

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 June 6, 2025, the Retail Energy Supply Association (RESA), a non-profit trade association comprised of retail suppliers of natural gas and electricity, filed a motion requesting permission to intervene in this proceeding. On June 11, 2025, East Kentucky Power Cooperative Inc. (EKPC) filed its response to the motion opposing intervention by RESA. Thereafter, RESA filed its reply on June 16, 2025. The next day, EKPC filed two concurrent motions. On June 17, 2025, EKPC filed a motion requesting leave to file a sur-reply pursuant to 807 KAR 5:001, Section 22, and its sur-reply. For the reasons explained below, the Commission finds that RESA's motion requesting permission to intervene should be denied in this case and EKPC's motion requesting permission to file a sur-reply should be granted.

In denying RESA's motion for intervention, the Commission also notes, as discussed below, that full intervention in a proceeding is not the only manner for a party to participate. Commission regulation 807 KAR 5:001, Section 4(11)(e)(1-2) establishes the right of parties 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.

BACKGROUND

To properly understand the Commission's findings in this order it is helpful to understand the operative claims made in each of the parties' filings. In RESA's original motion to intervene, it described itself and its asserted fundamental reason for requesting intervention in the following way: that RESA is a

trade association of energy companies providing generation solutions to customers, and while RESA's participation on utility issues i[s] generally in states with retail customer choice for electricity and gas supply, RESA and its members have extensive experience addressing generation construction, procurement, risk hedging, and other related issues that extend beyond the confines of retail choice. This experience, while beyond what has been specifically proposed by EKPC, is something RESA can nonetheless draw from in providing insights on EKPC's proposal that can aid the Commission in its ultimate decision in the matter.¹

While RESA made a nominal nod to the "special interest" prong² in 807 KAR 5:001 Section 4(11)(b), its original motion focused almost exclusively on its expertise in other jurisdictions³ regarding "generation supply issues for the new hyperscale data center loads[]" and "assisting customers in the commodity and financial markets to hedge risk[.]"

¹ Motion to Intervene of RESA (RESA's Motion)(filed June 6, 2025) at 1.

² RESA's motion states that neither the Attorney General nor Nucor Steel Gallatin (Nucor), both parties to this proceeding, adequately represents its interests. Notably, the Attorney General enjoys a statutory right to intervene, and Nucor is the largest end-user of electricity in Owen Electric Cooperative's service territory which means that it relies on generation and transmission service provided by EKPC. Therefore, as the Commission's Order granting intervention to Nucor found, Nucor has a clear special interest in this proceeding because the Commission's ultimate decision in this case could "significantly and directly affect the demand and energy charges paid by Nucor." Order (Ky. PSC June 4, 2025) at 3.

³ RESA's motion cites proceedings in Ohio, Louisiana, and Virginia. RESA's Motion at 4, footnote 11. In determining the special interest in this Commission's proceedings, the Commission relies on its own legal authority and precedent. RESA's intervention in those cases have limited persuasive value. Moreover, at least with regard to Louisiana, the proceeding RESA cites involves a general investigation into a broad swath of issues appearing to generally relate to rising rates for Louisiana customers. Louisiana Public Service Commission, Ex Parte, *In Re: Rulemaking to Research and Evaluate Customer-Centered Options for All Electric Customer Classes as well as Other Regulatory Environments*, Docket No. R-35462. That case appears to involve all Louisiana electric utilities and a large number of other parties, and its substantive purpose is entirely inapposite to the issues implicated in this proceeding.

In EKPC's response⁴ to RESA's motion, it made several claims: (1) that RESA demonstrated no connection to Kentucky⁵; (2) that any expertise RESA may have regarding electric service is rooted in dissimilar regulatory systems; (3) that RESA did not satisfy the minimal procedural requirements in 807 KAR 5:001, Section 4(11)(a) because it did not include a mailing address or email address; (4) that RESA did not have the necessary associational standing to intervene in Kentucky; and (5) that RESA did not have a special interest to assert because "[q]uestions of generic wholesale power supply in PJM are beyond the scope of this proceeding and the Commission's jurisdiction[.]"

RESA timely filed its reply to EKPC's response.⁶ RESA's reply made several new substantive additions to its original motion.⁷ RESA identified specific proposed tariff language in EKPC's original filing, in which EKPC discussed its obligation to secure necessary capacity for a potential data center customer, especially within the PJM territory, which RESA stated would directly impact RESA member organizations.⁸ Additionally, and notable for its absence in the original motion, RESA also submitted the affidavit of Mr. Brandon Stanislaus, who is "an employee of Vistra Corp. located at 6555

⁴ Response to Request for Intervention by Retail Energy Supply Association (EKPC's Response) (filed June 11, 2025).

⁵ EKPC does recognize that RESA, and its members, have been granted intervention in Commission proceedings related only to Columbia Gas of Kentucky's Small Gas Transportation Service Tariff and Small Volume Aggregation Service Tariff. That program is unique in Kentucky as it is a competitive program.

⁶ Retail Energy Supply Association's Reply to East Kentucky Power Cooperative, Inc.'s Response to Motion to Intervene (RESA's Reply) (filed June 16, 2025).

⁷ RESA also restated its argument regarding the lack of adequate representation of its specific interest in the following way: "the docket in this case does not appear to include any other independent power providers capable of adequately representing the interests of power plant owners and suppliers of electric power[.]" RESA proceeded to go further, and stated later in its reply that "[t]he central issue is EKPC's tariff, which no other intervening party is suited to address."

⁸ RESA's Reply at 4.

Sierra Drive, Irving, TX 75039[]” and asserted that “Vistra Corp. owns and operates approximately 13,000 megawatts of generation in the PJM Interconnection, a regional transmission organization.” Finally, Mr. Stanislaus’s affidavit asserted that “RESA has a special interest in the Case, and it will present issues and develop facts essential for the Commission’s consideration of this Case.”⁹

Thereafter, EKPC filed two concurrent motions on June 17, 2025. In EKPC’s first motion it requested leave to file a sur-reply pursuant to 807 KAR 5:001, Section 22 arguing that RESA raised unresolved issues in its reply. The second, a substantive motion¹⁰, addressed Mr. Stanislaus’s affidavit and argued that the Commission’s precedent has traditionally considered the connection between the entity seeking intervention and the regulated utility. EKPC also renewed its argument that RESA lacked associational standing.¹¹

LEGAL STANDARD

While the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), has the statutory right to intervene in Commission cases pursuant to KRS 367.150(8)(b), with limited exception, intervention by other parties is permissive and within the sole discretion of the Commission.¹² Commission regulation 807 KAR 5:001, Section 4(11) establishes the Commission’s

⁹ RESA’s Reply, Attachment A.

¹⁰ East Kentucky Power Cooperative Inc.’s Sur-Reply in Opposition to Motion to Intervene (EKPC’s Sur-Reply) (filed June 17, 2025).

¹¹ EKPC’s Sur-Reply at 3.

¹² KRS 164.2807.

governing rules regarding permissive intervention. That language states in relevant part that:

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

[. . .]

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Operationally, the above language establishes a threshold hurdle potential parties must clear, filing a timely motion that includes all the information required by 807 KAR 5:001, Section 4(11)(a)(1). Once cleared, 807 KAR 5:001, Section 4(11)(b) establishes the Commission's obligations regarding evaluating a party's motion requesting permissive intervention. Specifically, parties must establish either (1) "a special interest in the case that is not otherwise adequately represented[]" or (2) that the party's intervention "is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." The Commission must consider both prongs of 807 KAR 5:001, Section 4(11)(b) and grant intervention if it finds that the party has satisfied either.

DISCUSSION AND FINDINGS

Based on the record, and being otherwise sufficiently advised, the Commission finds that RESA's motion to intervene should be denied, and EKPC's motion requesting leave to file a sur-reply should be granted. However, denying RESA's motion to be granted full participation in this case as a party, does not end RESA's voluntary involvement in the proceeding. Commission regulation 807 KAR 5:001, Section 4(11) clearly establishes the rights of any party not granted leave to intervene in a case the right to "file written comments regarding the subject matter of the case." Those comments "shall be filed in the case record."¹³ Of course, consistent with 807 KAR 5:001, Section 4(3)(b) any papers filed with the Commission "shall be verified or under oath if required by statute, administrative regulation, or order of the commission." Therefore, RESA is free to participate in a limited role in this case by filing comments related to this proceeding.

Threshold Questions

Before discussing its substantive findings, the Commission must first address the threshold issues raised by EKPC: (1) RESA's failure to satisfy 807 KAR 5:001, Section 4(11)(a) by not including its mailing address and email address; and (2) RESA's supposed lack of associational standing. With regards to the lack of a mailing address or email, the Commission finds that RESA included the appropriate information through the attorneys filing the motion on its behalf. Therefore, the Commission finds that the motion was not deficient.

¹³ 807 KAR 5:001, Section 4(11)(e)(1).

The matter of associational standing is also not determinative because, as the Court of Appeals has noted in several cases, the Commission's permissive intervention is governed by KRS 278.310(2) and the Commission's own regulations.¹⁴ Therefore, the operative question in determining intervention is whether RESA satisfied 807 KAR 5:001, Section 4(11) (a-b).

EKPC's Motion Requesting Leave to File a Sur-Reply

To properly consider the substantive issues the Commission first addresses EKPC's motion requesting leave to file a sur-reply, stating that it demonstrated good cause pursuant to 807 KAR 5:001, Section 22 because RESA's Reply included a number of items not included in its original motion.

Commission regulation 807 KAR 5:001, Section 5(3) governs the form replies must take and states that replies "shall be confined to points raised in the responses to which they are addressed and shall not reiterate an argument already presented." Given the inclusion of the affidavit and the additional arguments and authorities raised by RESA in its reply, EKPC should be afforded the opportunity to respond. Therefore, the Commission finds that EKPC's motion requesting leave to file a sur-reply should be granted.

RESA's Motion for Intervention

1. RESA's special interest

¹⁴ See *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2004-CA-001792-MR, 2007 WL 289328 at *3 (Ky. App. Feb. 2, 2007); *Biddle v. Public Service Commission of Kentucky*, 643 S.W.3d 83, 90 (Ky. App. Sep. 24, 2021) ("[w]e agree that 807 KAR 5:001, Section 4(11), which is addressed specifically to the process of applying for intervention, controls. After all, no matter how vital an interest a property owner might have, a right to intervene could still be waived if a motion to intervene is not timely filed[]").

As stated above, RESA purports, at least nominally, to have a special interest in this case deriving from RESA members' substantial participation in PJM, of which EKPC is also a member participant. RESA argued that because no other "power plant owners and suppliers of electric power" were parties to this case, its interests were not adequately represented. RESA then attempted to rely on the participation of several of its individual members in proceedings before the Commission in cases involving Columbia Gas of Kentucky's (Columbia Kentucky) "Choice" program to bolster its position.¹⁵

However, RESA's claims regarding intervention in the Columbia Kentucky cases misunderstands the Commission's precedent. The Choice program is a unique competitive market in Kentucky and has no electric corollary in the Commonwealth. Moreover, even in the context of that program, the Commission has still consistently denied RESA intervention. In fact, in Case No. 2017-00115, the Commission found that the "only interest that RESA has in the natural gas rates and service of Columbia is as a trade association of national retail energy providers with a generalized interest in the Choice program. That interest is too remote to justify [intervention] here."¹⁶

Neither RESA's Motion nor Reply have provided any evidence to suggest that it has a greater interest in this case than it did in Case No. 2017-00115. In fact, unlike in

¹⁵ Case No. 2021-00386 *Electronic Tariff Filing of Columbia Gas of Kentucky, Inc. To Extend Its Small Volume Gas Transportation Service*. This case is the most recent application involving Columbia Gas of Kentucky's tariff and its individual members, not RESA, were participants in this still open filing.

¹⁶ Case No. 2017-00115, *Tariff Filing of Columbia Gas of Kentucky, Inc. to Extend its Small Volume Gas Transportation Service* (Ky. PSC Apr. 5, 2017), Order at 2. The Commission did grant individual RESA members, Interstate Gas Supply, Inc. (IGS) and Constellation New Energy – Gas Division (CNEG) permissive intervention in Columbia Gas's 2024 rate case. However, both parties were granted intervention in their individual capacities and the Commission found that the parties' expertise related to revenue and expense tracking within the Choice program was likely to present issues and develop facts without unduly complicating the proceedings. Case No. 2024-00092, *Electric Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; and Other Relief* (Ky. PSC June 28, 2024), Order.

the gas context, no RESA member engaged in providing electric service has come forward expressing any relevant connection to the Commonwealth of Kentucky. RESA's interests in this case are, therefore, no different than any other non-Kentucky utility or retail electricity provider in PJM's territory. To accept RESA's assertions would be to find that any organization with a connection to PJM would have sufficient interest in the regulation of utilities providing service in Kentucky. Even Mr. Stanislaus, RESA's relied upon affiant, did not assert any specific Kentucky electrical interests. Moreover, the Commission's findings in this case are consistent with its reasoning in other contexts, such as those involving third-party bidders to utility issued requests for proposals (RFPs). In those cases, the Commission also found that third parties lacked the kind of cognizable relationship to the regulated utility (which is after all the entity over which the Commission has jurisdiction) to satisfy the special interest prong.¹⁷ Notably, those parties could at least point to a formal connection between themselves and the utility; something RESA has not been able to allege here.

Given all these considerations, the Commission finds that RESA has not satisfied the special interest prong of the intervention analysis.

2. Aiding the Commission without unduly complicating the proceedings.

Of course, RESA only needs to satisfy one of the prongs in 807 KAR 5:001 Section 4(11) to be granted intervention and so the Commission must still examine whether

¹⁷ See e.g., Case No. 2012-00578, *In The Matter Of: Application Of Kentucky Power Company For (1) A Certificate Of Public Convenience And Necessity Authorizing The Transfer To The Company Of An Undivided Fifty Percent Interest In The Mitchell Generating Station And Associated Assets; (2) Approval Of The Assumption By Kentucky Power Company Of Certain Liabilities In Connection With The Transfer Of The Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral Of Costs Incurred In Connection With The Company's Efforts To Meet Federal Clean Air Act And Related Requirements; And (5) All Other Required Approvals And Relief* (Ky. PSC July 5, 2013), Order.

granting RESA intervention “is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings”¹⁸

RESA’s expertise is in providing a service to retail customers, including large load customers and data centers. Additionally, RESA undisputedly has experience and expertise related to bilateral purchase agreements and in hedging risks related to commodity and financial markets. However, those issues are not being considered in this case. EKPC filed a specific tariff, intended for its specific territory, and included proposed language tailored to that purpose. RESA made no statement in either its Motion or its Reply that indicated that any of its members had any experience related to tariffs and a Commission’s consideration of such proposals. Instead, RESA’s motion relied on, as it had to, its expertise in providing retail service to customers, which is not contemplated by EKPC’s tariff.

By contrast, the specific language proposed by EKPC in this tariff filing establishes an obligation on EKPC to “identify resources designated to satisfy the applicable Eligible Data Center’s anticipated peak energy and capacity demand[.]”¹⁹ Even with regards to the Dedicated Resource Rider attached to the proposed tariff, the agreement is clearly tailored to establish the parameters of the relationship between the large load customer and EKPC. Since RESA’s expertise, based on its motion, is not directly applicable to the subject matter in this case, allowing its intervention may result in unduly complicating the proceedings and is not likely to assist the Commission in its consideration of, and

¹⁸ 807 KAR 5:001, Section 4(11)(b).

¹⁹ P.S.C Sheet No. 35, Original Sheet No. 105 as proposed by EKPC in its filing.

disposition of this case. Consequently, the Commission finds that, because RESA has failed to satisfy 807 KAR 5:001, Section 4(11), its motion requesting permissive intervention should be denied.

IT IS THEREFORE ORDERED that:

1. EKPC's motion requesting leave to file a sur-reply is granted.
2. The sur-reply should be accepted as filed and included as part of the record of this matter.
3. RESA's motion requesting permissive intervention is denied.

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