



Raff

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

August 27, 1993 RECEIVED

AUG 30 1993

Albert P. Marks, Esq.  
Marks, Shell, Maness & Marks  
114 South Second Street  
Post Office Box 1149  
Clarksville, Tennessee 37041-1149

GENERAL COUNSEL

Re: Cumberland Electric Membership Corp.

Dear Mr. Marks:

The Commission Staff has reviewed your request for a legal opinion as to whether Cumberland Electric Membership Corporation, a Tennessee Valley Authority Distribution Cooperative, is required to seek a Certificate of Public Convenience and Necessity from this Commission prior to borrowing funds from the Rural Electrification Administration and the National Utilities Cooperative Finance Corporation.

For those utilities subject to our jurisdiction, KRS 278.020 prohibits the construction of utility facilities until the Commission has issued a Certificate of Public Convenience and Necessity, and KRS 278.300 prohibits the issuance of any evidence of indebtedness by a utility without prior Commission approval.

As you know, the District Court for the Western District of Kentucky ruled in TVA, et al. v. Energy Regulatory Commission, Civil Action No. 79-0009-P (W.D. Ky. Sept. 27, 1979), the Commission was preempted on rate regulation by the TVA, a federal agency. The Commission subsequently concluded that TVA's service requirements similarly preempt those of Kentucky, leaving no aspect of a TVA distribution cooperative's operations subject to our jurisdiction. (See Opinion Letter dated March 2, 1983 attached hereto.) Thus, Cumberland Electric Membership Corporation is not required to either obtain a Certificate of Public Convenience and Necessity prior to constructing facilities or obtain any authorization in connection with the issuance of indebtedness.

If you have any further questions, please contact Richard Raff of our Legal Staff.

Sincerely yours,

Don Mills  
Executive Director

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Attachment



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March 2, 1983

Senator William L. Quinlan  
Chairman  
Joint Interim Committee on Energy  
Room 21 - Capitol Annex  
Frankfort, Kentucky 40601

Dear Senator Quinlan:

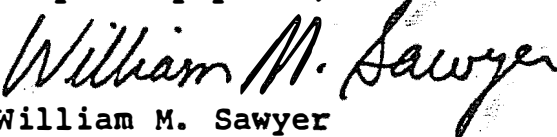
On September 25, 1979, the United States District Court for the western district of Kentucky ruled that the Kentucky Public Service Commission had no authority to regulate the rates of electric utilities in Kentucky that buy their power from the Tennessee Valley Authority. The court's ruling was based upon the fact that Congress gave TVA the power to set the retail rate for all customers who purchase electricity from TVA under a wholesale contract. The power of the federal government to set the retail rate for these utilities takes precedence over the power of the state to likewise set the rate. Accordingly, since 1979 the PSC has not exercised any jurisdiction over the retail rates of the following utilities operating in Kentucky: Hickman-Fulton RECC, Pennyrile RECC, Warren RECC, West Kentucky RECC, Tri-County Electric Membership Corporation, and Jellico Electric Company.

In January of this year, the PSC received correspondence from TVA stating that it was TVA's belief that the principle enunciated in the 1979 federal court decision would apply to service as well as rates. TVA thus contends that none of its wholesale customers operating in Kentucky are subject to any of the PSC's regulations governing the provision of electrical service to customers. The PSC has considered this matter and it is our conclusion that TVA is right on this point and that federal rather than state law governs the service as well as the rates of all TVA-supplied utilities. Since construction projects by utilities are also related to the rates and service of the utilities, the PSC believes it cannot legally certificate construction projects for these utilities. Accordingly, the PSC wishes to inform your committee that our agency will no longer regulate the rates, service, or construction of the aforementioned six utilities operating in Kentucky which purchase their electricity from the TVA.

Senator William L. Quinlan  
March 2, 1983  
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If you or any member of your committee have questions regarding this matter, please feel free to contact our agency at anytime.

Very truly yours,

A handwritten signature in cursive script that reads "William M. Sawyer". The signature is written in dark ink and is positioned above the typed name and title.

William M. Sawyer  
General Counsel