

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE COMMONWEALTH OF KENTUCKY

In the Matter of:

**THE ELECTRONIC FILING OF BIG RIVERS
ELECTRIC CORPORATION AND KENERGY
CORP. TO REVISE THE LARGE INDUSTRIAL
CUSTOMER STANDBY SERVICE TARIFF.**

)
)
)
)
)
)

CASE NO. 2023-00312

**INTERVENORS’ JOINT REPLY IN SUPPORT OF THEIR OMNIBUS MOTION
FOR HEARING AND AMENDMENT OF PROCEDURAL SCHEDULE**

Kimberly-Clark Corporation (“Kimberly-Clark”) and Domtar Paper Company, LLC (“Domtar”) (collectively referred to herein as “Intervenors”), by motion dated January 16, 2024 (“Intervenors’ Motion”), have together moved the Kentucky Public Service Commission (“Commission”) to amend the procedural schedule found in Appendix A of the Commission’s September 27, 2023 Order (“Procedural Schedule”) to allow Intervenors an opportunity to respond to new claims regarding MISO rules and related information (“New Claims”) raised by Big Rivers Electric Corporation (“BREC”) for the first time in its rebuttal testimony filed January 9, 2024 (“January 9 Testimony”). Intervenors’ Motion also requests a hearing in this matter.

On January 23, 2024, BREC filed a response to Intervenors’ Motion (“BREC’s Response”). Intervenors now jointly file the following reply and maintain their requested relief.

Intervenors’ Motion makes clear the New Claims raised for the first time in the January 9 Testimony relate to the concept that MISO Rules constrain BREC’s discretion regarding how it forecasts future load requirements.¹ In BREC’s Response, BREC claims it has not suggested that

¹ See Joint Motion at 2-3 (explaining “BREC appears to be alleging, through Mr. Wright’s January 9 Testimony, that BREC is without discretion regarding its LICSS rate design because it must forecast load for the upcoming planning year for customers with behind-the-meter generation (“BTMG”), and costs related to that load, as if the BTMG were completely inoperable during peak periods, rather than, for example, forecasting load based on the actual metered loads of BTMG customers during historical peak periods”).

MISO rules “prohibit the use of some discretion in forecasting capacity need” and yet, Mr. Wright’s January 9 Testimony very much implies that prohibition. For example, in response to the question of “How does [BREC] determine the amount of capacity it must purchase from MISO in a future planning year?”, Mr. Wright states:

The amount of capacity that Big Rivers must purchase from MISO *is determined by* (i) Big Rivers’ load requirements, and specifically, *its peak system demand* (i.e., the amount of power that is necessary to provide full service during the hour of highest system use during the future planning year), plus (ii) MISO’s Planning Reserve Margin.

January 9 Testimony at 4: 7-10 (emphasis added).

Instead of explaining that it is BREC’s choice to use this approach, Mr. Wright implies it is the only approach. This implication is compounded by the context provided by the balance of his testimony, which also includes the following statement: “As long as there are forced outages . . . [BREC] *must* plan for the capacity to serve its full load irrespective of the behind-the-meter-generation.” January 9 Testimony at 5: 5-8 (emphasis added). And, Mr. Wright implies any other approach is unacceptable to MISO because “[t]his strain on the electric grid and accompanying price volatility is precisely what regional transmission organizations like MISO strive to avoid through *their constructs*.” *Id.* at 5: 11-13 (emphasis added).

Mr. Wright further states:

[If BREC] is required to artificially give [Intervenors] an “accreditation” on their units by artificially reducing system peak demand, then [BREC]’s actual load will be much higher than the load submitted as part of its MISO Non-coincident and Coincident Peak submission in the event a forced outage occurs during MISO peak system conditions.

January 9 Testimony at 7-8. This statement makes clear BREC views the use of actual, historic load demands as “artificial” for purposes of forecasting future loads and again, at the very least, strongly implies such an approach is unacceptable to MISO. In other words, BREC is claiming

their calculations regarding future load forecasts are limited to consideration of the *possibility* of any outage, rather than accounting for the *probability* of an outage.

In BREC's Response to Intervenor's Motion, it claims this topic has been covered "at length already" in past testimony and in responses to requests for information in this and related proceedings. However, an examination of the examples pointed to by BREC belies this assertion. In purported support for its position, BREC references a question from Commission Staff asking for an explanation of how new seasonal settlements may impact MISO Planning Resource Auctions, and a Commission Staff request to explain BREC's rationale for not distinguishing between scheduled and unscheduled outages.² Despite BREC's implication to the contrary, BREC's responses to these questions leave out any assertion that MISO's construct *requires* that BREC treat planned and unplanned outages the same. Instead, BREC simply points to its perspective regarding cost considerations, and that those cost considerations dictate BREC's chosen approach.

The January 9 Testimony is the first time BREC has attempted to rely on constraints built into the MISO "construct" to justify the position taken by BREC regarding what constitutes just and reasonable standby service rates.

BREC's New Claims regarding MISO's requirements likewise warrant an exploration of BREC's forecasting practices and any potential charges or penalties that may occur if BREC's forecasted load differs from its actual load in MISO. Requiring BREC to respond to the Requests

² BREC's Response, at 3, n.10. BREC does not specify whether it is referencing *pages 5 and 7* or *Requests 5 and 7* of Commission's Second Request of Information to [BREC] and Kenergy Corp. However, there is no page 7 to that document, so Intervenor's presume for the purpose of this reply that BREC is referencing Requests 5 and 7. Out of an abundance of caution, Intervenor's note here that Commission's Request No. 8 appears on page 5, and that BREC's response thereto references *whether accreditation is required* for self-generation capacity, not whether *BREC is required by MISO rules* to treat scheduled and unscheduled outages the same.

for Information submitted contemporaneously with Intervenors' Motion will provide much-needed clarity on these issues.

The procedural schedule amendments requested in Intervenors' Motion—limited discovery, responsive testimony, and an evidentiary hearing on the proposed Tariff—are necessary for Intervenors to sufficiently probe and understand the basis for BREC's position. Those amendments will also assist the Commission in its consideration of what constitutes a just and reasonable result in this matter.

WHEREFORE, based on the foregoing, Intervenors respectfully request that the Commission grant the Intervenors' Omnibus Motion; permit Intervenors to engage in further discovery on the New Claims as set forth in Attachment B of the Omnibus Motion and to file surrebuttal testimony per the schedule proposed in Appendix A to the Omnibus Motion; and order an evidentiary hearing on the proposed Tariff.

Dated January 29, 2024.

Respectfully Submitted,

/s/Daniel E. Danford

Daniel E. Danford

Robert C. Moore

STITES & HARBISON LLC

250 W. Main Street, Suite 2300

Lexington, KY 40507

Telephone: (859) 226-2292

Email: ddanford@stites.com

Email: rmoore@stites.com

/s/Michael Kurtz (w/permission)

Michael L. Kurtz, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: (513) 421-2255

Fax: (513) 421-2764

E-Mail: mkurtz@BKLawfirm.com

jkylercohn@BKLawfirm.com

Susan E. Bruce (Pa. Bar No. 80146)

Robert A. Weishaar, Jr. (Pa. Bar No. 74678)

Brigid L. Khuri (Pa. Bar No. 315274)

Admitted Pro Hac Vice

McNEES WALLACE & NURICK

100 Pine Street

Harrisburg, PA 17101

Email: sbruce@mcneeslaw.com

bweishaar@mcneeslaw.com

bkhuri@mcneeslaw.com

Counsel for Domtar Paper Company, LLC

Counsel for Kimberly-Clark Corporation

Certification

I hereby certify that a copy of this Reply has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/ Daniel E. Danford

Counsel for Kimberly-Clark Corporation