

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR AN ORDER)	
DECLARING THE GLASGOW LANDFILL GAS)	
TO ENERGY PROJECT TO BE AN ORDINARY)	
EXTENSION OF EXISTING SYSTEMS IN THE)	
USUAL COURSE OF BUSINESS AND A JOINT)	CASE NO.
APPLICATION OF FARMERS RURAL)	2014-00292
ELECTRIC COOPERATIVE CORPORATION)	
AND EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR APPROVAL TO)	
ENTER INTO A TEN YEAR PURCHASED)	
POWER AGREEMENT AND APPROVAL OF A)	
SPECIAL CONTRACT)	

ORDER

On August 21, 2014, East Kentucky Power Cooperative, Inc. ("EKPC") filed an application requesting the Commission to issue an order declaring that the Glasgow Landfill Gas to Energy Project ("Glasgow LFGTE Project") to be an ordinary extension of existing systems in the usual course of business. As part of the same application, EKPC and Farmers Rural Electric Cooperative Corporation ("Farmers") (collectively, "Joint Applicants"), request an Order approving a Capacity, Energy and Environmental Attribute Purchase, Sale and Interconnection Agreement dated August 13, 2014, a special contract which relates to a landfill gas to energy project.

Commission Staff issued, and Joint Applicants responded to, three information requests. There are no intervenors in this proceeding. The matter is now before the Commission for a decision based upon the evidentiary record.

The Glasgow LFGTE Project – EKPC’s Agreement with the City of Glasgow

Part of the application concerns a landfill gas to energy (“LFGTE”) facility with a rated capacity of 1 megawatt (“MW”) or less that EKPC seeks to construct at the Glasgow Regional Landfill (“Glasgow Landfill”).¹ In support of the application, EKPC and Farmers submitted a Landfill Gas Purchase Agreement (“LGPA”) entered into by and between the city of Glasgow and EKPC on August 11, 2014.² Pursuant to the LGPA, the city of Glasgow, which operates the Glasgow Landfill, agrees to sell to EKPC all of the existing or future landfill gas produced and collected at the landfill facilities.³ The city of Glasgow will have the responsibility to maintain an active gas-collection system.⁴

EKPC, per the LGPA, will construct, operate, and maintain a LFGTE facility at or adjacent to the Glasgow Landfill and agrees to purchase all landfill gas produced and delivered to the LFGTE facility up to the design capacity of the facility.⁵ In the event that the Glasgow Landfill facilities recover more landfill gas than EKPC can use at the LFGTE facility, EKPC, at its option, is allowed to expand the LFGTE facility and has a right of refusal for the purchase of any additional landfill gas.⁶

Pursuant to the LGPA, “[a]ll Internal Revenue Code Section 29 Tax Credits or any other similar state, federal, or local credits or deductions available to landfill gas

¹ Application at paragraph 1.

² Application, Exhibit 13.

³ *Id.*

⁴ Joint Applicants’ response to Commission Staff’s First Request for Information (“Staff’s First Request”), Item 14.a.

⁵ Application, Exhibit 13 at 1-2. EKPC will lease from the city of Glasgow certain real estate in order to construct, operate, and maintain the facility.

⁶ *Id.* at 2. Each additional unit constructed by EKPC shall have a rated capacity of approximately 1 MW.

producers and arising from the” city of Glasgow’s production and sale of landfill gas from the landfill facilities are the property of the city of Glasgow.⁷ EKPC has “the right to all tax credits or any other similar state, federal, or local credits or deductions or payments arising from the generation and sale of electricity using Landfill Gas as a fuel.”⁸ Air emission credits associated with the production and sale of the landfill gas prior to the delivery point are the property of the city of Glasgow, while all emission credits associated with EKPC’s production of electricity and purchase of landfill gas after the delivery point are the property of EKPC.⁹

The Glasgow LFGTE Project – EKPC Agreement with Farmers

On August 13, 2014, EKPC and Farmers executed a Capacity, Energy and Environmental Attribute Purchase, Sale, and Interconnection Agreement (“Agreement”).¹⁰ Pursuant to the Agreement, EKPC, which will own, operate, and maintain the Glasgow LFGTE facility, will interconnect the facility to Farmers’ electric distribution system.¹¹ EKPC, at its own expense, is required to design, construct and interconnect the LFGTE facility with Farmers’ system.¹² EKPC has the sole duty and responsibility for the operation and maintenance of the LFGTE facility.¹³ Farmers indicates that it “is willing to permit EKPC to be interconnected and operate in parallel

⁷ *Id.* at 7.

⁸ *Id.*

⁹ *Id.*

¹⁰ Application, Exhibit 1.

¹¹ *Id.* at 1.

¹² *Id.* at 5.

¹³ *Id.*

with” Farmers’ system so that EKPC will be able to deliver to Farmers “such capacity, energy, and environmental attributes produced by the LFGTE facility.”¹⁴ Farmers’ intention is to serve approximately 1 MW of Farmers’ load “with a Land Fill Gas generator at the Glasgow Landfill.”¹⁵

Pursuant to Article 2.02 of the Agreement:

EKPC agrees that its LFGTE Facility will be installed and used at all times for the sole purpose of . . . [Farmers’] benefit, and capacity, energy and Environmental Attributes produced by said LFGTE Facility shall not be otherwise transmitted, shared, or resold by EKPC to any other person throughout the term(s) of this Agreement, unless consented to in advance by . . . [Farmers].¹⁶

Farmers is responsible, pursuant to the Agreement, for the design and construction of the interconnection facilities.¹⁷ Farmers is also responsible for the operation and maintenance of the interconnection facilities.¹⁸

Pursuant to Article 5.01 of the Agreement:

Any capacity, energy, and environmental attributes purchased by . . . [Farmers] from EKPC from a resource other than the LFGTE Facility shall be metered and accounted for separately from capacity, energy and Environmental Attributes delivered and sold hereunder to . . . [Farmer] by EKPC, and shall be purchased in accordance with tariffs, rules, and regulations established by EKPC as applicable to all members of EKPC and approved by the Kentucky Public Service Commission.¹⁹

¹⁴ *Id.* at 1.

¹⁵ Joint Applicants’ response to Staff’s First Request, Item 3.

¹⁶ Application, Exhibit 1 at 4.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 7.

During periods in which the LFGTE facility is experiencing a planned or unplanned outage, EKPC will provide Farmers with energy as needed through the Wholesale Power Contract.²⁰

The EKPC Board of Directors approved Farmers' request for the utilization of Amendment No. 3 of the Wholesale Power Contract for the proposed LFGTE generator on June 10, 2013.²¹ The Farmers' Board of Directors approved the Agreement on August 13, 2014.²²

Amendment No. 3 to Wholesale Power Contract Between EKPC and Farmers

EKPC and Farmers are parties to a Wholesale Power Contract dated October 1, 1964.²³ Pursuant to the Wholesale Power Contract, EKPC shall sell and deliver to Farmers, and Farmers shall purchase and receive from EKPC, all electric power and energy which shall be required to serve Farmers' load, including all electric power and energy required for the operation of Farmers' system.²⁴ By an agreement dated October 23, 2003 ("Amendment No. 3"), EKPC and Farmers amended the Wholesale Power Contract to provide Farmers with the following option.

[Farmers] shall have the option, from time to time, with notice to . . . [EKPC], to receive electric power and energy, from persons other than [EKPC], or from facilities owned or leased by . . . [Farmers], provided that the aggregate amount of all members'²⁵ elections (measured in megawatts in 15-

²⁰ Joint Applicants' response to Staff's First Request, Items 10 and 11.

²¹ Application, Exhibit 3.

²² Application, Exhibit 2.

²³ Joint Applicants' response to Staff's First Request, Item 1.

²⁴ *Id.*

²⁵ The term "all members" referenced in Amendment No. 3 means all Rural Electric Cooperative Corporation Member-Owners served by EKPC under the Wholesale Power Contract.

minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of . . . [EKPC's] coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by . . . [Farmers] from time to time, as provided herein and further provided that no [EKPC] Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve month periods immediately preceding any election by [Farmers] from time to time, as provided herein²⁶

DISCUSSION

KRS 278.020 requires a utility to obtain a certificate of public convenience and necessity ("CPCN") prior to constructing any new facility that is intended to furnish regulated utility services to the public. However, this statute also provides an exemption from the certificate requirement if the new facility is an ordinary extension of existing systems in the usual course of business. Commission regulation 807 KAR 5:001, Section 15(3), defines that exemption as follows:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

Based on the application and the responses to requests for information, and being otherwise sufficiently advised, the Commission finds that the Glasgow LFGTE

²⁶ Joint Applicants' response to Staff's First Request, Item 1 at 4.

Project satisfies the criteria set forth in 807 KAR 5:001, Section 15(3), to be classified as an ordinary extension in the usual course of business. With an investment requirement of approximately \$ [REDACTED],²⁷ and given that EKPC's net plant investment as of December 31, 2013, was approximately \$2.67 billion,²⁸ the cost to construct and operate the facility will not materially affect EKPC's financial condition.

Fuel costs for the facility will be incurred by EKPC and accounted for on EKPC's books separately in a general ledger subaccount 547040, Fuel, Other Power Generation, Methane Gas.²⁹ EKPC will recover the cost of the associated fuel directly from Farmers.³⁰ "All expenses associated with the purchase of gas from Glasgow will be recovered through the contract."³¹ Fuel purchased for the Glasgow facility, and the associated megawatt hours sold, will not be included in EKPC's fuel adjustment clause calculation.³²

The price being charged to Farmers by EKPC fully recovers the cost of production from the Glasgow LFGTE Facility, the purchase of capacity, energy and environmental attributes and will not result in subsidization of Farmers by EKPC's other

²⁷ Application at paragraph 11(b). Joint Applicants filed a petition for confidential treatment of the investment required. The Commission issued an Order on Mar. 30, 2015 denying the petition. Pursuant to KRS 278.400 and 807 KAR 5:001, Section 13(5), when confidentiality is denied, "the material shall not be placed in the public record for the time period permitted pursuant to KRS 278.410 to bring an action for review."

²⁸ See EKPC's 2013 Financial Report on file with the Commission.

²⁹ Joint Applicants' response to Commission Staff's Third Request ("Staff's Third Request"), Item 1.a.

³⁰ *Id.*, Items 1.b. and 2.

³¹ Joint Applicants' response to Staff's First Request, Item 12.

³² Joint Applicants' response to Staff's Third Request, Item 1.b.

members.³³ EKPC will recover all costs from Farmers associated with the design, construction, and interconnection of the proposed LFGTE project through the monthly capacity charge. Under the Agreement, the cost of capacity, energy, and environmental attributes sold to Farmers are priced below the cost of the bundled wholesale rate charge by EKPC to Farmers under the Wholesale Power Contract. The Agreement between EKPC and Farmers also incorporates a Times Interest Earned Ratio component in the determination of the charges to Farmers.³⁴ Farmers is obligated to pay the cost of the LFGTE facility if the facility is unable to generate electricity on a temporary or permanent basis.³⁵ EKPC's construction and operation of the facility will not result in an increase in EKPC's wholesale power rates.

In addition, the Commission finds that the facility will not conflict with the existing certificates or service of other utilities under the Commission's jurisdiction. Therefore, the project will not create wasteful duplication of plant, equipment, property, or facilities.

On five prior occasions, the Commission has granted similar declarations, finding that relatively small-sized LFGTE projects are exempt from the requirements for

³³ *Id.*, Item 3.b.

³⁴ *Id.*, Item 3.a.

³⁵ Joint Applicants' response to Staff's First Request, Item 14.d.

the CPCN under KRS 278.020(1).³⁶ These LFGTE facilities, which are owned by EKPC, are system resources for EKPC and their capacity, energy and environmental attributes are shared by all of EKPC's member-owners. The pending application differs from the five prior applications in that this application is the first request for EKPC to sell LFGTE power and energy under a special contract to a single member.³⁷ EKPC and Farmers rely upon Amendment No. 3 as the foundation for this request.

Amendment No. 3 provides Farmers with an option, after notice to EKPC and subject to several conditions, to receive electric power and energy outside of the Wholesale Power Contract in two instances. Farmers may pursue this option when it seeks to receive electric power and energy from persons other than EKPC. Additionally, Farmers may pursue this option when it seeks to receive electric power and energy from facilities owned or leased by Farmers. The transaction for which EKPC and Farmers seek approval does not fall within the scope of either of the foregoing.³⁸

³⁶ Case No. 2007-00509, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Maysville-Mason County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 26, 2008); Case No. 2006-00033, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Pendleton County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 10, 2006); Case No. 2005-00164, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Hardin County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC July 8, 2005); Case No. 2002-00474, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Green Valley and Laurel Ridge Landfill Gas to Energy Projects to be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 3, 2003); and Case No. 2002-00352, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring Landfill Gas to Energy Projects to be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Dec. 18, 2002).

³⁷ Joint Applicants' response to Staff's First Request, Item 4.

³⁸ Joint Applicants' response to Staff's First Request, Item 2, and Joint Applicants' response to Commission Staff's Second Request for Information ("Staff's Second Request"), Item 1.

The Commission notes that EKPC's Board of Directors approved Farmers' request to utilize Amendment No. 3 in order for Farmers to make an agreement with EKPC to purchase from EKPC outside of the Wholesale Power Contract through which Farmers already purchases power.³⁹ Joint Applicants state that Amendment No. 3 was utilized because the power purchases from the Glasgow LFGTE facility would be outside of the Wholesale Power Contract. While the Agreement relates to a generating resource that is arguably outside of the Wholesale Power Contract, that generating resource nonetheless is owned by EKPC and technically does not fall within the scope of Amendment No. 3. Thus, while EKPC and Farmers have not formally modified Amendment No. 3 by revising the language of Amendment No. 3, they have, by agreement, enlarged the scope of Amendment No. 3 to allow Farmers and EKPC to enter into the Agreement with each other.

IT IS THEREFORE ORDERED that:

1. The Glasgow LFGTE Project is properly classified as an ordinary extension of existing systems in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), is not required for its construction.

2. The August 13, 2014 Capacity, Energy and Environmental Attribute Purchase, Sale, and Interconnection Agreement by and between EKPC and Farmers is approved.

³⁹ Application, Exhibit 3; and Joint Applicants' response to Staff's Second Request, Item 1.

By the Commission

ENTERED
APR 02 2015
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Stephanie Bell for TD

Executive Director

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*Farmers R.E.C.C.
504 South Broadway
P. O. Box 1298
Glasgow, KY 42141-1298

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504