COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR APPROVAL OF A CONTRACT FOR ELECTRIC SERVICE UNDER TARIFF E.D.R. | ) ) ) ) | CASE NO. 2018-00378 |

## ORDER

On November 30, 2018, Kentucky Power Company (Kentucky Power) filed an application requesting approval of a Contract for Electric Service between Kentucky Power and Big Run Power Producers LLC (Special Contract). The terms of the Special Contract are developed pursuant to Kentucky Power's Tariff E.D.R. – Economic Development Rider tariff. Kentucky Power also sought a deviation from Finding Number 5 of the Commission's September 24, 1990 Order in Administrative Case No. 327 (Admin. 327),[1] which determined that economic development rates (EDRs) should only be offered if excess capacity is available during each year of the contract period.

Pursuant to the Commission's Order of December 19, 2018, a procedural schedule was established for the processing of this matter. The procedural schedule set forth, among other things, a deadline for intervention requests and two rounds of discovery upon Kentucky Power's application. There are no intervenors in this matter and Kentucky Power filed responses to two data requests propounded by Commission Staff. The matter

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

now stands submitted to the Commission for a decision based upon the evidentiary record.

BACKGROUND

Kentucky Power states that its Tariff E.D.R. was approved by the Commission in Case No. 2014-00336.[2] Kentucky Power's Tariff E.D.R. is available to new and existing customers that are served, or eligible to be served, under either Kentucky Power's Tariff L.G.S – Large General Service, or Tariff I.G.S. – Industrial General Service. Kentucky Power's Tariff E.D.R. offers an Incremental Billing Demand Discount (IBDD) to customers meeting the following eligibility requirements of Tariff E.D.R.: a new customer must have at least a monthly maximum billing demand of 500 kilowatts (kW), while an existing customer must increase its monthly maximum billing demand by at least 500 kW, and the customer also must demonstrate that the qualifying new or increased electrical demand would be located outside of Kentucky Power's service territory but for the discount incentives provided by Tariff E.D.R.[3]

According to the application, Big Run Power Producers LLC (Big Run) is a North Carolina limited liability company with offices near Ashland, Kentucky, and in San Francisco, California.[4] Big Run currently operates a gas flaring operation at a landfill near

[2] Case No. 2014-00336, *Application of Kentucky Power Company For (1) Approval of an Economic Development Rider; (2) For Any Required Deviation from the Commission's Order in Administrative Case No. 327; and (3) All Other Required Approvals and Relief* (Ky. PSC Mar. 4, 2015).

[3] Kentucky Power Company Tariff E.D.R. (Economic Development Rider) P.S.C. KY. NO. 11 ORIGINAL SHEET NO. 37-1 (Effective Jan. 19, 2018).

[4] Application at 2.

Ashland, Kentucky (Ashland Landfill)[5] and intends to install new operations and facilities that will compress and process landfill emissions into renewable natural gas.[6] Although the Ashland Landfill is owned and operated by River Cities Disposal LLC, Big Run purchased the right to process the landfill gas emissions and currently flares the gas emissions.[7] Big Run intends to expand and convert its existing gas flaring operations by investing approximately $40 million in connection with a new renewable natural gas operation; approximately $10 million in construction labor has been locally sourced.[8]

Big Run's expansion and conversion of its operations will involve the construction of a new landfill gas upgrading and conditioning plant which will process up to 4,000 standard cubic feet per minute of landfill gas into biogas, or renewable natural gas, which will be sold into the Columbia Gulf Transmission interstate pipeline for delivery into transportation fuel markets.[9] The new facility will be separate from and will replace the existing flaring of methane by Big Run at the Ashland Landfill.[10] A new meter will be installed and a new account established for Big Run's gas upgrading and conditioning plant.[11] Big Run's new plant is expected to have a monthly demand of approximately

---

[5] Big Run's gas flaring operations is currently being served by Kentucky Power under Tariff L.G.S. – Large General Service and has an average monthly billing demand of approximately 92 kW. *See* Application at 3.

[6] Application at 2.

[7] Application at 3.

[8] Application at 2. *See also* Application, Exhibit 2 at 3.

[9] Application at 3. *See also* Application, Exhibit 2 at 2. According to Big Run, the biogas that will be produced is a high value, renewable fuel that is indistinguishable from pipeline quality natural gas and can be sold at a premium in the transportation fuel market.

[10] Application at 3.

[11] *Id.*

3,600 kW with a 90 percent load factor.[12] The new gas plant would create seven new highly skilled and well-paying jobs.[13]

Kentucky Power states that the Special Contract includes its Tariff E.D.R. provisions to govern service to Big Run's gas upgrading and processing plant.[14] Kentucky Power notes that Big Run's new gas plant will be billed under Tariff I.G.S. – Industrial General Service and that the term of the Special Contract is 10 years, with Big Run being eligible for the IBDD during the first five years of the contract.[15] Big Run states that it would not have chosen to expand in Kentucky Power's service territory in the absence of the discount provided by Tariff E.D.R.[16]

Kentucky Power points out that the Special Contract is in compliance with the terms of its Tariff E.D.R. Kentucky Power notes that the 3.6 megawatts (MW) of total new load served under the Special Contract will not exceed the Tariff E.D.R. limit of 250 MW.[17] Kentucky Power also notes that Big Run's new qualifying incremental demand resides in new and separate facilities that will be metered on a separate meter according to Tariff I.G.S. and that Big Run's incremental billing demand will be calculated based upon that facility's meter readings, which are all consistent with the terms of Tariff E.D.R.[18] Kentucky Power further states that the Special Contract comports with the provisions of

---

[12] *Id.*

[13] Application, Exhibit 2 at 1, 3.

[14] Application at 4.

[15] *Id.*

[16] Application, Exhibit 2 at 2.

[17] Application at 5.

[18] *Id.*

its Tariff E.D.R. because Big Run's monthly demand as a result of its expanded operations will exceed 500 kW.[19] Lastly, Kentucky Power avers that the total contract period as well as the discount rates are consistent with the terms of Tariff E.D.R.[20]

Kentucky Power maintains that the Special Contract comports with the relevant requirements of an EDR contract as set forth in Admin. 327 in the following manner.

- Finding Number 3[21] requires that EDRs should be implemented by a special contract negotiated between a utility and its large commercial and industrial customers – the Special Contract is a negotiated agreement between Kentucky Power and one of its large commercial/industrial customers.

- Finding Number 4 requires that an EDR contract should specify all terms and conditions of service – the Special Contract specifies all terms and conditions of service and provides for, among other things, a five-year IBDD beginning with a 50 percent discount of the demand charge in the first year with the discount rate declining by 10 percent in each of the subsequent four discount years. The Special Contract also provides that Kentucky Power will recover from Big Run any fixed costs associated with any necessary upgrades to the distribution facilities to serve Big Run over the life of the contract. The Special Contract also sets forth the contract demand for Big Run at 3,600 kW and provides for the conditional waiver of the minimum demand charge for the first 36 months of the Special Contract.

- Finding Number 5 requires that EDRs should only be offered during periods of excess capacity – Kentucky Power states that it currently has a surplus capacity of over 200 MW and anticipates that surplus to remain through the end of the 2021/2022 PJM planning year. However, based on the potential addition of significant new load in the next few years, Kentucky Power states that it may not have sufficient capacity to serve its then-existing load beginning in the 2022/2023 PJM planning year, which begins June 1, 2022. Kentucky Power will address this shortfall in its next integrated resource plan filing in December 2019. Kentucky Power also states that its Tariff E.D.R. provides for the ability make a specific market purchase if needed and any such cost will reduce on a dollar-for-dollar basis Big Run's demand discount. Kentucky Power avers that it does not anticipate having to make any market purchases to cover the new

---

[19] *Id.*

[20] *Id.*

[21] Findings 1 and 2 merely sets forth the reasons for utilities to offer EDRs and to have the flexibility in designing EDRs to meet the needs of their customers and service areas.

Big Run load, which Kentucky Power characterizes as relatively modest. Nonetheless, Kentucky Power requests a deviation from the strict requirement of Finding Number 5 with respect to the instant Special Contract.

- Finding Number 6 requires a demonstration that the discounted rate exceeds the marginal cost associated with serving the customer – Kentucky Power provided a 2018 marginal cost analysis which showed that the offered discount rate exceeds the marginal costs associated with serving Big Run by $3.7 million over the five-year discount period.

- Finding Numbers 7 and 11 require the filing of an annual EDR report detailing the revenues received from EDR customers and the marginal costs associated with serving EDR customers – Kentucky Power states that it commits to filing such reports by March 31 each year, which is the same date as its annual filing for the Kentucky Economic Development Surcharge.

- Finding 8 requires Kentucky Power to demonstrate in rate proceedings a detailed cost-of-service analysis that nonparticipating customers are not adversely affected by EDR customers – Kentucky Power states that it will commit to this requirement in its future rate case applications.

- Finding 9 requires that all EDR contracts should include a provision for the recovery of EDR customer-specific fixed costs over the life of the contract – Kentucky Power states that the Special Contract contains such a provision.

- Finding 10 states that specific job creation and capital investment requirements should not be imposed on EDR customers even though a major objective of EDRs are job creation and capital investment – Kentucky Power states that the Special Contract does not establish a minimum job creation requirement nor does it establish a specific capital investment requirement.

- Finding 12 requires that, for existing industrial customers, an EDR should apply only to new load that exceeds an incremental usage level above the normalized base load and that the minimum incremental usage level and normalized base load for the existing customer be identified and justified – Kentucky Power states that its Tariff E.D.R. sets the requisite incremental monthly billing demand increase at 500 kW and that Big Run's 3,600 kW demand level under the Special Contract exceeds the minimum incremental increase required under Tariff E.D.R.

- Finding 14[22] requires the term of the contract to be twice the length of the discount period, which period should not exceed five years – Kentucky Power

[22] Finding 13 relates to retaining the load of an existing customer experiencing financial hardship and is not applicable to this Special Contract.

states that the Special Contract has a term of 10 years with a discount period of five years, both of which are in compliance with Finding 14.

- Finding 17[23] requires the submission of comments from the Kentucky Cabinet for Economic Development or other interested parties – Kentucky Power states that it provided copies of the instant application to the Kentucky Cabinet for Economic Development and the Office of the Attorney General upon the filing of the application with the Commission.

Kentucky Power states that it seeks approval of the instant Special Contract through a formal application and docketed matter, given that the Special Contract is the company's first special contract under its Tariff E.D.R. Kentucky Power requests confirmation that any future EDR contract may be submitted by Kentucky Power either as a formal case or through the Commission's electronic tariff filing system, which would be consistent with the Commission's decision in Case No. 2016-00316.[24] Kentucky Power seeks further confirmation that, for all subsequent EDR contracts submitted through the electronic tariff filing system, the Commission will establish a formal proceeding If the Commission finds that further investigation is needed to determine the reasonableness of a proposed EDR contract.

## DISCUSSION

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the proposed Special Contract is reasonable under the particular facts presented. The Commission further finds that the Special Contract substantially complies with the provisions of Kentucky Power's Tariff E.D.R. and the EDR requirements

[23] Findings 15 and 16 relate to gas utilities and is not applicable to this Special Contract. The last finding, Finding 18, addresses then-existing EDR contracts by certain other utilities and did not implicate Kentucky Power.

[24] Case No. 2016-00316, *Application of East Kentucky Power Cooperative, Inc. for Approval of an Industrial Power Agreement with Economic Development Rider* (Ky. PSC Nov. 21, 2016).

established in Admin. 327. Regarding Kentucky Power's request for a deviation from the following requirements of Finding 5 of Admin. 327: "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 such year of the contract period will not cause them to fall below a reserve margin that is considered essential for system reliability," the Commission finds that Kentucky Power's request is reasonable and should be granted. We note that for the first approximately three and a half years of the discount period Kentucky Power will have between 218 and 240 MW of excess capacity.[25] Kentucky Power projects that it will have a capacity deficit ranging from 151 MW to 162 MW beginning with the 2022/2023 PJM planning year through the 2028/2029 PJM planning year.[26] We note that the discount period would end around the middle of 2024 based upon our approval of the Special Contract at this time; thus, Kentucky Power would have sufficient capacity during the majority of the five-year discount period, with reserve margin levels that will be 23.27 percent to 25.73 percent above the PJM required installed reserve margin.[27] It appears that anticipated termination of the Rockport lease agreement (and the associated 392 MW) in 2022 is the primary factor in causing Kentucky Power to become short in capacity at the end of 2022.[28] Kentucky Power asserts that its capacity shortfall will be addressed in its integrated resource plan (IRP) filing later this year. We further note that Kentucky Power's average forecasted load from 2022 through 2029, or during the period of time that Kentucky Power is projected to be in a capacity deficit, is

---

[25] Kentucky Power's Response to Commission Staff's First Request for Information, Item 1.

[26] *Id.*

[27] *Id.*

[28] *Id.*

approximately 1,101 MW.[29] Big Run's capacity demand of 3.6 MW accounts for only 0.3 percent of Kentucky Power's total load obligation over this time frame.

Given that Kentucky Power will be addressing its future capacity shortfall in its upcoming IRP filing and that the Big Run load would not have caused or exacerbated Kentucky Power's future capacity deficit, the Commission finds that Kentucky Power's request to deviate from the requirement that it have sufficient capacity before offering the EDR discount to Big Run to be reasonable. Lastly, we note that Kentucky Power's Tariff E.D.R. includes a provision that permits Kentucky Power to purchase capacity on the E.D.R. customer's behalf when the company does not have sufficient generating capacity.[30] The provision provides that costs associated with the capacity procured on behalf of the E.D.R. customer will reduce on a dollar-for-dollar basis the customer's demand discount.[31] To the extent Kentucky Power is required to purchase capacity for Big Run, those costs would be borne by Big Run.

The Commission confirms that any future EDR contracts entered into by Kentucky Power can be submitted via the Commission's electronic tariff filing system and that the Commission will establish a formal proceeding if further investigation is needed to determine the reasonableness of any EDR contract submitted through the electronic tariff filing system.

---

[29] *Id.*

[30] Kentucky Power Company Tariff E.D.R. (Economic Development Rider) P.S.C. KY. NO. 11 ORIGINAL SHEET NO. 37-1 (Effective Jan. 19, 2018).

[31] *Id.*

IT IS THEREFORE ORDERED that:

1. The Special Contract between Kentucky Power and Big Run is approved effective August 1, 2019.[32]

2. By March 31 of each year, Kentucky Power shall file an annual report with the Commission detailing, for the prior calendar year, revenues received from Big Run and the marginal costs associated with serving Big Run throughout the term of the Special Contract.

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

4. Kentucky Power 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 this Order upon Kentucky Power's showing of good cause for such extension.

[32] The Special Contract provides that the effective date of the contract will be the first day of the first billing month following Commission approval of the Special Contract.

7. Kentucky Power's request for a deviation from the requirements of Finding 5 of the September 24, 1990 Order in Admin. 327 is granted.

8. Kentucky Power's request for confirmation that future EDR special contracts may be filed through the Commission's electronic tariff filing system is confirmed. The Commission further confirms that a formal proceeding will be established if further investigation is needed to determine the reasonableness of any EDR special contract submitted through the electronic tariff filing system.

9. Within 20 days of the date of this Order, Kentucky Power shall file with the Commission, using the Commission's electronic Tariff Filing System, its Special Contract as approved herein.

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

By the Commission

ENTERED

JUL 09 2019

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Gwen R. Pinson

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2018-00378 DATED JUL 0 9 2019

# ECONOMIC DEVELOPMENT RATE CONTRACT REPORT

UTILITY: ______________________________ YEAR: __________

| | Current Reporting PERIOD | CUMULATIVE |
|---|---|---|
| I) 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 | ____________kW |
| Existing Customers: | ________kW | ____________kW |
| New Customers: | ________kW | ____________kW |
| (B) ENERGY/CONSUMPTION | | |
| Total: | ________kWh | ____________kWh |
| Existing Customers: | ________kWh | ____________kWh |
| New Customers: | ________kWh | ____________kWh |

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO  43216

*John W. Pollom
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY  40602-0634

*Kentucky Power Company
855 Central Avenue, Suite 200
Ashland, KY  41101

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY  40602-0634

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY  40602-0634