COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF DUKE ENERGY KENTUCKY, INC. FOR APPROVAL OF AN ECONOMIC DEVELOPMENT INCENTIVE SERVICE AGREEMENT WITH DIVERSEY, INC.	))))	CASE NO. 2022-00394

<u>O R D E R</u>

On October 24, 2022, Duke Energy Kentucky, Inc. (Duke Kentucky) filed an Economic Development Incentive Service Agreement (Agreement) with Diversey, Inc. (Diversey), pursuant to the terms of the Economic Development (ED) section of Duke Kentucky's Development Incentive Rider (Rider DIR) and to the Commission's September 24, 1990 Order in Administrative Case No. 327[1] (Administrative Case 327 Order). By Order issued on November 22, 2022, the Agreement was suspended for five months up to and including April 22, 2023, and a procedural schedule was established to process this matter. No requests for intervention were received. Duke Kentucky responded to two requests for information from Commission Staff. On February 15, 2023, Duke Kentucky requested that the matter be submitted for decision based upon the existing evidentiary record. As there are no intervenors in this case and a hearing is not necessary in the public interest, the Commission will adjudicate this case based on the evidence of record.

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[1] Administrative Case No. 327 (Docket No. 19000327), *An Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. PSC Sept. 24, 1990).

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.[2] Kentucky law provides that a utility may demand, collect and receive fair, just and reasonable rates[3] and that the service it provides must be adequate, efficient and reasonable.[4] KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness. Commission regulation 807 KAR 5:011, Section 13 requires each utility to file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.

In the Administrative Case 327 Order, the Commission found that Economic Development Rates (EDR) would provide important incentives to large commercial and industrial customers to either locate or expand their facilities in Kentucky, bringing jobs and capital investment into the Commonwealth.[5] The Administrative Case 327 Order contains 18 findings that refined the criteria on which the Commission would evaluate and approve an EDR.[6] In the Administrative Case 327 Order, the Commission also directed that a jurisdictional utility filing an EDR contract must comply with findings 3–17.[7] The findings in the Administrative Case 327 Order that are applicable to this proceeding, and therefore comprise the legal standard by which this proposed contract should be evaluated, are summarized in the findings below.

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[2] KRS 278.040(2).

[3] KRS 278.030(1).

[4] KRS 278.030(2).

[5] Administrative Case 327, Sept. 24, 1990 Order at 25.

[6] Administrative Case 327, Sept 24, 1990 Order at 24–28.

[7] Administrative Case 327, Sept 24, 1990 Order at 28, ordering paragraph 1.

DEVELOPMENT INCENTIVE RIDER

Rider DIR was approved by the Commission in Case No. 2004-00253.[8] The ED section of Rider DIR is available to non-residential customers for load associated with initial permanent service to new establishments, expansion of existing establishments, or new customers in existing establishments who make application to Duke Kentucky for service under the ED program. The new load must be a minimum of 1,000 kW at one delivery point. Customers taking service under the ED section of Rider DIR are expected to employ an additional workforce of 25 full-time equivalent employees per 1,000 kW of new load and the additions must occur after Duke Kentucky approved service under Rider DIR. The tariff also states that the new load should result in capital investment of one million dollars per 1,000 kW of new load provided that such investment is accompanied by a net increase in full time equivalent employees in Duke Kentucky's service area and the capital investment must occur after Duke Kentucky approved service under Rider DIR.

The customer will comply with all terms of the standard tariff rate except that the customer's total bill for electric service, less any rate adjustment rider amounts shown in the standard tariff, will be reduced by up to 50 percent for a period of 12 months. The customer must maintain a minimum demand and maintain a monthly average load factor of 40 percent. Failure to do so would result in the customer being billed a minimum bill based on the minimum demand specified in the service agreement and a monthly average load factor of 40 percent. Finally, the customer must continue to take service at

[8] Case No. 2004-00253, *Application of the Union Light, Heat and Power Company for Approval of Its Proposed Economic Development Riders* (Ky. PSC Apr. 19, 2005).

the same or greater demand and usage levels for a period of at least two years following the 12-month incentive period.

In approving Rider DIR, the Commission stated that Duke Kentucky had shown that its economic development incentive rates were designed to recover the variable costs of serving the new or expanded load and make a contribution to its fixed costs.

THE SPECIAL CONTRACT

Under the proposed Agreement, Diversey is anticipated to maintain a minimum monthly peak demand and a monthly average load factor that satisfy the Rider DIR requirements. The Agreement indicates that Diversey qualifies for service under Rider DIR as its new load will be a minimum of 1,000 kW, it has applied for and received economic assistance from the Commonwealth of Kentucky, a local government or other public agency; it will employ at least 25 full-time equivalent employees per 1,000 kW of new load; and it will have a capital investment of one million dollars per 1,000 kW of new load. The Agreement states that should Diversey fail to meet any of the provisions of Rider DIR, the incentive shall not be applied to Diversey's bills, and it will be billed at the full tariff rate. The contract sets forth an incentive discount for the customer's monthly bill for electric service for 12 consecutive months. The term of the Agreement is for 36 consecutive months beginning no later than July 1, 2023.

Through discovery, Duke Kentucky stated that it has adequate excess capacity to serve Diversey and maintain its system reserve margin.[9] Duke Kentucky also stated that marginal energy costs are the only material marginal cost of service, and the proposed

[9] Duke Kentucky's Response to Commission Staff's First Request (Staff's First Request) (filed Dec. 21, 2022), Item 1 and Duke Kentucky's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Jan. 27, 2023), Item 2.

rates will cover the variable cost of service and contribute to fixed costs.[10] Duke Kentucky stated there are no customer specific costs because the line extension costs were paid by another customer to market the location.[11]

DISCUSSION AND FINDINGS

In the Administrative Case 327 Order, the Commission directed that a jurisdictional utility filing an EDR contract must comply with findings 3–17.[12] The following paragraphs will address the findings of the Administrative Case 327 Order that are applicable to this proceeding.

Finding 3:

> EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.[13]

The Commission finds the proposed special contract complies with finding 3 of the Administrative Case 327 Order because Duke Kentucky has submitted the proposed special contract that was negotiated and executed by Duke Kentucky and Diversey, an industrial customer.

Finding 4:

> An EDR contract should specify all terms and conditions of service including, but not limited to, the applicable rate discount and other discount provisions, the number of jobs and capital investment to be created as a result of the EDR, customer-specific fixed costs associated with serving the

[10] Duke Kentucky's Response to Staff's First Request, Item 2 and Duke Kentucky's Response to Staff's Second Request, Items 1 and 3.

[11] Duke Kentucky's Response to Staff's First Request, Item 3.

[12] Administrative Case 327, Sept. 24, 1990 Order at 28, ordering paragraph 1.

[13] Administrative Case 327, Sept. 24, 1990 Order at 25, finding paragraph 3.

> customer, minimum bill, estimated load, estimated load factor, and length of contract.[14]

Duke Kentucky provided the following: (1) the discount will reduce the then-current tariff rate during the first 12 consecutive months of the special contract; (2) the special contract will create approximately 25 full-time equivalent employees per 1,000 kW of new load and require a capital investment of approximately one million dollars per 1,000 kW of new load; (3) no customer-specific fixed costs are anticipated in serving Diversey; (4) Diversey's minimum monthly peak demand will be at least 1,000 kW and Diversey's monthly average load factor will be at least 40 percent; (5) the length of the contact is 36 months, beginning no later than July 1, 2023, with Diversey providing 30 days' notice to begin receiving the discount, and (6) if Diversey's demand or load factor falls below the minimum for a billing period, no discount will apply to that period.[15] For the above reasons, the Commission finds that the proposed special contract complies with the Administrative Case 327 Order, finding 4.

Finding 5:

> EDRs should only be offered during periods of excess capacity. Utilities should demonstrate, upon submission of each EDR contract, that the load expected to be served during each year of the contract period will not cause them to fall below a reserve margin that is considered essential for system reliability. Such a reserve margin should be identified and justified with each EDR contract filing.[16]

Through discovery, Duke Kentucky stated that it has adequate system capacity with reserve margin for system reliability to serve Diversey under the proposed

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[14] Administrative Case 327, Sept. 24, 1990 Order at 25, finding paragraph 4.

[15] Agreement at 3–5.

[16] Administrative Case 327, Sept. 24, 1990 Order at 25, finding paragraph 5.

Agreement.[17] The Commission finds that, based on Duke Kentucky's representations, the proposed special contract complies with the Administrative Case 327 Order, finding 5. For future EDR contracts, the Commission finds that Duke Kentucky should provide specific support for finding 5 and demonstrate that Duke Kentucky has adequate system capacity and that the load served will not cause it to fall below a reserve margin considered essential for system reliability.

Finding 6:

> Upon submission of each EDR contract, a utility should demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer. Marginal cost includes both the marginal cost of capacity as well as the marginal cost of energy. In order to demonstrate marginal cost recovery, a utility should submit, with each EDR contract, a current marginal cost-of-service study. A current study is one conducted no more than one year prior to the date of the contract.[18]

Through discovery, Duke Kentucky provided a marginal cost of service study demonstrating that the discounted rate to Diversey produces revenues that exceed the marginal cost associated with serving Diversey.[19] The Commission finds that the special contract complies with the Administrative Case 327 Order, finding 6. For future EDR contracts, the Commission finds that Duke Kentucky should provide specific support for finding 6 and demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer, including a marginal cost of service study.

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[17] Duke Kentucky's Response to Staff's First Request, Item 1 and Duke Kentucky's Response to Staff's Second Request, Item 2.

[18] Administrative Case 327, Sept. 24, 1990 Order at 26, finding paragraph 6.

[19] Duke Kentucky's Response to Staff's First Request, Item 2 and Duke Kentucky's Response to Staff's Second Request, Items 1 and 3.

Finding 7:

> Utilities with active EDRs should file an annual report with the Commission detailing revenues received from individual EDR customers and the marginal costs associated with serving those individual customers.[20]

Duke Kentucky's Rider DIR is silent on this finding and Duke Kentucky did not refer to it in the instant proceeding. The Commission finds that Duke Kentucky should file an annual report with the Commission detailing the revenues received from Diversey and the marginal costs associated with serving Diversey.

Finding 8:

> During rate proceedings, utilities with active EDR contracts should demonstrate through detailed cost-of-service analysis that nonparticipating ratepayers are not adversely affected by these EDR customers.[21]

Duke Kentucky's Rider DIR is silent on this finding and Duke Kentucky did not refer to it in the instant proceeding. The Commission finds that in all rate proceedings occurring during the term of the proposed special contract that Duke Kentucky should provide a detailed cost of service analysis demonstrating that non-EDR ratepayers are not adversely affected by the proposed special contract.

Finding 9:

> All EDR contacts should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.[22]

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[20] Administrative Case 327, Sept. 24, 1990 Order at 26, finding paragraph 7.

[21] Administrative Case 327, Sept. 24, 1990 Order at 26, finding paragraph 8.

[22] Administrative Case 327, Sept. 24, 1990 Order at 26, finding paragraph 9.

Duke Kentucky indicated that no customer-specific fixed costs are anticipated in serving Diversey.[23] The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, finding 9.

Finding 10:

> The major objectives of EDRs are job creation and capital investment. However, specific job creation and capital investment requirements should not be imposed on EDR customers.[24]

Duke Kentucky's Rider DIR does not impose job creation and capital investment requirements on EDR customers, but does create expectations for participants. The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, finding 10.

Finding 11:

> All utilities with active EDR contracts should file an annual report to the Commission providing the information as shown in Appendix A, which is attached hereto and incorporated herein.[25]

Duke Kentucky's Rider DIR is silent on this finding and Duke Kentucky did not refer to it in the instant proceeding. The Commission finds that Duke Kentucky should file an annual report to the Commission providing the information as shown in the Appendix to this Order.

Finding 12:

> For new industrial customers, an EDR should apply only to load which exceeds a minimum base level. For existing industrial customers, an EDR shall apply only to new load

[23] Duke Kentucky's Response to Staff's First Request, Item 3.

[24] Administrative Case 327, Sept. 24, 1990 Order at 26, finding paragraph 10.

[25] Administrative Case 327, Sept. 24, 1990 Order at 26, finding paragraph 11.

> which exceeds an incremental usage level above a normalized base load. At the time an EDR contract is filed, a utility should identify and justify the minimum incremental usage level and normalized base load required for an existing customer or the minimum usage level required for a new customer.[26]

Pursuant to the Rider DIR, new customers must contract for at least 1,000 kW at one delivery point. The proposed Agreement complies with this requirement. The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, finding 12.

Finding 14:

> 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. During the second half 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.[27]

Pursuant to the proposed Agreement, the discount applies to the first 12 months of the 36-month term of the special contract. The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, finding 14.

The Commission finds that the terms of the Agreement are reasonable and should be approved because they substantially comply with the requirements set forth in Duke Kentucky's Rider DIR and in the Administrative Case 327 Order.

IT IS THEREFORE ORDERED that:

1. The Agreement between Duke Kentucky and Diversey is approved.

[26] Administrative Case 327, Sept. 24, 1990 Order at 26–27, finding paragraph 12.

[27] Administrative Case 327, Sept. 24, 1990 Order at 27, finding paragraph 14.

2. For future EDR contracts, Duke Kentucky shall file specific detailed support for the Administrative Case 327 Order, finding 5 showing that Duke Kentucky has adequate system capacity to serve the proposed customer and that the load served will not cause it to fall below a reserve margin considered essential for system reliability.

3. For future EDR contracts, Duke Kentucky shall file specific support for the Administrative Case 327 Order, finding 6 and demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer, including a marginal cost of service study.

4. By March 31 of each year, Duke Kentucky shall file an annual report with the Commission detailing, for the prior calendar year, revenues received from Diversey and the marginal costs associated with serving Diversey throughout the term of the special contract.

5. During any rate proceedings filed by Duke Kentucky subsequent to the effective date of the special contract with Diversey, and during a period when Duke Kentucky still has an active EDR contract, Duke Kentucky shall demonstrate through a detailed cost-of-service analysis that its non-EDR ratepayers are not adversely affected by the EDR rate to Diversey and any other EDR customers that may be on the Duke Kentucky system at that time.

6. Duke Kentucky shall file by March 31 of each year a report with the Commission providing, for the prior calendar year, the information shown in the Appendix to this Order.

7. Any documents filed pursuant to ordering paragraphs 3 and 5 of this Order shall reference the number of this case and shall be retained in the post-case correspondence file for this proceeding.

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

9. Within 20 days of the date of service of this Order, Duke Kentucky shall file with the Commission, using the Commission's electronic Tariff Filing System, the special contract as approved herein.

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

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PUBLIC SERVICE COMMISSION

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Chairman

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Vice Chairman

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Commissioner

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KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

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Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00394 DATED MAY 08 2023

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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