

**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 REVIEW,</b>	)	
<b>MODIFICATION, AND CONTINUATION OF</b>	)	<b>CASE NO. 2014-00003</b>
<b>EXISTING, AND ADDITION OF NEW,</b>	)	
<b>DEMAND-SIDE MANAGEMENT AND ENERGY</b>	)	
<b>EFFICIENCY PROGRAMS</b>	)	

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**WALLACE MCMULLEN AND SIERRA CLUB’S  
REQUEST FOR AN EVIDENTIARY HEARING**

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Wallace McMullen and the Sierra Club (collectively, the “Sierra Club”) respectfully move the Commission to hold an evidentiary hearing in the above-captioned proceeding.<sup>1</sup> This case concerns Louisville Gas and Electric Company and Kentucky Utilities Company’s (collectively, the “Companies”) proposed plan to offer certain energy efficiency (“EE”) and demand-side management (“DSM”) programs during the next three years, a critical window of time for developing these important energy resources in Kentucky and across the country. Based on their flawed underlying analyses and despite the customer and system-wide benefits provided by their current EE/DSM programs, the Companies propose to let four existing programs expire and to offer a limited portfolio of programs going forward. Critically, the Companies’ plan would result in virtually no growth in annual energy savings through 2018.

After a thorough review of the Companies’ filings and two rounds of discovery, Sierra Club and other parties submitted testimony that raised several concerns about the proposal’s reasonableness. For example, Sierra Club witness Tim Woolf, an energy efficiency expert and

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<sup>1</sup> Pursuant to the Commission’s June 20 Order in this case, this hearing request is timely.

former public utility commissioner, provided detailed testimony explaining the flaws in the Companies' proposal and underlying analyses, and offered several recommended modifications on which any approval of the 2015-2018 DSM/EE Program Plan ("Plan") should be conditioned.<sup>2</sup> The Companies' rebuttal testimony and the June 30<sup>th</sup> informal conference made clear that several critical issues remain in dispute in this case.

An evidentiary hearing would lead to a more complete record than has been developed to date and would assist the Commission in the resolution of this important case that will shape the role DSM plays in the Companies' resource portfolio during the next three years and beyond. In light of the complex and critical issues presented in the Companies' filings and intervenor testimony, many of which remain in dispute, a hearing is necessary to serve the public interest and protect the substantial rights of the parties. *See* 807 KAR 5:001 § 9. As such, Sierra Club respectfully requests an evidentiary hearing in this case.<sup>3</sup>

## **I. PROCEDURAL BACKGROUND**

On January 17, 2014, the Companies filed an application seeking approval of their 2015-2018 DSM/EE Program Plan, along with associated cost recovery tariffs. The Companies' Plan consists of modifying five existing DSM/EE programs, allowing four existing programs to expire at the end of 2014, maintaining five programs that are approved through 2018, and adding one new program for advanced metering systems. On April 14, 2014, Sierra Club filed the expert testimony of Tim Woolf, which calls into question the reasonableness of the Plan as filed and provides several recommended modifications on which approval of the Plan should be conditioned. Intervenors Association of Community Ministries, Inc. ("ACM"), Metropolitan

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<sup>2</sup> Sierra Club incorporates, by reference, the testimony of Tim Woolf (filed April 14, 2014).

<sup>3</sup> Along with this Motion, Sierra Club is filing a response in opposition to the Companies' motion to submit the case for decision on the record.

Housing Coalition (“MHC”) and Wal-Mart Stores East, LP and Sam’s East, Inc. (“Wal-Mart”) also filed testimony that raised concerns about the Companies’ Plan.

On May 7, 2014, the Companies filed a joint motion requesting permission to file rebuttal testimony to refute several claims made in Intervenors’ testimony. The Companies also requested an extension of the hearing request deadline so that parties could determine whether to request a hearing after reviewing the rebuttal testimony. On June 10, 2014, the Commission issued an order granting the Companies’ motion and extending the deadline for parties to request a hearing to June 23, 2014. On June 20, 2014, the Commission further extended the hearing request deadline to July 7, 2014 and scheduled a June 30 informal conference, at the Companies’ request, to discuss whether a hearing is necessary. At the informal conference, the parties did not reach consensus with respect to the need for an evidentiary hearing.

## **II. LEGAL STANDARDS**

The Commission has the authority to review the reasonableness of a utility’s demand-side management plan. KRS 278.285(1). The statute obligates the Commission to consider certain factors, but allows the Commission to consider additional factors not enumerated in the statute. *Id.* Among other things, the Commission must consider “[t]he cost and benefit analysis” for specific programs and whether the plan “provides programs which are available, affordable, and useful to all customers.” KRS 278.285(1)(b), (g).

The DSM statute, KRS 278.285, is silent regarding whether a hearing should be held in a proceeding to review a DSM plan. *See* KRS 278.285(2) (authorizing a “separate proceeding . . . which shall be limited to a review of demand-side management issues and related rate-recovery issues . . .”). However, no party disputes the authority of the Commission to hold a hearing. The Commission’s rules of procedure specify that the Commission “shall conduct a hearing” if “a request for a hearing has been made,” unless “a hearing is not required by statute, is waived by

the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest.” 807 KAR 5:001 § 9(1).

**III. CONDUCTING AN EVIDENTIARY HEARING WOULD LEAD TO A MORE COMPLETE RECORD AND IS IN THE PUBLIC INTEREST.**

Energy efficiency and conservation are paramount considerations for determining the utilities’ rates and services and their importance will continue to grow “as more constraints are . . . placed on utilities that rely significantly on coal-fired generation.”<sup>4</sup> As Sierra Club witness Woolf explained in his testimony, cost-effective DSM/EE programs provide important benefits to all customers, including reductions in electricity system costs, customers’ bills, harmful emissions, and risk. Woolf Testimony at 8.

This case raises several issues pertaining to this critical resource, including how to properly analyze the savings potential, costs and benefits of DSM/EE, which directly inform the development of program plans and investment levels. An evidentiary hearing would serve the public interest by developing and clarifying these contested issues, and by helping the Commission determine whether the Companies’ proposal is reasonable pursuant to KRS 278.285, or whether any approval of the plan should be subject to certain conditions, such as those recommended by Sierra Club.

In granting Sierra Club full party rights in this proceeding, the Commission observed that Sierra Club has assisted the Commission in considering issues of DSM and EE programs and that, in this case, Sierra Club would likely “present issues and develop facts that will assist

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<sup>4</sup> *In the Matter of: Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities*, Case No. 2010-00204, Order at 14 (Ky PSC Sept. 30, 2010) (noting that the Commission stated its support for energy-efficiency programs in a report “to the Kentucky General Assembly in July 2008 pursuant to Section 50 of the 2007 Energy Act”).

the Commission in fully considering the matter.” Order of March 12, 2014 at 3. An evidentiary hearing would afford all parties an opportunity to provide such assistance to the Commission.

Sierra Club has submitted extensive expert testimony calling into question the reasonableness of the Companies’ plan as filed. Mr. Woolf identified systemic problems with the way the Companies assess the potential for cost-effective EE/DSM and calculate their benefits, which led the Companies to significantly underestimate the potential for efficiency savings and the value of such savings, and ultimately their failure to pursue the full amount of cost-effective energy savings. Woolf Testimony at 14-20. The result is missed opportunities to reduce customer costs, including from existing programs that are set to expire and programs that will continue with limited budgets. For example, Mr. Woolf explained that the Companies should account for the avoided cost of complying with future federal carbon regulations, as it has in a pending resource acquisition proceeding (Case No. 2014-00002), which would significantly increase the benefits of the Companies’ DSM/EE programs. *Id.* at 15-17. Mr. Woolf also explained that the Companies improperly use their estimated avoided cost of capacity to limit achievable potential by placing a cap on incentives. *Id.* at 43-44. Such an approach reflects a flawed understanding of the value of efficiency, ignoring avoided energy costs, avoided environmental compliance costs, and participant non-energy benefits.<sup>5</sup> *Id.* The result of these and other flaws is a proposed plan that would result in virtually no growth in annual energy savings relative to sales through 2018. *Id.* at 7, 11. Mr. Woolf explained that the Companies should continue the expiring programs and expand other programs to account for certain proposed modifications and to increase the number of participants, thereby ensuring that a larger

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<sup>5</sup> In their rebuttal testimony, the Companies’ assert that the Commission lacks jurisdiction to consider participant non-energy benefits. *See* Rebuttal Testimony of Robert Conroy at 2-3. This distinct legal issue should be addressed in briefing.

portion of customers will benefit from reduced electricity bills and continuing the trend of growing the efficiency resource. *Id.* at 25-33.

In response, the Companies submitted the testimony of three witnesses, who largely dispute Mr. Woolf's analysis and conclusions, and recommended that the Commission approve the Proposed DSM/EE Program Plan as filed. *See* Rebuttal Testimony of Robert M. Conroy at 1; Rebuttal Testimony of Michael E. Hornung at 1; Rebuttal Testimony of David E. Huff at 5.

In light of this dispute and the complex issues presented, Sierra Club seeks to further develop facts through an evidentiary hearing, which will assist the Commission in undertaking a robust investigation into the Companies' proposal. Participation of all parties in an evidentiary hearing will assist the Commission in resolving critical issues that go the heart of whether the plan, as currently proposed, should be approved.

It is particularly important to ensure that the Companies are adequately pursuing demand-side resources given that they are seeking to build a new power plant by 2018 and anticipate asking the Commission for authority to build yet another power plant in the near future. *See* Application at 1, 6, Case No. 2014-00002, Jan. 17, 2014; 2014 IRP, Volume III, 2014 Resource Assessment at 43, Case No. 2014-00131, Apr. 21, 2014. Moreover, the U.S. Environmental Protection Agency's recent issuance of a proposed rule that would require Kentucky to limit carbon pollution under Section 111(d) of the Clean Air Act<sup>6</sup> underscores the importance of ensuring that the Companies' plan to pursue cost-effective EE/DSM, which will likely play a key role in any State compliance plan, is reasonable.

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<sup>6</sup> *See* Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34,830 (June 18, 2014) (to be codified 40 C.F.R. pt. 60), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2014-06-18/pdf/2014-13726.pdf>.

**IV. CONCLUSION**

For the foregoing reasons, the Sierra Club respectfully requests that the Commission schedule an evidentiary hearing in this matter.

Dated: July 7, 2014

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that Sierra Club's July 7, 2014 electronic filing is a true and accurate copy of the **Wallace McMullen and Sierra Club's Request for an Evidentiary Hearing**, to be filed in paper medium; and that on July 7, 2014, the electronic filing has been transmitted to the Commission, and that one copy of the filing will be delivered to the Commission, that no participants have been excused from electronic filing at this time, and electronic mail notification of the electronic filing is provided to the following:

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