

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

In Re:

**PETITION OF EASTMAN CHEMICAL COMPANY
AND AIR PRODUCTS AND CHEMICALS, INC.,
FOR EXPEDITED REVIEW TO ALLOW
CERTAIN END USE CUSTOMERS OF
KINGSPORT POWER COMPANY TO
PARTICIPATE IN PJM INTERCONNECTION
DEMAND RESPONSE PROGRAMS**

DOCKET No. 12-00026

**PETITIONERS' RESPONSE AND ALTERNATIVE
TO STATEMENT OF POSITION OF KINGSPORT POWER COMPANY
d/b/a AEP APPALACHIAN POWER**

Come now Eastman Chemical Company ("Eastman") and Air Products and Chemicals, Inc. ("Air Products") (collectively, "Petitioners" or "Industrial Customers"), by counsel, and submit the following response and alternative ("Response") to the Statement of Position filed by Kingsport Power Company d/b/a Appalachian Power ("KgPCo").

1. On Monday, April 9, 2012, at approximately 2:15 p.m. (Eastern), Industrial Customers received the Statement of Position filed by KgPCo for consideration during the meeting of the Tennessee Regulatory Authority ("TRA") panel scheduled for Tuesday, April 10, 2012 at 10:00 a.m. (Central) in both this docket and in Docket No. 12-00012 (Petition of Kingsport Power Company for Approval of Demand Response Programs and Associated Demand Response Tariffs). Industrial Customers have previously filed a Petition to Intervene in Docket No. 12-00012, and are likewise filing this Response and

Alternative in both dockets.

2. The tentative procedural schedule set out in the Notice of Status Conference issued by the TRA on April 4, 2012 is reasonable and acceptable to the Industrial Customers.

3. If the TRA prefers to accommodate KgPCo's request for a more extended procedural schedule, Industrial Customers are willing to accept an interim solution, so long as it is fair to all parties and preserves their rights on all issues. Such an interim solution is proposed below.

4. In response to KgPCo's position that it was delay by the Industrial Customers that resulted in a proposed procedural schedule that KgPCo finds unacceptable, the Industrial Customer state as follows:

- a. In the Consent Order, dated March 30, 2011 ("Consent Order") entered by the TRA in Docket No. 11-00039, KgPCo stated that it "intends in the near future to seek approval of one or more demand response tariff schedules that would offer advantages to certain customers willing to receive service under the terms of the tariff schedules as established by KgPCo and approved by the TRA." (Consent Order, p. 4.)
- b. Subsequently, in 2011, KgPCo advised counsel for Industrial Customers that it intended to file proposed Demand Response tariffs with the TRA in time for implementation during the 2012-13 program year, and that it would notify counsel for the Industrial Customers when it did so.

- c. KgPCo, however, did not file its Petition seeking TRA approval of its proposed Demand Response tariffs until February 7, 2012, and did not notify or provide copies to Industrial Customers or their counsel until March 7, 2012.
- d. KgPCo's Petition, revealed to Industrial Customers on March 7, 2012, requested that Industrial Customers be prohibited from participating in PJM Demand Response programs.
- e. Thus, it was not until March 7, 2012, that Industrial Customers could review and evaluate KgPCo's Petition; compare it with PJM Demand Response programs; determine, *inter alia*, that it could in no way substitute for such programs; and prepare and file their Petition in the instant docket and their separate petition to intervene in docket number 12-00012. Industrial Customers moved as promptly as possible to file both pleadings.

5. In response to KgPCo's position that its proposed interim solution would "protect all parties, interveners, other KgPCo customers and the integrity of the processes of the TRA" (KgPCo Statement of Position, p. 6), Industrial Customers state as follows:

- a. KgPCo's proposed interim solution is unfair and unreasonable. It would pre-determine all issues relating to KGPCo's proposed Demand Response program and tariffs in KgPCo's favor -- and it would do so on the very expedited schedule to which KgPCo claims to object -- with the sole exception of the issue of exclusivity.
- b. KGPCo thus seeks expedited approval of its proposed demand response

tariffs at the same time that it would deny expedited approval (except for a one-year hiatus) of a key element of the relief requested by Industrial Customers – access to PJM Demand Response Programs -- and at the same time that its future generation supplies are subject to considerable uncertainty due to the decision to terminate the AEP Interconnection Agreement.

- c. Any extended procedural schedule should allow the parties to litigate all issues properly raised, and the TRA should resolve such issues only after they have been fairly and fully addressed.
- d. KgPCo's proposed interim solution is also unfair and unreasonable because it would pre-determine the issue of whether industrial Customers, and other KgPCo customers, will be permitted to participate in PJM Demand Response programs.
- e. Any extended procedural schedule should allow the parties to litigate that issue, and the TRA should resolve that issue only after it is fully and fairly addressed. In the interim, Industrial Customers and other KgPCo customers should be able to participate in PJM Demand Response programs to the extent they are qualified to do so under PJM program rules and tariffs.

6. Accordingly, if an alternative to proceeding pursuant to the tentative schedule established in the Notice of Status Conference of April 4, 2012 is determined to be required, and as an alternative to KgPCo's lopsided "interim" proposal, Industrial

Customers offer the interim solution described below that would treat all participants fairly, while preserving the rights of all parties and not predetermining the outcome of any issue.

NOW, THEREFORE, Industrial Customers respectfully request that, if the Authority determines that a more extended procedural schedule is required, it should provide as follows:

1. Both Dockets would be converted to Contested Cases, and combined for all purposes;
2. A Hearing Officer would be appointed;
3. Eastman, Air Products and any other KgPCo customers that timely intervene in the combined dockets would be granted authority to participate in demand response programs offered by PJM for the period June 1, 2012 to May 31, 2013, to the extent they are qualified to do so pursuant to PJM program rules and tariffs;
4. Whether said authority would continue past May 31, 2013 (and, if so, under what circumstances) would be litigated in the combined dockets;
5. KgPCo's proposed Demand Response Programs and Tariffs would be approved only on a temporary basis, for the period June 1, 2012 to May 31, 2013, so that all disputed issues properly raised by the parties may be litigated in the combined dockets; and
6. A Scheduling Order would be entered permitting adequate time for all parties and any interveners to conduct discovery, develop and file direct

testimony, develop and file rebuttal testimony, and provide adequate time to prepare for and conduct hearing in each Docket.

Respectfully submitted this 9th day of April, 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)

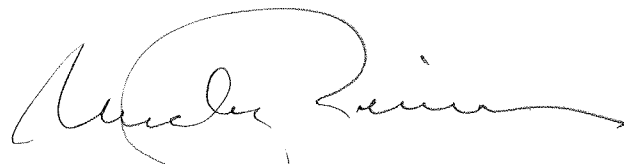
Counsel for Eastman Chemical Company,
Domtar Corporation, and Air Products and
Chemicals, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on April 9, 2012, the foregoing pleading was served overnight delivery service and/or e-mail 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 | Andrew W. Dorn IV Demand Response Partners, Inc. 360 Delaware Ave., Suite 406 Buffalo, NY 14202 |
| Greg Geller EnerNOC, Inc. 101 Federal Street, Suite 1100 Boston, MA 02110 | Cynthia Kinser Consumer Advocate Division Office of the Attorney General P.O. Box 30207 425 5 th Avenue North, 2 nd Floor Nashville, TN 37243-0500 |

This 9th day of April, 2012.



Michael J. Quinan, Esq.

#1264873