

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

October 30, 2023

IN RE:)	
)	
KINGSPORT POWER COMPANY D/B/A AEP)	DOCKET NO.
APPALACHIAN POWER 2022 REVISED FUEL)	22-00111
AND PURCHASED POWER ADJUSTMENT RIDER)	
TARIFF FILING)	

**ORDER DENYING CONSUMER ADVOCATE’S REQUEST TO
AMEND PROCEDURAL REQUIREMENTS FOR KINGSPORT POWER COMPANY’S
FUEL AND POWER ADJUSTMENT RIDER TARIFF**

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Kenneth C. Hill, and Commissioner David Crowell of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the panel assigned to this docket, during a regularly scheduled Commission Conference held on August 14, 2023, to consider certain changes proposed by the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) to Kingsport Power Company d/b/a AEP Appalachian Power’s (“Kingsport,” “KPC,” or the “Company”) Fuel and Purchased Power Adjustment Rider Tariff Filing (“FPPAR”). In summary, the changes sought by the Consumer Advocate were denied, and the Company’s FPPAR filing that went into effect on November 1, 2022, remains in effect.

BACKGROUND AND PROCEDURAL HISTORY

Kingsport is a public utility, subject to Commission jurisdiction, engaged in the business of distributing electric power service to approximately 50,000 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. Kingsport's FPPAR tariff was approved by the Commission on October 19, 2016, in Docket No. 16-00001 and allows KPC to annually true-up its actual costs incurred for fuel and power purchased for use by its customers.¹

Prior to approval of the FPPAR in 2016, Kingsport recovered certain costs related to the procurement, generation, and transmission of electricity through two separate mechanisms known as the Fuel Adjustment Clause, which was a monthly adjustment, and the Purchased Power Adjustment Rider ("PPAR"), which was an annual rate adjustment.² In the distant past, the Commission had allowed a portion of the wholesale fuel and power costs to be collected partially in both base rates and within the rider mechanisms, but the Commission changed this methodology by separating the distribution costs (now collected through base rates) from generation and transmission costs (now collected through riders). This policy change occurred before Kingsport's 2016 rate case filing.³

In Docket No. 16-00001, the Commission approved the implementation of the current FPPAR as part of the *Stipulation and Settlement Agreement* negotiated between Kingsport, the Consumer Advocate, the Energy Freedom Coalition of America ("EFCA"), East Tennessee Energy Consumers ("ETEC"), and the Tennessee Solar Energy Industries Association ("TenneSEIA") (collectively, the "Settlement Parties").⁴ The Settlement Parties agreed and recommended to the Commission that the prior existing PPAR be terminated as of August 31, 2016, but replaced with the newly designed FPPAR.⁵

¹ See *In re: Petition of Kingsport Power Company d/b/a AEP Appalachian Power for a General Rate Case*, Docket No. 16-00001, *Order Approving Stipulation and Settlement Agreement* (October 19, 2016).

² *In re: Petition of Kingsport Power Company d/b/a AEP Appalachian Power for a General Rate Case*, Docket No. 16-00001, *Petition*, p. 2 (January 4, 2016).

³ *In re: Petition of Kingsport Power Company d/b/a AEP Appalachian Power for a General Rate Case*, Docket No. 16-00001, William H. Novak, Pre-Filed Direct Testimony, pp. 28-29 (June 24, 2016).

⁴ *In re: Petition of Kingsport Power Company d/b/a AEP Appalachian Power for a General Rate Case*, Docket No. 16-00001, *Order Approving Settlement Agreement*, p. 1 (October 19, 2016).

⁵ *Id.* at 3.

The FPPAR mechanism requires the Company to annually reconcile its actual wholesale power costs with the revenue received from the FPPAR surcharge. The FPPAR rates are to be reviewed, recalculated, and implemented no less often than annually upon a tariff filing by the Company with the Commission. The parties to the settlement additionally clarified that the methodologies required under Tenn. Code Ann § 65-5-103(d)(6) for an annual rate review mechanism were not adopted.⁶

Under the FPPAR approved in Docket No. 16-00001, the Company's fuel and purchased power costs are trued-up to actual costs at least annually and will be subject to Commission Staff audits for reasonableness and prudence.⁷ The approved review procedures require the Company to submit a proposed FPPAR rider change to Commission Staff at least 30 days in advance of its proposed effective date. The tariff requirements have not changed since the Company's 2016 rate case or its more recent rate case in Docket No. 21-00107.⁸ There is no requirement in the tariff or any subsequent related Commission orders that requires the opening of a new docket for each FPPAR filing.

KPC has made annual FPPAR filings since 2018, and the accuracy of the filings are reviewed by Commission staff. KPC filed its 2022 FPPAR on September 30, 2022, with an effective date of November 1, 2022. The Consumer Advocate filed a *Petition to Intervene* on October 28, 2022. The ETEC, representing a coalition of three of Kingsport's largest industrial power customers, filed its *Petition to Intervene of the East Tennessee Energy Consumers* on October 31, 2022.⁹

⁶ *Id.* at 3-4.

⁷ *Id.* at 5.

⁸ Kingsport Power Company, T.P.U.C. Tariff Number 3, Sixth Revised Sheet Number 2-16 (Effective August 08, 2022).

⁹ *ETEC's Intervention*, p. 3 (October 31, 2022).

On November 1, 2022, Kingsport filed its *Motion to Dismiss Petitions to Intervene on Behalf of Kingsport Power Company d/b/a AEP Appalachian Power* (“*Motion to Dismiss*”). Kingsport argued that the petitions to intervene of the Consumer Advocate and ETEC should be dismissed because they are untimely under Commission Rule 1220-01-02-.02(4) and the Commission lacks jurisdiction over the subject matter.¹⁰ KPC asserted that since the tariff filing is based on actual costs incurred by Kingsport for Fuel and Purchased Power and there is nothing subjective in the filing, the Commission Staff is capable of reviewing and evaluating the numbers in the tariff.¹¹ In addition, Kingsport asserted that delaying the revised tariff would be detrimental to Kingsport’s customers because each month that passes beyond November 1, 2022, will result in a larger increase to customers as the under-recovery amount increases.¹² The Hearing Officer granted the petitions to intervene and denied the *Motion to Dismiss*.¹³ Although the FPPAR rates went into effect on November 1, 2022, and the tariff was not suspended, the parties engaged in discovery and submitted pre-filed testimony pursuant to a procedural schedule.¹⁴

POSITION OF THE CONSUMER ADVOCATE

In pre-filed direct testimony filed on behalf of Consumer Advocate, Mr. William H. Novak testified that the Company’s tariff filing requested a 41.51% increase in the existing FPPAR surcharge rate in order to account for a prior under-recovery of \$30.6 million and forecasted fuel and power costs of \$133.2 million. According to Mr. Novak, this 41.51% adjustment results in a \$48.0 million rate increase spread across all customers. In comparison, Mr. Novak noted that by contrast, the Company’s rates were only increased by \$5.75 million in the Company’s last rate

¹⁰ *Motion to Dismiss*, p. 2 (November 1, 2022).

¹¹ *Id.*

¹² *Id.* at 2-3.

¹³ *Order Denying Kingsport Power’s Motion To Dismiss And Granting Petitions To Intervene Filed By Consumer Advocate And East Tennessee Energy Consumers*, pp. 6-10 (March 29, 2023).

¹⁴ *Id.* at 7; *Order Establishing a Procedural Schedule* (March 29, 2023).

case.¹⁵ Mr. Novak testified that the Company appropriately reconciled the actual expenses and net investment to the amounts recorded on the Company's ledger and recommended that the Commission formally approve the new FPPAR rates.¹⁶

Nevertheless, Mr. Novak expressed concern with the process used by the Company in making its annual filing with the Commission. According to Mr. Novak, the Company does not make a formal filing for the FPPAR mechanism and, in its filing with the Commission, does not provide support to reconcile the FPPAR revenues and costs with the Company's ledger.¹⁷ Mr. Novak recommend that the Company provide structured workpapers with future FPPAR filings that reconcile to the Company's books.¹⁸ Mr. Novak equated the FPPAR as the electric equivalent of the Actual Cost Adjustment ("ACA") for gas utilities, and those filings are evaluated in separate, public docket filings.¹⁹ By contrast, there is currently no formal approval by the Commission for the Company's annually proposed FPPAR rates. Mr. Novak recommended that the Company make future FPPAR filings in separate docket files along with testimony and support to describe the details of the filing and be subject to the Commission's approval.²⁰

POSITION OF THE ETEC

ETEC submitted the pre-filed direct testimony of Mr. Stephen J. Baron. Mr. Baron testified that he participated in the original FPPAR cost proceeding and believes that the initial cost allocation methodology employed by the Company is reasonable. Mr. Baron opined that regardless of how the tariff is modified regarding the Street Lighting customer class, there should be no change to the overall allocation methodology approved by the Commission.²¹

¹⁵ William H. Novak, Pre-Filed Direct Testimony, p. 4 (April 03, 2023).

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.* at 7.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Stephen J. Baron, Pre-Filed Direct Testimony, p. 8 (April 03, 2023).

KINGSPORT’S REBUTTAL TESTIMONY

Mr. William K. Castle submitted pre-filed rebuttal testimony on behalf of the Company. Kingsport purchases all of its electric power inventory at wholesale from Appalachian Power Company (“APCo”) at rates approved by the Federal Energy Regulatory Commission (“FERC”).²² Mr. Castle testified that the Commission has previously recognized that the FERC has jurisdiction over the terms of the sale of power from APCo to Kingsport.²³ According to Mr. Castle, before 1994, the Company recovered fuel costs through a rider that changed monthly and purchased power costs were recovered in base rate cases.²⁴ Mr. Castle testified that the Commission directed Kingsport to develop a tariff that would permit recovery of FERC-approved rate changes without the need for a rate case, and the initial rider was approved in TPSC Docket No. 94-04283.²⁵

The FPPAR was the most recent tariff rider approved in Docket No. 16-00001 included as part of the *Order Approving Stipulation and Settlement Agreement* (“*Order Approving Settlement*”) resolving that rate case docket. The *Order Approving Settlement* stipulated that revised FPPAR rates shall be filed at least thirty days prior to the effective date proposed by Kingsport, and that fuel and purchased power costs will be trued up at least annually and are subject to Commission audits for reasonableness and prudence.²⁶ Mr. Castle testified that in the years following the FPPAR’s inception, Kingsport has responded to both Commission Staff and the Consumer Advocate’s informal discovery requests with information supporting its proposed FPPAR rates and to the best of Kingsport’s knowledge, no material irregularities have ever been discovered in its FPPAR filings.²⁷

²² William K. Castle, Pre-Filed Rebuttal Testimony, p. 4 (May 08, 2023).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 5.

²⁷ *Id.* at 5-6.

Mr. Castle opined that the approved FPPAR mechanism is consistent with T.C.A. § 65-5-103(d)(5)(b) which establishes the right of a utility to request and the Commission to authorize, a mechanism to permit a more timely adjustment of rates resulting from changes in essential, nondiscretionary expenses, such as fuel and power and chemical expenses.²⁸ Mr. Castle emphasized the Company's position that because the FERC sets the rates which APCo charges Kingsport for fuel and purchased power, the FPPAR costs are both essential and nondiscretionary.²⁹

With respect to the recommendations of Consumer Advocate, Mr. Castle testified that they contain all the hallmarks of making all future FPPAR proceedings contested case proceedings.³⁰ Mr. Castle opined that the Consumer Advocate's proposed changes are not necessary. Mr. Castle testified that every year since the Commission's implementation of FPPAR in 2016, the Company has provided Commission Staff with any and all documentation needed to determine the proposed FPPAR rates are calculated correctly prior to implementation and are reflective of FERC-approved rates.³¹

According to Mr. Castle, there is no reason for the Commission to change an administrative process into an annual contested case proceeding. The Commission Staff has ably performed a review and delaying implementation of FPPAR rates for a contested case would undermine a timely adjustment of rates.³² Mr. Castle speculated that the significant size of the proposed increase in FPPAR rates was a reason for the Consumer Advocate's interest.³³ Wholesale costs of electricity have more than doubled from 2021 to 2022, representing a 101% increase, constituting

²⁸ *Id.* at 6.

²⁹ *Id.*

³⁰ *Id.* at 6-7.

³¹ *Id.* at 7-8.

³² *Id.* at 8.

³³ *Id.*

the largest dollar or percentage increase since the formation of Pennsylvania - New Jersey - Maryland (PJM) Interconnection, a Regional Transmission Organization, in 1999. According to Mr. Castle, Kingsport is not completely exposed to the wholesale market, and the request in this docket is significantly lower at 41%.³⁴

THE HEARING

A hearing was held before the panel assigned to this docket on June 20, 2023, as noticed by the Commission on June 9, 2023. The hearing participants are listed as follows:

Kingsport Power Company d/b/a AEP Appalachian Power – William C. Bovender, Esq. & Joe Harvey, Esq., Hunter, Smith & Davis LLP, Post Office Box 3740, Kingsport, Tennessee 37664.

Consumer Advocate Division – Mason Rush, Esq., Post Office Box 20207, Nashville, Tennessee 37202-4015.

East Tennessee Energy Consumers – Michael J. Quinan, Esq., Thompson McMullen, P.C., 100 Shockoe Slip, Third Floor, Richmond, Virginia 23219.

William H. Novak presented testimony on behalf of the Consumer Advocate. William K. Castle presented testimony on behalf of the Company. The parties waived cross-examination.³⁵ During the hearing, members of the public were given an opportunity to offer comments, but no one sought recognition to do so. As the parties requested to file post-hearing briefs, the panel took the matter under advisement.

POST-HEARING BRIEFS

In a post-hearing brief filed on July 11, 2023, the Consumer Advocate urged the Commission to adopt the FPPAR process-change recommendations presented by Mr. Novak both in pre-filed testimony and during the hearing on June 20, 2023.³⁶ The Consumer Advocate argued

³⁴ *Id.* at 8-9.

³⁵ *Pre-Hearing Order*, p. 3 (June 15, 2023).

³⁶ *Consumer Advocate's Post-Hearing Brief* p. 1 (July 11, 2023).

that these changes would ensure that the Company's rates are fully transparent to the consumers from whom the Company recovers its FPPAR costs.³⁷ The Consumer Advocate asserted the FPPAR allows for an annual "true-up" of the Company's fuel and purchased power costs through a surcharge to customers, and that this process is similar to a gas utility's ACA mechanism.³⁸ The Consumer Advocate proposed that the Company's annual FPPAR calculations should be subject to public filing requirements and formal Commission approval.³⁹

The Consumer Advocate argued that the Commission has the authority to establish the Consumer Advocate's proposed changes through Tenn. Code Ann. § 65-4-104 and § 65-5-103. The Consumer Advocate asserted the proposed filing requirements are within the procedural norms for similar true-up mechanisms.⁴⁰ Kingsport's parent company, APCo, is already subject to similar requirements in other jurisdictions such as the State of Virginia, citing Va. Code Ann. §56-249-.6, which states that an electric utility shall submit to the Commission its estimate of fuel and purchased power costs for the 12-month period beginning on the date prescribed by the Virginia Commission.⁴¹

In a post-hearing brief filed on July 17, 2023, Kingsport asserted that the existing review procedures, as set forth in Tenn. Code Ann. § 65-5-103(d)(5)(b) and the FPPAR process approved in Docket No. 16-00001, are the preferred method for changes to the FPPAR surcharge.⁴² Kingsport contended that the FPPAR reflects a pass through of wholesale costs, for which Kingsport is billed by APCo under rates approved by FERC, and that those wholesale rates cannot be modified at the state level under the filed-rate doctrine and federal preemption. The only

³⁷ *Id.*

³⁸ *Id.* at 2.

³⁹ *Id.* at 3.

⁴⁰ *Id.*

⁴¹ *Id.* at 4.

⁴² *Post Hearing Brief On Behalf Of Kingsport Power Company d/b/a AEP Appalachian Power* pp. 1-2 (July 17, 2023).

question in an FPPAR proceeding is whether the calculations of Kingsport's rates and supporting data are correct or not.⁴³

Kingsport argued the FPPAR procedure is consistent with the General Assembly's interest in efficiency. At the same time, Kingsport acknowledged that persons affected by a change in FPPAR rates are permitted to move to intervene and open a contested case as the Consumer Advocate and ETEC both did in the current proceeding.⁴⁴ The Company also noted that there have been six filings of modified FPPAR tariffs since October 2, 2017, and this case is the first intervention by the Consumer Advocate. Kingsport argued that despite the intervention, it is unaware of any material irregularities discovered through the tariff filing or informal discovery.⁴⁵

Kingsport asserted that filing a contested petition each year will constitute administrative waste and unnecessary cost to the Commission, the taxpayers of Tennessee, the customers of Kingsport, and the Company itself.⁴⁶ The Company asserted that the notion that an ACA audit for gas utilities is comparable to the FPPAR procedure is wrong.⁴⁷ Additionally, Kingsport claimed APCo's Virginia Commission reviews are not similar to this proceeding.⁴⁸

FINDINGS AND CONCLUSIONS

Based on the evidentiary record, the panel found that the Fuel and Purchased Power Adjustment Rider rates, implemented on November 1, 2022, were reviewed by Staff and became effective in accordance with the methodologies and procedures approved in Docket No. 16-00001. Neither the Consumer Advocate nor ETEC opposed or challenged the supporting calculation of the FPPAR rates.

⁴³ *Id.* at 2.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 3.

⁴⁷ *Id.* at 9.

⁴⁸ *Id.* at 8.

With regard to the process for reviewing annual FPPAR tariff filings, the panel found that the approved methodologies and procedures are working as intended, and that the existing review process and tariff administration rules provide reasonable notice and a fair opportunity for interested parties to raise concerns and objections to Kingsport's annual FPPAR filings, as demonstrated by the proceedings in this docket. As such, the panel voted unanimously that the Consumer Advocate's recommended procedural changes to the annual FPPAR review process are not warranted at this time, and that the currently approved methodologies and procedures remain in effect until such time as they are modified by the Commission.

The panel concluded that Kingsport should continue to provide all supporting documentation of its calculation of FPPAR rates in its annual filings, and directed Kingsport to continue to provide a copy of its annual FPPAR tariff filing with supporting documentation to the Consumer Advocate contemporaneously with its filing to the Commission Staff for review. Finally, the panel found that the FPPAR mechanism remains in the public interest as it provides Kingsport with a reasonable opportunity to recover its essential nondiscretionary costs in a timely manner while simultaneously reducing the costs and burdens of general rate case proceedings.

IT IS THEREFORE ORDERED THAT:

1. The proposed changes to the Fuel and Purchased Power Adjustment Rider Tariff Filing sought by the Consumer Advocate are denied.
2. The 2022 Fuel and Purchased Power Adjustment Rider Tariff Filing of Kingsport Power Company d/b/a AEP Appalachian Power that went into effect on November 1, 2022, remains in effect.

3. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

4. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Herbert H. Hilliard,
Vice Chairman David F. Jones,
Commissioner Robin L. Morrison,
Commissioner Kenneth C. Hill, and
Commissioner David Crowell concurring.**

None dissenting.

ATTEST:

A handwritten signature in dark ink, appearing to read "Earl Taylor" with a stylized flourish or initials "abh" to the right.

Earl R. Taylor, Executive Director