



February 5, 2014

Via Personal Delivery

Mr. Jeff Derouen, Executive Director
Case No. 2014-00003
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: Case No. 2014-00003 Motion of Wallace McMullen and Sierra Club for Leave to Intervene

Dear Mr. Derouen,

Enclosed please find one (1) original and ten (10) copies of the Motion of Wallace McMullen and Sierra Club for Leave to Intervene, 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,

Kristin A. Henry
Senior Attomey
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PUBLIC SERVICE
COMMISSION

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

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS)	
AND ELECTRIC COMPANY AND KENTUCKY)	
UTILITIES COMPANY FOR REVIEW,)	
MODIFICATION, AND CONTINUATION OF)	CASE NO. 2014-00003
EXISTING, AND ADDITION OF NEW,)	
DEMAND-SIDE MANAGEMENT AND ENERGY)	
EFFICIENCY PROGRAMS)	

**MOTION OF WALLACE MCMULLEN AND SIERRA CLUB FOR LEAVE TO
INTERVENE**

Pursuant to KRS § 278.310 and 807 KAR 5:001 § 4(11)(a), Wallace McMullen and Sierra Club (collectively "Movants") respectfully move the Commission for leave to intervene in the above-captioned case. Movants have extensive knowledge and experience in the complex issues pertaining to demand-side management ("DSM") and associated cost recovery mechanisms, the subject of Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company's ("KU") joint application,¹ and Movants' intervention will assist the Commission in fully considering this matter. Additionally, the joint application is in part an outgrowth of the DSM market potential study which Sierra Club advocated for, and which the Commission ordered the applicants to conduct, in Case No. 2011-00375.² Movants' special interests in this proceeding

¹ 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 ("Application").

² Consistent with the recommendations of the Sierra Club, the Commission found that LG&E and KU had not followed the advice of a consultant to conduct a market characterization study for DSM. Accordingly, the Commission ordered LG&E and KU to commission a market characterization or potential study for DSM. Case No.

are not adequately represented by any other party to the proceeding. Therefore, Movants seek full intervention in this proceeding.

On January 17, 2014, LG&E and KU filed their Joint Application to continue and amend their DSM Program and implement a revised DSM tariff. Specifically, LG&E and KU seek approval of their 2015-2018 DSM and EE plan, which proposes to continue certain programs, allow some programs to expire, and add new programs. The Joint Applicants seek approval of a revised DSM cost recovery tariff (P.S.C. Electric No. 16, Second Revision of Original Sheet No. 86.4 - 86.10).³ The Joint Applicants propose that the new tariffs go into effect February 16, 2014, but they do not intend to implement the proposed programs and new rates until January 1, 2015.⁴ The Commission suspended the effective date of the proposed tariffs to July 5, 2014.⁵

The Joint Application raises issues regarding investment in energy efficiency and other DSM resources, and DSM program planning, design, implementation, and associated cost recovery. 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.”⁶ The organizational Movant, on behalf of its members, has gained substantial experience working on demand-side management issues throughout the United States, including in Kentucky, and seeks

2011-00375, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity*, Order at pp. 17-18 (Ky. PSC May 3, 2012).

³ Case No. 2014-00003, Application at pp. 11-12.

⁴ *Id.* at p. 12.

⁵ Case No. 2014-00003, Order (Ky. PSC Jan. 30, 2014).

⁶ Case No. 2010-00204, *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*, Order at 20 (Ky PSC Sept. 30, 2010) (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”).

to bring such expertise to this proceeding to assist the Commission with its review of the Joint Application.

I. THE MOVANTS

Movants 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. Additionally, movants seek full intervention in order to bring to this proceeding their expertise concerning DSM programs and cost recovery. Movant Wallace McMullen is a customer of LG&E, a Sierra Club member, and has a long-standing interest in LG&E and KU increasing their use of low cost, clean energy options, like energy efficiency and other DSM resources. His address is:

Wallace McMullen
4324 Dover Rd.
Louisville, KY 40216

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, who are dedicated to practicing and promoting the responsible use of natural resources. Sierra Club has over 4,700 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, KY 40588-1368

II. REQUIREMENTS FOR INTERVENTION

The Commission's regulations regarding intervention provide that the Commission shall grant a person, as defined by KRS § 278.010(2), leave to intervene in a Commission proceeding upon a timely motion if the Commission finds that the 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.”⁷ Thus, the Commission must grant full intervention if Movants have filed a timely intervention motion and either have interests in this proceeding that are not adequately represented or if they would assist in evaluation of the pending application without unduly complicating or disrupting the proceedings. As explained below, Movants satisfy all of the standards for intervention.

III. THE COMMISSION SHOULD GRANT MOVANTS FULL INTERVENTION.

A. This Motion is Timely Filed.

Pursuant to the Commission’s Order in this case, requests for intervention are due no later than February 5, 2014.⁸ Movants submit this motion for leave to intervene on February 5, 2014. As such, this motion is timely.

B. Movants Will Present Issues or 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 without unduly complicating or disrupting the proceedings.”⁹ In their application, LG&E and KU propose changes to their DSM Program and associated tariff. Organizational Movant Sierra Club has developed expertise in a broad range of environmental and energy concerns relevant to this proceeding. In particular, Sierra Club’s staff and consultants have extensive experience in

⁷ 807 KAR 5:001 § 4(11)(b) (emphasis added).

⁸ Case No. 2014-00003, Order (Ky. PSC Jan. 30, 2014).

⁹ 807 KAR 5:001 § 4(11)(b).

analyzing the potential for cost-effective energy efficiency, DSM program design, and cost recovery. Sierra Club has jointly or individually intervened and/or provided testimony on these and similar issues in a multitude of similar proceedings in a number of states including Arkansas, California, Colorado, Louisiana, Minnesota, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, Virginia, Washington, and West Virginia. Sierra Club has intervened and provided testimony on complex energy and electric utility issues in numerous dockets in the past three years before this Commission.¹⁰ Moreover, in a prior proceeding in which LG&E and KU sought a CPCN, Sierra Club submitted testimony and briefing regarding the need for LG&E and KU to follow the recommendation of their consultant to conduct a DSM market potential study;¹¹ the Commission then ordered LG&E and KU to commission a market characterization or potential study, and the resulting study is shaping the DSM programs proposed in this application. Sierra Club has also regularly presented testimony before the U.S. Congress and

¹⁰ See Case No. 2011-00162, *Application of Louisville Gas & Electric for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Ky PSC); Case No. 2011-00161, *Application of Kentucky Utilities for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge* (Ky PSC); Case No. 2011-00375, *Joint Application of Louisville Gas & Electric and Kentucky Utilities for Certificates of Public Convenience and Necessity to Construct Combined Cycle Natural Gas Plant* (Ky PSC); Case No. 2011-00401, *Application of KPC for Certificates of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Ky PSC); Case No. 2012-00063, *Application of Big Rivers Electric Cooperative for Certificate of Public Convenience and Necessity and Approval of Its Compliance Plan for Recovery by Environmental Surcharge* (Ky PSC); Case No. 2012-00535, *Application of Big Rivers Electric Corporation For an Adjustment of Rates* (Ky PSC); Case No. 2012-000578, *Application of KPC For: (1) 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; (2) Approval Of The Assumption by Kentucky Power Company of Certain Liabilities In Connection With the Transfer Of The Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred In Connection With The Company's Efforts to Meet Federal Clean Air Act And Related Requirements; and (5) For All Other Required Approvals and Relief* (Ky PSC); Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates* (Ky PSC); and Case No. 2013-00259, *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* (Ky PSC).

¹¹ Case No. 2011-00375, Direct Testimony of Dylan Sullivan at pp. 4,8 (Dec. 20, 2011).

various state legislatures on issues related to the electric utility industry, including energy efficiency.

Movants bring to this docket their unique perspective and experience in advancing technical and regulatory solutions to increasing cost-effective demand-side energy resources in all regions of the country, including Kentucky. Movants will apply their perspective and experience in evaluating the present case to assist the Commission in determining the reasonableness of the pending DSM Program and tariff proposals, and to ensure that LG&E and KU are maximizing cost-effective DSM.

Movants' participation as a full intervenor will not unduly complicate the matter. Rather, it will facilitate a more robust examination of the joint application. Finally, 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 a Special Interest in this Proceeding That Is Not Otherwise Adequately Represented.

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

Wallace McMullen, the individual Movant, is a customer and rate payer of LG&E. As such, individual Movant helps to fund LG&E's operations and the decisions to be made in this

proceeding concerning the DSM Program and associated tariff will directly impact his bill. In addition, the individual Movant lives within the LG&E service territory and, therefore, is impacted by the economic, public health, and environmental effects of the resource decisions that KPC makes. Organizational Movant Sierra Club has members who are customers and ratepayers of LG&E and KU, and, therefore, Sierra Club has the same interests as the individual Movant. In addition, Movants' desire to promote energy efficiency and peak demand reduction in Kentucky is directly related to the issues of this proceeding, in which LG&E and KU are proposing modifications to their DSM Program. Finally, this proceeding is in part an outgrowth of the DSM market potential study LG&E and KU were ordered to conduct by the Commission in Case No. 2011-00375, a proceeding in which Sierra Club was a party and urged LG&E and KU to undertake a DSM market potential study. Thus, Movants have a special interest in this proceeding.

Movants' interests are not adequately represented by any of the parties in the proceeding. Currently, several parties¹² have motions to intervene pending before the Commission.¹³ Even if all of the pending motions are granted, none of the other parties can adequately represent the organizational Movant's interests as a national organization interested in the promotion of energy efficiency and other DSM as the most reasonable and cost-effective way for LG&E and KU to

¹² The Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas counties filed a motion to intervene on January 21, 2014. The Association Of Community Ministries, Inc., filed a motion to intervene on January 28, 2014. The Attorney General moved to intervene on January 31, 2014.

¹³ The Attorney General, should intervention be granted in this proceeding, cannot adequately represent Movants' interests. 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. 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. 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). Moreover, the Attorney General's office will not marshal the same level of expertise as Movants with regard to energy efficiency and DSM. Accordingly, Movants are uniquely positioned to share their expertise with the Commission.

maintain essential electric services and meet emerging federal regulatory requirements.

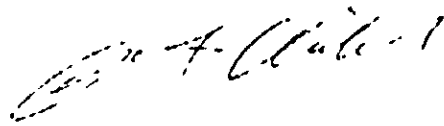
Movants' full intervention is warranted so that their interests, as detailed above, are represented.

IV. CONCLUSION

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

Dated: February 5, 2014

Respectfully submitted,



JOE F. CHILDERS
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CERTIFICATE OF SERVICE

I certify that I mailed a copy of this MOTION OF WALLACE MCMULLEN AND SIERRA CLUB FOR LEAVE TO INTERVENE by first class mail on February 5, 2014 to the following:

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