

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

**In the Matter of:**

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

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**MOTION OF WALLACE MCMULLEN AND SIERRA CLUB FOR LEAVE TO  
INTERVENE**

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Pursuant to KRS § 278.310 and 807 KAR 5:001 § 4(11)(a), Wallace McMullen and Sierra Club (collectively “Movants”) respectfully move the Commission for leave to intervene in the above-captioned case. Having intervened in many CPCN proceedings in Kentucky and in other jurisdictions, the Movants have extensive experience in evaluating resource expansion plans such as the one proposed in Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company’s (“KU”) joint application.<sup>1</sup> Movants will use that experience to present issues and develop facts that will assist the Commission in fully considering this matter. In the alternative, Movants seek intervention because their special interests in this proceeding are not adequately represented by any other party to the proceeding. Moreover, this proceeding grows out of a prior

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<sup>1</sup> *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity 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* (Ky. PSC Jan. 17, 2014) (“Joint Application”).

CPCN proceeding, Case No. 2011-00375,<sup>2</sup> in which the Sierra Club intervened, and the Sierra Club seeks intervention to continue to protect its interests.

On January 17, 2014, LG&E and KU filed their Joint Application requesting that the Commission issue certificates of public convenience and necessity authorizing construction of a new 700 MW natural gas combined cycle (“NGCC”) facility at the Companies’ existing Green River site and a new 10 MW solar facility at the Companies’ existing Brown site.<sup>3</sup> The Joint Application notes that after the Companies decided to retire existing generating units, the Companies planned to build a new NGCC and acquire an existing natural gas facility.<sup>4</sup> The Companies ultimately did not acquire the existing gas plant.<sup>5</sup> The Companies project that they will face a capacity and energy shortfall as early as 2015. After issuing an RFP in September 2012 and analyzing the bids received, the Companies selected construction of a new 700 MW NGCC and 10 MW solar photovoltaic facility as the most prudent way to meet their forecasted capacity and energy needs.<sup>6</sup>

## **I. THE MOVANTS**

Movants seek full intervention in order to ensure that their interests in low-cost, clean energy options are fully represented. Additionally, 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. Movant Wallace McMullen is a customer of LG&E, is a Sierra Club member, and has a long-standing interest in

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<sup>2</sup> Joint Application at pp. 2-3; *see also* Case No. 2011-00375, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity* (Ky. PSC May 3, 2012).

<sup>3</sup> Joint Application at pp. 4-5, 7-8.

<sup>4</sup> *Id.* at p. 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at pp. 4-5.

LG&E and KU diversifying their supply portfolio to include low-cost, clean energy options such as energy efficiency and renewables. His address is:

Wallace McMullen  
4324 Dover Rd.  
Louisville, KY 40216

Sierra Club is one of the oldest conservation groups in the country, with more than 600,000 members nationally in sixty-four chapters in all fifty states, including the District of Columbia and Puerto Rico, who are dedicated to practicing and promoting the responsible use of natural resources. Sierra Club has over 4,700 members in Kentucky, which are part of the Cumberland Chapter. The Cumberland Chapter's address is:

Sierra Club  
Cumberland Chapter  
P.O. Box 1368  
Lexington, KY 40588-1368

## **II. REQUIREMENTS FOR INTERVENTION**

The Commission's regulations regarding intervention provide that the Commission shall grant a person, as defined by KRS § 278.010(2), leave to intervene in a Commission proceeding upon a timely motion if the Commission finds that the person "has a special interest in the case that is not otherwise adequately represented **or** that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings."<sup>7</sup> Thus, the Commission must grant full intervention if Movants have filed a timely intervention motion and either have interests in this proceeding that are not adequately represented or if they would assist in evaluation of the pending application without unduly complicating or disrupting the proceedings. As explained below, Movants satisfy all of the standards for intervention.

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<sup>7</sup> 807 KAR 5:001 § 4(11)(b) (emphasis added).

### **III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION.**

#### **A. This Motion is Timely Filed.**

Pursuant to the Commission's Order in this case, requests for intervention are due no later than February 27, 2014.<sup>8</sup> Movants submit this motion for leave to intervene on February 25, 2014. As such, this motion is timely.

#### **B. Movants Will Present Issues or Develop Facts that Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings.**

The Commission should grant Movants full intervention because they are "likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings."<sup>9</sup> LG&E and KU seek certificates of public convenience and necessity to meet projected capacity and energy shortfalls.<sup>10</sup> The Companies support their application in part by presenting load forecasts documenting their future capacity and energy needs as well as modeling results of various bids under different load, natural gas, and carbon price scenarios.<sup>11</sup>

Organizational Movant Sierra Club has extensive experience analyzing precisely this sort of resource expansion plan. Sierra Club has jointly or individually intervened and/or provided testimony in resource planning dockets in a number of states including Arkansas, California, Colorado, Louisiana, Minnesota, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, Virginia, Washington, and West Virginia. Sierra Club has intervened and provided testimony on complex energy and electric utility issues in numerous dockets in the past three years before this Commission, including in CPCN dockets involving Big Rivers, East Kentucky Power

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<sup>8</sup> Case No. 2014-00003, Order (Ky. PSC Jan. 30, 2014).

<sup>9</sup> 807 KAR 5:001 § 4(11)(b).

<sup>10</sup> Joint Application at pp. 4-5, 7-8.

<sup>11</sup> *E.g.*, Direct Testimony of David Sinclair at pp. 5-19; LG&E/KU Ex. DSS-1 at pp. 19-46.

Cooperative, Kentucky Power Company, and LG&E/KU.<sup>12</sup> Additionally, Movants will bring to this proceeding their experience as a party in the prior LG&E/KU proceeding, Case No. 2011-00375, that has led to this CPCN docket.

Movants' participation as full intervenors will not unduly complicate the matter, but instead will assist the Commission's review of the joint application. Movants are represented by experienced counsel and will comply with all deadlines in the proceeding established by the Commission. As such, Movants' participation will not disrupt this proceeding.

**C. Movants Have a Special Interest in this Proceeding That Is Not Otherwise Adequately Represented.**

807 K.A.R. 5:001 § 4(11) provides two alternative bases for granting full intervention. Parties either need to have a special interest not adequately represented or present issues and facts that will help the Commission fully consider the matter. As explained in Section III.B. above, Movants will present issues and facts that will help the Commission fully consider the matter. Therefore, the Commission can grant full intervention on that basis alone and need not

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<sup>12</sup> 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).

consider Movants' special interest. Nevertheless, as explained below, Movants also have special interests that are not adequately represented.

Wallace McMullen, the individual Movant, is a customer and ratepayer of LG&E. Mr. McMullen helps to fund LG&E's operations and the decisions to be made in this proceeding concerning the requested CPCNs will directly impact his bill. In addition, 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. Organizational Movant Sierra Club has members who are customers and ratepayers of LG&E and KU, and, therefore, Sierra Club has the same interests as the individual Movant. In addition, Movants' 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.

Movants' interests are not adequately represented by any of the parties in the proceeding. Currently, several parties<sup>13</sup> have motions to intervene pending before the Commission.<sup>14</sup> Even if all of the pending motions are granted, none of the other parties can adequately represent the organizational Movant's interests in the promotion of low-cost, clean energy resources such as energy efficiency and renewables and in ensuring there is a legitimate need for new supply-side resources. Furthermore, none of the other parties can represent the individual Movant's interests in the local public health and environmental impacts of the Companies' resource decisions. Movants' full intervention is warranted so that their interests, as detailed above, are represented.

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<sup>13</sup> Kentucky Industrial Utility Customers, Inc. filed a motion to intervene on January 14, 2014. The Attorney General moved to intervene on January 31, 2014. Big Rivers Electric Corporation moved to intervene on February 12, 2014. Bluegrass Generating Company, LLC filed a motion to intervene on February 14, 2014.

<sup>14</sup> The Attorney General cannot adequately represent Movants' interests. The Attorney General has the unenviable task of representing all consumers and all of their diverse interests, even if some of the interests are diametrically opposed to each other. The Attorney General may not be able to represent the Movants' interest, or at least not as forcefully, because of the Attorney General's obligation to represent all consumers. Courts have "repeatedly held that private companies can intervene on the side of the government, even if some of their interests converge." *See, e.g., Hardin v. Jackson*, 600 F. Supp. 2d 13, 16 (D.D.C. 2009).

#### IV. CONCLUSION

For the foregoing reasons, Movants respectfully request full intervention in this matter.

Dated: February 25, 2014

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that I mailed a copy of this MOTION OF WALLACE MCMULLEN AND SIERRA CLUB FOR LEAVE TO INTERVENE by first class mail on February 25, 2014 to the following:

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