

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 28, 2016

IN RE:)	
)	DOCKET NO.
PETITION OF KINGSPORT POWER COMPANY)	16-00001
D/B/A AEP APPALACHIAN POWER FOR A)	
GENERAL RATE INCREASE)	

ORDER ON STATUS CONFERENCE

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) during a status conference held on February 18, 2016 to consider petitions to intervene and motions regarding the procedural schedule and discovery filed in the docket file. Along with the petitioner, Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport” or “KPC”), the following parties participated in the status conference: the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate” or “CPAD”), East Tennessee Energy Consumers (“ETEC”), Tennessee Solar Energy Industries Association (“TenneSEIA”), The Alliance for Solar Choice (“TASC”), and the Energy Freedom Coalition of America (“EFCA”) (collectively, the “Parties”).

BACKGROUND

KPC 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 January 4, 2016, 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 and to implement its revised tariffs, including its net metering service rider tariff.

During the regularly scheduled Authority Conference held on January 11, 2016, the voting panel of Directors appointed General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing.¹

FEBRUARY 18, 2016 STATUS CONFERENCE

A Notice of Status Conference was issued on February 10, 2016. As stated in the notice, the status conference was held to consider issues regarding the procedural schedule and to hear oral arguments on petitions to intervene and the motion to issue more than 40 discovery requests filed by the Consumer Advocate.² As noticed, the Status Conference was held in the Conference Room of the Office of the Attorney General in the UBS Tower and the following parties attended:

Kingsport – William C. Bovender, Esq. and John B. Harvey, Esq., Hunter, Smith & Davis, LLP, P.O. Box 3704, Kingsport, TN 37664.

Consumer Advocate – Wayne Irvin, Esq., Erin Merrick, Esq., and Vance Broemel, Esq., Office of the Attorney General, P.O. Box 20207, Nashville, TN 37202.

ETEC (by phone) – Michael J. Quinan, Esq., Christian & Barton, LLP, 909 East Main Street, Suite 1200, Richmond, VA 23219.

TenneSEIA - Henry W. Walker, Esq., Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203.

TASC - Henry W. Walker, Esq., Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203.

¹ *Order Convening a Contested Case and Appointing a Hearing Officer* (October 28, 2015).

² The Hearing Officer issued an order on the procedural matters on February 24, 2016. *See Order Establishing Procedural Schedule* (February 24, 2016).

EFCA – Charles B. Welch, Jr., Esq., Farris Bobango PLC, 414 Union Street, Suite 1105, Nashville, TN 37219.

I. CONSUMER ADVOCATE’S MOTION FOR LEAVE TO ISSUE MORE THAN FORTY

DISCOVERY REQUESTS

On February 20, 2016, the Consumer Advocate filed a *Motion for Leave to Issue More Than Forty Discovery Requests* (“*Discovery Motion*”) pursuant to TRA Rule 1220-1-2-.11. The Consumer Advocate argues that “[t]o enable the Consumer Advocate to put forth that case [a complete case], and in view of the substantial period of time since KgPCo’s last general rate case and the breadth and complexity of the issues presented in KgPCo’s general rate case (as set out in the Petition and in the testimony of its many witnesses), the Consumer Advocate’s requests meet the ‘good cause’ standard.”³

On February 5, 2016, Kingsport filed its *Response of Kingsport Power Company to Motion of CAPD for Leave to File More than Forty Discovery Requests* (“*KPC Discovery Response*”) stating that it does not oppose the Consumer Advocate’s *Discovery Motion*, “assuming it applies only to the First Discovery Requests already served. That is, the CAPD should be limited to the 207+ requests already served.”⁴

FINDINGS AND CONCLUSIONS ON DISCOVERY MOTION

TRA Rule 1220-1-2-.11 states as follows:

No party shall serve on any other party more than forty (40) discovery requests including sub-parts without first having obtained leave of the Authority or a Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. 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 forty (40) requests.

³ *Memorandum in Support of the Consumer Advocate’s Motion for Leave to Issue more than Forty Discovery Requests*, p. 5 (February 2, 2016).

⁴ *KPC Discovery Response*, p. 1 (February 4, 2016).

TRA Rules allow a minimum of forty discovery requests to be served upon a party. Nevertheless, upon compliance with TRA Rule 1220-1-2-.11 and a showing of good cause, the TRA has been flexible in permitting supplemental discovery to occur. In light of the foregoing, the Hearing Officer found that the Consumer Advocate had met the requirements of the Rule by showing good cause to issue additional discovery requests to KPC. Further, the Company does not oppose the Consumer Advocate's *Motion*. Based on these findings, the Hearing Officer granted the Consumer Advocate's *Discovery Motion*.

II. PETITIONS TO INTERVENE

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.

TENNESEIA

In its *Petition to Intervene* filed on February 4, 2016, TenneSEIA seeks intervention as of right under Tenn. Code Ann. § 4-5-310(a). TenneSEIA is the Tennessee state chapter of the national Solar Industries Association, which promotes solar energy, and represents the interests of the solar energy industry in Tennessee. Further, TenneSEIA notes that it will supplement its

filing with a list of the specific members that have elected to participate in this proceeding, which includes companies that design, install, monitor, and maintain solar panels on a customer's roof that are located in Tennessee and currently serving and seeking to serve customers in the Kingsport service area. TenneSEIA asserts that Kingsport's proposed changes to its "Net Metering Service Rider" tariff will make customer-generated solar power a less attractive option and would therefore have a direct financial impact on TenneSEIA's ability to offer services to customers in the Kingsport service area. As such, TenneSEIA asserts that it has a financial interest in the outcome of this case, and therefore its "legal rights, duties, privileges, immunities, or other legal interest" may be determined in this proceeding. Further, it states that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by its intervention.

TASC

TASC filed its *Petition to Intervene* on February 4, 2016 pursuant to Tenn. Code Ann. § 4-5-301(a). TASC states it leads advocacy across the country for rooftop solar providers. According to TASC, one of its members, Lightyear, is located in Tennessee and offers rooftop solar service to customers of KPC. TASC maintains that "[i]n light of the detrimental impact the proposed changes in Kingsport's new metering tariff would have on Kingsport's customer who wish to install and utilize onsite solar, TASC and its members have a direct financial interest in the outcome of this proceeding."⁵

EFCA

According to its *Petition to Intervene* filed on February 4, 2016, EFCA is a "national association of companies that promotes, provides and consumes distributed energy resources

⁵ TASC *Petition to Intervene*, p. 2 (February 4, 2016).

(“DERs”).”⁶ Its members include full-service distributed rooftop solar providers and solar product manufacturers that serve customers in multiple states. EFCA states that its local member, Ecological Energy Systems, is owned and operated in Tennessee and provides DER services to customers near or within KPC’s service area. EFCA seeks full intervention in these proceedings because “disposition of various issues in this proceeding will directly or indirectly affect its ability to offer its products and services in a competitively neutral environment in this State.”⁷ EFCA asserts that the revised tariff is discriminatory to rooftop solar customers, will discourage consumer choice and investment in self-generation of energy, and stifle the development of distributed rooftop solar energy resources in Tennessee. As such, EFCA contends that its members’ interests in preserving consumer choice and expanding the solar market are directly related to the broader public interest of reliable electric service at just and reasonable rates. Finally, EFCA asserts that the TRA would benefit from its participation and perspective in this proceeding due to its experience in similar proceedings in other states, and that it has a justiciable interest in the disposition of the case. As such, ETEC requests permission to intervene and participate in this case.

OBJECTION TO PETITIONS TO INTERVENE

In its *Objection to Petitions to Intervene*, filed on February 8, 2016, Kingsport states “[b]ecause the Hearing Officer in the prior case (Docket No. 15-00093) permitted limited intervention by EFCA, Sun Run, Inc. (now a member of TASC), and TenneSEIA, Kingsport does not oppose intervention by the Solar Intervenors in this matter, provided their participation is limited to reflect their particular interest in the case.”⁸ Kingsport argues that EFCA, TASC, and TenneSEIA’s (collectively “Solar Intervenors”) interests are limited to Kingport’s proposed

⁶ *The Energy Freedom Coalition of America Petition to Intervene*, pp. 1-2 (February 4, 2016).

⁷ *Id.* at 2.

⁸ *Kingsport Objections to Petitions to Intervene*, p. 1 (February 8, 2016).

net metering tariff and net metering issues, thus they are not entitled to mandatory intervention pursuant to Tenn. Code Ann § 4-5-310(a). Kingsport asserts that if intervention is granted, it should be limited to the proposed net metering tariff and net metering issues.

RESPONSES TO OBJECTION

On February 16, 2016, TenneSEIA and TASC filed motions to file replies to KPC's *Objection to Petitions to Intervene* pursuant to TRA Rule 1220-1-2-.06. On February 23, 2016, EFCA filed a response to KPC's *Objection to Petitions to Intervene*. The Hearing Officer grants the motions to file replies.

In its *Motion and Reply of Tennessee Solar Energy Industries Association* ("TenneSEIA Reply"), TenneSEIA reiterates that the association now includes ratepayers who may suffer direct and particular financial harm as a result of this docket.⁹ TenneSEIA maintains that "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."¹⁰

In its *Reply to Objection to Interventions* ("TASC Reply"), TASC states that "[c]hanges in base rates affect the integrity of the investments these customers have made in onsite solar generation and directly impact the savings they realize by generating and consuming electricity onsite."¹¹

According to the *Energy Freedom Coalition of America, LLC Response to Kingsport Power's Objection to Petitions to Intervene* ("EFCA Response"), the increase in rates and changes to rate design influence whether a customer will invest in DER, thus "the interests of EFCA's members extend beyond net metering and net metering issues and are fundamentally tied to the Company's proposed rates and rate designs for all customer classes since all customer

⁹ *TenneSEIA Reply*, p. 2 (February 16, 2016).

¹⁰ *Id.* at 4.

¹¹ *TASC Reply*, p. 3 (February 16, 2016).

classes could install DERs.”¹² For these reasons, EFCA asserts that it is necessary for it to be allowed to participate as a full party in this docket.

FINDINGS & CONCLUSIONS ON PETITIONS TO INTERVENE

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 petitions to intervene, it reads in part:

(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.

Similarly, TRA Rule 1220-01-02-.08 directs that requests for intervention before the Authority be made and considered as follows:

¹² *EFCA Response*, p. 2 (February 23, 2016).

- (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.

At the Status Conference held on February 18, 2016, the Hearing Officer found that as a group of KPC's largest industrial customers, ETEC's members will be directly impacted by the rate increase requested in Kingsport's *Petition*. Therefore, the Hearing Officer found that the legal rights, duties, privileges, immunities or other legal interest of ETEC may be determined in this proceeding. In addition, at the Status Conference, Kingsport indicated it did not oppose intervention by ETEC. Further, ETEC's *Petition to Intervene* was 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 concluded that ETEC's *Petition to Intervene* should be granted.

Similar to ETEC, TenneSEIA has members who serve customers of KPC and who are retail customers of KPC. TenneSEIA members will be directly impacted by the rate increase sought by KPC. Members of TASC offer or seek to offer rooftop solar panels to customers of Kingsport Power, and the changes proposed by Kingsport to its net metering tariff would have a detrimental impact on TASC members. And, EFCA members provide DER services in or near Kingsport's service area and have a direct interest in the outcome of Kingsport's *Petition*.

The Hearing Officer agrees with the positions of TenneSEIA, TASC, and EFCA and finds that the legal rights, duties, privileges, immunities or other legal interest of the members of

these organizations may be determined in this proceeding. Further, the Hearing Officer finds that the legal interests of these organizations are not limited to the net metering issues of Kingsport's *Petition* and consideration of net metering issues in the docket cannot be separated from the consideration of an increase in base rates and rate design. The Hearing Officer finds that TenneSEIA, TASC, and EFCA interests are not limited to the net metering issues, and the organizations will be directly impacted by any changes in base rates and rate design. Therefore, the Hearing Officer finds that the organizations should not be limited to participating only with regard to the net metering issue. In addition, the Hearing Officer finds that the petitions to intervene of TenneSEIA, TASC, and EFCA 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 the petitions to intervene filed by TenneSEIA, TASC, and EFCA should be granted and TenneSEIA, TASC, and EFCA may participate in the proceedings as full parties.

To the extent possible TenneSEIA and TASC, shall combine their use of discovery, cross-examination, and other procedures, and should confer with counsel for EFCA to combine, and/or avoid duplication in discovery, cross-examination, and other procedures to promote the orderly and prompt conduct of the proceedings.

IT IS THEREFORE ORDERED THAT:

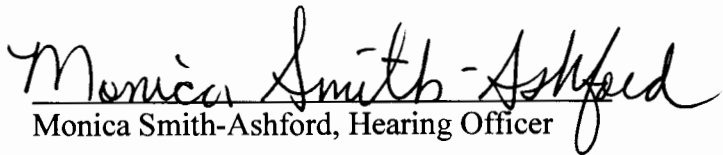
1. *Motion for Leave to Issue More Than Forty Discovery Requests* filed by the Consumer Protection and Advocate Division of the Office of the Attorney General is granted.
2. The *Petition to Intervene of East Tennessee Energy Consumers* is granted. The East Tennessee Energy Consumers may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.

3. The *Petition to Intervene* filed by the Tennessee Solar Energy Industries Association is granted. Tennessee Solar Energy Industries Association 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.

4. The *Petition to Intervene* filed by The Alliance for Solar Choice is granted. The Alliance for Solar Choice 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.

5. The *Petition to Intervene* filed by Energy Freedom Coalition of America is granted. The Alliance for Solar Choice 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.

6. Tennessee Solar Energy Industries Association, The Alliance for Solar Choice, and the Energy Freedom Coalition of America shall, to the extent possible, combine their use of discovery, cross-examination, and other procedures to avoid duplicative discovery requests, evidence, and cross-examination questions.


Monica Smith-Ashford, Hearing Officer