

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

FILED ELECTRONICALLY ON 12-4-15

IN RE:

PETITION OF KINGSPORT POWER COMPANY
d/b/a AEP APPALACHIAN POWER GENERAL
RATE CASE

DOCKET NO.: 15-00093

MOTION FOR PROTECTIVE ORDER AND OBJECTIONS TO DISCOVERY
REQUESTS ON BEHALF OF KINGSPORT POWER COMPANY

Comes Petitioner, Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport”), and, pursuant to Tenn. R. Civ. P. 26.03, moves for an Order:

1. That Kingsport not be required to respond to the FIRST DISCOVERY REQUEST OF THE CONSUMER PROTECTION AND ADVOCATE DIVISION (“Consumer Advocate”);
2. That the Consumer Advocate be offered the option of submitting a total of eighty (80) discovery requests, including subparts, so as to be allowed to appropriately conduct discovery in this Docket, and, Kingsport be afforded adequate time to object to same, and following, submit responses;
3. In the alternative, Kingsport requests that the Hearing Officer deny the Motion of the Consumer Advocate that it be allowed to issue more than 40 discovery requests and order that Kingsport respond to a total of 40 discovery requests, including subparts, as contained in said FIRST DISCOVERY REQUEST; but that Kingsport be relieved from responding to more

than 40 requests, including subparts (recognizing there are more than 40 requests in less than 20 of the numbered requests).

OBJECTIONS

Kingsport, hereby, objects to all 220 Discovery Requests of the Consumer Advocate, including subparts, as same are oppressive, unduly burdensome, and calculated to cause Kingsport to expend unreasonable sums in order to respond to same. Moreover, much of the information requested has been provided prior hereto in filings and Exhibits submitted as part of Kingsport's Petition and in response to Staff Data Requests (the so-called "MFR's"), or is available from publically available information. The Consumer Advocate has apparently chosen to discount this fact in fashioning its FIRST DISCOVERY REQUEST.

DISCUSSION

A. DISCOVERY SHOULD NOT BE HAD

Kingsport attaches as EXHIBIT 1 a copy of the Consumer Advocate's FIRST DISCOVERY REQUEST. It contains 220 numbered requests. Including subparts, the discovery requests exceed 500. TRA Rule 1220-1-2-.11(5)(a) sets the limit on discovery requests at 40, including subparts. The Consumer Advocate has moved for an Order lifting the 40 request limit.

Rule 26.03 permits the Hearing Officer to order that discovery not be had in instances where the discovery sought is so oppressive, so burdensome, and the cost of response is so expensive that justice requires that remedy. This situation is not unlike that seen in *Marceaux v. Sundquist*, 107 S.W.3d 527 (2002), when the Attorney General's Office, representing the Governor, sought an Order that discovery not be had, based on the sheer volume of information requested by the Pro Se Plaintiff. The Trial Court granted the Attorney General's Motion for

Relief, citing the applicable Rule. The Court of Appeals found the Trial Court did not abuse its discretion by granting the Attorney General the relief sought. *Id.*, at 529. (See, EXHIBIT 2.)

Kingsport recognizes it has been many years since it prosecuted a base rate case. Issues and questions do require the Consumer Advocate to be permitted fair discovery. However, 500+ discovery requests do not constitute “fair” discovery. The Consumer Advocate seeks to abuse its role as an Intervenor.

Kingsport submits that the Hearing Officer should grant the Motion that discovery not be had but offer to the Consumer Advocate the option of submitting 80 discovery requests, including subparts, to Kingsport. Kingsport would reserve the right to object within 4 days and would have the same number of days to respond as envisioned in the original Scheduling Order. (Kingsport would, otherwise, respond to the discovery requests of the other Intervenors under the original Scheduling Order.)

Indeed, in an effort to resolve this serious discovery controversy with the Consumer Advocate, Kingsport made such a proposal. See, EXHIBIT 3 hereto. The Consumer Advocate’s response was an unqualified “no”, that office only being willing to discuss individual requests. It should be noted that any comprehensive discussion of the individual requests would have consumed most of the waking hours up to the Status Conference on December 8, 2015. The Consumer Advocate’s response is EXHIBIT 4.

Yet another reason to grant Kingsport’s Motion that discovery not be had (and the accompanying offer of Kingsport to respond to 80 requests, including subparts, - twice the number permitted by the TRA Rule) is that prior hereto, the Consumer Advocate has been a full and complete recipient of Kingsport’s Responses to Staff Data Requests (also now known as MFR’s).

It should be noted that in meetings with the TRA and the Consumer Advocate prior to the filing of Kingsport's Petition, no mention was made of the need for Kingsport to submit the information requested by the so-called MFR's. Indeed, nowhere in the Rules or Regulations of the TRA is there a mention of MFR's. These were apparently developed with gas company input for use in gas rate cases. The initial draft of the "MFR's" sent to Kingsport was gas oriented. After discussion with the TRA Staff, the Staff graciously revised same to more completely "fit" this electricity docket. Kingsport responded and provided the Consumer Advocate with copies of all responses including confidential information. Attached as EXHIBIT 5 is a copy of the Staff Data Requests (the "revised" MFR's) Kingsport received from the Staff in October. EXHIBIT 6 is a copy of the responses, without exhibits and attachments thereto. It must be pointed out that the information which Kingsport submitted in response to the Staff Data Requests consisted of over 16,000 pages. The Consumer Advocate has apparently failed to take this volume of information into account in fashioning the most unreasonable FIRST DISCOVERY REQUEST.

In summary, Kingsport's Motion under Rule 26.03 that discovery not be had relative to the FIRST DISCOVERY REQUEST of the Consumer Advocate should be granted. Tenn. R. Civ. P. 26.03; *Marceaux v. Sundquist, supra*.

Kingsport has proposed that the Consumer Advocate be granted the option of submitting 80 discovery requests, including subparts, as discussed herein.

It is facetious to suggest that the Consumer Advocate cannot represent the interests of Kingsport consumers or test the merits of Kingsport's case if that office is limited to an initial 80 discovery requests. "Good Cause" does not mean abuse, oppression or utter harassment.

As an alternative, the Hearing Officer should deny the request to exceed 40 discovery requests, including subparts, and Kingsport will respond, subject to objections, to the first 40 discovery requests, including subparts, contained in the challenged FIRST DISCOVERY REQUEST.

B. OBJECTIONS TO DISCOVERY REQUEST

Kingsport objects to all 500+ discovery requests contained in the Consumer Advocate's FIRST DISCOVERY REQUEST for the reasons discussed above and because the Consumer Advocate has apparently chosen to ignore information on hand contained in Kingsport's filing and Kingsport's responses to Staff Data Requests.

It should first be pointed out that in the first 21 numbered requests contained in the Consumer Advocate's FIRST DISCOVERY REQUEST, there are, giving the Consumer Advocate the benefit of the doubt, 58 separate requests including subparts. It is an unproductive use of time to attempt to discuss each one with the Consumer Advocate.

Without limiting the possible individual objections that could be made to many of the requests, Kingsport would point out the following:

1. Requests 3, 7, 11, 17, 19, and 67 would require Kingsport to respond with legal conclusions concerning the alternative rate mechanism it contemplates filing in the future pursuant to TCA § 65-5-103(d).

2. Certain requests are so open-ended as to be facetious. Request 82: "Please provide written accounting, tax, regulatory or other policies that are used or have been adopted by KgPCo or that have been used or have been adopted by KgPCo affiliates that are also used by or applicable to KgPCo." (emphasis added). Put another way, provide all written policies used or adopted by Kingsport or its affiliates. One assumes the time frame for this Request is "until

the mind of man runneth not to the contrary.” Requests 83 and 84 are similarly without time limitation. KgPCo has existed since 1923.

3. Why should Kingsport be required to provide 6 years of information as to multiple topics by month? See, Requests 97, 98, 99, 100, 119-126.

4. With reference to Request 104, why should Kingsport be required to supply the Consumer Advocate with publically available NOAA reports on Kingsport’s weather for 20 years? There are a number of requests seeking information that is publically available.

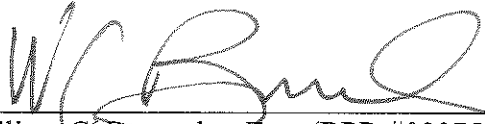
The fact of the matter is that there are valid individual objections which can be made to virtually every Request, making the Consumer Advocate’s offer to “discuss” individual requests illusory at best. Kingsport does not waive its right to object to individual discovery requests if the relief sought herein is denied.

SUMMARY

Kingsport is well aware that the Consumer Advocate and other intervenors (within their area of interest) should be permitted proper discovery. The issue is not whether relevant information might be obtained in a response to an otherwise objectionable discovery request. However, the sheer magnitude of the information requested, in some cases as far back as 1923, leaves Kingsport no choice but to seek the relief discussed herein. The excuse that Kingsport has not had a base rate case since 1992 only goes so far.

Respectfully submitted,

**KINGSPORT POWER COMPANY d/b/a AEP
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing **MOTION FOR PROTECTIVE ORDER AND OBJECTIONS TO DISCOVERY REQUESTS ON BEHALF OF KINGSPORT POWER COMPANY** has been served upon the following by emailing a true and accurate copy on this the 4th day of December, 2015:


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