

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

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY FOR ENVIRONMENTAL)	CASE NO.
PROJECT CONSTRUCTION AT THE)	2021-00004
MITCHELL GENERATING STATION, AN)	
AMENDED ENVIRONMENTAL COMPLIANCE)	
PLAN, AND REVISED ENVIRONMENTAL)	
SURCHARGE TARIFF SHEETS)	

MOTION TO INTERVENE BY SIERRA CLUB

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(a), on behalf of its members who are ratepayers of Kentucky Power Company (“KPC” or the “Company”), Sierra Club respectfully moves the Commission for full intervention in the above-captioned case. KPC has requested, *inter alia*, a certificate of public convenience and necessity (“CPCN”) approving its plans, and their substantial associated costs, to make certain capital investments at the Mitchell coal-fired power plant in West Virginia (of which KPC owns a 50% share), as a means of complying with two federal environmental regulations, the Coal Combustion Residuals (“CCR”) Rule and Effluent Limitation Guidelines (“ELG”) Rule. The Company’s plans constitute one of multiple options of complying with these rules; an alternative may be a less costly and less risky.

Sierra Club has valuable experience and expertise bearing on the planning and spending issues implicated by this docket. Sierra Club has deep familiarity with the CCR and ELG Rules. It also has actively participated as intervenor in other dockets featuring requests for CPCNs, including general rate cases, as well as integrated resource plan (“IRP”) dockets and demand-

side management (“DSM”) proceedings, in Kentucky and other jurisdictions. Notably, in parallel to this docket, Sierra Club participate vigorously, with expert testimony, in analogous cases filed in Virginia and West Virginia by Appalachian Power Company and Wheeling Power Company, two of KPC’s sibling subsidiaries of American Electric Power Company (“AEP”). Sierra Club can do so here, too, using the same consultant, to the benefit of all commissions involved.

Sierra Club’s intervention, as the Commission has recognized in numerous cases (including KPC’s most recent rate case), “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.”¹ Accordingly, the Commission should grant this Motion.

I. MOVANT

One of America’s oldest and largest conservation groups, Sierra Club has more than 3.5 million members and supporters, across all fifty states, the District of Columbia, and Puerto Rico. More than 6,300 Kentuckians belong to Sierra Club’s Kentucky Chapter, a number of whom are residential customers of KPC. One member-ratepayer is Amelia “Mimi” Pickering, who takes service at 14 Church Street, Whitesburg, KY 41858. Sierra Club seeks to act on behalf of its KPC-ratepaying members, whose interests align with Sierra Club’s in these proceedings. Sierra Club’s address is: Sierra Club, Kentucky Chapter, PO Box 1368, Lexington, KY 40588.

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, Order (Aug. 6, 2020); *see also, e.g., 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 (Commission finding, in general rate case featuring a CPCN, that Sierra Club “possesses “special knowledge and expertise in multiple areas,” including “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.”); *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.

Sierra Club is interested in, and knowledgeable about, resource planning and capital spending, and their consequences for fair, just, and reasonable rates. Cases featuring economic assessments of alternative means of compliance with environmental regulations such as the CCR Rule and ELG Rule are the core of Sierra Club’s interest and expertise in advocacy at public utilities commissions. Sierra Club routinely provides insightful testimony and useful argument on these questions, developing the record and assisting commissions in identifying pathways that are lawful, practicable, cost- and risk-minimizing, and otherwise a reasonable way of providing reliable service to ratepayers.

II. THE COMMISSION SHOULD GRANT MOVANT’S FULL INTERVENTION

Sierra Club satisfies either of the two independently sufficient bases for timely intervention. First, Sierra Club will smoothly aid the Commission’s full consideration of the matters at hand, as it has done in the past. 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.²

In the first place, 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). As noted above, this CPCN application features issues that implicate Sierra Club’s expertise—including, *inter alia*, the prudence of KPC’s plan to comply with the ELG Rule by spending tens of millions of dollars on capital investments to keep Mitchell coal-fired past 2028, rather than foregoing those investments and retiring/repowering the plant by then. Sierra Club plans on

² This Motion is timely filed in accordance with the procedural schedule in Commission’s February 12, 2021, Order.

developing the record in this case through discovery, expert testimony, witness examination, and briefing on that issue and possibly others. This will aid the Commission by scrutinizing the Company's decision-making, elucidating viable alternatives and their risks and costs, gathering data, supplying expert analysis, and otherwise informing the consideration of whether the proposed projects and their requested costs will result in reliable service, reasonably minimize costs and risks, and render rates that are "fair, just and reasonable." K.R.S. § 278.030(1). Sierra Club's participation here will not only "assist the commission in fully considering" the issues, but will do so without unduly complicating or disrupting the proceedings. 807 K.A.R. 5:001 § 4(11)(b). Sierra Club is represented by experienced counsel and will comply with all Commission rules and deadlines, as it has in the past.

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 is interested in cost-effective clean energy solutions, which lower rates while protecting public health and mitigating climate change—a crisis in light of which KPC's parent company has pledged to reduce its fleet's carbon emissions drastically by 2030, in tension with a plan to keep Mitchell coal-fired until 2040. Sierra Club's interests are "special," *id.*, because they are quantitatively unique (its members generally value the aforementioned interest more deeply than the rate-paying community at large) as well as qualitatively unique (its members advocate for, invest in, and otherwise champion the interest in exceptional ways). Moreover, its interests are implicated "in this case," *id.*, in light of the proposed plan for environmental compliance. Finally, the interests are "not otherwise adequately represented" in the case, *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's office, for one, has neither the capacity nor the inclination (as the office has stated in the past) to fully represent Sierra Club's more focused interests. The office 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.³ Meanwhile, Sierra Club's special interests are not adequately represented by any other intervenor, whose interests are distinct.⁴

III. CONCLUSION

For the foregoing reasons, Sierra Club respectfully requests that the Commission grant Sierra Club's full intervention in these proceedings.

Dated: February 26, 2021

Respectfully submitted,



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³ 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.

⁴ Kentucky Industrial Utilities Customers ("KIUC") was the only other intervenor at the time this Motion was finalized.

CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of this MOTION TO INTERVENE BY SIERRA CLUB in this action is being electronically transmitted to the Commission on February 26, 2021; 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