

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

The Electronic Application of Duke Energy)
Kentucky, Inc. for a Certificate of Public)
Convenience and Necessity to Convert its Wet Flue) Case No. 2024-00152
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)

OBJECTION OF DUKE ENERGY KENTUCKY, INC TO SIERRA CLUB’S MOTION TO INTERVENE OUT-OF-TIME AND REQUEST TO STRIKE THE SIERRA CLUB’S FIRST SET OF REQUESTS FOR INFORMATION

Duke Energy Kentucky, Inc., (Duke Energy Kentucky or the Company) respectfully requests that the Kentucky Public Service Commission (Commission or KPSC) deny the Sierra Club’s Motion to Intervene Out-of-Time (Motion). The Motion should be denied for three reasons: 1) the Motion is untimely and the Sierra Club has failed to demonstrate good cause as to why its untimely motion should be granted; 2) the Sierra Club has failed to demonstrate that it has a special interest in the proceeding because the stated interests are adequately represented by other parties; and 3) the Sierra Club has failed to identify any relevant issues or facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. Because the Sierra Club has failed to satisfy any of the requirements of intervention under 807 KAR 5:001, Section 4(11)(b), the Company respectfully requests the Commission deny the Sierra Club’s Motion. Further, the Company requests that the Sierra Club’s First Request for Information (RFI), filed contemporaneously with its untimely Motion should be struck from the

record.

I. Introduction

On May 8, 2024, the Company filed its “Notice of Intent to File an Application 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” (Notice of Intent), opening the above-styled docket.¹ On July 25, 2024, the Company filed its Application in this proceeding for approval of a Certificate of Public Convenience and Necessity (CPCN) to convert its wet flue gas desulfurization system (WFGD) from a quicklime reagent process to a limestone reagent handling system at its East Bend Generating Station (East Bend), for approval to amend its environmental compliance plan, and for approval to amend its Environmental Surcharge Mechanism (ESM) (collectively, the Application).² On August 9, 2024, the Commission issued an Order that among other things, announced that the Commission was retaining an independent consultant to assist in its review of the Company’s Application, and established a procedural schedule.³ Among the procedural milestones ordered, the deadline for timely intervention was set at August 16, 2024, with the first set of data requests issued to the Company on August 23, 2024. On August 16, 2024, the Office of the Attorney General (OAG) timely intervened in this proceeding.⁴ On August 23, 2024, at 8:24 P.M., the Sierra Club filed its Motion to Intervene Out-of-Time and its First Set of Data Requests to Duke Energy Kentucky (Sierra Club Motion).⁵

¹ *In the Matter of the 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*, Case No. 2024-00152, Notice of Intent (May 8, 2024).

² *Id.*, Application (July 25, 2024).

³ *Id.*, Order (August 9, 2024).

⁴ *Id.*, OAG Motion to Intervene (August 16, 2024).

⁵ *Id.*, Sierra Club Motion and Requests for Information (August 23, 2024).

II. Law and Argument

A. An August 16, 2024, deadline for intervention was reasonable and should be enforced as interested persons had adequate time to intervene.

The standard for Intervention in proceedings before the Commission is set forth in 807 KAR 5:001 Section 4(11). Specifically, the regulation provides that “a person who wishes to become a party to a case before the Commission may, **by timely motion**, request leave to intervene.”⁶ The regulation further provides in relevant part that:

(b) The Commission shall grant a person to intervene if the Commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention 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.”⁷

By Order dated August 9, 2024 (Order), the Commission ordered a procedural schedule in this proceeding, that among other things, established August 16, 2024, as the last date for intervention requests to be accepted.⁸ The Commission’s Order further provided that “any motion to intervene filed after the date established in the procedural schedule shall also show good cause for being untimely.”⁹

The Commission’s establishing August 16, 2024, as the deadline for intervention was consistent with Kentucky regulations, which expressly contemplate timely submission in intervention. Further, the August 16, 2024, deadline was reasonable as interested parties had adequate notice of this proceeding.

⁶ 807 KAR 5:001 Section 1 (11)(a); emphasis added.

⁷ *Id.*

⁸ *In the Matter of the 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*, Case No. 2024-00152, Order, p. 1 (August 9, 2024).

⁹ *Id.*, p. 4.

The docket activity in this proceeding and numerous newspaper announcements provided ample notice to any party who wished to intervene. In accordance with KRS 278.183(2), the Company filed its Notice of Intent that it would be filing an Application to amend its ESM, thereby opening the above-styled docket on May 8, 2024.¹⁰ Within that notice, the Company identified that it would file its Application “on or after June 10, 2024.”¹¹ The Company filed its Application on July 25, 2024, and published notice of the application in multiple newspapers of general circulation as is required by 807 KAR 5:001, Section 16(1)(b)(5).¹² Exhibit 5 to that Application, included a Certificate of Notice and Publication demonstrating compliance with 807 KAR 5:001, Section 16(1)(b)(5) and explaining that newspaper publication commenced on July 19, 2024.¹³ Exhibit 5(A) and (B) included a copy of the detailed newspaper notice of the Company’s Application, including the estimated rate impact of the project and identified the five newspapers of general circulation in which the notice was published, respectively.¹⁴ Accordingly, interested parties had sufficient, adequate and statutorily compliant notice of the Company’s Application.

Parties monitoring the Commission’s dockets would have seen the Notice of Intent in Early May 2024. Further, newspaper publications ran for three consecutive weeks, commencing July 19, 2024, provided the required public notice. The Company’s Application was submitted on July 25, 2024, and would have appeared on the Commission’s website home page in the Latest Case Filings. The Attorney General moved to intervene in this proceeding on August 16, 2024, in

¹⁰ *Id.*, Notice of Intent (May 8, 2024).

¹¹ *Id.*

¹² *In the Matter of the 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*, Case No. 2024-00152, Application, p. 15 (July 25, 2024).

¹³ *Id.*, Application, Exhibit 5, p. 2.

¹⁴ *Id.*, pp. 5-8.

compliance with the Commission's Order.¹⁵ An August 16, 2024 deadline for intervention was therefore reasonable because it was more than three months after the Company's Notice of Intent, nearly a month after the first newspaper publication, and three weeks after the filing of the Application. Other interested parties had sufficient opportunity to file a timely intervention. Accordingly, the August 16, 2024, deadline for intervention should be strictly enforced.

B. The Commission should deny the Sierra Club's intervention because its Motion is untimely and without good cause.

By submitting its Motion on August 23, 2024, the Sierra Club has failed to satisfy the first requirement for intervention because they did not file a "timely motion for intervention" in accordance with 807 KAR5:001 Section 4(a). Pursuant to the Commission's Order, their intervention is only permissive if the Sierra Club can now demonstrate good cause for their untimely intervention. They have failed to do so in several respects.

In its Motion, the Sierra Club's only stated justification to grant its untimely intervention was that, even though it "typically monitors the Kentucky Public Commission's website for new case filings...due to staffing changes and an unfortunate oversight, Sierra Club did not become aware of this proceeding until [August 23, 2024] one week after the intervention deadline," and further claims that such an oversight constitutes "excusable neglect."¹⁶ The Commission should not be persuaded by the Sierra Club's claims of inadequate resources resulting in an unfortunate oversight. This is not good cause. Indeed, the Sierra Club's own motion describes how it has successfully intervened in matters before this Commission as well as "in other jurisdictions

¹⁵ *In the Matter of the 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, Case No. 2024-00152, OAG Motion to Intervene (August 16, 2024).*

¹⁶ *Id.*, p. 1.

nationwide.”¹⁷ The Sierra Club is experienced in matters before this Commission, is aware of its regulations and processes, and thus its “neglect” does not constitute good cause. Moreover, although the Sierra Club fails to cite to any precedent or Commission regulation whereby “excusable neglect” (as the term is used in Kentucky Rules of Civil Procedure, which are not binding upon this Commission) constitutes good cause to justify failing to timely intervene in matters before the Commission. Indeed the Commission has previously rejected such a claim.¹⁸ In Case No. 2020-00350, the Commission denied the untimely intervention of 17 owners of McDonald’s Inc. franchise restaurants who argued that pursuant to Kentucky Rules of Civil Procedure 6.02 an enlargement of time to intervene was justified and excusable neglect existed due to holidays, Covid-19 Pandemic, and time needed to organize and meet with their attorney. *Id.* The Commission found that “general averments to the holidays and Covid-19 pandemic” did not constitute good cause to justify untimely intervention due to tight procedural time constraints.

As its Motion describes, the Sierra Club is a “national nonprofit environmental and conservation organization”¹⁹ and thus, possesses sufficient experience and resources to participate in regulatory proceedings. The Sierra Club’s own website describes its Environmental Law Program as having “perfected the art of campaign litigation and “lawyer-organizing.”²⁰ The website goes on to state describe its resources as follows:

Our team of top-notch attorneys and legal staff leverages all of the Club's tools of democracy, integrating legal advocacy with grassroots organizing, sophisticated communications, a state-of-the-art digital strategies team, and administrative lobbying.”²¹

¹⁷ *Id.*, p. 2.

¹⁸ *In the Matter of the Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350, Order at pp. 2, 4-5 (March 5, 2021).

¹⁹ Sierra Club Motion, p. 3.

²⁰ <https://www.sierraclub.org/environmental-law/about-our-program>

²¹ *Id.*

Moreover, the Sierra Club's website identifies a robust team of legal professionals, including forty attorneys, as well as research analysts, paralegals, and legal assistants.²²

The Sierra Club had ample notice and opportunity to timely file an intervention in this proceeding. As previously stated, the docket for this proceeding has been open since May 8, 2024, when the Company filed its Notice of Intent. Since that time, the Sierra Club has intervened in at least one other Commission proceeding, Case No. 2024-00197, the Company's 2024 Integrated Resource Plan (2024 IRP).²³ The Company filed its notice of intent opening the 2024 IRP proceeding on June 17, 2024, and filed the 2024 IRP on June 21, 2024. Accordingly, this CPCN docket was open and on the Commission's website at the time the Sierra Club intervened in the Company's 2024 IRP. The Sierra Club timely filed its motion to intervene in the 2024 IRP case on July 23, 2024, and submitted its First Request for Information to the Company in the 2024 IRP on August 14, 2024. Clearly the Sierra Club had sufficient resources to monitor the Commission's docket and to timely intervene and participate in Commission proceedings at the time this CPCN case was filed and when the procedural schedule was established.

Neglecting to notice that this proceeding existed, notwithstanding the fact that the Sierra Club successfully intervened and participated in a contemporaneous Company proceeding, does not constitute good cause for an untimely intervention. The Commission should deny the Sierra Club's Motion.

C. The Sierra Club has failed to demonstrate that it has a special interest in this proceeding that is not adequately represented by other parties.

The Sierra Club's Motion bases its standing for intervention on behalf of "itself and its members who live and purchase electric services in Kentucky, many of whom are residential

²² <https://www.sierraclub.org/environmental-law/staff>

²³ *In the Matter of the Electronic 2024 Integrated Resource Plan of Duke Energy Kentucky, Inc.*, Case No. 2024-00197, Integrated Resource Plan (June 21, 2024) (2024 IRP).

customers of Duke.”²⁴ Its justification to intervene is to “protect (1) its organizational interests and (2) the interests of Sierra Club members who are (a) Customers of Duke and/or (b) live, work and recreate in and around Duke’s power units, including the East Bend Generating Station…” and that its members have interest in ensuring that the Company’s plans “provide for the least-cost means of meeting customer energy and reliability needs while also avoiding unnecessary pollution.”²⁵ The Sierra Club’s Motion fails to state any special interest that is not otherwise already represented in this proceeding that justifies an untimely intervention.

The Commission has consistently held that, as a threshold matter, a person seeking intervention must have an interest in the rates or service of the utility at issue as, pursuant to KRS 278.040(2), those are the only two subjects under the jurisdiction of the Commission.²⁶ And the Commission has repeatedly found that groups like the Sierra Club, as non-customers, lack that interest, although they could represent that interest on behalf of their members.²⁷ Because the

²⁴ Sierra Club Motion, p. 3.

²⁵ *Id.*

²⁶ See, e.g., *In the Matter of the Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, Case No. 2013-00148, Order at 80 (April 22, 2014); “The Commission finds that the only person with a statutory right to intervene is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission. In the unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention, but that discretion is not unlimited. The Court enumerated the statutory and regulatory limits on Commission discretion in ruling on motions to intervene. The statutory limitation, KRS 278.040(2) requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission.” See also; *In the Matter of the Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at 7 (July 27, 2011); *In the Matter of the Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Order at 7 (July 27, 2011); *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at 4 (July 15, 2009).

²⁷ See e.g., *In the Matter of the Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00161, Order at 7-8 (July 27, 2011); *In the Matter of the Application of Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2011-00162, Order at 7-8 (July 27, 2011). The Commission held in *In the Matter of Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order at 4 (July 15, 2009) (“Only persons who have an interest in a utility’s rates or service are eligible to be granted intervener status. SEC Customer Group is not a customer of Columbia Gas and, thus, has no individual interest in the rates or service at issue in this case. Rather, SEC Customer Group is asserting an interest as the representative of certain unnamed

Sierra Club itself is not a customer of Duke Energy Kentucky, it has no individual interest in the rates and services of the Company. As for its members that are residential customers who are concerned with reliable and least-cost service that avoids unnecessary pollution, those same interests are shared by the Office of the Attorney General, who is already an intervenor. And those stated interests in reliable, least cost service that avoids unnecessary pollution are embedded in the legal standard for approval of a CPCN, namely whether there is a need for the proposed facilities and an absence of wasteful duplication.²⁸ Given that the Company must overcome this burden to gain approval, the Attorney General must also share in the Sierra Club's stated member interests. While the Sierra Club's Motion claims the Attorney General has neither the capacity nor the inclination to represent the Sierra Club's more focused interests in conservation, such was not the basis of its untimely Motion, but rather, concerns over the Company's provision of reliable, least cost services that avoids unnecessary pollution.

Finally, although the Sierra Club claims no other party has the same expertise or inclination to advocate in the same way that the Sierra Club will, the Sierra Club ignores that the Commission itself, pursuant to KRS 278.183(4) has ordered that an independent consultant be retained to assist the Commission in evaluating the Company's CPCN proposal.²⁹ Therefore the Commission has already retained, or is in the process of retaining, an independent expert who can advise the Commission regarding the Company's CPCN Application. Because the Sierra Club has not

customers of Columbia Gas. The Commission has, on prior occasions, required a customer representative to identify the specific customers being represented."

²⁸ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952). As explained in the Company's Application, wasteful duplication includes an examination of reasonable alternatives and a balancing of relevant factors, including costs. Application at 8-9.3

²⁹ *In the Matter of the 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*, Case No. 2024-00152, Order, p. 1 (August 9, 2024).

articulated a special interest that is not adequately represented, their untimely intervention must be denied.

D. The Sierra Club has failed to identify any relevant issues or facts that will assist the Commission in the resolution of this matter without unduly complicating or disrupting the proceeding.

Because the Sierra Club lacks any special interest in this proceeding that is not already adequately represented by other parties, the Sierra Club may only intervene if it can show they will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding. Not only does their Motion fail to do so, the First Set of Data Requests submitted contemporaneously demonstrate the opposite.

The Sierra Club's Motion claims that it will help stimulate a robust evaluation of the issues and inform the Commission's decision about the prudence, necessity and public interest in the Company's Application.³⁰ As the Motion goes on, the Sierra Club's real intent becomes clearer—to "illuminate the economic and environmental risks associated with continued reliance on fossil fuel-fired generation" and to promote renewable energy and storage capacity.³¹ As the Commission is well aware, Kentucky energy policy is explicit. Fossil generation is unable to be retired unless the utility is able to satisfy the statutory burden contained in KRS 278.264 which creates a rebuttable presumption against such retirement and the filing of a separate proceeding seeking Commission approval.³² Moreover, before a utility can even make such a demonstration pursuant to KRS 278.264, the utility must now go before a separate and independent body to evaluate the retirement in accordance with KRS 164.2807. The Sierra Club's Motion ignores that both requirements exist.

³⁰ Sierra Club Motion, p. 5.

³¹ *Id.*

³² KRS 278.264.

The Company's Application in the present case is for a CPCN to make necessary changes to continue operating its only baseload generating unit due to a real concern regarding the availability of the existing environmental reagent commodity. The Company is not seeking to retire a generating unit, nor has the Company made any filing before the Energy Planning and Inventory Commission under KRS 164.2807. Therefore, any discussion or argument about the retirement of East Bend will absolutely disrupt and unreasonably complicate this proceeding. Upon review of the Sierra Club's first set of Data requests, such disruption and complication are its intent.

In the Sierra Club's First Request for Information to Duke Energy Kentucky (RFI), the Sierra Club propounded thirty-nine RFIs, excluding subparts, that among other things, seek irrelevant information regarding East Bend's retirement.³³ Additionally, Sierra Club has requested irrelevant historical and forecasted operations at East Bend, as well as information regarding the Company's currently pending IRP proceeding.³⁴ In fact, many of these RFIs are similar to, if not identical to those the Sierra Club submitted in the IRP proceeding. This information includes, but is not limited to:

- East Bend's historical Fixed O&M, Non-fuel variable O&M, capital costs, revenues, and unforced capacity.³⁵
- East Bend's projected operational costs;³⁶
- Present Value Revenue Requirements;³⁷
- Retirement and replacement alternatives;³⁸

³³See RFI 1.15, RFI 1.16, 1.17, RFI 1.25h, 1.33d, 1.36, and 1.37c, g, h.

³⁴ Sierra Club RFI 1.12, 1.13, 1.17, and 1.18.

³⁵ See Sierra Club RFI 1.4; *See also*, 2024 IRP, Sierra Club RFI 10.

³⁶ Sierra Club RFI 1.5; *See also*, 2024 IRP, Sierra Club RFI 9.

³⁷ Sierra Club RFI 1.6; *See also*, 2024 IRP, Sierra Club RFI 5.

³⁸ Sierra Club RFI 1.15, *See also*, 2024 IRP 6, 8, and 16.

- Compliance strategy with other environmental regulations (Effluent Liquid Guidelines, Mercury Air Toxics Standards, Good Neighbor, Regional Haze);³⁹
- Environmental Enforcement communications;⁴⁰
- PJM dispatch decisions as “must run” vs self-scheduling.⁴¹

Again, this information, while potentially relevant to the Company’s pending IRP proceeding which is about the Company’s long-term generation supply strategy, has no bearing on the current Application which is to continue complying with existing regulations in the event the current reagent costs continue to escalate or the reagents become unavailable. All these issues unnecessarily complicate and disrupt the current proceeding. Therefore, the Sierra Club’s intervention should be denied and their first set of RFIs should be struck from the record.

E. The Commission has previously denied the Sierra Club’s attempt at untimely intervention.

The Commission has previously denied an untimely intervention by the Sierra Club for failure to state good cause based upon similar claims of resource constraints. In Case No. 2015-00355, regarding the Applications of Louisville Gas and Electric Company and Kentucky Utilities to install and operate electric charging stations, the Sierra Club sought an untimely intervention, several weeks after the established intervention deadline.⁴² In that proceeding, the Sierra Club argued that it had only recently secured resources for full and active participation in the proceeding.⁴³ In finding that the Sierra Club failed to demonstrate good cause, the Commission

³⁹ Sierra Club RFI 1.19, 1.20, 1.231.24, 1.25, 1.28, 1.29, 1.30, and 1.31 *See also*, 2024 IRP 15 and 16.

⁴⁰ Sierra Club RFI 1.39; *See also*, 2024 IRP 1.22.

⁴¹ Sierra Club RFI 1.38; *See also*, 2024 IRP Sierra Club RFI 21.

⁴² *In the Matter of Application of Louisville Gas and Electric Company and Kentucky Utilities Company to Install and Operate Electric Charging Stations in their Certified Territories, For Approval of An Electric Vehicle Supply Equipment Rider, An Electric Vehicle Supply Equipment Rate, An Electric Vehicle Charging Rate, Depreciation Rate, And For a Deviation from the Requirements of Certain Commission Regulations*, Case No. 2015-00355, Order, p. 8 (March 11, 2016).

⁴³ *Id.*

noted that Sierra Club filed their intervention past the deadline,⁴⁴ failed to provide sufficient information regarding the status of its resources and its inability to secure funds to timely intervene, and that such information was critical for the Commission to make a fully-informed decision.⁴⁵ So too here. The Sierra Club's Motion fails to explain what staffing changes constituted an unfortunate oversight whereby it was unaware of this proceeding within which the Company's notice of intent had been pending, when at the same time, it commenced actively participating in another Company proceeding before the Commission.

Notwithstanding the tardiness of its Motion, and insufficient justification to warrant good cause to support late intervention, the Sierra Club is not precluded from complete participation in this case. As the Commission has previously noted, the Sierra Club would not be precluded from submitting public comment in this matter and the Commission has the expertise to afford it the appropriate weight as it considers the Company's Application.

III. CONCLUSION

For the foregoing reasons, Duke Energy Kentucky, Inc., respectfully requests that the Commission deny the Sierra Club's untimely Motion and to strike its Initial Data Requests to the Company from the record.

⁴⁴ *Id.*

⁴⁵ *Id.*

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

/s/ Rocco O. D'Ascenzo

Rocco O. D'Ascenzo (92796)

Deputy General Counsel

Larisa Vaysman (98944)

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45201-0960

Phone: (513) 287-4320

Fax: (513) 370-5720

rocco.d'ascenzo@duke-energy.com

larisa.vaysman@duke-energy.com

CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on August 27th, 2024; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

John G. Horne, II
The Office of the Attorney General
Utility Intervention and Rate Division
700 Capital Avenue, Ste 118
Frankfort, Kentucky 40601
John.Horne@ky.gov

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

Of counsel (not licensed in Kentucky)

Kristin A. Henry
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
kristin.henry@sierraclub.org

/s/Rocco D'Ascenzo
Rocco D'Ascenzo

