

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

In the Matter of:

**ELECTRONIC APPLICATION OF EAST
KENTUCKY POWER COOPERATIVE, INC.
FOR 1) A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
CONSTRUCT A NEW GENERATION
RESOURCE; 2) A SITE COMPATIBILITY
CERTIFICATE; AND 3) OTHER GENERAL
RELIEF**

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) **Case No. 2024-00310**
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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 East Kentucky Power Cooperative (“EKPC”). EKPC has filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a new electric generation station using Reciprocating Internal Combustion Engine (“RICE”) generators (the “Liberty RICE” Facility), the issuance of a Site Compatibility Certificate for the Liberty RICE Facility, and other general relief.¹

EKPC claims that the proposed Liberty RICE Facility is needed to improve reliability concerns in the area when generation is not available, meet the forecasted load growth, support the addition of increased renewable energy and other issues that existing service is inadequate to provide.² EKPC also claims that the Liberty RICE Facility is needed to serve the growing

¹ Application of East Kentucky Power Cooperative, Inc. for 1) A Certificate of Public Convenience and Necessity to Construct a New Generation Resource; 2) A Site Compatibility Certificate; and 3) Other General Relief (Sept. 20, 2024) (“EKPC CPCN Application”) at 1.

² *Id.* at 5.

demand in EKPC’s service territory, as demonstrated in EKPC’s 2024 Long Term Load Forecast, and it will also help further economic development efforts.³

This proceeding comes at a critical juncture for EKPC. Existing or expected federal Clean Air Act and Clean Water Act regulations will require EKPC to modify its use of coal as a fuel source at Cooper and Spurlock power plants, install pollution controls on coal-fired units, and/or to retire such units. Most notable is the U.S. Environmental Protection Agency’s (“EPA”) regulation of greenhouse gas emissions under Section 111(d) of the Clean Air Act.⁴ While EKPC’s Application generally discusses how the project will reduce its carbon intensity,⁵ the Cooperative does not overlay the 111(d) compliance obligations and 111(d) compliance pathways with the proposed Liberty Rice Facility to determine how they would impact each other.⁶ Although elsewhere EKPC has noted that it intends to co-fire Spurlock and Cooper with 40% gas to comply with 111(d).⁷

In addition, EKPC is planning for the addition of several other generation sources. EKPC was invited to apply for a New ERA grant under the Inflation Reduction Act, which the U.S. Department of Agriculture should formally approve shortly. EKPC intends to use its New ERA grant to: “construct or procure 757 megawatts of renewable energy for rural portions of Kentucky, as well as improve the regional transmission grid to support renewable projects and

³ *Id.* at 6.

⁴ See New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units, 89 Fed. Reg. 39,798 (May 9, 2024).

⁵ EKPC CPCN Application at 3.

⁶ See generally *id.*

⁷ See, e.g., Kentucky Legislative Research Commission, Interim Joint Committee on Natural Resources and Energy (Oct. 17, 2024), at meeting minute 48:55 <https://www.youtube.com/watch?v=BbfLFqL8poM>.

increase energy efficiency.”⁸ Finally, EKPC intends to build a new 745 MW combined cycle gas plant at its Cooper Station, for which it will seek a CPCN later this year.⁹ EKCP is proposing all of this generation without also proposing to retire any of its existing generation assets, such as the Spurlock and Cooper power plants.

None of these new proposed generation resources were evaluated or proposed as part of EKPC’s most recent Integrated Resource Plan in 2022.¹⁰ So there has been no comprehensive Integrated Resource Plan that evaluated the new projected demand growth, the prospects of additional economic development, possible changes to PJM’s capacity market, including the introduction of Effective Load Carrying Capacity (“ELCC”) considerations; recent extreme winter weather experiences; the potential large influx of new, intermittent generation across Kentucky (and the PJM footprint) and its impact on dispatchable generation needs during the morning and evening peak periods; and compliance costs associated with newly promulgated environmental regulations to determine the least-cost portfolio to address all of these issues.¹¹ Moreover, this CPCN application only seeks approval for one element of the new generation assets—the 214 MW of RICE units—and not the other elements, which include the addition of 757 MW of renewable generation and 745 MW of a new combined cycle plant.¹²

⁸ U.S. Department of Agriculture, Empowering Rural America Program: Project Announcements, <https://www.rd.usda.gov/empowering-rural-america-program-project-announcements>.

⁹ See *supra* n.7 at meeting minute 48:55; see also EKPC CPCN Application, Direct Testimony of Julia J. Tucker at 15-16, and Attachment JJT-3 (showing 745 MW of CCGT “capacity additions” coming online 2034).

¹⁰ EKPC’s 2022 Integrated Resource Plan, Case No. 2022-00098, https://psc.ky.gov/pscecf/2022-00098/Jessica.Fitch-Snedegar%40ekpc.coop/04012022085400/2022-00098_-_REDACTED_EKPC_2022_IRP.pdf.

¹¹ EKPC CPCN Application at 3 (factors listed as supporting proposed Liberty RICE Facility).

¹² See generally EKPC CPCN Application.

Such a piecemeal approach can lead to stranded assets and wasteful duplication, committing ratepayers to a compliance pathway that does not represent the least-cost option to meet all compliance obligations.¹³

Sierra Club has extensive experience evaluating proposed new generation resources, similar to EKPC's proposed Liberty Rice Facility. Sierra Club has regularly intervened successfully in matters before the Kentucky Public Service Commission¹⁴ and in other jurisdictions nationwide, including numerous proceedings regarding the construction of new generating stations. In fact, Sierra Club has previously successfully intervened in proceedings by EKPC in Kentucky, including Case No. 2022-00098 (regarding EKPC's 2022 Integrated Resource Plan), Case No. 2013-00259 (regarding EKPC's Application for a CPCN at Cooper Station to modify equipment) and Case No. 2012-00149 (regarding EKPC's 2012 Integrated Resource Plan). Sierra Club has extensive experience evaluating the issues raised in EKPC'S CPCN Application. As the Commission has previously recognized, it should grant Sierra Club's motion to intervene because Sierra Club possesses "special knowledge and expertise in multiple

¹³ *Ky. Utils. Co. v. Pub. Serv. Comm'n*, 252 S.W. 2d 885, 890 (Ky. 1952); *In re: Elec. Application of Kentucky Power Co. for a CPCN to Rebuild the Wootton-Stinnett Portion of the Hazard-Pineville 161 KV Line in Leslie County*, Case No. 2022-00118, Final Order (Ky. P.S.C. Sept. 22, 2022) at 16-17, https://psc.ky.gov/pscscf/2022%20Cases/2022-00118//20220922_PSC_ORDER.pdf.

¹⁴ Sierra Club has great respect for the Commission and has participated in proceedings before the Commission for over a decade.

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.”¹⁵

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 EKPC and its owner-member cooperatives. 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 4,900 Kentuckians belong to Sierra Club’s Kentucky Chapter.¹⁶ 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 EKPC and its member-owner cooperatives and/or (b) live, work, and recreate in and around EKPC’s power units, and who will be directly affected by any Commission order regarding the proposed CPCN.

Sierra Club and its members who are EKPC and/or EKPC member-owner customers or otherwise directly impacted by EKPC’s facilities have economic and environmental interests in ensuring that EKPC’s proposed Liberty RICE Facility and other plans provide for the least-cost

¹⁵ *In re: Elec. Application of Louisville Gas and Electric Co. for an Adjustment of Its Electric Rates and for CPCNs*, Case No. 2016-00371, Order (Jan. 11, 2017) at 3, https://psc.ky.gov/pscscf/2016%20Cases/2016-00371//20170111_PSC_ORDER.pdf; *In re: Elec. Application of Ky. Utils. Co. for an Adjustment of Its Electric Rates and for CPCNs*, Case No. 2016-00370, Order (Jan. 11, 2017) at 3, https://psc.ky.gov/pscscf/2016%20Cases/2016-00370//20170111_PSC_ORDER01.pdf; *In re: Application of Ky. Utils. Co. for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Order (Jan. 13, 2015) at 4-5, https://psc.ky.gov/pscscf/2014%20Cases/2014-00371//20150113_PSC_ORDER.pdf; *In re: Application of Louisville Gas and Electric Co. for an Adjustment of Its Electric Rates*, Case No. 2014-00372, Order (Jan. 12, 2015) at 4, https://psc.ky.gov/pscscf/2014%20Cases/2014-00372//20150112_PSC_ORDER01.pdf.

¹⁶ 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.

means of meeting customer energy and reliability needs while also avoiding unnecessary pollution and/or overbuild of generation. 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 EKPC and/or EKPC member-owner 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 are fully represented in ensuring that EKPC's investment, operational, and resource decisions are reasonable. Specifically, Sierra Club will investigate, among other issues, whether EKPC's proposed Liberty RICE Facility and additional forthcoming changes to its generation portfolio are the least-cost option for customers, and particularly whether EKPC has fully evaluated whether all of this additional generation is actually needed to meet demand; the costs to comply with the suite a new environmental regulations promulgated by the U.S. EPA, and other provisions of the Inflation Reduction Act; and if EKPC could avoid costs by retiring or

fully converting some of its coal-fired generation assets or investing more 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.

Although only necessary to satisfy one, Sierra Club satisfies both of the two independently sufficient bases for timely 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.”¹⁷

Kentucky law requires that a utility obtain a CPCN for “the construction of any plant, equipment, property, or facility” with limited exceptions.¹⁸ To receive a CPCN, a utility must show (1) a need for the construction and (2) an absence of wasteful duplication.¹⁹ Need requires “a showing of a substantial inadequacy of existing service.”²⁰ Wasteful duplication means “an excess of capacity over need” and “an excessive investment in relation to productivity or

¹⁷ 807 K.A.R. 5:001, Section 4(11)(b).

¹⁸ K.R.S. § 278.020(1)(a).

¹⁹ *Ky. Utils. Co.*, 252 S.W. 2d at 890; *In re: Elec. Application of Kentucky Power Co. for a CPCN*, Case No. 2022-00118, Final Order (Ky. P.S.C. Sept. 22, 2022) at 16-17, https://psc.ky.gov/pscscf/2022%20Cases/2022-00118//20220922_PSC_ORDER.pdf.

²⁰ Case No. 2022-00118, Final Order (Ky. P.S.C. Sept. 22, 2022) at 16 (quoting *Ky. Utils. Co.*, 252 S.W. 2d at 890).

efficiency, and an unnecessary multiplicity of physical properties.”²¹ Demonstrating an absence of wasteful duplication requires showing that “a thorough review of all reasonable alternatives has been performed.”²² The proposal selected need not be the absolute least cost, but “[t]he fundamental principle of reasonable least-cost alternative is embedded in [the] analysis.”²³

Sierra Club is seeking to present testimony regarding whether the Liberty RICE Facility proposed by EKPC, in conjunction with the additional generation resources proposed, without the offset of the retirement of any other generation assets might be wasteful duplication in light of demand growth, possible future economic development, and the full range of regulatory, capital, operating, and fuel costs that Spurlock and Cooper face. The Commission cannot reach a logical determination on the reasonableness of the proposed capital investment without evaluating each of those issues.

Sierra Club routinely intervenes in public utility commission proceedings nationwide and in Kentucky. 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, and inform the Commission’s ultimate decision about the prudence, necessity, and public interest in EKPC’s proposed Liberty RICE Facility. Through discovery, the filing of expert testimony, examination of witnesses, and legal briefing, Sierra Club will help to illuminate whether the

²¹ *Id.*

²² Case No. 2022-00118, Final Order (Ky. P.S.C. Sept. 22, 2022) at 16.

²³ *Id.* at 16-17.

proposed Liberty Rice Facility, in conjunction with the soon to be proposed 745 MW combined cycle plant at the Cooper Station and 757 megawatts of renewable energy proposed under its New ERA grant,²⁴ without the retirement or full gas conversion of any of its existing coal-fired units, is the least-cost path when considered against the backdrop of environmental risks associated with newly promulgated rules. 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 others. The organization has particular expertise with analysis of how utilities should address demand growth and 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 revised Mercury Air Toxics Standard Rule (“MATS”), the Good Neighbor Plan, and other federal rules. 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 there is 1) a need for the construction and (2) an absence of wasteful duplication.²⁵

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. The Commission has set a case schedule for this proceeding, and this motion for intervention meets the established intervention deadline of October 28, 2024. Except for EKPC’s filing of the CPCN Application

²⁴ U.S. Dep’t of Agriculture, Empowering Rural America Program: Project Announcements, <https://www.rd.usda.gov/empowering-rural-america-program-project-announcements>.

²⁵ *Ky. Utils. Co.*, 252 S.W. 2d at 890; *In re: Elec. Application of Kentucky Power Co. for a CPCN*, Case No. 2022-00118, Final Order (Ky. P.S.C. Sept. 22, 2022) at 16-17, https://psc.ky.gov/pscscf/2022%20Cases/2022-00118//20220922_PSC_ORDER.pdf.

and supporting testimony and exhibits, 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].”²⁶

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.”²⁷ No other party to this docket adequately represents the institutional and policy interests of Sierra Club and its members, including as it 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 also has an interest in ensuring that utilities do not overbuild fossil fuel generation resources that exceed actual demand. 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,”²⁸ 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

²⁶ 807 K.A.R. 5:001, Section 4(11)(b).

²⁷ *Id.*

²⁸ *Id.*

ways. These interests are implicated “in the case,”²⁹ 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,”³⁰ 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: October 28, 2024

Respectfully submitted,

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²⁹ *Id.*

³⁰ *Id.*

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 October 28, 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