

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

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

RETAIL ENERGY SUPPLY ASSOCIATION’S MOTION FOR RECONSIDERATION

I. INTRODUCTION

On July 1, 2025, the Kentucky Public Service Commission (the “Commission”) issued an order (“Intervention Order”) denying the motion to intervene filed by The Retail Energy Supply Association (“RESA”). Pursuant to KRS 278.400, RESA respectfully submits this Motion for Reconsideration of the Intervention Order requesting that the Commission grant RESA’s motion for intervention to participate in this proceeding. (“RESA”) has satisfied both prongs of 807 KAR 5:001 Section 4(11), even though meeting just one prong is sufficient for intervention, and thus respectfully requests that the Commission reconsider its order denying RESA’s intervention in this case.

Fundamentally, utility commission proceedings addressing the new crop of hyperscale data centers present utility commissions with novel and complex issues. EKPC’s Application acknowledges this fundamental issue indicating its existing tariff structure is inadequate to serve a new hyperscale data center. Although responding to the needs of hyperscale data centers is an emerging issue across the country, several other utility commissions have already had an opportunity to begin addressing the issues. While their reviews are shaped by the relevant regulatory structures applicable to each

commission, these utility commission cases have common themes: (1) there are many and diverse intervening parties in the cases, and (2) the utility commissions have undertaken robust processes to address the new and novel issues presented by the hyperscale data centers.

For both practical and legal reasons, RESA respectfully requests that the Commission reconsider the denial of intervention. Getting the data center supply issues correct is critical for the Commonwealth to attract economic development, including new load and new baseload generation, to the state. EKPC's tariff proposal lacks the detail and flexibility necessary to set Kentucky up for success.

II. ARGUMENT

A. Reconsideration is appropriate under KRS 278.400.

This motion for reconsideration is a proper filing through Commission precedent and statutory authority. KRS 278.400 states the following:

“After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.”

Under this authority, the Commission has accepted other motions for reconsideration for Commission orders relating to intervention.¹ Additionally, the Commission has a well-established precedent for considering motions for reconsideration.² Pursuant to this precedent, the Commission has the ability to reconsider the matter and reverse its previous decision based upon a demonstration of good cause.³

Commission 807 KAR 5:001, Section 4(11) addresses permissive intervention, with part (a) of the rule addressing several threshold requirements, and part (b) requiring that parties seeking permissive intervention meet one of two elements: (1) a special interest in the case that is not otherwise adequately represented or (2) the party seeking intervention is likely to present issues or develop facts that will assist the Commission without unduly delaying the proceeding.⁴ In its Order the Commission notes that

¹ *Tariff Filing of Louisville Gas and Electric Company to Establish Prepaid Gas and Electric Service*, Case No. 2000-00548, Order (Ky. PSC Apr. 27, 2001); *Application of Central Kentucky Cellular Telephone Company for Issuance of a Certificate of Public Convenience and Necessity to Construct an Additional Cell Facility in the Lexington, Metropolitan Statistical Area (Athens/Pure Gold Cell Facility)*, Case No. 1992-00170, Order at 1-2 (Ky. PSC Feb. 11, 1993); *Application of Right Beaver Gas Company for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 10404, Order at 1 (Mar. 15, 1989); *Application of Kenergy Corp. for an Adjustment in Existing Rates*, Case No. 2011-00035, Order at 2 (Ky. PSC Dec. 5, 2011) and Order at 2 (Ky. PSC Dec. 22, 2011).

² *Tariff Filing of Louisville Gas and Electric Company to Establish Prepaid Gas and Electric Service*, Case No. 2000-00548, Order (Ky. PSC Apr. 27, 2001); *Application of Central Kentucky Cellular Telephone Company for Issuance of a Certificate of Public Convenience and Necessity to Construct an Additional Cell Facility in the Lexington, Metropolitan Statistical Area (Athens/Pure Gold Cell Facility)*, Case No. 1992-00170, Order at 1-2 (Ky. PSC Feb. 11, 1993); *Application of Right Beaver Gas Company for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 10404, Order at 1 (Mar. 15, 1989).

³ *Application of Kenergy Corp. for an Adjustment in Existing Rates*, Case No. 2011-00035, Order at 2 (Ky. PSC Dec. 5, 2011) (“Kenergy’s Petition for Reconsideration is granted.”); Case No. 2011-00035, Order at 2 (Ky. PSC Dec. 22, 2011) (“Having reviewed the amended petition and being otherwise sufficiently advised, the Commission finds that Kenergy has established good cause to reconsider the matter. ... Is it therefore ordered that Kenergy’s Amended Petition for Reconsideration is granted.”).

⁴ See Order at 4-5.

permissive intervention is appropriate so long as the party requesting intervention satisfies at least one prong of 807 KAR 5:001 Section 4(11).

In its Order, the Commission correctly concluded that RESA had met the threshold issues identified in part (a) and, therefore, the issue being addressed here is whether the Commission was correct in that RESA's pleadings did not meet either of the standards specified in part (b) of the rule. As discussed in more detail below, RESA meets both prongs, and RESA demonstrated that in its prior pleadings. Accordingly, and consistent with Commission precedent, reconsideration is appropriate and RESA requests that the Commission reconsider its Order and reverse its decision to deny RESA's request to intervene.⁵

B. RESA's unique market role and direct stake in EKPC's tariff establish a special interest not represented by any other party.

RESA has a special interest in the proceeding. As such, the Commission should grant this request for reconsideration and grant RESA full participation rights in the proceeding.

In its Order, the Commission correctly summarized RESA's core position on the issue, which is that no other party in the proceeding represented the interests of independent power producers and competitive generation market participants.⁶ However, the Order then finds that RESA failed to meet prong 1 because (a) RESA inappropriately relied on the Columbia Kentucky Choice proceeding, and (b) RESA's interests are no

⁵ *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, Case No. 2012-00222, Order (Oct. 24, 2012), Order (Oct. 2, 2012).

⁶ Order at 8.

different than any organization in PJM which the Commission previously found insufficient in a prior RFP proceeding.

As to the first issue, the Commission recognizes that RESA alleged that its individual members have participated in the Columbia Kentucky Choice program proceeding.⁷ The Commission also previously noted that the matter of associational standing was not a determinative issue in the proceeding, as the core issue is whether RESA satisfies the intervention standard. The Commission, in RESA's view, also narrowly defines the scope of this proceeding in claiming there is no electric choice in the Commonwealth.⁸ RESA's request for intervention was not premised on the ability (or inability) for RESA members to provide competitive retail electric choice to customers in EKPC's territory. RESA's request for intervention is premised on EKPC's tariff filing. That tariff filing indicates that if EKPC tries to secure generation service in the same manner in which it has historically done so, it will be unable to obtain sufficient generation supply for a hyperscale data center load. Accordingly, EKPC believes it needed to look to market solutions to obtain generation service for hyperscale sized data centers (should one look to locate in EKPC's territory). With the proper framing of the issue, RESA believes the Commission's reliance on denying RESA intervention in the Columbia Kentucky Choice program was misplaced.

⁷ Order at 8.

⁸ Order at 8.

The Commission also relied, incorrectly in RESA's view, on the *Kentucky Power Case*, and EnerNOC's attempt to intervene in that case.⁹ In that proceeding, EnerNOC sought intervention and asserted a special interest as a bidder to the utility's RFP to construct a new generating facility on the basis that its bid would provide KPCO's ratepayers a lower cost alternative to converting Kentucky Power Company's Big Sandy 1 to gas.¹⁰ While RESA might raise alternative generation supply constructs (within the bounds of Kentucky's statutory and regulatory structure), RESA also identified in its pleadings that it has views on how to improve the constructs proposed by EKPC. As an example, RESA pointed out the EKPC's tariff prohibits behind the meter generation arrangements but does not fully define that concept or otherwise address co-located generation that a data center might build under EKPC's proposed tariff.¹¹ RESA also provided another example of details missing from EKPC's own concepts – that being the legal corporate structure that any generation that a data center might build, under EKPC's own tariff proposal, to serve the data centers own load. Accordingly, RESA's pleadings are different from the situation in *Kentucky Power* where EnerNOC sought to only replace its proposed market generation solution for the utility's proposal to convert the existing generating facility from coal to gas.

⁹ 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. ("Kentucky Power Company").

¹⁰ *Kentucky Power Company* at p. 2.

¹¹ *RESA Reply to EKPC* at 4 (Jun 16, 2025).

For these reasons, the Commission should reconsider its prior finding and determine that RESA has a special interest and grant intervention.

C. The Commission overlooked RESA's ability to assist the Commission without unduly complicating the proceeding.

In the Order the Commission correctly recognizes that RESA, “undoubtedly has experience related to bilateral purchases agreements and in hedging risks related to commodity and financial markets.”¹² However, the Commission claimed that RESA failed to identify that RESA or its members have any familiarity with tariffs and a Commission's consideration of utility's tariff proposals. The Commission then concluded that RESA's expertise is not tailored to EKPC's specific proposal in this case.

Initially, RESA did claim in its motion and reply that it had familiarity with utility tariff cases, including those specific to emerging hyperscale data center issues. In its Motion, RESA stated that “RESA's members have participated in a number of utility cases relating to serving data centers and large loads across the county, including in areas that do not have full customer retail choice for generation choice.”¹³ In support of that statement RESA cited to three separate state utility commission cases. In its reply, RESA also asserted that “RESA and its members have participated in similar proceedings relating to data center loads and tariffs” and in support cited to two State level retail proceedings in which other state utility Commissions were addressing the new and unique issues.

¹² Order at 10.

¹³ Motion to Intervene at p.4 (June 6, 2025) citing to Ohio Public Utilities Commission of Ohio, *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 renewable energy generation*, designated Schedule CFG, pursuant to §56-234 B of the Code of Virginia, Case No. PUR-2024-00114; Reply to EKPC's Response to RESA's Motion to Intervene at p.5 (June 16, 2025).

For additional context, in one of those cited cases, RESA was granted intervention in a proceeding involving AEP Ohio's proposed data center tariff. That case addressed the same core issues raised by EKPC's proposal: how to serve large, rapidly growing data center loads while balancing impacts on other ratepayers and ensuring system reliability. Nearly 20 parties intervened and participated in the Ohio proceeding. A variety of issues including collateral requirements, demand charges, and behind-the-meter generation were central to that case. RESA actively participated in that proceeding by filing comments, engaging in settlement discussions, ultimately signing a stipulation, and participated in the evidentiary hearing and post-hearing briefing.

Beyond the specific cases cited in the Motion and Reply, RESA participates in countless utility commission proceedings across the country each year, as that is the core function of the trade association and has been doing so for over 20 years. Of course, RESA's primary focus is on states where there is competitive retail gas and/or electric choice, but RESA participates in states where there is partial choice, or where there are unique structures in place that look to the competitive market for unique supply solutions. RESA's pleadings set forth that unique market experience, including states that do not have full retail choice.¹⁴

Additionally, the Commission wrongly relied upon its statement that "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" as a basis for denying intervention under this

¹⁴ Louisiana does not have full retail access. 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, Order at pp. 1-2 (Aug. 1, 2024).

prong.¹⁵ As discussed in RESA's pleadings, and above, RESA is aware of Kentucky's legal and regulatory structures when it comes to full retail electric choice. While RESA as an organization has its views on the benefits of competition, RESA's pleadings demonstrate how it possesses knowledge beyond just full retail electric choice,¹⁶ and RESA's pleadings demonstrate that RESA has participated in other jurisdictions that do not have full retail choice.¹⁷

Accordingly, the facts are different than those upon which the Commission based its denial of intervention. RESA respectfully requests that the Commission reconsider its Order and grant RESA intervention under this prong of the intervention standard.

D. Other utility commission proceedings are addressing data center issues.

In addition to RESA's responses above, which are specific to the legal standard for the reconsideration request and intervention standard, RESA would also like to take this opportunity to highlight the complexity of hyperscale data center loads, and the processes (including diverse input) being solicited and received by utility commission across the country.

To resolve a large load or data center specific tariff, Commissions across the country have heard perspectives from a large group of intervenors - in some instances, groups much larger than three intervenors. For instance, the Ohio Commission granted

¹⁵ Order at p. 10.

¹⁶ RESA demonstrated that it serves data centers in a variety of ways: "RESA's members include generation owners and therefore RESA is well suited to provide unique feedback to the Commission in this matter on issues related to the Qualifying Customer Supplied Dedicated Resource and the specific requirements EKPC has proposed for this type of resource." Further, RESA stated that its members are owners in PJM, as well as wholesale and retail electric market participants because this experience is directly relevant to provide the Commission a unique insight in response to the Bilateral Purchase option EKPC proposed in the tariff. Motion to Intervene at 4

¹⁷ Motion to Intervene at 4.

intervention to 20 parties in AEP Ohio's data center tariff proceeding.¹⁸ This proceeding went through a comment period, testimony, settlement discussions, and a full evidentiary hearing for the Commission to decide between two stipulations.¹⁹ This proceeding took over a year to resolve, and resulted in a 99-page Opinion and Order to resolve the complex hyperscale data center load issues.²⁰ Nearly all of the 99 pages are related to services regulated by the Ohio utility commission.

Indiana has also considered a large load tariff to serve data centers in the state. Indiana Michigan Power Company ("I&M") filed for approval of modifications to I&M's Industrial Power Tariff.²¹ The utility commission in Indiana granted intervention to all 5 parties that sought to participate in the proceeding and approved the settlement between the parties.

Virginia is also considering a large load tariff that will serve its data centers in the state. Virginia Electric and Power Company filed for a new customer class (GS-5) for existing and new customers with contract demand at one site of 25MW or greater and a load factor of at least 75 percent.²² This is an ongoing proceeding with a hearing scheduled in September 2025. Thus far, the proceeding has almost 20 respondents.²³

¹⁸ *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, Entry (Sept. 3, 2024).

¹⁹ *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, Opinion and Order (July 9, 2025). See Attachment A.

²⁰ *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, Opinion and Order (July 9, 2025). See Attachment A.

²¹ Indiana Utility Regulatory Commission, *In the Matter of the Verified Petition of Indiana Michigan Power Company for Approval of Modifications to Its Industrial Power Tariff*, Tariff I.P., Cause No 46097, Order (Feb. 19, 2025). (See Attachment B)

²² *Application of Virginia Electric and Power Company for a 2025 biennial review of the rates, terms, and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUR-2025-00058, Application (March 31, 2025).

²³ See <https://www.scc.virginia.gov/docketsearch#caseParticipants/146025>

In Louisiana’s docket considering customer-centered solutions for serve large load customers, 30 parties intervened and the Commission took almost four years from the start of the proceeding to issue new regulations.²⁴

Not only are state regulatory bodies considering how to serve data centers, but the Federal Energy Regulatory Commission (“FERC”) has also considered similar issues and possible solutions to serving data centers. FERC considered PJM’s amended Interconnection Service Agreement (“ISA”) among PJM, Susquehanna Nuclear, LLC and PPL Electric Utilities Corporation.²⁵ The Amended ISA addressed issues associated with a data center collocated with the Susquehanna Nuclear Plant. In this docket alone, almost 50 parties participated in the Commission’s consideration of the amended ISA.²⁶ In another FERC proceeding last year, FERC considered Basin Electric Power Cooperative’s proposed revisions to its rates to include separate rate schedules for cryptocurrency data center customers.²⁷ Over 40 parties participated in that proceeding.²⁸

These examples identify the importance of getting the issues associated with hyperscale data center loads correct. Those cases also stand in stark contrast to this

²⁴ 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, Order at pp. 1-2 (Aug. 1, 2024)(See Attachment C).

²⁵ United States of America Federal Energy Regulatory Commission, PJM Interconnection, L.L.C., Docket Nos. ER24-2172-000, ER24-2172-001, Order Rejecting Amendments to Interconnection Service Agreement (Issued Nov. 1, 2024) (See Attachment D).

²⁶ United States of America Federal Energy Regulatory Commission, PJM Interconnection, L.L.C., Docket Nos. ER24-2172-000, ER24-2172-001, Order Rejecting Amendments to Interconnection Service Agreement (Issued Nov. 1, 2024) (See Attachment D).

²⁷ United States of America Federal Energy Regulatory Commission, Basin Electric Power Cooperative, Docket Nos. ER24-1610-000,ER24-1610-001, Order Rejecting Proposed Rate Schedules (Aug. 20,2024)(See Attachment E).

²⁸ United States of America Federal Energy Regulatory Commission, Basin Electric Power Cooperative, Docket Nos. ER24-1610-000,ER24-1610-001, Order Rejecting Proposed Rate Schedules, Section III Notice of Filing and Responsive Pleadings (Aug. 20, 2024)(See Attachment F).

proceeding, where the Commission has denied intervention and closed ranks to only the incumbent utility, one industrial customer, and its own Staff. This lack of diverse viewpoints and experience will hinder the Commission's ability to set up EKPC and Kentucky to best attract economic development, new generation, and do so while balancing the interests of other ratepayers and stakeholders. Serving the hyperscale data center loads is a complex issue, and the Commission should (as its sister regulatory bodies are), be fully engaged in seeking additional stakeholder participation so that it has diverse views and additional information, and can be armed with the best information to advance the interests of the Commonwealth and its citizens.

III. CONCLUSION

For these reasons, RESA respectfully requests that the Commission reconsider its decision in the Intervention Order, and grant RESA intervention. In the event the Commission does not reconsider its decision and grant RESA intervention, then RESA respectfully requests further guidance as to the timing deadline of comments and reply comments that the Commission indicated RESA could still pursue if its intervention was denied.

Respectfully submitted,

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