

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

In the Matter of:

ELECTRONIC APPLICATION OF)	
KENTUCKY UTILITIES COMPANY FOR AN)	CASE NO. 2018-00294
ADJUSTMENT OF ITS ELECTRIC RATES)	

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

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(b), Alice Howell, Carl Vogel, and Sierra Club (collectively “Movants”) hereby petition for full intervention in Case No. 2018-00294, filed by the Kentucky Utilities Company (“KU”). In parallel proceedings, Amy Waters, Joe Dutkiewicz, and Sierra Club concurrently petition for full intervention in Case No. 2018-00295, filed by Louisville Gas & Electric Company (“LG&E”). KU and LG&E (together “the Companies”) seek authorization from the Commission to substantially increase the revenues they collect from their ratepayers, and to alter the rate designs through which they collect those revenues—including to substantially increase, and change the format of, residential customers’ fixed customer charge.

Ms. Howell and Mr. Vogel are KU residential customers, and Sierra Club represents them and other members who are customers, who will be directly affected by, and have special interests in, the proposed rates. Movants have extensive experience evaluating the issues raised in the Companies’ applications, having previously intervened in general rate cases like the instant proceedings, as well as in integrated resource planning (“IRP”) cases, certificate of public convenience and necessity (“CPCN”) cases, and demand-side management (“DSM”) 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 economics of the Companies' generating fleet, power purchase agreements, and more cost-effective potential alternative sources of reliable power; and other issues implicated by KU's application. Accordingly, as the Commission has repeatedly recognized in comparable past rate cases, Movants' request to intervene should be granted (notwithstanding KU's objections) because Movants "possess special knowledge and expertise in multiple areas," including "rate design" and "evaluation of capital spending," and "are likely to present issues and develop facts that will assist the Commission in considering this matter without unduly complicating or disrupting the proceedings."¹

Movants seek to intervene because they will once again present issues and develop facts that will assist the Commission in fully considering the matters presented by KU's application with no undue complication or disruption. Moreover, Movants' participation is vital to ensuring that the rates approved by the Commission advance the important objectives of promoting least-cost reliable generation, cost-saving efficiencies, distributed generation, avoidance of disproportionate and unreasonable burdens on different classes of ratepayers, and other goals in which Movants have a special interest.

¹ *In re: Electronic Applic. of Ky. Utils. Co. for an Adjustment of Its Elec. Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00370, Order (Jan. 11, 2017) at 3 (granting intervention of Sierra Club, Ms. Howell, and Mr. Vogel); *see also In re: Electronic Applic. of Louisville Gas and Elec. Co. for an Adjustment of Its Elec. Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Order (Jan. 11, 2017) at 3 (granting intervention of Sierra Club and Ms. Waters); *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 Commission approved settlement agreements in those cases that resulted, respectively, in minimal or no increase in fixed residential customer charges.

I. THE MOVANTS

The individual Movants, Ms. Howell and Mr. Vogel, are members of Sierra Club and residential customers of KU who would be directly affected by the costs and broader impacts of the proposed expenditures and rate adjustments. 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 3.5 million members and supporters across its sixty-four chapters, covering all fifty states, the District of Columbia, and Puerto Rico. More than 6,300 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. Sierra Club's Kentucky address is: Sierra Club, Cumberland Chapter, PO Box 1368, Lexington, KY 40588.

Movants are interested in, and knowledgeable about, rate structures that are fair, just, and reasonable—including rate designs that 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; and investment in, or contracting for, market-competitive generation sources that minimize costs while reliably providing power to ratepayers.

II. KU'S APPLICATION

On September 28, 2018, KU filed an application pursuant to K.R.S. Chapter 278 and 807 K.A.R. Chapter 5 for authority to adjust its electric rates. KU asks for an annual revenue

increase of approximately \$112 million or 6.9 percent per year for the forecasted test period compared to revenues under existing rates.²

Among other matters in this case, the rate structure that KU proposes would substantially increase its residential customers' fixed charges, while also displaying that charge as a per-day figure rather than the familiar per-month rate. Specifically, the Basic Service Charge for residential customers would change from the current \$12.25 per month to \$0.53 per day.³ That translates to \$15.90 in 30-day months and \$16.43 in 31-day months, for a total increase of roughly \$4 per month, or a percentage increase in the low-30s, on average (although the proposed change in cost-presentation format tends to inhibit customers from perceiving the extent of that leap). On top of that fixed charge hike, KU additionally proposes to increase the rate at which it charges customers to consume energy, from \$0.09047/kWh to \$0.09552/kWh.⁴

Combining both of those proposed increases, and also factoring in the expiration of the Tax Cuts and Jobs Act ("TCJA") Surcredit, average KU residential customers stand to see their electric bills jump by approximately \$13.47 per month, or 11.7 percent.⁵

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

² *Electronic Applic. of Ky. Utils. Co. for an Adjustment of Its Elec. Rates*, Case No. 2018-00294 ("KU Application"), ¶ 6.

³ *See, e.g.*, KU Application, Tab 6, Ex. A (Customer Notice of Rate Adjustment), at 1.

⁴ *Id.*

⁵ KU Application ¶ 7.

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.

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 will smoothly aid the Commission’s full consideration of the matters at hand (as the Commission has repeatedly recognized), and also have special interests not otherwise adequately represented in these cases.⁶ The Commission may grant intervention on either basis without opining on the other.

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

Movants belong in these proceedings because 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. 5:001 § 4(11)(b).

The instant cases feature several questions that implicate Sierra Club’s expertise, including whether the KU reasonably requires such substantial increases in its annual revenues as it requests; whether rates should be restructured in a way that is unnecessarily confusing, inaccurately represents true fixed costs, and perversely disincentivizes energy conservation and efficiency; and whether huge sums should continue to be spent on uneconomical generation.

⁶ This Petition is timely, being filed in advance of the October 29, 2018, deadline for intervention motions.

Movants have knowledge of 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 KU’s purported justifications for, as well as the perverse implications of, increasing the fixed residential customer charge. Such hikes not only tend to misrepresent the extent of the utility’s true fixed costs, but also 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. KU’s application and supporting testimony suggest that KU does not share Sierra Club’s insights on what constitute actual fixed costs, or its perspective on the adverse and regressive effects of the proposed rate structure. Movants are experienced in analyzing cost-of-service studies and proposed rate designs, having offered testimony and/or briefing on those topics (among others) in numerous past proceedings—including KU’s last general rate case—for the consideration of this Commission as well as other authorities.⁷ Movants’ participation here will thus “assist the commission in fully considering” these important issues. 807 K.A.R. 5:001 § 4(11)(b).

⁷ See, e.g., *In re: Electronic Applic. of Kentucky Utils. Co. for an Adjustment of Its Elec. Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00370, Direct Testimony of Jonathan Wallach on Behalf of Sierra Club, Alice Howell, and Carl Vogel (filed Mar. 3, 2017); *In re: Applic. of Louisville Gas and Elec. Co. for an Adjustment of Its Elec. Rates*, Case No. 2014-00371, 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).

Movants' participation will not unduly complicate or disrupt these proceedings but rather will facilitate them. To illustrate, in the Companies' last pair of general rate cases filed two years ago, Movants' contributions via discovery, testimony, witness examination, and legal briefing were instrumental in elucidating rate design issues that are likewise present in the instant proceedings, and helping to produce a settlement agreement that the Commission went on to approve as reasonable in relevant part. As further examples, 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 be similarly helpful. Movants are represented by experienced counsel and will comply with all deadlines established by the Commission.

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

Movants belong in these proceedings for the additional, independently sufficient reason that 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 "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 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. KU's proposal threatens to jeopardize those sound calculations, however, and 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' more 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 at times caused his office to take positions at odds with Sierra Club.⁹ Meanwhile, Movants' special interests, set forth above, plainly are not adequately represented by the other current or putative intervenors, whose interests are either generalized or distinct.¹⁰

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>.

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 Movants also note their sincere interest in another important issue in these cases: making sure that KU's rates do not saddle low-income Kentuckians with an unfair share of costs. See, e.g., Synapse Fixed Charges Report, at 14-16. Movants do not claim to be specialized advocates for low-income customers. However, Sierra Club has low-income members who are customers; has previously advocated for design of programs that benefit such customers (e.g., DSM); and considers economic equity to be a key element of its organizational mission.

V. CONCLUSION

The Commission should permit Movants to intervene in these proceedings, as it has in consecutive recent rate cases resembling this one. Movants possess special knowledge and expertise in smart rate design, energy economics, and other matters implicated by KU's application, and are likely to present issues and develop facts that will assist the Commission in considering these matters without unduly complicating or disrupting the proceedings, as the Commission has previously held. Independently, Movants have special interests that are not adequately represented by other parties in these proceedings.

Dated: October 25, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

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; the electronic filing was transmitted to the Commission on October 25, 2018; there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that the filing in paper medium is being delivered to the Commission via overnight express U.S. mail.



JOE F. CHILDERS