

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On July 17, 2025, Retail Energy Supply Association (RESA) filed a motion for reconsideration of the Order denying intervention issued on July 1, 2025.¹ On July 25, 2025, East Kentucky Power Cooperative, Inc. (EKPC) filed its response,² and this matter now stands ready for a decision.

BACKGROUND

In the July 2, 2025 Order, the Commission found that RESA had not satisfied the special interest prong of the intervention analysis, and that allowing intervention “may result in unduly complicating the proceedings” and was “not likely to assist the Commission in its consideration of [sic], and disposition of this case.”³ In its motion for reconsideration, RESA argued that it has a unique market role and direct stake in EKPC’s tariff, which established a special interest not represented by any other party, and that the Commission overlooked its ability to assist without unduly complicating the proceeding.⁴

¹ RESA’s Motion for Reconsideration (filed July 17, 2025).

² EKPC’s Response to RESA’s Motion for Reconsideration (filed July 25, 2025).

³ Order (Ky. PSC July 2, 2025) at 10–11.

⁴ RESA’s Motion for Reconsideration at 4–7.

Essentially, RESA argued that it met both prongs of permissive intervention.⁵ Lastly, RESA asserted that other utility commissions that are addressing data center issues are allowing large groups of intervenors, which provides a diverse viewpoint and experience.⁶ RESA requested that the Commission reconsider its Order and grant intervention in this matter.⁷

On July 25, 2025, EKPC responded, arguing that the Commission's Order should be upheld as RESA did not satisfy either the "unlawful" or "unreasonable" basis for granting rehearing pursuant to KRS 278.400 and noted that Kentucky does not offer retail choice for electric service, and therefore, RESA's alleged special interest is insufficient to justify intervention.⁸ Furthermore, EKPC asserted that RESA did not provide evidence of any actual members that participate in any meaningful way within the Commonwealth, and that there was no evidence presented that any member of RESA would supply any generation EKPC may seek.⁹

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

⁵ RESA's Motion for Reconsideration at 4.

⁶ RESA's Motion for Reconsideration at 9–11.

⁷ RESA's Motion for Reconsideration at 12.

⁸ EKPC's Response to RESA's Motion for Reconsideration at unnumbered page 3.

⁹ EKPC's Response to RESA's Motion for Reconsideration at unnumbered pages 4–5.

evidence presented leaves no room for difference of opinion among reasonable minds.”¹⁰

An order can only be unlawful if it violates a state or federal statute or constitutional provision.¹¹

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

DISCUSSION AND FINDINGS

Having reviewed the motion and the record, the Commission finds that the motion for reconsideration should be denied. RESA’s motion presented no new evidence, it identified no material errors or omissions, nor did it allege that the Commission’s findings were unlawful or unreasonable. For example, RESA’s motion alleged that the Commission “narrowly define[d] the scope of this proceeding”¹² and that the Commission relied “incorrectly in RESA’s view”¹³ on its own precedent. By contrast, RESA’s motion did allege that it “might raise alternative generation supply constructs (within the bounds of Kentucky’s statutory and regulatory structure).”¹⁴ RESA’s motion for reconsideration is

¹⁰ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

¹¹ *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).

¹² RESA’s Motion for Reconsideration at 5.

¹³ RESA’s Motion for Reconsideration at 6.

¹⁴ RESA’s Motion for Reconsideration at 6.

clearly an attempt to relitigate the issue. Therefore, the motion failed to satisfy the standard for reconsideration established in KRS 278.400

The Commission notes, once again, that full permissive intervention in this proceeding is not the only manner for a party to participate. This proceeding is public and Commission regulation 807 KAR 5:001, Section 4(11)(e)(1–2), establishes the right of individuals or entities not granted intervention to file written comments regarding the subject matter of the case, which if filed, are included in the Commission’s record for the proceeding.

IT IS THEREFORE ORDERED that RESA’s motion for reconsideration is denied.

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PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:


Executive Director



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