

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	CASE NO.
CONTRACT FOR ELECTRIC SERVICE WITH MC)	2019-00124
MINING, LLC)	

ORDER

On May 1, 2019, Kentucky Power (Kentucky Power) filed an application requesting approval of a contract (Special Contract) for electric service between Kentucky Power and MC Mining, LLC (MC Mining). The terms of the contract are developed pursuant to Kentucky Power's Tariff C.S. – Coal (Contract Service – Coal Power), which is intended to help revive the economy of Kentucky Power's service territory and the eastern Kentucky region.

Pursuant to the Commission's Order of May 14, 2019, 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 discovery upon Kentucky Power's application. There are no intervenors in this matter, and Kentucky Power filed responses to one round of data requests propounded by Commission Staff.

On August 7, 2019, Kentucky Power filed a motion requesting that the case be submitted for a decision on the written record, noting that there are no intervenors in this proceeding and the time for all scheduled events under the existing procedural schedule has expired. The matter now stands submitted to the Commission for a decision based upon the evidentiary record.

BACKGROUND

Kentucky Power states that its Tariff C.S. – Coal was approved by the Commission in Case No. 2017-00099, on a temporary basis with an expiration date of December 31, 2017.¹ Kentucky Power also states that Tariff C.S. – Coal has been extended twice by the Commission in Case Nos. 2017-00179 and 2018-00426.² Currently, Tariff C.S. – Coal is set to expire on December 31, 2019. Kentucky Power points out that Tariff C.S. – Coal provides a framework for it to work with customers engaged in the extraction or processing of coal to enter into a special contract agreed to by Kentucky Power and the customer for the purpose of encouraging these customers to open new facilities or expand existing facilities.³

Kentucky Power's Tariff C.S. – Coal is available to customers engaged in the extraction or processing of coal.⁴ Tariff C.S. – Coal allows eligible customers to receive service from Kentucky Power pursuant to a contract in which the customer may receive limited exceptions to Kentucky Power's general tariff provisions. The contract will provide full disclosure of all rates, terms and conditions of service under Tariff C.S. – Coal, as well

¹ Case No. 2017-00099, *Application of Kentucky Power Company for (1) Authority to Amend Temporarily Tariff C.S. – I.R.P. And Tariff E.D.R.; (2) To Establish Temporarily Tariff C.S. – Coal; (3) For Leave to Deviate From The Notice of Requirements Of 807 KAR 5:011, Section 8; (4) For Related Accounting Relief; And 5) For All Other Required Approvals and Relief* at 3 (Ky. PSC Feb. 23, 2017).

² Application at 3. Case No. 2017-00179, *Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2017 Environmental Compliance Plan; (3) An Order Approving its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief* (Ky. PSC Jan. 18, 2018); Case No. 2018-00426, *Tariff Filing of Kentucky Power Company for Proposed Changes to Tariff Sheet 11-2; Tariff Sheet 12-1; and Tariff Sheet 37-6* (Ky. PSC Feb. 12, 2019).

³ Direct Testimony of Ranie K. Wohnhas (Wohnhas Testimony) at 4.

⁴ Kentucky Power Company Tariff C.S.-Coal (Contract Service – Coal Power) P.S.C. KY. NO. 11 1ST REVISED SHEET NO. 11-1 (Effective June 28, 2018).

as any and all agreements between Kentucky Power and the customer.⁵ Terms and conditions of the contract may be designated as confidential.⁶ Qualifying customers would be required to contract for at least 1,000 kW of capacity, with a 60,000-kW limit for all customers taking service under the tariff.⁷ Kentucky Power notes that, under Tariff C.S. – Coal, it may enter into an economic development-based contract for electric service with a new customer engaged in the extraction or processing of coal or an existing coal extraction and processing customer with a load expansion.⁸

According to the application, MC Mining is a Delaware limited liability company and is engaged in the extraction and processing of coal near Pikeville, Kentucky.⁹ MC Mining currently owns Excel Mine No. 4 located in Pikeville, Pike County, Kentucky.¹⁰ Excel Mining, LLC (Excel Mining), currently operates Excel Mine No. 4.¹¹ Alliance Resource Partners LP (Alliance) owns both MC Mining and Excel Mining.¹² MC Mining intends to open a new mine, Excel Mine No. 5, in Pike County in Kentucky Power’s service territory.¹³ The new mine represents a transition of MC Mining’s existing Pike County operation as the currently mined reserves are projected to be depleted in 2020.¹⁴

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; *See also* Case No. 2017-00099.

⁸ Application at 4.

⁹ Application at 4.

¹⁰ Wohnhas Testimony at 5.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Kentucky Power states that the new mine constitutes a load expansion under the terms of Kentucky Power's Tariff C.S. – Coal.¹⁵ Alliance will invest \$45 million to \$50 million in the development of the new mine to begin mining operations of an estimated 15 million tons of coal reserves controlled by MC Mining in 2020.¹⁶ The annual production capacity of the new mine is expected to be approximately 1.3 million tons of high BTU, low-sulfur coal.¹⁷ The existing processing plant will serve the new mine,¹⁸ and a new six-mile continuous conveyor belt will transport the coal from the new mine to the existing processing plant.¹⁹ MC Mining anticipates transitioning its current 211 employees to the new mine.²⁰ MC Mining will also be adding up to six new employees to oversee the operation of the continuous conveyor belt.²¹

Kentucky Power states that the Special Contract to provide retail electric service to MC Mining complies with the terms of Tariff C.S. – Coal. Kentucky Power notes that the Special Contract provides that MC Mining will take firm service under Kentucky Power's Tariff I.G.S. – Industrial General Service and interruptible service under the company's Tariff Contract Service – Interruptible Power tariff (Tariff C.S. - I.R.P), as modified by the interruptible service provisions of the Special Contract,²² and that the term

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Wohnhas Testimony at 6.

¹⁹ *Id.*

²⁰ Testimony at 6.

²¹ *Id.*

²² Application at 5.

of the Special Contract is approximately 14 years extending to no later than May 31, 2033,²³ with Kentucky Power providing a Monthly Economic Development Credit to MC Mining.²⁴ The monthly credit is designed to encourage the \$45 million to \$50 million capital investment needed for the commencement of operations of Excel Mine No. 5.²⁵ The credits under the Special Contract will also permit MC Mining to have a favorable market position when selling the coal and a favorable price to help offset the upfront costs of constructing the new mine.²⁶ The record also reflects that absent the monthly credits provided under the Special Contract, MC Mining would experience higher electrical costs, which could result in a higher risk of the new mine closing in the future.²⁷ The Special Contract allows Kentucky Power to suspend the payment of the monthly credits if the new mine is not completed and placed in operation by January 1, 2021, and requires MC Mining to repay any credits received if it suspends development of the new mine.²⁸ Pursuant to the terms of the Special Contract, Alliance has agreed to guarantee the Special Contract's financial terms on behalf of MC Mining.²⁹ Lastly, Kentucky Power states that the rates to be paid by MC Mining under the Special Contract, including the impact of the monthly credit, cover Kentucky Power's variable costs and make a

²³ Wohnhas Testimony at 8.

²⁴ Application at 6.

²⁵ Wohnhas Testimony at 8.

²⁶ Kentucky Power's Response to Commission Staff's First Request for Information (Response), Item 1.

²⁷ *Id.*

²⁸ Wohnhas Testimony at 12.

²⁹ Wohnhas Testimony at 13.

contribution towards the utility's fixed cost of service and that Kentucky Power's other ratepayers will not be adversely affected by the terms of the Special Contract.³⁰

Kentucky Power notes that under the Special Contract the Total Capacity Reservation is 9,000 kW,³¹ which satisfies Tariff C.S. – Coal's capacity requirement of at least 1,000 kW. MC Mining has designated the first 2,500 kW of the Total Capacity Reservation as the Firm Service Capacity Reservation, which is not subject to interruption as specified in Kentucky Power's Tariff C.S. – I.R.P.³² The remaining 6,500 kW has been designated by MC Mining as interruptible pursuant to Kentucky Power's Tariff C.S. – I.R.P.³³

Kentucky Power notes that under the Special Contract, MC Mining has committed to supporting Kentucky Power in its economic development and diversification efforts in eastern Kentucky in exchange for the Monthly Economic Development Credit.³⁴

Kentucky Power states that it seeks approval of the instant Special Contract pursuant to the terms of its Tariff C.S. – Coal and, thereby, the Special Contract sets out rates, charges, or conditions not currently included in Kentucky Power's general tariffs.

DISCUSSION

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the proposed Special Contract is reasonable under the particular

³⁰ *Id.*

³¹ Application at 5.

³² *Id.*

³³ Application at 5.

³⁴ Application at 6.

facts presented and complies with the provisions of Kentucky Power's Tariff C.S. – Coal. The Commission further finds that the Monthly Economic Credit to be received by MC Mining in exchange for constructing and operating the new Excel Mine No. 5 and for supporting Kentucky Power's economic development and diversification efforts in eastern Kentucky is reasonable under the particular facts presented.

We note that the rates paid by MC Mining under the Special Contract, even when taking into account the Monthly Economic Credits, would cover Kentucky Power's variable costs, make a contribution towards Kentucky Power's fixed costs, and will not adversely affect the rates paid by Kentucky Power's other customers. We further note that the Special Contract will permit MC Mining to continue its coal extraction at the new Excel Mine No. 5, which allows for the continued employment of the current 211 employees and create up to six additional positions. The purpose of the Monthly Economic Credits to MC Mining under the Special Contract is to provide a means to seed and secure the investment needed for MC Mining to open the new mine and for it to build additional infrastructure.³⁵ Once MC Mining places the new mine into commercial operation, it will be deemed to have fulfilled its obligations to Kentucky Power to receive the Monthly Economic Credits under the Special Contract.³⁶ MC Mining will be deemed to have fulfilled its obligations of assisting Kentucky Power in promoting economic development in eastern Kentucky under the Special Contract, when, at the direction of Kentucky Power, MC Mining participates in interacting with potential new customers of

³⁵ Response at Item 5.

³⁶ *Id.*

Kentucky Power looking to locate in eastern Kentucky.³⁷ Specifically, MC Mining has agreed to work with Kentucky Power to raise the profile of the eastern Kentucky region, promote the coal industry, promote economic growth, and attract new investment to the region.

The Commission commends Kentucky Power for its efforts to secure the continued employment of over 200 workers and gain MC Mining as an ally in promoting economic development in eastern Kentucky.

Lastly, the Commission finds that Kentucky Power's motion for a decision on the record is reasonable and should be granted.

IT IS THEREFORE ORDERED that:

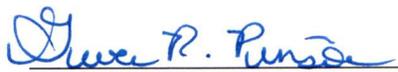
1. The Special Contract between Kentucky Power and MC Mining is approved as of the date of this Order.
2. Kentucky Power's motion to submit the matter for a decision on the record is granted.
3. Within 20 days of the date of this Order, Kentucky Power shall file with the Commission, using the Commission's electronic Tariff Filing System, its Special Contract as approved herein.
4. This case is hereby closed and removed from the Commission's docket.

³⁷ Response at Item 2.

By the Commission

ENTERED
AUG 23 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00124

*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