

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

In the Matter of:

ELECTRONIC TARIFF FILING OF EAST)	
KENTUCKY POWER COOPERATIVE, INC.)	
AND ITS MEMBER DISTRIBUTION)	Case No. 2023-00153
COOPERATIVES FOR APPROVAL OF)	
PROPOSED CHANGES TO THEIR QUALIFIED)	
COGENERATION AND SMALL POWER)	
PRODUCTION FACILITIES TARIFFS)	

SIERRA CLUB’S MOTION TO INTERVENE

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11), Sierra Club respectfully moves for full intervention in the above-captioned proceeding filed by East Kentucky Power Cooperative, Inc. (EKPC). EKPC proposes updated Tariffs for Qualified Cogeneration and Small Power Production Facilities that shift the Market Administration Fee and that change capacity rates. In justifying the capacity rates, EKPC states that “it has no plan to add capacity or retire capacity in the next ten (10) years.”¹

Sierra Club seeks intervention, especially in light of EKPC’s representation regarding capacity plans. The U.S. Department of Agriculture’s (USDA) New Empowering Rural America (ERA) Program provides \$9.7 billion in funding specifically for rural electric cooperatives. Funding is available for projects such as renewable generation, battery storage, transmission, and energy efficiency programs. Individual cooperatives may apply for up to \$970 million in direct support: grants and/or low-interest loans. **EKPC must submit a Letter of Interest (a pre-application) no later than August 31, 2023, to remain eligible for New ERA.**² All New ERA

¹ Letter from Isaac S. Scott to Linda C. Bridwell at 2 (Mar. 31, 2023), Case No. 2023-00153.

² USDA, *Empowering Rural America Program (New ERA)* at 2, <https://www.rd.usda.gov/sites/default/files/RD-FS-RUS-NewERA-FINAL508.pdf>.

funding must be disbursed by September 30, 2031.³ EKPC must act quickly to take advantage of the significant economic opportunities of the New ERA program and other aspects of the IRA, to further “fair, just and reasonable rates” for its owner-members’ customers. K.R.S. § 278.030(1). For New ERA funding, planning to take advantage of the funding must take place within the time frame of these proceedings—and, thus, information regarding likely added capacity should be available before request for a hearing or submission of the case by September 5, 2023.

It is important that EKPC’s planning and its system design, including rates and tariffs such as the Tariffs for Qualified Cogeneration and Small Power Production, account for the benefits of New ERA and other aspects of the IRA. In its recently concluded IRP proceeding, EKPC stated its commitment to “consider the impacts of the IRA in future requests for proposals for resources and future IRP filings, as applicable.”⁴ Consideration of the IRA’s impacts on these proposed Tariffs, and the assumptions that undergird them, is likewise appropriate.

Sierra Club has experience evaluating how utilities can leverage IRA provisions to benefit their customers and has closely analyzed the benefits available under the New ERA Program. More broadly, Sierra Club has extensive experience in evaluating rate design and tariff matters. Further, Sierra Club has regularly successfully intervened in matters before the Kentucky Public Service Commission and in other jurisdictions nationwide, including previously in proceedings involving EKPC.⁵ As the Commission has previously recognized, Sierra Club’s

³ USDA, Rural Utils. Serv., *Notice of Funding Opportunity for the Empowering Rural America (New ERA) Program*, 88 Fed. Reg. 31,218, 31,221, <https://www.govinfo.gov/content/pkg/FR-2023-05-16/pdf/2023-10392.pdf>.

⁴ *In re: Electronic 2022 Integrated Resource Plan of East Ky. Power Cooperative, Inc.*, Case No. 2022-0098, Response of EKPC to Joint Intervenors’ Post-Hearing Comments at 9 (Feb. 17, 2023), https://psc.ky.gov/pscecf/2022-00098/jessica.fitch-snedegar%40ekpc.coop/02172023105651/Response_Comments_-_Joint_Intervenors_-_Final_02-16-2023.pdf.

⁵ *E.g.*, *In re: Electronic 2022 Integrated Resource Plan of East Ky. Power Cooperative, Inc.*, Case No. 2022-0098; *In re: Applic. of East Ky. Power Cooperative, Inc. for a Certificate of Public Convenience*

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.”⁶

I. SIERRA CLUB SEEKS FULL INTERVENTION.

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 EKPC by way of EKPC’s owner-members. 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 belong to Sierra Club’s Kentucky Chapter.⁷ Sierra Club’s Kentucky address is: Sierra Club, Kentucky Chapter, P.O. Box 1368, Lexington, KY 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 are customers of EKPC’s owner-members.

Sierra Club members who are customers of EKPC’s owner-members are directly affected by EKPC’s electricity rates. EKPC’s Cogeneration and Small Power Production Tariffs affect

and Necessity for Alteration of Certain Equipment at the Cooper Station and Approval of a Compliance Plan Amendment for Environmental Surcharge Cost Recovery, Case No. 2013-00259.

⁶ 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 at 3 (Jan. 11, 2017); *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 at 3 (Jan. 11, 2017); *In re: Applic. of Ky. Utils. Co. for an Adjustment of Its Elec. Rates*, Case No. 2014-00371, Order at 4-5 (Jan. 13, 2015); *In re: Applic. of Louisville Gas and Elec. Co. for an Adjustment of Its Elec. Rates*, Case No. 2014-00372, Order at 4 (Jan. 13, 2015).

⁷ 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.

the rates of EKPC's owner-members, as they set the Cooperative's purchase rate for certain power and contribute to the Cooperative's broader system of rate design.

Further, Sierra Club members who are customers of EKPC's owner-members have economic, public health, and environmental interests in ensuring that EKPC is acting to take advantage of the significant opportunities provided by the IRA. In addition to the \$970 million for which EKPC is eligible under the New ERA Program, the IRA provides substantial direct payment for clean energy. Historically, rural cooperatives such as EKPC were not eligible for tax credits such as the Investment Tax Credit (ITC) and Production Tax Credit (PTC). Now, a rural cooperative can receive direct payments equivalent to the tax credits.⁸ The ITC provides a percentage of total capital costs for renewable generation and battery storage.⁹ It sets a baseline credit at 30% of capital costs, with an additional 10% for location in an "energy community" under the IRA and another 10% for reliance on domestic manufacturing.¹⁰ The PTC provides \$27.50 per MWh (currently) for electricity generated by clean energy.¹¹ This amount can likewise increase by 10% for location in an energy community and an additional 10% for domestic manufacturing.¹² In *In re: Electronic 2022 Integrated Resource Plan of EKPC*, Sierra Club and other parties recently noted that much of the area EKPC serves is located within an energy community and thus eligible for a 10% bonus.¹³ Since that time, the federal government

⁸ U.S. Office of Energy Efficiency and Renewable Energy, Solar Energy Technologies Office, *Federal Solar Tax Credits for Businesses*, <https://www.energy.gov/eere/solar/federal-solar-tax-credits-businesses>; DSIRE, *Renewable Energy Production Tax Credit*, <https://programs.dsireusa.org/system/program/detail/734>.

⁹ U.S. Office of Energy Efficiency and Renewable Energy, Solar Energy Technologies Office, *Federal Solar Tax Credits for Businesses*, *supra*.

¹⁰ *Id.*

¹¹ *Id.* This is the amount paid where the project meets labor requirements, such as prevailing wage. *Id.*

¹² *Id.*

¹³ Case No. 2022-0098, Sierra Club's Comments Regarding the Commission Staff's Report on East Ky. Power Cooperative, Inc.'s 2022 Integrated Resource Plan at 16-17 (Mar. 31, 2023), <https://psc.ky.gov/pscecf/2022->

has published additional information, including a searchable map, that confirms that significant areas served by EKPC are within energy communities eligible for the 10% ITC and PTC bonus.¹⁴

Sierra Club’s members who are customers of EKPC’s owner-members have a strong interest in ensuring that EKPC takes advantage of the economic opportunities afforded by the IRA—in order to ensure that EKPC’s rates are “fair, just and reasonable.” K.R.S. § 278.030(1). Thus, these Sierra Club members have an interest in making sure that EKPC’s tariffs take into account the need for the Cooperative to act on IRA provisions for the benefit of its owner-members’ customers. These Sierra Club members and the Sierra Club also have an interest in furthering the public health and environmental benefits that accompany solar power, wind power, battery storage, and energy efficiency.

Finally, Sierra Club and its members have procedural and organizational interests in exercising their rights to participate in this proceeding to advocate for accelerating EKPC’s transition from high-cost fossil fuel-based generation to more affordable, healthier, and more environmentally friendly renewable energy sources.

Sierra Club therefore seeks full intervention to ensure that its and its members’ interests are fully represented. Specifically, Sierra Club will investigate, among other issues, if EKPC’s proposed tariffs adequately take into account the IRA; and if and how EKPC is accounting in these tariff updates for the significant financial benefits provided to it, and ultimately to its owner-members’ customers, by the New ERA Program in particular. Sierra Club will advocate

[00098/childerslaw81%40gmail.com/03312023034618/2023.3.31_post_report_comments_FINAL.pdf](https://psc.ky.gov/pscecf/2022-00098/ashley%40kyrc.org/02032023055123/Post_Hearing_Comments_of_Joint_Intervenors.pdf); Case No. 2022-0098, Joint Intervenors’ Supplemental Post-Hearing Comment on East Ky. Power Cooperative Inc.’s 2022 Integrated Resource Plan at 4-8 (Feb. 3, 2023), https://psc.ky.gov/pscecf/2022-00098/ashley%40kyrc.org/02032023055123/Post_Hearing_Comments_of_Joint_Intervenors.pdf.

¹⁴ Interagency Working Group on Coal & Power Plant Communities & Revitalization, *Section 48C Tax Credits – Designated Energy Communities*, <https://energycommunities.gov/>.

for ensuring that EKPC’s planning, including for its proposed tariffs, adequately accounts for the speed with which EKPC must act to ensure that IRA benefits accrue to its owner-members’ customers. Sierra Club may advance other positions as this proceeding unfolds.

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. Sierra Club Will Assist the Commission’s Consideration Without Undue 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.¹⁵ 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. Sierra Club regularly evaluates the benefits of the IRA and how to incorporate those benefits into rate design. In fact, Sierra Club has already identified the

¹⁵ See *supra* notes 5-6 and accompanying text.

particular benefits of New ERA funding for EKPC in light of its large industrial customer Nucor.¹⁶

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 of the proposed tariffs. Through discovery and legal briefing, Sierra Club will help to illuminate the ways that EKPC can incorporate planning to take advantage of the benefits of the New ERA Program and other aspects of the IRA into its tariff update, as well as the potential benefits of planning to meet 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 EKPC’s proposal comports with “fair, just and reasonable” rates for its owner-members’ customers and all other applicable laws and regulations. K.R.S. § 278.030(1).

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 EKPC’s filing of the Proposed Tariffs, no other substantive pleadings or testimony have been filed. In sum, Sierra Club’s participation here will “assist the commission in

¹⁶ Jeremy Fisher & Nachy Kanfer, *A New ERA for U.S. Manufacturing: Tapping a Once-in-a-Generation Opportunity*, Sierra Club (May 23, 2023), <https://www.sierraclub.org/articles/2023/05/new-era-us-manufacturing-tapping-once-generation-opportunity>.

fully considering” these important issues without any “undu[e] complicati[on].” 807 K.A.R. 5:001 § 4(11)(b).

B. Sierra Club Has 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, the rapid development of renewable energy and storage technology, and the newly available New ERA and other IRA funding for cooperatives that requires immediate action. Sierra Club and its members possess the economic, environmental, and public health interests described above.¹⁷

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, and the IRA. 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 tariffs and EKPC’s underlying assumptions—essential to the tariffs—regarding a lack of added capacity over the next decade.

¹⁷ *Supra* Section I.

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 has not yet intervened, but were he to do so, he 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. This is because the Attorney General 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. Sierra Club’s intervention is necessary to adequately represent its unique interests in these proceedings.

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.

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Of counsel
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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 June 5, 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