COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC. AND INTER-COUNTY ENERGY COOPERATIVE CORPORATION FOR APPROVAL OF AN INDUSTRIAL POWER AGREEMENT WITH ECONOMIC DEVELOPMENT RIDER AND RENEWABLE ENERGY PURCHASES	)))))))	CASE NO. 2020-00193

O R D E R

On June 26, 2020, East Kentucky Power Cooperative, Inc. (EKPC) and Inter-County Energy Cooperative Corporation (Inter-County Energy) (collectively, Joint Applicants) filed a joint application, pursuant to KRS 278.030(1), KRS 278.040(2), 807 KAR 5:001, Section 14, and 807 KAR 5:011, seeking approval of an Industrial Power Agreement with Economic Development Rider and Renewable Energy Purchases (Diageo Agreement) with Diageo Americas Supply, Inc. (Diageo Americas). Pursuant to an Order issued on July 24, 2020, the Commission established a procedural schedule that set deadlines for requesting intervention, two rounds of discovery upon Joint Applicants, the filing of intervenor testimony, discovery upon intervenor testimony, and rebuttal testimonies by Joint Applicants.

The only intervenor in this matter is the Office of the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General). Joint Applicants filed responses to two rounds of discovery propounded by Commission Staff and the Attorney General. On September 14, 2020, the Attorney

General submitted a notice informing that he would not be filing any testimony in this matter.

On September 18, 2020, Joint Applicants filed a motion requesting that the matter be decided based upon the evidentiary record and waived their right to a hearing in this matter. The Commission finds that Joint Applicants' motion is reasonable and should be granted. Accordingly, the matter is now submitted for a decision on the merits based upon the existing record without the need for a hearing.

BACKGROUND

EKPC is a generation and transmission rural electric cooperative established under KRS Chapter 279. EKPC owns and operates approximately 2,965 MW of net summer generating capability and 3,267 MW of net winter generating capability.[1] EKPC also purchases 170 MW of hydropower from the Southeastern Power Administration. Pursuant to various agreements, EKPC provides electric generation capacity and electric energy to its 16 owner-member cooperatives, which in turn serve approximately 535,000 Kentucky homes, farms and commercial and industrial establishments in 87 Kentucky counties.[2]

Inter-County Energy is a rural electric distribution cooperative organized under KRS Chapter 279. As one of the 16 owner-member cooperatives, Inter-County Energy distributes retail electric power to approximately 26,000 customers in the Kentucky counties of Boyle, Casey, Garrard, Larue, Lincoln, Madison, Marion, Mercer, Nelson, Rockcastle, Taylor, and Washington.[3]

[1] Application at 2.

[2] Application at 2–3.

Diageo Americas is part of Diageo, PLC, which is a global producer of spirits and beer.[4] Diageo Americas currently owns and operates a distillery in Shelbyville, Kentucky.[5] The company proposes to expand its operations and supplement the Shelbyville distillery by building a second distillery to be located near the city of Lebanon, Kentucky.[6] Diageo Americas will invest approximately $130 million in the new Lebanon distillery, which will create several dozen construction jobs and approximately 30 permanent jobs.[7] The Lebanon distillery will have a contract demand of 32 MW when fully operational, which is expected to be in July 2021.[8] In furtherance of its corporate sustainability goals, the operational Lebanon distillery will obtain 100 percent of its forecasted energy requirements from renewable sources – from either the purchase of renewable energy or the purchase and retirement of renewable energy credits (RECs).[9] The proposed Diageo Agreement is intended, in part, to allow Diageo Americas to meet that sustainability goal.

Joint Applicants state that the terms of the Diageo Agreement are comprised of multiple available tariff provisions, including an economic development rate and green energy tariffs.[10] The initial term of the Diageo Agreement is for 15 years, with a five-year discount period.[11] Joint Applicants contend that the Diageo Agreement is structured to

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[3] Application at 2–3.

[4] Application at 4.

[5] Application at 5.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] Application at 6.

enable Diageo Americas to obtain 100 percent of the energy requirements of the new Lebanon distillery from renewable resources, while also ensuring that no other customer of Inter-County Energy and no other EKPC distribution cooperative are called upon to subsidize or otherwise pay incremental costs arising from, or related to, the transactions under the Diageo Agreement.[12]

PROPOSED INDUSTRIAL POWER AGREEMENT

Renewable Resources Component

Pursuant to the terms of the Diageo Agreement, Diageo Americas will take electric service from Inter-County Energy under its Rate G- – Large Industrial Customer; Rate Renewable Energy Program; Rate CS – Community Solar Power Generation; and Rate Economic Development Rider. EKPC will supply power to Inter-County Energy under EKPC's Rate G – Special Electric Contract Rate; Rate H – Wholesale Renewable Energy Program; Rate CS – Community Solar; and Rate EDR – Economic Development Rider. Joint Applicants state that this is the first time that these existing rate schedules have been combined into a single agreement to provide service to customers with specific sustainability goals, without creating subsidization to non-participating customers.[13]

The Lebanon distillery's forecasted energy requirements for the period of July 1, 2021, through June 30, 2022, and July 1, 2022, through June 30, 2023, is 105,000 MWh for each period.[14] For the remainder of the initial term, the forecasted energy requirement

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[11] Direct Testimony of David Crews (Crews Testimony) (filed June 26, 2020) at 19.

[12] Crews Testimony at 7 and 11.

[13] Crews Testimony at 7–8.

[14] Application, Exhibit 1–Industrial Power Agreement, Appendix A.

is 175,000 MWh per period.[15] Under the terms of the proposed contract, EKPC and Inter-County Energy will provide all of Diageo Americas' energy requirements via renewable energy and REC purchases in accordance with EKPC's Rate H - Wholesale Renewable Energy Program and Inter-County Energy's Rate Renewable Energy Program for all delivery periods within the initial term, as follows:

1. For the delivery period prior to July 1, 2021, Diageo Americas renewable energy consumption will be covered by the purchase and retirement of RECs by EKPC or Inter-County Energy on Diageo Americas' behalf in accordance with Option A of EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County Energy's Rate Renewable Energy Program.[16]

2. For the delivery period July 1, 2021, through June 30, 2022, Diageo Americas' renewable energy consumption will be covered by the purchase and retirement of RECs by EKPC and Inter-County on Diageo Americas' behalf in accordance with Option A of EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County Energy's Rate Renewable Energy Program.[17]

3. For the delivery period July 1, 2022, through June 30, 2023, the amount of renewable energy purchased from Inter-County Energy will be at least 42,000 MWh from power purchase agreements or physical renewable resources under Option B of EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County Energy's Rate

[15] *Id.*

[16] Application, Exhibit 1–Industrial Power Agreement at paragraph 4.

[17] *Id.*

Renewable Energy Program with the balance of Diageo Americas' renewable energy consumption requirement covered through the purchase of RECs.[18]

4. For the delivery period July 1, 2023, through the balance of the initial term of the Diageo Agreement, the amount of renewable energy purchased will be at least 105,000 MWh from power purchase agreements or physical renewable resources under Option B of EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County Energy's Rate Renewable Energy Program with the balance of Diageo Americas' renewable energy consumption requirement covered through the purchase of RECs.[19]

5. Throughout this period, Diageo Americas will be a significant subscriber to EKPC's existing Community Solar One project beginning on the effective date of the Diageo Agreement.[20] Diageo Americas has agreed to license 330 panels in accordance with EKPC's Rate CS – Community Solar and Inter-County Energy's Rate CS – Community Solar Power Generation.[21]

6. As part of the contract, EKPC will waive the 25 cents per increment administrative fee for the purchase of RECs under Rate H – Wholesale Renewable Energy Program but the contract does state that all of EKPC's direct costs for RECs would pass directly through to Diageo America.[22] Joint Applicants assert that due to the volume of RECs required to offset Diageo America's energy consumption, charging the administrative fee would place an undue burden on Diageo America given that the

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[18] *Id.*

[19] *Id.*

[20] Crews Testimony at 7.

[21] Application, Exhibit 1–Industrial Power Agreement at paragraph 4(b).

[22] Application, Exhibit 1–Industrial Power Agreement at 4(a)(5).

administrative burden to purchase the RECs for Diageo Americas would not be materially more than doing so for an average customer.[23]

EKPC and Inter-County Energy also point out that the proposed Diageo Agreement includes early termination and performance assurance obligations to assure that EKPC's other distribution cooperatives and Inter-County's retail members are held harmless from any failure to perform or early termination by Diageo Americas.[24] Moreover, the terms of EKPC's Rate H – Wholesale Renewable Energy Program and Inter-County Energy's Rate Renewable Energy Program are specifically designed to prevent cross subsidization.[25]

Economic Development Rate Component

EKPC and Inter-County Energy state that because of the substantial job creation and capital investment associated with the Lebanon distillery, Diageo Americas requested to avail itself of the economic development rates (EDR) afforded under the EKPC and Inter-County Energy's respective tariffs.[26] With respect to the EDR discount component of the Diageo Agreement, Joint Applicants state that the Diageo Agreement includes provisions applying EKPC's Rate EDR – Economic Development Rider and Inter-County Energy's Economic Development Rider tariff to Inter-County Energy's Rate G – Large Industrial Customer and EKPC's Rate G – Special Electric Contract Rate. The proposed Diageo Agreement has an initial 15-year term, which includes a five-year discount rate to

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[23] EKPC's Response to Commission Staff's First Requests for Information (filed Aug. 17, 2020), Item 3.

[24] Application at 8.

[25] EKPC's Response to the Attorney General's Initial Requests for Information (filed Aug. 17, 2020), Item 1.

[26] Application at 6.

the demand charges.[27] The first discount period involves a 50 percent discount applied to the demand charges as stated in EKPC's Rate G – Special Electric Contract Rate.[28] The discount period will begin with the first complete billing month beginning on or after July 1, 2022, and the discount rate will decline by 10 percent in each of the four subsequent discount periods.[29]

Joint Applicants maintain that the incentive provisions in the Diageo Agreement fully comports with the EDR requirements set forth in Administrative Case No. 327.[30] The Administrative Case 327 EDR guidelines are discussed as follows:

1. An EDR should be implemented by special contracts. EKPC and Inter-County Energy state that the EDR terms were negotiated and the final terms were ultimately reflected in the Diageo Agreement.[31]

2. The special contract should specify all terms and conditions of service. EKPC and Inter-County Energy state that all of the following required terms are set forth in the Diageo Agreement: the applicable rate discount and other discount provisions; the number of jobs and capital investment to be created as a result of the project underlying the economic development rates; customer-specific fixed costs associated with serving the customer; the minimum bill calculation; estimated load; estimated load factors; and the length of the contract.[32]

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[27] Crews Testimony at 19.

[28] Application, Exhibit 1–Industrial Power Agreement at paragraph 5(a).

[29] *Id.*

[30] Administrative Case No. 327, *An Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. PSC Sept. 24, 1990).

[31] Crews Testimony at 12.

3. EDRs should only be offered during periods of excess capacity. EKPC states that based on the reserve margin required by PJM and current conditions it will not be necessary to make a specific market purchase to cover the new demand created by the Lebanon distillery during the Diageo Agreement's 15-year term. The expected PJM required reserve margin is provided in its currently pending IRP case.[33]

4. A utility should demonstrate that the discounted rate should exceed the marginal cost associated with serving the new load. EKPC and Inter-County Energy submitted a Marginal Cost Analysis, which compared the most recent capacity and energy pricing from PJM with the market demand and energy pricing with the demand and energy rates that will be charged to Diageo Americas.[34] A historical analysis of capacity demand based on capacity pricing from PJM's 2019-2020 Delivery Year that ended May 31, 2020, shows that the economic development rates offered in the proposed Diageo Agreement yielded a discounted demand rate that exceeded the marginal cost of capacity as set in PJM's Base Residual Auction (BRA) in each year of the discount period.[35] The Marginal Cost Analysis also performed an alternative analysis of demand using future BRA pricing based upon PJM's 2021-2022 Delivery Year, which showed that the discounted demand rate charged to Diageo Americas was less than the capacity price established by the BRA for 2021-22 in the first two years of the discount period and higher in the last three years of the discount period but that overall the total discounted demand

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[32] Crews Testimony at 12–13.

[33] Crews Testimony at 13–14.

[34] Application, Exhibit 4–Marginal Cost Analysis.

[35] *Id.* at 1–3.

exceeded marginal costs over the full discount period.[36] For the energy analysis, EKPC relied upon the average monthly market purchase rate from PJM during the 2019-2020 Delivery Year and compared this to the tariffed rate for Rate G – Special Electric Contract Rate (net of the applicable Fuel Adjustment Clause adjustment).[37] This analysis demonstrated that the tariffed Rate G energy rate exceeded the cost of market purchases, which is the marginal cost for energy, in each month of the 2019-2020 Delivery Year.[38]

5. Utilities with active EDRs should file an annual report detailing the revenues received from each EDR customer and the marginal costs associated with serving each EDR customer and provide such information on a prescribed form. EKPC states that it already files this type of report annually with the Commission for each of the economic development special contracts that are currently active on behalf of itself and its participating distribution cooperatives. EKPC commits to file an annual report detailing revenues received from Diageo Americas and the marginal costs associated with serving this customer on or before March 31st of each year.[39]

6. During rate proceedings, utilities with active EDR contracts should demonstrate through detailed cost of service analysis that non-participating ratepayers are not adversely affected by these EDR customers. EKPC and Inter-County Energy state that they prepare detailed cost of service studies as part of any rate filings and that based upon the provisions of the proposed Diageo Agreement, they should have no

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[36] *Id.* at 3–4.

[37] *Id.* at 4–5.

[38] *Id.*

[39] Crews Testimony at 16.

trouble demonstrating that non-participating customers are not adversely affected by the Diageo Agreement.[40]

7. EDR contracts should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract. EKPC and Inter-County state that the proposed Diageo Agreement contains such a provision.[41]

8. Major objectives of EDRs are job creation and capital investment – the proposed Diageo Agreement provides that the Lebanon distillery will create 30 new jobs, several dozen construction jobs, and reflect $130 million in capital investment.[42]

9. For new industrial customers, an EDR should apply to new load, which exceeds an incremental usage level above a normalized base load. EKPC points out that in Case No. 2014-00034,[43] the Commission granted EKPC a waiver of this requirement to allow it to apply the EDR discounts to a qualifying new customer's entire load instead of an incremental load over a certain threshold amount. EKPC states that proposed special contract with Diageo Americas applies the EDR discounts to the entire new load.[44]

10. The term of an EDR contract should be for a period twice the length of the discount period, with the discount period not exceeding five years. EKPC and Inter-

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[40] Crews Testimony at 16–17.

[41] Crews Testimony at 17.

[42] *Id.*

[43] Case No. 2014-00034, *Application of East Kentucky Power Cooperative, Inc. for Approval of an Economic Development Rider* (Ky. PSC June 20, 2014).

[44] Crews Testimony at 18–19.

County Energy states that the proposed Diageo Agreement complies with this requirement as the discount period is five years and the initial term is 15 years.[45]

11. During the nondiscount period of an EDR contract, the rates charged to the customer should be identical to those contained in a standard rate schedule that is applicable to the customer's rate class and usage characteristics. EKPC and Inter-County Energy state that Diageo Americas will pay the rates charged to other customers in Inter-County Energy's Rate G – Large Industrial Customer during the nondiscount period.[46]

DISCUSSION

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the terms and provisions of the proposed Diageo Agreement are reasonable and should be approved. The Commission notes that the renewable resources aspect of the proposed Diageo Agreement is structured to enable Diageo Americas to achieve its corporate sustainability objective of obtaining 100 percent of its forecasted energy requirements from renewable sources primarily under EKPC's Rate H – Wholesale Renewable Energy Program and the corresponding Inter-County Rate Energy Renewable Energy Program. In Case No. 2019-00378,[47] the Commission approved the modification of EKPC's Rate H – Wholesale Renewable Energy Program to include a new green energy option for nonresidential customers. The approval was based upon a determination that nonparticipants will not bear any undue burden from EKPC's proposal because the participating retail customers receiving charges and credits

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[45] Crews Testimony at 19.

[46] *Id.*

[47] Case No. 2019-00378, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Implement a New Green Energy Option for Non-Residential Customers* (Ky. PSC Mar. 25, 2020).

under Option B continue to be subject to all other fixed and variable charges. Accordingly, there should be no occurrence of nonparticipating customers subsidizing Diageo Americas under the terms and conditions of the latter's participation under Option B of EKPC's Rate H – Wholesale Renewable Energy Program given that Diageo Americas will pay its share of the legacy fixed costs through Inter-County Energy's Rate G – Large Industrial Customer tariff, from which Diageo Americas will receive service. Inter-County Energy's Rate G – Large Industrial Customer tariff distributes Inter-County Energy's and EKPC's fixed and variable cost to all customers that take service under this tariff, including Diageo Americas.[48] Further, the Commission notes that the Diageo Agreement acknowledges that prior Commission approval may be needed for green energy purchases necessary to supply Diageo Americas.[49]

The Commission further finds that the proposed EDR component of the Diageo Agreement between EKPC, Inter-County Energy, and Diageo Americas is reasonable under the particular facts presented and meets the requirements of EKPC and Inter-County Energy's EDR tariffs and should be approved. The Commission further finds that under the facts presented, the proposed Diageo Agreement satisfies the requirements of Administrative Case 327 as well.

IT IS HEREBY ORDERED that:

1. Joint Applicants' motion to submit the matter for a decision on the record is granted.

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[48] EKPC's Response to the Attorney General's Initial Requests for Information (filed Aug. 17, 2020), Item 1.

[49] Crews Testimony at 10. *See* Application, Exhibit 1–Industrial Power Agreement, Paragraph 4(f) ("EKPC will likely be required to obtain approval from the Commission for any renewable energy purchase(s) exceeding two calendar years in duration.").

2. The proposed Diageo Agreement between EKPC, Inter-County Energy, and Diageo Americas is approved.

3. By March 31st of each year, EKPC shall file an annual report with the Commission detailing, for the prior calendar year, revenues received from Diageo Americas and the marginal costs associated with serving Diageo Americas throughout the term of the proposed contract.

4. During any rate proceedings by EKPC filed subsequent to the effective date of the proposed Diageo Agreement, and during a period when EKPC still has an active EDR contract, EKPC shall demonstrate through detailed cost of service analysis that its member distribution cooperative non-EDR ratepayers are not adversely affected by the EDR rate to Diageo Americas and any other EDR customers that may be on the EKPC system at that time.

5. So long as it is providing wholesale service to one of its distribution cooperatives with an active EDR contract, EKPC shall file by March 31st of each year an annual report with the Commission providing, for the prior calendar year, the information shown in the Appendix to this Order.

6. Any documents filed pursuant to ordering paragraphs 2 and 4 of this Order shall reference the number of this case and shall be retained in the post-case correspondence file.

7. Within 20 days of the date of this Order, EKPC and Inter-County Energy shall file with the Commission, using the Commission's electronic Tariff Filing System, the Diageo Agreement approved herein.

8. The Executive Director is designated authority to grant reasonable extension of time for the filing of any documents required by this Order upon EKPC's showing of good cause for such extension.

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

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By the Commission

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KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

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Deputy Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2020-00193 DATED NOV 16 2020

ECONOMIC DEVELOPMENT RATE CONTRACT REPORT

UTILITY:_______________________________ YEAR:___________

	Current Reporting Period		Cumulative	
1) Number of EDR Contracts -				
Total:	______		______	
Existing Customers:	______		______	
New Customers:	______		______	
2) Number of Jobs Created -				
Total:	______		______	
Existing Customers:	______		______	
New Customers:	______		______	
3) Amount of Capital Investment -				
Total:	______		______	
Existing Customers:	______		______	
New Customers:	______		______	
4) Consumption -				
(A) DEMAND				
Total:	______	kW	______	kW
Existing Customers:	______	kW	______	kW
New Customers:	______	kW	______	kW
(B) ENERGY/CONSUMPTION				
Total:	______	kWh	______	kWh
Existing Customers:	______	kWh	______	kWh
New Customers:	______	kWh	______	kWh

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