

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2021 JOINT INTEGRATED)	
RESOURCE PLAN OF LOUISVILLE GAS)	CASE NO. 2021-00393
AND ELECTRIC COMPANY AND)	
KENTUCKY UTILITIES COMPANY)	

**LOUISVILLE GAS AND ELECTRIC COMPANY’S
AND KENTUCKY UTILITIES COMPANY’S
OBJECTION TO MOTION TO INTERVENE OF
SOUTHERN RENEWABLE ENERGY ASSOCIATION**

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively, the “Companies”) respectfully request that the Commission deny the request of Southern Renewable Energy Association (“SREA”) for intervention. The request should be denied for two principal reasons: (1) the request does not demonstrate a direct interest, much less a special interest, in the proceeding because SREA is not a retail customer of either LG&E or KU, and therefore does not have an interest in the Companies’ rates and service and (2) the request fails to show that SREA will identify any issues or develop facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. Because SREA has not satisfied the requirements for intervention under 807 KAR 5:001 § 4(11), the Companies respectfully request that the Commission deny the request for intervention.

SREA Does Not Have a Direct or Special Interest in This Proceeding

The Commission may grant SREA’s request for intervention only if the request meets the requirements of 807 KAR 5:001 § 4(11)(b). SREA’s request does not satisfy the first basis for permissive intervention, which requires the movant to demonstrate a special interest in the

proceeding that is not already represented by another party to the action.¹ Earlier this year, the Commission clearly stated that only a utility’s retail customers can have a direct interest, much less a special interest, upon which intervention can be granted on this prong of 807 KAR 5:001 § 4(11):

Here, ChargePoint has not established that it pays any retail rate to LG&E or that it receives any retail service from LG&E. Thus, ChargePoint has not established any direct interest in LG&E’s retail rates or service, much less one that is not otherwise adequately represented. Because only retail customers of LG&E have an interest in its rates or service, ChargePoint failed to establish that it should be permitted to intervene based on a special interest that is not otherwise adequately represented.²

The Commission denied ChargePoint intervention in the Companies’ base-rate cases on the special interest ground even though ChargePoint “state[d] that it operates more than 120,000 charging stations around the world, including more than 200 public charging ports in Kentucky, ... sells electric vehicle (EV) charging equipment and services to customers in Kentucky, ... [and] has substantial and specific economic interests in the sustainable and scalable growth of EV charging infrastructure within Kentucky and the utility infrastructure supporting it.”³

Here, SREA claims neither to be a customer of either of the Companies nor to have any members (whose identities SREA has not disclosed) who are the Companies’ customers; rather, it asserts that it is an Arkansas nonprofit corporation and an “an industry-led initiative” whose only

¹ *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350, Order (Ky. PSC Dec. 9, 2020) (stating the requirements for a person requesting permissive intervention in a Commission proceeding).

² Case No. 2020-00350, Order at 3-4 (Ky. PSC Jan. 6, 2021). *See also Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00349, Order at 3 (Ky. PSC Jan. 6, 2021) (denying ChargePoint intervention in KU’s rate case on the same ground).

³ Case No. 2020-00350, Order at 2 (Ky. PSC Jan. 6, 2021); Case No. 2020-00349, Order at 2 (Ky. PSC Jan. 6, 2021).

Kentucky contacts are that certain unnamed “SREA[] members are actively developing renewable energy projects in Kentucky.”⁴ Whether these anonymous members are “developing” projects in the Companies’ service territories or even have a physical presence in the Commonwealth, SREA’s motion does not say. In other words, SREA’s claims to have any interest at all in the Companies rates or service are far weaker even than those asserted by ChargePoint when the Commission denied ChargePoint intervention in the Companies’ rate cases earlier this year. Therefore, the Commission must not grant SREA intervention in this proceeding on this prong of 807 KAR 5:001 § 4(11).

Even if the Commission finds that SREA has a special interest in this proceeding, the Attorney General could adequately represent that interest. The Attorney General has a statutory right, pursuant to KRS 367.150(8)(b), to represent customers’ interests in proceedings such as this one. The Attorney General filed a motion to intervene on October 13, 2021. The Attorney General has significant expertise and years of experience in representing customers’ interests in all kinds of proceedings before this Commission, including the Companies’ prior Integrated Resource Plan proceedings.⁵ The Attorney General will have the ability in this case to present issues relating to “the responsible use and development of wind energy, solar energy, energy storage and

⁴ SREA Motion to Intervene at 1-2.

⁵ See, e.g., *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348; *2014 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2014-00131; *2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2014-00140.

transmission solutions,” as well as, “the most up-to-date publicly available market information regarding renewable energy resource availability, pricing, performance, and forecasting”⁶

The Commission Should Deny SREA’s Request to Intervene Because SREA Has Not Demonstrated That It Will Present Issues or Develop Facts That Would Assist the Commission

Because SREA lacks a special interest in this proceeding that is not adequately represented by other parties, SREA may intervene only if it can show that it will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding.⁷ SREA twice states that its interest and intent in this proceeding is to provide “publicly available market information regarding renewable energy resource availability, pricing, performance, and forecasting.”⁸ SREA further states it intends to “enable this docket to accurately and adequately evaluate utility-scale renewable energy resources.”⁹ Respectfully, the Commission and its Staff, the Companies, and the Attorney General, have all demonstrated in multiple Commission proceedings that they are more than capable of obtaining and evaluating both public and non-public information to evaluate utility-scale renewable resources.¹⁰ In addition, the Sierra Club has sought intervention in this proceeding to represent specific interests of certain customers of the Companies, which the Companies do not oppose. Therefore, all of the certain and likely

⁶ SREA Motion to Intervene at 1-2.

⁷ See, e.g., Case No. 2020-00350, Order at 4 (Ky. PSC Jan. 6, 2021); Case No. 2020-00349, Order at 4 (Ky. PSC Jan. 6, 2021).

⁸ SREA Motion to Intervene at 1-2.

⁹ *Id.* at 2.

¹⁰ See, e.g., *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station*, Case No. 2014-00002; *Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3*, Case No. 2020-00016; *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348; *2014 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2014-00131; *2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2014-00140.

participants in this proceeding have or can readily gather all of the public and non-public information necessary to consider and evaluate the Companies' Integrated Resource Plan ("IRP"), including utility-scale renewables, rendering any intervention by SREA redundant at best.

SREA offers another justification for its intervention request, namely that its members, whoever they might be, "are actively developing renewable energy projects in Kentucky," and that such development activity, whatever it is, has caused SREA to be "knowledgeable and active in matters pertaining to MISO."¹¹ Why this knowledge is supposed to aid the Commission in this proceeding is unclear: the Companies are not MISO members. To whatever extent knowledge of MISO could be useful in this proceeding, SREA's contributions would again be irrelevant at best: the Commission is well familiar with MISO, including through its regulation of Big Rivers Electric Corporation, which is a transmission-owner MISO member. In addition, the Companies are former transmission-owner MISO members, routinely transact in MISO, and regularly submit reports to the Commission (including one submitted less than a month ago) evaluating possible MISO membership and its potential effects on the Companies and their customers. Therefore, although there is no reason to expect that MISO knowledge or information will be particularly useful in this proceeding, the Commission and the Companies, as well as other likely case participants, have more than adequate MISO expertise to render SREA's intervention on this basis both unnecessary and unhelpful.

But the final basis SREA asserts as a ground for intervention is perhaps the most telling: "SREA has expert capacity to convey the interest of supply-side energy resources, specifically, large-scale renewable energy development companies."¹² An "industry-led initiative" seeking to promote renewable energy development may be "expert" at conveying its own industry's

¹¹ SREA Motion to Intervene at 2.

¹² *Id.*

interests.¹³ But the purpose of an IRP proceeding is not to advance the financial self-interests of renewable energy developers—or those of natural gas or coal interests, for that matter—rather, it is to review and evaluate the Companies’ “load forecasts and resource plans ... to meet future demand with an adequate and reliable supply of electricity at the lowest possible cost for *all customers* within their service areas, and satisfy all related state and federal laws.”¹⁴ Thus, SREA’s expertise in advancing its own financial interests and those of its unnamed members is entirely irrelevant to this proceeding, and its intervention could serve only to unduly complicate and disrupt this proceeding. The regulatory process should not be used by persons who are not customers to advance their business interests, which the Commission has recognized in denying intervention in other proceedings on similar grounds.¹⁵

¹³ *Id.* at 1-2.

¹⁴ 807 KAR 5:058, Necessity, Function, and Conformity. (Emphasis added).

¹⁵ See, e.g., *Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2016-00162, Order at 3 (Ky. PSC July 21, 2016) (“Thus, the only interest that Stand Energy arguably has in the natural gas rates and service of Columbia is as a competitor, and that interest is too remote to justify intervention here.”); *Application of Kentucky Power Company for Approval of Its 2011 Environmental Compliance Plan, for Approval of Its Amended Environmental Cost Recovery Surcharge Tariff, and for the Grant of a Certificate of Public Convenience and Necessity for the Construction and Acquisition of Related Facilities*, Case No. 2011-00401, Order (Ky. PSC Jan. 26, 2012) (“Riverside has not established in its petition that it is a retail customer of Kentucky Power. ... [O]nly retail customers of Kentucky Power have an interest in its rates or its service. ... To the extent that Riverside seeks to ‘offer the sale of its facilities’ pursuant to a contract for long-term generation capacity to Kentucky Power to be included as part of Kentucky Power’s environmental compliance plan, Riverside is acting in the capacity of a wholesale supplier or competitor to Kentucky Power. ... [T]he interest of a competitor seeking to supply power to a utility is not sufficient to support intervention at the Commission. Accordingly, we find that Riverside’s motion [to intervene] should be denied.”); *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal-Fired Unit in Mason County, Kentucky*, Case No. 2004-00423, Order at 3-4 (Ky. PSC Apr. 18, 2005) (“EnviroPower’s perspective on these issues is as an unsuccessful bidder. ... [T]he Commission is unable to find that granting full intervention to EnviroPower is likely to present issues or develop facts that would assist us in fully considering the matter of East Kentucky Power’s bid solicitation and evaluation. EnviroPower’s pecuniary interest in challenging the rejection of its power supply bid is not aligned with the interests of ratepayers and does not rise to the level of a special interest in this proceeding sufficient to grant intervention.”), *aff’d EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. 2007); *Investigation of the Financial Condition of East Kentucky Power Cooperative, Inc.*, Case No. 2006-00455, Order at 4-5 (Ky. PSC Jan. 30, 2007) (denying EnviroPower intervention as a “disappointed bidder” and noting, “EnviroPower cites no authority to suggest that a merchant electric power generator has an inherent pecuniary interest in the transmission lines of another electric supplier.”).

Moreover, the Commission denied ChargePoint intervention in the Companies' base-rate cases earlier this year on nearly identical grounds: "[T]he Commission finds that ChargePoint's interest is to promote the EV charging infrastructure market and in doing so may be a potential competitor of [the Companies] or a potential vendor seeking increased sales. Such an interest is not sufficient to support intervention under the regulatory standard."¹⁶ This characterization applies equally to SREA and its stated reason for seeking intervention; the Commission should deny SREA intervention in this proceeding for the same reasons it denied ChargePoint intervention in the Companies' most recent base-rate cases.

Finally, when the Commission similarly denied ChargePoint intervention in Duke Energy Kentucky's most recent rate case, it stated that ChargePoint would have "ample opportunity to participate in the proceeding even though it is not granted intervenor status."¹⁷ The Commission should likewise deny SREA intervention in this proceeding and permit it instead to participate by submitting public comments. As SREA noted, it has submitted public comments in previous IRP proceedings, including the Companies' 2018 IRP case.¹⁸ The Companies have no objection to SREA's participation in this proceeding by filing public comments.

Conclusion

SREA has not satisfied either of the bases for permissive intervention set forth in 807 KAR 5:001 §4(11)(b). SREA does not have a special interest that is not already adequately represented by other parties, and it has not shown an ability to present issues or develop facts that will assist

¹⁶ Case No. 2020-00350, Order at 4 (Ky. PSC Jan. 6, 2021); Case No. 2020-00349, Order at 4 (Ky. PSC Jan. 6, 2021).

¹⁷ *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Tariffs*, Case No. 2019-00271, Order (Ky. PSC Oct. 14, 2019).

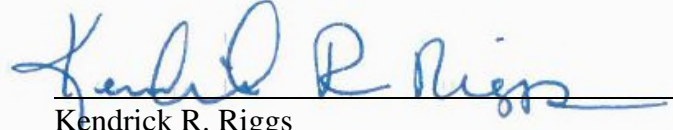
¹⁸ SREA Motion to Intervene at 3.

the Commission in considering the Companies' 2021 IRP without unduly complicating and disrupting this proceeding.

WHEREFORE, Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request that the Commission deny SREA's request to intervene.

Dated: November 3, 2021

Respectfully submitted,

A handwritten signature in blue ink, reading "Kendrick R. Riggs", is written over a horizontal line.

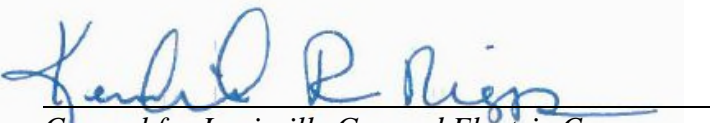
Kendrick R. Riggs
Stoll Keenon Ogden PLLC
500 West Jefferson Street, Suite 2000
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000
Fax: (502) 627-8722
kendrick.riggs@skofirm.com

Allyson K. Sturgeon
Managing Senior Counsel
Regulatory and Transactions
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088
Fax: (502) 627-3367
allyson.sturgeon@lge-ku.com

*Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company*

CERTIFICATE OF COMPLIANCE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on November 3, 2021; and that there are currently no parties in these proceedings that the Commission has excused from participation by electronic means.



Karl D. Rieps
*Counsel for Louisville Gas and Electric Company
and Kentucky Utilities Company*