

**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)	

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

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(b), Alice Howell, Carl Vogel, and Sierra Club hereby petition for full intervention in Case No. 2016-00370, filed by the Kentucky Utilities Company (“KU”). In parallel proceedings, Amy Waters and Sierra Club concurrently petition for full intervention in Case No. 2016-00371, filed by Louisville Gas & Electric Company (“LG&E”). KU and LG&E (together “the Companies”) seek authorization, in their respective applications, to substantially increase their revenues, and to alter rate structures so as to roughly double the fixed customer charge that residential consumers pay independent of how much power they use each month. The Companies also seek two Certificates of Public Convenience and Necessity (“CPCNs”) to make large investments in infrastructure meant to enhance their metering and distribution systems.

Ms. Howell, Mr. Vogel, and Sierra Club (collectively “Movants”) are or represent customers who will be directly affected by, and have special interests in, the proposed rate adjustments and infrastructure projects. Movants have extensive experience evaluating the issues raised in the Companies’ applications, having previously intervened in general rate cases, integrated resource planning cases, CPCN cases, and demand-side management proceedings, in Kentucky as well as many other jurisdictions. As such, Movants deeply understand the

principles of rate design; the effects of rate structures on consumer behavior; the impacts of raising customer charges while lowering use rates, on efficiency, costs, and low-income consumers; and the optimization of smart grid systems. Indeed, the Commission recognized as much just last year, when it permitted Movants to intervene in a similar case featuring a request by KU to increase customer charges. The Commission determined (over the Companies' opposition) that Movants' participation was warranted, explaining that Sierra Club "possesses special knowledge and expertise in multiple 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."¹

Movants seek to intervene in the present cases because their participation is vital to ensuring that the rate structures and any projects approved by the Commission advance the important objectives of promoting cost-saving efficiencies and distributed generation, avoiding disproportionate and unreasonable burdens on low-income Kentuckians, and other goals in which Movants have a special interest. Movants also seek to intervene because, as the Commission has recognized in comparable cases, they will present issues and develop facts that will assist the Commission in fully considering these matters, with no undue complication.

I. THE MOVANTS

The individual movants, Ms. Howell and Mr. Vogel, are long-time members of the Sierra Club who, as residential customers of KU, would be directly affected by the costs and broader

¹ *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); *see also In re: Applic. of Louisville Gas and Elec. Co. for an Adjustment of Its Elec. Rates*, Case No. 2014-00372, Order (Jan. 13, 2015) at 4 (granting intervention of Sierra Club and Wallace McMullen). The cases were settled with no increase in the respective residential customer charges.

impacts of the proposed rate structures and CPCN investments. Their address is 918 Aurora Ave., Lexington, KY 40502.

The organizational movant, Sierra Club, is one of the oldest and largest conservation groups in the country. Sierra Club has approximately 650,000 members across its sixty-four chapters, covering all fifty states, the District of Columbia, and Puerto Rico. More than 5,000 Kentuckians (including Ms. Howell and Mr. Vogel) belong to the Cumberland Chapter. Sierra Club seeks to act on behalf of the individual movants, whose interests align with Sierra Club's in these proceedings.² Sierra Club's Kentucky address is: Sierra Club, Cumberland Chapter, P.O. Box 1368, Lexington, KY 40588.

Movants are interested in rate structures and infrastructure projects that are fair, just, and reasonable—and that, accordingly, do not perversely penalize consumers who partake in energy-efficient practices, use relatively little energy compared to other consumers, or invest in distributed generation or other cost-saving products and technologies.

II. THE COMPANIES' APPLICATIONS

On November 23, 2016, the Companies filed applications pursuant to K.R.S. Chapter 278 and 807 K.A.R. Chapter 5 for authority to adjust their gas and electric rates, *inter alia*. The Companies ask for a combined annual revenue increase of \$210.5 million between electricity and gas.³ Critically, the proposed rate structures would roughly double current residential customer charges while slightly decreasing per-unit energy costs: Monthly customer charges would leap

² See *supra* n.1, Order (1/13/15) at 5, Case No. 2014-00371 (granting intervention on individuals' behalf).

³ The forecasted test period runs from mid-2017 to mid-2018. *Applic. of Ky. Utils. Co. for an Adjustment of Its Elec. Rates and for Certificates of Pub. Convenience and Necessity*, Case No. 2016-00370 ("KU Application"), ¶¶ 6, 11 (electric: \$103.1 million); *Applic. of Louisville Gas and Elec. Co. for an Adjustment of Its Elec. Rates and for Certificates of Pub. Convenience and Necessity*, Case No. 2016-00371 ("LG&E Application") ¶¶ 6, 8, 13 (electric: \$93.6M; gas: \$13.8M).

from \$10.75 to \$22.00 for electricity and from \$13.50 to \$24.00 for gas, such that consumers of both would go from paying \$24.25 to paying \$46.00 each month just to be a customer.⁴

The Companies also seek a CPCN to deploy Advanced Metering Systems (“AMS”) and another CPCN for a Distribution Automation (“DA”) project. The AMS project would involve replacing existing meters with ones that provide access to real-time data and enable development of time-of-day or other dynamic rate structures. The Companies peg AMS’s capital cost at \$312.8 million between KU and LG&E, with operating and management costs at \$29.2 million during the deployment phase from mid-2017 through 2019.⁵ The DA project, meanwhile, would feature equipment and systems intended to facilitate intelligent, remote distribution control and to improve reliability and outage recoveries. The Companies quote DA’s capital cost at \$112 million and its O&M costs at \$6 million over a seven-year schedule starting in 2016.⁶

III. LEGAL STANDARDS

Utilities may “demand, collect and receive” only rates that are “fair, just and reasonable.” K.R.S. § 278.030(1). A utility seeking to increase rates or charges bears the burden of proving to the Commission that the adjustment “is just and reasonable.” *Id.* § 278.190(3). If the Commission finds that a proposed rate is “unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provisions of [K.R.S. ch. 278],” the Commission must prescribe one that is “just and reasonable.” *Id.* § 278.270. Separately, utilities seeking to construct infrastructure to furnish public services generally must first apply for, and obtain from

⁴ KU Application Ex. 6 at 171, 330 (Tab 5); LGE Application Ex. 6 at 300, 593, 609-10 (Tab 5). Between the increased customer charges and decreased use rates, average residential electricity bills would rise an estimated \$7.16 for KU customers and \$9.65 for LG&E customers, KU Application ¶ 7; LG&E Application ¶ 7, and average gas bills would rise \$2.99 per month, LG&E Application ¶ 9.

⁵ KU Application ¶ 14 (capital – \$138.8M; O&M – \$13.7M); LG&E Application ¶ 16 (electric plus gas: capital – \$174M; O&M – \$15.5M).

⁶ KU Application ¶¶ 30-31; LG&E Application ¶ 32-33.

the Commission, “a certificate that public convenience and necessity require the ... [proposed] construction.” *Id.* § 278.020(1).

In proceedings to consider these matters, the Commission shall grant a timely motion to intervene if it finds either that the movant “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).

IV. THE COMMISSION SHOULD PERMIT MOVANTS’ FULL INTERVENTION

Movants satisfy either of the two independently sufficient bases for timely intervention, as Movants have special interests in these cases and also will smoothly aid the Commission’s full consideration of the matters at hand.⁷ While Movants are confident that they satisfy both bases, Movants note that the Commission need not reach the special-interest basis, discussed below in subsection (a), if, as in the Companies’ 2014-2015 rate cases, the Commission grants Movants’ intervention by opining only on the consideration-assistance basis, discussed in subsection (b).

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

Movants belong in these proceedings because they “ha[ve] a special interest in the case that is not otherwise adequately represented.” 807 K.A.R. 5:001 § 4(11)(b). Movants’ interests include ensuring that energy efficiency, conservation, and distributed generation are advanced by the Companies’ rate designs, resource planning, and expenditures. Energy efficiency and distributed generation lower utility-system costs and help customers take control of their bills, while enabling the utility to respond to changing market conditions and face new and emerging regulations in the most cost-effective and otherwise reasonable way. Movants’ interests are

⁷ This Petition is timely—filed in advance of the December 22, 2016, deadline for intervention motions.

“special,” *id.*, because Movants’ interests are quantitatively unique (Movants value them more deeply than the rate-paying community at large) as well as qualitatively unique (Movants publically advocate for and otherwise champion the interests in exceptional ways).

Moreover, Movants’ special interests are implicated “in this case,” *id.*, because redesigning rates by hiking fixed customer charges while easing volumetric energy-use charges would disincentivize conservation and energy-efficient behaviors. At the same time, the fact that the adjustments would ultimately take more money out of customers’ pockets exacerbates that perverse dynamic—making consumers less financially able to invest in energy-saving products or distributed generation, such as the solar panels that are increasingly popular with Kentucky families and businesses. Currently, many consumers will pay an extra capital cost for those technologies because they know they will recoup that upfront cost and more, by paying substantially less for energy use in the future. The Companies’ proposals threaten to jeopardize those sound calculations, however, and thus to discourage investments that would otherwise reduce long-term individual and systemic costs.⁸

Finally, Movants’ special interests in the case are “not otherwise adequately represented,” *id.*, because no other intervenor has either the expertise or the inclination to appropriately present and zealously defend them. The Attorney General, for one, does not adequately represent Movants’ focused interests (in energy efficiency, conservation, distributed generation, and the like) because he must represent the values and prerogatives of ratepayers generally—a broad, mixed obligation that has caused his office to take positions at odds with Sierra Club in recent

⁸ See generally Melissa Whited et al., Synapse Energy Economics, Inc., *Caught in a Fix: The Problem with Fixed Charges for Electricity* (2016) (“Synapse Fixed Charges Report”), at 16-19, available at <http://consumersunion.org/wp-content/uploads/2016/02/Caught-in-a-Fix-FINAL-REPORT-20160208-2.pdf>.

cases.⁹ Meanwhile, Movants' special interests above plainly are not adequately represented by the other current or putative intervenors, whose interests are either generalized or distinct.¹⁰

Movants also note their sincere interest in another important issue in these cases: making sure that the Companies' rate structures do not saddle low-income Kentuckians with an unfair share of certain costs that are actually driven by higher-using consumers. That issue is related to the dynamics discussed above, given that low-income customers tend to use less energy and hence generally stand to lose more under a rate structure that raises customer charges.¹¹ Movants do not claim to be specialized advocates for low-income customers. However, Sierra Club has low-income members who are customers of the Companies; has previously advocated for design of programs that benefit such customers (*e.g.*, demand-side management); and considers economic equity to be a key element of its organizational mission.

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

Movants belong in these cases for the additional, independently sufficient reason that 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.

⁹ For instance, the Attorney General has challenged Sierra Club's settlements with applicant utilities, *see, e.g., Applic. of Ky. Power Co.*, Case No. 2012-00578 (Ky. PSC Oct. 7, 2012); *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), and has opposed Sierra Club's intervention in demand-side management proceedings, *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 Applic. of Louisville Gas & Elec. Co. and Ky. Utils. Co.*, Case No. 2014-00003.

¹⁰ The other current or putative intervenors in the instant pair of cases include: Kentucky Industrial Utility Customers, Inc. (a generalized association); Kroger Company, the U.S. Dept. of Defense and other Federal Executive Agencies, Wal-Mart Stores East, LP and Sam's East, Inc., the Greater Muhlenberg Parks and Recreation System, and the Kentucky School Boards Association (being or representing specific high-use ratepayers); the Association of Community Ministries, Inc. and the Community Action Council (representing low-income individuals); the Metropolitan Housing Coalition (a non-profit promoting affordable housing); the Louisville/Jefferson County Metro Government and the Lexington-Fayette Urban County Government (high-use ratepayers and policymakers); and the Kentucky Cable Telecommunications Association (representing cable operators).

¹¹ *See, e.g., Synapse Fixed Charges Report*, at 14-16.

5:001 § 4(11)(b). The instant cases feature several questions, including whether the Companies reasonably need such substantial increases in their annual revenues as they request; whether rates should be restructured so that consumers pay more simply to be a customer and less for the energy they use; and whether hundreds of millions of dollars should be spent (and how) on smart grid technologies. Movants (along with their consultants) have deep expertise and experience with those questions, having previously studied, argued, and helped resolve them in Kentucky and elsewhere. Movants will aid the Commission by helping to identify, clarify, and apply key principles that bear on whether the proposed rate adjustments and investments are efficient, cost-minimizing, equitable, and otherwise “fair, just and reasonable.” K.R.S. § 278.030(1).

By way of illustration, prominent among the issues that Movants seek to examine are the Companies’ purported justifications for, as well as the perverse implications of, skyrocketing customer charges. As discussed above, such hikes are generally an inefficient, inequitable way to gather revenue because they discourage energy- and cost-saving behaviors and investments while disproportionately burdening low-use (and often low-income) ratepayers. The Companies’ applications and supporting testimony suggest that the Companies do not share Sierra Club’s views on the adverse and regressive effects of the proposed rate structures. Movants are experienced in analyzing cost-of-service studies and proposed rate designs, having offered testimony on those topics (among others) in numerous past proceedings for the consideration of

this Commission as well as other authorities.¹² Movants’ participation here will thus “assist the commission in fully considering” these important issues. 807 K.A.R. 5:001 § 4(11)(b).¹³

Further, the CPCN proposals also implicate Movants’ interests and their consideration would be facilitated by Movants’ participation. While the projects’ potential benefits may be in line with Movants’ interests (*e.g.*, efficiency), it is critical to vet the CPNC costs (in the hundreds of millions of dollars)—and to consider whether specific policies and practices to realize the infrastructure’s touted theoretical benefits should be spelled out and cemented now—in order to make sure that Kentuckians end up getting their money’s worth.

Movants’ participation will not unduly complicate or disrupt these proceedings but rather will facilitate them, as in prior cases. For example, the Staff Report on the Companies’ 2011 IRP cited approvingly to Sierra Club recommendations, and the Commission adopted Sierra Club recommendations in the Companies’ 2014 DSM docket. In the instant cases, Movants expect to file testimony and briefing that would be similarly helpful. Movants are represented by experienced counsel and will comply with all deadlines established by the Commission.

In sum, the Commission should permit Movants to intervene because—just as the Commission recognized last year in proceedings involving many of the same parties and issues—Movants possess “special knowledge and expertise in multiple areas, including energy

¹² See, *e.g.*, *In re: Applic. of Louisville Gas and Elec. Co. for an Adjustment of Its Elec. Rates*, Case No. 2014-00372, Direct Testimony of Paul Chernick on Behalf of Sierra Club (filed Mar. 6, 2015); see also Wallace McMullen and Sierra Club’s Reply in Support of Petition for Full Intervention (filed Jan. 7, 2015), at 2-4 & nn. 4-9, Case No. 2014-00372 (in advance of successful intervention, collecting citations and discussing numerous occasions in which Sierra Club has intervened to facilitate consideration of fixed customer charges and related issues).

¹³ In addition to the question of how to proportion customer-charge revenue versus use revenue is the separate question of whether the Companies legitimately need such a substantial overall increase in revenue. Movants also seek to assist the Commission in exploring and resolving that question.

efficiency” and are “likely to present issues and develop facts that will assist the Commission in considering th[ese] matter[s] without unduly complicating or disrupting the proceedings.”¹⁴

Dated: December 20, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

¹⁴ See *supra* n.1, Order (1/13/15) at 4-5, Case No. 2014-00371; Order (1/13/15) at 4, Case No. 2014-00372.

This is to certify that the foregoing copy of the petition of ALICE HOWELL, CARL VOGEL, and SIERRA CLUB for full intervention in these actions 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 20, 2016; 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