

1 to information requests, just as Kimberly-Clark was given an opportunity to offer
2 testimony in response to Big Rivers' and Kenergy's tariff filings and responses to
3 information requests. *See Util. Regulatory Comm'n v. Kentucky Water Serv. Co.*,
4 642 S.W.2d 591, 593 (Ky. App. 1982) ("Due process requires, at a minimum that
5 persons forced to settle their claims of right and duty through the judicial process
6 be given a meaningful opportunity to be heard. It has been said that no hearing
7 in the constitutional sense exists where a party does not know what evidence is
8 considered and is not given an opportunity to test, explain or refute....Indeed, the
9 Due Process Clause forbids any agency to use evidence in a way that forecloses an
10 opportunity to offer a contrary presentation")(citations omitted); *Mayfield Gas Co.*
11 *v. Publ Serv. Comm'n*, 259 S.W.2d 8, 10-11 (Ky. 1953) ("*In Wisconsin Telephone*
12 *Co. v. Public Service Commission*, 232 Wis. 274, 287 N.W. 122, 593, a 'formal
13 hearing' was considered as analogous to a common law hearing and held to
14 include: (1) the right to seasonably know the charges; (2) the right to meet such
15 charges by competent evidence; and (3) the right to be heard by counsel upon the
16 probative force of the evidence adduced by both sides, and upon the law applicable
17 thereto"): *Am. Beauty Homes Corp. v. Louisville & Jefferson Cty. Planning &*
18 *Zoning Comm'n*, 378 S.W.2d 450, 456 (Ky. 1964) ("Administrative proceedings
19 affecting a party's rights which did not afford an opportunity to be heard could
20 likewise be classified as arbitrary"); *In the Matter of: Application of Big Rivers*
21 *Electric Corporation for a General Adjustment in Rates*, P.S.C. Case No. 2011-
22 00036, Order (Apr. 12, 2012) at p. 2 ("To ensure that due process is afforded all

1 parties by allowing them an adequate opportunity to present evidence and
2 arguments on all of the issues now being investigated in this rehearing, the
3 procedural schedule will be revised, as discussed below”).

4 4. More specifically, Big Rivers and Kenergy should be given the
5 opportunity to respond to the two alternative rate designs proposed by Kimberly-
6 Clark, and the allegations and arguments Kimberly-Clark raised in its testimony
7 with regard to the capacity required to provide standby service to Kimberly-Clark,
8 Big Rivers’ cost to provide that service, and the applicability Big Rivers’ QFS
9 tariff.

10 5. Big Rivers has conferred with counsel for Kimberly-Clark, and
11 reports that Kimberly-Clark does not object to the Commission amending the
12 procedural schedule to allow for rebuttal testimony.

13 6. Big Rivers respectfully requests that the Commission amend the
14 procedural schedule so that it and Kenergy have the opportunity to jointly file
15 rebuttal testimony on or before November 29, 2021, which is two weeks after the
16 date for Kimberly-Clark to file its responses to information requests and following
17 the observance of the Thanksgiving holiday. If the Commission grants this
18 request, Big Rivers further requests that the deadline for the parties to request
19 either a hearing or that the case be submitted for a decision based on the record
20 also be extended, to December 6, 2021.

21 WHEREFORE, on the basis of the foregoing, Big Rivers respectfully
22 requests that the Commission enter an Order amending the procedure schedule to

1 allow Big Rivers and Kenergy to jointly file rebuttal testimony on or before
2 November 29, 2021, and to allow the parties until December 6, 2021 to request
3 either a hearing or that the case be submitted for a decision based on the record.

4 On this the 2nd day of November, 2021.

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Respectfully submitted,

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