

**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>	)	

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**KBCA’S REPLY IN SUPPORT OF PETITION FOR CLARIFICATION**

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The Kentucky Broadband and Cable Association (“KBCA”) respectfully submits the following Reply in support of its July 21, 2022 Petition for Clarification.

In its July 25, 2022 Response to KBCA’s Petition, Kenergy Corp. (“Kenergy”) argues that broadband is an unregulated business in Kentucky and that the General Assembly’s 2022 amendments to KRS 278.5464 “exempt electric cooperatives from a CPCN requirement when building fiber for the purposes of broadband service.”<sup>1</sup> Kenergy is correct in part: Section 278.5464, as amended, exempts cooperatives from the requirement to obtain a CPCN in order to construct and lease fiberoptic cable to a broadband affiliate if certain conditions are met. What Kenergy’s argument disregards, however, is that Section 278.5464 is an exemption from the usual rule under KRS 278.020 that utilities must obtain a CPCN for utility infrastructure projects, as well as from the usual rule under KRS 279.020 and KRS 279.110(12) that an electric cooperative

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<sup>1</sup> Kenergy Response at 1.

wishing to participate in an unregulated market, such as broadband, do so through a separate affiliate. In order to qualify for this exemption, Section 278.5464 requires that electric distribution cooperative must be leasing the fiber to an “affiliate engaged exclusively in the provision of broadband service to unserved or underserved households and businesses[.]”<sup>2</sup> KBCA is not asking the Commission to regulate the provision of broadband service in Kentucky, but instead seeks confirmation that the Order upholds the statute’s clear geographic limitations (i.e., Kenergy’s affiliate may only serve areas of the Commonwealth that are deemed “unserved” or “underserved” under the law).

Contrary to Kenergy’s contention that the Commission’s July 1 Order “needs no further clarification,” it is apparent from Kenergy’s Response—which states that it has “elected to proceed with construction of broadband fiber” under the amended Section 278.5464—that Kenergy reads the Order differently from KBCA . KBCA believes that the Order holds that Kenergy may build and lease a broadband-only fiber network *if Kenergy complies with the statutory limitation that it exclusively support service in unserved and underserved areas.*<sup>3</sup> Kenergy, however, appears to believe that the Order authorizes it to provide broadband service through its affiliate to areas that are already served with broadband.

This distinction is material to the scope of any authorization that the statute grants to Kenergy, and is material to any further judicial review. KBCA therefore respectfully requests that the Commission clarify it.

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<sup>2</sup> KRS 287.5464(3).

<sup>3</sup> Contrary to Kenergy’s contention, KBCA is not “ask[ing] the Commission...to unlawfully regulate Kenergy and Kenect’s broadband activities.” Kenergy Response at 1. Rather, KBCA is asking the Commission to clarify the application of KRS 287.5464(3) as written.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC



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