COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY TO INSTALL AND OPERATE ELECTRIC CHARGING STATIONS IN THEIR CERTIFIED TERRITORIES, FOR APPROVAL OF AN ELECTRIC VEHICLE SUPPLY EQUIPMENT RIDER, AN ELECTRIC VEHICLE SUPPLY EQUIPMENT RATE, AND AN ELECTRIC VEHICLE CHARGING RATE, APPROVAL OF A DEPRECIATION RATE FOR ELECTRIC VEHICLE CHARGING STATIONS, AND FOR A DEVIATION FROM THE REQUIREMENTS OF CERTAIN COMMISSION REGULATIONS	)	**CASE NO. 2015-00355**

OBJECTION OF LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY TO MOTION OF WALLACE MCMULLEN AND SIERRA CLUB FOR LEAVE TO INTERVENE

Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively "Companies") respectfully request that the Commission deny the motion of Wallace McMullen and Sierra Club (collectively "Movants") for leave to intervene in this proceeding. The motion should be denied for three reasons: (1) the motion is untimely; (2) the Movants have failed to demonstrate that Mr. McMullen or the Sierra Club have a special interest in the proceeding because the stated interests are either not within the Commission's jurisdiction or are adequately represented by other parties; and (3) the Movants have failed to identify any relevant issues or develop relevant facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. Because neither Mr. McMullen nor the Sierra Club has satisfied any of the requirements for intervention under 807

KAR 5:001, Section 4(11)(b), the Companies respectfully request that the Commission deny the motion for leave to intervene.

I. The Commission should deny intervention to Movants because their motion is untimely without good cause, as Sierra Club has known of this proceeding for at least a month and had more than adequate resources to intervene then.

The Movants have failed to satisfy the first requirement for intervention because they have not filed a "timely motion for intervention."[1] In its Order of December 16, 2015, the Commission specifically found that any motion for intervention submitted after December 22, 2015, was untimely. That was a reasonable requirement: The Companies had filed on October 27, 2015, their notice of intent in this proceeding, which was posted to the Commission's website the same day. The Companies electronically filed their application on November 13, 2015. The Companies further issued a press release that same day announcing their application.[2] A number of local, statewide, and national news outlets and other entities—including the Kentucky Clean Fuels Coalition—published stories about the application within a few days of its filing.[3] And before the Commission issued its scheduling order, the Attorney General moved to intervene in this proceeding on December 9, 2015. The Movants therefore had more than adequate notice of this proceeding and could have moved timely to intervene, but instead chose to file their motion a full 52 days after the Commission's deadline for such motions and more than 90 days after the Companies filed their application. Such gross tardiness in requesting intervention would require a showing of very good cause.

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[1] 807 KAR 5:001 Section 4(11)(b) ("The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention ….").

[2] Available at: https://lge-ku.com/newsroom/press-releases/2015/11/13/lge-and-ku-looking-add-ability-install-and-operate-electric

[3] *See*, *e.g.*, http://www.whas11.com/news/lge-ku-ask-install-vehicle-charging-stations/29727400 (story dated Nov. 16, 2015; accessed Feb. 17, 2016); http://kentuckycleanfuels.org/2015/11/lge-and-ku-looking-to-add-ability-to-install-and-operate-electric-vehicle-charging-stations/ (story dated Nov. 16, 2015; accessed Feb. 17, 2016); http://www.wtvq.com/2015/11/13/lgeku-want-in-on-electric-car-charging/ (story dated Nov. 13, 2015; accessed Feb. 17, 2016); https://www.snl.com/InteractiveX/articleabstract.aspx?id=34522450&KPLT=8 (story dated Nov. 16, 2015; accessed Feb. 17, 2016).

But the Movants have made no such showing. Instead, they offer a total of two sentences to justify their untimely filing: "The organizational Movant, Sierra Club, is a not-for-profit organization, and its advocacy work is principally funded by grants, donors and members. Sierra Club has a long history as a leader on transportation issues, but only recently secured the resources necessary for full and active participation in this proceeding."[4] First, this claimed justification implicitly admits that Sierra Club has been aware of this proceeding for some time; they do not claim they only recently became aware of the proceeding, but rather that they only recently secured resources to participate in it.[5] Indeed, Sierra Club was aware of this proceeding at least as early as mid-January when they advised the Companies that they were considering intervening for the purpose of providing support for the filing.

But second and more importantly, Movants' claim of inadequate resources is unconvincing at best. The Movants themselves state that the Sierra Club has or is currently participating in numerous proceedings in Kentucky and other states.[6] Indeed, the Sierra Club is currently litigating against LG&E or KU in multiple forums, including in federal court concerning the Mill Creek Generating Station.[7] And the Sierra Club has more than adequate resources to do so: In its latest filing with the Internal Revenue Service, the Sierra Club Foundation reported net assets of $89,083,509 as of December 31, 2014.[8] It further reported expending $28,332,298 in support of its *Beyond Coal Campaign* during 2014,[9] of which Sierra

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[4] Motion at 4.
[5] *Id.*
[6] *See, e.g.,* Motion at 5 (noting the Sierra Club's participation "in similar proceedings in a number of states including California, Missouri, New York, and Connecticut" and its intervention and provision of testimony "on complex energy and electric utility issues in numerous dockets in the past three years before this Commission").
[7] *Sierra Club v. Louisville Gas & Electric Co.,* No. 3:14-cv-391-H (W.D. Ky. filed May 28, 2014). The Companies have also received from Sierra Club a notice of intent to sue concerning the E.W. Brown Generating Station.
[8] *See* Sierra Club Foundation Form 990 ("Return of Organization Exempt from Income Tax"), https://www.sierraclubfoundation.org/sites/sierraclubfoundation.org/files/uploads/SCF%202014%20Public%20Disclosure%20copy%20Form%20990.pdf (last visited Feb. 16, 2016).
[9] *Id.*

Club's proffered witness in this proceeding is a deputy director.[10] Moreover, Sierra Club's Environmental Law Program has more than thirty attorneys in its employ and a total staff of more than 45 people, in addition to Sierra Club's other employees and outside counsel.[11] Thus, it is clear that Sierra Club is an organization with vast resources, including the resources to litigate against LG&E at this very moment. And it is an organization the Movants claim has "a long history as a leader on transportation issues."[12] The only inference to draw is that this well-resourced transportation leader's assertion of inadequate resources as "good cause" for its delay is unconvincing at best.

Third and finally, Sierra Club asserts it "only recently secured the resources necessary for full and active participation in this proceeding."[13] As discussed above, that assertion rings hollow. But if the Sierra Club expects the Commission to believe its claim, it owes the Commission some explanation for the newfound resources making possible this untimely intervention request. As the party seeking to demonstrate good cause for gross tardiness, Sierra Club has the burden for such an explanation, and chose not to provide it. That Sierra Club did not provide such an explanation in its motion necessitates the only reasonable inference, namely that its good cause lacks support; there is no good cause for its late motion.

II. The Commission should deny intervention to Movants because neither Mr. McMullen nor the Sierra Club has a special interest in this proceeding.

The Commission has consistently held that, as a threshold matter, a person seeking intervention must have an interest in the rates or service of the utility at issue.[14] The

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[10] *See* Direct Testimony of Nachy Kanfer (Feb. 12, 2016).
[11] *See* http://content.sierraclub.org/environmentallaw/staff.
[12] Motion at 4.
[13] Motion at 4.
[14] *See*, *e.g.*, *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at 7 (July 27, 2011); *In the Matter of: The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by*

Commission has repeatedly held that groups like Sierra Club, as non-customers of the Companies, lacked that interest, although they could represent that interest on behalf of their members, and that any such members must be specifically named.[15] In this case, there is only one Movant who is a customer of either of the Companies: Mr. McMullen. Mr. McMullen is an LG&E customer, not a KU customer. As such, Mr. McMullen can have no interest in KU's rates or service. Therefore, without Mr. McMullen's cognizable interest in KU's rates or service, Sierra Club cannot have a cognizable interest in this proceeding in KU's proposed program or tariff changes.

In addition, Mr. McMullen lacks a special interest in this proceeding that is not already represented by another party to the proceeding and is jurisdictional to the Commission. First, although Mr. McMullen is a customer of LG&E, the scope of this proceeding is limited to the proposed service offering and will have no immediate effect on any other LG&E rate or service or the bill of any LG&E customer unless that customer voluntarily takes the proposed service. Indeed, Mr. McMullen does not claim to own an electric vehicle, or that he will be directly affected by the proposed service or the proposed rates and conditions of service attached to the proposed service. Moreover, the Commission has repeatedly held that the Attorney General represents the interests of all customers in proceedings like these, and Mr. McMullen has not

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Environmental Surcharge, Case No. 2011-00162, Order at 7 (July 27, 2011); *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at 4 (July 15, 2009).

[15] *In the Matter of: The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at 7-8 (July 27, 2011); *In the Matter of: The Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Order at 7-8 (July 27, 2011); *In the Matter of: The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Order at 6 (July 11, 2011). The Commission held in *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at 4 (July 15, 2009) ("Only persons who have an interest in a utility's rates or service are eligible to be granted intervener status. SEC Customer Group is not a customer of Columbia Gas and, thus, has no individual interest in the rates or service at issue in this case. Rather, SEC Customer Group is asserting an interest as the representative of certain unnamed customers of Columbia Gas. The Commission has, on prior occasions, required a customer representative to identify the specific customers being represented.").

demonstrated or even claimed that his interest in this proceeding as an LG&E customer is different than that of any other customer.[16] Therefore, Mr. McMullen—and therefore also Sierra Club—does not have an interest in the rates or service of LG&E that the Attorney General does not already represent in this proceeding, and cannot have intervention on that ground.

Second, Mr. McMullen's only claimed interest in this proceeding that might differ from other customers is not jurisdictional to the Commission, namely Mr. McMullen's "deep interest in improving access to safe, affordable, and clean transportation options."[17] Whatever the merits of that interest, it is outside the jurisdiction of the Commission, and therefore cannot be grounds for intervention. Both the Kentucky Court of Appeals and the Commission have made clear that a person seeking intervention must have "an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."[18] The Commission has also clearly stated that concerns not related to the rates or service of utilities, such as environmental concerns *per se*, are outside its jurisdiction;[19] the same reasoning would apply to concerns about transportation safety, affordability, and options, none of which is within the Commission's statutorily prescribed purview.

Turning to the Sierra Club, it necessarily lacks a special interest in this proceeding not otherwise adequately represented by another party because Mr. McMullen lacks such an interest. Indeed, the Commission has held that the Sierra Club and its individual utility-customer co-

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[16] *Id.*
[17] Motion at 3.
[18] *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at 4 (Ky. App. 2007) (not to be published); *In the Matter of: The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company,* Case No. 2008-148, Order (July 18, 2008).
[19] *In the Matter of The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company,* Case No. 2008-148, Order at 5-6 (July 18, 2008) ("Notably absent from the Commission's jurisdiction are environmental concerns, which are the responsibility of other agencies within Kentucky state government .... To the extent that [the proposed intervenor] seeks to address issues in this proceeding that deal with the impact of air emissions on human health and the environment, this is not the proper venue for those issues to be considered.").

movant seeking intervention in a rate case lacked any special interest in the case because the Sierra Club's individual members had the same interest in the rates and service of the utility as did all the other individual customers of that utility, customers already adequately represented by the Attorney General.[20] The Commission so held even though Sierra Club and its customer representative claimed that the Attorney General could not adequately represent their interests in "promoting energy efficiency, renewable energy, and other low carbon generation resources as the most reasonable and cost effective way for Big Rivers to maintain essential electric services and meet new and emerging federal regulatory requirements."[21] And as is true for Mr. McMullen, to the extent Sierra Club's asserted interest is promoting clean transportation options,[22] such interest is outside the Commission's jurisdiction, and therefore cannot be grounds for granting intervention to Sierra Club.

III. The Commission should deny intervention to Movants because they have not demonstrated that they will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding; indeed, they have already complicated and disrupted the proceeding with their untimely motion.

Because Mr. McMullen and the Sierra Club lack an interest in this proceeding that is not adequately represented by other parties, the Movants may intervene only if they can show that they will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding. Their motion fails to do so.

Concerning Mr. McMullen, the motion makes no specific claims of expertise on his behalf. Even the petition's generic claims concerning expertise clearly are meant to apply only

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[20] Case No. 2012-00535, *Application of Big Rivers Electric Corporation for an Adjustment of Rates* (Ky. PSC Apr. 17, 2013) at 6 ("While Movants [Sierra Club and Ben Taylor] certainly have an interest in Big Rivers' rates being fair, just, and reasonable, they have not established how their interest in this issue differs from the interest of all other Big Rivers' customers or how the AG's representation is not adequate to protect their interest.").

[21] *Id.* at 2 (internal quotation marks omitted).

[22] Motion at 7.

to the Sierra Club, not Mr. McMullen.[23] Although Mr. McMullen has been a named intervener in several cases concerning the Companies, Mr. McMullen has not provided testimony or otherwise substantively participated in any of the evidentiary proceedings; rather, he is Sierra Club's "named plaintiff," the Sierra Club member willing to lend his name for Sierra Club to obtain intervention. Because the petition claims no specific expertise for Mr. McMullen, and because he has shown none in the cases in which he has been a named intervener, the Commission should not grant him intervention on this ground.

Concerning the Sierra Club, it claims it will provide the Commission useful expertise in this proceeding, but careful examination shows the Sierra Club has not shown it possesses any expertise relevant to this proceeding. The Sierra Club contends that it has extensive experience in analyzing efficient and reliable integration of EV charging load, EV charging station program design, and cost recovery and that it has provided comment on these issues to four regulatory commissions. The Sierra Club does not identify these proceedings in its motion. Moreover, the testimony Sierra Club has proffered in this proceeding is not from a witness who claims to have participated or testified in any of the proceedings concerning EV matters Sierra Club cites. In addition, the witness's stated educational and professional background demonstrates he lacks expertise in these matters.[24] Therefore, neither Movant has demonstrated that it will, or even can, present issues or develop facts that will assist the Commission.

Finally, the Movants have already unduly complicated and disrupted this proceeding. The Companies have already filed testimony and provided responses to data requests; the only

[23] *See, e.g.,* Motion at 5 ("Organizational Movant Sierra has developed expertise that encompasses a broad range of environmental and energy concerns that relate to the issues presented in this proceeding.").
[24] Kanfer Testimony at 2-3.

intervener in the proceeding, the Attorney General, presumably recognizing the pilot-scale nature of the proposed EV program and the reasonableness of the proposed tariff provisions, has elected not to file testimony in this proceeding. Absent the Movants' untimely intervention motion, this proceeding would be ready for submission to the Commission on the record. But coming as late as it does—more than 50 days after the Commission's intervention deadline and without good cause—the Movants' intervention request is causing significant disruption and cost to the Companies and the Commission in a proceeding ripe for resolution. The Commission should refuse intervention to a party that has already disrupted this proceeding.

Conclusion

Neither Mr. McMullen nor the Sierra Club has satisfied either of the bases for permissive intervention set forth in 807 KAR 5:001, Section 4(11)(b). Neither has articulated any special interest that is not already adequately represented by other parties, and neither has shown an ability to present issues or develop facts that will assist the Commission in considering the Companies' proposed rates without unduly complicating and disrupting this proceeding. To the extent Mr. McMullen or the Sierra Club wish to express their views, they, like other members of the public, can submit written public comments in the record.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission deny Movants' motion to intervene.

Dated: February 19, 2016

Respectfully submitted,

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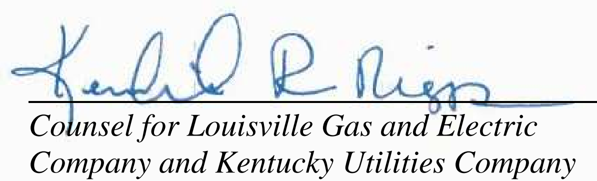
CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the February 19, 2016 electronic filing of this Objection to Motion of Wallace McMullen and Sierra Club for Leave to Intervene is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Commission on February 19, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this Objection will be mailed to the Commission by first class United States mail, postage prepaid, on February 19, 2016.



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