

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

In the Matter of:

ELECTRONIC 2018 JOINT INTEGRATED RESOURCE)	CASE NO.
PLAN OF LOUISVILLE GAS AND ELECTRIC)	2018-00348
COMPANY AND KENTUCKY UTILITIES COMPANY)	

**PETITION FOR FULL INTERVENTION OF SIERRA CLUB,
ALICE HOWELL, CARL VOGEL, AMY WATERS, AND JOE DUTKIEWICZ**

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(a), Sierra Club, Alice Howell, Carl Vogel, Amy Waters, and Joe Dutkiewicz (collectively “Movants”) respectfully move the Commission for full intervention in the above-captioned case. Having previously participated in dockets concerning integrated resource plans (“IRPs”) filed by Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (jointly the “Companies”) and other utilities, in addition to other types of dockets whose issues are implicated this case, Movants have extensive experience evaluating the issues raised in the Companies’ instant IRP.¹ Movants will use their experience and expertise to present issues and develop facts that will assist the Commission in fully considering this matter, thereby helping Staff and the Commissioners to ensure that the Companies’ IRP reflects a least-cost, least-risk, and otherwise reasonable plan that serves customers’ interest. Separately, Movants’ special interests are not adequately represented by any other party to this case. Accordingly, Movants’ intervention is proper under either of two independent bases and should be granted, as in the past.

¹ *2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Oct. 19, 2018), *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348.

The energy and electric sectors are at a crossroads of technological advances and changes in market conditions that continue to make a larger suite of cleaner options (supply- as well as demand-side) that are available and increasingly more cost-effective than outmoded fossil-based options for the Companies to provide reliable service. Meanwhile, growing awareness of the public health, environmental, and economic impacts of energy production have increased the importance and prevalence of energy efficiency and renewable energy resources—as reflected, for example, by the carbon reduction pledges and initiatives of local governments and businesses. In this vein, the dangers and legal violations related to coal ash contamination have regrettably become prominent in Kentucky and a number of other states, while greenhouse gas emissions from fossil generation continue to manifest with increasing severity and frequency. It is critical that the Companies seriously and deliberately consider how these and other developments should affect their resource planning, to minimize costs and risks while providing reliable service to their customers.

In this proceeding, the Commission will review whether the Companies have identified the least-cost, lowest-risk plan for meeting customers’ energy and peak demand requirements. A prudent IRP should take into account the significant ongoing changes in the market and in the regulatory and policy landscapes. Sierra Club has gained significant expertise on these issues by participating in previous IRP dockets, general rate cases, certificates of public convenience and necessity (“CPCN”) dockets, and demand-side management (“DSM”) dockets, before this Commission as well as other jurisdictions, and will bring its expertise to bear in this proceeding so as to assist the Commission’s full, fair, and efficient consideration of the issues at hand. The Commission has repeatedly found as much in the past, and this case will be no different. Indeed, the Commission recently stated, in its final orders in the Companies’ last, companion rate cases, that “KU and LG&E’s pending IRP matter, Case No. 2018-00348, would be the appropriate

forum to address the OVEC [Ohio Valley Electric Corporation] issues proffered by Sierra Club [in those cases].”² And the OVEC issue is just one topic among others that are pertinent to the Companies’ IRP and that Sierra Club intends to examine and illuminate through its participation in this docket.

I. THE MOVANTS

Movants seek intervention in order to ensure that their interests in low-cost, clean energy options are fully represented and that these issues are fully explored and litigated for the Commission’s benefit. Movants will bring their expertise evaluating IRPs, in particular in reviewing whether companies have fully considered all reasonable options to develop a least-cost, low-risk resource plan that meets customers’ needs. Movants will also ensure that the interests in cost-effective clean energy options are fully and adequately represented.

Alice Howell and Carl Vogel are KU residential customers; Amy Waters and Joe Dutkiewicz are LG&E customers; and all are members of Sierra Club’s Kentucky Chapter. These individuals, among other Sierra Club members, have longstanding interests in their respective utilities supplying lower-cost, cleaner energy options in providing reliable service to customers. Ms. Howell and Mr. Vogel’s address is 918 Aurora Ave., Lexington, KY 40502. Ms. Waters and Mr. Dutkiewicz’s address is 539 E. Oak St., Louisville, KY 40203.

Sierra Club is one of the oldest and largest conservation groups in the country, with approximately 3.5 million members and supporters across its sixty-four chapters, which cover all 50 states, the District of Columbia, and Puerto Rico. More than 6,300 Kentuckians belong to Sierra Club’s Kentucky Chapter, whose address is: Sierra Club, Cumberland Chapter, PO Box 1368, Lexington, KY 40588. Sierra Club has many years of experience working on energy and electric generation issues throughout the United States, including in the Commonwealth,

² E.g., Order (Apr. 30, 2019), *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2018-00295, at 29.

advocating for robust cost-effective investments in clean generation, demand response, energy storage, energy efficiency, and renewable energy—all of which produce safe and sustainable jobs while reducing electric system costs for both customers and utilities, and reducing reliance on dirty, climate-threatening generation. Many of Sierra Club’s Kentucky members are customers of KU or LG&E, and thus are directly affected by the rates, policies, plans, terms, and conditions governing the Companies’ provision of electricity.

Movants are interested in, and knowledgeable about, rate structures that are fair, just, and reasonable. These include rate designs that do not perversely penalize consumers who partake in energy-efficient practices, or use relatively little energy compared to other consumers, or invest in distributed generation or other cost-saving products and technologies. Movants are also interested in, and knowledgeable about, investment in and contracting for market-competitive generation sources that minimize costs while reliably providing power to ratepayers. In sum, Movants have direct and substantial interests implicated by the Companies’ IRP, and will assist the Commissions’ consideration of the same.

II. REQUIREMENTS FOR INTERVENTION

The Commission’s regulations regarding intervention provide that the Commission shall grant a person, as defined by K.R.S. § 278.010(2), leave to intervene in a Commission proceeding upon a timely motion if the Commission finds that the person “has a special interest in the case that is not otherwise adequately represented *or* that his or her 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.”³ Thus, the Commission must grant full intervention if Movants have filed a timely intervention motion; and either have interests in this proceeding that are not adequately represented, *or* would assist in evaluation of the IRP

³ 807 KAR 5:001 § 4(11)(b) (emphasis added).

without unduly complicating or disrupting the proceedings. As explained below, Movants satisfy both of the two independent bases for intervention.

III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION

A. This Motion is Timely Filed.

The Companies filed their 2018 Joint IRP on October 19, 2018. On April 10, 2019, the Commission issued an Order setting a deadline of September 16, 2019, for the filing of intervention motions. Accordingly, Sierra Club's instant motion to intervene is timely.

B. Movants Will Present Issues or Develop Facts that Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings.

The Commission should grant Movants full intervention 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.”⁴ The IRP was developed against a backdrop of major changes in the electric sector, as natural gas prices remain low, federal environmental regulations had become increasingly stringent yet are subject to pending challenges, and sustained technological advances in renewable generation and energy storage continue to make clean power all the cheaper and more reliable. Energy efficiency and demand response continue to be the cheapest resources available, while the cost of renewable generation, particularly wind and solar, has declined significantly, particularly when coupled with storage.

The Commission previously granted Movants' intervention into the Companies' respective 2014 and 2011 IRP proceedings, determining that they would be “likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.”⁵ Further, just last year, the Commission

⁴ *Id.*

⁵ Order (June 25, 2014), *In re 2014 Joint Integrated Resources Plan of Louisville Gas and Electric Company*

held the same in granting Sierra Club intervention in Big Rivers Electric Corporation's ongoing 2017 IRP docket; and earlier did the same Kentucky Power Company's 2013 IRP, and East Kentucky Power Company's 2012 IRP.⁶ As in those proceedings, so will Sierra Club again be a valuable contributor to this proceeding, without undue complication or disruption. The Commission has never denied a motion by Sierra Club to intervene in an IRP docket.

Organizational Movant Sierra Club has extensive experience analyzing and commenting on these issues, which are central to the development of a prudent IRP. Sierra Club has intervened and provided testimony on complex energy issues before this Commission in a number of general rate cases as well as CPCN and DSM dockets, in addition to IRP dockets.⁷ Sierra Club has significant expertise on these issues and will bring that expertise to bear in this proceeding. Sierra Club's staff and consultants have extensive experience in resource planning, analyzing the potential for cost effective renewable energy, demand response, energy storage, and energy efficiency, and in the laws and regulations governing energy production. In addition, outside of Kentucky, Sierra Club has intervened and/or provided testimony in resource planning and similar dockets in a number of states, including Arkansas, California, Colorado, Florida, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, North Carolina, Oregon, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Washington, and West Virginia.

As the Commission's prior orders reflect, an IRP should consider the full range of demand- and supply-side resources, and should comprehensively account for the costs facing

and Kentucky Utilities Company, Case No. 2014-00131, at 1; Order (July 11, 2011), *In re 2011 Joint Integrated Resources Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, at 7. In the 2011 IRP docket, the Natural Resources Defense Council was another organizational intervenor.

⁶ Order (May 28, 2018), *In re 2017 Integrated Resources Plan of Big Rivers Electric Corporation*, Case No. 2017-00384, at 1; *In re Kentucky Power Company's Integrated Resource Planning Report*, Case No. 2013-00475; *In re The 2012 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Case No. 2012-00149.

⁷ See, e.g., *Electronic Investigation of the Reasonableness of the Demand Side Management Programs and Rates of Kentucky Power Company*, Case No. 2017-00097; *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371.

such resources. Sierra Club seeks to present testimony regarding whether the Companies have in fact identified a reasonably least-cost, least-risk plan in light of the substantial loss of demand the utility needs to serve; the full range of regulatory, capital, operating, and fuel costs that its generating plants face; and the increasing availability of low-cost renewable energy, demand response, energy storage, and energy efficiency resources. One of the issues, among others, that Sierra Club will examine and comment on is the reasonableness of the Companies' long-term contract (including associated costs) with OVEC. As noted above, the Commission recently expressly indicated that this IRP proceeding is an appropriate forum in which to consider the OVEC issues that Sierra Club will raise and illuminate.⁸ Furthermore, Sierra Club has been the only party to date to explore and elucidate the OVEC issues—among others that Sierra Club will examine in this proceeding, as it has in past proceedings.

Movants' intervention will not unduly complicate the matter, but instead will assist the Commission's review, as has occurred in other proceedings. For example, the Staff Report on the Companies' 2011 IRP cited approvingly to several recommendations made by the Sierra Club.⁹ Movants expect to file comments that would be similarly helpful in this docket, on the Companies' 2018 IRP. Movants are represented by experienced counsel and will comply with all deadlines in the proceeding established by the Commission. As such, Movants' participation will not disrupt this proceeding.

C. Movants Have Special Interests in This Proceeding That Are Not Otherwise Adequately Represented.

⁸ See *supra* n.2 & accompanying text.

⁹ Staff Report (Mar. 13, 2013), *In re 2011 Joint Integrated Resources Plan of Louisville Gas & Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, at 23-24 (noting that the Commission had already accepted the Environmental Intervenors' suggestion that LG&E and KU should commission a market potential study for DSM, with Staff again encouraging the same); *id.* at 41 (agreeing with the Environmental Intervenors that LG&E and KU should have considered the impact of potential carbon rules; stating the next IRP should respond to Environmental Intervenors' comments regarding selection of the target reserve margin).

In the alternative, Movants belong in these proceedings for the 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). The individual Sierra Club members are customers of the Companies; thus they help to fund LG&E’s operations and are financially impacted by the utilities’ resource plan at issue here. In addition, they are also impacted by the economic, public health, and environmental effects of the resource decisions that the Companies make. Further, they share a desire to promote renewable energy, energy storage, demand response, and energy efficiency resources in Kentucky that is unique in degree and kind. Meanwhile, Organizational Movant Sierra Club has members who are customers of the utilities; shares their interests in cost-effective clean energy; and will uniquely advocated on behalf of these interests in a way, and to a degree, not otherwise represented in these proceedings.

At present, the Commission has granted full intervention only to the Attorney General of the Commonwealth of Kentucky. Respectfully, it is unlikely that the Attorney General can fully and adequately represent Movants’ aforementioned interests. The Attorney General has the unenviable task of representing all consumers and all of their diverse interests, even if some of the interests are diametrically opposed to each other. The Attorney General may not be able to represent the Movants’ interest, or at least not as forcefully, because of this obligation to represent all consumers. Courts have “repeatedly held that private companies can intervene on the side of the government, even if some of their interests converge.”¹⁰

Movants’ intervention is thus independently warranted on the independent basis that their special interests are not otherwise adequately represented. However, the Commission need not reach this question if it holds, as it has uniformly in past IRP cases, that Sierra Club is likely to

¹⁰ E.g., *Hardin v. Jackson*, 600 F. Supp. 2d 13, 16 (D.D.C. 2009).

present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

IV. CONCLUSION

For the foregoing reasons, Movants respectfully request full intervention in this matter.

Dated: August 28, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of the PETITION FOR FULL INTERVENTION OF SIERRA CLUB, ALICE HOWELL, CARL VOGEL, AMY WATERS, AND JOE DUTKIEWICZ in this action is a true and accurate copy of the document being filed in paper medium; the electronic filing was transmitted to the Commission on August 28, 2019; there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and the filing in paper medium is being delivered to the Commission via express U.S. mail.



JOE F. CHILDERS