

STATE OF TENNESSEE

Office of the Attorney General



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Hon. Herbert H. Hilliard, Chairman  
Tennessee Regulatory Authority  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243

*In Re: Petition of Kingsport Power Company d/b/a Appalachian Power for  
Approval of Home Warranty Programs, TRA Docket No. 15-00064*

Dear Chairman Hilliard:

In order to expedite this proceeding as much as possible, the Consumer Protection and Advocate Division of the Attorney General's Office ("Consumer Advocate") is hereby informing the Authority and parties that it has reviewed the filings in this Docket and will not oppose Kingsport Power Company's ("Company") *Petition for Approval of Home Warranty Programs* ("Petition").

In general, however, the Consumer Advocate disfavors such programs, as they raise numerous consumer-protection concerns. The Consumer Advocate has discussed these concerns with the Company and recognizes the importance of respecting the Company's independent business judgment regarding the proposed programs. As a result of these discussions, the Company has made some improvements to its marketing materials and submitted these new materials as filings in this Docket.

Despite any improvements, these programs once implemented may subject the Company and/or HomeServe, Inc., ("HomeServe"), the unregulated third-party warranty provider, to liability under the Tennessee Consumer Protection Act ("TCPA") and/or other state or federal laws, rules, regulations, investigations, and/or enforcement actions. Neither this letter nor the approval of the proposed programs by the Tennessee Regulatory Authority ("TRA" or "Authority") will constitute a shield, defense, or release of liability.

## **I. General Consumer-Protection Concerns**

Home-warranty programs like the one proposed in the Company's *Petition* are not uncommon, and HomeServe operates similar programs in several states. These programs are worrisome, however, because they generally mislead and/or confuse consumers. Misleading and confusing behaviors have a particularly pronounced effect among more vulnerable utility customers like the elderly and low-income families. The Consumer Advocate has researched similar programs and identified some common consumer-protection concerns, explained below.

The overall impression of such programs usually suggests that the regulated utility, not an unregulated third-party, is offering the home-warranty products. This impression may be the result of utility branding on solicitations from the third-party, the lack of third-party branding on promotional materials, and warranty sales websites that include the utility name in the Internet address.

Marketing materials for such programs usually imply that there is either an existing relationship between the customer and the warranty provider or that the customer must purchase a warranty program to comply with local regulations. These implications arise from the use of unique identifying numbers on solicitations and the use of words and phrases such as "Status: Not Covered."

Such programs have a reputation of offering warranties with material limitations in coverage, also known as "monster exceptions." Monster exceptions are often not disclosed at the time of the warranty offer. Accordingly, customers reasonably believe that the offered warranty products cover damages that are, in fact, excluded.

The billing practices of these programs raise heightened concern. The Company has properly declared that it will not cut off a customer's electricity for failure to pay unregulated charges (i.e., payments for warranty products). A disclaimer to this effect is included on the Company's new billing materials. Despite such disclaimers, customers typically do not look beyond the "Total Amount Due" listed on their utility bills. Including unregulated charges in this "Total Amount Due" implies that paying an unregulated charge is necessary to maintain utility service. This implication is problematic because utilities are modern necessities, and many low-income consumers prioritize paying utility bills over other expenses such as food, rent, and medicine.

Data-security protocols and data-sharing practices are increasingly prominent concerns for consumers. Utility customers are required to provide sensitive personal information to receive necessary utility services, and therefore utilities should be held to a high standard of maintaining data privacy. The Consumer Advocate recognizes here that the Company will not share all customer information HomeServe, and it will not share phone information for customers who are on the Do Not Call List. It is not clear, however, how HomeServe will treat the customer data it receives. For example, HomeServe may have a more lax privacy policy than the Company and may re-sell customer information for a profit, without the customer ever entering a contract with HomeServe. To prevent data-sharing abuse, the Consumer Advocate strongly encourages the Company to share customer data with HomeServe only if customers opt-in to receive HomeServe

solicitations and to require that HomeServe scrub against the state and federal Do Not Call Lists before making calls to consumers.

Finally, sales activities conducted through the utility's call center are another way that these programs generally mislead or deceive customers into thinking the utility itself is offering the home warranty service. The following are common practices of concern: sales scripts that refer to "our" warranty programs; indicating that callers are members of a special subset of customers and eligible for special benefits/pricing, when in fact all customers are eligible for those benefits/pricing; offering commission payments to the utility's call-center employees for selling warranty products, as this incentivizes sales activities and diverts time and resources from addressing issues with regulated activities; prohibiting customers to cancel warranty services through the utility call center, especially if the services were purchased through the utility call center.

As the programs proposed in the *Petition* are not yet in effect, it is not clear which of these concerns, if any, will be borne out. At this juncture, the Consumer Advocate defers to the Company's independent business judgement to determine whether the potential benefits to customers outweigh these concerns and to select a warranty provider that will minimize the possibility of consumer harm.

## **II. Communications Between Kingsport Power Company and the Consumer Advocate**

The Company and the Consumer Advocate have engaged in informal discussions regarding the proposed home-warranty programs. On August 11, 2015, these parties participated in a conference call during which the Consumer Advocate explained its general consumer-protection concerns and suggested possible improvements.

Some of the improvements discussed included more robust disclaimers, separating the unregulated charges from the total amount due on customer invoices, incorporating HomeServe's logo into promotional materials, and requiring an opt-in provision for data sharing. The Consumer Advocate also explained that no singular improvement would be determinative of the Company's compliance with the TCPA; rather, the resulting overall impression of the program would determine its potential liability.

In response to these informal discussions, the Company did make certain improvements to its disclaimers and marketing materials. The Company is encouraged to continue evaluating improvements that will reduce the possibility of consumers being misled or deceived as described above. While the Consumer Advocate has decided not to oppose the Company's *Petition*, the Consumer Advocate is not taking a position on overall impression of the materials or their likely effect on the Company's potential liability.

## **III. Potential Liability for Kingsport Power Company and HomeServe, Inc.**

Although the Consumer Advocate does not oppose the Company's *Petition*, the Company is not absolved from potential liability under the TCPA and/or other state or federal laws, rules,

regulations, investigations, and/or enforcement actions. The TCPA is liberally construed to protect consumers and legitimate businesses from unfair and deceptive practices. Under the TCPA, such practices “affecting the conduct of any trade or commerce constitute unlawful acts or practices...” Tenn. Code Ann. § 47-18-104(a). If a court finds that such unlawful acts have occurred, civil penalties in the amount of up to \$1,000 per violation may be awarded. Tenn. Code Ann. § 47-18-108(b)(3). Such actions for violations of the TCPA may be brought by the Tennessee Attorney General, at the request of the Tennessee Division of Consumer Affairs.

If the TRA grants the Company’s *Petition*, this will not constitute a defense, shield, or release of liability. Home-warranty programs are unregulated activities that are neither provided for nor necessary to carry out the TRA’s objectives pursuant to Tenn. Code Ann. § 65-4-101, *et seq.* In fact, other regulated utilities such as Piedmont Natural Gas Company, Inc., already offer home-warranty programs that the TRA does not regulate. Thus, the TRA is not authorized to absolve or protect the Company or HomeServe from TCPA violations. Out of an abundance of caution, the Consumer Advocate requests that any TRA Order granting the *Petition* expressly state that liability under the TCPA and any other state or federal laws is not exempted by the Order.

Sincerely,



Erin Merrick

Assistant Attorney General

CC: All parties of record