



September 25, 2013

Via Personal Delivery

Mr. Jeff Derouen, Executive Director
Case No. 2013-00259
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: Case No. 2013-00259 Petition of Sonia McElroy and Sierra Club for Full Intervention

Dear Mr. Derouen,

Enclosed please find one original and ten (10) copies of Sonia McElroy and Sierra Club's Petition for Full Intervention, filed today in the above-referenced matter via personal delivery. By copy of this letter, all parties listed on the Certificate of Service have been served via USPS and e-mail. Please place this document of file.

Sincerely,

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RECEIVED

SEP 25 2013

FRANKFORT, KY
KENTUCKY PUBLIC SERVICE COMMISSION

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

In the Matter of:

**In the Matter of the Application of East Kentucky Power)
Cooperative, Inc. for a Certificate of Public Convenience)
and Necessity for Alteration of Certain Equipment at the) CASE NO. 2013-00259
Cooper Station and Approval of a Compliance Plan)
Amendment for Environmental Surcharge Cost Recovery)**

**PETITION OF SONIA MCELROY AND
SIERRA CLUB FOR FULL INTERVENTION**

Pursuant to K.R.S. § 278.310 and 807 K.A.R. 5:001 § 4(11)(b), Sonia McElroy and Sierra Club (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 East Kentucky Power Cooperative, Inc.’s (“EKPC” or the “Company”) application for a Certificate of Public Convenience and Necessity (“CPCN”), 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 a CPCN is approved only if it represents the best option to satisfy its members’ interest in low cost energy service.

On August 21, 2013, EKPC filed an application, pursuant to KRS § 278.020(1), and 807 KAR 5:001 §§ 8, 9, and 11, for a CPCN for rerouting existing duct work for Cooper Station Unit 1 such that its emissions are able to flow to the Unit 2’s pollution control equipment. EKPC

seeks approval for the retrofit work so that it can recover the full costs of rerouting the duct work, which it estimates at \$15 million.¹

EKPC needs to reroute the duct work to keep Unit 1 operable because the unit does not comply with existing federal Clean Air Act requirements to control emissions of nitrogen oxide (“NO_x”), sulfur dioxide (“SO₂”), hazardous air pollutants, and particulate matter.² EKPC contends it should keep Unit 1 operable to reduce the approximately 300 MW of capacity that EKPC would purportedly need if it were to retire Cooper Unit 1 and the Company’s Dale Power Station. While EKPC purports to have evaluated the revenue requirements of different options and determined that retrofitting Cooper Unit 1 is the most cost-effective means of meeting this professed capacity need,³ that process appears to have been critically flawed. The alternative compliance path for EKPC is to retire the units and replace the capacity, to the extent such capacity is actually needed.⁴ EKPC conducted a Request for Proposal (“RFP”) process in 2012 to identify options for satisfying the anticipated capacity need,⁵ but the RFP did not fully consider alternatives, such as demand side management (“DSM”), that could replace some or all of the capacity and energy produced by Cooper Unit 1.⁶

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 either install pollution controls on coal units or to retire such units. Technological advances and changes in market

¹ See EKPC CPCN Application at 2.

² See Direct Testimony of Jerry B. Purvis at 5-7. The proposed environmental controls project (“Project”) would retrofit the plant to comply with the Mercury Air Toxics Standard (“MATS”) and the Regional Haze State Implementation Plan. For NO_x, SO₂, and PM abatement, EKPC proposes to reroute existing duct work for Cooper Station Unit 1 such that emissions from that unit flow to Cooper Station Unit 2’s dry flue gas desulfurization and pulse-jet fabric filter. EKPC plans to install continuous emission monitors on the Cooper plant to demonstrate MATS compliance.

³ See, e.g., EKPC CPCN Application at 4, 6.

⁴ See, e.g., EKPC CPCN Application at 4.

⁵ See, e.g., EKPC CPCN Application at 2.

⁶ See EKPC CPCN Application, Ex. 1a at 4.

conditions have made a larger suite of both supply- and demand-side options available for EKPC to provide service to its customers through the distribution cooperatives. 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.⁷ 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.”⁸ In short, EKPC faces 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. The organizational Movant, on behalf of its members, has gained significant expertise on these issues in proceedings in Kentucky and throughout the country, and seeks 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. Movant Sonia McElroy is a customer of Shelby Energy, which is an EKPC distribution cooperative, and a long-time Sierra Club member who has a deep interest in seeing EKPC transform to meet the new reality in a way

⁷ See, e.g., Erica Peterson, *Kentucky Has ‘Obligation’ to Address Climate Change, Beshear Says*, WFPL News (Sept. 17, 2013) available at <http://wfp1.org/post/kentucky-has-obligation-address-climate-change-beshear-says> (Gov. Steve Beshear publicly stated at the 37th Governor’s Conference on Energy and the Environment that the Commonwealth of Kentucky has an obligation to address climate change and greenhouse gas emissions).

⁸ *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”).

that is both low cost and cleaner. Her address is as follows: 412 Lee Port Road, Milton, Kentucky, 40045.

Sierra Club is one of the oldest conservation groups in the country, with approximately 600,000 members nationally in sixty-four chapters in all fifty states, the District of Columbia, and Puerto Rico. Sierra Club has almost 5,000 members in Kentucky, which are part of the Cumberland Chapter. The Cumberland Chapter's address is: Sierra Club, Cumberland Chapter, P.O. Box 1368, Lexington, Kentucky, 40588-1368.

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:

The commission shall grant a person leave to intervene if the commission finds that a person has a special interest in the case that is not otherwise adequately represented **or** that intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings

807 K.A.R. 5:001 § 4(11)(b) (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 CPCN application. As explained below, Movants satisfy both standards for intervention.

Movants are seeking intervention in a CPCN proceeding that is governed by KRS § 278.020(1).⁹ Pursuant to that statute, EKPC cannot install or reroute pollution control 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.* EKPC is also seeking to recover

⁹ See EKPC CPCN Application at 1.

approximately \$15 million from the ratepayers for this project pursuant to KRS § 278.183.¹⁰ This proceeding is intended to evaluate the reasonableness of EKPC's 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. EKPC filed its CPCN application for the installation of pollution control equipment detailed in its application on August 21, 2013. On September 20, 2013, the Commission issued a scheduling order in this proceeding, which requires the filing of all requests for intervention by September 27, 2013. Movants have submitted this Petition for intervention on September 25, 2013. 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 as they are "likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." 807 K.A.R. 5:001 § 4(11)(b). This proceeding involves complex questions regarding whether rerouting duct work on an existing unit of a coal-fired power plant to run through the pollution controls on another unit is a public convenience or necessity. According to EKPC, retrofitting this plant is the most cost effective option of the alternatives it evaluated.¹¹ However, EKPC's application and supporting testimony makes clear that the full range of alternatives, such as demand side management, were not considered in its alternatives assessment.¹² As parties to this proceeding, the Movants will ensure that the appropriate suite of alternatives is examined, such as replacing Cooper Unit 1 with

¹⁰ See EKPC CPCN Application at 2.

¹¹ See, e.g., EKPC CPCN Application at 4, 6.

¹² See EKPC CPCN Application at 4, 6; see also CPCN Application, Ex. 1a at 4.

renewable energy sources and/or efficiency.¹³ Movants bring to this docket their unique perspective and experience in advancing technical and regulatory solutions to increasing renewable and demand side energy sources.

Movant Sierra Club has 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, 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. Sierra Club has 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, Indiana, Iowa, Louisiana, Kentucky, Michigan, Mississippi, Missouri, New York, New Jersey, Nevada, Ohio, Oklahoma, Oregon, South Carolina, Utah, Wisconsin, and Wyoming. Moreover, Sierra Club has intervened and provided testimony on these issues in eight other dockets before this Commission.¹⁴ Sierra Club has also regularly presented testimony before the

¹³ “[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”).

¹⁴ *See, Application of Louisville Gas & Electric for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2011-00162), *Application of Kentucky Utilities for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2011-00161); *Joint Application of Louisville Gas & Electric and Kentucky Utilities for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant* (Docket No. 2011-00375); *Application of Kentucky Power Company for Approval of its 2011 Environmental Compliance Plan and Certificates of Public Convenience and Necessity* (Docket No. 2011-00401); *Application of Big Rivers Electric Cooperative for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Docket No. 2012-00063); *Application of Kentucky Power Company For: A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of An Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets* (Docket No. 2012-00578); *Application of Big Rivers Electric Corporation for an Adjustment of Rates* (Docket No. 2012-00535); *Application of Big Rivers Electric Corporation for a General Adjustment in Rates* (Docket No. 2013-00199).

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.¹⁵ But the Movants are not seeking intervention to opine about the environmental impacts of EKPC's coal plant and its environmental compliance plan. Instead, Movants are seeking to present testimony regarding whether the compliance plan proposed by EKPC is the least cost option in light of the full range of regulatory, capital, operating, and fuel costs that the Cooper plant faces, 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 EKPC's request to recoup \$15 million from its ratepayers to pay for rerouting duct work through existing controls on Cooper Unit 2 without evaluating each of those issues. As such, Movants are seeking intervention to address topics that are directly at issue in this proceeding.

The Commission must examine the entire suite of emerging federal regulations in order to accurately determine what is the least cost option. In its application, EKPC insists that it must address certain federal regulations now. However, the company appears to be ignoring a number of emerging federal requirements that will require additional expenditures on control technology (emerging retrofits) or may lead to the Cooper plant being repowered or retired. In this way, EKPC is asking ratepayers to fund piecemeal work that it could do more efficiently or not at all once EKPC has a better understanding of the full suite of federal requirements facing the unit. EKPC has stated that rerouting the duct work on Cooper Unit 1 is the most cost effective

¹⁵ *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.

compliance option.¹⁶ However, since EKPC has only analyzed a subset of the expected regulatory obligations and of potential options for replacing Cooper Unit 1, the accuracy of that conclusion is doubtful. Movants want to ensure that the Commission evaluates the full regulatory and capital costs facing the Cooper plant, including the expected Clean Water Act effluent limitation guidelines, coal combustion waste, and greenhouse gas regulations for existing coal-fired power plants, so it can accurately determine the least cost option for moving forward. Movants are not advocating any particular resource mix or alternative at this time, and instead simply endorse a robust examination of the comparative costs and benefits of viable options once the full suite of emerging federal requirements are considered and the full costs of each alternative assessed.

Through full intervention, Sierra Club, on behalf of its members including the individual Movant, will use its expertise and consultants to provide current data and analysis to investigate the adequacy of EKPC's proposed compliance plan, explore additional alternatives for replacing capacity, investigate the adequacy of EKPC's limited cost analyses, and present evidence and argument in support of energy efficiency and renewable energy resources, if they represent reasonable and prudent alternatives for EKPC to pursue.

EKPC's application deals with complicated topics. However, the Movants helping the Commission to explore many of the assumptions and inputs will 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 EKPC. 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.

¹⁶ See, e.g., EKPC CPCN Application at 4, 6.

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

As noted above, 807 K.A.R. 5:001 § 4(11)(b) 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.

The individual Movant is a customer and rate payer of Shelby Energy, which is one of EKPC's distribution cooperative members. As such, she helps fund EKPC's operations, and the Commission's decision about whether to grant the CPCN for rerouting of duct work through existing pollution control equipment and subsequent surcharges for \$15 million will directly impact her bills. In addition, the individual Movant lives within the EKPC distribution cooperatives' service territory and, therefore, is impacted by the economic, public health, and environmental effects of the resource decisions that EKPC makes. Organizational Movant Sierra Club has members who are customers and ratepayers of a distribution cooperative of EKPC and, therefore, have the same interests as the individual Movant. 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, in which EKPC has proposed and the parties are evaluating whether to reroute duct work on an existing plant or pursue different options.

Movants' interests are not adequately represented by any of the parties in the proceeding, as none of the other parties can adequately represent the organizational Movants' interests as a

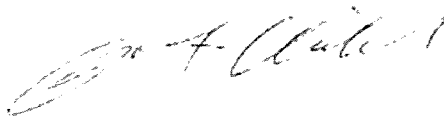
national organization that seeks to promote energy efficiency, renewable energy, and other low carbon generation sources as the most reasonable and cost effective way for EKPC to maintain essential electric services and meet new and emerging federal regulatory requirements.

Finally, no other party will marshal the same level of expertise as Movants with regard to emerging federal regulatory requirements and what pollution control upgrades utilities will need to make to meet those obligations. Movants are uniquely positioned to share their expertise with the Commission to ensure that it does not authorize the proposed CPCN and accompanying \$15 million in surcharges only to discover that another investment is required to meet additional environmental compliance obligations. 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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Dated: September 25, 2013

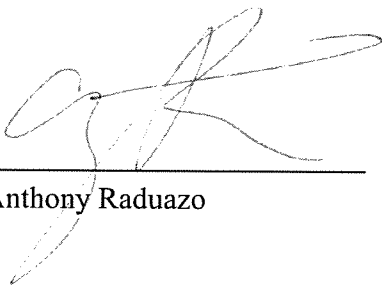
CERTIFICATE OF SERVICE

I certify that I mailed a copy of this Petition for Full Intervention by first class mail on September 25, 2013 to the following:

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