

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On December 23, 2025, the Commission issued a final Order approving, in part, and denying, in part, East Kentucky Power Cooperative, Inc.'s (EKPC) application to amend its Environmental Compliance Plan (ECP) and recover costs through its Environmental Surcharge Mechanism (ESM).¹ In that Order, the Commission denied Project 44, Cooper Unit 2 Air Heater Basket and Seal Replacement (Project 44) from inclusion in EKPC's ECP and from recovery through its ESM.²

On January 7, 2026, EKPC filed a motion for rehearing pursuant to KRS 278.400 requesting reconsideration of the Commission's denial of Project 44.³ By Order entered January 26, 2026, the Commission granted rehearing for the limited purpose of further developing the evidentiary record concerning Project 44 and its relationship to previously approved Project 11, Cooper Unit 2 Air Quality Control System (Project 11).⁴

¹ Order (Ky. PSC Dec. 23, 2025).

² Order (Ky. PSC Dec. 23, 2025) at 15.

³ EKPC's Motion for Rehearing (Motion for Rehearing) (filed Jan. 7, 2026).

⁴ Order (Ky. PSC Jan. 26, 2026).

EKPC participated in an informal conference⁵ and responded to two rounds of rehearing data requests issued by Commission Staff.⁶ Vantage Energy Consulting, LLC (Vantage) assisted Commission Staff in reviewing EKPC's supplemental responses and the rehearing record.⁷ There are no intervenors in this matter. This matter now stands submitted for a decision on rehearing.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable minds."⁸ An order can only be unlawful if it violates a state or federal statute or constitutional provision.⁹

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission

⁵ Order (Ky. PSC Apr. 3, 2026).

⁶ EKPC's Response to Commission Staff's First Rehearing Request for Information (Staff's First Rehearing Request) (filed Feb. 20, 2026); EKPC's Response to Commission Staff's Second Rehearing Request for Information (Staff's Second Rehearing Request) (filed Apr. 13, 2026).

⁷ Order (Ky. PSC Oct. 21, 2025).

⁸ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

⁹ *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).

proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

Furthermore, KRS 278.183 authorizes recovery through an environmental surcharge for costs incurred to comply with federal, state, or local environmental requirements. To qualify for recovery, a project must be necessary to achieve or maintain environmental compliance and must constitute a reasonable and prudent compliance-related investment.

PROCEDURAL BACKGROUND

In the December 23, 2025 Order, the Commission denied inclusion of Project 44 in EKPC's ECP after finding that the record characterized the project as a replacement of end-of-life components rather than a discrete environmental compliance requirement.¹⁰ Because the Commission determined that Project 44 constituted routine plant maintenance, it was therefore not recoverable under KRS 278.183.¹¹

In its motion for rehearing, EKPC argued that the Commission's denial of Project 44's inclusion in its ESM was due to an incomplete explanation by EKPC of the relationship between Project 44 and the previously approved Project 11.¹² EKPC asserted that replacement of the air heater baskets and seals is necessary to maintain operation of environmental controls and that Project 44 should either qualify

¹⁰ Order (Ky. PSC Dec. 23, 2025) at 11–12.

¹¹ Order (Ky. PSC Dec. 23, 2025) at 10–12.

¹² Motion for Rehearing at 5.

independently as an environmental compliance project or be treated as an amendment to previously approved Project 11.¹³

April 10, 2026 INFORMAL CONFERENCE

Following EKPC's motion for rehearing, EKPC sought¹⁴ and was granted¹⁵ an informal conference, which was held in this matter on April 10, 2026. A memorandum summarizing the general discussions at the informal conference was filed in the record on May 11, 2026.¹⁶ On May 15, 2026, EKPC filed comments regarding the informal conference memorandum.¹⁷ EKPC stated that the memorandum did not recount questions and statements made by Vantage representatives during the informal conference.¹⁸ EKPC also pointed to billing entries referring to a "VEC Assessment Report" and argued that Vantage had made a recommendation to the Commission that should have been filed into the record pursuant to KRS 278.110(2).¹⁹

The Commission notes that an informal conference memorandum is intended to provide a short, concise summary of the principal matters discussed during the conference. It is not a transcript of every word that was said by each person participating in the informal conference. The Commission further notes that Vantage was retained as a consulting expert to assist Commission Staff in its review and analysis of the issues

¹³ Motion for Rehearing at 3–7.

¹⁴ EKPC's Motion for Informal Conference (filed Mar. 16, 2026).

¹⁵ Order (Ky. PSC, Apr.3, 2026).

¹⁶ Intra-Agency Memorandum and Attendance List (filed May 11, 2026).

¹⁷ EKPC's Comments on Informal Conference Memorandum (filed May 15, 2026).

¹⁸ EKPC's Comments on Informal Conference Memorandum at 1.

¹⁹ EKPC's Comments on Informal Conference Memorandum at 2.

presented in this case as contemplated by KRS 278.183(4). As a consulting expert, Vantage was not engaged or requested to provide a final report or recommendation to the Commission, rather assist Commission Staff in their analysis of the application. The final Order of the Commission, as with this Order on Rehearing, relied upon evidence in the record, not a report or recommendation from Vantage as no such report or recommendation was submitted to the Commission.

DISCUSSION AND FINDINGS

The Commission granted rehearing for the limited purpose of further developing the evidentiary record concerning Project 44 and its relationship to previously approved Project 11.²⁰ As stated above, in its motion for rehearing, EKPC attributed the Commission's prior determination to EKPC's incomplete explanation of that relationship.²¹ The underlying relationship between the projects, however, was known or reasonably available to EKPC during the original proceeding. Accordingly, EKPC's supplemental explanation²² does not constitute new evidence that was not readily discoverable at the time of the original proceeding under KRS 278.400. Nevertheless, the Commission has considered the supplemented rehearing record and finds that it does not demonstrate a material error or omission or establish that the December 23, 2025 Order was unreasonable or unlawful.

The Commission has reviewed EKPC's supplemental rehearing responses and the entirety of the rehearing record. Upon review, the Commission finds that EKPC has

²⁰ Order (Ky. PSC, Jan. 26, 2026).

²¹ Motion for Rehearing at 5.

²² Motion for Rehearing at 3–7.

not demonstrated that Project 44 constitutes an environmental compliance project recoverable under KRS 278.183 and affirms the denial of the request. Although the air heater equipment is associated with previously approved environmental control systems, the rehearing record continues to demonstrate that Project 44 primarily involves replacement of end-of-life components necessary for general plant operation and maintenance. The Commission finds that the weight of the evidence of record indicates that the need for replacement is driven by operational considerations, including cycling, temperature fluctuations, corrosion, and fouling, rather than a specific environmental compliance mandate.²³

The Commission further finds that EKPC has not identified any federal or state environmental regulation specifically requiring replacement of Cooper Unit 2 air heater baskets and seals.²⁴ While the project may assist in maintaining reliable operation of existing environmental control equipment, the rehearing record does not establish that Project 44 itself is required for environmental compliance within the meaning of KRS 278.183.

The Commission notes that Cooper Unit 2 operates at a relatively low-capacity factor.²⁵ As discussed in the rehearing record, the unit's low-capacity factor undermines EKPC's assertion that continuous environmental compliance obligations are driving the need for Project 44.²⁶

²³ EKPC's Response to Staff's Second Rehearing Request, Item 2.

²⁴ EKPC's Response to Staff's First Rehearing Request, Item 2a-2c; and EKPC's Response to Staff's Second Rehearing Request, Item 3.

²⁵ EKPC's Response to Staff's Second Rehearing Request, Item 1. For 2012–2025, Cooper Unit 2's capacity factor ranged from 16.02% to 20.90% and averaged 18.82%.

²⁶ EKPC's Response to Staff's First Rehearing Request, Item 2c.

Based upon the supplemented rehearing record, the Commission finds that EKPC has not demonstrated material error in the December 23, 2025 Order and has not presented sufficient evidence to justify reversal of the Commission's original determination regarding Project 44. Accordingly, the Commission affirms its denial of Project 44's inclusion in EKPC's ECP and recovery through ESM.

IT IS THEREFORE ORDERED that:

1. Following rehearing and review of the supplemented evidentiary record, the Commission affirms its December 23, 2025 finding that Project 44, Cooper Unit 2 Air Heater Basket and Seal Replacement, shall not be included in EKPC's Environmental Compliance Plan and shall not be recovered through EKPC's Environmental Surcharge Mechanism.
2. All remaining portions of the Commission's December 23, 2025 Order not in conflict with this Order remain in effect.
3. This matter is closed and removed from the Commission's docket.

Entered on this 25th day of August, 2026.

PUBLIC SERVICE COMMISSION



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Chair

Mary Pat Regan
Vice Chair

Andrew W. Wood
Commissioner

Barry Mayfield
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ATTEST:



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