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VIA EMAIL (tpuc.docketroom@tn.gov) & FEDEX

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c/o Ectory Lawless, Dockets & Records Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

Electronically Filed in TPUC Docket
Room on April 1, 2025 at 3:02 p.m.

Re: IN RE: DOCKET TO COLLECT AND CONSIDER
INFORMATION RELATING TO COMMISSION
PRACTICE AND PROCEDURE FOR
RULEMAKING ON TENN. R. & REGS. 1220-01-
01, 1220-01-02, AND OTHER SECTIONS AS
DETERMINED RELEVANT
DOCKET NO.: 21-00018

Dear Chair Jones:

On behalf of Kingsport Power Company, we transmit herewith the following Comments
of Kingsport Power Company, d/b/a AEP Appalachian Power.

The original and four copies of the Comments are being sent via Federal Express.

Should there be any questions, contact the undersigned.

Very sincerely yours,

HUNTER, SMITH & DAVIS, LLP


Joseph B. Harvey

Enclosures: As stated

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**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE: DOCKET TO COLLECT AND CONSIDER)	
INFORMATION RELATING TO COMMISSION)	
PRACTICE AND PROCEDURE FOR)	
RULEMAKING ON TENN. R. &)	DOCKET NO.: 21-00018
REGS. 1220-01-01, 1220-01-02, AND OTHER)	
SECTIONS AS DETERMINED RELEVANT)	

**COMMENTS OF KINGSFORT POWER COMPANY,
D/B/A AEP APPALACHIAN POWER**

Kingsport Power Company, d/b/a AEP Appalachian Power (“Kingsport” or the “Company”), pursuant to the Notice Soliciting Public Comments on Rulemaking electronically filed in this matter on March 24, 2025, respectfully submits the following comments for consideration by the Tennessee Public Utilities Commission (“Commission” or “TPUC”) in connection with the Commission’s proposed changes to Tenn. R. & Regs. 1220-01-01, 1220-01-02, *etc.*

PRELIMINARY STATEMENT

Kingsport does not oppose a majority of the changes to the Rules and Regulations proposed by the Commission. Certain changes, however, raise concerns and have the potential to substantially increase the regulatory burden on Kingsport, increase the time and complexity of contested cases, drive up regulatory expenses, and increase costs borne by customers for little benefit in return. Specifically, Kingsport respectfully requests that the Commission give further consideration to the following revisions in light of the comments below:

1. 1220-01-01-.03(4)(c) - General Filing Procedures,
2. 1220-01-02-.23(5)(a)(ii) and (7) - Notice to Customers, and
3. 1220-01-02-.23(4) - Minimum Filing Requirements.

Each topic will be addressed below in order of its appearance.

1. General Filing Procedures - 1220-01-01-.03(4)(c)

The proposed revisions to Rule 1220-01-01-.03, include adding a new section (4)(c). The new Section (4)(c) would require that "All spreadsheets or databases filed with the Commission shall have formulas visible, editable, and all dependencies to files provided to the Commission. Spreadsheets and databases do not need to be formatted to print on 8 1/2" 11" paper."

As a general proposition, Kingsport does not oppose filing spreadsheets or databases with all formulas visible, editable, and all dependencies to files provided to the Commission -- if such documents exist. However, applying this requirement to all spreadsheets and databases filed with the Commission or produced during discovery does not take into account how utilities currently maintain records in the regular course of business. The language of Section (4)(c) appears to rest on the assumption that all of a utility's financial information is maintained and available in Excel spreadsheets. That assumption is not accurate.

Like many utilities, all Kingsport's financial records are not maintained exclusively in Excel spreadsheets. Instead, Kingsport has implemented industry standard and proprietary computer systems that organize financial data and transactions, automate certain functions, and promote efficiency and convenience. Kingsport can generally retrieve data from its systems and present that information in an Excel spreadsheet. However, that Excel spreadsheet "report" will have hard-coded numbers and will not have "dependency files" that are also Excel spreadsheets.

Moreover, taking this requirement to its limit could result in a time-consuming exercise of identifying the source of a number all the way back to individual invoices or employee time records among other source documents, which unnecessarily increases the complexity and expense of contested cases with little corresponding benefit. Going to tedious levels of detail is unnecessary and often impracticable.

To accurately reflect how Kingsport and other utilities maintain financial data, while providing the Commission and Consumer Advocate Division the maximum available information, Kingsport proposes that the Rule be revised as follows:

“All spreadsheets or databases filed with the Commission shall have formulas visible, editable, and all dependencies to files provided to the Commission, except if such spreadsheet or database is the result of a query of data from a system used to collect and store financial and/or operational data and/or statistics. Spreadsheets and databases do not need to be formatted to print on 8 1/2” 11” paper.”

This language is practical and consistent with the general discovery principle that parties are required only to provide documents that exist and are not required to create new documents in order to respond to a discovery request. 8A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2210 (2d ed. 1994) (“[A] party cannot be required to permit inspection of documents or things that it does not have....”); *Gipson Mech. Contractors, Inc. v. U.A. Loc. 572 of the United Assoc.*, No. 3:18-CV-00768, 2020 WL 8254820, at *4 (M.D. Tenn. Apr. 10, 2020) (“Defendants are correct that they are not required to create new documents simply to produce them in discovery.”); *Hussey v. Woods*, 538 S.W.3d 476, 487 (Tenn. 2017) (“When interpreting the Tennessee Rules of Civil Procedure, we are guided by the decisions of the federal courts interpreting comparable Federal Rules of Civil Procedure.”).

2. Petition for Rates - 1220-01-02-.23(5)(a)(ii) – Methods of Notice to Customers

The proposed revisions to the Rules, include adding a new section Rule 1220-01-02-.23. Subsection (5)(a)(ii) of the new Rule 1220-01-02-.23 would require the Company to provide notice to customers “Within the next billing cycle or 45 days from the filing date of the rate petition, whichever is sooner, the Company shall publish in a newspaper of general circulation distributed in the utility’s service area and send directly to its customers by electronic mail and

first-class mail, a notice of its filing that includes the summary set forth in (a) above.” In other words, this Rule would require the Company to provide notice to customers in three ways: (1) newspaper; (2) email; and (3) first-class mail.

Kingsport does not oppose providing able notice to its customers when it petitions for a revision of rates. However, requiring the Company to provide notice to customers by both email and first-class mail is not feasible, exceedingly expensive, and of limited benefit because of the redundancy.

Providing notice to every customer by email is not feasible because not all customers have email and/or have not provided an email address to the Company. The Company simply lacks the information necessary to comply with this requirement. Moreover, providing notice to every customer by first-class mail would cost upwards of \$200,000.00 to accomplish. Such an expense is unwarranted where customers can be notified through publication of notice in the newspaper or through email when such addresses are available.

For these reasons, the Company proposes that the proposed Rule be revised slightly to say that customers must be notified by email or first-class mail, rather than email and first-class mail.

Finally, the new Rule 1220-01-02-.23(7), which addresses spreadsheets produced during discovery, rests on the same faulty assumptions and suffers from the same fundamental deficiencies identified in in connection with Rule 1220-01-01-.03(4)(c) above.

3. Minimum Filing Requirements - 1220-01-02-.23(4)

TPUC’s Rules and Regulations currently do not require submission of Minimum Filing Requirements (“MFRs”) with petitions for rates. The revised Rules would change this by adding a new rule, 1220-01-02-.23(4), stating that “The Commission will post on its website and, from

time to time, may update, amend or revise by industry, those minimum filing requirements that the Company shall include with the petition to revise rates.”

Kingsport does not oppose MFRs in principle. However, Kingsport expresses two concerns with the Rule as currently proposed. First, the proposed Rule purports to give TPUC the ability to “update, amend or revise” the MFRs “from time to time,” which does not comply with the requirements of the Uniform Administrative Procedures Act, TENN. CODE ANN. § 4-5-101, *et seq.* (the “APA”). Second, if MFRs are implemented, the demands of discovery should be substantially decreased and the case substantially streamlined. But other Rule changes suggest that the CAD anticipates a broader and more involved discovery process. Each of these concerns is addressed below.

TPUC rulemaking must comply with the APA. TENN. CODE ANN. § 4-5-216; *Tennessee Cable Television Ass’n v. Tennessee Pub. Serv. Comm’n*, 844 S.W.2d 151, 163 (Tenn. Ct. App. 1992) (“the Commission must substantially comply with the Uniform Administrative Procedures Act’s requirements when it promulgates a rule.”). A rule that purports to give the Commission the ability to “update, amend or revise” a rule “from time to time” without following the APA rulemaking process skirts the requirements of the APA and is invalid. *See* TENN. CODE ANN. § 4-5-203(c)(2) (requiring that “The complete text of the express terms of the rule being proposed is made available”). To have the binding effect of an enforceable rule, MFRs must be implemented according to the rulemaking process established in the APA.

Second, other revisions to the Rules suggest that the CAD seeks more latitude in the discovery process. However, there must be a balance: If MFRs will be imposed on Kingsport, then same should reduce the discovery needed in the case. It is not clear that MFRs achieve this balance. For example, as a part of its base rate filing in TPUC Docket No. 21-00107, Kingsport

responded to 84 MFR requests, many of which contained multiple subparts. Kingsport's response to the 84 MFRs in Docket No. 21-00107 contained more than 14,600 pages of detailed answers and financial information. Despite the production of voluminous information at the outset of the case, Kingsport was still served with, and responded to, 265 formal discovery requests from the CAD. Therefore, it is not clear that MFRs promote efficiency or reduce the burden of discovery in contested cases. Moreover, the need for so-called "informal discovery," which is another name for extra rounds of discovery, should be reduced significantly. In sum, the adoption of MFRs should serve to streamline cases and make them more efficient – not to make cases more involved, more complicated, more time-consuming, or serve as a technicality for delaying reasonable revisions to rates.

As such, Kingsport does not oppose the general concept of MFR's directed to electric utilities regulated by TPUC, but does believe that, in order to be enforceable, the MFRs must be implemented according to the requirements of the APA and published as part of the Rules and Regulations or published addenda thereto. Additionally, if MFRs are properly implemented through the rulemaking process, Kingsport requests acknowledgement or recognition that discovery will be meaningfully reduced as a result.

Respectfully submitted this the 1st day of April, 2025.

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

By: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing *Comments Of Kingsport Power Company, d/b/a AEP Appalachian Power* has been served by mailing a copy of same by United States mail, postage prepaid, or Email, to below on this the 1st day of April, 2025, as follows:

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