

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)
)
PETITION OF KINGSPORT POWER) DOCKET NO. 16-00001
COMPANY d/b/a AEP APPALACHIAN)
POWER, GENERAL RATE CASE)

**JOINT MOTION OF SOLAR INTERVENORS TO SEVERE AND DISMISS
KINGSPORT’S PROPOSED NET METERING TARIFF**

Summary

Kingsport Power Company (“Kingsport” or “the Company”) seeks to impose a mandatory “demand” charge on residential and small commercial customers who use solar equipment as a source of energy. No such charge is required or proposed for other residential and small commercial customers. Kingsport’s proposal violates state law. Since 1980, Tennessee has prohibited electric companies from imposing “rates, fees, or charges” on customers solely because they “use solar or wind-powered equipment as a source of energy.” T.C.A. § 65-4-105(d). Kingsport’s proposal is illegal on its face, and there is no reason to consider it further. It should be severed from this docket and dismissed.¹

Background

Since 2006, customers of Kingsport have been able to save money on their electric bills by generating electricity on site and participating in the Company’s “net metering” program. As explained by the Authority in 2008, net metering is “a method of crediting customers for electricity that they generate on site in excess of their own electricity consumption.” TRA Docket 08-00173 (Oct. 17, 2008) Order, at 2. Pursuant to federal law and instructions from the Authority, Kingsport has offered “net metering” by special contract since 2006 and by tariff

¹ This motion is filed by The Alliance for Solar Choice, The Energy Freedom Coalition of America, and the Tennessee Solar Energy Association (collectively, “the Solar Intervenors”).

since 2011. TRA Docket 11-00111 (Sept. 28, 2011). The current tariff, designed by Kingsport working in cooperation with the TRA Staff,² permits residential and small commercial customers to install solar or wind-powered generators and use that electricity to offset the customer's electric usage. The tariff limits the number of net metering customers "to 1% of Kingsport's forecasted peak load."³

When the TRA approved Kingsport's tariff in 2011, the agency explained the tariff and how the net metering program works:

The Net Metering Tariff gives AEP [Kingsport Power Company] residential and small commercial customers, including public schools for the Kingsport service area, the opportunity to construct alternative electricity production systems (solar, wind, etc.) on their property at their expense and to use that electricity for their personal use. The Net Metering Tariff is available to customers with eligible Renewable Fuel Generators ("RF Generators") on a first-come, first-serve basis. If the electricity from the alternative system does not meet the customers' individual needs, AEP will supply the balance at normal rates. If the electricity produced exceeds a customer's needs, the excess will be used by AEP to supply its remaining customer body, but AEP will not monetarily compensate the customer for that electricity. All monthly charges will be billed under the appropriate rate schedule. The meter installed on the customer's premises will measure the flow of electricity in "both directions," and the monthly charges will be calculated based on positive net energy consumed. If there is a negative net energy, the credit will be carried forward and credited against a positive energy usage in a subsequent billing period. Any excess credits upon termination by the customer are not transferrable, and the customer will not be compensated by the Company.

Id., Order at 1-2.

² The Order approving the current tariff notes, in footnote 1, that the Authority had requested the Company "work with TRA Staff to develop a net metering tariff." Docket 11-00111, Order at 1.

³ According to the Company, "This provision is important in that it will minimize the subsidy paid by non-participating customers to Kingsport's net metering customers." Docket No. 11-00111, Letter from William Boston to David Foster, June 1, 2011.

It is important to note that under Kingsport's current, net metering tariff, participating customers are charged the same tariffed rates for electricity as other residential and small commercial customers. The tariff states, "All monthly charges shall be in accordance with the schedule under which the customer takes service." Original sheet Number 17-5.

Kingsport's net metering tariff, as well as the special contracts for net metering which preceded the tariff, were all considered and approved as individual filings, not as part of a rate case. Kingsport has now filed its first general rate case in over twenty years, seeking a \$12 million rate increase. Incorporated in that filing is a request to increase the rates charged to new net metering customers, effective January 1, 2017. Because of the 1% cap and limited customer participation,⁴ the net metering program does not have a material impact on the Company's earnings and will have no impact on the outcome of the rate case.⁵

Under the Company's proposed tariff, net metering will still be offered only to residential and small commercial customers and limited to "1% of the company's peak load forecast." The difference between the current and proposed tariff is in the monthly charge for electricity. Instead of being charged for usage at the standard residential or small commercial rate, customers who request net metering will be required to obtain service under either the "Residential Demand on Metered Electric Service" tariff or the "Small General Service – Demand Metered" tariff. As the names imply, each of these new tariffs requires customers to pay a monthly "demand" charge⁶ in addition to an energy charge. The overall impact of the proposed tariff is to increase the electric bills of customers who use solar or wind-powered

⁴ At this time, only 8 residential customers and one commercial customer take service under the Company's net metering tariff. Kingsport Response to Data Request TASC/TenneSEIA 1-001.

⁵ The proposed tariff does not become effective until after the attrition period.

⁶ Unlike an energy charge, which is based on a customer's total electric usage during a month, a demand charge is calculated by measuring the customer's highest level of electric usage at any point in time during the month.

equipment as a source of energy. That, as the Company acknowledges, is the purpose of the new tariff. According to the Company, customers who use solar or wind-powered equipment to meet a portion of their electricity needs are considered “partial requirements” customers and should be required to pay a demand fee to cover a larger share of the Company’s transmission and distribution costs. See Kingsport’s response to TASC/TenneSEIA Discovery Request No. 1-024. See also the responses to TASC/TenneSEIA Discovery Requests 1-015 and 1-018.

Argument

What the company has proposed violates Tennessee law. T.C.A. § 65-4-105(d) states that no TRA-regulated electric company may impose “rates, fees or charges” on customers because the customers “use solar or wind-powered equipment as a source of energy.” The company proposes to force residential and small commercial customers with solar panels to begin paying demand charges while other residential and small commercial customers – the so-called “full requirements” customers – are not required to do so. It is hard to imagine a clearer violation of this statutory prohibition.

The law protecting solar customers from being forced to pay higher rates originated as Chapter 756 of the Public Acts of 1980. A copy of Chapter 756 is attached. It applies not only to public utilities regulated by the Authority but to electric cooperatives, municipal electric companies, and utility districts. The law prohibits discrimination against solar customers in “rates, fees, or charges” unless the charges relate to safety issues.⁷

The section applicable to TRA-regulated utilities reads as follows:

65-4-105(d). When any public utility regulated by the Authority supplies its services to consumers who use solar or wind powered equipment as a source of energy, such public utility shall not

⁷ T.C.A. § 65-5-1-4(b) states that a utility may impose separate requirements on customers who generate solar or wind-powered electricity if the requirements are safety related.

discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy. . . .

The statute is unambiguous and requires no interpretation. Recognizing that customers may choose to use “solar or wind powered equipment as a source of energy,” the statute prohibits an electric company from imposing special rates on those customers to make up for the utility’s loss of revenue. Here, Kingsport proposes to add a demand charge because, the Company claims, these “partial requirements” customers who generate electricity for their own use are not paying their full share of the Company’s costs. Again, it is hard to imagine a clearer violation of the statute.

Conclusion


This rate case raises a large number of complex, rate-related issues, all of which must be resolved within the nine-month statutory deadline. There is no reason to spend any more time or resources on the Company’s illegal, net metering tariff which — because it would not take effect until 2017 — has been excluded from the Company’s revenue calculations and will have no impact, one way or the other, on the Company’s request for a \$12 million rate increase.

The proposed tariff is illegal. It is also a distraction. We ask that it be severed from the rate case and dismissed.⁸

⁸ When the net metering issue was first raised by the Authority in 2006, Kingsport’s witness testified, “Should the TRA ultimately decide to pursue the development of a net metering program, the Company is willing to participate in a collaborative process that will result in an appropriately designed net metering program.” Docket 06-0010, Pre-filed Direct Testimony of Chris Potter, at 8. When or if Kingsport makes another proposal to re-write the net metering tariff, the Company should “participate in a collaborative process,” as Mr. Potter recommended, outside the context of a general rate case.

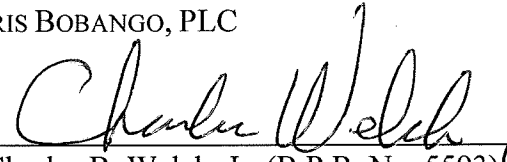
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 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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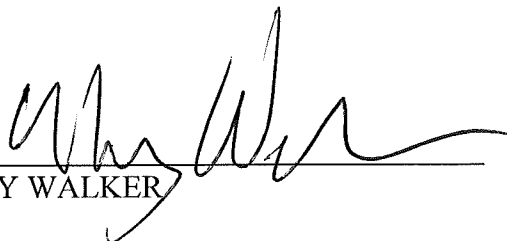
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HENRY WALKER

APPROVED: April 8, 1980

LAMAR ALEXANDER
GOVERNOR

CHAPTER NO. 755

SENATE BILL NO. 1652

By Crow

Substituted for: House Bill No. 1721

By Chiles, Small, Robinson (Washington),
King (Washington)

AN ACT To repeal Tennessee Code Annotated, Sections 41-105 and 4-614, relative to the residence of the wardens of the state penal institutions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 41-105, is repealed.

SECTION 2. Tennessee Code Annotated, Section 4-614, is repealed.

SECTION 3. The warden shall be and is hereby required to live within a twenty (20) mile radius of the state penal institution over which he has the charge and custody.

SECTION 4. This act shall take effect July 1, 1980, the public welfare requiring it.

PASSED: March 27, 1980

JOHN S. WILDER
SPEAKER OF THE SENATE

NED R. McWERTER
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED: April 8, 1980

LAMAR ALEXANDER
GOVERNOR

CHAPTER NO. 756

SENATE BILL NO. 1717

By Hicks

Substituted for: House Bill No. 2115

By Steinhauer

AN ACT Relative to certain consumers of public utilities' services who use solar or wind powered equipment as a source of energy; and to amend Tennessee Code Annotated, Sections 6-1314, 6-1515, 65-405, 65-521, 65-2418, and 65-2514, and Title 6, Chapter 27.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 6-1314, is amended by adding at the end of such section the following sentence:

Provided, however, that when such public works supplies its services to consumers who use solar or wind powered equipment as a source of energy, such public works shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy. Any consumer who uses solar, wind power, or other auxiliary source of energy shall install and operate the equipment, property, or appliance for such energy source in compliance with any state or local code or regulation applicable to the safe operation of such equipment, property, or appliance.

SECTION 2. Tennessee Code Annotated, Section 65-405, is amended by inserting between the first and second sentences the following sentence:

Provided, that when any public utility regulated by the commission supplies its services to consumers who use solar or wind powered equipment as a source of energy, such public utility shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy. Any consumer who uses solar, wind power, or other auxiliary source of energy shall install and operate the equipment, property, or appliance for such energy source in compliance with any state or local code or regulation applicable to the safe operation of such equipment, property, or appliance.

SECTION 3. Tennessee Code Annotated, Section 65-521, is amended by adding at the end of such section the following sentence:

Provided, however, any measure taken by any public utility to avoid discrimination in rates, charges, fees and in the availability and quality of energy against consumers using solar or wind powered equipment as a source of energy shall not be considered unreasonable, unjust, or unduly preferential in violation of this section, unless such customers do not have sufficient safety equipment to protect the suppliers from damage.

SECTION 4. Tennessee Code Annotated, Section 65-2418, is amended by adding at the end of such section the following sentence:

Provided, however, that when any electric membership corporation supplies its services to consumers who use solar or wind powered equipment as a source of energy, such electric membership corporation shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy. Any consumer who uses solar, wind power, or other auxiliary source of energy shall install and operate the equipment, property, or appliance for such energy source in compliance with any state or local code or regulation applicable to the safe operation of such equipment, property, or appliance.

SECTION 5. Tennessee Code Annotated, Section 65-2514, is amended by adding at the end of the first paragraph in subsection (A) the following language:

A cooperative which supplies its services to consumers who use solar or wind powered equipment as a source of energy shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy. Any consumer who uses solar, wind power, or other auxiliary source of energy shall install and operate the equipment, property, or appliance for such energy source in compliance with any state or local code or regulation applicable to the safe operation of such equipment, property, or appliance.

SECTION 6. Tennessee Code Annotated, Section 6-1515, is amended by adding at the end of such section the following sentence:

Provided, however, that when such municipal electric plant supplies its services to consumers who use solar or wind powered equipment as a source of energy, such electric plant shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy. Any consumer who uses solar, wind power, or other auxiliary source of energy shall install and operate the equipment, property, or appliance for such energy source in compliance with any state or local code or regulation applicable to the safe operation of such equipment, property, or appliance.

SECTION 7. Tennessee Code Annotated, Title 6, Chapter 27, is amended by adding the following section:

SECTION 8. When any public utility in a power district supplies its services to consumers who use solar or wind powered equipment as a source of energy, such public utility shall not discriminate against such consumers by its rates, fees or charges or by altering the availability or quality of energy. Any consumer who uses solar, wind power, or other auxiliary source of energy shall install and operate the equipment, property, or appliance for such energy source in compliance with any state or local code or regulation applicable to the safe operation of such equipment, property, or appliance.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 10. This act shall become effective on July 1, 1980, the public welfare requiring it.

PASSED: March 27, 1980

JOHN S. WILDER
SPEAKER OF THE SENATE

NED R. McWHERTER
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED: April 8, 1980

LAMAR ALEXANDER
GOVERNOR

CHAPTER NO. 757

SENATE BILL NO. 1745

By White

Substituted for: House Bill No. 2292

By Moore, Martin, Gill, Turner, Kent,
Sterling, King (Shelby), Ford (Shelby),
Small, Spence, Gaia, Kernell, Hartzog

AN ACT To amend Chapter 409 of the Public
Acts of 1973 and Chapter 847 of the
Public Acts of 1976 relative to the
Chickasaw Basin Authority.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF
THE STATE OF TENNESSEE:

SECTION 1. Section 3(2) of the Chapter
409 of the Public Acts of 1973, as amended
by Section 3 of Chapter 847 of the Public
Acts of 1976 is amended by deleting the
existing language of Section 3(2) in its
entirety and substituting in lieu thereof,
the following:

(2) Membership of the board of
directors shall consist of:

(a) The presiding officer of the
county legislative body or his
authorized representative and one other

member from the county legislative body
in each County which is a member of the
Authority. The terms of such members
shall coincide with their terms of
office; but such membership may, at the
discretion of the respective county
legislative body, be rotated annually.

(b) The chairman or his authorized
representative and one member of the
Council of the City of Memphis. The
terms of such members shall coincide
with their terms of office; but such
membership may, at the discretion of
the Council, be rotated annually.

(c) One member at large, to be
appointed by the Governor to serve
during the Governor's term of office.

(d) The Mayor of Shelby County,
Tennessee, or his authorized
representative.

(e) One member from each county
soil conservation district board of
supervisors from each county which is
a member of the Authority, as
established under Tennessee Code
Annotated, Sections 43-1501 through 43-
1523, as amended. The term of such
member shall coincide with his term of
office on the district board; but such
membership may, at the discretion of
the district board, be rotated
annually.

(f) The Mayor, or his authorized
representative, of each incorporated
municipality within counties which are
members of the Authority.