

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**RESPONSE TO REQUEST FOR INTERVENTION BY
RETAIL ENERGY SUPPLY ASSOCIATION**

Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, in accordance with 807 KAR 5:001, Section 5 and in response to the “Motion of Intervene” of Retail Energy Supply Association (“RESA”), respectfully stating as follows:

RESA’s motion should be overruled. As the Movant, it has the burden of proof to establish that it satisfies the criteria for being granted status as a full intervenor in the above-referenced docket.¹ Its motion fails to satisfy this burden from a plethora of perspectives and Commission precedent further demonstrates that RESA’s position is without merit. Accordingly, EKPC respectfully opposes RESA’s motion, requests that it be overruled, and suggests that RESA should instead be permitted to file any comments relating to the proposed Data Center Power Tariff that it deems necessary.

A. The Motion Fails to Demonstrate Any Connection to Kentucky

RESA does not allege that it, or any of its members, is a customer of EKPC or any of EKPC’s sixteen (16) Owner-Member distribution cooperatives. Nor does it allege that it has an

¹ See *In the Matter of the Adjustment of Rates of Kentucky-American Water Company*, Order, Case No. 2000-00120, p. 2 (Ky. P.S.C. May 30, 2000).

office in Kentucky, operations in Kentucky, employees in Kentucky, or even a mailbox in Kentucky. There is no specific allegation in RESA’s motion that demonstrates any substantive connection on the part of the association to EKPC, any of the Owner-Member distribution cooperatives or the Commonwealth of Kentucky as a whole. Moreover, shockingly, it does not allege that a single of its members would affirmatively check the box as a cooperative ratepayer. Instead, it only offers vague assertions that it indirectly possesses unique and special knowledge based upon its members’ experience in other states that would be instructive to determining whether a Kentucky tariff applying to Kentucky customers of Kentucky utilities is fair, just and reasonable. Clearly, this is inadequate. Any asserted interest is simply too remote to be justifiable.²

B. RESA’s Expertise Lies in a Regulatory Construct Inconsistent with Kentucky Law

RESA describes itself as a “trade association of energy companies providing generation solutions to customer.”³ RESA concedes that it “generally” participates in regulatory proceedings in states “with retail customer choice for electricity and gas supply.”⁴ The only cases cited by RESA where its members have participated before the Commission are two cases that involve Columbia Gas of Kentucky’s (“Columbia Kentucky”) Small Gas Transportation Service Tariff

² See *In the Matter of the Tariff Filing of East Kentucky Power Cooperative, Inc. and its Members Distribution Cooperatives for Approval of Proposed Changes to Their Qualified Cogeneration and Small Power Production Facilities Tariffs and Implementation of Separate Tariffs for Power Purchases from Solar Generation Qualifying Facilities*, Order, Case No. 2017-00212, p. 4 (Ky. P.S.C. Sept. 22, 2017) (“In reviewing the pending motions to intervene, we find that neither Great Blue Heron nor Bluebird Solar receives service from EKPC, pays any rates to EKPC, or is a customer of EKPC. Therefore, Movants lack the necessary special interest in the rates and service of EKPC sufficient to justify intervention.”); *In the Matter of the Adjustment of Rates of Columbia Gas of Kentucky, Inc.*, Order, Case No. 2007-00008 (Ky. P.S.C. May, 3, 2007); *In the Matter of The Application of Columbia Gas of Kentucky, Inc. for an Order Issuing a Certificate of Public Convenience and Necessity to the Extent Such a Certificate is Required to Construct a Pipeline to Service Cooper Tire, Inc. in Mt. Sterling, Kentucky*, Order, Case No. 1996-00015, p. 1 (Ky. P.S.C. Feb. 27, 1996) (“Western has no facilities and provides no service in the area which is the subject of this dispute. Western’s interest is therefore too remote to justify full intervention.”).

³ RESA Motion, p. 1.

⁴ *Id.*

and Small Volume Aggregation Service tariff (collectively the “Choice Program”). Columbia Kentucky is unique among utilities in the Commonwealth because of the Choice Program. The Choice Program is a voluntary program, proposed by Columbia, to allow customers the option to choose their gas supplier.

In this matter, of course, there is no retail choice for electric customers – which is the only type of service to which the Data Center Power Tariff will apply – as the legislature chose decades ago to establish separate, unique, and distinct service territories for retail electric suppliers within the Commonwealth of Kentucky.⁵ As such, any “generation solutions” for consumers that RESA may seek to offer would necessarily be inconsistent with the Territories Act. For this reason alone, the motion should be overruled.

RESA also concedes that its expertise is on matters “beyond what has been specifically proposed by EKPC....”⁶ Injecting matters and questions not at issue into a proceeding are the very definition of “unduly complicating or disrupting the proceeding,” which the Commission’s regulation expressly prohibits.⁷ It begs the question why a distant trade association with no obvious connection to the forum, the subject matter, or the parties would be eager to expend treasure and talent to “help” the Commission in its review. There must be a catch.

C. The Motion Fails to Satisfy the Minimal Procedural Requirements for Intervention

Further, the Commission’s intervention regulation states that a party seeking intervention *shall* include with their motion, “the movant’s full name, mailing address, and electronic email address....”⁸ While RESA includes its name, it fails to include its mailing address and electronic

⁵ See KRS 278.016, *et seq.*

⁶ RESA Motion, p. 1.

⁷ See 807 KAR 5:001, Section 4(11)(b).

⁸ 807 KAR 5:001, Section 4(11)(a)1.

email address. Failure to comply with a basic filing requirement plainly set forth in the Commission’s regulation does not give confidence that RESA, if allowed intervention, would comply with other rules and regulations of the Commission. While this omission is no doubt easily cured, it suggests indifference or lack of attention that could again lead to unduly complicating or disrupting the proceeding.

D. RESA Fails to Demonstrate it Has Legitimate Associational Standing in Kentucky

The dearth of necessary information in the motion also raises a serious question as to whether RESA even has standing to represent the interests of its unidentified members. Commission precedent holds that an unincorporated association cannot represent the interest of its members in an open docket.⁹ This makes inherent sense, yet nowhere in RESA’s motion does it refer to itself as an incorporated association. A search of the Kentucky Secretary of State’s website confirms that RESA is certainly not a Kentucky corporation,¹⁰ which further underscores the tangential nature of its alleged special interest in the Data Center Power Tariff.

RESA’s motion also fails to establish that the elements necessary to establish associational standing are established here. As the Kentucky Supreme Court has held: “Thus, in Kentucky, an association may have standing to assert a claim on behalf of its members ‘only if its members

⁹ See *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Order, Case No. 2009-00141, p. 4 (Ky. P.S.C. July 15, 2009):

In addition, the disclosure of the specific customers is particularly important here, since it appears that SEC Customer Group is an unincorporated association which, under Kentucky law, lacks the power to sue or be sued. Further, SEC Customer Group has failed to provide sufficient information to establish standing to represent its customers before this Commission. While SEC Customer Group’s request to intervene asserts the existence of agency agreements sufficient to represent the customers served, no such agency agreements were filed to support that assertion

¹⁰ See <https://sosbes.sos.ky.gov/BusSearchNProfile/search.aspx> (using search term (“retail energy”) (accessed June 9, 2025).

could have sued in their own right.”¹¹ Here, we know nothing of RESA’s actual members from the motion. As stated previously, the only members RESA states have participated in Commission proceedings are natural gas suppliers in retail choice proceedings,¹² who plainly have no interest in an electric tariff applying to data centers.¹³ Not a single RESA member is identified, nor is there a single allegation supporting the notion any individual member of RESA would have the ability to challenge (or support) the Data Center Tariff in its own name. This is exactly the scenario the Kentucky Supreme Court contemplated where it indicated the necessity of complete transparency when associational standing is requested:

Importantly, vague allegations that a member has suffered injury are insufficient to establish associational standing. An association must specifically identify the member whose alleged injury the association seeks to vindicate through judicial proceedings. Indeed, “[i]n cases where the harm is specific, the proof of standing must be equally specific.” “[S]tanding cannot be inferred argumentatively from averments in the pleadings ... but rather must affirmatively appear in the record.”¹⁴

The lack of demonstrated associational standing is fatal to Movant’s motion. If RESA has no members who can assert a special interest in the Data Center Tariff, it necessarily also lacks standing as a matter of law. Thus, the motion should be overruled.

E. The Motion Fails to Satisfy the Intervention Regulation’s Requirements

Apart from each of the jurisdictional and procedural deficiencies noted above – any one of which renders RESA’s motion unsustainable, the motion also fails to satisfy the substantive

¹¹ *City of Pikeville v. Kentucky Concealed Carry Coalition, Inc.*, 671 S.W.3d 258, 264 (Ky. 2023).

¹² *See* RESA Motion, p. 3.

¹³ In Kentucky, only electric utilities have certificated service territories. Natural gas utilities do not have this statutory coverage.

¹⁴ *City of Pikeville*, 671 S.W.3d at 265. (citations omitted).

requirements of the regulation. RESA does not demonstrate “how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter...”¹⁵ Nor has RESA demonstrated that its interest is “not otherwise adequately represented.”¹⁶ Of note, RESA only devotes one scant paragraph to support its motion:

RESA’s motion meets the intervention requirements. First, RESA’s motion is timely and follows the Commission’s procedural schedule set out in its May 23, 2025 Order. RESA’s interest is not adequately represented by any other party in this proceeding, nor will its participation unduly complicate or disrupt this proceeding. Nucor is a large industrial customer. The Attorney General represents customers in Kentucky, and as noted in Nucor’s motion to intervene, the discharge of that duty is primarily related to residential customers. RESA’s unique position reflecting members with significant generation ownership in the PJM footprint, and elsewhere, will allow RESA to provide the Commission with unique perspective on generation supply for data centers and present the Commission with issues and facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. RESA intends to play a constructive role in developing the record to aid in the Commission’s ultimate decision-making.¹⁷

EKPC does not dispute that RESA’s motion was timely filed. However, RESA’s next allegation that its interest is not adequately represented is based upon a false premise – that it has a legitimate interest to assert. It is well established that the Commission’s jurisdiction is limited to the “rates” and “service” of Kentucky utilities.¹⁸ The Commission does not have jurisdiction over RESA’s proffered members’ businesses, which are to “own and operate a significant amount of generation resources in the PJM footprint.”¹⁹ Questions of generic wholesale power supply in

¹⁵ 807 KAR 5:001, Section 4(11)(b).

¹⁶ *Id.*

¹⁷ RESA Motion, p. 5.

¹⁸ *See* KRS 278.040(2).

¹⁹ *See* RESA Motion, p. 4.

PJM are beyond the scope of this proceeding and the Commission's jurisdiction – making the motion unsustainable.²⁰ The motion utterly fails to suggest why being a participant in PJM's wholesale markets somehow should allow it to influence the tariffed relationship of a cooperative and retail load in Kentucky. Commission precedent affirms that RESA cannot make this demonstration.²¹ Indeed, the Commission has even denied an Independent System Operator's motion to intervene in cases involving retail service.²² Reading between the lines, it is apparent that any members of RESA who have an interest in the Data Center Power Tariff are most likely interested in supplying power to any data centers who would operate under the tariff.²³ This, of course, makes RESA's membership's interest primarily pecuniary in nature. The Commission has held that a pecuniary interest is not a special interest that permits intervention.²⁴ In fact, when the

²⁰ The proposed Data Center Power Tariff does not provide for any particular purchase of capacity or energy in PJM, nor does it change how the PJM markets operate. The Data Center tariff is designed to operate in a manner consistent with the wholesale market regulated by the Federal Energy Regulatory Commission.

²¹ See *In the Matter of the Investigation into the Membership of Louisville Gas & Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.*, Order, Case No. 2003-00266, p. 2 (Ky. P.S.C. Oct. 2, 2003):

The Commission's regulatory authority over LG&E and KU is limited to their respective rates and service for retail customers. Since issues relating to the wholesale transmission of electric energy over facilities owned by an investor-owned utility and the rates for that transmission have always been under FERC's jurisdiction, they are not within the scope of this investigation. Consequently, the Commission finds that Thoroughbred does not have a special interest in the issues subject to investigation in this case.

²² See *In the Matter of the Application of Louisville Gas & Electric Company and Kentucky Utilities Company to Transfer Function Control of their Transmission Facilities*, Order, Case No. 2005-00471 (Ky. P.S.C. July 6, 2006).

²³ See RESA Motion, p. 5 (arguing that "generation ownership" and "generation supply" are the basis for "reflecting members" interests).

²⁴ See *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal-Fired Unit in Mason County, Kentucky*, Order, Case No. 2004-00423, p. 3-4 (Ky. P.S.C. Apr. 18, 2005):

EnviroPower's pecuniary interest in challenging the rejection of its power supply bid is not aligned with the interests of ratepayers and does not rise to the level of a special interest in this proceeding sufficient to grant intervention. The

pecuniary interest is “not aligned with the interests of ratepayers,” it “does not rise to the level of a special interest ... sufficient to grant intervention.”²⁵ In other words, the Commission is not an appropriate forum for a third-party to seek to leverage a tariff to achieve a financial outcome that is inconsistent with the interests of ratepayers. Without any real transparency, the Commission must speculate as to RESA’s true motives for seeking intervention. They are unlikely to be altruistic.

Finally, RESA insinuates that because some of its members have been allowed to intervene in one Kentucky natural gas utility’s cases involving retail choice questions, it has a unique interest to be heard here. Such a proposition must be rejected out of hand. It is well-established that intervention in one Commission proceeding does not assure that intervention would or should be allowed in a different case. The facts of each case and the context of each individual motion to intervene must be viewed on a case-by-case basis.²⁶

F. Conclusion

Intervention as a matter of right exists only for the Attorney General.²⁷ In all other cases, the Commission’s “sound discretion” determine whether a movant satisfies the high standards of

Commission has already granted full intervention to the Attorney General’s Office, on behalf of all ratepayers, and to Gallatin Steel, on behalf of East Kentucky Power’s largest consumer of electricity.

See also In the Matter of a Formal Review of Western Kentucky Gas Company’s Decision to Terminate a Natural Gas Sales, Transportation and Storage Agreement with NorAm Energy Services, Inc., and Enter into a Natural Gas Sales, Transportation and Storage Agreement with Woodward Marketing, LLC, Order, Case No. 1999-00447, p. 3 (Ky. P.S.C. Mar. 2, 2000) (“IGS has not expressed an interest that differs from that of the general public. The fact that IGS is a competitor does not enlarge or enhance its interest in this proceeding and it should not be permitted to intervene on that ground.”)

²⁵ *In the Matter of East Kentucky Power Cooperative, Inc.*, *supra.*, Case No. 2004-00423, p. 4.

²⁶ *See In the Matter of the Application of Mallard Point Disposal Systems, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Order, Case No. 2005-00235, p. 3 (Ky. P.S.C. Sept. 2, 2005) (“While we have granted Mr. and Mrs. van der Gaag and Mr. Warhus full intervenor status in past Commission proceedings, such action does not establish a right to intervene in all proceedings involving Mallard Point. For each proceeding all Movants must show that they meet the regulatory prerequisites for such status.”).

the intervention regulation.²⁸ Here, that has not occurred. For the foregoing reasons, RESA's motion should be overruled.

This the 11th day of June, 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on June 11, 2025, and that there are no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to prior Commission Orders, no paper copies of this filing will be made.

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²⁷ KRS 367.150(8).

²⁸ See *Inter-County Rural Electric Coop. Corp. v. Public Service Comm'n*, 407 S.W.2d 127, 130 (Ky. 1966) ("The regulation reposes in the Commission the responsibility for the exercise of sound discretion in the matter of affording permission to intervene.").