

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**August 10, 2006**

<b>IN RE:</b>	)	
	)	
<b>APPROPRIATENESS OF IMPLEMENTATION OF</b>	)	<b>DOCKET NO.</b>
<b>PURPA STANDARD 11 (NET METERING), STANDARD</b>	)	<b>06-00010</b>
<b>12 (FUEL SOURCES), STANDARD 13 (FOSSIL FUEL</b>	)	
<b>GENERATION EFFICIENCY), STANDARD 14 (TIME</b>	)	
<b>BASED METERING AND COMMUNICATION) AND</b>	)	
<b>STANDARD 15 (INTERCONNECTION) FOR</b>	)	
<b>KINGSPORT POWER COMPANY D/B/A AEP</b>	)	
<b>APPALACHIAN POWER</b>	)	

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**INITIAL ORDER**

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This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the “Authority” or “TRA”) for consideration and determination of the appropriateness of the implementation of certain federal standards for electric utilities set forth in the Public Utility Regulatory Policies Act of 1978 (“PURPA”), as amended by the Energy Policy Act of 2005, for Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport Power”).

**BACKGROUND**

PURPA was enacted in 1978 to “encourage (1) conservation of energy supplied by electric utilities; (2) the optimization of the efficiency of use of facilities and resources by electric utilities; and equitable rates to electric consumers.”<sup>1</sup> PURPA originally contained six (6) federal standards for electric utilities; four (4) additional standards were added by the Energy Policy Act

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<sup>1</sup> 16 U.S.C. § 2611.

of 1992. The PURPA requirements apply to electric utilities with total annual retail sales greater than 500 million kilowatt hours using a baseline year of two (2) years before when the standards are being considered.<sup>2</sup> PURPA requires a “state regulatory authority (with respect to each electric utility for which it has ratemaking authority)” to “consider each standard” and “make a determination concerning whether or not it is appropriate to implement such standard.”<sup>3</sup> If a state regulatory authority declines to implement a standard, the agency must state in writing the reason for the decision and make that statement available to the public.<sup>4</sup>

The procedures for consideration and determination of the appropriateness of the implementation of the standards are established by the state regulatory authority.<sup>5</sup> The consideration of the standards must be made after public notice and a hearing.<sup>6</sup> The determination of appropriateness of implementation of the standards must be made in writing, based upon findings and upon the evidence presented at the hearing, and available to the public.<sup>7</sup>

The Energy Policy Act of 2005 amended PURPA by adding five (5) additional standards that a state regulatory authority must consider and determine the appropriateness of their implementation with respect to each electric utility for which the agency has ratemaking authority.<sup>8</sup> These additional standards are codified at 16 U.S.C. § 2621(d)(11) through (15) and are discussed in detail below.

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<sup>2</sup> 16 U.S.C. § 2612(a).

<sup>3</sup> 16 U.S.C. § 2621(a).

<sup>4</sup> 16 U.S.C. § 2621(c)(2).

<sup>5</sup> 16 U.S.C. § 2621(b)(2).

<sup>6</sup> 16 U.S.C. § 2621(b)(1).

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

<sup>8</sup> The effective date of the Energy Act of 2005 is August 8, 2005.

Kingsport Power, a wholly-owned operating company subsidiary of American Electric Power Company, Inc., is a public utility engaged in furnishing electric power to approximately 46,000 retail customers in a 220 square mile area in Sullivan, Hawkins and Washington Counties, Tennessee.<sup>9</sup> At a regularly scheduled Authority Conference held on January 10, 2006, the Directors voted unanimously to open a docket for the purpose of considering and determining the appropriateness of implementation of the standards contained in 16 U.S.C. § 2621(d)(11) through (15) as they relate to Kingsport Power, and to appoint the Authority's General Counsel or his designee to act as the Hearing Officer on the merits.<sup>10</sup> On March 14, 2006, Kingsport Power filed its *Petition of Kingsport Power Company d/b/a AEP Appalachian Power to Participate as a Party in Docket No. 06-00010*.

#### **APRIL 25, 2006 HEARING**

Pursuant to 16 U.S.C. § 2621(b)(1), public notice of the Hearing in this matter was issued by the Hearing Officer on February 15, 2006. At the Hearing held on April 25, 2006, the Hearing Officer applied the standards for intervention set forth in Tenn. Code Ann. § 4-5-310(a) (2005) and granted the *Petition of Kingsport Power Company d/b/a AEP Appalachian Power to Participate as a Party in Docket No. 06-00010* pursuant to 16 U.S.C. § 2631(a). No other persons sought intervention prior to or during the Hearing.

At the Hearing, William C. Bovender, Esq., Hunter Smith & Davis, LLP, 1212 North Eastman Road, Kingsport, Tennessee 37664, appeared on behalf of Kingsport Power. Kingsport Power called the following witnesses: Barry L. Thomas, Director of Regulatory Services for the Appalachian Power Unit of American Electric Power Company, Inc.; Chris Potter, Manager in

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<sup>9</sup> See Barry L. Thomas, Pre-Filed Direct Testimony, p. 5 (March 20, 2006).

<sup>10</sup> See Transcript of Authority Conference, pp. 12-13 (January 10, 2006).

the Regulated Pricing and Analysis Department for American Electric Power Service Corporation; and Stephen E. Early, Principal Engineer in the Distribution Engineering Services Department for American Electric Power Service Corporation. All witnesses were subject to examination by the Hearing Officer and TRA Staff.<sup>11</sup>

### **FINDINGS AND CONCLUSIONS**

**Standard 11 - Net Metering:** Each electric utility shall make available upon request net metering to any electric consumer that the electric utility serves. For purposes of this paragraph, the term “net metering service” means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.<sup>12</sup>

Based upon the evidence presented, the Hearing Officer finds that there is minimal interest in net metering within Kingsport Power’s service area.<sup>13</sup> The Company has committed to work with residential and small commercial customers who request net metering through the use of special contracts.<sup>14</sup> Because this is an efficient and sufficient method for addressing customers’ requests for net metering, particularly in light of minimal customer interest, the Hearing Officer concludes that it would be inappropriate for the TRA to find that Kingsport Power should implement Standard 11. Therefore, after due consideration of the purposes of PURPA set forth in 16 U.S.C. § 2611 and for the reasons stated, the Hearing Officer declines to adopt Standard 11 for Kingsport Power.

**Standard 12 – Fuel Sources:** Each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is

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<sup>11</sup> At the Hearing, Kingsport Power consented to TRA Staff asking questions directly of the witnesses. *See* Transcript of Proceedings, p. 5 (April 25, 2006).

<sup>12</sup> 16 U.S.C. § 2621(d)(11).

<sup>13</sup> *See* Chris Potter, Pre-Filed Direct Testimony, p. 7 (March 20, 2006).

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

**generated using a diverse range of fuels and technologies, including renewable technologies.<sup>15</sup>**

Based upon the evidence presented, the Hearing Officer finds that Kingsport Power has no generating facilities and purchases all of its electric power requirements at wholesale from Appalachian Power Company, another American Electric Power Company, Inc. operating company.<sup>16</sup> Both Kingsport Power and Appalachian Power Company are part of the AEP-East System, which has five (5) companies that own generation facilities and pool their generation resources under a FERC-approved agreement.<sup>17</sup> Although coal dominates the capacity of the AEP-East System, other fuel types account for approximately 18% of capacity.<sup>18</sup> Therefore, the AEP-East System's generation uses a reasonably diverse mix of fuels. Because Kingsport Power is a distribution company and does not own any generation, the Hearing Officer concludes that it would be inappropriate for the TRA to find that Kingsport Power should implement Standard 12. Therefore, after due consideration of the purposes of PURPA set forth in 16 U.S.C. § 2611 and for the reasons stated, the Hearing Officer declines to adopt Standard 12 for Kingsport Power.

**Standard 13 – Fossil Fuel Generation Efficiency: Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.<sup>19</sup>**

Based upon the evidence presented, the Hearing Officer finds that Kingsport Power has no generating facilities and purchases all of its electric power requirements at wholesale from Appalachian Power Company, another American Electric Power Company, Inc. operating company.<sup>20</sup> Kingsport Power does not have any specific unit power contracts with Appalachian

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<sup>15</sup> 16 U.S.C. § 2621(d)(12).

<sup>16</sup> See Barry L. Thomas, Pre-Filed Direct Testimony, p. 5 (March 20, 2006).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 7.

<sup>19</sup> 16 U.S.C. § 2621(d)(13).

<sup>20</sup> See Barry L. Thomas, Pre-Filed Direct Testimony, p. 5 (March 20, 2006).

Power Company, American Electric Power Company, Inc. or any other entity.<sup>21</sup> Kingsport Power obtains all of its power requirements from Appalachian Power Company under a FERC-approved full requirements power supply agreement.<sup>22</sup> Because Kingsport Power is a distribution company and does not own any generation, the Hearing Officer concludes that it would be inappropriate for the TRA to find that Kingsport Power should implement Standard 13. Therefore, after due consideration of the purposes of PURPA set forth in 16 U.S.C. § 2611 and for the reasons stated, the Hearing Officer declines to adopt Standard 13 for Kingsport Power.

**Standard 14 – Time Based Metering and Communications: Not later than 18 months after the date of enactment . . . each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility’s costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.**<sup>23</sup>

Based upon the evidence presented, the Hearing Officer finds that Kingsport Power has in place time-based or time differentiated tariffs and load management rates designed to encourage customers to reduce on-peak usage.<sup>24</sup> At least one of these tariffs is available to the majority of Kingsport Power’s customers.<sup>25</sup> However, only 40 out of approximately 40,200 residential customers are receiving service under the Company’s time-differentiated tariffs.<sup>26</sup> Because of the availability of time-differentiated tariffs and minimal customer interest, the Hearing Officer concludes that Kingsport Power has implemented sufficient standards for time-based metering and communications. Therefore, after due consideration of the purposes of PURPA set forth in

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<sup>21</sup> See Letter from Barry L. Thomas to Darlene Standley, p. 2 (February 6, 2006).

<sup>22</sup> *Id.*

<sup>23</sup> 16 U.S.C. § 2621(d)(14).

<sup>24</sup> See Chris Potter, Pre-Filed Direct Testimony, pp. 4-5 (March 20, 2006).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 4.

16 U.S.C. § 2611 and for the reasons stated, the Hearing Officer declines to adopt Standard 14 for Kingsport Power.

**Standard 15 – Interconnection: Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term “interconnection service” means service to an electric consumer under which an on-site generating facility on the consumer’s premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.<sup>27</sup>**

Based upon the evidence presented, the Hearing Officer finds that Kingsport Power has in place a sufficient process by which its customers can request interconnection with the distribution system.<sup>28</sup> Interconnection service to Kingsport Power’s distribution system is based upon IEEE Standard 1547.<sup>29</sup> The interconnection process and procedures contain the basic elements found in practices stipulated in the model code adopted by the National Association of State Utility Regulatory Commissioners.<sup>30</sup> As a result, the Hearing Officer concludes that Kingsport Power has implemented sufficient standards for interconnection. Therefore, after due consideration of the purposes of PURPA set forth in 16 U.S.C. § 2611 and for the reasons stated, the Hearing Officer declines to adopt Standard 15 for Kingsport Power.

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<sup>27</sup> 16 U.S.C. § 2621(d)(15).

<sup>28</sup> See Stephen E. Early, Pre-Filed Direct Testimony, pp. 4-9 (March 20, 2006).

<sup>29</sup> *Id.* at p. 9.

<sup>30</sup> *Id.*

**IT IS THEREFORE ORDERED THAT:**

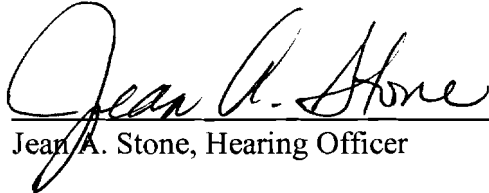
1. The *Petition of Kingsport Power Company d/b/a AEP Appalachian Power to Participate as a Party in Docket No. 06-00010* is granted.

2. For the reasons stated herein, the Hearing Officer declines to adopt Standards 11, 12, 13, 14 and 15, codified at 16 U.S.C. § 2621(d)(11) through (15), for Kingsport Power Company d/b/a AEP Appalachian Power.

3. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.

4. Any part aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

5. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry. Thereafter, any party aggrieved by the decision of the Hearing Officer may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.<sup>31</sup>

  
Jean A. Stone, Hearing Officer

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<sup>31</sup> 16 U.S.C. § 2633(c)(1) provides: "Any person . . . may obtain review of any determination made under subchapter I . . . with respect to any electric utility . . . in the appropriate State court if such person . . . intervened or otherwise participated in the original proceeding or if State law otherwise permits such review. . . . Such review . . . in a State court shall be pursuant to any applicable State procedures."