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January 13, 2022

PSC STAFF OPINION 2021-007

Todd Peyton
Vice President, Engineering
Clark Energy Cooperative
2640 Ironworks Road
Winchester, Kentucky 40391

Re: Clark Energy Cooperative's 2022-2025 Construction Work Plan

Dear Mr. Peyton:

Commission Staff acknowledges receipt of your letter dated December 13, 2021, on behalf of Clark Energy Cooperative, Inc. (Clark Energy) requesting a staff advisory opinion. Specifically, the letter requests an opinion as to whether any or all projects contained in Clark Energy's 2022-2025 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 Clark Energy's 2022-2025 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 2022-2025 CWP, Clark Energy proposes construction identified by the following RUS Codes: (1) Code 100 new distribution line at an estimated total cost

of \$10,317,168; (2) Code 300 line conversion and replacement at an estimated total cost of \$2,891,597; (3) Code 600 miscellaneous distribution equipment and at an estimated total cost of \$10,954,566¹; (4) Code 700 other distribution items at an estimated total cost of \$1,943,578.

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.

Included in Clark Energy's 2022-2025 CWP is a Code 601 project for 1,946 new meters at an estimated cost of \$457,624. Clark Energy 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, Clark Energy received a copy of the final order dated April 13, 2016 that stated in pertinent part:

¹ The estimated cost of each individual Code 600 projects over the four-year CWP period are as follows:

- Code 601 - New Transformers/Meters\$2,124,292
- Code 602 - Service Upgrades \$670,498
- Code 603 - Sectionalizing\$1,412,561
- Code 604 - Voltage Regulators..... \$232,787
- Code 606 - Pole Replacement \$4,135,404
- Code 607 - Miscellaneous\$400,000
- Code 608 - Conductor Replacement (OH) \$1,979,024

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.

Commission Staff is of the opinion that the Code 601 project involving, among other things, the purchasing and upgrading of 1,946 new meters does not satisfy the "ordinary course of business" exemption and would, therefore, require a CPCN authorization from the Commission prior to commencing this part of the Code 601 project.

In analyzing whether the proposed projects would materially affect Clark Energy's financial condition, Commission Staff takes notice of Clark Energy's 2020 Annual Report, which shows Clark Energy having net utility plant of approximately \$94,021,900.00 as of December 31, 2020. With the exception of the Code 601 New Meters project, Commission Staff is of the opinion that the individual projects in Clark Energy's 2022-2025 CWP do not require a CPCN. When reviewed individually, each of those proposed construction projects, with the exception of the Code 601 New Meters project, based on its estimated cost would not materially impact Clark Energy's existing financial condition. Therefore, with the exception of the Code 601 New Meters project, each construction project is generally considered an extension in the ordinary course of business. Likewise, the cost estimate of each project, with the exception of the Code 601 New Meters project, considered separately in the 2022-2025 CWP will not have an immediate or significant impact on Clark Energy's rates. Lastly, with the exception of the Code 601 New Meters project, 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, with the exception of the Code 601 New Meters project, that each of the proposed projects set out in Clark Energy's 2022-2025 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 Andrew Bowker at (502) 782-2580.

Sincerely,



Nancy J. Vinsel
General Counsel