COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

REPLY BRIEF OF DOMTAR PAPER COMPANY, LLC

Domtar Paper Company, LLC ("Domtar") submits this Reply Brief in response to the Post-Hearing Brief filed by Big Rivers Electric Corporation and Kenergy Corp. ("Big Rivers/Kenergy" or "Companies") on May 29, 2024.

In their Post-Hearing Brief, Big Rivers/Kenergy claim that reliability concerns and cost causation principles justify approval of their proposed Large Industrial Customer Standby Service ("LICSS") tariff.[1] However, contrary to the Companies' reliability arguments, MISO's planning reserve margin is explicitly intended to cover "*Unplanned or forced outages of generating equipment*."[2] Continuing Big Rivers' current practice of planning to serve the net load of customers with cogeneration (as opposed to the full load) for both MISO and integrated resource planning ("IRP") purposes thus preserves the reliability that exists today. The Companies have not presented a valid reason to voluntarily exceed MISO's current reliability requirements at the expense of their customers.

Further, rather than aligning with cost causation principles, the proposed LICSS tariff directly contravenes those principles by introducing the possibility that standby service

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[1] Big Rivers/Kenergy Post-Hearing Brief at 4-9.
[2] MISO Business Practices Manual BPM-011 at 11.

customers may be required to pay more than a customer without self-generation through a *"higher of cost or market"* energy penalty.[3] There is no possible cost-based justification for such an anomalous result.

The Companies readily admit that their proposed standby service pricing is not *"conventional"* and is *"a departure from the historical approach to tariffs for the service at issue."*[4] But the *"conventional"* pricing approach is conventional for good reason. That approach is required by law under Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), the FERC regulations implementing PURPA (18 CFR Section 292), and the Kentucky regulations implementing PURPA (807 KAR 5:054). No other utility anywhere in the U.S. has a rate that is similar to the Companies' proposed LICSS.

Duke Energy Kentucky's ("Duke Kentucky") Generation Support Service ("GSS") tariff is conventional, reasonable, and lawful. The Duke Kentucky GSS tariff properly charges less for maintenance power during planned outages than for backup power during unplanned outages; properly charges the full demand rate only on the supplemental capacity which is in excess of the capacity provided by the customer's self-generation (net demand not gross demand); charges a cost-based energy rate on all energy consumed (not the higher of cost or market); and imposes a reasonable monthly standby charge based on the utility's transmission cost. The GSS tariff is also comparable to standby service tariffs offered by other MISO utilities, contradicting Big Rivers' argument that the proposed LICSS approach is necessary for reliability.[5] Duke's *"conventional"* GSS tariff should serve as the model for standby service pricing for Big Rivers.

Seemingly as a fallback proposal, the Companies hold out the possibility that they could enter into special contracts with standby service customers even if the LICSS tariff was approved.[6]

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[3] Domtar Brief at 8-9.
[4] Big Rivers/Kenergy Post-Hearing Brief at 6 and 9.
[5] Baron Direct at 17-20.
[6] Big Rivers/Kenergy Post-Hearing Brief at 11-12.

But were the Commission to approve the proposed LICSS tariff, the Companies would have little incentive to engage in good-faith negotiations. The possibility of entering into a special contract to avoid an unreasonable rate cannot be the justification for approving the unreasonable rate in the first place.

The Companies also attempt to justify overcharging Domtar and Kimberly-Clark Corporation on the basis that margins earned by Big Rivers in excess of its approved 1.30 TIER would go 60% to pay down the smelter-related regulatory assets and 40% to members as a credit through the Member Rate Stability Mechanism.[7] The Commission has never embraced "*Robin Hood*" ratemaking nor can it under KRS 278.030 (rates shall be "*fair, just and reasonable*") and KRS 278.170 ("*No utility shall…subject any person to any unreasonable prejudice or disadvantage…")*. Moreover, Domtar's Hawesville plant produces freesheet paper, a market that is declining at 4% to 6% per year. The 45.5% (6.48 million) annual rate increase to Domtar that would result from approval of the proposed LICSS tariff would further put this major Western Kentucky industry at risk.

CONCLUSION

WHEREFORE, the Commission should reject the proposed LICSS tariff, and should require Big Rivers to implement a standby service tariff based on Duke Kentucky's GSS rate.

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[7] Big Rivers/Kenergy Post-Hearing Brief at 9.