

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Application of Evergy Kansas Metro, Inc., Evergy Kansas South, Inc., and Evergy Kansas Central, Inc. for Approval of Large Load Service Rate Plan and Associated Tariffs.)))))	Docket No. 25-EKME-315-TAR
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**KANSAS INDUSTRIAL CONSUMERS GROUP, INC.’S REPLY TO DATA CENTER
COALITION’S RESPONSE TO KANSAS INDUSTRIAL CONSUMERS GROUP, INC.’S
MOTION TO DENY THE PETITION TO INTERVENE OF THE DATA CENTER
COALITION**

COMES NOW the Kansas Industrial Consumers Group, Inc. (“KIC”) for its Reply to the Response of the Data Center Coalition (“DCC”) dated March 5, 2025, states as follows:

1. KIC welcomes participation by the DCC and its members in this KCC Docket, and to the business community in Kansas.

The KCC Standards for Intervention

2. KIC does not argue that the DCC and its members should not be granted Intervention herein, but has instead stated in its Motion dated March 4, 2025, that the DCC and its members should be required to meet the same standards for Intervention that have been applicable to KIC and its members since 2008 – a period of 16 consecutive years, in the following KCC dockets:

- 08-WSEE-1041-RTS
- 09-WSEE-925-RTS
- 12-WSEE-112-RTS
- 13-WSEE-629-RTS
- 15-WSEE-115-RTS
- 18-WSEE-328-RTS
- 23-EKCE-775-RTS
- 25-EKCE-207-PRE
- 25-EKME-315-TAR

3. KIC is a corporation organized and existing under the laws of the State of Kansas, that represents the interests of commercial and industrial users of natural gas and electric power.

4. The Commission has nonetheless ruled that KIC does not meet the legal standards for Intervention, except as it represents the interests of customers of Evergy which have direct financial interests in Commission proceedings based on such members' customer relationships with Evergy.

5. For its part, Evergy has consistently argued at the Commission, that KIC does not have a cognizable legal interest that justifies Intervention, that is separate and apart from its members, and that those members must be identified and admitted to the KCC Docket as Listed Intervenors.

KIC, LPC, Spirit and Occidental filed a joint petition to intervene in this docket on May 1, 2023, asserting that LPC, Spirit, and Occidental had selected KIC to represent their interests in this rate proceeding. Goodyear filed a petition to intervene in this docket on May 3, 2023, asserting that it too would participate in this proceeding through KIC.¹

As reflected in its May 5, 2023, annual report, KIC is a for-profit Kansas corporation with two corporate officers/directors: attorneys James P. Zakoura and Lee M. Smithyman. Citing its Articles of Incorporation, KIC asserts its business and purpose is as follows: "Representation, advancement, and protection of the interests of commercial, industrial, and other large volume users of energy (including natural gas, electric energy, and renewable resources) in matters before state and federal administrative agencies, state and federal courts, and before private and governmental entities, and in the public generally." **KIC has not identified in its pleadings a particularized legal interest in this proceeding separate and apart from the interests of LPC, Spirit, Occidental, and Goodyear.**²

LPC, Spirit, Occidental and Goodyear have stated their intent to participate in this docket through KIC. As such, any limitation placed on the participation of these companies would also apply to KIC. **Further, since KIC's participation is defined by the interests of the companies it represents, KIC should be**

¹ *Motion for Order Imposing Participation in Proceeding by KIC Petitioners*, Docket No. 23-EKCE-775-RTS, May, 10, 2023, ¶ 3, <https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202305101012395885.pdf?Id=0200bdb6-32aa-45c4-b6ab-447d8499da19>

² *Id.* at ¶ 4 (emphasis added).

required to notify the Commission and the parties via a supplemental pleading whenever other customers seek to participate in this proceeding through KIC.³

Data Center Coalition's Petition for Intervention

6. In its Petition to Intervene, the DCC described the Coalition as follows:

DCC is **a voluntary membership association** of the data center industry, representing 35 leading data center owners and operators, as well as companies that lease large amounts of data center capacity.⁴

On its face, a designation of a voluntary membership association would not indicate a corporate form.

7. However, in its Response filed by DCC, the DCC states it:

DCC is incorporated as a nonstock Virginia corporation with a tax-exempt status under Section 501(c)(6) of the U.S. Internal Revenue Code, not an "unincorporated association" that must identify its membership in order to obtain party status.⁵

8. Footnote No. 3 of the DCC Petition to Intervene, the DCC did not list DCC members but instead referred the Commission to a website to ascertain the identities of the members of DCC.

For the Commission's ease of reference, DCC's member list – available on its website – is as follows: Aligned Adaptive Data Centers, AWS, Clayco, Cloud HQ, Cologix, Compass Data Centers, Corescale Data Centers, CoreSite, CyrusOne, Databank, Digital Realty, Edge Connex, Edge Core Digital Infrastructure, Equinix, Google, Iron Mountain Data Centers, Meta, Microsoft, NTT Data, Oppidian Connect, Oracle, Prime Data Centers, Powerhouse Data Centers, Prologis, QTS, Rowan Digital Infrastructure, Sabey Data Centers, Skybox Data Centers, Stack Infrastructure, Stream Data Centers, Switch, T5 Data Centers, TA Realty, Vantage Data Centers, Visa, and Yondr.⁶

³ *Id.* at ¶ 11 (emphasis added).

⁴ DCC Petition to Intervene, Docket No. 25-EKME-315-TAR, Mar. 3, 2025, ¶ 2 (emphasis added).

⁵ DCC Response to KIC's Mtn to Deny Intervention, Docket No. 25-EKME-315-TAR, Mar. 5, 2025, ¶ 6 (emphasis added).

⁶ *Id.* at ¶ 7, note 5.

9. Reference to a membership listing contained in a website is not a request for intervention for each of those 35 listed members of the DCC.

10. Although the DCC states that some of its members are current Evergy customers, it does not disclose their identity. Without providing an identity of its members with a cognizable legal interest in this KCC docket, the DCC is unable to identify interests separate and apart from its own as an association. It does not follow that each of the 35 members of the DCC have an interest in this docket when only a few are current Evergy customers; therefore it is inappropriate to allow the DCC to intervene as a coalition. To allow otherwise would suggest that an entity that is a member of the DCC automatically possesses a cognizable legal interest in this KCC proceeding.

11. Both KIC and DCC are incorporated entities.

12. As required of the members of KIC, Commission precedent would require at a minimum, that individual members of the DCC that are current customers of Evergy be identified and admitted as Intervenors, as well as those entities that have expressed an interest to locate a Data Center in Kansas. Those categories of customers have clearly cognizable legal interests of Intervention, that those members with no current interest to locate in Kansas do not have.

Conclusion

13. The issue before the Commission is straightforward. Historically the KCC has applied its long-standing rule on Intervention that requires individual members of a group advocating policy in a KCC Docket to be identified and admitted as Intervenors. This rule should be applied to the members of the Data Center Coalition as it has been applied to KIC members in multiple prior KCC Dockets, including: Associated Purchasing Services, the Kansas Hospital Association, Cessna / Textron, the Boeing Company, Spirit AeroSystems, Cargill, Coffeyville

Resources, Goodyear Tire & Rubber Company, Lawrence Paper Company, Enbridge Pipelines, National Beef, Air Products, Occidental Chemical Corporation, Magellan Pipeline, Owens Corning Fiberglass, CertainTeed Products and many others. All of which have been long standing customers of Evergy with cognizable legal interests.

14. The rationale for this Commission precedent is clear – membership in a group does not necessarily mean that every member of the group: (1) has an interest in the policy initiative in Kansas; and (2) does membership in a policy advocacy group assure the Commission that each member of the policy group is in agreement with every item of the group’s policy advocacy.

15. The Commission has ruled that only affirmative statements of each member may be relied upon regarding a policy – and in fact a negative inference of nonsupport otherwise applies.

Furthermore, NGTCC's Supplement only identifies 42 of its roughly 400 members who wish to go on record as supporting its motion for a subpoena. With roughly only 10% of its membership expressing support for a subpoena, the Commission questions whether the vast majority of NGTCC's membership opposes issuing a subpoena.⁷

16. If the Commission elects to reverse course and abandon precedent on this issue, it certainly has the lawful authority to do so. In that event, the Commission cannot apply a different standard to KIC.

⁷ Order Denying NGTCC’s Petition for Reconsideration of the Denial of its Motion Requesting Issuance of a Subpoena, Docket No. 21-KSKG-332-GIG, Oct. 21, 2021, ¶ 14.

Respectfully submitted.

/s/ James P. Zakoura


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VERIFICATION


STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc. and its Participating Members, that he has read and is familiar with the foregoing *Reply to the Data Center Coalition's Response*, and that the statements therein are true to the best of his knowledge, information, and belief.



James P. Zakoura

SUBSCRIBED AND SWORN to before me this 6th day of March 2025.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March 2025, the above and foregoing was electronically filed with the Kansas Corporation Commission and that one copy was delivered electronically to all parties on the service list and by U.S. Mail as follows:

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