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October 8, 2019

PSC STAFF OPINION 2019-014

Clayton O. Oswald
Taylor, Keller & Oswald, PLLC
Hamburg Place Office Park
1795 Alysheba Way, Ste 2201
Lexington, Kentucky 40509

Re: Jackson Energy Cooperative Corporation 2019-2022 Construction Work Plan

Dear Mr. Oswald:

Commission Staff acknowledges receipt of your letter dated January 18, 2019, on behalf of Jackson Energy Cooperative Corporation (Jackson Energy), in which you request an opinion as to whether any or all projects contained in Jackson Energy'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 Jackson Energy'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, Jackson Energy proposes construction identified by the following RUS Codes: (1) Code 100 construction for new services at an estimated total cost of \$12,847,313; (2) Code 601 underground transformers at an estimated cost of \$1,174,240, overhead transformers at an estimated cost of \$4,454,137, and new meter at an estimated cost of \$5,590,088; (3) Code 602 service upgrades at an estimated cost of \$1,950,295; (4) Code 603 Sectionalizing at an estimate cost of \$2,400,000; (5) Codes 604, 605 and 607 for regulators, capacitors, and miscellaneous replacements at a total estimated cost of \$929,373; (6) Code 606 pole replacements at an estimated cost of \$12,979,000; (7) Code 608 conductor replacement at \$4,266,900; and (8) Code 701 security lighting equipment at an estimated total cost of \$1,851,000.

By letter dated May 24, 2019, Jackson Energy provided responses to questions posed by Commission Staff upon its review of Jackson Energy's 2019-2022 CWP. According to Jackson Energy, its 2019-2022 CWP total estimated amount of \$48,442,346 (an average of approximately \$12 million over the four-year CWP period) is consistent with its historical spending on plant additions from 2014-2018 which totaled \$48,527,021 (an average of approximately \$9.71 million over the five-year historical period). Jackson Energy notes that its 2014-2017 CWP was extended by an additional year to include spending for 2018, which Jackson Energy covered via cash and did not incur any additional debt. Jackson Energy notes that its 2019-2022 CWP were projected to increase at a rate of four percent per year over the historic costs. Also, Jackson Energy informs that its TIER in each of the last three years was 2.82 (in 2018), 2.19 (in 2017), and 3.10 (in 2016), which were above the RUS required level. Jackson Energy states that it will attempt to extend the 2019-2022 CWP spending over five years or more as was done with the 2014-2017 CWP. Jackson Energy informs that it along with RUS will monitor the spending during the 2019-2022 CWP period to ensure that Jackson Energy continues to make the TIER levels required by RUS.

Regarding the Code 601 projects (underground transformers, overhead transformers and meters), Jackson Energy informs that the number of projected underground and overhead transformers and meters along with their estimated costs were projected based upon the historic information data from 2016 and 2017 and estimated data from 2018¹ that was reflective of the 2016 and 2017 data. The projected cost for the 2019-2022 CWP reflects a four percent inflation of cost per year. Jackson Energy notes that the actual number of metering equipment needed will depend on customer requests for new service and replacement of any metering equipment that fail or are damaged.

With respect to the service upgrades, Jackson Energy states that the 2019-2022 CWP estimated number and cost were based on the historical data in 2016 and 2017 and the 2018 estimated data based on information available at that point in 2018. The projected cost for the 2019-2022 CWP reflects a four percent inflation of cost per year.

¹ Jackson Energy explained that information from 2018 was not complete at the time it developed the 2019-2022 CWP and therefore estimated the quantity of transformers based upon the available data at that point in the year.

Jackson Energy states that the actual number of service upgrades will depend on the number of consumers that increase the load to their home or business.

With respect to the estimated cost for sectionalizing, Jackson Energy states that this estimate was derived from the historical data in 2016 and 2017 and the estimate for 2018 based on available data in 2018. The projected cost for the 2019-2022 CWP reflects a four percent inflation of cost per year. Jackson Energy informs that the actual cost will depend on the need to lessen outages.

With respect to the estimated number of pole replacements and associated cost estimates as contained in the 2019-2022 CWP, Jackson Energy states that the estimates were based on historical data in 2016 and 2017 and the 2018 estimated data based on information available at that point in 2018. The projected cost for the 2019-2022 CWP reflects a four percent inflation of cost per year. Jackson Energy states that the actual amount of pole replacement will depend on the number of poles that are found to be deteriorated or damaged.

With respect to the estimated number of conductor replacements and associated cost estimates contained in the 2019-2022 CWP, Jackson Energy states that it intends to replace copper conductor that has been in place for 50 years or more, resulting in reliability issues. Jackson Energy states that there are 1,232 miles of copper conductor remaining that needs to be replaced. The 2019-2022 CWP estimates 19 conductor replacements spanning 44 miles. Jackson Energy indicates that it will monitor its finances so that expenditures on this project does not cause any financial issues and will delay the project if any financial concern does arise. Further, Jackson Energy states that it will attempt to spread this project over a five to six-year period.

Commission Staff begins its analysis of Jackson Energy's request regarding the need for a CPCN as it relates to the individual projects contained in its 2019-2022 CWP with the relevant statute and regulation governing CPCN.

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 Jackson Energy's financial condition, Commission Staff takes notice of Jackson Energy's 2018 Annual Report, which shows Jackson Energy having total utility plant of approximately \$167,450,269 as of December 31, 2018. When reviewed individually, each proposed construction project based on its estimated cost would not materially impact Jackson Energy'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 Jackson Energy'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 Jackson Energy'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