

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	)	

O R D E R

On January 7, 2026, East Kentucky Power Cooperative, Inc. (EKPC), filed a motion,<sup>1</sup> pursuant to KRS 278.400, requesting reconsideration of the final Order entered December 23, 2025,<sup>2</sup> regarding denial of the recovery of Project 44, Cooper Unit 2 Air Heater Basket and Seal Replacement, as part of EKPC's Environmental Compliance Plan and Environmental Surcharge or allow cost recovery through its Environmental Surcharge to amend Project 11 to include the costs of replacing the already existing assets and allow cost recovery through its Environmental Surcharge.<sup>3</sup>

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

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<sup>1</sup> EKPC's Motion for Rehearing (Motion) (filed Jan. 7, 2026).

<sup>2</sup> Order (Ky. PSC, Dec. 23, 2025).

<sup>3</sup> Motion at 3.

evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>4</sup>

An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>5</sup>

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.

#### MOTION

EKPC asserts that the denial of Project 44 resulted from what it describes as an ineloquent explanation of the project<sup>6</sup> and its relationship to the Cooper Unit 2 Air Quality Control System, originally approved as Project 11.<sup>7</sup> EKPC contends that replacement of the air heater components is necessary to maintain the operability of environmental controls previously authorized for recovery under KRS 278.183.<sup>8</sup>

EKPC requests the Commission reconsider the denial based on the operational function of the equipment and allow record supplementation demonstrating why Project

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<sup>4</sup> *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>5</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).

<sup>6</sup> EKPC’s Response to Commission Staff’s Second Request for Information (Staff’s Second Request) (filed Sept. 24, 2025), Item 8.

<sup>7</sup> Motion at 5.

<sup>8</sup> Motion at 5-6.

44 should properly be treated as either (1) a recoverable environmental compliance investment or (2) an amendment to previously approved Project 11.<sup>9</sup>

### DISCUSSION AND FINDINGS

The Commission has reviewed EKPC's motion, the December 23, 2025 Order, and the record. EKPC asserts in its motion that the Commission's denial of cost recovery for Project 44 was "unlawful".<sup>10</sup> The Commission disagrees. The determination reached in the December 23, 2025, Order was based on the record as filed, including EKPC's own discovery responses that characterized Project 44 as replacement of end-of-life components,<sup>11</sup> and represented a lawful and reasonable application of KRS 278.183. Nothing in EKPC's motion establishes that the Commission exceeded its statutory authority or otherwise acted outside the bounds of governing law.

EKPC argued that there exists an undisputed record that Project 44 is a requirement for compliance with environmental rules, and therefore, the Commission's Order is unreasonable,<sup>12</sup> while simultaneously stating that its prior responses may have been "ineloquent" and that such responses may not have fully described the operational role of the Cooper Unit 2 air heater equipment or its relationship to previously approved Project 11.<sup>13</sup> The Commission finds that acknowledgment to indicate additional and relevant facts may exist that were not provided in the original proceeding.

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<sup>9</sup> Motion at 7.

<sup>10</sup> Motion at 3.

<sup>11</sup> EKPC's Response to Staff's Second Request, Item 8.

<sup>12</sup> Motion at 3.

<sup>13</sup> Motion at 5.

Because EKPC represents that it may now be able to provide clarifying technical and cost information, not because the Commission finds its prior determination unlawful or unreasonable, the Commission finds that limited rehearing is warranted for the purpose of supplementing the evidentiary record. Rehearing will allow the Commission to provide EKPC the opportunity to more fully explain whether Project 44 should properly be treated as (1) necessary to maintain compliance with an existing environmental obligation, eligible for recovery under KRS 278.183, or (2) an amendment to previously approved Project 11. The Commission reiterates that EKPC, as the applicant, bears the burden of proof and is expected to fully develop the evidentiary record, including through complete and responsive discovery responses.

The Commission finds that further development of the evidentiary record may assist in determining whether recovery of Project 44 through the environmental surcharge is appropriate. The Commission emphasizes that permitting limited rehearing does not modify the December 23, 2025 Order or authorize recovery of Project 44 at this time.

IT IS THEREFORE ORDERED that:

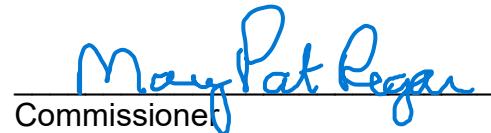
1. EKPC's motion for reconsideration is granted for the limited purpose of developing the record concerning Project 44 and its relationship to Project 11.
2. Commission Staff shall issue requests for information to EKPC, and EKPC shall respond to all such requests within the timeframe established in those requests.
3. Project 44 remains denied pending the outcome of rehearing, and no cost recovery related to Project 44 is authorized at this time.
4. The remainder of the December 23, 2025 Order not in conflict with this Order remains in effect.

PUBLIC SERVICE COMMISSION

Chairman



Commissioner



Commissioner

ATTEST:



Executive Director

ENTERED

**JAN 26 2026**

**AB**

KENTUCKY PUBLIC  
SERVICE COMMISSION

\*L. Allyson Honaker  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 1203  
Lexington, KY 40509

\*Greg Cecil  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P. O. Box 707  
Winchester, KY 40392-0707

\*Heather Temple  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 1203  
Lexington, KY 40509

\*Jacob Watson  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P. O. Box 707  
Winchester, KY 40392-0707

\*Meredith L. Cave  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 1203  
Lexington, KY 40509

\*East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P. O. Box 707  
Winchester, KY 40392-0707