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AMEP/Z.90208

May 3, 2016

VIA EMAIL & FEDEX:

Mr. Herb Hilliard, Chairman
c/o Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, TN 37243

Re: Petition of Kingsport Power Company d/b/a AEP Appalachian Power for
Approval of Franchise Agreement with the City of Kingsport, Tennessee,
Pursuant to T.C.A. § 65-4-107; **Docket No.: 16-00033**

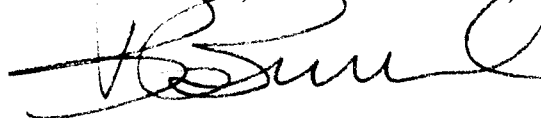
Dear Chairman Hilliard:

Enclosed herewith are Appalachian Power's Responses to Staff Data Requests No. 1. We are sending the original and four (4) copies via FedEx for overnight delivery.

If you have any questions, please feel free to contact our office.

Very sincerely yours,

HUNTER, SMITH & DAVIS, LLP



William C. Bovender

Enclosures

Mr. Herb Hilliard, Chairman

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c: David Foster, Chief-Utilities Division
Charles Patton
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**TENNESSEE REGULATORY AUTHORITY
PETITION OF KINGSPORT POWER COMPANY
DOCKET NO. 16-00033
Data Requests and Requests for Production
of Documents by the TRA Staff of the
Tennessee Regulatory Authority (First Set)
to Kingsport Power Company**

Data Request Staff 1-001:

The Petition states that both Kingsport Power and the City were able to agree on the terms and conditions of a renewed franchise, but the two franchise agreements are signed solely by the City. Further, according to page 3 of City Ordinance No. 6541 the Company's written acceptance is to be provided within 60 days of approval by the TRA. Please provide a signed copy of City Ordinance Nos. 6541 and 6556 that have been signed by Kingsport Power Company.

Response Staff 1-001:

It is important to understand the process which lead to the two Ordinances (Franchise, Ordinance No. 6541 and Franchise Fee, Ordinance No. 6556). The City of Kingsport ("City") and Kingsport Power Company ("KgPCo") had numerous meetings over a period of time in excess of two (2) years. KgPCo and the City agreed upon the terms of a new franchise, including a term that provided that the City "may" impose a franchise fee, but the City did not seek KgPCo's agreement to a specific franchise fee.

Following that process, the City, through City Attorney Billingsley, placed KgPCo on notice that the Board of Mayor and Aldermen would be considering two Ordinances drafted by the City at a work session: Ordinance No. 6541 (Franchise Renewal) and Ordinance No. 6542 (Franchise Fee). KgPCo was provided with copies of same shortly prior to the work session.

KgPCo reviewed both drafts and reported to the City Attorney that the Franchise Ordinance was acceptable. The reason for the sixty (60) day delay of approval by KgPCo reflected KgPCo's concern that the TRA might impose terms and conditions on the Franchise renewal which KgPCo might not be able to accept. If accepted by the TRA, KgPCo will accept the Franchise Renewal, which is tantamount to signing it.

Relative to Ordinance No. 6542, KgPCo had advised the City during negotiations that the TRA would be reviewing the Franchise Fee. KgPCo suggested that the City might want to consider equalizing the amount of the fee, up to a reasonable point. The City chose to differentiate between industrial power customers and all other customers in Ordinance No. 6542, which the

City's Board of Mayor and Aldermen passed. KgPCo continued to discuss the configuration of the Franchise Fee with the City.

The result was Ordinance No. 6556, which sets a Franchise Fee in SECTION II, which reads:

“SECTION II. For its use of the public streets, alleys, other public places and other real property owned or controlled by the city and for the expenses for the administration of the franchise, the Company shall pay to the city a fee equal to the aggregate of the following:

1. Five percent (5%) of the Company's gross receipts derived from retail electrical power and energy sales within the corporate limits of the city for all kilowatt hours per customer per month from 0 to 500,000; and
2. One and one-half percent (1-1/2%) of the Company's gross receipts derived from retail electrical power and energy sales within the corporate limits of the city for all kilowatt hours per customer per month over 500,000.”

Ordinance No. 6542 was deleted in its entirety by the City and Ordinance No. 6556 was substituted for it. The City determined and set the amount of the fee. If accepted by the TRA, KgPCo will accept the Franchise Fee, which is tantamount to signing it.

If the TRA believes it needs KgPCo's written approval of Ordinances No. 6541 and No. 6556, in advance of their consideration of same by the TRA, same can be provided. The approval document of KgPCo will have to be a separately filed document. The Ordinances, as approved, cannot be amended to include KgPCo's signature of approval.

Data Request Staff 1-002:

On pages 6-7 of City Ordinance No. 6541 in paragraph (J), there is a term regarding construction and repair. The term states that the City Manager will issue a notice to the Company of his findings and instructions and, if after three days of receipt of such notice, the Company had not commenced to execute the work the City manager will cause the construction required in said notice to be performed and charge the Company the entire cost and expense plus ten percent of the construction. Please state whether Kingsport will seek to recover these construction and repair charges and the 10% penalty from its ratepayers.

Response Staff 1-002:

KgPCo does not anticipate it would choose to ignore and/or refuse to take action in response to a demand from the City to perform construction/restoration/repairs. If same did come to pass, whether KgPCo would seek to recover the costs incurred would depend on the particular circumstances involved.

Data Request Staff 1-003:

On page 7 of City Ordinance No. 6541 in paragraph (k), there is a term regarding restoration and repair. The term states that if the Company fails to timely perform restoration and repair within a reasonable time, the City manager may issue notice to the Company of his findings and instructions and, if after three (3) days the Company has not commenced the restoration and/or repair, the City Manager will cause the work required in said notice to be done and performed and charge the Company the entire cost and expense of restoration or repair plus ten percent. Please state whether Kingsport will seek to recover these restoration and repair charges and the 10% penalty from its ratepayers.

Response Staff 1-003:

See response to Staff Request 1-002.

Data Request Staff 1-004:

According to page 8 of City Ordinance No. 6541, the City shall have the right without cost to use all poles and suitable overhead structures owned by the Company within Public Ways for City wires used in connection with its governmental purposes. Please state why the City should not pay for the use of pole attachments and the use of other overhead Company structures, and explain whether the City will be given preference over other service providers (e.g., telephone or cable utilities) for obtaining access to company poles and structures.

Response Staff 1-004:

Section X (p) of Ordinance No. 6541 reads as follows:

“(P) The City shall have the right without cost to use all poles and suitable overhead structures owned by the Company within Public Ways for City wires used in connection with its governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose. Provided, that the Company shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with the Company's use of the same. Nothing herein shall be construed to require the Company to increase pole size, or alter the manner in which the Company attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of the Company and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by the Company in conjunction with the Company's standard pole attachment

application process. The Company shall have the right to inspect such attachments to ensure compliance with this Section and to require the City to remedy any defective attachments.”

The right to use “poles and suitable overhead structures owned by the Company...for a public purpose...” was granted to the City as a portion of the consideration “paid” to the City in return for the granting of the twenty (20) year franchise. As indicated in the language of Ordinance 6541, quoted above, “City attachments shall be attached or installed only after written approval by the Company in conjunction with the Company's standard pole attachment application process”, which process does not provide the City a preference over other service providers for obtaining access to KgPCo’s poles and structures.

Data Request Staff 1-005:

According to page 9 of City Ordinance No. 6541, the Company "shall at all times defend, indemnify and hold harmless the City and any of the City's representatives from and against all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever resulting fully or in part from the failure of the Company or its employees to exercise due care and diligence in the construction, operation and maintenance of its Electric Facilities in the City..." According to page 10 of City Ordinance No. 6541, the "right of indemnification shall include and extend to reasonable attorney fees and trial preparation expenses and other litigation expenses reasonably incurred in defending a claim arising from the operation of the Electric Facilities by the Company whether or not the claim be proved to be without merit. Please state whether Kingsport will seek to recover from ratepayers any amounts that may be paid under this provision of the franchise agreement. If so, please explain the rationale for such recovery.

Response Staff 1-005:

It is difficult to project under what circumstances the indemnity provisions might come into play because the City enjoys immunity from many civil actions and its liability is limited generally by the Tennessee Governmental Tort Liability Act. Consequently, KgPCo can only respond that the particular circumstances would dictate whether it would seek to recover the costs of indemnity.

Data Request Staff 1-006:

Please explain why City Ordinance No. 6556 does not reference or contain language incorporating City Ordinance No. 6541 within City Ordinance No. 6556.

Response Staff 1-006:

Ordinance No. 6556 was drafted, considered, and approved by the City of Kingsport. The City Attorney chose to word that Ordinance as it appears, without input from KgPCo.