

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

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS)	
AND ELECTRIC COMPANY AND KENTUCKY)	
UTILITIES COMPANY FOR CERTIFICATES)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2014-00002
FOR THE CONSTRUCTION OF A COMBINED)	
CYCLE COMBUSTION TURBINE AT THE)	
GREEN RIVER GENERATING STATION AND)	
A SOLAR PHOTOVOLTAIC FACILITY AT THE)	
E.W. BROWN GENERATING STATION)	

**WALLACE MCMULLEN AND SIERRA CLUB’S REPLY
IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE**

Louisville Gas & Electric Company and Kentucky Utilities Company’s (collectively, the “Companies”) opposition recycles arguments the Commission rejected nearly three years ago when it granted the Sierra Club intervention in three of the Companies’ CPCN dockets. In several places, the Companies appear to have cut and pasted the language they used in their prior, unsuccessful opposition to the Sierra Club’s motion to intervene in Case No. 2011-00375.¹ The Commission rejected the Companies’ arguments when they were first made in 2011, and should reject them here, too.

¹ *E.g., compare* Case No. 2014-00002, Louisville Gas and Electric Company’s and Kentucky Utilities Company’s Response to Wallace McMullen’s and Sierra Club’s Motion to Intervene at p. 4 (“Notably absent from the Motion to Intervene is any indication that they have ever issued, evaluated, or had to make actual business decisions based on the results of a request for proposals (“RFP”).”) *with* Case No. 2011-00375, Joint Objection of Louisville Gas and Electric Company and Kentucky Utilities Company to the Petition of the Sierra Club and the Natural Resources Defense Council for Full Intervention at p. 6 (“Notably absent from their Petition is any indication that they have ever issued, evaluated, or had to make actual business decisions based on the results of a request for proposals.”).

Over the past three years, this Commission has granted the Sierra Club full intervention in a number of proceedings, including seven CPCN dockets.² In many of these cases, the applicant has opposed the Sierra Club's intervention for the same reasons contained in the Companies' opposition here.³ The Commission has consistently rejected such opposition and found that the Sierra Club should be granted full intervention because it will present issues and develop facts that will assist the Commission.⁴ The Commission should reach the same result here and grant the Sierra Club full intervention.

² See Case No. 2011-00162, *Application of Louisville Gas & Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC); Case No. 2011-00161, *Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC); Case No. 2011-00375, *Joint Application of Louisville Gas & Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant* (Ky. PSC); Case No. 2011-00401, *Application of Kentucky Power Company for Certificates of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC); Case No. 2012-00063, *Application of Big Rivers Electric Corporation for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC); Case No. 2012-00535, *Application of Big Rivers Electric Corporation For an Adjustment of Rates* (Ky. PSC); Case No. 2012-00578, *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) For All Other Required Approvals and Relief* (Ky. PSC); Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates* (Ky. PSC); and Case No. 2013-00259, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Alteration of Certain Equipment at the Cooper Station and Approval of a Compliance Plan Amendment for Environmental Surcharge Cost Recovery* (Ky. PSC).

³ Case No. 2011-00161, Joint Response of Louisville Gas & Electric Company and Kentucky Utilities Company (filed June 24, 2011); Case No. 2011-00162, Joint Response of Louisville Gas & Electric Company and Kentucky Utilities Company (filed June 24, 2011); Case No. 2011-00375, Joint Objection of Louisville Gas & Electric Company and Kentucky Utilities Company (filed Dec. 1, 2011); Case No. 2012-00535, Big Rivers Electric Corporation's Response (filed Feb. 18, 2013).

⁴ Case No. 2011-00161, Order at p. 8 (Ky. PSC July 27, 2011) (“[T]he Commission finds that intervention by Petitioners is likely to present issues or develop facts that will assist in the review of the KU and LG&E environmental compliance plans without unduly complicating or disrupting the review.”); Case No. 2011-00162, Order at p. 8 (Ky. PSC July 27, 2011) (“[T]he Commission finds that intervention by Petitioners is likely to present issues or develop facts that will assist in the review of the KU and LG&E environmental compliance plans without unduly complicating or disrupting the review.”); Case No. 2011-00375, Order at p. 8 (Ky. PSC Dec. 14, 2011) (“[T]he Commission finds that intervention by Petitioners is likely to present issues or develop facts that will assist in the review of KU's and LG&E's CPCN request without unduly complicating or disrupting the review.”); Case

I. THE SIERRA CLUB WILL PRESENT ISSUES AND DEVELOP FACTS THAT WILL ASSIST THE COMMISSION.

The Companies' claim that the Sierra Club provided "no evidence" of its ability to present issues or develop facts that will assist the Commission⁵ ignores the detailed showing the Sierra Club made in its motion to intervene. The Sierra Club's motion cited multiple CPCN proceedings in which it has been granted intervention precisely because the Commission found that the Sierra Club will present issues and develop facts that will assist the Commission,⁶ and in which the Sierra Club has borne out the Commission's findings by actually presenting issues and developing facts that assisted the Commission. For example, in the prior LG&E/KU CPCN docket, Case No. 2011-00375, the Commission's final order expressly agreed with, and granted relief informed by, one of the positions taken only by the Sierra Club.⁷ Having cited to this track

No. 2011-00401, Order at p. 1 (Ky. PSC Jan. 19, 2012) ("It appears to the Commission that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings."); Case No. 2012-00063, Order at p. 1 (Ky. PSC May 21, 2012) ("It appears to the Commission that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings."); Case No. 2012-00535, Order at p. 6 (Ky. PSC Apr. 17, 2013) ("Therefore, the Commission finds that intervention by Movants is likely to present issues or develop facts that will assist in the review of Big Rivers' rate application without unduly complicating or disrupting the review."); Case No. 2012-00578, Order at p. 1 (Ky. PSC Feb. 8, 2013) ("It appears to the Commission that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings."); Case No. 2013-00259 (Ky. PSC Oct. 18, 2013) ("It appears to the Commission that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings."); Case No. 2013-00199, Order at p. 1 (Ky. PSC July 31, 2013) ("It appears to the Commission that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the mailer without unduly complicating or disrupting the proceedings.").

⁵ Louisville Gas & Electric Company's and Kentucky Utilities Company's Response to Wallace McMullen's and Sierra Club's Motion to Intervene at p. 4 ("Opposition").

⁶ See *supra* note 3.

⁷ *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity*, Case No. 2011-00375 at p. 17 (Ky. PSC May 3, 2012) ("[T]he Commission does share the concern of Environmental Intervenors that the Joint Applicants have not adequately addressed one of the recommendations set forth in the ICF Louisville Gas and Electric Company/Kentucky Utilities Company DSM Program Review Report ("ICF Report")."

record of being granted intervention in CPCN proceedings and actually presenting issues and developing facts that assist the Commission, the Sierra Club has provided ample evidence of its ability to assist the Commission's review of this case.⁸

The Companies' opposition appears to call for a heightened evidentiary showing that has no basis in the Commission's regulations or prior orders. While the Companies dismiss Sierra Club's showing as merely "conclusory," they do not purport to explain what sort of demonstration they think Sierra Club should be required to make. To the extent that the Companies are suggesting that the Sierra Club must preview its substantive arguments and positions in its motion to intervene, that suggestion is inconsistent with the fact that discovery has not yet commenced and intervenor testimony is not due until May 8, 2014.⁹ In addition, other parties granted intervention in this and other Commission proceedings, such as the Kentucky Industrial Utility Customers ("KIUC"), have not been required to satisfy the heightened evidentiary standard that the Companies urge here. There is no reason that the Sierra Club's intervention should be treated any differently.

The Companies go so far as to argue that the Sierra Club cannot intervene because there is no evidence it has "even issued, evaluated, or had to make actual business decisions based on the results of a request for proposals ("RFP").¹⁰ In essence, the Companies advance the argument that only public utilities are capable of reviewing the reasonableness of the Companies' proposal in this case. While this argument is convenient for the utility applicants, it is not the law. The Companies fail to cite any statutory provision or Commission Order holding

⁸ Some of the same attorneys who represented the Sierra Club in prior proceedings are involved in this case, and these attorneys will bring their experience in those cases to this proceeding.

⁹ Case No. 2014-00002, Appendix to Order (Ky. PSC Feb. 6, 2014).

¹⁰ Opposition at p. 4.

that an intervenor must have issued an RFP or built a gas plant in order to be able to evaluate the reasonableness of the resource planning issues and decisions at stake in this proceeding. If the Commission accepted this argument, then virtually all proposed intervenors, such as KIUC and community groups, would be barred from intervening.

Even if the Commission were to adopt the Companies' newly invented legal standard, the Sierra Club would satisfy it. The Sierra Club has experience analyzing RFP bids and the resulting resource expansion plans proposed in dockets before this Commission.¹¹ The Sierra Club was a party to Case No. 2011-00375, in which the Companies' application for a CPCN resulted from their analysis of bids received in response to an RFP.¹² Similarly, the Sierra Club intervened in the East Kentucky Power Cooperative ("EKPC") CPCN proceeding, which centered on EKPC's evaluation of bids received in response to an RFP.¹³ Contrary to the Companies' claims, the Sierra Club will bring to this docket its experience analyzing RFPs and RFP bids in other proceedings.

II. THE SIERRA CLUB HAS SPECIAL INTERESTS NOT ADEQUATELY REPRESENTED BY THE OTHER PARTIES.

The Commission need not reach the issue of whether the Sierra Club has special interests not adequately represented by the other parties, since the Sierra Club can be granted full intervention based solely on its ability to assist the Commission in its review of this case. However, the Sierra Club's special interests, which are not adequately represented by other parties, provide an alternative basis for granting full intervention. In opposition, the Companies present several variations on a single theme, which amounts to the argument that because the

¹¹ The Sierra Club was an intervenor in Case No. 2011-00375, the LG&E/KU application for a CPCN stemming from an RFP, and Case No. 2013-00259, the EKPC application for a CPCN that resulted from an RFP.

¹² See Case No. 2011-00375 (Ky. PSC filed Sept. 15, 2011).

¹³ See Case No. 2013-00259 (Ky. PSC filed Aug. 21, 2013).

Attorney General represents the interests of consumers generally, Wallace McMullen and the Sierra Club purportedly cannot intervene to protect their specific interests as consumers focused on clean energy resources.¹⁴

As the Sierra Club explained in support of its motion to intervene in the Companies' pending DSM docket, the Attorney General's statutory right to intervene to represent consumers cannot be interpreted to bar all other consumer representatives from intervening, because doing so would render the statutory provisions regarding permissive intervention superfluous.¹⁵ If the Commission were to accept the Companies' arguments and deny Sierra Club intervention here, then consistency would require the Commission to deny intervention to all organizations that represent consumers, whether they be industrial consumers represented by KIUC or low-income consumers represented by community associations. Such a result would be unjust and contrary to numerous Commission orders over the years authorizing intervention by KIUC and other consumer groups.

In their opposition, the Companies once again make their misleading claim that the Commission has "repeatedly" denied motions to intervene filed by customers like Mr. McMullen.¹⁶ But the Companies cite only a single, readily distinguishable Order in Cases No. 2007-00565 and 2008-00251 to support this claim.¹⁷ In that Order, the Commission denied intervention to an individual who had never intervened in a case before the Commission, sought to raise environmental quality issues, and was found to not understand fundamental remaking

¹⁴ Opposition at pp. 2-3.

¹⁵ See *Lexington-Fayette Urban Cnty. Gov't v. Johnson*, 280 S.W.3d 31, 34 (Ky. 2009), *Univ. of Cumberlands v. Pennybacker*, 308 S.W.3d 668, 683-84 (Ky. 2010).

¹⁶ Opposition at pp. 2, 3.

¹⁷ *Id.* at p. 2, n. 4.

principles.¹⁸ That Order is distinguishable on all three grounds. Unlike Mr. Young, the Sierra Club has intervened in multiple proceedings before the Commission.¹⁹ In contrast to Mr. Young, the Sierra Club does not seek to raise environmental quality issues but instead “seek full intervention in order to ensure that their interests in low-cost, clean energy options are fully represented.”²⁰ The Commission found that Mr. Young had misconstrued fundamental remaking principles and raised extraneous issues, while the Sierra Club, having participated in many dockets before this Commission, understands fundamental remaking and utility regulatory principles and will not unduly complicate the proceeding.

In short, the Attorney General’s participation does not foreclose intervention by the Sierra Club, whose members have distinct interests narrower than other classes of ratepayers. Furthermore, the Order denying Mr. Young’s motion to intervene has no bearing here.

III. SIERRA CLUB’S INTERVENTION WILL NOT UNDULY COMPLICATE OR DELAY THE PROCEEDING.

The Companies seize on statements taken out of context in order to argue that granting intervention to the Sierra Club will unduly complicate and delay this proceeding. Specifically, the Companies contend that the Sierra Club’s reference to the health and environmental impacts of the Commission’s decisions on its members means that the Sierra Club will raise issues outside the scope of this Commission’s jurisdiction.²¹

¹⁸ *In the Matter of Application of Kentucky Utilities Company to File Depreciation Study*, Case No. 2007-00565, *In the Matter of Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, at pp. 3,5 (Ky. PSC Dec. 5, 2008).

¹⁹ Motion of Wallace McMullen and Sierra Club for Leave to Intervene at p. 5 (filed Feb. 25, 2014).

²⁰ *Id.* at p. 3.

²¹ Opposition at pp. 4-5.

The Companies make a mountain out of a molehill by constructing an argument around a single sentence, which merely observed that “the individual Movant lives within the LG&E service territory and is impacted by the economic, public health, and environmental effects of the resource decisions that LG&E makes.”²² A few sentences later, the Sierra Club emphasized that “[m]ovants’ desire to promote low-cost, clean energy resources in Kentucky is directly related to the issues involved in reviewing LG&E and KU’s proposed CPCNs.”²³ Throughout the motion to intervene, the Sierra Club elaborated on its interests in the issues that are the core of the Commission’s jurisdiction; for example, the motion states that “movants seek full intervention in order to bring to this proceeding their expertise evaluating resource expansion plans, particularly their expertise reviewing whether companies have fully considered all reasonable options and appropriately accounted for all reasonably foreseeable costs and risks.”²⁴

Having intervened in a number of proceedings before this Commission, the Sierra Club is well aware of the limits of the Commission’s jurisdiction. In particular, the Sierra Club understands that the Commission’s jurisdiction does not extend to health and environmental issues. In the many proceedings in which the Sierra Club has participated, the Sierra Club has not raised health and environmental issues but rather has focused its testimony and briefing exclusively on the resource planning and economic issues over which the Commission has jurisdiction. The Sierra Club will do the same in this docket and, as such, the Companies’ unfounded claim of undue complication or delay should be rejected.

²² Motion to Intervene at p. 6.

²³ *Id.*

²⁴ *Id.* at p. 2.

CONCLUSION

For the foregoing reasons, the Sierra Club respectfully requests that the Commission grant Wallace McMullen and the Sierra Club full intervention in this proceeding.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of WALLACE MCMULLEN AND SIERRA CLUB'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on March 10, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is being hand delivered to the Commission on March 10, 2014.



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