COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF BIG RIVERS	)	
ELECTRIC CORPORATION AND KENERGY	)	**2023-00312**
CORP. TO REVISE THE LARGE INDUSTRIAL	)	
CUSTOMER STANDBY SERVICE TARIFF	)	

POST-HEARING BRIEF OF
BIG RIVERS ELECTRIC CORPORATION AND KENERGY CORP.

Big Rivers Electric Corporation ("*Big Rivers*" or the "*Company*") and Kenergy Corp. ("*Kenergy*") (together, the "*Joint Applicants*"), by counsel, hereby submit this post-hearing brief in support of their proposed Large Industrial Customer Standby Service ("*LICSS*") tariffs (the "*Revised Tariffs*").

I. Introduction

Big Rivers is a wholesale generation and transmission cooperative owned by its three distribution cooperatives: Kenergy, Jackson Purchase Energy Corporation, and Meade County Rural Electric Cooperative Corporation. On September 1, 2023, and in response to the Commission's order in Case No. 2021-00289,[1] Big Rivers filed a revised Large Industrial Customer Standby Service ("*LICSS*") tariff with a proposed effective date of October 1, 2023. On September 11, 2023, Kenergy filed its revised LICSS tariff to reflect the revisions proposed by BREC. The Commission suspended the proposed tariffs by Order entered herein on September 27, 2023. This proceeding has included multiple rounds of written discovery, direct and rebuttal direct testimony, and a hearing held for purposes of cross-examination on May 1, 2024.

[1] Case No. 2021-00289, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff*, Order at 25 (Ky. PSC Mar. 3, 2022). (Hereinafter "Case No. 2021-00289").

Preceding this case, the Joint Applicants proposed a LICSS tariff as part of Case No. 2021-00289, which was approved by the Commission on a pilot basis in its March 3, 2022 Order.[2] The 2021 LICSS tariff application was precipitated by Kimberly-Clark's 2021 installation of a natural gas turbine cogeneration unit at its Owensboro facility, which produces between 11 and 17 MW of behind-the-meter generation ("*BTMG*").[3] After installing this unit, Kimberly-Clark requested that Big Rivers and Kenergy provide Maintenance Power Service and Backup Power Service for its BTMG. The parties were unsuccessful in negotiating an amendment to their special contract to account for these new services, and so Big Rivers and Kenergy filed proposed LICSS tariffs to create a standard set of rates and terms for all current and future standby customers.[4]

As previously discussed during the 2021 tariff proceeding, the 2021 LICSS tariff design was intended to resolve several challenges posed by reserving capacity for large industrial customers on a standby basis. Big Rivers sought to create a tariff that fairly credited and charged standby customers for their effects on the system, as well as minimized system reliability risks resulting from BTMG outages. Fundamentally, Big Rivers believed (and continues to believe) that other customers should not subsidize the costs involved in reserving capacity and, when needed, providing power to meet standby customers' full loads.[5]

After weighing the merits of Big Rivers' and Kenergy's proposed LICSS tariffs against Kimberly-Clark's alternative rate structure, the Commission ultimately adopted Big Rivers' and

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[2] Case No. 2021-00289, Order at 25 (Ky. PSC Mar. 3, 2022).

[3] Case No. 2021-00289, Post-Hearing Brief at 2-3 (Ky. PSC Feb. 11, 2022) (citations omitted); Direct Testimony of Timothy Honadle at 4-5.

[4] Case No. 2021-00289, Post-Hearing Brief at 2-3 (Ky. PSC Feb. 11, 2022) (citations omitted).

[5] Case No. 2021-00289, Order at 22 (Ky. PSC Mar. 3, 2023); Case No. 2021-00289, Post-Hearing Brief at 11 (Ky. PSC Feb. 11, 2022).

Kenergy's tariffs on a pilot basis, and determined that the fixed costs associated with reserving capacity for standby customers cannot be passed off to other customer classes.[6] The Commission also ordered the Joint Applicants to submit a revised tariff, which should account for both the value and costs of an industrial customer's decision to utilize BTMG.[7]

On September 15, 2023, Joint Applicants submitted their Revised Tariffs. The Revised Tariffs seek to make the LICSS tariff more flexible and attuned to MISO market conditions, thereby enabling Big Rivers to recover the actual costs of serving standby customers by passing the actual administrative and structural costs associated with accounting for a standby customer's self-generation to those standby customers directly.[8] The proposed Revised Tariff also passes through to the standby customer all capacity benefits resulting from its BTMG, as monetized by accredited participation in the MISO marketplace. Joint Applicants believe their proposal is consistent with traditional cost-causer principles; it also transparently, fairly, and successfully minimizes the risk associated with cross-class subsidization in favor of customers with special needs.

Kimberly-Clark Corporation ("*Kimberly-Clark*") filed a motion to intervene in this proceeding as the only customer that currently receives standby service under the existing LICSS tariff. The Commission granted that motion.[9] Domtar Paper Company, LLC ("*Domtar*", and together with Kimberly-Clark, the "*Intervenors*") is also an intervenor. Domtar utilizes a 52 MW

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[6] Case No. 2021-00289, Order at 25 (Ky. PSC Mar. 3, 2023). *See also* Case No. 2021-00289, Rebuttal Testimony of John Wolfram at 9 (Ky. PSC Dec. 21, 2021).

[7] Case No. 2021-00289, Order at 25-26 (Ky. PSC Mar. 3, 2023).

[8] Direct Testimony of Nathan Berry at 10-11.

[9] Oct. 12, 2023 Order Granting Kimberly-Clark's Motion to Intervene at 3.

cogeneration facility at its Hawesville mill, and it has received standby service from Kenergy and Big Rivers through a Commission-approved special contract for more than twenty (20) years.[10] The Intervenors have each filed direct testimony proposing alternative LICSS tariff structures based on approaches developed by other electric utilities, such as Duke Energy Kentucky.[11]

Ultimately, Joint Applicants' concerns in this proceeding center around issues of system reliability and fair cost allocation. Big Rivers proposed its Revised Tariff based on its belief that, as a MISO member operating in a moment of expanding BTMG usage and MISO rules that are rapidly changing to keep up with reliability challenges, its LICSS tariff needs to afford adequate flexibility to adapt to MISO protocols and to ensure adequate capacity for all of its members at all times. Additionally, under these evolving conditions, Joint Applicants reasoned that conventional LICSS tariff approaches to prorating rates and costs for Standby Customers do not align with the economic realities of the Big Rivers or MISO systems. The Revised Tariff is an effort by Big Rivers to devise a balanced approach that meets Standby Customers' needs without sacrificing system reliability or unfairly subsidizing customer-induced costs through arbitrary proration of prices. While Big Rivers recognizes that this is an evolving area that will require revisiting as circumstances change and develop, it also believes that its Revised Tariff reasonably and properly emphasizes the system-wide considerations of its Member-Owners.

II. Big Rivers' Revised Tariff Properly Emphasizes Reliability and Fair Cost Allocation

In developing its Revised Tariff, Joint Applicants sought to create a tariff structure that centers on system reliability, properly accounts for the costs that stem from reserving sufficient power to meet its Standby Customers' needs at a moment's notice, and is flexible enough to adapt

[10] Oct. 12, 2023 Order Granting Domtar's Motion to Intervene at 2.

[11] Direct Testimony of Stephen J. Baron at 3, 22; Direct Testimony of Larry Blank, Exhibit 2.

to the changing conditions in the MISO market. Ultimately, the Company identified a structure that passes-through the real market costs and benefits of Standby Customers' BTMG directly to those Standby Customers, while using MISO's LMR registration protocols to ensure that MISO has a full and accurate picture of Big Rivers' system needs. This approach ensures that Big Rivers' system has appropriate capacity to meet its Standby Customers' needs at any time in all seasons, properly allocates incurred administrative and fixed costs (as well as credits) to the Standby Customers as the cost-causer (or credit-creator), and incentivizes Standby Customers to plan outages without forcing other customer classes to subsidize these incentives.

In its March 3, 2022 Order, the Commission instructed Big Rivers to properly evaluate the difference between Backup and Maintenance Power, and to propose a tariff which accounts for the differences between the two.[12] During the process of developing the Tariff, Big Rivers concluded that the structure of the Revised Tariff properly places the cost and risk of outages associated with a BTMG on the Standby Customer, and that the proposed structure makes Big Rivers essentially indifferent from a cost perspective to how often or whether a Standby Customers conducts planned maintenance outages. Further, instead of offering arbitrary incentives for planned outages, the Revised Tariff achieves the same goal as a bifurcation of maintenance and backup power rates by leveraging market realities to incentivize outage scheduling, rather than risk subsidization of Standby Customers through arbitrary rate discounts used in more conventional tariffs.

Though structurally identical to Big Rivers' 2021 LICSS Tariff in many respects, Big Rivers' Revised Tariff effectively replaced the differentiation between Backup and Maintenance power with a flexible approach that charges Standby Customers for the greater of the LIC energy

[12] Case No. 2022-00289, Order at 17-20 (Ky. PSC Mar. 3, 2022).

charge or the market rate.[13] Although this does not provide arbitrary incentives to Standby Customers (subsidized by non-Standby Customers) for pre-planning maintenance outages, it nevertheless does incentivize Standby Customers to work with Big Rivers to plan their maintenance outages for times when market prices and volatility are anticipated to be at a minimum. Moreover, market price spikes can now occur in all seasons,[14] and the Revised Tariff ensures that the risk of an unforeseen market spike occurring during a planned outage is properly borne by the Standby Customer. Thus, this approach was designed to encourage Standby Customers to consider scheduling maintenance outages during opportune periods, while also ensuring that unexpected market fluctuations do not result in other customer classes subsidizing these Customers' energy purchases.

In their testimony, Intervenors' witnesses raised the fact that the Revised Tariff reflects a departure from the historical approach to tariffs for the service at issue.[15] While Big Rivers does not disagree, Big Rivers believes that the approach laid out in the Company's Revised Tariff is nonetheless a legitimate and appropriate means of balancing system reliability with fair, just, and reasonable rates for its Standby Customers.[16] Specifically, Big Rivers believes that registering Standby Customers' BTMGs with MISO and passing both the fixed costs and the revenues from accredited capacity through to these Standby Customers is a fair and reasonable way to ensure that its Standby Customers receive adequate benefits from their BTMG units while the costs from

[13] *See* Joint Response of Big Rivers and Kenergy to Commission Staff's Request No. 1-15.

[14] Rebuttal Testimony of Terry Wright, Jr. at 8.

[15] Direct Testimony of Stephen J. Baron at 22; Direct Testimony of Larry Blank at 5, Exhibit 2.

[16] *See* Rebuttal Testimony of Terry Wright at 11.

reserving additional capacity for its Standby Customers are not subsidized by other customer classes.[17]

While it is of course true that Big Rivers could have simply mirrored existing rate structures of other utilities, the Revised Tariff was an attempt to evaluate how to effectively develop a LICSS tariff for the MISO marketplace while placing capacity, reliability, and the need to avoid subsidization at the fore.[18] As the Commission has stated, at the core of fair, just, and reasonable rates is the principle that "the consumers whose service demand causes the utility to incur additional investment expenditures and expenses should pay these costs," which the Revised Tariff ensures through its flexible, market-driven structure.[19] Additionally, because MISO's own approach to regulating BTMGs remains in flux, the Company concluded that a market pricing approach that allocated capacity credits, administrative costs, and energy costs based on economic realities would be a flexible way to accurately allocate the costs and credits of providing Backup Power while safeguarding other customer classes from market conditions that would force them to subsidize the Company's few Standby Customers.[20]

Arbitrary incentives for submitting planned maintenance schedules create financial risks to Big Rivers and the other retail customers served by Big Rivers' Members.[21] As Mr. Wright

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[17] Case No. 2022-00106, *Electronic Investigation of the Proposed Pole Attachment Tariffs of Rural Electric Cooperative Corporations*, Order at 8 (Ky. PSC Dec. 28, 2022) ("When determining how a utility's costs should be allocated among customers, the Commission has long stated that the basic tenant of rate-making is that costs should be allocated to the cost-causer.").

[18] Rebuttal Testimony of Terry Wright, Jr. at 11.

[19] Case No. 2022-00106, *Electronic Investigation of the Proposed Pole Attachment Tariffs of Rural Electric Cooperative Corporations*, Order at 8 (Ky. PSC Dec. 28, 2022).

[20] *See* Joint Response of Big Rivers and Kenergy to Commission Staff's Request No. 1-15, 1-16.

[21] *See* Joint Response of Big Rivers and Kenergy to Commission Staff's Request No. 1-11.

noted in his testimony, under MISO's Seasonal PRA construct, Big Rivers must acquire capacity to meet its Standby Customers' backup energy needs during peak seasons and shoulder seasons alike, meaning that there can be little or no advantage to scheduling maintenance outages during shoulder seasons.[22] Additionally, under the proposed tariff, a Standby Customer's low outage rate does not affect Big Rivers' costs; as long as there is any possibility that its Standby Customer will experience an outage, the costs Big Rivers incurs to maintain capacity remain unchanged.[23] Further, absent penalties for a Standby Customer not following a planned maintenance schedule that it provides to Big Rivers, Big Rivers and non-Standby Customers would be put at risk if Big Rivers hedged energy purchases based on that schedule and the Standby Customer delayed or cancelled its outage.

Intervenors also raise concerns about the requirements associated with registering BTMGs with MISO.[24] However, as Big Rivers has noted, the only way to adequately account for its Standby Customers' BTMGs is to allow MISO to evaluate the anticipated capacity value of these BTMGs.[25] As the market evolves and the prevalence of BTMG grows, if Big Rivers – or any other G&T within the MISO footprint – attempts to act as its own balancing authority by evaluating the capacity value of Standby Customer BTMGs in isolation, there is substantial risk of a capacity shortfall and its ensuing consequences.[26] These risks to both Big Rivers and, in the aggregate, the

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[22] Rebuttal Testimony of Terry Wright, Jr. at 8.

[23] *Id.* at 6.

[24] *See* Surrebuttal Testimony of Steve Cassady at 3-4.

[25] Rebuttal Testimony of Terry Wright, Jr. at 5-6; Joint Response of Big Rivers and Kenergy to Commission Staff Request No. 1-14, 2-8; Joint Response of Big Rivers and Kenergy to Intervenors Joint Request for Information on Rebuttal No. 3-2, 3-3, 3-4(c), 3-5.

[26] Joint Response of Big Rivers and Kenergy to Intervenors Joint Request for Information on Rebuttal Nos. 3-3(a), 3-4(c).

MISO system, are the exact issue that the Company can avoid by requiring BTMG registration by its Standby Customers.

Moreover, Big Rivers believes that its position as a member-owned, not-for-profit G&T affords it an opportunity to bring fresh thinking to tariff design, as shareholder interests are not present and profits are no motivation. Should Big Rivers' rate structure yield revenue for Big Rivers in excess of what is needed to meet a minimal 1.30 TIER, these revenues would assist in covering the costs of regulatory assets in its system, while simultaneously generating bill credits to its members, including its Standby Customers, through Big Rivers MSRM Program.[27]

III. Intervenors' Proposed Alternatives Do Not Adequately Address Big Rivers' Reliability and Cost-Allocation Concerns.

Big Rivers appreciates the analysis provided by Intervenors in this proceeding. As noted in Parts I and II, *supra*, Intervenors have recommended that Big Rivers adopt a conventional tariff structure that uses outage probability to discount the Monthly Standby Reservation Charge and provides a more favorable rate for scheduled maintenance outages.[28] However, when viewed in light of the economic realities of obtaining and maintaining standby capacity for Standby Customers, Big Rivers has determined that these components of the intervenors' proposed rate structure have the ability to artificially discount Standby Customer pricing at a cost and risk to all other retail customers served by Big Rivers' Members. Thus, the Company has concluded that a conventional LICSS approach will not adequately address the concerns that the Revised Tariff was designed to resolve.

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[27] Joint Response of Big Rivers and Kenergy to Commission Staff's Post-Hearing Request No. PH-4. *See also* Case No. 2022-00106, *Electronic Investigation of the Proposed Pole Attachment Tariffs of Rural Electric Cooperative Corporations*, Order at 8 (Ky. PSC Dec. 28, 2022) (Noting that in the case of non-profits including RECCs, "even retained capital is used to offset future rates or lower rate increases.").

[28] Direct Testimony of Larry Blank at 10-14. *See also* Direct Testimony of Stephen J. Baron at 22.

Given Big Rivers' seasonal capacity requirements and the increasing frequency of extreme weather events and outages during shoulder seasons, the advantages of scheduling maintenance outages during shoulder seasons simply does not justify the arbitrarily-discounted rates that Intervenors propose in their testimony.[29] Allotting this sort of discount for the Standby Customer class would inevitably result in subsidization by other customer classes, which cuts against traditional principles of ratemaking as well as a primary goal of Big Rivers' Revised Tariff.[30]

While Big Rivers acknowledges that there may be reasonable alternatives to its LICSS Tariff, requiring Big Rivers to assign capacity values to Standby Customers' BTMGs instead of relying on MISO's capacity accreditations unfairly shifts the risk and financial consequences of BTMG non-performance away from the Standby Customer and onto Big Rivers and its other Members.[31] For this reason, the Company believes that requiring Standby Customers to register their BTMG with MISO is a necessary step in properly ensuring reliability both within the Big Rivers system and throughout the MISO footprint.[32]

Intervenors' attempts to draw a connection between outage rates and energy pricing likewise create incentives that are simply too excessive to be included in a LICSS tariff without

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[29] Joint Response of Big Rivers and Kenergy to Domtar's Request No. 2-3; Rebuttal Testimony of Terry Wright, Jr. at 8-9.

[30] Joint Response of Big Rivers and Kenergy to Commission Staff's Post Hearing Request No. PH-2. *See also* Case No. 95-554, 1996 Ky. PUC LEXIS 449, Order at *84 (Ky. PSC September 11, 1996) ("The Commission is always concerned with the impact a rate increase will have on customers and must weigh the impact of that increase against the fairness of having one or more classes subsidize another class.").

[31] Joint Response of Big Rivers and Kenergy to Commission Staff Request No. 1-14; Joint Response of Big Rivers and Kenergy to Intervenors' Joint Request Nos. 3-2, 3-3(g), 3-5; Rebuttal Testimony of Terry Wright, Jr. at 5-6.

[32] Big Rivers notes that registration of BTMG capacity as a part of the Planning Resource Auction is not uncommon in the MISO footprint. In MISO's 2023 Planning Resource Auction, there were more than 4,000 MWs of BTMGs registered in MISO for Summer 23-24. *See* Direct Testimony of Terry Wright, Jr. at 6.

some degree of cross-class subsidy. Big Rivers has given serious consideration to the rate structure proposed by Domtar witness Larry Blank, and it remains concerned with the emphasis on outage probability as a basis for Monthly Standard Reservation Charge.[33] As discussed in the Rebuttal Testimony of Terry Wright, Jr., the possibility, rather than the probability, of forced outage is the relevant consideration when examining demand costs.[34] Big Rivers' fixed demand costs do not change regardless of how often backup energy is needed, and its rates are flexible depending on the market conditions at the time of the outage. In short, giving Standby Customers favorable rates based on their low outage rates would ultimately be an artificial incentive whose costs would be borne by other customer classes, rather than the cost-causer.

Finally, Big Rivers remains open to working with Intervenors to develop an approach that allays all concerns while ensuring flexibility, reliability, and proper cost allocation. Standby Customers are still able to enter agreements regarding maintenance power rates through special contracts.[35] For example, a special contract would allow Big Rivers to purchase blocks of energy for a Standby Customer's planned maintenance outage, with the Standby Customer paying the cost of that energy even if it changes its schedule or cancels the outage. As mentioned, Big Rivers does not foresee any material planning or pricing advantages to it resulting from advance notice periods for maintenance outages, but it will continue to evaluate its approaches. Should Big Rivers and Standby Customers find that there is a preferable structure that maintains reliability while ensuring

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[33] Direct Testimony of Larry Blank at 9; Direct Testimony of Stephen J. Baron at 7.

[34] Direct Testimony of Terry Wright, Jr. at 6.

[35] Although the Revised Tariff eliminated language related to special contracts, Commission regulations explicitly allow for special contracts. *See* Joint Response of Big Rivers and Kenergy to Intervenors Joint Request for Information No. 1-17.

that Standby Customers receive an appropriate credit for their BTMG, the Company would be eager to enter such an agreement.[36]

IV. Conclusion

For the foregoing Reasons, the Commission should approve Big Rivers' and Kenergy's Revised LICSS Tariff.

On this 29th day of May, 2024.

Respectfully submitted,

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[36] *See* Joint Response of Big Rivers and Kenergy to Commission Staff's Post-Hearing Request No. PH-2.

Certification

I hereby certify that a copy of this filing 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.

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