

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Staff's Audit of Kansas City)
Power & Light Company's Expenditures Related)
to the LaCygne Air Quality Control System Project)

File No. EO-2014-0042

SIERRA CLUB REPLY IN SUPPORT OF MOTION TO INTERVENE

Sierra Club respectfully submits this reply in support of its motion to intervene in this matter. As described in more detail in Sierra Club's motion, Sierra Club brings unique perspective and expertise in evaluating proposed investments in coal-fired generation as compared with cleaner, lower-cost alternatives – including prior proceedings both before this Commission and the Kansas Corporation Commission relating to the LaCygne Generation Station – that will assist the Commission and parties in fully evaluating the issues in any future rate case in which the prudence of KCP&L's investment in the LaCygne Generation Station is considered. Although the Commission will make this prudence determination in a future rate case rather than in this docket, Sierra Club should be allowed to participate in the discovery process facilitated by this docket to allow its consultants and attorneys to begin accessing discovery materials that will allow it to prepare for that future proceeding, including any discovery materials that KCP&L designates "highly confidential" (and to which Sierra Club would thus not otherwise have access). Sierra Club's intervention in this docket serves the public interest and the interest of Missouri ratepayers in prudent, least-cost resource planning, and therefore the Commission should grant Sierra Club's intervention under 4 CSR 240-2.075(3)(B).

Kansas City Power & Light ("KCP&L") opposes Sierra Club's motion on the ground that, because this is not a contested case in which relief is being sought, intervention is not

available under 4 CSR 240-2.075 to third-party organizations such as Sierra Club. (KCP&L Opp. at 2.) But KCP&L does not cite to any language in the rule that limits intervention to contested cases – nor can it, because such language does not exist in the rule. On the contrary, 4 CSR 240-2.075(3) provides that the Commission may grant intervention if *either* the proposed intervenor (A) “has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case;” *or* (B) “[g]ranteeing the proposed intervention would serve the public interest.” Although Paragraph (A) might not apply here since no order is presently being contemplated, Paragraph (B) is not limited to contested cases. Rather, Paragraph (B) provides that the Commission may grant intervention in any proceeding for which it determines that it would serve the public interest to do so. The language of 4 CSR 240-2.075(3)(B) thus plainly allows the Commission to grant intervention to Sierra Club, because for the reasons set forth above and in Sierra Club’s motion to intervene, Sierra Club’s intervention in this docket would serve the public interest.

KCP&L also cites to a June 2013 order of the Commission that it claims reaches a contrary result, but the facts which prompted that order are clearly distinguishable from the situation here. In Case No. EO-2013-0405, the Commission denied intervention to Renew Missouri because the Commission had already issued an order resolving the issue that it had intended to resolve in that docket. Renew Missouri’s motion to intervene in that docket was based on the mistaken belief that further proceedings would take place in that docket as opposed to a different, future docket. In Case No. EO-2013-0405, the Commission not only denied Renew Missouri’s motion to intervene, but it also in the same order closed the docket.

This case presents a different set of facts. Here, Sierra Club is not mistakenly attempting to intervene in a future docket that has not yet commenced. Rather, Sierra Club seeks to

intervene to participate in the discovery that will be facilitated in this docket, and which has not yet occurred. Although the order in Case No. EO-2013-0405 does include some dicta suggesting that “[t]he purpose of the [intervention] rule is to allow individuals or entities to intervene in contested cases where relief is being sought,” this statement was not material to the reasoning that prompted the Commission’s order there and should not bind the Commission here.

Accordingly, because Sierra Club’s intervention here would serve the public interest, the Commission should grant Sierra Club’s motion to intervene.

Date: October 25, 2013

Respectfully submitted,

/s/ Henry Robertson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and sent by email on this 25th day of October, 2013, to all counsel of record.

/s/ Henry Robertson

Henry Robertson