

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 26th day of
November, 2013.

In the Matter of Staff's Audit of Kansas City)	
Power & Light Company's Expenditures Related to the)	
LaCygne Air Quality Control System Project)	<u>File No. EO-2014-0042</u>

**ORDER DENYING THE MOTION TO INTERVENE OF
SIERRA CLUB**

Issue Date: November 26, 2013

Effective Date: November 26, 2013

This file was opened on August 21, 2013, to facilitate and retain discovery regarding Staff's audit of Kansas City Power & Light Company's (KCP&L's) installation of an Air Quality Control System at its LaCygne Generation Station.

On October 4, Sierra Club, applied to intervene. Sierra Club is a non-profit corporation interested in environmental issues. Sierra Club represents that it has an interest in promoting cleaner and lower-cost forms of energy that is different from that of the general public. In particular, Sierra Club is interested in whether KCP&L's investment in installation of air quality controls at its LaCygne coal-fired generation station is prudent and would serve the public interest. On October 15, KCP&L objected to Sierra Club's intervention. Subsequently, Public Counsel and Sierra Club filed responses supporting Sierra Club's intervention.

Staff did not initially respond to either Sierra Club's motion to intervene or KCP&L's objection to that intervention. On November 20, the Commission directed Staff to file a

pleading no later than November 22 indicting its position on Sierra Club's motion to intervene. Staff responded on November 22 indicating it recommends the Commission deny Sierra Club's motion to intervene.

The basis for KCP&L's objection is that this is not a contested case and therefore intervention is not appropriate. Specifically, KCP&L contends that Sierra Club's interest in the prudence of its investment in the LaCygne station is not implicated in what it describes as a non-contested investigative case since the Commission will not consider the prudence of that investment until a future rate case. Sierra Club and Public Counsel argue that this case was established to facilitate and retain discovery regarding Staff's audit of KCP&L's installation of an air quality control system at LaCygne. They contend there is no reason to limit that discovery to just Public Counsel and Staff.

The Commission's regulation on intervention allows for intervention either when the proposed intervenor has an interest that is different from that of the general public and that interest may be adversely affected by an order resulting from that case, or when granting the proposed intervention would serve the public interest.¹ There will be no order issued in this audit file that could adversely affect Sierra Club's interest, so that aspect of the rule does not justify allowing Sierra Club to intervene. The question then becomes, would granting the proposed intervention of the Sierra Club serve the public interest?

In support of its argument that intervention should not be allowed in what it describes as a non-contested case, KCP&L cites a Commission order from May 15, 2013, in File No. EO-2013-0405. In that order, the Commission denied Earth Island Institute d/b/a Renew Missouri's application to intervene in a case regarding The Empire District Electric

¹ Commission Rule 4 CSR 240-2.075(3)

Company's 2013 IRP filing. In doing so, the Commission stated that the purpose of the Commission's intervention rule "is to allow individuals or entities to intervene in contested cases where relief is being sought." However, the Commission's holding in that case denied intervention because Renew Missouri had intended to intervene in the case in which the Commission would consider Empire's triennial IRP filing, but mistakenly applied to intervene in a case in which the Commission had previously granted Empire's request for certain variances regarding that upcoming IRP filing. As a result, the Commission's decision to deny Renew Missouri's application to intervene in File No. EO-2013-0405 is distinguishable from its ruling on Sierra Club's application to intervene in this file.

Thus, KCP&L's argument that the Commission has indicated an intent to deny intervention in a non-contested case is incorrect. Nevertheless, intervention is not proper in this matter because it is neither a contested case nor a non-contested case. It is not, in fact, a case at all. Rather it is a file created to assist Staff in conducting an audit. Staff and Public Counsel have statutory authority to audit Empire. Sierra Club does not have such authority. As a result, no public interest would be served by allowing Sierra Club to participate in Staff's audit. On that basis, in accordance with Commission Rule 4 CSR 240-2.075(3), the Commission will deny Sierra Club's application to intervene.

THE COMMISSION ORDERS THAT:

1. The Motion to Intervene of Sierra Club is denied.

2. This order shall become effective upon issuance.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
and Hall, CC., concur.

Woodruff, Chief Regulatory Law Judge