

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

In the Matter of:

<b>ELECTRONIC APPLICATION OF EAST</b>	<b>)</b>	
<b>KENTUCKY POWER COOPERATIVE, INC. FOR</b>	<b>)</b>	
<b>APPROVAL TO AMEND ITS ENVIRONMENTAL</b>	<b>)</b>	<b>CASE NO.</b>
<b>COMPLIANCE PLAN, AND RECOVER COSTS</b>	<b>)</b>	<b>2025-00053</b>
<b>PURSUANT TO ITS ENVIRONMENTAL</b>	<b>)</b>	
<b>SURCHARGE, AND OTHER GENERAL RELIEF</b>	<b>)</b>	

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**EAST KENTUCKY POWER COOPERATIVE, INC.'S MOTION FOR REHEARING**

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Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, pursuant to KRS 278.400 and respectfully requests the Kentucky Public Service Commission (“Commission”) grant rehearing on its December 23, 2025 Order (“Final Order” or “the Order”) in the above-styled case. In support of this motion, EKPC respectfully states as follows:

**BACKGROUND**

On July 2, 2025, EKPC filed an application requesting approval to amend its Environmental Compliance Plan and recover costs through its Environmental Surcharge.<sup>1</sup> On July 22, 2025, the Commission issued a procedural schedule for the processing of the case<sup>2</sup> and incorporated the record of Case No. 2024-00109 into this proceeding.<sup>3</sup> EKPC responded to

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<sup>1</sup> Application (filed July 2, 2025).

<sup>2</sup> July 22, 2025 Order (Ky. PSC July 22, 2025).

<sup>3</sup> *Electronic Application of East Kentucky Power Cooperative, Inc. for Approval to Amend its Environmental Compliance Plan and Recover Costs Pursuant to its Environmental Surcharge, and for the Issuance of a Certificate of Public Convenience and Necessity and Other General Relief*, Case No. 2024-00109.

multiple rounds of discovery issued by Commission Staff.<sup>4</sup> On November 3, 2025, EKPC requested the matter be resolved based upon the administrative record.<sup>5</sup> On December 23, 2025, the Commission issued its Final Order approving the inclusion of Projects 38, 42, 43, and 45-59 in the Environmental Compliance Plan and cost recovery through the surcharge.<sup>6</sup> The Commission denied inclusion and cost recovery for Project 44.<sup>7</sup>

### **APPLICABLE LAW AND STANDARD OF REVIEW**

KRS 278.400 governs motions for rehearing which provides the Commission with the ability to correct findings based on material errors or omissions or to correct findings that are unreasonable or unlawful.<sup>8</sup> The statute states in its entirety:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or

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<sup>4</sup> EKPC's Responses to Staff's DR 1 (filed August 27, 2025); EKPC's Responses to Staff's DR 2 (filed September 25, 2025); and EKPC's Responses to Staff's DR 3 (filed October 20, 2025).

<sup>5</sup> Motion to Submit (filed November 3, 2025).

<sup>6</sup> See generally December 23, 2025 Order.

<sup>7</sup> December 23, 2025 Order at 11-12.

<sup>8</sup> *Electronic Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the 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 Businesses of the Commonwealth*, Case No. 2021-00365, Order (Ky. PSC May 19, 2022) at 1-2.

affirm its former orders, and make and enter such order as it deems necessary.

A Commission Order is unreasonable when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>9</sup> An Order of the Commission is unlawful when it is deemed to be in violation of a state or federal statute, or a constitutional provision.<sup>10</sup> In denying EKPC current recovery of its costs of complying with the Federal Clean Air Act as applied to energy produced from a coal-fired electric generating unit, that portion of the Commission’s December 23, 2025 Order denying cost recovery for Project 44 is unlawful. Given the undisputed record that Project 44 is a requirement for compliance with environmental rules, the Commission’s December 23, 205 Order is also unreasonable. Accordingly, rehearing is necessary and appropriate.

## **ARGUMENT**

### **Project 44 Should be Included in EKPC’s Environmental Compliance Plan or Project 11 Should be Amended**

On September 4, 2007, EKPC entered into a consent decree (“2007 Consent Decree”) with the United States Environmental Protection Agency (“EPA”). The 2007 Consent Decree required EKPC to install an Air Quality Control System (“AQCS”) at Cooper Unit 2. The installation of the AQCS on Cooper Unit 2 constituted a full resolution of claims by the EPA against EKPC for alleged violations of the federal Clean Air Act. Under the 2007 Consent Decree, EKPC had two principle options: (1) install and continuously operate sulfur dioxide control system by June 30, 2012 and nitrogen oxide emission control system at Cooper Unit 2 by December 31, 2012; or (2)

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<sup>9</sup> *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

<sup>10</sup> *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).

retire and permanently cease operation of Unit 3 and Unit 4 at its William C. Dale Generating Station ("Dale Station") by December 31, 2012. EKPC ultimately elected and received Commission approval to retrofit Cooper Unit 2 with an AQCS consisting of a Circulating Fluidized Bed Dry Flue Gas Desulfurization system, a selective catalytic reduction system, a pulse jet fabric filter, and other environmental control equipment.<sup>11</sup> The AQCS became operational in 2012 and achieved compliance with the specific requirements of the 2007 Consent Decree. In 2010, EKPC included the AQCS projects as Project 11 in its Environmental Compliance Plan and the Commission approved recovery of the costs through its Environmental Surcharge.<sup>12</sup>

In 2013, EKPC requested to amend its Environmental Compliance Plan, including a proposed re-route of the existing duct work for Cooper Unit 1. This allowed Cooper Unit 1's emissions to flow to the Cooper Unit 2's AQCS allowing Cooper Unit 1 to satisfy certain air emission regulations from updates to the Clean Air Act. The Commission found that EKPC's amendment to its Environmental Compliance Plan is fair, just and reasonable and would not result in wasteful duplication.<sup>13</sup> EKPC then classified these updates as Project 14 in its Environmental Surcharge.

In 2023, EKPC requested to amend its Environmental Compliance Plan, Project 11 – Cooper 2 Air Quality Control System Cooper Inlet Hooper Discharge Modification with New

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<sup>11</sup> *The Application of East Kentucky Power Cooperative, Inc. For A Certificate of Public Convenience and Necessity for The Construction of An Air Quality Control System at Cooper Power Station*, Case No. 2008-00427, May 1, 2009 Order (Ky. PSC May 1, 2009).

<sup>12</sup> *Application of East Kentucky Power Cooperative, Inc. for Approval of an Amendment to its Environmental Compliance Plan and Environmental Surcharge*, Case No. 2010-00083, September 24, 2010 Order at 5-6 (Ky. PSC September 24, 2020).

<sup>13</sup> *Application Of East Kentucky Power Cooperative, Inc. for A Certificate of Public Convenience and Necessity for Alteration of Certain Equipment at The Cooper Station and Approval of a Compliance Plan Amendment for Environmental Surcharge Cost Recovery*, Case No. 2013-00259, Order (Ky. PSC Feb. 20, 2014).

System (“Project 11”) so that ash can be discharged automatically through a new discharge control valve and spout connected through an additional opening in the existing hopper discharge box and tied into the existing center overflow pipe.<sup>14</sup> The Commission found the amended Project 11 appropriate for EKPC’s Environmental Compliance Plan and that EKPC was authorized to recover the costs associated with the project.<sup>15</sup>

In this proceeding, EKPC proposed to include the costs of replacing the already existing Cooper Unit 2 Air Heater Basket/Seals as a separate project, Project 44. EKPC felt classifying the replacement of the Cooper Unit 2 heater basket would allow greater transparency to the Owner-Members, the Commission, and end use members about what costs are being included in its Environmental Surcharge. However, the replacement of these heater baskets is essentially part of Amended Project 11, which was already approved by the Commission.<sup>16</sup> EKPC believed it clarified its original explanation of Project 44 and how it related to Project 11 in its responses to data requests.<sup>17</sup> In hopes of remedying the ineloquent description EKPC provided, EKPC is attaching a copy of that same fact sheet to this motion as Exhibit A.

The Commission found in its Order that Project 44 is a maintenance project rather than an environmental compliance project as contemplated by KRS 278.183. Project 44 in this case is not a maintenance project. Project 44 is needed to comply with federal environmental rules and

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<sup>14</sup> *Electronic Application of East Kentucky Power Cooperative, Inc. for Approval to Amend its Environmental Compliance Plan and Recover Costs Pursuant to its Environmental Surcharge, and for Issuance of Certificates of Public Convenience and Necessity and Other Relief*, Case No. 2023-00177 (filed June 30, 2023).

<sup>15</sup> Case No. 2023-00177, January 11, 2024 Order (Ky. PSC. January 11, 2024).

<sup>16</sup> Case No. 2023-00117, January 11, 2024 Order.

<sup>17</sup> EKPC’s Responses to Commission Staff’s Second Request for Information, Item 1, Attachment *Staff DR2 Response 1-JVI Projects.xlsx*

regulations as detailed above and in EKPC’s application.<sup>18</sup> Specifically, KRS 278.183 states that a “utility shall be entitled to the current recovery of its costs of complying with the Federal Clean Air Act as amended....”<sup>19</sup> Additionally, new air heater baskets are required considering the EPA required SOx reductions under the Clean Air Interstate Rule (“CAIR”), later revised to the Cross-State Air Pollution Rule (“CSAPR”). As noted above, EKPC’s AQCS was already approved by the Commission in Case No. 2008-00427 and EKPC is now replacing an existing portion of the AQCS to extend the useful life of that asset so that it can continue to comply with the Clean Air Act and other federal rules and regulations while simply seeking recovery of the replaced portion. By denying current cost recovery for Project 44, the Commission’s December 23, 2025 Order violates KRS 278.183(1).

In addition, the Commission recently approved a similar type of project for Kentucky Power Company (“Kentucky Power”) in its proposed environmental compliance plan amendment.<sup>20</sup> Kentucky Power replaced the Air Heater Baskets on Mitchell Units 1 and 2, at a cost of approximately \$3.8 million each because the baskets had reached the end of their useful lives and were necessary for the Mitchell Plant’s continued operation. The Commission noted the Non-ELG Investments projects were generally small relative to Kentucky Power’s overall plant in service and would have been completed in the ordinary course of business. The Commission found the Non-ELG Investments were necessary for the Mitchell Plant’s operations and were approved.

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<sup>18</sup> EKPC’s Responses to Commission Staff’s Second Request for Information, Item 8 and *Attachment JRW-1 – Compliance Plan Project List.xlsx*, Tab JRW-1, Cells H315:H317.

<sup>19</sup> KRS 278.183(1)

<sup>20</sup> *Electronic Application of Kentucky Power Company for Approval Of (1) A Certificate of Public Convenience and Necessity to Make the Capital Investments Necessary to Continue Taking Capacity and Energy from The Mitchell Generating Station After December 31, 2028, (2) An Amended Environmental Compliance Plan, (3) Revised Environmental Surcharge Tariff Sheets, And (4) All Other Required Approvals and Relief*, Case No. 2025-00175, Order at 29-30 and 63 (Ky. PSC Dec. 30, 2025).

While EKPC understands that Kentucky Power is vastly different than EKPC in multiple ways, the projects and federal environmental rules and regulations enforced upon power plants remain the same.

Lastly, considering EKPC was denied to include Project 44 in its Environmental Surcharge, EKPC would then be required to request another amendment to Project 11. In reality, Project 44 is simply an amendment to Project 11, but was included as a separate project for the reasons discussed above. EKPC would not be opposed to Project 44 being classified as an amendment to the previously approved Project 11. Project 11 currently has a balance of \$3,105,209. If approved, EKPC would still write off the remaining balance of the existing Air Heater Basket/Seals, which totals \$763,452, and includes the costs associated with replacing them in Project 11 rather than as a separate project. Currently, as illustrated in EKPC's application, the costs to replace those assets, less accumulated depreciation, would be \$2,042,166.<sup>21</sup> Therefore, EKPC would propose to recover \$1,278,714 as the total cost to replace the Air Heater Basket/Seals in Project 11, which would bring the total balance of Project 11 to \$4,383,923.

## **CONCLUSION**

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests that the Commission grant rehearing on the issues contained herein and permit Project 44 to be included in its Environmental Compliance Plan and allow cost recovery through its Environmental Surcharge or allow EKPC to amend Project 11 to include the costs of replacing the already existing assets and allow cost recovery through its Environmental Surcharge.

This the 7<sup>th</sup> day of January, 2026.

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<sup>21</sup> Application, *Attachment JRW-3 – Residential Impact.xlsx*.

Respectfully submitted,

*Heather S. Temple*

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**CERTIFICATE OF SERVICE**

This is to certify that the electronic filing was transmitted to the Commission on January 7, 2025, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made.

*Heather S. Temple*

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