

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2018 JOINT INTEGRATED	)	
RESOURCE PLAN OF LOUISVILLE GAS	)	CASE NO.
AND ELECTRIC COMPANY AND KENTUCKY	)	2018-00348
UTILITIES COMPANY	)	

ORDER

On August 28, 2019, Alice Howell, Carl Vogel, Amy Waters, Joe Dutkiewicz (collectively, Sierra Club Members), and the Sierra Club, Kentucky Chapter (collectively, Sierra Club) filed a joint motion, pursuant to KRS 278.310 and 807 KAR 5:001, Section 4(11)(a), requesting that the Commission grant them leave to intervene in this joint Integrated Resource Plan (IRP) proceeding filed by Kentucky Utilities Company (KU) and Louisville Gas and Electric Company (LG&E) (jointly, KU/LG&E). The October 30, 2018 procedural established September 16, 2019, as the last day for intervention requests to be accepted. Thus, the Sierra Club’s motion is timely filed.

According to the motion, Ms. Howell and Mr. Vogel are residential customers of KU; Ms. Waters and Mr. Dutkiewicz are customers of LG&E;<sup>1</sup> and all four are members of the Sierra Club’s Kentucky Chapter. The Sierra Club Members state that they have a longstanding interest in KU/LG&E supplying lower-cost, cleaner energy options in providing reliable service, and that the Sierra Club, as an organization, has experience in

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<sup>1</sup> The motion states that Ms. Waters and Mr. Dutkiewicz are customers of LG&E, but does not specify whether they are residential customers.

advocating for cost-effective investments in clean generation, demand response, energy storage, energy efficiency, and renewable energy.

### SIERRA CLUB'S ARGUMENTS

The Sierra Club states that it will draw upon its expertise to present issues and develop facts related to least-cost, least-risk options for meeting KU/LG&E customers' energy and peak demand requirements that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. The Sierra Club argues that prudent resource planning should address the technological advances and changes in market conditions that make "cleaner options," including renewable generation and energy storage, increasingly more cost-effective than coal or natural gas-based electric generation facilities.<sup>2</sup> The Sierra Club states that it is knowledgeable about rate designs that are fair, just, and reasonable, and do not penalize customers who invest in distributed generation or engage in energy efficiency practices. The Sierra Club further states that it is knowledgeable about contracting for market-competitive generation that minimizes cost and provides reliable electric service. The Sierra Club asserts that it will present testimony regarding whether KU/LG&E identified reasonably least-cost, least-risk resource planning in light of loss of demand, generation costs, and the availability of renewable energy, demand response, energy storage, and energy efficiency resources. For example, the Sierra Club states that it will provide testimony on the reasonableness of KU/LG&E's long-term contract with the Ohio Valley

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<sup>2</sup> Sierra Club's Petition for Intervention at 2.

Electric Corporation (OVEC).<sup>3</sup> In support of its argument regarding its expertise, the Sierra Club points to its status as an intervenor in previous IRP proceedings filed by KU/LG&E,<sup>4</sup> along with participation in IRPs filed by other utilities in Kentucky and other states.

The Sierra Club contends that it has a special interest that is not adequately represented by any other party to this case. The Sierra Club members assert that they are customers of KU/LG&E and thus are financially impacted by KU/LG&E's resource plans. The Sierra Club Members also argue that they share a desire to promote renewable energy, energy storage, demand response, and energy efficiency resources that are unique in degree and kind. The Sierra Club asserts that, as an organization, it will advocate on behalf of those interests to a degree not otherwise represented in these proceedings. The Sierra Club argues that the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), who is an intervenor in this proceeding, represents all consumers and their diverse interests, and thus cannot forcefully represent the Sierra Club's interests because of this obligation.

## DISCUSSION AND FINDINGS

### Legal Standard for Intervention

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<sup>3</sup> See Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates* (filed Sept. 28, 2018), Application, Attachment to Filing Requirement 807 KAR 5:001 Section 16(7)(k), p. 49 of 310; Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates* (filed Sept. 28, 2018), Application, Attachment to Filing Requirement 807 KAR 5:001 Section 16(7)(k), p. 49 of 298. OVEC owns and operates two coal-fired power plants, the Kyger Creek plant in Ohio and Clifty Creek plant in Indiana. LG&E owns a 5.63 percent interest and KU owns a 2.50 percent interest in OVEC.

<sup>4</sup> Case No. 2014-00131, *2014 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC June 25, 2014); Case No. 2011-00140, *The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (July 11, 2011).

The only person who has a statutory right to intervene in a proceeding before the Commission is the Attorney General, pursuant to KRS 367.150(8). Intervention by all others is permissive and is within the discretion of the Commission.<sup>5</sup> Although the Commission retains the discretion to grant or deny a motion for intervention, statutory and regulatory law limits the discretion.<sup>6</sup> 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>7</sup> The regulatory limitation is set forth in 807 KAR 5:001, Section 3(8), 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.

According to the Sierra Club, if it makes a showing of either of the bases for permissive intervention, then the Commission shall grant it intervention. However, it is more accurate to state that, in a permissive intervention, a person or entity may intervene in accordance with the Commission’s administrative regulations and at the discretion of the Commission. The Commission will grant intervention only if it first makes a factual finding that movants meet the standards for intervention in 807 KAR 5:001, Section 3(8). We make this finding on a case-by-case basis. When a person or entity is granted

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<sup>5</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

<sup>6</sup> *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

<sup>7</sup> *Id.* at 3.

intervention in one proceeding, that determination does not control the Commission's findings regarding intervention in a future proceeding.

#### Legal Standard for IRP Proceedings

807 KAR 5:058 requires certain electric utilities, including KU/LG&E, to file an IRP to provide for adequate and reliable electric service that meets forecasted electricity requirements that is cost-effective. Under 807 KAR 5:058, Section 8, a utility filing an IRP must address its projected load growth, and the resources planned to meet that growth, including cost-effective resource options for conservation, load management, and other demand-side management programs.

IRP filings are unique because the Commission's role under 807 KAR 5:058 is limited to addressing procedural issues and not substantive issues. The specific procedures established under 807 KAR 5:058 include a procedural schedule that leads to a report prepared by Commission Staff (Staff) that is the final substantive action in an IRP. The Staff Report summarizes Staff's review of the IRP and provides recommendations and suggestions for subsequent IRP filings. The regulation does not provide for an evidentiary hearing, and the Commission does not enter findings of fact or conclusions of law.

#### Intervention Standard: Likely to Present Issues or Develop Facts that Will Assist the Commission in Fully Considering the Matter Without Unduly Complicating or Disrupting the Proceedings

As an initial matter, we reiterate that granting or denying intervention in a previous proceeding is not a predicate to granting or denying intervention in future proceeding. Thus, we do not analyze whether the Sierra Club satisfies this standard based on past decisions of the Commission.

In regard to Sierra Club's argument that its experience in rate design would ensure that KU/LG&E's rate designs do not penalize consumers who engage in energy-efficiency practices or invest in distributed generation, we find that the issue of rate design is not relevant to an IRP proceeding. The scope of an IRP proceeding is resource assessment and adequacy. Thus, presenting issues and developing facts regarding rate design will not assist the Commission in this matter.

In regard to the Sierra Club's argument that it will present issues and develop facts pertaining to least-cost, lowest-risk options to consider in resource planning, we find that the Sierra Club satisfies that standard under 807 KAR 5:001, Section 4(11)(b), and should be granted intervenor status in regard to resource assessment and adequacy. The Sierra Club provided specific details on the testimony it would proffer that would assist the Commission in this proceeding, including the reasonableness of the costs associated with KU/LG&E's contract with OVEC. As the Commission indicated in a recent rate case, this IRP proceeding is the appropriate forum to address OVEC issues presented by the Sierra Club.<sup>8</sup>

Intervention Standard: Special Interest that is Not Otherwise Adequately Represented

We are not persuaded by the Sierra Club's claim that it has a special interest that is not otherwise adequately represented. The Sierra Club has not shown how its interest in energy efficiency, demand-side management, and renewable energy differs from the interest of all other KU/LG&E customers or how the Attorney General's representation is not adequate to protect the Sierra Club's interests. Therefore, the Commission finds that Sierra Club failed to establish that it has a special interest that is not otherwise

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<sup>8</sup> Case No. 2018-00295, Final Order (Ky. PSC Apr. 30, 2019) at 27–29.

represented. However, because we found that the Sierra Club will present issues and develop facts that will assist the Commission, and the Commission may grant a motion to intervene if only one of the legal standards is satisfied, our finding that the Sierra Club failed to establish a special interest does not prevent the Commission from granting the motion to intervene to present issues and develop facts pertaining to resource assessment and adequacy.

IT IS HEREBY ORDERED that:

1. Alice Howell, Carl Vogel, Amy Waters, Joe Dutkiewicz, and the Sierra Club, Kentucky Chapter's joint motion to intervene is granted.

2. Alice Howell, Carl Vogel, Amy Waters, Joe Dutkiewicz, and the Sierra Club, Kentucky Chapter shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. Alice Howell, Carl Vogel, Amy Waters, Joe Dutkiewicz, and the Sierra Club, Kentucky Chapter 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), within seven days of entry of this Order, Alice Howell, Carl Vogel, Amy Waters, Joe Dutkiewicz, and the Sierra Club, Kentucky Chapter shall file a written statement with the Commission that:

a. Certifies that they, or their agent, possess the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

By the Commission

ENTERED  
SEP 19 2019  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2018-00348

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