

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF KINGSFORT POWER</b>	)	
<b>COMPANY D/B/A AEP APPALACHIAN</b>	)	
<b>POWER FOR A GENERAL RATE CASE –</b>	)	<b>DOCKET NO. 22-00111</b>
<b>TARIFF CHANGES TO FUEL AND</b>	)	
<b>PURCHASED POWER ADJUSTMENT</b>	)	
<b>RIDER</b>	)	
	)	

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**CONSUMER ADVOCATE’S MOTION TO STRIKE OR, IN THE ALTERNATIVE, FOR  
ORDER TO SHOW CAUSE**

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The Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), pursuant to TENN. R. CIV. P. 7.02 and TENN. CODE ANN. § 65-2-106, hereby moves the Tennessee Public Utility Commission (“TPUC” or the “Commission”) to strike any portion of the late-filed *Post Hearing Brief* of Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport” or the “Company”) responding to the *Consumer Advocate’s Post-Hearing Brief* filed timely under the June 15, 2023 *Pre-Hearing Order*. Alternatively, the Consumer Advocate moves this Commission to enter an order to show cause why the Company’s untimely *Post Hearing Brief* should be considered. In support of its motion, the Consumer Advocate would show as follows:

1. During the June 12, 2023, pre-hearing conference in this matter, the Company requested that post-hearing briefs on the sole contested issue be filed by the parties in lieu of closing arguments.
2. The Consumer Advocate did not object to the Company’s request for post-hearing briefs.
3. Page 3 of the *Pre-Hearing Order* entered June 15, 2023, in this docket provides that “[t]he

parties will file post-hearing briefs in lieu of presenting Closing Arguments. The post-hearing briefs will be due two weeks after the transcript has been released.”

4. The hearing transcript was released on June 27, 2023.
5. The *Consumer Advocate’s Post-Hearing Brief* was timely filed on July 11, 2023, two weeks after the release of the transcript.
6. The Company did not file its *Post Hearing Brief* until July 17, 2023, in violation of the Hearing Officer’s June 15, 2023, *Pre-Hearing Order*.
7. The Company never requested permission of the Hearing Officer, or consent of the Consumer Advocate, to amend the briefing schedule.
8. The Company’s *Post Hearing Brief* does not provide any basis for a finding of excusable neglect.
9. The Company appears to have willfully ignored the filing deadline and even cites to the *Consumer Advocate’s Post-Hearing Brief*, which was not filed until the deadline. For example, page 8 of the Company’s *Post Hearing Brief* quotes directly from page 5 of the *Consumer Advocate’s Post-Hearing Brief*.
10. Consideration of the Company’s late-filed *Post Hearing Brief* at this time would be prejudicial to the Consumer Advocate.

In light of the above, the Consumer Advocate requests that the Commission strike any portion of the Company’s *Post Hearing Brief* that relies upon, refers to, or responds to the *Consumer Advocate’s Post-Hearing Brief*, or in the alternative, enter a show cause order why the Company’s *Post Hearing Brief* should be considered despite the failure to timely file the same. Relevant factors to be considered include “(1) the danger of prejudice to the party opposing the late filing, (2) the length of the delay and its potential impact on proceedings, (3) the reason why

the filing was late and whether that reason or reasons were within the filer's reasonable control, and (4) the filer's good or bad faith." *State ex rel. Sizemore v. United Physicians Ins. Risk Retention Grp.*, 56 S.W.3d 557, 567 (Tenn. Ct. App. 2001) (citing *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993)). The Consumer Advocate submits that (1) the late filing is extremely prejudicial to the Consumer Advocate as it was not afforded the same opportunity to review the Company's *Post Hearing Brief* and formulate a response, (2) the Company's delay of nearly a week is unreasonable and inexcusable and gave the Company additional time to draft and file its *Post Hearing Brief* while shortening the Commission's time for review, (3) the Company has offered no reason for its late filing and has not suggested that it received the transcript later than the date it was provided to the Consumer Advocate, and (4) the Company failed to include even a cursory statement in its *Post Hearing Brief* as to its good faith effort to file in a timely manner.

RESPECTFULLY SUBMITTED,



**MASON C. RUSH** (BPR No. 039471)

Assistant Attorney General

**KAREN H. STACHOWSKI** (BPR No. 019607)

Deputy Attorney General

Office of the Tennessee Attorney General

Consumer Advocate Division

P.O. Box 20207

Nashville, Tennessee 37202-0207

Phone: (615) 741-2357

Email: [mason.rush@ag.tn.gov](mailto:mason.rush@ag.tn.gov)

Email: [karen.stachowski@ag.tn.gov](mailto:karen.stachowski@ag.tn.gov)

***TPUC Docket No. 22-00011***

***Consumer Advocate's Motion to Strike***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail, with  
a courtesy copy by electronic mail upon:

William C. Bovender, Esq.  
Joseph B. Harvey, Esq.  
Hunter, Smith & Davis, LLP  
P.O. Box 3740  
Kingsport, TN 37665  
Email: [Bovender@hdsdlaw.com](mailto:Bovender@hdsdlaw.com)  
Email: [jharvey@hdsdlaw.com](mailto:jharvey@hdsdlaw.com)

James R. Bacha, Esq.  
American Electric Power Service Corp.  
1 Riverside Plaza  
Columbus, OH 43215  
Email: [jrbacha@aep.com](mailto:jrbacha@aep.com)

William K. Castle  
Director, Regulatory Services VA/TN  
American Electric Power Service Corp.  
Suite 1100, 1051 E. Cary Street  
Richmond, VA 23219-4029  
Email: [wkcastle@aep.com](mailto:wkcastle@aep.com)

Noelle J. Coates, Senior Counsel  
American Electric Power Service Corp.  
Three James Center  
Suite 1100, 1051 E. Cary Street  
Richmond, VA 23219-4029  
Email: [njcoates@aep.com](mailto:njcoates@aep.com)

On this the 17<sup>th</sup> day of July 2023.



**MASON C. RUSH**  
Assistant Attorney General