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November 16, 2022

KPOW-94519

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

Herbert H. Hilliard, Chairman
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 November 16, 2022 at 1:08 p.m.

Re: Petition of Kingsport Power d/b/a AEP Appalachian Power for a
General Rate Case – Tariff Changes to Fuel and Purchased Power
Adjustment Rider
Docket No.: 22-00111

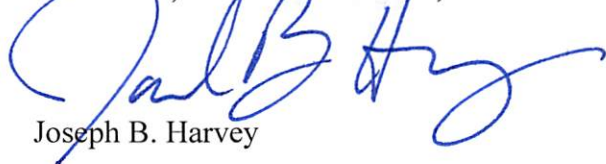
Dear Chairman Hilliard:

We submit herewith electronically for filing *Reply in Support of Its Motion to Dismiss Petitions to Intervene* on behalf of Kingsport Power Company d/b/a AEP Appalachian Power relative to the above-styled proceeding.

The original and four copies will be sent on via Federal Express. Please file in the Docket.

Very sincerely yours,

HUNTER, SMITH & DAVIS, LLP



Joseph B. Harvey

Enclosure

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November 16, 2022

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BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

IN RE:)
)
PETITION OF KINGSPORT POWER COMPANY) Docket No.: 22-00111
D/B/A AEP APPALACHIAN POWER FOR A)
GENERAL RATE CASE -TARIFF CHANGES TO)
FUEL AND PURCHASED POWER ADJUSTMENT)
RIDER)

KINGSPORT POWER COMPANY d/b/a AEP APPALACHIAN POWER'S
REPLY IN SUPPORT OF ITS MOTION TO
DISMISS PETITIONS TO INTERVENE

Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport”) respectfully submits the following Reply in Support of its Motion to Dismiss the Petitions to Intervene filed by the Consumer Advocate Division (the “Consumer Advocate” or “CAD”) and East Tennessee Energy Consumers (“ETEC”). For the reasons explained below, Kingsport respectfully requests that the Petitions to Intervene be dismissed as untimely. Alternatively, if intervention is granted, Kingsport respectfully requests that the issue addressed be limited to the issue the Consumer Advocate claims justifies its intervention in this tariff filing.

I. The Petitions to Intervene Are Untimely

Kingsport’s Motion to Dismiss should be granted because the Petitions to Intervene are undisputedly untimely under the Tennessee Public Utility Commission’s (“TPUC” or “Commission”) clear rules. Neither the Consumer Advocate nor ETEC assert that their respective Petitions were timely under TENN. COMP R. & REGS. 1220-01-02-.02(4).

As explained in Kingsport’s Motion to dismiss, TENN. COMP R. & REGS. 1220-01-02-.02(4) states that a tariff filing does not constitute a contested case. Additionally, an objection to a tariff “shall be filed no later than seven (7) days prior to the Commission Conference immediately

preceding the proposed effective date of the tariff.” (*Id.*) The effective date of Kingsport’s FPPAR tariff was November 1, 2022. The Commission Conference immediately preceding November 1, 2022, was the conference occurring on October 10, 2022. Therefore, the deadline for Petitions to Intervene was October 3, 2022. The Petitions at issue admittedly were not filed until October 28, 2022 or later, more than three weeks *after* the deadline established by the Commission’s Rules & Regulations. In fact, neither Petition was filed even 7 days before the proposed effective date of the tariff. There is no dispute that the Petitions to intervene were untimely under the Commission’s rules by several weeks.

The Consumer Advocate acknowledges in its Petition that its intervention in this matter must be “in accordance with . . . TPUC rules.” (*See* CAD Petition to Intervene, ¶ 1.) But in its Opposition to Kingsport’s Motion to Dismiss, the Consumer Advocate does not argue that there is any exception to the rule that renders the CAD’s Petition untimely; rather, CAD simply urges the Hearing Officer to ignore the Commission’s rules and grant intervention as if the rule did not exist. The Hearing Officer should not causally disregard the Commission’s rules.

Finally, CAD’s reliance on the Commission’s decision in *In Re: Bellsouth Telecommunications, Inc. Tariff to Introduce CCS7 Access Arrangement Serv.*, TPUC Docket No. 01-00440, 2001 WL 36656594 (July 2, 2001) is inapposite for two reasons. First, Bellsouth’s Motion to Dismiss was not based on the timeliness of the petitions to intervene. Second, the Commission noted that the petitions were untimely under Rule 1220-1-2-0.2(4), but the Commission construed the petitions to be formal complaints under Rule 1220-1-2-.09. Here, the Consumer Advocate’s Petition does not meet the requirements of a complaint under that rule.

II. If The CAD is Permitted to Intervene, Intervention Should Be Limited To The Issue The CAD Relies Upon For Intervention

If the CAD is permitted to intervene, the scope of that intervention should be limited to the “policy dispute” that the CAD relies upon for intervention, namely “whether the Fuel and Purchased Power Adjustment Rider (“FPPAR”) surcharge should apply to street lighting customers.” (See CAD’s Response Brief, p. 2.)

One of the rationales for alternative rate mechanisms is that they reduce expenses and attorney’s fees by replacing a contested case with the Commission’s review and approval of the revised tariff. See *In Re: Petition of Chattanooga Gas Co. to Opt into an Ann. Rev. of Rates Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, TPUC Docket No. 19-00047, 2019 WL 5086233, at *7 (Oct. 7, 2019) (“**this [ARM] mechanism will allow the Company to recover its operating costs in a timely manner while avoiding the cost and time necessary for a general rate case**”) (emphasis added); *In Re: Petition of Kingsport Power Co. d/b/a Aep Appalachian Power for Approval of Its Targeted Reliability Plan, & Its TRP & MS Rider, an Alternative Rate Mechanism*, TPUC Docket No. 17-00032, 2017 WL 5256208, at *7 (Nov. 9, 2017) (approving ARM where “**customers should benefit through reduced rate case and legal expenses that would otherwise result through expensive rate case proceedings to address such issues**”) (emphasis added). The benefit of a streamlined process disappears if the CAD is permitted to intervene and engage in expansive discovery on any issue unrelated to the issue that it claims warrants its intervention.

Rather than an expansive and time-consuming contested case, the Commission’s Order approving the FPPAR contemplated “that under the new Fuel and Purchased Power Adjustment Rider, the Company’s fuel and purchased power costs will be trued-up to actual costs at least annually and will be subject to [TPUC] staff audits for reasonableness and prudence.” (Docket 16-

00001, Order p. 5.)¹ Consistent with that Order, the Commission's Staff has already performed its review of Kingsport's FPPAR rate calculation, found no errors, and issued a letter acknowledging the reasonableness of the tariff. (Tariff Filing No. 2022-0080).

To preserve the benefits that the Commission intended with the approval of the FPPAR in the first place, and prevent additional expenses that do not benefit consumers, if the Consumer Advocate is permitted to intervene, it is reasonable and prudent to limit that intervention to the issue that the Consumer Advocate claims justifies its intervention, which is only "whether the Fuel and Purchased Power Adjustment Rider ("FPPAR") surcharge should apply to street lighting customers." Allowing the case to expand beyond the "policy dispute" at issue would eliminate the benefits that were intended when the FPPAR was approved.

In addition, Kingsport's actual fuel and purchased power costs are a function of its wholesale power supply contract with Appalachian Power Company, which is a rate schedule on file at the Federal Energy Regulatory Commission ("FERC"). As such, the level of those costs, which have already been audited by the TPUC's Staff, should not be the subject of a contested case or even discovery in such a case. Rather, the "policy dispute" raised by the Consumer Advocate is properly limited to the proper allocation of those actual fuel and purchased power costs to Kingsport's retail customers, including its street lighting customers.

PREMISES CONSIDERED, Kingsport Power Company d/b/a AEP Appalachian Power respectfully requests that the Commission dismiss the Petitions of Consumer Advocate Division and East Tennessee Energy Consumers; or alternatively, if intervention is granted in spite of the Commission's Rules, limit the issue in dispute to the issue the Consumer Advocate asserts for

¹ The FPPAR replaced Kingsport's previous Fuel Clause Rider and Purchased Power Adjustment Rider, which tracked actual fuel and purchased power costs on a monthly basis but did not provide for over/under-recovery of costs, effective September 1, 2016. (Docket 16-00001, Order p. 3-4; Settlement Agreement, p. 5-6.)

intervention: “whether the Fuel and Purchased Power Adjustment Rider (“FPPAR”) surcharge should apply to street lighting customers.”

Respectfully submitted,

KINGSPORT POWER COMPANY
d/b/a AEP APPALACHIAN POWER

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **KINGSPORT POWER COMPANY'S
REPLY IN SUPPORT OF ITS MOTION TO DISMISS PETITIONS TO INTERVENE** has been served upon the following by emailing a copy of same as follows, on this the 16th day of November, 2022.

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