

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

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Joint Application Of Louisville Gas And Electric Company )  
and Kentucky Utilities Company for Certificates of Public )  
Convenience and Necessity for the Construction of a Combined )  
Cycle Combustion Turbine at the Cane Run Generating )  
Station and the Purchase of Existing Simple Cycle Combustion )  
Turbine Facilities from Bluegrass Generation Company, LLC )  
in LaGrange, Kentucky )

PUBLIC SERVICE  
COMMISSION

CASE NO. 2011-00375

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PETITION OF SIERRA CLUB AND THE NATURAL RESOURCES DEFENSE  
COUNCIL FOR FULL INTERVENTION

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Pursuant to K.R.S. § 278.310 and 807 K.A.R. § 5:001 § 3(8), Sierra Club and the Natural Resources Defense Council (“NRDC”) (collectively “Movants”), petition the Commission for full intervention in this case. The Movants have a wealth of knowledge and experience in a wide variety of the complex and rapidly changing issues which impact Louisville Gas & Electric (“LG&E”) and Kentucky Utilities Company’s (collectively, the “Companies”) application for Certificates of Public Convenience and Necessity, and interests in this proceeding that are not adequately represented by any other party to the proceeding. The Movants seek full intervention to help to ensure that any Certificates of Public Convenience and Necessity are approved only if they represent the best option to satisfy their members’ interest in low cost energy service, while at the same time ensuring energy efficiency programs are maximized and that the Companies adequately considered renewable energy sources.

On September 15, 2011, the Companies filed a joint application for Certificates of Public Convenience and Necessity and a Site Compatibility Certificate for the construction of a 640

MW net summer rating natural gas combined cycle combustion turbine (“NGCC”) at the Companies’ Cane Run Generating Station, including a 20-inch natural gas pipeline, and for the purchase of Bluegrass Generation Company, LLC’s facilities in LaGrange, Kentucky, which include natural gas simple cycle combustion turbines (“SCCT”). The Companies claim these new operating systems are required to offset a capacity shortfall that will occur because of the retirements of Cane Run, Green River and Tyrone coal-fired power plants.

In order to comply with promulgated or emerging Clean Air Act standards, the Companies would need to retrofit the Cane Run, Green River and Tyrone coal-fired power plants. The Companies’ 2011 IRP found that it was more economic to retire these units at the end of 2015 rather than retrofit them. The Companies submitted a request for proposals (“RFP”) in December 2010 for electric energy and capacity. Responses to the RFP included power purchase agreements and asset sale offers for gas, coal, nuclear, wind, biomass and solar technologies. The Companies determined that the least-cost alternative for complying with the aforementioned EPA regulations and meeting the capacity and energy needs beginning in 2016 is to build a 640 MW net summer rating NGCC at the Companies’ Cane Run facility (“CR7”) and to purchase Bluegrass Generation Company, LLC’s existing SCCT facilities in LaGrange, Kentucky.

This proceeding comes at a critical juncture for both the Companies and the state of Kentucky. Existing or expected federal Clean Air Act and Clean Water Act regulations will require coal-fired power plants to either install pollution controls on coal units or to retire such units. Technological advances and changes in market conditions have made a larger suite of both supply- and demand-side options available for the Companies to provide service to their customers. Moreover, growing awareness of the public health, environmental, and economic impacts of energy production have increased the importance of the pursuit of energy efficiency

and renewable energy resources from both a cost and environmental perspective. For the Commission, energy efficiency and conservation are paramount considerations for determining the rates and services of utilities and *their importance will continue to grow* “as more constraints are . . . placed on utilities that rely significantly on coal-fired generation.”<sup>1</sup> In short, the Companies face a new reality involving a growing set of costs to its existing generation fleet, an expanding set of options for how to service its customers, and an increasingly complex set of factors relevant to identifying the lowest cost mix of supply- and demand-side resources for meeting its customers’ needs. While natural gas may represent the least cost alternative, Movants want to ensure that proper consideration was given to energy efficiency, demand side management, and renewable supply options. The Movants, on behalf of their members, have gained significant expertise on these issues in proceedings throughout the country, and seek to bring such expertise to this proceeding.

## **I. THE MOVANTS**

Movants seek full intervention in order to ensure that their interests in lower cost and cleaner energy options are fully represented, and to bring to this proceeding their expertise in developing plans for providing a lower cost and cleaner energy future.

Sierra Club is one of the oldest conservation groups in the country with over 625,000 members nationally in sixty-four chapters in all fifty states including the District of Columbia and Puerto Rico. Sierra Club has over 5,000 members in Kentucky, which are part of the Cumberland Chapter. This chapter has five groups including a Northern Kentucky group and a Bluegrass Group. The Cumberland Chapter’s address is:

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<sup>1</sup> *In the Matter of: Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities* (Case No. 2010-00204) Order, Sept. 30, 2010 at 20 (noting that the Commission stated its support for energy-efficiency programs in a report “to the Kentucky General Assembly in July 2008 pursuant to Section 50 of the 2007 Energy Act”).

Sierra Club  
Cumberland Chapter  
P.O. Box 1368  
Lexington, KY 40588-1368

The Natural Resources Defense Council (“NRDC”) is a national non-profit environmental organization, headquartered in New York, that has worked for its 40-year history to, among other things, promote energy efficiency and renewable energy sources, and protect air and water quality. NRDC has 2,942 members in Kentucky, many of whom reside in the Companies’ service areas and/or live near the Companies’ existing power generating facilities. NRDC has a Midwest Office, which address is:

Natural Resources Defense Council  
2 N. Riverside Plaza, Suite 2250  
Chicago, IL 60660

## **II. LEGAL BACKGROUND**

The Commission’s regulations regarding intervention provide that a person may seek leave to intervene in a Commission proceeding and, upon timely motion:

If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by [the] party 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, such person shall be granted full intervention.

807 K.A.R. 5:001 § 3(8)(emphasis added). In other words, the Commission must grant full intervention if Movants either have interests in this proceeding that are not adequately represented or they offer expertise that would assist in evaluation of the application for Public Convenience and Necessity. As explained below, Movants satisfy both standards for intervention.

Movants are seeking intervention in a Certificates of Public Convenience and Necessity proceeding that is governed by KRS § 278.020(1).<sup>2</sup> Pursuant to that statute, the Companies cannot install equipment until it receives a certificate that “public convenience and necessity require the service or construction.” KRS § 278.020(1). The Commission has the right to “issue or refuse to issue the certificate, or issue it in part and refuse it in part.” *Id.* This proceeding is intended to evaluate the reasonableness of the Companies’ submission and to identify possible improvements or less costly alternatives.

### **III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION**

#### **A. This Petition to Intervene is Timely Filed.**

This request to intervene is timely. The Companies filed their application for Certificates of Public Convenience and Necessity for the construction of a 640 MW net summer rating natural gas combined cycle combustion turbine at the Companies’ Cane Run Generating Station and for the purchase of Bluegrass Generation Company, LLC’s facilities in LaGrange, Kentucky, which include natural gas simple cycle combustion turbines on September 15, 2011. On October 18, 2011, the Commission issued a scheduling order for this docket. While Movants have missed the initial round of requests for information, it is still one month before Intervenor direct testimony is due. In addition, Movants are cognizant that it will only get one round of requests for information and have included such requests with this motion so that they are compliant with the second discovery deadline. As such, this Petition is timely.

#### **B. Movants 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 Movants full intervention because they are “likely to present issues or to develop facts that assist the commission in fully considering the matter

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<sup>2</sup> Joint Application for Public Convenience and Necessity, Docket No. 2011-00375 at 1.

without unduly complicating or disrupting the proceedings.” 807 K.A.R. 5:001 § 3(8). This proceeding involves complex questions regarding whether natural gas fired facilities represent the least cost option to replacing the coal units that the Companies are retiring. According to the Companies, building a new natural gas plant and purchasing an existing natural gas plant represent the most cost effective option of the alternatives it evaluated. However, the Companies’ application and supporting testimony do not provide adequate information regarding why certain alternatives were eliminated. As parties to this proceeding, the Movants will ensure that the appropriate suites of alternatives were examined, such as replacing the capacity with renewable energy sources and/or efficiency.<sup>3</sup> Movants bring to this docket their unique perspective and experience in advancing technical and regulatory solutions to increasing renewable and demand side energy sources to all regions of the country.

Movants Sierra Club and NRDC have developed expertise that encompasses a broad range of environmental and energy concerns that fully complement the myriad of technical and policy issues parties will face in this proceeding. In particular, NRDC and Sierra Club’s staff and consultants have extensive experience in resource planning, analyzing the potential for cost effective energy efficiency, and in the laws and regulations regulating energy production. NRDC and Sierra Club have jointly or individually intervened and/or provided testimony on these issues in a multitude of similar proceedings in a number of states including Arkansas, Arizona, California, Colorado, Florida, Illinois, Iowa, Louisiana, Michigan, Mississippi, Missouri, New York, New Jersey, Nevada, Ohio, Oklahoma, Oregon, South Carolina, Utah,

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<sup>3</sup> “[A]s more constraints are . . . placed on utilities that rely significantly on coal-fired generation,” this is an important issue for the Commission to consider. *See, e.g., In the Matter of Joint Application of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of an Acquisition of Ownership and Control of Utilities* (Case No. 2010-00204) Order, Sept. 30, 2010 at 20 (noting that the Commission stated its support for energy-efficiency programs in a report “to the Kentucky General Assembly in July 2008 pursuant to Section 50 of the 2007 Energy Act”).

Wisconsin, and Wyoming. NRDC and Sierra Club have also regularly presented testimony before the U.S. Congress and various state legislatures on issues related to the electric utility industry, including energy efficiency, renewable energy, and coal generation.

Movants are aware of past holdings by the Commission that it does not make decisions about environmental regulations.<sup>4</sup> But the Movants are not seeking intervention to opine about the environmental impacts of the Companies' proposed generation plan. Instead, Movants are seeking to present testimony regarding whether the options proposed by the Companies are the least cost option in light of the full range of regulatory, capital, operating, and fuel costs that Companies' plants face, whatever need exists, and the increasing availability of low cost energy efficiency and renewable energy alternatives. The Commission cannot reach a logical determination on the reasonableness of the Companies' request to build these new generation sources without evaluating each of those issues. As such, Movants are seeking intervention to address topics that are directly at issue in this proceeding.

For example, the Companies have represented to the Commission that 500 megawatts is the maximum amount of efficiency that can be gained from DSM programs.<sup>5</sup> Movants have looked at DSM measures across the nation and sufficiently probe the application and the supporting documents to ensure that energy efficiency through DSM is maximized. By increasing energy efficiency, we can avoid the need for new polluting power plants. This is perhaps the simplest and most effective way to combat global warming by using available technologies that do the same amount of work for less energy use and money.

The Companies have also represented that the proposed natural gas units are the least cost option compared to other generation sources. The Companies arrived at this decision after

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<sup>4</sup> In the Matter of The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company (Case No. 2008-148) Order, July 18, 2008 at 5-6.

<sup>5</sup> See David S. Sinclair Direct Testimony at pg. 8.

issuing a RFP that garnered 50 proposed projects.<sup>6</sup> Through the Companies' Phase I screening, the Companies eliminated all alternatives, including renewables, except natural gas fired options (either through purchase or construction of a new unit). Movants will apply their perspective and experience to ensure that cost effective renewable generating options were not inappropriately passed over during Phase I. Movants believe that increasing renewable generation in Kentucky can help move our nation economically and environmentally in the right direction.

The Companies rejected the wind and solar proposals that they received.<sup>7</sup> Wind energy is the fastest-growing source of power on the planet. Wind energy accounted for 93 percent of total installed renewable electricity capacity in 2008. In fact, in 2008 the United States surpassed Germany as the world leader in installed wind capacity. The Department of Energy has stated that we can get 20 percent of our power from wind energy alone by 2030. Already, wind energy can compete with coal powered energy in terms of cost at around 4 cents per kilowatt hour. However, the federal government's National Renewable Energy Laboratory projects that the price of wind energy will fall even further over the next decade, making it the most economically competitive renewable energy technology. Solar energy is the cleanest, most abundant, renewable energy source available, and the U.S. has ample supplies. Solar energy electricity generation more than tripled between 2000 and 2008. All of this activity has the solar PV industry aiming to provide half of all new U.S. electricity generation by 2025.

Through full intervention, NRDC and Sierra Club will use their expertise and consultants to provide current data and analysis to investigate the adequacy of the Companies proposed generation plan, and present evidence and argument in support of energy efficiency and renewable energy resources, if they represent reasonable and prudent alternatives.

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<sup>6</sup> See David S. Sinclair Direct Testimony at pg. 17.

<sup>7</sup> Companies Application for Public Convenience and Necessity, Docket No. 2011-00375 at 4.



Movants will help the Commission to explore many of the assumptions and inputs in this application and not unduly complicate the matter. Rather, it will allow for a more robust examination to ensure that the Commission approves the least cost alternative for the Companies. Finally, the Movants are represented by experienced counsel and will comply with all deadlines in the proceeding established by the Commission. As such, Movants' participation will not disrupt this proceeding.

**C. Movants Have Special Interests in This Proceeding Which Are Not Adequately Represented.**

As noted above, 807 K.A.R. 5:001 § 3(8) 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 III.B., above, the Movants 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 the Movants' special interest. Nevertheless, as explained below, the Movants also have special interests that are not adequately represented.

Movants NRDC and Sierra Club each have members who are customers and ratepayers of LG&E and KU. As such, their members help fund the Companies' operations, and the Commission's decision about whether to grant the Certificates of Convenience and Necessity for installation of new generation sources and purchase of existing generation will directly impact their bills. In addition, the Movants' members live within the Companies' service territories and, therefore, are impacted by the economic, public health, and environmental effects of the resource decisions that the Companies make. In addition, Movants' desire to promote energy efficiency, peak demand reduction, renewable energy, and cost-effective low carbon energy sources in Kentucky is directly related to the issues of this proceeding.

Movants' interests are not adequately represented by any of the parties in the proceeding, as none of the other parties can adequately represent the Movants' interests as national organizations that are interested in the promotion of energy efficiency and renewable energy sources as the most reasonable and cost effective way for the Companies to maintain essential electric services and meet emerging federal regulatory requirements.

The Attorney General cannot adequately represent the Movants' interest. 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." *See, e.g., Hardin v. Jackson*, 600 F. Supp. 2d 13, 16 (D.D.C. 2009). That is because "government entities are usually charged with representing the interests of the American people, whereas aspiring intervenors, like the [Movants] here, are dedicated to representing their personal interests or the interests of their members or members' businesses." *County of San Miguel, Colo. v. MacDonald*, 244 F.R.D. 36, 48 (D.D.C. 2007); *Purnell v. Akron*, *Purnell v. Akron*, 925 F.2d 941, 949 (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); *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. Cincinnati*, 904 F.2d 336, 343 (6th Cir. 1990) (granting intervention when intervenors agreed with the government's conclusion but differed in their rationale); *Southern 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). While the Attorney General is tasked with representing the overall, and sometimes conflicting, public interest(s) in this proceeding, the Movants have a more narrow interest and concern in ensuring that energy efficiency and renewable energy sources are appropriately evaluated.

Moreover, the Attorney General has often opposed (or at least not affirmatively supported) DSM programs in the state of Kentucky,<sup>8</sup> which stands in stark contrast to the Movant's interest.

Thus, the Attorney General may not be able to represent the Movants' interest, or at least not as forcefully, because of the Attorney General's obligation to represent all consumers. 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.<sup>9</sup> Moreover, the Commission cannot interpret its regulations to provide that the mere fact that the Attorney General intervened in this case to mean that the public interest Movants' interest 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. *See Lexington-Fayette Urban County Government v. Johnson*, 280

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<sup>8</sup> *See, e.g., Kentucky Public Service Commission v. Commonwealth*, 2007-CA-001635-MR. (Ky. Ct. App. 2008) (Unpublished) (Attorney General appealed PSC's orders that approved Duke Energy's Accelerated Main Replacement Program (AMRP) Rider. The AMRP Riders were meant to avoid general rate increase procedures, and were pursuant in part to KRS 278.285, authorizing recovery for demand-side management through a general rate increase or separate proceeding).

<sup>9</sup> *See In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service* (Case No. 2009-00141), Attorney General's Comments Regarding the Motion of Stand Energy Corporation Customer Group to Intervene, June 17, 2009 at 1 (arguing that the Commission should grant the SEC Customer Group's motion to intervene).

S.W.3d 31, 34 (Ky. 2009), *University of Cumberlands v. Pennybacker*, 308 S.W.3d 668, 683-84 (Ky. 2010).

Finally, neither the Commission staff nor the Attorney General's office will marshal the same level of environmental expertise as Movants with regard to the current state of renewable development. As such Movants are uniquely positioned to share their expertise with the Commission to ensure that it does not authorize the proposed Certificates of Convenience and Necessity only to discover that there was another cheaper and cleaner generation source. Finally, allowing Movants to intervene will serve the public interest because no other party to this proceeding has the capacity or the incentive to assure that Movants' concerns are addressed.

#### IV. CONCLUSION

For the foregoing reasons, the Movants respectfully request full intervention in this matter.

Respectfully submitted,



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Edward George Zuger III, Esq.  
Zuger Law Office PLLC  
Post Office Box 728  
Corbin, Kentucky 40702  
(606) 416-9474

Of counsel:

Shannon Fisk  
Senior Attorney  
Natural Resources Defense Council  
2 N. Riverside Plaza, Suite 2250  
Chicago, IL 60660  
Phone: (312) 651-7904  
Fax: (312) 234-9633  
sfisk@nrdc.org

Kristin Henry  
Staff Attorney  
Sierra Club  
85 Second Street  
San Francisco, CA 94105  
Phone: (415) 977-5716  
Fax: (415) 977-5793  
kristin.henry@sierraclub.org

Dated: November 22, 2011

## CERTIFICATE OF SERVICE

I certify that I mailed a copy of this Petition For Full Intervention by first class mail on November 22, 2011 on the following:

Lonnie Bellar  
Vice President, State Regulation & Rates  
LG&E and KU Services Company  
220 West Main Street  
Louisville, KY 40202

Allyson K. Sturgeon  
Senior Corporate Attorney  
LG&E  
220 West Main Street  
Louisville, KY 40202

Kendrick R. Riggs, Esq.  
Stoll, Keenon & Odgen, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202

Dennis G. Howard II  
Lawrence W. Cook  
Attorney General's Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

Michael L. Kurtz  
Kurt J. Boehm  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202

Lindsey W. Ingram, III  
Attorney at Law  
Stoll Keenon Ogden, PLLC  
300 West Vine Street  
Suite 2100  
Lexington, KY 40507-1801