

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC TARIFF FILING OF BIG RIVERS)	Case No.
ELECTRIC CORPORATION AND KENERGY)	2023-00312
CORP. TO REVISE THE LARGE INDUSTRIAL)	
CUSTOMER STANDBY SERVICE TARIFF)	

**RESPONSE TO INTERVENORS’ OMNIBUS MOTION FOR HEARING AND
AMENDMENT OF PROCEDURAL SCHEDULE**

Big Rivers Electric Corporation (“Big Rivers”) and Kenergy Corp. (“Kenergy”) (Big Rivers and Kenergy are referred to herein collectively as “Joint Applicants”), by counsel, hereby submit their Response to the Intervenor’s Omnibus Motion for Hearing and Amendment of Procedural Schedule.

On January 16, 2024, Kimberly-Clark Corporation (“Kimberly-Clark”) and Domtar Paper Company LLC (“Domtar”) (collectively referred to herein as the “Intervenors”) filed their Joint Motion to Amend the Procedural Schedule. In that motion, the Intervenor takes issue with the Rebuttal Testimony of Mr. Terry Wright, Jr., Big Rivers’ Vice President of Energy Services, which was submitted herein on January 9, 2024, pursuant to the established procedural schedule.¹ In sum, the Intervenor contends the Rebuttal Testimony raises a new issue regarding “BREC’s discretion under MISO rules to forecast BTMG customers’ loads[.]”² The Intervenor seeks the opportunity to propound an additional forty-five (45) data requests (counting subparts) on this issue,³ as well as file additional testimony; in the alternative, the Intervenor asks that two (2)

¹ See Order (Ky. P.S.C. Sept. 27, 2023), at Appendix A.

² Intervenor’s Joint Omnibus Motion for Hearing and Amendment of Procedural Schedule (Ky. P.S.C. Jan. 16, 2024) at 3.

³ Between them, the Intervenor has already propounded 164 data requests (counting subparts) in this case. For reasons further explained herein, no additional discovery is necessary, and certainly not on a truncated seven (7) day response schedule.

sentences of Mr. Wright’s Rebuttal Testimony be stricken.⁴ For the reasons that follow, good cause does not support the Intervenors’ Omnibus Motion, and it should be denied.

As observed by the Intervenors, “this matter involves complex issues upon which the parties do not agree.”⁵ One such issue, no doubt, is the allocation of capacity risk between Joint Applicants and customers like the Intervenors, who seek on-demand, full-requirements service but, due to their behind-the-meter generation (“BTMG”), expect to need it only some of the time. The Intervenors believe their ability to schedule certain outages of their BTMG, combined with an anticipated improbability of forced outages, means that Big Rivers should just plan to serve less load than it will actually be required to serve if called upon to do so. Put alternatively, if demand is ultimately greater than estimated, the risk of last-minute, high-cost energy purchases should be suffered by Big Rivers and its membership at-large. Conversely, as filing after filing has made abundantly clear, Big Rivers asserts that it “must have the transmission service and power available at all times to supply to the customer in the event of an outage of the customer’s generator[,]”⁶ and that if it does not “accurately report[] load values to MISO[,]” the risk of costly capacity shortfalls (including RTO-wide impacts) is increased.⁷ These issues have been examined and discussed at

⁴ “Specifically, the relevant portions of the January 9 Testimony that the Intervenors contend should be stricken if they 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.” Intervenors’ Joint Omnibus Motion for Hearing and Amendment of Procedural Schedule (Ky. P.S.C. Jan. 16, 2024) at 4 n. 2.

⁵ Intervenors’ Joint Omnibus Motion for Hearing and Amendment of Procedural Schedule (Ky. P.S.C. Jan. 16, 2024) at 4.

⁶ Direct Testimony of Nathaniel A. Berry, at 9, lines 8-10; *see also* Joint Response of Big Rivers Electric Corporation and Kenergy Corporation to Domtar Paper Company, LLC’s First Request for Information (Oct. 27, 2023); Joint Response of Big Rivers Electric Corporation and Kenergy Corp. to Kimberly-Clark Corporation’s First Request for Information (Oct. 27, 2023); Joint Response of Big Rivers Electric Corporation and Kenergy Corp. to Commission Staff’s First Request for Information (Oct. 27, 2023).

⁷ Joint Response to Commission Staff’s Request No. 2-8(b); *see also* Joint Response to Commission Staff’s Request No. 1-14; Joint Response to Domtar Paper Company, LLC’s Request No. 1-8; *In the Matter of Electronic Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff*, Case No. 2021-00289, Rebuttal Testimony of John Wolfram (Ky. P.S.C. Dec. 21, 2021) at 12-13, 15 (“Recall that Big Rivers does not include the standby customer’s Self-Supply Capacity in its load forecast for the MISO [Planning Reserve Margin Requirement], so that in order to provide Backup Power Service, it is necessary for Big Rivers to procure the full amount of the standby customer’s Self-Supply Capacity – not just a fraction of it as Kimberly-Clark claims.”).

length as part of this case and related proceedings,⁸ and nothing new and unanticipated is contained in Mr. Wright’s Rebuttal Testimony which warrants the unnecessary delay and expense resulting from the Intervenor’s requested relief.⁹

Despite the Intervenor’s feigned confusion about what Mr. Wright’s Rebuttal Testimony “appears to be alleging” regarding MISO and Big Rivers’ forecasting of customer load, the reality is that the testimony merely elaborates on the mechanics of MISO purchases and pricing, which were laid out in the original tariff filing and were the subject of Requests for Information from the Commission and the Intervenor, as well as testimony on behalf of Big Rivers and the Intervenor.¹⁰ Moreover, Mr. Wright’s testimony simply seeks to expound upon the appropriateness of BTMG capacity accreditation within MISO, which the Intervenor could have anticipated from their own testimony and Requests for Information and which has been an undeniable focus of this matter and multiple earlier submissions by Big Rivers.¹¹ To be sure, Big

⁸ *Electronic Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff*, Case No. 2021-00289; *Domtar Paper Company, LLC v. Big Rivers Electric Corporation and Kenergy Corp.*, Case No. 2023-0017; *Kimberly-Clark Corporation v. Big Rivers Electric Corporation and Kenergy Corp.*, 2023-00063.

⁹ Commission precedent is clear that unscheduled surrebuttal testimony is inappropriate absent good cause, such as introduction of evidence on a new, unanticipated matter. See *In the Matter of: Adjustment of the Rates of Kentucky-American Water Co.*, Case No. 2004-00103, Order (Ky. P.S.C. Oct. 27, 2004); *In the Matter of: Electronic Application of Kentucky Power Company*, Case No. 2017-00179, Order (Ky. P.S.C. Oct. 24, 2017). While new evidentiary matters that could not have been anticipated, such as revised studies, may provide grounds for surrebuttal testimony, good cause does not exist when a party has notice of the issues the other parties may raise, and thus an opportunity to anticipate them. See Case No. 2017-00179, *id.*, Order at 5-6.

¹⁰ See e.g. *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Revise the Large Industrial Customer Standby Notice Tariff*, Case No. 2023-00312 (Commission Staff’s Second Request of Information to Big Rivers Electric Corporation and Kenergy Corp.) at 5; See *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Revise the Large Industrial Customer Standby Notice Tariff*, Case No. 2023-00312 (Commission Staff’s Second Request of Information to Big Rivers Electric Corporation and Kenergy Corp.) at 7; See *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Revise the Large Industrial Customer Standby Notice Tariff*, Case No. 2023-00312 (Direct Testimony of Timothy Honadle on Behalf of Kimberly-Clark Corporation) at 2, 9, 11.

¹¹ Rebuttal Testimony of Terry Wright, Jr. at 4-5 (“The problem with this approach is that if we assume behind-the-meter generators will be online at the time of greatest system need, and they are not, then our actual load will be significantly higher than our submitted load; this inconsistency notably increases reliability risks.”); *id.*, at 7-8 (“On top of this fact, if Big Rivers is required to artificially give Domtar and Kimberly-Clark an ‘accreditation’ on their units by artificially reducing system peak demand, then Big Rivers’ 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.”); Joint Applicants’ Response to Commission Staff’s Request No. 2-8(b)

Rivers has not suggested that “MISO rules” dictate such accreditation¹² or otherwise prohibit the use of some discretion in forecasting capacity needs, but rather has asserted that a decision by Big Rivers to acquire less capacity from MISO in reliance on BTMG presents significant and unacceptable risk.¹³ The Intervenors’ alternative, erroneous characterization of Mr. Wright’s Rebuttal Testimony as somehow surprising or unresponsive should therefore be rejected.

The Intervenors have failed to show good cause for the relief they seek, and Big Rivers believes the Commission presently has all of the information necessary to determine the reasonableness of the tariff it has proposed. Consequently, Big Rivers requests that the Commission deny the Intervenors’ motion and decide this matter based on the existing record, without an unnecessary and time-consuming hearing.

WHEREFORE, the Joint Applicants request that the Intervenors’ Omnibus Motion be DENIED.

Respectfully submitted,

/s/ Edward T. Depp
Edward T. Depp
DINSMORE & SHOHL LLP
101 South 5th Street, Suite 2500
Louisville, KY 40202
Telephone: (502) 540-2347
Facsimile: (502) 585-2207
tip.depp@dinsmore.com

M. Evan Buckley
DINSMORE & SHOHL LLP
100 West Main Street, Suite 900
Lexington, KY 40507

(“When a behind-the-meter resource does not register with MISO, Big Rivers is forced to attempt to provide its own accreditation of the resource by submitting a lower total load value than would otherwise be submitted to MISO.”). Strangely, the Intervenors have asked the Commission to strike the second of these three quotations.

¹² See Joint Applicant’s Response to Commission Staff’s Request No. 2-8(a) (“MISO does not require a behind-the-meter generator to register in the MISO market and receive capacity accreditation.”).

¹³ Rebuttal Testimony of Terry Wright, Jr., at 5, lines 3-5.

Telephone: (859) 425-1000
Facsimile: (859) 425-1099
evan.buckley@dinsmore.com

Counsel to Big Rivers Electric Corporation

Certification

I hereby certify that a copy of this Response to Intervenor's Omnibus Motion For Hearing and Request for Amendment to Procedural Schedule 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/ Edward T. Depp

Counsel to Big Rivers Electric Corporation