

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
NASHVILLE, TENNESSEE**



**IN RE:**

**RESOLUTION OF BOUNDARY DISPUTE  
BETWEEN KINGSPORT POWER COMPANY  
d/b/a AEP APPALACHIAN POWER AND  
BRISTOL TENNESSEE ESSENTIAL SERVICES  
AS AUTHORIZED BY T.C.A. § 65-34-105**

**DOCKET NO.: 17-00087**

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**MOTION TO DISMISS OR SUSPEND KINGSPORT’S PETITION  
PENDING OUTCOME OF CONDEMNATION SUIT IN SULLIVAN COUNTY  
CIRCUIT COURT**

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Bristol Tennessee Essential Services (“BTES” or “Bristol”) submits this motion in response to the above-captioned petition filed by the Kingsport Power Company (“KPC” or “Kingsport”).<sup>1</sup>

Summary

A new high school will soon be under construction in Sullivan County, Tennessee. The site of the school is unincorporated farm land lying partially in or near the service areas of two electric companies: Kingsport Power Company and Bristol Tennessee Essential Services. Both Kingsport and Bristol claim the right to serve the new school.

On August 30, 2017, Kingsport filed the above-captioned petition asking the Tennessee Public Utility Commission (“TPUC” or “Commission”) to declare that KPC has the exclusive right to provide electricity to the school. Two weeks later, the Sullivan County Board of Education selected Bristol over Kingsport as its “preferred” provider of both electric and internet service. In response to the school board’s decision, Bristol has filed a petition in the Circuit Court of Sullivan

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<sup>1</sup> Although Bristol is not labeled as a party, Kingsport’s petition seeks declaratory and injunctive relief against Bristol, even asking the Commission to “assess costs” against BTES. KPC Petition, at 10-11. Bristol is, in effect, the respondent to this action and files this dispositive motion pursuant to Rule 1220-1-2-.03(2)(e) in lieu of filing an answer.

County for “Condemnation of Service Rights and for Declaratory Judgment.” Bristol asks the court to enter an order of condemnation granting BTES the right to serve any portion of the site which the court finds to be within Kingsport’s service area. A copy of the condemnation filing is attached as Exhibit A.

Under these circumstances, it serves no purpose for the agency to open a contested case proceeding to determine whether Kingsport’s service area includes the school site. KPC’s boundary lines – wherever they now may be – will shortly be moved by the Sullivan County Circuit Court to the extent necessary to allow Bristol to provide electric and broadband service to the new school as requested by the school board. Kingsport’s petition should be dismissed or, in the alternative, held in abeyance pending the outcome of the condemnation suit.

#### Statement of Facts

BTES is a municipal electric system owned by the city of Bristol, Tennessee. It provides electric service in the city of Bristol and portions of Sullivan County and offers broadband internet service to any customer located within Bristol’s electric service territory. It is a “municipal electric system” as that term is defined in T.C.A. § 65-34-102(3).

KPC is an investor-owned electric company providing service to the city of Kingsport and parts of Sullivan, Hawkins and Washington counties. KPC Petition, ¶ 2. KPC is a “non-consumer owned electric system” as that term is defined in T.C.A. § 65-34-102(4). See KPC Petition, ¶ 10.

The site of the new school lies within an unincorporated area of Sullivan County and consists of four parcels of land, two large ones (BTES Petition, ¶ 9) and two small ones (BTES Petition, ¶ 10). Kingsport states that it has provided service to two residences located on the smaller parcels which are part of the school campus but not the location of the school building or athletic fields. BTES Petition, ¶ 13. The school building itself and athletic fields will be

constructed on the two larger parcels. KPC Petition, Exhibit 9; BTES Petition, ¶¶ 9 and 10. Neither Kingsport nor Bristol has ever provided service to either of the larger parcels. BTES Petition, ¶ 15.

On August 30, 2017, Kingsport filed a petition asking the Tennessee Public Utility Commission to open a contested case proceeding, declare that “only” Kingsport has the right to serve the new school, enjoin Bristol from “taking any steps to serve the tract in question” and order Bristol to remove any electric equipment from the site. KPC Petition, at 10-11.

The Sullivan County Board of Education, which now owns all four parcels, voted on September 15, 2017, “to select BTES as the preferred choice to provide electric service and internet service to the new high school.” Six board members voted for Bristol. One abstained. No board member voted for Kingsport.<sup>2</sup> On September 15, 2017, Bristol received from Sullivan County Director of Schools, Ms. Evelyn Rafalowski, a completed application requesting electric service for the school. Exhibit C.

Following the school board’s decision, Bristol filed on September 27, 2017, a condemnation petition against Kingsport in the Circuit Court of Sullivan County. The petition asks the court to issue a declaratory judgment that Bristol “is the sole owner of the rights to provide service” to the two larger parcels of land where the new school and athletic fields will be built and to enter an order of condemnation granting Bristol the right to serve the two smaller parcels now apparently served by Kingsport. Should the court find that the two larger parcels are within Kingsport’s service area, the petition asks the court to include those parcels in the condemnation order. The petition asks that any compensation owed Kingsport as a result of losing the right to

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<sup>2</sup> See attached affidavit of Dr. R. Michael Browder. Exhibit B

serve these four parcels be reserved for hearing at a later date and computed in accordance with T.C.A. § 6-51-112.<sup>3</sup>

### Argument

Kingsport asks the Commission to “decide the boundary dispute” between Kingsport and Bristol pursuant to T.C.A. § 65-34-105. That statute is part of Chapter 34 of Title 65. Enacted in 1989, the statute grants the Commission jurisdiction to resolve disputes concerning “the boundaries” of the “current geographic territories” served by “non-consumer owned electric systems.” The agency has never conducted a proceeding under this statute. Therefore, it is important to consider exactly what this statute and the other parts of Chapter 34 are intended to do.

As Kingsport acknowledges, the intent of the legislature in enacting Chapter 34 was “to block any . . . expansion” of Kingsport’s service territory as it existed on February 16, 1989. KPC Petition, ¶ 13. Each section of the chapter re-enforces that purpose.

\*Section 103 prohibits a “non-consumer owned electric system” (i.e., KPC), from extending service “to any parcel of land” outside the utility’s “current geographic territory.”

\*Section 102(1) defines “current geographic territory” as “the parcels of land” to which an electric company “was providing electric service on February 16, 1989.”

\*Section 104 requires the removal by November 2, 1989 of any KPC facilities being used to provide service outside KPC’s “current geographic territory.”

\*Section 105 grants the Commission jurisdiction to determine “the boundaries” of KPC’s current geographic territories i.e., the boundaries of those “parcels of land” to which KPC was providing service on February 16, 1989.

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<sup>3</sup> KPC would receive annual payments for ten years of twenty-five percent of the revenue currently received by KPC from electric customers located with the area service taken by BTES.

\*Section 106 authorizes municipal electric systems and electric cooperatives to take by eminent domain Kingsport's "facilities, equipment and service areas."

It is equally important to review what Chapter 34 does not do. There is no provision in Chapter 34 granting Kingsport the exclusive right to provide service within its "current geographic territory" and no provision authorizing Kingsport to take by eminent domain the service territory of any electric cooperative or municipal electric system. Finally, there is no provision in the statute giving the Commission jurisdiction over municipal electric systems except for the limited purpose of determining the location of the boundary lines between a municipal system and KPC.

In sum, Chapter 34 is as one-sided a statute as due process will permit. It not only prohibits the expansion of Kingsport's service area beyond the parcels of land the utility was serving on February 16, 1989 but exposes KPC to the loss of its "facilities, equipment and service areas" through a condemnation suit.

In light of this statutory scheme, Kingsport seeks relief which the Commission has no power to grant. While the agency may determine the boundaries of KPC's service area as they existed in 1989, the Commission has no power to declare which electric utility "has the right to serve the new Sullivan County High School" (KPC Petition, p. 10) much less order Bristol to cease providing service and remove its facilities from the site. The statute does not authorize the Commission to do any of those things.

More importantly, any determination the Commission makes concerning the boundaries of Kingsport's service territory will soon be rendered moot by the actions of the Sullivan County Circuit Court.

In similar circumstances, this agency has suspended its proceedings pending the outcome of a related judicial proceeding. For example, when two wastewater providers asked the agency

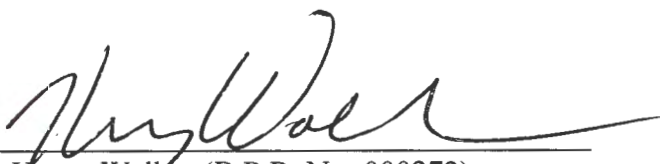
to decide which utility could provide service to a Williamson County development, the agency's Hearing Officer decided to hold the proceedings in abeyance pending the outcome of a lawsuit between the parties to determine the ownership of the partially completed treatment system. In Re: Petition of King's Chapel Capacity, LLC [et seq.], Docket No. 04-00335, "Order Granting Motion to Hold Proceedings in Abeyance," December 17, 2004 (finding it would be "premature" and "imprudent" for the agency to act until after the lawsuit had been resolved). On appeal, the agency affirmed the Hearing Officer's decision, finding that it would not be "administratively inefficient" to proceed with the TPUC proceeding until after the court case was over. "Order Affirming Hearing Officer's Order issued December 17, 2004 and Holding Proceedings in Abeyance," September 2, 2005. The agency's decision to suspend its proceedings proved to be a smart choice. Once the court ruled, the two wastewater companies reached a settlement and the agency's proceedings were quickly concluded. See "Notice of Settlement and Withdrawal of Objections," July 25, 2005.

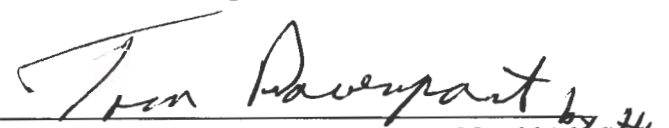
The Commission now faces a similar situation. Even if the agency had the power (which it does not) to grant Kingsport the relief it seeks, it would be "premature," "imprudent" and "administratively inefficient" to open a contested case to determine the boundaries of KPC's service area as they existed almost thirty years ago. Within a relatively short period of time – necessitated by the county school board's desire that there be no delays in the construction and opening of the new school – the Sullivan County Circuit Court will resolve this boundary dispute by the simple expedient, if necessary, of moving the boundary lines. There is no good reason for the Commission to proceed with this docket at this time.

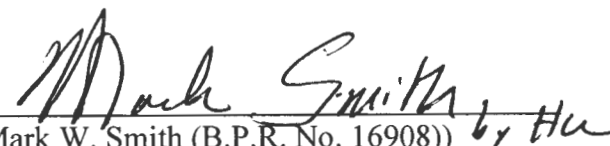
Conclusion

For these reasons, the agency should either decline to open a contested case pursuant to Rule 1220-1-2-.02 (the agency “may” commence a contested case) or dismiss Kingsport’s petition for failure to state a claim upon which relief can be granted. Rule 1220-1-2-.03(2)(e). In the alternative, the Commission should hold this proceeding in abeyance pending the outcome of Bristol’s condemnation suit in Sullivan County Circuit Court.

Respectfully submitted,

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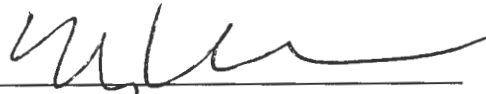
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*Attorneys for Bristol Tennessee Essential  
Services*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26 day of September, 2017, a copy of the foregoing document was served on the parties of record, via electronic delivery and U.S. Mail, postage prepaid, addressed as follows:

William C. Bovender, Esq.  
Joseph B. Harvey  
HUNTER, SMITH & DAVIS, LLP  
1212 N. Eastman Road  
P.O. Box 3740  
Kingsport, TN 37664  
[bovender@hstdlib.com](mailto:bovender@hstdlib.com)  
[jharvey@hstdlib.com](mailto:jharvey@hstdlib.com)

  
\_\_\_\_\_  
Henry Walker



**SEE ATTACHED**

**STATE OF TENNESSEE  
SULLIVAN COUNTY  
S U M M O N S**

BRISTOL TENNESSEE ESSENTIAL SERVICES,

Plaintiff,

VS

CIRCUIT COURT OF SULLIVAN COUNTY, TENNESSEE  
AT BRISTOLCIVIL ACTION NO. C15545(R)AEP APPALACHIAN POWER d/b/a KINGSPORT POWER  
COMPANY,

Defendants.

**NOTICE  
TO THE DEFENDANT(S):**

Tennessee law provides a four thousand dollar (\$4,000) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary, however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed, these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

**TO THE ABOVE-NAMED DEFENDANT(S):** AEP Appalachian Power, c/o CT Corporation Systems, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710

You are hereby summoned and required to serve upon **Larry L. Cash, Miller & Martin PLLC**, plaintiff's attorney, whose address is **832 Georgia Avenue, Suite 1200, Chattanooga, Tennessee 37402** an answer to the complaint which is herewith served upon you within thirty (30) days after service of the summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Tested this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. Issued this 27, day of September, 2017.

TOMMY R. KERNS

Clerk

By: Jeffery George  
Deputy Clerk

Received this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_ Deputy Sheriff

**RETURN**

I certify and return that I:

☐ served this summons together with the complaint as follows:

☐ failed to serve this summons within thirty (90) days after its issuance because:

Date \_\_\_\_\_

Deputy Sheriff

☐ accept service

I, \_\_\_\_\_, hereby accept service of process in this case as fully and in all respects, as though I had been personally served by a Deputy Sheriff of Sullivan County, and I acknowledge that I received a copy of the summons and complaint in this case.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_ Defendant

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CLERK OF COURT  
SULLIVAN COUNTY, TENN.

IN THE CIRCUIT COURT FOR SULLIVAN COUNTY, TENNESSEE  
AT BRISTOL

BRISTOL TENNESSEE ESSENTIAL  
SERVICES,

Plaintiff,

v.

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

Defendants.

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Civil Action No. C15545(R)

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PETITION FOR CONDEMNATION OF SERVICE RIGHTS  
AND FOR DECLARATORY JUDGMENT

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The Plaintiff, Bristol Tennessee Essential Services ("BTES" or "plaintiff") for cause of action would respectfully show unto the Court:

1. This is a suit under Tenn. Code Ann. §§65-34-106 by a "municipal electric system" to acquire the service rights of a "non-consumer owned electric system," the defendant AEP Appalachian Power dba Kingsport Power Company ("AEP", as those terms are defined in Tenn. Code Ann. §65-34-102, and under the Tennessee Declaratory Judgment Act, Tenn. Code Ann. §§29-14-101 *et seq.* for a declaration that BTES already owns certain of service rights in dispute.

2. The Circuit Court has subject matter jurisdiction of this matter under the general statutes governing eminent domain, *inter alia*, Tenn. Code Ann. §§29-16-102 and 104 and under Tenn. Code Ann. §29-14-102.

3. Venue is proper in Sullivan County since the plaintiff has its legal address in Sullivan County and the defendant AEP does business in Sullivan County. This lawsuit arises

from a dispute as to the geographic service areas within Sullivan County of the plaintiff and defendant.

4. The plaintiff is a municipal electrical system owned by the City of Bristol, Tennessee, organized and existing under the Municipal Electric Plant Law of 1935, Tenn. Code Ann. §§7-52-101 to 135, with all powers as defined and set out in the said statute and in Tenn. Code Ann. §§65-34-101 to 107.

5. The defendant AEP is a for-profit corporation organized and existing under the laws of the State of Virginia, with principal office and place of business at 1 Riverside Plaza, Columbus, OH 43215-2355. AEP's registered agent for service of process is CT Corporation Systems, 800 S. Gay Street, Suite 2021, Knoxville, TN 37929-9710. This defendant's mailing address in Tennessee is 420 Riverport Road, Kingsport, Tennessee 37664.

6. The plaintiff, in accordance with the Constitution and laws of the State of Tennessee, and acts amendatory thereof and supplementary thereto, particularly Tenn. Code Ann. §§7-52-101 to 135. Tenn. Code Ann. Title 29, Chapters 16 and 17, and the Charter of the City of Bristol, Tennessee, has the power of eminent domain.

7. In addition, the plaintiff may use the power of eminent domain to acquire "facilities, equipment, and service areas" of any "non-consumer owned electric system," as defined in Tenn. Code Ann. §65-34-102(4).

8. The defendant AEP is a "non-consumer owned electric system."

9. On June 9, 2017, Jennelle M. Carroll and Rebecca Carroll, Co-Trustees, conveyed by general warranty deed 109.39 acres more or less in the Seventh (7<sup>th</sup>) Civil District of Sullivan County property to the Sullivan County Board of Education ("Board") for the purpose of constructing the new Sullivan County High School (the "School"). The deed to this property is

recorded at Book 3246, Page 1535-1540, Register's Office of Sullivan County. This property may also be identified as Sullivan County Tax Map 079, Parcel 036.00 and Tax Map 064.00, Parcel 024.00. (A copy of this deed is attached as Exhibit 1, attached). (Hereinafter "the School Parcels")

10. On June 9, 2017, Rebecca Carroll Barnett and husband, Nelson Douglas Barnett, conveyed to the Board by general warranty deed two additional parcels of land, comprising 3.08 acres more or less, for the purpose of uses accessory to the School. The deed to this property is recorded at Book 3246, Page 1529-1534, Register's Office of Sullivan County. This property may also be identified as Sullivan County Tax Map 079, Parcels 036.20 and 036.15. (A copy of this deed is attached as Exhibit 2, attached). (Hereinafter "the Accessory Parcels")

11. Both the School Parcels and the Accessory Parcels are located within an unincorporated area of Sullivan County.

12. On September 14, 2017, the Board voted to authorize the completion of application for electrical service with BTES and to select BTES as the preferred choice to provide electrical and internet service to the School.

13. On August 30, 2017, AEP filed an administrative action with the Tennessee Public Utilities Commission ("PUC") claiming that it has the exclusive right to serve the School Parcels and the Accessory Parcels, because it had previously served two residences on or within the Accessory Parcels. (Collective Exhibit 3, attached with exhibits).

14. AEP also claims to own or hold an easement over the School Parcels, of record in Book 102A, Page 52, Register's Office of Sullivan County.  
(Exhibit 5, attached),

15. BTES avers that it already owns the service rights to the School Parcels as those parcels have never been provided with electrical service. BTES seeks a declaratory judgment from this Court that BTES has the exclusive right to serve the School Parcels.

16. Pleading in the alternative and without waiving its averment that it already possesses the right to serve the School Parcels, BTES states that it has the right to condemn service rights to the School Parcels, if necessary, pursuant to Tenn. Code Ann. §65-34-106. Under the clear language of that statute, BTES has the power to condemn the service area of any non-consumer owned electrical system such as AEP.

17. BTES brings this action further for the purpose of acquiring by the exercise of eminent domain the right to serve the Accessory Parcels.

18. BTES is entitled after notice and a hearing to an immediate order condemning the service rights as hereinabove alleged.

**WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS:**

1. That a copy of this petition and notice thereof issue and be served upon the defendant AEP and that it be required to answer the same as provided by law.

2. That the Court grant a declaratory judgment in the plaintiff's favor to the effect that the plaintiff is the sole owner of the rights to provide service to the School Parcels as above defined.

3. That following a hearing, pursuant to Tenn. Code Ann §29-17-803, an order of condemnation be entered granting to the plaintiff the service rights to the Accessory Property, and the School Property, should the Court conclude that the latter is within the service area of AEP.

4. That the Court grant all further necessary orders for the condemnation and appropriation of the condemned rights.

5. That any question of compensation or damages, if any, due to the defendant AEP be reserved for hearing at a later date and that damages shall be fixed according to the same process as is provided in Tenn. Code Ann. § 5-51-112, dealing with the annexation of services areas of an electrical cooperative.

6. That plaintiff have such further, other, and general relief as appears just under the facts and laws of this case.

DATED: September 27, 2017

Respectfully Submitted,

LEGAL OFFICE OF C. THOMAS DAVENPORT, JR.

By: 

By: 

C. Thomas Davenport, Jr., BPR No. 001696

[td@ctdlegal.com](mailto:td@ctdlegal.com)

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P.O. Box 1745

Bristol, TN 37621-0966

Telephone: (423) 989-6500

Facsimile: (423) 989-6509

MILLER & MARTIN PLLC

 and 

By: 

By: 

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Facsimile: (423) 785-8480

Attorneys for *Bristol Tennessee Essential Services*

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SHEENA R TINGLEY  
IN QUARTER W DECEU

WITNESSETH:

BEGINNING AT AN IRON ROD (OLD) WITH CAP # 1542 ON THE  
EASTERLY SIDELINE OF LYNN ROAD, SAID ROD A CORNER TO LOT  
1, REPLAT OF CARROLL AND BARNETT PROPERTY (PLAT BOOK 54,  
PAGE 524); THENCE LEAVING SAID SIDELINE SOUTH 43 DEGREES 39  
MINUTES 02 SECONDS WEST, A DISTANCE OF 24.97 FEET TO A MAG  
NAIL IN LYNN ROAD. THENCE ALONG ROBIN HORNER SUBDIVISION  
(PLAT BOOK, 50, PAGE 381), THE LAURELS—PHASE I (PLAT BOOK 50,  
PAGE 996) AND TATUM (DEED BOOK 2211C, PAGE 766) NORTH 43

EXHIBIT

tabbies

1



DEGREES 01 MINUTES 42 SECONDS WEST, A DISTANCE OF 1219.77 TO A MAG NAIL IN HENRY HARR ROAD, SAID NAIL A CORNER TO HARR (WILL BOOK 21, PAGE 375). THENCE ALONG HARR AND IN AND NEAR HENRY HARR ROAD THE FOLLOWING COURSES AND DISTANCES: NORTH 51 DEGREES 03 MINUTES 00 SECONDS EAST, A DISTANCE OF 761.48 FEET TO A MAG NAIL; NORTH 54 DEGREES 33 MINUTES 00 SECONDS EAST, A DISTANCE OF 510.00 FEET TO A MAG NAIL; NORTH 48 DEGREES 03 MINUTES 00 SECONDS EAST, A DISTANCE OF 215.50 FEET TO A 5/8 INCH IRON ROD (NEW) AND NORTH 38 DEGREES 53 MINUTES 00 SECONDS EAST, A DISTANCE OF 341.30 FEET TO A MAG NAIL, SAID NAIL A CORNER TO HARR (WILL BOOK 28, PAGE 484 AND DEED BOOK 188A, PAGE 344). THENCE LEAVING SAID ROAD AND ALONG HARR, THE FOLLOWING COURSES AND DISTANCES: SOUTH 47 DEGREES 14 MINUTES 47 SECONDS EAST, A DISTANCE OF 120.50 FEET TO A 8 INCH X 10 INCH SET STONE; SOUTH 48 DEGREES 03 MINUTES 36 SECONDS EAST, A DISTANCE OF 895.43 FEET TO A 5/8 INCH IRON ROD (NEW); NORTH 41 DEGREES 34 MINUTES 16 SECONDS EAST, A DISTANCE OF 682.73 FEET TO A 5 INCH X 8 INCH SET STONE AND SOUTH 54 DEGREES 31 MINUTES 38 SECONDS EAST, A DISTANCE OF 1057.76 FEET TO A 5/8 INCH IRON ROD (NEW), SAID ROD LOCATED IN THE LINE OF TALBERT (DEED BOOK 585C, PAGE 352). THENCE ALONG TALBERT SOUTH 29 DEGREES 15 MINUTES 11 SECONDS WEST, A DISTANCE OF 979.37 FEET TO A 5/8 INCH IRON ROD (NEW) AND SOUTH 24 DEGREES 51 MINUTES 38 SECONDS EAST, A DISTANCE OF 98.00 FEET TO A 5/8 INCH IRON ROD (NEW), SAID ROD LOCATED IN THE NORTHERLY RIGHT OF WAY LINE OF INTERSTATE 81. THENCE ALONG SAID RIGHT OF WAY, BEING CONTROLLED ACCESS, BY A CURVE TO THE RIGHT HAVING A RADIUS 11,209.16 AN ARC LENGTH 1760.50 AND A CHORD SOUTH 62 DEGREES 43 MINUTES 06 SECONDS WEST 1758.69 TO A TYPE "C" HIGHWAY MONUMENT; THENCE LEAVING SAID CURVE NORTH 46 DEGREES 45 MINUTES 58 SECONDS WEST, A DISTANCE OF 503.96 FEET TO AN IRON ROD (OLD) WITH CAP, SAID ROD BEING A CORNER TO LOT 2, REPLAT OF CARROLL AND BARNETT PROPERTY. THENCE LEAVING SAID RIGHT OF WAY AND ALONG LOT 2 AND LOT 1 THE FOLLOWING COURSES AND DISTANCES: NORTH 46 DEGREES 50 MINUTES 37 SECONDS EAST, A DISTANCE OF 353.97 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; NORTH 52 DEGREES 24 MINUTES 50 SECONDS EAST, A DISTANCE OF 228.97 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; NORTH 46 DEGREES 06 MINUTES 01 SECONDS WEST, A DISTANCE OF 231.78 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; SOUTH 46 DEGREES 50 MINUTES 37

SECONDS WEST, A DISTANCE OF 488.67 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; SOUTH 87 DEGREES 24 MINUTES 01 SECONDS WEST, A DISTANCE OF 74.29 FEET TO AN IRON ROD (OLD) WITH CAP # 1542 AND SOUTH 43 DEGREES 43 MINUTES 26 SECONDS WEST, A DISTANCE OF 106.72 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINS 109.39 ACRES MORE OR LESS.

ADDRESS OF PROPERTY: 899 Henry Harr Road, Blountville, TN

SULLIVAN COUNTY TAX MAP 079, PARCEL 036.00 and TAX MAP 064.00, PARCEL 024.00

TO HAVE AND TO HOLD unto the party of the second part, its successors and assigns, in fee simple. The above-described property is hereafter collectively referred to as the "Property".

The party of the first part covenants with the party of the second part, its successors and assigns, that it is lawfully seized and possessed of said Property; that it has a good and lawful right to convey the same; that the same is free, clear and unencumbered, except as herein set out; and that it will forever warrant and defend the title to the Property against the good and lawful claims of all persons whomsoever.

The conveyance of the Property is made expressly subject to all covenants, conditions, restrictions and reservations contained in former deeds and other instruments of record applicable to the Property, insofar as same are presently binding thereto, and to any easements apparent from an inspection of the Property.

Taxes for the current year are prorated and payment is assumed by the party of the second part.

THIS INSTRUMENT PREPARED BY:  
Wilson Worley PC  
2021 Meadowview Lane, 2nd Floor  
Eastman Credit Union Building  
P.O. Box 88  
Kingsport, TN 37662

DK/PG:3246/1529-1534

17010069

FILE #	131529 - 17010069
RECORDED	01-09-19 PM
TAXES	
MOBILE TAX	0.00
LANDING TAX	0.00
RECORDING TAX	39.00
DEED TAX	0.00
REGISTER'S FEE	0.00
TOTAL DUE	39.00
STATE OF TENNESSEE, SULLIVAN COUNTY	
SHEENA R TINSLEY	
CLERK OF DEED	

THIS GENERAL WARRANTY DEED, made and entered into on this 9th day of June, 2017, by and between **REBECCA CARROLL BARNETT and husband, NELSON DOUGLAS BARNETT**, parties of the first part; and **SULLIVAN COUNTY BOARD OF EDUCATION**, party of the second part;

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties of the first part have bargained and sold and do hereby grant, transfer and convey unto the party of the second part, its successors and assigns, certain lots or parcels of land located in seventh (7th) Civil District of Sullivan County, Tennessee, to-wit:

PARCEL 1:

COMMENCE AT AN IRON ROD (OLD) WITH CAP # 1542, SAID ROD LOCATED ON THE EASTERLY SIDELINE OF LYNN ROAD, SAID ROD A CORNER TO CARROLL (DEED BOOK 2639C, PAGE 790) AND LOT 1 REPLAT OF THE CARROLL AND BARNETT PROPERTY (PLAT BOOK 54, PAGE 524). THENCE ALONG SAID SIDELINE SOUTH 46 DEGREES 20 MINUTES 58 SECONDS EAST, A DISTANCE OF 49.86 TO AN IRON ROD (OLD) WITH CAP # 1542, SAID ROD BEING A CORNER TO LOT 2 AND KNOWN AS THE POINT OF BEGINNING. THENCE LEAVING SAID SIDELINE AND ALONG LOT 1, THE FOLLOWING COURSES AND DISTANCES: NORTH 43 DEGREES 46 MINUTES 16 SECONDS EAST, A DISTANCE OF 86.70 FEET TO AN IRON ROD (OLD) WITH CAP # 1542;

1



NORTH 87 DEGREES 24 MINUTES 01 SECONDS EAST, A DISTANCE OF 72.62 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; NORTH 46 DEGREES 50 MINUTES 37 SECONDS EAST, A DISTANCE OF 173.60 FEET TO AN IRON ROD (OLD) WITH CAP # 1542 AND SOUTH 46 DEGREES 45 MINUTES 46 SECONDS EAST, A DISTANCE OF 159.71 FEET TO AN IRON ROD (OLD) WITH CAP # 1542, SAID ROD BEING A CORNER TO LOT 1 AND IN THE LINE OF CARROLL. THENCE ALONG CARROLL SOUTH 46 DEGREES 50 MINUTES 37 SECONDS WEST, A DISTANCE OF 246.45 FEET TO AN IRON ROD (OLD) WITH CAP # 1542, SAID ROD LOCATED IN THE EASTERLY SIDELINE OF LYNN ROAD ACCESS AND INTERSTATE 81. THENCE ALONG THE EASTERLY SIDELINE OF LYNN ROAD ACCESS AND INTERSTATE 81 NORTH 46 DEGREES 45 MINUTES 58 SECONDS WEST, A DISTANCE OF 155.64 FEET TO A TYPE "B" HIGHWAY MONUMENT AND SOUTH 43 DEGREES 56 MINUTES 51 SECONDS WEST, A DISTANCE OF 66.44 FEET TO AN IRON ROD (OLD) WITH CAP # 1542, SAID ROD IN THE EASTERLY SIDELINE OF LYNN ROAD. THENCE ALONG SAID SIDELINE NORTH 46 DEGREES 20 MINUTES 58 SECONDS WEST, A DISTANCE OF 50.07 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINS 1.03 ACRES MORE OR LESS AND IS KNOWN AS LOT 2, REPLAT OF CARROLL AND BARNETT PROPERTY.

PARCEL 2:

BEGINNING AT AN IRON ROD (OLD) WITH CAP # 1542 ON THE EASTERLY SIDELINE OF LYNN ROAD. SAID ROD A CORNER TO CARROLL (DEED BOOK 2639C, PAGE 790). THENCE LEAVING SAID SIDELINE AND ALONG CARROLL THE FOLLOWING COURSES AND DISTANCES: NORTH 43 DEGREES 43 MINUTES 26 SECONDS EAST, A DISTANCE OF 106.72 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; NORTH 87 DEGREES 24 MINUTES 01 SECONDS EAST, A DISTANCE OF 74.29 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; NORTH 46 DEGREES 50 MINUTES 37 SECONDS EAST, A DISTANCE OF 488.67 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; SOUTH 46 DEGREES 06 MINUTES 01 SECONDS EAST, A DISTANCE OF 231.78 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; SOUTH 52 DEGREES 24 MINUTES 50 SECONDS WEST, A DISTANCE OF 228.97 FEET TO AN IRON ROD (OLD) WITH CAP # 1542 AND SOUTH 46 DEGREES 50 MINUTES 37 SECONDS WEST, A DISTANCE OF 107.52 FEET TO AN IRON ROD (OLD) WITH CAP # 1542, SAID ROD A CORNER TO LOT 2, REPLAT OF THE CARROLL AND BARNETT PROPERTY (PLAT BOOK 54, PAGE 524). THENCE ALONG LOT 2 THE FOLLOWING COURSES AND DISTANCES: NORTH 46 DEGREES 45 MINUTES 46 SECONDS WEST, A DISTANCE OF 159.71 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; SOUTH 46 DEGREES 50 MINUTES 37 SECONDS WEST, A

DISTANCE OF 173.60 FEET TO AN IRON ROD (OLD) WITH CAP # 1542; SOUTH 87 DEGREES 24 MINUTES 01 SECONDS WEST, A DISTANCE OF 72.62 FEET TO AN IRON ROD (OLD) AND SOUTH 43 DEGREES 46 MINUTES 16 SECONDS WEST, A DISTANCE OF 86.70 FEET TO AN IRON ROD (OLD) WITH CAP # 1542, SAID ROD A CORNER TO LOT 2 AND LOCATED IN THE EASTERLY SIDELINE OF LYNN ROAD. THENCE ALONG SAID SIDELINE NORTH 46 DEGREES 20 MINUTES 58 SECONDS WEST, A DISTANCE OF 49.86 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINS 2.05 ACRES MORE OR LESS AND IS KNOWN AS LOT 1, REPLAT OF THE CARROLL AND BARNETT PROPERTY (PLAT BOOK 54, PAGE 524).

Being the same property conveyed to Rebecca Carroll Barnett and husband, Nelson Douglas Barnett, by deed from Jenell M. Carroll and Rebecca Carroll Barnett, as Co-Trustees under the Jenelle M. Carroll Life Trust Agreement, dated February 29, 2008, of record in Book 3175, page 70, Register's Office of Sullivan County, Tennessee.

ADDRESS OF PROPERTY: 386 Lynn Road, Blountville, TN

SULLIVAN COUNTY TAX MAP 079, PARCELS 036.20 and 036.15

TO HAVE AND TO HOLD unto the party of the second part, its successors and assigns, in fee simple. The above-described property is hereafter collectively referred to as the "Property".

The parties of the first part covenant with the party of the second part, its successors and assigns, that they are lawfully seized and possessed of said Property; that they have a good and lawful right to convey the same; that the same is free, clear and unencumbered, except as herein set out; and that they will forever warrant and defend the title to the Property against the good and lawful claims of all persons whomsoever.

The conveyance of the Property is made expressly subject to all covenants, conditions, restrictions and reservations contained in former deeds and other instruments of record applicable to the Property, insofar as same are presently binding thereto, and to any easements apparent from an inspection of the Property.

Taxes for the current year are prorated and payment is assumed by the party of the second part.

WITNESS the signatures of the parties of the first part on this the day and year first above written.

Rebecca Carroll Barnett  
REBECCA CARROLL BARNETT

Nelson Douglas Barnett  
NELSON DOUGLAS BARNETT

ADDRESS OF OWNER and  
PARTY TO RECEIVE TAX NOTICE:  
Sullivan County Board of Education  
P.O. Box 300  
Blountville, TN 37617

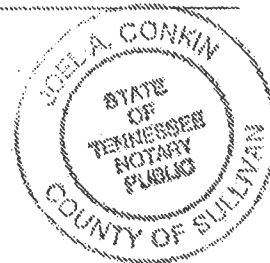
STATE OF TENNESSEE  
COUNTY OF SULLIVAN

On this 9th day of June, 2017, before me personally appeared **Rebecca Carroll Barnett**, to me known to be the person described in and who executed the foregoing instrument, or proved to me on the basis of satisfactory evidence, and acknowledged that she executed the same as her free act and deed.

WITNESS my hand and official seal at office in the State and County aforesaid.

Joela A. Conkin  
NOTARY PUBLIC

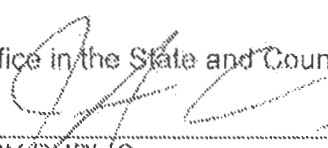
My Commission Expires: 12/19/2017



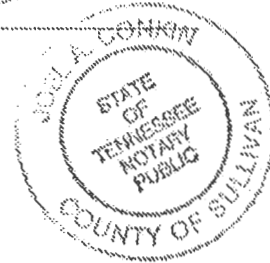
STATE OF TENNESSEE  
COUNTY OF SULLIVAN

On this 9th day of June, 2017, before me personally appeared **Nelson Douglas Barnett**, to me known to be the person described in and who executed the foregoing instrument, or proved to me on the basis of satisfactory evidence, and acknowledged that he executed the same as his free act and deed.

WITNESS my hand and official seal at office in the State and County aforesaid.

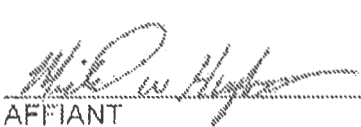
  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 12/19/2017



STATE OF TENNESSEE  
COUNTY OF SULLIVAN

I, or we, hereby swear or affirm that the actual consideration for this transfer, or value of the property or interest in property transferred, whichever is greater, is **EXEMPT** PER T.C.A. § 67-7-409 (f)(1), which amount is equal to or greater than the amount which the property or interest in property transferred would command at a fair and voluntary sale.

  
\_\_\_\_\_  
AFFIANT

SWORN TO AND SUBSCRIBED before me, this 9th day of June, 2017.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 12/19/2017



TRUE COPY CERTIFICATION

I, Mary P. Barkley, do hereby make oath that I am a licensed attorney and/or the custodian of the electronic version of the attached document tendered for registration herewith and that this is a true and correct copy of the original document executed and authenticated according to law.

Mary P. Barkley  
Signature

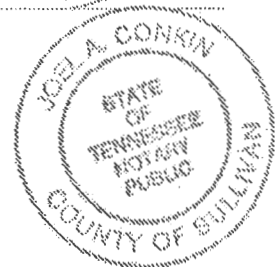
STATE OF TENNESSEE  
COUNTY OF SULLIVAN:

Personally appeared before me, a Notary Public for this county and state, , who acknowledges that this certification of an electronic document is true and correct and whose signature I have witnessed.

[Signature]  
Notary Public

My Commission Expires:

12/19/2017





BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

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

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PETITION OF KINGSFORT POWER COMPANY d/b/a AEP APPALACHIAN POWER,  
 REQUESTING THE TENNESSEE PUBLIC UTILITY COMMISSION COMMENCE A  
 CONTESTED CASE TO RESOLVE IN KINGSFORT POWER'S FAVOR A BOUNDARY  
 DISPUTE WITH BRISTOL TENNESSEE ESSENTIAL SERVICES PURSUANT TO T.C.A. §  
 65-34-105 AND GRANT DECLARATORY AND INJUNCTIVE RELIEF

---

Comes Petitioner, Kingsfort Power Company, d/b/a AEP Appalachian Power (herein  
 sometimes "KgPCo"), and requests the Tennessee Public Utility Commission ("TPUC"): (a)  
 convene a contested case under T.C.A. § 4-5-301, et seq. and TPUC Rules and Regulations  
 1220-1-2-.02 to resolve a boundary dispute between KgPCo and Bristol Tennessee Essential  
 Services ("BTES") related to providing electric service to the new Sullivan County, Tennessee  
 High School pursuant to T.C.A. § 65-34-105 (b) determine that only Petitioner can serve the  
 school site; and (c) grant to Petitioner both declaratory, pursuant to T.C.A. § 4-5-223 et seq., and  
 permanent injunctive relief pursuant to T.R.C.P. 65, as discussed more fully herein below:

1. It is represented that any notice or communication with respect to this or any  
 related Petition be sent to the following:



- A. Andrew Shaffron, Kingsport District Manager  
**Kingsport Power Company d/b/a AEP Appalachian Power**  
420 Riverport Road  
Kingsport, TN 37660  
Ph: (423) 578-2201  
Email: [ashaffron@aep.com](mailto:ashaffron@aep.com)
- B. William K. Castle, Director, Regulatory Services VA/TN  
**Appalachian Power Company**  
Three James Center  
Suite 1100 1051 E. Cary Street  
Richmond, VA 23219-4029  
Ph: (804) 698-5540  
Email: [wkcastle@aep.com](mailto:wkcastle@aep.com)
- C. James R. Bacha, Esq.  
**American Electric Power Service Corporation**  
P. O. Box 16637  
Columbus, Ohio 43216  
Ph: (614) 716-1615  
Email: [jrbacha@aep.com](mailto:jrbacha@aep.com)
- D. William C. Bovender, Esq.  
Joseph B. Harvey, Esq.  
**Hunter, Smith & Davis, LLP**  
PO Box 3704  
Kingsport, TN 37664  
Ph: (423) 378-8800  
Email: [bovender@hsdlaw.com](mailto:bovender@hsdlaw.com)  
Email: [jharvey@hsdlaw.com](mailto:jharvey@hsdlaw.com)

2. Petitioner is a Virginia Corporation with its principal office located in Kingsport, Sullivan County, Tennessee. It is engaged in the business of distributing electric power to approximately 47,000 customers in its service area which includes parts of the City of Kingsport, Tennessee; the Town of Mt. Carmel, Tennessee; Sullivan County, Tennessee; Hawkins County, Tennessee and Washington County, Tennessee. The boundary dispute in question concerns

Petitioner's service area in the Seventh (7<sup>th</sup>) Civil District of Sullivan County, Tennessee, shown generally on the assessor's maps at all times relevant to this proceeding, including Sullivan County Tax Map 079, and discussed generally in a deed from Joseph S. Isley, et al. to J.E. Myers, et ux. made and entered into August 10, 1944, contained in Book 69A, pages 118-120, in the Register's Office for Sullivan County, Tennessee, at Blountville, Tennessee.

3. In July of 1931, Kingsport Utilities, Incorporated was granted a franchise by Sullivan County, Tennessee, which contains the following provisions:

"This is a franchise granting the company the right to construct, maintain and operate its service lines for the transmission of electric...energy for distribution along, upon, over and across the public roads, highways and thoroughfares in said county including those now in existence and any that hereafter may be in existence. This franchise was approved by the Railroad and Public Utilities Commission of the state of Tennessee July 27, 1931, docket No. 1667."

This Franchise Agreement is EXHIBIT 1 hereto. KgPCo is the successor of Kingsport Utilities, Incorporated. That franchise agreement was approved by the Railroad and Public Utility Commission of the State of Tennessee (predecessor to TPUC) on July 27, 1931. The area in dispute in this proceeding is part of the franchise territory granted to Kingsport Utilities, Incorporated (and, hence, KgPCo).

4. By deed made and entered into on August 10, 1944, as mentioned above, J.E. Myers and wife, Verna A. Myers, purchased a tract of land in the Seventh (7<sup>th</sup>) Civil District of Sullivan County, Tennessee, which was considerably larger than, but includes, the land area on which the new high school will be built. A copy of the Myers deed is attached as EXHIBIT 2. The Myers tract encompassed an area running from Barger and Myers properties to the north,

east, west, and south of the new high school's footprint across what is now Interstate 81, to Shipley Ferry Road. Attached as EXHIBIT 3 is an illustration of the Myers tract which also shows the new school's footprint.

5. By instrument dated September 27, 1945, Mr. and Mrs. Myers granted a Utility Easement to Kingsport Utilities, Inc. (predecessor to KgPCo) which was recorded in the Register's Office for Sullivan County, Tennessee on July 9, 1948 in Deed Book 102A, Page 52. That Utility Easement gave Kingsport Utilities, Inc and its successors and assigns "...the right and easement to construct, operate, and maintain or remove an electric power line, with all necessary poles, anchors, wires and fixtures and the right to permit attachments of others to said poles..." over the Myers tract. (See, Easement, EXHIBIT 4). Other property owners around the Myers tract also granted to KgPCo Utility Easements during the same time frame as the Myers grant.

6. Commencing in 1947, and continuing to 1986, KgPCo set poles and strung power lines into and around the Myers tract, and adjoining tracts including the area where the new school will be built. Attached as EXHIBIT 5 is a diagram which shows the location of these poles and lines. Attached as EXHIBIT 6 is a Google Earth photograph which shows the current location of KgPCo lines and the single line BTES has newly erected and placed on the school site in violation of state law as discussed more fully herein below. KgPCo has provided electric service to the larger Myers tract, including the tract where the school will be built, continuously since 1947, along with providing electric service to adjoining tracts as well over the years. Hence, KgPCo has a franchise to serve the school tract from Sullivan County, a utility easement from the Myers which runs with the land, has served the school tract area since 1947, and was serving the school tract on February 16, 1989. As such, the school site was within KgPCo's

geographic territory and service territory on February 16, 1989, the legal significance of which is explained below.

7. At no time prior to recently placing a pole on the school site, has BTES ever had a pole, line or other equipment on the site in question nor has BTES ever provided electric service to any portion of the school site at any time or to any customers thereon. KgPCo has found nothing to indicate BTES has a franchise from Sullivan County or a utility easement for the school site, and BTES has refused to provide said information in response to KgPCo's requests.

8. The site of the school is depicted on EXHIBIT 6 in yellow. The two deeds which conveyed the site to the Sullivan County Board of Education are attached as EXHIBIT 7 and 8. Both deeds were recorded June 9, 2017. A rendering of the new school site is attached as EXHIBIT 9.

9. In addition to the franchise granted by Sullivan County, Tennessee, to Kingsport Utilities, Incorporated, Kingsport Electric Light and Power Company, the predecessor to Kingsport Utilities, Inc. was granted an exclusive franchise to provide electric service in the City of Kingsport on May 24, 1917, a 99 year franchise, which expired within the last year. KgPCo was then granted a non-exclusive twenty (20) year franchise by the City of Kingsport, which was subsequently approved by TPUC. (Docket No 16-00033) That original exclusive franchise permitted KgPCo to expand its service into areas which the City of Kingsport annexed, and existing law up to 1989 did not require KgPCo to compensate incumbent power providers in newly-annexed areas even if capital improvements had been made by those incumbent power providers.

10. KgPCo is, essentially, the only non-consumer owned electric system in the State of Tennessee. It is, however, a public electric system under Tennessee law and is regulated by

TPUC. The Tennessee Valley Authority power distributors around KgPCo's service territory, which are considered under Tennessee law to be electric and community service cooperatives or municipal electric systems, include Holston Electric Cooperative, Johnson City Power Authority, and BTES.

11. BTES is a municipal electric system formed under the Municipal Electric Law of 1935. It is owned by the City of Bristol, Tennessee. Its service territory includes the City of Bristol, Tennessee, the Town of Bluff City, Tennessee, and portions of Sullivan County, Tennessee. BTES does provide electric service to areas within miles of the site of the new school but has never serviced any portion of that area prior to placing a pole within the past two months. BTES has never provided service to any portion of the Myers tract, north of Interstate 81 discussed hereinabove.

12. In 1988/1989 a controversy arose among KgPCo, BTES, and Johnson City Power Board over the right of KgPCo to expand its services into areas the City of Kingsport had annexed. With respect to this boundary dispute, the controversy between KgPCo and BTES concerned what was then known as the Steadman Farm property which lay between Tri-Cities Airport and what is now the area near Interstate 81. The City of Kingsport purchased the Steadman Farm property, which was served, to some degree, by BTES along State Highway 75. KgPCo gave notice it would expand its services into the new Steadman Farm portion of the City of Kingsport, pursuant to its exclusive franchise with the City of Kingsport.

13. Both BTES and Johnson City Power Board opposed the position of KgPCo; and, BTES spearheaded an effort by TVA distributors, including BTES and Johnson City Power Board, to prevent KgPCo from expanding its existing service territory by having legislation introduced in the Tennessee General Assembly to block any KgPCo expansion.

14. While the various bills were pending, BTES, KgPCo, and the Johnson City Power Authority did engage in negotiations but no final agreement was reached initially. One of the bills pending in the General Assembly was Senate Bill 1336, House Bill 1135 which all three electric systems eventually came to support.

15. By Letter Agreement dated April 19, 1989, the Chief Executives of KgPCo, BTES and Johnson City Power Board agreed not only to support said bill, but also agreed to several points which are relevant to this boundary dispute. Attached as EXHBIT 10 is the Letter Agreement. Specifically, TPUC should note the following portions of this Letter Agreement:

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

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

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

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

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

The bill, as supported by the three power distributors, and essentially containing the provisions outlined in EXHIBIT 10, passed the General Assembly and was signed into law by the Governor.

16. That Act, Public Chapter 230, is codified at T.C.A. § 65-34-101 - § 65-34-108. A copy of the Act is attached as EXHIBIT 11.

17. The Act mandated that the existing service territory of KgPCo in Sullivan County, Tennessee was fixed as of February 16, 1989. The school site in question, as part of the former



Myers tract, was in KgPCo's service territory as of that date, particularly since KgPCo was actually serving the site well before February 16, 1989. This means BTES has no right to service the school site and its incursion violates the relevant portions of the 1989 Act. Of particular importance, when read with the April 19, 1989 letter (Exhibit 10), (which was executed by the then and now General Manager of BTES) are the following portions of the Act:

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

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

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

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

In summary, these definitions along with the Letter Agreement (EXHIBIT 10) establish that the service territory that KgPCo was serving on February 16, 1989, which included the school tract,

remain in its service territory; and, it is the exclusive provider of electricity to that service territory and school site; and, BTES may not make an incursion into that service territory and school site and has no legal right to provide service to the new high school. T.C.A. § 65-34-101 et. seq. Moreover, the Sullivan County School System cannot choose BTES to provide electric service to the new school as same is prohibited by law. Id.

18. The tract of land in question, including the site of the new school, was part of KgPCo's service territory on February 16, 1989, has never been served by BTES, and KgPCo is the sole electric utility which can provide electric service to the new school. BTES must remove its pole and other equipment as it has no right to serve the new school, pursuant to the 1989 Act and the Letter Agreement among the three power distributors. Moreover, it is in the public interest and in the interest of Sullivan County taxpayers that the new high school be served by KgPCo as its rates are considerably lower than that of BTES.

PREMISES CONSIDERED, Petitioner, Kingsport Power Company d/b/a AEP Appalachian Power, requests the following relief:

(1) That TPUC convene a contested case to decide the boundary dispute between Petitioner and BTES relative to which power distributor has the right to serve the new Sullivan County High School, pursuant to T.C.A. § 65-34-105, T.C.A. § 4-5-301 et seq., and TPUC Rules and Regulations 1220-1-2-.02;

(2) That TPUC make a finding and declare pursuant to T.C.A. § 65-34-105 and T.C.A. § 4-5-223 et seq. that only Petitioner has the right to serve the tract on which the new high school will be located and the new high school;

(3) That, if necessary, TPUC issue a permanent injunction pursuant to T.R.C.P. 65 which prohibits BTES from taking any steps to attempt to serve the tract in question and which mandates that the pole and other equipment which BTES has placed on the site be removed;

(4) That TPUC grant Petitioner general relief and such other relief as TPUC deems appropriate; and

(5) That TPUC assess costs and discretionary costs against BTES.

Respectfully submitted this the 30<sup>th</sup> day of August, 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@hsdlaw.com](mailto:bovender@hsdlaw.com)

Email: [jharvey@hsdlaw.com](mailto:jharvey@hsdlaw.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 Formal Notice of Publication has been served upon the following by mailing a copy of same by United States mail, postage prepaid, as follows, on this the 30<sup>th</sup> day of August, 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  
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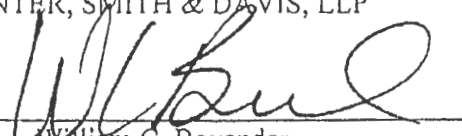
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Blountville, TN 37617

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

HUNTER, SMITH & DAVIS, LLP

By

  
William C. Bovender

**SEE ATTACHED**

## AFFIDAVIT OF DR. R. MICHAEL BROWDER

State of Tennessee

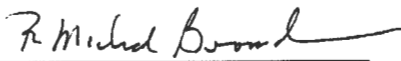
County of Sullivan

I am R. Michael Browder, the Chief Executive Officer, of Bristol Tennessee Essential Services. On September 14, 2017, I attended the meeting of the Sullivan County Board of Education in Blountville, Tennessee. At that meeting Evelyn Rafalowski, Director of Schools made the recommendation that the Board act to authorize the completion of an application for service with Bristol Tennessee Essential Services ("BTES") and to name BTES as the preferred choice to provide electric service and internet service to the new county high school on the Lynn Road property. On motion by Mr. Jerry Greene and a second by Ms. Jane Thomas, the Board unanimously with one abstention approved and authorized the recommended action. Below is the vote of each Board member:

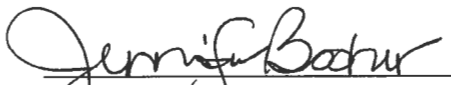
Mr. Jerry Greene	yes	Mr. Mathew Spivey	yes
Mr. Michael Hughes	yes	Ms. Jane Thomas	yes
Mr. Mark Ireson	abstained	Mr. Dan Wells	yes
Mr. Randall Jones	yes		

On September 15, 2017 BTES received the completed application for initial temporary service to the property on behalf of the Board signed by Ms. Rafalowski, a copy of which is attached to this Affidavit.

I have also read the "Motion to Dismiss or Suspend Kingsport's Petition Pending Outcome of Condemnation Suit in Sullivan County Circuit Court" and state that the information therein concerning or attributed to BTES is true and correct to the best of my knowledge.

  
Dr. R. Michael Browder

Sworn to and subscribed before me this day of 28 September 2017.

  
Notary Public

My Commission expires: 10-23-2018





**Application for General Power Services for Temporary Service.**

## 2 FORMS OF IDENTIFICATION ARE NEEDED WHEN APPLYING FOR SERVICE

PLEASE PRINT

Application for (select all that apply): Electric ☒ Cable ☒ Internet ☒ Telephone ☐

1. Name (to appear on bill) Sullivan County Board of Education  
Your Name Evelyn Rafalowski Relationship to the business / Position Director of Schools  
Do you have the authority to execute contracts for the business? Yes ☒ No ☐
2. Service Address 380 Lynn Road
3. Mailing Address (if different from above) P.O. Box 306 Blountville, TN. 37617
4. Telephone (location) \_\_\_\_\_ (alternate) 423-354-1001 Email evelyn.rafalowski@sullivan.k12.tn.net
5. How are premises to be used? High school
6. If a business, what type? Proprietorship \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Other (specify) School  
SSN N/A Employer ID # / Taxpayer ID # (if different) ON File  
Name of Principal(s) (proprietorship or partnership) N/A  
Principal(s) Home Address(s) N/A
7. Is the property rented? Yes \_\_\_\_\_ No ☒  
If yes, who is the landlord? \_\_\_\_\_ Please provide a copy of the lease or proof of occupancy
8. Type of Structure: Building ☒ Trailer \_\_\_\_\_ Other (specify) \_\_\_\_\_  
Type of Heat: Electric \_\_\_\_\_ Gas \_\_\_\_\_ Oil \_\_\_\_\_ Other (specify) \_\_\_\_\_
9. Has your organization and/or the principal(s) had electric service with Bristol Tennessee Essential Services before?  
Yes ☒ No \_\_\_\_\_ If yes, where? Several School Locations

BTES requires a deposit of two times the highest bill at the location at which you are applying. Deposit requirements must be met before an application will be processed. Deposits are refunded after the customer no longer has an account with BTES, at which time the last bill will be deducted. Any remaining balance will be billed/refunded to the customer. I certify that all the answers above are true and complete and are submitted for the purpose of obtaining services from BTES. I agree to be responsible for all charges for such services until BTES is notified in writing to the contrary and services discontinued. I understand and agree that such services shall be furnished, subject to the **Rules and Regulations of BTES**, as amended from time to time, copies of which are available to me online at [www.btes.net](http://www.btes.net) or during business hours at BTES' office, 2470 Volunteer Parkway, Bristol, Tennessee.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name \_\_\_\_\_

01/15

(OFFICE USE ONLY)

Turn on date	T-on	Read	Location	Connection Fee: Paid	Billed
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Customer:	Old	New	Member Sep#	SO#
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**Contract Required: Yes** \_\_\_\_\_ **No** \_\_\_\_\_ **Contract Signed: Yes** \_\_\_\_\_ **No** \_\_\_\_\_ **Contract Set-up on Account: Yes** \_\_\_\_\_ **No** \_\_\_\_\_

Deposit Amt	Guarantor's Name	Member Sep#
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Guarantor#	Uncollectible:	Member Sep#	Amt
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Turn off Date for Old	Member Sep#	SO#
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Temp Service	Temp Service Fee: Paid	Billed	Inspections: IAF	ITBAF
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Grid	Transformer	Nearest Location
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**Customer Services: Bank Draft**                      **E-bill**                      **Alerts**                      **Completed by**\_\_\_\_\_