

**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 AND REPLY OF  
BRISTOL TENNESSEE ESSENTIAL SERVICES**

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Pursuant to Commission Rule 1220-1-2-.06(3), Bristol Tennessee Essential Services (“BTES” or “Bristol”) requests permission to submit this reply to the brief filed October 10, 2017 by Kingsport Power Company (“KPC” or “Kingsport”) opposing Bristol’s motion to dismiss or suspend this proceeding pending the outcome of Bristol’s condemnation suit in Sullivan County Circuit Court.

**Argument**

Kingsport acknowledges (Response, at 7) that Bristol has the statutory authority to take by condemnation Kingsport’s “facilities, equipment, and service areas” (T.C.A. § 65-34-106) and that Bristol has filed a condemnation suit in Sullivan County Circuit Court to take part or all of the site where the new county high school will be built.<sup>1</sup>

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<sup>1</sup> As explained in Bristol’s motion, the school site consists of four parcels of land. See, “Petition for Condemnation of Service Rights and For Declaratory Judgment” (attached to Bristol’s Motion) at ¶¶ 9 and 10. The school and athletic fields will be built on the two larger parcels, which total 109.39 acres. *Id.*, at ¶ 9. The parcels are farm land, and neither BTES nor KPC has provided electric service to any customer on those parcels. *Id.*, at ¶ 15. The two smaller parcels, totaling 3.08 acres, will be part of the school campus adjacent to the main building. *Id.*, at ¶ 10. KPC apparently has provided electricity to a farm house on each parcel. *Id.*, at ¶ 13. BTES has petitioned the court to take the smaller parcels and, if necessary, the larger ones as well so that Bristol may provide both electric and broadband internet service to the new school as requested by the Sullivan County Board of Education.

Kingsport argues, however, that the Sullivan County Court “must defer” to the Commission before acting on Bristol’s condemnation suit (Response, at 6) and that Kingsport “will be filing dispositive motions” asking the Court to dismiss Bristol’s suit for, among other reasons, “failure to exhaust administrative remedies” before this agency. Id., at 9.<sup>2</sup>

Once KPC’s motions are filed, the Circuit Judge will decide whether to move forward with Bristol’s condemnation suit or, as Kingsport requests, await the conclusion of these proceedings. If the Court agrees with Kingsport and dismisses or delays the condemnation suit to await a decision by this agency, then the Commission should proceed. If, on the other hand, the Judge proceeds with the condemnation action, it would be pointless for the agency to spend time and resources determining the location of thirty-year-old boundary lines that the Court may soon move. In either case, it makes no sense for the Commission to act until the Court has ruled.

#### Conclusion

Kingsport’s Response only reinforces Bristol’s argument for holding this proceeding in abeyance. The Circuit Court will decide whether this dispute between Kingsport and Bristol proceeds in court or is heard first by the agency. Therefore, BTES reiterates its motion that the Commission either dismiss Kingsport’s petition for failure to state a claim<sup>3</sup> or suspend these proceedings pending further action by the Sullivan County Circuit Court.

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<sup>2</sup> Bristol believes that the “exhaustion of administrative remedies” doctrine does not apply to a condemnation proceeding because the Circuit Court has exclusive, original jurisdiction over condemnation suits and concomitant authority to decide issues necessary to rule on a condemnation request. Bristol, however, has not addressed that issue here because it is a question the Court – not the Commission – will decide.

<sup>3</sup> KPC’s Response does not address Bristol’s argument that while the Commission has jurisdiction to determine the location of KPC’s service territory as it existed in 1989, the agency has no statutory authority to declare that KPC has an exclusive right to serve the site of the new school or to enjoin Bristol from serving it. The Commission cannot provide the relief Kingsport requests.

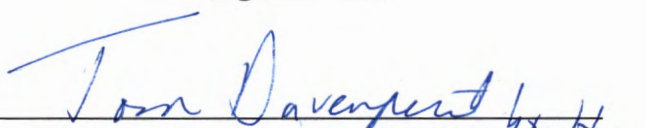
Respectfully submitted,

By: \_\_\_\_\_



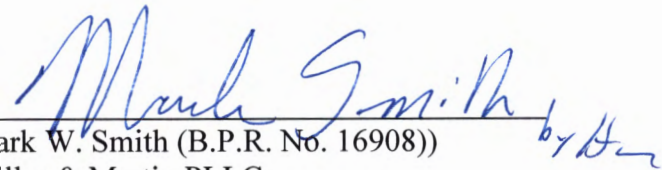
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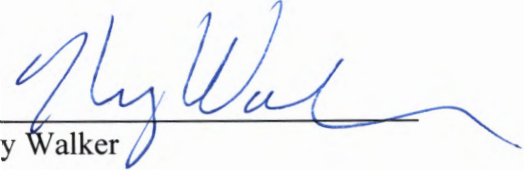
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of October, 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:

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