

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

In the Matter of:

**APPLICATION OF KENTUCKY POWER)
COMPANY FOR (1) RE-AUTHORIZATION OF)
CERTAIN OF ITS EXISTING PROGRAMS;)
(2) AUTHORITY TO DISCONTINUE THE)
COMMERCIAL AND RESIDENTIAL HVAC)
DIAGNOSTIC AND TUNE-UP PROGRAMS;)
(3) AUTHORITY TO AMEND ITS DEMAND-)
SIDE MANAGEMENT PROGRAM TO)
IMPLEMENT RESIDENTIAL HOME)
PERFORMANCE AND RESIDENTIAL)
APPLIANCE RECYLCING PROGRAMS;)
(4) AUTHORITY TO RECOVER COSTS AND)
NET LOST REVENUES AND TO RECEIVE)
INCENTIVES ASSOCIATED WITH THE)
IMPLEMENTATION OF THE PROGRAMS;)
AND (5) ALL OTHER REQUIRED APPROVALS)
AND RELIEF)**

CASE NO. 2014-00271

**MOTION OF ALEXANDER DESHA AND SIERRA CLUB FOR LEAVE TO
INTERVENE**

Pursuant to KRS § 278.310 and 807 KAR 5:001 § 4(11)(a), Alexander DeSha and Sierra Club (collectively “Movants”) respectfully move the Commission for leave to intervene in the above-captioned case. Movants have a wealth of knowledge and experience in the complex issues pertaining to demand-side management (“DSM”) and associated cost recovery, the subject of Kentucky Power Company’s (“KPC”) application, and their intervention will assist the Commission in fully considering this matter. Moreover, KPC’s proposal in this case relates directly to KPC’s obligations to increase its DSM spending pursuant to the Commission’s

October 7, 2013 order approving, with modifications, the Stipulation and Settlement Agreement in Case No. 2012-00578, to which Movants are a party.¹ Movants' special interests in this proceeding are not adequately represented by any other party to the proceeding. Therefore, Movants seek full intervention in this proceeding.

On August 14, 2014, KPC filed its Application seeking Commission approval, pursuant to KRS § 278.285(1), of the continuation and modification of nine of its existing DSM programs; the discontinuation of two existing DSM programs; the implementation of two new DSM programs; cost recovery, including lost revenues and incentives, through revised DSM tariffs; and all other required relief or approvals. The Commission has suspended the effective date of the proposed rates for five months to allow time for additional inquiry to determine the reasonableness of the revised DSM tariffs.²

This proceeding deals with questions concerning investment in energy efficiency and other DSM resources, and DSM program planning, design, implementation, and associated cost recovery. For the Commission, energy efficiency and conservation are paramount considerations for 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."³ The organizational Movant, on behalf of its members, has gained substantial experience working on

¹ The Commission approved the Stipulation and Settlement Agreement subject to KPC's acceptance of the modifications set forth in Appendix B of the October 7, 2013 order. Order at 43, Case No. 2012-00578. On October 14, 2013, KPC filed a notice with the Commission accepting and agreeing to be bound by the Commission's modifications.

² Order, Case No, 2014-00271 (Sept. 10, 2014).

³ *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").

demand-side management issues throughout the United States, including in Kentucky, and seeks to bring such expertise to this proceeding to assist the Commission with its inquiry.

I. THE MOVANTS

Movants seek full intervention in order to ensure that their interests in energy efficiency and other demand-side management resources and in KPC's compliance with the Stipulation and Settlement Agreement in Case No. 2012-00578 are fully represented, and to bring to this proceeding their DSM and energy efficiency expertise. Movant Alexander DeSha is a customer of KPC, a long-time Sierra Club member, and has a deep interest in seeing KPC increase its reliance on low cost, clean energy options, like energy efficiency and other DSM resources. His address is as follows:

Alexander DeSha
1348 Jenkins Road
Whitesburg, Kentucky 41858

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

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 September 15, 2014.⁴ Movants have submitted this motion for leave to intervene on September 15, 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.” 807 KAR 5:001 § 4(11)(b). In its application, KPC proposes changes to its DSM program portfolio and associated tariff. Organizational Movant Sierra Club has developed expertise that encompasses a broad range of environmental and energy concerns that relate to the issues presented in this proceeding. In particular, Sierra Club’s staff and consultants have extensive experience in analyzing the potential for cost-effective energy efficiency, DSM program design, and cost recovery. Sierra Club has jointly or individually intervened and/or provided testimony on these and similar issues

⁴ Order at Appendix, Case No. 2014-00271 (KY PSC Sept. 10, 2014).

in proceedings before this Commission in Case Nos. 2013-00367 and 2014-0003, and in a multitude of similar proceedings in a number of states including Arkansas, California, Colorado, Louisiana, Minnesota, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, Virginia, Washington, and West Virginia. Moreover, 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 Docket No. 2012-00578, in which the Stipulation and Settlement Agreement was approved, as modified by the Commission.⁵ Sierra Club has also regularly

⁵ See Application of Louisville Gas & Electric for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2011-00162); Application of Kentucky Utilities for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2011-00161); Joint Application of Louisville Gas & Electric and Kentucky Utilities for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant (Docket No. 2011-00375); Application of KPC for Certificates of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2011-00401); Application of Big Rivers Electric Cooperative for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge (Docket No. 2012-00063); Application of Big Rivers Electric Corporation For an Adjustment of Rates (Docket No. 2012-00535); Application of KPC 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 (Docket No. 2012-000578); Application of Big Rivers Electric Corporation for a General Adjustment in Rates (Docket No. 2013-00199); 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 (Docket No. 2013-00259); 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 (Docket No. 2013-00487); In the Matter of Kentucky Power Company's Integrated Resource Planning Report (Docket No. 2013-00475); Joint Application of Louisville Gas & Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy Efficiency Programs (Docket No. 2014-00003); Join Application of Louisville Gas & 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 EW Brown Generating Station (Docket No. 2014-00002); 2014 Joint Integrated Resource Plan of Louisville Gas & Electric Company and Kentucky Utilities Company (Docket No. 2014-00131).

presented testimony before the U.S. Congress and various state legislatures on issues related to the electric utility industry, including energy efficiency.

Movants bring to this docket their unique perspective and experience in advancing technical and regulatory solutions to increasing cost-effective demand-side energy resources to all regions of the country, including Kentucky. Movants will apply their perspective and experience in evaluating KPC's application in the present case to assist the Commission in its inquiry to determine the reasonableness of the pending DSM Program and tariff proposals, and to ensure that KPC is maximizing cost-effective DSM.

Movants' participation as a full intervenor will not unduly complicate the matter. Rather, it will facilitate a more robust examination of KPC's application. Finally, 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.

As noted above, 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 consider Movants' special interest. Nevertheless, Movants also have special interests that are not adequately represented.

The individual Movant is a customer and rate payer of KPC. As such, individual Movant helps to fund KPC's operations and the decisions to be made in this proceeding concerning the DSM Program and associated tariff will directly impact his bill. In addition, the individual

Movant lives within the KPC service territory and, therefore, is impacted by the economic, public health, and environmental effects of the resource decisions that KPC makes.

Organizational Movant Sierra Club has members who are customers and ratepayers of KPC, and, therefore, have the same interests as the individual Movant. In addition, Movants' desire to promote energy efficiency and peak demand reduction in Kentucky is directly related to the issues of this proceeding, in which KPC has proposed modifications to its DSM Program. Finally, this proceeding is directly related to the Stipulation and Settlement Agreement in Case No. 2012-00578, which requires KPC to increase its DSM spending and to which Movants are a party. Thus, Movants have a special interest in this proceeding

Movants' interests are not adequately represented by any of the parties in the proceeding. At the time of this filing, KPC is the only other party in this case. No other party can adequately represent the organizational Movant's interests as a national organization that is interested in the promotion of energy efficiency and other DSM as the most reasonable and cost-effective way for KPC to maintain essential electric services and meet emerging federal regulatory requirements, and Movants interests as a party to the Stipulation and Settlement Agreement.⁶ Movants' full intervention is warranted so that their interests, as detailed above, are represented.

⁶ Movants acknowledge that the Attorney General and other parties may file requests for intervention. However, Movants respectfully submit that the Attorney General cannot adequately represent their interests. The Attorney General must represent consumers and all of their diverse interests, even where some of the interests may be diametrically opposed to each other. Thus, 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). Moreover, the Attorney General is not a party to the Stipulation and Settlement Agreement in Case No. 2012-00578 and, in fact, has challenged the Commission's approval of the Stipulation. Finally, as stated above, Movants bring their unique perspective and experience in advancing cost-effective demand-side energy resources.

IV. CONCLUSION

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

Dated: September 15, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that in addition to electronic notification received the Commission's electronic filing system, I mailed a copy of this MOTION OF ALEXANDER DESHA AND SIERRA CLUB FOR LEAVE TO INTERVENE by first class mail on September 15, 2014 to the following:

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