COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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

COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

On April 30, 2025, East Kentucky Power Cooperative, Inc., ("EKPC") filed an application with the Kentucky Public Service Commission ("Commission") proposing a new data center tariff. EKPC warns of a future where "large data center loads could quickly exceed EKPC's existing generation portfolio resources."[1] To remedy the issue, EKPC proposes to borrow competitive generation solutions to serve new hyperscale data centers that might come to its service area. EKPC's proposed tariff, however, is missing details critical to those that would be making the investment decisions, and in other areas proposes overly restrictive limitations. The combination of these is likely to impede economic development.

The Commission's decision in this proceeding can have far-reaching impacts on Kentucky's ability to attract and retain large-scale economic development. Data centers represent a new wave of investment, bringing in billions of dollars of capital and high-skilled jobs. Kentucky should take note of the new energy landscape—one where states compete with other jurisdictions for billion-dollar investment opportunities. These

[1] *Id.* at 2.

opportunities can drive local and regional economies through the expansion of existing tax bases and creation of new jobs.[2] Recognizing this opportunity, the Kentucky legislature recently enacted expanded sales and use tax exemptions for eligible data centers.[3] Yet, EKPC's tariff provision could have the effect of pulling an iron curtain over data center investment in its service area and drive data center customers elsewhere.

EKPC's tariff filing underscores the fact that the traditional vertically-integrated model is not set up nor equipped to meet the unique challenges posed by hyperscale data centers. Despite acknowledging the shortcomings of a "one-size-fits-all approach,"[4] and looking towards competitive generation options like customer-constructed generation and bilateral market purchases, EKPC's proposed tariff creates roadblocks for actual investment.

Developers of billion-dollar electricity-intensive projects, in RESA's experience, are not going to select a site in an electric utility service area where the exact parameters to one of the biggest cost inputs are a complete mystery. Nor would they select a site in a utility service area that appears to artificially create additional costs and burdens. The EKPC tariff proposal is missing clarity and transparency on many essential details necessary to encourage economic development in the region of Kentucky served by EKPC.

RESA had sought to intervene in the proceeding to help develop the missing details in a collaborative manner with the parties, based on RESA's experience and the

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[2] Economic Contributions of Data Centers in the United States: 2017-2023, PricewaterhouseCoopers (February 2025).

[3] Ky. H.B. 775, 2025 Reg. Sess. (Ky. 2025) (enacted as Act ch. 98).

[4] EKPC Cover Letter at 1 (Apr. 30, 2025).

experience of its members. However, EKPC objected to RESA's intervention, and the Commission ultimately denied our intervention. While RESA fully understands the current retail electric landscape in Kentucky, RESA still believes it is well positioned to share its perspective on the approaches that have worked in states that rely on competitive generation markets, approaches that are being utilized to unlock customer-choice in states that are still vertically-integrated, and the ways the EKPC tariff could be modified to attract investment while providing incremental customer choice. To this end, RESA respectfully offers the following Comments for the Commission's consideration.[5]

II. COMMENTS

A. The Commission should modify the bilateral tariff provisions to emphasize the need for customer input, authorize customers to be part of the process for selecting the terms and conditions of the bilateral market purchases, and clarify that virtual PPAs are not covered by the Bilateral Purchase provisions of the tariff.

1. There is still room for customer involvement in the generation procurement process in vertically-integrated states.

In Kentucky, as well as states that are vertically-integrated, states have become aware of the unique generation needs of large load customers. While RESA believes full retail choice in the long run is the better approach, there is still room for the Commission to modify EKPC's proposed tariff to allow for customer input on the generation process under Kentucky's existing legal and regulatory framework.

As an example, in 2013, Kenergy Corp. and Big Rivers Electric Corp. submitted an application that relied on the market for procuring the generation supply of a large load

[5] These Comments are offered pursuant to 807 KAR 5:001, Section 4(11)(e)(1-2) and the Commission's August 6th Rehearing Order. *In the Matter of the Electronic Filing of East Kentucky Power Cooperative, Inc. to Establish a New Tariff for Data Center Power*, Case No. 2025-00140, Rehearing Order at 4 (August 6, 2025).

customer.[6] There, the rural co-op, Big Rivers Electric Corp., relied on market purchases to supply the 482MW required for the Century Aluminum Company's smelting operations.[7]

Arizona, another state without full retail electric choice, has authorized customer involvement in the generation procurement process. The Arizona Corporation Commission's approval of the Alternative Generation Rate Rider, AG-X ("AG-X"), provides such a framework. Since 2012, Rate Rider AG-X has enabled qualifying customers to contract with third-party generation service providers while the Arizona Public Service Company ("APS") facilitates delivery. Under the tariff, customers with at least 5 MW of aggregated peak load can arrange for a third-party generation provider to sell wholesale power to APS on the customer's behalf.[8] Notably, customers may directly negotiate with the generation service provider, even though it is APS that ultimately purchases the power and takes delivery from the wholesale provider.[9] The Arizona Corporation Commission has affirmed this program's benefits in subsequent rate cases.[10] Rate Rider AG-X creates a practical pathway for enabling customers to find generation on terms and conditions that meet their respective needs, even within a vertically-integrated framework. This framework utilized by APS could be utilized in EKPC's bilateral purchases concept.

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[6] *See, e.g.*¸ *Joint Application of Kenergy Corp. and Big Rivers Electric Corp. for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, Order at 1 (Aug. 14, 2013) ("Kenergy Order").

[7] *Id.* at 3.

[8] Decision No. 76295 (August 18, 2017). Rate Rider AG-X General Service Alternative Generation, A.C.C. No. 6202 at 1 (defining "Generation Service Provider" as a "third party entity that provides wholesale power to the Company on behalf of a Customer. This entity must be legally capable of selling and delivering wholesale power to the Company").

[9] *Id.*

[10] *See e.g.*, Decision No. 76295 (August 18, 2017); Decision No. 73183 (May 24, 2012).

In Virginia, there is only partial deregulation. Nonetheless, even for residential customers that generally are not able to shop for generation service, if the utility doesn't offer a residential customer the option to choose to obtain generation supply from 100% renewable sources, the utility must allow the homeowner the ability to shop for generation through a competitive supplier.[11] For larger customers, the State Corporation Commission has authorized a renewable program that provides that "a non-utility developer installs a solar or wind generating facility on a customers' property and then sells the electricity generated by them back to that customer at a price that is usually less than electricity provided by the utility company."[12] Dominion Energy Schedule RG states that it "is a voluntary program for large commercial and industrial customers interested in purchasing renewable energy. These customers are able to select the amount of renewable generation they wish to purchase, as well as the type of energy such as solar or wind."[13] In the program, Dominion Energy Virginia would sign a Power Purchase Agreement (PPA) with a renewable energy generator(s) to procure the energy and environmental attributes on behalf of the customer. In turn, customers would sign a Customer Agreement with Dominion Energy Virginia for the purchase of the renewable energy and attributes.[14] This concept from Dominion Energy Virginia could certainly be utilized by EKPC within its bilateral market purchase proposal.

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[11] VA Code § 56-585.5(D) (authorizing utility arrangements for renewable sources with "facilities owned by the persons other than the utility…").

[12] Virginia State Corporation, *Renewable Energy Program*, available at: https://www.scc.virginia.gov/regulated-industries/utility-regulation/energy-regulation/renewable-resources/renewable-energy-pilot-program/.

[13] Dominion Energy, *Renewable Energy Program – Schedule RG*, available at: https://www.dominionenergy.com/virginia/renewable-energy-programs/schedule-rg.

[14] *Id.*

The Commission has already confirmed the lawfulness of getting competitively priced power to Century Aluminum, rejecting claims that it was impermissible retail wheeling.[15] If the Commission wants to encourage data center economic development, then it must consider how to provide attractive and cost saving options to these hyperscale customers within the parameters of Kentucky law. That flexibility, as discussed in more detail in the sections below, is critical to ensure that businesses can make hundred million to billion-dollar investment decisions, including in which states and utility service territories to make such investments. As it stands, the lack of details about how customers can participate in the process is likely to create market confusion as to the applicable parameters, assuming one of these customers considers an investment within the EKPC service area. From RESA's experience, large load customers value options and transparent rules on service. The current EKPC proposal does not provide that foundational framework.

2. Customer Input should be required as part of EKPC's bilateral purchase proposal.

EKPC's Rate DCP contemplates that a data center's electrical needs may be met through a bilateral contract in addition to dedicated resources.[16] The proposal notes that bilateral contract resources will be "selected by EKPC."[17] Details on what criteria EKPC would use to select the generation supply are absent from the tariff proposal. The tariff proposal also lacks detail on what process a customer served under Rate DCP would have to provide input to EKPC on the type of generation supply that would meet the

[15] *Kenergy Order* at 15-16 (rejecting the Territories Act challenge by noting that "[t]here is nothing in KRS Chapter 278 that prohibits Kenergy from securing power from a source other than Big Rivers.").
[16] P.S.C. No. 35, Original Sheet No. 106.
[17] *Id.*

customer's needs. Although Kentucky does not have full retail electric choice, there is no reason to not authorize to the fullest extent permissible under the law a process for Rate DCP customers to provide input and be involved in any process of market-based generation where the full costs of that generation purchase will be passed on to the customer.

Initially, Rate DCP provides that EKPC will identify resources sufficient to serve the customer, which may be an EKPC-Supplied Dedicated Resource or a Qualifying Customer-Supplier Dedicated Resource, Bilateral Purchases, or a combination of these. At a threshold of 250,000 kW, EKPC will have sole discretion to eliminate the Bilateral Purchase option.[18] The tariff also provides that ultimately the selection of the resources, "including any terms and conditions applicable to such resources . . . shall be within the sole discretion of EKPC."[19] The proposed tariff also suggests a contrary outcome on final decision making providing that, "if the expected or actual peak real-time energy demand of an Eligible Data Center is greater than 250,000 kW then Qualifying Customer shall have the option of utilizing either" a dedicated resource supplied by EKPC or the customer.[20]

As for costs to serve the Rate DCP customer, the proposed tariff provides that: "[a]ll costs, expenses, losses and liabilities associated with, arising from, or relating to serving the Eligible Data Center . . . shall be kept as a separate account for PJM and accounting purposes . . . and borne by the Qualifying Customers . . . with a reasonable

[18] Proposed Tariff Sheet P.S.C. No. 35, Original Sheet No. 106.
[19] *Id.*
[20] *Id.*

rate of return for both EKPC and the Cooperative . . ."[21] The proposed tariff also requires the Rate DCP customer to be responsible for 100% of all transmission and distribution costs, and related infrastructure, necessary to serve the customer.[22] The proposed tariff provides further that the Rate DCP customer will have to make an upfront payment for the estimated amount of the full build out costs to serve the data center.[23] Essentially, the Rate DCP customer will be responsible for the actual generation secured to serve the data center as well as all of the infrastructure build out costs.

Where the data center is served through market purchases, there are several rate options that exist. Power could be secured at real-time pricing, a fixed around-the-clock price, based on a block-and-index approach, etc. The generation could come from the PJM market at large, or from a counter-party identifying specific resources backing the bilateral transaction, with the latter option especially relevant when a customer is looking to secure carbon-free or renewable generation. The term of the bilateral transaction could be short, medium, or long-term. The universe of data center companies is broad, and the specific data processing needs are varied. For example, some data centers have processes that are intended to run 24/7, whereas others have more flexibility over the amount of power they draw from the grid.

While the generation needs of the hyperscale data center load are dynamic, the EKPC tariff provides no clear optionality to the customer to be part of the discussion with EKPC about securing generation on terms and conditions that serve the data center's needs. What if the customer can interrupt and wants to be served at real-time prices with

[21] *Id.* at Original Sheet No. 107.
[22] *Id.*
[23] *Id.* at Original Sheet No. 107-108.

a plan to curtail when LMP prices are high and during the peak times that establish network service peak load ("NSPL") and peak load contribution ("PLC") hours? What if the customer is risk-adverse and wants a long-term fixed price? What if the customer is willing to pay a premium for a bilateral purchase from a specific counter-party offering a specific supply resource in the bilateral transaction? The EKPC tariff does not provide any details on how, if at all, this would play out. Given the size of the hyperscale loads, and the significant input cost for the generation necessary to serve the load, the tariff ambiguity about whether EKPC will need to involve the DCP Customer at all is likely to discourage the customer from choosing the EKPC service area.

The Commission should modify EKPC's tariff to provide for a process for a Rate DCP customer to work with, or through EKPC to select generation to be acquired through Bilateral Purchases that meet the customer's individual needs and meets whatever reasonable counter-party requirements that the Commission or EKPC determine need to be met (e.g. creditworthiness of the counter-party). With the Rate DCP customer bearing all of the costs of this generation supply, there is little to no downside to providing the customer with flexibility. However, there is tremendous upside as enabling customer optionality will, all else equal, drive more economic development interest in the EKPC service area.

3. The Commission should clarify that virtual PPAs are not subject to the Rate DCP tariff provisions.

As noted above, the EKPC tariff provides that the ultimate decisions with Bilateral Purchases will rest with EKPC. In addition to the other edits to the bilateral agreement provision, the Commission should make clear that a customer under the proposed rate schedule can still enter into a virtual power purchase agreement ("VPPA") financial

transaction without limitation. These VPAA engagements do not have the same physical delivery characteristics as a traditional PPA and are instead a financial instrument that can operate as a hedge for the customer. The Commission should hold that nothing in Rate DCP restricts the ability to undertake these VPAAs and interpret EKPC's bilateral contract provision as impliedly requiring a physical delivery requirement. The financial nature of the VPAA does not trigger any retail utility Territories Act power, given that KRS 278.018(1) relates to actual retail sales of electricity to the public for consumption.

B. The Commission should modify the provisions regarding a Qualifying Customer-Supplied Dedicated Resource and either eliminate the behind-the-meter prohibition or clarify that it does not prohibit co-location, and third-parties are allowed to build and operate a co-located plant.

The Commission should modify the proposed tariff to either eliminate the behind-the-meter prohibition or clarify the permissible location of the generation, the ownership structure regarding the construction of the generation, and the ownership structure during the operation of the generation.

1. Qualifying Customer-Supplied Dedicated Resources.

The current proposal lacks clear standards for the manner in which the data center customer served under Rate DCP could construct a Qualifying Customer-Supplied Dedicated Resource. Important questions remain regarding the legal entity that may own the generation facility and the conditions under which customer-constructed generation would be developed and operated. Without these clarifications, it would be extremely unlikely that one would consider deploying the significant capital necessary to construct generation sufficient to serve a hyperscale data center.

Initially, the definition of Qualifying Customer-Supplied Dedicated Resources provides that the resource "be solely and exclusively owned by Qualifying Customer via one hundred percent (100%) ownership in the assets of the Qualifying Customer-Supplied Dedicated Resource."[24] This provision, even if adopted, does not address whether the data center could own the generation through an affiliated company or how to structure the arrangement for compliance purposes.

Moreover, this limitation, without further guidance, is likely to dissuade new baseload generation from being constructed. Setting aside whether the ownership limitation should exist, data centers are not in the business of constructing and operating generation plants. They will need to hire third parties to construct and operate the plants. This obvious reality is not addressed at all in the tariff, and where ambiguity exists, projects of this size are unlikely to move forward. Take for example, a hyperscale data center in central Ohio that is relying on a third party to construct and operate an onsite generator to supply the facility. Could that model be replicated in Kentucky? What would the necessary commercial terms be under the EKPC tariff? Could the entity constructing the generation have a security interest in the generation assets? Could a third-party be retained to construct the plant? Could the third-party operate the plant? How would EKPC's long-term lease provision work with third-party companies constructing and operating the plant? Why would the customer, or its agent, be required to sell a grid connected resource to EKPC at the end of the contract, and what would be the terms of the purchase option? The universe of hyperscale data centers that operate largescale

[24] P.S.C. No. 35, Original Sheet No. 117(h)(i).

baseload generation is small to non-existent. Before this new type of baseload generation is likely to be built in Kentucky, much more detail would be necessary.

2. Co-located Generation.

Hyperscale data centers occasionally contract for new co-located generation. The tariff, however, prohibits behind-the-meter or onsite generation that is not strictly for backup service. The tariff does not address siting the generation and the likely co-located situations that would arise if a customer were to construct its own generation. The Commission should modify the tariff to permit co-located generation.

Under the proposed tariff, the data center customer "may not utilize behind-the-meter generation, on-site or off-site energy generation, energy storage or other sources of energy, capacity or ancillary services (other than the Selected Resource Mix determined by EKPC and approved by the Kentucky Public Service Commission)."[25] This tariff restriction does not provide clarity about what on-site generation would be prohibited, including whether co-located generation in front of the meter would be permissible.

Moreover, as discussed above, other sections make clear that the customer would be responsible for all necessary transmission upgrades to serve the customer. There are many scenarios where on-site generation, whether in-front-of or behind-the-meter would reduce the need for transmission upgrades. One scenario could be utilization of the co-located generation as primary power, and reliance on whatever grid power is currently available on the transmission network thus avoiding costly significant incremental transmission infrastructure.

[25] P.S.C. No. 35, Original Sheet No. 107.

Beyond cost considerations, co-located generation can also help address the time disparity that exists between data center construction and transmission infrastructure and interconnection timelines. As has played out in central Ohio, data centers are getting built and expanded faster than transmission upgrades can be completed. Even when generation is available, it often cannot be delivered timely to the data centers due to transmission constraints. In fact, AEP Ohio has indicated it may take 10 years to build the transmission infrastructure to serve the future incremental data center load in central Ohio that has already requested to interconnect.[26] In response, co-located generation is currently in the Ohio generation siting process, obtaining permission to build onsite behind-the-meter generation to serve the incremental data center load. The PowerConneX project is for 216 MW of generation,[27] the Bluegrass Power project is for 800 MW of generation,[28] and the Socrates project is for 200 MW of generation.[29] Each of these central Ohio baseload natural gas projects have described themselves as behind-the-meter. The Ohio legislature recently took further steps to incentive new baseload generation in the state by, among other things, expanding the types of commercial structures that would still qualify a customer as a self-generator.[30] The new legislation facilitated this expansion by creating a new statutorily permissible category, mercantile

[26] *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, Direct Testimony of Kamran Ali at 8 (May 13, 2024) ("As an illustration, AEP's 765 kV line from Vassell station to Kammer station traverses 120 miles and a new line of this length may take 7 to 10 years to build").

[27] Ohio Power Siting Board, Case No. 25-302-EL-BGN, Application at 1 (June 25, 2025)

[28] Ohio Power Siting Board, Case No. 25-227-EL-BGN, Application at 1 (June 9, 2025).

[29] Ohio Power Siting Board, Case No. 25-188-EL-BGN, Application at 2 (Apr. 25, 2025).

[30] R.C. 4928.73.

self-power systems.[31] This category authorizes one or more large users to connect to generation located behind the meter, even when the generation is not onsite.

Other jurisdictions have also recognized the need for co-located generation. At the federal level, the Federal Energy Regulatory Commission (FERC) has explicitly recognized the need to promote transparency in the construction of flexible co-located generation solutions.[32] On February 20, 2025, FERC issued a Show Cause Order, which required PJM and the Transmission Owners to address concerns related to co-located loads within the PJM Interconnection. FERC emphasized the importance of transparency on co-location, stating it "find[s] that the absence of rates, terms, and conditions of interconnection service specific to co-location arrangements, and especially regarding studies of the impacts of those arrangements, may render the Tariff unjust and unreasonable or unduly discriminatory or preferential."[33]

For the reasons stated above, RESA recommends that the Commission should modify EKPC's tariff provisions to make clear that the customer-owned generation contemplated by EKPC's tariff can be co-located with the data center load. RESA also recommends that the Commission should consider eliminating the behind-the-meter prohibition. As noted above, there are situations where a data center will want power and can receive it from behind-the-meter generation, prior to the PJM interconnection process being finalized and/or before transmission upgrades occur. The Commission should take steps to modify the proposed tariff to provide additional flexibility.

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[31] *Id.*

[32] *PJM Interconnection, L.L.C.*, Order Instituting Proceeding Under Section 206 of the Federal Power Act and Consolidating with Other Proceedings, Docket Nos. EL25-49-000, et al. at 1 (February 20, 2025).

[33] *Id.* at 42.

III. CONCLUSION

RESA thanks the Commission for the opportunity to submit these comments, despite its objective of intervening and actively participating in the proceeding to help develop the record on the issues outlined above. Although EKPC opposed RESA's participation and intervention in this proceeding, RESA remains hopeful that there will still be an opportunity for future collaboration. RESA respectfully submits these comments in an effort to continue the constructive dialog and share information that RESA and its members have learned over many years of serving customers.

Respectfully submitted,

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