COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On April 30, 2025, East Kentucky Power Cooperative, Inc. (EKPC) filed a tariff, through the Commission's electronic Tariff Filing System, to establish a Data Center Power Tariff (Rate DCP). Rate DCP will set the parameters by which EKPC and its distribution cooperatives will provide service to data centers. EKPC proposed an effective date of June 1, 2025. On May 23, 2025, the Commission entered an Order opening an investigation into the reasonableness of the tariff, suspending the tariff, and setting forth a procedural schedule.

PROCEDURAL HISTORY

By Order entered May 23, 2025, the Commission suspended the proposed tariff up to and including October 31, 2025, and also established a procedural schedule.[1] Nucor Steel Gallatin (Nucor)[2] and the Attorney General, by and through the Office of Rate Intervention, (Attorney General)[3] were granted intervention. Retail Energy Supply

[1] Order (Ky. PSC May 23, 2025).

[2] Order (Ky. PSC June 4, 2025).

[3] Order (Ky. PSC June 2, 2025).

Association (RESA) was denied intervention in this matter.[4] EKPC filed direct testimony on June 16, 2025. EKPC has responded to four requests for information from Commission Staff.[5] EKPC responded to one request for information from the Attorney General.[6] There have been public comments filed; two of which will be discussed subsequently in this Order.[7] EKPC[8] and the Attorney General[9] requested a decision on the record.[10] The matter now stands submitted for a decision.

BACKGROUND

EKPC is a not-for-profit, rural electric cooperative corporation established under KRS Chapter 279 with its headquarters in Winchester, Kentucky. Pursuant to various agreements, EKPC provides electric generation capacity and electric energy to its 16 Owner-Member Cooperatives (Owner-Members) which, in turn, serve over 570,000 Kentucky homes, farms and commercial and industrial establishments in 89 Kentucky counties. EKPC's transmission system is operated by PJM Interconnection, LLC (PJM),

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[4] Order (Ky. PSC July 1, 2025), ordering paragraph 3; Order (Ky. PSC Aug. 6, 2025), rehearing denied.

[5] EKPC's Response to Commission Staff's First Request for Information (Staff's First Request) (filed July 14, 2025); EKPC's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Aug. 7, 2025); EKPC's Response to Commission Staff's Third Request for Information (Staff's Third Request) (filed Sept. 2, 2025); EKPC's Response to Commission Staff's Fourth Request for Information (Staff's Fourth Request) (filed Oct. 15, 2025).

[6] EKPC's Response to the Attorney General's First Request for Information (Attorney General's First Request) (filed July 14, 2025).

[7] The Public Comments for this case are available at https://psc.ky.gov/Case/ViewCaseFilings/2025-00140/Public.

[8] EKPC's Motion to Submit the Case on the Record (filed Sept. 10, 2025).

[9] Attorney General's Response to Motion to Submit (filed Sept. 12, 2025).

[10] On October 22, 2025, EKPC filed Errata Direct Testimony of David Samford along with an updated proposed tariff. The testimony corrected two issues on the previously proposed tariff: a clerical error and a typo regarding a reference and the reference location. No substance edits to the proposed tariff were made.

of which EKPC has been a fully integrated member since June 1, 2013. PJM is a regional transmission organization (RTO) regulated by the Federal Energy Regulatory Commission (FERC).[11]

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.[12] Kentucky law provides that a utility may only demand, collect and receive fair, just and reasonable rates[13] and that the service it provides must be adequate, efficient and reasonable.[14] KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

PROPOSED TARIFF

EKPC stated that the proposed tariff will help set the parameters by which EKPC and its Owner-Members will provide service to data centers.[15] According to the initial filing, the proposed tariff assists in setting guidelines in place to assure that commercial relationships are fair, just and reasonable without giving rise to undue discrimination either in favor of, or in opposition to, this new category of load.[16] EKPC averred that Rate DCP is designed to assure that risks are appropriately identified, characterized and allocated between new data center load and traditional residential, commercial and

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[11] PJM- PJM History, https://www.pjm.com/about-pjm (Last accessed Oct. 20, 2025).

[12] KRS 278.040(2).

[13] KRS 278.030(1).

[14] KRS 278.030(2).

[15] Letter to Executive Director Linda Bridwell with the initial Electronic Tariff Filing (Initial Letter) at 1 (filed Apr. 30, 2025).

[16] Initial Letter at 1.

industrial loads.[17] The tariff anticipates several details but according to EKPC, a special contract will be executed with the data center as well.[18]

To be eligible to receive service pursuant to Rate DCP, a party must be a retail customer of an Owner Member Cooperative and own or operate, or propose to own or operate, an “Eligible Data Center”.[19] If a current or prospective customer meeting the criteria for a “qualifying customer”[20] effective as of the date of this tariff, the customer must take service pursuant to Rate DCP.[21] EKPC defined an “Eligible Data Center” as meeting the following criteria: 1) at any time before, on or after the effective date of this Tariff, Expected or actual peak of the real-time energy demand of the Data Center is 15,000 kW or greater; (Load size test) and 2) expected or actual monthly load factor for the Data Center is 60 percent or greater (Load factor test).[22]

According to EKPC, aggregation of load is defined as expected or actual peak real-time energy demand and expected or actual monthly load factor of a Data Center will be taken together and aggregated with the expected or actual peak real-time energy demand and expected or actual monthly load factor of the following: any other Data Center owned or operated by Customer located at the same location; any non-Data Center electricity consuming facilities owned or operated by Customer located at the same location; and

[17] Initial Letter at 1.

[18] Direct Testimony of David Samford (Samford Direct Testimony) (filed June 16, 2025) at 5.

[19] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 103.

[20] It should be noted that the term “qualifying customer” used throughout the remaining portions of the proposed tariff is subject to EKPC’s definition and not to be confused with any other possible definitions used within the industry.

[21] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 103.

[22] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 103.

any other Data Centers owned or operated by Customer located at a different location but within one or more of EKPC's Owner-Members' service territories.[23] Each individual Co-Located Data Center, Co-Located Non-Data Center and Grouped Data Center will be metered and billed separately on an individual basis, and will be subject to separate contracts.

According to EKPC each data center will be required to enter into a special contract for service and the contract must be approved by the Commission.[24] Each of the special contracts will be negotiated between EKPC, its Owner-Members in whose territory the data center would locate, and the particular data center customer.[25] According to EKPC, the special contract will set forth any conditions precedent to each of EKPC's and Owner-Members' obligations to sell or deliver energy, capacity or any other products.[26] Such terms may include: Service location for each Eligible Data Center; Initial term length and renewal periods; Purchase and sale obligations, including contract capacity and load ramp schedule; Rates and pricing structure; Billing and payment between the parties, including any minimum billing demand; metering; Level of firmness of service and curtailment; Indemnification; Events of default and remedies for events of default; Termination rights; Force majeure; Limits on liability; Changes of law; Choice of law and venue, which shall be Kentucky; and Confidentiality obligations.[27]

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[23] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 103-104.

[24] Samford Direct Testimony at 5.

[25] Samford Direct Testimony at 5.

[26] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 105.

[27] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 105.

Rate DCP includes a requirement for EKPC to work with data centers to develop and implement a power supply plan to support the customer's load with the following: Dedicated Resources supplied by EKPC or the data center; bilateral power and capacity purchases; or a combination of these resources.[28] In the case of data center loads exceeding 250 MWs, one or more dedicated resources will be required as part of the power supply plan and the Dedicated Resource Rider will apply.[29] EKPC stated that the 250 MW threshold was selected because that is intended to be the approximate value of a dedicated CT unit, and EKPC believes that any load exceeding that amount should be served with Dedicated Resources to help minimize risk to non-data center loads.[30]

The selected resources will be offered into the PJM Market[31] and PJM will dispatch resources based on the economics and transmission availability.[32] Eligible data center demand will be served by PJM through the day-ahead, real-time energy, and ancillary services markets and capacity market.[33] EKPC stated it will not execute a contract until EKPC has determined, and "the Commission has approved (if needed)",[34] a selected resource mix sufficient to meet the anticipated contractual load requirements of the Eligible Data Center plus any associated PJM reserve requirements without harming

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[28] Samford Direct Testimony at 6.

[29] Samford Testimony at 6.

[30] EKPC's Response to Staff's First Request, Item 7.

[31] PJM Interconnection is a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia. PJM - About PJM, https://www.pjm.com/about-pjm/who-we-are/territory-served (last accessed Oct. 20, 2025).

[32] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 106.

[33] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 106.

[34] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 106.

EKPC's non-Rate DCP customers.[35] According to EKPC, it also will not begin commencement of electric service under Rate DCP or any contract until the selected resource mix is obtained, secured, and available to provide electric service to the applicable Eligible Data Center.[36]

Electric service to Eligible Data Centers will be served exclusively by the Owner-Members.[37] EKPC stated that this does not prevent an Eligible Data Center from utilizing any other power supply source that: (1) is used solely and exclusively as emergency back-up to serve contractual load requirement that EKPC and the Owner-Members are unable or fail to satisfy; (2) operates autonomously from EKPC's and the Owner-Members' system; (3) has been proposed by the Eligible Data Center in its application for service and load study; and (4) EKPC and the Owner-Members have determined that use of such other power supply source will not pose reliability or safety concerns, pose a threat to EKPC's or the Owner-Members' owned or leased equipment, or violate any law, regulations, or tariffs.[38] The tariff set forth that all costs associated with serving Eligible Data Centers will be allocated to the Eligible Data Centers.[39]

EKPC stated that rates to Eligible Data Centers will be included in the special contract.[40] The proposed tariff allows EKPC and its Owner-Members to utilize weekly

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[35] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 106.

[36] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 106.

[37] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 107.

[38] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 107.

[39] Initial letter at 2.

[40] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 109.

billings to prevent any detrimental impacts to cash flows, carrying accounts and interest on accounts.[41]

The tariff requires Eligible Data Centers to provide a prepayment deposit equal to a rolling two-month period of expected maximum monthly bills to the Owner-Members that can be adjusted no more frequently than once per month.[42] EKPC and the Owner-Members can draw on the prepayment deposit immediately upon delivery of the applicable invoice or for any other amounts due under the contract.[43] When EKPC or the Owner-Members draws on a prepayment deposit, the Eligible Data Center will be required to replenish it within seven days.[44] Rate DCP also includes several other provisions under which additional collateral may be required.[45]

Eligible Data Centers will be required to submit an application for service to EKPC on a form supplied by EKPC.[46] The application form will have to include all the information necessary for EKPC to determine the requirements for serving the prospective customer and to perform a suitable load study.[47] A minimum application fee of $75,000 will be required, with an additional $1,000 per additional MW of final expected load over 15,000 kW, subject to a $250,000 cap.[48]

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[41] Initial letter at 2.

[42] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 110.

[43] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 110.

[44] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 110.

[45] Initial letter at 2; Rate DCP Tariff P.S.C. No. 35.

[46] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 114.

[47] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 114.

[48] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 114.

Rate DCP does contain a provision that allows EKPC to deviate from its terms, with Commission approval, for good cause shown.[49]

EKPC included its Dedicated Resource Rider as an attachment to the tariff for Rate DCP.[50] The Dedicated Resource Rider sets forth the requirements and conditions that must be met if the dedicated resource is a qualifying customer supplied dedicated resource or a EKPC supplied dedicated resource.[51] The Dedicated Resource Rider allows EKPC to participate in or accommodate project financing with respect to an EKPC supplied dedicated resource.[52]

PUBLIC COMMENTS

Appalachian Citizens' Law Center, Inc., Kentucky Resources Council, Inc., and Kentucky Conservation Committee

On September 25, 2025, Appalachian Citizens' Law Center, Inc., Kentucky Resource Council, Inc., and Kentucky Conservation Committee (collectively, Public Interest Commenters), submitted a public comment addressing the tariff filing. Public Interest Commenters argued that EKPC's proposed tariff was comprised of too few specific items, leaving "many of the most important aspects of ratemaking and design" to the special contract.[53] Public Interest Commenters stated that the current proposal would lead to inconsistencies and, ultimately, cause EKPC to be at a disadvantage in

[49] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 115.

[50] Rate DCP Tariff P.S.C. No. 35, Original Sheet Nos. 116–118.

[51] Rate DCP Tariff P.S.C. No. 35, Original Sheet Nos. 116–118.

[52] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 118.

[53] Public Interest Commenters' Public Comment (filed Sept. 25, 2025) at 4.

negotiations with large economic development projects.[54] Public Interest Commenters suggested that the tariff should include specific non-negotiable terms for:

- A more comprehensive application process, including long-term feasibility study, marginal cost study, and adequate fee to cover related expenses.
- Cost allocation and recovery, including:
  - what specific costs are expected to be caused by data centers, and rates designed to ensure they are recovered;
  - minimum billing provisions, such as minimum demand charges and meter fees, requiring data centers pay at least 90% of their contracted demand each month; and
  - termination of service provisions, requiring data centers taking service under the tariff to contract for a minimum amount of time not below 15 years, and requiring notice before termination of at least 5 years after that time.
- Requirements for interruption and consideration of demand response and curtailment of service during peak periods of service during system load shedding events.[55]

The Public Interest Commenters stated that "there is insufficient information on how the process proceeds, what details are required, what studies will be conducted, and how they will determine the details of the rates and requirements under which prospective data centers will take service."[56] The Public Interest Commenters cited to a May 2025 report by Elevate Energy Consulting and GridLab, which identifies the specific data that should be included with each application.[57]

Furthermore, the Public Interest Commenters raised concerns about EKPC only performing one study for each new applicant under the tariff.[58] EKPC stated that the

[54] Public Interest Commenters' Public Comment at 4.

[55] Public Interest Commenters' Public Comment at 5.

[56] Public Interest Commenters' Public Comment at 5.

[57] Public Interest Commenters' Public Comment at 6.

[58] Public Interest Commenters' Public Comment at 6.

purpose of the study is “to determine the costs of interconnecting the applicable data center to EKPC’s transmission system,” but the Public Interest Commenters suggested that the application fee be sufficient to cover a more comprehensive feasibility study and a marginal cost study.[59] The Public Interest Commenters also believe that the “application fee itself lacks adequate explanation or justification. There is no basis for the proposed fee minimum or for any fee cap.”[60]

Public Interest Commenters argued that the Rate DCP fails to fully protect existing customers from potentially subsidizing investments to serve new large loads.[61] The Public Interest Commenters argued that they are concerned that the proposed individually negotiated special contracts would allow multi-national conglomerates to engage in lopsided negotiations that lack robust public review, and they would recommend that “the tariff include a term directly assigned to large load customers certain costs associated with delivering service to those customers as determined by the marginal cost of service study, without any exception for ‘separate agreements.’”[62]

Additionally, the Public Interest Commenters raised concerns with reimbursement in the event of early termination, stating that the proposed tariff does not explain how termination occurs, whether the collateral posted will be sufficient to cover the remaining costs, or what rights EKPC maintains in a bankruptcy proceeding.[63] The Public Interest Commenters also expressed concerns with requiring a dedicated resource with loads

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[59] Public Interest Commenters’ Public Comment at 10.

[60] Public Interest Commenters’ Public Comment at 10.

[61] Public Interest Commenters’ Public Comment at 11–12.

[62] Public Interest Commenters’ Public Comment at 13.

[63] Public Interest Commenters’ Public Comment at 14–15.

above 250 MWs.[64] With PJM facing significant pressure in capacity markets, the Public Interest Commenters argued that a requirement for all data centers above 100 MW to provide a dedicated resource would better protect customers against the supply issues caused by large loads.[65]

Public Interest Commenters argued that the tariffs should include provisions that contemplate both interruption and curtailment of service.[66] The Public Interest Commenters argued that "all contracts for large loads should include provisions related to the occasional need to interrupt service to safeguard the grid" but that "it is important that the tariff itself asserts that a condition of taking power under the tariff is that the customer agrees to service interruptions when load shedding events occur."[67] Furthermore, the Public Interest Commenters believe that EKPC should include provisions that anticipate that data centers will come to negotiations with demand response programs, and if specifically included in the tariff, EKPC will be better positioned to make the most of coming opportunities.[68]

Public Interest Commenters believe that, due to the impacts on the public utility systems, a general investigation into the impacts of data centers should be conducted and focus on cost allocation and protections for current ratepayers, impacts on the

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[64] Public Interest Commenters' Public Comment at 15–16.

[65] Public Interest Commenters' Public Comment at 15–16.

[66] Public Interest Commenters' Public Comment at 16–18.

[67] Public Interest Commenters' Public Comment at 16.

[68] Public Interest Commenters' Public Comment at 19.

generation and transmission systems in the Commonwealth, and opportunities to protect each of the above.[69]

RESA

On September 30, 2025, Retail Energy Supply Association (RESA) submitted a public comment addressing the tariff filing. RESA argued that the proposed tariff is missing clarity and transparency on many essential details necessary to encourage economic development in the region.[70] RESA suggested the following:

- The bilateral tariff provisions should be revised to emphasize the need for customer input, to authorize customers to be part of the process for selecting terms and conditions of the bilateral market purchases, and to clarify that virtual PPAs are not covered by the bilateral purchase provisions of the tariff.[71]
- The Qualifying Customer-Supplied Dedicated Resource provisions should be revised to eliminate the behind-the-meter prohibition or clarify that it does not prohibit co-location, and to allow third parties to build and operate a co-located plant.[72]

RESA cites to several examples from other states that authorize customer involvement in the generation procurement process.[73] The Arizona Corporation Commission approved an Alternative Generation Rate Rider (Rider AG-X) that allows qualifying customers to contract with third-party generation service providers while the Arizona Public Service Company facilitates delivery.[74] In Virginia, the State Corporation

[69] Public Interest Commenters' Public Comment at 19.

[70] RESA's Public Comment (filed Sept. 30, 2025) at 2.

[71] RESA's Public Comment at 3–10.

[72] RESA's Public Comment at 10–14.

[73] RESA Public Comment at 4–5.

[74] RESA Public Comment at 4.

Commission authorized a renewable program that allows large industrial and commercial customers to select the amount of renewable generation they want to purchase, as well as the type of energy.[75] RESA states that, as proposed, EKPC's Rate DCP lacks specific details about how customers can participate in the process, which is likely to create market confusion.[76]

RESA states that as proposed, Rate DCP lacks specific details on what criteria EKPC would use to select the generation supply and on what process a Rate DCP customer would have to provide input to EKPC on the type of generation supply that would meet their needs.[77] RESA states that there is little downside, but a lot of upside, for providing the Rate DCP customer with flexibility.[78]

In regards to virtual power purchase agreements (VPPA), RESA states that since VPPAs are a financial instrument and don't have the same physical delivery characteristics of a traditional power purchase agreement, the Commission should find that nothing in the proposed Rate DCP should restrict the ability of customers to enter into a VPPA.[79] RESA also states that the Commission should interpret the bilateral contract provision in Rate DCP as requiring a physical delivery requirement.[80]

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[75] RESA Public Comment at 5.

[76] RESA Public Comment at 6.

[77] RESA Public Comment at 6–7.

[78] RESA Public Comment at 9.

[79] RESA Public Comment at 10.

[80] RESA Public Comment at 10.

RESA argued that Rate DCP as proposed lacks clear standards for the manner in which a data center customer could construct a qualifying customer-supplied resource.[81] Specifically, RESA states that questions remain regarding who may own the generation facility and the conditions under which customer-constructed generation would be developed and operated.[82] RESA argues that because of this lack of clarity, projects of this size would be unlikely to move forward.[83]

RESA argued that the proposed tariffs should be modified to permit co-located generation and remove the behind-the-meter prohibition.[84] RESA states that co-located generation can reduce the need for transmission upgrades.[85] RESA also argued that co-located generation can help address the time disparity between data center construction and transmission infrastructure and interconnection timelines.[86] RESA stated that removing the behind-the-meter prohibition would allow data centers to obtain power prior to the PJM interconnection process being finalized and/or prior to transmission upgrades occurring.[87]

DISCUSSION AND FINDINGS

As the Commission has noted on numerous occasions over the course of the last several years, demand for electricity is currently in a state of flux, with high projected

[81] RESA Public Comment at 10.

[82] RESA Public Comment at 10.

[83] RESA Public Comment at 11.

[84] RESA Public Comment at 12.

[85] RESA Public Comment at 12.

[86] RESA Public Comment at 13.

[87] RESA Public Comment at 14.

demand coupled with significant uncertainty about whether, and/or when, demand may materialize. Nationally, projections from regional transmission organizations (RTOs) such as PJM and the Midcontinent Independent System Operator, Inc. (MISO) project significant, perhaps unprecedented, growth in electrical demand for capacity and energy driven largely by artificial intelligence (AI) infrastructure associated with data centers. PJM's 2025 long-term load forecast projects nearly 30 GW of new load will enter its territory by 2030.[88] The proliferation of data centers is part of the reason that demand for electricity is growing at the fastest pace in years.[89] PJM is also exploring how to integrate large load customers rapidly and reliably without risking an electricity supply shortage.[90]

The resulting high level of uncertainty complicates the long-term planning process that utilities rely on to make costly generation and transmission decisions.[91] This is because utilities must balance their mandate to serve current ratepayers who will be impacted by decisions to construct new generation and transmission infrastructure against their need to have sufficient headroom to reliably serve new load as it materializes on the grid for decades to come.

[88] *2025 Long-Term Load Forecast Report Predicts Significant Increase in Electricity Demand* (Jan. 30, 2025), https://insidelines.pjm.com/2025-long-term-load-forecast-report-predicts-significant-increase-in-electricity-demand/; *2025 PJM Long-Term Load Forecast Report* (Jan. 24, 2025), https://www.pjm.com/-/media/DotCom/library/reports-notices/load-forecast/2025-load-report.pdf.

[89] *2025 Long-Term Load Forecast Report Predicts Significant Increase in Electricity Demand.*

[90] *PJM Kicks Off Initiative to Balance Reliability With Large Load Growth* (Sept. 17, 2025), https://insidelines.pjm.com/pjm-kicks-off-initiative-to-balance-reliability-with-large-load-growth/.

[91] A utility is expected to file an integrated resource plan every three years with the Commission outlining its plans for the next 15 years.

Because a single data center, especially one qualifying as a hyper-scaler,[92] has the potential to materially impact a utility's load forecast, and the reliability of its resources, data centers have garnered significant public attention.[93] Of course, the risks associated with data centers must be weighed against potential benefits; and the Commission certainly recognizes the benefits to Kentucky cities and counties if they are able to secure a data center customer. In fact, in HB 775, the General Assembly expanded its tax incentives for qualifying data centers significantly, providing a clear signal of its intent to compete with other states for data center infrastructure. The Commission will review DCP Tariffs like all tariffs, on a utility-by-utility basis and address specific individual needs.

For these reasons, the Commission finds EKPC's proposed Rate DCP Tariff is approved, except as modified by this Order.

<u>Application Fee</u>

EKPC's proposed Rate DCP Tariff provided that a minimum application fee of $75,000 will be required, with an additional $1,000 per additional MW of final expected load over 15,000 kW, subject to a $250,000 cap.[94] In response to Staff's First Request,

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[92] "Hyperscalers are large-scale data centers that provide a wide range of cloud computing and data solutions for businesses that need vast digital infrastructure, processing, and storage." Karl Montevirgen, *The rise of hyperscalers: Reshaping cloud computing and business* https://www.britannica.com/money/hyperscaler-data-centers (last accessed Oct. 20, 2025).

[93] And indeed, as recent news makes clear, public sentiment regarding data centers appears divided and corporations attempting to locate data center facilities in the Commonwealth have experienced meaningful pushback. For example, the Oldham County data center project, originally identified in this case by Louisville Gas &Electric Company and Kentucky Utilities under its *nom de guerre* "Project Lincoln," was recently withdrawn following significant public pushback. *See,* Matthew Keck, *Plans for $6B data center in Oldham County scrapped amid pushback* (July 3, 2025) *https://www.wlky.com/article/data-center-oldham-county-scrapped/65291482*.

[94] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 114.

Item 3, EKPC provided the following chart indicating the breakdown of the application fee:[95]

Cost	Amount
Engineering & Construction (Internal)	33,935
Engineering & Construction (Consulting)	32,400
Transmission (Internal)	17,424
Transmission (Consulting)	47,520
Power Supply (Internal)	6,539
Economic Development (Internal)	34,853
Economic Development (External)	20,000
Legal (External Counsel)	75,000
Total	267,671

The Public Interest Commenters argued that the application fee lacks adequate explanation or justification.[96] In response to Staff's Fourth Request, Item 1, EKPC explained that the fee would be payable to EKPC, as Owner-Members are not expected to incur significant costs, but once a project moves forward, the Owner-Members would have the ability to recover any additional costs through agreements with the data centers.[97] Additionally, EKPC provided that, in the event that costs exceed the application fee cap, the excess costs "would be absorbed by EKPC as a cost of doing business, and at the appropriate time, be included within its base rates."[98] However, EKPC previously

[95] EKPC's Response to Staff's First Request, Item 3.

[96] Public Interest Commenters' Public Comment at 5.

[97] EKPC's Response to Staff's Fourth Request, Item 1.

[98] EKPC's Response to Staff's Fourth Request, Item 2.

stated that "[t]he data center would be required to pay all costs associated with providing it service."[99] To ensure that no costs are passed onto non-qualifying customers, the Commission finds that each qualifying customer should be responsible for paying all associated costs with providing it service, including all costs related to the application fee. As such, the application fee cap should be removed from the proposed tariff and no costs should be absorbed by EKPC regardless of whether EKPC requests recovery in base rates as part of a subsequent application for a general rate adjustment. EKPC should track actual expenditures for a prospective Rate DCP customer, and those costs should be passed on to that customer pursuant to the tariff or special contract in full.

Deposit

As discussed above, the tariff provides for a prepayment deposit equal to a rolling two-month period of expected maximum monthly billings to the distribution cooperative that can be adjusted no more frequently than once per month. The tariff allows for EKPC and the distribution cooperative to draw on the prepayment deposit immediately upon delivery of the applicable invoice or for any other amounts due under the contract. The Commission notes that there are no standards set forth in the tariff as to what facts or circumstances may constitute grounds for additional credit. Unfortunately, a utility is not generally a secured creditor in a bankruptcy proceeding.[100]

The Commission finds that EKPC should require at least a six-month period of expected maximum monthly billings instead of two months. A six-month period would allow for more protection for other rate payers as well as EKPC, especially in light of the

[99] EKPC's Response to Staff's First Request, Item 19.

[100] 11 U.S.C. § 366.

new type of customer and the lack of foundational knowledge as to the impact on this utility. The Commission also finds that EKPC may include language to revise the length of a rolling deposit amount after a two-year period. The Commission notes that EKPC would have a historical basis to make changes, if necessary. However, even with that provision, EKPC should never maintain less than the two months of expected maximum monthly billings originally proposed in this tariff.

Special Contracts

As presented, EKPC's proposed Rate DCP Tariff states that all qualifying customers would be required to enter into a special contract, which would set forth any condition precedent to each of EKPC's and Owner-Members' obligations to sell or deliver energy, capacity, or any other products.[101] Additionally, as stated above, the special contract would include EKPC's list of minimum contract terms. The Public Interest Commenters expressed concern with the lack of terms EKPC presented in the tariff and argued that the tariff itself should include more specific terms for consistency and transparency.[102]

The Commission finds that EKPC's proposed Rate DCP Tariff is acceptable and negotiations of specific terms between EKPC, its Owner-Members, and any qualifying customer, should take place in a special contract. However, the Commission will require to specifically state that all special contracts for service under Rate DCP shall be reviewed by the Commission. In addition, special contracts should be specific to the territory of the member cooperative and based on the utility's operational characteristics to protect its

[101] Rate DCP Tariff P.S.C. No. 35, Original Sheet No. 105.

[102] Public Interest Commenters' Public Comment at 4–5.

customers. The Commission further finds that all special contracts, and any deviations from the tariff or from the special contract itself, are subject to Commission review and approval.

When a special contract is proposed, the Commission finds that all contracts should include all the items listed within the case filing as items to be covered; however, the Commission will specifically also require an evaluation as to whether the collateral posted would be sufficient to cover the remaining costs, and what rights EKPC would maintain during a bankruptcy proceeding. The Commission will look favorably on special contracts that include language that tracks back up generation and explores demand-side management programs. Additionally, EKPC shall notify the Commission upon any transfer of rights between the parties of the special contract, including but not limited to, rights transferred between a parent company and any subsidiary. The Commission finds that, if any purchase power agreements (PPA) are required under this tariff, they may be subject to Commission review and approval pursuant to KRS 278.300 as an evidence of indebtedness. In Administrative Case No. 350, the Commission encouraged, but did not require, utilities to file long-term power purchase agreements for pre-approval pursuant to KRS 278.300, stating:

> In addition, these contracts may well require prior approval under KRS 278.300 if they constitute evidence of indebtedness. In particular, the inclusion in such contracts of minimum payment obligations or take/pay provisions may necessitate prior approval.[103]

[103] Administrative Case No. 350, *The Consideration and Determination of the Appropriateness of Implementing a Ratemaking Standard Pertaining to the Purchase of Long-Term Wholesale Power by Electric Utilities as Required in Section 712 of the Energy Policy Act of 1992* (Ky PSC. Oct. 25, 1993), final Order at 8-9.

In subsequent reviews of power purchase agreements, the Commission affirmed that the KRS 278.300 standard of review applied when the agreements included minimum obligation or take/pay provisions. For example, in Case No. 2014-00321, Louisville Gas & Electric Company (LG&E) and Kentucky Utilities (KU) (jointly, LG&E/KU) requested a declaratory order whether approval under KRS 278.300 was required for a firm generation capacity purchase agreement that contained minimum payment obligations and minimum production requirements.[104] The Commission explained that:

> The minimum payment obligations in the form of fixed capacity and O&M charges and the requirement that [LG&E/KU] take a minimum amount of production over the term of the Agreement constitute long-term financial obligations that are appropriate for Commission review and approval under KRS 278.300.[105]

In addition to a review under KRS 278.300, the Commission will also review a purchase power agreement under the standards established in KRS 278.020(1) if the financial and operational impact of the agreement on ratepayers is the same as if new generation were being constructed.

COMMUNITY ENGAGEMENT

Community resistance to data center development is a significant, bipartisan trend across the U.S. Of the 28 States where hyperscalers and co-developers have proposed projects over 50 MW, 142 advocacy organizations are actively involved in blocking the associated projects.[106]

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[104] Case No. 2014-00321, *Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Declaratory Order and Approval Pursuant to KRS 278.300 for a Capacity Purchase and Tolling Agreement* (Ky. PSC Apr. 29, 2015).

[105] Case No. 2014-00321, (Ky. PSC Apr. 29, 2015), Order at 6-7.

[106] See *Data Center Watch Report*, (May 13, 2025) https://www.datacenterwatch.org/report.

To mitigate the community resistance to locating a data center in EKPC's territory, the Commission encourages EKPC to collaborate with data center developers to proactively address community concerns through an engagement program that includes early intervention, transparent communication, emphasizes community benefits by prioritizing local hiring, addressing environmental concerns, and being upfront about potential impacts including aesthetics and noise abatement programs. Examples of early intervention include starting early and engaging with the local community representatives, local authorities, and multiple stakeholders early during the project conceptual phase before project plans are finalized and to share information about the project's scope, including size, timeline, and potential impacts.

For transparent communication, EKPC could consider hosting public meetings and open houses to provide opportunities for local residents to ask questions, voice concerns, and receive accurate information directly from EKPC, developers and industry experts; developing mechanisms for ongoing dialogue, such as advisory boards or liaison roles, to address concerns throughout the data center's life; utilizing various social media systems to transfer information and answer common questions; continue developing a relationship with the local media in regards to data centers. When engaging with the community, EKPC along with data centers, could highlight benefits such as the potential for job creation (both during construction and during operation); increased tax revenue and potential partnerships with local businesses; focus on investment in local infrastructure improvements including the power grid and/or water infrastructure. Such community engagement communications should also include factual information about any potential downsides or risks the data center may pose to the community and power supply. The Commission also encourages EKPC to continue to collaborate with data centers to determine data center developer needs such as the expected load and ramp-up rate, the data load pattern, the most cost-effective means of providing back-up power, and the Uninterruptible Power Supply requirements. Increased collaboration between utilities and data center developers can help to maximize the resiliency, power quality and efficiency of the power supply and delivery infrastructure. A transparent exchange of technical specifications, growth projections, and community priorities can transform potential obstacles into collaborative opportunities.

IT IS THEREFORE ORDERED that:

1. EKPC's Rate DCP tariff is approved, as modified in this Order, for service rendered on and after the date of this Order.

2. Within 20 days of the date of service of this Order, EKPC shall file, using the Commission's Electronic Tariff Filing System, its revised tariff sheets setting forth the proposed Rate DCP and Dedicated Resources Rider and modifications approved or as required in this Order and reflecting their effective date and that they were authorized by this Order.

3. The case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

ATTEST:

Executive Director

ENTERED

OCT 30 2025

jdc

KENTUCKY PUBLIC
SERVICE COMMISSION

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