

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

THE APPLICATION OF KENTUCKY)	
PIONEER ENERGY, LLC FOR A)	
CONSTRUCTION CERTIFICATE)	CASE NO. 2002-00312
PURSUANT TO KRS 278.704(1) TO)	
CONSTRUCT A MERCHANT)	
ELECTRIC GENERATING FACILITY)	

MOTION OF KENTUCKY PIONEER ENERGY, LLC

* * * * *

Kentucky Pioneer Energy, LLC (“Kentucky Pioneer”) respectfully requests the Kentucky State Board on Electric Generation and Transmission Siting (the “Board”) to issue an order before the close of business on May 15, 2003 declaring that its order of April 16, 2003 is not a final ruling for purposes of bringing an action under KRS 278.712.

As grounds for its motion, Kentucky Pioneer states that it submitted a letter to the Board dated May 7, 2003 requesting a hearing on its position that it is in compliance with the requirements of KRS 278.710(1)(e). The Board has not yet acted on that request. If the Board’s order of April 16, 2003 is considered to be a final ruling for purposes of bringing an action under KRS 278.712, then Kentucky Pioneer must bring the action no later than Friday, May 16, 2003. If the Board has not acted on Kentucky Pioneer’s May 7, 2003 letter by that date, then Kentucky Pioneer must file its appeal and the Board may lose jurisdiction to take further action in this proceeding. If, however, the Board issues an order declaring that its order of April 16, 2003 is

not a final ruling for purposes of bringing an action under KRS 278.712, then Kentucky Pioneer will not need to file its appeal and the Board can proceed to act on Kentucky Pioneer's request in its May 7, 2003 letter.

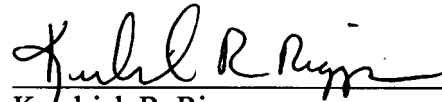
The statutory requirements in KRS 278.710(1) for the Board to act 120 days following the receipt of an administratively complete application are not a bar to the relief requested in this motion. The Board denied Kentucky Pioneer's application within that time required by KRS 278.710(1). However, nothing in the Board's statutory authority limits the Board from exercising its powers ascertained by the necessary or fair implication of its express authority in the statutes to grant the relief requested herein. It is well established Kentucky law that the powers of an administrative agency, like the Board, can be ascertained by a necessary or fair implication of its express powers. *See Croke v. Public Service Com'n of Kentucky*, Ky. App., 573 S.W.2nd 927 (1978); *Public Service Com'n v. Cities of Southgate and Highland Heights*, Ky., 268 S.W.2nd 19 (1954); *See also Humana of Kentucky, Inc. v. NKC Hospitals, Inc.*, Ky., 751 S.W.2nd 369 (1988). Thus, because the Board has the statutory authority to issue an order on Kentucky Pioneer's application, the Board also has the power by the necessary or fair implication of that same express power to give further consideration to the position of the applicant and declare that its action is not a final ruling under KRS 278.712. This is a reasonably necessary and fair implication of the Board's authority so that the applicant is not forced to bring an appeal before the Board can act timely on the applicant's request and possibly divest the Board of jurisdiction over the applicant's request for further consideration.

Kentucky Pioneer further moves the Board to the act on its May 7, 2003 letter and issue a final ruling by June 1, 2003.

WHEREFORE, Kentucky Pioneer Energy, LLC, for the reasons stated above, requests the Kentucky State Board on Electric Generation and Transmission Siting to issue an order before the close of business on May 15, 2003 declaring that its order of April 16, 2003 is not a final ruling for purposes of bringing an action under KRS 278.712 and then to act on its May 7, 2003 letter and issue a final ruling in this proceeding by June 1, 2003.

Dated: May 15, 2003

Respectfully submitted,



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COUNSEL FOR KENTUCKY
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was filed by facsimile and hand delivery with the Kentucky State Board on Electric Generation and Transmission Siting and copy of the same was served this 15th day of May 2003, by United States mail, postage prepaid upon:

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