

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE COMMONWEALTH OF KENTUCKY

In the Matter of:

**THE ELECTRONIC FILING OF BIG RIVERS
ELECTRIC CORPORATION AND KENERGY
CORP. TO REVISE THE LARGE INDUSTRIAL
CUSTOMER STANDBY SERVICE TARIFF.**

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CASE NO. 2023-00312

KIMBERLY-CLARK CORPORATION’S POST-HEARING BRIEF

Pursuant to the Order of the Kentucky Public Service Commission (“Commission”) dated May 3, 2024, Kimberly-Clark Corporation (“Kimberly-Clark”) hereby submits the following post-hearing memorandum brief in support of its position that Big Rivers Electric Corporation (“BREC”) and Kenergy Corporation (“Kenergy”) (collectively, “the Applicants”) have failed to establish that the Large Industrial Customer Standby Service Tariff proposed in the above-captioned matter (“Proposed LICSS Tariff”) is just, reasonable, and non-discriminatory.

INTRODUCTION

The Applicants have failed to meet their burden to establish that the rates in the Proposed LICSS Tariff are just, reasonable, and non-discriminatory. Rather than grounding the rates in the tariff in the costs incurred by the Applicants to provide back-up and maintenance service to their standby customers, Applicants instead incorrectly attempt to capture the “benefits” that a customer’s self-generation provides to the Applicants. And, the metrics by which they assess such benefits are deeply flawed.

The Proposed LICSS Tariff is inconsistent with previous direction provided by the Commission, with applicable laws and regulations, and with basic principles of fairness. Kimberly-Clark respectfully requests the Proposed LICSS Tariff be firmly rejected, and that the Commission adopt a tariff that is consistent with the alternative LICSS tariff proposed by

Kimberly-Clark.¹ As explained below, Kimberly-Clark’s proposed alternative is grounded in established Commission precedent for what constitutes a just, reasonable, and non-discriminatory standby rate and it appropriately encourages efficient scheduling of maintenance outages and reliable operation of customer-owned generation.

I. Jurisdiction And Burden Of Proof

The Commission has jurisdiction over the regulation of rates and service of utilities in the Commonwealth of Kentucky.² Kentucky law provides that a utility may demand, collect, and receive rates that are fair, just, and reasonable,³ and that the service the utility provides must be adequate, efficient, and reasonable.⁴ A utility is also permitted to employ classifications of its service, patrons, and rates where those classifications are “suitable and reasonable,”⁵ but are prohibited from discrimination in their rates by giving “any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage”⁶

Kentucky law further provides that the Commission may investigate any schedule of new rates to determine the reasonableness of those rates, and that “the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility”⁷ Whenever the Commission, after hearing, finds that any rate is unjust, unreasonable, insufficient, unjustly

¹ See Exhibit LB-1 to Direct Testimony of Dr. Larry Blank (filed December 4, 2023).

² KRS 278.040(2).

³ KRS 278.030(1).

⁴ KRS 278.030(2).

⁵ KRS 278.030(3).

⁶ KRS 278.170(1).

⁷ KRS 278.190(1), (3).

discriminatory, or otherwise in violation of applicable requirements, the Commission “shall by order prescribe a just and reasonable rate to be followed in the future.”⁸

II. Factual Background

Kimberly-Clark is a global leader in the manufacturing of essential home paper products. Kimberly-Clark operates a mill in Owensboro, Kentucky (the “Owensboro Mill”). The Owensboro Mill has, for more than 30 years, employed hundreds of full-time personnel and full-time contractors in the production of Kleenex, Scott tissue, and hand towels for hotels, restaurants, and workplace settings.

Kimberly-Clark is a Large Industrial Customer (“LIC”) of BREC, taking delivery of its electricity through Kenergy Corp. The Owensboro Mill’s standard, full operating load is approximately 30-32 megawatt (“MW”). The Owensboro Mill went from best in class on electrical cost in 2012 and 2013 to worst in class by 2016 due to two significant rate increases totaling over \$7.54 million over this time period.⁹ To remain competitive, Kimberly-Clark evaluated various options to avoid a reduction of productive use for the invested capital and employment at the Owensboro Mill.¹⁰

In 2018, a separate Kimberly-Clark facility in Fullerton, California was being closed due to its own lack of competitiveness. That facility had a behind-the-meter natural gas turbine cogeneration unit (“Cogen Unit”). In 2020, approval was given to relocate this stranded asset to the Owensboro Mill. The Owensboro Mill installed the Cogen Unit, which has a capacity of

⁸ KRS 278.270.

⁹ Direct Testimony of Steven Cassady, page 2, lines 17-21 (filed December 4, 2023).

¹⁰ *Id.*

approximately 14 MW.¹¹ The Cogen Unit provided the additional benefit of a Heat Recovering Steam Generator tied to the turbine, which produces 100% of the steam load required by the facility.¹² This has allowed Kimberly-Clark to idle and hold in reserve its natural gas fired boiler, reducing overall energy consumption and related emissions.¹³ Prior to the Cogen Unit installation, Kimberly-Clark did not have a backup boiler and the Owensboro Mill would have to shut down for boiler related issues.¹⁴

In the event of a planned or unplanned outage of the Cogen Unit, the Applicants provide backup service to the Owensboro Mill. The facility would, therefore, take service under the Proposed LICSS Tariff filed by the Applicants on September 1, 2023, if that tariff were approved by the Commission.

The Applicants originally proposed an earlier version of the LICSS tariff on June 24, 2021. The Commission investigated the reasonableness of that tariff at docket number 2021-00289. By order dated March 3, 2022, the Commission determined that there was, at the time, “not sufficient information in the record to determine the most appropriate rates for both Maintenance Power Service and for Backup Power Service” and instituted the original LICSS proposal on a pilot basis (“Pilot Tariff”) “until the Commission approves a revision to the LICSS tariff.”¹⁵ The March 3 Order also noted that Maintenance Power Service and Backup Power Service “are different, but the LICSS tariff inappropriately and unnecessarily equates the two services in regards to pricing,

¹¹ The costs associated with the installation of the Cogen Unit are provided on page 3 of the confidential Direct Testimony of Steven Cassady (filed December 4, 2023).

¹² Direct of Timothy Honadle Testimony, page 5 line 20 through page 6 line 2 (filed December 4, 2023).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See* Order of the Commission, 2021-00289, at 16 (March 3, 2022).

and bundles the pricing for the two distinct services into one price.”¹⁶ The March 3 Order directed that “[t]hese 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.”¹⁷

The March 3 Order also determined that, because the standard LIC tariff rate had already been previously approved by the Commission and is the rate an LIC rate customer would be charged absent a different rate specified in its retail service agreement with BREC, “using the standard LIC tariff rates as the basis for demand and energy under Supplemental Power Service [in the LICSS is] fair, just, and reasonable.”¹⁸

The March 3 Order directed BREC to file a revised LICSS tariff, along with cost support and testimony, on or before September 1, 2023, noting that the Commission was providing the parties “time to continue discussions” and to allow BREC to design forward looking rates that are fair, just, and reasonable.¹⁹

The Applicants submitted their revised LICSS Tariff on September 1, 2023. The Applicants did not attempt to discuss any revisions to its LICSS approach with Kimberly-Clark prior to doing so.²⁰

¹⁶ *Id.*

¹⁷ *Id.* at 20.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See* 2023-0312 Hearing Video at 11:09:30 a.m. (Chairman Chandler noting it was an expectation of the Commission that BREC would have conversations with Kimberly-Clark and Domtar about a new standby rate following the March 3 Order and BREC Witness Terry Wright explaining he “was not aware of” that expectation, nor was he aware of any such discussions having occurred); *see also* Testimony of Kimberly-Clark witness Mr. Timothy Honadle, Hearing Video at 2:13:50 p.m. (noting he was not aware of any contact from either Applicant to Kimberly-Clark to discuss the new standby service tariff following the March 3, 2022 Order and when the Applicants proposed the revised tariff on September 1, 2023).

ARGUMENT

III. The Proposed LICSS Tariff Is Not Just, Reasonable, And Non-Discriminatory

The Proposed LICSS Tariff is not just, reasonable, and non-discriminatory and the Applicants cannot, therefore, meet their burden to establish that it is. The Proposed LICSS Tariff fails to follow the Commission's directive to separate Backup and Maintenance Power, it unnecessarily assumes all standby customers taking service under the LICSS tariff will require emergency backup service at all times, and it unfairly uses cost-based pricing for demand charges to customers while at the same time using a market-based approach to reflect the "benefits" of the self-generation provided to the grid. In addition, the Proposed LICSS Tariff fails to incentivize customers to keep their self-generation running at optimal levels and to coordinate outages in advance. Finally, the terms and conditions of the Proposed LICSS Tariff are also unjust and unreasonable. Each of these issues is discussed in further detail below.

a. The Proposed LICSS Tariff Ignores The Commission's Directive, As Well As Statutory Requirements, To Separate Maintenance And Backup Power

The Proposed LICSS Tariff filed by the Applicants on September 1, 2023 again fails to make a distinction between the standby service provided during planned maintenance outages of a customer's self-generation ("Maintenance Power") and the service provided during unplanned outages of self-generation ("Backup Power"). Rather, the Proposed LICSS Tariff combines the two into a single "Backup Power Service."²¹

As noted above, in its March 3, 2023 Order, the Commission already determined that combining Maintenance and Backup Power is not just and reasonable and directed the Applicants to separate the two. In addition, the Public Utility Regulatory Policies Act ("PURPA")²² seeks to

²¹ Proposed LICSS Tariff at Sheet No. 70.

²² 16 U.S.C.A. §§ 2601-2645.

provide for the “increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers.”²³ And, the federal regulations implementing PURPA specifically require that “rates for sales of back-up power or maintenance power . . . [s]hall 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.”²⁴

The failure to separate these two types of service remains unjust and unreasonable, and the issues identified by the Commission in its March 3, 2022 Order remain. These include the fact that the Proposed LICSS Tariff provides “the wrong price signals to standby customers[,]” and “no incentive beyond maintaining good corporate relations” for a customer to inform BREC about a planned outage or reduce the length of those outages, where the outage could “effectively provide standby customers a means to avoid relatively higher fuel prices for its own generation.”²⁵

By combining maintenance and backup power into a single category, Applicants also remove any incentive to schedule outages during off-peak times. As Kimberly-Clark’s expert witness Larry Blank explained in his direct testimony, maintenance outages should be scheduled during system off-peak times of the year, and the charges for the power delivered should reflect

²³ 16 U.S.C.A. § 2601(1).

²⁴ 18 CFR § 292.305(c); *see also* 807 KAR 5:054 Section 6(5) (requiring that “rates for sale shall be just and reasonable, in the public interest and nondiscriminatory”).

²⁵ March 2, 2022 Order, at 19-20; *see also* Testimony of Wright, 2023-00312 Hearing Video at 10:21 a.m. (admitting there are advantages to BREC knowing when an outage will occur but that there are no incentives in the Proposed LICSS Tariff for customers to tell BREC in advance); *see also* Blank Direct Testimony, page 8, line 18 through page 9, line 3 (“[T]here is no provision to schedule maintenance during the peak demand season. If a customer could bid their capacity into a reserve capacity market at some point in the future, a customer may be economically enticed to simply use [BREC’s] power with no additional demand charge (just energy charges) and sell capacity into the market. These perverse standby customer incentives under the LICSS may cause system instability and jeopardize system reliability.”).

the lower costs normally incurred by the utility during off-peak times.²⁶ These lower costs include the lower cost of energy, as well as the avoided costs that may be required for future capacity investments if BREC's overall load forecasts are exceeded.

Similarly, as discussed further below, the Proposed LICSS Tariff provides no incentive for customers like Kimberly-Clark to invest in the maintenance of their cogeneration facilities to keep them running efficiently and to reduce outages. Kimberly-Clark's witness Timothy Honadle, who is responsible for maintenance and capital investment projects at the Owensboro Mill, testified to these points. He explained that "because the existing pilot tariff and the proposed LICSS Tariff require us to pay for backup power even when we are not actually using it, there is no incentive to continue maintaining the Cogen Unit to run as efficiently as possible, to shut down our operations to reduce demand on the grid in the result of an unplanned outage, or to schedule our planned outages during the shoulder seasons."²⁷ This is in direct contravention to the goals of PURPA, noted above, which seek energy efficiency, reliability, and the effective use of resources.

b. The Billing Units In The Proposed LICSS Tariff Are Not Just and Reasonable Because They Do Not Account For The Customer's Actual Metered Usage

The billing units in the LICSS Tariff for Backup Power Service²⁸ and for Supplemental Power Service are not just and reasonable because they do not account for a customer's actual metered usage. More specifically, the Proposed LICSS Tariff provides that the charge for "All Backup Power demand shall be billed at the [BREC] Standard Rate [LIC] tariff rate, less a credit

²⁶ See Blank Direct Testimony, at 5.

²⁷ See Honadle Direct Testimony, page 3 line 22 through page 4 line 3.

²⁸ "Backup Power Service" is defined in the Proposed LICSS Tariff as "a service which provides transmission capacity as well as the energy and capacity requirements for use by the Standby Customer to replace energy generated by the Standby Customer's own generation during an outage or other interruption of the Standby Customer's own generation." Proposed LICSS Tariff at Sheet No. 69.01.

equal to the Self-Supply Capacity times the MISO Planning Resource Auction (“PRA”) Auction Clearing Prices (“ACP”) for the [BREC] zone for the applicable resource auction period.”²⁹ Thus, in calculating the embedded costs to BREC to provide service to its customers, the LICSS Tariff assumes customers will be operating at and demanding a full load from BREC at all times, rather than calculating these costs to BREC based on actual metered usage. This assumption is not only inconsistent with standard practices as they relate to standby service tariffs,³⁰ it is also in direct contravention to PURPA regulations governing standby service.³¹

In BREC’s written direct testimony submitted to the Commission as well as during live testimony at the hearing in this matter on May 1, 2024, it was suggested that BREC is using a customer’s actual demand when calculating its embedded costs relating to generation capacity.³² In other words, BREC is not accounting for the contributions Kimberly-Clark’s Cogen Unit provides to the system when determining the appropriate demand charge for standby service.

Similarly, when calculating its own actual load forecasts for purposes of reporting to the Midcontinent Independent System Operator (“MISO”), BREC appears to employ a “net” approach, meaning it accounts for the contributions of standby customers’ self-generation. The

²⁹ See Proposed LICSS Tariff at Sheet No. 69.03.

³⁰ See Blank Direct Testimony, page 3, lines 10-11; *see also* Direct Testimony of Domtar Witness Stephen J. Baron, page 4, lines 14-19 (December 4, 2023).

³¹ See 18 CFR § 292.305(c)(1) (stating that rates for sales of back-up and maintenance power “[s]hall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility’s system will occur simultaneously, or during the system peak, or both”).

³² See Joint Response of [Applicants] to Kimberly-Clark[]’s First Request for Information, Response to Request No. 1-15; *see also* Testimony of BREC Expert Witness John Wolfrom, 2023-00312 Hearing Video at 1:28 p.m. (explaining he used 12-month coincident peaks to calculate costs); *see also id.* at 1:39 p.m. (explaining, subject to check, calculations were net of the behind-the-meter-generation); *see also id.* at 1:41 p.m. (explaining “utility would be focused on what amounts of capacity they have to supply to the customer—so net of any customer self-supply”).

result is that, under its Proposed LICSS Tariff, BREC is overstating the actual cost of service to provide standby service to customers and, therefore, would result in overcharging such customers.

Not only is this approach in direct contravention to applicable state and federal regulations, it is also unnecessary. MISO load forecasting does not require that Load Serving Entities include the “gross” load of customers that have self-generation.³³ There is no need to assume the worst.³⁴ Rather, utilities have access to outage rates for self-generation units, and can utilize this information in assessing the costs to provide service to those customers. According to the unrebutted, uncontested testimony of Kimberly-Clark’s expert witness Jamie Scripps, “BREC should not gross up its [coincident peak] forecast with demand normally reserved by non-tariff-defined behind-the-meter-generation.”³⁵ Scripps explains that, “[i]nclusion of such load in the CP forecast would not reflect normal conditions, and would artificially inflate BREC’s CP forecast, hindering efforts to ‘obtain accurate estimates of each entity’s coincident peak.’”³⁶

As explained further in Section IV.b, below, the proposed tariff from Kimberly-Clark’s expert witness Larry Blank incorporates this important consideration into Kimberly-Clark’s proposed alternative tariff. By incorporating the outage rate into the rate calculation, this alternative proposal also provides incentives for customers to keep their own individual outage rate low by conducting regular maintenance and otherwise keeping their system running as consistently and as efficiently as possible.

³³ See BREC’s response to Commission Data Request 2-8.

³⁴ See Surrebuttal Testimony of Kimberly-Clark Expert Witness Jamie Scripps, page 4 line 1 through page 5 line 2 (filed March 18, 2024) (explaining in unrebutted, uncontested testimony that MISO does not intend for all behind-the-meter generation to qualify as a Load Modifying Resource).

³⁵ Scripps Surrebuttal Testimony, page 8, lines 8-9.

³⁶ *Id.* at page 8, lines 15-19, citing MISO Peak Forecasting Review, p. 8, available at <https://cdn.misoenergy.org/Peak%20Forecasting%20Methodology%20Review%20Whitepaper173766.pdf>.

c. The Billing Units In The Proposed LICSS Tariff Are Not Just, Reasonable, And Non-Discriminatory Because The Tariff Energy Charge Is The Higher Of The Locational Marginal Price Or The Standard Large Industrial Customer Rates And Uses A “First Through The Meter Approach” To Capture Higher Rates Associated With Backup Service

For energy charges, the Proposed LICSS Tariff provides the following:

All Backup Power energy usage shall be billed at the higher of the charges of [BREC]’s Standard Rate Schedule LIC – Large Industrial Customer tariff schedule or 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.³⁷

The Proposed LICSS Tariff further provides the following:

During any period in which the metered output of the Standby Customer’s generator is less than its Self-Supply Capacity, Backup Power shall be the first through the meter, up to the Self-Supply Capacity. Energy Consumed above the Self-Supply Capacity for any period shall be Supplemental Power Energy.³⁸

This “higher of” approach means that Backup Power energy would be billed at the LIC tariff energy rate (\$0.038050 per kWh) or the MISO locational marginal price (“LMP”) at the applicable node during each hour of the day at the time of delivery, plus charges and fees. A standby customer’s Supplemental Power demand would be measured as the level of metered demand or the level of demand set forth in a special contract *after* the Backup Power Self-Supply Capacity threshold is met. Supplemental Power energy would be measured as the actual energy sold to Kimberly-Clark in each month *after* the Self-Supply Capacity threshold is met.³⁹

This “higher of” and “first through the meter” approach is not just, reasonable, and non-discriminatory because it requires customers to pay a cost/market hybrid rate for demand and a

³⁷ Proposed LICSS Tariff at Sheet No. 69.04.

³⁸ *Id.*

³⁹ See Baron Direct Testimony, page 10 line 14 through page 11 line 13.

“higher of” market or cost rate for energy for “first through the meter” power up to the customer’s total Self-Supply Capacity level *regardless of the customer’s actual standby generation needs*.⁴⁰

This approach has the effect of punishing a standby customer for installation of self-generation.

Kimberly-Clark’s expert witness Dr. Blank explains there are more appropriate alternatives available:

The charges for the power delivered during unscheduled backup outages should be priced at a daily (or hourly) cost of that power. A reasonable approach is to utilize a daily charge during unscheduled outages based on the daily-prorated monthly demand charge as approved by the Commission for Duke Energy Kentucky in its Rider GSS, Generation Support Service. Replacement energy delivered during the outage is priced at the full energy charge(s).⁴¹

As Commission Chair Chandler recognized at the hearing, this is a change from the Pilot Tariff. At the first hearing on the LICSS tariff, the price of energy was “not an issue.”⁴² These new provisions are unjust, unreasonable, and discriminatory towards standby customers.

d. The Proposed Charges For Back-Up/Supplemental Power Service Provided For In The Proposed LICSS Tariff Are Not Just And Reasonable Because Of A Fundamental Disconnect Between the Cost-Based Pricing Of The Demand Charge And The Market-Based Pricing Of The Credit For Having Self-Generation

Rather than following the Commission’s directions in the March 3, 2022 Order, the Applicants made the revised LICSS Tariff even more financially onerous for customers with self-generation capacity. The Proposed LICSS Tariff would use the MISO Planning Resource Auction (“PRA”) price as a proxy for a credit that the Applicants would deduct from its proposed monthly

⁴⁰ *Id.*

⁴¹ Blank Direct Testimony, page 5, lines 15-20.

⁴² 2023-00312 Hearing Video at 10:11:18 a.m.

standby reservation charge.⁴³ This approach is not just and reasonable for several reasons, including because the PRA prices can be extremely volatile and, at times, too low to be a fair representation of the contributions of self-generation capacity. Recent clearing prices, for example, are nowhere near the LICSS Pilot credit level or the base costs for Backup/Supplemental Power Service.⁴⁴ Moreover, a standby customer's generation capacity would not be actually bid into the MISO PRA auction because it is already committed to serving the host customer's load. And, the MISO PRA auction clearing price is not reflective of BREC's costs to provide service as captured by the Applicants' inflated demand charge.

A properly designed demand charge for standby service should reflect the costs to BREC to provide back-up and maintenance services to a customer with self-generation. For the reasons discussed supra, the Applicants overstate the costs of providing such service and offer, by way of a credit, a "discount" off the demand charge based on the amount of the customer's Self-Supply Capacity accredited by MISO multiplied by the MISO PRA seasonal price.

While the MISO PRA clearing price may reflect the "avoided costs" to BREC, this approach is inconsistent with the Proposed LICSS Tariff's approach to calculating the demand charge in the Proposed LICSS Tariff. The demand charge would be calculated using a cost-based method, yet BREC proposes using a market-based method when assessing the benefits of a customer's cogeneration facility to BREC.

⁴³ See BREC and Kenergy Proposed LICSS Tariff, dated September 1, 2023 (providing that Demand Charges for "Backup Power demand shall be billed at Big Rivers' Standard Rate Schedule LIC – Large Industrial Customer tariff rate, less a credit equal to the Self-Supply Capacity times the MISO [PRA] Auction Clearing Prices ("ACP") for the Big Rivers zone for the applicable resource auction time period.").

⁴⁴ Though not officially made part of the record in this proceeding, the MISO Planning Resource Auction results for the 2024-2025 Planning Year were posted April 25, 2024 and are available at: <https://cdn.misoenergy.org/2024%20PRA%20Results%20Posting%2020240425632665.pdf>. Those results show that Zone 6 capacity prices remained very low.

In addition, and quite importantly, requiring that capacity be “accredited by MISO” in order to qualify for any such credit is neither just nor reasonable. As acknowledged by BREC’s witness during the hearing, MISO does not require accreditation for behind-the-meter generation.⁴⁵ The Proposed LICSS Tariff provides no explanation for such a requirement, nor any details regarding how the accreditation process or requirements work for a customer that seeks to use its behind-the-meter generation purely for its own purposes. Further, as explained by Kimberly-Clark’s expert witness Jamie Scripps in unrebutted, uncontested testimony, “[i]n order for behind-the-meter generation to qualify as [a Load Modifying Resource Behind the Meter Generation], the generation owner must volunteer for the obligation to make the generator available to MISO during emergencies.”⁴⁶

Kimberly-Clark is in the business of making paper products. While energy is key to Kimberly-Clark’s business, Kimberly-Clark is not in the business of energy sales, nor does it wish to be a participant in the MISO energy or capacity markets. As explained in the written testimony of Steven Cassady, Kimberly Clark has not volunteered its generation to be utilized in this manner.⁴⁷ Indeed, Mr. Cassady explained Kimberly-Clark’s objections as follows:

Kimberly-Clark installed its CHP system to support its own business operations and to position the Owensboro facility to be more economic and competitive than under then-existing utility rates. Kimberly-Clark designed its CHP to operate behind the Owensboro facility's retail customer meter to realize efficiencies in its manufacturing operations, including anticipated cost savings to support the competitiveness of the Owensboro facility. The Owensboro facility uses both the electricity and the steam heat generated by the CHP in its manufacturing process. As a manufacturer focused on producing essential everyday products for consumers—not electricity

⁴⁵ Wright Testimony, 2023-00312 Hearing Video at 9:57:54 a.m. (explaining MISO does not require accreditation); *see also* Scripps Surrebuttal Testimony, page 4, lines 7-8 (explaining the MISO Tariff “does not intend for all behind-the-meter generation to be registered as a [Load Modifying Resource]”).

⁴⁶ Scripps Testimony, page 4, lines 10-13 citing MISO Tariff, p.69A.3.6-1(h).

⁴⁷ Surrebuttal Testimony of Steven Cassady, page 1, lines 15-23 through page 2, line 1 (filed March 18, 2024).

generation—Kimberly-Clark views any utility requirement that effectively forces a Kimberly-Clark asset to participate as a MISO LMR not only to add complexity and costs to our overall manufacturing operation, negating the efficiencies sought from the CHP system, but also as outside of the core business purpose underlying Kimberly-Clark's decision to invest in the Owensboro facility by installing cogeneration to support our manufacturing operations.⁴⁸

In addition, the attendant consequence of needing to provide energy to the system on short notice would pose significant business challenges to Kimberly-Clark. Mr. Cassady explained these challenges in his unrebutted, uncontested written testimony:

Applicants would enter Kimberly-Clark's CHP unit into MISO on Kimberly-Clark's behalf. This requirement would effectively result in Kimberly-Clark's CHP being operated in a way that is outside of Kimberly-Clark's control as a condition of receiving standby service and jeopardize Kimberly-Clark's ability to produce its products based on externalities, such as a force majeure call on the CHP by MISO. Given that our assets are scheduled to operate 24/7/365 to meet customer demand, excluding planned maintenance, short-notice interruptions would cause significant cost to be incurred by Kimberly-Clark that cannot be recaptured. More importantly, Kimberly-Clark could miss deliveries and, as a result, lose market share to direct competitors that are not subject to this provision, which is very difficult to recover. In addition, the Proposed Tariff provides that any of Applicants' costs to manage Kimberly-Clark's MISO participation would be passed through to Kimberly-Clark with little transparency or opportunity to challenge the reasonableness of the costs. *See*, for example, Proposed LICSS Tariff, Terms and Conditions, Sections 4 and 12.⁴⁹

Seeking and obtaining accreditation from MISO when it is neither necessary nor appropriate would be overly burdensome on standby customers served by an LICSS. Kimberly-Clark's behind-the-meter generation is not and will not be a MISO Load Modifying Resource.

⁴⁸ Cassady Surrebuttal Testimony, page 2, lines 7-20.

⁴⁹ Cassady Surrebuttal Testimony, page 3, lines 2-15.

e. The Proposed LICSS Tariff Is Neither Just Nor Reasonable Because It Does Not Recognize and Encourage Efficient Operation of Self-Generation

The Proposed LICSS Tariff's demand charge does not incorporate into its calculation any recognition of efficient operation of self-generation. This approach fails to acknowledge and incentivize efficient performance, and in failing to do so, discriminates against self-supply customers like Kimberly-Clark that operate their generators efficiently and effectively.

Section 278.170 of Kentucky's Revised Statutes prohibits discrimination as to rates or service.⁵⁰ Specifically, rates that "give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage" are prohibited.⁵¹

Kimberly-Clark witness Timothy Honadle testified that Kimberly-Clark "take[s] maintenance of the [Cogen Unit] equipment very seriously because [Kimberly-Clark] wants the Cogen Unit to run as efficiently and reliability as possible." He explained further:

Every approximately 30,000 operating hours (approximately three-and-a-half years) the turbine engine and gearbox are removed by and shipped to Solar Turbines Incorporated ("Solar") in exchange for a fully rebuilt (like new) turbine and gearbox. During each of these intervals, or at twice this interval depending on Solar's recommendation, the generator is removed and shipped to Solar's preferred maintenance vendor . . . [where the generator] is disassembled, inspected, cleaned, baked, tested, reassembled, and tested again. [Kimberly-Clark] schedule[s] this maintenance well in advance and during a "shoulder" season, meaning spring or fall.⁵²

The approximate costs to Kimberly-Clark to obtain these external services annually is provided in Mr. Honadle's confidentially filed direct testimony.⁵³

⁵⁰ KRS 278.170(1).

⁵¹ *Id.*

⁵² Honadle Direct Testimony, page 6 line 17 through page 7 line 2.

⁵³ *Id.* at page 7, lines 2-5.

As explained by Kimberly-Clark’s expert witness Jamie Scripps, “[n]ot only does the [Applicants’] proposed LICSS tariff contravene best practices, the proposed tariff increases risk and costs for both the utility and its customers by disincentivizing the efficient use of grid and consumer-owned resources.”⁵⁴ Kimberly-Clark’s other expert witness, Dr. Larry Blank, explains that “customers with more unscheduled outages should pay more under a standby tariff, but under the proposed LICSS, all customers pay the same price per kW each month irrespective of customer generator performance. This is unduly discriminatory within a tariff in which customer generator reliability is important to system reliability.”⁵⁵

A generator’s outage rate is incorporated into Kimberly-Clark’s proposed alternative tariff because it “serves as a probability factor and is specific to the performance of that customer generator” and that it “ensures that more reliable customer generators pay a lower reservation charge versus less reliable generators.”⁵⁶ If the probability is higher that a customer’s generation would not be available, it follows that its standby charges would be higher than those charged to a customer that has a low probability of not being available.

This lack of distinction between excellent performing behind-the-meter-generation and poor performing facilities in the assessment of demand charges makes the Proposed LICSS Tariff unduly discriminatory. Instead, the Applicants’ standby charges should reflect the actual reliability and related benefits of cogeneration.

⁵⁴ Scripps Surrebuttal Testimony, page 11, lines 10-13.

⁵⁵ Blank Direct Testimony, page 9, lines 4-9.

⁵⁶ Blank Direct Testimony, page 12, lines 15-17.

f. The Terms And Conditions Of The Proposed LICSS Tariff Are Neither Just Nor Reasonable

In addition to the substantive elements of the Proposed LICSS Tariff noted above, the Terms and Conditions themselves found in the Proposed LICSS Tariff are not just or reasonable.

Paragraph 4 of the Proposed LICSS Tariff's Terms and Conditions provides that standby customers would be "responsible for all costs (including any charges from ACES) related to the Standby Customer's generator."⁵⁷ However, the Proposed LICSS Tariff does not provide for any transparency relating to these charges, there is no mechanism for customers to verify their legitimacy or accuracy, and there is similarly no way to challenge charges a customer might suspect are inaccurate or otherwise inappropriate. This is a change from the Pilot Tariff, which imposes a straight \$150 administrative charge.

Paragraph 5 of the Proposed LICSS Tariff provides that standby customers would be responsible for "any MISO charges, fees, penalties, or other costs associated with Standby Customer's generation, outages of Standby Customer's generation, or Backup Power service."⁵⁸ Similarly, the proposed Paragraph 12 provides that a "Standby Customer is responsible for the cost of all facilities on the Standby Customer's site to meet and maintain eligibility as a MISO capacity resource, and the Standby Customer is subject to all non-performance costs levied by MISO or its successor, the Kentucky Public Service Commission, or other applicable entity related to nonperformance of its generating equipment."⁵⁹

These provisions result from the Applicants' inappropriate insistence that standby customers must seek and obtain MISO accreditation. BREC is a participant in the MISO markets;

⁵⁷ Proposed LICSS Standby Tariff, at Sheet No. 69.04.

⁵⁸ *Id.*

⁵⁹ *Id.* at Sheet No. 69.05.

Kimberly-Clark and other similarly situated standby service customers are not. Also, similar to the proposed Paragraph 4, this provision lacks transparency and mechanisms for accountability. As noted in the testimony of Domtar’s expert witness Stephen J. Baron, BREC “conceded that imposing such a requirement [that standby customers obtain accreditation from MISO] could be complex, costly, and could take years for intermittent resources owned by standby service customers.”⁶⁰

It is also unreasonable to omit language allowing standby service customers to enter into special contracts that may deviate from the terms of the proposed LICSS tariff with BREC. While BREC witness Terry Wright testified at the hearing that such special agreements would be permitted, there is no language permitting such arrangements.⁶¹

Finally, and perhaps most significantly, the Applicants reserve the right to “discontinue sales to the Standby Customer” during “system emergencies.”⁶² In other words, despite standby service customers paying a premium for standby service pursuant to a structure that Applicants insist must assume all such customers’ self-generation will suffer an unplanned outage at the same time, the Applicants can discontinue sales any time it deems there to be a “system emergency.” Indeed, under the Proposed LICSS Tariff, standby customers are paying a premium for service, but do not even have a right to take the power for which it is paying that premium.⁶³

⁶⁰ Baron Direct Testimony, page 15, lines 18-20 (filed December 4, 2023) (citing BREC’s response to Commission’s Request for Information 1-6).

⁶¹ See Wright Hearing Testimony, 2023-00312 Hearing Video at 10:16:32 a.m. The lack of a provision in the applicable tariff fails to give customers like Kimberly-Clark a reasonable contractual expectation that the terms and conditions of such a contract reflect a viable option. Setting expectations for standby service through an LICSS Tariff that is consistent with industry best practices represents sound public policy.

⁶² Proposed LICSS Standby Tariff, at Sheet No. 69.05.

⁶³ See Baron Direct Testimony, page 15, lines 6-16 (explaining that this type of provision is highly unusual and that “interruptible backup power and maintenance power would normally have a lower monthly demand reservation charge than the firm power equivalent standby rate”).

g. The Proposed LICSS Is Not Just, Reasonable, And Non-Discriminatory Because It Harms The Competitive Position Of The Owensboro Mill

The Proposed LICSS Tariff is not just, reasonable, and non-discriminatory because it unnecessarily harms the competitive position of the Owensboro Mill with respect to competitors in the marketplace. It similarly places the Owensboro Mill at a disadvantage with respect to other mills within Kimberly-Clark's portfolio, with which the Owensboro Mill must compete for capital investment and other resources. Given the Owensboro Mill's reliance on a "significant amount of electricity" to power its operations, "[e]nergy is a significant part of [Kimberly-Clark's] cost to manufacture, so even small changes to [Kimberly-Clark's] rates have a significant impact on the economic viability of . . . operations in Owensboro."⁶⁴

As explained above in Section III.c. by Kimberly-Clark witness Steven Cassady, having to obtain accreditation with MISO would significantly impact the Owensboro Facility's competitive position. Additionally, the rates themselves would impose a significant, unfair burden on Kimberly-Clark. Mr. Cassady explains that, if the Proposed LICSS Tariff is approved as is, 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 that "Kimberly-Clark would have to consider additional energy supply alternatives to the combined total cost of electrical service from [BREC] (Industrial Tariff, Maintenance Tariff, & LICSS Tariff)."⁶⁵ In his confidentially filed direct testimony, Mr. Cassady explains the Owensboro Mill's position relative to other Kimberly-Clark facilities, as well as the overall increases to its energy costs over time.⁶⁶

⁶⁴ Honadle Direct Testimony, page 4, lines 11-15.

⁶⁵ Cassady Direct Testimony, page 6, lines 17-21.

⁶⁶ See Cassady Direct Testimony, Confidential Exhibit SC-1, SC-2, and SC-3.

h. The Pilot Tariff Has Had A Significant, Negative Impact On Kimberly-Clark's Owensboro Facility

As explained above in Section II, Kimberly-Clark installed its Cogen Unit to address rapidly rising energy costs at the Owensboro Mill and the threats to the mill's competitive position caused by those costs.⁶⁷ However, the Pilot Tariff currently in place has further increased energy costs and significantly extended the time to recover the investments Kimberly-Clark has made in the Cogen Unit.⁶⁸ The Pilot Tariff caused the Owensboro Mill to have the highest per unit cost for a tissue facility across all of Kimberly-Clark's North American locations.⁶⁹ Mr. Cassady provides specific data outlining the cost increases resulting from the Pilot Tariff on page 6, lines 10-16 of his confidentially filed direct testimony.⁷⁰

Extending the Proposed LICSS Tariff, including its Terms and Conditions, would only make this untenable financial situation worse, is not just and reasonable, and should not be directed to continue.

IV. Kimberly-Clark's Proposed Alternative Tariff Is Just, Reasonable, And Non-Discriminatory

Kimberly-Clark's proposed alternative tariff ("Kimberly-Clark's Proposal") is just and reasonable because it (1) recognizes the three distinct services of Maintenance, Backup, and Supplemental power, and addresses them accordingly, (2) recognizes the value of—and therefore incentivizes—reliability of a customer's behind-the-meter-generation via an appropriate and reasonable reservation charge, and (3) reflects the actual probability of customers placing load on

⁶⁷ See Cassady Direct Testimony, page 3, lines 4-13; see also Honadle Direct Testimony, page 2, lines 13-17.

⁶⁸ *Id.* at page 3, lines 12-13.

⁶⁹ *Id.* at page 3, lines 12-16.

⁷⁰ See also Kimberly-Clark Corporation's Confidential Response to Commission Staff's Post-Hearing Data Request, providing "specific financial data . . . that illustrate the scale of those cost increases" resulting from the LICSS Pilot Tariff (filed May 17, 2024).

the system, which BREC should and does take into account in determining its own capacity needs. Each of these elements is discussed in further detail below.

a. Kimberly-Clark’s Proposed LICSS Tariff Provides Rates For Three Distinct Services.

Kimberly-Clark’s Proposal provides for Maintenance, Back-Up, and Supplemental Power services, as required by PURPA and related state regulations, consistent with standard practice, and consistent with the Commission’s March 3 Order. Kimberly-Clark’s Proposal incorporates these aspects so that the charges are objectively determined based on the Applicants’ actual costs to provide such services.

Kimberly-Clark’s Proposal defines Maintenance Power as “a service that provides transmission capacity as well as the energy and capacity requirements for use by the Standby Customer during Scheduled Outages.”⁷¹ It defines Back-Up Power as “a service that provides transmission capacity as well as the energy and capacity requirements for use by the Standby Customer to replace power generated by the Standby Customer’s own generation during an Unscheduled Outage.”⁷²

Under Kimberly-Clark’s Proposal, Maintenance Power billing demand would be “equal to the Standby Contract demand multiplied by the ratio of the number of days the Scheduled Outage lasts during the billing period and the number of days in the billing period . . .” and the demand charge would “equal fifty (50) percent of the Company’s Standard Rate Schedule . . . demand charge times the Maintenance Power billing demand.”⁷³ For Backup Power charges, the billing demand would “equal the Standby Contract Demand multiplied by the ratio of the number of days

⁷¹ Blank Direct Testimony, Exh. 2, Sheet No. 69.01.

⁷² *Id.*

⁷³ *Id.* at Sheet No. 69.03.

the unscheduled Outage lasts during the billing period and the number of days in the billing period . . .” and the demand charge would “equal the Company’s Standard Rate Schedule LIC . . . demand charge (\$/kW) times the Backup Power billing demand for that billing period.”⁷⁴

By separating these charges and providing for a reduced demand charge for scheduled outages, Kimberly-Clark’s Proposal recognizes the value to BREC of having advanced notice of outages and encourages the standby customer to coordinate its outages in advance with BREC. Not only does this advance notice provide value to BREC, as acknowledged by BREC witness Terry Wright during the hearing in this matter,⁷⁵ this advance notice from standby customers allows for proper planning on a system-wide scale, reducing the potential for unnecessary strain on the system balanced against unnecessarily overbuilding capacity.

b. Kimberly-Clark’s Proposal Incorporates The Actual Reliability Value Of A Standby Customer’s Self Generation

To account for the fact that a utility is required to stand at-the-ready to provide standby service to its customers in the event of planned or unplanned outages, Kimberly-Clark’s Proposal provides for a Monthly Standby Reservation Charge. This charge is “equal to the Company’s Standard Rate Schedule LIC . . . demand charge times the Standby Contract Demand times the Generator Outage Rate.”⁷⁶ The Generator Outage Rate is defined as “the number of hours the

⁷⁴ *Id.*

⁷⁵ See Wright Hearing Testimony, 2023-00312 Hearing Video at 10:21 a.m. (admitting there are advantages to BREC knowing when an outage will occur but that there are no incentives in the Proposed LICSS for customers to tell BREC in advance); see also Baron Direct Testimony, page 7, lines 7-9 (“Backup power should be priced at cost and should reflect the probability that a facility would experience a forced outage during a period that would impact a utility’s need for capacity.”) and page 12, lines 17-18 (explaining “a customer’s own generation reliability factor is a critical component in the determination of the cost of providing backup service).”

⁷⁶ Blank Direct Testimony, Exh. 2, Sheet No. 69.03.

generator was not available in the prior 12-month Period, excluding Scheduled Outages, divided by the number of hours per year.”⁷⁷

By incorporating the Generator Outage Rate into the charge paid by a standby customer during an unplanned outage, Kimberly-Clark’s Proposal builds in an incentive for standby customers to avoid unplanned outages whenever possible and to keep them as brief as possible. As explained in the written testimony of Kimberly-Clark’s expert witness, Dr. Larry Blank, “[t]his encourages the customer generator to be more efficient and reliable in its management of its generation unit(s) in that outages will increase both the monthly reservation charge in the following year and increase the monthly backup and maintenance charges in the month the outages occur.”⁷⁸

This element of Kimberly-Clark’s Proposal is in sharp contrast to the Applicants’ Proposed LICSS Tariff, which provides no such incentive. Rather, as discussed above, because there is no distinction between the charges to a standby customer for planned and unplanned outages, and because the standby customer is also forced to pay the higher of LIC energy rates and MISO locational marginal price, the Proposed LICSS Tariff fails to encourage behavior on the part of standby customers that benefits grid reliability and the efficient use of resources.

c. The Kimberly-Clark Proposal Reflects The Probability Of Standby Customers Actually Placing Load On The BREC System, Which BREC Takes Into Account In Determining Its Own Capacity Needs When Reporting To MISO

As noted above, the LICSS Proposed Tariff presumes that standby customers will require their full load requirements at all times because the customer’s onsite generation would not be available. But when estimating its own capacity needs for purposes of reporting to MISO, BREC *does* assume standby customers’ generation will be operating some portion of the time. This

⁷⁷ *Id.* at Sheet No. 69.01.

⁷⁸ Blank Direct Testimony, page 7, lines 11-15.

approach is inherently inconsistent. And, the result of the improper and unnecessary assumption that every standby customer will need full backup service at all times is that the costs to provide that service will be unreasonably and unnecessarily high.

By incorporating the probability of a standby customer actually placing load on the BREC system due to an outage of its self-generation, the Kimberly-Clark Proposal resolves this improper assumption, and more accurately reflects the actual costs BREC might incur to provide standby service. The result is that the charges relating to standby service are just, reasonable, and non-discriminatory.

d. The Kimberly-Clark Proposal Would Enhance The Duke Kentucky, Inc. Tariff

Kimberly-Clark recognizes that the Commission has already approved the standby service tariff rate for Duke Kentucky, Inc.'s ("Duke Kentucky") Generation Support Service as just, reasonable, and non-discriminatory. The Commission has an opportunity in this case to further refine and enhance that approach, and to further advance the public policy principles behind an appropriate standby service tariff by incorporating consideration of a standby customer's forced outage rate.

As noted above, PURPA seeks to provide for the "increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers."⁷⁹ Self-generation enhances grid security by providing redundancy and reducing the overall strain on the grid. And, the proper maintenance and resulting optimal operation of that self-generation furthers these ends. As noted above in Section IV.b, Kimberly-Clark's Proposal incorporates the outage rate of a standby customer into the calculations

⁷⁹ 16 U.S.C.A. § 2601(1).

incurred for Backup Service. This element, absent from the Duke Kentucky Tariff, incentivizes owners to invest in maintenance and proper operation of their self-generation to optimize performance.⁸⁰

In addition, because the Duke Kentucky rate contains a percentage discount instead of a performance-based metric, the Duke Kentucky tariff may be more susceptible to legal challenges than a proposal that includes a performance-based metric, such as Kimberly-Clark's Proposal.

CONCLUSION

For the reasons discussed herein, the Applicants' Proposed LICSS is unjust, unfair, unreasonable, and is discriminatory. The Applicants cannot, therefore, meet their burden to establish the contrary. Kimberly-Clark respectfully requests that the Commission (a) reject the Pilot Tariff and the Proposed LICSS Tariff and (b) adopt an LICSS tariff with rates and provisions consistent with Kimberly-Clark's Proposal.

Dated May 29, 2024.

Respectfully Submitted,

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⁸⁰ Notably, during the hearing in this matter, BREC witness Terry Wright explained that, in general, BREC's inability to control outages at behind the meter generation poses difficulties for BREC. *See, generally*, Wright Testimony, 2023-00312 Hearing Video at 9:55 a.m. to 10:02 a.m. Thus, incentivizing proper maintenance and, at minimum, reducing the outage rate at behind the meter generation facilities would benefit BREC's system overall.

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Certification

I hereby certify that a copy of this Post Hearing Brief 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.

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