

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

In the Matter of:

THE 2014 JOINT INTEGRATED RESOURCE)	
PLAN OF LOUISVILLE GAS AND)	CASE NO.
ELECTRIC COMPANY AND KENTUCKY)	2014-00131
UTILITIES COMPANY)	

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

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 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 other integrated resource plan (“IRP”), certificate of public convenience and necessity (“CPCN”), and demand-side management (“DSM”) proceedings in Kentucky and in other jurisdictions, the Movants have extensive experience evaluating the issues raised by Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company’s (“KU”) joint IRP.¹ 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.

LG&E and KU submitted their IRP at a moment of significant change for the electric utility industry. Existing or expected federal environmental regulations will require LG&E and

¹ *2014 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Apr. 21, 2014) (“Joint IRP”).

KU to either install pollution controls on their coal units or to retire such units. The U.S. Environmental Protection Agency (“EPA”) recently proposed the first federal rule that would restrict greenhouse gas emissions from existing power plants. Technological advances and changes in market conditions have made a larger suite of supply- and demand-side options available for the Companies to provide service to their customers. Moreover, growing awareness of the public health, environmental, and economic impacts of energy production have increased the importance of pursuing energy efficiency and renewable energy resources. This is reflected in recent Commission statements that energy efficiency and conservation are paramount considerations in determining the rates and services of utilities and their importance will continue to grow “as more constraints are . . . placed on utilities that rely significantly on coal-fired generation.”²

In this proceeding, the Commission will review whether the Companies have identified the least-cost, lowest risk expansion plan for meeting customers’ energy and peak demand requirements. A prudent integrated resource plan should take into account the recent, sweeping changes in the market and in the regulatory and policy landscapes. The Sierra Club has gained significant expertise on these issues by participating in DSM, CPCN, and IRP dockets before this Commission and the Sierra Club will bring its expertise to bear in this proceeding.

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

² *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, Sept. 30, 2010 at 20 (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”).

bring to this proceeding their expertise evaluating integrated resource 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 and a Sierra Club member. Mr. McMullen has a long-standing interest in 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, the District of Columbia, and Puerto Rico, who are dedicated to practicing and promoting the responsible use of natural resources. Sierra Club has over 4,800 members in Kentucky who 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 K.R.S. § 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.”³ 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 joint IRP without unduly complicating or disrupting the proceedings. As explained below, Movants satisfy both standards for intervention.

III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION.

A. This Motion is Timely Filed.

On May 30th, the Commission issued an order stating that a procedural schedule will not be set until August 4th, to reflect the abeyance granted in LG&E and KU’s pending CPCN docket, No. 2014-00002. As a result, the Commission has not yet set a deadline for the filing of motions to intervene. Accordingly, 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.”⁴ The IRP was developed against a backdrop of major changes in the electric sector as natural gas prices remain low and federal environmental regulations become increasingly stringent. Energy efficiency and demand response continue to be the cheapest resources available, and the Commission has encouraged utilities to pursue demand-side resources in order to mitigate the increased cost of utilities’

³ 807 KAR 5:001 § 4(11)(b) (emphasis added).

⁴ 807 KAR 5:001 § 4(11)(b).

existing generation. At the same time, the cost of renewable generation, particularly wind and solar, has declined significantly.

As the Commission's prior orders indicate, an IRP should consider the full range of demand- and supply-side resources, and comprehensively account for the costs facing such resources. The Commission expects utilities such as the Companies to plan for both existing and expected environmental regulations, including carbon regulations.

Organizational Movant Sierra Club has extensive experience analyzing and commenting on these issues, which are central to the development of a prudent integrated resource plan. Sierra Club has intervened in the proceedings relating to the 2013 Kentucky Power Company IRP, East Kentucky Power Company's 2012 IRP, and Louisville Gas and Electric Company and Kentucky Utilities Company's 2011 IRP.⁵ In addition to having participated as intervenors in these IRP dockets, Sierra Club has intervened and provided testimony on complex energy issues before this Commission in several CPCN and DSM dockets.⁶ Outside Kentucky, Sierra Club has

⁵ *In re Kentucky Power Company's Integrated Resource Planning Report*, Case No. 2013-00475; *In re The 2012 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Case No. 2012-00149; *In re The 2011 Joint Integrated Resources Plan of Louisville Gas & Electric Company and Kentucky Utilities Company*, Case No. 2011-00140.

⁶ 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*

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.

Movants' participation as full intervenors will not unduly complicate the matter, but instead will assist the Commission's review, as has occurred in other proceedings. For example, the Staff Report on LG&E and KU's 2011 IRP cited approvingly to several recommendations made by the Sierra Club.⁷ Movants expect to file comments that would be similarly helpful to the Commission's review of LG&E and KU's 2014 IRP. 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 need to have either 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.,

General Adjustment in Rates (Ky. PSC); 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); Case No. 2013-00487, Application of Kentucky Power Company to Amend its Demand-Side Management Program and for Authority to Implement a Tariff to Recover Costs and Net Lost Revenues, and to Receive Incentives Associated with the Implementation of the Programs; Case No. 2014-0002, 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; Case No. 2014-0003, Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy Efficiency Programs.

⁷ See, e.g., *In re The 2011 Joint Integrated Resources Plan of Louisville Gas & Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Staff Report at pp. 23-24 (noting that the Commission had already accepted the Environmental Intervenors' suggestion that LG&E and KU should commission a market potential study for DSM), 41 (agreeing with the Environmental Intervenors that LG&E and KU should have considered the impact of potential CO₂ rules), and 41 (stating the next IRP should respond to Environmental Intervenors' comments regarding selection of the target reserve margin).

above, Movants will present issues and facts that will help the Commission fully consider the matter. The Commission can grant full intervention on that basis alone and need not 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 outcome of this proceeding 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 joint IRP.

Movants' interests are not adequately represented by the current or potential intervenors in this proceeding. At present, the Commission has granted full intervention to Kentucky Industrial Utility Customers ("KIUC").⁸ As an association with a singular focus on the interests of large industrial customers, KIUC cannot 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, KIUC cannot adequately represent the individual Movant's interests in the local

⁸ Case No. 2014-00131, *In re Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Order, May 16, 2014.

public health and environmental impacts of the Companies' resource decisions.⁹ Movants' full intervention is warranted so that their interests, as detailed above, are represented.

IV. CONCLUSION

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

Dated: June 16, 2014

Respectfully submitted,



JOE F. CHILDERS
JOE F. CHILDERS & ASSOCIATES

300 Lexington Building
201 West Short Street
Lexington, Kentucky 40507
859-253-9824
859-258-9288 (facsimile)
childerslaw81@gmail.com

Of counsel:

(The following attorneys are not licensed to practice law in Kentucky.)

Shannon Fisk
Earthjustice
1617 John F. Kennedy Boulevard
Suite 1675
Philadelphia, PA 19103
(215) 717-4522
sfisk@earthjustice.org

⁹ Even if the Attorney General were to intervene, he 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).

Kristin Henry
Susan Laureign Williams
Sierra Club
85 Second Street
San Francisco, CA 94105-3441
(415) 977-5716
kristin.henry@sierraclub.org
laurie.williams@sierraclub.org

Matthew Gerhart
Earthjustice
705 2nd Ave.
Suite 203
Seattle, WA 98104
(206) 343-7340
mgerhart@earthjustice.org

CERTIFICATE OF SERVICE

I hereby certify that Sierra Club's June 16, 2014 electronic filing is a true and accurate copy of Wallace McMullen and Sierra Club's Motion for Leave to Intervene, to be filed in paper medium; and that on June 16, 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:

Dennis G. Howard II, Esq.
Lawrence W. Cook, Esq.
Angela M. Goad, Esq.
Heather Napier, Esq.
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204
Dennis.Howard@ag.ky.gov
Larry.Cook@ag.ky.gov
Angela.Goad@ag.ky.gov
Heather.Napier@ag.ky.gov

Allyson KI. Sturgeon, Esq.
Senior Corporate Attorney
LG&E and KU Energy, LLC
220 West Main Street
Louisville, KY 40202
Allyson.Sturgeon@lge-ku.com

Rick Lovekamp
Manager Reg. Affairs
LG&E and KU Energy, LLC
220 West Main Street
Louisville, KY 40202
Rick.Lovekamp@lge-ku.com

Edwin R. Staton
Vice President, State Regulation and
Rates
LG&E and KU Energy, LLC
220 West Main Street
Louisville, KY 40202
Ed.Staton@lge-ku.com

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

W. Duncan Crosby, III
Kendrick Riggs
Joseph Mandlehr
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 10202
duncan.crosby@skofirm.com
joseph.mandlehr@skofirm.com
kendrick.riggs@skofirm.com



JOE F. CHILDERS