

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

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	
REASONABLENESS OF THE DEMAND SIDE)	CASE NO. 2017-00097
MANAGEMENT PROGRAMS AND RATES)	
OF KENTUCKY POWER COMPANY)	

**RESPONSE OF BEVERLY MAY, JIM WEBB, AND SIERRA CLUB
TO KENTUCKY POWER COMPANY’S MOTION FOR INTERLOCUTORY ORDER**

Pursuant to Section 5 of the Commission’s Rules of Procedure, 807 KAR 5:001 § 5(2), proposed intervenors Beverly May, Jim Webb, and Sierra Club (collectively, “Sierra Club”)¹ hereby respond to the Motion of Kentucky Power Company (“KPC” or “the Company”) for Interlocutory Order Regarding Program Activity During the Pendency of Investigation (“Motion”), which KPC filed in the above-captioned docket on March 31, 2017.

Sierra Club appreciates KPC’s efforts to keep the Commission apprised of its DSM-related activities that are underway or scheduled to occur during the next several months, before the Commission is expected to issue an order in this case. *See* Mot. at ¶¶ 5-6. Further, Sierra Club supports KPC’s request for the Commission’s “[c]onfirmation [of] the Company’s ongoing obligation during the pendency of this proceeding to administer its DSM portfolio in the ordinary course of business....” *Id.* at 5. However, to the extent that KPC alternatively seeks an order “relieving the Company of the obligation in 2017 of achieving the existing \$6 million DSM expenditure level,” *id.*,² Sierra Club respectfully submits that the Commission should refrain

¹ Sierra Club filed a timely motion for leave to intervene on March 23, 2017. This motion is currently pending before the Commission.

² In full, KPC’s requests for relief are as follows:

Kentucky Power Company requests that the Commission issue an interlocutory order:

from directing KPC to take any action that would be contrary to its existing DSM obligation for years 2017-2018 required under the Stipulation and Settlement Agreement that Sierra Club entered into with KPC and the Kentucky Industrial Utility Customers—and that the Commission vetted, adjusted, and approved as modified—in Case No. 2012-00578 (“2013 Stipulation”).

Sierra Club strongly opposes any interim request for relief from KPC’s current DSM obligations—particularly in the early stage of this investigation—for at least three reasons. First, as a practical matter, relieving KPC of its DSM investment obligation would prejudice KPC’s customers and business partners. As KPC recognizes, the Commission has approved the expansion of one DSM program and demand for two additional programs is exceeding forecasts. Mot. at ¶ 5(a), (c). An interlocutory order reducing KPC’s expenditure levels or otherwise reducing DSM activity would likely result in the suspension of at least some of the programs to new customers and adversely impact customer expectations and program momentum. *See id.* at ¶¶ 5(c), (d), 6. Such an order now would hardly provide greater customer certainty compared to an order on DSM activities issued at the conclusion of this proceeding, nor is it apparent that an interim suspension of DSM spending would translate into lower interim customer bills.³ Meanwhile, however, an abrupt termination would definitely prejudice KPC’s customers and business partners who benefit from and rely on the programs at issue. Sierra Club respectfully

(1) Confirming the Company’s ongoing obligation during the pendency of this proceeding to administer its DSM portfolio in the ordinary course of business through programmatic, marketing, operational, and future planning activities and expenditures, and declaring whether in administering its DSM portfolio during the pendency of this investigation the Company should distinguish between its commercial and residential programs; and

(2) Otherwise directing the Company in the manner it should administer its DSM portfolio during the pendency of this proceeding and relieving the Company of the obligation in 2017 of achieving the existing \$6 million DSM expenditure level, or such other expenditure level the Commission may ultimately order, including any penalties that might be assessed pursuant to KRS 278.990, if the Company is unable to do so because of its adherence to the Commission’s interlocutory order.

Mot. at 5.

³ *See* KPC’s Response to Commission Staff’s First Set of Data Requests, Request No. 6, Case No. 2017-00097 (March 17, 2017).

maintains that modifications to KPC's DSM portfolio should be the product of a thorough and deliberate investigation, including input from DSM experts.⁴

Second, as a legal matter, it is not obvious that an interlocutory order could properly suspend the DSM obligations contained in the 2013 Stipulation, which requires that KPC increase its aggregate annual spending on cost-effective DSM to \$6 million in 2017 and 2018. The Commission approved the 2013 Stipulation, as modified, after a three-day evidentiary hearing and post-hearing briefing in Case No. 2012-00578, having determined that the agreement provides substantial benefits to KPC customers.⁵ The Commission modified the 2013 Stipulation to clarify that KPC must seek prior Commission approval should the Company desire to spend less than \$6 million on DSM or energy-efficiency programs after 2018. *Id.* at 36. Thus, while KPC can request Commission approval to reduce its DSM investment after 2018, the 2017 and 2018 obligations to invest in Commission-approved cost-effective DSM programs are firm. Accordingly, the requested relief would be inconsistent with the 2013 Approved Stipulation, which the Commission considered and ordered binding as modified. Moreover, such interlocutory relief would seem also to run afoul of the generally applicable requirement of Kentucky law that “[n]o order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.” K.R.S. 278.260.⁶

⁴ As stated in its intervention petition, Sierra Club has retained expert consultants to help further illuminate the questions and issues posed by this case. Sierra Club Intervention Petition at 2.

⁵ Order, *In the Matter of: Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief*, Case No. 2012-00578 at 3, 35-36 (Oct. 7, 2013).

⁶ The Commission initiated this investigation pursuant to K.R.S. 278.260, which provides for Commission investigations into utility rates and services upon customer complaint or the Commission's own motion. Order, Case No. 2017-0097 at 1 (Feb. 23, 2017).

Finally, any request for revisions to or relief from the Company's DSM obligations is at least premature, because such a request is essentially asking the Commission to decide now—with little discovery and no expert testimony or input from the parties—the very questions this docket was opened to explore. The Commission initiated this investigation to examine the reasonableness of the Company's current DSM programs and rates. KPC's DSM spending obligation, established in the 2013 Stipulation, has been a key driver of KPC's DSM efforts over the past three years. It would be premature to reduce or eliminate the DSM expenditure requirements at the very beginning of an investigation opened to consider the reasonableness of the Company's DSM portfolio.⁷

For the foregoing reasons, Sierra Club respectfully requests that the Commission confirm KPC's ongoing obligation to administer its DSM portfolio in compliance with the 2013 Stipulation, and deny KPC's Motion to the extent that it asks the Commission to reduce or seek relief from its current DSM expenditure obligation during the pendency of this investigation. Sierra Club looks forward to working with KPC and the other parties to assist the Commission in this proceeding.

Dated: April 7, 2017

Respectfully submitted,



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⁷ KPC also asks for a Commission “declar[ation] whether in administering its DSM portfolio during the pendency of this investigation the Company should distinguish between its commercial and residential programs,” Mot. at 5. Sierra Club submits that such a declaration is also premature at this early stage of the instant investigation.

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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of the RESPONSE OF BEVERLY MAY, JIM WEBB, AND SIERRA CLUB TO KENTUCKY POWER COMPANY'S MOTION FOR INTERLOCUTORY ORDER 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 April 7, 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