

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2021 JOINT INTEGRATED	)	
RESOURCE PLAN OF LOUISVILLE GAS AND	)	CASE NO.
ELECTRIC COMPANY AND KENTUCKY	)	2021-00393
UTILITIES COMPANY	)	

ORDER

On October 28, 2021, Southern Renewable Energy Association (SREA) filed a timely motion to intervene in this case arguing that it has a special interest in the proceedings not otherwise adequately represented and that it will present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) filed a response to SREA’s motion on November 3, 2021, arguing that SREA failed to establish that it should be permitted to intervene, and SREA filed a reply in support of its motion on November 8, 2021. SREA’s motion is now before the Commission for a decision on its merits.

BACKGROUND

SREA is a nonprofit corporation formed to promote the responsible use and development of wind energy, solar energy, energy storage, and transmission solutions in the South.<sup>1</sup> SREA states that its members are actively developing renewable energy projects in Kentucky and, as a result of those developments, that SREA is knowledgeable

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<sup>1</sup> SREA Motion to Intervene (filed Oct. 28, 2021) at 1–2.

and active in matters pertaining to MISO.<sup>2</sup> SREA notes that it has previously submitted comprehensive, well-documented written comments for other Integrated Resource Plans (IRPs) filed with the Commission and in other states.<sup>3</sup> It asserts that it has expert capacity to convey the interest of large-scale renewable energy development companies. SREA stated that its intent in intervening is to provide the “most up-to-date publically available market information regarding renewable energy resource availability, pricing, performance, and forecasting,” so the record in this matter accurately and adequately evaluates utility-scale renewable energy resources.<sup>4</sup> Thus, SREA argues that it has a special interest in the proceeding not otherwise adequately represented and that it will present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.<sup>5</sup>

LG&E and KU assert that the Commission previously held that only a utility’s retail customers can have a direct interest, much less a special interest, upon which intervention can be granted based on the first prong of 807 KAR 5:001, Section 4(11).<sup>6</sup> LG&E and KU note that neither SREA nor its members are retail customers of LG&E and KU.<sup>7</sup> Thus, they argue that SREA does not have a special interest justifying intervention in this matter.<sup>8</sup>

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

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

<sup>4</sup> *Id.* 2–3.

<sup>5</sup> *Id.*

<sup>6</sup> LG&E and KU Response to SREA’s Motion to Intervene (filed Nov. 3, 2021) at 1–2.

<sup>7</sup> *Id.* at 2–3.

<sup>8</sup> *Id.*

LG&E and KU acknowledge that SREA may also be permitted to intervene if the Commission finds it will present issues or develop facts that will assist the Commission without unduly complicating or disrupting the proceeding.<sup>9</sup> However, LG&E and KU note that SREA's stated intent in intervening in this matter is to provide "publicly available market information regarding renewable energy resource availability, pricing, performance, and forecasting."<sup>10</sup> LG&E and KU argue that the Commission and its staff, other intervenors, and the companies themselves have all demonstrated in multiple Commission proceedings that they are capable of obtaining and evaluating both public and non-public information to evaluate utility-scale renewable resources.<sup>11</sup> LG&E and KU also assert that SREA specifically acknowledges in its motion that the information it will provide is intended to advance the interest of large-scale renewable energy development companies as opposed to interest of customers in LG&E and KU's service territory.<sup>12</sup> Thus, LG&E and KU argue that the interests SREA seeks to promote are irrelevant and that its intervention will only serve to unduly complicate and disrupt this proceeding, and they further argue that the regulatory process should not be used by persons who are not customers to advance their business interest.<sup>13</sup>

In its reply, SREA notes, among other things, that IRP proceedings are different from typical cases before the Commission such as applications for rate increases, applications for certificates of public convenience and necessity, and investigations of

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5–7.

<sup>13</sup> *Id.* at 7–8.

utilities's rates or service standards. SREA argues that those cases are adjudicatory in nature whereas IRP proceedings are intended to be an informal and cooperative review of a utility's IRP that does not result in a formal adjudication by the Commission. SREA argues that its motion to intervene should be reviewed with those differences in mind and by reference to the basis for requiring an IRP.<sup>14</sup> SREA also asserts that the Commission has not strictly limited intervention to utility customers or those representing utility customers even in cases where a formal adjudication is being sought.<sup>15</sup> Rather, SREA notes that the Commission has occasionally permitted intervention by persons who are not customers based on a finding that they are likely to present issues and develop facts that will assist the Commission in fully considering a matter without unduly complicating or disrupting the proceedings.<sup>16</sup> SREA argues that it should be granted permissive intervention for the same reasons.<sup>17</sup>

## DISCUSSION

The Attorney General is the only person with a statutory right to intervene in a case before the Commission.<sup>18</sup> Intervention by all others is permissive and is within the sound

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<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 7–9 citing Case No. 2007-00134, *Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing the Construction of the Kentucky River Station II, Associated Facilities and Transmission Main* (Ky. P.S.C. Aug. 13, 2007), Order; Case No. 2003-00266, *Investigation Into the Membership of Louisville Gas and Electric Company and Kentucky Utilities Company in the Midwest Independent Transmission System Operator, Inc.* (Ky. P.S.C. Aug. 22, 2003), Order.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 9–10.

<sup>18</sup> Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting all Other Required Approvals and Relief*, (Ky. PSC Aug. 3, 2017), Order at 1.

discretion of the Commission.<sup>19</sup> Motions to intervene are granted based upon the timely filing of a motion to intervene, pursuant to the rules established by the Commission, and a finding that the person seeking intervention has a special interest in the case that is not otherwise adequately represented or is likely to present issues or to develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.<sup>20</sup> The person requesting intervention has the burden to establish that its motion to intervene should be granted.<sup>21</sup>

The Commission has generally denied intervention to persons who are not customers based on a finding that they do not have a special interest and that their participation will not assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.<sup>22</sup> However, different cases and types of cases present distinct issues, so the analysis of whether a particular persons should be

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<sup>19</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

<sup>20</sup> 807 KAR 5:001, Section 4(11)(b).

<sup>21</sup> See 807 KAR 5:001, Section 4(11)(a)1. (“The motion . . . shall state his or her interest in the case and how 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.”); see also Case No. 2021-00109, *Electronic Application of Fleming-Mason Energy Cooperative, Inc. for Pass-Through of East Kentucky Power Cooperative, Inc. Wholesale Rate Adjustment* (Ky. PSC May 24, 2021), Order at 4 (granting intervention based on a finding that the intervenor met its burden of proof).

<sup>22</sup> See, e.g. Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC Jan. 6, 2021), Order; Case No. 2016-00162, *Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates* (Ky. PSC Jul. 21, 2016), Order; Case No. 2004-00423, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal-Fired Unit in Mason County, Kentucky* (Ky. PSC Apr. 18, 2005), Order; see also *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007) (unpublished) (“[T]here is the statutory limitation under KRS 278.040(2) 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.”).

permitted to intervene may change depending on the case and the issues the Commission will address.<sup>23</sup>

Here, SREA indicated that it intends to provide information regarding renewable energy resource availability, pricing, performance, and forecasting. Those issues have been significant in recent IRPs, and their analyses has been changing rapidly due to changes and potential changes in law and technology, as well as new information obtained from previous deployments. SREA filed detailed and concise comments regarding utility scale renewable resources in past IRP proceedings, which were useful in reviewing utilities's IRPs in those cases.<sup>24</sup> Those past comments support a finding that SREA is likely to assist the Commission in developing the facts regarding those complex issues in this matter. Further, while SREA has interests that are distinct from those of LG&E and KU's retail customers, LG&E and KU will have the opportunity to explain why any information or analysis provided by SREA is incorrect or unreasonable, and the Commission can evaluate the positions of all parties.<sup>25</sup> Finally, IRP proceedings are

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<sup>23</sup> See Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Sept. 19, 2019), Order at 4. Even cases of the same type involving the same utility might present different issues that effect whether a person should be granted intervention. For instance, if a utility proposes to use a depreciation methodology in a rate case that is distinct from the methodology used by most other utilities, the Commission may seek additional evidence regarding that issue such that a person likely to present such evidence could establish that they should be permitted to intervene. However, if the same utility in a subsequent rate case simply proposes to use the same methodology approved in the previous case, then a person's ability to present evidence on that issue might not justify intervention in the new case.

<sup>24</sup> See, e.g. Case No. 2019-00443, *Electronic 2019 Integrated Resource Planning Report of Kentucky Power Company* (filed Oct. 16, 2020), SREA Comments; Case No. 2019-00096, *Electronic 2019 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.* (filed June 8, 2020), SREA Comments; Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (filed Jan. 16, 2020), SREA Comments.

<sup>25</sup> See, e.g. Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (filed Feb. 17, 2020), LG&E and KU's Response to SREA and Sierra Club's Comments.

distinct from most other Commission cases in that utilities are not requesting a formal approval or adjudication in a final Commission Order that could be appealed or further complicated by an intervenor improperly seeking to promote its distinct business interests.<sup>26</sup> Thus, having reviewed the record and being otherwise sufficiently advised, the Commission finds that SREA 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. The Commission directs SREA to the Commission's July 22, 2021 Order in Case No. 2020-00085<sup>27</sup> regarding filings with the Commission.

IT IS THEREFORE ORDERED that:

1. The motion of SREA to intervene is granted.
2. SREA 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. SREA 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, SREA shall file a written statement with the Commission that:

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<sup>26</sup> There is some risk that SREA and similarly situated parties might attempt to use the discovery process to obtain an economic advantage. However, that risk is minimal given that most information in discovery will be publically available and confidential information is subject to limitations in how it may be used and disseminated. Further, in the event discovery disputes do arise, they can be addressed through subsequent motions and any abuses may affect future findings regarding whether a party's participation will unduly complicate or disrupt the proceedings.

<sup>27</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

a. Certifies that it, or its agent, possesses 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.

5. SREA shall adhere to the procedural schedule set forth in the Commission's November 12, 2021 Order and any amendments thereto.

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By the Commission

Commissioner Marianne Butler did not participate in the deliberations or decision concerning this case.



ATTEST:

  
Executive Director

Case No. 2021-00393

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*John G Horne, II  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Rick E Lovekamp  
Manager - Regulatory Affairs  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202

\*Honorable Allyson K Sturgeon  
Managing Senior Counsel - Regulatory &  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202

\*Honorable Kurt J Boehm  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Robert Conroy  
Vice President, State Regulation and Rates  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202

\*Honorable David Edward Spenard  
Strobo Barkley PLLC  
239 South 5th Street  
Ste 917  
Louisville, KENTUCKY 40202

\*Honorable Kendrick R Riggs  
Attorney at Law  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 W Jefferson Street  
Louisville, KENTUCKY 40202-2828

\*Kentucky Utilities Company  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40232-2010

\*Tom Fitzgerald  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Larry Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Louisville Gas and Electric Company  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40232-2010

\*Jeff Derouen  
Assistant County Attorney  
Louisville/Jefferson County Metro Government  
First Trust Centre  
200 South 5th Street, Suite 300N  
Louisville, KENTUCKY 40202

\*J. Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Joe F. Childers  
Childers & Baxter PLLC  
300 Lexington Building, 201 West Sho  
Lexington, KENTUCKY 40507

\*Quang Nguyen  
Assistant County Attorney  
Louisville/Jefferson County Metro Government  
First Trust Centre  
200 South 5th Street, Suite 300N  
Louisville, KENTUCKY 40202