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December 27, 2021

## **PSC STAFF OPINION 2021-006**

Hon. James M. Crawford  
Crawford & Baxter, P.S.C.  
P.O. Box 353  
523 Highland Avenue  
Carrollton, Kentucky 41008

Re: Owen Electric Cooperative, Inc. 2022-2023 Construction Work Plan

Dear Mr. Crawford:

Commission Staff acknowledges receipt of your letter dated November 19, 2021, on behalf of Owen Electric Cooperative, Inc. (Owen Electric) requesting a staff advisory opinion. Specifically, the letter requests an opinion as to whether any or all projects contained in Owen Electric's 2022-2023 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 Owen Electric's 2022-2023 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 2022-2023 CWP, Owen Electric proposes construction identified by the following RUS Codes: (1) Code 100 new distribution line at an estimated total cost

of \$10,611,713; (2) Code 300 line conversion and replacement at an estimated total cost of \$4,585,430; (3) Code 600 miscellaneous equipment and poles at an estimated total cost of \$27,559,596<sup>1</sup>; (4) Code 611 line relocations at an estimated total cost of \$1,855,000; and (5) Code 700 other distribution items (outdoor lights, AMI and SCADA/DA hardware and software) at an estimated total cost of \$773,451.

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 Owen Electric's financial condition, Commission Staff takes notice of Owen Electric's 2020 Annual Report, which shows Owen Electric having net utility plant of approximately \$145,109,426.00 as of December 31, 2020. Commission Staff is of the opinion that the individual projects in Owen Electric's 2022-2023 CWP do not require a CPCN. When reviewed individually,

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<sup>1</sup> The estimated cost of each individual Code 600 projects over the two-year CWP period are as follows:

- Code 601 - New Transformers/Meters ..... \$11,575,781
- Code 602 - Service Upgrades ..... \$469,201
- Code 603 - Sectionalizing ..... \$740,000
- Code 604 - Voltage Regulators..... \$104,040
- Code 606 - Pole Replacement ..... \$4,774,573
- Code 607 - Miscellaneous ..... \$5,000,000
- Code 608 - Conductor Replacement (OH) ..... \$4,896,000

each of those proposed construction project based on its estimated cost would not materially impact Owen Electric's existing financial condition. Therefore, each construction project is generally considered an extension in the ordinary course of business. Likewise, the cost estimate of each project considered separately in the 2022-2023 CWP will not have an immediate or significant impact on Owen Electric'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 Owen Electric's 2022-2023 CWP satisfy the "ordinary course of business" exemption from CPCN requirement.

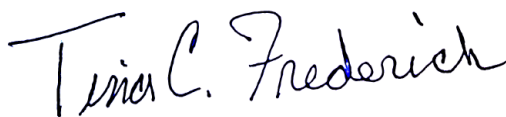
It should be noted that Owen Electric was included as a party to Case Number 2012-00428, *Consideration of the Implementation of Smart Grid and Smart Meter Technologies*. As a party to that case, Owen Electric received a copy of the final order dated April 13, 2016 that stated in pertinent part:

With regard to CPCNs, the Commission finds it appropriate for jurisdictional electric utilities to obtain CPCNs for major AMR or AMI meter investments and distribution grid investments for DA, SCADA or volt/var resources. In the past, when addressing requests for CPCNs for AMR and AMI meters, the Commission has noted its concern regarding a number of meter related issues such as cost, compatibility with current system equipment and software, and unplanned obsolescence.

The New Meters part of this 2022-2023 Construction Work Plan is part of a six-year project that began in 2018 wherein Owen Electric replaced PLC meters with RF meters (both AMI meters). Owen Electric should have applied to the Commission for a CPCN for this six-year project so that the Commission could determine whether or not to grant a CPCN, or if the meter replacement project is generally considered an extension in the ordinary course of business. Moving forward, Owen Electric should apply to the Commission for a CPCN for major AMR or AMI meter investments.

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 Andrew Bowker at (502) 782-2580.

Sincerely,



Tina Frederick  
Assistant General Counsel