

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

In the Matters of:

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

APPLICATION OF LOUISVILLE GAS &)	
ELECTRIC COMPANY FOR AN)	CASE NO. 2014-00372
ADJUSTMENT OF ITS ELECTRIC RATES)	

**PETITION OF WALLACE MCMULLEN AND
SIERRA CLUB FOR FULL INTERVENTION**

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(b), Wallace McMullen and Sierra Club (collectively “Movants”), petition the Commission for full intervention in Case No. 2014-00372 and Sierra Club moves for full intervention in Case No. 2014-00371, filed by Louisville Gas & Electric (“LG&E”) and Kentucky Utilities Company (“KU”), respectively. In these applications, the Companies seek authorization to increase the annual revenue recovered from ratepayers and to make significant increases to the monthly fixed customer charge for residential customers. The Movants are, or represent, ratepayers who will be directly affected by the requested adjustments.

Having intervened in general rate cases, integrated resource planning cases, certificate of public convenience and necessity cases, and demand-side management proceedings in Kentucky and in other jurisdictions, the Movants have extensive experience evaluating the underlying issues raised in the Companies’ rate applications. Movants have substantial knowledge and

experience in the principles of rate design and the impacts of rate structure on consumer behavior based on our advocacy in Kentucky and other jurisdictions. We will use that experience to present issues and develop facts that will assist the Commission in fully considering this matter.

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. Our interests in this proceeding are not adequately represented by any other party.

On November 26, 2014, LG&E and KU (the “Companies”) filed applications, pursuant to K.R.S. Chapter 278 and the applicable sections of 807 K.A.R. Chapter 5, for authority to increase their electric rates.¹ KU seeks to increase its annual revenues by approximately \$153 million, and to recover that revenue primarily by increasing rates for residential customers.² LG&E seeks to increase its annual revenues by just over \$30 million, and to make similar rate structure changes as KU.³ Perhaps most significantly, LG&E and KU will increase the residential fixed charge from \$10.75 to \$18.00 per month.⁴ Movants wish to examine the justification for this dramatic increase in the fixed charge, which we believe will harm low-income customers, and significantly reduce the incentive for residential customers to install energy efficiency measures or distributed generation. The fixed charge increase has the potential to undermine the Companies’ efforts to encourage residential customer participation in demand-

¹ *Application of Kentucky Utilities Company for An Adjustment of Its Electric Base Rates*, Case No. 2014-00371; *Application of Louisville Gas & Electric Company for An Adjustment of Its Electric Base Rates*, Case No. 2014-00372.

² KU Application, ¶¶ 6-7.

³ LG&E Application, ¶¶ 6-7.

⁴ *See* Dr. Martin Blake Testimony, Case No. 2014-00371, at 19; Dr. Martin Blake Testimony, Case No. 2014-00372, at 18.

side management programs, as well as customers' independent efforts to conserve energy and be more efficient. The Companies also propose a time-of-use tariff for residential customers, and amendments to the net metering tariff for residential customers who choose a time-of-use rate structure, which Movants plan to evaluate and address in testimony. Movants may also address other issues after closer examination of the applications and supporting materials.

The organizational Movant, on behalf of its members, has gained significant expertise on similar issues throughout the country, as well as in the Companies' demand-side management programs, and seeks to bring such expertise to this proceeding.

I. THE MOVANTS

Movants seek full intervention in order to ensure that their interests in appropriate rate structures are fully represented, and to present issues and develop facts that will assist the Commission. Movant Wallace McMullen is a customer of LG&E, and a long-time Sierra Club member who has a deep interest in an LG&E residential rate structure that is fair and reasonable, and will not penalize energy efficient customers. His address is 4324 Dover Rd., Louisville, KY 40216.

Sierra Club is one of the oldest conservation groups in the country, with approximately 600,000 members nationally in sixty-four chapters in all fifty states, the District of Columbia, and Puerto Rico. 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, Kentucky, 40588-1368.

II. LEGAL BACKGROUND

The Commission's regulations regarding intervention provide that a person may seek leave to intervene in a Commission proceeding and, upon timely motion:

The commission 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 expertise that would assist in evaluation of the rate application. As explained below, Movants satisfy both standards for intervention.

Movants are seeking intervention in a rate case proceeding that is governed by K.R.S. Chapter 278.⁵ Pursuant to that statute, LG&E and KU may “demand, collect and receive” only those rates that are deemed “fair, just and reasonable.” *Id.* §278.030. This proceeding is intended to evaluate the reasonableness and fairness of LG&E and KU’s applications and approve only those adjustments that meet this standard. “At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.” *Id.* § 278.190(3). Should the Commission find that any of the proposed rates are “unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provisions of . . . chapter 278,” the Commission is required to prescribe a just and reasonable rate to be applied. *Id.* § 278.270.

III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION

A. This Petition to Intervene is Timely Filed.

The Companies filed their applications for rate increases on November 26, 2014. No procedural order has been issued as of the date of this filing, setting any deadline for intervention motions. As such, this Petition is timely.

⁵ See KU Application at 1; LG&E Application at 1.

B. Movants Will Present Issues and 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 K.A.R. 5:001 § 4(11)(b). This proceeding presents questions of whether KU and LG&E are entitled to an increase in their annual revenues, and how any justified increase should be recovered from ratepayers consistent with well-established principles of rate design. The Companies’ applications and supporting testimony makes clear that the utility has not fully considered the adverse and regressive effects of its proposal to dramatically increase the residential fixed charge.

As parties to this proceeding, the Movants will ensure that the Commission has full information and diverse views about the impacts of the residential fixed charge increase on low-income customers and the incentive to engage in energy efficiency, conservation, and distributed generation. The Companies are also proposing to offer, for the first time, an optional time-of-day rate structure for residential customers. Movants support the use of time-of-day rate structures, when properly designed, to incentivize customers to shift their consumption to times of day when less expensive and lower-emitting generation resources are relied upon. Movant Sierra Club and its consultants have developed expertise regarding the principles of rate design and how rate design can best promote state policy objectives of energy conservation, efficiency, and support distributed generation. We have actively participated in dockets involving fixed charges, time-of-use rates, and the interplay of time-of-use rates with net metering—all issues

being raised in the Companies' applications.⁶ Through full intervention, Sierra Club, on behalf of its members including the individual Movant, will use its expertise and consultants to provide thorough and transparent analysis of the Companies' proposed revenue increase and rate structure.

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, and the Commission adopted several of Sierra Club's recommendations in the Companies' 2014 DSM docket. Movants expect to file testimony and briefing that would be similarly helpful to the Commission's review of LG&E and KU's applications for rate adjustments. 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 Special Interests in This Proceeding Which Are Not Adequately Represented.

807 K.A.R. 5:001 § 4(11)(b) 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.,

⁶ Sierra Club has actively participated and filed testimony in the following relevant dockets: General Rate Case for Rocky Mountain Power (PacifiCorp), Utah Public Service Commission Docket No. 14-035-184 (utility proposal to increase fixed customer charge and impose net metering facilities surcharge), General Rate Case for Northern States Power (Xcel) Minnesota Public Utilities Commission, Docket No. 13-868 (request by utility to implement partial decoupling and increase fixed monthly charge, proposal by Sierra Club and other intervenors to implement inclining block rates), California Public Utilities Commission, R.12-06-013 (residential rate redesign for multiple California investor-owned utilities raising issues of potential imposition of fixed charges or minimum bill, tiered and time-of-use rate structures, and default or opt-in time-of-rates); California Public Utilities Commission, A.10-03-014 (PG&E general rate case that included proposed fixed charge).

above, the 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 the Movants' special interest. Nevertheless, as explained below, the 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, Mr. McMullen lives within the LG&E service territory and is impacted by the economic, public health, and environmental effects of the rate structure implemented by LG&E. 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 Mr. McMullen. In addition, Movants' desire to promote low-cost, clean energy resources in Kentucky will be directly affected by the rate structure approved by the Commission for LG&E and KU.

Movants' interests are not adequately represented by the current or potential intervenors in these proceedings. At present, the Commission has granted full intervention in either or both the KU and LG&E cases to the Attorney General, Kentucky Industrial Utility Customers ("KIUC"), Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc., and the Lexington-Fayette Urban County Government. Motions to intervene have been filed by the Association of Community Ministries, Inc., Kentucky Cable Telecommunications Association and Kroger Company.

The Kentucky Cable Telecommunications Association seeks to intervene to protect the interests of its members who "attach their facilities to the utility poles of Louisville Gas & Electric ("LG&E"), and . . . are directly affected by that portion of LG&E's rate-adjustment

application that addresses LG&E's pole attachment rates.”⁷ Kroger Company is a large commercial consumer, while KIUC is an association with a singular focus on the interests of large industrial customers. None of these intervenors will adequately represent the organizational Movant's interests in ensuring just and reasonable rates for the residential class that incentivize the deployment of energy efficiency and renewables. The Attorney General also cannot adequately represent Movants' interests, as he 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).

Advocates for low-income customers are also actual or potential intervenors: Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc., in the KU case, and Association of Community Ministries, Inc., in the LG&E case. Based on the statements in the motions to intervene by these parties, Movants share their interests in advocating for rate structures that minimize the burden on low-income electric utility customers. However, Movants also have an interest in ensuring that the rate structure creates proper incentives for investment in energy efficiency and renewable energy, which will not necessarily be a primary focus of the Community Action Council and Association of Community Ministries. Movants' full intervention is warranted so that their interests, as detailed above, are represented.

⁷ Kentucky Cable Telecommunications Association's Motion to Intervene (filed Dec. 9, 2014), at 1.

IV. CONCLUSION

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

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 (not licensed in Kentucky):

Laurie Williams
Associate Attorney
Sierra Club
50 F Street, NW, Eighth Floor
Washington, DC 20001
Phone: (202) 548-4597
Fax: (202) 547-6009
Email: laurie.williams@sierraclub.org

Casey Roberts
Staff Attorney
Sierra Club
85 Second Street
San Francisco, CA 94105
Phone: (415)977-5710
Fax: (415) 977-5793
casey.roberts@sierraclub.org

Dated: December 15, 2014

CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of WALLACE McMULLEN AND SIERRA CLUB'S MOTION TO INTERVEN is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on December 15, 2014; 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.



JOE F. CHILDERS