

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

**ATTORNEY GENERAL'S
NOTICE OF CONTEST TO WALLACE MCMULLEN AND
THE SIERRA CLUB'S MOTION FOR LEAVE TO INTERVENE**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and serves this notice of contest to Wallace McMullen and the Sierra Club's ("Sierra Club" or "the Movants") motion to intervene in the instant matter.

The Attorney General is the **only** party entitled by statute to intervene in matters before the Commission¹. KRS 367.150(8). Pursuant to KRS 278.285, Demand Side Management ("DSM") programs are regulatory mechanisms designed to enable collaborative members to explore cost effective energy efficiency and demand response programs for the benefit of companies and ratepayers. Under KRS 278.285(1)(f), in its evaluation of DSM programs, the Commission may consider "[t]he extent to which customer representatives and the Office of the Attorney General have been involved in

¹ KRS 367.150(8).

developing the plan..." Therefore, the Attorney General is also the only stakeholder in DSM programs as specified by statute.

To date, Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") have worked diligently with the Attorney General's Office and other "customer representatives" (as contemplated by KRS 278.285(1)(f)) to mutually arrive at a unanimous decision, or something as close thereto, before proceeding with a filing before the Commission². Regardless of whether a consensus is reached, parties in the collaborative process often reserve to later participate to either more fully develop the record or to challenge the application as filed by the company(ies). However, it is through the collaborative effort that the ideas are first offered and vetted.

Important to this collaborative effort is the fact that neither Mr. McMullen nor the Sierra Club has participated in that collaborative process. Rather, they now appear as "Johnny-come-lately" stakeholders to a filing with a level of purported expertise not held by the Attorney General. Indeed, unabashedly, the movants state that "[m]oreover, the Attorney General's office will not marshal the same level of expertise as Movants with regard to energy efficiency and DSM."³ This statement stands in stark contrast to

² The list as provided by the Joint Applicants includes: Office of the Attorney General, Metropolitan Housing Council, Louisville Metro Air Pollution Control District, University of Kentucky, Kentucky Division of Air Quality, West Louisville Community Ministries, Department for Energy Development and Independence, Community Action Council for Lexington-Fayette, Bourbon, Harrison & Nicholas Counties, KY Community Action Council, KY National Energy Education Development Project, Louisville Metro Air Pollution Control District, Legal Aid Society, Kentucky Home Builders Association, Association of Community Ministries, Kentucky Industrial Utilities Customers, Kentucky School Board Association, Shelby County Public Schools, Kentucky Resources Council, Kroger, Community Action Kentucky, Partnership for a Green City, Midwest Energy Efficiency Alliance, Louisville Metro Government, University of Louisville.

³ See Movants Motion for Leave to Intervene, page 7, footnote 13.

reality of the Attorney General's historical and statutory role in matters filed explicitly under KRS 278.285 or in matters related thereto.⁴

While the Movants may have participated in certain cases before the Commission, their participation in DSM programs has been limited. Efforts by the Movants, or at least by the Sierra Club, in the East Kentucky Power Company DSM program would on the surface appear to be somewhat compelling as precedent for their involvement in the LG&E and KU DSM matter. However, the Sierra Club fails to note the manner in which it advanced the goals of DSM in the EKPC collaborative. Prior to the first meeting of the collaborative in which the Sierra Club had been made a member as a consequence of their involvement in Case No. 2010-00238,⁵ the Sierra Club sent a letter dated 7 March 2011 to its members stating the following:

As we begin 2011, the Cumberland Chapter Sierra Club is celebrating Eastern Kentucky Power Cooperative (EKPC) withdrawing its air permit request to build a new coal-fired power plant in Winchester, Kentucky. As a result of citizen action and public pressure, EKPC has promised to **invest \$5 million in renewable energy and energy efficiency projects** and is forming an advisory group of both industry and environmental representatives to explore the possibilities for a cleaner energy future. (Emphasis in original.)

Unfortunately, the letter was, as best as can be determined, an apparent misrepresentation of the facts of the case. EKPC had made no such commitment in the originating case or the collaborative process - the latter of which had not yet begun. (See attachment A for a copy of the letter.)

⁴ In the interest of saving paper and trees, the Attorney General will avoid citing to the hundreds of cases, whether filed explicitly under KRS 278.285 or in matters related thereto in which the Attorney General has participated.

⁵ The Sierra Club does not cite to this case. However, it was the beginning of the Sierra Club's involvement in EKPC's DSM.

In addition to the overreaching by the Sierra Club in the EKPC DSM program, the Sierra Club has employed a similar tactic in the Kentucky Power Company's DSM program, to which the Sierra Club has sought access by settlement. Specifically, in Case No. 2012-00578, the Commission approved the non-unanimous settlement, which awarded to the Sierra Club approval as a party to the DSM collaborative process notwithstanding the by-laws of the organization which required a vote.⁶ Shortly after the Commission entered its final order in Case No. 2012-00578, the Sierra Club immediately petitioned the collaborative by letter dated 13 December 2013; demanded membership; and demanded certain spending included in the non-unanimous settlement regardless of the decision of the collaborative. (See attachment B for a copy of the letter.) The heavy-handed nature of the Sierra Club's efforts to influence DSM programming is by no means a sign of cooperation - a fundamental rule for the statutory collaboration encouraged by KRS 278.278(1) and necessary if a consensus is the preferred approach for a DSM program. The same rule of thumb applies in both the informal process as well as the formal process filed before the Commission.

Last, as a matter of general observation, the Attorney General notes that the movants took ten (10) pages to try to justify their intervention in their original motion and an additional nine (9) pages in their response to the companies' objection. While counsel for the Attorney General cannot state that he has counted the pages of every attempt to intervene by non-statutory individuals or entities, counsel can state that he

⁶ The Attorney General objected to the partial settlement in the case, part of which pertained to the inclusion of the Sierra Club's membership in the collaborative as well as the spending on the Sierra Club's requests. That case is currently under appeal.

does not recall ever seeing so much paper spent on what should be a straight forward motion. The motion is almost Shakespearean in nature in that the movants doth protest too much for what otherwise should be a simple decision to make. It begs the question - will their participation only complicate matters?

To conclude, the Attorney General files this notice of contest by stating that he possesses an abundance of expertise in DSM programs as definitively demonstrated by: (1) the history of his office's participation in DSM collaborative at both the local utility and statewide levels; (2) the precedence of his participation in key DSM cases considered by this Commission; and (3) the clear intent of the General Assembly that the Attorney General shall represent consumer interests regarding DSM programming. Just as importantly, the Commission should take administrative notice that movants have a history of unduly complicating and disrupting conduct in matters directly associated with DSM programs filed under KRS 278.285.

WHEREFORE, the Attorney General contests the Movants' motion to intervene in these proceedings.

Respectfully submitted,

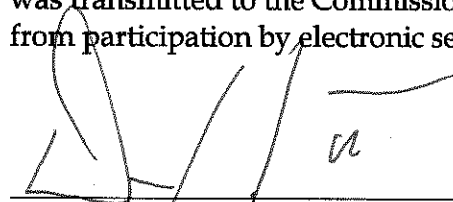
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Certificate of Service and Filing

Counsel certifies that the Motion to Intervene is a true and accurate copy of the documents to be filed in paper medium to the Commission within two business days; that the electronic filing was transmitted to the Commission on January 31, 2014; and that no party has been excused from participation by electronic service.



Assistant Attorney General

ATTACHMENT A



Every individual has a unique contribution.

*-- Jack Kornfield
American Author*

Our mission is to explore, enjoy, and protect the planet.

March 7, 2011

Dear [REDACTED]

As we begin 2011, the Cumberland Chapter Sierra Club is celebrating Eastern Kentucky Power Cooperative (EKPC) withdrawing its air permit request to build a new coal-fired power plant in Winchester, Kentucky. As a result of citizen action and public pressure, EKPC has promised to invest \$5 million in renewable energy and energy efficiency projects and is forming an advisory group of both industry and environmental representatives to explore the possibilities for a cleaner energy future.

Though we have many tireless volunteers, our work would not be possible without the generous financial support of our Sierra Club members like you. With the economic downturn, the Cumberland Chapter's financial health is in decline. Only in the month of March can we directly appeal to our entire membership for financial support. I am asking you to donate as generously as you can so our work can be ongoing.

Another exciting endeavor in which the Kentucky Sierra Club is engaged is as a founding partner in the Kentucky Sustainable Energy Alliance (KySEA). This is an alliance of more than 30 organizations and businesses committed to: improving energy efficiency; promoting the production of clean, renewable energy; creating new jobs and opportunities in the clean energy sector; and enabling all residents and businesses to take advantage of these energy solutions. The Sierra Club provided a grant for this organization to hold a Clean Energy Summit on January 31, 2011, in Lexington. More than 150 individuals were in attendance.

As many of us lament the United States' inability to enact any sweeping federal climate legislation, Sierra Club activists across the country are quietly going about the work of transforming our energy future. We are doing it by imagining and implementing clean sources of energy and phasing out last century's energy choice—coal. We are stopping new coal plants, retiring existing ones, convincing banks to quit funding the coal industry's destructive mountain top removal practice—all one step at a time.

In 2011, I believe each one of us can take small, or big, steps forward to change our energy future and promote clean air, clean water, and healthy food for Kentucky. Volunteer or provide financial support so that the great work we are doing will continue.

[REDACTED] when you make a contribution to the Cumberland Chapter, the funds stay in Kentucky. Your donation of \$35, \$50, \$100, or whatever gift you offer, will enable us to continue the work we are doing in this great Commonwealth. To use a credit card, please visit our website at www.kentucky.sierraclub.org.

Thank you for helping us make a positive difference in Kentucky's environment and in the lives of all her citizens.

Sincerely,

Alice Howell

Alice Howell, Cumberland Chapter Chair

P.S. We rely on donations directly from our members and friends to accomplish our work. No one will give in your place. **We need you.** Please act today and give as generously as you can. **Thank you!**

Contributions to the Sierra Club are not tax-deductible; they support our effective, citizen-based advocacy & lobbying efforts.

ATTACHMENT B



December 13, 2013

Via E-Mail

DSM Collaborative
c/o Ranie Wohnhas
Managing Director, Regulatory & Finance
Kentucky Power Company
101A Enterprise Drive
PO Box 5190
Frankfurt, KY 40602

**RE: Kentucky Power Demand-Side Management Collaborative – Sierra Club
Membership Petition**

Dear Mr. Wohnhas:

On behalf of the Sierra Club, I am petitioning the Kentucky Power Company Demand-Side Management (DSM) Collaborative to grant the Sierra Club voting membership in the Collaborative pursuant to Section 2 of the Kentucky Power DSM Collaborative bylaws.

As background, on July 2, 2013, Kentucky Power, the Kentucky Industrial Utility Customers, and the Sierra Club entered into a stipulation and settlement agreement regarding Kentucky Power's application for a certificate of public convenience and necessity authorizing the transfer of an interest in the Mitchell generating station, Case No. 2012-00578 ("Stipulation," attached as Exhibit 1). As a key component to the Stipulation, Kentucky Power agreed to authorize the Sierra Club's participation in the Company's DSM Collaborative. Stipulation at ¶ 12. The Kentucky Public Service Commission found the Stipulation reasonable and approved it in an October 7, 2013, order ("Order," attached as Exhibit 2). Order at 35-36, 43.¹

Pursuant to Section 3 of the bylaws, the Sierra Club intends to fulfill all of the duties associated with membership in the DSM Collaborative, and is committed to the

¹ While the Commission slightly modified the Stipulation in its Order, those modifications did not alter Sierra Club's right to participate in the DSM Collaborative, but instead further strengthened the terms of the Stipulation. See Order at Appx. B. Kentucky Power agreed to be bound by the Stipulation as modified on October 14, 2013 (attached as Exhibit 3).

development of robust DSM and energy efficiency programs that best serve the interests of ratepayers. This commitment is demonstrated by the terms of the Stipulation, through which the Sierra Club secured an agreement by Kentucky Power to increase its aggregate annual spending on cost-effective DSM and energy efficiency measures to \$4M in 2014, \$5M in 2015, and \$6M in 2016, 2017, and 2018. Stipulation at ¶ 12. The Company further agreed to institute a new two-year DSM program to help fund energy management programs for schools. *Id.* at ¶ 11. In its Order, the Commission noted that these Stipulation provisions “provide additional, substantial benefits to ratepayers that could not otherwise be obtained.” Order at 35. As such, the Commission not only approved the DSM provisions but found that Kentucky Power cannot spend less than \$6M on DSM and energy efficiency programs after 2018 without prior Commission approval. *Id.* at 36. The Sierra Club looks forward to offering its wealth of knowledge and experience with DSM and energy efficiency programs to the Collaborative to assist in maximizing the effectiveness of these additional funds.

It is our understanding that Kentucky Power is preparing to file updated DSM spending forecasts with the Commission this month. Given the anticipated rapid deployment of the additional funds secured through the Stipulation and Order, the Sierra Club respectfully requests that the Collaborative grant this petition within 30 days. Upon authorization, the Sierra Club will designate a voting representative and two alternates as required under Section 3 of the Collaborative bylaws.

Sincerely yours,

Dan Sawmiller
Senior Campaign Representative
Ohio and Kentucky
Sierra Club Beyond Coal Campaign

Cc:

E.J. Clayton, Manager of Energy Efficiency and Consumer Programs, Kentucky Power

Mark Overstreet, Counsel, Kentucky Power