

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 28, 2010

IN RE:

**APPROPRIATENESS OF IMPLEMENTATION OF
PURPA STANDARD 16 (INTEGRATED
RESOURCE PLANNING) AND STANDARD 17
(RATE DESIGN MODIFICATION) FOR
KINGSPORT POWER COMPANY D/B/A AEP
APPALACHIAN POWER**

**DOCKET NO.
09-00062**

ORDER ADOPTING HEARING OFFICER'S REPORT AND RECOMMENDATION

This matter came before Chairman Sara Kyle, Director Kenneth C. Hill and Director Mary W. Freeman of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on March 22, 2010 to determine 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 Independence and Security Act of 2007 ("2007 Energy Act"), for Kingsport Power Company d/b/a AEP Appalachian Power ("Kingsport Power" or "Company").¹

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

¹ The TRA also regulates two other electric companies: Entergy Arkansas, Inc. ("Entergy") and Kentucky Utilities, Inc. ("KU"). The primary service areas of Entergy and KU lie outside of Tennessee. This docket does not apply to Entergy and KU because their retail sales in Tennessee do not exceed the threshold amount set out in 16 U.S.C. § 2612(a).

utilities; and (3) equitable rates to electric consumers.”² PURPA originally contained six federal standards for electric utilities. Four additional standards were added by the Energy Policy Act of 1992. The Energy Policy Act of 2005 added five more standards. The PURPA requirements apply to electric utilities with total annual retail sales greater than 500 million kilowatt hours using a baseline year of two years before when the standards are being considered.³ 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.”⁴ 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.⁵

The procedures for consideration and determination of the appropriateness of the implementation of the standards are established by the state regulatory authority.⁶ The consideration of the standards must be made after public notice and a hearing.⁷ 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 made available to the public.⁸

The 2007 Energy Act amended PURPA by adding four 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.⁹ These additional standards are codified at 16 U.S.C. § 2621(d)(16) through (19). In addition to the

² 16 U.S.C. § 2611.

³ 16 U.S.C. § 2612(a).

⁴ 16 U.S.C. § 2621(a).

⁵ 16 U.S.C. § 2621(c)(2).

⁶ 16 U.S.C. § 2621(b)(2).

⁷ 16 U.S.C. § 2621(b)(1).

⁸ *Id.*

⁹ The effective date of the 2007 Energy Act was December 19, 2007.

requirements of the 2007 Energy Act, the recently passed American Recovery and Reinvestment Act of 2009 (“Stimulus Act”) requires that state regulatory authorities seek to implement policies similar to those described in the 2007 Energy Act in order to receive stimulus funds.¹⁰

TRAVEL OF THE CASE

At a Status Conference duly noticed on May 27, 2009 and held on June 3, 2009, it was determined that Kingsport Power and any other interested parties¹¹ would submit comments regarding their position on the appropriateness of implementing the 2007 PURPA standards in Tennessee. Also on June 3, 2009, Kingsport Power filed a copy of the Virginia State Corporation Commission (“Virginia Commission”) March 27, 2009 Order.¹² On August 3, 2009, Kingsport Power filed its comments. On January 20, 2010, Kingsport Power filed the direct testimony of Barry L. Thomas.¹³ On March 5, 2010, the Hearing Officer issued his *Report and Recommendation of Hearing Officer* (“*Hearing Officer’s Report*”), and on March 12, 2010, the Hearing Officer issued a *Notice of Hearing*.

FINDINGS AND CONCLUSIONS

The panel convened a Hearing in this matter at a regularly scheduled Authority Conference held on March 22, 2010. Mr. Barry L. Thomas, Kingsport Power’s Director of Regulatory Services for Virginia and Tennessee, presented testimony and was subject to examination by the panel. The Pre-filed Testimony was entered into the record without objection. No person sought intervention prior to or during the Hearing. The Company was represented by William Bovender, Esq.

¹⁰ Stimulus Act, Title IV Sec. 410 (a)(1): The applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, with respect to which the State regulatory authority has ratemaking authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers’ incentives to use energy more efficiently.

¹¹ No other parties intervened in this docket or submitted comments.

¹² The Order sets out that the Virginia Commission declined to adopt the 2007 PURPA standards.

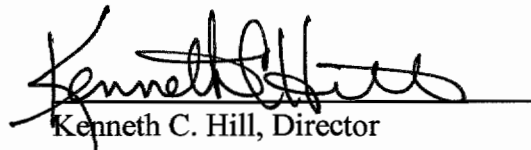
¹³ On March 15, 2010, Kingsport Power filed a properly signed and notarized version of Mr. Thomas’ testimony.

The panel noted that the *Hearing Officer's Report* states that the broad statutory powers granted to the Authority by the legislature are sufficient to provide the necessary oversight of Kingsport Power in the areas embodied by the 2007 PURPA standards. Further, the Hearing Officer also noted that no one intervened in this docket to challenge Kingsport Power's position that it is unnecessary to adopt the 2007 PURPA standards in order to accomplish the goals and benefits of those standards. Thereafter, the panel found that based on the testimony, the record and the *Hearing Officer's Report*, the existing state statutory authority is sufficient to provide oversight of Kingsport Power's ongoing cost-effective, energy efficiency efforts and that adoption of the 2007 PURPA standards is unnecessary. Based upon this finding, the panel unanimously adopted the *Hearing Officer's Report* and voted not to adopt the 2007 PURPA standards in this docket.

IT IS THEREFORE ORDERED THAT:

1. The *Report and Recommendation of the Hearing Officer* is hereby adopted. The *Report and Recommendation of the Hearing Officer* is attached as Exhibit 1 and is hereby incorporated by reference as if it was set out herein.
2. The 2007 PURPA standards shall not be adopted in this docket for the reasons discussed herein.


Sara Kyle, Chairman


Kenneth C. Hill, Director


Mary W. Freeman, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY

**NASHVILLE, TENNESSEE
March 5, 2010**

IN RE:

**APPROPRIATENESS OF IMPLEMENTATION OF
PURPA STANDARD 16 (INTEGRATED
RESOURCE PLANNING) AND STANDARD 17
(RATE DESIGN MODIFICATION) FOR
KINGSPORT POWER COMPANY D/B/A AEP
APPALACHIAN POWER**

**DOCKET NO.
09-00062**

REPORT AND RECOMMENDATION OF HEARING OFFICER

BACKGROUND

The Public Utility Regulatory Policies Act of 1978 ("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 (3) equitable rates to electric consumers."¹ PURPA originally contained six federal standards for electric utilities; four additional standards were added by the Energy Policy Act of 1992. The Energy Policy Act of 2005 added five more standards. The PURPA requirements apply to electric utilities with total annual retail sales greater than 500 million kilowatt hours using a baseline year of two years before when the standards are being considered.² 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

¹ 16 U.S.C. § 2611.

² 16 U.S.C. § 2612(a).

such standard.”³ 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.⁴

The procedures for consideration and determination of the appropriateness of the implementation of the standards are established by the state regulatory authority.⁵ The consideration of the standards must be made after public notice and a hearing.⁶ 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 made available to the public.⁷

The Energy Independence and Security Act of 2007 (“2007 Energy Act”) amended PURPA by adding four 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.⁸ These additional standards are codified at 16 U.S.C. § 2621(d)(16) through (19). In addition to the requirements of the 2007 Energy Act, the recently passed American Recovery and Reinvestment Act of 2009 (“ARRA”) requires that state regulatory authorities seek to implement policies similar to those described in the 2007 Energy Act in order to receive stimulus funds.⁹

At a regularly scheduled Authority Conference held on May 18, 2009, in order to comply with the 2007 Energy Act and ensure that the State of Tennessee is eligible to receive stimulus

³ 16 U.S.C. § 2621(a).

⁴ 16 U.S.C. § 2621(c)(2).

⁵ 16 U.S.C. § 2621(b)(2).

⁶ 16 U.S.C. § 2621(b)(1).

⁷ *Id.*

⁸ The effective date of the 2007 Energy Act was December 19, 2007.

⁹ ARRA, Title IV Sec. 410 (a)(1): The applicable State regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, with respect to which the State regulatory authority has ratemaking authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers’ incentives to use energy more efficiently.

funds under ARRA, the panel 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)(16) through (17) as they relate to Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport”). The panel further voted to appoint the Authority’s General Counsel or his designee for the purpose of hearing preliminary matters and preparing the matter for a hearing before the panel.

At a Status Conference duly noticed on May 27, 2009 and held on June 3, 2009, the Hearing Officer determined that the most expedient manner in which to proceed was for Kingsport to submit comments regarding its position regarding the appropriateness of implementing the 2007 PURPA standards in Tennessee. Kingsport filed its comments on August 3, 2009, and as requested by the Hearing Officer, Kingsport also filed a copy of the 2007 PURPA standards order of the Virginia State Corporation Commission (“Virginia Commission Order”). No one has sought intervention in this docket.

THE 2007 PURPA AMENDMENTS

The 2007 Energy Policy Act added standards 16, 17, 18, and 19, which state:

- (16) Integrated resource planning. - Each electric utility shall-
 - (A) integrate energy efficiency resources into utility, State, and regional plans; and
 - (B) adopt policies establishing cost-effective energy efficiency as a priority resource.
- (17) Rate design modifications to promote energy efficiency investments.-
 - (A) In general.--The rates allowed to be charged by any electric utility shall-
 - i. align utility incentives with the delivery of cost-effective energy efficiency; and
 - ii. promote energy efficiency investments.
 - (B) Policy options.--In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider-
 - i. removing the throughput incentive and other regulatory and management disincentives to energy efficiency;

- ii. providing utility incentives for the successful management of energy efficiency programs;
- iii. including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
- iv. adopting rate designs that encourage energy efficiency for each customer class;
- v. allowing timely recovery of energy efficiency-related costs; and
- vi. offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

(18) Consideration of smart grid investments

(A) In general

Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including--

- (i) total costs;
- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;
- (v) system performance; and
- (vi) societal benefit.

(B) Rate recovery

Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

(C) Obsolete equipment

Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

(19) Smart Grid information

(A) Standard

All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to

information from their electricity provider as provided in subparagraph (B).

(B) Information

Information provided under this section, to the extent practicable, shall include:

(i) Prices

Purchasers and other interested persons shall be provided with information on--

(I) time-based electricity prices in the wholesale electricity market; and

(II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) Usage

Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.

(iii) Intervals and projections

Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) Sources

Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

(C) Access

Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.¹⁰

COMMENTS OF KINGSFORT

Requirement to Implement: The 2007 Energy Act does not require adoption of the PURPA standards and does not change the evaluation of the criteria. Thus, the Authority is free to review the 2007 PURPA standards in the same manner as it has in the past and decline to implement any or all of the standards.¹¹

¹⁰ 16 U.S.C. §2621(d)(16)-(19).

¹¹ *Comments of Kingsport Power Company*, p. 2 (August 3, 2009).

Integrated Resource Planning (“IRP”): Kingsport, a subsidiary of American Electric Power Company, Inc. (“AEP”), owns no generation facilities and obtains its power through a long-term wholesale contract with Appalachian Power Company (“APCo”). Both Kingsport and APCo are affiliates within the AEP system. Because Kingsport has no generation facilities, there is no need for it to perform its own IRP study to file with the Authority as would be required if the Authority adopted PURPA Standard 16. Further, AEP already prepares an IRP on behalf of all of its AEP East Operating Companies which allows AEP and its east affiliates to adopt policies establishing cost effective energy efficiency as a priority resource. Kingsport further maintains that the TRA has authority under its existing statutes to promote resource planning by utilities and that adoption of the federal standard is therefore unnecessary.¹²

Rate Design: The Authority currently has sufficient authority under its general ratemaking authority to encourage energy efficiency and promote energy efficiency investments. This authority is vested both through the TRA’s power to set just and reasonable rates under Tenn. Code Ann. § 65-5-101 and to approve special contracts under TRA Rule 1220-4-1-.07, as well as through its other broad statutory powers. Further, Tennessee law already recognizes the importance of alternative energy sources under Tenn. Code Ann. § 65-4-105. Kingsport has voluntarily undertaken steps to promote energy efficiency and demand management by customers. As a part of the AEP systems integrated planning efforts, Kingsport and APCo are already evaluating implementation of Smart Grid systems and concepts. Because Kingsport is already undertaking substantial steps toward promotion of greater energy efficiency, nothing further would be gained by layering a separate set of federal requirements which would duplicate

¹² *Id.* at 2-4.

what is already being done.¹³

Smart Grid Investment and Information: Kingsport and APCo are participating in AEP's smart grid initiative, *gridSmart^{RM}*. The main components of AEP's initiative align with the 2007 Energy Act definition of a smart grid. Kingsport contemplates that the reasonableness of any Smart Grid investment that Kingsport wishes to make would have to be demonstrated to the Authority under existing Tennessee law. Thus, Kingsport does not believe that adoption of the 2007 PURPA standards is necessary to accomplish adoption of sound policies.¹⁴

VIRGINIA COMMISSION ORDER

As set out in its March 27, 2009 order, the Virginia Commission declined to adopt the 2007 PURPA standards. The Commission found that pre-existing Virginia law was sufficient to provide the Commission the authority to address the substance of the PURPA standards and adoption was unnecessary. As to the standard on smart grid information, the Commission further found it premature to adopt the federal standard which would mandate that utilities provide customers with this information without first examining the demand for the information versus the cost of providing the information.¹⁵

PRE-FILED DIRECT TESTIMONY

On January 20, 2010, Kingsport filed the direct testimony of Barry L. Thomas, Director of Regulatory Services for Virginia and Tennessee. Mr. Thomas' testimony is consistent with Kingsport's previously filed Comments, and states that the "Company encourages the Authority to decline to adopt the Federal standards. This is predicated upon TRA's existing state statutory authority to regulate the issues identified in the Federal standards, in addition to other measures

¹³ *Id.* at 4-6.

¹⁴ *Id.* at 6-9.

¹⁵ *Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the Matter of Considering §§ 532(a) and 1307(a) of the Energy Independence and Security Act of 2007*, Case No. PUE-2008-00112, *Final Order*, pp. 11-14 (March 27, 2009).

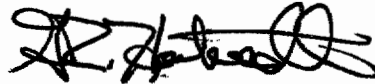
that the Company has taken, and will continue to take to improve service to its customers.”¹⁶

CONCLUSION

The Hearing Officer first would note that no one sought to intervene in this docket. Thus, Kingsport’s position that it is unnecessary to adopt the 2007 PURPA standards in order to accomplish the goals and benefits of those standards is currently unchallenged. Nevertheless, to conform to Federal law, the Authority must conduct a public hearing with requisite notice. At such time, Kingsport can present its case and Mr. Thomas can summarize his testimony and be available for questions from the panel. This hearing could occur during a regularly scheduled Authority Conference, and of course, the public should be allowed to comment.

RECOMMENDATION OF THE HEARING OFFICER

The Hearing Officer is persuaded that the Authority’s broad statutory powers granted by the legislature are, in fact, sufficient, to provide the necessary oversight of Kingsport in the areas embodied by the 2007 PURPA standards. Thus, consistent with the Authority’s precedent in declining to adopt the 2005 PURPA standards,¹⁷ the Hearing Officer recommends that the Authority find that its existing state statutory authority is sufficient to provide oversight of Kingsport’s on-going cost-effective, energy efficiency efforts and that adoption of the 2007 PURPA standards is unnecessary. The Hearing Officer further recommends that if the Authority makes the foregoing recommended findings that the Authority then decline to adopt said standards.



Gary Hotvedt, Hearing Officer

¹⁶ *Direct Testimony of Barry L. Thomas*, pp. 2-3, (August 3, 2009).

¹⁷ *See In re: Appropriateness of Implementation of PURPA Standard 11 (Net Metering), Standard 12 (Fuel Sources), Standard 13 (Fossil Fuel Generation Efficiency) Standard 14 (Time Based Metering and Communication) and Standard 15 (Interconnection) for Kingsport Power Company d/b/a AEP Appalachian Power*, Docket No. 06-00010, *Initial (and Final) Order*.