From: PSC Public Comment
To: "Byron Gary"
Cc: Mary Cromer; Boldman, Lane
Subject: RE: 2025-00140, Comments of Public Interest Commenters
Date: Thursday, September 25, 2025 8:49:00 AM

Case No. 2025-00140

Thank you for your comments on the application of East Kentucky Power Cooperative, Inc. Your comments in the above-referenced matter have been received and will be placed into the case file for the Commission's consideration. Please cite the case number in this matter, 2025-00140 in any further correspondence. The documents in this case are available at View Case Filings for: 2025-00140 (ky.gov).

Thank you for your interest in this matter.

From: Byron Gary [redacted]
Sent: Wednesday, September 24, 2025 5:01 PM
To: PSC Public Comment <PSC.Comment@ky.gov>
Cc: Mary Cromer [redacted]; Boldman, Lane [redacted]
Subject: 2025-00140, Comments of Public Interest Commenters

[redacted]

[redacted]

To Whom It May Concern -

Please see attached comments of Appalachian Citizens' Law Center, Kentucky Resources Council, and Kentucky Conservation Committee (together "Public Interest Commenters") on the Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. To Establish a New Tariff for Data Center Power, Case No. 2025-00140.

Let us know if you have any questions.

Best,
Byron Gary (he/him)

Program Attorney
Kentucky Resources Council

Sept. 24, 2025

Kentucky Public Service Commission
Via email to psc.comment@ky.gov

Re: Case No. 2025-00140, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. To Establish a New Tariff for Data Center Power*

Commissioners & Staff:

Please accept these comments on behalf of Appalachian Citizens' Law Center, Inc., Kentucky Resources Council, Inc., and Kentucky Conservation Committee (collectively, "Public Interest Commenters") on the Proposed Rate DCP (Data Center Power) of East Kentucky Power Cooperative, Inc. (EKPC) submitted by EKPC on April 30 2025, and under consideration in Case No. 2025-00140.

Since its incorporation in 2001, **Appalachian Citizens' Law Center** has focused on addressing the environmental, health, and economic impacts of resource extraction in Eastern Kentucky and Central Appalachia. ACLC's primary work includes both direct representation of individuals and groups and policy and advocacy work aimed at addressing the ongoing and legacy impacts of the coal industry and the economic impacts of its decline. Currently, ACLC's work includes numerous efforts to address utility unaffordability throughout Eastern Kentucky. ACLC advocates for energy and water affordability on behalf of low-income residents in the region by participating as stakeholders in national and state energy and water affordability discussions and workgroups, and by conducting research and issuing reports on different aspects of utility affordability.

Kentucky Resources Council is a non-profit membership corporation dedicated to prudent use and conservation of the natural resources of the Commonwealth and providing since 1984 legal and technical assistance without charge to low-income individuals, organizations, and communities across the Commonwealth and in the EKPC service area on a range of environmental and energy-related matters. KRC members include numerous individuals who are ratepayers taking service from EKPC.

Public Interest Commenters strongly support the creation of tariff terms to protect EKPC ratepayers from the substantial risks associated with the possible addition of new large load customers. Without such terms, EKPC and its existing customers are at risk of having to foot the bill for capacity, energy, transmission, and other expenses for large loads and for infrastructure investments that do not directly benefit non-large load customers. We suggest, however, that the proposed Rate DCP falls short of this goal, and offer the following comments and suggestions.

Kentucky Conservation Committee is a state-based conservation non-profit dedicated to providing a trusted voice of the public in Kentucky's capitol and throughout Kentucky, effectively advocating for protection, restoration and sustainable use of natural resources for the equitable benefit of all citizens in our Commonwealth.

Table of Contents

1. **Too few specific terms are provided for in the proposed rate.**

EKPC states that its "approach assures that on essential terms, there is consistency across all agreements while also allowing for case-specific adjustments to be made where necessary."[1] In fact, many of the most important aspects of ratemaking and design are left out of the tariff, ensuring anything but consistency, and leaving EKPC and its member-owners at a disadvantage in inevitably lopsided negotiations with incredibly large economic development projects often from the largest corporations in the world.

In order to ensure that EKPC remains well-positioned to fulfill its commitment to allocate all costs of serving data centers to the data centers themselves, several of the provisions that it proposes to work out in the contracting phase should be brought into the tariff. Including such provisions in the tariff will bolster protections for EKPC's other ratepayers and ensure an even playing field among its large load customers. Inclusion of key protections in the tariff will also protect EKPC from the challenges of competition as data centers shop their projects among different electricity providers to try to negotiate the best deal.

Harvard professors Eliza Martin and Ari Peskoe suggest that:

> Guided by their consumer-protection mandate, regulators should stop approving any special contracts and instead require utilities to serve data centers through tariffs that offer standard terms and conditions for all future data-center customers. Unlike a one-off special contract that provides each data center with unique terms and conditions, a tariff ensures that all data centers pay under the same terms and that the impact of new customers is addressed by considering the full picture of the utility's costs and revenue. This holistic and uniform approach ends the race-to-the-bottom competition that incentivizes utilities to attract customers by offering hidden discounts paid for by other ratepayers.[2]

In contrast, EKPC states that much of the detail in its Rate DCP will be left to "specific and unique special contracts negotiated between EKPC, our Owner-Members, and particular data center customers."[3] It does not have expected language for several key provisions,[4] nor in fact does it even know comprehensively what terms and conditions might even still need to be worked out.[5] Furthermore, even the terms that are included are apparently viewed as negotiable by EKPC:

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[1] Proposed Rate DCP (Data Center Power) of East Kentucky Power Cooperative, Inc., Cover letter at 1 (Apr. 30, 2025) ("Cover Letter").
[2] Eliza Martin and Ari Peskoe, *Extracting Profits from the Public: How Utility Ratepayers Are Paying for Big Tech's Power* at 23 (Mar. 2025) ("Extracting Profits Report").
[3] Cover Letter at 1.
[4] Responses to Staff's First Information Request to East Kentucky Power Cooperative, Inc. Dated June 27, 2025 at Response 24 (Jul. 14, 2025) ("Response to Staff 1-24").
[5] Response to Staff 1-23.b.

> If a data center customer objected to any specific provision of an approved data center tariff, EKPC, the Owner-Member distribution cooperative that would ultimately serve the data center customer and the customer would negotiate to resolve the dispute as part of the negotiation of the special contract.[6]

Public Interest Commenters suggest that instead of leaving important terms for negotiations in special contracts, the proposed 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 (see section 2);
- Cost allocation and recovery (see section 3), 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 (see section 4)

Without terms addressing these essential issues, "[i]t is a tale told by an idiot, full of sound and fury signifying nothing."

Ultimately, many of these issues are being faced statewide, along with other issues both within the purview of the Commission and beyond, but which deserve a comprehensive open forum for consideration. Due to the impacts on both the public utility systems of the Commonwealth - both electrical and water - Public Interest Commenters also suggest that the Commission consider opening a general investigation into the impacts of data centers.

2. The Application process lacks essential specifics.

Beginning with the application process, there is insufficient information on how the process proceeds, what details are required, what studies will be conducted and how, and how they will determine the details of the rates and requirements under which prospective data centers will take service.

[6] Responses to Staff's Second Information Request to East Kentucky Power Cooperative, Inc. Dated July 25, 2025 at Response 3 (Aug. 11, 2025) ("Response to Staff 2-3").

a. There is little information on the minimum information requirements of an application

The proposed tariff provides that each applicant for service will provide information that will include "information on the specific location for the applicable Data Center, the final expected Data Center Load and the expected ramping of the Data Center Load," as well as information to show that the applicant has control over the land.[7] While that is not an exhaustive list of what would be required, it is important to note that significantly more detailed information will be needed to conduct the studies necessary to show that the additional proposed load would not negatively impact the systems' overall performance, capacity, and reliability. The studies that will have to be done rely on accurate site specific information regarding each proposal. A May 2025 report by Elevate Energy Consulting and GridLab (hereinafter "Elevate Energy Consulting report") identifies the data that should be included with each application to ensure that the utility has sufficient information to conduct its reliability studies and assessments of grid impacts. To ensure consistency across all applications and to ensure that EKPC has sufficient data to assess the impacts of the added load, Public Interest Commenters request that the tariff include an appendix that sets forth all of the information and data that is required to be filed with each application. The tables in Appendix A of the Elevate Energy Consulting Report provide guidance on the information that should be included with each application.[8]

b. A Single Load Study Is Insufficient.

The proposed tariff relies on application fees to fund a Load Study for each new applicant or tranche of applicants. The purpose of the study is to "determine the costs of interconnecting the applicable data center to EKPC's transmission system."[9] The tariff mentions no other studies that may be required to ensure that a new large load customer would not negatively impact EKPC's ability to serve its native load customers.

The size of proposed data centers is increasing quickly. And the addition of very large loads can require significant expansion of generation and transmission capacity. The Elevate Energy Consulting Report notes that "the addition of a very large load in a rural region near existing generation can trigger large high-voltage transmission expansion projects, the need to procedure large voltage-supporting devices, and the design of highly complex protection schemes intended to prevent long-term damage to existing generators."[10]

But, it's not just the size of the loads. The characteristics of data center loads in particular pose numerous challenges for systems. In particular, data center loads are

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[7] Proposed tariff VIII.1.
[8] Quint R, et al. *Practical Guidance and Considerations for Large Load Interconnections*, May 2025, pp. 74-76, available at: https://gridlab.org/portfolio-item/practical-guidance-and-considerations-for-large-load-interconnections/. ("Elevate Energy Consulting Report")
[9] Proposed tariff VIII.2.
[10] Elevate Energy Consulting Report, *supra* note 8 at 17.

often variable to a degree that the existing system may be unable to accommodate them without mitigating devices. Further, "even in designs with high load factor and low variability, the sheer size of these loads can present problems during more infrequent events such as when the site comes offline or back online, requiring mitigations…."[11]

In addition, the types of analyses and modeling needed to ensure the feasibility of serving additional large load customers becomes more complex as the industry advances technologically and as the number of large load customers served by a particular system grows. What happened last year in Northern Virginia is indicative of the types of issues that can arise as data center load becomes concentrated in a system. In July 2024, lightning triggered a grid fault in Northern Virginia that caused a significant number of data centers to immediately shift to back up power. When the fault occurred, around 60 data centers shifted to back up power via their uninterruptible power supplies design. That sudden loss of nearly 1500 MW of load nearly triggered a blackout in Northern Virginia. In the incident, both the grid fault and the data centers' responses to the fault were as designed. Still yet, the scale of the sudden decline in load nearly caused a black out. In its Incident Review North American Electric Reliability Corporation (NERC) noted that while this incident did not cause significant operating issues, "the risk could quickly increase." One thing NERC recommends is that "operating agreements with large loads include ramp rates when connecting/reconnecting large loads to the system."[12] This is one example of the type of issues that can arise as more large loads with uninterruptible power supply designs come online. Determining whether and how those loads can be served requires sophisticated models that provide thorough understandings of the behaviors of large load customers individually and in the aggregate during normal and abnormal grid conditions.

The Elevate Energy Consulting report identifies the minimum studies that are needed for each application.[13] Specifically, Chapter 6 of the report identifies the types of models that are typically required to quantify reliability impacts. The report stresses that the current modeling standards are at times confounded by the behaviors of these large load customers and that more sophisticated models are needed to better understand and predict effects on the systems' performance, capacity, and reliability.[14] Public Interest Commenters recommend that EKPC's application fees should be sufficient to pay for the actual costs of the multiple modeling studies that are needed to ensure that the new load will not impact the capacity, performance, and reliability of service to EKPC's native load customers.

c. *The application process should fund a more comprehensive feasibility study.*

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[11] *Id.* at 19.
[12] North American Electric Reliability Corporation, Incident Review: Considering Simultaneous Voltage-Sensitive Load Reductions, Jan. 8, 2025, available at: https://www.nerc.com/pa/rrm/ea/Documents/Incident_Review_Large_Load_Loss.pdf.
[13] *Id.*
[14] *Id.* at 47-54.

In addition to the studies required of each applicant's proposed load, the tariff's requirement that the applicant pay for a load study should be bolstered to require its large load demand applicants to fund a longer term study on grid reliability impacts of the increased demand in aggregate across all large load customers served by EKPC.

For instance, New York Municipal Power Agency's rider for rates and charges for high density load service mandates that, "[u]pon payment of security acceptable to the Utility, the Utility shall conduct, or cause to be conducted a feasibility study to evaluate whether the requested load can be safely served by the Utility."[15] The rider specifies that the customer is responsible for the reasonable costs of conducting this feasibility study.[16]

Public Interest Commenters suggest this could be accomplished in aggregate by requiring that each applicant pay an additional amount to be escrowed until such time as the overall large load demand reaches a certain point, at which time the escrowed funds will be used to fund a feasibility study on grid reliability impacts of any further increased demand.

d. The application process should require a marginal cost study.

In response to a question from the Attorney General, EKPC states that it "does not believe a marginal cost study would be necessary" for data centers, and that it "will be able to identify all capital costs associated with serving a data center with a high degree of certainty."[17] EKPC is either being naive or intentionally obtuse about the potential risks in stating that it is so straightforward to account for all of the costs of load additions of the potentially unprecedented size associated with data centers. A marginal cost study as a part of the application process - at the expense of the applicant - would better ensure that applicants under Rate DCP can be fully allocated all costs associated with serving them, although even a one-time cost study alone is not a foolproof guarantee, for the same reason that a single load study is not.

According to a recent manual from the Regulatory Assistance Project, a reputable independent, non-governmental organization "with a mission of advancing policy innovation and thought leadership within the energy community,"[18] "[c]ost allocation is one of the major steps in the traditional regulatory process for setting utility rates."[19] Yet, even as the widespread growth of demand from data centers was just beginning,[20] the

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[15] New York Municipal Power Agency, Generic Tariff Rider A (Rates and Charges for Customers Requesting High Density Load ("HDL") Service), Leaf 95-96 (Mar. 23, 2018) ("NYMPA HDL Rider"), https://ets.dps.ny.gov/ets_web/search/showPDF.cfm?%3B%3AIS%20%3B%2A%29LOUNWD%5CJ%5E8%2B%22%2B5%2F0MD%2F0%28%231F%26S%5C%3FV%0A.

[16] *Id.* at Leaf 96.

[17] Responses to Attorney General's First Information Request to East Kentucky Power Cooperative, Inc. Dated June 30, 2025 at Response 2 (Jul. 14, 2025) ("Response to AG 1-2"),

[18] Regulatory Assistance Project, *About Us*, https://www.raponline.org/who-we-are/about-us/.

[19] Jim Lazar, Paul Chernick, and William Marcus, *Electric Cost Allocation for a New Era: A Manual* at 14 (RAP, Jan. 2020) ("RAP New Era Manual"), *available at*, https://rapstaging.wpengine.com/knowledge-center/electric-cost-allocation-new-era/.

[20] *See*, *e.g.*, Arman Shehabi et al., *2024 United States Data Center Energy Usage Report*, (LBNL, Dec. 2024), *available at* https://escholarship.org/uc/item/32d6m0d1.

authors point out that "legacy methods of cost allocation from the 20th century are no more suited to the new realities of the 21st century than the engineering of internal combustion engines is to the design of new electric motors."[21] Marginal cost allocation specifically requires data beyond that collected by EKPC's proposed application process, so far as it is fleshed out:[22]

> The typical marginal cost of service study requires detailed hourly data on loads by customer class, marginal energy costs and measures of system reliability (loss-of-energy expectation, peak capacity allocation factor, probability of peak, etc.), as well as multiyear data on loads and investments for the transmission and distribution system.[23]

For data centers, due to their potential size, the risk of cost-shifting to existing customers absent comprehensive understanding of marginal costs is particularly acute. A study of the impacts of data centers in Virginia, commissioned by the Virginia Joint Legislative Audit and Review Commission (JLARC) and conducted by Energy + Environmental Economics (E3), for instance, found that while "[c]urrent rates appropriately apportion costs to classes and customers responsible for incurring them…[l]oad growth is expected to increase system costs," and "[f]ixed costs associated with generation and transmission are difficult to effectively assign…."[24]

In that study, Virginia utilities were expected to see impacts from allocations associated with costs of transmission and generation to serve data centers,[25] despite each already allocating individual interconnection costs to new data centers.[26] Furthermore, bring-your-own-generation ("BYOG") arrangements, such as proposed here by EKPC for the largest loads, are not a talisman against increased costs, given the overall upward pressure of the demand from data centers, due to factors such as borrowing costs, marginal cost markets, and locational marginal pricing.[27]

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[21] RAP New Era Manual, *supra* note 19 at 14.
[22] The manual covers both embedded cost of service studies, "typically based on a single year-long period, using the embedded cost revenue requirement and customer usage patterns in that year to divide up costs," and marginal cost of service studies, which "look at how costs are changing over time in response to changes in customer usage." *Id.* at 14-15. A blog post introducing the manual states "A marginal cost of service study typically measures the cost of expanding system capability to meet additional requirements for capacity at peak periods, additional transmission and distribution capacity, and additional energy usage, with at least energy-related costs differentiated by time period." Jim Lazar, Mark LeBel, *Modern Marginal Cost of Service Studies*, (Apr. 15, 2020), https://www.raponline.org/blog/modern-marginal-cost-of-service-studies/.
[23] RAP New Era Manual, *supra* note 19 at 189.
[24] Energy+Environmental Economics (E3), *Virginia Data Center Study: Electric Infrastructure and Customer Rate Impacts*, Prepared on behalf of the Virginia Joint Legislative Audit and Review Commission (JLARC) at 19 (Dec. 2024), *available at* https://jlarc.virginia.gov/pdfs/presentations/JLARC%20Virginia%20Data%20Center%20Study_FINAL_12-09-2024.pdf.
[25] *Id.* at 80, 96.
[26] *Id.* at 77.
[27] *Id.* at 107-08.

Furthermore, as mentioned above, while existing rate structures may be scalable to accommodate data centers, there is significant cost shifting risk, including beyond marginal generation and transmission costs, such as from "the impacts of the scale of investments (and associated risk of those investments) on utility balance sheets, which has the potential to raise borrowing costs and thus increase costs for existing ratepayers."[28] EKPC is equally glib about this risk, stating:

> EKPC believes that, if necessary, it is possible to use a project financing model to build a Dedicated Resource to supply a data center with minimal financial risk to non-data center customers or even to other data centers. In such a situation, EKPC would not be seeking or guaranteeing its subsidiary's financing for the Dedicated Resource. The collateral for the project financing would be the power purchase agreement between EKPC and the Dedicated Resource subsidiary and, importantly, the guarantee from the data center or its parent to the Dedicated Resource's lenders.[29]

EKPC does not explain how a subsidiary would be created, the additional costs of creation, or how a subsidiary would obtain financing essentially without risk to EKPC as claimed. Separately, EKPC claims that a subsidiary could be created to generate power to sell to EKPC, who would in turn resell it to a qualifying customer.[30] EKPC doesn't explain how all cost risk could be shifted to the subsidiary via use of the data center guarantee (presumably made to EKPC, although this is unclear), while also keeping the debt off of EKPC's books.[31]

e. There is inadequate justification for the application fee minimum and fee cap.

The application fee itself lacks adequate explanation or justification. There is no basis for the proposed fee minimum or for any fee cap. The fees for the application serve two purposes, the minimum fee sets a barrier to entry so that speculative applications do not waste EKPC's resources. Above that minimum, the fees must be set at whatever level is needed to perform the studies required to ensure that the proposed project does not negatively impact EKPC's ability to serve its native load customers. There is no reasonable basis for setting a cap on the application fee.

A high fee minimum is important to maintain as a barrier to entry for speculative applicants. There is insufficient information to support the proposed minimum application fee of $75,000.[32] It is unclear that that fee amount would provide a sufficient barrier to entry that would weed out applicants that are shopping their proposal around to different markets, especially where the only firm requirement for an applicant is control over the land for the proposed center.

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[28] *Id.*
[29] Response to AG 1-7.a.
[30] Responses to Staff 1-10.b-c.
[31] *Id.*
[32] Proposed tariff at VII.6.

With regard to the maximum application fee, there is no explanation given and no conceivable reason that the fee should be capped. Modeling and study of each application is essential to ensure that the addition of each new customer does not negatively impact the system's performance, capacity, and reliability.
Further, as more large loads come online, the assessment of how and whether sufficient power can be provided will increase in complexity. That increased complexity will require more robust (and more expensive) modeling. While there is no justification for any cap on the application fee, it further appears from EKPC's own estimate of the costs of conducting the required studies that the fee cap should instead be closer to a floor. In response to a request for information from staff, "approximating the cost to prepare the data center tariff, required studies, a formal proposal to enter into a special contract with a data center, including any required project finance," gives an approximate cost to EKPC of $267,671.[33] For that reason, the fee cap on the study should be removed, and the Commission should require that the fee should not be linearly tied to the size of the applicant at all or, be increased substantially. The application fee should be based on actual costs to do all of the studies required, as outlined in part above.

3. Rate DCP fails to fully protect existing customers from potentially subsidizing investments to serve new large loads.

Public Interest Commenters are supportive of EKPC's efforts to eliminate cross subsidization through the "all costs" provisions in the proposed tariff. Specifically, we are supportive of EKPC's statement that its proposal "allocates all costs associated with serving a data center load to the data center. The cost recovery provisions comprehensively apply to all build out costs, operations, and other aspects of electric service."[34] However, given current conditions, Public Interest Commenters feel that their proposal does not provide enough protection for its other customer classes. Particularly given current conditions within PJM, even if Qualifying Customers are purchasing "dedicated resources," simply bringing resources of this size onto the system is diminishing into the total supply of generation and transmission resources, and driving costs up for all customers on the system.[35]

a. Rate DCP fails to properly allocate all costs to prospective large load customers.

Specifically, without broadly-applicable tariff provisions commenters are concerned that individually-negotiated special contracts, as called for by the proposed tariff, would allow multi-national conglomerates that are some of the largest corporations in the world, to engage in lopsided negotiations that lack the robust public review of a full PSC case, such as this one.

Martin and Peskoe note:

[33] Response to Staff 1-3.a.
[34] Cover Letter at 2; Direct Testimony of David S. Samford on Behalf of East Kentucky Power Cooperative, Inc. at 6, lines 14-17 (Jun. 06, 2025) ("Samford Direct").
[35] E3 Virginia Study, *supra* note 24 at 80.

> there are "notorious disagreements" about appropriate methodologies, and even the term "cost" can itself be subject to dispute. Experts debate, for instance, when to use average or marginal costs and whether short- or long-term costs are suitable metrics. When utilities use one metric in a rate case and another metric in a special contract proceeding, they could be causing spillover effects that harm ratepayers.[36]

Further, "[w]ithout reforms, consumers will be paying billions of dollars for regional infrastructure that is designed to address the needs of just a few of the world's wealthiest corporations."[37]

Direct assignment of certain costs to large load customers has become more common in tariffs and rates for large load customers. For example, I&M's recent large load tariff settlement assigns to each large load customer the cost of any "Full Planning Studies, including steady-state and dynamic studies, required because of the potential addition of a Large Load Customer."[38] Even with this provision, the settlement specifies that it does not limit the ability of the settling parties or Indiana Utility Regulatory Commission to address cost allocation in a subsequent proceeding.[39]

As noted above, New York Municipal Power Agency's rider for rates and charges for high density load service includes an even stronger cost allocation provision, requiring a feasibility study.[40] Under the New York rider, the customer is also initially responsible for the entire cost of any new facilities necessary to supply the requested service, and the customer is required to pay the costs of any new facilities in cash before those facilities will be constructed.[41] However, at the end of each of the first ten years of service, the customer receives a "refund equal to the lesser of the annual non-supply related revenues from the customer, or one-tenth of the cost contribution paid by the customer."[42]

Evergy Missouri Metro's Special High-Load Factor Market Rate takes a different approach to cost allocation. The utility is required to track all costs to serve a customer and verify that the revenue collected from the customer is higher than the costs, in order to ensure that other customers are not being held liable for any revenue deficiencies or

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[36] Extracting Profits Report, *supra* note 2 at 12.
[37] *Id.* at 16.
[38] Ind. Utility Reg. Comm'n Cause No. 46097, *In the Matter of the Verified Petition of Indiana Michigan Power Company for Approval of Modifications to its Industrial Power Tariff*, Submission of Unopposed Settlement Agreement, Stipulation and Settlement Agreement at 6, (Nov. 22, 2024) ("I&M Unopposed Settlement"), https://iurc.portal.in.gov/_entity/sharepointdocumentlocation/4aae5d78-18a9-ef11-8a6a-001dd80bd98a/bb9c6bba-fd52-45ad-8e64-a444aef13c39?file=46097_IndMich_Submission%20of%20Unopposed%20Settlement%20Agreement%20and%20Unopposed%20Motion%20for%20Acceptance%20of%20Out%20of%20Time%20Filing_112224.pdf.
[39] *Id.* at 9.
[40] NYMPA HDL Rider, *supra note* 15,. at Leaf 96. *See* section 2.c., above, for further discussion.
[41] *Id.*
[42] *Id.*

stranded investments and costs.[43] If the customer's rate revenues fail to exceed the cost to serve the customer, the utility is required to make an additional revenue adjustment to cover the shortfall while ensuring that non-Special High Load Factor Market Rate customers are held harmless from any such deficiency.[44] Absent a marginal cost-of-service study, as discussed above, such allocation would be difficult if not impossible to fully assign to new data center customers.

In the study of Virginia conducted by E3, discussed above regarding marginal cost of service studies, a number of tools are recommended to help manage risk and achieve and equitable outcome:

- Updating cost allocation factors and reducing regulatory lag given pace and scale of data center load growth
- Additional charges for data centers that balance historical ratemaking for individual large loads and potential impacts of transformational load growth
- Better forecasting of data center demand, which can also include a waitlist for service and other load interconnection queue reforms
- Long-term service commitments that may include ramping provisions, exit fees, and/or minimum terms for energy and demand charges such as "take or pay" constructs
- Self supply of resources or "bring your own generation" of both existing and emerging technologies like SMRs along with leveraging continued innovation from data center companies on energy efficiency as well as flexible operations
- Direct assignment of new infrastructure costs as well as enhanced collateral / credit requirements.[45]

Public Interest Commenters recommend that the proposed tariff include a term directly assigning to large load customers certain costs associated with delivering service to those customers as determined by the marginal cost of service study recommended above, without any exception for "separate agreements."[46] At a minimum, this term should encompass any costs from conducting studies related to the potential addition of a large load customer during the application process as described above in section 2. Like the New York rider, this term could also initially assign the cost of any new facilities needed to serve a customer to that customer, with a mechanism to refund a portion of

[43] Evergy Metro, Inc. d/b/a Evergy Missouri Metro, Special High-Load Factor Market Rate, Schedule MKT, Sheet 58C (July 13, 2023), https://www.evergy.com/-/media/documents/billing/missouri/detailed_tariffs_mo/special-high-load-factor-market-rate.pdf.
[44] *Id.*
[45] E3 Virginia Study, *supra* note 24 at 101.
[46] *See*, *e.g.*, Samfor Direct, Attachment DSS-1, Clean Rate DCP Tariff at proposed tariff term V.5.(a), requiring a Contract negotiated by EKPC (also note the reference at the top of this section appears to incorrectly reference Section V(5) rather than Section V.4., regarding Costs Recovery Generally); Section V.5.(b).

that over a reasonable period of time that sufficiently protects against stranded cost risks, rather than leaving cost recovery to take place over time.[47]

The proposed rate appears to contemplate this concept, stating:

> All costs, expenses, losses and liabilities associated with, arising from, or relating to serving the Eligible Data Center (including, but not limited to, all costs arising from developing, procuring, permitting, securing, financing, purchasing, owning, leasing, constructing, operating, insuring, utilizing, maintaining, decommissioning, retiring and deconstructing the Selected Resource Mix, all associated transmission, distribution, and related infrastructure upgrades and construction, and associated transmission and distribution service, including but not limited to Regional Transmission Expansion Planning ("RTEP") expenses) shall be kept as a separate account for PJM and accounting purposes from non-Rate DCP rate classification members and borne by the Qualifying Customer through a Facilities Agreement, Dedicated Resource Cost Recovery Agreement and/or Contract along with a reasonable rate of return for both EKPC and the Cooperative….[48]

But this seemingly comprehensive listing becomes fuzzier the longer one contemplates it. There is no description of how costs, expenses, losses and liabilities are to be determined. As noted above, what constitutes a cost is often a contentious issue itself, and should not be left for negotiation in individual contracts. Furthermore, how recovery will occur, for example in an upfront deposit or over time, is not clearly stated. Nor is how recovery will occur in the event either party attempts to terminate the contract. This becomes even more problematic in light of the fact that EKPC does not contemplate conducting a marginal cost study for potential data center customers.[49] Commenters suggest that these terms be made a part of the tariff with specificity, and further that tracking of costs and revenues should also be required to be publicly-filed with the Commission.

Further, while we do not wholly agree with the recommendations of E3 in Virginia (and maintain significant reservations about the potential for new nuclear to serve data centers, in particular), we encourage the Commission to require evaluation of additional methods such as those recommended to ensure equity. In particular, Rate DCP must contain minimum charges to ensure against stranded costs being borne by existing owner-members. Additionally, while the tariff requires reimbursement to EKPC in the event of early termination,[50] it says nothing about how termination occurs, whether the

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[47] *Id.* at V.5.(c).
[48] *Id.* at V.4.
[49] Response to AG 1-2. *See* section 2.d., above, for further discussion.
[50] Samfor Direct, Attachment DSS-1, Clean Rate DCP Tariff at proposed tariff term at Section V.5.(c) ("In the event that the Facilities Agreement, Dedicated Resource Cost Recovery Agreement and/or Contract terminate or expire prior to full recovery by EKPC and/or Cooperative of all Build-Out Costs, then Qualifying Customer shall pay EKPC and/or Cooperative for any unreimbursed Build-Out Costs incurred by EKPC and/or Cooperative….")

collateral posted will be sufficient to cover all remaining costs, or what rights EKPC maintains in a bankruptcy proceeding,[51] making recovery in the event of termination a proposition that could prove difficult depending on the financial status of the DCP customer and terms of any separately-negotiated contract.

In short, the proposed Rate DCP falls short of ensuring that all marginal costs associated with serving new data centers, or mitigating the significant risks of demand not manifesting or departing early through, for example, minimum demand fees, contract terms, or early termination requirements.

b. The threshold for requiring dedicated resources lacks sufficient justification, and should be lowered to 100 MW.

The proposed tariff requires a dedicated supply for data centers with loads above 250MW. PJM is facing significant pressure in its capacity markets from data centers that are now coming online. More dedicated supplies are needed to ensure that data centers do not overwhelm the PJM supply capacity and cause price spikes that hurt all customer classes. A requirement that all data centers above 100MW provide a dedicated resource according to the terms of the proposed dedicated resource rider would better protect all customers against the supply issues being caused by these large loads.

As a justification for the 250 MW threshold, EKPC states that it is "intended to approximate the capacity value of a new combustion turbine (CT) unit."[52] In justifying this choice, EKPC states that it was attempting to "balance three key objectives":

> First, EKPC desired to be consistent with Kentucky's long-standing policy of having "steel in the ground" to serve load. Smaller loads are easier to integrate into a utility's load portfolio because they do not necessarily require a new generation resource to serve them. However, as load size increases, the ability of a utility to have existing "steel in the ground" to serve the load diminishes. Second, a CT's capacity was used as the proximate trigger for a Dedicated Resource because it affords flexibility in portfolio planning. A CT can be built and operated on a stand-alone configuration or combined with other CTs to operate in a combined cycle configuration. As EKPC contemplates working through multiple applications for potential data center projects, having resource planning flexibility is desirable. Third, other forms of generation resources are not feasible.[53]

However, each of these justifications appears either insufficient or based on misconceptions. First, no explanation is given as to what size load could be integrated into EKPC's current system without need for additional buildout. In fact, to the extent

[51] *See*, *e.g.*, Response to Staff 1.29.
[52] Response to Staff 1-7.
[53] Response to Staff 2-5.

EKPC believes it could incorporate up to 249 MW of additional load without expanding its resource portfolio, then it is already over-building its system to the detriment of current customers.[54] Second, the description of simply adding CTs to combine them into a combined cycle is at best a misleading description of the different technologies. A combined cycle unit is any number of CTs (including simply 1) with heat recovery from the turbine used to power secondary steam generation.[55] Third, and related to two, the relative size of different generation technologies appears to bear little to no relation to the costs being caused to serve a new extremely large load. The cost being caused by the new customer is the key question, and that is why Public Interest Comments suggest that all data centers above 100MW provide a dedicated resource according to the terms of the proposed dedicated resource rider, to better protect all customers against the supply issues being caused by these large loads.

4. The tariff should include provisions that contemplate both interruption and curtailment of service

The proposed tariff does not include any protections for when load needs to be decreased or interrupted. Instead, the proposed tariff provides that "level of firmness of service and curtailment" will be part of the "additional minimum contract terms."[56] While many details related to interruption or curtailment will necessarily need to be worked out in each contract, the tariff itself should include some minimum requirements.

a. Load Shedding Events

All contracts for large loads should include provisions related to the occasional need to interrupt service to safeguard the grid. Those specific contractual provisions include the amount of firm load provided under the contract, the maximum number of hours of interruptible service per year, and the duration of interruption. The aggregation of these contract terms will allow EKPC to forecast and delineate its capacities at firm load and load subject to interruption. The contracts will also include pricing for loads that are subject to interruption or provide an overall discount based on the amount of load that is not considered firm. Those mechanisms can help incentivize data centers and other large load customers to design systems that allow reductions in draw both temporally and spatially, as well as ensuring that they have sufficient back up power.

However, it is critical 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. The tariff should specify terms related to interruption that are to be common across all contracts. Such common terms should include: triggering mechanisms that EKPC will use to determine when a load shedding event has occurred, the timing and type of notice required for both planned and emergency interruptions, how damages will be assessed for any failures to interrupt after EKPC determines a load shedding event has occurred, and provisions that ensure that EKPC will be held harmless for any

[54] *See* AG 1-3 and Response.
[55] *See*, *e.g.*, Responses to Staff's Third Information Request to East Kentucky Power Cooperative, Inc. Dated August 20, 2025 at Response 2.c. (Sept. 02, 2025) ("Response to Staff 3-2.c.").
[56] Samfor Direct, Attachment DSS-1, Clean Rate DCP Tariff at proposed tariff term IV.4.

damages that may occur as a result of the interruption. Further details of load shedding, many of which are listed above, can then be worked out in the individual contracts. However, it is critical that all large load customers operate under the same duty to interrupt service when EKPC determines that it is needed. By requiring interruptible service under the tariff rather than individual contracts, EKPC better protects its customers from the harm that could occur to all customers should large loads fail to interrupt service during load shedding events. Further, by requiring interruptible service at the front end, those seeking service under EKPC's proposed tariff will be required to enter the contract negotiations phase with sufficient back up power supplies or mechanisms that allow them to modify their demand temporally or spatially to allow them to respond to load shedding events. This will ensure that those large load customers seeking service in EKPC's territory will be less likely to fail to respond to a load shedding event, which can cause system-wide harm.

b. Curtailment of Service

EKPC's tariff should also include provisions that anticipate that data centers will come to negotiations with demand response programs. The ability of data centers to incorporate flexible demand into their energy plans is developing quickly. EKPC can best be ready to take advantage of these advancements if the tariff asserts that EKPC will consider curtailment commitments as part of the resource mix to be considered in each customer's load assessment.

Recent advances at data centers are making demand response planning more feasible. For example, Google has recently piloted a demand response program that centers on shifting non-urgent machine learning (ML) computing tasks to other times and locations during periods of high demand.[57] Michael Terrel, head of Advanced Energy at Google, said, "We see a significant opportunity to expand our demand response toolkit, develop capabilities specifically for ML workloads, and leverage them to manage large new energy loads. By including load flexibility in our overall energy plan, we can manage AI-driven growth even where power generation and transmission are constrained,"[58]

Considering curtailment commitments as part of the overall resource mix makes particular sense considering EKPC's reserve margins. In EKPC's recent CPCN application, their expert Julia J. Tucker discussed the cooperative's recent decision to increase their reserve margins. Specifically, EKPC increased its summer and winter reserve margins to 7%.[59] Those reserve margins could be used in non-peak times to

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[57] *See* Z. Skidmore, *Google partners with I&M and TVA to expand use of demand response at its AI data centers,* Data Center Dynamics, Aug. 4, 2025, available at: https://www.datacenterdynamics.com/en/news/google-partners-with-im-and-tva-to-expand-use-of-demand-response-at-its-ai-data-centers/#:~:text=Critical%20Power%20Channel-,Google%20partners%20with%20I&M%20and%20TVA%20to%20expand%20use%20of,during%20times%20of%20peak%20demand.

[58] *Id.*

[59] Case No. 2024-00370, *Electronic Application of East Kentucky Power Cooperative, Inc. For 1) Certificates of Public Convenience and Necessity to Construct a New Generation Resources; 2) for a Site Compatibility Certificate Relating to the Same; 3) Approval of Demand Side Management Tariffs; And 4) Other General Relief*, Direct Testimony of Julia J. Tucker on Behalf of EKPC, at 14-16, (Nov. 20, 2024).

provide power for large load customers. Then, during peak times, those large load customers would curtail their use under their curtailment commitment to ensure sufficient capacity to meet peak demand. If EKPC negotiated agreements that require data centers to curtail usage only during those peak demand periods, the cooperative would be able to offer some of that additional reserve margin as capacity to those data centers. That type of agreement would allow EKPC to offer more power based on current generation rather than requiring additional capacity to meet the data center's demand.

The use of reserve capacity was explored earlier this year by the Nicholas Institute for Energy, Environment & Sustainability in a study entitled Rethinking Load Growth: Assessing the Potential for Integration of Large Flexible Loads in US Power Systems.[60] That study assessed the amount of headroom, that is the difference between the capacity demands during peak times and the normal load capacity, and found that power systems in the United States typically run at 53% of their total capacity. The study found that if that headroom were able to be utilized, it could add between 76 and 126 gigawatts of new electric capacity without building new infrastructure. The study found that maximizing the generation capacity in the headroom would require curtailment less than 1% of the time. The Elevate Energy Consulting Report also discusses the potential for flexible demand. The report notes that "load flexibility can be achieved in various ways, including load reduction, such as workload shifting/rescheduling and cooling system control; onsite generation or energy storage dispatch to offset net demand; and participation in demand response or controllable load programs." The report continues, "[f]lexible load strategies are well-suited for non-critical IT workloads that can be deferred and rescheduled without impacting business operations. When deployed at scale, flexible data centers could support local grid congestion issues as well as regional resource adequacy needs, serving as controllable, dispatchable demand."[61]

It is possible, even likely that future data center applicants will come to EKPC with flexible load strategies. By including provisions in the tariff that anticipate the need to assess how best to serve applicants' demand response programs, EKPC will be better positioned to make the most of coming opportunities. The ability to predict and plan for the use of the reserve margin of available generation can significantly lessen the need for additional generation capacity, whether such capacity is to be purchased or built. Overall, the judicious use of capacity reserves by large load customers could lessen the risks to the EKPC and it's other customer classes posed by the need to ensure the availability of resources to meet all large load demands not covered by a dedicated resource.

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[60] Norris, T. H., T. Profeta, D. Patino-Echeverri, and A. Cowie-Haskell. 2025, *Rethinking Load Growth: Assessing the Potential for Integration of Large Flexible Loads in US Power Systems*, NI R 25-01, Durham, NC: Nicholas Institute for Energy, Environment & Sustainability, Duke University. *Available at* https://nicholasinstitute.duke.edu/publications/rethinking-load-growth.

[61] Elevate Energy Consulting Report at 66.

5. **The Commission should begin a more comprehensive investigation of the effects of new large loads on the electric and water systems of the Commonwealth.**

Ultimately, many of these issues are being faced statewide, along with other issues both within the purview of the Commission and beyond, but which deserve a comprehensive open forum for consideration. Due to the impacts on the public utility systems of the Commonwealth - both electrical and water - Public Interest Commenters also suggest that the Commission consider opening a general investigation into the impacts of data centers. Such investigation should focus on many of the suggestions here, including proper study of the impacts of data centers, cost allocation and protections for current ratepayers, impacts on the generation and transmission systems of the Commonwealth, and opportunities to protect each of the above, for instance through demand response programs that have shown promise in other jurisdictions.

Public Interest Commenters thank the Commission for this opportunity to provide comment on the tariff filing, and appreciate the fulsome investigation conducted in this case on an important issue. Please contact any of the below signatories regarding any questions or concerns.

Regards,

/s/

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