

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

**In the Matter of:**

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

---

**MOTION OF BEVERLY MAY, JIM WEBB, AND SIERRA CLUB  
FOR CLARIFICATION**

---

Pursuant to Section 5 of the Commission’s Rules of Procedure, 807 KAR 5:001 § 5, Intervenor Beverly May, Jim Webb, and Sierra Club (collectively “Sierra Club”) respectfully move for clarification of the Kentucky Public Service Commission’s (“Commission”) May 4, 2017 Order granting Kentucky Power Company’s (“KPC” or “the Company”) motion for an interlocutory order regarding demand-side management (“DSM”) program activity during the pendency of the Commission’s investigation in this case. Specifically, Sierra Club requests clarification of the Commission’s ruling that, during the pendency of this proceeding, KPC has an ongoing obligation to administer its cost-effective DSM portfolio in the ordinary course of business but also is relieved of its \$6 million expenditure obligation. Sierra Club seeks clarification because compliance with the DSM spending requirement is the ordinary course of business for KPC’s administration of its DSM portfolio. In support of this motion, Sierra Club states as follows:

1. On March 31, 2017, KPC filed a motion for an interlocutory order addressing the administration of its DSM portfolio during the pendency of this proceeding. KPC Mot. at 5. Among other things, KPC asked the Commission to confirm the Company’s ongoing obligation

to administer its DSM portfolio in the ordinary course of business, and to relieve it of its obligation in 2017 to achieve a \$6 million expenditure level, or any other expenditure level the Commission may ultimately order, if the Company cannot meet this requirement because of its adherence to the Commission's interlocutory order. *Id.* at 5.<sup>1</sup>

2. Sierra Club filed a response to KPC's motion on April 7, 2017. While supporting KPC's request for Commission confirmation of the Company's ongoing DSM obligations, Sierra Club opposed any interim request for relief from KPC's 2017 (or 2018) DSM expenditure obligations—particularly at this early stage of the investigation. Sierra Club Resp. at 1-2. Specifically, Sierra Club asked the Commission to refrain 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 Approved Stipulation”). *Id.*

3. On May 4, 2017, the Commission granted KPC's motion, ruling that “[d]uring the pendency of the instant proceeding, Kentucky Power shall continue its ongoing obligation to

---

<sup>1</sup> In full, KPC's requests for relief were as follows:

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

(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.

*Id.*

administer its DSM portfolio in the ordinary course of business, but shall not be required to attain the existing \$6 million DSM expenditure level in 2017.” Order at 4.

4. As KPC explained in its motion, the Company is required to meet a minimum annual level of spending on DSM of at least \$6 million in 2017. KPC Mot. at 2. The Commission’s Order appears to suspend this obligation during the pendency of this investigation.

5. KPC’s DSM investment obligations were established in the 2013 Approved Stipulation, which was entered into and approved, as modified, in a Commission proceeding concerning the Mitchell Generating Station.<sup>2</sup> In that case, KPC proposed to acquire a 50 percent interest in the 1,560 MW generating station and related assets. After two public hearings and extensive public comments, multiple rounds of discovery and testimony, settlement negotiations, a three-day formal evidentiary hearing, and post-hearing briefing, the Commission approved the Company’s asset transfer request subject to the provisions of the 2013 Approved Stipulation.<sup>3</sup>

6. As the Commission explained, the 2013 Approved Stipulation contained “additional, substantial benefits to ratepayers that could not otherwise be obtained.”<sup>4</sup> These benefits include the minimum spending requirements in cost-effective DSM. Specifically, the Commission approved minimum expenditure levels through 2018, and modified the agreement

---

<sup>2</sup> The Commission has explained that “[t]he instant proceeding arises from the Commission’s Order in Kentucky Power Company’s acquisition of an interest in the Mitchell Generating Station in Case No. 2012-00578.” Order (April 10, 2017), Case No. 2017-00097, at 1 (footnote omitted).

<sup>3</sup> 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 2-3, 43 (Oct. 7, 2013) (“Mitchell Transfer Order”). The Franklin Circuit Court affirmed the Commission’s Order approving the 2013 Approved Stipulation on April 10, 2015. See Opinion and Order, *Commonwealth of Kentucky ex rel. Conway v. Pub. Serv. Comm’n of Ky*, 13-CI-01398 (April 10, 2015).

<sup>4</sup> Mitchell Transfer Order at 35.

reached among the settling parties to clarify that KPC must seek prior Commission approval should the Company desire to spend less than \$6 million after 2018.<sup>5</sup>

7. Sierra Club entered into and supported the 2013 Approved Stipulation because it believed that, taken together, the concessions agreed to by KPC were just, reasonable, and in the best interests of ratepayers.<sup>6</sup> Chief among such concessions was the increased investment in cost-effective DSM.<sup>7</sup> Sierra Club urged the Commission to approve the 2013 Approved Stipulation “so that KPC’s customers can begin reaping the benefits of increased investment in cost effective DSM.”<sup>8</sup> It is worth emphasizing that the expenditure obligation directs KPC to invest in “*cost-effective* DSM and energy efficiency measures,” which means, at a general level, that the spending requirement covers DSM resources for which the benefits outweigh the costs.<sup>9</sup>

8. KPC’s DSM spending requirement, being a core component of the 2013 Approved Stipulation, has defined the “ordinary course of business” for the Company’s administration of its DSM program for the past three years. Put simply, KPC’s ordinary course of business for administering its DSM portfolio includes compliance with the minimum

---

<sup>5</sup> Mitchell Transfer Order at 36.

<sup>6</sup> Sierra Club Post-Hearing Brief, *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 2 (August 12, 2013) (“Sierra Club Post-Hearing Mitchell Transfer Brief”); *see also* Oct. 7, 2013 Order, Appendix A at 4 (prefatory settlement language stating that “[F]or and in consideration of the mutual premises set forth above, and the agreements and covenants set forth herein, Kentucky Power and the Settling Intervenors hereby agree...”).

<sup>7</sup> Indeed, while Sierra Club believed a more reasonable approach to KPC’s proposed asset transfer would have been for KPC to evaluate a full range of supply and demand side options, it agreed to the Mitchell transfer because the settlement agreement would, among other things, “require KPC to double its annual investments in demand side management. Sierra Club Post-Hearing Mitchell Transfer Brief at 6; *see also id.* at 14-18 (“The Commission should approve the Proposed Settlement so that KPC’s customers can begin reaping the benefits of increased investment in cost effective DSM.”).

<sup>8</sup> Sierra Club Post-Hearing Mitchell Transfer Brief at 18.

<sup>9</sup> Mitchell Transfer Order, Appendix A at ¶ 12 (emphasis added).

expenditure level that it and the other stipulating parties agreed to, and that the Commission approved in the 2013 Approved Stipulation. Thus, there is a tension within the ruling that “Kentucky Power shall continue its ongoing obligation to administer its DSM portfolio in the ordinary course of business, but shall not be required to attain the existing \$6 million DSM expenditure level in 2017.” Order at 4.

9. Sierra Club understands that the Commission seeks to curtail “any discretionary increases to the costs of the DSM program ... during the pendency of this proceeding.” Order at 3. However, the \$6 million investment floor is not discretionary: Under the 2013 Approved Stipulation, while KPC can request Commission approval to reduce its DSM investment in 2019 and beyond, the 2017 and 2018 obligations to invest in Commission-approved cost-effective DSM programs at a minimum level of \$6 million are firm.<sup>10</sup> One way to harmonize KPC’s continued administration of DSM in the ordinary course of business during the pendency of this case, in compliance with the 2013 Approved Stipulation, with the Commission’s direction to “not expand or increase expenditures on any existing DSM Program,” Order at 3, is for KPC to refrain from increasing its total 2017 expenditures above the minimally-required amount during the pendency of this case. Clarifying the Order in this way would help parties gain a clearer understanding of how KPC’s DSM program should run during the course of this investigation.

For the foregoing reasons, Sierra Club requests that the Commission clarify its May 4 Order in the way described above.

---

<sup>10</sup> Mitchell Transfer Order at 43 (approving the 2013 Stipulation, subject to KPC’s acceptance of modifications).

Dated: May 12, 2017

Respectfully submitted,



---

Joe F. Childers  
Joe F. Childers & Associates  
300 Lexington Building  
201 West Short Street  
Lexington, KY 40507  
Phone: (859) 253-9824  
Fax: (859) 258-9288  
Email: childerslaw81@gmail.com

*Of Counsel*  
*(Motion for pro hac vice admission pending)*

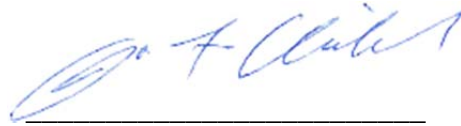
Matthew E. Miller  
Sierra Club  
50 F Street, NW, Eighth Floor  
Washington, DC 20001  
Phone: (202) 650-6069  
Fax: (202) 547-6009  
Email: matthew.miller@sierraclub.org

Jill Tauber  
Chinyere Osuala  
Earthjustice  
Washington, DC Office  
1625 Massachusetts Ave., NW, Ste. 702  
Washington, DC 20036  
Phone: (202) 667-4500  
Fax: (202) 667-2356  
Email: jtauber@earthjustice.org  
cosuala@earthjustice.org

*Counsel for Beverly May, Jim Webb, and Sierra  
Club*

## CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of the MOTION OF BEVERLY MAY, JIM WEBB, AND SIERRA CLUB FOR CLARIFICATION 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 May 12, 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 delivered to the Commission.



---

Joe F. Childers