

**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. 16-00001**

**MOTION AND REPLY OF TENNESSEE SOLAR
ENERGY INDUSTRIES ASSOCIATION**

Pursuant to T.C.A. § 1220-1-2-.06, the Tennessee Solar Energy Industries Association, Inc. (“TenneSEIA”) requests permission to file the following reply to the *Objection to Petitions to Intervene* (“Objection”) filed by Kingsport Power Company (“Kingsport”) on February 9, 2016.

Argument

Kingsport does not oppose TenneSEIA’s petition to intervene but, relying on the Hearing Officer’s ruling granting TenneSEIA limited participation in Kingsport’s last rate case, Docket 15-00093, Kingsport argues that TenneSEIA’s interests “do not involve any specific rights” of its members and, therefore, TenneSEIA is not entitled to “mandatory intervention or intervention of right under § 4-5-310(a).” *Objection to Petitions to Intervene*, at 4. Kingsport argues that since TenneSEIA is entitled only to intervene as a matter of agency discretion under § 4-5-310(b), the Hearing Officer should limit TenneSEIA’s participation to issues related to Kingsport’s proposed changes in its “net metering” tariff.

Kingsport apparently overlooked the differences between the petition filed by TenneSEIA in Docket 15-00093 and the petition filed in Docket 16-00001. In the prior case, TenneSEIA’s petition stated that TenneSEIA’s members included Tennessee-based companies that design, install, monitor and maintain solar panels on a customer’s roof. Those companies currently serve and are seeking to serve customers located in Kingsport’s service area. In the

new case, TenneSEIA also includes, as the petition states, “one or more” retail customers of Kingsport who either have or would consider rooftop solar panels. Petition to Intervene, at 1. At the time the petition was filed, one Kingsport customer had joined TenneSEIA. As of February 16, 2016, seven customers have now joined, and more are likely to join as this case continues. Like all of Kingsport’s retail customers, these members of TenneSEIA “have a direct financial interest in whether Kingsport is allowed to increase its retail rates.” *Id.*, at 2.

In the prior case, the Hearing Officer granted a petition to intervene filed by “East Tennessee Energy Consumers” (ETEC), a group of four, large industrial customers who purchase electricity from Kingsport Power. As the Hearing Officer noted, “ETEC is a group of actual industrial power customers receiving service from Kingsport,” and “Kingsport’s requests will directly impact the rates and charges that will be paid by its customers.” Therefore, the Hearing Officer found that ETEC was entitled to intervene as a matter of right under T.C.A. § 4-5-310(a) because “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.” Order Granting the Petitions to Intervene Filed by Consumer Advocate and East Tennessee Energy Consumers, Docket 15-00093, December 7, 2015, at 6.

Just like the four members of ETEC, the seven members of TenneSEIA are “actual...power customers receiving service from Kingsport.” Therefore, just like the members of ETEC, they have “legal rights or interests” that “may be determined in this proceeding” and are therefore entitled to intervene as a matter of right under § 4-5-310(a).

It is settled law that individuals threatened by direct, economic injury or an association whose members include such individuals have a right to intervene in an administrative proceeding to protect their interests. As explained in Pierce, Administrative Law Treatise (Fifth Edition), Section 16.10, Volume III, at 1533,

“Most of the lower court decisions on the right to intervene and to participate in the agency proceedings...apply the reasoning of the Supreme Court decisions on standing to obtain judicial review of agency decisions, with virtually identical results. Thus, intervention is granted to anyone who has an economic ... interest in the outcome of a proceeding if a person is arguably within the zone of interests to be protected or regulated by the statute.” (Citations omitted.)

Kingsport’s customers have a legally cognizable, economic interest in the outcome of this rate case and are squarely within the “zone of interests” the ratemaking statutes are designed to protect. Because TenneSEIA now includes members whose legal rights or interests may be determined in this rate case, TenneSEIA has standing to intervene as a matter of right in the docket.¹

TenneSEIA will work with the Consumer Advocate, ETEC, and other intervenors to avoid duplicative discovery requests, evidence, and cross-examination questions. Since counsel for TenneSEIA is also counsel for another intervening party, The Alliance for Solar Choice (“TASC”), counsel offers to submit one set of discovery requests on behalf of both TenneSEIA and TASC.

Conclusion

When TenneSEIA sought to intervene in Kingsport’s prior rate case, the association stated that it would “accept a decision by the Hearing Officer limiting TenneSEIA’s intervention at this time to net metering issues with the understanding that TenneSEIA may ask for expanded participation should circumstances warrant.” Response of TenneSEIA to Kingsport Power

¹ An association has standing to challenge an agency’s action or to intervene in an agency proceeding even if only some of the association’s members are directed impacted by the agency’s action. See Sierra Club v. Morton, 405 U.S. 727, 739 (1972) (“It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review.”) See also Pierce, supra, Section 16.4, Volume III, at 1429. (“This dictum enabled the Sierra Club to obtain standing on remand by identifying a member of the association who used the park and who would suffer injury...as a result of the effects of the construction of the ski resort authorized by the challenged agency action.”); and Pierce, supra, Section 16.12, Volume III, at 1542. (“The Court routinely confers standing on membership organizations when any member of the organization is entitled to standing under traditional standing doctrine.”)

Company's Objection, Docket 15-00093, at 4. TenneSEIA's circumstances have indeed changed. The association now includes individual Kingsport ratepayers who may suffer direct and particular financial harm as a result of this case. Whether they currently use or would consider using rooftop solar, they purchase electricity from Kingsport Power and – just like the industrial intervention group – are legally entitled to intervene as a matter of right and participate fully in this case.

Dated this 16th day of February, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2016, 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:

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