

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

In the Matter of:

ELECTRONIC TARIFF FILING OF EAST	)	
KENTUCKY POWER COOPERATIVE, INC.	)	CASE NO.
TO ESTABLISH A NEW TARIFF FOR DATA	)	2025-00140
CENTER POWER	)	

---

**EAST KENTUCKY POWER COOPERATIVE INC.’S  
RESPONSE TO RETAIL ENERGY SUPPLY ASSOCIATION’S  
MOTION FOR RECONSIDERATION**

---

Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, and for its response to Retail Energy Supply Association’s (“RESA”) Motion for Reconsideration respectfully states as follows:

The Commission’s reasoning and decision to deny intervention to RESA was correct and should be upheld.

**BACKGROUND**

The Commission opened an investigation into EKPC’s proposed Rate DCP (“data center tariff”) tariff on May 23, 2025.<sup>1</sup> The Commission established a procedural schedule allowing requests for intervention for interested parties.<sup>2</sup> The Commission granted intervention to the Attorney General, by and through the Office of Rate Intervention (“Attorney General”) and Nucor

---

<sup>1</sup> May 23, 2025 Order (Ky. PSC. May 23, 2025).

<sup>2</sup> May 23, 2025 Order.

Steel Gallatin.<sup>3</sup> RESA moved for intervention on June 6, 2025.<sup>4</sup> EKPC opposed RESA's motion<sup>5</sup>, and RESA filed a reply making additional arguments on why its intervention was appropriate.<sup>6</sup>

On July 1, 2025, the Commission denied RESA's motion to intervene.<sup>7</sup> The Commission found that RESA did not have a special interest in the proceedings because no RESA member is engaged in providing electric service with any relevant connections to Kentucky, placing RESA on the same footing as any other non-Kentucky utility providing electricity in the PJM Interconnection LLC ("PJM") territory.<sup>8</sup> The Commission further found that RESA's intervention would not assist the Commission without unduly complicating the proceedings.<sup>9</sup> The Commission stated that RESA's experience in bilateral purchase agreements and hedging risks is not at issue with EKPC's data center tariff and that RESA's only expertise is providing retail service to customers, which is not permitted under EKPC's proposed tariff.<sup>10</sup> On July 18, 2025, RESA filed a motion requesting the Commission to reconsider its denial of RESA's motion pursuant to KRS 278.400.<sup>11</sup>

---

<sup>3</sup> June 2, 2025 Order (Ky. PSC. June 2, 2025) and June 4, 2025 Order (Ky. PSC. June 4, 2025).

<sup>4</sup> Motion to Intervene (filed June 6, 2025).

<sup>5</sup> Response to Request for Intervention by Retail Energy Supply Association (filed June 11, 2025) and Sur-Reply to Request for Intervention (filed June 17, 2025).

<sup>6</sup> Retail Energy Supply Association's Reply to East Kentucky Power Cooperative's Response to Motion to Intervene (filed June 16, 2025).

<sup>7</sup> July 1, 2025 Order (Ky. PSC July 1, 2025).

<sup>8</sup> July 1, 2025 Order at 8-9.

<sup>9</sup> July 1, 2025 Order at 9.

<sup>10</sup> July 1, 2025 Order at 9.

<sup>11</sup> Motion for Reconsideration (filed July 18, 2025).

## **LEGAL STANDARD**

KRS 278.400 establishes the standard of review for motions for rehearing and limits rehearing to new evidence which could not with reasonable diligence have been offered on the former hearing be considered, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful.<sup>12</sup> A Commission's order is deemed unreasonable only where "the evidence presented leaves no room for difference of opinions among reasonable minds."<sup>13</sup> An order can only be unlawful if it violates a state or federal statute or provision.<sup>14</sup> KRS 278.400 is intended to provide closure to Commission proceedings and does not present parties with the opportunity to relitigate a matter fully addressed in the original order.<sup>15</sup>

## **ARGUMENT**

The Commission's ruling should be upheld. Nowhere in RESA's motion does it ever allege the Commission's decision to deny intervention was unlawful. The only other basis for rehearing is the Commission's decision was unreasonable. RESA never specifically argues the Commission's decision was unreasonable, but insists the Commission fundamentally misunderstood why RESA should be granted intervention. However, the Commission's reasoning was sound and RESA should not now be granted intervention. The Commission found Kentucky

---

<sup>12</sup> KRS 278.400.

<sup>13</sup> *Electronic Application of Duke Energy Kentucky, Inc. For a Certificate of Public Convenience and Necessity to convert its Wet Flu Gas Desulfurization System from a Quicklime Reagent Process to a Limestone Reagent Handling System at its East Bend Generating Station and For Approval To Amend Its Environmental Compliance Plan for Recovery By Environmental Surcharge Mechanism*, Case No. 2024-00152 (Ky. P.S.C. Order Dated April 2, 2025) quoting *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>14</sup> *Id.* Citing *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).

<sup>15</sup> *Electronic Big Sandy Water District's Unaccounted-For Water Loss Reduction Plan, Surcharge and Monitoring*, Case No. 2022-00301 (Ky. P.S.C. Order dated June 9, 2025).

does not offer retail choice for electric service and therefore RESA's alleged special interest is insufficient to justify intervention. RESA did not provide evidence of any actual members that participate in any meaningful way within the Commonwealth. There was no evidence presented that any member of RESA would supply any generation EKPC may seek.

RESA's motion for reconsideration states RESA did not claim to have expertise with tariffs as suggested by the Commission's Order.<sup>16</sup> However, RESA claims its understanding of tariffs give it a special interest in the proceedings.<sup>17</sup> RESA argues it should be permitted intervention because it participates in other state utility commission proceedings.<sup>18</sup> However, RESA acknowledges that its main purpose in other state utility commission proceedings is to advocate for customer choice which is inapplicable in Kentucky.<sup>19</sup>

RESA states that multiple utility regulatory commissions are, or have recently, dealt with data centers. Knowing that its position on having a special interest in the proceeding or an ability to assist the Commission is not tenable, RESA attempts to obfuscate the issue by listing state regulatory Commissions that are considering data center tariffs.<sup>20</sup> RESA cited a case that was before the Ohio Public Utility Commission regarding data centers,<sup>21</sup> an Indiana Utility Regulatory Commission matter,<sup>22</sup> a Virginia State Corporation Commission action, a Louisiana Public Service

---

<sup>16</sup> Motion for Reconsideration at 7.

<sup>17</sup> Motion for Reconsideration at 6.

<sup>18</sup> Motion for Reconsideration at 7-9.

<sup>19</sup> Motion for Reconsideration at 8.

<sup>20</sup> Motion for Reconsideration at 9-10.

<sup>21</sup> Motion for Reconsideration at 10.

<sup>22</sup> Motion for Reconsideration at 10.

Commission,<sup>23</sup> and a Federal Energy Regulatory Commission (“FERC”) proceeding<sup>24</sup> that are all considering large data centers. The only case where RESA participated in the data center consideration by a utility commission was Ohio. That becomes an important distinction because, Ohio is the only state of the four that has utility choice. Indiana, Virginia, and Louisiana do not allow customer choice for electric service. It is unclear if RESA requested intervention in the states without electric choice, but what is clear is that RESA cannot provide any meaningful participate in a state proceeding without customer choice.

Additionally, the standard for rehearing only permits information to be presented during the request for rehearing only if the additional evidence could not have been presented originally with reasonable diligence.<sup>25</sup> All of the information presented in RESA’s request for rehearing could have been presented originally if RESA had presented its request for intervention with reasonable diligence. The information surrounding other state utility commissions reviewing data center tariffs was available prior to the Commission’s initial ruling. The information related to RESA’s participation, or lack thereof, was available prior to the Commission’s initial ruling. RESA should not be allowed to supplement the record during its request for rehearing with this information it chose not to originally produce. Even if the Commission should choose to take this information into consideration, it is still not persuasive. Just because other states are reviewing data center tariffs with multiple intervenors does not mean this Commission should grant intervention to a party that does not have a special interest and would complicate the proceeding.

---

<sup>23</sup> Motion for Reconsideration at 11.

<sup>24</sup> Motion for Reconsideration at 11.

<sup>25</sup> KRS 278.400.

RESA has not satisfied its burden of proof and the Commission should not grant rehearing. As the Commission noted, RESA may still participate and provide comments related to EKPC's tariff in the public record.<sup>26</sup>

This 25<sup>th</sup> day of July, 2025.

Respectfully submitted,

*Heather S. Temple*

---

L. Allyson Honaker  
Heather S. Temple  
Meredith L. Cave  
HONAKER LAW OFFICE, PLLC  
1795 Alysheba Way, Suite 1203  
Lexington, Kentucky 40509  
(859) 368-8803  
allyson@hloky.com  
heather@hloky.com  
meredith@hloky.com

*Counsel for East Kentucky Power Cooperative, Inc.*

---

<sup>26</sup> July 1, 2025 Order at 6.

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing was transmitted to the Commission on July 25, 2025, and that there are no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to prior Commission Orders, no paper copies of this filing will be made.

*Heather S. Temple*  
\_\_\_\_\_  
*Counsel for East Kentucky Power Cooperative, Inc.*