

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

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. 2021-00289¹ with a proposed effective date of October 1, 2023. On September 11, 2023, Kenergy Corp. (Kenergy) (collectively, the Joint 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 the Joint Applicants' proposed LICSS tariffs.² There are two intervenors in this case, Kimberly-Clark Corporation (Kimberly-Clark) and Domtar Paper Company, LLC (Domtar) (collectively, the Joint Intervenors). A final Order was issued in this matter on June 28, 2024 (final Order). On July 18, 2024, Kimberly Clark filed a request for clarification. The Joint Applicants filed a

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).

motion for rehearing, clarification, and an extension of time.³ Domtar also filed a petition for rehearing on July 18, 2024.

On August 7, 2024, the Commission issued an Order granting the Joint Applicants' motion for rehearing and to delay the filing of tariff sheets until the rehearing matters were resolved. As part of the Order, the Commission granted the Joint Intervenors' respective motions.⁴ Commission Staff and the parties participated in two informal conferences.⁵ On December 11, 2024, the parties filed a proposed Settlement Agreement (Agreement), and at the December 12, 2024 informal conference the parties reviewed the Agreement with Commission Staff. On December 27, 2024, the Joint Applicants filed testimony in support of the Agreement.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable minds."⁶

³ BREC's Motion for Clarification, Partial Rehearing and an Extension of Time (filed July 18, 2024).

⁴ Order (Ky. PSC Aug. 7, 2024) at 4.

⁵ The first informal conference was ordered by the Commission in the Order issued Aug. 7, 2024. The first informal conference was held on Sept. 26, 2024. The second informal conference on Dec. 12, 2024, was held pursuant to a Commission Order issued Dec. 4, 2024.

⁶ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.⁷

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

DISCUSSION

In the final Order, the Commission encouraged the parties involved in this proceeding to collaborate and explore opportunities for a mutually beneficial settlement agreement.⁸ Additionally, the Commission emphasized the importance of fostering a cooperative environment to resolve outstanding issues while maintaining compliance with statutory and regulatory mandates. Following the final Order, and during the pendency of the rehearing in this case; the parties—BREC, Kenergy, Kimberly-Clark, and Domtar—reached an agreement that was formalized as a proposed settlement agreement (Settlement Agreement) and submitted for Commission review.⁹

The proposed Settlement Agreement addressed various issues raised by the parties in the respective motions for rehearing.¹⁰ Specifically, the Settlement Agreement

⁷ *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

⁸ Final Order (Ky. PSC June 28, 2024) at 32.

⁹ Settlement Agreement (filed Dec. 11, 2024); Refiled Settlement Agreement with fully executed exhibits (filed Dec. 12, 2024).

¹⁰ Joint Applicants Rehearing Motion (filed July 18, 2024); Kimberly-Clark Corporation's Request for Clarification (filed July 18, 2024); Domtar's Petition for Rehearing (filed July 18, 2024).

resolved disputes surrounding the LICSS tariff and incorporated terms and conditions that balanced the operational needs and financial interests of BREC and Kenergy with those of the industrial customers, Kimberly-Clark and Domtar. The Settlement Agreement reflected negotiations among the parties, as evidenced by its alignment with many provisions of the final Order,¹¹ while introducing refinements to suit the unique circumstances of the stakeholders involved.

The Commission's role in reviewing the proposed Settlement Agreement is to ensure that it results in fair, just and reasonable rates and that its terms of service are in accordance with Kentucky law. Upon careful review of the proposed Settlement Agreement and supporting documentation, the Commission finds that the Settlement Agreement meets these standards.

The Commission granted rehearing on several issues based on each parties' respective motions. Those issues included the following topics: the "appropriate Energy Charge for Maintenance Power Service"; the "appropriate Energy and Demand Charges for backup Power Services"; a request to "approve an energy rate for Maintenance Power Service equal to the [Large Industrial Customer (LIC)] energy rate"; approval of an energy rate for Backup Power Service equal to the actual locational marginal price (LMP) for energy by Mid-Continent Independent System Operator (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; the "holding back" language associated with capacity requirements for standby customers; whether a demand charge for Backup Power should not be read into the Commission's final Order where the order is otherwise silent on that

¹¹ Final Order (Ky. PSC June 28, 2024).

issue; and “reduce the Maintenance Power demand charge to 50 percent of the 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”.¹²

The proposed Settlement Agreement included several key provisions that merit analysis to determine their alignment with the Commission’s statutory and regulatory obligations as well as the requirements set out in the final Order in this matter.

Unbundling and Defining Standby Services: The Settlement Agreement adheres to the Commission’s Order¹³ to unbundle and clearly define Maintenance Power Service and Backup Power Service as those terms are used in the tariff. Those services are now distinctly categorized, with specific parameters for scheduling and associated charges. The Commission finds that here, unbundling, enhances transparency and ensures that customers understand their obligations and rights under the LICSS tariff.

Maintenance Outage Scheduling: Consistent with the final Order, the Settlement Agreement restricts maintenance outages to off-peak periods during peak seasons, with additional limitations on the duration of such outages. The Commission finds that this provision balances the operational flexibility of industrial customers with BREC’s reliability requirements and obligations.

Demand Charges for Maintenance Power: The Settlement Agreement establishes a maintenance demand charge at 40 percent of the LIC demand charge, prorated based on the number of outage days in a month. This negotiated rate provides

¹² Final Order (Ky. PSC June 28, 2024) at 2-3.

¹³ Order (Ky. PSC Mar. 3, 2022).

a cost-effective mechanism for addressing maintenance power needs without shifting undue financial burdens to other ratepayers, thus is found to be reasonable.

Refund Provisions: The Settlement Agreement requires BREC to refund Kimberly-Clark the difference between the rates paid under the Pilot LICSS Tariff and the rates that would have been paid under the Settlement Tariffs, from July 1, 2024, onward. July 1, 2024, was the first day of the month following the Commission's final Order in this case and utilizing this effective date results in the most equitable resolution for all parties, thus reasonable.

Withdrawal of Pending Litigation: As part of the Settlement Agreement, the parties have agreed to withdraw all pending litigation related to the LICSS tariff. To ensure progress on this matter, the Commission finds that the parties should file a report within 30 days of the date of this Order updating the Commission on the status of the litigation withdrawal process

Effective Date and Billing Simplification: Proposed tariffs are set, pursuant to the Settlement Agreement. The associated contracts are set, pursuant to the Settlement Agreement, to take effect on the first day of the month following the issuance of this Order.

FINDINGS

The Commission finds that the Settlement Agreement submitted by the parties represents a fair, just and reasonable resolution of the issues raised in this proceeding. The Commission notes that the Settlement Agreement properly aligns with many of findings and directives from the final Order, addresses outstanding concerns of all stakeholders that were raised from rehearing, and ensures compliance with statutory obligations. Therefore, the Commission finds that the Settlement Agreement should be

approved in its entirety, and that it resolves each issue raised by the rehearing motions. The terms of the Settlement Agreement will govern the provision of LICSS tariff moving forward, providing a stable and equitable framework for both BREC and Kenergy and its industrial customers.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement, including the associated proposed tariffs, are approved in their entirety as a fair, just and reasonable resolution of the issues raised in this proceeding.

2. The Settlement Agreement tariffs are approved for service rendered pursuant to the Settlement Agreement.

3. The contracts attached to the Settlement Agreement are approved for service rendered on and after the first day of the month following the issuance of this Order.

4. Within 30 days of this Order, the parties shall file an update related to the status of the refund, including a plan for the refund, as part of this Settlement Agreement and another update once the refund is complete.

5. The parties are directed to file a report within 30 days of the date of this Order updating the Commission on the status of the withdrawal of all pending litigation related to the LICSS tariff.

6. Any filings related to paragraph 4 and paragraph 5 of this Order shall reference this case number and be filed in the post-case correspondence.

7. 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.

8. Within 20 days of the date of service of this Order, the Joint Applicants shall file with the Commission, using the Commission's electronic Tariff Filing System, the revised Domtar and Kimberly-Clark contracts.

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

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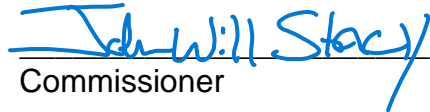
PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ENTERED
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