COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF EAST KENTUCKY POWER COOPERATIVE, INC. OF AN AMENDMENT TO AN INDUSTRIAL POWER AGREEMENT WITH INTERRUPTIBLE SERVICE BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC., OWEN ELECTRIC CORPORATION, INC. AND NUCOR STEEL GALLATIN, LLC F/K/A GALLATIN STEEL COMPANY	)	CASE NO. 2020-00317

O R D E R

By Order issued on September 29, 2020, this matter was initiated by the Commission to determine the reasonableness of a proposed Third Amendment to the Industrial Power Agreement with Interruptible Service (Agreement) between East Kentucky Power Cooperative, Inc. (EKPC); Owen Electric Cooperative, Inc. (Owen Electric); and Nucor Gallatin Steel, LLC f/k/a Gallatin Steel Company (Nucor). EKPC had initially filed the Agreement via the Commission's electronic Tariff Filing System and had responded to one round of discovery prior to the initiation of this matter. EKPC responded to one additional round of discovery during the pendency of this matter.

On December 4, 2020, EKPC filed a motion requesting that a decision be rendered based on the existing administrative record and stating that it is willing to waive its rights to a hearing in this matter. The Commission finds that EKPC has established good cause to have this matter be decided without the need of a hearing. The case now stands submitted for a decision based on the existing evidentiary record.

THE THIRD AMENDMENT TO THE AGREEMENT

EKPC states that the proposed Third Amendment makes certain revisions to the Agreement due to expansion of the melting and casting operation at the Nucor plant facilities located in Ghent, Kentucky. The expansion includes the addition of a single shell electric arc furnace, a twin shell ladle metallurgical facility, a caster with double the capacity of the existing caster that is to be removed, two additional rolling mill stands, a baghouse, a pump house, and air separation facilities.[1] The expansion will allow Nucor to increase its annual capacity at the Ghent facility from 1.6 million tons of manufactured coiled sheet metal to over 3 million tons. The Nucor expansion represents an investment of approximately $650 million and will result in an increase of 75 new jobs to Nucor's existing 465 employee workforce and increase Nucor's load requirement by approximately 195 megawatts (MW) from 220 MW to 415 MW.[2]

EKPC states that the nature of Nucor's load and operations make it an ideal candidate for an interruptible tariff. In particular, EKPC notes that Nucor's electric arc steel-making operations are sufficiently flexible to allow Nucor to require only 15 MW of firm demand to serve the 195 MW expansion, with the remainder subject to interruption.[3] EKPC notes that because the size of Nucor's interruptible load far exceeds the maximum in Owen Electric's interruptible tariff, a special contract must be utilized for Nucor's unique

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[1] Third Amendment to the Industrial Power Agreement with Interruptible Service dated April 30, 2013, unnumbered page 1.

[2] *Id.* *See also* Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 1.

[3] EKPC's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Nov. 6, 2020), Item 1.a.

service requirements.[4] Further, because the discounts that would be applied to the demand rate and not to the energy charge under EKPC's Economic Development Rider (EDR) Tariff would not have produced sufficient savings for Nucor's expansion and to ensure that Nucor would be able to attract the necessary internal capital for the expansion of its operations, EKPC proposed to use a similar rate structure that was used to achieve the galvanizing line expansion at the Ghent facilities in 2017.[5] Nucor and EKPC agreed on a different manner of discount than could be achieved by coupling the standard EDR tariff with the interruptible discount. As proposed, the Third Amendment provides a discount to the energy charge, which, according to EKPC, successfully attracted the new investment in the Nucor facility.[6] In particular, Nucor will receive a $/kWh energy credit that will diminish over six years with a ten-year contract term.[7] EKPC states that the credit for the new expanded melting and casting operation is comparable to the previous galvanizing line expansion credit but it is spread across the entire melting and casting operation load as opposed to just the new expansion load.[8] EKPC asserts that this ensures that there is no benefit to move operations away from the existing operation to the new operation.[9] EKPC further asserts that the three-month rolling average of the new

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[4] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 1.

[5] EKPC's Response to Staff's First Request (filed Nov. 6, 2020), Item 1.a. EKPC also points out that the September 24, 1990 Order in Administrative Case No. 327, *An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. PSC Sept. 24, 1990), provides an electric utility a choice between a tariffed EDR rate or a special contract.

[6] *Id.*

[7] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 1.

[8] *Id.*

[9] *Id.*

expansion and existing melting and casting operation must exceed 1.5 times the 2017 monthly average energy usage or the discount will be suspended.[10] EKPC informs that Nucor put some of the expansion credit at risk when it agreed to spread it over the existing and expansion melting and casting load.[11] EKPC explains that if the rolled steel orders Nucor expects do not materialize, it will not receive the benefits it expected.[12] EKPC notes that these provisions were drafted to assure that Nucor brought new load and jobs in order to receive the energy discount.[13] Furthermore, the 10 year contract term will extend the term of Nucor's existing contract.[14]

EKPC points out that an energy charge discount, which is not contemplated in EDR arrangements, incentivizes Nucor to run three shifts around-the-clock to maximize its energy usage and associated discount, which results in more jobs, payroll, and tax revenue.[15] EKPC maintains that a demand charge discount does not produce a similar incentive as the plant maximum demand will be the same whether running one shift or three.[16] Also, EKPC avers that if the EDR discounts were applied in addition to the energy discount, Nucor would receive a double dip economic development benefit.[17]

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[10] *Id.*

[11] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 7.

[12] *Id.*

[13] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 1.

[14] Third Amendment to the Industrial Power Agreement with Interruptible Service dated April 30, 2013, unnumbered page 7.

[15] EKPC's Response to Staff's First Request (filed Nov. 6, 2020), Item 1.a.

[16] *Id.*

[17] *Id.*

EKPC states that it will have to install additional metering and telemetry equipment as a result of the Nucor expansion.[18] The total costs of the equipment and labor required for installation is approximately $60,000.[19] Nucor is responsible for these customer-specific fixed costs and EKPC states that there are no other transmission or distribution equipment modifications needed for the Nucor expansion.[20]

EKPC maintains that the discounted rate provided to Nucor under the Third Amendment will cover EKPC's variable costs to serve Nucor's expanded load and make a contribution towards fixed costs.[21] EKPC notes that its marginal analysis on energy rates shows that the expanded Nucor load will generate significant margins, from both an on peak and off peak energy basis and when taking into account the discount energy rate.[22] EKPC points out that while marginal analysis shows that the off peak energy rate in the 9th and 10th years do not generate positive margins, the on peak margins for those two years completely off-sets or nearly off-sets the off peak deficits.[23] EKPC notes that the discounted energy rate is not in effect during the 9th and 10th years.[24] For the entire ten-year period, the marginal analysis shows the variable costs being covered.[25]

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[18]Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 3.

[19] *Id.*

[20] *Id.*

[21] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 4.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

EKPC states that it has more than sufficient capacity reserves to satisfy the 15 MW of firm demand and meet its summer peak load obligation.[26] EKPC's summer planning reserves from 2021 through 2032 ranges from 14 percent to 24 percent.[27] EKPC indicates that it will be short on winter capacity reserves beginning in 2026 through 2032, ranging from zero percent to minus 3 percent.[28] With projected winter capacity purchases of 100 MW in 2024 and 2029, EKPC's winter capacity reserves from 2026 through 2032 will range from 2 percent to 7 percent.[29] EKPC asserts that the impact of the 15 MW of firm load from the additional Nucor load has a minimal impact on the amount of winter reserves available to serve existing EKPC load.[30] EKPC points out that PJM has more than adequate reserve margins in the winter peak load season and that EKPC would expect to be able to make an economic seasonal purchase to adequately cover its load.[31] EKPC further points out that the revenue generated from offering the interruptible attributes of the Nucor expansion load of 180 MW as a demand response resource in the PJM capacity market will offset the additional load expense in the capacity auction.[32]

[26] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 2.

[27] Order (Ky. PSC Sept. 29, 2020), Attachment: page 8 of 11.

[28] *Id.*

[29] EKPC's Response to Staff's First Request (filed Nov. 6, 2020), Item 2.

[30] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 2.

[31] *Id.*

[32] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 6.

EKPC lastly notes that the 15 MW Nucor firm load is charged at EKPC's standard tariff rates and is not receiving a reduced rate incentive.[33]

DISCUSSION

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the proposed Third Amendment to the Agreement is reasonable and should be approved. In light of the unique operational characteristics of the Nucor load, the Commission finds that EKPC has provided sufficient justification for structuring the provisions of the Third Amendment as it relates to the incentives to attract the expanded Nucor operations. We further find that EKPC's marginal analysis is reasonable and supports a finding that the revenues generated from the Third Amendment when factoring the discounted rate will cover EKPC's variable costs to serve Nucor's expanded load and make a contribution towards fixed costs. Lastly, we note that the proposed Third Amendment will have aided in attracting the expansion of the Nucor facility in Ghent, Kentucky resulting in substantial economic development for the EKPC system and the local region.

Although the Third Amendment was not structured under EKPC's EDR tariff, the Commission emphasizes the provisions and incentives that were negotiated between the signatories allowed Nucor an opportunity to expand its existing operations at the Ghent facility. The Third Amendment in essence allows EKPC to attract additional load onto its system via an economic development tool. The Commission is therefore concerned that the provisions of the Third Amendment, particularly that the term of the Third Amendment would not be twice as long as the discount period, do not adequately reflect the EDR

[33] *Id.*

guidelines set forth by the Commission.[34] However, upon review of the record the Commission finds that, although the discount period is more than half of the total term, the Third Amendment also extends the non-discounted term of the special contract for the rest of Nucor's current load.[35] Therefore, on a kWh basis, the non-discounted load is at least equal to the discounted load. Also, EKPC mentions that Nucor is anticipating additional expansions and that "[h]aving the existing and expansion load on the same contract schedule will simplify current contract management and future contract negotiations."[36] Thus, it appears that Nucor is not intending to take advantage of the discount period and then shut down existing operations but will be looking to expand. Based on the unique facts of this case, the Commission finds that the six year discount period is reasonable and EKPC is entitled to a one-time exemption to the EDR guideline that the term of the contract be at least twice as long as the discount period.

IT IS THEREFORE ORDERED that:

1. The proposed Third Amendment to the Agreement is approved.

2. EKPC's motion to submit is granted.

3. Within 20 days of the date of this Order, EKPC shall file with the Commission, using the Commission's electronic Tariff Filing System, the Third Amendment to the Agreement as set forth in this Order.

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

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

[35] Third Amendment to the Industrial Power Agreement with Interruptible Service dated April 30, 2013, unnumbered page 7.

[36] Order (Ky. PSC Sept. 29, 2020), Attachment: EKPC's Response to Commission Staff Requests dated July 23, 2020, Item 1.

By the Commission

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