

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

In the Matter of:

**ELECTRONIC APPLICATION OF DUKE ENERGY
KENTUCKY, INC. FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO CONVERT ITS
WET FLUE GAS DESULFURIZATION SYSTEM FROM
A QUICKLIME REAGENT PROCESS TO A
LIMESTONE REAGENT HANDLING SYSTEM AT ITS
EAST BEND GENERATING STATION AND FOR
APPROVAL TO AMEND ITS ENVIRONMENTAL
COMPLIANCE PLAN FOR RECOVERY BY
ENVIRONMENTAL SURCHARGE MECHANISM**

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) **Case No. 2024-00152**
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SIERRA CLUB’S MOTION TO INTERVENE OUT-OF-TIME

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 Section 4(11), Sierra Club respectfully moves for permission to intervene out-of-time in the above-captioned proceeding filed by Duke Energy Kentucky, Inc. (“Duke”).¹ In its Order, the Commission established an intervention deadline of August 16, 2024, but found that parties may intervene out-of-time “upon a showing a good cause.” Good cause exists to grant Sierra Club’s intervention in this proceeding. Sierra Club typically monitors the Kentucky Public Service Commission’s website for new case filings, but due to staffing changes and an unfortunate oversight, Sierra Club did not become aware of this proceeding until today, one week after the intervention deadline. Sierra Club’s failure to file this motion within the time established by the Commission is the result of excusable neglect. Sierra Club is now seeking late intervention, and respectfully submits that its

¹ The Commission has the authority to grant out-of-time motions. *See, e.g., In re: Fuel Adjustment Clause of Kentucky Power Company from May 1, 2021 through October 31, 2021*, Case No. 2022-00036 (Commission Order on May 3, 2022).

intervention at this stage will not prejudice the applicant or any parties, and will not be disruptive – except for Duke’s initial application filing, no other substantive pleadings or testimony have been filed. If granted party status, Sierra Club will accept and abide by the existing procedural schedule in this proceeding.² Sierra Club also respectfully submits that, if granted intervention, its participation will help develop a thorough record and aid in the Commission’s full consideration of the important matters at hand.

Duke has filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct and convert pollution control equipment, referred to as the “Limestone Conversion Project”, at the East Bend Generating Station, located along the Ohio River in Boone County, Kentucky, and is seeking approval to amend its Environmental Compliance Plan (“ECP”) to include the Limestone Conversion Project and recover project costs. The CPCN application specifically discusses compliance obligations associated with new federal environmental regulations promulgated by the U.S. Environmental Protection Agency (“EPA”).

Sierra Club has extensive experience evaluating proposed environmental compliance projects, similar to Duke’s proposed Limestone Conversion Project at East Bend. Sierra Club has regularly intervened successfully in matters before the Kentucky Public Service Commission³ and in other jurisdictions nationwide, including numerous proceedings regarding the investment in and installation of pollution control equipment at electric generating stations. In fact, Sierra Club has previously successfully intervened in proceedings by Duke in Kentucky, including Case No. 2024-00197 (regarding Duke’s 2024 Integrated Resource Plan) and Case No. 2022-

² While Sierra Club understands the Commission has not yet had the opportunity to rule on Sierra Club’s motion for late intervention, Sierra Club is concurrently filing an initial Request for Information to Duke, to abide by the established deadline in the existing procedural schedule.

³ Sierra Club has great respect for the Commission and has participated in proceedings before the Commission for over a decade. During this decade of participation, Sierra Club has filed timely intervention motions.

00372 (Duke’s 2022 rate case). As the Commission has previously recognized, it should grant Sierra Club party status 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

I. MOVANT

Sierra Club moves to intervene out-of-time 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 Duke. 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 5,250 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 Duke and/or (b) live, work, and recreate in and around Duke’s power units, including the East Bend Generating Station, and who will be directly affected by any Commission order regarding East Bend.

⁴ 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.

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 who are Duke customers or otherwise directly impacted by Duke facilities have economic and environmental interests in ensuring that Duke plans 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 would be more affordable or lower risk, while maintaining reliability. Sierra Club members who are Duke 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.

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 its and its members' interests in ensuring that Duke's investment, operational, and resource decisions are reasonable are fully represented. Specifically, Sierra Club will investigate, among other issues, whether Duke's proposed Limestone Conversion Project is the least-cost option for customers, and particularly if Duke has fully evaluated the costs to comply with the EPA's suite of new environmental regulations and has incorporated those relevant compliance costs into its analysis

of the Limestone Conversion Project costs and whether additional alternatives should have been considered and whether those additional alternatives could avoid a stranded asset. 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 intervention. First, Sierra Club will 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.

The Commission should grant Sierra Club 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. 4. 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 stimulate a robust evaluation of the issues, and inform the Commission’s ultimate decision about the prudence, necessity, and public interest in Duke’s proposed Limestone Conversion Project at East Bend. 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 continued reliance on fossil fuel-fired generation, 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. The organization has particular expertise with analysis of how utilities should evaluate compliance costs and compliance options associated with the suite of new environmental regulations, including EPA's greenhouse gas rule under Clean Air Act Section 111(d), the revised Effluent Limitation Guidelines Rule (ELG), the Coal Combustion Residuals Rule (CCR), the revised Mercury Air Toxics Standard Rule (MATS), the Good Neighbor Plan, and other federal rules. Sierra Club has experience in ensuring that the full suite of compliance costs and compliance alternatives are presented to the Commission, will help ensure that projects don't become stranded assets. In addition, Sierra Club has experience with how utilities can avail themselves and their customers of the full benefits of the Inflation Reduction Act. Sierra Club will aid the Commission by helping to identify, clarify, and apply key principles that bear on whether Duke's project plans "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. Besides its late intervention motion, Sierra Club will comply with all Commission rules and deadlines, as it has in the past. 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.

The Commission should also grant Sierra Club 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 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, energy efficiency, 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 proposed supply-side and demand-side management plans.

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: August 23, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of Sierra Club’s Motion to Intervene Out of Time in this action is being electronically transmitted to the Commission on August 23, 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