

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

IN RE:)
)
PETITION OF KINGSPORT POWER)
COMPANY d/b/a AEP APPALACHIAN)
POWER GENERAL RATE CASE) **DOCKET NO. 15-00093**

**RESPONSE OF TENNESEIA TO
KINGSPORT POWER COMPANY'S OBJECTION**

Background

On November 17, 2015, the Tennessee Solar Industries Association ("TenneSEIA") filed a Petition to Intervene in this docket, noting that TenneSEIA members currently provide rooftop solar panels to customers in Kingsport's service area and will be directly affected by Kingsport's proposal to increase rates to customers who choose to use solar panels to reduce their electric bills. The Petition (at 1, fn.1) also noted that TenneSEIA's members include not only providers of rooftop solar panels but "law firms, investment firms, accounting firms and other vendors who provide service to the solar industry." The Petition explained, "those service firms are not participating in this intervention" and that TenneSEIA would make a supplemental filing "with a list of TenneSEIA members who have elected to participate in this intervention." *Id.*

The next day, Kingsport filed an "Objection to Petition to Intervene of TenneSEIA," arguing that TenneSEIA is "a coalition which claims to have some interest in promoting the solar industry in Tennessee." Overlooking the explanation in TenneSEIA's petition, Kingsport wrote (at 1), "This coalition includes law firms whose interest is merely fee generating, not solar generation." Arguing that "there is no need for yet another solar party to participate in this docket and conduct duplicative discovery," Kingsport asks the Hearing Officer to deny TenneSEIA's petition or, in the alternative, to require TenneSEIA and the other solar parties,

Sunrun (a provider of rooftop solar) and EFCA (the Energy Freedom Coalition of America), to collectively submit one set of discovery requests limited to net metering issues and restrict the intervenors' ability to monitor other developments in this rate case by prohibiting them from receiving copies of any confidential information which Kingsport determines is not relevant to net metering.¹ *Id.*, at 3.

The Hearing Officer has already issued an oral ruling granting the petitions to intervene filed by Sunrun and EFCA. The Hearing Officer stated that the parties' intervention would be limited to "net metering" issues i.e., issues arising from Kingsport's proposal to increase electric rates paid by customers who also use solar power and decrease electric rates paid by Kingsport (through a bill credit) to buy solar-generated power from those customers. The Hearing Officer also said that if, in the course of this proceeding, other issues arose affecting the interests of Sunrun or EFCA, she would revisit her decision to limit their intervention to net metering issues.

Argument

In light of the Hearing Officer's decision, there should be no need to relitigate TenneSEIA's right to intervene. Kingsport, however, argues that since the interests of solar providers are already represented by Sunrun, EFCA, and the Consumer Advocate, TenneSEIA's petition should be denied. Kingsport's argument has no logical or legal support.

It is true, as Kingsport has pointed out, that solar providers are "similar to other vendors of products utilizing electricity" (Reply of Petitioner Kingsport Power Company, filed November 12, 2015, at 3). Solar providers design, install and maintain behind-the-meter solar equipment

¹ In an earlier filing, Kingsport suggested that the solar intervenors should not receive copies of any discovery responses, even responses to net metering questions asked by the solar intervenors themselves. See "Reply of Petitioner Kingsport Power Company" filed November 12, 2015 stating in footnote 1 that Sunrun and EFCA could "determine what information they need solely on net metering" by reading publicly available information on the TRA's website.

which, like thermal windows or extra layers of insulation, reduce the homeowner's electric bill. *See SZ Enterprises v. Iowa Utilities Board*, 850 N.W.2d 441, 467 (Iowa, 2014). Nevertheless, these solar providers have an interest in the net metering issue as the Hearing Officer found when she granted the petitions to intervene of Sunrun and EFCA. As noted in TenneSEIA's Petition to Intervene, the Association's members include companies which are currently providing rooftop solar panels to customers located in Kingsport's service area. Therefore, if anything, these TenneSEIA members have a stronger, more direct interest in this proceeding than the other solar intervenors who would like to serve customers in the Kingsport area but are not doing so now.

Kingsport's claim that the Consumer Advocate is "absolutely positioned to protect the interests of Kingsport residential customers who have or will be engaging in solar energy activities" ("Reply of Petitioner Kingsport Power Company" at 3) is inconsistent with Kingsport's pre-filed testimony. According to company witness William Castle, the reason – the only reason he offers – for the changes to the net metering tariff is to reduce or eliminate the "cross-subsidization" of solar power users by other Kingsport customers. In fact, as numerous studies have shown and the evidence in this case will demonstrate, the "cross-subsidization" argument has no empirical support. But whether or not the Consumer Advocate takes a position on the net metering issue, Kingsport cannot plausibly argue that the Consumer Advocate represents the interests of customers using solar power while at the same time sponsoring testimony that those customers' interests conflict with the interests of other customers.

Finally, the Tennessee Uniform Administrative Procedure Act states that any person with a "legal interest" which "may be determined" in the proceeding is entitled to intervene as a matter of right. There is nothing in the Act which states or implies that this statutory right to

intervene may be denied because other parties with similar interests are already in the case.² See T.C.A. § 4-5-310(a). For these reasons, TenneSEIA's petition should be granted.

While the UAPA places no restrictions on the number of intervenors representing overlapping interests, it does allow the agency to limit an intervenor's participation to designated issues and to require intervenors to "combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings." T.C.A. § 4-5-310(c). As Sunrun has done ("Response of Sunrun" filed November 10, 2015 at 2) TenneSEIA will accept a decision by the Hearing Officer limiting TenneSEIA's intervention at this time to the net metering issues with the understanding that TenneSEIA may ask for expanded participation should circumstances warrant. In the meantime, TenneSEIA is entitled, like any other party, to receive copies of all filings, including responses to discovery and data requests. Only by receiving and reviewing that information may TenneSEIA effectively monitor the proceedings and determine whether or not to request expanded intervention.

For example, there is no evidence in the pre-filed testimony and exhibits showing the revenue impact of Kingsport's proposed changes to the net metering tariff. Such evidence will have to be requested through discovery and may indicate that Kingsport will earn an excessive return if the company is allowed to increase rates to customers who install solar panels. In other words, the net metering changes, like any other rate increase, may be relevant to the determination of Kingsport's overall revenue requirement. That would be an issue for the Hearing Officer to address after hearing from the parties. But the issue may never arise if the solar parties are denied access to filings related to the company's required return. As this example illustrates, the Hearing Officer's assurance that she would be willing to revisit the scope

² If the law were otherwise, a utility could recruit a "friendly" intervenor who purported to represent the interests of similar situated customers and thereby prevent other customers or customer groups from participating in the hearing.

of the solar parties' intervention is essentially meaningless unless the solar parties can monitor developments in the case by receiving copies of all filings.

Finally, as Sunrun has noted, the additional burden of serving a copy of discovery responses on two additional addressees (counsel for EFCA, counsel for Sunrun and TenneSEIA) is immaterial. Kingsport is simply trying to prevent the solar intervenors from monitoring developments in the case that may affect the intervenors and warrant expanded participation.


Kingsport also requests that all the solar intervenors combine their discovery requests into one filing. Since Sunrun and TenneSEIA are both represented by the same attorney, those two intervenors can readily include all their questions in one document and receive one response from Kingsport. EFCA, however, is represented by separate counsel who, as already demonstrated by the filings in this docket, is taking a different approach to this case. It is burdensome and impractical to require these attorneys to spend additional time combining their discovery requests into one filing. At best, it simply means that there will be one long discovery request with two, unrelated lists of issues. At worst, it means one or both attorneys must change strategies to accommodate the other. The attorneys should be allowed to submit independent discovery requests while, at the same time, taking reasonable steps to avoid making duplicate requests.

Conclusion

The petition of TenneSEIA should be granted, allowing TenneSEIA to participate in this docket on any issues related to net metering and to receive copies of all filings, including all responses to discovery and data requests. TenneSEIA will join with Sunrun in making consolidated discovery requests and will cooperate with counsel for EFCA to avoid making duplicate requests. Kingsport's other requested restrictions should be denied.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 
Henry Walker (B.P.R. No. 000272)
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
Phone: 615-252-2363
Email: hwalker@babbc.com

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of November, 2015, a copy of the foregoing document was served on the parties of record, via electronic email transmission and regular U.S. Mail, postage prepaid, addressed as follows:

William K. Castle
Director, Regulatory Services VA/TN
Three James Center
1051 E. Cary Street, Suite 1100
Richmond, VA 23219-4029
wkcastle@aep.com

Wayne Irwin
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202-0207
wayne.irwin@ag.tn.gov

James R. Bacha, Esq.
Hector Garcia, Esq.
American Electric Power Service Corporation
One Riverside Plaza
P.O. Box 16637
Columbus, OH 43216
jrbacha@aep.com
hgarcia1@aep.com

Charles B. Welch, Jr.
Farris Bobango, PLC
Bank of America Plaza
414 Union Street, Suite 1105
Nashville, TN 37219
cwelch@farris-law.com

William C. Bovender, Esq.
Hunter, Smith & Davis, LLP
1212 N. Eastman Road
P.O. Box 3740
Kingsport, TN 37664
bovender@hdsdlaw.com



HENRY WALKER