

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

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

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**RESPONSE OF BRISTOL TENNESSEE ESSENTIAL SERVICES TO MOTIONS FOR  
TEMPORARY INJUNCTION AND FOR EXPEDITED PROCEEDINGS**

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On October 23, 2017, Kingsport Power Company (“KPC” or “Kingsport”) filed two motions with the Commission. One was a “Motion for Temporary Injunction” against Bristol Tennessee Essential Services (“BTES” or “Bristol”). The other was a “Motion for Expedited Proceedings” in this docket. Pursuant to Commission Rule 1220-1-2-06(2), Bristol files this response to the two motions.

The same day those motions were filed, the Commission opened a contested case in this docket and delegated to a Hearing Officer the responsibility to establish a procedural schedule and rule on preliminary motions including – expressly – Bristol’s motion to suspend these proceedings pending developments in the condemnation suit filed by Bristol in Sullivan County Circuit Court. The Commission also asked the parties to keep the agency informed of the progress of that suit. At this time, no written order has been issued explaining the Commission’s oral ruling. It is therefore not clear whether the Commission also delegated to the Hearing Officer the power to rule on Kingsport’s Motion for a Temporary Injunction.<sup>1</sup>

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<sup>1</sup> Kingsport’s motion cites no agency precedent nor any statute that gives the Commission authority to issue injunctions.

Under these circumstances, Bristol respectfully awaits the issuance of a written order explaining the Commission's oral ruling, the appointment of a Hearing Officer, the Hearing Officer's ruling on Bristol's pending motion to suspend these proceedings, and, if the Hearing Officer denies Bristol's motion, the Hearing Officer's instructions concerning how the parties should address Kingsport's Motion for a Preliminary Injunction. In the event these proceedings go forward, Bristol agrees with Kingsport's request for an expedited procedural schedule.

In keeping with the agency's request to inform the Commission of developments in the condemnation suit, Bristol has attached to this filing a copy of BTSE's "First Request for Admissions to Defendant" filed October 24, 2017. Kingsport's answers to this request should determine whether the boundaries of Kingsport's "current geographic territory" as defined by T.C.A. § 65-34-102(1) include the location of the new school building and athletic fields.

As previously explained,<sup>2</sup> the site of the new Sullivan County high school encompasses four tax parcels. Farm houses (now being demolished) sit on two of those parcels and Kingsport apparently supplied electric service to both houses. These two parcels, totaling only about three acres, are near the front entrance to the proposed new school building. The other two parcels are much larger, totaling over one hundred acres, and are farm fields that have apparently never had any electric service. Those are the parcels where the new school building and athletic fields will be located.

Kingsport has alleged that it has provided electric service to customers on the site of the new school but has not specifically identified the parcels that were receiving service. In the request for admissions, Bristol has asked Kingsport to admit that KPC was not providing service to either

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<sup>2</sup> See, Bristol's Reply Brief filed October 13, 2017, footnote 1.

of the two large parcels on February 16, 1989. If Kingsport admits that it was, in fact, not providing service to either of those parcels, that area is not within Kingsport's "current geographic territory" as defined by T.C.A. § 65-34-102(1). Conversely, if Kingsport can show that it was providing service to one or both of the parcels on February 16, 1989, Bristol will acknowledge that any parcel receiving service on that date is within Kingsport's "current geographic territory" and proceed with the condemnation of that parcel. In either case, the boundaries of KPC's "current geographic territory" will be clarified and the parties can move forward accordingly.

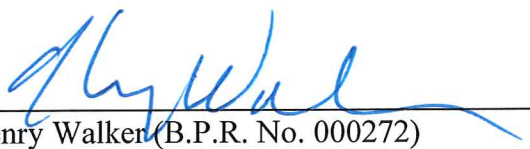
In conclusion, as the parties await the Hearing Officer's decision on Bristol's motion to hold these proceedings in abeyance, the arguments for granting Bristol's request grow stronger. The Sullivan County Circuit Court, not the Commission, will ultimately decide whether Bristol can provide electric and broadband service to the new school as requested by the Sullivan County Board of Education. Unless the Circuit Court holds otherwise or rules that the Commission should act first,<sup>3</sup> there is no reason for the agency to spend any more time or resources on this matter.

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<sup>3</sup> On October 27, 2017, Kingsport asked the Circuit Court either to dismiss Bristol's condemnation suit or to delay further proceedings until after the Commission has made a final decision in this docket. A courtesy copy of that motion has been provided to the Commission's General Counsel.

Respectfully submitted,

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

  
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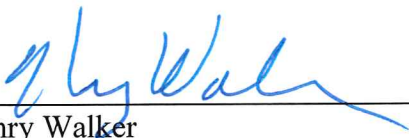
  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 30 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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\_\_\_\_\_  
Henry Walker



**ANSWER:**

4. BTES has the power of eminent domain to acquire facilities, equipment and service areas of any non-consumer owned electric system pursuant to the terms of T.C.A. § 65-34-106.

**ANSWER:**

5. AEP never provided any electrical service to any customer on property covered by Tax Map 079, Parcel No. 036.00.

**ANSWER:**

6. AEP did not provide any electrical service to any customer on property covered by Tax Map 079, Parcel No. 036.00 on or before February 16, 1989.

**ANSWER:**

7. AEP never provided any electrical service to any customer on property covered by Tax Map 064, Parcel No. 024.

**ANSWER:**

8. AEP did not provide any electrical service to any customer on property covered by Tax Map 064, Parcel No. 024 on or before February 16, 1989.

**ANSWER:**

9. AEP never received any revenues from the provision of electric service to any customer on the property covered by Tax Map 079, Parcel No. 036.

**ANSWER:**

10. AEP never received any revenues for the provision of electric service to any customer on the property covered by Tax Map 079, Parcel No. 036 on or before February 16, 1989.

**ANSWER:**

11. AEP never received any revenues from the provision of electric service to any customer on the property covered by Tax Map 064, Parcel No. 024.

**ANSWER:**

12. AEP never received any revenues from the provision of electric service to any customer on the property covered by Tax Map 064, Parcel No. 024 on or before February 16, 1989.

**ANSWER:**

13. Utility Pole No. 37821130C00344 was not used by AEP to provide any electrical service to any customer on the property covered by Tax Map 079, Parcel No. 036

**ANSWER:**

14. Utility Pole No. 37821130C00344 was not used by AEP to provide any electrical service to any customer on the property covered by Tax Map 079, Parcel No. 036 on or before February 16, 1989.

**ANSWER**

15. Utility Pole No. 37821130C00344 was not used by AEP to provide any electrical service to any customer on the property covered by Tax Map 064, Parcel No. 024.

**ANSWER:**

16. Utility Pole No. 37821130C00344 was not used by AEP to provide any electrical service to any customer on the property covered by Tax Map 064, Parcel No. 024 on or before February 16, 1989.

**ANSWER:**

17. Utility Pole No. 37821130C00343 was not used by AEP to provide any electrical service to any customer on the property covered by Tax Map 079, Parcel No. 036

**ANSWER:**

18. Utility Pole No. 37821130C00343 was not used by AEP to provide any electrical service to any customer on the property covered by Tax Map 079, Parcel No. 036 on or before February 16, 1989.

**ANSWER:**

19. Utility Pole No. 37821130C00343 was not used by AEP to provide any electrical service to any customer on the property covered by Tax Map 064, Parcel No. 024.

**ANSWER:**

20. Utility Pole No. 37821130C00343 was not used by AEP to provide any electrical service to any customer on the property covered by Tax Map 064, Parcel No. 024 on or before February 16, 1989.

**ANSWER:**

Respectfully Submitted,

**LAW OFFICE OF  
C. THOMAS DAVENPORT, JR.**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that an exact copy of the foregoing pleading has been served upon all parties at interest in this case, by delivering a true and exact copy to the offices of counsel of record shown at the addresses below, placing a copy in the United States mail, postage pre-paid.

William C. Bovender  
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This 24 day of October, 2017.

**MILLER & MARTIN PLLC**

By: 