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Commissioner

February 21, 2008

Mr. David E. Duval
Clark Energy
Post Office Box 748
Winchester, Kentucky 40392

Dear Mr. Duval:

Commission Staff acknowledges receipt of your letter of February 12, 2008 in which you request an opinion regarding the need for a certificate of public convenience and necessity for a proposed building.

In your letter, you present the following facts: Clark Energy, a rural electric cooperative, proposes to construct a metal, pre-engineered building to house utility construction equipment and materials. The building will be approximately 60 feet wide and 40 feet long. The cost of this building is estimated at no more than \$125,000. Annual depreciation cost will not exceed \$3,600. Total annual expenses related to this building, including property taxes and utility services, is estimated to be \$4,000. Clark Energy will finance the proposed project entirely from internal funds. It will not issue any evidence of indebtedness nor increase its rates for electric service. Clark Energy had total electric operating revenues of \$37,503,727 in calendar year 2006.¹

Your letter presents the following question: Must Clark Energy obtain a certificate of public convenience and necessity for the proposed building?

KRS 278.020(1) provides:

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

¹ Annual Report of Clark Energy to the Public Service Commission for the Calendar Year Ended December 31, 2006 at 13.

Service Commission a certificate that public convenience and necessity require the service or construction.

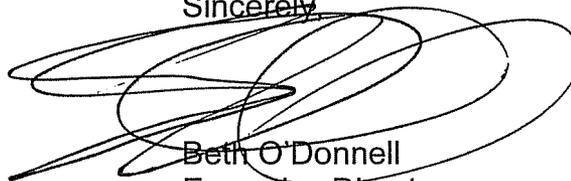
Administrative Regulation 807 KAR 5:001, Section 9(3) further provides:

Extensions in the ordinary course of business. No certificate of public convenience and necessity will 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 area in which the utility renders service or contiguous thereto, 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.

Based upon the facts presented in your letter, Commission Staff is of the opinion that the proposed construction appears to be in the ordinary course of business and would not require a certificate of public convenience and necessity. According to its Annual Report for Calendar Year 2006, Clark Energy had net utility plant of \$76,087,312.² The proposed construction, therefore, represents an increase of less than 0.3 percent in Clark Energy's utility plant. Such a small increase in net utility plant is considered as ordinary. See, e.g., City of Covington v. Board of Commissioners of Kenton County Water District No. 1, 371 S.W.2d 20 (Ky. 1963). Moreover, as the funds for the proposed construction will come from internal sources and will not require the issuance of additional debt or any increased charges to customers, the proposed construction does not appear to materially affect Clark Energy's existing financial condition. Based upon Clark Energy's total operation and maintenance expenses of \$31,069,586 for Calendar 2006,³ the proposed construction will increase annual expenses less than 0.02 percent.

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 Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

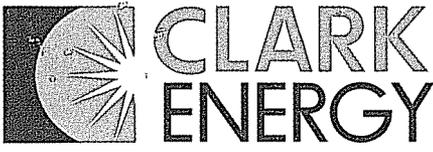
Sincerely,



Beth O'Donnell
Executive Director

² *Id.* at 1.

³ *Id.* at 15.



A Touchstone Energy Cooperative

February 12, 2008

RECEIVED

FEB 14 2008

PUBLIC SERVICE COMMISSION

Beth O'Donnell
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: CPCN Opinion

Dear Ms. O'Donnell:

Clark requests an opinion of the Commission Staff as to the need for a Certificate of Public Convenience and Necessity (CPCN) for the following building project.

Building Package: Scope includes a metal pre-engineered building (60' x 40'). The building includes 6" insulation within the roof, as well as 4" insulation within the walls. Building roof will slope one direction with gutter and downspouts on the back of the building. Building slab will be a minimum of six inches thick with reinforcement which includes all stone and excavation necessary for foundation work. Building will have three sectional overhead doors. Scope also includes a 200 amp service at the building. Also includes fluorescent lighting throughout as well as emergency exit light at the man doors. Includes wiring to the exhaust fan as well as to the overhead door operators. Building will be non-heated.

Building Use: Includes the parking of utility type construction equipment. Equipment included will be a bucket truck, digger derrick and service truck. Servicing of this equipment will also be performed at this location. A minimum amount of shelving will be installed in order to store some utility construction material.

Building Cost: No detail bids have been received at this time. However, the estimated cost will be in the \$75,000 to \$120,000 dollar range. The annual depreciation cost would be in the range of \$2,250 to \$3,600. The only additional cost would be the property tax and utilities which would be a small amount. Estimated annual expense would be around the \$4,000 range maximum.

If there are any questions, please contact me at your convenience.

Respectfully,

Handwritten signature of David E. Duvall

David E. Duvall
Vice President of Member and Corporate Services