

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 FOR)
THE CONSTRUCTION OF A COMBINED) **CASE NO. 2014-00002**
CYCLE COMBUSTION TURBINE AT THE)
GREEN RIVER GENERATING STATION AND A)
SOLAR PHOTOVOLTAIC FACILITY AT THE)
E.W. BROWN GENERATING STATION)**

**LOUISVILLE GAS AND ELECTRIC COMPANY’S
AND KENTUCKY UTILITIES COMPANY’S
RESPONSE TO WALLACE MCMULLEN’S AND SIERRA CLUB’S
MOTION TO INTERVENE**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) respectfully request that the Commission deny the February 25, 2014 Motion of Wallace McMullen and the Sierra Club (collectively, the “Movants”) for full intervention. Their Motion should be denied for three principal reasons: (1) the Motion does not demonstrate a special interest in the proceeding because their stated interests are adequately represented by the Attorney General; (2) the Motion fails to identify any relevant issues or development of relevant facts that will assist the Commission in the resolution of this matter; and (3) their intervention would unduly complicate and disrupt the proceeding. Because neither McMullen nor the Sierra Club have satisfied any of the requirements for intervention under 807 KAR 5:001, Section 4(11)(b), the Companies respectfully request that the Commission deny their Motion to Intervene.

I. Neither McMullen nor the Sierra Club Have a Special Interest in this Proceeding.

The Commission may grant Movants intervention only if they meet the requirements of 807 KAR 5:001, Section 4(11)(b). The Movants do not satisfy the first basis for permissive intervention, which requires the movant to demonstrate a special interest in the proceeding that is not already represented by another party to the action.¹

With respect to McMullen, the Motion claims that he has a special interest in this proceeding because the “decisions to be made...will directly impact his bill.”² The Motion further alleges that McMullen will be “impacted by the economic, public health, and environmental effects” of the resource decisions the Companies make.³ The Commission has repeatedly denied similar motions to intervene filed by customers claiming the same interest that McMullen alleges because the interests McMullen identifies are identical to the interests of LG&E’s and KU’s 943,000 other customers.⁴ The interests McMullen claims, which are common to all customers, are statutorily represented by the Attorney General,⁵ whose intervention was approved on February 6, 2014.

The Sierra Club’s claimed special interest is equally unavailing, as it bootstraps on McMullen’s alleged interest: “Sierra Club has the same interests as the Individual Movant [McMullen].”⁶ The Motion also claims that the Sierra Club has an interest in promoting energy efficiency and renewables and in ensuring there is a legitimate need for new supply-side resources.⁷ The Motion acknowledges that the Attorney General and others have moved to

¹ 807 KAR 5:001, Section 4(11)(b).

² Motion to Intervene, p. 6.

³ *Id.*

⁴ *See, e.g., In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study*, Case No. 2007-00565 and *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, Order (December 5, 2008).

⁵ KRS 367.150(8)

⁶ Motion to Intervene, p. 6.

⁷ *Id.*

intervene, but asserts that no intervenor, including the Attorney General, can adequately represent Movants' interests because they cannot ensure "there is a legitimate need for new supply-side resources."⁸

The Sierra Club has failed to demonstrate a special interest for two reasons. First, it is undisputed that the Attorney General represents all consumers' interests.⁹ The Commission has repeatedly denied efforts by customers, such as McMullen, to intervene because their interest is common to all customers represented by the Attorney General. If McMullen lacks a special interest, so must the Sierra Club, whose Motion claims the same interests as McMullen. Second, the Sierra Club's claim that its interests cannot adequately be represented by the Attorney General because the Attorney General cannot ensure "there is a legitimate need for new supply-side resources" is belied by the history of certificate of public convenience and necessity ("CPCN") cases before the Commission. The Attorney General has intervened and represented customers' interest in numerous cases arising under KRS 278.020 for CPCNs for decades. Moreover, the Commission has previously acknowledged the skill of the Attorney General with respect to renewable energy and energy conservation issues,¹⁰ both of which are related to the issue of whether the proposed facilities in this case are needed. In short, neither McMullen nor the Sierra Club has advanced any interest in this proceeding that is not represented by the Attorney General.

II. The Movants Have Not Demonstrated that They Will Present Issues or Develop Facts that Will Assist the Commission.

Because McMullen and the Sierra Club lack an interest in this proceeding that is not adequately represented by the Attorney General, the Movants may intervene only if they can

⁸ *Id.*

⁹ KRS 367.150(8).

¹⁰ *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Case No. 2008-148) Order, July 18, 2008 at 8.

show that they will present issues or develop facts that will assist the Commission without unduly complicating the disrupting the proceeding. Their Motion fails to do so.

The Movants claim that the Sierra Club has experience in analyzing utility companies' load forecasts of the type the Companies have submitted in this case. The Sierra Club provides, as examples of that experience, its intervention in various jurisdictions on the issue of resource planning. The Sierra Club notes that it intervened in the Companies' last CPCN case at this Commission (Case No. 2011-00375). But other than conclusory statements about Sierra Club's purported qualifications and a list of other jurisdictions in which their witnesses have testified, the Motion to Intervene provides no evidence of an ability to present issues or develop facts that will assist the Commission.

Indeed, Sierra Club has not shown that it is qualified to present issues or develop facts that will assist the Commission in this proceeding. 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"). Instead, the Motion to Intervene contains claims of expertise in analyzing items such as "complex energy and electric utility issues."¹¹ This proceeding is about the actual resources available to meet real customers' demand, not abstract discussions about various potentials.

Rather than contributing valuable expertise, it is clear from the Motion to Intervene that Movants will unduly complicate this proceeding. The Petition contains references to health and environmental issues,¹² which, of course, are outside the Commission's jurisdiction. As the Commission has stated many times, its jurisdiction extends only to the rates and service of

¹¹ Motion to Intervene, p. 4.

¹² Motion to Intervene, p. 6.

utilities, not to any other matters,¹³ and it does not have jurisdiction under KRS Chapter 278 to consider externalities.¹⁴ Moreover, the Commission has repeatedly held that permitting an intervener to address issues beyond the scope of the proceeding will unduly complicate and disrupt the proceeding.¹⁵ Therefore, given Sierra Club's focus on issues outside the jurisdiction of the Commission, permitting intervention will unduly complicate and disrupt this proceeding. Finally, the Motion makes no mention of how McMullen will assist the Commission in any regard.

III. Conclusion

Neither McMullen nor the Sierra Club has satisfied either permissive basis for intervention set forth in 807 KAR 5:001, Section 4(11)(b). Neither has articulated any special interest that is not already adequately represented by the Attorney General. Nor have they shown an ability to present issues or develop facts that will assist the Commission in considering the Companies' CPCN application. To the extent that McMullen or the Sierra Club wish to express their views, they, like other customers and members of the public, can submit written public comments in the record. For these reasons, the Companies respectfully request that the Commission deny their Motion to Intervene.

¹³ See, e.g., *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at 6 (July 27, 2011); *In the Matter of: The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Order at 6 (July 27, 2011).

¹⁴ Administrative Case No. 2005-00090, *In Re: An Assessment of Kentucky's Electric Generation, Transmission and Distribution Needs*, Order Appendix A at 50 (September 15, 2005), See also Administrative Case No. 2007-00477, *In Re: An Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky's 2007 Energy Act, Report to the General Assembly*, at 46.

¹⁵ *In the Matter of: Application of Louisville Gas and Electric Company to File Depreciation Study*, Case No. 2007-00564 and *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Base Rates*, Case No. 2008-00252, Order (October 10, 2008); *In the Matter of: The Joint Application Pursuant to 1994 House Bill No. 501 for the Approval of Kentucky Power Company Collaborative Demand-Side Management Programs and Authority to Implement a Tariff to Recover Costs, Net Lost Revenues and Receive Incentives Associated with the Implementation of the Kentucky Power Company Collaborative Demand-Side Management Programs*, Case No. 2008-00350, Order (October 13, 2008).

Dated: March 4, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that Louisville Gas and Electric Company and Kentucky Utilities Company's March 4, 2014 Response to Wallace McMullen and Sierra Club's Motion to Intervene is a true and accurate copy of the documents being filed in paper medium; that the electronic filing was transmitted to the Commission on March 4, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; that a copy of the filing in paper medium is being hand-delivered to the Commission on March 4, 2014; and that on March 4, 2014, electronic mail notification of the electronic filing will be provided to the following:

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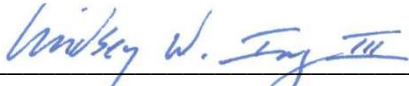
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