



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
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FRANKFORT, KY 40602  
(502) 564-3940

June 17, 1998

Hon. Howard Downing  
109 South First Street  
Nicholasville, Kentucky 40356

Re: Blue Grass Energy

Dear Mr. Downing:

The Commission Staff has reviewed your letter, received on June 12, 1998, requesting a legal opinion as to whether Blue Grass Energy Cooperative Corporation is required by KRS 278.300 to obtain Commission approval prior to assuming certain notes and executing mortgages related thereto. More specifically, your letter states that the Commission had previously approved the issuance of indebtedness and execution of mortgages by Fox Creek Rural Electric Cooperative Corporation and by Blue Grass Rural Electric Cooperative Corporation. Effective January 1, 1998 Fox Creek RECC and Blue Grass RECC were merged to form a new corporate entity known as Blue Grass Energy.

A review of the applicable statute, KRS 278.300(1), provides as follows:

No utility shall issue any securities, or evidences of indebtedness, or assume an obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

Thus, no utility may assume evidences of indebtedness of any other person until it has received authorization from the Commission to do so.

Under the facts as presented in your letter, a new utility known as Blue Grass Energy intends to issue new notes to replace ones previously issued by two other utilities, Fox Creek RECC and Blue Grass RECC. Since the statute includes no provision for exempting transactions that arise as a result of a merger, the approval process set forth in

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KRS 278.300 must be followed. However, since KRS 278.300(10) exempts evidences of indebtedness that are subject to the supervision or control of the federal government, the assumption of any notes or execution of mortgages to the Rural Utility Service need not be approved by the Commission. This exemption does not apply to notes issued to the National Rural Utilities Cooperative Finance Corporation, since it is a private lending agency and not a federal agency.

The Commission's regulations applicable to the filing of applications for approval of financing are set forth in 807 KAR 5:001, Sections 6, 8, and 11. To the extent Blue Grass Energy is unable to comply with any of these regulatory requirements, a request for a deviation can be sought under 807 KAR 5:001, Section 14.

This letter represents the Legal Division's interpretation of the law as applied to the facts presented in your letter. This opinion is advisory in nature and not binding on the Commission should these issues be formally presented for Commission resolution. Should you have any questions concerning this opinion, please contact our staff attorney Richard Raff at (502) 564-3940.

Sincerely,

A handwritten signature in black ink, appearing to read "Helen C. Helton". The signature is stylized with a large initial "H" and a long, sweeping underline.

Helen C. Helton  
Executive Director

HCH/RGR/fb