COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF EAST KENTUCKY POWER COOPERATIVE, INC. AND ITS MEMBER DISTRIBUTION COOPERATIVES FOR UPDATES TO THE RENEWABLE ENERGY PROGRAM	)))))	CASE NO. 2026-00188

EAST KENTUCKY POWER COOPERATIVE, INC'S MOTION FOR REHEARING OR ALTERNATIVE MOTION FOR A DEVIATION

Comes now East Kentucky Power Cooperative, Inc. ("EKPC") and its sixteen owner-member distribution cooperatives ("Owner-Members"), by and through the undersigned counsel, pursuant to KRS 278.400, and respectfully requests the Kentucky Public Service Commission grant rehearing on its October 29, 2026 Order in the above-styled case. In the alternative, EKPC respectfully requests a deviation from 807 KAR 5:001, Section 8. In support of this Motion, EKPC states as follows:

INTRODUCTION

The Commission's July 20, 2026 Order opening this proceeding, found that, in accordance with 807 KAR 5:011, Section 8, only Inter-County Energy should provide notice of the proposed tariff revisions stating:

> The Commission, on its own motion, finds that Inter-County Energy should actively participate in this proceeding, as the utility serving current, affected customers. The remaining distribution cooperatives may choose to participate as each sees fit. Regarding the affected customers … the Commission finds that Inter-County Energy should provide notice of the proposed tariff revisions to Diageo and Maker's Mark in accordance with 807 KAR 5:011, Section 8.[1]

[1] Order (Ky. PSC July 20, 2026) at 3.

Inter County Energy provided proof of notice in the record on July 27, 2026 in accordance with 807 KAR 5:011, Section 8 and the Commission's Order.[2]

On October 29, 2026, the Commission issued a final order approving EKPC's modifications to Rate H – Wholesale Renewable Energy Program tariff ("Rate H"). The final order contradicts the July 20, 2026 Order and now requires EKPC's sixteen Owner-Members, even those who are not parties to this proceeding, to provide notice of the revised tariff to all customers or otherwise request a deviation.[3] EKPC respectfully requests rehearing on the Commission's October 29, 2026 Order requiring the sixteen Owner-Members to provide notice to customers not affected by the proposed tariff changes. The October 29, 2026 Order is unreasonable in this limited respect because 1) it is inconsistent with the requirements of 807 KAR 5:011, Section 8 and Commission precedent, and 2) the financial burden it places on EKPC's Owner-Members outweighs any benefit that could be realized by providing notice to all customers.

STANDARD OF REVIEW

KRS 278.400 permits rehearing when there has been new evidence not readily discoverable at the time of the hearing, to correct any material errors or omission, or to correct findings that are unreasonable or unlawful.[4] A decision is considered "unlawful" if it violates a statute or constitutional provision.[5] A Commission order is unreasonable when, "the evidence presented leaves no room for different of opinion among reasonable minds."[6]

[2] Proof of Customer Notice (filed July 27, 2026).

[3] Order (Ky. PSC October 29, 2026), Ordering Paragraph 5.

[4] KRS 278.400.

[5] *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).

[6] *Energy Regulatory Comm'n v. Kentucky Power Co.,* 605 S.W.2d 46, 50 (Ky. App. 1980).

ARGUMENT

807 KAR 5:011, Section 8 specifically states:

> A utility shall provide notice if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated **and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service**.[7]

The Commission historically does not require customer notice when requesting to initiate the tariff offering of a voluntary program.[8] The regulation only requires notice be given to those customers affected by the proposed change, hence the wording: "***will*** affect the amount a customer pays…" (emphasis added). The regulation does not say "will possibly affect." Here, the only customers affected are Diageo and Maker's Mark and they were provided notice in accordance with the regulation. No other customers, other than Diageo and Maker's Mark, will experience changes in the amount they pay for service or the quality, delivery, or rendering of their service. Therefore, based on the plain reading of the regulation, notice was appropriately given, and no further notice is required.

Here, if the sixteen Owner-Members were to provide notice to all customers by publishing in Kentucky Living Magazine, it would result in a total cost of over $355,000.00 which would ultimately be borne by ratepayers, all of whom, except for two, do not participate in this voluntary tariff. Utilities would incur hundreds of thousands of dollars of charges to their operating budgets for publishing notice for small tariff changes that have no impact upon their customers. The Commission's order does not consider the very high added costs of publishing customer notice for

[7] 807 KAR 5:001, Section 8.

[8] *See In the Matter of Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Implement a New Green Energy Option for Non-Residential Retail Customers*, Case No. 2019-00378; and *In the Matter of the Tariff Filing of Columbia Gas of Kentucky, Inc. to Implement a Small Volume Gas Transportation Service, to Continue its Gas Cost Incentive Mechanisms, and to Continue its Customer Assistance Program*, Case No. 1999-00165.

every tariff change, even ones that do not change the amount a customer pays for service received. The notice mandate in the Commission's October 29, 2026 Order is contrary to keeping expenses low to achieve greater affordability.

Moreover, residential customers cannot participate in EKPC's proposed tariff, it is strictly for industrial and commercial customers. The Commission's order states that a customer should be kept informed of opportunities to participate in certain programs; however, that reasoning would not apply here where residential customers would be more concerned with keeping their bills low rather than having the costs of providing this notice passed on to them for something they could not participate in even if they wanted to. And, if a commercial or industrial customer decides to take service under this voluntary tariff, they would be more likely to review the tariff before beginning that service and would not rely on a customer notice.

The Commission cited Case No. 2022-00049 for the proposition that customer notice of tariff changes must be given to all customer regardless of direct impact of changes.[9] However, Case No. 2022-00049 misinterprets the regulation. In Case No. 2022-00049, the Commission effectively required preemptive notice to nonexistent customers saying, "[t]he regulation requires notice to be given if the proposal affects the amount a customer pays. The regulation does not require that the tariff change has to affect every customer." This unique interpretation contradicts the plain language of the regulation that says notice is required for the customers that "will" be affected by the change. Otherwise, an expansive notice requirement knows no bounds. It could be said that EKPC's Owner-Members have to provide notice to every customer in the state because who is to say that they will not move into EKPC's service territory at some point in the future and would need to be provided with notice regarding a tariff that they cannot take service under. The

[9] See October 29, 2026 Order at p. 5-6 citing Case No. 2022-00049, *Electronic Application of Columbia Gas of Kentucky Inc. for Approval of the Green Path Rider Pilot Program*, (Ky. PSC Feb. 10, 2023), Order at 4.

Commission does not appear to have used this broad reasoning in any proceeding since that time. Requiring universal customer notice for every voluntary tariff would be a significant departure from the current system in place. Upending this system for a voluntary tariff that does not affect residential ratepayers is unreasonable and would not achieve the Commission's stated mission of "transparency."

For the foregoing reasons, EKPC respectfully requests the Commission grant rehearing of its October 29, 2026 Order requiring EKPC's sixteen Owner-Members to provide notice to all customers. Alternatively, EKPC, on behalf of its sixteen Owner-Members, respectfully requests the Commission grant deviations from the notice requirements of 807 KAR 5:011, Section 8 given that notice has already been given to the affected customers and the costs outweigh the benefits of providing any further notice to unaffected customers. This Commission previously found that where the cost of providing public notice would outweigh the benefit derived from such notice, there is good cause to deviate from the notice requirements.[10] This is especially true when the proposed service is voluntary and/or the effected customers are given appropriate notice.[11]

[10] *See Application of Louisville Gas and Electric Company and Kentucky Utilities Company to Install and Operate Electric Charging Stations in their Certified Territories, for Approval of an Electric Vehicle Supply Equipment Rider, and Electric Vehicle Supply Equipment Rate, and Electric Vehicle Charging Rate, Depreciation Rate, and for a Deviation from the Requirements from Certain Commission Regulations*, Case No. 2015-00355 (April 11, 2016 Order) (LG&E/KU requested deviation from the notice requirements on the grounds that the proposed service is voluntary and would not affect the amount that any customer pays for electric service or the quality, delivery, or rendering of a customer's service until that customer actually requests the proposed service and that the benefits from publication of notice are small in comparison to the costs of publication. The Commission found that good cause was shown as "the cost of providing public notice would outweigh the benefit derived from such notice.")

[11] *Id.* See also *Filing of East Kentucky Power Cooperative, Inc. to Request Approval of Proposed Changes to its Qualified Cogeneration and Small Power Production Facilities Tariff*, Case No. 2008-00128 (May 28, 2008 Order) (The Commission ordered the 16 owner members to file revised cogeneration/small power producer tariffs. The owner members requested deviation from the notice requirements. The PSC found the only customer in EKPC's system currently using the tariff was provided notice from TCRECC and therefore there was good cause for granting the coops request for deviation.)

WHEREFORE, for the foregoing reasons, EKPC respectfully requests the Commission grant this motion for rehearing or alternatively grant a deviation from the regulation.

This 11th day of November 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on November 11, 2026, 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.

Counsel for East Kentucky Power Cooperative, Inc.