

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:)	
)	
ELECTRONIC APPLICATION OF KENERGY)	
CORP. FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY FOR THE)	
CONSTRUCTION OF A HIGH-SPEED FIBER)	CASE NO.
NETWORK AND FOR APPROVAL OF THE)	2021-00365
LEASING OF THE NETWORK'S EXCESS)	
CAPACITY TO AN AFFILIATE TO BE)	
ENGAGED IN THE PROVISION OF)	
BROADBAND SERVICE TO UNSERVED AND)	
UNDERSERVED HOUSEHOLDS AND)	
<u>BUSINESSES OF THE COMMONWEALTH</u>)	

**KBCA’S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEFING ON HB 315
AND MOTION FOR A BRIEFING SCHEDULE**

The Kentucky Broadband and Cable Association (“KBCA”), by counsel, respectfully submits this Motion for Leave to File Supplemental Briefing on newly enacted House Bill 315 and for a Briefing Schedule. In support of this motion, KBA states as follows:

The Commission held an evidentiary hearing on this matter on March 31, 2022, after which it set forth an expedited briefing schedule allowing KBCA to file its initial brief on April 11, 2022, Kenergy to file its response brief on April 15, 2022, and KBCA to file its reply brief on April 21, 2022. In its initial brief filed on April 11, 2022, KBCA noted “that that recent legislation delivered to the Governor, if signed in its presented form, would amend KRS 278.5464 in a manner that alters certain procedural aspects of the Commission’s approval process.”¹ It further stated that “[i]n

¹ See KBCA Post-Hearing Brief at 7 n. 2.

the event the statute is amended during the pendency of this proceeding, supplemental briefing may be required to address the impact, if any, of the changed statutory text.”²

On April 11, 2022, the Governor issued a line-item veto on HB 315’s “emergency clause.” On April 13, 2022, a majority of both houses of the General Assembly voted to override that veto, thereby making HB 315 effective immediately. In its response brief, however Kenergy Corp. (“Kenergy”) did not address whether the newly enacted legislation impacted this proceeding.

The General Assembly’s amendments to KRS 278.5464 during this proceeding’s briefing schedule creates a somewhat unusual set of procedural circumstances: the parties’ opening and response briefs both addressed the pre-amendment text of the statute, which has now changed. KBCA believes it would be beneficial for the Commission’s consideration of the matters in this proceeding for the parties to address the recent amendment. One option would be for KBCA to do so in its upcoming reply brief being filed on Thursday, April 21. However, since the new statutory language has not yet been briefed in either parties’ initial submissions, KBCA wishes to be mindful of the usual practice that reply briefs respond to the arguments presented in the initial briefing, rather than raising new issues.³

In order to ensure that the Commission has the benefit of the parties’ analysis of the new statutory text, therefore, KBCA recommends that the Commission authorize the parties to file expedited supplemental briefing regarding the effect, if any, of the recent enactment of HB 315 on this matter. Accordingly, KBCA proposes the following supplemental briefing schedule:

- KBCA may file a memorandum brief related to the above-mentioned issue on or before Monday, April 25, 2022.

² *Id.*

³ See generally *Milby v. Mears*, 580 S.W.2d 724, 728 (Ky. App. 1979) (noting that a “reply brief is not a device for raising new issues which are essential to the success” on the merits of a case).

- Kenergy Corp. (Kenergy) and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) may file their respective response briefs on the above-mentioned issue or before Thursday, April 28, 2022.
- KBCA may file a reply brief on or before Tuesday, May 3, 2022.

KBCA believes that the proposed supplemental briefing will assist the Commission in fully considering the legal issues that arise in this proceeding. The additional briefing—as proposed—will be complete within two weeks and will not unduly delay this proceeding. Accordingly, KBCA respectfully requests that the Commission allow it an opportunity to file a brief on whether the enactment of HB 315 impacts the matter pending before the Commission, as well as subsequent response and reply briefs filed by the respective parties in this matter.

KBCA further notes that based on prior Commission practice and the fact that this request is procedural in nature, the Commission with only one Commissioner has the authority to issue this requested order.

RESPECTFULLY SUBMITTED,

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