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June 8, 2022

## PSC STAFF OPINION 2022-0008

David S. Samford  
Attorney for Shelby Energy Cooperative, Inc.  
2365 Harrodsburg Road, Suite B325  
Lexington, Kentucky 40504

Re: Shelby Energy's 2022-2025 Construction Work Plan

Dear Mr. Samford:

Commission Staff acknowledges receipt of your letter dated May 9, 2022, on behalf of Shelby Energy Cooperative, Inc. (Shelby Energy) requesting a staff advisory opinion. Specifically, the letter requests an opinion as to whether any or all projects contained in Shelby 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 Shelby 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, Shelby Energy proposes construction identified by the following Rural Utilities Service (RUS) Codes: 1) New Lines-RUS Code 100 at a projected cost of \$6,149,045; 2) New Tie Lines-RUS Code 200 at a projected cost of \$389,200; 3) Conversion and Line Changes-RUS Code 300 at a projected cost of \$5,068,979; 4) Miscellaneous Distribution Equipment-RUS Code 600 at a projected cost of \$17,248,571<sup>1</sup>; 5) Outdoor Lights-RUS Code 700 at projected cost of \$1,350,103. The total cost estimate of all projects contained in Shelby Energy’s CWP is \$30,205,898.

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

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

•Code 601 - New Transformers.....	\$ 589,838
* Code 601- Meters.....	\$1,115, 944
•Code 602 - Service Changes .....	\$ 335,843
•Code 603 – Sectionalizing Equipment .....	\$ 331,554
•Code 604 - Voltage Regulators .....	\$ 931,279
•Code 606 - Pole Replacement .....	\$9,017,253
*Code 607- Misc.....	\$ 426,859
•Code 608 - Conductor Replacement.....	\$4,500,000

involved, or will not result in increased charges to its customers.

In analyzing whether the proposed projects would materially affect Shelby Energy's financial condition, Commission Staff takes notice of Shelby Energy's 2021 Annual Report, which shows Shelby Energy having net utility plant of approximately \$85,978,312 as of December 31, 2021. Commission Staff is of the opinion that the individual projects in Shelby Energy's 2022-2025 CWP do not require a CPCN. When reviewed individually, each of those proposed construction projects based on its estimated cost would not materially impact Shelby Energy'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 2022-2025 CWP will not have an immediate or significant impact on Shelby 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 Shelby 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

Sent by electronic mail to [david@gosssamfordlaw.com](mailto:david@gosssamfordlaw.com)