

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**BIG RIVERS ELECTRIC CORPORATION AND KENERGY CORP.’S
MOTION FOR CLARIFICATION AND PARTIAL REHEARING
AND MOTION FOR EXTENSION OF TIME**

Big Rivers Electric Corporation (“*Big Rivers*”) and Kenergy Corp. (“*Kenergy*”) (together, the “*Joint Applicants*”), by counsel and pursuant to KRS 278.400 and 807 KAR 5:001 Section 5, hereby move the Commission for clarification and a partial rehearing of its Order entered herein on June 28, 2024 and for an extension of time. In support of this motion, Joint Applicants state as follows.

I. Introduction.

In September of 2023, Joint Applicants filed their revised Large Industrial Customer Standby Service (“*LICSS*”) tariffs as directed by the Commission in Case No. 2021-00289.¹ On September 27, 2023, the Commission suspended the proposed Tariffs and initiated an investigation into the reasonableness of the proposed Tariffs. Domtar Paper Company, LLC (“*Domtar*”) and Kimberly-Clark Corporation (“*Kimberly-Clark*”) (collectively, the “*Intervenors*”) were admitted to join the proceeding as intervenors, and each proposed alternative LICSS rate designs for the Commission’s consideration. Following multiple rounds of written discovery, direct, rebuttal, and

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

sur-rebuttal testimony, a hearing held for purposes of cross-examination, and two rounds of post-hearing briefing, the Commission issued a final order in the proceeding on June 28, 2024 (the “*Order*”). In that Order, the Commission rejected Joint Applicants’ revised LICSS Tariffs and set out requirements for a revised Tariff, to be filed by July 18, 2024.²

The Order, among other things, prescribed rate formulas for different types of power service (namely, Maintenance, Back-up, and Supplemental), reinstated notice requirements for scheduled maintenance outages, and established a Monthly Standby Reservation Charge.³ The Order also denied Joint Applicants’ proposal to return capacity credits to LICSS customers based on Midcontinent Independent System Operator (“*MISO*”) Planning Resource Auction (“*PRA*”) clearing prices, as well as the related terms requiring MISO capacity accreditation for LICSS customers’ behind-the-meter generators.⁴

While many components of the Order provide Joint Applicants with obvious direction as to finalization and implementation of the new LICSS tariff, the Commission’s discussion also includes certain aspects that merit further clarification. Specifically, the Order does not contain express direction on approved energy and/or demand rates associated with the subject service types. It also includes confusing language arguably directing Big Rivers to “hold back the necessary capacity to serve the Standby Customer’s demand for maintenance outages[.]”⁵ Joint Applicants seek clarity with respect to these items to ensure the LICSS tariffs they file are compliant with the Order and that all parties have clarity with respect to the rates and practices associated with standby service.

² Order at 33-34.

³ *Id.* at ordering paragraphs 3, 4, 6, 7, 9.

⁴ *Id.* at 28.

⁵ *Id.* at 26.

KRS 278.400 provides an opportunity for a party to timely ask the Commission to revisit an earlier determination and “...correct any material errors or omissions, or to correct findings that are unreasonable or unlawful.”⁶ “[A]n order is unreasonable if it is not supported by substantial evidence and the evidence presented leaves no room for difference of opinion among reasonable minds.”⁷ Under such circumstances, the Commission is empowered to “change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.”⁸ Additionally, even where the Commission is not fully convinced that a correction is warranted, it is nonetheless empowered to order a rehearing in order to provide further clarification to particular provisions of an order.⁹

Joint Applicants request that the Commission grant partial rehearing in order to address certain relevant items that appear unclear, conflicting, or omitted, as well as reconsider language suggesting or directing that Big Rivers “hold back” capacity from MISO.

⁶ KRS 278.400; Case No. 2022-00216, *Electronic Application of Bluegrass Water Utility Operating Company, LLC For a Certificate of Public Convenience and Necessity for the Installation of Monitoring Equipment and for a Corresponding Limited Waiver of Daily Inspection Requirements*, Order (Ky. PSC Sep. 8, 2023).

⁷ *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 510 (Ky. App. 1990) (citing *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980)).

⁸ KRS 278.400.

⁹ See Case No. 2018-00358, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Order (Ky. PSC Aug. 8, 2019); Case No. 98-426, *Application of Louisville Gas and Electric Company for Approval of an Alternative Method of Regulation of its Rates and Service*, Order (Ky. PSC Feb. 17, 2000); Case No. 2022-00141, *An Electronic Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. For the Sixth Month Expense Periods Ending November 30, 2019, May 31, 2020, November 30, 2020, and November 30, 2021, the Two-Year Expense Period Ending May 31, 2021, and the Passthrough Mechanism of its Sixteen Member Distribution Cooperatives*, Order (Ky. PSC May 7, 2024).

II. Joint Applicants Request Clarification or, Alternatively, a Partial Rehearing of the Order.

Certain provisions of the Order require clarification. Specifically, Joint Applicants seek clarification regarding: (1) the appropriate Energy Charge for Maintenance Power Service; (2) the appropriate Energy and Demand Charges for Backup Power Service; and (3) the Commission's understanding or expectation that Big Rivers "hold[(s)] back" power from MISO in order to accommodate standby customers.

A. Energy Charges for Maintenance Power Service.

The Order does not discuss or expressly approve a rate for energy delivered in connection with Maintenance Power Service. Consistent with the fact that this service requires specified advanced notice from the customer and thus may be planned-for, similar to Supplemental Power, the energy charge approved under Joint Applicants' Standard Rate Schedule LIC – Large Industrial Customer tariff schedule should govern. The proposed tariff constructs submitted by both Intervenors embraced this conclusion.¹⁰ Big Rivers requests that the Commission grant rehearing and expressly approve an energy rate for Maintenance Power Service equal to the LIC energy rate.

B. Charges for Backup Power Service.

1. Energy Charges for Backup Power Service.

The Order contains conflicting language regarding the energy rates to be charged for Backup Power Service. In ordering paragraph 7, the Commission states, "Forced and Unscheduled Outages shall be charged an energy rate equal to BREC's variable cost of generation."¹¹ However, within the body of the Order, the Commission concluded: "Therefore, upon review and

¹⁰ Direct Testimony of Stephen J. Baron at 18-20, Ex. 10 at 3; Direct Testimony of Larry Blank at 11, Ex. 2 at 4.

¹¹ Order at 33, ordering paragraph 7.

consideration of all proposals regarding Backup Power Service, the Commission finds that in the event of a forced or unscheduled outage, the energy charge will be charged at the MISO LMP.”¹² The Commission went on to say that “this methodology also shifts the burden off BREC and allows Standby Customers to determine how and where they want to receive the energy at market price.”¹³

It appears to Joint Applicants that the Commission’s intention was to approve energy rates for Backup Power Service that align with MISO’s actual locational marginal price (LMP) for energy at the applicable load node during each hour the energy is delivered, plus any transmission charges, MISO fees, or other costs. This is consistent with the language contained in Joint Applicant’s originally-proposed LICSS tariff. It also aligns with the Commission’s apparent (and sound) determination that Big Rivers should be permitted to recover costs it actually incurs to accommodate the delivery of energy during unexpected events for which insufficient advance notice was provided by the customer. Given the conflicting language, however, Joint Applicants request rehearing and approval of an energy rate for Backup Power Service equal to the actual locational marginal price for energy by MISO at the applicable load node during each hour of the day at the time of delivery, plus any transmission charges, MISO fees, or other costs. An energy rate based on Big Rivers’ variable cost of generation would not compensate Big Rivers for the actual cost to deliver energy, would give Backup Power energy an unwarranted discount to energy sold to other retail customers on the Big Rivers system, is unsupported by any evidence in the record, and would be unreasonable.

¹² *Id.* at 27

¹³ *Id.* at 28. The Commission also stated, “While the Commission acknowledges the fact that not all outages can be planned, the Commission notes that Standby Customers have an extremely low forced outage rate and so the costs that are incurred from such an outage can be considered minimal as compared to *the costs that the Intervenors would incur from providing the energy from its own load that it holds back.*” *Id.* (emphasis added). Joint Applicants struggle to understand this language, as discussed *infra*.

2. Demand Charges for Backup Power Service.

Though the Order includes considerable discussion regarding the pricing of services in connection with forced and unscheduled outages, it does not expressly address a demand charge in connection with Backup Power Service. This apparent omission of a Backup Power demand charge defeats a central purpose of the Tariff's structure. More specifically, absent a demand charge for Backup Power Service, Standby Customers are incentivized to **not** schedule outages. Not scheduling an outage would result in zero additional demand charges, whereas scheduling an outage would result in additional demand charges. Although unscheduled outages would have an impact on the minimal Monthly Standby Reservation Charge, it is unreasonable and contrary to the reasoning of the Order for the demand charge for Backup Power Service to be less than the demand charge for Maintenance Power Service.

Demand charges are, of course, typical and reasonable components of electric rates; there was no evidence that removal of a demand charge would result in a fair, just, and reasonable rate; further, both Intervenors' own proposals included demand charges for Backup Power Service.¹⁴ Consequently, and consistent with the Commission's decision to adopt to Kimberly-Clark's proposed Monthly Standby Reservation Charge, it would appear that the Backup Power Demand Charge was likely intended to be based on the demand charge approved under Joint Applicants' Standard Rate Schedule LIC – Large Industrial Customer tariff schedules, prorated based on the number of unscheduled outage days during the billing period.¹⁵ As such, Joint Applicants request

¹⁴ *Id.* at 29; *see also* Direct Testimony of Larry Blank, Exhibit 2 at 5. Domtar's proposal included adopting Duke Energy Kentucky's GSS Tariff, which also includes both a reservation charge and Backup Power demand charge. *See* Direct Testimony of Stephen Baron, Exhibit 10 at 3.

¹⁵ *See* Direct Testimony of Larry Blank, at 11 ("Fourth, my recommended LICSS contains distinct Backup Power Charges based on the full LIC demand charge prorated based on the number of outage days and with energy charged at the full LIC energy charge.").

that the Commission grant rehearing and approve a Backup Power Demand Charge equal to the LIC demand charge, prorated based on the number of unscheduled outage days in the month.

C. “Hold Back” of Capacity.

At various points in the Order, the Commission references “holding back” capacity in order to ensure sufficient resources are available to provide standby customers with service when needed.¹⁶ At page 26 of the Order, the Commission states that Big Rivers “should only hold back the necessary capacity to serve the Standby Customer’s demand for maintenance outages considering BREC will receive sufficient customer notice and can properly plan accordingly for that capacity addition to its system and that otherwise BREC should be bidding the remainder of its capacity in the MISO market.”¹⁷ This language is both confusing and cause for concern, as it would be costly to Big Rivers and the ratepayers on its system, offers no benefits, and does not comport with how capacity works within MISO.

As was discussed throughout this proceeding, Big Rivers does not “hold back” capacity. Rather, “for each planning year, Big Rivers offers *all* of its generation capacity for sale into MISO and purchases *all* of its load requirements from MISO.”¹⁸ This includes acquiring capacity to serve its LICSS customers.¹⁹ Thus, the suggestion that Big Rivers either does or should “hold back” capacity from MISO to accommodate behind-the-meter outages—planned or otherwise—is

¹⁶ Order at 26 (“The Commission also finds that BREC should only hold back the necessary capacity to serve the Standby Customer’s demand for maintenance outages...”), at 27 (“The Commission acknowledges that since BREC is holding the additional capacity back to serve any outages from the Standby Customers that there are additional costs every month to ensure that BREC can provide Backup Power Service at a moment’s notice”), and at 28 (“... providing BREC the ability to bid in its entire load into the MISO market rather than incurring additional and unnecessary costs by holding that capacity back.”).

¹⁷ *Id.* at 26.

¹⁸ Rebuttal Testimony of Terry Wright, Jr. at 2 (emphasis added). *See also id.* at 4, 5, 8, 10.

¹⁹ *Id.* at 4.

inaccurate. Moreover, if taken at its plain meaning, it would seemingly require Big Rivers to significantly alter its existing practices of offering all of its generation capacity for sale into MISO in exchange for no benefit whatsoever.

Arguably, the Commission's references to "holding back capacity" were dicta, and intended only to reflect the Commission's colloquial understanding or expectation that Big Rivers' load forecasts incorporate the Maintenance Power needs of standby service customers, but not Backup Power needs. If so, clarification would be helpful. However, in the event the Commission's "hold back" discussions seek to compel Big Rivers to withhold capacity that should be sold into MISO, Joint Applicants believe the Order is unreasonable, unlawful, and outside the scope of this proceeding. Consequently, Big Rivers seeks clarification of this issue.

III. Motion for Extension of Time

In light of the clarifications sought herein, Joint Applicants respectfully request that the Commission suspend their obligation to file new tariff sheets with the Commission, pending resolution of this motion and any potential rehearing.

Additionally, consistent with the Commission's direction in the Order, the parties to this case have spent numerous hours both before and after the Order was issued negotiating tariff language, and are nearing an agreement.²⁰ Joint Applicants respectfully request that the parties be given twenty (20) days from today to finalize an agreement and that no further action be taken in this case, other than consideration of this Motion for Extension of Time. If an agreement is reached within those twenty (20) days, Joint Applicants will file the tariffs. Approval of the agreed tariffs

²⁰ See Order at 32 (encouraging parties to "address and resolve any concerns regarding the Commission's determinations and to explore the potential for agreement on new rates" and "engage in open and constructive dialogue, leveraging their collective expertise and perspectives to address any disputes and to develop mutually agreeable solutions.").

would resolve the Joint Applicants' Motion for Rehearing. Both Kimberly-Clark and Domtar support this request for twenty (20) days to finalize an agreement.

IV. Conclusion.

For the foregoing reasons, Joint Applicants request partial rehearing of the Commission's Order to provide clarification on the matters identified herein as well as an extension to finalize an agreement with Intervenors in this proceeding.

On this 18th day of July, 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