

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

In The Matter Of:

ELECTRONIC JOINT APPLICATION OF AMERICAN)	
ELECTRIC POWER COMPANY, INC., KENTUCKY)	
POWER COMPANY AND LIBERTY UTILITIES CO.)	Case No.
FOR APPROVAL OF THE TRANSFER OF OWNERSHIP)	2021-00481
AND CONTROL OF KENTUCKY POWER COMPANY)	

LS Power Development, LLC’s
Reply to Joint Applicants’ Response in Opposition to
Motion to Intervene

Comes LS Power Development, LLC (“LS Power”), by and through counsel, pursuant to 807 KAR 5:001, Section 5, and other relevant authority, and hereby provides its Reply to the Joint Applicants’ Response in Opposition to LS Power’s Motion to Intervene. In support of its Reply LS Power wishes to directly address the three bases for Joint Applicants’ opposition:

LS Power’s Status as a Retail Customer of Kentucky Power is not Relevant to Whether its Motion to Intervene should be Granted

1. Joint Applicants apparently incorrectly believe that LS Power only has standing to intervene is if it is a retail customer of Kentucky Power.¹ Joint Applicants cite a ten year old Kentucky Power Environmental Compliance Plan case for this proposition, not a transfer of ownership and control case such as is currently before the Commission. Moreover, in this very

¹ Joint Applicants’ Response, January 13, 2022, p.2: “...[H]ere LS Power failed to establish in its Motion to Intervene that it is a retail customer of Kentucky Power....LS Power must be a customer in its own right and cannot rely upon the claimed status of an affiliate to support its request here. Simply put, LS Power has no interest in the rates or services of Kentucky Power....The Commission should deny the Motion to Intervene on these grounds alone.”

case the Commission confirmed the statutory standard for permissive intervention requires that “the person seeking intervention must have an **interest** in the rates or service of a utility, since those are the only two subjects under the jurisdiction of the PSC.”² (emphasis added). The Commission clearly, and correctly, restated the longstanding regulatory principle that a prospective intervenor must have an ‘interest’ in the rates or services of a utility. Whether the movant is or is not a retail customer of the utility is not dispositive of whether permissive intervention is appropriate as Joint Applicants claim. If it was the Commission erroneously permitted the interventions of both Sierra Club and Kentucky Industrial Utility Customers (“KIUC”) in this case, neither of which is a retail customer of Kentucky Power. There must only be a sufficient ‘interest’ in the utility’s rates or service. LS Power arguably has at least as much interest in Kentucky Power’s rates or service as the industrial customer members which KIUC represents, and certainly much more than Sierra Club.

**LS Power’s Special Interest in the Case is Material and Similar to
that of Other Parties Already Granted Intervention, and its Participation will
Assist the Commission**

2. The Commission’s regulations, at 807 KAR 5:001, Section 4(11)(b), provide that the Commission shall grant leave to intervene if it finds that the movant has made a timely motion for intervention, and either (1) has a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that the intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

² Case No. 2021-00481, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company*, (Ky. PSC January 14, 2022), Order (in which the Commission sustained Sierra Club’s Motion to Intervene)

3. In their Response Joint Applicants claim that “LS Power’s experience as an electric generator and developer of renewable energy resources in Kentucky and PJM is irrelevant and will not present issues or develop facts that will assist the Commission in fully evaluating this matter.”³ That is a puzzling claim. As stated in its Motion, LS Power is a development, investment and operating company focused on the North American power and energy infrastructure sector developing, owning and operating more than 660 miles of high voltage transmission and more than 45,000 MW of power generation, including utility-scale solar, wind, hydro, natural gas-fired and battery energy storage projects. LS Power’s status as the controlling entity of Riverside Generating Company, LLC (“Riverside”), which is both an electric customer and electric generator in Kentucky Power’s territory, its status as a developer of renewable and energy storage resources in both Kentucky and the PJM footprint, and its status as a long standing PJM market participant gives it both a special interest in the case and will present facts or issues which will assist the Commission in addressing important case matters.

4. LS Power’s current renewable power development activities, and those of other similar renewable power developers, will be impacted by Kentucky Power’s plans regarding its future resource mix and procurement and, most importantly, evaluation of its future participation in PJM. LS Power’s interest in, and the positive assistance it could provide to the Commission, are at least equal to or greater than KIUC and Sierra Club, both of which were granted permissive intervention.⁴

³ Joint Applicants’ Response, January 13, 2022, p.3.

⁴ Case No. 2021-00481, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company* (Ky. PSC, January 14, 2022), Order, p. 3, in which the Commission granted Sierra Club’s Motion to Intervene finding “Sierra Club’s stated intention of presenting issues and developing facts regarding resource planning, capital investments, utility structuring, and sustainable energy sources will assist the Commission in considering whether there is substantial evidence of record that Liberty has the managerial, and technical ability to provide reasonable service to customers.” These are strikingly similar to the issues and facts which LS Power asserts

**If Granted Intervention LS Power Agrees to Limited
Access to Kentucky Power’s Confidential Information**

5. LS Power understands the concern that as a competitor in the PJM wholesale market it could obtain an unfair commercial advantage to Kentucky Power’s detriment if LS Power were to have unfettered access to operating costs and characteristics of Kentucky Power’s generating assets.⁵ This information should be fairly narrow in scope and LS Power agrees that it will not seek to review such information, and is willing to enter into a Confidentiality Agreement with Joint Applicants specifically carving out the information from disclosure to LS Power. This concession eliminates Joint Applicants’ objection that LS Power’s participation in the case would unduly complicate or disrupt the proceedings.

6. For the reasons provided above LS Power has a special interest in this case which cannot and will not be adequately represented by any existing party, including the Kentucky Attorney General and KIUC as Joint Applicants assert.

7. Moreover, LS Power’s intervention would not unduly complicate or disrupt the proceedings. To the contrary, LS Power’s intervention is likely to present issues or develop facts that will assist the Commission in fully considering important case issues. LS Power’s experience in the PJM Market and its vast experience and successes with utility-related finance and capital investment issues will provide assistance to the Commission that no other intervenor can offer.

WHEREFORE, LS Power respectfully reasserts its request for permissive intervention in this transfer of ownership and control proceeding.

it can provide the Commission. For example, considering the approximately \$47 billion in debt and equity financing it has raised to support its North American infrastructure, LS Power believes it is in a much better position than any other party currently in the case to assist the Commission with capital investment and other finance issues which are a key portion of the Commission’s inquiry into whether Liberty has the financial, managerial and technical ability to provide reasonable service. KRS 278.020(6) and (7).

⁵ Joint Applicants’ Response, January 13, 2022, pages 4-5.

This 18th day of January, 2022.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of LS Power Development, LLC's Reply to Joint Applicants' Response to Motion to Intervene is being electronically transmitted to the Commission on January 18, 2022; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

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