

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

January 5, 2018

IN RE:

**PETITION OF KINGSFORT POWER COMPANY
d/b/a AEP APPALACHIAN POWER FOR
APPROVAL OF NEGOTIATED FRANCHISE
AGREEMENT WITH THE TOWN OF MT.
CARMEL, TENNESSEE, PURSUANT TO
T.C.A. § 65-4-107**

**DOCKET NO.
17-00095**

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before Chairman David F. Jones, Commissioner Herbert H. Hilliard and Commissioner Kenneth C. Hill of the Tennessee Public Utility Commission (the "Commission" or "TPUC"), the voting panel assigned to this docket, at the regularly scheduled Commission Conference held on December 12, 2017, for hearing and consideration of the *Petition of Kingsport Power Company d/b/a AEP Appalachian Power for Approval of Negotiated Franchise Agreement with the Town of Mt. Carmel, Tennessee, Pursuant to T.C.A. § 65-4-107* ("Petition") filed on September 11, 2017, by Kingsport Power Company d/b/a AEP Appalachian Power ("Kingsport Power" or the "Company").

THE PETITION

Kingsport Power is incorporated under the laws of the state of Virginia with its principal place of business in Kingsport, Tennessee. Kingsport Power is engaged in the business of

distributing electric power to approximately two thousand seven hundred (2,700) customers in its service area in the Town of Mt. Carmel, Tennessee.¹

On September 11, 2017, Kingsport Power filed a *Petition* requesting approval of a negotiated franchise agreement between Kingsport Power and the Town of Mt. Carmel, Tennessee (“Town” or “Mt. Carmel”). Along with its *Petition*, Kingsport Power submitted a copy of Mt. Carmel Town Ordinance 17-458², granting a non-exclusive franchise to Kingsport Power from Mt. Carmel for a 30 year term, a copy of the notice published by the Town in the Kingsport Times – News in compliance with TPUC Rule 1220-4-1-.05³, and the pre-filed testimony of Mr. Andrew Shaffron, Jr., Manager of Distribution Systems for the Kingsport Division of Appalachian Power Company.⁴

Kingsport Power currently provides electric distribution services to Mt. Carmel through a month-to-month franchise agreement that operates as an extension of previous franchise agreements between Kingsport Power and Mt. Carmel. The Town originally granted a franchise to Kingsport Power on August 24, 1962 for a term of 30 years. Said franchise agreement was extended for a term of 24 years up to and through June 8, 2016. Since June 8, 2016, the parties have operated on a month-to-month franchise.⁵ Kingsport Power and the Town engaged in negotiations to renew the franchise over a period of several months and agreed on terms of the franchise agreement renewal.⁶ On August 22, 2017, the Town of Mt. Carmel’s Board of Mayor and Alderman enacted Ordinance No. 17-458 (the “Ordinance”) which grants the non-exclusive franchise to Kingsport Power.⁷

¹ *Petition*, p. 2 (September 11, 2017).

² *Id.* at Exh. 1.

³ *Id.* at Exh. 2.

⁴ *Id.* at Exh. 3.

⁵ *Id.* at 2-3.

⁶ *Id.* at 3 and Exh. 3, p. 2.

⁷ *Id.* 3.

The negotiated franchise agreement establishes a thirty year term and brings the agreement into compliance with current laws, regulations and industry practices that have come into being since the original franchise agreement was entered into in 1962.⁸ The Ordinance allows for a franchise fee to be imposed, but does not state a fee amount. Instead, the Ordinance provides that if a franchise fee is to be paid to the Town, such franchise fee would be subject to approval of the Commission.⁹ The *Petition* does not seek approval of a franchise fee.¹⁰

In his pre-filed testimony, Andrew Shaffron states that the franchise agreement is necessary and proper for the public convenience and properly conserves the public interest for the following reasons:

1. The new franchise agreement, with the thirty (30) year term, is a sufficiently long-term arrangement through which current and future residents, businesses, industries and government facilities located within the corporate limits of the Town will be able to receive the benefits of continuing electric service from Kingsport Power. As such the Town will receive the highest quality electric service for the future;

2. The new franchise agreement ensures electricity will continue to be provided to the Town and rate-payers in the Town by an established and proven electric company, possessing the required expertise, facilities and distribution network necessary to provide continued excellent service; and,

3. The new franchise agreement provides to [Kingsport Power] continued access to public rights-of-way and new and existing customers. This will assure [Kingsport Power] is able to provide adequate and efficient service and to comply with the requirements of the TPUC, to ensure the rights and protection of the residents and property within the Town.¹¹

REQUIREMENT OF AND STANDARDS FOR COMMISSION APPROVAL

Tenn. Code Ann. § 65-4-107 (2015) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Commission. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a

⁸ *Id.* at Exh. 3, p. 3.

⁹ *Id.* at Exh. 1, p. 10.

¹⁰ *Id.*

¹¹ *Id.* at Exh. 3, pp. 3-4.

determination by the Commission, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.” Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Commission “shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require.”

FINDINGS AND CONCLUSIONS

The Commission issued a *Notice of Hearing* on December 1, 2017. On December 12, 2017, a Hearing was held before the voting panel at a regularly scheduled Commission Conference. Appearing for Kingsport Power were Mr. Bill Bovender, Esq. and Mr. Andrew Shaffron, Jr., Manager of Distribution Systems for Kingsport District of AEP Appalachian Power. At the Hearing, Mr. Shaffron ratified, then summarized his pre-filed testimony and was subject to questioning before the panel. Mr. John Pevy, Municipal Attorney, appeared on behalf of the Town of Mt. Carmel. No person commented or sought intervention during the Hearing.

Thereafter, based upon the testimony and the administrative record as a whole, the panel found that Kingsport Power’s new franchise agreement with Mt. Carmel was necessary and proper for the public convenience and properly conserves the public interest and that the terms of the franchise are fair and reasonable. Therefore, the panel voted unanimously to approve Kingsport Powers’ *Petition* for approval of its franchise agreement with Mt. Carmel.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Kingsport Power Company d/b/a AEP Appalachian Power for Approval of Negotiated Franchise Agreement with the Town of Mt. Carmel, Tennessee, Pursuant to T.C.A. § 65-4-107* is approved.

2. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.

3. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chairman David F. Jones, Commissioner Herbert H. Hilliard and Commissioner Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director