
Counsel for Taylor County RECC
Spragens & Higdon, P.S.C.
P.O. Box 681 – 15 Court Square
Lebanon, KY 40033-0681

Re: Taylor County RECC
Proposed construction of garage/storage facility

Dear Mr. Spragens,

The Commission received on October 17, 2016, your letter dated October 14, 2016, in which you request on behalf of Taylor County RECC an opinion regarding the need for a Certificate of Public Convenience and Necessity ("CPCN") for the construction of an additional garage/storage facility located at Taylor County RECC's current office/warehouse building located on Industrial Drive in Columbia, Adair County, Kentucky. 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.

Based upon your letter, Commission Staff understands the facts are as follows:

The primary service area of Taylor County RECC includes the counties of Taylor, Green, Adair and Casey in South Central Kentucky. The cooperatives headquarters facility is located in Campbellsville, Taylor County, Kentucky, and Taylor County RECC owns and maintains service/storage facilities in each of the other three counties.

Taylor County RECC currently owns and maintains an office/warehouse building located on Industrial Drive in Columbia, Adair County, Kentucky. Taylor RECC has

essentially outgrown that building as it is not sufficiently large to house the trucks which operate out of that facility, nor does it have sufficient room for storage of other equipment and materials. Taylor RECC thus proposes to construct at this location an additional garage/storage facility having dimensions of 36' by 42' which will be sufficient in size to house a bucket truck, a digger truck, and additional smaller equipment and materials. Taylor RECC believes that this project will constitute an "extension in the ordinary course of business" as that language is used in 807 KAR 5:001, Section 9(3), and that it is therefore not required to apply for a CPCN in order to undertake, and complete, the project. Nonetheless, Taylor County RECC's position has been to consistently notify the Commission of any and all projects involving building construction, replacement, and/or refurbishment, and to request concurrence to the extent that prior Commission approval is not required.

Taylor County RECC has received bids for this project, and the cooperative board has tentatively approved a bid from a local contractor, Sherman Dudley, which includes the following components:

- a. Lumbar and materials
 \$9,150.00
 - b. Site work, transformer pad, and structural completion
 \$21,845.00
 - c. Doors, lights and miscellaneous expenses
 \$8,500.00
- TOTAL
 \$39,495.00

The cost of the project will not require Taylor County RECC to incur additional debt, and completion of this project will not require a rate increase. Taylor County RECC anticipates a start date immediately upon confirmation from the Commission that it may proceed with this project without a formal administrative review and approval. Taylor County RECC expects that the project will be completed no later than January 1, 2017.

Your letter presents the following questions: Must Taylor County RECC obtain a CPCN for the proposed construction project?

KRS 278.020(1) governs the need for a CPCN. It provides:

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.

Thus, unless a utility intends to construct a facility that is an “ordinary extension” in the “usual course of business,” it must obtain a CPCN for its proposed facility.¹

Since KRS 278.020(1) does not define “ordinary extension” in the “usual course of business,” the Commission promulgated 807 KAR 5:001, Section 9(3), which has been re-numbered to 807 KAR 5:001, Section 15(3).² 807 KAR 5:001, Section 15(3) provides:

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.

¹ Case No. 2000-00481, *Application of Northern Kentucky Water District (A) For Authority to Issue Parity Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) A Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

² *Id.*

When read together, KRS 278.020(1) and 807 KAR 5:001, Section 15(3) set forth those facilities for which a CPCN is not required. The Commission has interpreted this statute and regulation to mean that a CPCN is not necessary “for facilities that do not result in the wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.”³

To determine whether a proposed facility’s construction materially affects a utility’s financial condition, the Commission has historically compared the cost of the proposed facility to the present value of the utility’s existing facilities. The Commission has held:

In assessing whether a proposed project is a system extension in the ordinary course of business, Kentucky courts have traditionally looked to the size and scope of a project in the context of the monetary cost involved. The Commission has similarly adopted this method and likewise looks to the scale of a proposed project in relation to the relative size of the utility and its present facilities.⁴

Historically, the Commission has held that the construction of headquarters buildings, regional (satellite) office buildings, and warehouses is not in the ordinary

³ *Id.* (noting that “[t]he method used to finance the cost of proposed facilities does not determine whether those facilities require a Certificate of Public Convenience and Necessity.”).

⁴ Case No. 2014-00171, *Application of Northern Kentucky Water District for Approval of Dixie Highway Water Main Improvements, Issuance of a Certificate of Convenience and Necessity and Approval of Financing* (Ky. PSC Aug. 6, 2014), Order at 4.

course of business and does require a CPCN.⁵ However, the Commission has also frequently found that the construction of a proposed facility whose cost represents less than two percent of the utility's net utility plant and will not require financing approval by the Commission is in the ordinary course of business and does not require a CPCN.⁶

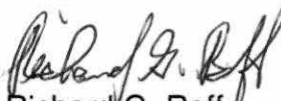
⁵ See, e.g., Case No. 2013-00343, *Application of Salt River Electric Cooperative Corporation for a Certificate of Convenience and Necessity Authorizing Certain Proposed Construction Identified as the Headquarters Construction and District Renovations* (Ky. PSC Oct. 25, 2013), Order granting Salt River's request for a CPCN to construct a new warehouse/operations center; Case No. 2011-00196, *Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 19, 2011), Order granting Kenergy a CPCN to construct a new district office and service facility; Case No. 2010-00244, *Application of Shelby Energy Cooperative, Inc. for a Certificate of Convenience and Necessity for its 2010-2014 Construction Work Plan* (Ky. PSC Aug. 3, 2011), Order holding that a CPCN was required for Shelby's AMI program since the AMI project was not in the ordinary course of business; Case No. 2008-00371, *Application of South Kentucky Rural Electric Cooperative Corporation for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility in Somerset, Kentucky* (Ky. PSC May 11, 2010), Order granting South Kentucky a CPCN to construct proposed headquarters facilities; Case No. 2004-00416, *Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for 2004-2007 Construction of Work Plan* (Ky. PSC Feb. 25, 2005), Order holding that in the event Kenergy or Big Rivers desires to proceed with a headquarters construction, a separate CPCN will have to be filed; Case No. 2001-178, *Application of the Big Sandy Water District for a Certificate of Public Convenience and Necessity to Construct an Improvement Project and to Issue Securities in the Approximate Principal Amount of \$822,000 for the Purpose of Financing Said Project and Refunding Certain Outstanding Revenue Bonds of the District Pursuant to the Provisions of KRS 278.020, 278.300 and 807 KAR 5:001* (Ky. PSC Dec. 20, 2001), Order finding that prima face evidence exists that Big Sandy violated KRS 278.020(1) by its construction of the proposed tank facilities without first obtaining a CPCN from the Commission; Case No. 94-182, *Columbia Gas of Kentucky, Inc. Alleged Failure to Comply with KRS Chapter 278* (Ky. PSC June 27, 1994), Order initiating an investigation into Columbia's construction of a new headquarters and customer service facility prior to obtaining a CPCN.

⁶ See, e.g., Case No. 2015-00284, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Expansion of the Bavarian Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Nov. 20, 2015), Order; Case No. 2012-00269, *Tariff Filing of Warren County Water District to Establish the Rockfield School Sewer Capital Recovery Fee* (Ky. PSC Nov. 19, 2012), Order; Case No. 2007-00058, *Application of Big Rivers Electric Corporation for Approval of an Interconnection Agreement with Kentucky Utilities Company* (Ky. PSC Apr. 16, 2007), Order; Case No. 2002-00474, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Green Valley and Laurel Ridge Landfill Gas to Energy Projects to Be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 3, 2003), Order; Case No. 98-508, *Application of Kentucky Turnpike Water District for a Declaration that a Certificate of Public Convenience and Necessity Is not Required or, in the Alternative, for the Issuance of Such a Certificate of Public Convenience and Necessity* (Ky. PSC Nov. 19, 1998), Order; Case No. 92-028, *Application of Kenton County Water District No. 1 for Authority to Perform Maintenance at its Taylor Mill Treatment Plant by Replacing Filer Valves at a Total Cost of Approximately \$700,000* (Ky. PSC Feb. 18, 1992), Order. But see also Case No. 2013-00365, *Application of Delta Natural Gas Company, Inc. for an Order Declaring that it is Authorized to Construct, Own and Operate a Compressed Natural Gas Station in Berea, Kentucky* (Ky. PSC Mar. 30, 2015), Order.

As of December 31, 2015, Taylor County RECC's net utility plant investment was \$56,249,743.⁷ Taylor County RECC estimates the total cost of the proposed 36' by 42' garage/storage facility is \$39,495, which represents an increase of less than one tenth of 1 percent in Taylor County RECC's net utility plant. Based upon prior Commission precedent addressing whether or not the construction of facilities require a CPCN, the proposed facility expenditure is not a materially capital outlay. Commission Staff is of the opinion that in this circumstance, no CPCN would be required for the construction of the proposed garage/storage facility.

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 Molly Katen, Commission Staff Attorney, at (502) 782-2591, or Molly.Katen@ky.gov.

Sincerely,


Richard G. Raff
General Counsel

MBK/ph

⁷ Taylor County's 2015 Annual Report at 6.