COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF KENERGY CORP. AND BIG RIVERS ELECTRIC CORPORATION FOR APPROVAL OF CONTRACTS	)))	CASE NO. 2016-00117

ORDER

On March 24, 2016, Kenergy Corp. ("Kenergy") and Big Rivers Electric Corporation ("Big Rivers") (collectively "Joint Applicants") filed a joint application requesting approval of an amended and restated retail electric service agreement ("2016 Retail Agreement") between Kenergy and Aleris Rolled Products Manufacturing, Inc. ("Aleris"), and a letter agreement amendment to the wholesale power agreements ("2016 Wholesale Amendment") between Big Rivers and Kenergy. The proposed contracts contain, among other things, an economic development rate ("EDR"). Big Rivers currently offers an EDR to its member cooperatives, including Kenergy, for their qualifying retail members or prospective members. The proposed contracts are the first EDR contracts entered into by Joint Applicants that are submitted for Commission review and approval.

The following parties petitioned for, and were granted, intervention in this matter: the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"); Kentucky Industrial Utility Customers, Inc. ("KIUC"); and Aleris. On April 8, 2016, the Commission issued an Order establishing a procedural schedule for the processing of this matter. The procedural schedule provided for, among other things, an informal conference, one round of discovery, the opportunity for the filing of intervenor testimony or comments, and the opportunity for the Joint Applicants to file rebuttal testimony or comments. The parties to this matter filed statements indicating that the matter could be decided upon the evidentiary record without a need for a formal hearing. For the following reasons, the Commission will approve the Joint Applicants' proposed 2016 Retail Agreement and the 2016 Wholesale Amendment.

BACKGROUND

Big Rivers is a member-owned rural electric generation and transmission cooperative organized pursuant to KRS Chapter 279.[1] Kenergy is a member-owned electric distribution cooperative organized pursuant to KRS Chapter 279.[2] Big Rivers provides wholesale electric power and services to three distribution cooperative members, one of which is Kenergy.[3] Aleris operates an aluminum rolling mill near Lewisport, Kentucky, ("Lewisport Mill") and is located in the certified retail electric service territory of Kenergy.[4] Kenergy currently provides retail electric service to Aleris under a 2011 electric service agreement dated May 13, 2011 ("2011 Retail Agreement").[5] Kenergy acquires wholesale electric service from Big Rivers under an agreement dated June 11, 1962, that has been amended and supplemented, including an amendment dated May 20, 2011 (collectively "2011 Wholesale Agreement").[6]

---

[1] Application at 2.

[2] *Id.*

[3] *Id.*

[4] *Id.* at 3.

[5] *Id.*

[6] *Id.*

Aleris currently employs 480 workers at its Lewisport Mill facilities.[7] Aleris intended to, and has, expanded its operations at the Lewisport Mill, which will involve a capital investment of approximately $350 million, resulting in an increase in employment of approximately 70 employees.[8] Due to the potentially significant increase in load and start-up of a new production line for Aleris, Kenergy proposes to amend and restate the 2011 Retail Agreement to provide for an increase in the Aleris load related to the Lewisport Mill expansion. The 2016 Retail Agreement includes an economic development rate offered by Big Rivers in order to provide an incentive to Aleris to locate the expanded load in Kenergy's service territory. Aleris represents that the economic development incentives offered to it and incorporated in the 2016 Retail Agreement were a necessary factor in the decision of Aleris to expand its operations in Kentucky.[9]

Joint Applicants state that the proposed EDR contracts are consistent with the guidelines that the Commission set forth in Administrative Case No. 327[10] ("Admin. 327") regarding EDR contracts offered by electric and gas utilities. An EDR is defined in Admin. 327 as follows:

> [A] gas or electric rate discount, offered to large commercial and industrial customers, which is intended to stimulate the creation of new jobs and capital investment both by encouraging existing customers to expand their operations

---

[7] *Id.*

[8] Id., Exhibit 3, Direct Testimony of Michael W. Chambliss ("Chambliss Testimony") at 12; and Exhibit 5, Amended and Restated Agreement for Retail Electric Service, Section 9.02(c).

[9] Chambliss Testimony at 12.

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

> and by improving the likelihood that new large commercial and industrial customers will locate in Kentucky.[11]

Among other things, the Commission found in Admin. 327 that utilities should have flexibility to design EDRs according to the needs of their customers and service areas and to offer EDRs to those new and existing customers who require such an incentive to locate new facilities in the state and to expand existing ones. The Commission then established the following relevant EDR guidelines:[12]

1. EDRs should be implemented by special contracts.

2. 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 customer, minimum bill, estimated load, estimated load factor, and length of contract.

3. EDRs should only be offered during periods of excess capacity and each utility should demonstrate that the load expected to be served during each year of the EDR contract period will not cause the utility to fall below a reserve margin that is considered essential for system reliability.

4. The discounted rate should exceed the short-run marginal, or variable, costs associated with serving the EDR customer.

5. All EDR contracts should include a provision allowing for the recovery of EDR customer-specific fixed costs over the term of the contract so that non-participating

---

[11] *Id.* at 1.

[12] *Id.* at 25–27

customers would be protected from contributing to the customer-specific fixed costs associated with serving customers who will be receiving a rate discount.

6. 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 which exceeds an incremental usage level above a normalized base load.

7. An EDR contract should extend for a period twice the length of the discount period, with the discount period not to exceed 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.

Joint Applicants contend that the proposed EDR contracts satisfy all of the guideline requirements set forth by the Commission. Joint Applicants state that the EDR is being implemented by way of special contracts negotiated between and among Big Rivers, Kenergy, and Aleris. The 2016 Retail Agreement specifies all the terms and conditions of service, including the EDR discount of 90 percent of the Big Rivers standard Large Industrial Customer ("LIC") tariff demand charge for the eligible kilowatts ("kW") purchased by Aleris during the four-year credit period. Because the expanded load of Aleris will develop in four phases, the proposed contracts provide for four credit periods.

The number of jobs and amount of capital investment to be created by Aleris as a result of the expansion project tied to the EDR is described in the 2016 Retail Agreement. The 2016 Retail Agreement also sets forth the customer-specific fixed costs to Big Rivers associated with serving Aleris. The fixed costs are related to construction of new transmission facilities and a new substation, which is currently estimated to be $9.5 million, but in the end Aleris will pay the actual cost of those facilities.[13] The actual amount of the customer-specific fixed costs becomes a Termination Charge in the 2016 Retail Agreement and that amount is reduced by $0.90 per kW purchased and paid for by Aleris during the term of the 2016 Retail Agreement. If the $0.90 per kW credits have not eliminated the Termination Charge upon the expiration of the 2016 Retail Agreement, Aleris is obligated to pay the remaining balance of the Termination Charge.[14] Under the 2016 Retail Agreement, the minimum bill that Aleris is required to pay is based upon a Minimum Contract Demand, which is never less than 60 percent of the Maximum Contract Demand.[15] The 2016 Retail Agreement also sets forth the increased Maximum Contract Demand for each of the four phases.[16]

The 2016 Retail Agreement provides for an initial term that expires on April 1, 2028, and includes an evergreen provision that allows the agreement to renew automatically on an annual basis unless Aleris gives Kenergy at least a 12-month notice not to renew.[17] During the full-rate term that follows each credit period, the Minimum Contract Demand is adjusted to assure that during the non-discount term Aleris will

---

[13] Chambliss Testimony at 6.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 6–7.

[17] *Id.* at 8.

always pay the full rate for at least the same number of kWs on which it has previously received a credit.

Big Rivers demonstrated that it has more than adequate capacity on its system to serve the increased load of Aleris over the term of the proposed contracts and maintain system reliability. Big Rivers will have approximately 380 megawatts ("MW") to 504 MW of capacity in which to serve the expanded Aleris load over the term of the 2016 Retail Agreement.[18] Joint Applicants performed a marginal cost-of-service study which indicated that the discounted rate to Aleris produces revenues that exceed the marginal cost associated with serving Aleris.

Joint Applicants state that the 2016 Retail Agreement also establishes a base demand, which reflects the minimum base level of load that must be achieved before the EDR credit applies. The minimum base level of load for Aleris was determined by calculating the average of its monthly peak demand over the three-year period ending December 31, 2014, which was 27,547 kWs. The base demand was then determined by using that average and adding to it the 1,000-kW threshold established in Big Rivers' EDR guidelines for eligibility for the Big Rivers EDR, for a total base demand of 28,547 kWs. Because Aleris is increasing its load in four phases, the 2016 Retail Agreement treats each of those phases as a separate EDR contract. So for each phase, there is a four-year credit period followed by a four-year full-rate term.

The 2016 Wholesale Amendment is a letter agreement that supplements Big Rivers' wholesale power contract with Kenergy to accommodate the provision of service to Aleris, such as the minimum demand obligations and the EDR. This letter agreement

[18] *Id.*, Exhibit Chambliss_B.

is typical for Big Rivers to supplement the wholesale power contract with Kenergy for Kenergy's retail service to a large industrial customer that is served directly from Big Rivers' transmission system.

DISCUSSION

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that the proposed contracts should be approved as filed. Pursuant to KRS 278.170(1), the Commission is authorized to permit reasonable preferences and advantages as to rates and services. Similarly, KRS 278.030(3) allows a utility to make reasonable classification of its service, patrons, and rates. Pursuant to these two statutes, the Commission has authority to approve economic development rates.[19]

The Commission finds that Big Rivers' EDR contract makes reasonable classification of its rates. Big Rivers has established specific and measurable eligibility guidelines for its EDR. Big Rivers will make an EDR available to all qualifying new or expansion loads above 1,000-kW billing demand. For expansion load, the EDR credit will only be applicable to the incremental load of the retail customer above the base demand, which is calculated as the average monthly demand of the retail customer during the 24 consecutive months as close as practical to the execution date of the EDR contract, plus 1,000 kWs.[20] Big Rivers' EDR also requires the retail customer to demonstrate that the economic development rate incentive was an important factor in the retail customer's decision to locate in Kentucky or to expand its operations in

---

[19] *See Public Service Commission of Kentucky v. Commonwealth*, 320 S.W.3d 660 (Ky. 2010).

[20] Chambliss Testimony, Exhibit Chambliss_A at 1.

Kentucky. Customers who qualify for the EDR will receive a monthly billing credit of an amount equal to 90 percent of the Big Rivers' standard LIC tariff demand rate applied to the billing demand in that month, before application of other adjustments.[21] The proposed contracts, which contain Big Rivers' EDR, make reasonable preferences as to rates and are based upon reasonable considerations in the classification of the Joint Applicants' qualifying customers. These specific and measurable guidelines are clearly targeted to accomplish the goals and purposes of the EDR—economic development resulting in job creation and capital investment.

The Commission further finds that the provisions of the proposed contracts containing an EDR are consistent with the Commission's guidelines established in Admin. 327. The Commission has previously approved EDR tariffs proposed by Duke Energy Kentucky, Inc. ("Duke Kentucky"),[22] Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU"),[23] and East Kentucky Power Cooperative, Inc. ("EKPC").[24] Duke Kentucky, LG&E, and KU have EDR terms that would reduce the demand component by 50 percent during each of the first 12 months, 40 percent during each of the next 12 months, and continuing on a declining scale of 10 percent for each 12-month period for the first 60 months of the customer's contract. In

---

[21] *Id.*

[22] 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). Duke Kentucky was formerly known as The Union Light, Heat and Power Company.

[23] Case No. 2011-00103, *Application of Louisville Gas and Electric Company and Kentucky Utilities Company to Modify and Rename the Brownfield Development Rider as the Economic Development Rider* (Ky. PSC Aug. 11, 2011).

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

addition to offering a 5-year discount period like Duke Kentucky, LG&E, and KU, EKPC also offers a 3- and 4-year discount period as part of its EDR tariff. EKPC's 3-year discount period provides for a 30 percent discount to the demand charge for the first 12 months, a 20 percent discount for the next 12 months, and a 10 percent discount for the last 12-month period. EKPC's 4-year discount is structured similar to the 3- and 5-year discount period except that the first 12-month period begins with a 40 percent discount on the demand charge. All of these EDRs obligate the customer to pay the full rate for service for at least the same number of years it has previously received a discount.

Although Big Rivers' EDR discount to Aleris is 90 percent of the standard LIC tariff demand charge, Joint Applicants have established that the discounted rate offered to Aleris exceeds the marginal cost associated with serving Aleris. This is due to Big Rivers' unique situation of having significant capacity. Lastly, the EDR provides an incentive for Aleris to increase its load resulting in significant capital investments in its operations and job creation.

The Commission also notes that Big Rivers commits to the following, in conformity with the requirements of Admin. 327:[25]

- Filing an annual report with the Commission detailing revenues received from Aleris and the marginal costs associated with serving Aleris throughout the term of the proposed contracts;

- During any rate proceedings by Big Rivers filed subsequently to the effective date of the proposed agreements related to Aleris, and during a period when Big Rivers still has an active EDR contract, Big Rivers will demonstrate through detailed

[25] Chambliss testimony at 10–11.

cost-of-service analysis that its member distribution cooperative non-EDR ratepayers are not adversely affected by the EDR rate to Aleris and any other EDR customers that may be on the Big Rivers system at that time; and

- So long as it is providing wholesale service to one of its distribution cooperatives with an active EDR contract, Big Rivers will file an annual report with the Commission providing the information shown in the Appendix to this Order.

IT IS THEREFORE ORDERED that:

1. The 2016 Wholesale Amendment and the 2016 Retail Agreement are approved as filed.

2. By March 31 of each year, Big Rivers shall file an annual report with the Commission detailing, for the prior calendar year, revenues received from Aleris and the marginal costs associated with serving Aleris throughout the term of the proposed contracts.

3. During any rate proceedings by Big Rivers filed subsequently to the effective date of the proposed agreements related to Aleris, and during a period when Big Rivers still has an active EDR contract, Big Rivers 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 Aleris and any other EDR customers that may be on the Big Rivers system at that time.

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

5. 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 utility's general correspondence file.

6. The Executive Director is designated authority to grant reasonable extension of time for the filing of any documents required by ordering paragraphs 2 and 4 of this Order upon Big Rivers' showing of good cause for such extension.

By the Commission

ENTERED
JUN 3 0 2016
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

Aaron D. Greenwell

Acting Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2016-00117 DATED **JUN 3 0 2016**

ECONOMIC DEVELOPMENT RATE CONTRACT REPORT

UTILTIY: ______________________ 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

	Current Reporting Period	Cumulative
(A) DEMAND:		
Total:	________KW | MCF	________KW | MCF
Existing Customers:	________KW | MCF	________KW | MCF
New Customers:	________KW | MCF	________KW | MCF
(B) ENERGY/CONSUMPTION:		
Total:	________KW | MCF	________KW | MCF
Existing Customers:	________KW | MCF	________KW | MCF
New Customers:	________KW | MCF	________KW | MCF

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

*Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*Cory J Skolnick
Frost Brown Todd, LLC
400 West Market Street
32nd Floor
Louisville, KENTUCKY 40202-3363

*Big Rivers Electric Corporation
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

*Honorable James M Miller
Attorney at Law
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KENTUCKY 42302-0727

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

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

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

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