COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF EAST KENTUCKY POWER COOPERATIVE, INC. AND ITS MEMBER DISTRIBUTION COOPERATIVES FOR APPROVAL OF PROPOSED CHANGES TO THEIR QUALIFIED COGENERATION AND SMALL POWER PRODUCTION FACILITIES TARIFFS AND THE IMPLEMENTATION OF SEPARATE TARIFFS FOR POWER PURCHASES FROM SOLAR GENERATION QUALIFYING FACILITIES	)	CASE NO. 2017-00212

ORDER

On March 31, 2017, East Kentucky Power Cooperative, Inc. ("East Kentucky") filed through the Commission's electronic Tariff Filing System revised tariff sheets setting forth proposed adjustments to its existing tariffs for Qualified Cogeneration and Small Power Production Facilities ("QF"). The filing also included a new tariff to establish rates, terms, and conditions for power purchases from QFs generating power from solar facilities ("Solar QF Tariff"). All of the tariffs relating to purchases from QF facilities are referred to collectively as "QF Tariffs," and all of the proposed revisions had an effective date of June 1, 2017.[1]

A telephone conference was held with East Kentucky on April 26, 2017, to discuss its proposal to reduce the tariffed rates, the PJM Interconnection, LLC ("PJM") Market Administration fee and missing load data support for the year 2021. As a result of that telephone conference, East Kentucky filed text changes to its tariff filing on April 27, 2017, and updated its load data on April 28, 2017. On May 18, 2017, Commission

[1] TFS 2017-00179.

Staff requested, and East Kentucky provided, support for calculating the PJM Market Administration participation fee. On May 24, 2017, the Commission issued an order suspending the effective date of the tariffs up to and including October 31, 2017. The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention ("Attorney General"), requested and was granted intervention.

An initial informal conference ("IC") was held at the Commission's offices on June 12, 2017, and East Kentucky responded to the IC memorandum[2] on June 16, 2017. A second IC was held on July 17, 2017.[3] A third IC was held on November 14, 2017.[4] Consistent with the discussions at the November 14, 2017 IC, East Kentucky filed revised tariffs on January 16, 2018. The revisions to the Solar QF Tariffs were made to reflect QFs that are intermittent, and not capable of being dispatched, rather than just solar resources. EKPC also revised all of its QF Tariffs characterizing QFs as either dispatchable or non-dispatchable. Lastly, with respect to the QF Tariffs for those QFs with capacity of more than 100 kW, EKPC made revisions to include language consistent with 807 KAR 5:054, Section 7(4), indicating that the standard rate schedule should be used only as the basis for negotiating a final purchase rate with those particular QFs after consideration has been given to factors affecting purchase rates listed in 807 KAR 5:054, Section 7(5)(a).

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[2] The IC memorandum for the first IC was issued on June 14, 2017.

[3] The IC memorandum for the second IC was issued on July 19, 2017.

[4] The IC memorandum for the third IC was issued on December 19, 2017.

East Kentucky is a generation and transmission cooperative that provides wholesale electric service to 16 member distribution cooperatives who, in turn, provide retail electric service to approximately 530,000 customers. All of the 16 distribution cooperatives filed proposed tariffs mirroring East Kentucky's proposed revisions.[5]

DISCUSSION

The revisions to East Kentucky's existing QF Tariffs include: 1) updating capacity and energy pricing; 2) text changes resulting in the consistent use of "QF" for qualifying facilities and "EKPC" for East Kentucky; 3) implementation of an adjustment to the energy rates for a Market Administration fee of $0.0008 per kilowatt-hour ("kWh"), which will be updated each year; 4) a proposal that purchases from non-dispatchable QFs be covered under a different tariff; and 5) language in the QF Tariffs dealing with power purchase rate schedules for dispatchable and non-dispatchable generation sources with capacity over 100 kW stating that East Kentucky is not obligated to purchase energy or capacity from a QF with a net capacity over 20 megawatts ("MW") pursuant to Federal Energy Regulatory Commission ("FERC") regulations 18 C.F.R. 292, Sections 303(a), 309, and 310.

Implementation of a PJM Market Administration Fee

As a PJM member, East Kentucky incurs certain costs associated with its participation in the PJM energy and capacity markets. These costs are incurred to both PJM and ACES.[6] East Kentucky states that it believes it is reasonable that the prices

[5] The Commission suspended the proposed effective date of June 1, 2017 for the distribution cooperative tariffs up to and including October 31, 2017 with its May 24, 2017 Order.

[6] East Kentucky is a member-owner of ACES, a non-profit entity. ACES has the software to interface with PJM and therefore East Kentucky uses ACES to participate in PJM.

East Kentucky pays to QFs reflect a portion of East Kentucky's market-participation costs. East Kentucky states that, for it to be held harmless, such a fee is necessary. East Kentucky contends that the Cogeneration Tariffs should be structured so that the utility is indifferent to purchasing power under the tariff versus the PJM market.[7] East Kentucky states that the power it purchases from QFs is sold into the PJM market and East Kentucky compensates QFs the amount the market provides.[8] East Kentucky further states that the Market Administration Fee is appropriate because there is an administrative burden to participating in PJM and that QFs should pay their share of those costs.[9] East Kentucky proposes to update the Market Administration Fee each year. The Market Administration Fee will be used to offset the PJM and ACES expense account.[10]

Non-Dispatchable QF Tariffs

Due to the establishment of its Community Solar Program in Case No. 2016-00269,[11] East Kentucky states that the rates paid to QFs generating power from non-dispatchable generating facilities should be on the same basis as capacity and energy rates determined under the Community Solar Tariff, which is based on the value of that generation in the PJM market.[12] East Kentucky is proposing that any QF that is non-

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[7] Informal conference memorandum issued on June 14, 2017 ("June 14, 2017 IC Memo").

[8] The rates in the dispatchable QF Tariffs are based on forecasts of PJM market prices and the rates in the non-dispatchable QF Tariffs are based on PJM real-time prices.

[9] July 19, 2017 IC memorandum.

[10] *Id.*

[11] Case No. 2016-00269, *Application of East Kentucky Power Cooperative, Inc. for Issuance of a Certificate of Public Convenience and Necessity, Approval of Certain Assumption of Evidences of Indebtedness and Establishment of a Community Solar Tariff* (Ky. PSC Nov. 22, 2016).

[12] East Kentucky and Member Distribution Tariff Filings at 1.

dispatchable, regardless of size, be treated in the same manner. East Kentucky states that the main reason it proposed a separate tariff for QF non-dispatchable generation is due to the capacity payment and, therefore, the rates in the proposed non-dispatchable QF Tariffs differ from those included in the dispatchable QF Tariffs. Although the rates under the dispatchable QF Tariffs are based on the PJM capacity and energy markets, the rates for the proposed non-dispatchable QF Tariffs are based on real-time PJM locational marginal price for energy and are also based on the appropriate value for the deemed non-dispatchable capacity as valued pursuant to PJM's capacity market rules. According to East Kentucky, the intermittent nature of non-dispatchable power is not as beneficial as power produced by other facilities that operate more frequently. East Kentucky claims that a cogeneration facility operating nearly 100 percent of the time reduces the need for capacity for East Kentucky, but power from intermittent, non-dispatchable generation would not reduce East Kentucky's need for capacity.[13]

East Kentucky contends that having different rates for the non-dispatchable QF Tariffs would not be in violation of the 807 KAR 5:054, Section 7(2) and 7(4). Section 7(2) states, in relevant part, that "[e]ach electric utility shall prepare standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. These rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory." Further, Section 7(4), states, in relevant part, "[e]ach electric utility shall provide a standard rate schedule for qualifying facilities with design capacity over 100 kilowatts . . . . Negotiated rates shall be just and reasonable to the electric customer of the utility, in the public interest and nondiscriminatory." East

[13] June 14, 2017 IC Memo at 2.

Kentucky argues that having different rates for the non-dispatchable QF Tariffs and the dispatchable QF Tariffs would not be in violation of the regulation because a utility could have different standard rates for different sources of generation. East Kentucky states that all non-dispatchable generation would receive the same standard rate and therefore would not violate the regulation.[14]

Language Related to FERC Regulations

East Kentucky filed an application with FERC on November 4, 2016, for a ruling that East Kentucky would no longer be required under Section 292.303(a) of FERC's regulations, 18 C.F.R. 292 Section 303(a), to enter into new contracts or be obligated to purchase electric energy or capacity from QFs with a net capacity over 20 MW on a service territory-wide basis. East Kentucky filed an amendment to the FERC application on December 7, 2016. On March 10, 2017, FERC issued a letter stating that due to a lack of a quorum, it was not able to make a final determination on East Kentucky's application, and the application was denied. On April 4, 2017, EKPC filed a motion for rehearing of the denial of its application. East Kentucky also filed a new application with FERC on March 13, 2017, seeking the same relief that it had requested in its November 4, 2016 application. Due to a continuing lack of quorum at FERC, East Kentucky's March 13, 2017 application was also denied. East Kentucky then filed a third application on June 9, 2017, requesting the same relief sought in its November 4, 2016, and March 13, 2017, applications at FERC.[15] On September 7, 2017, FERC granted East Kentucky's request to terminate its obligation, under Section 292.303(a) of FERC's

[14] *Id.*

[15] East Kentucky's September 9, 2017 Notice of Filing.

regulations,[16] to enter into new power purchase obligations or contracts to purchase electric energy and capacity from qualifying cogeneration or small power production QFs, located within PJM, with a net capacity in excess of 20 MW.[17] Specifically, FERC found that "QFs over 20 MWs have non-discriminatory access to wholesale markets for the sale of capacity and energy warranting termination of East Kentucky's mandatory purchase obligation pursuant to section 210(m) of PURPA."[18] FERC's approval was effective as of June 9, 2017.

Similar to the requests made at FERC, East Kentucky is proposing in the instant matter to include a provision in its proposed Cogeneration and Small Power Production Power Purchase Rate Schedule Over 100 kW from Dispatchable Generation Sources and Cogeneration and Small Power Production Power Purchase Rate Schedule Over 100 kW from Non-Dispatchable Generation Sources tariffs stating that it is no longer obligated to purchase electric energy or capacity from qualifying cogeneration facilities or qualifying small power production facilities with a net capacity over 20 MW. East Kentucky states that the exemption is provided under FERC's regulation, 18 C.F.R. Section 292.309(a)(1), which terminates a utility's obligation to purchase power from QFs over 20 MWs if the QFs have nondiscriminatory access to (i) independently

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[16] 18 C.F.R. § 292.303(a).

[17] A copy of FERC Docket No. QM17-5-000, Order Granting Application to Terminate Mandatory Purchase Obligation (Issued September 7, 2017), was attached to East Kentucky's September 9, 2017 Notice of Filing.

[18] *Id.* at ¶ 15. However, FERC also found that Bluebird Solar LLC ("Bluebird") and Blue Jay Solar LLC ("Blue Jay") (each of whom filed a motion to intervene and protest in FERC Docket No. QM-17-5-000) potentially established a legally enforceable obligation under the Public Utilities Regulatory Policy Act of 1978 ("PURPA") and that EKPC's application at FERC did not foreclose Bluebird or Blue Jay from having established a legally enforceable obligation under PURPA. FERC further noted that "[b]arring any restrictions under state law, Bluebird and Blue Jay would be grandfathered such that [FERC] approval of this Application would not include Bluebird or Blue Jay QFs." *Id.* at ¶ 21.

administered, auction-based day-ahead and real-time wholesale energy markets; and (ii) wholesale markets for long-term sales of capacity and electric energy.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the proposed changes to East Kentucky's current QF Tariffs are reasonable and should be approved. The Commission further finds that the proposed QF Tariffs addressing non-dispatchable generation sources is reasonable and should be approved because these QF Tariffs will apply to all intermittent cogeneration resources such that all non-firm resources are treated on an equal basis.

The Commission further finds that EKPC's request to terminate its obligation to purchase power from QFs in its service territory with a net capacity greater than 20 MW is reasonable. EKPC's obligation to purchase power from QF's arises under Commission regulation, 807 KAR 5:054, which was enacted to fulfill our obligation under PURPA and FERC regulations implemented thereunder. In 2005, Congress authorized FERC to terminate utilities' purchase obligation for QFs exceeding 20 MW under certain circumstances. Here, FERC has granted East Kentucky's request to terminate those obligations due to findings that East Kentucky is a member of PJM and QFs in East Kentucky's service territory have nondiscriminatory access to wholesale electric markets for energy and capacity. Accordingly, the Commission will grant East Kentucky's proposal to include a provision in its QF Tariffs terminating its obligation to purchase energy or capacity from QFs with a net capacity over 20 MW.

IT IS THEREFORE ORDERED that:

1. East Kentucky's proposed changes to its Cogeneration and Small Power Production Power Purchase Rate Schedule Over 100 kW from Dispatchable Generation

Sources tariff and its Cogeneration and Small Power Production Power Purchase Rate Schedule Equal to or Less Than 100 kW from Dispatchable Generation Sources tariff are approved for service rendered on and after the date of this Order.

2. East Kentucky's proposed new Cogeneration and Small Power Production Power Purchase Rate Schedule Over 100 kW from Non-Dispatchable Generation Sources tariff and its Cogeneration and Small Power Production Power Purchase Rate Schedule Equal to or Less Than 100 kW from Non-Dispatchable Generation Sources tariff, as revised, are approved for service rendered on and after the date of this Order.

3. Within 20 days of the date of this Order, East Kentucky and its distribution cooperatives shall file, using the Commission's electronic Tariff Filing System, its proposed cogeneration tariffs with the Commission reflecting that they were approved pursuant to this Order.

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By the Commission

ENTERED

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