

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF EAST KENTUCKY )  
POWER COOPERATIVE, INC. S NEED FOR )  
THE GILBERT UNIT AND THE KENTUCKY ) CASE NO. 2003-00030  
PIONEER ENERGY, LLC PURCHASE )  
POWER AGREEMENT )

O R D E R

By Order entered January 11, 2000 in Case No. 2000-00079,<sup>1</sup> the Commission approved East Kentucky Power Cooperative, Inc. s ( East Kentucky ) proposal to purchase 540 MW of base load generation from Kentucky Pioneer Energy, LLC ( Pioneer ). Under the terms of the Purchase Power Agreement ( Agreement ), Pioneer is to construct an integrated gasification combined cycle power plant within the boundary of East Kentucky s existing J.K. Smith Plant in Trapp, Clark County, Kentucky. The Pioneer plant will generate electricity through a process that converts coal and municipal solid waste into gas. East Kentucky agreed to purchase the entire output of the Pioneer project for an initial term of 20 years, with the right to extend for two successive 10-year periods. Due to certain operational problems that would be created on East Kentucky s system with the addition of 540 MW of base load generation at this

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<sup>1</sup> Case No. 2000-00079, The Application of East Kentucky Power Cooperative, Inc. For Approval of a Purchase Power Agreement with Kentucky Pioneer Energy, L.L.C.

site, East Kentucky entered into a separate agreement to sell 100 MW from the Pioneer project to Wabash Valley Power, an electric cooperative in Indiana.

The Agreement as amended required Pioneer to achieve certain milestone dates, including financial closure by June 30, 2001 and commercial operation by March 31, 2004. The Pioneer project has not been able to achieve financing, and by letter dated August 16, 2002, East Kentucky issued a notice of termination of the Agreement. East Kentucky subsequently withdrew that notice of termination by letter dated September 13, 2002, but stated therein that a notice of termination would be re-issued on January 31, 2003 if the Pioneer project had not achieved financial closure by that date. Copies of these two letters from East Kentucky are attached hereto as Appendices A and B.

In recognition of East Kentucky's need for additional base load capacity to meet its customers' needs, as well as the delays in the Pioneer project achieving financial closure, East Kentucky proposed an alternative supply-side project. In March 2001, East Kentucky filed an application for a Certificate of Public Convenience and Necessity to construct a coal-fired generating unit at its Hugh L. Spurlock Power Station in Mason County, Kentucky. After review and investigation in Case No. 2001-00053,<sup>2</sup> the Commission granted East Kentucky a certificate to construct a 268 MW coal-fired base load unit known as Gilbert.

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<sup>2</sup> Case No. 2001-00053, Application of East Kentucky Power Cooperative, Inc. For a Certificate of Public Convenience and Necessity, and a Certificate of Environmental Compatibility, For the Construction of a 250 MW Coal-Fired Generating Unit (With A Circulating Fluid Bed Boiler) at the Hugh L. Spurlock Power Station and Related Transmission Facilities, Located in Mason County, Kentucky, to be Constructed Only in the Event That the Kentucky Pioneer Energy Power Purchase Agreement Is Terminated.

The Commission's Certificate Order, dated September 26, 2001, recognized that the Gilbert unit was needed because of the delays in the Pioneer project. Although East Kentucky was at that time reluctant to terminate the Pioneer project due to its relatively low cost, East Kentucky acknowledged that constructing the Gilbert unit and proceeding with the Pioneer project would result in excess capacity that would not be needed for a substantial period of time. However, East Kentucky expressed confidence that such excess capacity could be sold off-system at competitive prices.<sup>3</sup> The evidence in that case also suggested that if the Pioneer project could obtain financing, it might be less costly for East Kentucky's customers to cancel the Gilbert unit if canceled prior to incurring 25 percent of its total costs. At that time, East Kentucky anticipated that it would incur 25 percent of the costs of the Gilbert unit by January 2003.<sup>4</sup>

The Commission has reviewed the records of Case Nos. 2000-00079 and 2001-00053, as well as the East Kentucky letters appended hereto. Based on East Kentucky's decision to withdraw its notice of termination of the Pioneer project as evidenced by its September 13, 2002 letter, the Commission finds that an investigation should be initiated to determine whether East Kentucky still has a need to purchase the output of the Pioneer project, whether that project is commercially feasible, and whether cancellation of the Gilbert unit would result in the lowest cost of supply to East Kentucky's customers. In addition, the Commission notes that East Kentucky's September 13, 2002 letter references a recently performed technical assessment of the Pioneer project for East Kentucky. The Commission finds that East Kentucky should file

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<sup>3</sup> Case No. 2001-00053, East Kentucky Brief at 16.

<sup>4</sup> Id. at 12.

copies of this technical assessment and that such assessment should be subjected to review in this investigation. The Commission further finds that East Kentucky should file responses to the request for information set forth in Appendix C to this Order, and that copies of this Order should be served upon the Attorney General's Office and Pioneer, intervenors in the above-referenced cases.

IT IS THEREFORE ORDERED that:

1. This case is initiated to conduct an investigation of the issues set forth in the findings above, as well as any other issues relevant to East Kentucky's continuing need for the Gilbert unit and the Pioneer project.

2. East Kentucky shall file with the Commission an original and six copies of its responses to the request for information set forth in Appendix C, attached hereto and incorporated herein by reference, within 14 days of the date of this Order, with copies to all parties of record. All requests for information and responses thereto shall be appropriately indexed. All responses shall include the name of the witness who will be responsible for responding to the questions related to the information provided.

3. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

Done at Frankfort, Kentucky, this 30<sup>th</sup> day of January, 2003.

By the Commission

ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2003-00030 DATED JANUARY 30, 2003

**See document 200300030apx\_30.pdf**

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2003-00030 DATED JANUARY 30, 2003

**See document [200300030apx\\_30.pdf](#)**

## APPENDIX C

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2003-00030 DATED JANUARY 30, 2003

1. What is the present estimated total cost for the Gilbert unit?
2. How much of the total estimated cost of the Gilbert unit has been incurred to date?
3. Assuming that the Pioneer project is able to achieve financing by January 31, 2003 or shortly thereafter, is East Kentucky aware of any information that would indicate that Pioneer will be unable to supply power at the price set forth in the Purchase Power Agreement approved in Case No. 2000-00079? If so, provide such information, together with all supporting documents.
4. Provide a cost analysis of cancelling Gilbert by February 28, 2003, and relying upon the Pioneer project supplemented by combustion turbines as necessary.
5. Explain in detail the current status of the transmission facilities needed to integrate the Gilbert unit into East Kentucky's system.
6. For each major component of the Gilbert transmission facilities, state the most recent estimated cost and provide a timeline for construction.
7. Assuming that the Gilbert unit and the Pioneer project are both operational by mid-2006, provide a schedule showing the amount of excess base load capacity that East Kentucky will have to sell off-system in 2007 and in each year thereafter through 2017.

8. Does East Kentucky intend to re-issue a notice of termination to Pioneer on January 31, 2003? If yes, file a copy of that notice. If no, explain in detail why the notice will not be re-issued on January 31, 2003.

9. East Kentucky's August 16, 2002 letter to Pioneer refers to the authorization of East Kentucky's Board of Directors to issue a notice of termination. Provide a copy of the board minutes discussing and approving that action.

10. Did East Kentucky's Board authorize the September 13, 2002 withdrawal of the notice of termination? If yes, provide a copy of the minutes of the Board meeting authorizing the withdrawal.

11. Does East Kentucky still have an enforceable contract to sell 100 MW from Pioneer to Wabash Valley Power? If yes, provide a copy of the contract and describe the terms and conditions under which each party can cancel or terminate the contract.

12. The Pioneer project was expected to receive a grant of \$78 million under a DOE Clean Coal Technology Cost Sharing Agreement. The grant included \$18 million for a fuel cell demonstration and \$60 million for a gasification demonstration. Provide a discussion of:

- a. Known changes, if any, in the amount of this grant; and
- b. The potential for future changes in the amount of the grant due to delays in the Pioneer project achieving financial closure or commercial operation.

13. Refer to East Kentucky's September 13, 2002 letter to Pioneer, page 2. Provide copies of the technical assessment recently performed for East Kentucky.