

**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** )

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**PRE-FILED TESTIMONY OF DR. MICHAEL BROWDER**

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**Q.:** Please state your name and what you do for a living.

**A.:** I am R. Michael Browder, the chief executive officer of Bristol Tennessee Essential Services ("BTES").

**Q.:** What is the purpose of your testimony?

**A.:** The purpose of my testimony is to explain to the Commission the position of BTES in this docket.

**Q.:** Please tell the Commission a little bit about yourself and about BTES.

**A.:** A copy of my resume is attached as Exhibit A. I came to BTES in 1972 as Director of Engineering and Operations. I have been the CEO of BTES since 1977. BTES is a Tennessee Municipal Plant providing electric service to customers in the city of Bristol Tennessee and in other parts of Sullivan County. We currently have over 33,000 electric customers. We are also authorized to offer cable television, telephone, and high-speed internet access service to customers within our electric footprint. We currently have almost 18,000 broadband customers. We provide internet access on fiber at speeds ranging up to 10 Gigabits per second. On November 16, 2017 BTES was announced by US Commerce Secretary Wilbur Ross as a 2017 recipient of the

prestigious Malcolm Baldrige Award. The Baldrige Award is a Presidential-level honor recognizing exemplary practices among American organizations and businesses. The Baldrige Award was established by Congress in 1987. Of the 110 recipients recognized in the ensuing 30 years, BTES is the first utility ever to receive it.

**Q.: Do you currently provide service to any high schools in Sullivan County?**

**A.:** Yes. We currently provide service to Sullivan East High School, and Sullivan Central High School, and Bristol Tennessee High School. We also provide broadband internet access at 2 Gigabits per second to those schools and we carry their home football games and other events over our cable television service.

**Q.: How did this dispute arise between BTES and Kingsport Power Company?**

**A.:** For some time, the Sullivan County Board of Education has been planning to build a new high school that is right on the edge of our service territory and school board staff has been talking to Bristol about whether we would be available to provide electric and broadband service to the new school. In anticipation, we put a pole and a line on the property which is there now. On September 15, 2017, the Board voted to select BTES as “the preferred choice to provide electric service and internet service to the new high school.” The vote was six to zero with one member abstaining. No one voted to ask for service from Kingsport Power which also has poles in the area. Like Bristol, Kingsport currently provides service to two Sullivan County high schools and therefore the Board is very familiar with Kingsport’s rates and level of service. We are very proud of the fact that the Board chose Bristol over Kingsport. I believe that is due to the reliability of our electric service, and the quality of our internet and other service, and the value of our professional broadcast of their high school football games and other events.

After the Board made its decision, we realized that part of the school site might be within Kingsport's "current geographic territory" as that term is defined in T.C.A. § 65-34-102. Therefore, in order to provide the requested service, we filed a lawsuit in Sullivan County Circuit Court pursuant to T.C.A. § 65-34-105 in order to take by eminent domain any parcels of land that are included in the school site and that may be part of Kingsport's "current geographic territory." Naturally, BTES will pay appropriate compensation to Kingsport as determined by the court.

**Q.:**           **Has BTES previously exercised its power of condemnation under this statute?**

**A.:**           No. This is the first time. We are doing it for the simple reason that the Board of Education has chosen BTES as its preferred provider of electric and broadband service and while some parts of the site of the school appear to be outside of Kingsport's territory, other parts may be inside KPC's "current geographic territory." Therefore, unless Kingsport will give up that area voluntarily, our alternative to provide service to the school is by exercising the power of eminent domain under Section 106. That statute expressly authorizes a municipal electric system such as BTES to take by eminent domain the "facilities, equipment, and service areas" of a "non-consumer owned" electric such as Kingsport. We intend to move forward with that lawsuit as expeditiously as possible so as not to delay the construction or completion of the new high school.

**Q.:**           **What do you mean by Kingsport's "current geographic territory"?**

**A.:**           I am referring to the language of T. C.A. § 65-34-102 (1) which states that a utility's "current geographic territory" means the parcels of land, as designated by the county tax assessor, "to which a public electric system was providing service on February 16, 1989." If a dispute arises over which parcels were receiving service on that date, this Commission is authorized by T.C. A. § 65-34-105 to "hear and resolve" that dispute.

**Q.:           What is the position of BTES regarding Kingsport's "current geographic territory" around the site of the new school?**

**A.:**           Our position is very simple. If Kingsport can prove to the satisfaction of this Commission that Kingsport was providing electric service to a customer located on a tax parcel within the school site on February 16, 1989, then that parcel is within Kingsport's "current geographic territory" and we will address that parcel in our condemnation suit. If there is a tax parcel within the school site to which Kingsport was not providing service on that date – or cannot prove to the satisfaction of the Commission that it was providing service on that date – then the parcel is not within Kingsport's current geographic territory and Bristol may provide service to that parcel without going through the condemnation process.

**Q.:           Has Bristol made an independent determination of which parcels were or were not receiving service from Kingsport on that date?**

**A.:**           We are continuing to investigate the issue, but it is complicated by the fact that although there are four parcels there today, we now believe that there may have been only three parcels there in 1989. But whether there were three or four, our position is the same. The burden of proof is on Kingsport and if they can prove to this Commission that they were providing service to a customer on a parcel that existed in 1989, we will abide by the agency's decision on that issue and take the matter up in Circuit Court.

**Q.:           Kingsport has said that BTES cannot take their service area by eminent domain because to do so would violate a "letter agreement" between the parties dated April 19, 1989. Do you have any comment on that?**

**A.:**           First, I think that is an issue for the consideration of the Sullivan County Circuit Court. Kingsport has raised this same issue in the Circuit Court as a defense to the condemnation

action and that court will determine whether or not the letter agreement overrides the statute. Nevertheless, I want to make it clear that I personally was involved in the discussions which resulted in both the passage of Chapter 34 of Title 65 and in the letter of intent.

**Q.: What was the purpose of the statute?**

**A.:** The purpose of the statute, in my opinion, was to stop the spread of Kingsport Power outside then-existing city limits into areas not already served by Kingsport Power. You can read that purpose in Section 101(6) and in Sections 103 and 104. It was not the purpose of the statute to stop the spread of consumer-owned electric companies. That is why the statute gives consumer-owned companies the right to take by eminent domain the service areas of non-consumer owned electric companies. Taken as whole, Chapter 34 indicates a clear legislative preference for consumer-owned electric utilities over investor-owned electric utilities.

**Q.: What about the April 19, 1989 letter agreement?**

**A.:** As the letter itself states, it was a “letter of intent,” not a contract. It states that all parties to the letter were to “seek prompt action by their respective boards of directors, as necessary, to ratify and affirm these undertakings.” Kingsport Power itself was supposed to “seek prompt action by the City of Kingsport to approve the Agreement and to make an appropriate revision to its franchise within the City.” To my knowledge, none of that ever happened. Kingsport and BTES each removed facilities from certain areas in the manner contemplated in that letter, but as far as I know, none of the three parties ever took the steps necessary to turn this letter of intent into a binding written contract. Bristol certainly did not and none of the parties pursued the matter further.

**Q.: Did Kingsport Power act as if the letter of intent was a binding contract?**

A.: No. Less than a year after the letter of intent was signed, Kingsport Power tried to take from BTES an 87-acre site at the southwest corner of the intersection of I-81 and Highway 126. The site was located within the service area of Bristol and was going to be developed into a shopping center. Attached to my testimony as Exhibit B are letters which indicate that Kingsport had contacted the developer and persuaded him to try to get Bristol to release the area to Kingsport. Had the letter of intent been a binding contract, such action by Kingsport would have violated that contract. This further demonstrates that none of the parties **who signed the letter of intent** ever took any action to turn the letter into a contract. In fact, in that letter of intent Kingsport agreed that "it is appropriate to use the procedures provided in Senate Bill 1336, House Bill 1135, to adjust their geographic territories...". All three parties were to provide letters endorsing the bill. That bill was enacted as Public Chapter 230 of the 1989 Public Acts and is codified at TCA Section 65-34-101 *et. seq.* Kingsport now attacks portions of that same act as being unconstitutional.

**Q.: Kingsport has also stated that they can provide service to the new school at a cheaper rate than Bristol. Do you have any response to that?**

A.: As I said earlier, the Sullivan County School Board has had plenty of experience with the services of both BTES and Kingsport and overwhelmingly chose BTES as the preferred provider for the new school. Kingsport's rates may be a little lower or not depending on a customer's specific situation, but there is no question that the service of BTES is significantly more reliable than Kingsport's service. Attached to my testimony as Exhibit C is an exhibit showing the number and length of outages experienced by both utilities in 2015 and 2016 as reported to the federal government and the estimated cost of those outages to consumers. As you can see, Bristol's service is more significantly more reliable than Kingsport's service. I think that

our reliability, quality of service, broadband internet service, and professional broadcast of athletic events are the reasons why the Board chose BTES over Kingsport.

**Q.: Do you have any concluding remarks?**

**A.:** The school site is located on the edge of the service territories of both utilities and both Kingsport and Bristol can readily meet the electric demand of this new customer. At the end of the day, however, the decision as to which utility can better meet the demands of the school has been made –and should be made – by the Board of Education. We accept the Board’s decision and are taking the necessary legal steps to be the “preferred provider” of electric and internet service to the school. Kingsport does not accept that decision and has thrown up every legal challenge imaginable, even to the point of challenging the constitutionality of the state law that gives BTES the right to take this area by eminent domain. We are going to do our best to prevent those legal obstacles from delaying the construction and completion of the new school. We appreciate the fact that the Commission has expedited its consideration of this docket and intends to make a decision on December 12, the day of the hearing, as to which tax parcels were within Kingsport’s “current geographic territory” on February 16, 1989. We will accept the Commission’s decision on that boundary issue and move forward from there.

**Q. Does that complete your testimony?**

**A.:** Yes, it does.



I swear that the foregoing testimony is true and correct to the best of my knowledge,  
information and belief.



R. Michael Browder  
Chief Executive Officer  
Bristol Tennessee Essential Services

*STATE OF TENNESSEE*

*COUNTY OF SULLIVAN*

Sworn to and subscribed before me this 16<sup>th</sup> day of November 2017.



Notary Public

My Commission expires: 10-23-18





Respectfully Submitted,

By: 

Henry Walker (B.P.R. No. 000272)  
Bradley Arant Boult Cummings, LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Phone: 615-252-2363  
Email: [hwalker@babbc.com](mailto:hwalker@babbc.com)

By: 

C. Thomas Davenport, Jr. (B.P.R. No. 001696)  
615 Shelby Street  
P.O. Box 966  
Bristol, TN 37621-0966  
Phone: 423-989-6500  
Email: [tom@ctdlegal.com](mailto:tom@ctdlegal.com)

By: 

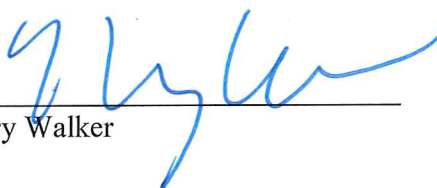
Mark W. Smith (B.P.R. No. 16908))  
Miller & Martin PLLC  
832 Georgia Avenue, Suite 1200  
Chattanooga, TN 37402  
Phone: 423-756-6600  
Email: [mark.smith@millermartin.com](mailto:mark.smith@millermartin.com)

*Attorneys for Bristol Tennessee Essential  
Services*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of November, 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@hsdlaw.com](mailto:bovender@hsdlaw.com)  
[jharvey@hsdlaw.com](mailto:jharvey@hsdlaw.com)

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

# EXHIBIT A

## BIOGRAPHY: R. MICHAEL BROWDER, PE, ED.D.

Michael Browder has served as CEO of Bristol Tennessee Essential Services (BTES) since 1977. He earned a Doctorate of Educational Leadership and Policy Analysis from East Tennessee State University (ETSU) *Organizational Culture: How Changes Impact Attitudes Toward Job Satisfaction*, (Doctoral dissertation), a Master of Administrative Science degree from the University of Alabama Huntsville and a Bachelor of Electrical Engineering Degree from Auburn University. He is a registered Professional Engineer in both Tennessee and Alabama.

Under Browder's leadership, BTES expanded their product offerings in 2005 to add cable and Internet services and again in 2006 to add telephone services. BTES now offers the fastest Internet available in the United States with 10 Gigabits of service available to its customers. Additionally, BTES received the Tennessee Center for Performance Excellence (TNCPE) Level 4 Excellence Award in 1994 and 2012.

Browder is the 2010 recipient of the TNCPE Ned R. McWherter Leadership Award and served on its Board of Directors from 1997-2009. He is also the 2013 recipient of the Bristol Chamber of Commerce Lifetime Achievement Award and the 2015 Award of Honor from the ETSU National Alumni Association.

In addition to being a past chairman for the American Public Power Association (APPA), Browder served as a board member for nine years and was part of the Executive Director Search Committee that hired the previous CEO. Since 2003, he has served on the Nominations and Awards Committee. To honor his longtime commitment to the enhancement of the electric power industry, Browder has received several awards from APPA including the James D Donovan Individual Achievement Award, the Harold Kramer-John Preston Personal Service Award and the Alex Radin Distinguished Service Award.

Browder works closely with the Tennessee Valley Public Power Association and is active on several committees. Most notable is the Rates and Contracts Committee, where he has been a Chair since 1990. The committee works closely with the Tennessee Valley Authority to keep electric rates low for the valley customers. He has served on their Board of Directors several times since 1989.

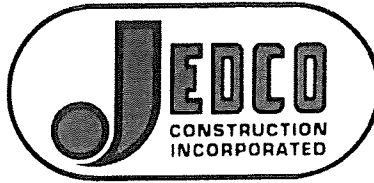
Locally, Browder is very active in his community. He is a past Chairman of the Bristol Chamber of Commerce and has served on various committees for the Chamber. He has been a past Chairman of the Board for Bristol Regional Medical Center (Wellmont) and helped to bring to fruition a new \$111 million hospital. Browder served on the United Way of Bristol Board of Directors from 1977 until 2008. He served two terms as President as well as on other committees. He led their annual campaign as Campaign Chairman in 1979 and later went on to receive their Outstanding Volunteer Award in 1991. He has served on several boards for local schools including Bristol Tennessee School System, East Tennessee State University, King University and Northeast State Community College.

Browder has been a member of the Rotary Club of Bristol VA-TN since 1973. Offices he has held include President, Assistant Governor and District Membership Chairman. He is proud to have sponsored over 90 members into Rotary.

BIOGRAPHY: R. MICHAEL BROWDER, PE, Ed.D.

He and his wife, Linda, are very active in their church. Browder serves as a Deacon and a member of the Building Committee. He is a member of the Pastor Search Committee and has been a Sunday School Teacher. Together he and Linda have three children and six grandchildren.

# EXHIBIT B



P.O. BOX 31088 ZIP 27622-1088  
1400 NOWELL ROAD RALEIGH, N.C. 27607

January 23, 1990

Mr. R. Michael Browder  
General Manager  
Bristol Tennessee Electric Service  
P. O. Box 549  
Bristol, TN 37621

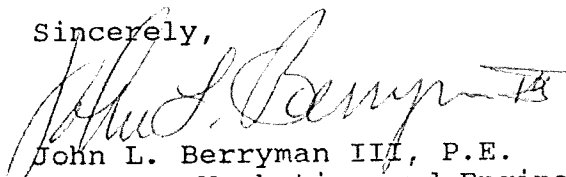
Dear Mr. Browder:

We are currently planning to develop an 87-acre site at the southwest corner of the intersection of I81 and Highway 126 for multiple uses. Our first project is planned to be an outlet shopping center.

Due to the extremely competitive nature of development, we are very sensitive to energy costs. To that end, the rate information we have available indicates that having Kingsport Power company provide electric service would help our competitive edge, making the project more viable. Based on this, we request that you allow Kingsport Electric Company to provide electric service to this site.

We appreciate your assistance on this matter.

Sincerely,

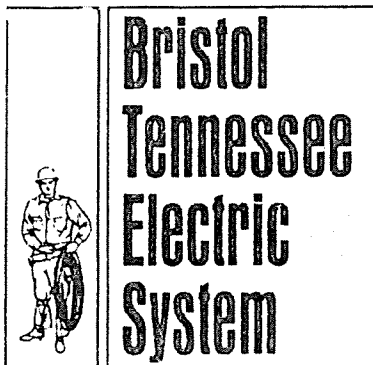


John L. Berryman III, P.E.  
Manager, Marketing and Engineering

JLB/smf

cc: Keith Westmoreland  
Jim Fesmier  
Dixon Fleming  
Honorable Ned McWherter





P. O. BOX 549 • 2470 VOLUNTEER PARKWAY • BRISTOL, TN 37621 • 615 968-1526

February 7, 1990

Mr. William Daugherty  
Jedco Construction, Inc.  
1400 Nowell Road  
P. O. Box 31088  
Raleigh, NC 27622

RE: Electrical Facilities for  
Carolina Pottery Mall

Dear Mr. Daugherty:

This letter is to confirm our conversation on Friday, January 19, 1990. As discussed then, the Carolina Pottery Mall to be located in Blountville, Tennessee, will be served with 120/208-volt, three-phase electrical service from padmounted transformers.

In order for us to determine the number and size of padmounted transformers required to serve your mall, we need to know the anticipated KW demand for each sign, house service and shop, a total of 23 services. Enclosed are copies of our Commercial & Industrial Load Survey form for your use to provide this information. Please be sure to complete the line "Anticipated Total Demand" denoted with a red asterisk.

Once we receive the Commercial & Industrial Load Survey forms, we can prepare the Contracts for Lighting and Power Service which will need to be signed by an authorized representative of the Carolina Pottery Mall. After the signed contracts have been returned to us, we can order the transformers for this job.

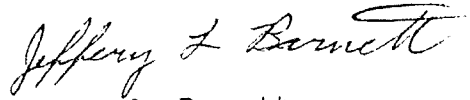
Since we have to order equipment for this project, the above mentioned process needs to be completed as swiftly as possible to insure the electrical services will be on schedule with the overall construction timetable.

Mr. William Daugherty  
Jedco Construction, Inc.  
February 7, 1990  
Page 2

A separate outside disconnect will be required for each service of 400 amps or larger in addition to a CT cabinet. A copy of the CT cabinet requirements is also enclosed.

If you have any questions or need any further information, please contact me at (615) 652-4536.

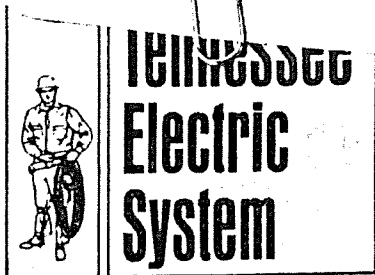
Sincerely,

A handwritten signature in cursive script that reads "Jeffery L. Barnett".

Jeffery L. Barnett  
System Engineer

JLB/mah

Enclosures



February 9, 1990

Mr. John L. Berryman III, P.E.  
Manager, Marketing & Engineering  
Jedco Construction, Inc.  
P. O. Box 31088  
Raleigh, NC 27622-1088

RE: Planned Outlet Shopping Center  
at Intersection of I-81 and  
Highway 126, Sullivan County, TN

Dear Mr. Berryman:

The site of the proposed outlet shopping center is located in the Bristol Tennessee Electric System service area. We have been working with Mr. Bill Daugherty of Jedco Construction to provide electric service to this development and will continue to work toward our goal of providing service by your proposed opening date.

If we can be of further service please call.

Sincerely,

J. Larry Nickell  
Director, Engineering & Operations

JLN/mah



June 1, 1990

Mr. Mike Browder  
Bristol Tennessee Electric System  
P.O. Box 549  
2470 Volunteer Pkwy.  
Bristol, TN 37621

Dear Mike:

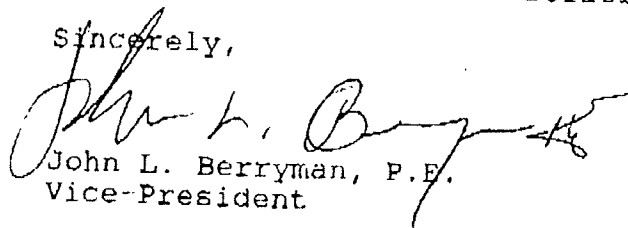
Thank you for your time and the information on projected costs.

It appears that there may be as much as 12% difference in rates in Kingsport Power's favor. However if the 8% increase comes into play in September this difference will be reduced further.

In order not to continue delaying our construction schedule we would appreciate it if you would provide power for our site at the earliest possible time. Currently, we expect to need permanent power by early August of this year.

Again thanks for your time and we look forward to a mutually beneficial relationship.

Sincerely,

  
John L. Berryman, P.E.  
Vice-President

3117 Poplarwood Ct. • Suite 326 • Raleigh, N.C. 27604  
Telephone (919)790-8500 • Fax# (919)790-8504

# EXHIBIT C

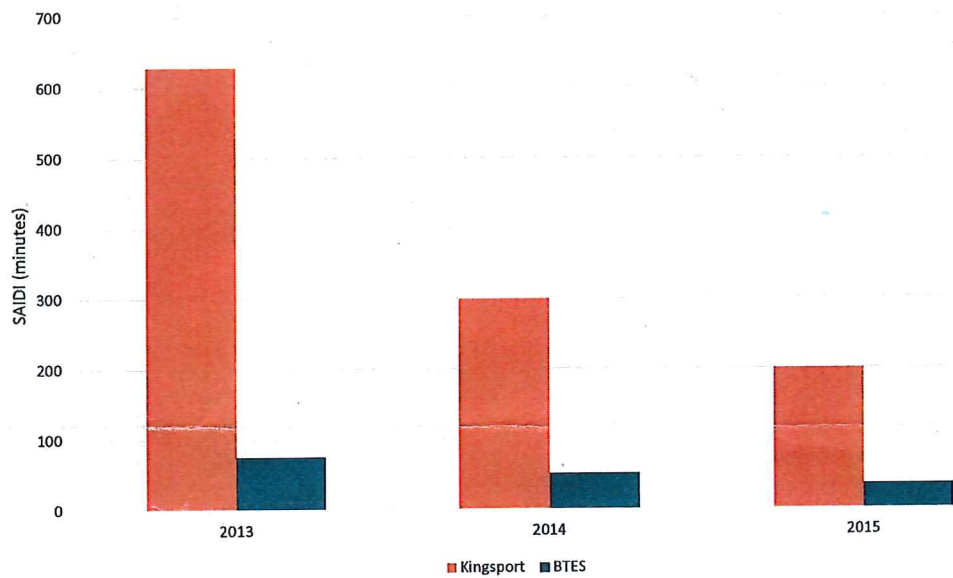
| Year | SAIDI<br>(Lower SAIDI indicates better reliability) |           | U.S. Dept of Energy ICE Calculator: Outage Costs Results |   |  |
|------|---|-----------|--|---|--|
|      | BTES  | Kingsport | BTES Customer Data with BTES Reliability (SAIDI)         | BTES Customer Data with Kingsport Reliability (SAIDI) | Kingsport Customer Data with Kingsport Reliability (SAIDI) |
| 2013 | 74.6  | 628       | \$4,393,098.50   | \$42,878,551.93                                       | \$60,429,878.90  |
| 2014 | 50.47   | 299       | \$3,261,218.60   | \$23,002,446.10                                       | \$25,101,684.90  |
| 2015 | 34.68   | 199.8     | \$2,638,341.70   | \$13,641,934.20                                       | \$17,575,476.40  |

**SAIDI** is defined as the average Interruption duration (In minutes) for customers served by the utility system during a specific time period.

SAIDI Data sourced from U.S. Energy Information Administration Annual Electric Power Industry Reports (2013-2015): <https://www.eia.gov/electricity/data/eia861/>

The U.S. Department of Energy **Interruption Cost Estimate (ICE)** Calculator is a tool developed with the Lawrence Berkely National Laboratory and designed for electric reliability planners at utilities, government organizations or other entities to estimate power outage costs and/or the benefits associated with reliability improvements.

Utility Provider SAIDI Comparison



Utility Provider ICE Comparison

