

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE GAS)	
AND ELECTRIC COMPANY FOR AN ADJUSTMENT)	
OF ITS ELECTRIC AND GAS RATES, AND)	Case No. 2025-00114
APPROVAL OF CERTAIN REGULATORY AND)	
ACCOUNTING TREATMENTS)	

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 Louisville Gas and Electric Company (“LGE” or “the Company”). Sierra Club is concurrently petitioning for intervention in the rate case filed by LGE’s sibling utility, Kentucky Utilities (“KU”), in Case No. 2025-00113. In their rate cases, KU and LG&E (together “the Companies”) are seeking approval for an adjustment of their base rates using a forecasted test year and included other related accounting requests and tariff changes, including a new “extremely high load factor” (“ELHF”) rate that would apply to data centers and other customers with large electricity demands (more than 100 MVA) and expected average load factors above 85 percent.¹ KU’s application requests Commission approval of rates to reflect a revenue increase of \$226.1 million (11.5%), LG&E’s application requests Commission approval of rates to reflect a revenue increase of \$104.9 million (8.3%) for its electric operations and \$59.5 million (14.0%) for its gas

¹ *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and Approval of Certain Regulatory and Accounting Treatments*, Case No. 2025-00114, Testimony of Michael Hornung at 4 (May 30, 2025).

operations, and these proposed increases reflect a requested return on equity of 10.95%.² The application proposed the rates become effective on July 1, 2025, and by subsequent Order of the Commission will not become effective until December 31, 2025.³ LGE’s application in this matter states that the average monthly residential electric bill increase sought here would raise those rates by 10.1 percent, or approximately \$11.04, for a customer using 866 kWh of electricity per month, which is the average monthly consumption of an LGE residential customer.⁴ Sierra Club seeks full intervention to help ensure that the proposed rates are approved only if they are appropriately structured and scaled to protect Sierra Club’s members’ interests in low-cost service in the Company’s service territory.

The rate increases, changes, and investments, among other matters at issue in this case, would directly affect residential customers who are members of Sierra Club. Sierra Club has extensive experience evaluating the issues raised in the Companies’ applications. Sierra Club has previously intervened in general rate cases, integrated resource planning (“IRP”) dockets, and demand-side management (“DSM”) proceedings, in Kentucky as well as many other jurisdictions, including several dockets initiated by the Companies.⁵ Indeed, Sierra Club has been participated as a party in each of the Companies’ last three general rate cases, the Companies’ 2022 certificate of public convenience and necessity (“CPCN”) docket, case no. 2022-00402,

² *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and Approval of Certain Regulatory and Accounting Treatments*, Case No. 2025-00113, Testimony of Robert Conroy at 2 (May 30, 2025).

³ *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and Approval of Certain Regulatory and Accounting Treatments*, Case No. 2025-00114, Order at 1 (June 18, 2025).

⁴ *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and Approval of Certain Regulatory and Accounting Treatment*, Case No. 2025-00114, Application at 4 (May 30, 2025).

⁵ *See, e.g., Electronic Applications of Kentucky Utilities Company for an Adjustment of its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishing a One-Year Subcredit*, Case No. 2020-00349, Order at 1-2 (Dec. 30, 2020).

and is currently participating as an intervenor in two LGE/KU dockets pending before the Public Service Commission: case no. 2024-00326 (2024 Joint IRP),⁶ and case no. 2025-00045 (Joint CPCN application).⁷ Sierra Club has regularly intervened successfully in matters before the Kentucky Public Service Commission and in other jurisdictions nationwide, including numerous proceedings regarding the Companies' proposed rate increases. 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 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."⁸

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 2.1 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.⁹ Sierra Club's Kentucky address is: Sierra Club, Kentucky Chapter, P.O. Box 1368, Lexington, KY 40588.

⁶ *Electronic 2024 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2024-00326, Order (Nov. 21, 2024).

⁷ *Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility*, Case No. 2025-00045, Order (Mar. 31, 2025).

⁸ *See, e.g., In re: Electronic Application of Louisville Gas and Electric Co. for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Order (Jan. 11, 2017) at 3; *In re: Electronic Application of Kentucky Utilities Co. for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00370, Order (Jan. 11, 2017) at 3; *In re: Application of Kentucky Utilities Co. for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Order (Jan. 13, 2015) at 4-5; *In re: Application of Louisville Gas and Electric Co. for an Adjustment of Its Electric Rates*, Case No. 2014-00372, Order (Jan. 13, 2015) at 4.

⁹ 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 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 KU and LGE and/or (b) live, work, and recreate in and around the Companies' power generation units, and who will be directly affected by any Commission order increasing electric utility rates for customers that live within LGE and KU's service territories.

Sierra Club and its members who are LG&E and KU customers and have an interest in ensuring the Companies provide for the least-cost means of meeting customer energy and reliability needs based on reasonable load forecasts while also avoiding unnecessary pollution and unnecessary construction of generation sources, all of which could be impacted by the proposed new electric rates, including the proposed extremely high load factor tariff. Sierra Club and its members have economic and environmental interests in ensuring the Companies pursue smart grid investments and electric vehicle ("EV") rates that help alleviate the need for new generation and keep electric rates affordable for all customers, including those that do not drive EVs. Sierra Club members who are LG&E and KU customers have an economic interest in ensuring that future electricity rates truly represent the least-cost option and don't include expensive speculative overbuilds, 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 and ensuring that utility rates and programs are structured to ensure there is no unnecessary construction of new fossil fuel generation sources. 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. Sierra Club is interested in, and knowledgeable about, rate structures that do not perversely

disincentivize energy efficiency or conservation; net metering tariffs that accurately reflect the true value conferred on a utility's system by distributed solar generation; the comparative economics of the Companies' generating fleet, power purchase agreements, and potential alternative sources of cost-effective reliable power; effective rate structures to ensure off-peak charging by EV drivers; rate structures that will protect existing ratepayers from risks posed by speculative data center proposals, and other issues implicated by LGE's application.

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 energy sources, preventing the unnecessary buildout of fossil fuel-based generation for speculative load growth that may never materialize, 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 members' interests in ensuring that LG&E/KU's rates are well structured and reasonable.

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 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 Present Issues and Develop Facts That Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings.

The Commission should grant Sierra Club full 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.”¹⁰ In past cases before this Commission, Sierra Club has conducted discovery and cross-examination, and submitted testimony and briefing, that has helped to illuminate material issues concerning Companies’ proposed increases in fixed customer charges, AMI deployment, and recovery of energy investments and operating expenses. In those cases, as here, Sierra Club’s participation will help the Commission and other parties in developing relevant facts and in fully evaluating the impacts of the Companies’ proposed rates.

Coinciding with a national boom in data center construction, Kentucky’s efforts to attract new data centers to the Commonwealth, and forecasted increases in future load growth in the Companies’ service territories driven largely by data center inquiries, the Companies are proposing a new tariff applicable to what it terms “extremely high load factor” customers, which are those with high loads (above 100 MVA) with load factors above 85 percent.¹¹ The Companies recognize that the emergence of a low number of extremely high load factor customers could cause the need for additional generation resources, and that as such, these customers pose “potential financial impacts to the Companies and their other customers,” necessitating a new rate.¹² Through this new rate, the Companies propose adding three specific

¹⁰ 807 K.A.R. 5:001, Section 4(11).

¹¹ *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and Approval of Certain Regulatory and Accounting Treatments*, Case No. 2025-00114, Testimony of Michael Hornung at 4-8 (May 30, 2025).

¹² *Id.* at 4.

rate design components intended to protect existing ratepayers: increased minimum billing demands, 15-year minimum contract lengths, and enhanced collateral requirements due at the time of signing an agreement for electric service.¹³

Sierra Club experience both nationally and in Kentucky advocating for appropriate utility responses to the exponential increase in data center proposals. Nationally, Sierra Club is participating in utility commission dockets addressing data center load growth and/or electric rates applicable to data centers in several states, including Louisiana, Maryland, Michigan, Minnesota, Missouri, North Carolina, Pennsylvania, and Virginia. In Kentucky, Sierra Club is participating in the Companies' 2025 CPCN application, case no. 2025-00045, which specifically addresses data center load growth and new generation resources to serve the forecasted increase in electricity demand. In this docket, as in 2025-00045,¹⁴ Sierra Club will present expert testimony addressing the proposed ratepayer protections put forward by the Companies, and offer additional protections for ratepayers that could be incorporated into the proposed EHLF rate. Specifically, through requests for information, expert testimony, and briefing, Sierra Club intends to advocate that specific protections in any final EHLF rate include, at a minimum, the following, which would require modifications to the Companies' proposed rate offering. First, the rate should include a requirement that the large load customer enter into at least a 15-year service contract with advanced notification requirements for discontinuation of service and change in load requirements. Second, the rate must include adequately structured collateral related to the minimum bill. Third, the rate should identify costs that will be covered by the large load customer, including feasibility study costs and contributions in aid of

¹³ *Id.*

¹⁴ Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility, Case No. 2025-00045, Testimony of Stacy Sherwood at 4 (June 16, 2025).

construction, and it should establish appropriately structured minimum load factors and minimum demand charges to encourage consistent energy usage by the new large load customers.

Additionally, in the application, LGE proposes specific changes to electric vehicle rates, as outlined in the testimony of Michael Hornung.¹⁵ Among other things, the proposed changes the Companies' EV rates include amending the allowable charger types for certain rates, increasing the non-metered energy consumption provisions for a specific sub-set of chargers, merging two existing rate into a single Rate EVC offering, moving public charging pricing from a time-based charge based on how long a vehicle is at a public charger to a per-kWH charge based on the amount of energy delivered by the charger to the vehicle, and includes adding revenue requirements from Level 3 direct current fast chargers ("DCFC") stations into the rate base, which is a change from the 2020 rate cases.¹⁶ Sierra Club has extensive experience in participating in Public Utility Commission and Public Service Commission dockets examining appropriate ways to incentivize EV adoption and the varied approaches utilities take to structuring rates for different EV use cases (such as residential, workplace, public level 2, and DCFC charging for light-, medium-, and heavy-duty vehicles) in several states, including California, Georgia, Illinois, Massachusetts, Maine, Michigan, Minnesota, New York, New Jersey, North Carolina, Pennsylvania, Vermont, Virginia, and Washington, among others.

LG&E/KU's applications deal with complicated issues that could have impacts on ratepayers for generations to come. Sierra Club respectfully submits that its participation will help develop a thorough record, stimulate a robust evaluation of the issues, and inform the

¹⁵ *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and Approval of Certain Regulatory and Accounting Treatments*, Case No. 2025-00114, Testimony of Michael Hornung at at 14-16 (May 30, 2025).

¹⁶ *Id.*

Commission's ultimate decision on the proposed rate increases is well informed and promotes the public's interest. Through discovery, the filing of expert testimony, examination of witnesses, and legal briefing, Sierra Club will help to illuminate the ratepayer implications of proposed rates and offer specific means of improving ratepayer protections in this docket, particularly on how to structure rates for new large load customers in ways that do not unnecessarily burden existing customers. Sierra Club has knowledge of and experience with these kinds of questions, having previously studied, argued, and helped resolve them in Commissions across the country. The organization has particular expertise with analysis of how utilities and commissions should appropriately handle load growth stemming from data centers and electric vehicles.

In sum, if granted intervention, Sierra Club will develop facts and present issues (developed through requests for information, other available data, and expert testimony) to assist the Commission in fully considering LG&E/KU's proposed rate increases, without unduly complicating or disrupting the proceeding.

B. Movants Have Special Interests Not Otherwise Adequately Represented.

As noted above, 807 K.A.R. 5:001, Section 4(11) provides two alternative bases for granting full intervention. Parties either need to have a special interest not adequately represented or present issues and facts that will help the Commission fully consider the matter. As explained in Section II.A., above, Sierra Club will present issues and facts that will help the Commission fully consider the matter. Therefore, the Commission can grant full intervention on that basis alone and need not consider Sierra Club's special interest. Nevertheless, as explained below, Sierra Club also has special interests that are not adequately represented.

Sierra Club has members who are customers and ratepayers of LG&E/KU, who fund LG&E/KU's operations, and the Commission's decision about whether to grant the increases that will have significant impacts to their residential utility bills for many years. In addition,

Sierra Club will work to ensure that rates applicable to new data centers protect existing residential customers from rate increases driven primarily by those large load customers, which is likely to be an issue of statewide concern for many years and is directly at issue in this proceeding.

Sierra Club's interests are not adequately represented by any of the parties in the proceeding, as none of the other parties can adequately represent Sierra Club's interests as an organization that is interested in ensuring that utilities do not overbuild fossil fuel generation, invest in unnecessary capital upgrades at aging coal plants when lower carbon generation sources represent the most reasonable and cost-effective way for LG&E/KU to maintain essential electric services, and meet possible but still emerging new demand.

The Attorney General cannot adequately represent Sierra Club's interests.¹⁷ The Attorney General has the unenviable task of representing all consumers and all of their diverse interests, even if some of the interests are diametrically opposed to each other. In fact, courts have "repeatedly held that private companies can intervene on the side of the government, even if some of their interests converge."¹⁸ That is because "government entities are usually charged with representing the interests of the American people, whereas aspiring intervenors, like the [Sierra Club] here, are dedicated to representing their personal interests or the interests of their

¹⁷ The Commission allowed Sierra Club and other environmental organizations to recently intervene in three dockets in which the Attorney General had already intervened. *See, e.g., In re: Application of Duke Energy Kentucky, Inc., for (1) an Adjustment of Electric Rates; (2) Approval of New Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities*, Case No. 2022-00372, Order (Jan. 6, 2023), https://psc.ky.gov/pscscf/2022%20Cases/2022-00372//20230106_PSC_ORDER.pdf; *In re: Joint Application of Kentucky Utilities Co. and Louisville Gas and Electric Co. for Certificates of Public Convenience and Necessity and Site Compatibility Certificates, Approval of a Demand-Side Management Plan, and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-00402, Order (Feb. 9, 2023), https://psc.ky.gov/pscscf/2022%20Cases/2022-00402//20230209_PSC_ORDER.pdf; *In re: Elec. 2024 Integrated Resource Plan of Duke Energy Kentucky*, Case No. 2024-00197, Order (Aug. 6, 2024), https://psc.ky.gov/pscscf/2024%20Cases/2024-00197//20240806_PSC_ORDER.pdf.

¹⁸ *See, e.g., Hardin v. Jackson*, 600 F.Supp.2d 13, 16 (D.D.C. 2009).

members or members' businesses.”¹⁹ While the Attorney General is tasked with representing the overall, and sometimes conflicting, public interest(s) in this proceeding, Sierra Club has a narrower interest and concern in ensuring that fossil fuel generation is not unnecessarily built and that all reasonable new generation approved for construction reflects the least-cost reliable option after a robust examination of all viable alternatives are adequately presented to the Commission.

The Attorney General has previously encouraged the Commission to allow public interest groups to intervene when the “Attorney General is not capable of providing the same perspective and representation” as a public interest group.²⁰ Moreover, the Commission cannot interpret its regulations to provide that the mere fact that the Attorney General intervened in this case to mean that Sierra Club's interests are adequately represented, for that is the situation in every case. Such an interpretation would render the intervention provision for parties other than the Attorney General superfluous, which would run contrary to the rules of statutory and regulatory interpretation.²¹

Finally, although Sierra Club and its members could submit public comments, the ability to offer a public comment is not a substitute for the complete participation afforded to parties.

While a public comment is filed in the case record, public commenters are not deemed parties to

¹⁹ *County of San Miguel v. MacDonald*, 244 F.R.D. 36, 48 (D.D.C. 2007) (internal quotation marks omitted); *see also Purnell v. City of Akron*, 925 F.2d 941, 949-950 (6th Cir. 1991) (granting intervention in a wrongful death suit when intervenors' interests were personal and narrower than the current defendants); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 737 (D.C. Cir. 2003) (movant satisfied its burden where it sought to protect interests that were “more narrow and parochial” than the government's interests [internal quotations omitted]); *Am. Horse Prot. Ass'n v. Veneman*, 200 F.R.D. 153, 159 (D.D.C. 2001) (granting intervention of right where intervenors had “more narrow interests and concerns” than the government entity); *Jansen v. City of Cincinnati*, 904 F.2d 336, 343 (6th Cir. 1990) (granting intervention when intervenors agreed with the government's conclusion but differed in their rationale); *S. Utah Wilderness v. Norton*, 2002 WL 32617198, at *5 (D.D.C. June 28, 2002) (concluding that government entity may not adequately represent specific interests of private entity).

²⁰ *See In re: Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service*, Case No. 2009-00141, Attorney General's Comments Regarding Motion of Stand Energy Corporation Customer Group to Intervene (June 17, 2009) at 1-2 (arguing that the Commission should grant the SEC Customer Group's motion to intervene), https://psc.ky.gov/PSCSCF/2009%20cases/2009-00141/20090617_AG_Comments.PDF.

²¹ *See Lexington-Fayette Urban County Gov't v. Johnson*, 280 S.W.3d 31, 34 (Ky. 2009); *Univ. of the Cumberland v. Pennybacker*, 308 S.W.3d 668, 683-84 (Ky. 2010).

the proceedings and are not named as parties to any appeal.²² Only parties to the proceedings are afforded the right to review confidential information (subject to appropriate protective agreements),²³ to ask and answer requests for information,²⁴ to participate in conferences with Commission staff,²⁵ to offer testimony from an expert witness, and to cross-examine witnesses at a hearing, if requested.

The Commission should grant Sierra Club intervention as it has special interests that are not adequately represented.

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: June 25, 2025

Respectfully submitted,

/s/ Joe F. Childers

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²² 807 K.A.R. 5:001, Section 4(11)(e).

²³ 807 K.A.R. 5:001, Section 13(6).

²⁴ 807 K.A.R. 5:001, Section 4(12).

²⁵ 807 K.A.R. 5:001, Section 9(4).

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 25, 2025, 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