

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

PETITIONER'S RESPONSE IN OPPOSITION TO
CONSUMER ADVOCATE DIVISION'S MOTION
TO SERVE MORE THAN FORTY (40) DISCOVERY REQUESTS

Petitioner, Kingsport Power Company d/b/a AEP Appalachian Power ("Kingsport") respectfully submits the following Response to the second "Motion to Exceed Forty (40) Discovery Requests" (the "Motion") filed by the Consumer Advocate Division ("Consumer Advocate" or "CAD"). The Company does not oppose the Consumer Advocate's request to exceed forty (40) discovery requests for its Second Round of Discovery, but feels compelled to document for the record the unreasonable conduct of Consumer Advocate in this matter. The Company would show the Hearing Officer as follows:

1. The Consumer Advocate Continues To Disregard The TRA's Rules

On March 31, 2016, the Consumer Advocate submitted a second installment of discovery requests consisting of one-hundred and two (102) numbered requests, many of which contain multiple subparts. When the subparts are counted, the Consumer Advocate's second round of discovery requests total approximately three-hundred and two (302) requests. This second round of over three-hundred discovery requests follows the three hundred and eighty-five (385) discovery requests the Consumer Advocate served in its first round of discovery. All told, the

Consumer Advocate has now served on Kingsport approximately six-hundred and eighty-seven (687) discovery requests in this case.

The limit for discovery requests under the Tennessee Regulatory Authority's Rules is forty (40). *See* TENN. R. & REGS. 122-1-2-.11(5)(a). It would be unreasonable to assume that the TRA did not take into consideration, or was not familiar with, public utility rate cases and the discovery necessary for such cases when it drafted a rule placing a reasonable limit on the number of discovery requests in a contested case. The Consumer Advocate is not exempt from the TRA's rules, and the Consumer Advocate's onslaught of discovery requests amounts to an unnecessary fishing expedition. However, the Company has gone, and will continue to go, to great lengths and incur significant costs to respond to the voluminous, and in many cases excessive, discovery submitted by the Consumer Advocate in this case.

Notably, the Consumer Advocate continues to violate the TRA's rules in this case. The Consumer Advocate's first round of 205 numbered discovery requests were served before a procedural schedule had been entered and before an order had been entered allowing the CAD to exceed the 40-request limit. *See* TENN. RULES & REGS. 1220-1-2-.11(1) ("no discovery shall be undertaken until a discovery schedule is set in accordance with these rules."). Nevertheless, the Company began responding to the Consumer Advocate's discovery requests and had responded to 173 of the 205 numbered requests before a procedural schedule was entered and before the entry of an order allowing the CAD to exceed 40 discovery requests.

The CAD's second round of discovery was also in violation of the TRA's rules. A party is not permitted to serve more than forty (40) discovery requests until after it has received permission from the Hearing Officer to do so. TENN. RULES & REGS. 1220-1-2-.11(5)(a) ("No

party shall serve on any other party more than forty (40) discovery requests including subparts, without first having obtained leave of the Authority of a Hearing Officer”). On the due date for its second round of discovery requests, the Consumer Advocate filed its Motion to Exceed Forty Discovery Requests simultaneously with its 302 discovery requests. No order permitting the Consumer Advocate to exceed the discovery request limit has been entered.¹ The Consumer Advocate acts as if the Rules of the TRA and Rules of Civil Procedure do not apply to it.

Also, the same TRA rule provides that “If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first 40 requests.” TENN. RULES & REGS. 1220-1-2-.11(5)(a). Therefore, Kingsport would be well within the letter and spirit of the TRA’s Rules to respond to only the first forty (40) of the Consumer Advocate’s 302 discovery requests. But in the interest of cooperation, to prevent any argument that this case should be delayed, and to avoid additional costs resulting from the Consumer Advocate’s discovery conduct, Kingsport intends to respond to the Consumer Advocate’s voluminous discovery requests to the best of its ability within the time allotted, subject to applicable objections.

The Company has produced thousands upon thousands of pages of documents, spreadsheets, and information to the Consumer Advocate in a timely and good faith manner and will to do so in response to the Consumer Advocate’s second round of discovery, despite the Consumer Advocate’s disregard for the TRA’s rules and lack of reasonableness and proportionality. Kingsport deserves the right to have the rules applied fairly and uniformly to all parties.

¹ It is difficult to believe that the Consumer Advocate was unaware that its second round of discovery requests would significantly exceed the limit in the rules until the due date. The Consumer Advocate could have filed its Motion earlier, but waited until the last minute to do so.

2. The Consumer Advocate's Pattern Of Unreasonableness and Abuse

The Consumer Advocate has demonstrated a pattern of unreasonableness and has repeatedly made arguments that appear intended only to unfairly disparage Kingsport and create animosity. Although Kingsport has made the decision to respond to the Consumer Advocate's second round of discovery (subject to applicable objections), the record in this case should reflect the actions listed below that the Consumer Advocate has engaged in up to this point. If the Consumer Advocate continues to engage in unreasonable conduct of the type outlined below, Kingsport anticipates it will be necessary to request protection or other appropriate relief.

1. The CAD has repeatedly alleged that Kingsport failed to submit its first round of discovery responses by the due date when, in fact, Kingsport had responded to 173 of the 205 numbered discovery requests by the February 23, 2016 deadline even though that deadline was unknown until the Procedural Schedule was entered on February 24, 2016, the day after the deadline had already "passed." Kingsport responded to the remaining 32 discovery requests on February 25, 2016, the day after the Procedural schedule was entered. Alleging that Kingsport failed to comply with a deadline that was not known until it had passed is not only unfair but incorrect.
2. Before filing a 78-page Motion to Compel, the CAD made no attempt to confer with Kingsport about the allegedly inadequate discovery responses -- no letter, no email, not even a phone call. The CAD did not reach out to Kingsport in any way. Many of the issues in the CAD's Motion to Compel could have been resolved by a simple phone call or inquiry because the information the CAD sought to compel was already in its possession, publicly available, or not the information the CAD really wanted.
3. During the hearing on the CAD's motion to compel, the CAD made the claim that the CAD, either itself or through its experts, can talk directly with a person represented by counsel without the permission of the person's counsel. *See* TENNESSEE RULES OF PROFESSIONAL CONDUCT, Rule 4.2 ("a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by

another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”) The CAD apparently believes it is not bound to follow rules that apply to all licensed attorneys in Tennessee.

4. The CAD has repeatedly claimed that Kingsport “failed to provide the ordered responses by March 23, 2016,” when, in fact, the documents were placed for overnight delivery on March 23, 2016, and delivered to the CAD’s office before 10:00 a.m. on March 24, 2016. The TRA’s Rules and the Tennessee Rules of Civil Procedure explicitly provide that “Service by mail is complete upon mailing.” TENN. R. & REGS. § 1220-1-1-.10; TENN. R. CIV. P. 5.02(1). The CAD’s allegation is legally incorrect and insignificant from any practical perspective.
5. The CAD’s claim that the Company has produced documents that it previously claimed were unavailable is patently and provably false. It is notable that the CAD provides no details in its Motion to support this spurious allegation. Kingsport assumes, however, based on other occasions the CAD has made this same argument, that the CAD is referring to Monthly Trial Balances requested in CPAD 1-005. Kingsport has not produced Monthly Trial Balances that it previously claimed were unavailable. Rather, after the CAD filed its Motion to Compel, the CAD and its expert explained the information they really wanted and Kingsport explained that such information was contained in Monthly Income Statements and Balance Sheets, which Kingsport then promptly provided in Excel format for the dates requested.² In other instances, the Company stated that the information was not readily available, not that it was unavailable, and has spent significant time and incurred additional expense to provide information requested.
6. The CAD’s Motion makes the absurd argument that the Company “created confusion and delay” because, out of the thousands of pages of spreadsheets produced by Kingsport, a single number in two spreadsheets with overlapping dates was different.

² Additionally, the raw billing data the Company produced to satisfy Requests CAD 1-018 and 1-019 is different from the adjusted data the Requests appear to seek. (See Tr. Of March 14, 2016 Status Conference, p. 39-48) (“The questions seem to us to be asking for adjusted [data], and that is how we responded. If it’s the raw data, which I now understand might satisfy the Consumer Advocate and its consultant, you know, we might be able to resolve that pretty quickly.”).

The CAD complains that it took the Company “a half day” to explain the completely legitimate reason for the difference. In fact, the Company responded to the CAD’s question within four (4) hours. (See email between the CAD and Kingsport’s Counsel attached as Exhibit A.) Furthermore, the reason for the difference in the numbers was already explained in Company Witness Wayne Allen’s pre-filed testimony. (See *id.*) In other words, the Company provided an answer to the CAD within four (4) hours to a question that was answered by pre-filed testimony submitted in January, and the CAD unashamedly claims this constitutes “confusion and delay” and the CAD’s “experts [were] unable to focus on that critical part of the rate case during that [four-hour] delay.”

7. On March 29, 2016, the CAD filed a Motion to Extend its deadline to submit its second round of discovery requests based solely on the claim that, despite Kingsport’s voluminous production, the CAD was unable to prepare any discovery requests for its second round of discovery, by the established deadline, until it received twelve (12) pages of minutes from the meetings of the Board of Directors of Kingsport’s parent corporation, AEP with a few lines of unredacted information. Perhaps recognizing the weakness of its Motion, the CAD abandoned its motion at the last minute, but not until after it had forced Kingsport to incur the time and expense of preparing a Response.
8. Finally, it is worth noting that, out of the thousands of pages of documents Kingsport has produced during discovery in response to the CAD’s voluminous discovery requests, the only complaints the CAD can manufacture are: (a) the Company took four hours to answer a question that had already been answered in pre-filed testimony, (b) an allegedly overbroad definition of what is attorney-client privileged material in Board minutes that are irrelevant to this case, and (c) service of discovery responses in a manner that complies with the TRA’s rules and the Tennessee Rules of Civil Procedure. These are trivial complaints (at best) in light of what Kingsport has provided during discovery in this case.

It appears Kingsport's reward for operating efficiently for decades, keeping costs and rates low, and not having a rate case in twenty-four (24) years, is the Consumer Advocate's abusive use of discovery and discovery motions, and the CAD's unreasonable and uncooperative approach, which have unnecessarily complicated and compounded this case.

This case is not as complex as the Consumer Advocate is attempting to make it. Kingsport recognizes that it has not had a rate case since 1992, it is one of only three public electric companies regulated by the TRA, and that the two other public electric companies have fewer than ten customers each in Tennessee. Therefore, Kingsport acknowledges that there may be a learning curve for the CAD regarding proper ratemaking for electric utilities in Tennessee and what information is necessary for that purpose. However, Kingsport does not believe that the treatment it has received from the CAD during discovery in this case is warranted or will in any way benefit the customers the CAD is representing.

The only question that needs to be answered is what Kingsport's rates should be going forward, based on the costs incurred during the test year, and any adjustments necessary to make sure the going-forward rates are just and reasonable. The rate increase sought by Kingsport in this matter, which is necessary to allow the Company to cover its costs of providing service to customers and earn a reasonable rate of return, would still result in rates lower than the rates currently paid by customers in other parts of Tennessee, still well below the national average for electric service, and still below the rates charged by TVA power distributors in the surrounding area.

Kingsport simply wants a fair hearing on the merits of its Petition, without undue burden and expense or unnecessary delay. Kingsport is willing to work cooperatively with the

Consumer Advocate to accomplish this goal. The Company hopes that the Consumer Advocate shares the Company's goal in this respect.

Respectfully submitted,

**KINGSPORT POWER COMPANY d/b/a AEP
APPALACHIAN POWER**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing **RESPONSE IN OPPOSITION TO CONSUMER ADVOCATE DIVISION'S MOTION TO SERVE MORE THAN FORTY (40) DISCOVERY REQUESTS** has been served upon the following by emailing a true and accurate copy on this the 4th day of April, 2016:

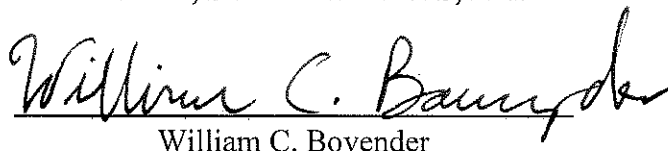
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HUNTER, SMITH & DAVIS, LLP


William C. Bovender

Joseph B. Harvey

From: Joseph B. Harvey
Sent: Monday, March 28, 2016 12:28 PM
To: Wayne Irvin; William C. Bovender
Cc: Vance Broemel; Emily Knight; Hal Novak (halnovak@whnconsulting.com); RSmithLA; Larry C Foust (lcfoust@aep.com); Hector H Garcia-Santana (hgarcia1@aep.com); jrbacha@aep.com; William K. Castle
Subject: RE: Discrepancy in Kingsport Power Balance Sheets

Wayne –

Here is an explanation regarding the question you raised in the emails below:

The December 2014 balance sheet included in the “Jan 2014 – Dec 2015 Month-End KgPCo Balance Sheet” file, which agrees with the balance sheet provided in KgPCo Exhibit No. 2 (AWA) in the Company’s filing, should be used since it includes a reclassification journal entry posted in the 1st quarter of 2015 in which KgPCo’s December 2014 books were re-opened in order to record this entry effective 12/31/14. This reclassification journal entry, which was related to the capitalization of certain AEP service corporation software costs billed to Kingsport instead of expensing such costs, has been extensively discussed in the Company’s filing and discovery responses (e.g. see the discussion of Adjustment OM-9 in Company witness Allen’s testimony).

The December 2014 balance sheet included in the “Jan 2013 – Dec 2014 Month-End KgPCo Balance Sheet” file, while correct at the time produced on January 23, 2015, does not include this reclassification journal entry that was posted later in the 1st quarter of 2015. Refer to the workpaper provided in the response to Staff Informal 1-24 AWA Attachment 2 for the related reconciling amounts that impacted Accounts 101 and 111 on the balance sheet.

There are no similar differences in the December 2014 income statements provided in the supplemental response to CPAD 1-005 since both December 2014 income statements were produced after the reclassification journal entry was posted.

We trust this explanation is sufficient, but if you have additional questions, please let us know.

Sincerely,
 Joe

From: Wayne Irvin [<mailto:Wayne.Irvin@ag.tn.gov>]
Sent: Monday, March 28, 2016 8:25 AM
To: William C. Bovender
Cc: Joseph B. Harvey; Vance Broemel; Emily Knight; Hal Novak (halnovak@whnconsulting.com); RSmithLA
Subject: FW: Discrepancy in Kingsport Power Balance Sheets

Bill, one of our experts identified the following problem yesterday that needs to be resolved asap. Please let me know that you have received this e-mail and how and when it will be reconciled / resolved. This obviously raises a number of concerns from our perspective. Best regards, Wayne

From: Hal Novak [<mailto:halnovak@whnconsulting.com>]
Sent: Sunday, March 27, 2016 4:57 PM

To: Wayne Irvin <Wayne.Irvin@ag.tn.gov>

Subject: Discrepancy in Kingsport Power Balance Sheets

Wayne -

In the Company's response to the Motion to Compel for Item # CAPD1-5 the Company provided us with the monthly balance sheets from January 1, 2009 through December 31, 2015 in four (4) separate Excel files. Two of these files (**Attached**) had overlapping data for January 2014 through December 2014. However, at least some of the overlapping monthly data in the two files appears to be inconsistent.

For example, the December 2014 amount for Account 1010001-Plant in Service equals \$153,037,157 in the "Jan 2013-Dec 2014 Month-End KgPCo Balance Sheet."

However, the December 2014 amount for Account 1010001-Plant in Service equals \$154,362,099 in the "Jan 2014-Dec 2015 Month-End KgPCo Balance Sheet."

This discrepancy is causing me to question which data in the response is accurate. As a result, I'm unable to proceed with any analysis until this discrepancy between the two files is first cleared up. Please ask the Company to reconcile this discrepancy asap.

Thanks.

Hal Novak, CPA
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