

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF (1) A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY TO MAKE THE CAPITAL)	
INVESTMENTS NECESSARY TO CONTINUE)	
TAKING CAPACITY AND ENERGY FROM)	Case No. 2025-00175
THE MITCHELL GENERATING STATION)	
AFTER DECEMBER 31, 2028, (2) AN)	
AMENDED ENVIRONMENTAL COMPLIANCE)	
PLAN, (3) REVISED ENVIRONMENTAL)	
SURCHARGE TARIFF SHEETS, AND (4) ALL)	
OTHER REQUIRED APPROVALS AND)	
RELIEF)	

SIERRA CLUB’S MOTION TO INTERVENE

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001, Section 4(11), and the Commission’s August 1, 2025 Order in this matter, Sierra Club respectfully moves for full intervention in the above-captioned proceeding filed by Kentucky Power Company. Kentucky Power Company (“the Company”) has applied for a Certificate of Public Convenience and Necessity (“CPCN”) to make the capital investments necessary to continue its ownership interest in the Mitchell coal-fired power plant beyond December 31, 2028. Sierra Club seeks full intervention to help ensure that the CPCN is approved only if it represents the best option to satisfy Kentucky Power’s customers’ interest in low-cost service.

On June 30, 2025 Kentucky Power filed its CPCN application requesting approval to extend its 50 percent interest in the Mitchell coal-fired power plant beyond the end of calendar

year 2028, and other relief.¹ The 1,560 MW Mitchell plant is located on the Ohio River roughly 12 miles south of Moundsville, West Virginia, operated by the Wheeling Power Company, and began operating in 1971.² Based on the Kentucky Public Service Commission’s (“the Commission”) Order in case No. 2021-0004, to which Sierra Club was a party, Kentucky Power cannot receive energy and capacity from the Mitchell Plant beyond December 31, 2028.³

According to the Application, the investment necessary includes 50 percent of the net plant balances for expenditures on compliance costs for the 2020 Effluent Limitation Guideline (“2020 ELG Rule”) (\$57.8 million), and 50 percent of the costs West Virginia has paid and will pay for 2020 ELG Rule compliance through the end of 2025 (\$20.1 million), and 50 percent of the ongoing operations and maintenance costs.⁴ The Company estimates the total investment of the proposal at \$138,238,191.⁵

Sierra Club has extensive experience evaluating the issues raised in the Company’s Application, including assessing costs associated with the 2020 ELG Rule and ongoing operations of the Mitchell plant. Sierra Club has regularly intervened successfully in matters before the Kentucky Public Service Commission, including numerous proceedings regarding CPCNs. In fact, Sierra Club has participated as an intervenor in Case No. 2021-0004, which resulted in the order requiring the company to stop taking power from the Mitchell plant by the

¹ *Elec. Application of Kentucky Power Company for Approval of (1) a Certificate of Public Convenience and Necessity to Make the Capital Investments Necessary to Continue Taking Capacity and Energy from the Mitchell Generating Station After December 31, 2028, (2) an Amended Environmental Compliance Plan, (3) Revised Environmental Surcharge Tariff Sheets, and (4) All Other Required Approvals and Relief*, Case No. 2025-00175, Application at 1 (June 30, 2025) (hereinafter “Application”).

² *Id.* at 2-3.

³ *Id.* at 3.

⁴ *Id.* at 7.

⁵ *Id.*

end of 2028. As the Commission has previously recognized, it should grant Sierra Club's motion to intervene because Sierra Club is "likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings."⁶

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 Kentucky Power. 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.⁷ 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 the Company and/or (b) live, work, and recreate in and around the Mitchell power plant, and who will be directly affected by any Commission order regarding the proposed CPCN and other requested relief.

Sierra Club and its members who are Kentucky Power customers or otherwise directly impacted by the Company's facilities have economic and environmental interests in ensuring that

⁶ *In the Matter of: Electric Application of Kentucky Power Company for Approval of a Certificate of Public Convenience and Necessity for Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets*, Case No. 2021-00004, Order at 1 (Mar. 5, 2021).

⁷ 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.

Kentucky Power's investments and retention of its ownership interest in the Mitchell plant does not unduly burden its customers and provides for the least-cost means of meeting customer energy and reliability needs. 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 Kentucky Power customers have an economic interest in ensuring that future electricity rates truly represent the least-cost option and don't include expensive and unnecessary investments in coal-fired generation.

Sierra Club is interested in, and knowledgeable about, resource planning and capital spending, and their consequences for fair, just, and reasonable rates. Cases featuring economic assessments of alternative means of compliance with environmental regulations such as the 2020 ELG Rule, and other existing or imminent environmental compliance requirements, are central to Sierra Club's interest and expertise in advocacy at public utility commissions. Sierra Club routinely provides testimony and argument on these questions, developing the record and assisting commissions in identifying pathways that are lawful, practicable, cost- and risk-minimizing, and otherwise a reasonable way of providing reliable service to ratepayers.

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 there are no unnecessary investments in aging fossil fuel generation sources, including those at issue here, which are more than 50 years old. 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 energy sources. Sierra Club seeks full intervention to ensure that Kentucky Power's investment, operational, and resource decisions are reasonable, and that Sierra Club's members' interests—many of whom are ratepayers and will bear the costs of Kentucky Power's investment decisions—are fully represented.

Specifically, Sierra Club will investigate, among other issues, whether the Company's proposed \$138 million investment in the Mitchell plant represents the least-cost option for customers, especially in light of future environmental compliance obligations as well as the availability of lower-cost resource options. Sierra Club may advance other positions as it conducts discovery in this proceeding.

II. THE COMMISSION SHOULD GRANT SIERRA CLUB'S MOTION

Sierra Club satisfies either of the two independently sufficient bases for timely intervention. First, Sierra Club will smoothly aid the Commission's full consideration of the matters at hand—as it has done 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.”⁸ As noted above, this CPCN application

⁸ 807 K.A.R. 5:001, Section 4(11).

features issues that implicate Sierra Club’s expertise—including, *inter alia*, the prudence of Kentucky Power’s plan to comply with the ELG Rule by spending tens of millions of dollars on capital investments to retain its interest in Mitchell past 2028, rather than foregoing those investments. Sierra Club plans on developing the record in this case through discovery, potentially expert testimony, witness examination, and briefing on that issue and possibly others. This will aid the Commission by scrutinizing the Company’s decision-making, elucidating viable alternatives and their risks and costs, gathering data, potentially supplying expert analysis, and otherwise informing the consideration of whether the proposed projects and their requested costs will result in reliable service, reasonably minimize costs and risks, and render rates that are “fair, just and reasonable.” K.R.S. § 278.030(1).

Sierra Club’s participation here will not only “assist the commission in fully considering” the issues, but will do so without unduly complicating or disrupting the proceedings. 807 K.A.R. 5:001 § 4(11)(b). Sierra Club is represented by experienced counsel and will comply with all Commission rules and deadlines, as it has in the past.

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, 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 of Kentucky Power, and will therefore bear the costs associated with Kentucky Power’s operational and investment decisions. Accordingly,

the Commission's decision about whether to grant the Company's application to invest more than \$138 million in a 50-year old coal-fired power plant will directly impact Sierra Club members' electricity bills. In addition, Sierra Club members live within the Kentucky Power service territory and, therefore, are impacted by the economic, public health, and environmental impacts of Kentucky Power's continued investment in the aging, and increasingly expensive, Mitchell power plant. In addition, Sierra Club's desire to ensure that utilities in Kentucky do not imprudently invest in fossil-fuel generation when other less-carbon intensive and less expensive alternatives are available is directly related to the issues of 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 works to ensure utilities do not unwisely invest in coal-fired generation. Sierra Club's participation will help ensure that any approved investments represent the most reasonable and cost-effective way for Kentucky Power to maintain essential electric services and meet demand.

The Attorney General cannot adequately represent Sierra Club's interests.⁹ The Attorney General has the unenviable task of representing all consumers and all of their diverse interests,

⁹ The Commission allowed Sierra Club and other environmental organizations to intervene in several dockets in which the Attorney General had already intervened. *See, e.g., In re: Elec. 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: Elec. Joint Application of Kentucky Utilities Co. and Louisville Gas and Electric Co. for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand-Side Management Plan*, 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.

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.”¹⁰ 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 members or members’ businesses.”¹¹ While the Attorney General is tasked with representing the overall, and sometimes conflicting, public interests in this proceeding, Sierra Club has a narrower interest and concern in ensuring that fossil fuel generation is not unnecessarily built and that all coal-fired generation investments reflect 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.¹² Moreover, the Commission cannot interpret its

¹⁰ See, e.g., *Hardin v. Jackson*, 600 F.Supp. 2d 13, 16 (D.D.C. 2009).

¹¹ *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. 2002) (concluding that government entity may not adequately represent specific interests of private entity).

¹² 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.

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.¹³

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 the proceedings and are not named as parties to any appeal.¹⁴ Only parties to the proceedings are afforded the right to review confidential information (subject to appropriate protective agreements),¹⁵ to ask and answer requests for information,¹⁶ to participate in conferences with Commission staff,¹⁷ 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.

¹³ See *Lexington-Fayette Urban County Gov't v. Johnson*, 280 S.W.3d 31, 34 (Ky. 2009); *Univ. of the Cumberlands v. Pennybacker*, 308 S.W.3d 668, 683-84 (Ky. 2010).

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

¹⁵ 807 K.A.R. 5:001, Section 13(6).

¹⁶ 807 K.A.R. 5:001, Section 4(12).

¹⁷ 807 K.A.R. 5:001, Section 9(4).

Dated: August 6, 2025

Respectfully submitted,

/s/ Joe F. Childers

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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 August 6, 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