COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of*:*

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

RESPONSE BRIEF OF
BIG RIVERS ELECTRIC CORPORATION AND KENERGY CORP.

Big Rivers Electric Corporation ("*Big Rivers*") and Kenergy Corp. ("*Kenergy*") (together, the "*Joint Applicants*"), by counsel, hereby submit this response to the post-hearing briefs filed herein by Domtar Paper Company, LLC ("*Domtar*") and Kimberly-Clark Corporation ("*Kimberly-Clark*") (together, the "*Intervenors*") with respect to Joint Applicants' proposed revised Large Industrial Customer Standby Service ("*LICSS*") tariff (the "*Revised Tariff*").

This case concerns the terms by which Big Rivers will provide a particular type of electric service to a specific few of the 120,000+ customers served by its Member-Owners. Intervenors believe the standby service they demand should be made available on terms that generally follow past practices and conceptions. Rather than reevaluate the risks and costs presented by this unique service (which, in reality, encompasses unique service profiles), Intervenors focus chiefly on their own costs, unmistakably favoring a benefit to their own cost structures over the broader system-wide focus of Joint Applicants.

Conversely, Joint Applicants believe this case presents an opportunity for the Commission to consider and permit the implementation of an updated approach to standby service. While Joint Applicants recognize multiple avenues may exist to promote safe, reliable service on fair, just and reasonable terms, the reality of today's capacity and energy marketplace—and, more specifically, the manner in which Big Rivers plans and meets its load obligations—has evolved and is currently evolving to address the growing reliability considerations framed by an expansion in behind the meter generation (*"BTMG"*) resources like the cogereration facilities owned and operated by the Intervenors. The Joint Applicants' proposed Revised Tariff attempts to recognize the challenges and risks imposed upon their systems from both a cost and reliability perspective as a direct consequence of these developments and the type of service sought by Intervenors.

In their briefs, Intervenors make clear their need for subsidization to cover the costs of their BTMG investments, mischaracterize the Revised Tariff's flexible structure as unlawful, and fail to recognize Joint Applicants' reliability and cross-subsidization concerns. The Commission should properly discount Intervenors' requests for a tariff rate that substantially guarantees a return on BTMG investments at the expense of other ratepayers, and instead adopt the Revised Tariff, which balances the needs of current and future Standby customers with Joint Applicants' legitimate reliability concerns and overarching goal to avoid subsidization between and among customer classes.

I. Intervenors' Market Positions are Irrelevant to Big Rivers' Tariff Structure.

In their briefs, Intervenors emphasize the competitive nature of their industries and the difficulties they have faced in recent years as a consequence of a shrinking market and technological changes. Domtar framed the rate structure discussion around the threat of plant closure, writing that "[o]ver the past 10 years, an average of 1,060,000 tons of North American paper production capacity have been closed annually. That is the equivalent of one Hawesville-sized mill being closed every 7 months[]" and that "[u]tility rate increases significantly impact the

Hawesville mill's competitiveness, both domestically and internationally."[1] Likewise, Kimberly Clark characterized the Revised Tariff as a threat to its Owensboro mill, writing that it "would have significant negative consequences on the Owensboro Mill's ability to compete with other Kimberly-Clark facilities for future investment and jobs" and would further extend the time needed to recover Kimberly-Clark's investment in its BTMG units.[2]

While Joint Applicants are committed to ensuring fair, just, and reasonable rates for all customers, their approach to tariff design does not and should not take into account the individual economic conditions of particular customers. Indeed, seemingly lost on Intervenors is that this tariff is not designed specifically for them, but rather for a class of customers that may have internally differing interests, assets, and profiles. This fact requires the development of cost-based rates that promote recovery from cost-causing customers, rather than unfair subsidization of customer-induced costs through the arbitrary proration of prices.

As discussed in Big Rivers' Brief, the Revised Tariffs are based on the belief that discounting Standby Customers' rates at the expense of other customers is fundamentally inappropriate, and that the price of power should instead reflect the actual costs of ensuring Standby Customers' power needs are met during all periods.[3] Joint Applicants believe passing actual energy costs through to these customers using market-based rates is an effective way to incentivize Standby Customers to carefully plan maintenance outages while protecting other

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[1] Brief of Domtar Paper Company, LLC at 15-16 (May 29, 2024); see also id., at 17 ("Energy costs will weigh heavily in future decisions made by Domtar management whether to close or potentially repurpose the Hawesville site.").

[2] Kimberly-Clark Corporation's Post-Hearing Brief at 20-21 (May 29, 2024).

[3] Post-Hearing Brief of Big Rivers Electric Corporation and Kenergy Corp. at 5-6.

customer classes from unexpected price spikes that are becoming more frequent during what were previously thought of as "shoulder seasons."[4]

Again, while Joint Applicants recognize that reasonable, competitive rates are vital to their missions, efforts to achieve those rates do not extend to forcing other customers to subsidize the Intervenors' returns on BTMG investments or to shore up their market positions, both of which fall outside of the scope of the tariff development process and arguably violate the nondiscrimination provisions inherent to KRS Chapter 278, and particularly KRS 278.170. Instead, the Revised Tariff accounts for the economic reality of providing power at unexpected times, and appropriately considers impact to all customers, not only Standby Customers.

II. The Revised Tariff Appropriately Prices Maintenance and Backup Power Based on Market Conditions.

Intervenors argue that Joint Applicants' approach to pricing is "unreasonable because it fails to recognize that the cost to provide maintenance power – which is limited to off-peak periods and is scheduled in advance – is not the same as the cost to provide unscheduled backup power."[5] Intervenors also contend that the proposed tariff structure violates federal regulations which require that rates "take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities."[6] However, in their attempt to convince the Commission that the only way to "recognize" a difference between backup and maintenance power is to subsidize maintenance power rates, Intervenors

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

[5] Kimberly-Clark Corporation's Post-Hearing Brief at 7.

[6] Brief of Domtar Paper Company, LLC at 7 (citing 18 CFR § 292.305(c)(2)).

mischaracterize the Revised Tariff, which continues to incentivize useful coordination by utilizing a flexible pricing approach that places the risks (and capacity benefit) where they should be—with the Standby Customer.

The Intervenors co-mingle the concepts of energy and capacity, and with the exception of a minimal reservation charge, they desire only to pay for backup/maintenance capacity when their own generation is down. The Revised Tariff, on the other hand, recognizes the reality that Big Rivers is incurring costs all month long to ensure that it has the capability to provide Back-up Power to a Standby Customer at a moment's notice, in the event that Standby Customer experiences a forced outage at any time during that month. Further, because the Back-up Power provisions in the Revised Tariff compensate Big Rivers for those costs, Big Rivers incurs no additional cost to have the same capability available for a Standby Customer's planned maintenance outages, and thus, there is no need to have a separate, discounted rate for "maintenance power."

Nevertheless, the Revised Tariff still incorporates a market incentive for Standby Customers to schedule outages during periods of reduced pricing, while also appropriately accounting for the risk of demand spikes during all seasons by tying energy rates to MISO day-ahead and real-time market pricing.[7] As the Intervenors acknowledged in their briefs, under the Revised Tariff there are significant energy costs incurred if Big Rivers provides power during periods of high demand.[8] Thus, in order for Standby Customers to maximize the value of their BTMGs, they must schedule maintenance outages during periods of low energy rates, an approach which would also help these Standby Customers maximize the net return they receive from their

[7] *See* Rebuttal Testimony of Terry Wright, Jr. at 9.

[8] Brief of Domtar Paper Company, LLC at 9.

capacity credit and their investment in cogeneration.[9] This approach is consistent with Big Rivers' finding that the system benefits of planned maintenance outages do not justify the sorts of subsidies that many other utilities build into their standby tariff rates for maintenance power.[10]

As stated in the Joint Applicants' brief, the Revised Tariff was designed to create a flexible approach that keeps energy costs with the cost-causer while still creating an incentive for Standby Customers to plan their outages with peak demand periods in mind.[11] Rather than create an arbitrary formula for capturing the limited benefits of maintenance scheduling or improperly subsidizing Standby Customers at the expense of the other customer classes, the Revised Tariff adheres to ratemaking principles of transparency, simplicity, and nondiscrimination by adhering to the economic realities of meeting Standby Customers' energy needs, whether backup or maintenance, at different points in time. Though this approach does not adhere to the bifurcation and proration approach taken by other utilities, Big Rivers believes that it is a fair, just, and reasonable alternative that properly accounts for maintenance and backup power while minimizing risks for other customers and customer classes.

III. The Revised Tariff's Emphasis on Reliability Is Reasonable.

Intervenors contend that the Revised Tariff's emphasis on reliability is unreasonable and excessive, particularly in light of MISO's current resource planning and BTMG registration requirements. In its brief, Domtar argues that Kentucky utilities "should not voluntarily take on additional capacity planning obligations and costs not imposed on MISO's other fourteen

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

[10] *See* Rebuttal Testimony of Terry Wright, Jr. at 8-10.

[11] Post-Hearing Brief of Big Rivers Electric Corporation and Kenergy Corp. at 5-6.

states[,]"[12] and Kimberly Clark stated plainly, "[t]here is no need to assume the worst."[13] While Joint Applicants do not believe that their approach "assume[s] the worst," they do believe that properly planning for reality, and therefore preparing for full outages of Standby Customers' BTMGs, is the most reasonable approach to resource planning, irrespective of current MISO minimum requirements regarding registration and recognition of BTMGs.

Ensuring system reliability and adequate resource planning are pressing issues, and Joint Applicants must continually evaluate their practices to keep up with, and anticipate, developing MISO rules and regulation. Joint Applicants believe their standby service tariffs should embrace MISO's LMR registration protocols to ensure that MISO has a full and accurate picture of Big Rivers' system needs. As stated in their brief, this approach ensures that Big Rivers' system has appropriate capacity to meet its Standby Customers' needs at any time in all seasons, that it properly allocates incurred administrative and fixed costs (as well as credits) to the cost-causing (or credit-creating) Standby Customers, and that it incentivizes Standby Customers to fairly plan outages without forcing other customer classes to subsidize these incentives. In light of "unprecedented challenges to the reliability of our nation's electric system[,]"[14] Joint Applicants do not believe it is appropriate to artificially constrain themselves to legacy tariff structures or minimum requirements. As intermittent resources and BTMG proliferate throughout MISO and the nation's energy grid, preparing for the inevitable becomes even more important, and Joint

[12] Brief of Domtar Paper Company, LLC at 13.

[13] Kimberly-Clark Corporation's Post-Hearing Brief at 10.

[14] "FERC Commissioners Tell Senators of Major Grid Reliability Challenges, With Some Blaming Markets," UTILITY DIVE, May 5, 2023, accessible at: https://www.utilitydive.com/news/ferc-grid-reliability-senate-energyhearing/649523/ (last accessed June 2, 2024).); Brief of Domtar Paper Company, LLC at 13.

Applicants believe that they have an obligation to actively identify and minimize risk to <u>all</u> of their Member-Owners when possible. This Revised Tariff does just that.

Joint Applicants' Revised Tariff reflects a transparent structure which properly allocates costs to cost-causers and emphasizes system reliability. It presents a rate design which is fair, just and reasonable, and it will provide the necessary flexibility to minimize cross-subsidization. For the reasons stated herein and in their Brief, Joint Applicants request that the Commission approve their revised tariffs.

On this 7th day of June, 2024.

Respectfully submitted,

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

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

/s/ Edward T. Depp
Counsel to Big Rivers Electric Corporation