



Henry Walker
Direct: 615.252.2363
Fax: 615.252.6363
hwalker@babco.com

December 5, 2017

VIA EMAIL

Monica.smith-ashford@tn.gov

Monica L. Smith-Ashford
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

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

Dear Hearing Officer Smith-Ashford:

I am responding to the December 4, 2017 letter from Bill Bovender reiterating his request that you grant Kingsport's "Motion for a Temporary Injunction."

On Friday last, you ruled that because of the rapid progress being made in the Sullivan County Circuit Court lawsuit, all proceedings before the Commission have now been suspended. I understand that to mean that no further actions will be taken by the parties or the agency pending further notice.

The progress of the condemnation case also obviates the need for a temporary or permanent injunction, even if the Commission had the power to issue one. A hearing is scheduled on January 4, 2018. If the Court denies KPC's motion to dismiss the condemnation case and recognizes Bristol's statutory right to take this portion of Kingsport's service area by eminent domain, then Kingsport does not have, as the utility insists, an "exclusive" right to serve the school site. Without that right, there is no basis for KPC to request – or for the Commission to issue – an injunction prohibiting Bristol from serving the area. In other words, if the Court denies Kingsport's motion to dismiss, Kingsport's request for injunctive relief is moot.

Nevertheless, if you are considering lifting the suspension in order to rule on Mr. Bovender's request, Bristol respectfully asks for a few days' notice in order to bring to your attention two Attorney General's opinions relevant to the issue of whether the Commission has the power to issue an injunction. I was going to discuss those opinions in Bristol's pre-hearing brief which would have been filed yesterday but for the suspension.

7/4093700.1
215433-301001


Monica L. Smith-Ashford
December 5, 2017
Page 2

If, on the other hand, you are not considering KPC's motion at this time, BTES will reserve further argument on the injunction request until the appropriate time.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:


Henry Walker

HW/dbi
cc via email:
William Bovender, Esq. bovender@hsdlaw.com