

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

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
KENTUCKY UTILITIES COMPANY AND)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	
FOR CERTIFICATES OF PUBLIC)	Case No. 2022-00402
CONVENIENCE AND NECESSITY AND SITE)	
COMPATIBILITY CERTIFICATES AND)	
APPROVAL OF A DEMAND SIDE)	
MANAGEMENT PLAN)	

SIERRA CLUB’S MOTION TO INTERVENE

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 Section 4(11), Sierra Club respectfully moves for full intervention in the above-captioned proceeding filed by Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”). KU and LG&E seek certificates of public convenience and necessity (“CPCNs”) to construct two 621 MW natural gas combined cycle (“NGCC”) generation units, one at LG&E’s Mill Creek Generating Station (“Mill Creek”) and one at KU’s E.W. Brown Generating Station (“Brown”), and associated site compatibility certificates. Further, KU and LG&E seek CPCNs to construct one 120 MW solar photovoltaic facility in Mercer County, to acquire another 120 MW solar photovoltaic facility in Marion County, and to construct a 125 MW, 4-hour battery storage facility at Brown; approval of a proposed 2024-2030 Demand Side Management and Energy Efficiency Program Plan (“DSM-EE Plan”); an order stating that Commission approval of the purchase of non-firm, energy-only solar purchase-power agreements for the output of four solar facilities is not required and that cost recovery as part of fuel adjustment clause mechanisms is permissible; and approval of regulatory asset treatment for the difference between the allowance for funds used during construction (“AFUDC”) accrued at KU and LG&E’s weighted average

cost of capital and AFUDC accrued using the methodology approved by the Federal Energy Regulatory Commission during the construction period of the proposed NGCCs, solar photovoltaic facility, and battery storage facility.

Sierra Club has extensive experience evaluating the issues raised in KU and LG&E's joint application. Sierra Club has regularly successfully intervened in matters before the Kentucky Public Service Commission and in other jurisdictions nationwide, including numerous proceedings regarding CPCNs and demand side management plans. In fact, Sierra Club has previously successfully intervened in proceedings by KU and LG&E in Kentucky. As the Commission has previously recognized, Sierra Club's motion to intervene should be granted because Sierra Club possesses "special knowledge and expertise in multiple areas" 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 moves to intervene in this proceeding on behalf of itself and its members who live and purchase utility services in Kentucky, many of whom are residential customers of KU and LG&E. Sierra Club is a national, non-profit environmental and conservation organization. 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 5,500 Kentuckians

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.

belong to Sierra Club's Kentucky Chapter.² Sierra Club's Kentucky address is: Sierra Club, Kentucky Chapter, P.O. Box 1368, Lexington, Kentucky 40588.

Sierra Club seeks to participate in this proceeding in order to protect (1) its organizational interests and (2) the interests of Sierra Club members who (a) are customers of KU and LG&E and/or (b) live, work, and recreate in and around the proposed NGCC facilities, and who will be directly affected by any Commission order approving KU and LG&E's proposal to build two gas-burning power facilities for a total projected cost of more than \$1.36 billion.

Sierra Club and its members who are KU and LG&E customers or otherwise directly affected by the proposed NGCC facilities have economic and environmental interests in ensuring that KU and LG&E's plans to construct and operate two new fossil fuel-burning power facilities are the least-cost means of meeting customer energy and reliability needs while also avoiding unnecessary pollution. Sierra Club and its members have economic and environmental interests in whether it is prudent, necessary, and in the public interest to invest more than \$1.36 billion to build two new fossil fuel-burning power facilities, or whether clean energy alternatives would be more affordable or lower risk, while maintaining reliability.

Because the costs of KU and LG&E's proposed NGCC facilities will be passed on to customers through increased electricity rates, Sierra Club members who are KU or LG&E customers have an economic interest in the outcome of this proceeding. Further, the proposed DSM-EE Plan in this proceeding likewise implicates customers' electricity rates, as well as the safety and reliability of the electric grid. Sierra Club members who are KU or LG&E customers have an economic interest in the outcome of this proceeding for this reason as well.

² Requiring member names infringes on Sierra Club members' rights of free association. However, if required by Commission order, Sierra Club will provide the names of one or more specific members.

Sierra Club and its members also have environmental and health interests in transitioning away from polluting fossil fuel generation resources as soon as possible. Sierra Club opposes KU and LG&E's proposed investment in additional fossil fuel infrastructure to continue burning fossil fuels that contribute to polluting the surrounding communities and to climate change. This pollution would adversely affect the environment and public health, contrary to the interests of Sierra Club and its members.

Finally, Sierra Club and its members have procedural and organizational interests in exercising their rights to participate in this proceeding to advocate for accelerating the electric sector's transition from high-cost, harmful fossil fuel-based generation to cleaner, more affordable energy sources to save customers money, preserve reliability, and assist impacted communities and workers. Sierra Club seeks full intervention to ensure that its and its members' interests in ensuring that KU and LG&E's investment, operational, and resource decisions are reasonable are fully represented. Specifically, Sierra Club will investigate, among other issues, if KU and LG&E's proposed \$1.36 billion investment in the Mill Creek and Brown NGCCs is the least-cost option for customers; if KU and LG&E have a need for the full 1240-MW capacity of the proposed generation units; if KU and LG&E's analysis supports the construction and operation of two new gas generation units; and if KU and LG&E could avoid costs by building less gas capacity and/or investing more money in renewable energy, storage, or efficiency measures. Sierra Club may advance other positions as it conducts discovery in this proceeding.

II. THE COMMISSION SHOULD GRANT SIERRA CLUB'S MOTION.

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 uniformly in the past. Second, 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 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).

Sierra Club routinely intervenes in public utility commission proceedings nationwide and in Kentucky. *See supra* n.1. In these interventions, Sierra Club advocates for utility practices, investments, and policies that promote the development of cost-effective energy efficiency and clean, renewable energy, which can reduce overall system costs, electricity rates, and pollution while also maintaining reliability.

Particularly in light of that experience, Sierra Club respectfully submits that its participation will help develop a thorough record, stimulate a robust evaluation of the issues to be decided, and inform the Commission’s ultimate decision about the prudence, necessity, and public interest in the proposed NGCCs, the proposed DSM-EE Plan, and other aspects of KU and LG&E’s proposed plan. Through discovery, the filing of expert testimony, examination of witnesses, and legal briefing, Sierra Club will help to illuminate the economic and environmental risks associated with the proposed NGCCs, as well as the potential benefits of meeting energy and capacity needs with additional affordable, renewable energy generation or storage capacity. Sierra Club has knowledge of and experience with these kinds of questions, having previously studied, argued, and helped resolve them in Commissions in this state and other states. Sierra Club will aid the Commission by helping to identify, clarify, and apply key principles that bear

on whether KU's and LG&E's proposals "furnish adequate, efficient, and reasonable service" and otherwise comport with all applicable laws and regulations. K.R.S. § 278.030(2).

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 will comply with all Commission rules and deadlines, as it has in the past. This timely application for intervention is within the case schedule that the Commission has set for this proceeding. Except for KU and LG&E's filing of the Application, no other substantive pleadings or testimony have been filed. In sum, Sierra Club's participation here will "assist the commission in fully considering" these important issues without any "undu[e] complicati[on]." 807 K.A.R. 5:001 § 4(11)(b).

B. Movants Have Special Interests Not Otherwise Adequately Represented.

Sierra Club should also be granted intervention for the independently sufficient reason that it "has a special interest in the case that is not otherwise adequately represented." 807 K.A.R. 5:001 § 4(11)(b). No other party to this docket adequately represents the institutional and policy interests of Sierra Club and its members, including as pertains to the environment and public health. Sierra Club's members have a unique interest in avoiding continued investment in expensive fossil fuel energy resources and infrastructure, especially in light of current and impending environmental regulations, which will increase the costs of burning fossil fuels, and the rapid development of renewable energy and storage technology—which could render the proposed NGCCs obsolete. Sierra Club and its members possess the economic, environmental, and public health interests described above. *Supra* section I.

Sierra Club is uniquely situated to represent its interests and the interests of its members in this proceeding as a result of its expertise and experience in energy policy and law, renewable

energy generation, energy efficiency, and environmental regulations—including the Good Neighbor Rule that forms a critical part of KU’s and LG&E’s analysis. Sierra Club’s interests are “special,” K.A.R. 5:001 § 4(11)(b), because they are quantitatively unique—Sierra Club and its members value their interests more deeply on average than the community at large—and qualitatively unique—Sierra Club publicly advocates for, invests in, and otherwise champions these interests in exceptional ways. These interests are implicated “in the case,” *id.*, due to the proposed CPCNs and the proposed demand side management plan.

Finally, Sierra Club’s 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 instance, 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 residential ratepayers generally—a broad, mixed obligation that has at times caused his office to take positions at odds with Sierra Club. Kentucky Industrial Utilities Customers, Inc., is explicit that its “interest is exclusively related to large energy intensive industrial customers”—not the Sierra Club and its residential customer members.³ Likewise, Walmart specifies that it is “not a residential customer” and “its interest is as a large commercial customer that takes service on different rate schedules than residential customers.”⁴ Sierra Club’s intervention is necessary to adequately represent its unique interests in these proceedings.

³ Mot. to Intervene of Kentucky Industrial Utility Customers, Inc. at 2 (Dec. 21, 2022).

⁴ Mot. to Intervene of Walmart Inc. at 3-4 (Jan. 18, 2023).

III. CONCLUSION

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

Dated: January 19, 2023

Of counsel
(not licensed in Kentucky)

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Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of Sierra Club's motion to intervene in this action is being electronically transmitted to the Commission on January 19, 2023, 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