

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

Filed Electronically
TRA Docket office
05/29/2015

IN RE: PETITION OF KINGS)	
CHAPEL CAPACITY, LLC FOR)	
APPROVAL OF A LEGAL &)	Docket No. 15-00037
REGULATORY EXPENSE)	
RECOVERY RIDER)	

POSITION OF THE CONSUMER ADVOCATE

The Consumer Advocate and Protection Division of the Attorney General and Reporter of the State of Tennessee (“Consumer Advocate”) respectfully opposes the recovery of the legal fees and regulatory expenses claimed by Kings Chapel Capacity, LLC (“KCC” or “Company”), pursuant to Tenn. Code Ann. § 65-5-103(d), the “alternative regulation” statute. The fees are expenses at issue arose in another docket, Docket 14-00007. That docket, however, is still ongoing. Thus, it is premature to consider the recovery of legal expenses and fees. Accordingly, based on the filings in this Docket 15-00037, it is not apparent whether the requested Legal & Regulatory Expense Recovery Rider (L&RERR) is in the “public interest” as required by Tenn. Code Ann. § 65-5-103(d). The propriety of the L&RERR will depend on the findings of fact and conclusions in Docket 14-00007, a show-cause proceeding involving KCC that is still pending before the Tennessee Regulatory Authority (“TRA” or “Authority”). Therefore, the TRA should not take action regarding the L&RERR until Docket 14-00007 is resolved and the parties to this Docket 15-00037 can assess the findings of that prior proceeding.

I. IT IS NOT CLEAR THAT THE L&RERR IS PERMITTED UNDER TENN. CODE ANN. § 65-5-103(d).

Section 65-5-103(d) outlines the alternative regulatory methods by which KCC petitions the TRA to grant its *Petition for Approval of a Legal & Regulatory Expense Recovery Rider* (*Petition*). The statute enumerates scenarios when, in lieu of a general rate case, the TRA may authorize the recovery of certain expense if they are “found by the [A]uthority to be in the public interest” and meet other established criteria. *See* Tenn. Code Ann. § 65-5-103(d). The “public interest” does not include KCC’s private legal defense costs.

Stretching the notion of the “public interest” to encompass KCC’s legal defense costs is untenable. Section 65-5-103(d) does not support the assertion that a public utility may petition the TRA for the recovery of expenses that may broadly result in any public benefit. For example, § 65-5-103(d)(5), which KCC highlights in its *Petition* as warranting the L&RERR, applies only to operational expenses and capital costs that are “related to other programs that are in the public interest.” It is expenditures on “investment in other programs” that are recoverable under § 65-5-103(d)(5). But the L&RERR does not relate to and is not an investment in any program, much less a program in the public interest. The L&RERR only sustains KCC’s ability to pay its private legal defense bills.

The impropriety of interpreting “public interest” to include KCC’s payment of its legal defense costs is evident from the other alternative regulation mechanisms enumerated in § 65-5-103(d). Section 65-5-103(d)(2) involves the recovery of operational expenses and capital costs in

the public interest that specifically relate to “(i) [s]afety requirements imposed by the state or federal government; (ii) [e]nsuring the reliability of the public utility plant in service; or (iii) [w]eather-related natural disasters.” Section 65-5-103(d)(3) involves the recovery of operational expenses and capital costs in the public interest that specifically relate to “the expansion of infrastructure for the purpose of economic development,” and § 65-5-103(d)(4) involves the recovery of “expenses associated with efforts to promote economic development in [the utility’s] service territory.”

The nature of these requirements underscores that the “public interest” contemplated in the statute involves some enduring structural, operational, or economic improvement beyond the utility’s own financial needs. The payment of legal costs, by contrast, is a non-investment expense that generates no lasting structural, operational, or economic improvement. Although KCC contends that it is in the public interest to approve the L&RERR “in order for the Company to provide uninterrupted service,” *Petition* at ¶ 5, this approval could create a moral hazard. KCC would be able to recover from customers legal expenses associated with alleged legal violations that resulted in a show-cause docket, without any added public benefit or improvement.

II. THE L&RERR CANNOT BE EFFECTIVELY EVALUATED UNTIL THE SHOW-CAUSE DOCKET 14-00007 IS RESOLVED.

In Docket 14-00007, the TRA ordered KCC to show cause why the TRA should not take action against it for violation of state laws and TRA Rules. The Consumer Advocate’s *Petition to Intervene* in the Docket was denied. Because the Consumer Advocate was not a party to Docket

14-00007, it lacks information about the nature and extent of KCC's alleged violations. This information is necessary to determine whether customers should pay the legal expenses associated with KCC's alleged violations through the L&RERR. Full findings of facts and conclusions about KCC's violations will not be available until Docket 14-00007 is resolved, so it is inappropriate to pass on legal defense costs to customers before this resolution, if ever.

The Consumer Advocate received copies of KCC's legal bills related to Docket 14-00007 two days before filing this Petition and is still in the process of reviewing them. Thus, the Consumer Advocate reserves the right to raise other objections regarding the recovery of these legal expenses through the L&RERR.

For the foregoing reasons, the Consumer Advocate respectfully opposes the implementation of the L&RERR at this time.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 29th day of May, 2015.


Erin Merrick