COMMONWEALTH OF KENTUCKY

BEFORE THE 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

O R D E R

On June 24, 2021, Big Rivers Electric Cooperative Corporation (BREC) and Kenergy Corporation (Kenergy), (collectively, Joint Applicants), submitted to the Commission, new tariff sheets to implement a Large Industrial Customer Standby Service (LICSS) tariff schedule to provide a default rate for Supplemental, Maintenance, and Backup Power for any large industrial customers on the BREC system who install their own generation; who request Supplemental, Maintenance, and Backup Power Service; and who do not have a special contract that provides rates for Supplemental, Maintenance, and Backup Power Service.[1]

On July 12, 2021, Kimberly-Clark Corporation (Kimberly-Clark) filed a motion to intervene in this proceeding. To ensure the orderly review of the proposed tariff, the Commission established a procedural schedule by Order dated July 30, 2021. In the same Order, the Commission suspended the tariff until December 31, 2021, in order to complete the investigation into the reasonableness of the proposed tariff.[2] By Order dated

[1] BREC Standby Service Tariff Filing (filed June 24, 2021).

[2] Order (Ky. PSC July 30, 2021) at 2.

August 6, 2021, the Commission granted Kimberly-Clark's motion to intervene. No other parties moved to intervene.

Joint Applicants responded to three rounds of discovery from Commission Staff, including a post-hearing request for information,[3] and two rounds of discovery[4] from Kimberly-Clark. Kimberly-Clark responded to one round of discovery[5] from Commission Staff, and one round of discovery from BREC.[6] Kimberly-Clark filed direct written testimony.[7] In addition to the direct written testimony[8] filed with the proposed tariff, BREC filed written rebuttal testimony.[9] On November 8, 2021, BREC and Kenergy agreed not to place the tariff into effect until at least March 1, 2022.[10] A hearing was held on January 20, 2022. BREC and Kimberly-Clark filed post-hearing briefs.[11] The matter now stands submitted for a decision.

[3] BREC and Kenergy's Response to Commission Staff's First Request for Information (Joint Response to Staff's First Request)(filed Sep. 3, 2021); BREC and Kenergy's Response to Commission Staff's Second Request for Information (Joint Response to Staff's Second Request)(filed Oct. 1, 2021); BREC and Kenergy's Response to Commission Staff's Post-Hearing Request for Information (Joint Response to Staff's Post-Hearing Request)(filed Feb. 4, 2022).

[4] BREC and Kenergy's Response to Kimberly-Clark's First Request for Information (Joint Response to Kimberly-Clark's First Request)(filed Sep. 3, 2021); BREC and Kenergy's Response to Kimberly-Clark's Second Request for Information (Joint Response to Kimberly-Clark's Second Request)(filed Oct. 1, 2021).

[5] Kimberly-Clark's Response to Commission Staff's First Request for Information (Kimberly-Clark's Response to Staff's First Request (filed Nov. 12, 2021).

[6] Kimberly-Clark's Response to BREC's First Request for Information (Kimberly-Clark's Response to BREC's First Request (filed Nov. 12, 2021).

[7] Direct Testimony of Justin Bieber (Bieber Testimony)(filed Oct. 15, 2021).

[8] BREC Standby Service Tariff Filing, Direct Testimony of John Wolfram (Wolfram Direct Testimony)(filed June 24, 2021).

[9] Rebuttal Testimony of John Wolfram (Wolfram Rebuttal)(filed Dec. 21, 2021).

[10] BREC's Notice in Response (filed Nov. 8, 2021).

[11] Post-Hearing Brief of Big Rivers Electric Corporation (filed Feb.11, 2022), and Brief of Kimberly-Clark Corporation (filed Feb. 11, 2022).

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.[12] Kentucky law provides that a utility may demand, collect and receive fair, just and reasonable rates[13] and that the service it provides must be adequate, efficient and reasonable.[14] KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

BACKGROUND

BREC is a rural electric cooperative corporation organized pursuant to KRS Chapter 279. BREC owns generating assets and purchases, transmits, and sells electricity at wholesale.[15] BREC's principal purpose is to provide the wholesale electricity requirement of its three distribution cooperative members: Jackson Purchase Energy Corporation, Kenergy, and Meade County Rural Electric Cooperative Corporation.[16]

Kenergy is a rural distribution electric cooperative with a corporate office in Henderson, Kentucky.[17] Kenergy provides retail electric service to approximately 58,589 customers[18] in Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson,

[12] KRS 278.040(2).

[13] KRS 278.030(1).

[14] KRS 278.030(2),

[15] *Annual Report of Big Rivers Electric Corporation to the Public Service Commission for the Year Ended December 31, 2020* at 8.

[16] *Id.* at 10

[17] *Annual Report of Kenergy Corp. to the Public Service Commission for the Year Ended December 31, 2020* at 1.

[18] *Id.* at 44.

Hopkins, Livingston, Lyon, McLean, Muhlenberg, Ohio, and Webster counties, Kentucky.[19]

Kimberly-Clark, a manufacturer of paper goods, operates a mill in Owensboro, Kentucky, and states that it is one of the largest end-use customers in BREC's service territory.[20] Kimberly-Clark owns and operates a 14 megawatt (MW) natural gas turbine cogeneration unit and currently takes retail electric service from Kenergy without standby service under standard Large Industrial Customer (LIC) rates.[21] If approved, Kimberly-Clark is one of two eligible large industrial members who may potentially take service offered through the proposed LICSS tariff.[22]

PROPOSED TARIFF

As filed, BREC's proposed LICSS tariff would be available to any of BREC's existing member cooperatives for service to any large industrial customer of the member cooperative that has resources capable of supplying all or a portion of its power requirements, and that requests Supplemental, Maintenance, or Backup Power Service.[23] The proposed tariff provides the following definitions:

> *Supplemental Power Service*: "A service which provides transmission capacity to the Standby Customer as well as the energy and capacity requirements for use by the Standby Customer's facility in addition to the electric power which the Standby Customer ordinarily generates on its own."[24]

[19] *Id.* at 52.

[20] Bieber Testimony at 1.

[21] *Id.* at 1 and 5.

[22] Joint Response to Staff's First Request, Item 2; *see also* Hearing Video Transcript (HVT) of the January 20, 2022 Hearing, Eacret at 09:16:30–09:16:51.

[23] Wolfram Direct Testimony at 2–3, lines 18-21 and 1–3.

[24] BREC Standby Service Tariff Filing, Third Revised Sheet No. 69 (filed June 24, 2021).

> *Maintenance Power Service:* "A service which provides transmission capacity as well as the energy and capacity requirements for use by the Standby Customer during scheduled outages or interruptions of the Standby Customer's own generation."[25]
>
> *Backup Power Service:* "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 unscheduled outage or other interruption of the Standby Customer's own generation."[26]

The level of demand required for Supplemental Power Service is the level of demand under the special contract between the cooperative and the standby customer.[27] Power not specifically identified as Maintenance Power or Backup Power is deemed to be Supplemental Power.[28] The total of the Supplemental Power, Maintenance Power, and Backup Power demand shall not exceed the standby customer's maximum contract demand in any month and Maintenance Power and Backup Power demand is not included in determining minimum demand charges for any month.[29] For billing purposes, Supplemental Power energy is the actual measured energy excluding Maintenance Power energy and Backup Power energy sold to the LICSS customer each

[25] BREC Standby Service Tariff Filing, Second Revised Sheet No. 69.01 (filed June 24, 2021).

[26] *Id.*

[27] BREC Standby Service Tariff Filing, Original Sheet No. 69.02 (filed June 24, 2021).

[28] *Id*.

[29] *Id.*

month.[30] The demand and energy charges are billed under the terms of BREC's LIC rate schedule.[31]

The level of Maintenance/Backup Power demand is equal to the standby customer's self-supply capacity, which is defined as "the demonstrated capacity of the standby customer's generating unit(s), as determined by the reduction in BREC's Midcontinent Independent System Operator (MISO) Planning Reserve Margin Requirement (PRMR) that results from the standby customer's own generation."[32] The standby customer is required to coordinate with BREC at least 60 days prior to the beginning of each calendar year to schedule maintenance outages so as to maximize the value of the LICSS customer's self-supply capacity.[33] The LICSS customer pays an administrative charge of $150 per month.[34]

Maintenance/Backup Power demand is billed at the Standard Rate Schedule LIC rate, less a credit equal to $3.80 per kW-month[35] times the self-supply capacity.[36] Maintenance/Backup Power energy is billed at the higher of (1) the charges of BREC's Schedule LIC or (2) the market price, which includes the energy charge BREC pays to

[30] *Id*.

[31] *Id*.

[32] BREC Standby Service Tariff Filing, Second Revised Sheet No. 69.01 *and* Original Sheet No. 69.03 (filed June 24, 2021).

[33] BREC Standby Service Tariff Filing, Original Sheet No. 69.03.

[34] *Id*.

[35] The credit is based on the capacity cost of the conversion of the Green Station units to natural gas as described by BREC in Case No. 2021-00079. BREC characterizes this cost as its marginal cost of capacity; *see* BREC and Kenergy's Joint Responses to Kimberly-Clark Corporation's First Request for Information(Joint Response to Kimberly-Clark's First Request) (filed Sept. 3, 2021), Item 1b.

[36] BREC Standby Service Tariff Filing, Original Sheet No. 69.03.

provide service to the member cooperative for the LICSS customer, plus any transmission charges, MISO fees, or other costs.[37] During any period in which the metered output of the standby customer's generator is less than its self-supply capacity, Maintenance/Backup Power energy is the first through the meter, up to the self-supply capacity.[38] Energy consumed above the self-supply capacity for any period shall be Supplemental Power energy.[39]

The demand and energy charges for BREC's proposed LICSS tariff are summarized in the following table.

BREC's Proposed LICSS Rate Structure	
Supplemental Power Service	Billed at Standard LIC demand and energy rates. All kW of billing demand at $10.7150 per kW. All kWh per month at $0.038050 per kWh
Maintenance Power/ Backup Power Service	Demand equal to Self-Supply Capacity billed at the current LIC demand rate of $10.715/kW-Month less a credit equal to $3.80/kW-Month (or $6.915/kW-Month) Energy usage billed at higher of Standard LIC Energy rate or market price

DISCUSSION

Kimberly-Clark's Position

Kimberly-Clark argued that BREC's proposed LICSS tariff does not result in reasonable rates for standby service for several reasons.[40] First, Kimberly-Clark

[37] BREC Standby Service Tariff Filing, Original Sheet No. 69.04 (filed June 24, 2021).

[38] *Id.*

[39] *Id.*

[40] Bieber Testimony at 3.

maintained that BREC does not incur any capacity costs to provide Maintenance Power Service.[41] Kimberly-Clark argued that Maintenance Power Service is defined in the tariff as a service to provide energy and capacity under *scheduled* outages which are required to be scheduled at least 60 days prior to the beginning of each calendar year.[42] According to the tariff, BREC may request that the LICSS customer reschedule those Maintenance Power Service requirements, and that scheduled outages of the self-generation are subject to BREC's approval.[43] For these reasons, Kimberly-Clark maintained that BREC does not need to procure any incremental capacity in order to provide Maintenance Power Service, because it has a manner of controlling when these outages can occur, and may direct the customers to schedule during off-peak periods.[44] Consequently, Kimberly-Clark argued that the provision of Maintenance Power Service will not impact BREC's peak load forecasts or it's PRMR of 11.1 percent.[45]

For Backup Power Service, Kimberly-Clark argued that BREC is not required to obtain additional capacity beyond the PRMR of a LICSS customers' self-supply capacity in order to provide Backup Power Service.[46] Backup Power Service is defined in the tariff as a service to provide energy and capacity under unscheduled outages.[47] Kimberly-Clark argued that while it is unlikely that a LICSS customer would experience a forced

[41] Bieber Testimony at 7-8.

[42] *Id.*; *see also* BREC Standby Service Tariff Filing, Original Sheet No. 69.03.

[43] *Id.*

[44] Bieber Testimony at 7–8.

[45] *Id.*; *see also* Joint Response to Kimberly-Clark's First Request, Item 3.

[46] Bieber Testimony at 8.

[47] Bieber Testimony at 8; *see also* BREC Standby Service Tariff Filing, Second Revised Sheet No. 69.01.

outage coincident with the system peak, in the rare case where it does, Kimberly-Clark proposed that it may be reasonable for BREC to incur costs to increase its PRMR by an amount up to 11.1 percent (at most) of the LICSS customer's self-supply capacity.[48]

In regards to the proposed Maintenance/Backup Power Service demand charge and capacity credit, Kimberly-Clark argued that it is not reasonable to charge LICSS customers a rate based on BREC's embedded cost of capacity but only provide a credit based on its marginal cost of capacity.[49] Kimberly-Clark pointed out that LICSS customers are not selling capacity to BREC, but rather they are buying standby service.[50] Kimberly-Clark also claimed it is not appropriate for BREC to bill LICSS customers for demand equal to the customer's self-supply capacity year round.[51] Kimberly-Clark maintained that the LICSS tariff rates should be based on BREC's cost to provide that service.[52] For all the reasons above, Kimberly-Clark argued that the proposed billing demand equal to the self-supply capacity is substantially higher than the amount of capacity that BREC would need to obtain in order to provide Maintenance and Backup Power Service.[53]

BREC currently offers Supplementary Service, Unscheduled Back-up Service, and Maintenance Service under its QFS tariff, which was last modified in Case No. 2013-

[48] Bieber Testimony at 8.

[49] *Id.* at 13.

[50] *Id.* at 4.

[51] *Id.* at 13.

[52] *Id.* at 10.

[53] *Id.* at 9.

00199.[54] Kimberly-Clark argued that the rate structure for the proposed LICSS tariff differs substantially relative to Unscheduled Back-up Service and Maintenance Service under the QFS tariff,[55] and that LICSS discriminatorily charges a much higher rate to Kimberly-Clark for the same effective service as QFS.[56] Kimberly-Clark does not qualify to take service under the QFS tariff because its generator has a capacity that is larger than 5,000 kW.[57]

The rate design under the QFS tariff is summarized in the following table:

BREC's QFS Rate Structure	
Unscheduled Back-up Demand	One hundred-ten percent (110%) of Big Rivers' actual cost, including transmission service, to import energy from a Third Party.[58]
Maintenance Power (on-peak)	The greater of: $3.2200 per kW of Scheduled Maintenance Demand *per week*, plus $0.045000 per kWh of Maintenance Energy; or 110% of the price at the time of scheduling of a block of energy obtainable by Big Rivers in the futures market.[59]
Maintenance Power (off-peak)	$3.2200 per kW of Scheduled Maintenance Demand *per week*, plus RDS Tariff energy charge.[60]

[54] Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period* (Ky. PSC Apr. 25, 2014); *see also* BREC Current Tariff, Sheet Nos. 42–47.

[55] Bieber Testimony at 10–11.

[56] *Id.* at 13.

[57] *Id*.

[58] BREC Current Tariff, Sheet Nos. 43.

[59] *Id.* Sheet Nos. 44.

[60] *Id.*

Maintenance demand charges under the QFS tariff run on a weekly rate and are tied to actual Scheduled Maintenance demand.[61] To model the LICSS rates after the QFS tariff, Kimberly-Clark argued that the LICSS Maintenance Power demand charge should be converted to a weekly rate and decoupled from the value of the self-supply capacity and be based on actual scheduled Maintenance Power demand.[62] Kimberly-Clark recommends that the overall rate design for Maintenance and Backup Power demand under the LICSS tariff be structured similar to the rate design for Maintenance and Back-up demand under the QFS tariff, and proposed two options[63]:

Kimberly-Clark Proposed LICSS Rate Structure	
Supplemental Power Service	Billed at Standard LIC demand and energy rates
Maintenance Power Service	Scheduled Maintenance Demand billed at the LIC demand rate converted to a $/kW-week rate. ($2.5002/kW-week) Energy usage billed at higher of Standard LIC Energy rate or market price
Backup Power Service	Unscheduled Backup Demand charged 110% of BREC actual cost to import energy from a third party, including transmission service

In the alternative:

[61] *Id.* Sheet Nos. 43–44.

[62] Bieber Testimony at 14, lines 275–277; *see also* Exhibit JB-2; BREC Current Tariff, Sheet No. 69.03.

[63] Bieber Testimony, Table JB-2 at 15 and Table JB-3 at 16.

Kimberly-Clark Alternative LICSS Rate Structure	
Supplemental Power Service	Billed at Standard LIC demand and energy rates
Maintenance Power/ Backup Power Service	Demand equal to Self-Supply Capacity billed at 11.1% of the LIC cost based demand charge. ($1.83/kW-Month) Energy usage billed at higher of Standard LIC Energy rate or market price

BREC's Position

In regards to Kimberly-Clark's claim that BREC will not incur any capacity costs to provide Maintenance Power Service, BREC argued in rebuttal testimony that there is still a cost associated with the capacity provided by BREC to standby customers.[64] BREC explained that the standby customer taking Maintenance/Backup Power Service is using capacity reserved for other BREC customers at times when those customers are not using it, since BREC does not have capacity set aside for the standby customer's amount of self-supply capacity.[65] While Kimberly-Clark claimed that the proposed tariffed rates should be based on BREC's cost to provide that service, BREC argued that Kimberly-Clark only focused on incremental costs incurred when Kimberly-Clark actually calls for Maintenance or Backup Power Service.[66] BREC claimed that Kimberly-Clark ignored the fixed costs, such as transmission costs, BREC incurs so that Maintenance and Backup Power Services are available when needed.[67]

[64] Wolfram Rebuttal at 3.

[65] *Id.*

[66] Wolfram Rebuttal at 4.

[67] *Id.*

In regards to Kimberly-Clark's contention that a standby customer should only pay for Backup/Maintenance Power Service when the customer is receiving such power, BREC argued that it must have the transmission facilities in place to deliver that energy 24 hours a day, 7 days a week, 52 weeks a year[68] and that the proposed tariff would require Kimberly-Clark to pay for at least some of the cost BREC incurred to build the transmission facilities necessary to provide Backup/Maintenance Power service and the costs incurred to maintain those facilities.[69]

Regarding Kimberly Clark's claim that it may be reasonable for BREC to incur no more than the costs to increase its PRMR by 11.1 percent of the standby customer's self-supply capacity in order to provide Backup Power Service, BREC argued that this represented a flawed application of planning reserve margins.[70] BREC argued that its planning reserve margins must be sufficient to cover planned maintenance of its assets, unplanned or forced outages of its generating equipment, resource de-ratings, system effects due to reasonably anticipated variations in weather, and load forecast uncertainty.[71] BREC further stated that it is required to obtain capacity for the entirety of its forecasted peak demand, plus a reserve margin of approximately 11.1 percent, which is contrary to Kimberly-Clark's suggestion. BREC argued following Kimberly-Clark's suggestion would leave it capacity short in an unplanned outage.[72] BREC asserted that since it will not include the full self-supply capacity, and corresponding reserve margin, in

[68] Wolfram Rebuttal at 8.

[69] *Id.*

[70] Wolfram Rebuttal at 10.

[71] *Id.* at 10–11.

[72] *Id.* at 11.

the load forecast used in the MISO PRMR process, it would need to otherwise procure capacity for Kimberly-Clark's full self-supply capacity and the reserve margin in order to be ready at all times to provide Backup Power Service.[73]

Regarding Kimberly-Clark's argument that the LICSS tariff rates should be based on BREC's cost to provide that service, and that a standby service charge should be based on a utility's embedded cost of service, BREC argued that Kimberly-Clark does not treat energy charges and demand charges consistently, as Kimberly-Clark supports the use of marginal costs for energy but not demand.[74] BREC also argued that basing the proposed tariff rates on BREC's embedded cost to provide the service would result in the application of the full standard rate demand charge from the LIC tariff for Backup Power Service demand and at least a portion of that same rate for Maintenance Power Service demand.[75]

BREC explained that its objective with the proposed rate design was to (1) address utility rate design objectives regarding cost recovery and free ridership, (2) minimize subsidization of a standby customer's self-generation by other retail customers, and (3) reduce disincentives for standby customers to install cost-effective distributed generation.[76] BREC argued that it began with the standard LIC demand charge in order to put standby customers on equal footing with other customers.[77] BREC further explained that since it does not procure capacity for the standby customer's self-supply

[73] *Id.* at 12.

[74] *Id.* at 14–15.

[75] *Id.* at 15.

[76] *Id.* at 15–16.

[77] *Id.* at 16.

capacity in MISO, all of that capacity would be incremental from a planning standpoint. BREC stated this is why it proposed offsetting the standard LIC demand charge with a credit for BREC's avoided capacity costs, which is its marginal cost of capacity.[78]

Regarding Kimberly-Clark's suggestion that the proposed Maintenance and Backup Power Service demand charge should be modified to reflect a standby service customer's contribution to BREC's PRMR, BREC argued that if such a modification were made, it should reflect the standby customer's full self-supply capacity and the corresponding reserve margin requirement.[79] BREC also stated that such a modification is not required because its approach is a reasonable approach to designing standby service demand charges.[80]

Lastly, BREC argued that Kimberly-Clark's recommendation that the proposed tariff should be structured similar to the rate design under BREC's QFS tariff is inconsistent with Kimberly-Clark's other arguments that standby service customers are not selling capacity to BREC, but that they are buying standby service.[81] As the QFS tariff is designed for customers selling capacity to BREC, BREC questioned why Kimberly-Clark would advocate modeling the proposed tariff after QFS.[82] BREC went on to state that most of the language contained in the QFS tariff was developed prior to BREC's membership in MISO, and is therefore outdated, and that BREC is not opposed

[78] *Id.* at 16–17.

[79] *Id.* at 17.

[80] *Id.*

[81] *Id.* at 18.

[82] *Id*.

to revising the QFS tariff to better align with the market in which BREC now operates and with the concepts being applied in the proposed LICSS tariff.[83]

ANALYSIS AND FINDINGS

It is clear that the most contentious issue between the parties lies in the determination of fair, just and reasonable rates for Maintenance Power and Backup Power Services, in particular the demand charge component of the rate for Maintenance Power and Backup Power Services. Kimberly-Clark did not raise any issues with the rates proposed for Supplemental Power Service or with the energy rates in the Maintenance Power and Backup Power Services.

For the reasons discussed below, 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. BREC's LICSS tariff is approved on a Pilot basis until the Commission approves a revision of the LICSS tariff. By

[83] *Id.* at 18–19.

September 1, 2023, BREC shall file an updated LICSS tariff, which shall address the issues discussed below.

According to the proposed LICSS tariff, Maintenance Power Service is a service that provides the transmission capacity as well as the energy and generation capacity requirements under a scheduled outage of the standby customer's self-generation, and Backup Power Service is a service that provides transmission capacity as well as the energy and generation capacity requirements under an unscheduled outage or other interruption in the standby customer's self-generation.[84] These services are different, but the LICSS tariff inappropriately and unnecessarily equates the two services in regards to pricing, and bundles the pricing for the two distinct services into one price.

Maintenance Power Service and Backup Power Service are identically priced, but the services provided are different. BREC has proposed to charge standby customers the standard LIC demand charge offset by a credit based on the value of capacity of converting the Green Station units to natural gas, which it characterized as its marginal cost of capacity.[85] The LIC demand charge is intended to capture large industrial customers' share of BREC's embedded transmission and generation capacity costs. BREC incurred these generation and transmission system costs to enable it to satisfy system peak demand, plus a reserve margin for the benefit of all customers. Kimberly-Clark's demand prior to recently implementing its self-generation ranged from about 30-

[84] BREC Standby Service Tariff Filing, Second Revised Sheet No. 69.01 (filed June 24, 2021).

[85] *See* Joint Response to Kimberly-Clark's First Request, Item 1b; *See also* Wolfram Rebuttal at 6–7 and 16–17.

32 MW.[86] In the event of an unplanned outage, regardless of when it occurs, Kimberly-Clark reverts to its historic demand level, and BREC is obligated to provide service at Kimberly-Clark's prior full demand level.[87]

A scheduled maintenance outage is different. Per the LICSS tariff, BREC requires maintenance outages to be planned for, requested, and approved well in advance of the event. Through the MISO PRMR process, BREC is required to obtain capacity for its entire estimated system peak load plus a reserve margin.[88] BREC will not include Kimberly-Clark's self-generation capacity plus the corresponding reserve margin in its system load forecast during this planning process.[89] Kimberly-Clark argued that the maintenance outage would be scheduled during an off peak period where BREC would have unused capacity.[90] BREC acknowledged that even though there would be no incremental cost to providing capacity during the maintenance outage, there are still costs. According to BREC, Kimberly-Clark would be using embedded generation and transmission capacity that is paid for by other customers and it should have to contribute toward that cost and not be a "free rider."[91] The Commission agrees that there should be

[86] *See* HVT of the January 20, 2022 Hearing at 10:11:59-10:12:12; and *See also* Kimberly-Clark Brief (filed Feb. 11, 2022) at 12. Kimberly-Clark's total load at its Owensboro mill is typically in the range of 32 MW.

[87] As required by KRS 278.030(2), KRS 278.016, and KRS 278.018(3) has a statutory obligation to provide adequate service to all customers within its service territory. That obligation necessitates that it have all necessary facilities in place to provide service at any time. BREC's participation in MISO and the PRMR process is the manner in which it ensures that it has the appropriate facilities and capacity in place to satisfy its estimated system peak demand including an appropriate reserve margin. *See also* HVT of the January 20, 2022 Hearing at 09:18:19 and 09:21:46

[88] Wolfram Rebuttal at 11.

[89] *Id.* at 12.

[90] Bieber Testimony at 7.

[91] Wolfram Rebuttal at 3.

some contribution toward covering embedded capacity costs during maintenance outages.[92]

During a maintenance outage, Kimberly-Clark's 14 MW still represents a temporary additional demand on BREC's system. Additionally, BREC is providing Kimberly-Clark a capacity credit for its self-supply generation at an amount reflecting an avoided generation capacity value. Regardless of whether BREC has unused system capacity or not, the known temporary nature of Maintenance demand and the monthly incremental self-supply capacity credit warrant that Maintenance demand be treated as incremental system demand. Under the terms of the LICSS tariff, BREC will know the timing and duration of the maintenance outage far in advance and will have ample time to plan for how to accommodate the incremental demand. BREC's proposed bundled rate structure is not appropriate for Maintenance Power Service, where the timing and duration of incremental demand placed on BREC's system is pre-approved and known well in advance. Under the proposed tariff, the energy rates are the same whether the outage is scheduled or not. Kimberly-Clark is being charged an embedded cost rate for Backup Power Service monthly and being charged nothing for the incremental cost of Maintenance Power Service. Essentially, Maintenance Power Service capacity is being offered for no charge, which provides the wrong price signals to standby customers. However, there is value to BREC in knowing the timing and duration of a standby customer's outage and the tariff provides no incentive beyond maintaining good corporate

[92] The Commission notes that up until Kimberly-Clark began self-supplying a portion of its demand, it had been paying LIC Tariffed demand charges on its entire demand. It is not fair to the other customers for it to stop paying for that capacity even though it will be utilized on a temporary and incremental basis.

relations for a standby customer to schedule an outage.[93] Furthermore, there is no provision in the tariff to address the potential of standby customers extending outages, which would effectively provide standby customers a means to avoid relatively higher fuel prices for its own generation.

The Commission finds 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.

Given that Supplemental demand is defined in the proposed LICSS tariff as the level of demand under the special contract between the member cooperative and the standby customer,[94] and that Supplemental Power is all power not specifically identified as Maintenance or Backup Power,[95] the Commission finds that using the standard LIC tariff rates as a basis for demand and energy under Supplemental Power Service to be fair, just and reasonable. The Commission makes this finding because the LIC tariff rate has been previously approved by the Commission and is the rate a large industrial customer would be charged absent a different rate specified in its retail service agreement with BREC.

[93] HVT of the January 20, 2022 Hearing at 11:17:30–11:19:15. BREC pointed out that there is incentive to take an outage at off peak times in order to take advantage of lower energy rates. However, there does not appear to be any incentive for the standby customer to let BREC know the timing or duration of its outage in advance. Further, the record is not clear how an LICSS customer would receive any benefit from *wholesale* prices being "off peak."

[94] BREC Standby Service Tariff Filing, Original Sheet No. 69.02 (filed June 24, 2021).

[95] *Id.*

The impetus for the LICSS tariff was Kimberly-Clark approaching BREC with the desire to self-supply a portion of its own power. Under its Agreement for Electric Service, Kenergy would provide the backup, maintenance and or supplemental power in accordance with its filed tariffs. At that time, neither BREC nor Kenergy had an appropriate tariff on file, hence, the LICSS tariff was developed.[96]

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.

The Commission agrees with BREC that it is appropriate to give self-supply customers credit for the incremental value of their self-generation capacity, and that at least in this matter, BREC's avoided generation capacity value is an appropriate credit amount. In this instance, the Commission also agrees with BREC that the use of the Green Station conversion cost of $3.80 per kW per month as its avoided generation capacity value was appropriate. However, even though the Green Station conversion cost does specifically represent BREC's most recent generation addition, it is a historical cost and may not be the most appropriate value moving forward. The Green Station conversion was approved in Case No. 2021-00079.[97]

[96] Joint Response to Staff's Second Request, Item 1.

[97] See Case No. 2021-00079, *Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity Authorizing the Conversion of the Green Station Units to Natural Gas Fired Units and an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC June 11, 2021). See also Joint Response to Kimberly-Clark's First Request, Item 1.

In addition, the Commission anticipates that penetrations of customer owned generation will continue to increase in the coming years, which could potentially bring additional capacity cost savings to BREC. There are also near-term changes in MISO, which may be moving towards a seasonal construct.[98] This seasonal construct has the potential to provide BREC the option to carry shorter-term capacity requirements to supply a standby customer's maintenance requirements, rather than on an annual basis.[99] These changes in wholesale markets will likely necessitate additional changes to BREC's standby tariff offerings.

Kimberly-Clark's proposed rate structure recognized the incremental nature of Maintenance and Backup Power Services by arguing that it should only have to pay for those services when they were used.[100] However, BREC correctly pointed out that in Kimberly-Clark's proposed rate structure there would be no contribution to embedded fixed costs and Kimberly-Clark would be free riding on capacity being paid for by the rest BREC's customers (and previously paid for by Kimberly-Clark).[101] The Commission finds that the arguments of both parties have some merit. 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

[98] HVT of the January 20, 2022 Hearing, Eacret at 09:33:48–09:35:02.

[99] HVT of the January 20, 2022 Hearing, Eacret at 09:45:43–09:47:25.

[100] See Bieber Testimony at 12–16.

[101] Wolfram Rebuttal at 4–6. Examples of fixed costs include transmission costs, the amortization of remaining book value of retired generation assets, and current generation fleet costs.

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.

For the reasons discussed above, the Commission believes that BREC's proposed LICSS tariff and Kimberly-Clark's alternative proposals are flawed. Were the Commission to reject the LICSS tariff, Kimberly-Clark would remain on the LIC tariff. The LIC tariff is structured for industrial customers taking power only from BREC and not self-supplying. While the energy and demand charge tariff provisions of the proposed LICSS Supplemental Power Service are the same as those in the LIC tariff, the energy and demand charge rates for either Maintenance Power Service or Backup Power Service are not the same. The LIC tariff rates do not produce fair, just and reasonable rates for Maintenance Power and Backup Power Services.

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.[102] On that issue, it should be noted that BREC's argument that its transmission system must keep capacity year-around 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,[103] 2021-00349[104] and 2021-00350[105] 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 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

[102] *See* Joint Response to Staff's Post Hearing Request, Item 3. BREC argues that specific transmission facilities were constructed to serve Kimberly-Clark and there are no other users on that specific portion of the transmission system. Therefore, there would be no additional transmission costs to provide capacity to Kimberly-Clark when it takes an outage. However, the Commission notes that there will be incremental transmission system requirements, outside of any facilities specifically constructed to serve any particular industrial customer, when self-supply generators take an outage.

[103] See Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (Ky. PSC May 14, 2021).

[104] *See* Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC Sept. 24, 2021).

[105] See Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC Sept. 24, 2021).

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.

As an interim step, and for lack of a better alternative, the Commission finds that BREC's proposed LICSS tariff as filed should be approved on a Pilot basis until the Commission approves a revision of the LICSS tariff. Though not an ideal solution, this will satisfy Kimberly-Clark's need for the proposed services and provide BREC with a measure of cost recovery. With the guidance provided in this Order, the interim time period will provide the parties time to continue discussions and BREC time to take into account possible changes at MISO and to design forward looking rates that are fair, just and reasonable. BREC shall file its updated LICSS tariff, along with cost support and testimony on or before September 1, 2023.

As an additional matter, BREC stated that some QFS tariff language was out of date by ten years or more and that it had been approved prior to it joining MISO and that it was not opposed to revising the tariff.[106] Given that BREC's circumstances have changed significantly since the QFS tariff was approved, the Commission finds that BREC shall review and revise the QFS tariff as necessary to reflect its current circumstances and concepts being applied in the LICSS tariff.

IT IS THEREFORE ORDERED that:

[106] Wolfram Rebuttal Testimony at 18–19.

1. The rates and charges proposed by Joint Applicants in the LICSS tariff are approved on a Pilot basis until the Commission approves a revision to the LICSS tariff.

2. On or before September 1, 2023, Joint Applicants shall file with the Commission new rates for services under the LICSS tariff along with cost support and testimony.

3. On or before March 1, 2023, BREC shall file with the Commission new rates for services under the QFS tariff along with cost support and testimony.

4. This case is closed and removed from the Commissions Docket.

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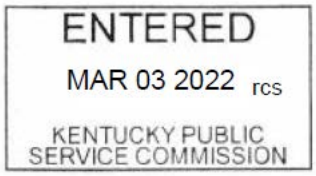
By the Commission



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