

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 07, 2015

IN RE:)	
)	DOCKET NO.
PETITION OF KINGSPORT POWER COMPANY)	15-00093
D/B/A AEP APPALACHIAN POWER FOR A)	
GENERAL RATE INCREASE)	

**ORDER GRANTING THE PETITIONS TO INTERVENE FILED BY
CONSUMER ADVOCATE AND EAST TENNESSEE ENERGY CONSUMERS**

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) during a status conference held on October 28, 2015 to consider, among other things, the petitions to intervene filed in the docket file. Along with the petitioner, Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport”), the following parties attended the status conference and filed petitions to intervene: the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), East Tennessee Energy Consumers (“ETEC”), Sunrun Inc. (“Sunrun”), and the Energy Freedom Coalition of America (“EFCA”) (collectively, the “Parties”).¹

BACKGROUND

Kingsport is a public utility, subject to TRA jurisdiction, engaged in the business of distributing electric power service to approximately 47,000 customers in its service area, which includes portions of Sullivan, Washington and Hawkins Counties, Tennessee, the City of Kingsport, Tennessee, and the Town of Mount Carmel, Tennessee. On September 28, 2015,

¹ This Order considers the petitions to intervene filed by the Consumer Advocate and ETEC. In light of Kingsport’s objection to the petitions to intervene filed by Sunrun and EFCA, a separate Order is entered in the docket file concerning those petitions.

Kingsport filed a *Petition of Kingsport Power Company d/b/a AEP Appalachian Power General Rate Case* (“*Petition*”) seeking approval to adjust its rates and charges for electric service in the amount of approximately \$12 million, or 13.2%, and to implement its revised tariffs, including its net metering service rider tariff. Included in its *Petition*, Kingsport gives notice of its intention to file 120 days prior to the completion of this rate case, a request for a Variable Cost Rider under Tenn. Code Ann. § 65-5-103(d) and a Rate Realignment Surcharge.

During the regularly scheduled Authority Conference held on October 19, 2015, the voting panel of Directors appointed General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing.² On October 20, 2015, the hearing officer entered a *Notice of Status Conference* setting a status conference with the parties on October 28, 2015. During the status conference, the Hearing Officer heard and considered the petitions to intervene discussed below.

PETITIONS TO INTERVENE

Consumer Advocate

In its *Petition to Intervene*, filed on October 23, 2015, the Consumer Advocate seeks to intervene in the docket pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to represent the interests of Tennessee consumers of public utility services in proceedings before the Authority. The Consumer Advocate asserts that the interests of consumers may be adversely affected by the proposed base rate increase and anticipated Variable Cost Rider. As such, it seeks to intervene in these proceedings to represent the interests of Kingsport consumers. In conclusion, the Consumer Advocate states that only by participating in this proceeding can it work to adequately protect the interests of consumers. During the Status Conference, Kingsport stated that it had no objection to the Consumer Advocate’s intervention

² *Order Convening a Contested Case and Appointing a Hearing Officer* (October 28, 2015).

into these proceedings.

East Tennessee Energy Consumers (“ETEC”)

According to the *Petition to Intervene of East Tennessee Energy Consumers*, ETEC is a group of Kingsport’s largest Industrial Power Customers, and includes Air Products and Chemicals, Inc., Domtar Paper Company, Inc., Eastman Chemical Company, and Wellmont Health Systems. ETEC asserts that it would be directly and adversely impacted by the implementation of the proposed general rate increase. Further, it states that its intervention will not impair the interests of justice or the orderly and prompt conduct of the proceedings. As such, ETEC requests permission to intervene and participate in this case. During the Status Conference, Kingsport stated it had no objection to the ETEC’s intervention into these proceedings.

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;
 - (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.³

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.⁴ 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.⁵

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.

³ Tenn. Code Ann. § 4-5-310.

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

⁵ Tenn. Comp. R. & Regs. 1220-01-02-.08.

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. The petitions filed by the Consumer Advocate and ETEC were received in the early stages of the case, before a procedural schedule was established, and well in advance of the anticipated hearing date. Therefore, the Hearing Officer considers the petitions of the Consumer Advocate and ETEC 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 that 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.⁶

Thus, 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

⁶ Tenn. Code Ann. § 65-4-118(b)(1).

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 seeks approval to increase its base rates and intends to request an alternative rate-making mechanism under Tenn. Code Ann. § 65-5-103(d). ETEC is a group of actual industrial power customers receiving service from Kingsport, and, under Tenn. Code Ann. § 65-4-118, the Consumer Advocate is qualified to represent the interests of Kingsport's consumers before the Authority. Therefore, as Kingsport's requests will directly impact the rates and charges that will be paid by its customers, the Hearing Officer finds that there exists a sufficient factual basis upon which to find that legal rights or interests held by those consumers may be determined in this proceeding.

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." The petitioner in this matter, Kingsport, has no objection to the requests to intervene filed by the Consumer Advocate or ETEC in this matter. Therefore, given the nature of the proceeding, the promptness of the requests to intervene, and lack of opposition thereto, the Hearing Officer finds that neither intervention should unduly delay or prejudice the administration of these proceedings.

THEREFORE, upon due consideration, the Hearing Officer concludes that the legal rights, duties, privileges, immunities or other legal interest of the consumers of electric services provided by Kingsport may be determined in this proceeding. Further, that the Consumer Advocate qualifies under law as an intervenor for the purpose of representing those consumer

interests, and ETEC is a group of actual Kingsport industrial customers. Further, that these requests to intervene were timely-filed and should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concludes that both the Consumer Advocate's *Petition to Intervene* and the *Petition to Intervene of East Tennessee Energy Consumers* should be granted.

IT IS THEREFORE ORDERED THAT:

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

2) The *Petition to Intervene of East Tennessee Energy Consumers* is granted. The East Tennessee Energy Consumers 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