

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

IN RE:

**PETITION OF KINGSPORT POWER
COMPANY D/B/A AEP APPALACHIAN POWER
COMPANY FOR A GENERAL RATE
INCREASE**

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**DOCKET NO.
21-00107**

**ORDER GRANTING *EAST TENNESSEE ENERGY CONSUMER'S MOTION TO FILE
REBUTTAL TESTIMONY***

This matter is before the Hearing Officer upon the *Motion in Limine of the East Tennessee Energy Consumers* (“*Motion to File Rebuttal*”) filed by the East Tennessee Energy Consumers (“ETEC”) on June 3, 2022. In the *Motion to File Rebuttal*, ETEC requests permission for its witness, Stephen Barron, to present oral testimony “rebutting and responding to certain rate-design and other proposals and assertions set forth in the direct testimony of Mr. William H. Novak”¹

ETEC relies on Tenn. Code Ann. §65-2-109(3) which states “[e]very party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence” and Commission Rule 1220-01-02-.16(5) as authority for its argument that it should be allowed to present the rebuttal testimony of Stephen Baron at the hearing. Commission Rule 1220-01-02-.16(5) provides:

- (5) Any party shall have the right to cross-examine witnesses who testify and shall have the right to submit rebuttal testimony, subject to the standards of admissibility and such limitations as the Hearing Officer or the Chair,

¹ *Motion to File Rebuttal*, p. 1 (June 3, 2022).

whichever is presiding at the hearing, may reasonably require.

ETEC argues that both the statute and Commission Rule provide due process rights that entitle it to cross-examine witnesses and to submit rebuttal evidence. Further, ETEC maintains that “[a]doption of the proposed Hearing procedure suggested for the first time at the recent pre-hearing conference would violate ETEC’s due process rights to be heard, thereby potentially undermining the validity of the final order in this case.”²

FINDINGS AND CONCLUSIONS

In contested case proceedings, the Hearing Officer issues a Procedural Order to establish the orderly administration of the proceedings. The Procedural Order in this docket was issued on January 6, 2022. At the time the Procedural Order was issued, ETEC had not been granted intervention. However, once ETEC’s intervention was granted on January 24, 2020, ETEC did not object to the Procedural Order, nor did ETEC request that the Procedural Order be amended to allow it to file rebuttal testimony. It was not until the Pre-Hearing Conference held on May 25, 2022, that ETEC brought up its desire to present rebuttal testimony by Mr. Barron at the hearing. At the time the Pre-Hearing Conference was held, the docket was scheduled for a hearing on the merits on June 20, 2022. ETEC’s *Motion to File Rebuttal* was discussed at a Status Conference held with the parties on June 6, 2022.

After ETEC was granted intervention, it was aware that a Procedural Order was in place in this docket. In addition, ETEC has been an intervenor in other dockets before the Commission and should, therefore, be aware that it is the procedure of the Commission to require pre-filed testimony of all witnesses. Despite the untimeliness of the *Motion to File Rebuttal*, the Hearing Officer finds the *Motion in Limine of the East Tennessee Energy Consumers* is well taken and should be **GRANTED**, provided East Tennessee Energy Consumers files the pre-filed rebuttal

² *Id.* at 5.

testimony of its witness by 2:00 p.m. (CDT) on June 9, 2022, and presents its witness at the hearing on the merits to provide a summary of the testimony and be subject to cross-examination.³

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Monica Smith-Ashford". The script is cursive and fluid, with the first name "Monica" being more prominent than the last name.

Monica Smith-Ashford, Hearing Officer

³ This ruling was communicated to the parties via email from the Hearing Officer dated June 6, 2022.