

**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**

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**INTERVENORS' JOINT 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 counsel, hereby jointly move 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. In addition, Intervenors respectfully request a hearing in this matter.

***Background***

BREC and Kenergy Corp. (“Joint Applicants”) filed a proposed tariff for Large Industrial Customer Standby Service (“Proposed LICSS Tariff”) on September 1, 2023, with a proposed effective date of October 1, 2023. In their application, the Joint Applicants provided a single piece of direct testimony, from Nathan Berry, Chief Operating Officer of BREC, in support of the Proposed LICSS Tariff (“Berry Testimony”).

On September 27, 2023, upon motions from Intervenors, the Commission suspended the tariff up to and including February 29, 2024, and issued the Procedural Schedule, which is attached hereto as Attachment A.

On October 10, 2023, Commission staff filed information requests directed to BREC. On October 13, 2023, Intervenors each filed requests for information based on the Berry Testimony.

On October 27, 2023, Joint Applicants filed responses to those requests.

On January 2, 2024, Intervenors each filed direct testimony on their own behalf, from several witnesses (“Kimberly-Clark Direct Testimony” and “Domtar Direct Testimony,” respectively).

On January 9, 2024, BREC filed a single piece of rebuttal testimony, sponsored by Terry Wright, Jr, Vice President of Energy Services for BREC (“the January 9 Testimony.”).

### ***Request to Amend Procedural Schedule***

Both Kimberly-Clark’s Direct Testimony and Domtar’s Direct Testimony focus on issues raised in Joint Applicants’ LICSS Application, the Berry Testimony, and Joint Applicants’ answers to the Intervenors’ respective requests for information.

Mr. Wright’s January 9 Testimony, however, raises points involving Midcontinent Independent System Operator, Inc. (“MISO”), rules that go beyond the Berry Testimony and are not responsive to the points raised in Intervenors’ respective filings.

Mr. Wright’s testimony shifts the focus from the justness and reasonableness of BREC’s LICSS rate design to that of BREC’s obligations under MISO’s rules.

More specifically, for the first time in these proceedings, 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. This assertion is absent from the Berry Testimony, which says only that “Big Rivers must purchase all of the capacity needed for its Member load at the PRA price” with no additional explanation of what that means.<sup>1</sup> Moreover, despite being specifically asked by Commission staff to “provide the cost support for the LICSS rates proposed in the tariff filing,” Joint Applicants did not indicate BREC is constrained by MISO rules in this manner. *See, e.g.*, Commission Staff’s October 10 Requests for Information, at 3; Joint Applicants’ Response to Commission Staff’s First Request for Information, Response to Request No. 1-3, filed October 27, 2023.

Kentucky law provides that, in proceedings such as this one, the burden of proof rests with the applicant or applicants proposing the tariff. KRS 278.190(3). Because the burden of proof lies with proponents of a rate change, the Commission will generally grant leave for surrebuttal from parties such as Intervenors only upon a showing of good cause. *See, e.g.*, Louisville Gas and Electric Co., Case No. 2002-00232 (Ky. PSC Nov. 22, 2002); Adjustment of the Rates of Kentucky-American Water Co., Case No. 2004-00103 (Ky. PSC Oct. 27, 2004).

By waiting to present this new testimony to the Commission until its Rebuttal Testimony, BREC has removed any opportunity for Intervenors to probe the testimony via Requests for Information and submit direct testimony to address and respond to BREC’s position, as contemplated by the original Procedural Schedule. And, if Intervenors are not provided the opportunity to respond, the Commission will be without the information—specifically, BREC’s discretion under MISO rules to forecast BTMG customers’ loads—needed to properly and justly decide this case.

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<sup>1</sup> Berry Testimony, at p. 5.

To this end, Intervenors respectfully request the Commission grant leave for Intervenors to file the Joint Requests for Information, attached hereto as Attachment B, with responses from Joint Applicants due seven (7) calendar days after entry of the Commission's order so granting. The Joint Requests for Information are intentionally limited in scope to probe only the New Claims and related issues presented by the January 9 Testimony.

The Joint Requests for Information regarding the New Claims are necessary to inform the surrebuttal testimony, and cover information that would have been addressed in Intervenors' initial requests for information and direct testimony, had the New Claims been presented at the appropriate time in this proceeding, in BREC's direct case.

Intervenors request leave to file surrebuttal testimony no later than ten (10) calendar days after receipt of Joint Applicants' responses to the Joint Requests for Information.

In the alternative, if the Commission is not inclined to amend the Procedural Schedule, as requested, Intervenors respectfully request that the Commission strike the portions of the January 9 Testimony that contain the New Claims that should have been raised in BREC's direct testimony but was not.<sup>2</sup>

### ***Request for Hearing***

Intervenors have challenged Joint Applicants' Proposed LICSS Tariff as unjust and unreasonable. As noted above, this matter involves complex issues upon which the parties do not agree. Intervenors respectfully request a formal hearing be scheduled to enable all parties to present the issues to the Commission.

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<sup>2</sup> Specifically, the relevant portions of the January 9 Testimony that should be stricken if Intervenors are not given the opportunity to request information about and respond to the January 9 Testimony are as follows:

Page 4, lines 5 through 10;  
Page 7, line 20 through page 8, line 2.

WHEREFORE, based on the foregoing, Intervenor respectfully request that the Commission grant this Omnibus Motion and enter the attached, proposed order.

Dated January 16, 2024.

Respectfully Submitted,

/s/Daniel E. Danford

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**Certification**

I hereby certify that a copy of this Motion 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*

**COMMONWEALTH OF KENTUCKY**  
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**In the Matter of:**

**THE ELECTRONIC FILING OF BIG RIVERS  
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**CASE NO. 2023-00312**

**[PROPOSED] ORDER**

On September 1, 2023, Big Rivers Electric Corporation (“BREC”) filed a revised Large Industrial Customer Standby Service (“LICSS”) tariff as directed by the Commission in Case No. 2021-002891 with a proposed effective date of October 1, 2023. On September 11, 2023, Kenergy Corp. (“Kenergy”) filed its revised LICSS tariff to mirror the revisions proposed by BREC. Kenergy proposed an effective date of October 11, 2023.

On September 27, this Commission issued an order finding that an investigation is necessary to determine the reasonableness of the proposed tariffs and that such investigation could not be completed by October 1, 2023 (“September 27 Order”). Pursuant to KRS 278.190(2), the Commission suspended the effective date of the proposed tariffs up to and including February 29, 2024. Kimberly-Clark Corporation (“Kimberly-Clark”) and Domtar Paper Company, LLC (“Domtar”), are intervenors in these proceedings.

The September 27 Order also established a procedural schedule to review the reasonableness of the proposed tariffs. The procedural schedule provided for initial requests for information to Joint Applications from Intervenors and Commission staff, responses from Joint

Applicants thereto, supplemental requests for information from Intervenors and staff, responses thereto, direct testimony from Intervenors, and rebuttal testimony from Joint Applicants.

On January 16, 2024, Intervenors filed a Joint omnibus motion requesting: (1) leave to file Joint Requests for Information to probe new claims asserted by BREC in its rebuttal testimony filed January 9, 2024; (2) leave to file surrebuttal testimony to address the same; and (3) a formal hearing (“Omnibus Motion”).

Having determined that Intervenors have established good cause to permit further information gathering for purpose of obtaining a well-reasoned and just result in these proceedings, THE COMMISSION THEREFORE ORDERS AS FOLLOWS:

1. The Procedural Schedule filed on September 27, 2023 is amended as follows:
  - i. Intervenors’ Joint Requests for Information filed with their Omnibus Motion are accepted as filed as of the date of this order.
  - ii. BREC shall file responses to Intervenors’ Joint Requests for Information no later than ten (10) days after the date of this order.
  - iii. Intervenors shall file surrebuttal testimony no later than seven (7) days after receipt of BREC’s responses to Intervenors’ surrebuttal testimony.
2. A hearing in this matter shall be held \_\_\_\_\_, 2024.

By the Commission



**APPENDIX A**

**APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC  
SERVICE COMMISSION IN CASE NO. 2023-00312**

DATED September 27, 2023

AMENDED January \_\_\_\_, 2024

Requests for intervention shall be filed no later than.....10/06/2023

Initial requests for information to Joint Applicants shall be filed no later than .....10/13/2023

Joint Applicants shall file responses to initial requests for information  
no later than.....10/27/2023

All supplemental requests for information to Joint Applicants shall be filed  
no later than .....11/13/2023

Joint Applicants shall file responses to supplemental requests for information  
no later than .....11/27/2023

Intervenor testimony, if any, in verified prepared form shall be filed  
no later than.....12/04/2023

All requests for information to Intervenors shall be filed no later than.....12/18/2023

Intervenors shall file responses to requests for information no later than.....01/02/2024

Joint Applicants shall file, in verified form, its rebuttal testimony  
no later than.....01/09/2024

Joint Applicants or any Intervenor shall request either a hearing or that the case  
be submitted for decision based on the record no later than.....01/16/2024

Intervenors' Joint Requests for Information are accepted as of the date of  
this Order.

Joint Applicants' responses to Intervenors' Joint Requests for Information shall  
be filed no later than seven (7) days after the date of this Order.

Intervenors' Surrebuttal Testimony shall be filed no later than ten (10) days after  
receipt of Joint Applicants' responses to Intervenors' Joint Request for Information.