

COMMONWEALTH OF KENTUCKY
BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:)

ELECTRONIC TARIFF FILING OF)
BIG RIVERS ELECTRIC CORPORATION)
AND KENERGY CORP. TO IMPLEMENT A)
NEW STANDBY SERVICE TARIFF)

Case No. 2021-00289

PETITION FOR REHEARING OF
KIMBERLY-CLARK CORPORATION

Pursuant to K.R.S. §278.400, Kimberly-Clark Corporation (“Kimberly-Clark”) seeks rehearing of the Commission’s March 3, 2022 Order approving Big Rivers Electric Corporation’s (“Big Rivers”) and Kenergy Corporation’s (“Kenergy”) proposed LICSS standby service tariff without modification.

I. INTRODUCTION

Kimberly-Clark respectfully requests rehearing of the Commission’s Order because it: 1) improperly shifted the burden of proof from the utility to the customer in violation of KRS 278.190(3); 2) is discriminatory because it approved more onerous terms for backup and maintenance service than for LIC service; 3) it may require Kimberly-Clark to pay a fixed demand of up to 34 MW every month while all other LIC customers are billed demand on a 100% variable basis; and 4) rejected Kimberly-Clark’s proposal to implement a standby tariff based on Big Rivers’ existing QFs due to factually inaccuracies.

II. ARGUMENT

1. The Commission's Order Shifted The Burden Of Proof From The Utility To The Customer In Violation Of KRS 278.190(3).

The utility has the burden of providing sufficient evidence to justify its proposed rate change. KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness and states that, "*At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility...*" (emphasis added). This standard is appropriate because the utility is the foremost expert on its own rates. The utility has greater access to information concerning its costs and revenues than its customers. Customers can intervene in a proceeding affecting rates, but they do not have the burden of proving that their proposals are just and reasonable.

The Commission's Order shifted the burden of proof in violation of KRS 278.190, finding that Big Rivers did not provide "*enough detailed evidence in the record at this time to precisely determine the most-appropriate rates for both BREC's proposed LICSS Maintenance Power Service and for Backup Power Service.*"¹ The Commission nonetheless approved Big Rivers' proposed LICSS rate in its entirety, based on the rationale that Big Rivers' proposal was *more* reasonable than Kimberly-Clark's alternative proposals. The Order states:

[The] Commission finds that there is not enough detailed evidence in the record at this time to precisely determine the most-appropriate rates for both BREC's proposed LICSS Maintenance Power Service and for Backup Power Service. The Commission also finds that continuing the current arrangement of Kimberly-Clark paying the LIC tariff rate is also not fair, just and reasonable. Because maintaining the status quo produces a result that is not fair, just and reasonable; and because there is not sufficient information in the record to determine the most-appropriate rates for both Maintenance Power Service and for Backup Power Service, the Commission finds that in the absence of a better alternative, BREC's proposed LICSS rates for Maintenance and Backup Power Service are a fair, just and reasonable initial arrangement for providing Maintenance Power Service and Backup Power Service, until a better alternative is supported and developed.²

¹ Order at 16.

² Order at 16-17.

This is an improper standard. KRS 278.190 states that the utility has the burden of proof, not the customer opposing the utility's rate change. If the utility has not provided sufficient evidence to support its proposal, as the Commission found, the utility's proposal should be adjusted by the Commission or rejected entirely. Instead, the Commission found that Big Rivers' proposal was not appropriate, but approved it in its entirety.

The Order identifies several problems with Big Rivers' proposal and clearly states that Big Rivers has not submitted enough evidence in this proceeding to determine that the LICSS tariff is the most-appropriate rate. The Order states:

Kimberly-Clark is correct in that its proposal recognizes the incremental nature of Maintenance Service. BREC is correct in that Kimberly-Clark's proposal goes too far and that there should be some contribution toward covering embedded fixed costs. BREC's proposed LICSS tariff Backup Power Service rate is more-appropriate than Kimberly-Clark's proposal. However, it is not offered separately and there is not sufficient information in the record to determine an appropriate Maintenance Power Service rate separately. Additionally, the Backup Power Service and Maintenance Power Service rates presumes only a current customer, rather than a new one, will attempt to take service under this tariff offering and that transmission capacity demand is fixed. Neither of these presumptions are necessarily true, and thus additional changes to this tariff in due course will be necessary.³

The Order additionally identifies Big Rivers' proposed \$3.80/kW capacity credit as not supported by sufficient evidence, acknowledging that Big Rivers' calculation of the capacity value of the cogeneration unit to the system is not appropriate, stating:

There are system benefits that can accrue as a result of customers installing behind-the-meter generation. For example, notwithstanding the direct transmission facilities constructed specifically to serve Kimberly-Clark, there will be additional transmission system capacity available that was previously used by Kimberly-Clark that will only be used by Kimberly-Clark going forward in the event of a backup or maintenance outage. On that issue, it should be noted that BREC's argument that its transmission system must keep capacity year-round for maintenance service seems to be in contravention of its assertion in its two most-recent rate cases that the embedded cost of transmission should be allocated based on customers' and classes' monthly peaks, rather than on a 1-CP basis. Nevertheless, in Case Nos. 2020-00174, 2021-00349 and 2021-00350 methodologies were discussed that identified and attempted to quantify the incremental benefits of behind-the-meter generation for which residential net metering customers should be

³ Order at 22-23.

credited. The Commission acknowledges that there are differences in behind the meter residential generation resulting in net metering and incremental sales to the utility, and in industrial customers self-supplying a portion of their power demand, resulting in reduced and intermittent purchases from the utility. Nor is the Commission advocating any particular methodology for quantifying the incremental benefits to the system of industrial customers' decision to self-supply. Rather, the Commission recognized in the above-mentioned cases that, behind-the-meter generation causes incremental effects on the existing system that have value and for which the self-supplier would either be credited or charged, depending on the nature of the transaction. An industrial customer's decision to self-supply also produces incremental effects that have value or cost. BREC should evaluate the various incremental effects of behind-the-meter generation and, to the extent applicable, account for them appropriately in future rate filings.⁴

The Commission found that Big Rivers did not prove that its proposed LICSS rate is appropriate. That the Commission also believes that Kimberly-Clark's proposals are not just and reasonable does not cure the fact that Big Rivers did not meet its burden of proving that the proposed LICSS rate results in appropriate rates. It is not the customer's burden to provide evidence to support an appropriate rate. That burden belongs to the utility. If Big Rivers has not provided sufficient evidence to determine the most-appropriate rates, KRS 278.190 requires the Commission to not approve that rate.

It is no consolation to Kimberly-Clark that the LICSS tariff was approved on a pilot basis. The Order will require Kimberly-Clark to pay a rate that the Commission acknowledges is not appropriate, for approximately two years, at a cost of more than \$1 million per year to Kimberly-Clark. Big Rivers is not required to file an updated LICSS tariff until September 1, 2023, and it will undoubtedly take several months to process that filing. For example, this case took over 8 months from application to final Order. Kimberly-Clark respectfully requests that the Commission reject Big Rivers' proposal on the basis that it did not meet its burden of proof under KRS 278.190 and refile its proposal to determine an appropriate rate.

⁴ Order at 23-24.

2. The Commission Erred By Approving More Onerous Terms For Backup and Maintenance Service Than For LIC Service.

Kimberly-Clark’s briefs extensively addressed the fact that Big Rivers’ proposed LICSS tariff charges standby customers the standard LIC demand charge of \$10.715/kW-Month, even though the LICSS tariff contains a mandatory *fixed* monthly demand charge for a service that is effectively *non-firm*; while LIC is billed on a 100% monthly *variable* basis and is *firm*.⁵ The below chart compares the LIC demand charge terms to the LICSS demand charge terms:

	LIC-Standard Rate	LICSS-Standby Service
Base Demand Charge	\$10.715/kW	\$10.715/kW
Demand Billing Terms	<i>Variable-</i> demand calculated monthly (no-minimum monthly demand or ratchet)	<i>Fixed-</i> minimum demand equal to self-supply capacity
Quality of Service	firm	non-firm

It is discriminatory for Big Rivers to charge LICSS customers the same demand charge for standby service billed on a fixed-basis as it charges LIC customers for firm, variably billed service.

And as explained in briefs, according to Big Rivers’ own testimony, the \$3.80/kW capacity credit is intended to pay the LICSS customer for “*the value that the additional capacity provided by a member’s generation resource brings to the other members.*”⁶ So, according to Big Rivers’ own testimony, the capacity credit is not offered to compensate the LICSS customer for paying the LIC demand charge while being subjected to lower quality service and more onerous demand-billing terms.⁷ In other words, the capacity credit cannot be the justification for applying the LIC demand charge to non-firm, fixed billed service. Kimberly-Clark’s briefs devote

⁵ Kimberly-Clark Brief at 2-10; Reply Brief at 4-5.

⁶ Wolfram Rebuttal at 6.

⁷ Kimberly-Clark Brief at 7-10.

a total of 10 pages to explaining this clearly discriminatory pricing structure, but this topic is not discussed at all in the Order.

Kimberly-Clark respectfully requests that the Commission consider its argument that it is not appropriate to charge LICSS customers a \$10.715/kW demand charge for non-firm service billed on a fixed basis; while LIC is billed the same \$10.715/kW demand charge on a 100% monthly variable basis and is firm.

3. The Commission's Order Erred By Requiring Kimberly-Clark To Pay For 34 MW Of Demand Every Month With No Ability For A Downward Adjustment Based On Actual Usage.

The Commission's Order does not address Kimberly-Clark's arguments that Big Rivers' proposed LICSS tariff will require it to pay for 34 MW of demand, every month, regardless of usage, even though Big Rivers acknowledges that Kimberly-Clark's demand is generally less than 34 MW even when its cogeneration unit is not running. Kimberly-Clark thoroughly briefed this issue and raised it during cross-examination, yet this obvious flaw in Big Rivers' proposal was not addressed at all in the Order.⁸

Kimberly-Clark's total load at its Owensboro mill is typically in the range of 31-33 MW; roughly 14 MW of which is self-supplied by the new cogeneration unit and about 18 MW is purchased from Big Rivers. But under Big Rivers' proposed LICSS rate, Kimberly-Clark will be responsible for paying its contractual 20 MW minimum billing demand⁹ *plus* a fixed billing demand of as much as 14 MW per the LICSS rate.¹⁰ In sum, the Order would have Kimberly-Clark pay for a total *fixed* demand of 34 MW (20 MW contractual minimum demand, plus

⁸ Kimberly-Clark Brief at 11-12.

⁹ As stated in its Brief, Kimberly-Clark currently takes service pursuant to an electric service agreement with Kenergy. This agreement, among other things, provides that Kimberly-Clark's minimum billing demand "*shall be 20,000 kilowatts (or 20 MW).*" See Kimberly-Clark, Exhibit 1 at 6.

¹⁰ It is Kimberly-Clark's understanding that Big Rivers is taking the position that its Self-Supply Capacity is 14 MW for billing purposes.

perhaps 14 MW of LICSS fixed demand) every month, despite the fact that the Mill is generally below 34 MW. And in the majority of months, Kimberly-Clark’s cogeneration unit will be running, resulting in an actual demand on the Big Rivers system of only about 18-21 MW.

The below chart shows Kimberly-Clark’s usage in each full month of billing since its cogeneration unit went online in July of 2021. As shown below, even when the unit is down, as in January of 2022 when a scheduled outage occurred, Kimberly-Clark’s demand was roughly 31.4 MW.

Month	Year	Big Rivers Demand	Energy From Big Rivers (KWH)	Big Rivers \$/MWH	Big Rivers Invoice	Energy (KWH) From K-C Turbine	Total Energy Consumed
August-21	2021	22637	14584250	\$57.24	\$834,801.09	9088106	23672356
September-21	2021	21298	13361250	\$59.07	\$789,222.89	9336432	22697682
October-21	2021	20822	13359000	\$56.17	\$750,327.57	9873890	23232890
November-21	2021	20000	11191750	\$67.57	\$756,266.93	10055673	21247423
December-21	2021	20000	12212750	\$66.88	\$816,799.33	10668322	22881072
January-22	2022	31406	11637453	\$81.65	\$950,186.94	10501342	22138795
February-22	2022	20000	10441172	\$74.64	\$779,368.76	9900808	20341980

It is unacceptable for Kimberly-Clark to be forced to pay a fixed demand of 34 MW, every month, while the demand component of all other LIC customers is billed on a 100% variable basis; and other LIC customers are certainly not required to pay for billing demand that is *greater* than actual load, month-after-month regardless of actual usage. Every other LIC customer’s demand charge tracks actual usage; so if a facility decreases consumption for any reason (energy efficiency efforts, reduced production, etc.) the customer’s demand also decreases. But the LICSS tariff imposes a 100% fixed demand on one customer on the Big Rivers system only – Kimberly-Clark.

While Kimberly-Clark agreed to a 20 MW minimum billing demand long before it installed its cogeneration unit, the 14 MW fixed bill for Self-Supply Capacity demand is being imposed upon the Mill through the LICSS tariff. Kimberly-Clark did not agree to this tariff structure that completely decouples its actual usage from its billing determinates. Again, no other LIC customer is billed in this manner. The Commission's Order requiring Kimberly-Clark to pay for 34 MW of fixed demand without any relationship to actual future usage, is unreasonable and discriminatory.

Kimberly-Clark respectfully requests that the Commission grant rehearing in order to correct this clear flaw in Big Rivers' LICSS tariff.

4. The Commission Rejected Kimberly-Clark's Proposed Standby Service Rate Based On A Misstatement of Facts.

In its Order the Commission rejected Kimberly-Clark's proposal to design a standby rate based on the existing, Commission-approved QFS rate for maintenance and backup power. The Commission states:

The Commission does not agree with Kimberly-Clark's recommendation to use BREC's QFS tariff rate structure. The nature of supplemental generation, of the type Kimberly-Clark uses, and of a qualifying facility are materially different. As such, there is no merit in applying the rates or methodology from the QFS tariff to the type of tariff before the Commission.¹¹

The explanation that "*the nature of supplemental generation, of the type Kimberly-Clark uses, and of a qualifying facility are materially different*" is incorrect because, as Kimberly-Clark stated in its testimony and briefs, Kimberly-Clark's cogeneration unit is a qualified facility.¹² Further, there is no support in the record for the assertion that Kimberly-Clark's need for a standby rate is "*materially different*" than the QFS standby rate. Big Rivers provides

¹¹ Order at 21.

¹² Kimberly-Clark's QF application was approved in FERC Dockets QF20-1255 and QF21-610.

maintenance and backup power to QFs through the QFS tariff. This is the exact same service that Big Rivers would provide to Kimberly-Clark through the LICSS rate, but at a much higher cost to the customer.

Big Rivers argues that allowing Kimberly-Clark to take service on a rate based on its existing standby service tariff is not appropriate because the QFS tariff is “*out-dated*” because some of the language contained in the QFS tariff was developed prior to Big Rivers’ membership in MISO and Big Rivers failed to remove some “*anachronistic references*” when it was updated in the last full rate proceeding.¹³ But Big Rivers joined MISO in 2009¹⁴ and the QFS tariff in its current form, was approved on February 1, 2014. In fact, the QFS tariff was approved by the Commission on the same day that the Commission approved the LIC demand charge that Big Rivers argues should be the LICSS demand charge. Big Rivers fails to explain why one rate that was approved on February 1, 2014 is outdated while another rate approved on the same day is not.

Kimberly-Clark respectfully requests that the Commission reconsider its proposal that a LICSS tariff be based on the existing Commission-approved QFS standby rate. The QFS rates for Maintenance and Back-up Power service are based on the standard service rate schedule and are reasonably designed to recover the costs that Big Rivers will incur to provide service.

¹³ Wolfram Rebuttal Testimony at 18.

¹⁴<https://www.bigrivers.com/powersupply/#:~:text=Big%20Rivers%20joined%20MISO%20in,electricity%20in%2013%20U.S.%20states>.

III. CONCLUSION

WHEREFORE, Kimberly-Clark respectfully requests that the Commission grant rehearing in order to address errors in the Commission's March 3, 2022 Order.

Respectfully submitted,

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