

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of: )  
)  
ELECTRONIC TARIFF FILING OF BIG RIVERS ) CASE NO.  
ELECTRIC CORPORATION AND KENERGY ) 2023-00312  
CORP. TO REVISE THE LARGE INDUSTRIAL )  
CUSTOMER STANDBY SERVICE TARIFF )

**MOTION FOR FULL INTERVENTION OF  
KIMBERLY-CLARK CORPORATION**

Kimberly-Clark Corporation (“Kimberly-Clark”) requests that it be granted full intervenor status in the above-captioned proceeding pursuant to 807 KAR 5:001, §4(11), 807 KAR 5:011 §8(4), KRS 278.310, KRS 278.040, and the Commission’s March 27, 2023 Order at \*5 in Case No. 2023-00017, stating that when the subject tariff filing is made, “[t]he Commission will allow Domtar and Kimberly-Clark [ ] to intervene as parties . . . and permit the companies to also file cost support and testimony regarding their position.”<sup>1</sup> Kimberly-Clark states in support of its motion as follows:

1. This motion outlines Kimberly-Clark’s “interest in the case and how intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.” 807 KAR 5:001, §4(11)(a)(1). This timely motion to intervene should be granted because Kimberly-Clark “has a special interest in the case that is not otherwise adequately represented” and will present facts and issues that will appropriately assist the Commission in this proceeding. 807 KAR 5:001, §4(11)(b).

<sup>1</sup> Kimberly-Clark previously filed a motion to intervene in the September 1, 2023 electronic tariff filing of Big Rivers Electric Corporation in TFS2023-00391 and in the September 8, 2023 electronic tariff filing of Kenergy Corp. in TFS2023-00399.

2. The 2023 Large Industrial Customer Standby Service (“LICSS”) tariffs filed in this matter by Big Rivers Electric Corporation (“BREC”) and Kenergy Corp. (“Kenergy”) represent the next stage of ongoing proceedings relating to attempts by BREC and Kenergy to secure approval for a LICSS tariff.<sup>2</sup>

3. BREC and Kenergy had previously filed proposed LICSS tariffs on June 24, 2021 (collectively, the “2021 Tariff”). *See* Case No. 2021-00289.

4. Kimberly-Clark is one of the largest end-use customers located in the BREC service territory and recently incurred the expense of installing an approximately 14 MW natural gas turbine cogeneration unit at its Owensboro facility. As proposed, the 2021 Tariff would apply to back-up and maintenance service received by Kimberly-Clark from Kenergy Corp., the electric distribution cooperative serving Kimberly-Clark. Kenergy is a member owner of BREC, a generation and transmission cooperative.

5. As such, Kimberly-Clark was granted intervention in the 2021 Tariff proceeding on August 6, 2021, and actively participated in the Commission’s proceeding in Case No. 2021-00289.

6. In its final Order resolving the proceeding (“March 2022 Order”), the Commission bemoaned the lack of an “ideal solution,” and so temporarily approved the 2021 Tariff on a pilot basis with direction to BREC to file by September 1, 2023 an amended LICSS with “forward looking rates that are fair, just and reasonable.” March 2022 Order at p. 25.

<sup>2</sup> *See 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, in which the Commission approved BREC’s 2021 tariff on a pilot basis.

7. BREC timely filed its 2023 LICSS tariff on September 1, 2023, yet this new tariff largely ignores key concerns identified by the Commission in its March 2022 Order.<sup>3</sup>

8. As one example, in the March 2022 Order, the Commission noted that “in 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.” *Id.* at p. 20. Yet the 2023 Tariff inexplicably fails to separate these different services. Indeed, rather than separately addressing the two different services as the Commission required, the proposed 2023 Tariff effectively pretends that maintenance service does not exist. *See* BREC’s Redline Version of 2023 Tariff (removing previous provisions addressing maintenance service, scheduling, and demand).

9. The 2023 Tariff proposes additional concepts that diverge from standard industry practice, including, but not limited to: (i) requiring MISO accreditation for a customer’s self-generation; (ii) imposing an unreasonably high reservation charge; (iii) failing to differentiate between monthly and daily demand charges during the use of backup or maintenance standby service; and (iv) requiring the customer to accept interruptible service while, at the same time, being charged for firm service, among others.

10. Kimberly-Clark expects to raise other areas of concern with respect to the 2023 Tariff proposed by BREC and Kenergy in this proceeding.

11. The 2021 Tariff has already resulted in significantly increased costs to Kimberly-Clark and has negatively impacted the economical operation of Kimberly-Clark’s new cogeneration

<sup>3</sup> Kenergy Corp.’s September 8, 2023 proposed tariff “mirrors the one filed by Big Rivers Electric Corporation” (*See* Kenergy Read First letter), and suffers the same infirmities. For ease of reference, the BREC and Kenergy proposed tariffs will be referred to in combination as the “2023 Tariff.”

system, and the 2023 Tariff will only worsen this adverse impact. Intervention is necessary so Kimberly-Clark can present facts and raise issues establishing the significant flaws in the 2023 Tariff and its unfair economic impact on customers that have self-generation capacity.

12. In any case, the Commission has already decided in a related matter that intervention for Kimberly-Clark is important in this proceeding. In 2023, Domtar, another large industrial end-user in BREC's territory with its own cogeneration facility, filed a complaint challenging the application of the 2021 tariff ("Domtar Proceeding"). *See* Case No. 2023-00017. Kimberly-Clark's motion to intervene in that matter was denied. However, the Commission stated:

When BREC and Kenergy make the required [2023 T]ariff filing, Kimberly-Clark will be given the opportunity to intervene. In that proceeding, Kimberly-Clark will have information and input that will assist the Commission to rendering a decision about the appropriateness of the LICSS tariff.

*See* March 9, 2023 Order at \*3, Case No. 2023-00017. Likewise, when the Commission issued its order resolving the Domtar proceeding—which allowed Domtar to operate under an existing contract until BREC issued its revised LICSS—the Commission specifically stated that “[t]he Commission will allow Domtar and Kimberly-Clark [ ] to intervene as parties when [this] case is established and permit the companies to also file cost support and testimony regarding their position.” *See* March 27, 2023 Order at \*5, Case No. 2023-00017.

13. Thus, the Commission has twice determined that Kimberly-Clark has satisfied the standard for intervention in this matter: once when it granted intervention in the proceeding to review the 2021 Tariff, and again when it denied intervention in the Domtar Proceeding.

14. Moreover, in its September 27, 2023 Order establishing this case, the Commission ordered that, in addition to the Domtar proceeding, two other cases in which Kimberly-Clark is a

party or intervening party will be incorporated into this action. (September 27, 2023 Order at 2 n.3, 4) (ordering that Case No. 2021-00289, Case No. 2023-00017, and Case No. 2023-00063 be “incorporated into this proceeding.”)

15. The attorneys for Kimberly-Clark authorized to represent them in this proceeding and to take service of all documents are:

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16. Kimberly-Clark has filed a timely motion to intervene in this proceeding.

17. Given the focus on Kimberly-Clark’s arguments in the underlying proceeding, Kimberly-Clark’s interests cannot be adequately represented by other potential parties. While the proposed 2023 Tariff could impact other customers in the future, to date it is believed Kimberly-Clark has been the only customer operating under the 2021 Tariff. Therefore, Big Rivers’ proposal in this proceeding uniquely affects Kimberly-Clark.

18. Kimberly-Clark’s intervention will also allow Kimberly-Clark to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

**WHEREFORE**, Kimberly-Clark respectfully requests that it be granted full intervenor status in this proceeding and that the 2023 Tariff proposed by BREC and by Kenergy be denied.

Respectfully Submitted,

/s/ Daniel E. Danford

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*Counsel for Kimberly-Clark Corporation*

## **CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing was transmitted to the Kentucky Public Service Commission on September 28, 2023; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and, by virtue of the Commission Order of July 22, 2021 in case number 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), no paper copies of this filing will be made.

*/s/ Daniel E. Danford* \_\_\_\_\_  
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*Counsel for Kimberly-Clark Corporation*