

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 15, 2016

IN RE:

PETITION OF KINGSPORT POWER COMPANY
d/b/a AEP APPALACHIAN POWER FOR APPROVAL
OF FRANCHISE AGREEMENT WITH THE
CITY OF KINGSPORT, TENNESSEE

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DOCKET NO.
16-00033

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before Chairman David F. Jones, Director Herbert H. Hilliard and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on July 11, 2016, for hearing and consideration of the *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* (“*Petition*”) filed on April 5, 2016.

THE PETITION

Kingsport Power Company d/b/a AEP Appalachian Power (“KPC” or the “Company”) is incorporated under the laws of Virginia with its principal place of business located in Kingsport, Tennessee (“Kingsport” or the “City”).¹ The Company is engaged in the business of distributing electric power to customers in its service area, which includes Kingsport.² On April 5, 2016, KPC filed the *Petition* requesting approval of a renewal of a non-exclusive franchise agreement between the Company and the city of Kingsport, Tennessee. With its *Petition*, KPC submitted a

¹ *Petition*, p. 2 (April 5, 2016).

² *Id.*

copy of Kingsport City Ordinance 6541, enacted February 2, 2016, by the City’s Board of Mayor and Alderman,³ which contained the agreement that renewed the City’s franchise with KPC (“franchise agreement”). Also with its *Petition*, KPC submitted Kingsport City Ordinances 6542 and 6556, relating to the City’s franchise fee as well as the pre-filed testimony of Isaac J. Webb, Distribution System Manager for Kingsport Power Company. On June 8, 2016, KPC filed its *Acceptance of Franchise Ordinances* in which it attested that it agreed to be bound by the terms and conditions of the previously mentioned Kingsport City Ordinances.

The franchise agreement grants KPC “the non-exclusive right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances...in the [City’s] public streets, highways, avenues, roads, courts, alleys, lanes, ways, utility easements, parkways, public rights-of-way, or other public grounds, held or controlled by the City.”⁴ The franchise agreement also has a twenty (20) year term beginning from the date of the Company’s acceptance of the agreement which, as mentioned previously, was June 8, 2016.⁵ Kingsport City Ordinance 6556, which was agreed to by the Company, provides for a franchise fee of “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 “one and one-half percent (1.5%) 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 over 500,000.”⁶

In its *Petition*, KPC states that pursuant to Tenn. Code Ann. § 65-4-105(e), it “intends, insofar as practicable, to bill its customers in the City, subject to the Franchise Agreement, at the

³ *Id.* at 3.

⁴ Kingsport City Ordinance 6541, Exhibit 1 to *Petition*, p. 2 (April 5, 2016).

⁵ *Id.* at 3 and *Petition*, p. 3.

⁶ Kingsport City Ordinance 6556, Exhibit 3 to *Petition*, p. 2 (April 5, 2016).

percentages set forth in Ordinance No.: 6556 for ‘any franchise payment or other payment for the use of public streets, alleys or other public places or any license, privilege, occupation or excise tax payment.’”⁷ According to KPC, the franchise is necessary and proper for the public convenience and properly conserves the public interest for the following reasons:

1. The franchise agreement establishes a twenty (20) year term arrangement, which secures the provision of electricity to citizens, businesses, industries and governmental institutions within Kingsport, for a significant period of time;

2. The franchise agreement ensures the provision of high quality electric service by an established provider of such service;

3. The franchise agreement establishes adequate and proper mechanisms for access by KPC to public rights-of-way, new and existing customers, existing service lines, and transmission and distribution facilities and, thereby ensures the protection of the property and citizenry of Kingsport; and

4. The franchise agreement allows KPC to invest in new infrastructure and helps the City make improvements to the service and opportunities it offers through the implementation of the franchise fee.⁸

REQUIREMENT OF AND STANDARDS FOR AUTHORITY APPROVAL

Tenn. Code Ann. § 65-4-107 (2015) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.” Tenn. Code Ann.

⁷ *Petition*, p. 5 (April 5, 2016).

⁸ *Id.* at 3-4 and *Direct Testimony of Isaac J. Webb*, p. 4, filed with the *Petition* (April 5, 2016).

§ 65-4-107 further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require.”

THE HEARING

The Hearing in this matter was held before the voting panel during the regularly scheduled Authority Conference on July 11, 2016, as noticed by the Authority on July 1, 2016.

Participating in the Hearing were:

Kingsport Power Company – William C. Bovender, Esq., Hunter, Smith & Davis, LLP, Post Office Box 3704, Kingsport, Tennessee 37664; and Isaac J. Webb, Distribution System Manager, Kingsport Power Company, 420 Riverport Road, Kingsport, Tennessee 37660.

City of Kingsport - Jeff Fleming, City Manager, City of Kingsport, Tennessee, City Hall, 1st Floor, 225 West Center Street, Kingsport, Tennessee 37660, by telephone.

During the Hearing, Mr. Webb ratified, then summarized his pre-filed testimony and was subject to questioning before the panel. There were no intervening parties to the Docket. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

Thereafter, based upon the testimony and the administrative record as a whole, the panel found that the terms of the new franchise agreement between KPC and Kingsport are fair and reasonable and the agreement is necessary and proper for the public convenience of furnishing electric service and properly conserves the public interest. Therefore, the panel voted unanimously to approve KPC’s *Petition* for approval of its franchise agreement with the city of

Kingsport.⁹

IT IS THEREFORE ORDERED THAT:

1. The *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*, filed on April 5, 2016, is approved.

2. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

3. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chairman David F. Jones, Director Herbert H. Hilliard and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director

⁹ Concurring with the action of the panel, Director Hill further stressed that the franchise fee is imposed by, and paid to, the City of Kingsport and, although the Authority is approving it as reasonable, it is not imposed by or paid to KPC or the Authority.