

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 17, 2012

IN RE:

**PETITION FOR APPROVAL OF DEMAND
RESPONSE PROGRAM AND ASSOCIATED
DEMAND RESPONSE TARIFFS ON BEHALF
OF KINGSPORT POWER COMPANY D/B/A
AEP APPALACHIAN POWER**

**DOCKET NO.
12-00012**

**JOINT 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**

ORDER ON APRIL 10, 2012 STATUS CONFERENCE

This matter came before the Hearing Officer of the Tennessee Regulatory Authority ("TRA" or the "Authority") during a Status Conference held on April 10, 2012, to consider petitions to intervene filed in the above styled docket files and to establish a procedural schedule to completion within the time deadline.

RELEVANT BACKGROUND

PJM Interconnection, LLC ("PJM") is a regional transmission organization (RTO) that manages the high-voltage electric grid, coordinates the movement of wholesale electricity, and the wholesale electricity market, in full or part, in 13 states and the District of Columbia.¹ Demand response (also known as load response) is a term used to signify a consumer's ability to

¹ See Docket No. 12-00026, *Joint Petition for Expedited Review to Allow Certain End Use Customers of Kingsport Power Company to Participate in PJM Interconnection Demand Response Programs*, p. 2, ¶ 3 (March 30, 2012).

reduce electricity consumption at their location in response to power grid needs (e.g., reliability of the electric grid is threatened), economic signals from a competitive wholesale market (e.g., high wholesale prices), or special retail rates (e.g., incentives). Demand response is a competitive resource that can be used to maintain demand and supply in balance for grid operations and the associated wholesale markets, and to avoid the use of less efficient generation resources to meet high demand.

Previously, in Docket No. 11-00039, the Authority entered a Consent Order that permitted, subject to certain terms and conditions, Eastman Chemical Company (“Eastman”) and Demand Response Partners, Inc. (“DRP”), both of which are qualified end use customers of Kingsport Power Company d/b/a AEP Appalachian Power (“KgPCo” or the “Company”), to participate in PJM’s demand response programs for the period of June 1, 2011 to May 31, 2012.² In the Consent Order, the parties agreed that the order would not be construed as a waiver of their rights with respect to future participation in PJM’s demand response programs.

On February 27, 2012, KgPCo, a subsidiary of American Electric Power Company, Inc. (“AEP”), filed a *Petition for Approval of Demand Response Programs and Associated Demand Response Tariffs* (“*DR Petition*”) in Docket No. 12-00012. KgPCo is an electric distribution company serving approximately 47,000 customers in Sullivan and Hawkins Counties, Tennessee, including the City of Kingsport, Tennessee.³ In its *DR Petition*, KgPCo requests approval of two proposed demand response tariffs that will allow the Company to participate in

² See *In re Petition for Expedited Review to Allow End Use Customer of Kingsport Co. to Continue their Participation in the PJM Interconnection’s Demand Response Program*, Docket No. 11-00039, Consent Order (March 30, 2011).

³ See Docket No. 12-00012, *DR Petition*, p. 1 (February 27, 2012).

certain PJM demand response programs and offer those programs to qualified end-use customers in its service territory.⁴

KgPCo, which purchases all of its power from Appalachian Power Company (“APCo”), asserts that implementation of its proposed tariffs will result in a reduced allocation of costs from APCo to KgPCo, thereby benefitting all customers in the form of cost savings due to the reduction in demand. In addition, in order to accrue these cost saving benefits for its customers, the Company contends that it should be the exclusive provider of demand response opportunities for its customers, and that Curtailment Service Providers (“CSPs”)⁵ should be restricted to act only as consultants for customers that enroll in Demand Response through KgPCo.⁶

On March 30, 2012, Eastman and Air Products and Chemicals, Inc. (“Air Products”) (collectively, “Industrial Customers”) filed a joint petition to intervene in Docket No. 12-00012.⁷ Also, on March 30, 2012, Industrial Customers filed a *Joint Petition for Expedited Review to Allow Certain End Use Customers of Kingsport Power Company to Participate in PJM Interconnection Demand Response Programs* (“*Joint Petition to Participate in PJM DR Programs*”) in Docket No. 12-00026. In their *Joint Petition to Participate in PJM DR Program*, the Industrial Customers request permission to participate in PJM demand response programs for the period of June 1, 2012 to May 31, 2013, and thereafter, and oppose certain provisions of KgPCo’s proposed demand response program tariffs filed in Docket No. 12-00012.⁸

⁴ KgPCo’s proposed tariffs are the Peak Shaving Demand Response (“PSDR”) Program and the Peak Shaving and Emergency Demand Response (“PSED”) Program. See Docket No. 12-00012, *DR Petition*, p. 2 (February 27, 2012).

⁵ End-use retail customers have access to PJM’s wholesale electricity market through agents that are PJM members, known as curtailment service providers (CSPs).

⁶ See Docket No. 12-00012, *DR Petition*, p. 7 & 11 (February 27, 2012).

⁷ See Docket No. 12-00012, *Joint Petition to Intervene of Eastman Chemical Company and Air Products and Chemicals, Inc.* (March 30, 2012).

⁸ See Docket No. 12-00026, *Joint Petition to Participate in PJM DR Programs* (March 30, 2012).

On April 3, 2012, the Authority's General Counsel issued a *Notice of Convening Panel* setting a meeting of the Authority panel to consider whether to convene a contested case proceeding and appoint a Hearing Officer on April 10, 2012. On April 4, 2012, in the event that the panel convened a contested case proceeding, the Authority's General Counsel issued a *Notice of Status Conference* setting a Status Conference immediately following the convening of the panel to address petitions to intervene filed in the docket and proposing a tentative procedural schedule to completion.

On April 7, 2012, DRP and EnerNOC, Inc. ("EnerNOC") (collectively, "Curtailed Service Providers" or "CSPs") filed a *Joint Petition to Intervene* in Docket No. 12-00012. On April 9, 2012, KgPCo filed a petition to intervene in Docket No. 12-00026,⁹ and a statement of its position to the *Notice of Convening Panel* and joint petition of the Industrial Customers.¹⁰ On April 10, 2012, the Industrial Customers filed a Response and Alternative to Statement of Position of KgPCo.¹¹

APRIL 10, 2012 STATUS CONFERENCE

The Status Conference began as noticed immediately following the conclusion of the convening of the Authority panel at 10:00 a.m. in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

KgPCo – **William C. Bovender, Esq.**, 1212 North Eastman Road, P.O. Box 3740, Kingsport, TN 37664, and, appearing by telephone, **James R. Bacha, Esq.**, American Electric Power Service Corp., 1 Riverside Plaza, Columbus, OH 43215, and **William A.**

⁹ See Docket No. 12-00026, *Petition of Kingsport Power Company d/b/a AEP Appalachian Power to Intervene in Docket No. 12-00026* (April 9, 2012).

¹⁰ See Docket Nos. 12-00026 & 12-00012, *Statement of Position of Kingsport Power Company d/b/a AEP Appalachian Power to Notice of Convening Panel and Joint Petition to Intervene of Eastman Chemical Company and Air Products and Chemicals, Inc.* (April 9, 2012).

¹¹ See Docket No. 12-00012, *Industrial Customers' Response and Alternative to Statement of Position of Kingsport Power Company d/b/a AEP Appalachian Power* (April 10, 2012).

Bosta, Director, Regulatory Services VA/TN, Appalachian Power Company, Three James Center, Suite 1100, 1051 E. Cary Street, Richmond VA 23219;

Eastman Chemical Co. & Air Products & Chemicals – by telephone, **Michael Quinan, Esq.**, Christian & Barton, LLP, 909 East Main Street, Suite 1200, Richmond, VA 23219; and

EnerNOC – by telephone, **Greg Geller**, Representative, 101 Federal Street, Suite 1100, Boston, MA 02110.

Petitions to Intervene

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.¹²

Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion.¹³

During the Status Conference, the Hearing Officer granted the intervention requests filed by Industrial Customers, CSPs, and KgPCo.¹⁴ The Hearing Officer found that the legal rights,

¹² Tenn. Code Ann. § 4-5-310(a) (2011).

¹³ Tenn. R. & Regs. 1220-1-2-.06.

¹⁴ See Docket No. 12-00012, *Joint Petition to Intervene of Eastman Chemical Company and Air Products and Chemicals, Inc.* (March 30, 2012) and *Joint Petition to Intervene* (April 7, 2012); and See Docket No. 12-00026, *Petition of Kingsport Power Company d/b/a AEP Appalachian Power to Intervene in Docket No. 12-00026* (April 9, 2012).

duties, privileges, immunities or other legal interests of the Industrial Customers and CSPs may be determined in Docket No. 12-00012, and as to KgPCo in Docket No. 12-00026. In addition, the Hearing Officer found that the petitions were timely, and that the interests of justice and orderly and prompt conduct of these proceedings will not be impaired by granting the intervention requests. For the above reasons, and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the petitions to intervene filed by Eastman, Air Products, DRP, and EnerNOC in Docket No. 12-00012, and KgPCo in Docket No. 12-00026.

Request to Combine Dockets

During the Status Conference, KgPCo requested that Docket Nos. 12-00012 and 12-00026 be combined for all purposes. EnerNOC and Industrial Customers each stated that it did not object to a consolidation of the dockets. As the issues for Authority resolution in the dockets are interrelated, the Hearing Officer granted the request and found that consolidation will facilitate the efficient administration of the dockets, resolution of the issues, and use of resources.

Procedural Process Proposed by the Parties

In light of the May 16, 2012 deadline for participation in PJM demand response programs, KgPCo and Industrial Customers requested that the Hearing Officer consider the procedural process set forth on pages 5 & 6 of the *Industrial Customers' Response and Alternative to Statement of Position of Kingsport Power Company d/b/a/ AEP Appalachian Power* filed on April 10, 2012, in pertinent part as follows:

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 of 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 intervenors to conduct discovery, develop and file direct testimony, develop and file rebuttal testimony, and provide adequate time to prepare for and conduct [a] hearing. . . ¹⁵

In addition, as an interim solution, the parties stated that an agreed Consent Order, similar to that agreed to by the parties previously and issued by the Authority on March 30, 2011, would be filed for the consideration of by Authority. The Consent Order would permit the parties to participate in PJM's demand response programs for the period of June 1, 2012 to May 31, 2013, assuming each party is so qualified under PJM's rules and regulations.

Further, KgPCo clarified that in the event that the Authority decided to alter or make any changes to KgPCo's proposed demand response program tariffs, such changes would be prospective in application and not commence sooner than June 1, 2013. The parties emphasized that time was of the essence and further requested their proposed Consent Order be considered during the next Authority Conference scheduled to be held on April 23, 2012. During the discussion of the proposal, EnerNOC concurred as to the reasonableness of the parameters of the proposal and, with confirmation that the three year notice of termination provision be waived for the period covered by the Consent Order, stated its support thereof. Upon consideration, the Hearing Officer found the agreed procedural process proposed by the parties reasonable and approved its adoption in these dockets.

¹⁵ See Docket No. 12-00012, *Industrial Customers' Response and Alternative to Statement of Position of Kingsport Power Company d/b/a/ AEP Appalachian Power*, pp. 5 & 6 (April 10, 2012).

IT IS THEREFORE ORDERED THAT:

1. The petitions to intervene filed in Docket No. 12-00012 by Eastman Chemical Company, Air Products and Chemicals, Inc., Demand Response Partners, Inc., and EnerNOC, Inc. are granted.
2. The petition to intervene filed in Docket No. 12-00026 by Kingsport Power Company d/b/a AEP Appalachian Power is granted.
3. Docket Nos. 12-00012 and 12-00026 are consolidated for all purposes.
4. The procedural process set forth at pages 5 & 6 of *Industrial Customers' Response and Alternative to Statement of Position of Kingsport Power Company d/b/a/ AEP Appalachian Power*, as reproduced herein above, is approved and hereby adopted for implementation in these consolidated dockets.
5. The parties shall prepare and file in the docket file an agreed Consent Order for the consideration of the Authority no later than **April 12, 2012**.


Kelly Cashman-Grams, Hearing Officer