$\frac{1}{2}$	COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY		
$3 \\ 4 \\ 5$	In the Matter of:		
6	ELECTRONIC TARIFF FILING OF BIG RIVERS ELECTRIC CORPORATION AND KENERGY CORP. TO IMPLEMENT A NEW STANDBY SERVICE TARIFF		
7 8 9 10 11	<u>MOTION OF BIG RIVERS ELECTRIC CORPORATION</u> <u>TO AMEND THE PROCEDURAL SCHEDULE</u>		
11	1. Comes Big Rivers Electric Corporation (" <i>Big Rivers</i> "), by counsel,		
13	and hereby moves the Public Service Commission (the "Commission") to amend		
14	the July 30, 2021, Order establishing a procedural schedule in this case to permit		
15	Big Rivers and Kenergy Corp. ("Kenergy") to jointly file rebuttal testimony. In		
16	support of this motion, Big Rivers states as follows:		
17	2. The current procedural schedule includes Intervenor testimony, one		
18	round of information requests to Intervenors, and a deadline of November 19,		
19	2021, for requesting a hearing, but it does not allow for Big Rivers or Kenergy to		
20	file rebuttal testimony. ¹ The Commission granted Kimberly-Clark Corporation's		
21	("Kimberly-Clark") motion to intervene, and Kimberly-Clark filed testimony on		
22	October 15, 2021.		
23	3. Due process requires that Big Rivers and Kenergy be given the		

24 $\,$ opportunity to present evidence to rebut the intervenor's testimony and responses

 $^{^1}$ The Commission's July 30, 2021, Order also suspended the effective date of the proposed tariffs for five months, up and including December 31, 2021.

1 to information requests, just as Kimberly-Clark was given an opportunity to offer $\mathbf{2}$ testimony in response to Big Rivers' and Kenergy's tariff filings and responses to information requests. See Util. Regulatory Comm'n v. Kentucky Water Serv. Co., 3 642 S.W.2d 591, 593 (Ky. App. 1982) ("Due process requires, at a minimum that 4 persons forced to settle their claims of right and duty through the judicial process 5be given a meaningful opportunity to be heard. It has been said that no hearing 6 in the constitutional sense exists where a party does not know what evidence is 7 considered and is not given an opportunity to test, explain or refute....Indeed, the 8 Due Process Clause forbids any agency to use evidence in a way that forecloses an 9 opportunity to offer a contrary presentation")(citations omitted); Mayfield Gas Co. 10v. Publ Serv. Comm'n, 259 S.W.2d 8, 10-11 (Ky. 1953) ("In Wisconsin Telephone 11 Co. v. Public Service Commission, 232 Wis. 274, 287 N.W. 122, 593, a 'formal 12hearing' was considered as analogous to a common law hearing and held to 13 include: (1) the right to seasonably know the charges; (2) the right to meet such 1415charges by competent evidence; and (3) the right to be heard by counsel upon the probative force of the evidence adduced by both sides, and upon the law applicable 16 thereto"): Am. Beauty Homes Corp. v. Louisville & Jefferson Cty. Planning & 17Zoning Comm'n, 378 S.W.2d 450, 456 (Ky. 1964) ("Administrative proceedings 18 affecting a party's rights which did not afford an opportunity to be heard could 19likewise be classified as arbitrary"); In the Matter of: Application of Big Rivers 2021Electric Corporation for a General Adjustment in Rates, P.S.C. Case No. 2011-00036, Order (Apr. 12, 2012) at p. 2 ("To ensure that due process is afforded all 22

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

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

13Big Rivers respectfully requests that the Commission amend the 6. procedural schedule so that it and Kenergy have the opportunity to jointly file 1415rebuttal 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 the observance of the Thanksgiving holiday. If the Commission grants this 17request, Big Rivers further requests that the deadline for the parties to request 18 either a hearing or that the case be submitted for a decision based on the record 19also be extended, to December 6, 2021. 20

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

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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 2 nd day of November, 2021.		
5		Respectfully submitted,	
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