

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

In the Matter of:

**APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR AN ADJUSTMENT OF ITS) CASE NO. 2016-00370
ELECTRIC RATES AND FOR CERTIFICATES)
OF PUBLIC CONVENIENCE AND NECESSITY)**

**REPLY IN SUPPORT OF PETITION OF ALICE HOWELL, CARL VOGEL,
AND SIERRA CLUB FOR FULL INTERVENTION**

Kentucky Utilities Company (“KU”) and Louisville Gas & Electric Company (“LG&E”) have sought authorization to increase their revenues, to roughly double fixed residential customer charges (among other rate structure adjustments), and to commence two expensive infrastructural projects. Movants in this case—Sierra Club and KU-ratepayer members Alice Howell and Carl Vogel—petitioned to intervene on December 20, 2016; KU opposed Movants’ intervention on December 27, 2016. In parallel proceedings, Sierra Club and LGE-ratepayer member Amy Waters likewise petitioned to intervene in Case No. 2016-00371, and LGE similarly opposed their intervention. Movants hereby file this Reply in support of their full intervention, in accordance with 807 K.A.R. 5:001 § 5(3).

The respective opposition briefs of KU and LG&E (jointly “the Companies”) echo, often verbatim, the briefs the Companies filed when they unsuccessfully opposed Sierra Club’s and individual movants’ intervention in Case Nos. 2014-00371 and 2014-00372—cases that featured many of the same issues and parties that are again before the Commission.¹ In reiterating the

¹ See *Ky. Utils. Co.’s Objection to Petition of Wallace McMullen and Sierra Club for Full Intervention*, Case No. 2014-00371, filed Dec. 22, 2014; *Louisville Gas and Elec. Co.’s Objection to Petition of Wallace McMullen and Sierra Club for Full Intervention*, Case No. 2016-00372, filed Dec. 22, 2014; see also *In re: Applic. of Ky. Utils. Co. for an Adjustment of Its Elec. Rates*, Case No. 2014-00371, Order (Jan. 13, 2015) at 4-5 (granting intervention of Sierra Club, Ms. Howell, and Mr. Vogel); *In re: Applic. of Louisville Gas and Elec. Co. for an Adjustment of Its*

arguments they previously made, the Companies have chosen neither to attempt to distinguish those prior cases factually or legally, nor to grapple with the Commission’s well-reasoned opinions granting full intervention in those proceedings.²

In light of the Companies’ failure to offer any new reasons why the Commission’s prior decisions granting intervention should not apply here too, and because Movants again satisfy either basis for intervention—having both special interests not otherwise adequately represented in these proceedings, and the ability to assist full consideration of the matters at hand without complication—the Commission should grant Movants’ Petition.

I. Movants Have Special Interests That Are Not Adequately Represented.

Under the first independently-sufficient basis for intervention, Movants “ha[ve] a special interest in the case that is not otherwise adequately represented,” 807 K.A.R. 5:001 § 4(11)(b), as explained in their Petition.³ (The Commission need not reach this issue if it grants intervention on the separate basis that Movants will assist the Commission in fully considering the matters at hand, as the Commission has previously ruled.) Movants’ special interests include ensuring that the rate structures, and any infrastructural projects that the Commission may approve, advance the important objectives of promoting individual as well as systemic efficiencies, energy conservation, and distributed generation. The furtherance of those objectives reduces costs for customers as well as utilities, as expenses are avoided for energy production and transmission. It

Elec. Rates, Case No. 2014-00372, Order (Jan. 13, 2015) at 4 (granting intervention of Sierra Club and Wallace McMullen, an individual intervenor analogous to Ms. Waters).

² The Companies’ only acknowledgment of the Commission’s 2015 decisions granting intervention appears as a terse ‘*But see*’ citation in a footnote; they make no effort to explain why those decisions were distinguishable or erroneous. *See Ky. Utils. Co.’s Objection to Petition of Alice Howell, Carl Vogel, and Sierra Club for Full Intervention*, Case No. 2016-00370, filed Dec. 27, 2016 (“KU Objection”), at 2 n.4; *see also Louisville Gas and Elec. Co.’s Objection to Petition of Amy Waters and Sierra Club for Full Intervention*, Case No. 2016-00371, filed Dec. 27, 2016 (“LG&E Objection”), at 2 n.4.

³ *Petition of Alice Howell, Carl Vogel, and Sierra Club for Full Intervention*, Case No. 2016-00370, filed Dec. 20, 2016 (“Petition”), at 5-7.

also enhances grid reliability, helps utilities to respond to changing market conditions, and helps to meet new and emerging regulations.

The Companies assert that Movants' interests in efficiency, conservation, and distributed generation are "not unique" but rather "are identical to the interests of [their] other customers."⁴ The Companies thereby disregard Movants' qualitatively and quantitatively unique commitments to championing and investing in those objectives and measures.⁵ The Companies also argue that Movants' special interests are outside the Commission's jurisdiction—by way of ignoring Movants' asserted interest in rate structures that promote cost-saving energy efficiencies and conservation, and incorrectly suggesting that Movants claim only an interest in investing in distributed generation.⁶ However, as Movants have emphasized, their special interests directly relate to the Companies' proposed rate structures. For instance, whether increasing residents' customer charges while decreasing their use rates will have the perverse effects of incentivizing energy waste, disincentivizing efficiency and conservation, and inflating longer-term costs is plainly relevant to whether proposals are "fair, just and reasonable," K.R.S. § 278.030(1), and thus falls squarely within the Commission's jurisdiction under the Companies' own authority.⁷

The Companies next contend that Movants' special interests are adequately represented by the Attorney General, who has intervened in this case.⁸ As Movants pointed out in their

⁴ KU Objection at 2; *see also* LG&E Objection at 2.

⁵ *See* Petition at 2-3, 6.

⁶ KU Objection at 3; *see also* LG&E Objection at 3.

⁷ Additionally, whether the rate structure dampens investment in distributed generation—which would, in turn, increase the need for costly systemic infrastructure, undercut reliability improvements, and ultimately increase costs for everyone (not just ratepayers with a solar generation system)—is also indeed "an interest in the 'rates' or 'service' of a utility," to invoke the Companies' cited authority for the Commission's jurisdiction. KU Objection at 3 & n.11 (citation omitted); *see also* LG&E Objection at 3 & n.11.

⁸ KU Objection at 3-4; *see also* LG&E Objection at 3-4. The Companies do not contend that any other intervenor, besides the Attorney General, will adequately represent Movants' interests in cost-saving measures that promote efficiency, energy conservation, distributed generation, and the like.

Petition, however, Movants' interests in a rate structure and projects that promote behavioral and systemic efficiencies, energy conservation, distributed generation, and other cost-saving measures are qualitatively and quantitatively unique, compared to the ratepayer community at large, and thus are more specific than the generalized consumer-interest advocacy with which the Attorney General is tasked.⁹ Those specific objectives are less likely to be adequately represented by the Attorney General, who naturally tends to focus primarily on the bottom-line bill impacts of the rate structure. Indeed, the Attorney General has taken positions at odds with those very objectives in recent proceedings—even opposing Sierra Club's intervention in a case involving efficiency and demand-side management.¹⁰ Thus, although the Attorney General does a commendable job of representing the general interests of utility customers, the Attorney General is unlikely to adequately identify, explain, and champion Movants' special interests.¹¹

The Companies close by contending, unnecessarily, that the interests of low-income customers are already adequately represented by other non-profit organizational intervenors in this case, and that the environmental components of Sierra Club's organizational mission are outside the scope of these proceedings.¹² As explained in their Petition, Movants do not assert

⁹ See Petition at 6-7.

¹⁰ 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; see also, e.g., *Applic. of Ky. Power Co.*, Case No. 2012-00578 (Ky. PSC Oct. 7, 2012) (Attorney General challenging Sierra Club's settlements with utilities); *Commonwealth ex rel. Jack Conway, Attorney General v. Pub. Serv. Comm'n of Ky.*, Franklin Cir. Ct., Div. II, Civil Action No. 13-CI-1398, filed Dec. 4, 2013 (similar).

¹¹ The Companies' expansive view of the Attorney General's ability to represent, simultaneously and adequately, the respective interests of all ratepayers would often render superfluous the first basis of intervention under 807 K.A.R. 5:001 § 4(11)(b)—effectively prohibiting third parties' intervention on special-interests grounds whenever the Attorney General had intervened. Such an interpretation is both contrary to the rules of statutory and regulatory interpretation, and in tension with the Companies' acquiescence to the intervention of certain other ratepayers and representational organizations in this case.

¹² KU Objection at 5-6; see also LG&E Objection at 5-6.

that their primary interests or advocacy are intrinsically tied to the interests of low-income ratepayers; rather, they simply acknowledge that their special interests in rate structures and projects that promote efficiency, conservation, and distributed generation tend to overlap with the interests of low-income Kentuckians (given that hiking customer charges while lowering use rates tends to disproportionately and unfairly burden low-income consumers).¹³ Nor do Movants suggest that other intervenors cannot ably represent the interests of low-income customers; but Movants simply note that their involvement and resources are likely to complement those other intervenors' efforts, and that Movants sincerely value economic equity as well. Meanwhile, Movants have never mentioned environmental interests in asserting special interests in this case.

II. Movants Will Assist Full Consideration of the Matters Without Complication.

As a second independently-sufficient basis for granting Movants' Petition, Movants' "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).¹⁴ Movants have deep expertise and experience before this and other commissions regarding several core questions in these proceedings—including examining cost-of-service studies, evaluating the implications on costs and efficiency of structuring rates so that consumers pay more simply to be a customer and less for actually using energy, and assessing best practices for deploying smart grid technologies. Movants will facilitate full consideration of the issues through their advocacy as well as the expert testimony they plan on submitting.

The Commission astutely recognized as much in the recent, comparable pair of rate cases—determining that Sierra Club "possesses special knowledge and expertise in multiple

¹³ Petition at 7.

¹⁴ Petition at 7-10.

areas, including energy efficiency, the institution of time-of-use rates and the impact of the proposed rate design on both energy efficiency and customer participation in demand-side management,” such that Movants’ intervention was “likely to present issues and develop facts that will assist the Commission in considering th[e] matter without unduly complicating or disrupting the proceedings.”¹⁵ And that decision was not unique: On at least seven prior occasions—including another base-charge case as well as CPNC cases—the Commission had found that Sierra Club qualified for full intervention under the assisting-consideration prong of 807 KAR 5:001 § 4(11)(b).¹⁶ In other jurisdictions, too, Sierra Club has been granted intervention and has facilitated resolution of the type of rate structure issues that Movants will raise and examine (among other matters) in this case.¹⁷

The Companies’ oppositions ignore those instances of successful intervention, as well as the Commission’s recent on-point holdings. Instead, the Companies repeat assertions and arguments that they made in their last opposition briefs—making no effort to explain why the last pair of cases is distinguishable or to confront the Commission’s rejection of their repeated contentions.¹⁸ The Companies again assert that efficiency, conservation, and distributed

¹⁵ *In re: Applic. of Ky. Utils. Co. for an Adjustment of Its Elec. Rates*, Case No. 2014-00371, Order (Jan. 13, 2015) at 4.

¹⁶ *See* *Applic. of Big Rivers Elec. Corp. for an Adjustment of Rates*, Case No. 2012-00535; *Applic. of Ky. Power for Certificate of Pub. Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets*, Case No. 2012-00578; *Applic. of Louisville Gas & Elec. Co. for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162; *Applic. of Ky. Utils. for Certificates of Pub. Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Env'tl. Surcharge*, Case No. 2011-00161; *Joint Applic. of Louisville Gas & Elec. Co. and Ky. Utils. Co. for Certificates of Pub. Convenience and Necessity to Construct Combined Cycle Natural Gas Plant*, Case No. 2011-00375; *Applic. of Ky. Power Co. for Approval of its 2011 Env'tl. Compliance Plan and Certificates of Pub. Convenience and Necessity*, Case No. 2011-00401; *Applic. of Big Rivers Elec. Corp. for Certificate of Pub. Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Env'tl. Surcharge*, Case No. 2012-00063.

¹⁷ *See* *Wallace McMullen and Sierra Club’s Reply in Support of Petition for Full Intervention* (filed Jan. 7, 2015), at 3-4 & nn. 8-11, Case No. 2014-00372 (citing and discussing several cases in other states in which Sierra Club has intervened to facilitate consideration of fixed customer charges and related issues).

¹⁸ *See supra* nn. 1 & 2 and accompanying text.

generation are “not relevant” to whether rates are fair, just, and reasonable.¹⁹ Such a claim is not credible on its face, given the direct and substantial link between those measures and cost minimization, which is patently central to fair, just, reasonable rates—without even getting to economic equity and other relevant tie-ins. Moreover, it squarely contradicts the Commission’s determination that Sierra Club’s “special knowledge and expertise” regarding “energy efficiency” and “the impact of the proposed rate design on ... energy efficiency,” among other matters, is “within the scope of the Commission’s jurisdiction” and supports intervention.²⁰ The Companies also repeat the notions that Movants’ intervention would be disruptive, that their testimony and arguments would be duplicative, and that other intervenors have all the relevant expertise necessary to address all the issues in this case.²¹ Once again, the Companies’ assertion is merely conclusory, ignoring the helpful nature of their participation in past cases²² and contradicting the import of the Commission’s prior rulings granting intervention on this basis.

Ultimately, notwithstanding the Companies’ reasserted, previously-rejected contentions to the contrary, Movants’ participation will assist the Commission in fully considering the matters at hand, without duplication, complication, or disruption. Movants will help to examine the Companies’ asserted justifications for, and the implications of, hiking fixed customer charges as well as other issues discussed in Movants’ Petition—issues on which neither the Companies nor any other intervenor bring Movants’ combination of views, expertise, and experience.

¹⁹ KU Objection at 8; *see also* LG&E Objection at 8.

²⁰ Order (Jan. 13, 2015), Case No. 2014-00371, *supra* n.15, at 4.

²¹ KU Objection at 7-8; *see also* LG&E Objection at 7-8.

²² *See* Petition at 9.

CONCLUSION

For the foregoing reasons as well as those additionally set forth in Movants' Petition, Movants respectfully request that the Commission grant them full intervention in this case.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of the Reply in Support of the Petition of ALICE HOWELL, CARL VOGEL, and SIERRA CLUB for Full Intervention in this action 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 3, 2017; 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