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April 22, 2022

## PSC STAFF OPINION 2022-006

J. Hadden Dean  
Attorney for Inter County Energy Cooperative  
114 South Fourth Street  
Danville, Kentucky 40422

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

Dear Mr. Dean:

Commission Staff acknowledges receipt of your letter dated March 21, 2022, on behalf of Inter County Energy Cooperative (Inter County Energy) requesting a staff advisory opinion. Specifically, the letter requests an opinion as to whether any or all projects contained in Inter County 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 Inter County 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, Inter County Energy proposes the following construction projects grouped by Rural Utilities Service (RUS) Codes: 1) New Lines-RUS Code 100 at a projected cost of \$10,154,239; 2) Conversion and Line Changes-RUS Code 300 at a projected cost of \$2,738,613; 3) Miscellaneous Distribution Equipment-RUS Code 600 at a projected cost of \$18,727,517; and 4) Other Distribution Items-RUS Code 700 at a projected cost of \$4,591,650. The total estimated cost of all projects contained in Inter County Energy's CWP is \$36,212,018.

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 Inter County Energy's 2022-2025 CWP is a Code 705 project for automated meter infrastructure (AMI) equipment at an estimated cost of \$2,107,650. In PSC Case Number 2012-00428, *Consideration of the Implementation of Smart Grid and Smart Meter Technologies*, the final order dated April 13, 2016 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.

Commission Staff is of the opinion that the Code 705 project involving the automated infrastructure equipment does not satisfy the "ordinary course of business" exemption and would, therefore, require a CPCN authorization from the Commission prior to commencing the Code 705 project. Also, Inter County Energy should apply for a CPCN for any meters that are part of the Code 705 AMI project.

In analyzing whether the proposed projects would materially affect Inter County Energy's financial condition, Commission Staff takes notice of Inter County Energy's 2020 Annual Report, which shows Inter County Energy having net utility plant of approximately \$95,011,429.00 as of December 31, 2020. With the exception of the Code 705 AMI project, including any meters that are part of the Code 705 AMI project, Commission Staff is of the opinion that the individual projects in Inter County 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 705 AMI project and meters, based on its estimated cost would not materially impact Inter County Energy's existing financial condition. Therefore, with the exception of the Code 705 AMI 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 705 AMI project, considered separately in the 2022-2025 CWP will not have an immediate or significant impact on Inter County Energy's rates. Lastly, with the exception of the Code 705 AMI 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 705 AMI project and related meters, that each of the proposed projects set out in Inter County 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