

# TOWN OF MOUNT CARMEL, TENNESSEE

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## BOARD OF MAYOR AND ALDERMEN MINUTES

August 15, 2017

### Special-Called Meeting

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#### BOARD OF MAYOR AND ALDERMEN SPECIAL-CALLED MEETING

A special-called meeting of the Board of Mayor and Aldermen of the Town of Mount Carmel, Tennessee, was held upstairs at the Town of Mount Carmel City Hall, 100 East Main Street, on August 15, 2017, at 6:00 p.m.

Those present and participating at the meeting:

Diane Adams, Alderman  
Eugene Christian, Alderman  
Margaret Christian, Alderman  
Wanda Davidson, Alderman  
Jennifer Williams, Alderman  
Carl Wolfe, Vice-Mayor  
Chris Jones, Mayor

Those absent:

None

Staff Present:

Marian Sandidge, City Recorder  
Gary Lawson, City Administrator  
John Pevy, City Attorney  
Grady White, Police Officer

#### CALL TO ORDER

The Mount Carmel Board of Mayor and Aldermen special-called meeting was called to order on August 15, 2017, at 6:00 p.m. by Mayor Chris Jones at Mount Carmel City Hall. Mayor Jones also chaired the meeting.

#### PRAYER AND PLEDGE OF ALLEGIANCE

William O. Dean led the Prayer and Ray Denton led the Pledge of Allegiance.

#### ROLL CALL

Marian Sandidge, City Recorder, conducted roll call. Board members present were Alderman Diane Adams, Alderman Eugene Christian, Alderman Margaret Christian, Alderman Wanda Davidson, Alderman Jennifer Williams, Vice-Mayor Carl Wolfe and Mayor Chris Jones. There were no absent members. Attorney John Pevy was also present. An attendance list is attached.

#### WELCOME FROM THE MAYOR

Mayor Jones welcomed everyone to the meeting. He reminded the visitors who wished to speak during visitor's comments to stand and state their name and address before commenting.

#### VISITORS COMMENTS

Garrett White, 421 Old Hickory, wants to know if the AEP franchise fee will be paid by the customer or the Town. If the customer will be paying, he thinks the property taxes should be lowered.

Janice Dean, 511 Carnation Lane, wants to know if the customer will be paying the franchise fee. She does not want the Town to vote for the franchise fee unless the Town was in desperate need for the money.

Carolyn Vaughn, 906 Ithaca, spoke against the franchise fee. She thinks the citizens are taxed to death.

**NEW BUSINESS**

**A. ORDINANCE 17-458. AN ORDINANCE GRANTING KINGSPORT POWER COMPANY D/B/A AEP APPALACHIAN POWER AN ELECTRIC UTILITY FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF ELECTRICITY DISTRIBUTION AND TRANSMISSION LINES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS, AND PUBLIC GROUNDS OF THE TOWN OF MOUNT CARMEL, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.** (first reading). Mayor Chris Jones presented ORDINANCE NO. 17-458, "GRANTING KINGSPORT POWER COMPANY D/B/A AEP APPALACHIAN POWER AN ELECTRIC UTILITY FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF ELECTRICITY DISTRIBUTION AND TRANSMISSION LINES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS, AND PUBLIC GROUNDS OF THE TOWN OF MOUNT CARMEL, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE." Following some discussion, a motion was made by Alderman Diane Adams and seconded by Alderman Jennifer Williams to adopt Ordinance No. 17-458 on its first reading. Those voting Yes: Alderman Diane Adams, Alderman Eugene Christian, Alderman Margaret Christian, Alderman Wanda Davidson, Alderman Jennifer Williams, Vice-Mayor Carl Wolfe, and Mayor Chris Jones. Those voting No: None. Those Absent: None. Mayor Chris Jones announced that Ordinance No. 17-458 passed on its first reading.

**B. ORDINANCE 17-459. AN ORDINANCE ENACTING A FRANCHISE FOR THE USE BY KINGSPORT POWER COMPANY D/B/A AEP APPALACHIAN POWER OF THE PUBLIC STREETS, ALLEYS, OTHER PUBLIC PLACES FOR ITS FRANCHISE FOR A SYSTEM OF ELECTRICITY DISTRIBUTION AND TRANSMISSION LINES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS UTILITY EASEMENTS, PARKWAYS AND PUBLIC GROUNDS OF THE TOWN OF MOUNT CARMEL, TENNESSEE, AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.** (first reading). Mayor Chris Jones presented ORDINANCE 17-459. "AN ORDINANCE ENACTING A FRANCHISE FOR THE USE BY KINGSPORT POWER COMPANY D/B/A AEP APPALACHIAN POWER OF THE PUBLIC STREETS, ALLEYS, OTHER PUBLIC PLACES FOR ITS FRANCHISE FOR A SYSTEM OF ELECTRICITY DISTRIBUTION AND TRANSMISSION LINES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS UTILITY EASEMENTS, PARKWAYS AND PUBLIC GROUNDS OF THE TOWN OF MOUNT CARMEL, TENNESSEE, AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE." Following some discussion, a motion was made by Alderman Wanda Davidson and seconded by Alderman Margaret Christian to table this matter at this time, to be brought back up later, at some point when detailed Town finances are available. Those voting Yes: Alderman Eugene Christian, Alderman Margaret Christian, and Alderman Wanda Davidson. Those voting No: Alderman Diane Adams, Alderman Jennifer Williams, Vice-Mayor Carl Wolfe, and Mayor Chris Jones. Motion failed. Following some additional discussion, a motion was made by Alderman Margaret Christian and seconded by Alderman Wanda Davidson to get rid of Ordinance No. 17-459. Those voting Yes: Alderman Eugene Christian, Alderman Margaret Christian, Alderman Wanda Davidson, Vice-Mayor Carl Wolfe, and Mayor Chris Jones. Those voting No: Alderman Diane Adams and Alderman Jennifer Williams. Those absent: None. Motion passed. Mayor Chris Jones announced that Ordinance No. 17-459 failed on its first reading.

**MAYOR COMMENTS**

No comment was made by Mayor Chris Jones.

**CITY ADMINISTRATOR COMMENTS**

Gary Lawson, City Administrator, said there would need to be a .23¢ property tax increase to make the \$175,000 in revenue expected by the Town once the AEP franchise passed. That revenue was budgeted in the FY 2018 budget.

**ALDERMEN COMMENTS**

Alderman Margaret Christian said that the Board of Mayor and Aldermen attended the 75<sup>th</sup> anniversary celebration at BAE recently. She said the hosts were very gracious. The celebration was nice and she really enjoyed attending.

**ATTORNEY COMMENTS**

Attorney Pevy had no comments.

**ADJOURNMENT**

Being no further business, a motion was made by Alderman Eugene Christian and seconded by Vice-Mayor Carl Wolfe to adjourn the meeting at 6:46 p.m.

Approved: \_\_\_\_\_

Chris Jones, Mayor



Attest: \_\_\_\_\_

Marian Sandidge, City Recorder

TOWN OF MOUNT CARMEL, TENNESSEE

**Sign In**

ATTENDANCE RECORD  
 DATE: **AUGUST 15, 2017**  
SPECIAL CALLED BMA MEETING

1. Marian Jindich	23.
2. Carl Wolfe	24.
3. Garrett White	25.
4. Shirley White	26.
5. Janice Dean	27.
6. Bill Dean	28.
7. Pearl Adams	29.
8. Eugene Chutkan	30.
9. Margaret V. Christian	31.
10. Wanda Davidson	32.
11. Ann Cox	33.
12. Ray Denton	34.
13. <del>Cliff Jones</del>	35.
14. Jennifer Williams	36.
15. Amy Shaffer	37.
16. R.J. Turner	38.
17. R.L. Seymour	39.
18.	40.
19.	41.
20.	42.
21.	43.
22.	44.

**ORDINANCE NO. 17-458**

AN ORDINANCE GRANTING KINGSPORT POWER COMPANY D/B/A AEP APPALACHIAN POWER AN ELECTRIC UTILITY FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF ELECTRICITY DISTRIBUTION AND TRANSMISSION LINES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND PUBLIC GROUNDS OF THE TOWN OF MT. CARMEL, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, Kingsport Power Company d/b/a AEP Appalachian Power (herein referred to collectively as the "Company"), is a regulated, investor-owned utility that provides electric power and energy to the citizens of the Town of Mt. Carmel (herein referred to as the "Town") and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the Town;

WHEREAS, the Town desires to set forth the terms and conditions by which the Company shall use the public ways of the Town;

WHEREAS, the Town and the Company recognize that both parties benefit from economic development within the Town;

NOW, THEREFORE,

BE IT ORDAINED BY THE TOWN OF MT. CARMEL, as follows:

**SECTION I. DEFINITIONS.**

That for the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

a) Board of Mayor and Alderman – the Board of Mayor and Alderman of the Town of Mt. Carmel, Tennessee.

b) Town – the Town of Mt. Carmel, Tennessee, and its respective successors and assigns.

c) Company – Kingsport Power Company d/b/a AEP Appalachian Power, a corporation organized under the laws of the Commonwealth of Virginia and its lawful successors and assigns.

d) Construction – the installation, laying, erection, renewal, repair, replacement, extension, or removal of an electric transmission and distribution system and such activity as may be necessary to construct, maintain and operate an electric system.

e) Electricity – Electricity transmitted and distributed into the Town by the Company.

f) Electric System – any lines for the transmission and distribution of electric energy, either by means of overhead or underground conductors, together with all necessary or desirable appurtenant equipment, to render public service and supply electric energy for heat, light, power or any other purpose or purposes for which electric energy is now or may hereafter be used.

g) Streets – the public streets, highways, avenues, roads, courts, alleys, lanes, ways, utility easements, parkways, public rights-of-way, or other public grounds, held or controlled by the Town, in the Town as they now exist or as they may be established at any time during the term of this franchise in the Town, but only to the extent of the Town's right, title, interest, or authority to grant a license or franchise to occupy and use such streets and easements for the construction and operation of a public utility system.

h) T.P.U.C. – the Tennessee Public Utility Commission or any successor state agency having jurisdiction over the Company.

## SECTION II. GRANT OF FRANCHISE.

The Town hereby grants to the Company the non-exclusive right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in the public streets, highways, avenues, roads, courts, alleys, lanes, ways, utility easements, parkways, public rights-of-way, or other public grounds, held or controlled by the Town (collectively referred to herein as "Public Ways"), in the Town as they now exist or as they may be established at any time during the term of this franchise in the Town, but only to the extent of the Town's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for the construction and operation of a

public utility system for the purpose of supplying and transmitting electric power and energy to the inhabitants of the Town and persons and corporations beyond the limits thereof.

### SECTION III. TERM.

The term of this Franchise is for a period of thirty (30) years from the date of the Company's acceptance hereof and the approval of the Franchise by the T.P.U.C.

### SECTION IV. ACCEPTANCE BY COMPANY.

The Company shall file with its Petition for Approval of the Franchise Agreement a written acceptance of the terms and conditions of same subject only to the disapproval by the T.P.U.C. of said terms and conditions.

### SECTION V. NON-EXCLUSIVE FRANCHISE.

The right to use and occupy the Public Ways of the Town shall be non-exclusive and the Town reserves the right to use the Public Ways for itself or any other entity that provides service to Town residences; provided, however, that such use shall not unreasonably interfere with the Company's Electric Facilities or rights as granted herein.

### SECTION VI. TOWN REGULATORY AUTHORITY

The Town and Company recognize that, under the law of the State of Tennessee, the T.P.U.C. is granted "...general supervisory and regulatory power, jurisdiction and control over public utilities, and also over their property, property rights, facilities and franchises. . ." T.C.A. § 65-4-104. However, to the extent not preempted by Tennessee state law, the Town reserves the right to adopt such additional ordinances and exercise its regulatory powers as may be deemed necessary in the exercise of its police powers for the protection of the health, safety and welfare of its citizens and their properties.

### SECTION VII. COMPLIANCE WITH APPLICABLE LAWS.

The Electrical Facilities of Company shall be constructed, maintained and operated, in good and safe condition, in accordance with standard engineering practices, and in accordance with any applicable Federal Laws and Regulations, Statutes of the State of Tennessee, the Rules and Regulations of the T.P.U.C., and Ordinances of the Town which do not conflict with any such federal or state laws, rules or regulations, as such practices and laws, statutes, ordinances, rules and regulations now exist or as they may be from time to time amended, changed or modified.

## SECTION VIII. STANDARD OF CARE.

That the Company shall at all times employ a reasonable standard of care and shall install and maintain and use industry standards or other reasonable methods and devices for preventing failure or accidents which are likely to cause damages, injuries or nuisances to the public.

## SECTION IX. LOCATION OF FACILITIES

(A) The Town and the Company agree that it is beneficial to both parties to this agreement and to the citizens of Mt. Carmel that the Town and the Company work together to plan the location of utility facilities as they relate to the Town's infrastructure and community planning. Towards that end, the Company and the Town commit to meet at least quarterly to review upcoming utility projects and the Town's ongoing planning efforts. In addition, the Company and the Town agree to jointly plan new development and redevelopment efforts to configure utilities in a way that compliments those efforts while affecting economical solutions to those desires.

(B) The Company understands that the Town reserves the right, by ordinance or resolution of the Board of Mayor and Alderman, or otherwise through proper representatives of the Town, to designate specifically the location of the Electric Facilities of the Company with references to municipal facilities, such as sewer and water mains, drainage facilities, fiber optic cable, signal poles and lines and similar services, other facilities, such as public telephone utilities, public electric utilities, public cable television utilities, and railway communication and power lines, in such a manner as to protect the public safety and public and private property and to facilitate the creation of a convenient, attractive and harmonious community. Failure by the Town to so designate does not relieve the Company of its responsibilities in matters of public safety as provided in this Ordinance. The Company shall construct, maintain and locate its Electric Facilities so as to not unreasonably interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal and fiber optic facilities owned or operated by the Town.

The rights and privileges granted by this franchise shall not be in preference or hindrance to the rights of the Town and any other lawful governmental authorities having jurisdiction to perform or carry out any public works or public improvements within the Public Ways.

## SECTION X. USE OF PUBLIC WAYS.

(A) The Company, in any opening it shall make in the Public Ways of the Town, shall be subject to the provisions of this Ordinance and to all applicable ordinances, codes and regulations of the Town. Specifically, in addition to the requirements contained herein, except in

the cases of emergencies, the Company shall at all times comply with all applicable Town ordinances with respect to any opening it shall make in the Public Ways of the Town. The proposed location of any part of the Electric Facilities to be constructed by the Company in, upon, across, under or over the Public Ways of the Town shall not unreasonably interfere with:

- (1) the public safety or the convenience of persons using the Public Ways;
- (2) the use of Public Ways for purpose of travel;
- (3) with any use or contemplated use of Public Ways by the Town either above or below the surface of the Public Ways for which plans have been prepared or for which plans are in the course of preparation, which plans have been authorized by the Town, and of which the Company has been previously notified by the Town; or
- (4) personal property lawfully in, upon, along, across, under or over the Public Ways.

(B) The Company's location, construction and maintenance shall not unduly burden regular maintenance procedures of the Town and shall be coordinated with the Town's annual paving program.

(C) The Company shall submit to the Town a drawing of all proposed street cuts prior to performing the work except in the case of an emergency excavation.

In the case of emergency excavations made in the Public Ways, the Company shall make a report of each such excavation to the Town within two (2) working days. Any inspections related to repair of excavations shall be promptly acted upon by the Town so as not to unreasonably delay the Company in discharging its public service obligation.

The Company shall use its best efforts not to interfere with or injure any utility or any other public improvement which the Town has heretofore made or may hereinafter make in, upon, across, along or under any Public Ways and shall not unnecessarily obstruct or impede such Public Ways of the Town.

The Company shall promptly remove or correct any obstruction, damage or defect in any Street which was caused by the Company in the installation, operation, maintenance or extension of the Electric Facilities. Any such obstructions, damage, or defect which is not promptly removed, repaired or corrected by the Company after proper notice to do so, given by the Town to the Company, may be removed or corrected by the Town, and the cost thereof shall be charged against the Company. Any expense, cost, or damages incurred for repair, relocation, or replacement to Town water, sanitary sewer, storm sewer, storm drainage, communication facilities or other property resulting from construction, operation, maintenance or extension of the

Electric Facilities shall be borne by the Company and any and all expense and cost incurred in connection therewith by the Town shall be fully reimbursed by the Company to the Town.

(D) If weather or other conditions do not permit the complete restoration required by this Section, the Company shall temporarily restore the affected Public Ways or property. Such temporary restoration shall be at the Company's sole expense and the Company shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(E) The Company shall not open, disturb or obstruct, at any one time, any more of the Public Ways than reasonably may be necessary to enable it to proceed in laying or repairing the Electric Facilities. Neither shall the Company permit any Street so opened, disturbed or obstructed by it in the installation, construction, repair or extension of its Electric Facilities to remain open or the Public Ways disturbed or obstructed for a longer period of time than reasonably shall be necessary.

(F) Whenever the Town shall widen, reconstruct, realign, pave or repave, or otherwise work on any Public Ways, or shall change the grade or line of any Public Ways, or shall construct or reconstruct any water, sanitary sewer, storm sewer, drainage or communications facility of the Town, it shall be the duty of the Company at the Company's cost and expense to move, alter or relocate its Electric Facilities originally constructed on a Public Way (that is not secured by a private easement) or any part thereof as reasonably requested by the Town. Upon written notice by the Town of the Town's intention to perform work as specified above, the Company shall within a reasonable period of time accomplish its obligation in accordance with and to conform to the plans of the Town for such construction, reconstruction of improvements.

(G) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of underground Electric Facilities must, to the extent the landscaping does not interfere with the safe operation of the facilities, be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work. The Town understands that vegetation growing in the vicinity of overhead power lines must be trimmed and maintained away from those lines to allow for safe operation of those lines.

(H) The Company shall give all required notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the construction being performed.

(I) Inspections during construction may be made by the Town.

(J) Construction and repair shall be performed with the least practical hindrance of the Public Ways for the purpose of travel or any other public purpose. After any work has commenced by the Company, in, upon, along, across, under, or over the Public Ways of the Town, the same shall be continued in good faith and with due diligence until completed. If, as determined by the Town, the Company refuses or fails to proceed in good faith, or any separable part thereof, with

such diligence as will ensure its completion within a reasonable period of time, the Town will issue notice to the Company of its findings and instructions and, if after three (3) days of receipt of such notice, the Company has not commenced to re-execute the work, the Town will cause the construction required in said notice to be performed and charge the Company the entire cost and expense plus ten (10%) percent of the construction.

(K) When any construction opening or excavation, disturbance, cut or damage is made in, along, upon, across, under or over the Public Ways for any purpose whatsoever by the Company, any portion of said Public Ways affected or damaged thereby shall be restored, as promptly as possible to as useful, safe, durable, in as good condition as existed prior to making of such opening or such excavation or such damage. If the Company is unable to comply with the provisions of this section by reason of strikes, riots, acts of God, or acts of public enemies or other factors beyond its control, restorative work of a temporary nature allowing for such requirements as trench and backfill consolidation and fine grading and vegetative stabilization will be performed. The temporary restorative work shall be accomplished immediately in accordance with the best acceptable construction procedures and shall be continuously maintained in a useful and safe condition pending permanent restoration. Where a cut or disturbance is made in a section of sidewalk rather than replacing only the area actually cut, the Company shall replace the full width of the existing sidewalk as determined by the Town and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring. Where a cut or disturbance is made by the Company in a section of pavement, rather than repaving only the actual area cut the Company shall, if requested by the Town, repave the area between the street cuts when there are two or more street cuts made by the Company within twenty (20) feet of each other. The width of the repavement shall correspond to the width of the street cut made by the Company. If the Company fails to timely perform said restoration and repair within a reasonable time, the Town may issue notice to the Company of its findings and instructions and, if after three (3) days the Company has not commenced the restoration and/or repair, the Town will cause the work required in said notice to be done and performed and charge the Company the entire cost and expense of restoration or repair plus ten (10%) percent.

(L) After the work of restoring such portion of the Street has been completed as provided herein, the Company shall keep such portion of such Street repaired or restored in as useful, safe, durable, and good condition as it existed prior to the making of such opening, excavation or damage, ordinary wear and tear excepted, for a period of eighteen (18) months from the completion of repair or restoration, if the Town determines that such portion of the Street was affected or damaged by the work of the Company.

(M) When Public Ways are opened, excavated, disturbed, obstructed or any other construction activity is required in the Public Ways by the Company, said Company, or other person acting on its behalf, shall place and maintain all necessary safety devices, barriers, lights, and warnings to properly notify all persons of any dangers resulting from such construction entrances, and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting the Street and shall comply with all federal, state and local laws and regulations, including the Manual of Uniform Traffic Control Devices flagging requirements, the

Manual for Streets and Highways, as approved by the Federal Highway Administrator and as may be amended from time to time shall be the standard used in determining the necessary placement of such devices, barrier, lights and warnings.

(N) The Company shall provide the Town with a master set "as built" drawings and/or maps in an electronic form agreed to by Town and the Company showing the location of all its underground Electric Facilities within the Town. To the extent Town and the Company cannot agree on an appropriate electronic form for the above referenced map or maps, the Company agrees to provide Town with such information in hard copy or paper format. The Company shall also provide the Town with a list of Public Ways long which its above ground Electric Facilities is located. The Company shall provide updated maps in accordance with this Section on an annual basis if changes have occurred. The Company also agrees to cooperate with and participate in Tennessee One Call. On at least an annual basis the Company shall meet with the Town to discuss its plans for construction and/or maintenance of its Electric Facilities for the following year.

(O) In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, the Company, upon payment of all charges provided in its tariffs or their equivalent, shall place newly constructed electric distribution lines underground as may be required by Town ordinance. The Company and Town agree to work together to jointly plan new facilities so the new facilities are operationally appropriate for the Company while providing the aesthetics desired by the Town and accomplishing the desired goal at the least cost to the Company's customers and the Town's citizens.

(P) The Town shall have the right without cost to use all poles and suitable overhead structures owned by the Company within Public Ways for Town wires used in connection with governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the Town for a public purpose. Provided, that the Company shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the Town shall be in such a manner as to prevent safety hazards or interferences with the Company's use of the same. Nothing herein shall be construed to require the Company to increase pole size, or alter the manner in which the Company attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. Town attachments shall be installed and maintained in accordance with the reasonable requirements of the Company and the current edition of the National Electrical Safety Code pertaining to such construction. Further, Town attachments shall be attached or installed only after written approval by the Company in conjunction with the Company's standard pole attachment application process. The Company shall have the right to inspect such attachments to ensure compliance with this Section and to require the Town to remedy any defective attachments.

(Q) If the Company is dissatisfied with any determination of the Town permitted by the foregoing sections thereof, it may petition the Board of Mayor and Alderman within ten (10) days after such determination to review the same, which review shall be taken up by the Board of Mayor and Alderman in the normal course of business.

## SECTION XI. INSURANCE.

The Company hereby agrees, upon official request of the Town, to furnish to the Town evidence of insurance on such amounts as may be reasonably necessary to protect the Town. However, the coverage shall, at a minimum, include Workers' Compensation insurance covering the Company's statutory obligation under the laws of the State of Tennessee and Employer's Liability insurance for all its employees engaged in work under the franchise. Minimum limits of liability for Employer's Liability insurance shall be \$100,000 bodily injury each occurrence; \$500,000 bodily injury by disease (policy limit); and \$100,000 bodily injury by disease (each employee).

## SECTION XII. HAZARDOUS WASTE.

The Company shall not transport, dispose of or release any hazardous waste within the Streets. If utilizing any hazardous material in the ordinary course of its business, the Company shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste. Regardless of the Town's acquiescence, the Company shall indemnify and hold Town, its officers, agents, employees and volunteers harmless from all costs, claims, damages, causes of action, liabilities, fines or penalties, including reasonable attorneys' fees, resulting from the Company's its agents, assigns, violation of this paragraph and Company agrees to reimburse Town for all costs and expenses incurred by Town in eliminating or remedying such violations, including all remediation and cleanup costs. This provision shall survive the expiration, revocation or termination of this franchise.

## SECTION XIII. INDEMNIFICATION.

(A) The Company shall at all times defend, indemnify and hold harmless the Town and any of the Town's representatives from and against all loss sustained by the Town on account of any suit, judgment, execution, claim or demand whatsoever resulting fully or in part from the failure of the Company or its employees to exercise due care and diligence in the construction, operation, and maintenance of its Electric Facilities in the Town provided the Company shall have been notified in writing of any claim against the Town on account thereof and shall have been given ample opportunity to defend same. The Company shall indemnify, defend and hold harmless the Town from any and all demands for fees, claims, suits, actions, causes of action, or judgments based on the alleged infringement or violation of any patent, invention, article, arrangement, or other apparatus that may be used in the performance of any work or activity arising out of the use of any Electric Facilities or the provision of electric service.

(B) The right of indemnification shall include and extend to reasonable attorney fees and trial preparation expenses and other litigation expenses reasonably incurred in defending a claim arising from the operation of the Electric Facilities by the Company, whether or not the claim be proved to be without merit. This provision shall survive the expiration, revocation or termination of this franchise.

#### SECTION XIV. ANNEXATION.

Upon the annexation of any territory to the Town, the rights granted herein shall extend to the annexed territory to the extent the Town has such authority. All Electrical Facilities owned, maintained or operated by the Company located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

#### SECTION XV. VEGETATION MANAGEMENT.

The Company or its contractors may prune all trees and vegetation which encroach upon the Public Ways, whether such trees or vegetation originate within or outside the Public Ways to prevent the branches or limbs of other part of such trees or vegetation from interfering with the Company's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and/or problematic. Nothing contained in this Section shall prevent the Company, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang Public Ways.

#### SECTION XVI. FRANCHISE FEE.

(A) The Town may impose upon Company the requirement that Company pay a franchise fee to the Town. The T.P.U.C., as with its jurisdictional obligation to approve this Franchise Ordinance, also must approve the amount of the franchise fee before its imposition. If approved by the T.P.U.C., Company shall pass the imposed franchise fee on to its customers for payment, with same being shown as a separate line item on the customer's electric bill from the Company. Should the T.P.U.C. approve the Franchise Agreement but not the amount of the franchise fee, the Agreement shall become effective and the parties may, thereafter, petition the T.P.U.C. for approval of a different franchise fee. Any franchise fee will be collected by the Company and distributed to the Town on a monthly basis as soon as practical.

(B) The franchise fee shall be the minimum tax collected by the Town other than ad valorem taxes on property and any other fees set forth in this document with respect to the Company's electric business or the exercise of this franchise within the corporate limits of the

Town and the amount due to the Town under such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting therefrom the amount of said franchise fee paid hereunder.

(C) The Town may inspect the Company books of account for the Town at any time during business hours and may audit such books from time to time, provided that only franchise payments which occurred during a period of 36 months prior to the date the Town notifies the Company of its intent to conduct an inspection shall be subject to such review. The Town may also request the Company to provide an audit report of franchise fees calculated and remitted from the gross revenues derived from its sale of Electricity within the Town limits at the Company's expense or an audit report prepared by an approved independent accounting firm at the Town's expense, but not more than once per calendar year.

#### SECTION XVII. ABANDONMENT OF FACILITIES.

Upon abandonment of any of the facilities or equipment of the Company located above or below the surface of the Public Ways, the Company shall notify the Town in writing of such abandonment within a reasonable time thereafter and if such abandoned facilities or equipment will then interfere with the use of the Public Ways by the Town, the Town shall give written notice thereof to the Company and the Company shall commence to remove the same within twenty (20) days following the date of the written notice and continue the work to completion with reasonable diligence and at its own cost and expense.

All rights and privileges granted hereby are subject to the lawful exercise of the police power of the Town to adopt and enforce local laws, rules and regulation necessary to the health, safety, and general welfare of the public. Expressly reserved to the Town is the right to adopt such additional ordinances and regulations as are necessary for the lawful exercise of its police power for the benefit and safety of the public. Further, the Town hereby reserves:

- (1) The right to grade, widen, relocate, sewer, pave, macadamize, lay conduits and pipe and to install manholes, poles or other structures therein, or to alter, repair or otherwise provide for the making of local improvements in the Street;
- (2) The right to make and enforce all such local police, sanitary or other regulations by ordinance in the exercise of its police power;
- (3) The right to make and provide for the making of local improvements by special assignment.

The enumeration herein of specific rights reserved shall not be taken as exclusive, or as limiting the reservation made herein.

## SECTION XVIII. TRANSFER OF ASSETS.

In the event the Company desires to sell, transfer, or lease the entire assets of the Electric System, which is the subject of this Ordinance, the following conditions shall apply:

(A) A statutory merger, consolidation, recapitalization or sale and transfer of common stock of the Company does not constitute a sale or transfer of assets for purposes of this Section.

(B) Any transfer of assets, whether by sale, assignment or lease by the Company shall first be subject to approval by the T.P.U.C.. Thereafter, same shall be subject to approval by the Town.

(C) To effect the transfer of assets, the Company shall have duly executed a good and sufficient instrument making such sale, transfer or lease; and, a duplicate original of said instrument shall be filed with the Town.

(D) The purchaser, transferee, or lease shall have duly executed a good and sufficient instrument accepting said purchase, transfer or lease and assuming all obligations of Company under this Ordinance; and, a duplicate original of the instrument shall be filed with the Town.

## SECTION XIX. T.P.U.C. RULES AND REGULATIONS

(A) The Town and the Company hereby agree that this Ordinance is subject to the approval of the T.P.U.C. and that the Ordinance shall also be subject to the rules and regulations of the State of Tennessee as they may from time to time be changed and that all such rules and regulations become part of this Ordinance to the same extent and with the same effect as if said rules and regulations were herein set out in full.

(B) The Company shall make every reasonable effort to furnish an ample and uninterrupted supply of Electricity to all customers throughout its entire system within the Town and on any enlargements and extensions thereof within the Town. The Company shall not unreasonably or arbitrarily refuse to make an extension thereof with in the Town. At the time each and every annexation ordinance of the Town becomes operative, the Town shall provide the Company with a copy of the ordinance and its accompanying map precisely describing said annexed territory. Subject to applicable law, the Company shall not unreasonably or arbitrarily refuse to make an extension for the purpose of giving Electric Service to the Town, the inhabitants, institutions and businesses thereof. The Company shall also file with the Town its extension policy and any changes as may from time to time be adopted, as filed with and approved by the T.P.U.C..

(C) The Company shall at all times keep the Town apprised of its current electrical rates, charges, and pricing policies charged to Town residents and changes to such rates, charges, and pricing policies whether changes are initiated by the Company or a third party. In

the event the Company files a rate change request with the T.P.U.C., it shall provide the Town with a copy of the request at the time of filing.

#### SECTION XX. ANNUAL REPORT.

The Company shall, upon request by the Town, file with the Town a duplicate original of the Annual Report of the Company's operation in the Town filed with the T.P.U.C., as now required by the Public Utility Act, or as may be required by any other act of the legislature of the State of Tennessee, as soon as practical after one duplicate original of said report has been filed with said T.P.U.C. or its successors.

#### SECTION XXI. RENEWAL.

At least 120 days prior to the expiration of this Franchise, the Company and the Town either shall agree to extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. The Company shall have the continued right to use the Public Ways of the Town as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise. The Town shall continue to receive any and all fees and payments due in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

#### SECTION XXII. DEFAULT AND CURE.

Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Ordinance is impossible or is delayed because of circumstances beyond the Company's control. In this instance, the Company shall use its best efforts to comply in a timely manner and to the extent possible. In the event of a substantial breach by Company of any material provision of this Ordinance, the Town, acting by and through its Board of Mayor and Alderman, may terminate the franchise and rights granted to Company hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(A) The Town must deliver to Company, by certified or registered mail, a written notice. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Company that the Town contends constitutes a substantial breach of any material provision hereof within sixty (60) days of the alleged breach or within sixty (60) days of the Town's actual or constructive notice of the alleged breach whichever is later; and (ii) designate which of the terms and conditions hereof the Town contends Company breached.

(B) The Town shall permit Company the opportunity to substantially correct and cure all of the breaches hereof set forth in the written notice described in subsection (A) above within sixty (60) days after Company's receipt of such notice before termination may occur.

(C) If the Company objects and disagrees with the Town's determination that a substantial breach of a material provision has occurred, the Company may submit the issue to the Board of Mayor and Alderman for review within thirty (30) days of receipt of the written notice described in subsection (A) above. Termination of this Ordinance shall be stayed during the course of any such review or subsequent litigation on the issue until the matter is either resolved by agreement between the parties or upon entry of a final order of a court authorizing termination by the Town.

In the event the Ordinance is properly terminated pursuant to the terms of this section prior to the expiration of the thirty (30) year period or any renewal period thereafter, the Company shall not be entitled to claim lost profits against the Town for the balance of time remaining under the thirty (30) year period or any renewal period thereafter in a sale of assets to the Town or any condemnation action. In the event of termination and/or expiration of this Ordinance, the Company may continue to operate on the same terms and conditions pending either a negotiated sale of its assets, negotiation of a new franchise or condemnation, whichever first occurs, with a minimum period of six (6) months and a maximum period of twenty four (24) months, absent agreement of the parties.

#### SECTION XXIII. NO WAIVER.

Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

#### SECTION XXIV. AMENDMENT.

At any time during the term of this Franchise, the Town through its Board of Mayor and Aldermen, or the Company may propose amendments to this Franchise by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the Town and the Company and formally adopted as an ordinance amendment, which is accepted in writing by the Company and approved by T.P.U.C.. Notwithstanding anything in this ordinance to the contrary, this ordinance is subject to any ordinance that may be adopted by the Town establishing

reasonable uniform rules, procedures and obligations concerning the use of streets for construction and operation of utility systems.

#### SECTION XXV. NOTICES.

Unless otherwise specified herein, all notices from the Company to the Town pursuant to or concerning this Franchise shall be delivered to the Town with a copy to the Town Attorney. Unless otherwise specified herein, all notices from the Town to the Company pursuant to or concerning this Franchise shall be delivered to William K. Castle, Director, Regulatory Services VA/TN, Appalachian Power Company, Three James Center, Suite 1100 1051 E. Cary Street, Richmond, VA 23219-4029, with a copy to William C. Bovender/Joseph B. Harvey, Hunter, Smith & Davis, LLP, PO Box 3740, 1212 North Eastman Road, Kingsport, TN 37664, 423-378-8800.

#### SECTION XXVI. SEVERABILITY.

If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

#### SECTION XVII. GOVERNING LAW.

The Agreement and the rights and obligations of the parties are governed by the laws of the State of Tennessee, without regard to its conflict of laws principles.

#### SECTION XXVIII. NO ARBITRATION, JURISDICTION, WAIVER OF JURY TRIAL, VENUE.

Notwithstanding any other provision in the Agreement to the contrary, arbitration is not permitted and if a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state or federal courts for Mt. Carmel, Hawkins County, Tennessee. The parties waive their right to a jury trial. Mandatory and exclusive venue for any disputes shall be in state courts or federal for Mt. Carmel, Hawkins County, Tennessee.

#### SECTION XXIX. EFFECTIVE DATE.

The franchise granted by this Ordinance shall become effective pursuant to the procedure set forth hereinabove.

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**CHRISTOPHER JONES, Mayor**

ATTEST:

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**MARIAN SANDIDGE, Recorder**

APPROVED AS TO FORM:

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**JOHN PEVY, ATTORNEY**

<b>FIRST READING</b>	<b>AYES</b>	<b>NAYS</b>	<b>OTHER</b>
Alderman Diane Adams			
Alderman Margaret Christian			
Alderman Eugene Christian			
Alderman Wanda Davidson			
Alderman Jennifer Williams			
Vice-Mayor Carl Wolfe			
Mayor Christopher Jones			
<b>TOTALS</b>			

PASSED FIRST READING: August 22, 2017

<b>SECOND READING</b>	<b>AYES</b>	<b>NAYS</b>	<b>OTHER</b>
Alderman Diane Adams			
Alderman Margaret Christian			
Alderman Eugene Christian			
Alderman Wanda Davidson			
Alderman Jennifer Williams			
Vice-Mayor Carl Wolfe			
Mayor Christopher Jones			
<b>TOTALS</b>			

PASSED SECOND READING: September 26, 2017

PUBLISHED DATE: September \_\_, 2017  
 NEWSPAPER: *Kingsport Times-News*

**ORDINANCE NO. 17-459**

AN ORDINANCE ENACTING A FRANCHISE FEE FOR THE USE BY KINGSPORT POWER COMPANY D/B/A AEP APPALACHIAN POWER OF THE PUBLIC STREETS, ALLEYS, OTHER PUBLIC PLACES FOR ITS FRANCHISE FOR A SYSTEM OF ELECTRICITY DISTRIBUTION AND TRANSMISSION LINES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND PUBLIC GROUNDS OF THE TOWN OF MT. CARMEL, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, Kingsport Power Company d/b/a AEP Appalachian Power (the "Company") is a regulated investor-owned utility that provides electric power and energy to the citizens of the Town of Mt. Carmel (the "Town") and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the Town;

WHEREAS, the parties are working to obtain approval of a new franchise to replace the franchise agreement previously entered into by them;

WHEREAS, the franchise allows the Town to impose a franchise fee; and

WHEREAS, the Town and the Company recognize that both parties benefit from economic development in the Town.

BE IT ORDAINED BY THE TOWN OF MT. CARMEL, as follows:

SECTION I. The board makes the following findings:

1. That Kingsport Power d/b/a Appalachian Power, hereinafter Company, has a franchise with the Town to sell electrical power in the corporate limits of the Town.
2. That the Company uses the public streets, alleys, other public places and other real property owned or controlled by the Town to transmit electrical power for sale and should remit a fee to the Town for the use of the public streets, alleys or other public places and for the expenses for the administration of the franchise.
3. That the actions authorized by this ordinance are in the public interest and will promote the health, comfort and prosperity of the public.

SECTION II. That the Company for its use of the public streets, alleys, other public places and other real property owned or controlled by the Town and for the expenses for the administration of the franchise shall pay to the Town a fee as follows:

Five percent (5%) of Company's gross receipts derived from retail electrical power and energy sales in the corporate limits of the Town to all classes of customers.

SECTION III. Such fee shall be paid monthly not later than 30 days after the last day of each month. The fee shall be in addition to any and all taxes which are now or may be required hereafter to be paid pursuant to any federal, state or local law. On a monthly basis, the Company shall furnish to the Town a report showing the monthly amount of gross revenues, and commodity volumes by rate class, for the Company's sale of electricity in the corporate limits of the Town.

SECTION IV. Acceptance of payments of the fee shall not be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable hereto.

SECTION V. As may be permitted by state law, the Company may show the fees paid to the Town hereto as a line item charge on the bills of the Company's customers served by the Company within the corporate limits of the Town. The Company shall pay to the Town the fee from the gross receipts derived from the retail electrical power and energy sales. The Company shall use its usual collection procedures, including potential cessation of service, to collect the fee from customers who have not paid their bill in full, including the fee imposed herein.

SECTION VI. The Town will promptly notify the Company in writing of any geographic areas annexed by the Town. Any such notice will be sent to the Company by certified mail, return receipt request, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as the Company may reasonably require in order to ascertain whether there exist any customers of the Company receiving electrical service in the annexed area. To the extent there are customers of the Company therein, and to the extent permitted by law, the gross receipts of the Company derived from the sale and distribution of electrical power and energy to such customers shall become subject to the fee provisions hereof effective on the first day of the Company's billing cycle immediately following the Company's receipt of the notice.

SECTION VII. That this ordinance shall be effective from and after the date of its passage, as the law directs, following approval by the Tennessee Public Utility Commission, the public welfare of the citizens of Mt. Carmel requiring it.

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**CHRISTOPHER JONES, Mayor**

ATTEST:

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**MARIAN SANDIDGE, Recorder**

APPROVED AS TO FORM:

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**JOHN PEVY, ATTORNEY**

FIRST READING	AYES	NAYS	OTHER
Alderman Diane Adams	✓		
Alderman Margaret Christian		✓	
Alderman Eugene Christian		✓	
Alderman Wanda Davidson		✓	
Alderman Jennifer Williams	✓		
Vice-Mayor Carl Wolfe		✓	
Mayor Christopher Jones		✓	
<b>TOTALS</b>	2	5	

~~PASSED~~ FIRST READING: August 15, 2017

Failed

SECOND READING	AYES	NAYS	OTHER
Alderman Diane Adams			
Alderman Margaret Christian			
Alderman Eugene Christian			
Alderman Wanda Davidson			
Alderman Jennifer Williams			
Vice-Mayor Carl Wolfe			
Mayor Christopher Jones			
<b>TOTALS</b>			

PASSED SECOND READING: August 22, 2017

PUBLISHED DATE: August \_\_, 2017  
 NEWSPAPER: *Kingsport Times-News*