

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY AND KENTUCKY)	
UTILITIES COMPANY TO INSTALL AND)	
OPERATE ELECTRIC CHARGING STATIONS IN)	
THEIR CERTIFIED TERRITORIES, FOR)	
APPROVAL OF AN ELECTRIC VEHICLE SUPPLY)	CASE NO.
EQUIPMENT RIDER, AN ELECTRIC VEHICLE)	2015-00355
SUPPLY EQUIPMENT RATE, AN ELECTRIC)	
VEHICLE CHARGING RATE, DEPRECIATION)	
RATE, AND FOR A DEVIATION FROM THE)	
REQUIREMENTS OF CERTAIN COMMISSION)	
REGULATIONS)	

ORDER

The matter is before the Commission upon a motion filed by Wallace McMullen (“Mr. McMullen”) and Sierra Club (collectively, “Movants”) for leave to intervene in the instant proceedings. Pursuant to the Commission’s scheduling Order of December 16, 2015, a deadline of December 22, 2015, was established for requests to intervene in this matter. Movants filed their intervention motion on February 12, 2016. In recognition of their late-filed pleading, Movants contend that they have established good cause for the Commission to consider their motion out of time. Movants state that Sierra Club “only recently secured the resources necessary for full and active participation in this proceeding.”¹

Movants also contend that, if permitted to intervene, they would present issues or develop facts that would assist the Commission in fully considering this matter without

¹ Motion of Wallace McMullen and Sierra Club for Leave to Intervene at 4.

unduly complicating or disrupting the proceedings. Movants assert that Sierra Club's staff and consultants have a broad range of expertise in the areas of electric vehicle ("EV") charging load integration, EV charging program design, and cost recovery, noting that it has participated, either as an intervenor or by providing briefs or comments, in similar proceedings in a number of states, including California, Missouri, New York, and Connecticut. Movants state that they would apply their experience and knowledge in evaluating the instant application to assist the Commission in its consideration of the reasonableness of the proposed EV programs and associated tariff proposals.

Movants further state that their intervention, if granted, would not unduly complicate, disrupt or prolong the proceedings. Movants contend that their participation would allow for a more robust examination of Louisville Gas and Electric Company's ("LG&E") and Kentucky Utilities Company's ("KU") (jointly, "LG&E/KU") application, and that Movants, who are represented by capable and experienced counsel, would comply with the existing procedural schedule and would not independently request a hearing.

Lastly, Movants assert that they have special interests in this proceeding that are not otherwise adequately represented. Movants state that Mr. McMullen is a customer of LG&E and that the proposed EV rate rider and rates potentially could impact his LG&E bill. Movants also state that Mr. McMullen lives within LG&E's service territory and could be "impacted by the economic, public health, and environmental effects of the resource decisions that [LG&E] makes."² Movants contend that the Sierra Club has members who are LG&E customers, and thus the organization represents the same special interests as Mr. McMullen. Movants assert that no other party can adequately represent the Sierra Club's interests "as a national organization that is interested in the

² *Id.* at 7.

promotion of vehicle electrification and deployment of charging infrastructure as a means to realize benefits for the body of utility customers, to improve grid reliability and efficiency, and to facilitate progress toward air quality and climate goals.”³

On February 19, 2016, LG&E/KU filed a response objecting to Movants’ request to intervene in this proceeding. First, LG&E/KU contend that Movants’ request is untimely and that they have failed to demonstrate good cause to have their request considered out of time. LG&E/KU argue that Movants had more than adequate notice of this proceeding and could have moved timely to intervene, but instead chose to file their motion 52 days after the deadline established by the procedural schedule for requesting intervention and more than 90 days after LG&E/KU’s application was filed. LG&E/KU further argue that the Sierra Club’s claim of inadequate resources is unconvincing, given that the organization acknowledges that it has or is currently participating in numerous proceedings in Kentucky and other states.⁴ LG&E/KU point out that public information regarding the Sierra Club indicates that the organization has vast resources at its disposal, with net assets of more than \$89 million as of the end of 2014, that it has more than 30 attorneys employed in its Environmental Law Program, and that it spent over \$28 million in support of its Beyond Coal Campaign during 2014.

Secondly, LG&E/KU assert that Movants failed to articulate a special interest sufficient to justify granting their intervention in this matter. LG&E/KU point out that Mr. McMullen is a customer of LG&E and not KU. Therefore, LG&E/KU claim that Mr. McMullen does not have an interest in KU’s rates or services and, by extension, the

³ *Id.* at 8.

⁴ Objection of Louisville Gas and Electric Company and Kentucky Utilities Company to Motion of Wallace McMullen and Sierra Club for Leave to Intervene at 3 indicates that this includes litigation against LG&E/KU in multiple forums.

Sierra Club has no cognizable interest in KU's proposed program or tariff changes in the absence of an interest by Mr. McMullen.

LG&E/KU further contend that Mr. McMullen lacks a special interest to justify his intervention and has no interest in this proceeding that (1) is not already represented by the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), and (2) is jurisdictional to the Commission. LG&E/KU proffer that the scope of this proceeding is limited to the proposed service offering and will have no immediate effect on any other rate or service or the bill of any LG&E customer, including that of Mr. McMullen, unless that customer voluntarily takes the proposed service. LG&E/KU assert that Mr. McMullen's claimed interests in improving access to safe, affordable, and clean transportation options fall outside the Commission's jurisdiction in regulating the rates or service of a utility. Absent any cognizable interest demonstrated by its member, LG&E/KU contend that the Sierra Club necessarily lacks a special interest in this proceeding not otherwise adequately represented by another party.

Thirdly, LG&E/KU maintain that Movants have not demonstrated that they will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding. LG&E/KU note that the intervention motion makes no specific claim of expertise on behalf of Mr. McMullen. Likewise, LG&E/KU assert that Movants have failed to establish that the Sierra Club possesses any expertise relevant to this proceeding, noting that the testimony filed with the Movants' motion did not identify the specific cases that were cited in support of their motion and that they have proffered the testimony of a witness that does not possess the relevant

educational or professional background to be considered an expert on the issues relevant to this proceeding.

Lastly, LG&E/KU argue that Movants' untimely motion for intervention has already disrupted the proceedings, given that under the current procedural schedule, the matter would be ripe for a decision to be submitted based upon the record.

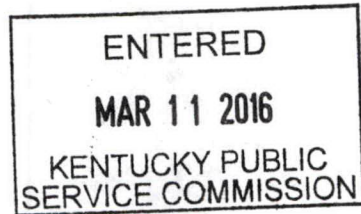
Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that Movants have failed to provide good cause to permit Movants leave to file their motion to intervene out of time. The Commission notes that the existing procedural schedule established a December 22, 2015 deadline for requests for intervention to be filed. Movants submitted their motion to intervene on February 12, 2016, which was more than seven weeks beyond the deadline period for the filing of such a request. The only reason provided by Movants to justify their late-filed intervention request is that the Sierra Club is a not-for-profit organization and had only recently obtained the necessary resources to allow it to fully and actively participate in this proceeding. The Commission finds that Movants have not provided sufficiently detailed information regarding the status of the Sierra Club's resources and its inability to secure the necessary funds to timely intervene in this matter.⁵ Such detailed information is critical for the Commission to make a fully informed decision as to the existence of good cause to grant Movant's request to intervene out of time; particularly, where, as here, the request was submitted almost two months after the deadline for

⁵ The Commission points out that just two months before the December 22, 2015 deadline to request intervention in this matter, the Sierra Club timely filed, on October 15, 2015, a motion to intervene in Case No. 2015-00271, *Application of Kentucky Power Company for (1) Authority to Modify Certain Existing Demand-Side Management Programs; (2) Authority to Implement New Programs; (3) Authority to Discontinue Certain Existing Demand-Side Management Programs; (4) Authority to Recover Costs and Net Lost Revenues, and to Receive Incentives Associated with the Implementation of the Programs; and (5) All Other Required Approvals and Relief* (filed Sept. 15, 2015), Application.

submitting such a request. The Commission further finds that the testimony provided by Movants should be considered as public comment in this proceeding.

IT IS THEREFORE ORDERED that Movants' motion to intervene is denied, and its tendered testimony shall be considered as public comment.

By the Commission



ATTEST:


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