

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

**In the Matter of:**

<b>APPLICATION OF KENTUCKY</b>	)	
<b>UTILITIES COMPANY FOR AN</b>	)	<b>CASE NO. 2014-00371</b>
<b>ADJUSTMENT OF ITS ELECTRIC RATES</b>	)	

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**SIERRA CLUB’S REPLY IN SUPPORT OF PETITION FOR FULL INTERVENTION**

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On December 15, 2014, Sierra Club and Wallace McMullen filed a petition requesting that the Commission grant them full intervention in Case No. 2014-00371, which concerns Kentucky Utilities Company’s application for adjustment of its electric and gas rates. On December 22, 2014, Kentucky Utilities Company (“KU”) filed an objection, requesting that the Commission deny the petition by Mr. McMullen and the Sierra Club (“Movants”) to intervene in this matter.<sup>1</sup> KU argues that Movants have neither demonstrated a special interest in this proceeding nor shown that their involvement will identify any relevant issues or develop relevant facts that will assist the Commission.<sup>2</sup>

Movants’ counsel was not served with any notice of this objection, and did not learn about it until December 30, 2014, as described in the accompanying motion for leave to late-file a reply. Consequently, counsel for KU has agreed to an extension of time through and including Wednesday, January 7, 2015 for the filing of this Reply.

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<sup>1</sup> See Kentucky Utilities Company’s Objection to Petition of Wallace McMullen and Sierra Club for Full Intervention, filed Dec. 22, 2014. We note that Louisville Gas & Electric filed a similar objection in the related rate case numbered 2014-00372 on the same date, December 22, 2014.

<sup>2</sup> KU Opposition at 1.

## INTRODUCTION

The Commission’s rules provide that it “shall grant a person leave to intervene if the commission finds that a 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 K.A.R. 5:001 § 4(11)(b) (emphasis added). In other words, the Commission must grant full intervention if Movants either have interests in this proceeding that are not adequately represented or they offer a perspective or expertise that would assist in evaluation of the rate application. As explained below, Movants satisfy both standards for intervention.

As noted in their Petition, “Movants seek full intervention to help to ensure that the approved rate structure reflects important policy objectives such as encouraging customer adoption of measures that reduce overall system costs and avoiding disproportionate impacts on low-income customers.”<sup>3</sup> Movants’ interests in this proceeding are not adequately represented by any other party, and Movants will bring to bear on these issues their experience with similar rate design questions in other states.

**I. Movants Will Present Issues and Develop Facts That Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings.**

On at least seven previous occasions, including at least one base rate case, the Commission has found that Sierra Club qualified for full intervention because it 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).<sup>4</sup> Here,

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<sup>3</sup> Petition at 2.

<sup>4</sup> Application of Big Rivers Electric Corporation for an Adjustment of Rates, Case No. 2012-00535; Application of Kentucky Power for Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of

KU contends that Sierra Club has no relevant expertise because among Sierra Club's many interventions in Kentucky PSC proceedings, only one was in a base rate case and the issues in that case were distinct from those Sierra Club plans to raise here.<sup>5</sup> KU completely ignores the citations in Movants' Petition to Sierra Club's involvement in four cases in other jurisdictions involving the type of rate structure issues that Movants intend to raise here.<sup>6</sup> To illustrate Sierra Club's experience, Movants provide the following further detail about the most recent of such proceedings.

- In a general rate case in Minnesota, Sierra Club and other interveners submitted expert testimony evaluating a proposed fixed charge increase on residential customers and proposed an inclining block rate structure intended to incentivize conservation.<sup>7</sup> An administrative law judge recently issued a proposed order adopting Sierra Club's positions on both matters.<sup>8</sup>
- In a general rate case in Utah, Sierra Club presented expert testimony opposing a proposed increase in the fixed customer charge and a net metering facilities charge, which evaluated the impact of both charges on customer installation of rooftop solar facilities.<sup>9</sup> The Utah Public Service Commission rejected the net

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an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets, Case No. 2012-00578; Application of Louisville Gas & Electric for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge, Case 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, Case 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, Case No. 2011-00375; Application of Kentucky Power Company for Approval of its 2011 Environmental Compliance Plan and Certificates of Public Convenience and Necessity, Case 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, Case No. 2012-00063.

<sup>5</sup> KU Objection at 8-9.

<sup>6</sup> See Petition at 6 & n.6.

<sup>7</sup> In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota, Minnesota Public Utilities Commission Docket No. GR-13-868. In that docket, Sierra Club presented direct, rebuttal, and sur-rebuttal testimony by Mr. Paul Chernick on fixed charges and inclining block rates.

<sup>8</sup> See Docket No. GR-13-868, *supra*, Findings of Fact, Conclusions of Law, and Recommendations, issued Dec. 26, 2014, at 180-84, 189.

<sup>9</sup> In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations, Utah Public Service Commission Docket No. 14-035-184. Sierra Club presented the expert testimony of Dr. Dustin Mulvaney regarding how the fixed charge increase and a net metering facilities charge would reduce the payback period for homeowners installing solar photovoltaic systems.

metering facilities charge and approved a settlement which allowed a smaller increase in the fixed customer charge than initially requested by the utility.<sup>10</sup>

- Sierra Club presented expert testimony and filed legal briefs in a California Public Utilities Commission proceeding to determine residential rate redesign for multiple California investor-owned utilities, involving the imposition of fixed charges or minimum bills, tiered and time-of-use rate structures, and default or opt-in time-of-rates.<sup>11</sup>

While the details of each regulated utility's rate structure are unique, the fundamental principles of rate design are generally applicable to all jurisdictions and have many commonalities across state borders. This Commission has found that Sierra Club's experience with integrated resource planning proceedings in other states supported its showing of expertise to intervene in LG&E and KU's 2011 IRP proceeding<sup>12</sup>—likewise, Sierra Club's experience with rate structure issues in other jurisdictions shows that it is likely to develop facts that are helpful for the Commission here. Similarly, how customers will respond to increased fixed charges and time of use rates— as proposed in this case— is largely a matter of behavioral economics and thus lessons learned in other jurisdictions would be relevant here. Movants seek to present issues and develop facts based on our experience with rate structures in other jurisdictions, which when combined with Movants' knowledge of KU's operations and demand-side management programs, will assist the Commission. Since filing their Petition, Movants have contracted with a highly experienced utility regulation expert, Mr. Jonathan Wallach, Vice President of Resource Insight, Inc., to provide expert testimony in this case.

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<sup>10</sup> Utah PSC Docket No. 13-035-184, *supra*, Report and Order, issued August 29, 2014, at ii, 13, 56-70.

<sup>11</sup> California Public Utilities Commission, R.12-06-013. Sierra Club presented testimony on dynamic pricing and fixed charges by Dr. James Barsimontov and Dr. Dustin Mulvaney, including a literature review on time-differentiated rate design.

<sup>12</sup> See In the Matter of the 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company, Case No. 2011-00140, at 7 (Ky. PSC July 11, 2011).

Contrary to KU's assertion, Movants do not seek to re-litigate through this proceeding any issue already adjudicated in other proceedings.<sup>13</sup> Movants note their participation in other KU proceedings only to convey their background knowledge of the utility's resource planning and demand-side management programs, both of which provide critical context for issues Movants plan to raise in this proceeding—namely the impact of increased fixed charges on customer participation in demand-side management programs and voluntary measures by customers to reduce energy consumption. This broader view of the utility's plant and operations is also relevant to evaluating the validity of the utility's claim that certain costs are "fixed."

KU further asserts that even if Movants had expertise regarding the "effect of [its] proposed residential basic service charge on energy efficiency, conservation, or distributed generation," that issue "is not relevant to this proceeding."<sup>14</sup> This assertion flatly contradicts the precedent of this Commission and the Company's own witness. As this Commission recognized in KU's last rate case, how rate structure affects load, peak demand, and customer behavior is relevant to the determination of whether rates are "fair, just, and reasonable":

For over 30 years, the Commission has historically noted the importance of energy efficiency (conservation) as a ratemaking standard. . . . In recent years the Commission has emphasized the importance of energy efficiency, and has often considered it and DSM *in conjunction with a requested increase in the customer charge*.<sup>15</sup>

Moreover, KU's own witness and Director of Rates, Mr. Robert M. Conroy, addresses in his direct testimony the question of whether "recovering more of the increase through the basic service charge rather than through the energy charge sends the wrong signal for energy

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<sup>13</sup> KU Objection at 9.

<sup>14</sup> KU Objection at 10.

<sup>15</sup> Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, Case No. 2012-00222, at 7-8 (Ky. PSC Dec. 20, 2012) (emphasis added).

conservation.”<sup>16</sup> This testimony acknowledges that the conservation impact of increased fixed charges is relevant to the proceeding, consistent with the Commission’s prior rulings.

KU also argues that because existing interveners in this case have opposed its proposals to increase residential basic service charges in previous rate cases, there is adequate existing expertise in this case on that particular issue. Movants note that in the most recent KU rate case, the issue of the impact of an increased customer charge on efficiency and conservation appears to have been raised in “e-mails, letters, and public hearing comments,” rather than in testimony by interveners.<sup>17</sup> Movants respectfully submit that because their *primary* focus will be on the conservation and efficiency impacts of the fixed charge increase, and because they will evaluate that impact through expert testimony, Movant’s involvement will assist the Commission beyond what the existing interveners provided in previous rate cases where increased customer charges were litigated.

Movants’ Petition also stated an interest in the proposed optional time-of-use rates for residential customers. KU contends that the Commission and interveners in this proceeding already have sufficient expertise to address KU’s proposed time-of-day rates for residential customers<sup>18</sup>—notwithstanding that none of the interveners representing residential customers, including the Attorney General, identified residential time-of-use rates as an area of concern in their motions to intervene.<sup>19</sup> The statutory standard is that would-be interveners “present issues

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<sup>16</sup> See Direct Testimony of Robert M. Conroy, Director, Rates, Kentucky Utilities Company, Case No. 2014-00372, filed November 26, 2014, at 17-18.

<sup>17</sup> Dec. 20, 2012 Order, *supra* note 14, at 9.

<sup>18</sup> KU Objection at 10-11.

<sup>19</sup> See Motions to Intervene by Attorney General (filed Oct. 30, 2014), Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc. (filed Nov. 7, 2014), and Lexington-Fayette Urban County Government (filed Nov. 6, 2014).

and develop facts” that will assist the Commission, which is precisely the role that Movants will play with respect to the residential time-of-use rates. Based solely on the motions to intervene, Movants are likely to present issues and develop facts relating to the proposed time-of-use rates—an issue on which other interveners may not focus.

In addition, KU asserts that because a time-of-day rate structure has been in place for low-emission vehicle-owning customers,<sup>20</sup> no new analysis or perspective is needed on the effectiveness of such a rate structure for the residential class more broadly.<sup>21</sup> However, the average residential customer may have very different usage patterns and incentives than a low-emission vehicle-owning residential customer, which is relevant to whether the same dynamic rate structure is appropriate or will have the same impacts. Sierra Club and its consultant’s experience evaluating time-of-use rates in other states will enable it to share with the Commission perspectives and information from those jurisdictions, which may not have been considered in the design of KU’s previous time-of-use rates for a unique subset of the residential class.

The final contention made by KU is that “to the extent Sierra Club seeks to intervene . . . to represent the environmental interests that are its *raison d’etre* . . . the Commission cannot grant it intervention.”<sup>22</sup> Notably, KU includes no citation to Movants’ petition where Movants indicate they plan to raise purely environmental concerns in this rate case—because Movants make no such statement in their Petition nor have any intention to raise environmental quality issues. As demonstrated in the Petition, Movants have “an interest in the rates or service of a

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<sup>20</sup> See Direct Testimony of Robert M. Conroy, Director, Rates, Kentucky Utilities Company, Case No. 2014-00371, filed November 26, 2014, at 23.

<sup>21</sup> KU Objection at 10-11.

<sup>22</sup> *Id.* at 5-6.

utility,”<sup>23</sup> and will present only issues and analysis that are relevant to this proceeding and within the Commission’s jurisdiction.

In sum, Movants have shown that they will present issues and develop facts that will assist the Commission in evaluating whether the proposed fixed charge increase and residential time-of-use rates are fair, just and reasonable.<sup>24</sup> This is sufficient grounds to grant Movants’ request for intervention. 807 K.A.R. 5:001 § 4(11)(b).

## **II. Movants Have Special Interests in This Proceeding That Are Not Adequately Represented.**

As a separate basis for intervention, Movants also demonstrated that they have special interests in this proceeding that are not adequately represented by the other parties.<sup>25</sup> These special interests stem from the fact that Sierra Club and its members who are customers of KU wish to promote energy efficiency and distributed renewable generation as the most reasonable and least cost tools for utilities such as KU to maintain essential electric services, respond to changing market conditions, and meet new and emerging regulations.<sup>26</sup>

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<sup>23</sup> *EnviroPower, LLC v. Publ. Serv. Comm’n of Kentucky*, 2007 WL 289328 at 4 (Ky. App. 2007) (unpublished).

<sup>24</sup> KU notes that the Petition makes no claims of expertise on behalf of Mr. McMullen. KU Objection at 7. This Commission has previously required Sierra Club to name an individual member who is a customer of the utility as a co-intervener. *See* Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate for the Construction of a Combined Cycle Combustion Turbine at the Cane Run Generating Station and the Purchase of Existing Simple Cycle Combustion Turbine Facilities from Bluegrass Generation Company, LLC, Case No. 2011-00375, at 7-8 (Ky. PSC Dec. 14, 2011). However, that customer need not meet both the special interest and expertise criteria for intervention.

<sup>25</sup> Petition at 6-8.

<sup>26</sup> KU also challenges the sincerity of Sierra Club’s concerns about the impact of the increased fixed charges on low-income customers. KU Objection at 5. In fact, Sierra Club has low- and fixed-income members who are customers of KU and Sierra Club previously advocated for design of demand-side management programs that will benefit such customers. Movants do not claim to be specialized advocates for low-income customers’ interests, only to recognize the disproportionate impact of fixed charge increases on such customers and to believe this is a matter that will concern the Commission as well.



KU correctly notes that the Petition did not identify a KU customer.<sup>27</sup> Alice Howell and Carl Vogel are long-time Sierra Club members who receive electric service from KU at the following address: 918 Aurora Avenue, Lexington Kentucky, 40502.

KU also asserts that Sierra Club and its individual co-movants do not have interests that are indistinct from those of any other customer, and are therefore adequately represented by the Attorney General.<sup>28</sup> Ms. Howell and Mr. Vogel's interests in a rate structure that promotes energy efficiency, conservation, and adoption of distributed generation are more specific than the generalized consumer interest well-represented by the Attorney General. These are aspects of the rate structure less likely to be raised by the Attorney General's office, which tends to focus primarily on the overall bill impacts of the rate structure.

KU also contends that this Commission has determined that Sierra Club's interests, which are derivative of its members' ratepayer status, are adequately represented by the Attorney General.<sup>29</sup> When combined with its argument that the Attorney General has sufficient expertise on the issues presented in this rate case such that Movants would not provide additional assistance,<sup>30</sup> KU's view would render the Commission's intervention provision superfluous, as the Commission would almost always deny intervention to a public interest group on the grounds that their interests are already adequately represented by a party with expertise. Such an interpretation would run contrary to the rules of statutory and regulatory interpretation. *See*

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<sup>27</sup> KU Objection at 2-3.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *Id.* at 3-4.

<sup>30</sup> *Id.* at 10-11.

*Lexington-Fayette Urban County Government v. Johnson*, 280 S.W.3d 3 1, 34 (Ky. 2009),  
*University of Cumberlands v. Pennybacker*, 308 S.W.3d 668, 683-84 (Ky. 2010).

KU's contention is also inaccurate. In fact, the Commission routinely permits representatives of segments of ratepayers such as industrial customers or low-income customers to intervene. There is good reason for the Commission to do so, because the Attorney General cannot adequately represent certain classes of ratepayers that have interests that are distinct from, and may diverge from, the interests of other classes of ratepayers. KU's contention ignores the fact that the Attorney General is in the unenviable position of representing all of the various and often-competing consumer interests in Kentucky.

The Attorney General's broad responsibility has caused it to take very different positions from the Sierra Club in recent dockets, due to Sierra Club's more specific interests. For example, in the recent CPCN docket concerning the retrofit of Big Sandy 2, Sierra Club settled with Kentucky Power Company along with several interveners, while the Attorney General chose not to settle and has challenged the settlement in state court, naming Sierra Club, among other settling parties, as a defendant.<sup>31</sup> Likewise, in the recent CPCN for the 10 MW solar photovoltaic project at the E.W. Brown plant, Sierra Club settled the matter with LG&E and KU, while the Attorney General continued to contest several aspects of the companies' proposal.<sup>32</sup>

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<sup>31</sup> See 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, Case No. 2012-00578, at 2-3, 23-24 (Ky. PSC Oct. 7, 2012); *Commonwealth of Kentucky ex rel. Jack Conway, Attorney General v. Public Service Comm'n of Kentucky et al.*, Franklin Cir. Ct., Div. II, Civil Action No. 13-CI-1398 (filed Dec. 4, 2013).

<sup>32</sup> See 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

The Attorney General opposed Sierra Club's intervention in the recent proceedings concerning demand-side management portfolios for LG&E.<sup>33</sup> These different choices reflect the underlying difference of interests between the Sierra Club and the Attorney General.

While the Attorney General does a commendable job of representing the general interest of utility customers, it cannot adequately represent the particular interests of Ms. Howell, Mr. Vogel, or the Sierra Club in whether the utility's policies encourage conservation and promote the installation of distributed renewable generation.

**III. KU PROVIDES NO SUPPORT FOR ITS ASSERTION THAT MOVANTS' INTERVENTION WILL UNDULY COMPLICATE OR DELAY THE PROCEEDING.**

While KU asserts that the Movants' participation will unduly complicate or delay the proceeding,<sup>34</sup> it provides no support for that claim. KU does not contest that the Movants timely filed their motion to intervene nor do they challenge Movants' representation that they will abide by the schedule established by the Commission for this case.<sup>35</sup> Thus, there is no basis for finding that full intervention by Movants will unduly complicate or delay this proceeding.

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Green River Generating Station And A Solar Photovoltaic Facility At The E.W. Brown Generating Station, Case No. 2014-00002 (Ky. PSC Dec. 19, 2014).

<sup>33</sup> See Attorney General's Notice of Contest to Wallace McMullen and the Sierra Club's Motion for Leave to Intervene (filed Jan. 31, 2014), 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, Case No. 2014-00003.

<sup>34</sup> KU Objection at 10-11.

<sup>35</sup> Petition at 6.

**CONCLUSION**

For the foregoing reasons, and for all of the reasons set forth in its Petition, Movants respectfully request that the Commission grant Wallace McMullen and the Sierra Club full intervention in this proceeding, along with Alice Howell and Carl Vogel.

Respectfully submitted,



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Dated: January 7, 2015

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing copy of SIERRA CLUB'S REPLY IN SUPPORT OF PETITION FOR FULL INTERVENTION is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on January 7, 2015; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is being hand delivered to the Commission.



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JOE F. CHILDERS