

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR REVIEW,)
MODIFICATION, AND CONTINUATION OF)
EXISTING, AND ADDITION OF NEW,)
DEMAND-SIDE MANAGEMENT AND ENERGY)
EFFICIENCY PROGRAMS)

CASE NO. 2014-00003

WALLACE MCMULLEN AND SIERRA CLUB'S REPLY
IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

Multiple parties have moved to intervene in this proceeding, yet Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively, "the Companies") oppose only the motion to intervene filed by Mr. Wallace McMullen and the Sierra Club (collectively, the "Sierra Club"). In their efforts to keep the Sierra Club out of this proceeding, the Companies misrepresent the Sierra Club's track record of intervening in proceedings before this Commission and invent heightened legal standards that would apply only to the Sierra Club. The Commission should look past these mischaracterizations of the facts and the law. The Sierra Club will draw on its experience with DSM and participation in other proceedings before this Commission to present issues and develop facts that will assist the Commission in reviewing this joint application. This reason alone provides a sufficient basis for the Commission to grant the Sierra Club full intervention in this proceeding. Moreover, the Sierra Club has special interests in this proceeding that are not adequately represented by other parties.

I. THE SIERRA CLUB WILL PRESENT ISSUES AND DEVELOP FACTS THAT WILL ASSIST THE COMMISSION.

The Companies misrepresent the facts and invent heightened legal standards in their attempt to show that the Sierra Club will not present issues and develop facts that will assist the Commission. First, the Companies misleadingly state that the Sierra Club has intervened in only one DSM case.¹ In Kentucky alone, Sierra Club has been a party to multiple proceedings in which DSM issues were contested, including Case No. 2012-00259, in which the Sierra Club developed facts regarding DSM as a potential alternative to retrofitting Cooper unit I; Case No. 2012-00149, in which the Sierra Club developed facts regarding DSM program potential for EKPC; Case No. 2011-00375, in which the Sierra Club presented testimony regarding the potential for DSM in the LG&E/KU service territory; and Case No. 2011-00140, in which Sierra Club presented comments regarding DSM in LG&E/KU's 2011 Integrated Resource Plan. Contrary to the Companies' assertions, the Sierra Club has a track record of intervening in cases concerning demand response and energy efficiency, and presenting issues and developing facts regarding such topics. The Sierra Club will use this significant experience to present issues and develop facts that will assist the Commission in this proceeding.

Next, the Companies attempt to minimize the Sierra Club's impact in a prior LG&E/KU case, No. 2011-00375, and claim that "Case No. 2011-00375's impact on this case has little, if anything, to do with Sierra Club's participation."² The Companies are wrong on both counts. In Case No. 2011-00375, LG&E and KU sought a certificate of public convenience and necessity to construct a new gas plant and purchase an existing gas plant. The Commission expressly agreed

¹ Louisville Gas and Electric Company and Kentucky Utility Company's Objection to Wallace McMullen's and the Sierra Club's Motion to Intervene at p.4 [hereinafter, "Opposition"].

² *Id.*

with the Sierra Club's argument that LG&E/KU had ignored the recommendation from their own consultant to conduct a market potential study for DSM, stating that "the Commission does share the concern of Environmental Intervenors that the Joint Applicants have not adequately addressed one of the recommendations set forth in the ICF Louisville Gas and Electric Company/Kentucky Utilities Company DSM Program Review Report ("ICF Report")."³ The Commission then ordered the Companies to conduct a DSM market characterization or potential study, as the Sierra Club and its expert witnesses had recommended.⁴ The Sierra Club was the sole party to develop this issue. Given that the Commission expressly noted that it shared the concern of the Environmental Intervenors, the case is another example of the Sierra Club presenting issues and developing facts that assist the Commission.

Moreover, the Sierra Club's participation in Case No. 2011-00375 is directly relevant to this proceeding, given that the Companies' current DSM proposals stem in part from the DSM market potential study that the Commission ordered the Companies to undertake in 2011-00375. Having participated in that case and urged the Commission to order the Companies to do a market potential study, the Sierra Club is uniquely positioned to assist the Commission in reviewing the Companies' proposal to implement the study recommendations.

Finally, after grossly misrepresenting the facts, the Companies proceed to misrepresent the law by claiming that the Sierra Club's motion to intervene contains "no actual evidence" regarding how the Sierra Club will provide assistance to the Commission.⁵ The Companies appear to suggest that a motion to intervene must preview the facts and issues in a party's

³ *In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity*, Case No. 2011-00375 at p.17 (Ky. PSC May 3, 2012).

⁴ *Id.* at p.18.

⁵ Opposition at p.4.

testimony or briefing. That argument has no basis in the law, and the Companies cite no authority for that proposition. A party cannot be expected to lay out its case at the intervention stage, before conducting discovery or presenting testimony.

Once the proper legal standard is applied to the facts, it is apparent that the Sierra Club presented evidence of its ability to present issues and develop facts that will assist the Commission in this proceeding. As the Sierra Club noted in its motion to intervene, the lawyers and experts representing the Sierra Club have gained deep experience on DSM issues in proceedings around the country.⁶ Moreover, the Sierra Club has a track record of intervening in proceedings before this Commission involving DSM issues;⁷ the Sierra Club consistently presents issues and develops facts that other parties do not; and the Commission has recognized in prior orders⁸ the useful role that the Sierra Club has played in assisting the Commission's review. For these reasons, the Commission should find that the Sierra Club will present issues and develop facts that will assist the Commission, and grant the Sierra Club full intervention.

II. THE SIERRA CLUB HAS SPECIAL INTERESTS NOT ADEQUATELY REPRESENTED BY THE OTHER PARTIES.

In order to satisfy the legal standard for full intervention, the Sierra Club need only show that its participation will assist the Commission. However, an alternative ground for granting the Sierra Club intervention is that its interests are not adequately represented by the other parties.

⁶ Motion of Wallace McMullen and Sierra Club for Leave to Intervene, Case No. 2014-00003, at p.5.

⁷ *Id.*

⁸ *E.g., In the Matter of Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity*, Case No. 2011-00375 at p.17 (Ky. PSC May 3, 2012); *In the Matter of Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Alteration of Certain Equipment at the Cooper Station and Approval of a Compliance Plan Amendment for Environmental Surcharge Cost Recovery*, Case No. 2013-00259 (Ky. PSC October 18, 2013).

The Companies object by making too much of the Attorney General's statutory right to intervene and by relying on a single Commission Order that has no application here.

The Companies first claim that because the Attorney General has moved to intervene in this proceeding, and the Attorney General represents all ratepayers, the Sierra Club cannot intervene on behalf of its members who are ratepayers. But if the Attorney General's participation precluded all ratepayers from intervening, virtually no one could intervene, which would render the provisions regarding intervention superfluous.⁹ According to the Companies' logic, any representative of a ratepayer—such as KIUC representing industrial ratepayers or organizations representing low-income ratepayers—would be foreclosed from intervention.

The Commission routinely permits representatives of segments of ratepayers such as industrial customers or low-income customers to intervene. There is good reason for the Commission to do so, because the Attorney General cannot adequately represent certain classes of ratepayers that have interests that are distinct from, and may diverge from, the interests of other classes of ratepayers. For the same reason, Sierra Club members' interests in developing and implementing aggressive DSM programs are not adequately represented by the Attorney General.

Finally, the Companies claim that the Commission has “repeatedly” denied motions to intervene filed by customers like Mr. McMullen¹⁰ but cite only a single, easily distinguishable order in support.¹¹ In that Order—which denied the motions to intervene of Mr. Geoffery Young in Cases No. 2007-00565 and 2008-00251—the Commission denied intervention to an individual

⁹ See *Lexington-Fayette Urban Cnty. Gov't v. Johnson*, 280 S.W.3d 31, 34 (Ky. 2009), *University of Cumberlands v. Pennybacker*, 308 S.W.3d 668, 683-84 (Ky. 2010).

¹⁰ Opposition at p.2.

¹¹ *Id.* at p.2, n.4.

who had never intervened in a case before the Commission, sought to raise environmental quality issues, and was found to not understand fundamental ratemaking principles.¹² That Order is distinguishable on all three grounds. Unlike Mr. Young, the Sierra Club has intervened in multiple proceedings before the Commission.¹³ In contrast to Mr. Young, the Sierra Club does not seek to raise environmental quality issues but instead “seek full intervention in order to ensure that their interests in energy efficiency and other demand-side management resources, and their interests in LG&E and KU’s implementation of the market potential study, are fully represented.”¹⁴ While Mr. Young was found to have misconstrued fundamental ratemaking principles and raised extraneous issues, the Sierra Club, having participated in many dockets before this Commission, understands fundamental remaking and utility regulatory principles and will not unduly complicate the proceeding.

In sum, the Attorney General’s participation does not foreclose intervention by the Sierra Club, whose members have distinct interests narrower than other classes of ratepayers.

Furthermore, the Order denying Mr. Young’s motion to intervene has no bearing here.

III. THE COMPANIES PROVIDE NO SUPPORT FOR THEIR ASSERTION THAT SIERRA CLUB’S INTERVENTION WILL UNDULY COMPLICATE OR DELAY THE PROCEEDING.

While the Companies assert that the Sierra Club’s participation will unduly complicate or delay the proceeding,¹⁵ the Companies provide no support for that claim. The Companies do not

¹² *In the Matter of Application of Kentucky Utilities Company to File Depreciation Study*, Case No. 2007-00565, *In the Matter of Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates*, Case No. 2008-00251, at pp.3,5 (Ky. PSC Dec. 5, 2008).

¹³ Motion of Wallace McMullen and Sierra Club for Leave to Intervene at p.5.

¹⁴ *Id.* at p.3.

¹⁵ Opposition at pp.1, 5.

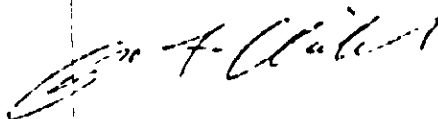
contest that the Sierra Club timely filed its motion to intervene¹⁶ nor do they challenge the Sierra Club's representation that it will abide by the schedule established by the Commission for this case.¹⁷ Thus, there is no basis for finding that full intervention by the Sierra Club will unduly complicate or delay this proceeding.

CONCLUSION

For the foregoing reasons, the Sierra Club respectfully requests that the Commission grant Wallace McMullen and the Sierra Club full intervention in this proceeding.

Dated: February 14, 2014

Respectfully submitted,



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¹⁶ Motion of Wallace McMullen and Sierra Club for Leave to Intervene at p.4.

¹⁷ *Id.* at p.6.

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CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing **Wallace McMullen and Sierra Club's Reply In Support of Motlon for Leave to Intervene** by first class mail on February 14, 2014 to the following:

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