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October 8, 2019

PSC STAFF OPINION 2019-012

Gregory D. Allen
Law Offices of Gregory D. Allen
P.O. Box 585
Salyersville, Kentucky 41465-0585

Re: Licking Valley Rural Electric Cooperative Corporation 2019-2022 Construction Work Plan

Dear Mr. Allen:

Commission Staff acknowledges receipt of your letter dated July 26, 2019, on behalf of Licking Valley Rural Electric Cooperative Corporation (Licking Valley RECC), in which you request an opinion as to whether any or all projects contained in Licking Valley RECC's 2019-2022 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 reviewed the projects contained in Licking Valley RECC's 2019-2022 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 2019-2022 CWP, Licking Valley proposes construction identified by the following RUS Codes: (1) Code 100 construction for new services at an estimated total cost of \$3,097,715; (2) Code 300 system improvements at an estimated total cost of \$1,588,172; (3) Code 600 for miscellaneous distribution equipment (conductor replacement, sectionalizing, pole changes, etc.) at an estimated total cost of \$14,039,769; and (4) Code 700 security lighting and SCADA equipment at an estimated total cost of \$965,859.

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 Licking Valley RECC's financial condition, Commission Staff takes notice of Licking Valley's 2018 Annual Report, which shows Licking Valley having total utility plant of approximately \$48,445,132 as of December 31, 2018. When reviewed individually, each proposed construction project based on its estimated cost would not materially impact Licking Valley RECC'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 2019-2022 CWP will not have an

immediate or significant impact on Licking Valley RECC'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 Licking Valley RECC's 2019-2022 CWP satisfy the "ordinary course of business" exemption from 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 at (502) 782-2586.

Sincerely,



J.E.B. Pinney
Acting General Counsel

QN/kg