

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)	

KENTUCKY PIONEER ENERGY, LLC’S OBJECTION
TO MOTION TO INTERVENE

Kentucky Pioneer Energy, LLC (“KPE”), by counsel, in response to the request for intervention filed by Charles T. Walters (“Movant”) on August 1, 2003, objects and requests the motion for intervention be denied.

Movant has failed to request intervention within a timely manner. The Board’s regulation clearly states that a person seeking intervention must file a request to do so “no later than thirty (30) days after the application has been submitted.” 807 KAR 5:110E §4 (1) (emphasis added). On August 26, 2002, KPE gave notice of its intention to file an application with the Kentucky State Board on Electric Generation and Transmission Siting (the “Board”) pursuant to KRS 278.700 *et seq.*, requesting a Construction Certificate for a 540 MW Integrated Gasification Combined Cycle (“IGCC”) electric generating plant located at East Kentucky Power Cooperative’s (“EKPC”) J.K. Smith Generating Site in Clark County, Kentucky. The

application was deemed to be filed as of December 19, 2002.¹ The motion for intervention therefore was due to be filed no later than January 20, 2003. Following public notice of both a public hearing and an evidentiary hearing on January 28, 2003, a site inspection by the Board on February 4, 2003, a public hearing on March 4, 2003, and an evidentiary hearing by the Board on March 6, 2003, the matter was submitted for decision. On April 16, 2003, the Board issued an order denying KPE's application without prejudice.² Now, approximately nine months after the application was deemed filed, eight months after public notice of this proceeding, and seven months after the deadline for filing motions for intervention, Movant requests intervention. Clearly, this request for intervention exceeds the time limit allowed for intervention and the Board should deny the request as untimely.

The Movant's motion acknowledges the thirty day requirement imposed by the Board's regulations, but asserts that "the thirty (30) day limit on intervention is inapplicable since this is a supplemental hearing" (Motion to Intervene filed August 1, 2003, p. 3, ¶ 6). The argument is misplaced. The time period for applying for intervention is not dependant upon the hearing date, but the date on which the application was filed. As such, the Board's regulation requires the application of the thirty day time period from December 19, 2002 – the date the application was deemed to be filed and not the date of the hearing.

Even if the Board could consider cause for not filing the motion on a timely basis (and its regulations do not permit such consideration) the Movant's motion makes no such

¹ Although the application was filed on November 26, 2002, the Board determined KPE's application to be administratively incomplete until December 19, 2002. *See* Kentucky State Board on Electric Generation and Transmission Siting Letter of December 19, 2002.

² Order of April 16, 2003. *See also* Order of May 15, 2003, clarifying that the April 16, 2003 Order was not a final order.

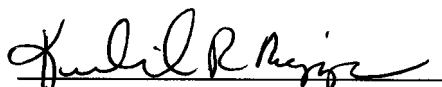
demonstration. This so because Movant was well informed of the KPE's application. Indeed, he chose to participate in this proceeding by appearing at the public hearing on March 4, 2003 where he spoke directly to the Board members. His comments on the project were entered into the record.

The Board must follow its regulations and deny Movant's motion full intervention.

The Board should also deny the alternative form of relief requested by Movant for "limited intervention" for the purpose of submitting a brief based on the evidence of record. This alternative motion for "limited intervention" is just as untimely as the motion for full intervention. The Board's regulations do not recognize the procedure for a "limited intervention." While KPE does not object to Movant being provided the further opportunity offer written public comment, only a party to the proceeding should be allowed to file pleadings and briefs.

WHEREFORE, Kentucky Pioneer Energy, LLC respectfully requests the Board to issue an order denying the motion for intervention in this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Objection to Motion to Intervene was served this 13th day of August 2003, by United States mail, postage prepaid upon:

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