

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:	:	
	:	
The Electronic Tariff Filing of East	:	Case No. 2025-00140
Kentucky Power Cooperative, Inc. to	:	
Establish a New Tariff for Data Center	:	
Power	:	
	:	

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**RETAIL ENERGY SUPPLY ASSOCIATION’S REPLY TO EAST KENTUCKY POWER  
COOPERATIVE, INC.’S RESPONSE TO MOTION TO INTERVENE**

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The Commission should grant Retail Energy Supply Association (“RESA”) intervention because it meets the Commission’s intervention standard, both for having a special interest that is not otherwise adequately represented and likely to present issues or develop facts that will assist the Kentucky Public Service Commission (“Commission”) with fully considering this matter. Despite East Kentucky Power Cooperative, Inc.’s (“EKPC”) attempts to interpose other requirements, this is the only standard that applies to the Commission’s procedures, and RESA meets it. EKPC’s arguments in its response to RESA’s motion to intervene should be rejected because they attempt to deviate from this standard to apply constructs and rules outside of the Commission. The RESA membership includes a diverse array of generation owners and power supplies experienced with providing electric power supply to end-use customers in the PJM region, including data center customers. Furthermore, 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 and the knowledge

represented by RESA membership can add insights that will assist the Commission in this new opportunity in Kentucky. The Commission should grant RESA's intervention.

**I. The Commission should grant RESA's motion because it meets the standard for intervention as applied to the facts and circumstances of this case.**

*a. Standard for intervention*

RESA's motion to intervene is governed by 807 KAR 5:001, Section 4(11), the Commission's standard for intervention. "[It] is the language of the relevant statutes and regulations governing intervention before the Commission that control."<sup>1</sup> Furthermore, "every motion to intervene should be addressed on the facts and circumstances of the case in which it is made."<sup>2</sup> This regulatory framework is liberal and favors intervention when a party demonstrates its interest in the proceeding.

Commission regulation 807 KAR 5:001, Section 4(11), requires a party to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that 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. Based on this standard, RESA should be granted intervention for either or both of these reasons.

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<sup>1</sup> *In the Matter of Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction*, Case No. 2020-00290, Order at p. 10 (Feb. 8, 2021) citing *See e.g. Shockey Tours, Inc. v. Miller Transp., Inc.*, 984 S.W.2d 95, 99 (Ky, 1998) (finding that the language of the relevant statute "confer[ed] standing" on carriers attempting to participate in administrative matter).

<sup>2</sup> *In the Matter of Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction*, Case No. 2020-00290, Order at p. 9 (Feb. 8, 2021).

- b. *RESA has a special interest in this case, and it will present issues and develop facts essential for the Commission's consideration.*

EKPC's tariff contains provisions that address the potential need for the purchase of generation supply to supply EKPC's data center customers. This issue is at the core of RESA members' interest and is the basis for RESA's intervention. EKPC's proposed tariff indicates that "EKPC shall identify resources designated to satisfy the applicable Eligible Data Center's anticipated peak energy and capacity demand within the PJM Interconnection, L.L.C. (or any successor thereto) ("PJM") market region. . ."<sup>3</sup> These resources, which are intended to meet the power requirements of EKPC's data center customers, can come from the following sources: (a) all or portion of an electric generation facility that is owned or leased by EKPC or the data center; (b) bilateral power and capacity purchase agreements selected by EKPC; or (c) any combination of (a) and (b).<sup>4</sup>

RESA members own electric generation facilities, procure power supply in the PJM region, serve entities through bilateral power agreements, and have a unique interest in EKPC's new proposal for serving data center customers.<sup>5</sup> The Commission has previously granted intervention to competitive marketers when a utility proposes to provide the same products or services offered by the marketer.<sup>6</sup> As such, there is precedent for allowing entities like RESA and its members to intervene when a utility proposal directly impacts their position in the energy industry. EKPC's tariff proposal puts

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<sup>3</sup> EKPC Proposed Tariff P.S.C. No. 35, Original Sheet No. 105.

<sup>4</sup> EKPC Proposed Tariff P.S.C. No. 35, Original Sheet No. 106.

<sup>5</sup> See Attachment A, Vistra Corp. Brandon Stanislau Declaration.

<sup>6</sup> "See *In the Matter of Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at p. 3 (July 20, 2009); *In the Matter of Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at p. 3 (July 17, 2009).

the provision of generation service through bilateral contracts directly at issue. It is proper for RESA to participate and represent its special interest in this proceeding.

Second, not only does RESA have a special interest in this proceeding, it could also help develop the facts and issues in this proceeding. For instance, RESA's extensive experience with bilateral power contracts and the competitive generation market<sup>7</sup> will help develop the facts in this proceeding. EKPC admits in its application that its tariff is "not comprehensive" and that a "one-size-fits-all approach is not prudent."<sup>8</sup> EKPC also endorses a solution that provides for "flexibility" and "encourages a wide range of commercial opportunities. . ."<sup>9</sup> RESA has expertise and knowledge on many of the questions that are raised by EKPC's proposed approach. Based on EKPC's statements, EKPC should welcome RESA's intervention because RESA can provide directly relevant expertise to support EKPC's supply of electric power to data centers, which will lead to a more comprehensive solution to this new and novel issue.

Further, EKPC's proposed tariff presents various questions that still need to be addressed. For example, while certain behind-the-meter ("BTM") arrangements are prohibited, such as the colocation of a generation facility that will supply power to both the PJM wholesale power market and an end-use data center customer? And if the generation must be owned by the data center, can that be accomplished through an affiliate entity or negotiated Purchase Power Agreement (PPA)? A clear and thoughtful tariff is necessary to provide the guidance needed to encourage the generation

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<sup>7</sup>See Attachment A, Vistra Corp. Brandon Stanislau Declaration; Calpine Powering America, <https://www.calpine.com/powering-america/> (accessed June 13, 2025).

<sup>8</sup> EKPC Cover Letter at p. 1.

<sup>9</sup> *Id.*

investment needed to serve new data center load in the EKPC service territory. Due to RESA's involvement in various jurisdictions addressing data center load growth,<sup>10</sup> RESA is uniquely situated to help develop the robust record needed to construct an alternate tariff structure that creates a clear framework for generation resource options. Further, RESA will not unduly complicate or disrupt this proceeding. RESA's interest is similar to that of EKPC, which is ensuring adequate electric power supply to new data center loads in the EKPC service territory for the benefit of all consumers and EKPC itself.

EKPC acknowledges that large loads could quickly exceed EKPC's existing generation portfolio resources<sup>11</sup> and if this occurs, new generation sources will need to be procured, which is where RESA and its members can provide valuable assistance in providing innovative, forward-thinking approaches. RESA and its members have addressed many generation supply issues for the new hyperscale data center loads, and other large loads.<sup>12</sup> Solutions for serving hyperscale data centers are still developing and evolving across the nation, and RESA and its members have participated in similar proceedings relating to data center loads and tariffs.<sup>13</sup>

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<sup>10</sup> Data Centre Dynamics, Ltd, "Meta signs 20-year PPA with Constellation for entire output of Illinois nuclear power plant", <https://www.datacenterdynamics.com/en/news/meta-signs-20-year-ppa-with-constellation-for-entire-output-of-illinois-nuclear-power-plant/#:~:text=The%20PPA%20is%20the%20second%20Constellation%20has%20signed,the%20revived%20Three%20Mile%20Island%20nuclear%20power%20plant> (accessed June 13, 2025); Data Centre Dynamics, Ltd, "Three Mile Island nuclear power plant to return as Microsoft signs 20-year, 835MW AI data center PPA", <https://www.datacenterdynamics.com/en/news/three-mile-island-nuclear-power-plant-to-return-as-microsoft-signs-20-year-835mw-ai-data-center-ppa/> (accessed June 13, 2025).

<sup>11</sup> EKPC Cover Letter at p. 2.

<sup>12</sup> See fn 10.

<sup>13</sup> *In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Case No. 24-508-EL-ATA. 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; *Application of Virginia Electric and Power Company, For approval to establish a voluntary, experimental companion tariff to support carbon-free and*

c. No other party adequately represents RESA's interest in this proceeding.

As discussed in RESA's motion to intervene, RESA's interest is not being represented by any other party already participating in the case.<sup>14</sup> The only other non-governmental intervenor, Nucor Steel Gallatin, states its interest as "Nucor is by far the largest single user on the EKPC system, and is one of the largest users of electricity in the United States."<sup>15</sup> This is not the same nor a related interest to RESA's interest in this proceeding. The only other intervening party is the Kentucky Attorney General as a party to be heard on behalf of consumers' interests.<sup>16</sup> Again, this is not the same nor related to RESA's interest in this proceeding. No other party that has already been granted intervention represents RESA's interest.

RESA's members have worked towards solutions to solve capacity shortage issues, and that experience and knowledge is directly relevant to EKPC's customers and will be helpful in this proceeding as EKPC works through the options to serve data center load through generation resources.<sup>17</sup> RESA is not asserting arguments outside of the Commission's jurisdiction; RESA simply wants to be granted intervention to fully develop and offer acceptable solutions to any generation shortfall that might be experienced by EKPC from new data center demand.

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*renewable energy generation, designated Schedule CFG, pursuant to §56-234 B of the Code of Virginia, Case No. PUR-2024-00114.*

<sup>14</sup> *In the Matter of Electronic Tariff Filing of Kentucky Power Cooperative, Inc. to Establish a New Tariff for Data Center Power*, Case No. 2025-140, RESA's Motion to Intervene at p. 5 (June 6, 2024).

<sup>15</sup> Nucor Steel Gallatin Motion to Intervene at p. 2 (May 28, 2025).

<sup>16</sup> Attorney General's Motion to Intervene at p.1 (May 28, 2025).

<sup>17</sup> See fn. 10; *In the Matter of the Application of Ohio Power Company for New Tariffs Related to Data Centers and Mobile Data Centers*, Case No. 24-508-EL-ATA.

**II. EKPC's arguments opposing RESA's intervention are unpersuasive and seek to incorporate intervention standards not reflected in the intervention statutes and regulations.**

Throughout its objection, EKPC attempts to import requirements beyond the Commission's intervention regulation and the facts and circumstances in this proceeding. For instance, EKPC states that RESA's motion fails to demonstrate any connection to Kentucky, such as an office in Kentucky, and that "shockingly" RESA does not allege that any of its members are customers of any Kentucky electric cooperative.<sup>18</sup> While a person's status as a customer or physical presence may be a consideration when determining that person's special interest in the proceeding, it is not controlling. Indeed, 807 KAR 5:001, Section 4(11) does not require specific physical connections to Kentucky. Instead, as discussed above, the intervention standard requires a demonstration of a special interest in the proceeding. Similarly, EKPC also incorrectly states that there is "no specific allegation in RESA's motion that demonstrates any substantive connection on the part of the association to EKPC."<sup>19</sup> As RESA stated in its motion to intervene, RESA has a special interest in EKPC's proposed tariff, especially in the Bilateral Purchase Option.<sup>20</sup> RESA's members have significant experience with bilateral supply contracts, including bilateral contracts with data center customers.

EKPC argues that RESA's expertise lies in a regulatory construct inconsistent with Kentucky law. Noting RESA's experience with retail customer choice for electric and gas supply, EKPC concludes that because there is no retail electric choice in the

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<sup>18</sup> East Kentucky Power Cooperative Inc. Response to RESA's motion to intervene at p. 2 (June 11, 2025).

<sup>19</sup> *Id.*

<sup>20</sup> RESA Motion to Intervene at p. 4.

Commonwealth, RESA cannot have an interest in the case.<sup>21</sup> Similarly, EKPC concludes that “any ‘generation solutions’ for customers RESA may seek to offer would necessarily be inconsistent with the Territories Act.”<sup>22</sup> EKPC attempts to construct a nefarious hidden agenda in RESA’s intervention that simply does not exist, with an ominous warning that “[t]here must be a catch.”<sup>23</sup> In doing so, EKPC ignores the stated interests by RESA throughout its intervention request and this reply, which relate directly to provisions of the proposed tariff.

There is no catch. RESA is seeking to intervene because it has a special interest in the terms proposed in EKPC’s tariff, not to debate expansive retail electric customer choice. RESA participates in a wide range of matters in other utility proceedings including proceedings involving data center tariffs. RESA members also provide unique services and products to customers, such as the generation products discussed in its motion to intervene. RESA will present issues and help develop facts regarding regulatory options for addressing the unique generation needs of data center customers. EKPC’s assertion that RESA’s expertise lies in a regulatory construct inconsistent with Kentucky law is simply false. The central issue is EKPC’s tariff, which no other intervening party is suited to address. EKPC itself in its tariff expressly contemplates the provision of third-party supply being used to satisfy a customer’s needs, albeit in the context of a regulated-utility tariff. If anyone opened the door to this concept, and sparked RESA’s interest in the proceeding, it is EKPC. The utility cannot now seek to argue that the very association

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<sup>21</sup> *Id.* at pp. 2-3; East Kentucky Power Cooperative Inc. Response to RESA’s motion to intervene at pp. 2-3 (June 11, 2025).

<sup>22</sup> *Id.* at p. 2.

<sup>23</sup> *Id.* at p. 3.

representing companies with an indispensable role in its own proposed tariff structure should be excluded from participating in this proceeding.

EKPC's further misconstrues RESA's statement that RESA has expertise on matters "beyond what has been specifically proposed by EKPC."<sup>24</sup> While RESA does have expertise on matters beyond those proposed by EKPC, RESA's interest in this case is related to the express terms of EKPC's proposed tariff and the issues raise therein. Furthermore, EKPC's itself states that its proposal "is not comprehensive."<sup>25</sup> EKPC states in its filing that "[o]ur understanding of data center projects proposed across the Commonwealth and throughout the nation confirms that a one-size-fits-all approach is not prudent."<sup>26</sup> RESA agrees and can bring valuable insights into this issue. In this context, RESA's statement about its nationwide expertise in data center supply issues is relevant to the potential issues that may arise in this proceeding. Contrary to EKPC's assertions, RESA's nationwide expertise with these very issues better enables it to present issues or develop facts that will assist the Commission in fully considering the issues present in this proceeding.

Moreover, on multiple occasions in its objection, EKPC asserts that RESA's full intervention will unduly complicate or disrupt the proceeding. This concern is unfounded. As noted in its motion to intervene, RESA and its individual members have previously participated in Commission proceedings.<sup>27</sup> RESA is a national trade association with a

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<sup>24</sup> *Id.*

<sup>25</sup> EKPC Cover Letter at p. 1.

<sup>26</sup> *Id.*

<sup>27</sup> *In the Matter of Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; and Other Relief*, Case No. 2024-00092, Order (May 28, 2024); IGS and CNEG's Reply to Columbia Kentucky's Response at 1 citing Case No. 2007-00008, *Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates*; 2009-00141,

track record of participation in state public service commissions across the nation. RESA's interest in this proceeding is tethered to the issues presented in the tariff, and its broader expertise with these novel issues is relevant to this proceeding. With respect to the issue raised by EKPC concerning RESA's contact information, RESA provided addresses and e-mail addresses of its counsel, and further states that RESA can be contacted at [tmccormick@resausa.org](mailto:tmccormick@resausa.org) and 7159 Red Top Road, Hummelstown, PA 17036.

Finally, EKPC argues that RESA should be denied intervention because it lacks associational standing, but as outlined in our motion that simply is untrue. EKPC mischaracterizes the conclusions of the Commission case authority it cites. For instance, in *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates* (2009) (“*Columbia*”), the Commission addressed intervention of an “SEC Customer Group”, which was an unincorporated association that would not disclose the customers it represented.<sup>28</sup> EKPC wrongly asserts that the Commission concluded that an unincorporated association cannot represent the interests of its members. Instead, the Commission concluded that it could not grant intervention to a group of consumers because the group failed to disclose its members publicly.<sup>29</sup> RESA is wholly distinguishable from the intervenor in the cited case. RESA is a trade organization

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*Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates*, Case No. 2009-00141 and 2013-00167, *Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates*; *In the Matter of An Investigation of Natural Gas Retail Competition Programs*, Case No. 2010-00146. Order (June 9, 2010) (Commission granted RESA's intervention).

<sup>28</sup> *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order (July 15, 2009).

<sup>29</sup> EKPC Response to RESA's Motion to Intervene at pp. 4-5 (June 11, 2025); *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at p.4 (July 15, 2009).

registered as a 501 (c)(6) organization, which discloses its members to the public.<sup>30</sup> EKPC failed to accurately describe the holding from *Columbia*, which is not analogous to RESA's situation in this case.

In addition, the Commission has held that the “associational standing” argument EKPC relies on is not determinative when considering a motion to intervene. In Case 2020-00290, a water utility opposed a homeowners’ association’s intervention because the association allegedly lacked associational standing. The Commission noted that the associational standing argument is derived from civil cases and stated that “it is the language of the relevant statutes and regulations [*i.e.*, 807 KAR 5:001, Section 4(11)] governing intervention before the Commission that control.”<sup>31</sup> Pursuant to the relevant statutes and regulations, RESA has met the standard for intervention and should be granted the opportunity to represent its interests and the development of facts to assist the Commission with fully considering this matter.

### **III. Conclusion**

Wherefore, RESA respectfully requests that it be permitted to intervene in the above-referenced matter.

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<sup>30</sup> Retail Energy Supply Association, <https://www.resausa.org/>, (accessed June 12, 2025).

<sup>31</sup> *In the Matter of Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction*, Case No. 2020-00290, Order at p. 9 (Feb. 8, 2021).

Respectfully submitted,

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## **ATTACHMENT A**

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of: \_\_\_\_\_ :

ELECTRONIC TARIFF FILING OF :  
KENTUCKY POWER COOPERATIVE, :  
INC. TO ESTABLISH A NEW TARIFF :  
FOR DATA CENTER POWER :

Case No. 2025-00140

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**SWORN DECLARATION OF BRANDON STANISLAUS**

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I, Brandon Stanislaus, being duly cautioned and sworn and based on personal knowledge, hereby submit this in the above-captioned matter:

1. I am an employee of Vistra Corp. located at 6555 Sierra Drive, Irving, TX 75039.
2. Vistra Corp. is a member of the Retail Energy Supply Association ("RESA").
3. Vistra Corp. owns and operates approximately 41,000 megawatts of generation across the United States.
4. Vistra Corp. owns and operates approximately 13,000 megawatts of generation in the PJM Interconnection, a regional transmission organization.
5. Vistra Corp.'s portfolio of generation assets located in PJM Interconnection includes natural gas, nuclear, and coal generation.
6. Vistra Corp. regularly enters into bilateral sales with customers to serve the customers' electricity needs.
7. Vistra Corp. has entered into bilateral sales with data center customers.
8. Vistra Corp. has entered into bilateral sales agreements with customers who are located in a rural cooperative and municipality utility system.
9. Other RESA members have similar experience to Vistra Corp.

10. I have reviewed the tariff filed by East Kentucky Power Cooperative in Case No. 2025-00140 (the "Case").

11. 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.

I declare under the penalty of perjury that the information provided here are true, complete and accurate to the best of my personal knowledge.



Declarant

6/16/2025  
Date