

**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. FOR APPROVAL OF	)	Case No. 2021-00481
THE TRANSFER OF OWNERSHIP AND	)	
CONTROL OF KENTUCKY POWER COMPANY	)	

**RESPONSE BY JOINT APPLICANTS IN OPPOSITION TO  
LS POWER DEVELOPMENT LLC’S MOTION TO INTERVENE**

Liberty Utilities Co., Kentucky Power Company, and American Electric Power Company, Inc. (“Joint Applicants”) oppose LS Power Development, LLC’s (“LS Power”) Motion for Leave to Intervene (“Motion”) filed on January 11, 2022. Intervention is appropriate only when the party seeking intervention has an interest in the rates or services of a utility and (1) has a special interest in the proceeding not otherwise represented by other parties to the case or (2) is likely to present issues or develop facts that will assist the Commission in fully evaluating the matter without unduly complicating or disrupting the proceedings.

LS Power cannot make either showing. Moreover, LS Power’s role as a direct competitor of Kentucky Power in the PJM wholesale market would affect the ability of Kentucky Power to provide confidential information in response to data requests, even under the protections afforded by 807 KAR 5:001, Section 13, and thereby unduly complicate the proceedings.

LS Power’s motion must be denied.

**A. LS Power Is Not A Customer Of Kentucky Power.**

LS Power’s Motion to Intervene asserts that its *affiliate*, Riverside Generating Company L.L.C. (“Riverside”) is a customer of Kentucky Power, but fails to establish that LS Power is a customer of Kentucky Power. The Commission has previously denied leave to intervene because, among other reasons, the applicant failed to establish that it was a retail customer of Kentucky Power:

KRS 278.040(2) requires that the person seeking intervention have an interest in the rates or service of a utility as those are the only two subjects under the jurisdiction of the Commission.

[...]

The Commission’s jurisdiction is limited to regulating the retail rates and service of Kentucky Power. Only retail customers of Kentucky Power pay its rates and receive its service. Thus, only retail customers of Kentucky Power have an interest in its rates or its service.<sup>1</sup>

Likewise, here LS Power failed to establish in its Motion to Intervene that it is a retail customer of Kentucky Power. Nor could it, as it is not 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 to intervene here. Simply put, LS Power has no interest in the rates or services of Kentucky Power, regardless of whether its affiliate does. The Commission should deny the Motion to Intervene on these grounds alone.

**B. LS Power’s Claimed Special Interest Is Irrelevant To The Matters Before The Commission And Will Not Present Facts Or Issues Likely To Aid The Commission In Addressing The Matters Pending In This Proceeding.**

Even if LS Power were a customer of Kentucky Power, its claimed special interest is not relevant, nor will it present facts or issues that are likely to aid the Commission in addressing the

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<sup>1</sup> Order, *In the Matter of: 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 at 2-3 (Ky. P.S.C. Jan. 26, 2012).

pending matters. LS Power asserts it is uniquely positioned as an “electric generator in Kentucky Power’s territory and a developer of renewable and energy storage resources in both the state of Kentucky and PJM that gives it a special interest in the case that cannot be adequately represented by any other entity.”<sup>2</sup> It further contends that “LS Power’s Riverside facility in Kentucky Power’s territory is served by the Company under Tariff I.G.S. (Industrial General Service) and will be directly impacted by such changes.”<sup>3</sup> Finally, LS Power alleges, generally, that it has interests in the Company’s future supply mix and participation in PJM, and that it will be impacted by any changes in the Company’s rates.<sup>4</sup> LS Power also specifically states that its solar resource developments will be impacted.<sup>5</sup>

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. This case concerns a request for approval of the transfer of ownership and control of Kentucky Power Company to Liberty Utilities Co. This case is not an application for a solar project, nor does it seek to raise rates or modify any tariff provisions.

Moreover, none of LS Power’s claimed interests in this case meet the regulation’s definition of a “special interest.” Nor would Riverside’s, even if it had been the party moving to intervene here. The Commission has previously confirmed that LS Power’s affiliate, Riverside’s status as a customer with a generalized interest in the rates and services of Kentucky Power does

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<sup>2</sup> LS Power’s Motion to Intervene at p. 2 ¶ 4.

<sup>3</sup> *Id.* at p. 3 ¶ 5.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

not meet the standard for intervention.<sup>6</sup> Assertions of generalized interests, had they been made by LS Power *or* Riverside, likewise are insufficient here.

LS Power further asserts that its affiliate, Riverside, takes service under Tariff I.G.S. As previously stated, Riverside has not moved to intervene here, but even if it had, its interest is adequately represented by an existing party to this proceeding, Kentucky Industrial Utility Customers, Inc. (“KIUC”). KIUC regularly intervenes in Commission proceedings and has a demonstrated ability to represent the interest of Tariff I.G.S. customers.

For these reasons, the Commission should deny the Motion to Intervene.

**C. LS Power’s Role as a Competitor Would Unnecessarily Complicate Handling of Confidential Information in this Case.**

LS Power concedes, as it must, that it is a competitor of Kentucky Power in the PJM wholesale market. As participants in the PJM market, both Kentucky Power and LS Power bid their generating assets into the day-ahead energy and ancillary services market. These bids are based on the operating costs and characteristics of the generation assets. Information about the operating costs and characteristics of a competitor’s generating assets would allow a market participant to alter its bidding strategy to undercut the bid of the competitor.

During the course of this case, it is likely that Kentucky Power will be required to provide highly confidential information regarding the operating costs and characteristics of its generating

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<sup>6</sup> Thus, even if Riverside were the movant here rather than LS Power, the Commission has twice denied Riverside intervention in past Kentucky Power Company cases based on similar reasons. *See Order, In the Matter of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 at 5 (Ky. P.S.C. Aug. 3, 2017); *Order, In the Matter of: 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 (Ky. P.S.C. Jan. 26, 2012).

assets in response to data requests. The Kentucky Open Records Act excludes from public disclosure

records confidentially disclosed to an agency or required to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.<sup>7</sup>

Accordingly, Kentucky Power will seek confidential treatment under 807 KAR 5:001, Section 13 of information relating to operating costs and characteristics on the basis that the disclosure of this information would give its competitors an unfair advantage in the PJM market to the detriment of the Company and its customers. Kentucky Power will provide this highly confidential information under seal, and it will only be available to parties in the case who sign non-disclosure agreements to protect against disclosure of the highly confidential information to the Company's competitors. LS Power is one of these competitors.

Kentucky Power cannot provide this sort of confidential information to LS Power under any circumstances without suffering the exact competitive harm that KRS 61.878(1)(c)(1) seeks to prevent. Even if LS Power had a special interest in this proceeding, which it does not, granting intervention would unnecessarily complicate and disrupt the proceeding due to the nature of the confidential information that is likely to become a part of the record. LS Power's Motion should be denied.

### **Conclusion**

LS Power has not satisfied the standards for intervention. LS Power is not a customer of Kentucky Power and the Motion to Intervene should be denied for this reason alone. LS Power does not have a special interest in this proceeding that is not otherwise adequately represented, nor would it present facts or issues that are likely to aid the Commission in addressing the pending

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<sup>7</sup> KRS 61.878(1)(c)(1).

matters. Moreover, even if LS Power did have a special interest in this proceeding, its role as a direct competitor of Kentucky Power would unduly complicate and disrupt the handling of confidential information in the case.

LS Power's Motion should be denied.

Respectfully submitted,

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