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filed electronically in docket office on 03/30/12

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March 30, 2012

VIA OVERNIGHT MAIL

Chairman, Tennessee Regulatory Authority
c/o Sharla Dillon
Dockets and Records Manager
460 James Robertson Parkway
Nashville, TN 37243

Re: Petition of Kingsport Power Company for Approval of Demand Response Programs and
Associated Demand Response Tariffs
Docket No. 12-00012

Dear Ms. Dillon:

Enclosed please find an original and four copies of the Joint Petition to Intervene By Eastman Chemical Company and Air Products and Chemicals, Inc. to be filed in the above-referenced docket. Also enclosed is our firm's check in the amount of \$50.00 which represents the filing fee.

Accordingly, your attention to this matter and the Authority's consideration of this Petition is greatly appreciated.

Sincerely yours,

Michael J. Quinan

MJQ/wcy
Enclosures

cc: Mr. William C. Bovender
Mr. William A. Bosta
Mr. James R. Bacha
Mr. David Foster

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re:

**PETITION OF KINGSPORT POWER
COMPANY FOR APPROVAL OF DEMAND
RESPONSE PROGRAMS AND
ASSOCIATED DEMAND RESPONSE
TARIFFS**

DOCKET No. 12-00012

**JOINT PETITION TO INTERVENE OF EASTMAN CHEMICAL COMPANY
AND AIR PRODUCTS AND CHEMICALS, INC.**

Come Eastman Chemical Company ("Eastman") and Air Products and Chemicals, Inc. ("Air Products") (collectively, "Industrial Customers"), by counsel, pursuant to T.C.A. §§ 4-5-310, 65-2-107, 65-4-104, 65-4-115, 65-4-117(1) and (3), 65-5-101, and 65-5-103, and Tennessee Regulatory Authority ("TRA" or "Authority") Rules 1220-1-2-.02(4), 1220-1-2-.08, and 1220-1-2-.09, and petition to intervene in this docket as parties of record. In support of their petition to intervene, Industrial Customers state as follows:

1. This proceeding was initiated upon the petition ("Petition") of Kingsport Power Company d/b/a Appalachian Power ("KgPCo"). In its Petition, KgPCo seeks TRA approval of two Demand Response Tariffs ("DR Tariffs").

2. KgPCo is a subsidiary of American Electric Power Company, Inc. ("AEP"), and is the electric distribution company ("EDC") for approximately 47,000 customers in its service territory, which consists of portions of Sullivan and Hawkins Counties, including the City of Kingsport.

3. Both Industrial Customers own and operate facilities located in KgPCo's service territory; both are industrial customers of KgPCo; and both have the ability to respond to demand contingencies. Industrial Customers have substantial and vital interests in the outcome of this docket and desire to intervene, *inter alia*, in order to protect such interests.

4. PJM Interconnection, LLC ("PJM"), is a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states, including Tennessee, and the District of Columbia. Pursuant to its Open Access Transmission Tariff, approved by the Federal Energy Regulatory Commission ("FERC"), and pursuant to current FERC Rules, PJM offers certain Demand Response programs ("Demand Response").

5. This proceeding is a contested case in which KgPCo seeks to impose the terms of its proposed demand response programs through implementation of its proposed DR Tariffs, which would unfairly limit its customers' ability to respond to demand contingencies. Given the issues raised by KgPCo's filing, Industrial Customers' legal rights, duties, immunities, or other legal interests may be determined in this proceeding and presently are not, or may not be, adequately represented by another party in this docket.

6. KgPCo, AEP, and the other AEP-East operating utilities are members of PJM and benefit by participation in the PJM and its markets and programs.

7. KgPCo's Petition seeks to prohibit Industrial Customers from participating in PJM Demand Response programs.¹ Industrial Customers oppose the proposed prohibition. In comparison to the PJM Demand Response programs, KgPCo's proposed demand response programs and tariffs would be inferior to and more limiting than the PJM Demand Response programs, and therefore substantially discourage or eliminate demand response by Industrial Customers. Concurrent with the filing of the instant Joint Petition, such customers also are filing a Joint Petition for Expedited Review to Allow Certain End Use Customers of Kingsport Power Company to Participate in PJM Interconnection Demand Response Programs. That Joint Petition seeks the Authority's permission for Industrial Customers to participate in such programs for the program year commencing June 1, 2012 and ending May 31, 2013, and thereafter.

8. It would be unjust and unreasonable to prevent KgPCo's Industrial Customers from participating in PJM's Demand Response programs.

- A. KgPCo's proposed prohibition on the participation of Industrial Customers in PJM's Demand Response programs would require them to forego the benefits of such participation after May 31, 2012.
- B. KgPCo is a full requirements customer of Appalachian Power Company ("APCo"). Thus, KgPCo obtains its generation and transmission service from APCo pursuant to rates approved by the Federal Energy Regulatory Commission ("FERC").

¹ See, Petition, p. 6, ¶ 12 and Exh. 3, p. 11.

- C. APCo also provides retail electric service in Virginia, and APCo's retail customers in Virginia are not prohibited from participating in PJM Demand Response programs. It would be unfair, unduly preferential, and unreasonably discriminatory to prohibit Tennessee customers served by KgPCo from participating in PJM Demand Response programs while Virginia customers served on the other side of the border by APCo – often from the same transmission and generation facilities – are not prohibited from doing so. Tennessee should not place its industrial customers at such a disadvantage compared to industrial customers ultimately served by the *same* utility, and even from the *same* facilities, across a common border.
- D. While retail customers of APCo in Virginia may participate in PJM Demand Response programs, APCo retail service in that state also includes, as KgPCo acknowledges, demand response programs and tariffs similar to those proposed by KgPCo in TRA Docket No. 12-00012. Thus, the existence of KgPCo demand response programs and tariffs, if approved by the Authority, should not bar participation by Industrial Customers in PJM Demand Response programs.²
- E. Eastman, one of the Industrial Customers in the instant matter, has committed demand response capacity to PJM for the 2012-13, 2013-14 and 2014-15

² KgPCo attached to its Petition, as Exhibit 5, a copy of the order of the Virginia State Corporation Commission approving similar demand response programs for APCo in Virginia that do not prohibit participation in PJM Demand Response programs. However, KgPCo did *not* attach a copy of that commission's order approving APCo's withdrawal of *prior* APCo proposals that would have prohibited participation in PJM Demand Response programs. (See, *Application of Appalachian Power Company Pursuant to Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly, for approval of demand response programs to be offered to its retail customers*, Va. SCC Case No. PUE-2009-00068, Order Granting Withdrawal of Application, dated March 24, 2010, attached hereto as Exhibit 1.)

program years and may incur significant penalties if unable to fulfill such commitments.

- F. Prohibiting Industrial Customers from participating in PJM Demand Response programs would discourage demand response despite its myriad public and consumer benefits.
- G. As KgPCo acknowledges in its Petition, each member of the AEP-East power pool, of which APCo is a member, already has given notice to the other members and to America Electric Power Service Corporation as agents for the pool of its intention to terminate the pool, effective as of January 1, 2014 or such other date as specified by the FERC. In light of the resulting, considerable uncertainty as to APCo's future power supply (and hence that of KgPCo), APCo's participation in PJM programs, and its contractual and other relations with other AEP companies, a prohibition on continued participation by Industrial Customers in PJM Demand Response programs could hardly be more untimely.

9. KgPCo's instant Petition for approval of its proposed demand response programs, through implementation of its proposed DR Tariffs, is not fair, reasonable, or in the best interest of Industrial Customers or KgPCo's other customers, and such request should be rejected by the Authority.

10. Accordingly, the Industrial Customers request permission to intervene and participate in this case.

11. Granting Industrial Customers' instant Joint Petition to Intervene will not impair the interests of justice or the orderly conduct of these proceedings.

12. All notices, correspondence, pleadings, copies of orders, communications and other materials should be addressed to counsel for the Industrial Customers as follows:

Michael J. Quinan, Esq.
CHRISTIAN & BARTON, LLP
909 East Main St., Suite 1200
Richmond, VA 23219
Tel: 804 697-4149
Fax: 804 697-6149
Email: mquinan@cblaw.com

WHEREFORE, Industrial Customers respectfully request that the Authority grant this Joint Petition to Intervene and enter an Order allowing Industrial Customers to become intervening parties of record in this docket.

Respectfully submitted this 30th day of March, 2012,

By Counsel:

A handwritten signature in black ink, appearing to read "Michael J. Quinan", written over a horizontal line.

Michael J. Quinan, Esq.
(Tenn. Sup. Ct. No. 11104)
CHRISTIAN & BARTON, LLP
909 East Main St., Suite 1200
Richmond, VA 23219
(804) 697-4149 (Telephone)
(804) 697-6149 (Fax)

Counsel for Eastman Chemical Company
and Air Products and Chemicals, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on March 30, 2012, the foregoing pleading was served by hand-delivery, facsimile, overnight delivery service, or first class mail, postage prepaid, to all parties of record at their addresses shown below

William C. Bovender, Esq. HUNTER, SMITH & DAVIS, LLP 1212 North Eastman Road Kingsport, TN 37664	Mr. William A. Bosta Director, Regulatory Services VA/TN Appalachian Power Company Three James Center Suite 1100, 1051 E. Cary St. Richmond, VA 23219-4029
James R. Bacha, Esq. Hector Garcia, Esq. American Electric Power Service Corp. One Riverside Plaza, 29 th Floor Columbus, OH 43215	Mr. David Foster Chief, Utilities Division Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37243-0505
Jean A. Stone General Counsel Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37243-0505	

This 30th day of March, 2012.



Michael J. Quinan, Esq.

#1258720

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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, MARCH 24, 2010

FILED

2010 MAR 24 P 3:56

APPLICATION OF

APPALACHIAN POWER COMPANY

COMMITTEE ON UTILITIES
CASE NO: PUE-2009-00068

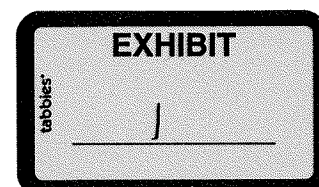
Pursuant to Chapters 752 and 855 of the
2009 Acts of the Virginia General
Assembly for approval of demand response
programs to be offered to its retail customers

ORDER GRANTING WITHDRAWAL OF APPLICATION

On July 15, 2009, Appalachian Power Company ("Appalachian" or "Company") filed an application ("Application") and supporting testimony with the State Corporation Commission ("Commission") requesting approval of two demand response programs and associated riders. Appalachian's proposal was filed pursuant to Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly, which require the Commission to approve "any demand response program proposed to be offered to retail customers" if an applicant can establish that such a program satisfies certain statutory requirements.

On August 3, 2009, the Commission issued an Order for Notice and Comment ("August Order") that required public notice and allowed the opportunity for interested persons to submit to the Commission written comments on the Application. The August Order also permitted interested persons to request a public hearing on the Application. Any persons filing requests for a hearing and expecting to participate as a respondent in such a hearing were also required to file notices of participation. The August Order further allowed the Company to respond to any filings in this matter.

Several interested persons, in addition to the applicant Appalachian, requested a public hearing in this matter. The following parties filed notices of participation as respondents: the



Coalition of Demand Response Supporters; the Old Dominion Committee for Fair Utility Rates ("Committee"); Steel Dynamics, Inc.; and Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart").¹ The Committee also filed a Motion for Partial Dismissal of the Application.

On November 16, 2009, the Commission issued an Order Modifying Procedural Schedule ("November Order"). The November Order granted the requests for a public hearing, with such hearing initially scheduled to begin February 23, 2010; denied, without prejudice, the Committee's Motion for Partial Dismissal; required the Company, respondents, and Staff to file testimony and exhibits; and assigned a Hearing Examiner to conduct all further proceedings in this matter. The evidentiary hearing was subsequently rescheduled to April 8, 2010, by ruling of Hearing Examiner Michael D. Thomas, dated February 19, 2010.²

On March 15, 2010, Appalachian filed a Motion to Withdraw Application and Terminate Proceeding ("Motion"). The Motion states, in part, that:

Although there was a productive conversation and an exchange of information and ideas [during settlement discussions], the Company realized that it could not meet the expectations of certain of the parties for a quick resolution of the issues. Thus, the Company cannot bring a firm offer to the table in the timeframe as initially requested in its Motion for Delay. Therefore, with the goal of preserving the resources of all parties, and those of the Commission, Appalachian moves the Commission to allow it to withdraw its Application.³

On March 17, 2010, the Hearing Examiner entered a Report that explained the procedural history of this case, and found that:

¹ On March 1, 2010, the Hearing Examiner granted Wal-Mart's late-filed Notice of Participation.

² The original hearing date was retained for the sole purpose of allowing any public witnesses the opportunity to testify. No public witness appeared to testify concerning this matter on February 23, 2010.

³ Motion to Withdraw at 1-2.

Good cause having been shown, . . . [Appalachian's] Motion should be granted and the April 8, 2010, hearing should be cancelled. I further find that the comment period to this Report should be waived.⁴

The Hearing Examiner's Report concludes by recommending that the Commission adopt the findings included therein and dismiss the Company's Application.⁵

NOW THE COMMISSION, having considered the Hearing Examiner's Report and the filings in this matter, is of the opinion and finds that the Report should be adopted.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Appalachian's request to withdraw its Application is granted.

(2) There being nothing further to come before the Commission, this case is dismissed, and the papers shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation and Economics and Finance.

⁴ Report at 1.

⁵ *Id.* at 1-2.