

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

In the Matter of:

**ELECTRONIC INVESTIGATION OF
LOUISVILLE GAS AND ELECTRIC COMPANY
AND KENTUCKY UTILITIES COMPANY
SERVICE RELATED TO WINTER STORM
ELLIOTT**

)
)
)
) **Case No. 2023-00422**
)
)
)
)

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 initiated by the Commission. The Commission’s “investigation stems from LG&E/KU’s rolling blackouts during Winter Storm Elliott that affected 54,637 customers, as well as the impact generally of Winter Storm Elliott on LG&E/KU’s operations.”¹ The Commission has incorporated into the record discovery and examination in Case No. 2022-00402.² Sierra Club was extensively involved in the development of the record regarding LG&E/KU’s inability to provide retail electric service during Winter Storm Elliott in Case No. 2022-00402. Sierra Club’s expert provided direct testimony on the need for LG&E/KU to recognize and respond to the issue of correlated outages of fossil fuel units, including coal units, in extreme weather. Through cross-examination and post-hearing data requests, Sierra Club played a key role in developing information about the causes of rolling blackouts during Winter Storm Elliott for LG&E/KU customers—including coal plant failures and the inability to import power from a regional transmission organization.

¹ Order, Dec. 22, 2023, at 2.

² *Id.* at 2-3.

Sierra Club’s post-hearing brief provided 10 pages of argument regarding LG&E/KU’s failures during Winter Storm Elliott. Sierra Club raised serious concerns with inconsistencies in data related to severe winter weather events provided by LG&E/KU and advocated for an ELCC-type approach to evaluating *all* generation units’ contributions—including coal and gas units’ contributions—and for LG&E/KU to join a regional transmission organization, to prevent this kind of event in future.³

Further, Sierra Club has extensive experience evaluating power system reliability issues, such as those raised in this investigation. Sierra Club has regularly successfully intervened in matters before the Kentucky Public Service Commission and in other jurisdictions nationwide, including numerous proceedings regarding energy system reliability. Sierra Club has previously successfully intervened in proceedings involving LG&E/KU in Kentucky, including the case that is incorporated into this record. 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.”⁴

³ Sierra Club’s Post-Hearing Brief, *In re: Electronic Joint Application of Ky. Utils. Co. & Louisville Gas & Elec. Co. for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-402 (filed Sept. 23, 2023), at 70-80, https://psc.ky.gov/pscecf/2022-00402/childerslaw81%40gmail.com/09222023110306/2023.9.22_Sierra_Club_post-hearing_brief.pdf.

⁴ See, e.g., *In re: Electronic Joint Application of Ky. Utils. Co. & Louisville Gas & Elec. Co. for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-402, Order (Feb. 9, 2023); *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.

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 LG&E/KU. 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.⁵ 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 (a) are customers of LG&E/KU and/or (b) live, work, and recreate in and around LG&E/KU's power units, and who may be directly affected by Commission orders springing from this investigation.

Sierra Club and its members who are LG&E/KU customers or otherwise directly impacted by LG&E/KU facilities have economic and environmental interests in ensuring that LG&E/KU provide for 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 further clean energy alternatives and further pooling resources via membership in a regional transmission organization would be more affordable or lower risk, while maintaining reliability. Sierra Club members who are LG&E/KU customers have an economic interest in ensuring that future electricity rates truly represent the least-cost option, and an interest in the safety and reliability of the electric grid.

⁵ 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. Continued burning of fossil fuels contributes to polluting the surrounding communities and to climate change. These outcomes adversely impact 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 it and its members' interests in ensuring that LG&E/KU's investment, operational, and resource decisions are reasonable are fully represented. Specifically, Sierra Club will investigate, among other issues, if LG&E/KU's current portfolio is the least-cost and most reliable option for customers, especially given serious discrepancies in the data that LG&E/KU has provided about winter outages; and if LG&E/KU could avoid costs and increase reliability by adopting an effective load carrying capacity (ELCC)-type analysis for coal and gas units in light of correlated outages, a position for which Sierra Club has advocated and will continue to advocate and develop the record. 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.

Further, as described above, Sierra Club has also already contributed significantly to developing many of the facts about the causes of LG&E/KU's rolling blackouts during Winter Storm Elliot. Perhaps most notably, Sierra Club brought to light the information that LG&E/KU's coal unit outages alone were an independent cause of the Winter Storm Elliott rolling blackouts, and that the utility's inability to access imported electricity from the regional transmission organization PJM was also an independent and sufficient cause.⁶ In fact, the

⁶ Sierra Club's Post-Hearing Brief, Case No. 2022-402 (filed Sept. 23, 2023), at 70-80.

Commission termed Sierra Club’s cross-examination of a LG&E/KU witness on LG&E/KU’s Winter Storm Elliott after-action report “very helpful . . . from a takeaway perspective” to understanding the report’s contents.⁷

Sierra Club therefore 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 cause and impacts of LG&E/KU’s failure to provide retail electricity during Winter Storm Elliott, along with the prudence, necessity, and public interest of LG&E/KU’s actions in the aftermath of that failure. Through discovery, the filing of expert testimony, examination of witnesses, and legal briefing, Sierra Club will help to illuminate the reliability issues associated with LG&E/KU’s reliance on aging coal units, lack of adequate recognition of or response to the risk of correlated outages in extreme weather, and choice to remain outside of a regional transmission organization—as well as potential solutions to these problems, including ELCC-type analysis of fossil fuel units’ contributions to reliability and joining a regional transmission organization. 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. The organization has particular expertise with analysis of how utilities can strengthen system reliability. Sierra Club will aid the Commission by helping to identify, clarify, and apply key principles that bear on whether LG&E/KU “furnish[es] adequate, efficient, and reasonable service” and otherwise comports 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

⁷ Case No. 2022-402, Hr. Video Tr. Aug. 23, 2023, ~ 2:47:15 (statement of Commission Chair).

Club will comply with all Commission rules and deadlines, as it has in the past. The Commission has not yet set a case schedule for this proceeding, and this motion for intervention predates such a schedule. Except for the Commission’s filing of its Order, 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 and unreliable fossil fuel energy resources and infrastructure, especially in light of current and impending environmental regulations and the rapid development of renewable energy and storage technology. 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, regional transmission organizations, and environmental regulations. 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 focus on energy system reliability of this investigation.

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 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.

Dated: January 12, 2024

Of counsel
(not licensed in Kentucky)

Kathryn Huddleston
Sierra Club
6406 N I-35, Suite 1805
Austin, TX 78752
(919) 623-5942
kate.huddleston@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, KY 40507
(859) 253-9824
joe@jchilderslaw.com

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 12, 2024, 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