

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR AN)
ADJUSTMENT OF ITS ELECTRIC RATES) CASE NO. 2016-00371
AND FOR CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY)

LOUISVILLE GAS AND ELECTRIC COMPANY'S
OBJECTION TO PETITION OF AMY WATERS AND SIERRA CLUB
FOR FULL INTERVENTION

Louisville Gas and Electric Company ("LG&E" or the "Company") respectfully requests that the Commission deny the petition of Amy Waters and Sierra Club (collectively, the "Movants") for intervention. Their petition should be denied for two principal reasons: (1) the petition does not demonstrate 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 (2) the petition fails to show that either Movant will 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 Ms. Waters nor the Sierra Club has satisfied any of the requirements for intervention under 807 KAR 5:001 § 4(11)(b), LG&E respectfully requests that the Commission deny their petition for intervention.

Neither Ms. Waters nor the Sierra Club Has a Special Interest in this Proceeding

The Commission may grant Movants intervention only if they meet the requirements of 807 KAR 5:001 § 4(11)(b). The Movants do not satisfy the first basis for permissive

intervention, which requires a movant to demonstrate a special interest in the proceeding that is not already represented by another party to the action.¹

The petition claims that Ms. Waters has a special interest in the proceeding because she “would be directly affected by the costs and broader impacts of the proposed rate structures and CPCN investments.”² The petition further alleges that the “[m]ovants’ interests include ensuring that energy efficiency, conservation, and distributed generation are advanced by the Companies’ rate designs, resource planning, and expenditures.”³ These interests are not unique. In fact, the Commission has repeatedly denied similar petitions to intervene filed by customers claiming the same interests that Ms. Waters alleges because the interests Ms. Waters identifies are identical to the interests of LG&E’s other customers.⁴

With respect to Sierra Club, it cannot have a special interest in this proceeding not otherwise adequately represented by another party. The Attorney General is statutorily authorized to participate in rate-making proceedings “on behalf of consumer interests,”⁵ and has been granted intervention to represent those interests in this case.⁶ The Commission has held that Sierra Club and its individual utility-customer co-movant seeking intervention in a rate case lacked any special interest in the case because 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

¹ 807 KAR 5:001 § 4(11)(b).

² Petition at 2-3.

³ *Id.* at 5.

⁴ See e.g., *In the Matter of: Application of Kentucky Utilities Company to File Depreciation Study*, Case No. 2007-00565 and *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, Order (Ky. PSC Dec. 5, 2008). But see *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2014-00371 and *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of its Electric Rates*, Case No. 2014-00372, Order (Ky. PSC Jan. 13, 2015) (granting intervention to Sierra Club and named plaintiffs).

⁵ KRS 367.150(8)(b).

⁶ *In the Matter of: Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Order (Ky. PSC Nov. 15, 2016).

utility, customers already adequately represented by the Attorney General.⁷ 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.”⁸

Here, the Sierra Club makes an even narrower claim to be interested in this proceeding, namely to ensure the Commission “advance[s] the important objectives of promoting cost-saving efficiencies and distributed generation.”⁹ As conceded by Sierra Club, distributed generation refers to measures undertaken by individual consumers, such as solar panels, to generate power.¹⁰ The Commission, of course, does not have jurisdiction over these investments. 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.”¹¹ Actions taken by consumers with regard to distributed generation at their residences or businesses are outside the scope of the Company’s rates and service and cannot provide a basis for intervention in this case.¹²

⁷ *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, Case No. 2012-00535, Order at 6 (Ky. PSC Apr. 17, 2013) (“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.”).

⁸ *Id.* at 2 (internal quotation marks omitted).

⁹ Petition at 2.

¹⁰ *Id.* at 6.

¹¹ *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 Ky. App. Unpub. LEXIS 121, at *4 (Ky. App. 2007) (not to be published).

¹² The only instance of the construction of a distributed generation facility falling within the Commission’s jurisdiction is when a utility (as opposed to a utility customer) constructed the facility for its own use in a manner requiring a certificate of public convenience and necessity. See *In the Matter of: Application of Owen Electric Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a Two Megawatt Distributed Generation Facility in Owen County, Kentucky*, Case No. 2015-00213.

Moreover, the Commission has rejected arguments that additional customer intervention is necessary when the Attorney General is participating in the case on behalf of the customers, including when the customer or customer representative claims to have a special interest in supporting “conservation issues”:

[T]he AG, as the statutorily authorized representative of Kentucky’s utility customers, has a continuing interest in articulating and advocating support for renewable energy and energy conservation issues - the same issues that [a customer] seeks to advocate in this proceeding. The Commission further finds that the AG has consistently exercised his statutory duty to investigate these energy policy issues and to advocate their consideration by the Commission in its examination of the IRPs filed by Kentucky’s jurisdictional electric utilities over the past several years.¹³

The Commission further relevantly stated in an order denying Sierra Club’s special interest in an IRP proceeding:

While the Petitioners’ certainly have an interest in energy efficiency, demand-side management, and renewable energy, they have not shown how their interest in these issues differs from the interest of all other KU and LG&E customers or how the AG’s representation is not adequate to protect their interests.¹⁴

In sum, Sierra Club’s individual members who are LG&E customers have interests in LG&E’s rates and how those rates might impact energy-efficiency efforts or distributed generation that are no different than the interests of all other individual LG&E customers, whose interests the Commission has repeatedly held are more than adequately represented by the Attorney General, who is an intervener in this proceeding. Therefore, Sierra Club cannot intervene in this proceeding on the ground that its LG&E-customer members have a special interest not otherwise adequately represented in this proceeding.

¹³ *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 8 (Ky. PSC July 18, 2008).

¹⁴ *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, Order at 6 (Ky. PSC July 11, 2011).

Sierra Club presents another claimed special interest in this proceeding, namely as an advocate for low-income customers' interests.¹⁵ This assertion stands in sharp contrast with Sierra Club's public description of itself as "the nation's largest and most influential grassroots environmental organization."¹⁶ But even if Sierra Club could provide any evidence that even a single low-income LG&E customer is asking Sierra Club to represent low-income interests in this proceeding, such interests are already well represented in this proceeding by the Attorney General, who represents all customers, the Metropolitan Housing Coalition ("MHC"), which is a low income advocacy and service agency that has been granted full intervention in this case,¹⁷ and the Association of Community Ministries ("ACM"), which is another low-income advocacy and service agency that has been granted full intervention in this case.¹⁸ In its motion to intervene, MHC notes its role as an advocate for affordable housing and energy efficiency and particularly complains that the proposed increase of the flat monthly service charge will "fall heaviest on the poor and elderly utility customers." MHC also explains that it "mandates energy efficiency measures and encourages alternative energy provision" in affordable housing developments and notes that "[a] non-profit developer that has used solar power in multi-family housing construction has expressed concern about the increased disincentive to use solar power due to proposed rate structure changes." There is therefore neither any reason to believe Sierra Club actually represents low-income customers' interests, nor any reason to believe such low-

¹⁵ Petition at 2.

¹⁶ <http://www.sierraclub.org/about> (viewed on Dec. 21, 2016).

¹⁷ *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Order (Ky. PSC Dec. 20, 2016) (granting full intervention to MHC; in its motion to intervene, MHC claims to represent the interests of "over 300 individual and organizational members").

¹⁸ *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Order (Ky. PSC Dec. 20, 2016) (granting full intervention to ACM; in its motion to intervene, ACM explains that it is an organization "comprised of the fourteen independent community ministries that provide social services to low-income individuals throughout Louisville Metro").

income and efficiency interests will not be well represented by current parties to this proceeding; therefore, the Commission should not grant Sierra Club intervention on this ground.

Finally, to the extent Sierra Club seeks to intervene in this case to represent the environmental interests that are its *raison d'être* as “the nation’s largest and most influential grassroots environmental organization,” the Commission cannot grant it intervention; such issues are beyond the Commission’s jurisdiction. As mentioned, 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.”¹⁹ The Commission has clearly stated that environmental concerns *per se* are outside its jurisdiction:

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.²⁰

Ultimately, the Sierra Club has failed to demonstrate a special interest for two reasons. First, the Commission has repeatedly denied efforts by individual residential customers to intervene because their interest is common to all customers. If Ms. Waters lacks a special interest, so must the Sierra Club, whose cognizable interest in this proceeding must be subsidiary of the customers it claims to represent because Sierra Club is not an LG&E customer in its own right. Second, as shown above, Sierra Club does not have a special interest in this proceeding within the Commission’s jurisdiction that is not already represented ably by other parties that

¹⁹ *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 Ky. App. Unpub. LEXIS 121, 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 (Ky. PSC July 18, 2008).

²⁰ *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 (Ky. PSC July 18, 2008).

have been permitted to intervene. Therefore, the Commission should not grant Sierra Club intervention on this ground.

**The Movants Have Not Demonstrated that They Will Present Issues
or Develop Facts that Will Assist the Commission**

Because Ms. Waters 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 petition fails to do so.

Concerning Ms. Waters, the petition does not make any specific claims of expertise on her behalf. Even the petition's generic claims concerning expertise clearly are meant to apply only to the Sierra Club, not Ms. Waters.²¹ Because the petition claims no specific expertise for Ms. Waters, the Commission should not grant her 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 base-rate proceeding; rather, the Sierra Club's claims show that its intervention will serve only to unnecessarily disrupt and complicate this case. The petition claims Sierra Club's "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."²² More specifically, Sierra Club claims it will be able to offer useful expertise to the Commission because, "Movants are experienced in analyzing cost-of-service studies and proposed rate

²¹ See, e.g., Petition at 2 ("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.").

²² *Id.* at 2.

designs, having offered testimony on those topics (among others) in numerous past proceedings for the consideration of this Commission as well as other authorities.”²³

None of Sierra Club’s claims of expertise will increase the relevant expertise already present among the Commission and the interveners in this proceeding, making any information Sierra Club might offer irrelevant, redundant, or duplicative, and therefore unduly complicating to, and disruptive of, this proceeding. First, the effect of LG&E’s proposed rates on energy efficiency, conservation, or distributed generation is not relevant to this proceeding; the only relevant question is whether the proposed rates, particularly in the context of all of LG&E’s proposed rates based on well-established and accepted cost-of-service principles, are fair, just, and reasonable. The parties that have been granted intervention, including the Attorney General, have all the relevant expertise necessary to address these issues; the Sierra Club’s intervention would be unnecessary at best. And Sierra Club’s motion makes no showing that the AG, MHC, and ACM are not qualified, capable, and stand ready to present issues or develop facts that will assist the Commission on the customer charge, rate design, and other rate case issues.

Second, for the same reasons just given, the Attorney General, MHC, and ACM are more than sufficiently able to address the effects of LG&E’s proposed rates on low-income customers. Other than Sierra Club’s making a bare claim to having expertise on this issue, it is not obvious how or why an environmental group would have any relevant expertise on how rates affect low-income customers. Therefore, the Sierra Club’s intervention to address this issue would also be unnecessary at best; indeed, the Sierra Club’s intervention to address this issue would likely be duplicative and redundant, resulting in undue complication and disruption, and the Commission should deny Sierra Club’s petition on this ground.

²³ *Id.* at 8-9.

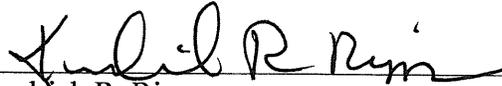
Conclusion

Neither Ms. Waters nor the Sierra Club has satisfied either of the bases for permissive intervention set forth in 807 KAR 5:001 § 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 LG&E's proposed rates without unduly complicating and disrupting this proceeding. To the extent Ms. Waters 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 respectfully requests that the Commission deny the petition to intervene of Amy Waters and Sierra Club.

Dated: December 27, 2016

Respectfully submitted,



Kendrick R. Riggs
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000
Fax: (502) 627-8722
kendrick.riggs@skofirm.com

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088
Fax: (502) 627-3367
allyson.sturgeon@lge-ku.com

Counsel for Louisville Gas and Electric Company

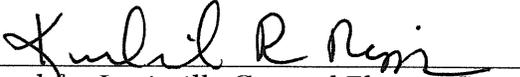
CERTIFICATE OF COMPLIANCE

This is to certify that Louisville Gas and Electric Company's December 27, 2016 electronic filing of the Objection is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on December 27, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies, in paper medium of this Objection will be mailed to the Commission on December 27, 2016. This further certifies that a true and accurate copy of the foregoing was served, via U.S. Mail and electronic mail, on December 27, 2016, upon the following.

Joe F. Childers, Esq.
Joe F. Childers & Associates
300 Lexington Building
201 West Short Street
Lexington, KY 40507
childerslaw81@gmail.com

Casey Roberts, Esq.
Sierra Club
1536 Wynkoop St., Suite 312
Denver, CO 80202
casey.roberts@sierraclub.org

Matthew E. Miller, Esq.
Sierra Club
50 F Street, NW, Eighth Floor
Washington, DC 20001
matthew.miller@sierraclub.org



Counsel for Louisville Gas and Electric Company