

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO)	
CONVERT ITS WET FLUE GAS)	
DESULFURIZATION SYSTEM FROM A)	
QUICKLIME REAGENT PROCESS TO A)	CASE NO.
LIMESTONE REAGENT HANDLING SYSTEM AT)	2024-00152
ITS EAST BEND GENERATING STATION AND)	
FOR APPROVAL TO AMEND ITS)	
ENVIRONMENTAL COMPLIANCE PLAN FOR)	
RECOVERY BY ENVIRONMENTAL SURCHARGE)	
MECHANISM)	

ORDER

On August 23, 2024, the Sierra Club filed a motion to intervene in this proceeding. Sierra Club concurrently filed an initial request for information to Duke Energy Kentucky, Inc. (Duke Kentucky), in order to abide by the established deadline in the existing procedural schedule.¹ In accordance with the procedural schedule established on August 9, 2024, the intervention deadline was August 16, 2024, and anyone who submitted a motion to intervene after August 16, 2024, had to show good cause for the untimely filing.²

On August 27, 2024, Duke Kentucky filed an objection to the motion and a request to strike Sierra Clubs' first set of requests for information, arguing Sierra Club failed to demonstrate good cause as to why its untimely motion should be granted, failed to

¹ Order (Ky. PSC Aug. 9, 2024), Appendix. First requests for information to Duke Kentucky were due by Aug. 23, 2024.

² Order (Ky. PSC Aug. 9, 2024) at 4, paragraph 6.

demonstrate that it has a special interest in the proceeding, and failed to identify any relevant issues or facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding.³ On August 31, 2024, Sierra Club filed a reply in support of their motion to intervene and an objection to Duke Kentucky's motion to trike Sierra Club's first set of requests for information.⁴

LEGAL STANDARD

Until recently, the only person who has a statutory right to intervene in a Commission case is the Attorney General pursuant to KRS 367.150(8)(b).⁵ Intervention by others is permissive and is within the sole discretion of the Commission.⁶

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11) requires a person to set forth in the motion to intervene either a special interest in the proceeding that is not otherwise adequately represented in the case, or 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.

³ Objection of Duke Kentucky to Sierra Club's Motion to Intervene Out-of-Time and Request to Strike the Sierra Club's First Set of Requests for Information (filed Aug. 27, 2024) at 1.

⁴ Sierra Club's Reply in Support of Motion to Intervene Out-of-Time and Sierra Club's Objection to Duke's Motion to Strike Sierra Club's First Set of Requests for Information (filed Aug. 31, 2024).

⁵ On April 12, 2024, KRS 164.2807 was passed granting an absolute right to the Energy Planning and Inventory Commission for intervention, if so desired. KRS 164.2807(8) states "Notwithstanding any provision of law to the contrary, the executive committee, or the executive director if authorized by the executive committee, shall have standing to participate as an intervening party in any case or other proceeding before the Public Service Commission."

⁶ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

DISCUSSION

Sierra Club argued that it did not become aware of this proceeding until one week after the intervention deadline and filed the untimely motion to intervene due to staffing changes and unfortunate oversight.⁷

Sierra Club further argued its participation in the preceding is essential to its members, many of whom are residential customers of Duke Kentucky, because no other party to this docket adequately represents the institutional and policy interests of Sierra Club and its members, as it pertains to the environment and public health, pursuant to 807 KAR, 5:001 Section 4(11)(b).⁸ In addition, Sierra Club submitted that its participation will help stimulate a robust evaluation of the issues, and inform the Commission's ultimate decision about the prudence, necessity, and public interest in Duke Kentucky's proposed Limestone Conversion Project at East Bend without unduly complicating or disrupting the proceedings pursuant to 807 KAR 5:001, Section 4(11)(b).⁹

Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that Sierra Club has established good cause to grant leave to file its intervention motion out of time. The Commission further finds that Sierra Club demonstrated that it is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings pursuant to 807 KAR 5:001, Section 4(11)(b). Sierra Club has been a party before the

⁷ Sierra Club's Motion to Intervene Out-of-Time (Motion) (filed Aug. 23, 2024) at 1.

⁸ Motion at 7.

⁹ Motion at 5.

Commission in numerous proceedings and has demonstrated an ability to assist in developing a robust record without complicating the proceeding.

The Commission also finds that Duke Kentucky should not answer Sierra Club's initial request for information, although the requests will not be stricken from the record, and going forward Sierra Club will adhere to the procedural schedule filed in the record on August 9, 2024. Duke Kentucky would have had no notice that Sierra Club was an intervening party in the matter and the Commission had not even had the opportunity to review the motion nor Duke Kentucky respond to the motion on August 23, 2024. Sierra Club's requests for information were presumptive and by requesting for intervention, which only may be granted by the Commission, Sierra Club was agreeing to be bound by the procedural schedule. The Commission notes that its Order could not have been issued on August 23, 2024 without depriving Duke Kentucky of its opportunity to respond.

IT IS THEREFORE ORDERED that:

1. Sierra Club's motion to intervene is granted.
2. Duke Kentucky should not file answers to Sierra Club's initial request for information.
3. Sierra Club shall follow the procedural schedule set forth in this proceeding.
4. Duke Kentucky's request to strike the first set of requests for information from Sierra Club is denied.
5. Sierra Club is 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.

6. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, Sierra Club shall file a written statement with the Commission that:

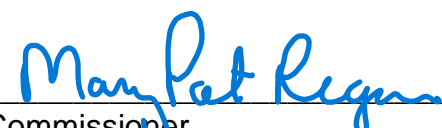
a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

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

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman


Commissioner

ENTERED
SEP 04 2024
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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