

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 14, 2015

IN RE:)	
)	DOCKET NO.
PETITION OF KINGSPORT POWER COMPANY)	15-00064
D/B/A APPALACHIAN POWER FOR APPROVAL OF)	
HOME WARRANTY PROGRAMS)	

ORDER GRANTING CONSUMER ADVOCATE’S PETITION TO INTERVENE

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) upon a *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on June 25, 2015.

BACKGROUND

Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport”) is a public utility, subject to the jurisdiction of the TRA, engaged in the business of distributing electric power service to some 47,000 retail customers in its service area in the state of Tennessee. On June 1, 2015, Kingsport filed a petition seeking the TRA’s permission for Home Warranty Programs to be offered to its customers by HomeServe USA Corp. (“HomeServe”).¹ In its petition, Kingsport states that HomeServe is a Pennsylvania Corporation that is unaffiliated with Kingsport, its parent company American Electric Power Company (“AEP”), or American Electric Power Service Corporation (“AEPSC”), a wholly-owned, special purpose subsidiary of AEP.²

¹ *Petition for Approval of Home Warranty Programs* (June 1, 2015).

² *Id.* at p. 2 ¶ 4.

Upon approval, HomeServe would offer Kingsport's customers an option to purchase home warranty programs designed to cover a variety of systems, including exterior and interior electrical lines, heating and cooling systems, water heaters, exterior water and sewer/septic tank service lines, interior plumbing and drainage systems, surge protection, and other systems as appropriate.³ As part of its arrangement, Kingsport would bill the charges for HomeServe programs and services purchased by its customers on Kingsport's monthly bill, retain a percentage of the purchase price, and dedicate such revenue to the reduction of the costs of service to Kingsport's residential customers.⁴ Kingsport, however, will not provide warranty or repair services to its residential customers in connection with the home warranty programs, will incur no liability under such programs, and will not be a party to contracts for subscriptions between HomeServe and Kingsport's customers.⁵

PETITION TO INTERVENE

In its *Petition to Intervene*, the Consumer Advocate asks that the Authority grant its request to intervene in this proceeding because "consumers' interests, rights, duties or privileges may be determined or affected by the proceeding."⁶ In support of its request, the Consumer Advocate states that, under Tenn. Code Ann. § 65-4-118, it is authorized to represent the interests of Tennessee consumers of public utility services in proceedings before the Authority.⁷ Further, the Consumer Advocate asserts that consumers have a protectable privacy interest concerning the dissemination of their personal information, which is implicated as a result of Kingsport's request to allow an unaffiliated, unregulated third-party, HomeServe, to offer its

³ *Id.*

⁴ *Id.* at p. 3 ¶ 6 and p. 4 ¶ 8.

⁵ *Id.* at p. 2 ¶ 5.

⁶ *Petition to Intervene* (June 25, 2015).

⁷ *Id.* at p. 1 ¶ 1.

customers home warranty services using Kingsport's customer data and billing platforms.⁸ In addition, the Consumer Advocate states that consumers deserve to know how nonpayment of HomeServe services might impact the provision of their electric service.⁹ Finally, the Consumer Advocate states that consumers have an interest in Kingsport's generation of revenues from the sale of HomeServe programs and services and the application of such revenue to reduce residential customers' rates.¹⁰ In conclusion, the Consumer Advocate contends that, "only by participating in this proceeding can it adequately carry out its statutory duty to represent the interests of Tennessee consumers" and, therefore, asks that its *Petition to Intervene* be granted.¹¹

FINDINGS & CONCLUSIONS

Under Tenn. Code Ann. § 65-2-107, "All persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case." Along with its own statutes and rules, contested case proceedings before the Authority are governed by the provisions of Tenn. Code Ann. § 4-5-101, *et seq.*, known as the Tennessee Uniform Administrative Procedures Act ("UAPA"). Tenn. Code Ann. § 4-5-310 establishes the following criteria for considering requests for mandatory and permissive intervention:

- (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;

⁸ *Id.* at pp. 1-2 ¶ 3.

⁹ *Id.* at p. 2 ¶ 4.

¹⁰ *Id.* at p. 2 ¶ 5.

¹¹ *Id.* at p. 2 ¶ 6.

- (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 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.
- (b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.¹²

Further, the UAPA provides that a Hearing Officer may, at any time, limit or impose conditions upon or otherwise modify an intervenor's participation in the proceedings.¹³ Similarly, TRA Rule 1220-01-02-.08 directs that requests for intervention before the Authority are to be made and considered as follows:

- (1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.
- (2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.
- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.¹⁴

Finally, TRA Rule 1220-1-2-.06 requires any party opposing a motion in a contested case to file and serve a response to the motion within seven (7) days of service of the motion.

Timeliness

Under Tenn. Code Ann. § 4-5-310(a)(1) and TRA Rule 1220-01-02-.08(3), a petition for intervention must be filed at least seven (7) days prior to the date of the contested case hearing.

¹² Tenn. Code Ann. § 4-5-310.

¹³ Tenn. Code Ann. § 4-5-310(c) and (d).

¹⁴ Tenn. Comp. R. & Regs. 1220-01-02-.08.

The instant proceeding is not subject to any particular statutory deadline, is yet in its early stages, and a date for the hearing has not been established. Thus, the Hearing Officer considers the Consumer Advocate's *Petition to Intervene* timely-filed.

Content & Requisite Showing

Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2) require that a petition to intervene state particular facts that demonstrate a legal right or interest held by the petitioner may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Tenn. Code Ann. § 65-4-118(b)(1) provides a general basis for the qualification of the Consumer Advocate as an intervening party to represent the interests of Tennessee public utility consumers, as follows:

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.¹⁵

According to the statute, with the approval of the Attorney General and upon satisfaction of the requisite showing for intervention under the UAPA and the TRA's Rules, the Consumer Advocate may be permitted to intervene as a party for the purpose of representing those Tennessee consumers of public utility services that have legal rights or interests that may be determined in proceedings before the TRA. Tenn. Code Ann. § 65-4-118(b)(1) provides for the Consumer Advocate's qualification as an intervenor under law, but in no way confers upon the Consumer Advocate an automatic or absolute right to participate in any particular Authority proceeding.

In the instant proceeding, Kingsport has sought approval to allow HomeServe, an

¹⁵ Tenn. Code Ann. § 65-4-118(b)(1).

unaffiliated third-party, to utilize Kingsport's customer data and billing platforms to offer home warranty programs to its customers. In exchange, Kingsport will receive a percentage of the purchase price and use those revenues to reduce the costs of electric service to its residential customers. As Kingsport's request involves issues relating to the provision of service and rates, the Hearing Officer finds that there exists a sufficient factual basis upon which to find that legal rights or interests held by Tennessee public utility consumers, and in particular by Kingsport's residential customers, may be determined in this proceeding. And further, that under Tenn. Code Ann. § 65-4-118, the Consumer Advocate is qualified to represent that interest before the Authority.

Procedural Due Process

Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that "the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention." Kingsport has not filed a response or otherwise objected to the Consumer Advocate's request to intervene in this matter. Given the nature of this proceeding, the promptness of the request to intervene, and the lack of opposition to the petition to intervene, the Hearing Officer finds that the Consumer Advocate's intervention should not unduly delay or prejudice the administration of these proceedings.


THEREFORE, upon due consideration, the Hearing Officer finds that the legal rights, duties, privileges, immunities or other legal interests of Kingsport's customers may be determined in this proceeding and that the Consumer Advocate qualifies under law as an intervenor for the purpose of representing those consumer interests. Further, the Hearing Officer finds that the Consumer Advocate's request to intervene is timely-filed and its intervention should not impair the interests of justice or the orderly and prompt conduct of the proceedings.

For these reasons, the Hearing Officer concludes that the Consumer Advocate's *Petition to Intervene* should be granted.

IT IS THEREFORE ORDERED THAT:

1) The *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General is granted.

2) The Consumer Advocate and Protection Division of the Office of the Attorney General may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.



Kelly Cashman-Grams, Hearing Officer