

S. Morris Hadden  
William C. Bovender  
William C. Argabrite  
Jimmie Carpenter Miller  
Mark S. Dessauer  
Gregory K. Haden  
Michael L. Forrester  
Stephen M. Darden  
Edward J. Webb, Jr.  
James N. L. Humphreys  
Suzanne Sweet Cook  
Michael S. Lattier  
Scott T. Powers  
**Respond to:**  
Kingsport Office  
William C. Bovender  
423-378-8858  
bovender@hdsdlaw.com

# HUNTER·SMITH·DAVIS

SINCE 1916

LLP

**Kingsport Office**  
1212 North Eastman Road  
P.O. Box 3740  
Kingsport, TN 37664  
Phone (423) 378-8800  
Fax (423) 378-8801

**Johnson City Office**  
100 Med Tech Parkway  
Suite 110  
Johnson City, TN 37604  
Phone (423) 283-6300  
Fax (423) 283-6301

Leslie Tentler Ridings  
Christopher D. Owens  
Chad W. Whitfield  
Jason A. Creech  
Meredith Bates Humbert  
Joseph B. Harvey  
Rachel Ralston Manc  
Caroline Ross Williams  
Marcy E. Walker  
Karen L. Kane  
Matthew F. Bettis  
Teresa Mahan Lesnak \*  
Michael A. Eastridge \*  
Jeannette Smith Tysinger\*

*\*Of Counsel*

KPOW.94403

September 12, 2017

**VIA EMAIL (Sharla.Dillon@tn.gov) & FEDEX**

Mr. David Price, Chairman  
c/o Sharla Dillon, Dockets & Records Manager  
Tennessee Public Utilities Commission  
502 Deaderick Street, 4th Floor  
Nashville, TN 37243

Re: Resolution of Boundary Dispute Between Kingsport  
Power Company d/b/a AEP Appalachian Power and  
Bristol Tennessee Essential Services  
Docket No. 17-00087

Dear Chairman Price:

On behalf of Kingsport Power Company, we transmit herewith the following:

Pre-filed Testimony of Andrew Shaffron, Jr. in Support of Petition of Kingsport Power  
d/b/a AEP Appalachian Power, Requesting a Contested Case be Convened and a Boundary  
Dispute be Resolved in Favor of Petitioner

The originals and four (4) copies are being sent via Federal Express.

Very sincerely yours,

**HUNTER, SMITH & DAVIS, LLP**

  
William C. Bovender

Enclosures: As stated

cc: Dr. R. Michael Browder (w/enc.)  
Kelly Grams, General Counsel (w/enc.)

Mr. David Price, Chairman

Page 2

September 12, 2017

David Foster (w/enc.)

Monica L. Smith-Ashford, Esq. (w/enc.)

C. Thomas Davenport, Jr., Esq. (w/enc.)

Mark W. Smith, Esq. (w/enc.)

Henry Walker, Esq. (w/enc.)

E. Patrick Hull, Esq. (w/enc.)

Mayor Richard S. Venable (w/enc.)

Ms. Evelyn Rafalowski (w/enc.)

Joseph B. Harvey, Esq. (w/enc.)

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

IN RE: )  
)  
RESOLUTION OF BOUNDARY DISPUTE )  
BETWEEN KINGSPORT POWER COMPANY ) DOCKET NO.: 17-00087  
d/b/a AEP APPALACHIAN POWER AND )  
BRISTOL TENNESSEE ESSENTIAL SERVICES )  
AS AUTHORIZED BY T.C.A. § 65-34-105 )

---

PRE-FILED TESTIMONY OF ANDREW SHAFFRON, JR. IN SUPPORT OF  
PETITION OF KINGSPORT POWER COMPANY d/b/a AEP APPALACHIAN POWER,  
REQUESTING A CONTESTED CASE BE CONVENED AND A BOUNDARY DISPUTE BE  
RESOLVED IN FAVOR OF PETITIONER

---

Comes Petitioner, Kingsport Power Company, d/b/a AEP Appalachian Power and  
submits herewith for filing in the Docket the Pre-Filed Testimony of Andrew Shaffron, Jr., in  
support of the TPUC finding in favor of Petitioner relative to the boundary dispute with Bristol  
Tennessee Essential Services pursuant to T.C.A. § 65-34-105.

Respectfully submitted this the 12<sup>th</sup> day of September, 2017

**KINGSPORT POWER COMPANY d/b/a AEP  
APPALACHIAN POWER**

By: 

William C. Bovender, Esq. (BPR #000751)

Joseph B. Harvey (BPR #028891)

**HUNTER, SMITH & DAVIS, LLP**

1212 N. Eastman Road

P. O. Box 3740

Kingsport, TN 37664

(423) 378-8858; Fax: (423) 378-8801

Email: [bovender@hdsdlaw.com](mailto:bovender@hdsdlaw.com)

Email: [jharvey@hdsdlaw.com](mailto:jharvey@hdsdlaw.com)

OF COUNSEL:

James R. Bacha, Esq.

**American Electric Power Service Corporation**

1 Riverside Plaza

Columbus, OH 43215

(615) 716-1615; Fax: (614) 716-2950

Email: [jrbacha@aep.com](mailto:jrbacha@aep.com)

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **Pre-Filed Testimony of Andrew Shaffron, Jr. In Support of Petition of Kingsport Power Company d/b/a AEP Appalachian Power Requesting a Contested Case be Convened and a Boundary Dispute be Resolved in Favor of Petitioner** has been served upon the following by mailing a copy of same by United States mail, postage prepaid, and Emailing as follows, on this the 12<sup>th</sup> day of September, 2017.

Dr. R. Michael Browder  
Bristol Tennessee Essential Services  
2470 Volunteer Pkwy  
P.O. Box 549  
Bristol, TN 37621  
Email: [mbrowder@btes.net](mailto:mbrowder@btes.net)

Kelly Grams, General Counsel  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
Email: [Kelly.Grams@tn.gov](mailto:Kelly.Grams@tn.gov)

David Foster, Chief-Utilities Division  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
Email: [David.Foster@tn.gov](mailto:David.Foster@tn.gov)

Monica L. Smith-Ashford  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
Email: [monica.smith-ashford@tn.gov](mailto:monica.smith-ashford@tn.gov)

C. Thomas Davenport Jr., Esq.  
Attorney at Law  
615 Shelby St.  
Bristol, TN 37620  
Email: [tom@ctdlegal.com](mailto:tom@ctdlegal.com)  
*Attorney for BTES*

Mark W. Smith, Esq.  
Miller & Martin PLLC  
Volunteer Building Suite 1200  
832 Georgia Avenue  
Chattanooga, TN 37402-2289  
Email: [Mark.Smith@millermartin.com](mailto:Mark.Smith@millermartin.com)  
*Attorney for BTES*

Henry Walker, Esq.  
Bradley Arant Boult Cummings, LLP  
1600 Division St., Ste 700  
Nashville, TN 37203  
Email;: [hwalker@babco.com](mailto:hwalker@babco.com)  
*Attorney for BTES*

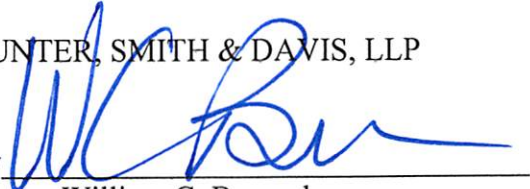
E. Patrick Hull, Esq.  
Sullivan County School Attorney  
229 E. New Street  
Kingsport, TN 37660  
Email: [Pat@Hull-firm.com](mailto:Pat@Hull-firm.com)  
*Attorney for Sullivan County Schools*

Richard S. Venable  
County Mayor  
3411 Hwy. 126, Suite 206  
Blountville, TN 37617

Ms. Evelyn Rafalowski  
Superintendent of Sullivan County Schools  
154 Blountville Bypass  
Blountville, TN 37617

HUNTER, SMITH & DAVIS, LLP

By



William C. Bovender

**DIRECT PRE-FILED TESTIMONY OF  
ANDREW SHAFFRON, JR.  
ON BEHALF OF PETITIONER KINGSPORT POWER COMPANY  
D/B/A AEP APPALACHIAN POWER  
BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
IN DOCKET NO. 17- 00087**

1   **Q.   PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.**

2   A.   My name is Andrew Shaffron, Jr. My business address is 420 Riverport Road,  
3       Kingsport, TN. I am the Manager of Distribution Systems for the Kingsport  
4       District of Appalachian Power Company. In this capacity, I represent Kingsport  
5       Power Company d/b/a AEP Appalachian Power (“KgPCo”).

6   **Q.   PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
7       **BUSINESS EXPERIENCE.**

8   A.   I earned a Bachelor of Science degree in Electrical Engineering from West  
9       Virginia University in 1984. I have worked for Appalachian Power in the  
10      electrical distribution organization since 1985, first as an electrical engineer and  
11      subsequently in various distribution operations leadership positions over the past  
12      25 years. I have been in my current position since April 2017.

13   **Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
14       **PROCEEDING?**

15   A.   The purpose of my testimony is to support the Petition of Kingsport Power  
16       Company d/b/a AEP Appalachian Power (“KgPCo”) in this Docket No 17-00087.  
17       The Petition of KgPCo seeks the convening of a contested case and a finding that  
18       only KgPCo is authorized by law to provide electric service to the new Sullivan

1 County High School, thus requiring the Tennessee Public Utility Commission  
2 (“TPUC”) to decide the boundary dispute between KgPCo and Bristol Tennessee  
3 Essential Services (“BTES”) in KgPCo’s favor. (See, T.C.A. § 65-34-105).

4 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

5 A. Yes. There were eleven (11) EXHIBITS to the Petition which I am adopting. In  
6 addition, my testimony is considered EXHIBIT 12 and I have added EXHIBIT 13, a  
7 copy of the original exclusive franchise granted to KgPCo’s predecessor, Kingsport  
8 Utilities, Incorporated, by the City of Kingsport, Tennessee in 1917 – a ninety nine  
9 (99) year franchise.

10 The following is a list of all EXHIBITS:

11 EXHIBIT 1: 1931 Franchise Agreement between Sullivan County, Tennessee and  
12 Kingsport Utilities, Incorporated.

13 EXHIBIT 2: August 10, 1944 deed from Joseph S. Isley, et al. to J.E. Myers, et  
14 ux.

15 EXHIBIT 3: Illustration of Myers’ tract and new school’s footprint inside of  
16 same.

17 EXHIBIT 4: Utility Easement granted by the Myers to Kingsport Utilities,  
18 Incorporated dated September 27, 1945, recorded July 9, 1948 in Register’s Office  
19 for Sullivan County, Tennessee.

20 EXHIBIT 5: Diagram which shows locations of various poles and lines placed by  
21 KgPCo on and around the Myers’ tract commencing in 1947.

22 EXHIBIT 6: Google Earth photograph showing KgPCo’s current lines and poles,



1 the single pole and line of BTES, and the site of the new school in yellow.

2 EXHIBIT 7: Barnett deed to Sullivan County Board of Education for part of new  
3 school property.

4 EXHIBIT 8: Carroll, et al. deed to Sullivan County Board of Education for  
5 rest of new school property.

6 EXHIBIT 9: New school site.

7 EXHIBIT 10: April 19, 1989, Letter Agreement among KgPCo, BTES, and  
8 Johnson City Power Board.

9 EXHIBIT 11: T.C.A. § 65-34-101 *et seq.* (the 1989 Act).

10 EXHIBIT 12: Pre-filed Testimony of Andrew Shaffron, Jr.

11 EXHIBIT 13: 1917 Franchise Ordinance of the City of Kingsport (and related  
12 documents) granting KgPCo an exclusive, 99 year franchise, within the City of  
13 Kingsport.

14 **Q. WHAT IS THE HISTORY OF KgPCo's PROVISION OF SERVICE TO**  
15 **UNINCORPORATED AREAS OF SULLIVAN COUNTY, TENNESSEE IN**  
16 **GENERAL AND THE DISPUTED AREA, LYING IN THE SEVENTH**  
17 **CIVIL DISTRICT OF THE COUNTY, IN PARTICULAR?**

18 A. The area at issue is located in the Seventh (7<sup>th</sup>) Civil District of Sullivan County,  
19 Tennessee, shown generally on the Assessor's maps at all times relevant to this  
20 proceeding, including Sullivan County Tax Map 079. The site of the new school  
21 is located on a portion of a tract described in a deed from Joseph S. Isley, et al. to  
22 J.E. Myers, et ux, dated August 10, 1944, contained in Book 69A, pages 118-120, in  
23 the Register's Office for Sullivan County, Tennessee, at Blountville, Tennessee.

1 That deed is EXHIBIT 2 to the KgPCo Petition.

2 It is important to recognize that KgPCo's predecessor-in-interest, Kingsport  
3 Utilities, Incorporated, was granted a Franchise Agreement by Sullivan County,  
4 Tennessee in July, 1931; and, KgPCo has provided electric service to  
5 unincorporated portions of Sullivan County, Tennessee at least since 1931. A  
6 copy of the Franchise Agreement between Kingsport Utilities, Incorporated, and  
7 Sullivan County, still in effect, is attached as EXHIBIT 1 to the KgPCo Petition.  
8 That Franchise was also approved by the Railroad and Public Utilities Commission  
9 of the State of Tennessee on July 27, 1931. The area in dispute in this proceeding  
10 is part of the Franchise territory granted to Kingsport Utility Incorporated by  
11 Sullivan County. Id.

12 The tract conveyed to the Myers was considerably larger than, but includes, the  
13 area now owned by the Sullivan County School Board on which the new school  
14 will be built. (See, EXHIBIT 2, 7, and 8 to the Petition). Reference is hereby  
15 made to EXHIBIT 3 to the Petition which illustrates both the Myers' tract and the  
16 area inside the Myers' tract where the school will be built. By instrument dated  
17 September 27, 1945, the Myers granted to Kingsport Utilities, Inc. a Utility  
18 Easement which gave Kingsport Utilities, Inc., "...its successors and assigns the  
19 right and easement to construct, operate, and maintain or remove an electric  
20 power line, with all necessary poles, anchors, wires and fixtures and the right to  
21 permit attachments of others to said poles..." over the Myers' tract. (See,  
22 EXHIBIT 4 to the Petition). The Myers' tract and adjoining properties all around  
23 the Myers' tract have been served by KgPCo for years. Commencing in 1947,  
24 and continuing to 1986, the records of KgPCo reflect it set poles and strung power

1 lines into and around the Myers' tract and adjoining tracts, including the area  
2 where the new school will be built. In addition, Interstate 81, which abuts a  
3 portion of the Myers' tract and the area where the new school will be built, was  
4 annexed into the City of Kingsport and is part of KgPCo's service territory,  
5 particularly since the Interstate in that area lies within the Myers' tract.

6 EXHIBIT 5 to the Petition shows the location of the poles and lines set by KgPCo  
7 years ago. EXHIBIT 6 to the Petition is a Google photograph which shows the  
8 KgPCo lines and the single pole and line BTES has located on the new school  
9 property within the last few months, thus igniting this boundary dispute.

10 In summary, the records of KgPCo, records contained in the Register's Office for  
11 Sullivan County, Tennessee, records of the County and photographs of the area,  
12 establish KgPCo has (1) a Franchise from Sullivan County to provide electric  
13 service to the new school's land area, (2) a Utility Easement that was granted to the  
14 predecessor of KgPCo by the Myers, which runs with the land and includes the new  
15 school land area, and (3) KgPCo has been providing electric service to that new  
16 school area and the larger Myers' tract and adjoining tracts since at least 1947, and  
17 was doing so prior to February 16, 1989. All the school land in question is part of  
18 KgPCo's exclusive service territory and was so prior to February 16, 1989. (See,  
19 EXHIBITS 10 and 11 to the Petition).

20 **Q. WHAT IS THE NATURE OF THE BOUNDARY DISPUTE WHICH**  
21 **KGPCO REQUESTS TPUC DECIDE IN ITS FAVOR?**

22 **A.** Within the last two months or so, BTES planted a pole on the east side of the new  
23 school tract and then ran a three-phase line across KgPCo's exclusive service  
24 territory to that pole so as to supposedly provide electric service to the new

1 school. The records of the Register's Office for Sullivan County, Tennessee do  
2 not reveal BTES has a Utility Easement to serve the tract. Based on the history  
3 of KgPCo's service to the site and the 1989 legislation discussed herein below,  
4 KgPCo is the exclusive provider of electricity to the school site and BTES  
5 has never served the site. Reference is made to EXHIBITS 3, 4, 5, 6, 7 and 8 to the  
6 Petition. A boundary dispute thus exists between KgPCo and BTES (See,  
7 EXHIBIT 11).

8 **Q. DO T.C.A. § 65-34-101 et seq. AND OTHER DOCUMENTS PROVIDE**  
9 **GUIDANCE TO TPUC RELATIVE TO THE RESOLUTION OF THIS**  
10 **BOUNDARY LINE DISPUTE?**

11 A. Yes. The archives of KgPCo, of which I am a custodian, reflect that a dispute  
12 arose between KgPCo and BTES/Johnson City Power Board ("JCPB") in the  
13 1988/1989 time frame relative to the right of KgPCo to exclusively  
14 serve areas of Sullivan County, Tennessee and other areas adjoining the City of  
15 Kingsport, Tennessee when that City annexed new areas. The predecessors to  
16 KgPCo had been granted an exclusive franchise to provide electric service to the  
17 City of Kingsport in 1917. A copy of that exclusive franchise is attached hereto  
18 as EXHIBIT 13. The City of Kingsport annexed an area served partially by BTES,  
19 known as the Steadman Farm, located near the Myers' tract, and another tract  
20 served by JCPB. When no resolution was at hand, the dispute ended up in the  
21 Tennessee General Assembly, and the resulting legislation became T.C.A.  
22 § 65-34-101 et seq. (EXHIBIT 11). KgPCo, BTES, and JCPB eventually entered  
23 into a Letter Agreement dated April 19, 1989, EXHIBIT 10 to the Petition, which  
24 not only expressed support for the pending Act which became T.C.A. § 65-34-101

1 et seq., but which also interpreted the proposed Act, adopted definitions from same,  
2 and established exclusive service territory for KgPCo, as of February 16, 1989.  
3 (See, EXHIBITS 10 and 11).

4 **Q. WHAT PORTIONS OF THE LETTER AGREEMENT OF APRIL 19, 1989**  
5 **ARE PARTICULARLY APPLICABLE TO THIS BOUNDARY DISPUTE?**

6 A. TPUC is referred to the following portions of the Agreement as set forth in  
7 Paragraphs 15 (a), (b), (c), (d), and (e) of the Petition, which read as follows:

8 (a) "Kingsport Power Company, Bristol Tennessee Electric System and  
9 Johnson City Power Board are public electric systems that distribute at retail  
10 electricity to residential, commercial, and industrial customers in adjoining service  
11 areas." (Emphasis added).

12 (b) "Kingsport Power Company provides retail electric service in certain areas  
13 within Sullivan County..."

14 (c) "Kingsport Power Company, Bristol Tennessee Electric System, and  
15 Johnson City Power Board desire to further the purposes of Senate Bill 1336 and  
16 House Bill 1135 by entering into an agreement to adjust the boundaries of their  
17 geographic territories, thus avoiding excessive consumer costs and adverse  
18 environmental and aesthetic impacts. Said agreement shall provide that all areas  
19 located within the city limits of Kingsport on February 16, 1989, shall be served  
20 by Kingsport Power Company, that no consideration is to be paid to Bristol or  
21 Johnson City for the right to serve said areas and that the parties agree not to  
22 extend service beyond the Current Geographic Territories as defined in said Bill,  
23 as amended by agreements pursuant to Section 8 of said Bill, except as incident to  
24 annexation." (Emphasis added).

1 (d) "Kingsport Power Company, Bristol Tennessee Electric System, and  
2 Johnson City Power Board intend that the Agreement shall only have effect to  
3 provide for the adjustment of their geographic territories in accordance with its  
4 terms if Senate Bill 1336/House Bill 1135 is enacted into law in the form as  
5 originally introduced with the addition of the attached Amendments. The parties  
6 intend that the Agreement shall not be effective if Senate Bill 1336/House Bill  
7 1135 does not become law in the form described in the preceding sentence."

8 (e) "Kingsport Power Company, Bristol Tennessee Electric System, and  
9 Johnson City Power Board intend that the Agreement shall be in form and  
10 substance an agreement of the type described in Section 8 [now T.C.A. § 65-34-  
11 108] of Senate Bill 1336/House Bill 1135, authorizing two or more public electric  
12 systems serving adjacent current geographic territories to enter into an agreement  
13 by which their current geographic territories are modified and by which  
14 equipment, facilities, and the right to serve specific parcels of land are transferred  
15 from one public electric system to another. The parties intend that they shall each  
16 be committed to the ratification and affirmance of the Agreement in the event of  
17 and following enactment into law of Senate Bill 1336/House Bill 1135, in the  
18 form described in the paragraph above." (EXHIBIT 10).

19 **Q. WHAT PORTIONS OF THE 1989 ACT, T.C.A. § 65-34-101 et seq., ARE**  
20 **PARTICULARLY APPLICABLE TO THIS BOUNDARY DISPUTE?**

21 **A.** TPUC is referred to the following portions of the 1989 Act (EXHIBIT 11 to the  
22 Petition):

23 (a) Definitions contained in T.C.A. § 65-34-102:

24 "(1) 'Current geographic territory' means the parcels of land, as such parcels

1 are defined or designated by the assessor of property of the county in which the  
2 parcels are located, to which a public electric system was providing electric  
3 service on February 16, 1989. In any case in which more than one (1) public  
4 electric system was providing electric service to a parcel of land on such date, the  
5 parcel shall be included within the current geographic territory of the public  
6 electric system that first provided electric service to such parcel. Should a public  
7 electric system enter into an agreement authorized by § 65-34-108, the current  
8 geographic territory of that public electric system shall be modified as provided in  
9 that agreement.” (Emphasis added).

10 “(4) ‘Non-consumer owned electric system means any public electric system  
11 other than electric and community service cooperatives and municipal electric  
12 systems; and”

13 “(5) ‘Public electric system includes electric and community service  
14 cooperatives, municipal electric systems, and every individual, co-partnership,  
15 association, corporation or joint stock company, their lessees, trustees or  
16 receivers, appointed by any court whatsoever, that own, operate, manager, or  
17 control any electric power system, plant, or equipment within Tennessee affected  
18 by and dedicated to public use.”

19 These definitions, when read in conjunction with KgPCo’s Sullivan County  
20 Franchise, the Myers Utility Easement of KgPCo, KgPCo’s service history to  
21 the school site and surrounding areas, the Letter Agreement (EXHIBIT 10), and  
22 the relevant portions of the Act, conclusively establish that the school site was in  
23 KgPCo’s service territory on February 16, 1989 and remains in KgPCo’s exclusive  
24 service territory. Accordingly, only KgPCo has the right to provide service to

1           the new Sullivan County high school. BTES cannot legally serve the site and must  
2           remove its plant. The school system may not choose BTES over KgPCo even if it  
3           preferred to do so.

4       **Q.   DOES THAT CONCLUDE YOUR TESTIMONY?**

5       **A.   Yes.**