



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
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**Ronald B. McCloud, Secretary**  
**Public Protection and**  
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**Helen Helton**  
**Executive Director**  
**Public Service Commission**

**Paul E. Patton**  
**Governor**

December 3, 1999

Mr. Charles A. Lile  
East Kentucky Power Cooperative  
4775 Lexington Road 40391  
P. O. Box 707  
Winchester, Kentucky 40392-0707

Dear Mr. Lile:

The Commission Staff has reviewed your letter regarding East Kentucky Power Cooperative's twenty-year contract to purchase power from a new combined cycle generating facility to be constructed in Clark County, Kentucky by Kentucky Pioneer Energy, L.L.C. The Clark County site is owned by East Kentucky and will be leased to Pioneer Energy. You state your belief that East Kentucky need not obtain any approvals from the Commission for either the purchase power contract or the site lease. You conclude by requesting the Commission to determine that no approval of the purchase power contract is needed or, if some approval is needed, to explain the statutory or regulatory basis and the procedure to be followed to secure such approval.

We note at the outset that the Commission speaks only through its orders. Consequently, if you are requesting a definitive, binding determination on the jurisdictional issues raised in your letter, the proper procedure to be followed is to file an application, pursuant to 807 KAR 5:001, Section 8, requesting the Commission to issue such a determination. Alternatively, the Commission Staff will issue informal, advisory letter opinions on jurisdictional issues, but such opinions specify that they are not binding on the Commission.

If by your letter you are requesting an advisory letter opinion, Staff is unable to issue such an opinion based on the limited information disclosed in your letter. At a minimum, the additional information needed would be copies of the purchase power contract, the site lease, and a detailed explanation of who Pioneer Energy is and whether it shares any common ownership or control with East Kentucky.

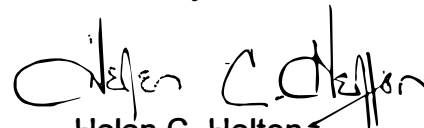


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Mr. Charles Lile  
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Information regarding the relationship between Pioneer Energy and East Kentucky is essential for a proper determination of who will be constructing this generating facility since it is the person constructing who must obtain a certificate of public convenience and necessity under KRS 278.020(1), and a certificate of environmental compatibility under KRS 278.025. Thus, a determination of this relationship will dictate whether these certificates must be obtained only by Pioneer Energy or whether East Kentucky must be a co-applicant.

While your letter seems to limit your request to any approvals needed to enter into the purchase power contract, it warrants emphasizing that even if no prior approvals are needed, East Kentucky will at some point in time need Commission approval if any costs incurred under this contract are to be passed on to its member cooperatives. At such time that East Kentucky seeks rate recovery, the Commission will then determine whether this source of power was reasonable, considering the availability of alternative sources of power. A finding of unreasonableness would likely result in costs being disallowed. Thus, East Kentucky should consider whether the risk from a future cost disallowance justifies requesting the Commission to approve the purchase power contract now, even if no approval is otherwise needed.

Sincerely,



Helen C. Helton  
Executive Director

/rst  
cc: File

