COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR (1) A GENERAL ADJUSTMENT OF ITS RATES FOR ELECTRIC SERVICE; (2) APPROVAL OF TARIFFS AND RIDERS; (3) APPROVAL OF CERTAIN REGULATORY AND ACCOUNTING TREATMENTS; AND (4) ALL OTHER REQUIRED APPROVALS AND RELIEF	))))))))	CASE NO. 2025-00257

O R D E R

On September 29, 2025, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to KRS 278.400, requesting clarification or partial rehearing of the Order entered September 11, 2025, which established a procedural schedule and indicated the Commission's intent to forego a suspension beyond Kentucky Power's selected March 1, 2026 new rate effective date pursuant to KRS 278.190(2).

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable minds."[1]

[1] *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.[2]

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

MOTION

Kentucky Power filed an application for a general rate increase on August 29, 2025. Kentucky Power indicated an effective date of March 1, 2026 for new rates to go into effect.[3] In a footnote, Kentucky Power stated "Kentucky Power files this Application and provides this notice with the expectation the Commission subsequently will suspend pursuant to KRS 278.190 the proposed rates for investigation."[4]

The Commission's September 11, 2025 Order stated as follows:

> Regarding the issue of rate schedule suspension, the Commission notes that pursuant to KRS 278.190(2), the Commission may
>
>> [A]t any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used . . .

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[2] *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

[3] Application (filed Aug. 29, 2025) at 9.

[4] Application at 9, footnote 4.

> Kentucky Power's application established a date of March 1, 2026, that the requested rate proposal would go into effect.1 Given that the effective date of the proposed rates is March 1, 2026, the Commission finds that a rate suspension is not currently necessary. The Commission anticipates completing this matter prior to the proposed effective date but will suspend the proposed rates prior to the effective date and likely allow them to go into effect subject to refund if such a suspension becomes necessary.[5]

Kentucky Power's present motion requested that

> [T]he Commission grant rehearing and confirm or clarify that, consistent with its past practice, it is suspending Kentucky Power's proposed rates for five months, up to March 1, 2026, and that if the Commission issues its final order on or after March 1, 2026, that Kentucky Power may implement the proposed rates subject to refund in conformity with KRS 278.190(2). Such amendment and clarification is necessary to be consistent with the Commission's prior precedent, Kentucky case law, and the Commission's statutory authority.[6]

Kentucky Power interpreted Orders from its two previous rate cases as limiting suspension of rates to six months (for a forecasted test period) from the date 30 days after the application was accepted for filing, and objects to the Commission's application of a different interpretation of KRS 278.190(2) "without notice or justification."[7] Kentucky Power represented that it would not have chosen a March 1, 2026 effective date if an additional suspension might apply.

[5] Order (Ky. PSC Sept. 11, 2025) at 2.

[6] Kentucky Power's Motion for Clarification or Partial Rehearing (filed Sept. 29, 2025) (Motion) at 5.

[7] Kentucky Power's Motion at 5-6.

Kentucky Power further asserted that KRS 278.190(2) does not permit the Commission to issue an order suspending proposed rates after a hearing is held, because the statute states

> Pending the hearing and the decision thereon, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used.[8]

Lastly, Kentucky Power stated

> If the Commission does not amend the Order and adhere to its past practice as requested, then Kentucky Power respectfully requests, for the reasons stated herein, that the Commission amend the Order to reflect that if the Commission suspends the proposed rates past the proposed effective date of March 1, 2026, then Kentucky Power will be allowed to implement the proposed rates subject to refund in conformity with KRS 278.190(2) on that date.[9]

DISCUSSION AND FINDINGS

Kentucky Power does not expressly invoke any of the criteria set forth in KRS 278.400 for establishing that rehearing is required. The Commission infers that Kentucky Power's arguments alleged that rehearing is necessary to correct findings that are unlawful, as the other criteria pertain to evidentiary matters, which are not at issue at this stage of the proceeding. Pursuant to KRS 278.400, a finding is unlawful if it violates a state or federal statute or constitutional provision.

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[8] Kentucky Power's Motion at 7.

[9] Kentucky Power's Motion at 8.

The statute at issue, KRS 278.190(2), is unambiguous. "[T]he commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months **beyond** the time when it would otherwise go into effect if an historical test period is used."(emphasis added) At the end of the suspension period, the utility may place the proposed rate schedule into effect, subject to refund. No suspension is required prior to the effective date of the proposed rate schedule. Under KRS 278.180(1), a utility seeking a rate change must identify when the proposed changes are to go into effect, no sooner than 30 days after filing notice of the rate changes to the Commission. Kentucky Power's position that a rate suspension is necessary to cover the period of time between the application being accepted for filing and the effective date would call into question why an effective date would be necessary if a tariff could become effective before the effective date, absent a suspension.

In the vast majority of general rate cases filed by electric generating utilities, the Commission suspends rates for the maximum period beyond the effective date, as the applicant typically proposes the earliest possible effective date.[10] In Case No. 2017-

[10] *See* Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period* (Ky. PSC July 18, 2013), Order at 1-2; Case No. 2024-00354, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC Dec. 18, 2024), Order at 1; Case No. 2025-00208, *Electronic Application of East Kentucky Power Cooperative, Inc. for a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief* (Ky. PSC Aug. 1, 2025), Order at 1; Case No. 2025-00113, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and Approval of Certain Regulatory and Accounting Treatments* (Ky. PSC June 18, 2025), Order at 1.

00179,[11] Kentucky Power proposed an effective date 30 days after the filing of its general rate application. Kentucky Power expressly recognized that the rates could not go into effect until five months later if the Commission followed its usual practice of suspending rates for five months beyond the proposed effective date.[12] The Commission ordered a suspension spanning five months beyond the earliest date the rates were permitted to take effect under KRS 278.180(1).[13] In Case No. 2020-00174,[14] Kentucky Power changed its practice from seeking the earliest possible effective date to a date six months from the application filing rate. Kentucky Power noted that this date was chosen because its settlement agreement in Case No. 2017-00179 included a "stay-out" provision which prohibited Kentucky Power from initiating new rates prior to the January 2021 billing cycle,[15] which would begin the day after the proposed effective date. Kentucky Power also requested that the Commission allow the rates to go into effect at the start of the January 2021 billing cycle, referring to the time between the application filing and the effective date as a suspension period for the first time.[16] The Commission deviated from

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[11] Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief* (filed June 28, 2017), Application at 8.

[12] Case No. 2017-00179, Application at 8, footnote 7.

[13] Case No. 2017-00179, (Ky. PSC July 17, 2017), Order at 2.

[14] Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (filed June 29, 2020).

[15] Case No. 2020-00174, Application at 8-9, footnote 5; Case No. 2017-00179, (Ky. PSC Jan. 18, 2018), Order, Appendix at 9.

[16] Case No. 2020-00174, Application at 8-9, footnote 5.

its usual practice to accommodate Kentucky Power, suspending rates until January 13, 2021, (after the effective date) and using the language proposed by Kentucky Power regarding suspending prior to the effective date.[17] In Case No. 2023-00159,[18] Kentucky Power proposed an effective date six months after the application filing, noting as in the present case that its proposed effective date was based on an expectation that the rates could be put into effect after that date and relying on the suspension period used in Case No. 2020-00174. Pursuant to the case history above, the beginning of Kentucky Power's current rate effective date practice appears to be a result of the Commission allowing Kentucky Power to put rates into effect immediately upon the end of the Case No. 2017-00179 settlement stay-out period. While the Commission strived to accommodate Kentucky Power in the prior matter, the Commission's previous forbearance of imposing the maximum suspension should not be construed as limiting its authority to suspend under KRS 278.190(2). Likewise, in the present case, the Commission plans to resolve the case by March 1, 2026, but is unable to abrogate its statutory right to initiate a suspension, if necessary.

Even if the current Commission were to find that orders in Kentucky Power's two prior rate cases interpreted KRS 278.190(2) as Kentucky Power suggested, the Commission would be unable to find that the September 11, 2025 Order is unlawful, as the plain and unambiguous language of the statute takes precedence over past Commission orders.

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[17] Case No. 2020-00174, (Ky. PSC July 14, 2020), Order at 2.

[18] Case No. 2023-00159, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) A Securitization Financing Order; and (5) All Other Required Approvals and Relief* (filed June 29, 2023), Application at 9, footnote 6.

However, the Commission shall provide clarification as follows. The Commission took note of Kentucky Power's footnote regarding its choice of effective date and recognized that Kentucky Power believed that the suspension period was limited to five months from the date 30 days after acceptance of the application for filing. The Commission's intent is to resolve this case by March 1, 2026. However, it cannot "guarantee" this result as Kentucky Power requested.[19] The Commission does not believe it can waive its right to suspend rates, nor in any event would it do so prior to conducting a full investigation of the case. If the Commission determined during the course of discovery that allowing rates to take effect prematurely would harm ratepayers, such a waiver would prove an unacceptable abrogation of the Commission's powers and duties.

If the Commission had issued an Order remaining silent regarding suspension while attempting to adhere to the March 1, 2026 effective date, the Commission would have reaffirmed Kentucky Power's erroneous interpretation of KRS 278.190(2). Therefore, the language in the September 11, 2025 Order pertaining to the lack of suspension was intended to put Kentucky Power on notice of the differing interpretation so it could respond by amending its application with a new effective date if necessary. The Commission urges Kentucky Power to file a motion to amend its application with a new effective date if it requires a guarantee that it can put rates into effect by a date certain.

Regarding Kentucky Power's assertion that the Commission may not suspend rates after a hearing takes place, the Commission disagrees that the statute indicates

[19] Kentucky Power's Motion at 6.

that a suspension may not be initiated after formal hearing. KRS 278.190(2) allows a suspension "at any time before the schedule becomes effective." The definition of "pending" is "during" or "while awaiting"[20] and pertains to both the words "hearing" and "decision" in KRS 278.190(2). The Commission interprets this language as meaning that while awaiting hearing *and a final decision*, it may initiate a suspension at any time prior to the effective date. Furthermore, even if the statute were interpreted as Kentucky Power argued, nothing in KRS Chapter 278 or the Commission regulations prevent the Commission from rescheduling a formal evidentiary hearing if the Commission deemed additional investigation and suspension necessary or for some other reason. However, as previously noted, the Commission fully intends to work deliberately and purposefully on resolving the case by March 1, 2026.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for partial rehearing is denied.

2. Kentucky Power's motion for clarification is granted to the extent discussed herein.

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[20] *"Pending." Merriam-Webster.com Dictionary, Merriam-Webster*, https://www.merriam-webster.com/dictionary/pending Accessed Oct. 7, 2025.

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Chairman

Commissioner

Commissioner

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ENTERED
OCT 17 2025
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