

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS &	)	
ELECTRIC COMPANY AND KENTUCKY	)	
UTILITIES COMPANY FOR CERTIFICATES OF	)	
PUBLIC CONVENIENCE AND NECESSITY FOR	)	CASE NO.
THE CONSTRUCTION OF A COMBINED	)	2014-00002
CYCLE COMBUSTION TURBINE AT THE	)	
GREEN RIVER GENERATING STATION AND A	)	
SOLAR PHOTOVOLTAIC FACILITY AT THE	)	
E.W. BROWN GENERATING STATION	)	

ORDER

On February 25, 2014, Wallace McMullen and the Sierra Club (collectively “Petitioners”) filed a petition for full intervention in the instant matter. Petitioners assert that they are seeking intervention to ensure that their interests in lower-cost and cleaner-energy options are fully represented. Sierra Club further asserts that it has gained significant expertise in the areas of resource expansion plans and complex energy and electrical utility issues in proceedings throughout the country. Petitioners seek to bring such expertise to the instant proceeding.

Petitioners state that the “Sierra Club is one of the oldest conservation groups in the country, with more than 600,000 members nationally in sixty-four chapters in all fifty states, including the District of Columbia and Puerto Rico.”<sup>1</sup> There are over 4,700 Sierra Club members in Kentucky who are part of the Cumberland Chapter. The Cumberland Chapter’s address is P.O. Box 1368, Lexington, Kentucky 40588-1368.

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<sup>1</sup> Motion of Wallace McMullen and Sierra Club for Leave to Intervene at p. 3.

Wallace McMullen is a customer of Louisville Gas and Electric Company (“LG&E”) and a Sierra Club member. He has an interest in low-cost, clean-energy resources.

In support of their request, Petitioners maintain that they will present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Petitioners note that the Applicants support their Application “in part by presenting load forecasts documenting their future capacity and energy needs as well as modeling results of various bids under different load, natural gas, and carbon price scenarios.”<sup>2</sup> The Sierra Club asserts that it has experience analyzing resource expansion plans. The Sierra Club will bring experience as a party in the prior proceeding that led to this application.<sup>3</sup> Further, Petitioners assure that their participation will not disrupt the proceedings, as they are represented by experienced counsel and will comply with all deadlines established by the Commission.

Petitioners argue that they have a special interest that is not otherwise adequately represented in this matter. Petitioners note that they have members who are customers and ratepayers of LG&E and Kentucky Utilities Company (“KU”) (collectively “Joint Applicants”), and that these members help fund the Joint Applicants’ operations and are impacted by the Joint Applicants’ operational decisions. Specifically, Petitioners state that they are “impacted by the economic, public health, and

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<sup>2</sup> *Id.* at 4.

<sup>3</sup> Case No. 2011-00375, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Site Compatibility Certificate 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 Blue Grass Generation Company, LLC in La Grange, Kentucky* (Ky. PSC May 3, 2012).

environmental effects of the resource decisions that LG&E makes.” Petitioners want to promote low-cost, clean-energy resources. Petitioners contend that none of the parties who have moved to intervene can adequately represent their specific interests.

On March 4, 2014, LG&E and KU filed a response objecting to Petitioners’ request for full intervention. The Joint Applicants contend that Petitioners’ claimed special interest in economic, public health, and environmental effects are no different from that of any of the Joint Applicants’ customers and that those interests are adequately represented by the Attorney General (“AG”), who is a party to these proceedings.

The Joint Applicants also contend that Petitioners have provided no evidence of their ability to present issues or develop facts that will assist the Commission. The Joint Applicants state that Petitioners have not provided any indication that they have ever issued, evaluated, or had to make actual business decisions based on the results of a request for proposal. The Joint Applicants contend that Petitioners’ concerns over environmental and health impacts are issues that are outside the scope of the Commission’s jurisdiction. The Joint Applicants further argue that Petitioners’ intervention would serve only to complicate and disrupt this proceeding currently pending before the Commission.

On March 10, 2014, Petitioners filed a reply in support of their request for intervention. Petitioners state that the AG’s statutory right to intervene does not prevent other consumer representatives from intervening. Petitioners assert they will present issues and develop facts that will assist the Commission. They have participated in multiple Certificates of Public Convenience and Necessity (“CPCN”) proceedings where

Petitioners presented issues and developed facts. Petitioners contend their participation will not unduly complicate or delay the proceeding. The Sierra Club acknowledges that the Commission's jurisdiction does not extend to health and environmental issues. The Petitioners' focus is resource planning and economic issues.

DISCUSSION

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the AG, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.<sup>4</sup>

In the unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Kentucky Court of Appeals ruled that "the PSC retains the power in its discretion to grant or deny a motion for intervention," but that this discretion is not unlimited. The Court then enumerated the limits on the Commission's discretion in ruling on motions for intervention; one arising under statute, the other arising under regulation. The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."<sup>5</sup>

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<sup>4</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

<sup>5</sup> 2007 WL 289328 at 3.

The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

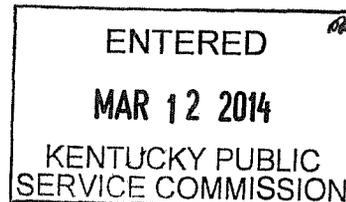
In analyzing the instant petition to intervene, we find that Wallace McMullen is a customer of LG&E and has the requisite statutory interest in the rates and service of LG&E. Members of the Sierra Club are also LG&E and KU customers. To the extent that the Sierra Club seeks to address issues that impact the rates or service of LG&E and KU, such as whether the Joint Applicants considered all reasonable options and considered all foreseeable risks and costs, those issues are within the scope of the Commission's jurisdiction and this proceeding. Thus, Mr. McMullen and the Sierra Club, as representatives of its members who are customers of LG&E or KU, have an interest in the rates and service of LG&E and KU in these proceedings, and that interest is sufficient to satisfy the statutory limitation for intervenors under KRS 278.040(2).

This Commission is persuaded that the Sierra Club, acting on behalf of its members who are customers of LG&E and KU, does possess expertise on issues that are within the scope of this proceeding, including the evaluation of resource expansion plans. The Commission notes that the Sierra Club has intervened in similar prior proceedings before this Commission and that Petitioners are represented by experienced counsel. Therefore, the Commission finds that intervention by Petitioners is likely to present issues or develop facts that will assist in the review of the Joint Applicants' CPCN request without unduly complicating or disrupting the review.

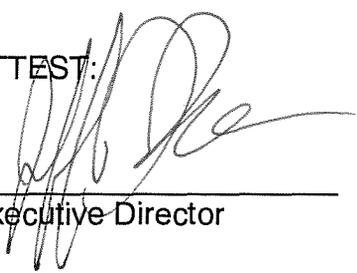
IT IS THEREFORE ORDERED that:

1. Petitioners' request for full intervenor status is granted, and Petitioners shall accept the existing procedural schedule.
2. Petitioners shall be entitled to the full rights of a party and shall be served with the Commission's Orders after the date of this Order.
3. Petitioners shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.
4. Pursuant to 807 KAR 5:001, Section (8)(9), the Petitioners shall file with the Commission within seven days from the date of this Order, a written statement that Petitioners waive their right to service of any Commission Order by mail for purposes of this proceeding only, and certify that they possess the facilities to receive electronic transmission.

By the Commission



ATTEST:

  
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