

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	
ELECTRONIC APPLICATION OF)	
DUKE ENERGY KENTUCKY, INC. FOR)	
(1) AN ADJUSTMENT OF ELECTRIC)	CASE NO. 2022-00372
RATES; (2) APPROVAL OF NEW)	
TARIFFS; (3) APPROVAL OF)	
ACCOUNTING PRACTICES TO)	
ESTABLISH REGULATORY ASSETS)	
AND LIABILITIES; AND (4) ALL)	
OTHER REQUIRED APPROVALS AND)	
RELIEF)	

SIERRA CLUB’S PETITION TO INTERVENE

Pursuant to K.R.S. § 278.310 and 807 KAR 5:001 Section 4(11), Sierra Club respectfully petitions for full intervention in the above-captioned rate case filed by Duke Energy Kentucky (“Duke”). Duke seeks to substantially increase the revenues it collects from its ratepayers, including by accelerating the recovery of underappreciated remaining net-book value of generating assets, creating a new hedging program for managing the Company’s participation in the PJM Interconnection LLC markets to mitigate price volatility for customers, and a new, voluntary, community-based solar program called Clean Energy Connection. In addition, Duke seeks Commission approval of new tariffs to support electric vehicle (EV) charging infrastructure. This proposed change in residential customer rates and new tariffs would each directly affect Duke residential customers who are members of, and represented by, Sierra Club.

Sierra Club has extensive experience evaluating the issues raised in Duke’s application. Sierra Club has previously intervened in general rate cases, integrated resource planning (“IRP”) dockets, and demand-side management (“DSM”) proceedings in Kentucky, as well as many other jurisdictions, including another docket initiated by Duke Energy Kentucky. Sierra Club has

extensive experience in rate-making proceedings, and is uniquely situated to provide the Commission with helpful insight and analysis evaluating rate design, the structure of pilot renewable energy programs, effective EV infrastructure programs, and effective means to address fuel price volatility. Accordingly, as the Commission has recognized in past general rate cases as well as other dockets (including one involving Duke), 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 thus “likely to present issues and develop facts that will assist the Commission in considering this matter without unduly complicating or disrupting the proceedings.”¹

I. MOVANT

Sierra Club seeks to intervene in a representational capacity on behalf of its members who are residential customers of Duke Energy Kentucky. Sierra Club is one of the oldest and largest conservation groups in the country. Sierra Club has approximately 3.5 million members and supporters across its sixty-four chapters, covering all fifty states, the District of Columbia, and Puerto Rico. More than 5,800 Kentuckians belong to Sierra Club’s Kentucky Chapter. Sierra Club seeks to act on behalf of its members who are residential customers of Duke and whose interests align with Sierra Club’s interests in these proceedings. Sierra Club’s Kentucky address is: Sierra Club, Kentucky Chapter, P.O. Box 1368, Lexington, KY 40588.

¹ See, 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; *In re: Electronic 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.

Sierra Club is interested in, and knowledgeable about, rate structures that are fair, just, and reasonable, including rate designs that do not perversely penalize consumers who partake in renewable energy programs; the comparative economics of accelerating depreciation for a generation source that is no longer economic compared to alternative sources of power; and other issues implicated by Duke's application.

II. THE COMMISSION SHOULD GRANT SIERRA CLUB'S MOTION

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 recognized it would, and as the Franklin Circuit Court has also validated. 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.

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).

Duke's rate application features several issues that implicate Sierra Club's expertise, including whether accelerated depreciation for an uneconomic coal asset is appropriate; the propriety of the Company's proposed electric vehicle tariff; and the propriety of the Company's proposed new pilot renewable energy program. Sierra Club has knowledge of and experience with those kinds of questions, having previously studied, argued, and helped resolve them in Commissions in other states. Indeed, Sierra Club has in past cases before other commission

s(among others) conducted discovery and cross-examination, and submitted testimony and briefing, illuminating questions concerning utilities' proposed accelerating recovery of depreciation for uneconomic assets, structuring electric vehicle tariffs, and appropriate rate structures for pilot renewable programs. 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 not 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 uneconomic generation assets are appropriately depreciated, retired, and replaced with resources that are cost-effective and do not create unnecessary volatility in rates advanced by Duke's rate designs, resource planning, and expenditures. Renewable energy programs, if properly structured, can 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 publicly 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 EV tariff, and the recovery of and increases in revenue. 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 conservation 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.

III. CONCLUSION

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

Dated: December 21, 2022

Of counsel
(not licensed in Kentucky)

Joshua Smith
Sierra Club
2101 Webster St., Suite 1300
Oakland, CA 94612
(415) 977-5560
Joshua.Smith@sierraclub.org

Respectfully submitted,

/s/ Joe F. Childers
Joe F. Childers, Esq.
Childers & Baxter, PLLC
The Lexington Building
201 West Short Street, Suite 300
Lexington, Kentucky 40507
(859) 253-9824
Joe@Jchilderslaw.com

CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of SIERRA CLUB'S PETITION TO INTERVENE in this action is being electronically transmitted to the Commission on December 21, 2022; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Joe F. Childers

JOE F. CHILDERS