

to provide a status report to the Commission of the participants' progress on reaching an agreement on proposed rule amendments by March 19, 2021. Although substantive discussions took place, the participants were unable to reach an agreement on any proposed amendments to the rules.

On April 19, 2021, Kingsport, Tennessee-American, Piedmont, and CGC filed written comments in this Docket. On April 19, 2021, the Consumer Advocate moved to file supplemental comments in response to these filings, and the motion was granted.

I. THE COMMISSION'S RULES SHOULD BE UPDATED TO ALIGN DISCOVERY PROVISIONS WITH THE NEEDS OF REGULATORY CASES.

The Consumer Advocate opposes any suggestion for this Commission to maintain a numerical limit on discovery questions. The Consumer Advocate also opposes Kingsport's and Piedmont's requests for a mandatory discovery-planning conference between the utilities and the intervenors.

A. A Numerical Limitation on Discovery Is Not Appropriate in Public-Utility Proceedings.

The parties agree that the Commission's rule limiting discovery to forty questions "is impractical and unrealistic."¹ The Consumer Advocate shares the view of CGC insofar that "discovery requests should reasonably relate to the case presented to the Commission for its approval, and clearly identify the information that [sic] being sought and what it relates to in the case."² The Consumer Advocate, however, maintains the position that while discovery questions should be tied to a reasonableness standard, there should not be an arbitrary numerical limit placed on discovery questions.

¹ *Chattanooga Gas Company's Supplemental Comments*, p.2, ¶ 5(a), TPUC Docket No. 21-00018 (April 19, 2021).

² *Id.*

CGC suggests the Commission amend the current rules to place a 400-question limit on discovery questions in rate cases or annual-rate-review cases and a 100-question limit of discovery questions in all other Dockets.³ Although these numbers provided by CGC highlight how complex the Dockets before this Commission can be, it would be arbitrary and impractical to place a one-size-fits-all cap for discovery questions, just as the current forty-question limit on discovery is arbitrary and impractical. Every Docket varies in complexity, which means every Docket requires varying amounts of discovery questions and testimony to acquire pertinent information.⁴ There is no way to predict how many discovery questions would be appropriate for future Dockets.

Moreover, due to the nature of utility regulation, essentially all the information necessary to examine a matter is retained by a public-utility company. Discovery is the only avenue intervenors and TPUC Staff have to perform their duties to review utilities' filings. Thus, rigid limits to discovery restrict parties from seeking adequate information regarding a case.

Kingsport's stated that it "agrees with the CAU that the current limitation of forty (40) discovery requests, including subparts, without obtaining leave for additional requests, is antiquated and the number limitation should be deleted."⁵ In lieu of a numerical limitation on discovery, Kingsport's comments recommend that there be "guardrails" on the Consumer Advocate's proposed discovery rules. The Consumer Advocate's proposal does indeed involve

³ *Id.* at p.3, ¶5(b).

⁴ For example, both Piedmont and CGC proposed a significant increase in base rates in their most recent rate case filings. In the case of CGC, it sought a \$7 million increase, with an approximate 31.29% increase in base rates to the residential customer class. *Consumer Advocate Petition to Intervene*, p. 3, ¶5, TPUC Docket No. 18-00017 (March 9, 2018). In the case of Piedmont, it sought a 23.9% increase in residential rates in the midst of a pandemic with its customer base suffering from the largest level of unemployment in recent memory. *Direct Testimony of David N. Dittmore* at 3:7-9, TPUC Docket No. 20-00086 (November 30, 2020). Further, this was the first case involving Piedmont Natural Gas subsequent to its acquisition by Duke Energy. Both cases were extremely impactful to their customer base. *Id.* at 26:5-8.

⁵ *Comments of Kingsport Power Company D/b/a AEP Appalachian Power*, p.5, TPUC Docket No. 21-00018 (April 19, 2021).

restrictions on discovery questions. The Consumer Advocate suggests replacing the current discovery rules with the following language:

Parties to proceedings are encouraged to exchange information informally. Parties will also be permitted to serve formal discovery requests as deemed reasonable and necessary by the hearing officer. While there is no limit within these rules to the number of discovery requests that may be issued, discovery requests must be reasonable and pertain to issues relevant to the proceeding. Upon motion and a showing of good cause, a party from whom discovery is sought may seek to limit the number of discovery requests it is required to provide.

The Consumer Advocate's proposed rule would protect parties responding to discovery from unnecessary or unreasonable discovery requests while allowing discovery to be flexible based on the needs of individual cases. Furthermore, certain standards applicable to discovery and found in caselaw and in the Tennessee Rules of Civil Procedure apply to Commission proceedings, and these standards already protect utilities from discovery that is overly broad, unduly burdensome, or unlikely to lead to the discovery of relevant information. Those well-established standards already address the utilities' concerns.

B. The Commission Should Not Require the Parties to Confer to Produce a Discovery Plan.

The Consumer Advocate opposes Kingsport's and Piedmont's suggestion to require parties to hold a discovery-planning conference after Minimum Filing Requirements are made and reviewed.⁶ The discovery plan proposal is a clear attempt to limit the Consumer Advocates' ability to review regulatory filings.

This discovery plan would directly involve the utility and would determine the subjects upon which discovery may be issued. This allows the utility the opportunity to oppose any questions relating to topics it does not wish to be examined in each proceeding. Under the

⁶ See *Comments of Kingsport Power Company D/b/a AEP Appalachian Power*, p. 5, TPUC Docket No. 21-00018 (April 19, 2021); *Comments of Piedmont Natural Gas Company, Inc.*, p. 3, TPUC Docket No. 21-00018 (April 19, 2021).

discovery plan proposal, the utility may, for example, determine that costs allocated from its service company are not appropriate areas of inquiry and may decline to include such items within the discovery plan.⁷ Allowing these potential circumstances to occur is not in the public interest. On one hand, Piedmont and Kingsport acknowledge the need for relevant discovery. On the other hand, the utilities indicate that they should participate in the development of a discovery plan. The scope of such a discovery plan is unclear and may allow the utility to provide input into or restrictions on which areas of a proposal are eligible for review; this would be inappropriate. The utility should not dictate which issues may be addressed in discovery and which issues are off-limits. That authority belongs to the Commission.

Furthermore, Piedmont and Kingsport fail to include in its commentary how such disputes regarding the scope of the discovery plan will be resolved by the Commission. Given the inherently litigious nature of these Dockets, it is unlikely that the parties would reach an amicable agreement regarding discovery. The result of such discovery-planning conference would likely be high attorneys' fees (which will ultimately fall on rate payers) and would likely only serve as a distraction from preparing for the fast-paced and complex docket at hand.

II. THE COMMISSION'S RULES SHOULD BE UPDATED TO REQUIRE NOTICE OF RATE OR TARIFF CHANGES TO CONSUMERS AS WELL AS NOTICE OF UPCOMING FILINGS TO THE COMMISSION, THE ATTORNEY GENERAL, AND INTERESTED PARTIES.

The Consumer Advocate maintains its position that the Commission's rules should be revised to include requirements for notice to be given: 1) to consumers that rate, or other tariff

⁷ *Direct Testimony of David Dittmore* at 23:21 – 26:8, TPUC Docket No. 20-00086 (November 30, 2020). As Mr. Dittmore explained, due to “the size and scope of the operations of Duke Energy, it is very challenging to assess the accuracy of the company’s cost allocation process.” *Id.* at 24:2-4. Also, Mr. Dittmore raised the concern if whether the Cost Allocation Manual was “being followed by Duke Energy.” *Id.* at 25:23 – 26:8.

changes have either been requested or will soon go into effect; and 2) to the Commission, the Attorney General, and other interested parties that a public utility intends to file a matter.

A. Customer Notice

The parties generally agree that modernization of the notice requirements is appropriate. CGC and Piedmont agree with the Consumer Advocate's suggestion to revise the notice rule to reflect things like posting of tariffs and rate case/ARM information on utility websites.⁸ Tennessee-American does not oppose updating the Commission's notice requirements as a general proposition.⁹ Likewise Kingsport does not oppose modernization of customer notice requirements.¹⁰

It is important that the Commission update and modernize its rules to require public utilities to provide more thorough notice when filing for revision of rates or tariff changes so that customers are well-informed of potential changes to their bills and how to exercise their right to participate in the regulatory process. The goal for modernization of customer notice is primarily to increase customers' accessibility and comprehension of notice. The Consumer Advocate believes that the enhanced customer-utility communication can be achieved through two main avenues: 1) using customer-friendly and modern communication platforms—i.e., replacing the newspaper-publication requirement with a website and an electronic and printed bill insert requirement; and 2) providing useful information on these notices.¹¹

Piedmont suggests that “[t]he rules should provide for disclosure of the basic information relating to the petition for a rate change, including, by way of example, the identity of the utility,

⁸ *Chattanooga Gas Company's Supplemental Comments*, p.3, ¶ 5(c), TPUC Docket No. 21-00018 (April 19, 2021); *Comments of Piedmont Natural Gas Company, Inc.*, p. 4, TPUC Docket No. 21-00018 (April 19, 2021).

⁹ *Comments of Tennessee-American Water Company*, p.4, TPUC Docket No. 21-00018 (April 19, 2021).

¹⁰ *Comments of Kingsport Power Company D/b/a AEP Appalachian Power*, p.3, TPUC Docket No. 21-00018 (April 19, 2021)

¹¹ *See Comments of The Consumer Advocate*, TPUC Docket No. 21-00018 (February 23, 2021) (Detailing Customer Advocate's proposal for customer notice and citing to various states with similar requirements).

information regarding the scale of the proposed increase, information about how the customer can provide comments, a link to the TPUC website, and the address of the Commission where comments may be submitted.”¹² In addition to the proposed rule amendments previously offered, the Consumer Advocate supports this proposed rule amendment offered by Piedmont.

B. 60-Day Notice to Commission, Attorney General, and Interested Parties of Upcoming Filing.

The Consumer Advocate seeks a 60-day notice requirement provided to the Commission, the Attorney General’s Office, and interested parties of the utility’s indication of its intent to make a filing to change base rates no earlier than sixty days and no later than one hundred twenty days from the date of the Notice.¹³ The Consumer Advocate’s 60-day notice would allow other stakeholders to better plan their work and direct their resources. Kingsport “does not oppose the Consumer Advocate’s proposal to the Commission regarding 60-day notice.”¹⁴

Piedmont, Tennessee-American, and CGC suggest a 30-day notice requirement be utilized. These utility companies do not, however, offer an explanation as to why providing a 60-day notice to the Commission and the Attorney General’s office for any non-scheduled change in base rates is less preferable or unobtainable. The 60-day notice the Consumer Advocate seeks would not be required for scheduled filings, such as submissions of Annual Rate Mechanisms, capital rider filings, purchased gas and electric cost adjustments, production costs and other pass-through costs, and the Targeted Reliability Plan and Major Storm Rider. This 60-day notice does not add an additional expense or burden upon the utilities—such notice is essentially a matter of professional courtesy.

¹² *Comments of Piedmont Natural Gas Company, Inc.*, p.4, TPUC Docket No. 21-00018 (April 19, 2021).

¹³ The state of Virginia requires comparable notice to be made to its State Corporation Commission. Virginia’s rules state that: “[a]n applicant shall provide a notice of intent to file an application [. . .] to the commission 60 days prior to the application filing date.” 20 Va. Admin. Code 5-204-10 (“General filing instructions”).

¹⁴ *Comments of Kingsport Power Company D/b/a AEP Appalachian Power*, p.3, TPUC Docket No. 21-00018 (April 19, 2021).

Lastly, the Consumer Advocate opposes Piedmont’s proposed rule regarding notice of tariff changes because Piedmont does not include that notice be given to the Consumer Advocate.¹⁵ Because of potential ex parte communications issues, the Consumer Advocate cannot rely on the Commission to notify them that notice has been given. Moreover, the Consumer Advocate has been given a statutory duty from the legislature to represent the interests of ratepayers.¹⁶ Cutting the Consumer Advocate out of the notice process circumvents the protections that the General Assembly envisioned when it created the Consumer Advocate’s office.

C. Utilities’ Request for a Proposed Procedural Schedule to be Included in Initial Filing Should Not be Implemented.

The Consumer Advocate opposes Piedmont and Tennessee-American’s request that “a proposed procedural schedule [be filed] along the utility’s initial filing that would include a deadline for motions to intervene.”¹⁷ This proposal only adds an unnecessary hurdle to the Consumer Advocate’s participation in its Dockets. The Consumer Advocate has a statutory duty to represent the interest of ratepayers, which includes intervening in Dockets when necessary, to protect those interests.¹⁸ In nearly every docket, the Consumer Advocate and the public utility work together to produce a proposed procedural schedule to be filed with the Commission for consideration.

Additionally, the Consumer Advocate opposes Piedmont’s request for a deadline for motions to intervene on those proposed procedural schedules. This, too, can only be interpreted to seek to limit the rights of the Consumer Advocate.

¹⁵ *Comments of Piedmont Natural Gas Company, Inc. (With Exhibit A)*, Exh. A, p.2, TPUC Docket No. 21-00018 (April 19, 2021).

¹⁶ Tenn. Code Ann. § 65-4- 118(b)(1).

¹⁷ *Comments of Tennessee-American Water Company*, p.6, TPUC Docket No. 21-00018 (April 19, 2021); *Comments of Piedmont Natural Gas Company, Inc.*, p. 2, TPUC Docket No. 21-00018 (April 19, 2021).

¹⁸ The Consumer Advocate is created by statute within the Attorney General’s Office and “has the duty and authority to represent the interests of Tennessee consumers of public utilities services.” Tenn. Code Ann. § 65-4- 118(b)(1).

III. THE CONSUMER ADVOCATE SUPPORTS THE ADOPTION OF STANDARDIZED MINIMUM FILING REQUIREMENTS.

The parties generally support the adoption of rules regarding minimum filing requirements. Such rules are not overly burdensome on regulated companies as they contain information used by public utilities in developing their petitions. Further, because of time constraints within dockets, minimum filing requirements eliminate lag time in analysis between the filing of petitions and the discovery phase.

The Consumer Advocate does not see it being greatly advantageous for the Commission to delay implementing necessary revisions to its rules when it is well-posed to draft and implement minimum filing requirements at this time. Nonetheless, the Consumer Advocate does not oppose the utilities' recommendation to jointly identify appropriate Minimum Filing Requirements. If the Commission determines Minimum Filing Requirements should be revisited, the Consumer Advocate would be willing to collaborate with other interested parties.

CONCLUSION

The Consumer Advocate thanks the Commission for this opportunity to respond to the utilities' comments and respectfully requests that the Commission consider the Consumer Advocate's Comments and Supplemental Comments to discovery rules, notice requirements, and minimum filing requirements when drafting the noticed rule revisions.

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RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail and electronic mail on May 3, 2021.

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