

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF KINGSPORT POWER COMPANY D/B/A AEP APPALACHIAN POWER FOR A GENERAL RATE CASE))))	Docket No. 22-00111

CONSUMER ADVOCATE’S RESPONSE IN OPPOSITION TO MOTION TO DISMISS

The Consumer Advocate Division in the Office of the Tennessee Attorney General (“Consumer Advocate”), by and through counsel, hereby submits this response to the *Motion to Dismiss Petitions to Intervene on Behalf of Kingsport Power Company d/b/a AEP Appalachian Power* (“Motion”) filed October 31, 2022, by Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport Power” or “Company”) pursuant to TENN. COMP. R. & REGS. 1220-01-02-.02(4). For the reasons set forth herein, the Motion should be denied.

The Commission Retains Its Subject Matter Jurisdiction

Kingsport Power asserts that the Consumer Advocate’s *Petition to Intervene* (“Petition”) filed October 28, 2022, is time-barred under TENN. COMP. R. & REGS. 1220-01-02-.02(4) and that the Tennessee Public Utility Commission (“TPUC” or “Commission”) therefore “lacks jurisdiction over the subject matter.”¹ Kingsport Power’s argument is without merit. There is no question as to the Commission’s subject matter jurisdiction: “The [C]ommission has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises[.]”² The Commission’s jurisdiction over

¹ Motion, p. 2.

² TENN. CODE ANN. § 65-4-104.

this matter is not rooted in TENN. COMP. R. & REGS. 1220-01-02-.02(4), so the lack of a complaint filed under that rule does not divest the Commission of its jurisdiction.

**The Commission May Properly Exercise Its Discretion in Granting
the Consumer Advocate’s Intervention**

The procedural issue here centers on the Commission’s discretion—not its jurisdiction. By statute, the Commission “may grant one (1) or more petitions for intervention *at any time*, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.”³ Kingsport Power asserts that this filing simply amounts to verifying invoices.⁴ However, this is an incorrect framing of the issue, as a policy dispute exists as to whether the Fuel and Purchased Power Adjustment Rider (“FPPAR”) surcharge should apply to street lighting customers. The Consumer Advocate’s intervention “is in the interests of justice” because it concerns the proper allocation of costs under the FPPAR to all customer classes. The Consumer Advocate’s intervention would in no way impair any proceeding but would ensure that the Company is not under-collecting from its street lighting customers and reallocating the costs to other customer classes—an issue most recently demonstrated in TPUC Docket No. 21-00142 regarding the Company’s Targeted Reliability Plan and Major Storm Rider (“TRP&MS”).⁵ Thus, the Commission would properly exercise its discretion here in granting the Consumer Advocate’s Petition.

Furthermore, the language of TENN. COMP. R. & REGS. 1220-01-02-.02(4), cited by Kingsport Power in its Motion, nowhere requires the dismissal of the Consumer Advocate’s Petition for untimeliness or otherwise limits the Commission’s discretion to grant the Petition. As the Court of Appeals has noted, “[n]o statute or regulation prescribes the factors for the

³ TENN. CODE ANN. § 4-5-310(b) (emphasis added).

⁴ Motion, p. 2.

⁵ *Consumer Advocate’s Post Hearing Brief*, at p. 4, TPUC Docket No. 21-00142 (Oct. 24, 2022).

[Commission] to consider when deciding whether to dismiss a complaint seeking a contested case proceeding regarding a proposed tariff.”⁶ Rather, whether to allow a contested case proceeding is within the discretion of the Commission.⁷ However, the Commission abuses its discretion when it declines to grant a contested case hearing where factual or policy issues exist,⁸ as in this matter.

Moreover, the Commission has favored the resolution of cases on the merits rather than granting dispositive motions based on procedural technicalities. Analogous to the present docket is the Commission’s decision in TPUC Docket No. 01-00440, where the “tariff was filed with a proposed effective date of June 15, 2001” and petitions to intervene were filed on June 14, 2001.⁹ The conference was held on June 26, 2001. Thus, the petitions were not filed “seven (7) days prior to the Commission Conference immediately preceding the proposed effective date of the tariff.”¹⁰ Although “the Petitions were untimely objections/complaints to a pending tariff pursuant to the Authority Rule 1220-1-2-.02(4),” the Commission did not dismiss the petitions but construed the petitions as formal complaints and ordered a response.¹¹ The Commission may and should make the same determination in the present docket.

⁶ *Off. of the Atty. Gen. v. Tennessee Regul. Auth.*, No. M200301363COAR12CV, 2005 WL 3193684, at *9 (Tenn. Ct. App. Nov. 29, 2005).

⁷ *Id.* at *8.

⁸ *Id.* at *6, *11. This position was also taken by the hearing officer in *In Re Atmos Energy Corp.*, TPUC Docket No. 07-00020, 2007 WL 2415852 (July 3, 2007):

Based upon a review of the filings in this docket, the Hearing Officer is of the opinion that this case raises factual and policy issues that should be resolved by the Authority in the context of a contested case proceeding. The factual issues raised by the Complaints filed in this docket warrant allowing the parties an opportunity to present their positions and address the issues in a contested case proceeding.

⁹ *In Re: Bellsouth Telecommunications, Inc. Tariff to Introduce Ccs7 Access Arrangement Serv.*, TPUC Docket No. 01-00440, 2001 WL 36656594, at *1 (July 2, 2001).

¹⁰ TENN. COMP. R. & REGS. 1220-01-02-.02(4).

¹¹ *In Re: Bellsouth*, at *1.

Conclusion

For the reasons articulated above, the Commission should grant the Consumer Advocate's Petition and deny the Company's Motion. The Commission retains its jurisdiction over this matter. The Commission would properly exercise its discretion in granting the Consumer Advocate's Petition as the Consumer Advocate's intervention is in the interests of justice, particularly as the Consumer Advocate seeks to ensure the fair allocation of FPPAR costs to all customer classes, and such intervention would not impair any proceeding. This would be in keeping with the Commission's preference for resolution on the merits.

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, with a courtesy copy by electronic mail, upon:

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This the 4th day of November 2022.

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