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July 3, 2019

Hon. David S. Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B-325
Lexington, Kentucky 40504

PSC STAFF OPINION NO. 2019-005

Re: Request for Advisory Opinion – Ordinary Course Extension

Dear Mr. Samford:

Commission Staff acknowledges receipt of your letter dated April 22, 2019, in which you request an opinion regarding the need for a certificate of public convenience and necessity (CPCN) for a proposed improvement of a warehouse facility.

As described in the letter, Farmers Rural Electric Cooperative Corporation's (Farmers RECC) current headquarters facilities include an administrative building, which was built in 1954, and two warehouses. The first warehouse was built in 1964. The second and larger warehouse was constructed in 1979. Because the headquarters facilities have not been expanded since their construction, Farmers RECC states that there is a need to extend the larger warehouse to include a six-truck bay to create a more adequate and efficient workspace for vehicle storage and maintenance. The estimated cost for this warehouse improvement project is approximately \$599,395 (which includes a 10 percent contingency). Farmers RECC is of the belief that this remodeling project does not require a CPCN, reasoning that the project will not create wasteful duplication of plant or conflict with the service of any other jurisdictional utilities operating in the same general area in which Farmers RECC renders service. Farmers RECC also states that the project will not involve sufficient capital outlay to materially affect its existing financial condition nor will it result in increased charges to its customers until it files its next base rate application. Even then, Farmers RECC notes that the total impact to its customers will be negligible. Farmer RECC points out that the project will not require the purchase of any new real estate or the issuance of new debt. Farmers RECC requests a staff advisory opinion confirming its understanding that no CPCN is required for the warehouse improvement project.

Commission Staff's review of the opinion request is as follows. KRS 278.020(1) governs the need for a CPCN. That statute provides, in relevant part:

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.

Under KRS 278.020(1), a jurisdictional utility cannot commence construction of any property unless it has received a CPCN from the Commission. There are two exceptions to this requirement: 1) the utility is a retail electric supplier and the construction is for service connections to electric-consuming facilities located within its certified territory; or 2) the construction is an ordinary extension of existing systems in the usual course of business. Although Farmers RECC is a retail electric supplier, the first exception does not apply based upon the facts presented as the proposed construction is not related to a service connection to electric-consuming facilities within Farmers RECC's service territory. A CPCN is unnecessary only if Farmers RECC's proposed project can be considered an ordinary extension of existing systems in the usual course of business.

Although KRS 278.020(1) does not define "ordinary extensions of existing systems in the usual course of business" exception, 807 KAR 5:001, Section 15(3) defines this exception as follows.

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 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 utility's rates will increase as a result of the construction project.

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 Farmers RECC’s current facilities and the proposed expansion, it does not appear that the proposed construction would result in a wasteful duplication of plant. Commission Staff notes that the proposed project consists of a remodeling and expansion of the current larger warehouse rather than construction of new building.

In analyzing whether the proposed construction project would materially affect Farmers RECC’s financial condition, Commission Staff takes notice of Farmers RECC’s 2018 Annual Report, which shows Farmers RECC having net utility plant of \$69,068,101 as of December 31, 2018.¹ Given that the estimated capital cost of the proposed construction represents approximately 0.8 percent of Farmers RECC’s net utility plant, Commission Staff is of the opinion that the proposed construction would have an insignificant impact on Farmers RECC’s financial condition. Likewise, given its relatively limited scope and that Farmers RECC is not incurring any new debt, the proposed construction would not have an immediate or significant impact on Farmers RECC’s rates.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, Assistant General Counsel, at (502) 782-2586.

¹ Farmers RECC 2018 Annual Report, p. 6 of 59.

² See, Staff Opinion Letter Dated February 21, 2008 (opining that Clark Energy’s proposal to construct a warehouse building at a cost of \$125,000 was in the ordinary course of business because the proposed construction represents an increase of less than 0.3 percent in Clark Energy’s utility plant); PSC Opinion 2019-001 (opining that Salt River’s proposed improvements to its warehouse and storage facilities at a cost of \$647,000 was in the ordinary course of business because the proposed improvements represent an increase of approximately 0.9 percent of Salt River RECC’s net plant); PSC Staff Opinion No. 2010-015 (opining that Taylor County RECC’s proposed construction of a new storage building to replace a storage building that was damaged as a result of a tornado was in the ordinary course of business because the proposed construction cost of \$78,900 did not involve sufficient capital outlay to materially affect the existing financial condition of Taylor County RECC nor result in an immediate rate increase); PSC Staff Opinion No. 2011-002 (opining that EKPC’s proposed office space expansion at a cost of \$2.5 million was in the ordinary course of business because the proposed expansion would have an insignificant impact on EKPC’s utility plant, which was \$3.08 billion); PSC Staff Opinion 2016-019 (opining that Taylor County RECC’s proposed construction of an additional garage facility at a total cost of \$39,495 was in the ordinary course of business because the proposed addition represents an increase of 0.1 percent of Taylor County RECC’s net utility plant).

Hon. David S. Samford
July 3, 2019
RE: Farmers RECC Advisory Opinion
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Sincerely,

A handwritten signature in blue ink, appearing to read "John E.B. Pinney", with a large circular flourish at the end.

John E.B. Pinney
Acting General Counsel