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July 19, 2023

KPOW-94519

**VIA EMAIL ([tpuc.docketroom@tn.gov](mailto:tpuc.docketroom@tn.gov)) & FEDEX**

Herbert H. Hilliard, Chairman  
c/o Ectory Lawless, Dockets & Records Manager  
Tennessee Public Utility Commission  
502 Deaderick Street, 4th Floor  
Nashville, TN 37243

Electronically Filed in TPUC Docket  
Room on July 19, 2023 at 2:40 p.m.

Re: Petition of Kingsport Power d/b/a AEP Appalachian Power for a General  
Rate Case – Tariff Changes to Fuel and Purchased Power Adjustment Rider  
Docket No.: 22-00111

Dear Chairman Hilliard:

On behalf of Kingsport Power Company d/b/a AEP Appalachian Power, we transmit herewith Kingsport Power Company's *Response to the Consumer Advocate's Motion to Strike Or, In the Alternative, for Order to Show Cause*, for filing in the above docket. The original and four copies are being sent by overnight delivery.

Very sincerely yours,

**HUNTER, SMITH & DAVIS, LLP**

Joseph B. Harvey

Enclosure

cc: Kelly Grams, General Counsel (w/enc.)  
Monica L. Smith-Ashford, Esq. (w/enc.)

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BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

IN RE: )  
)  
PETITION OF KINGSPORT POWER COMPANY ) Docket No.: 22-00111  
D/B/A AEP APPALACHIAN POWER FOR A )  
GENERAL RATE CASE -TARIFF CHANGES TO )  
FUEL AND PURCHASED POWER ADJUSTMENT )  
RIDER )

**RESPONSE TO THE CONSUMER ADVOCATE’S MOTION TO STRIKE OR, IN THE  
ALTERNATIVE, FOR ORDER TO SHOW CAUSE, ON BEHALF KINGSPORT POWER  
COMPANY D/B/A AEP APPALACHIAN POWER**

Kingsport Power Company d/b/a AEP Appalachian Power (herein “Kingsport” or “Company”) respectfully submits the following Response to the Motion to Strike or, in the Alternative, for Order to Show Cause filed by the Consumer Advocate (herein, “Consumer Advocate” or “CAD”).

1. The CAD’s Motion to Strike should be denied because Kingsport’s post-hearing brief was submitted within the time period ordered by the Commission.

a. The hearing in this matter was held at the Commission’s Conference on June 20, 2023.

b. At the conclusion of the hearing, the Commission ordered that “The posthearing briefs will be due **two weeks after the transcript of this conference is distributed.**” (Transcript, p.20, attached as Exhibit A (emphasis added.)

i. The Commission’s Order following the hearing at the Conference takes precedence over any language in the pre-hearing order.

- c. The transcript of the conference was distributed to counsel for Kingsport by email from Jennifer B. Carollo on **Saturday, July 1, 2023**. A copy of Ms. Carrallo's email is attached as Exhibit B.
  - i. The CAD's Motion to Strike does not state when a copy of the transcript of the conference was distributed to the CAD.
- d. Two weeks from Saturday, July 1, 2023, is Saturday, July 15, 2023.
- e. Under TPUC Rule § 1220-01-01-.11, and Tenn. R. Civ. P. 6.01, when a deadline would fall on a Saturday, the deadline is extended to the next business day.
- f. The next business day after Saturday, July 15, 2023, was Monday, July 17, 2023.
- g. Accordingly, the deadline for Kingsport to submit its posthearing brief (two weeks after distribution of the transcript) was **Monday, July 17, 2023**.
- h. Kingsport timely filed its posthearing brief via email at 11:32 a.m. eastern on **Monday, July 17, 2023**. The email filing Kingsport's posthearing brief is attached as Exhibit C.
- i. Kingsport's posthearing brief was filed "two weeks after the transcript of [the] conference [was] distributed" to Kingsport. Likewise, Kingsport's posthearing brief was filed "two weeks after the transcript [was] released" to Kingsport.
- j. The CAD's suggestion that the transcript of the conference was "distributed" or "released" *before* it was received by Kingsport's counsel, is factually and legally incorrect. Of course, Kingsport has no way to know when the transcript

was distributed to counsel for the CAD and the CAD's Motion to Strike does not state when they received the transcript. But, under the CAD's theory, which is not based on the date of actual *receipt*, it was possible for the deadline for Kingsport's posthearing brief to pass before Kingsport ever received a copy of the transcript had the transcript been "released," but not sent to Kingsport until more than two weeks later. The CAD's position is not consistent with the Commission's Order at the conference, the facts in this case, nor basic common sense.

2. Counsel for the CAD is unwilling to withdraw their Motion to Strike despite being advised of the facts above and being asked to withdraw the Motion based on its factual and legal deficiencies.

- a. At 4:08 p.m. eastern on Monday, July 17, 2023, the CAD filed its Motion to Strike.
- b. Prior to filing its Motion to Strike, the CAD did not contact counsel for Kingsport to determine when the transcript of the conference was distributed to Kingsport.
- c. On Wednesday, July 19, 2023, counsel for Kingsport contacted counsel for the CAD to advise of the above-referenced, undisputed facts, and request that the CAD withdraw its Motion to Strike. Counsel for the CAD indicated that they would like Kingsport to file a Response and would like it to be reflected in the docket that the parties did not receive the transcript at the same time. This is essentially the same "show cause" relief requested in the CAD's Motion.



- d. The CAD's Motion to Strike and refusal to withdraw it is unnecessarily litigious, unnecessarily compounds the proceedings in this case, and unnecessarily increases the burden, cost, and inefficiency of these administrative pleadings.

3. One of the rationales for alternative rate mechanisms is that they reduce expenses and attorney's fees by replacing a contested case with the Commission's review and approval of the revised tariff. *See In Re: Petition of Chattanooga Gas Co. to Opt into an Ann. Rev. of Rates Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, TPUC Docket No. 19-00047, 2019 WL 5086233, at \*7 (Oct. 7, 2019) ("this [ARM] mechanism will allow the Company to recover its operating costs in a timely manner while avoiding the cost and time necessary for a general rate case"); *In Re: Petition of Kingsport Power Co. d/b/a Aep Appalachian Power for Approval of Its Targeted Reliability Plan, & Its TRP & MS Rider, an Alternative Rate Mechanism*, TPUC Docket No. 17-00032, 2017 WL 5256208, at \*7 (Nov. 9, 2017) (approving ARM where "customers should benefit through reduced rate case and legal expenses that would otherwise result through expensive rate case proceedings to address such issues").

4. Similar to its position on the merits of this case, the CAD's Motion to Strike and refusal to withdraw it is unnecessary, factually and legally incorrect, a distraction from the real issues, and an inefficient use of the parties' and the Commission's valuable time and resources.

5. For these reasons, Kingsport respectfully requests that the CAD's Motion to Strike be denied, Kingsport's posthearing brief be considered by the Commission, and this matter proceed to a decision on its merits.

Respectfully submitted,

KINGSPORT POWER COMPANY  
d/b/a AEP APPALACHIAN POWER

BY: 

William C. Bovender, Esq. (BPR #000751)

Joseph B. Harvey, Esq. (BPR #028891)

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing *RESPONSE TO THE CONSUMER ADVOCATE'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, FOR ORDER TO SHOW CAUSE, ON BEHALF KINGSPORT POWER COMPANY D/B/A AEP APPALACHIAN POWER* has been served upon the following by emailing a copy of same as follows, on this the 19th day of July, 2023.

Karen H. Stachowski, Esq.  
Mason C. Rush, Esq.  
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Consumer Protection and Advocate Division  
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Email: [Karen.Stachowski@ag.tn.gov](mailto:Karen.Stachowski@ag.tn.gov)  
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Kelly Grams, General Counsel  
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Monica L. Smith-Ashford, Deputy General Counsel  
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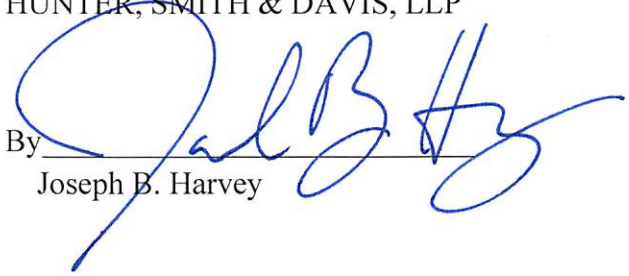
David Foster, Chief-Utilities Division  
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Michael J. Quinan  
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HUNTER, SMITH & DAVIS, LLP

By

Joseph B. Harvey

A handwritten signature in blue ink, appearing to read "J.B. Harvey", is written over a horizontal line. The signature is stylized and fluid.



**In The Matter Of:**

*Before the Tennessee Public Utility Commission  
Excerpt of Transcript of Commission Conference*

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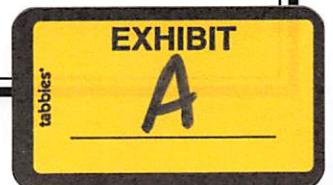
*Excerpt of Transcript of Commission Conference  
June 20, 2023*

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BEFORE THE TENNESSEE PUBLIC UTILITY CONFERENCE

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EXCERPT OF TRANSCRIPT OF COMMISSION CONFERENCE

Tuesday, June 20, 2023

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1 objection, it's so moved.

2 As this is a public hearing, at this  
3 time, is there any member of the public who would like  
4 to comment on this matter?

5 (No response.)

6 CHAIR HILLIARD: Let the record reflect  
7 that no one is seeking recognition to comment.

8 I understand that the parties have  
9 requested to submit posthearing briefs in lieu of  
10 presenting closing arguments. The posthearing briefs  
11 will be due two weeks after the transcript of this  
12 conference is distributed, and the panel will  
13 deliberate at a later date.

14 This particular hearing is adjourned.

15 MR. BOVENDER: Thank you.

16 CHAIR HILLIARD: Thank you.

17 (Conclusion of Excerpt re: Docket  
18 No. 22-00111.)

19  
20 THE CLERK: Section 20, Commissioners  
21 Crowell, Hie, Hill, Hilliard, and Morrison. Docket  
22 No. 23-00019, Kingsport Power Company. Petition of  
23 Kingsport Power Company doing business as AEP  
24 Appalachian Power for October 2021 through  
25 December 2022 annual recovery under the Targeted

## Joseph B. Harvey

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**From:** Jennifer Carollo <jennifer.carollo@ncrdepo.com>  
**Sent:** Saturday, July 1, 2023 10:25 AM  
**To:** William C. Bovender  
**Cc:** Joseph B. Harvey; Will Castle (wkcastle@aep.com); jrbacha@aep.com; James G Ritter  
**Subject:** Re: 6/20/2023 TPUC Conference Transcript  
**Attachments:** 2023-06-20 TPUC - Kingsport Excerpts.txt; 2023-06-20 TPUC - Kingsport Excerpts\_F.pdf; 2023-06-20 TPUC - Kingsport Excerpts\_4PP.pdf; Bovender 23JC6107.pdf

**Caution:** Message originated from an external sender.

Good morning. Attached is the transcript with the two excerpts re: Docket No. 22-00111 and 23-00019. Also attached is my invoice.  
Thank you!

Jennifer B. Carollo, LCR, RPR, CCR

Nashville Court Reporters

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On Tue, Jun 27, 2023 at 3:16 PM William C. Bovender <[bovender@hsdlaw.com](mailto:bovender@hsdlaw.com)> wrote:

Please send us the full transcripts of both cases.

---

**From:** Jennifer Carollo [mailto:[jennifer.carollo@ncrdepo.com](mailto:jennifer.carollo@ncrdepo.com)]  
**Sent:** Tuesday, June 27, 2023 3:07 PM



**To:** William C. Bovender <[bovender@hdsdlaw.com](mailto:bovender@hdsdlaw.com)>; Joseph B. Harvey <[jharvey@hdsdlaw.com](mailto:jharvey@hdsdlaw.com)>  
**Subject:** 6/20/2023 TPUC Conference Transcript

**Caution:** Message originated from an external sender.

Hello Mr. Bovender and Mr. Harvey. Checking in with you both to see if you need an excerpt of either of the Kingsport Power cases, 22-00111 or 23-00019.

Thank you!

**Jennifer B. Carollo, LCR, RPR, CCR**

**Nashville Court Reporters**

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## Joseph B. Harvey

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**From:** Roberta Davis  
**Sent:** Monday, July 17, 2023 11:32 AM  
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**Cc:** Kelly Grams; monica.smith-ashford@tn.gov; David Foster; epetrini@cblaw.com; Karen H. Stachowski; mason.rush@ag.tn.gov; mquinan@t-mlaw.com; James R Bacha; Will Castle; Matthew W Nollenberger; jritter@aep.com; Joseph B. Harvey; William C. Bovender; Terra.Allen@ag.tn.gov  
**Subject:** Docket 22-00111  
**Attachments:** 2023-07-17 L TPUC with Post Hearing Brief..pdf

Good Morning:

On behalf of Kingsport Power Company d/b/a AEP Appalachian Power, please find the attached Post Hearing Brief for filing in the above docket. The original and 4 copies will be sent via FED EX delivery.

Thank you

Roberta Davis

---

## HUNTER·SMITH·DAVIS

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