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July 17, 2023

KPOW-94519

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

Herbert H. Hilliard, Chairman  
c/o Ectory Lawless, Dockets & Records Manager  
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Electronically Filed in TPUC Docket  
Room on July 17, 2023 at 10:32 a.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:

On behalf of Kingsport Power Company d/b/a AEP Appalachian Power, we transmit herewith  
Kingsport Power Company's *POST HEARING BRIEF ON BEHALF KINGSFORT POWER COMPANY*  
*d/b/a AEP APPALACHIAN POWER*. The original and four copies are being sent by overnight delivery.

Very sincerely yours,

**HUNTER, SMITH & DAVIS, LLP**



William C. Bovender

Enclosure

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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	)	

**POST HEARING BRIEF ON BEHALF KINGSPORT POWER COMPANY**  
**d/b/a AEP APPALACHIAN POWER**

Comes Kingsport Power Company d/b/a AEP Appalachian Power (herein “Kingsport” or “Company”) and submits this Post Hearing Brief in accordance with the schedule established by the Tennessee Public Utility Commission (herein, the “TPUC”). This Brief is a follow up to the intervention proceeding filed by the Consumer Advocate Division of the Office of the Tennessee Attorney General (herein, “CAD”) and the East Tennessee Energy Consumers (herein, “ETEC”) pursuant to T.C.A. §§ 65-4-118, 4-5-310 and 65-2-107 respectively.<sup>1</sup>

**ISSUE PRESENTED**

Should Kingsport be required to file a Petition to institute a formal contested case for, and receive specific TPUC approval of, any increase or decrease in the Fuel and Purchase Power Adjustment Rider (“FPPAR”) rates each year instead of utilizing the procedure outlined in Tenn. Comp. R. & Regs. 1220-04-01-.06, T.C.A. Section 65-5-103(d)(5)(b), and the FPPAR process approved in Docket No. 16-0001?

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<sup>1</sup> Kingsport moved to dismiss the Petitions to Intervene but its Motion to Dismiss was denied by Order dated March 29, 2023.

## **OUTCOME REQUESTED**

The procedure set forth in 1220-04-01-.06, Tennessee statutes, and the currently approved FPPAR is the preferred method for dealing with changes in the FPPAR since such changes reflect a pass through of wholesale costs Kingsport is billed by Appalachian Power Company (herein “APCO”) under rates approved by the Federal Energy Regulatory Commission (herein, “FERC”). Those rates cannot be modified at the State level under the filed-rate doctrine and federal preemption (*Miss. Power Light Co. v. Miss. Ex rel. Moore*, 487 U.S. 354, 373 (1988)), and thus the only question in an FPPAR proceeding is whether the calculations of Kingsport’s FPPAR rates and supporting data are correct. The Staff of the TPUC is charged with assuring the Company’s filings and calculations are correct and accurate. Any change in the FPPAR does not go into effect until the “numbers” are approved by the TPUC Staff.

The currently approved FPPAR procedure is wholly consistent with the Legislature’s interest in efficiency as set forth in T.C.A. § 65-5-103(d)(7): “...the Commission is empowered to adopt policies or procedures that would permit a more timely review and revision of the rates, tolls, fares, charges, schedules, classifications or rate structures of public utilities and that would further streamline the regulatory process and reduce the cost and time associated with the rate making processes in § 65-5-101 and subsection (a).” Tenn. Code Ann. § 65-5-103(d)(7). That is precisely what the TPUC’s predecessor, the Tennessee Regulatory Authority (herein, the “TRA”), did in its August 9, 2016 Order in Docket No. 16-0001 approving the current FPPAR.

Moreover, persons supposedly affected by a change in the FPPAR are expressly permitted to move to intervene and open a contested case, just as the CAD and ETEC did in this proceeding. All due process rights are, thus, protected by the current FPPAR procedure for both the public utility and any potential intervenor. Requiring Kingsport to file a contested Petition each year as



demanded by the CAD constitutes administrative waste and adds unnecessary cost to TPUC, the taxpayers of Tennessee, the customers of Kingsport and the utility. Only lawyers and consultants would appear to benefit from instituting such a procedure.

## **DISCUSSION**

### **A. HISTORY OF KINGSFORT'S RECOVERY OF PURCHASED POWER COSTS FROM APCo (Rebuttal Testimony of William K. Castle, pp. 4-5)**

Kingsport purchases all its electric power requirements at wholesale from APCo at rates approved by (i.e. on file with) the FERC. Unlike Kingsport, APCo has generation. Its retail rates in Virginia and West Virginia are subject to the jurisdiction of the regulatory commissions in those states, but its sale of power at wholesale, such as to Kingsport, falls solely under the FERC's jurisdiction.

TPUC has recognized for decades that the FERC has jurisdiction over the terms of the sale of electricity from APCo to Kingsport. [See, In Re: Notice of Kingsport Power Company d/b/a AEP Appalachian Power Company relative to changes in its Purchased Power Adjustment Rider, Order, pp 1-2, (December 22, 2008)]. Prior to 1994, while Kingsport recovered fuel costs through a rider that changed monthly, the purchased power cost charged to it by APCo was recovered in base rate cases. (See, e.g., In Re: The Petition of Kingsport Power Company to Change and Increase Certain Tariffs, Rates and Charges for Electric Service, [Docket 92-04425, Order Approving Settlement Agreement, p. 3 of Settlement Agreement (November 3, 1992)].

Thereafter, the Tennessee Public Service Commission (herein, "TPSC") a predecessor of TPUC, directed Kingsport to develop a tariff that would permit recovery of FERC-approved rate changes without the need for a Rate Case. (Rebuttal Testimony of William K. Castle, p. 4.) In Docket No. 94-04283, the TPSC approved a Purchased Power Adjustment Rider (PPAR) for

Kingsport. [(See, In Re: Petition of Kingsport Power Company to Implement a Purchased Power Adjustment Rider, Docket No. 94-04283, Order, p. 2 (December 29, 1994)]. (*Id.*). Kingsport's fuel adjustment clause continued to change monthly, upon a filing with TPUC. The PPAR operated when changes to APCo's non-fuel charges to Kingsport were approved by the FERC. (*Id.*, at pp. 4, 5)

**B. DOCKET 16-00001**

Kingsport's current FPPAR was implemented by the TRA in the Order Approving Stipulation and Settlement Agreement in Docket No. 16-00001. The TRA Order indicated that, under the new FPPAR, fuel and purchased power costs will be trued up at least annually and will be subject to TRA Staff Audit for reasonableness and prudence. (See, Order in Docket No. 16-0001, p. 5). Significantly, the Stipulation and Settlement Agreement provided that, going forward, revised FPPAR rates shall be filed at least thirty days prior to the effective date proposed by Kingsport for the implementation of the revised FPPAR rates; and, no entity affected shall be precluded from filing a contested case with respect to the FPPAR. (Rebuttal Testimony of William K. Castle, p. 5).

The approved STIPULATION AND SETTLEMENT AGREEMENT, Section 16, RATES, Subsection d., in Docket No. 16-0001 reads:

"d. The Parties agree and recommend, subject to Authority approval, that the existing Fuel Clause Rider and Purchased Power Adjustment Rider be terminated as of August 31, 2016 and be replaced commencing September 1, 2016 with the FPPAR that includes both fuel and purchased power components: The Parties agree that the fuel expenses reflected in the FPPAR rates set out in Attachment B no longer include the Company's OPEB expenses, which are now reflected in Distribution Rates. The FPPAR Rates shall be reviewed, recalculated, and implemented no less often than annually upon a filing by the Utility in accordance with the mechanism set forth in the FPPAR that is contained in Attachment B to this Settlement Agreement and as illustrated in

Attachment D to this Settlement Agreement. Such revised proposed FPPAR Rates shall be filed at least thirty days prior to the effective date proposed by the Utility for the implementation of the revised FPPAR Rates. No Party to this Settlement Agreement shall be precluded from filing any action with respect to the Utility's filing."

The currently approved FPPAR is consistent with T.C.A. 65-5-103(d)(5)(b), which reads as follows:

"A utility may request, and the Commission may authorize a mechanism to allow for and permit a more timely adjustment of rates resulting from changes in essential, nondiscretionary expenses, such as fuel and power and chemical expenses."

Because the FERC sets the rates that APCo charges Kingsport for Fuel and purchased power costs necessary to provide power to its retail customers in Tennessee, there can be no doubt that those costs are essential and nondiscretionary. (Rebuttal Testimony of William K. Castle, p. 6).

### **C. CHANGES IN TARIFF**

The filing of a revised Tariff, including, but not limited to, a tariff like the FPPAR, was first certified for usage on May 9, 1974. (See, 1220-04-01-.06). The current codification of same is the 1220-04-01-.06 which reads as follows:

- (1) All public utilities, agents, representatives, or bureaus issuing tariffs or schedules of rates and charges affecting Tennessee intrastate business, shall file with the Tennessee Public Utility Commission of the State of Tennessee written notice, in triplicate, containing a brief explanation of the character of and reason for proposed changes in said tariff schedules.
- (2) Such explanation shall be filed not later than the date said tariff or schedule is filed.
- (3) A receipt copy of said explanation shall be evidence of filing such explanation and related tariffs or schedules.
- (4) All tariffs and supplements affecting Tennessee intrastate business shall be filed with the Tennessee Public Utility Commission at least thirty (30) days before the date upon which they are to become effective, unless upon application and for

good cause shown the Commission may waive the thirty (30) days time limit or any portion thereof.

- (5) The Commission may, on its own motion or on the filing of a sufficient protest by any person or persons affected, order such tariff modified or suspended.

Since the implementation of the current FPPAR procedure there have been submittals of proposed, modified FPPAR tariffs with the TPUC's Staff, which have reflected changes in Kingsport's cost of fuel and purchased power on the following dates:

1. October 2, 2017 (Docket No. 16-0001 referenced) (no intervention by CAD);
2. September 28, 2018 (Docket No. 16-0001 referenced) (no intervention by CAD);
3. October 1, 2019 (Docket No. 16-00001 referenced) (no intervention by CAD);
4. October 1, 2020 (Docket No. 16-00001 referenced) (no intervention by CAD);
5. September 24, 2021 (Docket No. 16-00001 referenced) (no intervention by CAD);
6. September 29, 2022 (Docket No. 22-00111) (CAD intervenes).

From Tariff Modifications under the FPPAR commencing with the Settlement Agreement and Order in Docket No. 16-00001 and continuing in 2017, 2018, 2019, 2020, 2021, and 2022, Kingsport has provided supporting calculations and, in some years, responded to informal discovery from the TPUC Staff and even the CAD. Insofar as Kingsport is aware, no material irregularities have ever been discovered in either the Tariff filing, by the TPUC Staff, or after said informal discovery. (Rebuttal Testimony of William K. Castle, p. 5)

#### **D. THE RECOMMENDATIONS OF THE CAD ARE NOT REMEDIES**

The CAD Witness Novak, discusses "...the lack of a formal filing for FPPAR by the Company..." (Direct Testimony of William H. Novak, p. 3). This is an incorrect characterization. The filing of tariffs under 1220-04-01-.06 is a formal filing procedure, and the FPPAR procedure adopted in Docket No. 16-0001 is consistent with Tennessee law, as previously mentioned. Mr.



Novak desires for Kingsport to file a formal Petition opening a contested case each year. His use of the term “formal filing” refers to a contested case even though there can be no modification of the level of costs to be passed through to Kingsport’s retail customers under the FPPAR. Hence, the contested case sought by the CAD is to check the numbers in a contested case, a task which is already assigned to the TPUC Staff. Mr. Novak points to no evidence that the TPUC Staff has ever failed to perform its assigned duties. (*Id.*) The so-called failure of Kingsport to provide support to reconcile the FPPAR revenues and costs with the Company’s ledger appears not to have been a problem in the past. The TPUC Staff holds in its hands the power to delay Tariff implementation; and the CAD, after being allowed to take informal discovery, had not chosen to move to intervene prior to 2022.

Mr. Novak claims there is no “formal approval” by TPUC before any new FPPAR rates are placed in effect. (*Id.*) This is incorrect. Section 1220-04-02-.06 has been in place for several years and the current process to formally approve FPPAR tariff modifications has been in place since 2016. Mr. Novak complains the process of Proof of Publication allows Kingsport to “hide” the FPPAR changes from the rate payers and the public. (*Id.* at 6). At what point in time did the CAD reach the conclusion that Kingsport and TPUC and the TPUC Staff were engaged in a game of hide and seek when dealing with tariff changes; particularly, when the CAD and others were copied on each FPPAR transmittal letter from 2017 to 2022, the filing at issue in this proceeding.

The arguments made by the CAD, which supposedly justify making Kingsport file a contested case every year to have TPUC check the numbers after the TPUC Staff has already checked the numbers, is the best evidence such a procedure is unnecessary, duplicative and a waste of time and money. It is contrary to the language of T.C.A. § 65-5-103(d)(7), wherein the General Assembly expresses a preference for streamlining the administrative process. The CAD’s

Witness's preference for an unnecessary contested case is obvious given the fact that nowhere in his Pre-Filed Direct Testimony or his Testimony Summary at the hearing did he so much as mention, let alone endorse, T.C.A. 65-5-103(d)(7).

In its Post Hearing Brief, the CAD claims that APCo is already subject to, and complies with similar filing requirements as recommended by CAD in this proceeding. Cited as support are an APCo filing at the Public Service Commission of West Virginia (WVPSC), discussed in footnote 12, p. 4 of the Post Hearing Brief of the CAD, West Va. PSC, Case No. 22-0393-E-ENEC, and a proceeding under Va. Code Ann. § 56-249.6A.1, Va. State Corporation Commission (VSCC), Division of Public Utility Regulation, Case No. PUR-2022-00139 (footnote 13, p. 4 of the CAD's Brief).

The discussion in the CAD's Brief might lead one to believe these cases are similar to this proceeding. They are not. Neither the rates that are reviewed nor the procedures employed replicate the current FPPAR in Tennessee. The WVPSC and the VSCC Commissions do regulate APCo's fuel and purchase power costs for retail customers in their respective states, but it is the FERC that regulates and sets the cost of wholesale electricity for Kingsport.

At page 5 of the CAD's Post Hearing Brief, the following appears:

"The Company notes that "all of the costs, Kingsport seeks to recover in such updates results from APCo's wholesale rates to Kingsport which are approved by the FERC." Nonetheless, the Commission's review and public, formal approval is necessary, particularly in consideration of the Company's previous failure to properly apply surcharges appropriately to all customer classes, resulting in under-collection and subsequent inappropriate re-allocation of costs to customers."

Cited in footnote 16 of the CAD's Post Hearing Brief is the "direct Testimony of William H. Novak, p. 15, TPUC Docket No. 21-00142 (September 6, 2022). This is disingenuous at best. Docket No. 21-00142 is the October, 2020 – September, 2021 recovery Petition filed by Kingsport relative to the Targeted Reliability Plan and Major Storm Rider. That case has nothing to do with Kingsport's FPPAR, especially given that neither Mr. Novak nor ETEC witness Baron found any issues related to cost allocation in this proceeding. (Rebuttal Testimony of William K. Castle, pp. 2-3).

Mr. Novak "modified" his Pre-Filed Direct Testimony, while summarizing his testimony at the hearing, by advocating that "regulation is not designed to be efficient. Regulation is purposely designed to be inefficient as a substitute for competition." (Hearing Testimony of Mr. Novak, p. 14, lines 9 – 21).

This is a remarkable admission that this witness does not recognize statutory mandates. It is, however, wholly consistent with the illusory reasons Mr. Novak advocates that Kingsport should be ordered to file a contested case every year. Regulations, according to Mr. Novak, should be burdensome, wasteful, and expensive, even where only limited calculations can be reviewed.

Mr. Novak's comparison of the FPPAR procedure and the ACA for gas utilities is simply wrong. Changes in the ACA concern many more issues, including a review of the underlying gas costs themselves. Since the Settlement in Docket No. 16-00001, neither the TPUC nor TPUC Staff have ever taken the position a contested case is needed or that the TPUC Staff has erred in reviewing and approving changes in the FPPAR.

The intervention of the CAD in this proceeding appears to be motivated by the magnitude of the FPPAR rate change necessitated by an increase in the wholesale cost of Kingsport's power. Not one of Mr. Novak's recommendations could have changed the level of Kingsport's FPPAR increase. Kingsport Rebuttal Witness Castle explained the reasons for the size of the FPPAR

adjustment: In the past year, the wholesale cost of electricity increased 101.4%, the largest dollar and percentage increase since the formation of PJM in 1999. However, wholesale prices have begun to decrease. (Rebuttal Testimony of William K. Castle, pp. 8-9).

### CONCLUSION

It makes no sense to adopt the “remedies” advocated by the CAD because these “remedies” cannot address the rate modifications due to FERC regulation. Demanding a contested case every year to examine the work of the TPUC Staff is wasteful, inefficient, and contrary to the will of the General Assembly.

By the same token, the CAD and other interested parties remain free to move to intervene and initiate a contested case if they deem same necessary. There is no reason to modify the currently approved FPPAR procedure. The relief requested by the intervenors should be denied.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

The undersigned hereby certifies that the *foregoing POST HEARING BRIEF ON BEHALF KINGSFORT POWER COMPANY d/b/a AEP APPALACHIAN POWER* has been served upon the following by emailing a copy of same as follows, on this the 17<sup>th</sup> day of July, 2023.

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