

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

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	
SERVICE; (2) APPROVAL OF TARIFFS AND)	
RIDERS; (3) APPROVAL OF ACCOUNTING)	CASE NO.
PRACTICES TO ESTABLISH REGULATORY)	2020-00174
ASSETS AND LIABILITIES; (4) APPROVAL OF)	
A CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY; AND (5) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

MOTION OF SIERRA CLUB FOR LEAVE TO INTERVENE

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11), Sierra Club respectfully moves for full intervention in the above-captioned case, filed by Kentucky Power Company (“KPC” or the “Company”). KPC seeks to substantially increase the revenues it collects from their ratepayers, and to alter the rate designs through which they collect those revenues, including by increasing residential customers’ fixed customer charge. In addition, KPC seeks Commission approval of a new tariff under the Commonwealth’s new net metering law—the first request for such approval to be filed in Kentucky. Further, KPC seeks a Certificate of Public Convenience and Necessity (“CPCN”) to make substantial investments in Advanced Metering Infrastructure (“AMI” or “smart meters”).¹ This proposed change in residential customer rate design, new net metering tariff, rate recovery and revenue increase, and CPCN

¹ *Electronic Application Of Kentucky Power Company) For (1) A General Adjustment Of Its Rates For) Electric Service; (2) Approval Of Tariffs And Riders;) (3) Approval Of Accounting Practices To Establish) Regulatory Assets And Liabilities; (4) Approval Of A) Certificate Of Public Convenience And Necessity;) And (5) All Other Required Approvals And Relief, Case No. 2020-00174, Application (June 29, 2020).*

would each directly affect KPC residential customers who are members of, and represented by, Sierra Club.

Sierra Club has extensive experience evaluating the issues raised in the Companies’ applications. Sierra Club has previously intervened in net metering dockets, general rate cases, and CPCN cases, as well as integrated resource planning (“IRP”) dockets and demand-side management (“DSM”) proceedings—in Kentucky as well as many other jurisdictions, and including proceedings centering on KPC.² Sierra Club also submitted robust public comments in the general precursor docket on net metering that the Commission opened last year, Case No. 2019-00256—comments that, as the Commission confirmed in that docket, are part of the instant record in this utility-specific rate case.³ Sierra Club therefore understands the principles of rate design, net metering, the effects of rate structures on consumer behavior, resource planning, and comparative energy economics—among other issues implicated by KPC’s application.

Accordingly, as the Commission has recognized in past general rate cases as well as other dockets (including ones involving KPC), Sierra Club’s motion to intervene should be granted because Sierra Club possesses “special knowledge and expertise in multiple areas,” including “rate design” and “evaluation of capital spending,” and is “likely to present issues and develop facts that will assist the Commission in considering this matter without unduly complicating or disrupting the proceedings.”⁴

² *E.g., Electronic Investigation of the Reasonableness of the Demand Side Management Programs and Rates of Kentucky Power Company*, Case No. 2017-00097, Order (Apr. 17, 2017), at 1 (“It appears to the Commission that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. The Commission, being otherwise sufficiently advised, finds that Sierra Club should be granted full rights of a party in this proceeding.”).

³ *Electronic Consideration of the Implementation of the Net Metering Act*, Case No. 2019-00256, Order (Dec. 18, 2019), at 35 (“The record of this proceeding shall be incorporated by reference into the initial net metering rate case filed by the respective jurisdictional electric utilities.”).

⁴ *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; *see also, e.g., In re: Electronic*

I. MOVANT

Sierra Club is one of the oldest and largest conservation groups in the country, and has a robust, engaged Kentucky Chapter. Sierra Club has more than 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 belong to Sierra Club's Kentucky Chapter, including residential customers of KPC. Sierra Club seeks to act on behalf of those KPC-ratepaying members, whose interests align with Sierra Club's in these proceedings. Sierra Club's Kentucky address is: Sierra Club, Kentucky Chapter, PO Box 1368, Lexington, KY 40588.

Sierra Club is interested in, and knowledgeable about, rate structures that are fair, just, and reasonable. These including rate designs that do not perversely penalize consumers who partake in energy-efficient practices or conservation; net metering tariffs that accurately reflect the true, full value conferred on a utility's system by distributed solar generation (among other questions implicated by net metering tariff design); and investment in, or contracting for, market-competitive generation sources that minimize costs while reliably providing power to ratepayers. Sierra Club's members who are KPC residential customers will be affected by each of the aforementioned aspects of the Company's application in this case.

II. THE COMMISSION SHOULD GRANT MOVANT'S FULL INTERVENTION

Sierra Club satisfies either of the two independently sufficient bases for timely intervention. For one, Sierra Club will smoothly aid the Commission's full consideration of the matters at hand—as it has done uniformly in the past, as the Commission has repeatedly

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; *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; *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; *see also supra* n. 1.

recognized it would, and as the Franklin Circuit Court has also validated.⁵ In the alternative, Sierra Club has a special interest not otherwise adequately represented in this case. The Commission may grant intervention on either basis without opining on the other, and has done so in the past on the former ground without reaching the latter.⁶

a. Movants Will Assist the Commission’s Consideration Without Complication.

Sierra Club should be granted intervention because it 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).

KPC’s rate application features several issues that implicate Sierra Club’s expertise, including whether its residential fixed customer charge should be restructured; the propriety of the Company’s proposed net metering tariff; whether the requested rates reflect any imprudent costs unnecessarily incurred by avoidably uneconomic generation practices and decisions; and whether its proposed investment in smart meters is reasonably necessary and in customers’ interests. Sierra Club has knowledge of and experience with those kinds of questions, having previously studied, argued, and helped resolve them in Kentucky and elsewhere. Indeed, Sierra Club has in past cases before this Commission (among others) conducted discovery and cross-examination, and submitted testimony and briefing, illuminating questions concerning utilities’ proposed increases in fixed customer charges, CPCN applications, and recovery of energy investments and operating expenses. Sierra Club also submitted robust comments in the Commission’s general docket on implementing Kentucky’s new net metering law, which is

⁵ Opinion & Order, *Sierra Club, et al. v. Pub. Serv. Comm’n of Ky., et al.*, Civil Action No. 18-CI-1229 (Mar. 5, 2019, Franklin Circuit Court), at 11-12 (reversing Commission’s findings to the contrary, and ordering the Commission to permit Sierra Club’s full participation in ongoing rate cases).

⁶ This Motion is timely filed, in accordance with the procedural schedule in Commission’s July 14, 2020, Order.

directly implicated by the proposed net metering tariff for which KPC is seeking authorization; and has litigated net metering dockets in other jurisdictions as well. Sierra Club 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).

In sum, Sierra Club’s participation here will “assist the commission in fully considering” these important issues. 807 K.A.R. 5:001 § 4(11)(b). Moreover, Sierra Club’s participation will not unduly complicate or disrupt the proceedings, and will Sierra Club’s advocacy be unduly duplicative of that of any other party to this case. Sierra Club is represented by experienced counsel and will comply with all Commission rules and deadlines, as it has in the past.

b. Movants Have Special Interests Not Otherwise Adequately Represented.

In the alternative, Sierra Club should be granted intervention for the independently sufficient reason it “has a special interest in the case that is not otherwise adequately represented.” 807 K.A.R. 5:001 § 4(11)(b).

Sierra Club’s interests include ensuring that energy efficiency, conservation, and distributed generation are advanced by KPC’s 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. Sierra Club’s interests are “special,” *id.*, because Movants’ interests are quantitatively unique (Sierra Club’s members value them more deeply on average than the rate-paying community at large) as well as qualitatively unique (Sierra Club publically advocates for, invests in, and otherwise champions the interests in exceptional ways). Moreover, they are implicated “in this case,” *id.*, in light of the proposed new rate designs, the new new metering tariff, the recovery of and

increases in revenue, and the CPCN. Finally, Movants' special interests in the case are "not otherwise adequately represented," *id.*, because no other party has either the same expertise or the inclination to advocate in the same ways that Sierra Club will. The Attorney General, for one, has neither the capacity nor the inclination (as his office has stated on the record in the past) to fully represent Sierra Club's 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.⁷ Meanwhile, Sierra Club's special interests are not adequately represented by other intervenors, whose interests are either generalized or distinct.

III. CONCLUSION

Sierra Club respectfully requests that the Commission permit Sierra Club to intervene in these proceedings, as Sierra Club has in recent general rate cases and other proceedings, before this Commission and others.

Dated: July 31, 2020

Respectfully submitted,



Of counsel
(not licensed in Kentucky):

Matthew E. Miller, Esq.
Sierra Club
2528 California St
Denver, CO
Phone: (517) 230-7420
Email: matthew.miller@sierraclub.org

Joe F. Childers, Esq.
Childers & Baxter, PLLC
300 Lexington Building
201 West Short Street
Lexington, KY 40507
Phone: (859) 253-9824
Fax: (859) 258-9288
Email: joe@jchilderslaw.com

Counsel for Sierra Club

⁷ 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.

CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of the MOTION OF SIERRA CLUB FOR LEAVE TO INTERVENE in this action is being electronically transmitted to the Commission on July 31, 2020; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Per the Commission's general standing Order issued in Case No. 2020-00085 on March 16, 2020, this filing will not be mailed in paper medium to the Commission..



JOE F. CHILDERS