COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On September 1, 2023, Big Rivers Electric Corporation (BREC) filed a revised Large Industrial Customer Standby Service (LICSS) tariff as directed by the Commission in Case No. 2021-00289[1] with a proposed effective date of October 1, 2023. On September 11, 2023, Kenergy Corp. (Kenergy) (collectively, the Applicants) filed its revised LICSS tariff to mirror the revisions proposed by BREC. Kenergy proposed an effective date of October 11, 2023. On September 27, 2023, the Commission established this proceeding to investigate the reasonableness of BREC's proposed LICSS tariff.[2] There are two intervenors in this case, Kimberly-Clark Corporation (Kimberly-Clark) and Domtar Paper Company, LLC (Domtar) (collectively, the Intervenors).

PROCEDURAL HISTORY

Pursuant to the Commission's March 3, 2022, Order in Case No. 2021-00289,[3] BREC filed proposed tariff sheets to revise its LICSS rate schedule. BREC also provided

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[1] Case No. 2021-00289, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff* (Ky. PSC Mar. 3, 2023).

[2] Opening Order. (Ky. PSC Sept. 27, 2023).

[3] Case No. 2021-00289, Mar. 3, 2023 Order.

notice of this tariff filing to its three members – Jackson Purchase Energy Corporation (Jackson Purchase Energy), Kenergy, and Meade County Rural Electric Cooperative Corporation (Meade RECC).

By Order entered September 27, 2023, the Commission suspended the proposed rates up to and including February 29, 2024, for BREC and March 10, 2024, for Kenergy, and also established a procedural schedule.[4] Kimberly-Clark and Domtar were granted intervention on October 12, 2024.[5] The Applicants have responded to three requests for information from Commission Staff.[6] The Applicants initially responded to two requests for information from the Intervenors.[7] Intervenors filed testimony on December 4, 2023,[8] and have responded to two requests for information.[9] The Applicants filed rebuttal testimony on January 9, 2024.[10] The Applicants requested a decision on the record on

[4] Opening Order (Ky. PSC Sept. 27, 2023).

[5] Order Granting Domtar Intervention (Ky. PSC Oct. 12, 2023); Order Granting Kimberly-Clark Intervention (Ky. PSC Oct. 12, 2023).

[6] Applicants' Response to Commission Staff's First Request for Information (Staff's First Request) (filed Oct. 27, 2023); Applicants' Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Nov. 27, 2023); Applicants' Response to Commission Staff's Post-Hearing Requests for Information (Staff's Post-Hearing Request) (filed May 16, 2024).

[7] BREC's Response to Domtar's First Request for Information (filed Oct. 27, 2023); BREC's Response to Kimberly- Clark's First Request for Information (filed Oct. 27, 2023); BREC's Response to Domtar's Second Request for Information (filed Nov. 27, 2023); BREC's Response to Kimberly-Clark's Second Request for Information (filed Nov. 27, 2023).

[8] Direct Testimony of Larry Blank (Blank Testimony) (filed Dec. 4, 2023); Direct Testimony of Stephen Thomas (Thomas Testimony) (filed Dec. 4, 2023); Direct Testimony of Stephen J. Baron (Baron Testimony) (filed Dec. 4, 2023); Direct Testimony of Timothy A. Honadle (Honadle Testimony) (filed Dec. 4, 2023); Direct Testimony of Steven Cassady (Cassady Testimony) (filed Dec. 4, 2023).

[9] Domtar's Responses to BREC's First Request (filed Jan. 2, 2024); Kimberly-Clark's Responses to BREC's First Request (filed Jan. 2, 2024); Kimberly-Clark's Response to Commission Staff's Post-Hearing Requests for Information (filed May 17, 2024).

[10] Rebuttal Testimony of Terry Wright, Jr. (Wright Testimony) (filed Jan. 9, 2024).

January 16, 2024.[11] On January 16, 2024, Intervenors asked for a hearing as well as an amended procedural schedule.[12] On January 23, 2024, the Applicants responded to the motion.[13] On January 29, 2024, the Intervenors responded to Applicants' response to the Intervenor's January 16, 2024, motion.[14] On February 20, 2024, the Commission granted the request for an additional data request, amended the procedural schedule to allow for the additional data request and rebuttal testimony, and ordered a hearing.[15] On March 8, 2024, BREC and Kenergy responded to a third data request from the intervenors.[16] Surrebuttal testimony was filed by both Kimberly-Clark and Domtar on March 18, 2024.[17] A formal evidentiary hearing was originally set for April 2, 2024, but the parties requested it be rescheduled.[18] The formal evidentiary hearing was held in Frankfort, Kentucky on May 1, 2024. On May 16, 2024, BREC and Kenergy responded to post-hearing data requests from Commission Staff.[19] On May 17, 2024, Kimberly-Clark

[11] BREC's Request to Submit on Existing Record (filed Jan. 16, 2024).

[12] Joint Omnibus Motion for Hearing and Amendment of Procedural Schedule (filed Jan. 16, 2024).

[13] Response to Intervenors Omnibus Motion for Hearing and Amendment to Procedural Schedule (filed Jan. 23, 2024).

[14] Intervenors Joint Reply in Support of Omnibus Motion for Hearing and Amendment of Procedural Schedule (filed Jan. 29, 2024).

[15] Order (Ky. PSC Feb. 20, 2024).

[16] BREC's Responses to Intervenors Third Request for Information (filed Mar. 8, 2024).

[17] Surrebuttal Testimony of Steve Cassady on Behalf of Kimberly-Clark (Cassady Surrebuttal Testimony) (filed Mar. 18, 2024); Surrebuttal Testimony of Jamie Scripps on Behalf of Kimberly-Clark (Scripps Surrebuttal Testimony) (filed Mar. 18, 2024); Domtar Paper Company's Surrebuttal Testimony of Stephen J. Baron (Baron Surrebuttal Testimony) (filed Mar. 18, 2024).

[18] Emergency Motion to Reschedule Hearing (filed Mar. 11, 2024).

[19] Applicants' Response to Staff's Post-Hearing Requests.

responded to post hearing data requests from Commission Staff.[20] Post-Hearing briefs were filed by all parties on May 29, 2024.[21] Reply briefs were filed by all parties on June 7, 2024.[22]

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.[23] Kentucky law provides that a utility may only demand, collect and receive fair, just and reasonable rates[24] and that the service it provides must be adequate, efficient and reasonable.[25] KRS 278.190[26] 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 wholesale electricity.[27] BREC's principal purpose is to provide the wholesale electricity

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[20] Kimberly-Clark's Response to Commission Staff's Post-Hearing Requests for Information (filed May 17, 2024).

[21] Post-Hearing Brief of BREC and Kenergy (Joint Applicants Post-Hearing Brief) (filed May 29, 2024); Brief of Domtar Paper Company, LLC (Domtar Post-Hearing Brief) (filed May 29, 2024); Kimberly-Clark Corporation Post-Hearing Brief (Kimberly-Clark Post-Hearing Brief) (filed May 29, 2024).

[22] Kimberly-Clark Corporations Reply Brief (Kimberly-Clark Reply Brief) (filed June 7, 2024); BREC and Kenergy's Response Brief (Joint Applicants Reply Brief) (filed June 7, 2024); Reply Brief of Domtar Paper Company, LLC (Domtar Reply Brief) (filed June 7, 2024).

[23] KRS 278.040(2).

[24] KRS 278.030(1).

[25] KRS 278.030(2).

[26] KRS 278.190.

[27] *Annual Report of Big Rivers Electric Corporation to the Public Service Commission for the Year Ended December 31, 2022* (BREC's 2022 Annual Report) at 8.

requirement of its three distribution cooperative members: Jackson Purchase Energy, Kenergy, and Meade County RECC.[28]

Kenergy is a rural distribution electric cooperative with a corporate office in Henderson, Kentucky.[29] Kenergy provides retail electric service to approximately 59,214 total customers[30] in Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McLean, Muhlenberg, Ohio, Union and Webster counties, Kentucky.[31]

Kimberly-Clark, a manufacturer of paper goods, operates a facility in Owensboro, Kentucky.[32] Kimberly-Clark owns and operates a 14 megawatt (MW) natural gas turbine cogeneration unit and takes retail electric service from Kenergy with standby service under BREC's current pilot LICSS rates.[33]

Domtar is a large industrial customer that takes generation and transmission service from BREC and distribution service from Kenergy. Domtar owns a 52 MW cogeneration facility located in Hawesville, Kentucky.[34] Kimberly-Clark and Domtar are currently the only customers who take service under the LICSS tariff.

PROPOSED TARIFF

[28] BREC's 2022 Annual Report at 10.

[29] *Annual Report of Kenergy Corp. to the Public Service Commission for the Year Ended December 31, 2022* (Kenergy's 2022 Annual Report) at 1.

[30] Kenergy's 2022 Annual Report at 44.

[31] Kenergy's 2022 Annual Report at 52.

[32] Honadle Testimony (filed Dec. 4, 2023).

[33] Cassady Testimony (filed Dec. 4, 2023).

[34] Baron Testimony (filed Dec. 4, 2023).

As filed, BREC's proposed LICSS tariff would be available to any of its existing member cooperatives for service to any large industrial customer (LIC) of the member cooperative that has resources capable of supplying all or a portion of its power requirements and requests Standby Power Service.[35] BREC explained that under the proposed changes to the Standby Service tariff, Standby Power Service includes only Supplemental Power Service and Backup Power Service.[36] Supplemental Power Service refers to transmission service and power supply to the Standby Customer's facility for its needs that exceed the capability of the Standby Customer's own generation and Backup Power Service refers to transmission service and power supply to the Standby Customer during outages or other interruptions of the Standby Customer's own generation.[37]

Additionally, BREC proposed a change to how the capacity credit is determined by removing any distinction between Maintenance Power Service and Backup Power Service. BREC reasoned, despite the Commission's March 3, 2022 Order in Case No. 2021-00289[38] finding that bundling the maintenance and backup power service was inappropriate, that there was no difference in cost to bundling the two services.[39] For the demand charge for Backup Power Service, BREC proposed that all Backup Power be billed at the LIC rate, with the customer receiving a credit equal to the Self Supply Capacity multiplied by the Midcontinent Independent System Operator (MISO) Planning

[35] Direct Testimony of Nathaniel Berry (Berry Direct Testimony) at 3.

[36] Berry Direct Testimony at 3.

[37] Berry Direct Testimony at 3-4.

[38] Case No. 2021-00289, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff* (Ky. PSC Mar. 3, 2022), Order at 19.

[39] Berry Direct Testimony at 4 and 6.

Resource Auction (PRA) Auction Clearing Prices (ACP) for the BREC zone during the applicable resource auction period.[40] BREC explained that, because it purchases all of its capacity needs for its member load at the PRA price, the benefit to BREC from a Standby Customer's generator is the savings it receives by purchasing less capacity in MISO equal to the accredited capacity of the customer's generator.[41] BREC did not propose a revision to the demand charge for Supplemental Power Service, which would continue to be billed under the terms and charges of BREC's LIC Tariff.

For the energy charge for Backup Power Service, BREC proposed that energy be charged at the higher of the LIC energy charge, or the locational marginal price (LMP) for energy at the applicable MISO load node during each hour of the day at the time of delivery, plus any transmission charges, MISO fees, or other costs.[42] BREC also included a revision to the tariff which clarifies that in situations in which the Backup Power Energy is priced at the LMP, the applicable energy charge would not be subject to the Fuel Adjustment Clause (FAC), Non-FAC Purchased Power Adjustment, Environmental Surcharge, or Member Rate Stability Mechanism Riders.[43] BREC did not propose a revision to the energy charge for Supplemental Power Service, which would continue to be billed under the terms and charges of BREC's LIC tariff.

[40] Berry Direct Testimony at 4–5.

[41] Berry Direct Testimony at 5.

[42] Berry Direct Testimony at 4.

[43] Berry Direct Testimony at 9–10.

BREC also proposed to remove the administrative charge of $150 per month and instead pass through to the Standby Customer the actual costs associated with the Standby Customer's self-generation.[44]

Additionally, BREC proposed a revision that would require that the capacity of the Standby Customer's generating unit be accredited by MISO.[45] BREC also proposed other revisions to the terms and conditions of the tariff, including: (1) Requiring Standby Customers to be responsible for all costs related to the Standby Customer's generator; (2) Limiting capacity credits to customer-generators that are dispatchable; (2) Requiring that Standby Customers comply with applicable codes, regulations and generally accepted utility practices; (3) Requiring that Standby Customers have insurance for damages to persons and property; (4) Requiring Standby Customers to pay for interconnection costs and for any penalties resulting from a failure of the customer's generator to perform; (5) Requiring Standby Customers to provide reasonable protection for BREC's and the Member Cooperative's systems; and (6) Making Standby Customers responsible for the cost of all facilities on the Standby Customer's site to meet and maintain eligibility as a MISO capacity resource.[46]

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[44] Berry Direct Testimony at 10.

[45] Proposed P.S.C. KY. No. 27, Third Revised Sheet No. 69.01, Cancelling P.S.C. KY. No. 27, Second Revised Sheet No. 69.01.

[46] Proposed P.S.C. KY. No. 27, First Revised Sheet No. 69.04; Proposed P.S.C. KY. No. 27, First Revised Sheet No. 69.05.

DISCUSSION

BREC and Kenergy's Position

Nathaniel Berry, the Chief Operating Officer of BREC, provided direct testimony to support the proposed revisions to the LICSS rate schedule.[47] Berry described the Standby Service rate schedule as available to any large industrial customer capable of supplying part of its power needs. He explained that Standby Power Service includes both Supplemental Power Service and Backup Power Service.[48] The proposed tariff revisions aim to eliminate the distinction between Maintenance Power Service and Backup Power Service, combining them into one Backup Power Service.[49] The demand rate would require the Member Cooperative to pay the standard LIC demand charge for both services, less a credit for the value of the customer's self-supply capacity.[50] Energy charges for Backup Power would be the higher of the LIC energy charge or the locational marginal price (LMP) at the applicable MISO load node.[51] Berry argued that this structure ensures fairness and reflects the actual costs incurred by BREC to provide standby services.

In his rebuttal testimony, Terry Wright, Jr., Vice President of Energy Services for BREC, defends the proposed LICSS Tariff against intervenors' criticisms.[52] He clarifies the necessity of the tariff, explaining that it ensures reliable service for customers with

[47] Berry Direct Testimony.

[48] Berry Direct Testimony at 3.

[49] Berry Direct Testimony at 6–7.

[50] Berry Direct Testimony at 4.

[51] Berry Direct Testimony at 4.

[52] Wright Testimony at 3.

their own generation while maintaining system reliability and economic stability. Wright detailed how BREC must plan for peak load demands and the implications of forced outages from behind-the-meter generators, which cannot be mitigated by scheduled maintenance.[53] Wright underscored that MISO's capacity planning and accreditation processes validate the proposed tariff's structure and emphasized its alignment with MISO's operational framework.[54] Wright concluded that the tariff is a fair and reasonable approach to managing standby service needs in the current energy market framework, protecting all ratepayers while meeting customer demands.

The post-hearing brief of the Applicants argued that the revised tariff aims to create a flexible, cost-reflective structure for large industrial customers with behind-the-meter generation (BTMG), ensuring system reliability and fair cost allocation.[55] Applicants argued the revised tariff is designed to reflect actual market costs and benefits to standby customers, minimizing cross-class subsidization.[56] Applicants supported their position by stating that the proposed tariff incorporates MISO's LMR registration protocols to meet standby customers' needs without compromising system reliability.[57] The tariff differentiates between backup and maintenance power by charging the higher of the LIC energy charge or the market rate, thus incentivizing efficient outage scheduling without arbitrary subsidies.[58]

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[53] Wright Testimony at 5-6.

[54] Wright Testimony at 4-5.

[55] Joint Applicants Post-Hearing Brief at 4-9.

[56] Joint Applicants Post-Hearing Brief at 3.

[57] Joint Applicants Post-Hearing Brief at 4-5.

[58] Joint Applicants Post-Hearing Brief at 5-7.

The Applicants' argued that traditional tariffs, which discount charges based on outage probability, fail to reflect the true costs of maintaining standby capacity and lead to cross-subsidization by other customer classes.[59] BREC argued that its approach, passing through real market costs and benefits, aligns with cost-causation principles. It states that the requirement for standby customers to register their BTMG with MISO is essential for accurate capacity evaluation and system reliability.[60]

BREC argued it remains open to negotiating special contracts with standby customers to address specific needs while maintaining reliability and fair cost allocation principles.[61] BREC requested the Commission approve the revised LICSS tariff, alleging it balances the needs of standby customers with system reliability and fair cost allocation, reflecting the growing use of BTMG and changing market conditions within the MISO framework.

In their reply brief, the Applicants argued that the tariff reflects current planning and load obligation realities, particularly with the increase in BTMG, and balances the needs of standby customers with broader system reliability and cost considerations, avoiding unfair subsidization.[62] The Joint Applicants argued that the proposed tariff is fair, just and reasonable, incentivizing customers to schedule maintenance outages during low demand periods and ensuring appropriate cost allocation.[63] The Joint Applicants rejected the idea that individual customers' economic conditions should

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[59] Joint Applicants Post-Hearing Brief at 3.

[60] Joint Applicants Post-Hearing Brief at 4-5.

[61] Joint Applicants Post-Hearing Brief at 11.

[62] Joint Applicants Reply Brief at 1-2.

[63] Joint Applicants Reply Brief at 5-6.

influence tariff design, highlighting the need to protect all ratepayers and maintain system reliability amid increasing grid challenges.[64]

Kimberly-Clark's Position

Kimberly-Clark argued that BREC's proposed LICSS tariff does not result in reasonable rates for standby service and presented the testimony of several witnesses to substantiate its position. One such witness, Timothy Honadle, an Engineering Technical Leader at Kimberly-Clark, provided direct testimony regarding the impact of the LICSS tariff on Kimberly-Clark's Owensboro Facility.[65] Witness Honadle highlighted that Kimberly-Clark's Owensboro Facility, which produces 14 million cases of paper products annually, installed a 14 MW self-generation unit to mitigate high electricity costs.[66] This unit generates about half of the facility's electricity needs and helps maintain competitive operations. However, the pilot LICSS tariff has increased the facility's electricity costs. The proposed tariff would further elevate costs and disincentivize efficient operations by charging for backup power, even when not used.[67] Witness Honadle argued that the structure discourages proper maintenance and efficient use of resources, ultimately undermining the facility's economic viability.

Larry Blank, a consultant specializing in policy and ratemaking facets of regulated utility industries, also presented direct testimony[68] and testified on behalf of Kimberly-Clark at the hearing in this matter. Witness Blank opposed the proposed LICSS tariff by

[64] Joint Applicants Reply Brief at 3-4.

[65] Honadle Redacted Direct Testimony (Honadle Testimony) (filed Apr. 26, 2024).

[66] Honadle Testimony at 2-3.

[67] Honadle Testimony at 11.

[68] Blank Direct Testimony (filed Dec. 4, 2023).

BREC and Kenergy. Witness Blank argued that the proposed LICSS structure is unusual and inconsistent with industry standards, lacking a foundation in cost-based service principles.[69] He stated that the proposed tariff design does not differentiate between various types of power services such as standby reservation, maintenance service for scheduled outages, and backup service for unscheduled outages.[70] Instead, witness Blank took the position that the proposed structure bundles those components into a single monthly charge, which fails to recognize the distinct characteristics and costs associated with each service type. Additionally, witness Blank criticized the proposed backup charge for creating a barrier to customer generation, as it could deter investment in customer generation units that otherwise enhance system reliability and efficiency.[71]

Witness Blank also argued that it was improper to use the MISO Planning Resource Auction (PRA) clearing price as a credit against the demand charge, noting that this does not align with the cost principles typically used in standby tariffs.[72] He recommended that the Commission reject both the proposed LICSS and the existing Pilot LICSS, advocating instead for an alternative LICSS that includes distinct charges for Supplemental Power Service, a Monthly Standby Reservation Charge, Maintenance Power Service, and Backup Power Service. Witness Blank argued that the alternative tariff structured better aligned with industry standards and ensured that charges would be objectively determined based on BREC's actual costs to provide those services.[73]

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[69] Blank Direct Testimony at 3.

[70] Blank Direct Testimony at 6.

[71] Blank Direct Testimony at 9.

[72] Blank Direct Testimony at 4-5.

[73] Blank Direct Testimony at 10-12.

Witness Blank's testimony emphasized that a logical construct for a standby service tariff would properly separate the components of service, encouraging customer generators to maintain reliability and efficiency.[74] Additionally, he proposed that maintenance service charges should be lower for scheduled outages, which can be coordinated to minimize system impact, while backup service charges should be higher for unscheduled outages due to their greater potential for disruption[75]. Witness Blank stated that by adopting this recommended structure, the Commission would ensure that charges are fair, reasonable, and reflective of the actual costs and risks associated with providing standby services and would provide for a more equitable and logically consistent tariff design that supports both utility efficiency and customer generation reliability.[76]

Jamie Scripps provided surrebuttal testimony on behalf of Kimberly-Clark in response to BREC and Kenergy's proposed revisions to the LICSS tariff.[77] Witness Scripps, put forth as an expert in energy policy and utility regulation, criticized the proposed LICSS tariff for its potential to increase costs and disincentivize efficient operation of customer-owned generation units like Kimberly-Clark's cogeneration unit.[78]

Witness Scripps emphasized that the current and proposed tariffs impose charges for backup power even when not utilized, which leads to higher operational costs and

[74] Blank Direct Testimony at 14.

[75] Blank Direct Testimony at 13-14.

[76] Blank Direct Testimony at 13.

[77] Scripps Surrebuttal Testimony (filed Mar. 18, 2024).

[78] Scripps Surrebuttal Testimony at 10-11.

undermines incentives for maintaining efficient generation systems.[79] Witness Scripps also noted that BREC's approach of including load from non-LMR (Load Modifying Resource) behind-the-meter generation in its load forecasts could result in inflated costs for all customers.[80] Witness Scripps advocated for a load forecasting approach that accurately reflects the net load served by BREC during peak hours, avoiding overstatements of costs and charges.

Furthermore, witness Scripps highlighted the benefits of traditional standby rate models that differentiate between scheduled maintenance and unscheduled outages, providing more appropriate price signals and encouraging efficient maintenance practices. Witness Scripps criticized BREC's proposed LICSS tariff for deviating from these established practices without demonstrating that the current approach is inadequate. Witness Scripps recommended maintaining traditional standby rate models to support efficient energy use and minimize costs for both the utility and its customers.[81]

Finally, Steve Cassady, Senior Director of Procurement for Kimberly-Clark, provided direct testimony[82] and surrebuttal testimony[83] wherein witness Cassady opposed the proposed requirement by BREC and Kenergy that Kimberly-Clark's Combined Heat and Power (CHP) unit register as a Load Modifying Resource (LMR) with MISO. Witness Cassady, in his direct testimony, addressed several critical issues regarding the Owensboro Facility's energy costs and operations. Witness Cassady

[79] Scripps Surrebuttal Testimony at 12-14.

[80] Scripps Surrebuttal Testimony at 9.

[81] Scripps Surrebuttal Testimony at 12-13.

[82] Cassady Testimony (filed Dec. 4, 2023).

[83] Cassady Surrebuttal Testimony (filed Mar. 18, 2024).

stated that due to significant rate increases since 2012, the facility's electrical costs have become unsustainable, prompting Kimberly-Clark to explore self-generation as a cost-saving measure.[84] Witness Cassady detailed the installation of a cogeneration unit relocated from a closed facility in Fullerton, California, to the Owensboro facility in 2021.[85] According to witness Cassady's testimony, despite achieving cost reductions through self-generation, the introduction of a pilot standby tariff has increased overall energy costs, jeopardizing the facility's competitiveness.[86] Witness Cassady argued that without reasonable energy tariffs, the facility risks losing further investment and may face long-term viability issues. He expressed Kimberly-Clark's preference to negotiate sustainable energy rates with local utilities rather than expand self-generation capabilities.[87] Witness Cassady explained that Kimberly-Clark's CHP system was designed to support its Owensboro facility's manufacturing operations, not to participate in MISO's grid support.[88] He argued that forcing the CHP unit to become an LMR would add complexity, costs, and operational disruptions, undermining the facility's efficiency and competitiveness.[89] Witness Cassady argued that the proposed tariff would compel Kimberly-Clark to prioritize MISO's demands over its production needs, potentially leading to significant operational and financial losses during forced outages.[90] Additionally, he stated that any

[84] Cassady Testimony at 2-3.

[85] Cassady Testimony at 2-3.

[86] Cassady Testimony at 7.

[87] Cassady Testimony at 7.

[88] Cassady Surrebuttal Testimony at 3-4.

[89] Cassady Surrebuttal Testimony at 2.

[90] Cassady Surrebuttal Testimony at 3-4.

costs incurred from managing MISO participation would be unfairly passed to Kimberly-Clark without adequate transparency or recourse.[91] Kimberly-Clark's Post-Hearing Brief argued against the proposed LICSS tariff by BREC and Kenergy, claiming it is unjust, unreasonable, and discriminatory.[92] Kimberly-Clark requested the Commission reject the proposed tariff and adopt their alternative LICSS tariff. Kimberly-Clark argued that its Owensboro facility relies so heavily on electricity it installed a cogeneration unit to reduce electric utility costs, would be adversely affected by the proposed LICSS tariff.[93]

In its brief, Kimberly-Clark argued that the proposed tariff fails to differentiate between maintenance (planned outages) and backup power (unplanned outages), which removes incentives for scheduling maintenance during off-peak times, negatively impacting grid reliability and efficiency.[94] Additionally, Kimberly-Clark argued that contrary to Public Utility Regulatory Policies Act (PURPA) regulations, the proposed tariff overstates costs by assuming full load demand rather than actual metered usage. The tariff's structure, which charges backup power energy at the higher of the standard rate or locational marginal price (LMP), unfairly penalizes customers with self-generation. Additionally, the tariff's demand charges use a cost-based method while self-generation benefits are assessed using a market-based method, resulting in unjust charges.[95]

[91] Cassady Surrebuttal Testimony at 3.

[92] Kimberly-Clark Post-Hearing Brief at 6.

[93] Kimberly-Clark Post-Hearing Brief at 8.

[94] Kimberly-Clark Post-Hearing Brief at 7-8.

[95] Kimberly-Clark Post-Hearing Brief at 12-15.

Kimberly-Clark argues that the tariff would harm its Owensboro facility's competitive position by increasing energy costs.[96]

Kimberly-Clark proposed an alternative LICSS tariff that separates maintenance and backup power services, bases charges on actual metered usage, and incorporates the generator outage rate into the reservation charge.[97] According to Kimberly-Clark, this approach would ensure charges reflect actual costs, encourage efficient operation, and comply with PURPA and Commission directives.[98]

In its reply brief, Kimberly-Clark reiterated opposition to the proposed LICSS tariff, stating it is unjust, unreasonable, and discriminatory and fails to meet the Commission's directives.[99] Kimberly-Clark criticized the lack of consultation with affected customers and the failure to separate provisions for different power services. Kimberly-Clark disputed claims that standby customers could negotiate special contracts and argued the tariff unfairly inflates costs, shifting an undue burden onto standby customers. Kimberly-Clark also argue the tariff would lead to standby customers subsidizing other rate classes and that it overestimates standby customers' load requirements, not aligning costs with actual backup service reliance.[100] Kimberly-Clark challenged BREC's reliability claims, arguing the tariff is inconsistent with MISO's planning requirements and best utility rate-making practices.[101]

[96] Kimberly-Clark Post-Hearing Brief at 20.

[97] Kimberly-Clark Post-Hearing Brief at 21-25.

[98] Kimberly-Clark Post-Hearing Brief at 21-26.

[99] Kimberly-Clark Reply Brief at 1-2.

[100] Kimberly-Clark Reply Brief at 3-4.

[101] Kimberly-Clark Reply Brief at 11.

Domtar's Position

Stephen J. Baron offered direct testimony on behalf of Domtar, wherein he critiqued the proposed LICSS tariffs by BREC and Kenergy.[102] As the President of J. Kennedy and Associates, Inc., Baron provided analysis on utility rates and services, focusing on Domtar's position as a large industrial customer with its own cogeneration facility.[103] Witness Baron argued that the proposed LICSS tariff is flawed because it does not base backup and maintenance power rates on the actual costs incurred by BREC.[104] Instead, it uses a cost/market hybrid rate, leading to higher charges for standby customers. He asserted that the tariff conflates backup and maintenance power, which should be separately priced, as it serves different purposes and incurs different costs.[105]

As part of his testimony, witness Baron reviewed six other utilities with standby and maintenance tariff provisions.[106] Domtar endorsed using Duke Energy Kentucky's (Duke Kentucky) Generation Support Services rider (Rider GSS) as the model for the instant tariff. Witness Baron noted that Duke Kentucky's GSS Tariff distinguishes between backup, maintenance, and supplemental power service.[107] Duke Kentucky's GSS Tariff establishes cost-based rates for those services that recognize the load characteristics of a standby customer. He criticized BREC's proposed tariffs for including various unreasonable changes, such as requiring standby customers to be accredited by MISO

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[102] Baron Testimony at 4-5.

[103] Baron Testimony at 3-4.

[104] Baron Testimony at 4.

[105] Baron Testimony at 4.

[106] Baron Testimony at 17.

[107] Baron Testimony at 18-20.

and charging standby customers for various ancillary services and interconnection costs. Witness Baron's testimony concluded that the Commission should reject the proposed LICSS tariffs and adopt a more reasonable and cost-based approach to standby service pricing.[108]

In his surrebuttal testimony, witness Baron addressed the rebuttal by BREC's witness, Terry Wright, Jr.[109] Witness Baron disputes witness Wright's justification for the proposed LICSS tariff, emphasizing that BREC's plan to serve the total plant load of customers with cogeneration is unnecessary and inconsistent with the MISO requirements.[110] Witness Baron argued that the proposed LICSS tariff is not cost-based and conflates backup and maintenance power, which should be separately priced.[111] He argued that this approach violates the PURPA regulations by assuming forced outages without factual data and could lead to higher costs for standby customers than standard industrial customers.[112] Finally, witness Baron argued that the change in planning to serve the total plant load would impose unnecessary costs on ratepayers by accelerating the need for new generation capacity.[113]

Domtar had Murray Hewitt, General Manager of its Hawesville facility, provide direct testimony as well as adopted several positions from Stephen Thomas' testimony.[114]

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[108] Baron Testimony at 22-23.

[109] Baron Surrebuttal Testimony at 1.

[110] Baron Surrebuttal Testimony at 3.

[111] Baron Surrebuttal Testimony at 3.

[112] Baron Surrebuttal Testimony at 3.

[113] Baron Surrebuttal Testimony at 3.

[114] Direct Testimony of Murray R. Hewitt (Hewitt Testimony) (filed Apr. 23, 2024); adopted to replace Direct Testimony of Stephen Thomas Testimony (filed Dec. 4, 2023).

Witness Hewitt argued that utility rate increases undermine the competitiveness of the Hawesville facility, both domestically and internationally, exacerbating its disadvantages in fiber supply costs.[115] Witness Hewitt stated that the cost of electricity is a major factor in determining the facility's per-unit production costs, which influence Domtar's allocation of capital.[116] Increases in energy costs make it harder for the Hawesville facility to compete against domestic and international suppliers, especially those from countries with lower environmental and labor standards.[117] According to witness Hewitt, The proposed rate increase by BREC would raise the facility's electricity costs by 45.5 percent, severely affecting its economic viability and competitiveness within Domtar's portfolio.[118] Witness Hewitt also supported an alternative rate based on Duke Kentucky's Rider GSS, despite apparently still resulting in a 17.8percent increase and apparently, posing significant operational challenges.[119]

Domtar's post-hearing brief opposes the proposed LICSS tariff filed by BREC and Kenergy, arguing it is unjust and unreasonable. Domtar stated that the tariff should be rejected for failing to unbundle backup and maintenance power services, contrary to the Commission's March 3, 2022 Order.[120] Domtar reasoned that bundling is problematic

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[115] Hewitt Testimony at 4.

[116] Hewitt Testimony at 3-4.

[117] Hewitt Testimony at 3.

[118] Hewitt Testimony at 6.

[119] Hewitt Testimony at 6.

[120] Domtar's Post-Hearing Brief at 1.

because the costs of scheduled maintenance power differ from those of unscheduled backup power.[121]

Additionally, Domtar argued in the post-hearing brief that BREC's proposed tariff does not reflect the actual cost to BREC of providing standby service, potentially leading to higher costs for standby customers compared to those without self-generation due to the "higher of" energy pricing for backup power.[122] Domtar also argued that the proposed tariff violates the PURPA by assuming qualifying facilities (QFs) like Domtar's cogeneration facility will experience forced outages during system peaks without evidence.[123] Finally, Domtar stated that the tariff bases pricing on benefits from selling cogeneration capacity into the MISO market rather than on BREC's cost of service, and requires BREC to plan for serving the full load of cogeneration customers, exceeding MISO reliability requirements.

Domtar also argued in its post-hearing brief that the tariff's mandate that standby customers have their cogeneration facilities accredited by MISO as Load Modifying Resources (LMR), is infeasible for Domtar since its facility stops when paper production ceases. Domtar argued this approach would increase costs for other utility customers by accelerating the need for new generating capacity due to planning changes.[124] Domtar argued that the proposed tariff would raise its annual electricity costs by 45.5 percent ($6.48 million per year), impacting the competitiveness of its Hawesville facility.[125]

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[121] Domtar's Post-Hearing Brief at 7.

[122] Domtar's Post-Hearing Brief at 8-9.

[123] Domtar's Post-Hearing Brief at 9-10.

[124] Domtar's Post-Hearing Brief at 14-15.

[125] Domtar's Post-Hearing Brief at 15.

Domtar's reply brief recommended adopting a standby service pricing approach like Duke Kentucky's Rider GSS, which separates pricing for supplemental, backup, and maintenance power and aligns charges with actual costs.[126] In its reply brief, Domtar argued that the proposed LICSS tariff was inconsistent with cost causation principles and PURPA mandates. Domtar asserted that the potential proposed tariff had the potential to charge customers taking service under the LICSS tariff more than those without self-generation, which it believed is unfair. Domtar continued to emphasize its belief that the proposed tariff would have a severe impact on its Hawesville facility.[127] Domtar concluded by asking the Commission to reject the proposed LICSS tariff in favor of a model based on Duke Kentucky's Rider GSS.

ANALYSIS AND FINDINGS

In Case No. 2021-00289, the Commission found, in regard to BREC's LICSS tariff, that in future filings, it would be inappropriate to bundle the pricing of LICSS Maintenance Power Service and Backup Power Service.[128] BREC indicated that while it recognizes that the Commission's Order in Case No. 2021-00289 found that bundling Maintenance and Backup Power Service was inappropriate, it nonetheless chose to ignore that finding because it believed the differences between the two services did not result in a difference in cost.[129] Based on this reasoning, BREC submitted a tariff which did not comply with the Commission's express findings; and bundled Maintenance Power Service and

[126] Domtar's Reply Brief at 1-2.

[127] Domtar's Reply Brief at 1-2.

[128] Case No. 2021-00289, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff* (Ky. PSC Mar. 3, 2022), Order, at 20.

[129] BREC's Response to Staff's Second Request, Item 7.

Backup Power Service.[130] BREC's failure to file a tariff which conformed with the Commission's express findings and final Order in Case No. 2021-00289 is significant evidence that BREC has not met its burden in this case.[131] The Commission reiterates that bundling Maintenance Power Service and Backup Power Service is inappropriate because the services provided are, in fact, different. Additionally, the testimony and information BREC presented during this case was not sufficient evidence to support its proposed LICSS tariff revisions.[132] The Commission's findings are further discussed below.

Maintenance Power Service

In this filing, BREC proposed to remove language that required Standby Customers to coordinate with BREC at least 60 days prior to the beginning of each calendar year to schedule maintenance outages to maximize the value of the LICSS customer's self-supply capacity. The Commission notes that there are benefits for BREC to continue requiring that the Standby Customers maintenance outages be planned for, requested, and approved well in advance of the event so that BREC can accurately plan for its future load requirements as well as satisfy MISO's Planning Reserve Margin Requirements (PRMR). The Commission notes that through the MISO PRMR process, BREC is required to obtain capacity for its entire estimated system peak load plus a reserve margin.

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[130] Berry Direct Testimony at 6.

[131] Case No. 2021-00289, Mar. 3, 202, Order, at 26.

[132] Domtar Post-Hearing Brief, Exhibit A.

Additionally, the Commission disagrees with BREC's argument that it does not believe it is reasonable to require other customers to subsidize a Standby Customer's decision to install cogeneration by paying an incentive for advanced notice of an outage. When specifically discussing a maintenance outage, by removing the tariff language that requires customer generators to provide sufficient notice of a maintenance outage, then BREC assumes the burden of trying to find energy to serve its Standby Customers at whatever the costs of energy on the MISO market, which could potentially result in costs that were imprudently incurred and could have been prevented. However, by requiring such notice BREC can properly plan for that outage and serve the Standby Customers load at an approximated known or estimated cost considering that energy would come from BREC's own generation rather than the MISO market.

The Commission finds that, all Standby Customers must continue to provide, at least 60 days prior to the beginning of each calendar year, a maintenance outage schedule. The Commission also expects Standby Customers to have further discussions with the Joint Applicants for finding days and times during the systems off-peak to schedule maintenance outages. This notice period is critical to allow for adequate planning and to ensure minimal disruption to the Joint Applicants and MISO's system. Additionally, if a scheduled maintenance outage were to change or need to be rescheduled, then the Standby Customer will send notice 60 days prior to its scheduled maintenance outage. In the event that the Standby Customers fails to meet the notice requirements listed above, then the cost of power delivered during the planned maintenance outage will be charged at the Backup Power Rate.

The Commission partially agrees with the intervenor's arguments with respect to the calculation of the Maintenance Power Charge. However, the Commission does not agree that the Maintenance Power Charge should be prorated at 50 percent of the LIC demand charge because BREC currently holds back approximately 70 MW of capacity in its capacity planning to potentially address the possibility that if one of the Standby Customers' generators experience an outage, planned or unplanned, then BREC could sufficiently provide the necessary energy at the time of that outage.

Therefore, the Commission finds that the Maintenance Power Charge should be based on the full LIC demand charge prorated based on the number of outage days divided by the total days in the month in which the scheduled maintenance outage was to occur. The Commission notes that these measures are reasonable and necessary to balance the needs for maintenance with the cost considerations and reliability requirements of the system. The Commission also finds that BREC should only hold back the necessary capacity to serve the Standby Customer's demand for maintenance outages considering BREC will receive sufficient customer notice and can properly plan accordingly for that capacity addition to its system and that otherwise BREC should be bidding the remainder of its capacity in the MISO market. The inclusion of a notice requirement ensures that all parties have adequate time to prepare for outages, thereby minimizing potential disruptions and maintaining system stability.

Backup Power Service

Regarding Backup Power Service, the Commission notes that it partially agrees with BREC's arguments in that there is additional risk and potentially additional costs that are incurred with providing Backup Power Service for forced or unscheduled outages.

The Commission acknowledges that since BREC is holding the additional capacity back to serve any outages from the Standby Customers that there are additional costs every month to ensure that BREC can provide Backup Power Service at a moment's notice. However, as noted above, BREC currently holds back the capacity to serve the Standby Customers in the event there is an outage, but the Commission notes that it appears that there is an unfair benefit to BREC from doing so in its proposed revised LICSS tariff. The proposed revised LICSS tariff contained language that stated that "all Backup Power energy usage shall be billed at the higher of the charges of Big Rivers' 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."[133] The Commission disagrees that Standby Customers should have to pay the higher of either the LICSS tariff rate or the MISO LMP considering that BREC is holding back that capacity and can serve its Standby Customers whenever there is a forced or unplanned outage. Therefore, the cost to serve the Standby Customers would not be the higher thereof to provide Backup Power Service because it should be the variable cost of BREC's own generation considering BREC is not relying on the MISO market to provide energy to Standby Customers at the MISO LMP price.

Therefore, upon review and consideration of all proposals regarding Backup Power Service, the Commission finds that in the event of a forced or unscheduled outage, the energy charge will be charged at the MISO LMP. This proposal meets the standard of being fair, just, and reasonable, ensuring consistency and transparency in the pricing

[133] P.S.C. KY. No. 27, First Revised Sheet No. 69.04.

structure for all customers while also providing BREC the ability to bid in its entire load into the MISO market rather than incurring additional and unnecessary costs by holding that capacity back. While the Commission acknowledges the fact that not all outages can be planned, the Commission notes that Standby Customers have an extremely low forced outage rate and so the costs that are incurred from such an outage can be considered minimal as compared to the costs that the Intervenors would incur from providing the energy from its own load that it holds back. Additionally, this methodology also shifts the burden off BREC and allows Standby Customers to determine how and where they want to receive the energy at market price.

Supplemental Power

Upon review and consideration of BREC's proposed supplemental power tariff provision, and noting that the Intervenors have no objections, the Commission finds that Supplemental Power Service shall be billed under the terms and charges of BREC's current LIC Tariff rate. This proposal meets the standard of being fair, just, and reasonable, ensuring consistency and transparency in the pricing structure for all customers.

Capacity Accreditation Through MISO

The Commission finds that the Joint Applicants proposal for Standby Customers to be accredited by MISO for their generating units is moot considering the Commission denied the proposal for the capacity credit to be based on the MISO PRA.

Monthly Stand-by Reservation Charge

Upon review and consideration, the Commission finds that the Monthly Standby Reservation Charge, as recommended by Kimberly-Clark,[134] is adopted. The charge shall be calculated using BREC's LIC demand charge, multiplied by the customer Generator Outage Rate. This rate is derived from the ratio of the total number of hours the generator was unavailable in the prior 12-month period, excluding Scheduled Outages, to the total number of hours in a year. The customer Generator Outage Rate effectively measures the probability of unscheduled outages and accurately reflects the anticipated use of replacement power by the customer. This method ensures the reservation charge is cost-based and equitable, aligning with the principles of cost causation discussed in the recommendation.

Additional Tariff Issues

The Joint Applicants proposed LICSS tariff indicates that in hours when the energy charge for Backup Power energy is priced at the locational marginal prices, those energy charges will not be subject to the FAC, Non-FAC Purchased Power Adjustment, Environmental Surcharge, or MRSM riders. BREC stated this adjustment aligns with Case No. 2023-00063.[135] BREC also proposed to pass through to the Standby Customers the actual costs related to the customers' self-generation, including services from ACES Power Marketing. Although intervenors have expressed disagreement with this proposal, no formal objections have been noted. Under the proposal, Standby Customers would be required to provide reasonable protection for BREC's and the Member Cooperative's systems. Standby Customers must also design, construct, install,

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[134] Larry Blank's Direct Testimony at 10.

[135] Case No. 2023-00063, *Kimberly-Clark Corporation v. Big Rivers Electric Corporation and Kenergy Corp.*

own, operate, and maintain their generation equipment in accordance with all applicable codes, laws, regulations, and generally accepted utility practices. Additionally, Standby Customers must obtain insurance with minimum amounts for each occurrence: Public Liability for Bodily Injury - $1,000,000.00 and Property Damage - $500,000.00. BREC is permitted to discontinue sales to a Standby Customer during system emergencies. After review of the record and given the lack of objections to the proposed tariff revisions, the Commission finds these revisions to be reasonable and hereby approves them.

In its application, the Joint Applicants proposed revisions that were to be consistent with its proposed QF tariff in Case No. 2023-00102.[136] At the time of this filing, the Commission had not yet ruled on BREC's QF tariff proposal. However, considering the Commission has issued an Order in that case denying BREC's QF filing, BREC's proposal in this case for it to align with the QF case are moot.

The Joint Applicants proposed to make Standby Customers "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". However, the Commission notes that this proposal is moot considering the Commission denied the Joint Applicants proposal to set the capacity rate at the MISO PRA.

Additionally, the Joint Applicants proposed to charge Standby Customer for "[a]ny and all costs incurred by BREC as a result of the Standby Customer's generator's failure to

[136] Case No. 2023-00102, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. To Revise the Large Industrial Customer Standby Service Tariff* (Ky. PSC Dec. 15, 2023).

generate, including, without limitation, ancillary services necessary to maintain reliability on the BREC's system and MISO RSG charges;" However, the Commission notes that this proposal is moot considering the Commission denied the Joint Applicants proposal to set the capacity rate at the MISO PRA.

In its application, the Joint Applicants proposed that the Standby Customers be required to pay "all interconnection costs arising out of the Standby Customer's generator;" the Intervenors did not object to this proposal in their rebuttal testimonies or in their briefs. In fact, Kimberly-Clark included an identical provision in Witness Blank's alternative LICSS Tariff. The Commission finds that the proposal by the Joint Applicants should be approved if the interconnection upgrades are required because of the Standby Customers generators. The Commission notes that if the Joint Applicants incurs any interconnection costs and the Standby Customer's generators are not responsible for the upgrades, then the Standby Customer should not bear the costs associated with the interconnection.

In its application, the Joint Applicants proposed to remove language allowing Standby Customers to enter into special agreements that may deviate from the provisions of the proposed LICSS tariffs. Domtar stated objections to this proposal.[137] The Joint Applicants acknowledged in its Post-Hearing Brief that although the Revised Tariff eliminated language related to special contracts, Commission regulations[138] explicitly allow for special contracts.[139] The regulation further states that all special contracts must

[137] Baron's Testimony at 16 and 20.

[138] 807 KAR 5:001 Section 13.

[139] Joint Applicants Post-Hearing Brief at 11, footnote 35.

be filed with the Commission.[140] The Commission finds that the presence of the language allowing for special agreements does not affect the provision in the Commission regulations regarding the formation of special agreements, therefore, the proposal by the Joint Applicants should be denied as the presence of the language in the tariff would provide clarity to potential LICSS customers that are not familiar with Kentucky regulations.

In the event that Joint Applicants or Joint Intervenors find themselves dissatisfied with the findings and conclusions set forth by the Commission in this Order, all parties are hereby encouraged to engage in collaborative discussions with one another. The purpose of these discussions is to address and resolve any concerns regarding the Commission's determinations and to explore the potential for agreeing on new rates. Any dissatisfied party must formally notify all-parties involved in this case, indicating its intent to engage in discussions aimed at resolving its concerns and negotiating new rates. The parties are encouraged to engage in open and constructive dialogue, leveraging their collective expertise and perspectives to address any disputes and to develop mutually agreeable solutions.

If a mutual agreement is reached, the parties must document the terms of the agreement in a formal filing. This filing should be submitted to the Commission and should either be submitted in a new filing or be included in a subsequent rate case. Upon receipt of the formal filing, the Commission will review the agreement to ensure it is fair, just and reasonable. The Commission reserves the right to approve, modify, or reject the proposed agreement.

[140] 807 KAR 5:001 Section 13.

IT IS THEREFORE ORDERED that:

1. The Applicants' proposed tariffs are denied.

2. Maintenance outages should be scheduled during system off-peak times of the year when possible and the maintenance charge should be the full LIC demand charge prorated based on the number of outage days divided by the total days in the month in which the scheduled maintenance outage was to occur

3. Standby Customers shall provide notice of any scheduled maintenance outage at least 60 days, but not more than 120 days, prior to January 1st of each calendar year.

4. Supplemental Power Service shall be set at the standard LIC rates.

5. Joint Applicants' requirement for capacity accreditation through MISO is denied as moot.

6. The Monthly Standby Reservation Charge shall be calculated using BREC's LIC demand charge, multiplied by the customer Generator Outage Rate.

7. Forced and Unscheduled Outages shall be charged an energy rate equal to BREC's variable cost of generation.

8. The Joint Applicants' proposed revisions that were to be consistent with its proposed QF tariff in Case No. 2023-00102 are denied as moot.

9. The Joint Applicants' proposed revisions to make Standby Customers responsible for the cost of all facilities on the Standby Customer's site to meet and maintain eligibility as a MISO capacity resource, including the provisions related to non-performance costs, are denied as moot.

10. The Joint Applicants' proposed revisions to charge the Standby Customer for costs incurred by BREC as a result of the Standby Customer's generator's failure to generate are denied as moot.

11. The additional tariff language, as modified herein, to the extent it was not rejected or determined to be moot, is approved.

12. Within 20 days of the date of service of this Order, BREC and Kenergy shall file with this Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates and charges approved herein and its effective date, and stating that the rates and charges were authorized by this Order.

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

PUBLIC SERVICE COMMISSION

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Chairman

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Vice Chairman

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Commissioner

ENTERED

JUN 28 2024

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KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

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Executive Director

*Brigid L. Khuri
McNees Wallace & Nurick, LLC
777 North Capitol Street, NE, Suite
Washington, DISTRICT OF COLUMBIA 20002-

*Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*Timothy Lindahl
Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*Robert A. Weishaar, Jr.
McNees Wallace & Nurick, LLC
777 North Capitol Street, NE, Suite
Washington, DISTRICT OF COLUMBIA 20002-

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Tyson Kamuf
Corporate Attorney
Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304

*J. Christopher Hopgood
Dorsey, Gray, Norment & Hopgood
318 Second Street
Henderson, KENTUCKY 42420

*Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304

*David Giesel
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*Honorable Robert C Moore
Attorney At Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Daniel E Danford
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507

*Susan E. Bruce
McNees Wallace & Nurick, LLC
777 North Capitol Street, NE, Suite
Washington, DISTRICT OF COLUMBIA 20002-

*M. Evan Buckley
Dinsmore & Shohl, LLP
City Center, 100 W. Main Street
Suite 900
Lexington, KENTUCKY 40507

*Senthia Santana
Big Rivers Electric Corporation
710 West 2nd Street
P. O. Box 20015
Owensboro, KY 42304

*Jody M Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Edward T Depp
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202