

customers on the BREC system that install their own generation; who request Supplemental, Maintenance, and Backup Power Service; and who do not have a contract for Supplemental, Maintenance, and Backup Power Service.² Kimberly-Clark Corporation intervened in those proceedings, but Domtar did not.³

After conducting extensive discovery and holding a hearing, the Commission found that BREC and Kenergy's LICSS tariff was approved on a pilot basis only.⁴ The Commission noted there was not enough evidence in the record to determine if the proposed LICSS tariff contained the most appropriate rates for Maintenance Power Service and Backup Power Service.⁵ The Commission noted concern that the LICSS tariff Maintenance Power Service and Backup Power Service are priced the same but are very different.⁶ The Commission stated:

[I]n future filings, it is inappropriate to bundle the pricing of LICSS Maintenance Power Service and Backup Power Service. These different services should be offered separately, and the rates should be set such that the appropriate embedded and incremental costs associated with each of the services are recognized and accounted for appropriately.⁷

² Case No. 2021-00289, Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff (filed June 24, 2021).

³ Case No. 2021-00289, Aug. 6, 2021 Order.

⁴ Case No. 2021-00289, Mar. 3, 2022 Order at 16.

⁵ Case No. 2021-00289, Mar. 3, 2022 Order at 16.

⁶ Case No. 2021-00289, Mar. 3, 2022 Order at 17.

⁷ Case No. 2021-00289, Mar. 3, 2022 Order at 20.

The Commission required BREC and Kenergy to file a new LICSS tariff that contained fair, just and reasonable rates with additional cost support and testimony by September 1, 2023.⁸

Domtar owns a papermill in Hawesville, Kentucky that has a 52 MW onsite cogeneration facility.⁹ Domtar has had a Commission approved contract with Kenergy since April 4, 2001, that covers planned and unplanned outages of its cogeneration unit.¹⁰ Under the contract, Domtar designates a certain percentage of its load as firm and pays the tariff rate on that portion, then purchases standby backup power at the Midcontinent Independent System Operator, Inc. (MISO) rate, plus an adder to cover BREC's administrative costs.¹¹

After the final Order in Case No. 2021-00289, Kenergy notified Domtar it would be terminating Domtar's contract on March 31, 2023, based on the Commission's approval of the LICSS tariff.¹² Domtar, BREC, and Kenergy have attempted to negotiate a new contract for a standby rate but have been unable to reach an agreement, and on April 1, 2023, Domtar will be moved to the LICSS tariff rates.¹³ Domtar requested the contract be extended until the new LICSS tariff is filed and requested an Informal Conference (IC) with Commission Staff.¹⁴

⁸ Case No. 2021-00289, Mar. 3, 2022 Order at 25.

⁹ Domtar Paper Company, LLC Complaint (filed Jan. 11, 2023) (Domtar Complaint) at 1.

¹⁰ Domtar Complaint at 6.

¹¹ Domtar Complaint at 7.

¹² Domtar Complaint at 10.

¹³ Domtar Complaint at 10.

¹⁴ Domtar Paper Company, LLC's Motion for Contract Extension and Motion for Informal Conference (filed Feb. 16, 2023).

LEGAL STANDARD

The Commission has original jurisdiction to hear complaints against a utility regarding its rates and services.¹⁵ A utility may only collect a rate that is fair, just and reasonable¹⁶ and the services a utility provides must be adequate, efficient, and reasonable.¹⁷

DISCUSSION AND FINDINGS

Based upon the case record, and the record in Case No. 2021-00289, the Commission finds Domtar's contract with BREC and Kenergy should be extended until the refile of the LICSS tariff and subsequent investigation are complete. The Commission found in Case No. 2021-00289 the LICSS tariff was being approved on a pilot basis only.¹⁸ The Commission found BREC's LICSS tariff was flawed¹⁹ and directed BREC to file cost support and testimony showing the updated LICSS tariff was fair, just and reasonable.²⁰ The Commission further found that BREC should not bundle the pricing for LICSS Maintenance Power Service and Backup Service in the new filing.²¹

BREC and Kenergy were on notice when negotiating the contract with Domtar that the Commission would be conducting another investigation into the LICSS tariff. Instead revising the LICSS tariff to address the Commission's concerns, BREC moved forward

¹⁵ KRS 278.260.

¹⁶ KRS 278.030(1).

¹⁷ KRS 278.030(2).

¹⁸ Case No. 2021-00289, Mar. 3, 2022 Order at 16.

¹⁹ Case No. 2021-00289, Mar. 3, 2022 Order at 23.

²⁰ Case No. 2021-00289, Mar. 3, 2022 Order at 25.

²¹ Case No. 2021-00289, Mar. 3, 2022 Order at 20.

with requiring Domtar to take service on the pilot LICSS tariff. From the case record, there is no evidence of a change in Domtar's circumstances that would justify the change. The Commission finds that allowing a long-standing contract to expire and forcing Domtar onto a tariff that has only been approved on a pilot basis would not result in a fair, just and reasonable rate.

The Commission cautions Domtar that this is not an approval of the contract on an indefinite basis, nor is this a comment on the appropriateness of the contract. The extension of the contract is merely maintaining the status quo until the Commission is presented with the information necessary to make a decision regarding the reasonableness of the LICSS tariff. The Commission notes the final Order in Case No. 2021-00289 did not state the LICSS tariff would continue without modifications. The Commission will conduct detailed review of BREC's LICSS tariff after it is filed with the appropriate evidentiary support. The Commission will allow Domtar and Kimberly-Clark Corporation (Kimberly-Clark) to intervene as parties when that case is established and permit the companies to also file cost support and testimony regarding their position. The Commission finds because the contract is being extended, the motion for an IC with Commission Staff is moot and should be denied.

IT IS THEREFORE ORDERED that:

1. The contract between Domtar and Kenergy shall remain in effect until further order of the Commission.
2. The motion for an IC is denied.
3. Domtar and Kimberly-Clark shall be granted intervention into the proceedings in which the Commission will investigate the new LICSS tariff filing.

4. This case is closed and removed from the Commission's docket.

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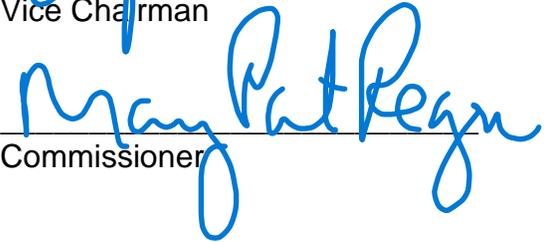
PUBLIC SERVICE COMMISSION



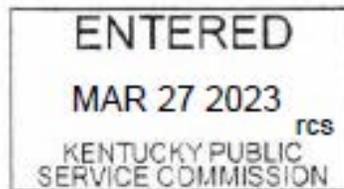
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