COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS ELECTRIC CORPORATION AND MEADE COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION FOR (1) APPROVAL OF CONTRACTS FOR ELECTRIC SERVICE WITH NUCOR CORPORATION; AND (2) APPROVAL OF TARIFF	)))))))	CASE NO. 2019-00365

O R D E R

On October 18, 2019, Big Rivers Electric Corporation (BREC) and Meade County Rural Electric Cooperative Corporation (Meade County RECC) filed a joint application, pursuant to KRS 278.030, 278.040, 278.160, and 278.180; 807 KAR 5:001, Section 14; and 807 KAR 5:011, Sections 6, 9, and 13, seeking approval of a retail contract for electric service between Meade County RECC and Nucor Corporation (Nucor) and a wholesale letter agreement between BREC and Meade County RECC (collectively, Joint Applicants). Joint Applicants state that the retail and wholesale contracts are needed to facilitate the construction of a new Nucor facility in Brandenburg, Kentucky, that would significantly bolster the Commonwealth's economy. Lastly, BREC requests approval to establish a modified version of the Large Industrial Customer Expansion (LICX) tariff that was in effect from 2000 through 2014.

Pursuant to the Commission's October 30, 2019 Order, a procedural schedule was established for the processing of this matter. The procedural schedule provided for a deadline to file intervention requests, two rounds of discovery upon the joint application, and a deadline for requesting a formal hearing or requesting that the matter be submitted for a decision based on the record. The only intervenor in this matter is Nucor. Joint Applicants responded to two rounds of discovery requests propounded by Commission Staff. On January 17, 2020, Joint Applicants filed a notice indicating that a hearing is not necessary in this matter and that the case may be submitted for adjudication based on the existing record. The Commission finds that a hearing is not necessary for the public interest or the protection of substantive rights and, therefore, the matter will be decided based upon the existing evidentiary record.

BACKGROUND

According to the joint application, Nucor is the largest steel producer in the United States with facilities located throughout the country, including an existing facility in Ghent, Kentucky, served by East Kentucky Power Cooperative, Inc. Further, according to the joint application:

> In January 2019, Nucor announced that it was considering investing approximately $1.35 billion to build a state-of-the-art 1.5 million square foot plate mill on the Buttermilk Falls Site in Brandenburg, Kentucky, consisting of electric arc furnaces, continuous casters, rolling mills, air separation facilities, scrap and raw materials processing facilities, slag processing facilities, and other facilities incidental and necessary to the production of steel. The mill would produce cut-to-length, heat-treated and discrete steel plate in widths and thickness that are not currently offered by Nucor. The contemplated [f]acility, which Nucor aims to begin operating by 2022, is projected to have an annual capacity of approximately 1.2 million tons. Between the capital investment required to construct and operate the [f]acility and the costs associated with the planned of the existing Nucor facility in Ghent, Nucor intends to invest over $2 billion in Kentucky in the coming years.[1]

[1] Joint Application at paragraph 8.

Because Nucor's new facility would be highly energy intensive and because the assurance of long-term competitive power pricing is a critical factor in Nucor's decision to locate in Brandenburg, Kentucky, Joint Applicants state that they have engaged in extensive discussions with Nucor and have negotiated the proposed special contracts to ensure that Nucor proceeds with its intended investment in Kentucky. Completion of the Nucor facility would bring 400 direct jobs with an annual average wage of $72,000, over 2,600 indirect jobs across Kentucky, $189 million in annual labor income, $14.3 million in annual state and local tax revenues, and approximately $360 million in annual gross domestic product once the new mill is fully operational.[2] Specifically, an economic and fiscal impact analysis performed on behalf of BREC showed that of the statewide impact, about 2,800 direct and indirect jobs and $176 million in labor income will be concentrated in Meade County and the nearby Kentucky counties of Breckinridge, Bullitt, Hardin, and Jefferson.[3] Lastly, during the two-year construction of the new mill, the Nucor project will create 2,349 jobs; increase incomes annually by $151.1 million; and add approximately $216 million to Kentucky's annual gross domestic product.[4]

With respect to the retail agreement, joint applicants state that this agreement sets forth the terms and conditions of Meade County RECC's electric service to the new Nucor facility.[5] Throughout the contract term, Meade County RECC would purchase all of the electric power and energy for resale to the new Nucor mill from BREC.[6] The retail

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[2] *Id.*, Direct Testimony of Robert W. Berry (Berry Testimony) at 3 of 9.

[3] Berry Testimony, Berry-Ex. 4 at 2–3.

[4] Berry Testimony at 3 of 9.

[5] *Id.* at 4 of 9.

[6] *Id.*

agreement is structured into three phases. In the first phase, once all required conditions are met, Nucor will begin taking service under BREC's Large Industrial Customer tariff, or its successor, including all applicable riders and taxes, but without any retail adder from Meade County RECC.[7]

Once the new Nucor mill begins commercial operation, a different electric pricing structure commences. Under this second phase, Nucor would pay Meade County RECC a monthly demand charge as specified in the retail agreement for a certain increment of billing demand. Should Nucor exceed the threshold billing demand, Nucor would pay the greater of (1) the demand charge set forth in BREC's Large Industrial Customer tariff, or its successor; or (2) BREC's out-of-pocket costs associated with each megawatt of excess demand.[8] Under this second pricing structure phase, Nucor would also pay on-peak and off-peak energy charges for all energy consumed in accordance with the retail agreement.[9]

In the third and final rate structure phase, which runs until the end of the retail agreement term, the terms and conditions have been afforded confidential treatment at the request of the joint applicants.

In the event the retail agreement is terminated for any reason, Nucor is obligated to pay Meade County RECC a termination charge as set forth in the agreement. [10]

Joint Applicants state that the wholesale agreement reflects the concurrence with the terms of the retail agreement. The wholesale agreement also sets forth additional

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[7] *Id.* at 4–5 of 9.

[8] *Id.* at 5 of 9.

[9] *Id.*

[10] *Id.* at 7 of 9.

rights and obligations of BREC and Meade County RECC, the division of any partial payments made by Nucor, and BREC's agreement to hold Meade County RECC harmless for any costs Meade County RECC incurs relating to the retail agreement.

Joint Applicants assert that the retail and wholesale agreements are reasonable and that the electric pricing agreed to by the parties is expected to cover the incremental costs associated with the Nucor facility and to result in Nucor contributing to fixed costs throughout the contract term. BREC also states that the Nucor facility would represent the culmination of its successful efforts to fulfill the risk mitigation plan it implemented in 2012 after receiving the termination notice from the first of its two large smelter customers.[11] BREC indicated that over the past seven years, it has worked diligently to offset the loss of the smelter load, entering into off-system sales agreements with Nebraska municipalities, Kentucky Municipal Power Agency, and Owensboro Municipal Utilities in order to reduce cost for its native load customers.[12] Should Nucor complete its expansion in Meade County RECC's service territory, BREC states that it could offset the remaining smelter load loss through increased native load sales rather than shorter-term off-system sales, achieving the ultimate goal of the mitigation plan.[13]

BREC also requests approval to reinstate a modified version of the Large Industrial Customer Expansion Tariff (LICX Tariff). BREC states that the initial LICX Tariff was approved in Case No. 99-360[14] as a three-year pilot to address BREC's concern that the

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[11] *Id.* at 8 of 9.

[12] *Id.* at 8–9 of 9.

[13] *Id.* at 9 of 9.

[14] Case No. 99-360, *The Tariff Filing of Big Rivers Electric Corporation to Revise the Large Industrial Customer Rate Schedule* (Ky. PSC Feb. 25, 2000).

unexpectedly robust native load growth forecasted on its system would eventually exceed its system capacity.[15] BREC notes that in 2000 it had just emerged from bankruptcy and was concerned that it did not have the financial ability to withstand the volatility of the wholesale power market needed to serve its forecasted load increases.[16] The initial LICX Tariff prevented BREC from financial harm by allowing certain large industrial customers the option to pay market-based rates for power plus a per kW-month adder.[17] BREC indicates that the LICX Tariff was extended over the years until 2014 when BREC requested in Case No. 2013-00199[18] that the LICX Tariff be discontinued as a result of the loss of the significant smelter loads from BREC's system.[19]

Unlike the prior LICX Tariff which applied to new or expanded loads of 5 MW to 10 MW, the proposed LICX Tariff requires new or expanded load of at least 50 MW to qualify for the tariff.[20] Similar to its earlier version, the qualifying load under the proposed LICX Tariff would be supplied at the actual market prices of power purchased by BREC from third-party suppliers, including all capacity and energy charges, charges to compensate for transmission losses on third-party transmission systems, all transmission and ancillary services charges on third-party transmission systems paid by BREC to

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[15] Joint Application, Direct Testimony of Paul G. Smith (Smith Testimony) at 4 of 6.

[16] *Id.*

[17] *Id.*

[18] Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment of Rates Supported by Fully Forecasted Period* (Ky. PSC Apr. 25, 2014).

[19] Smith Testimony at 4 of 6.

[20] Smith Testimony at 5 of 6.

purchase the power and wheel it to BREC's transmission system, and all Midcontinent Independent System Operator expenses and costs.[21]

BREC states that the proposed LICX Tariff will also include an adder for all of the power purchased under the tariff.[22] BREC further states that the level of the adder would vary by customer on a case-by-case basis, which would allow BREC flexibility to propose a reasonable markup level associated with its market purchases based upon the individual circumstances surrounding the new or expanded load.[23]

BREC asserts that the proposed LICX Tariff is needed to facilitate Nucor's significant expansion into Kentucky.[24] BREC also asserts that the proposed LICX Tariff is structured to allow BREC to receive some compensation if load growth exceeds its available capacity.[25] In general, BREC states that the purpose of the proposed LICX Tariff is to provide a mechanism to offer reasonable rates to very large new or expanded load while protecting existing customers from potential cost risks associated with such new or expanded load.[26] BREC also points out that the modified LICX Tariff does not change the rates Nucor will pay, but does require customers that would be served via the LICX Tariff to negotiate a Special Contract Rate that is sufficient to ensure that the rate the new or expanded load pays provides a net benefit to existing customers.[27] Lastly,

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] Smith Testimony at 6 of 6.

[25] *Id.*

[26] BREC's response to Commission Staff's First Request for Information, Item 12.

[27] *Id.*

BREC maintains that reinstatement of the proposed LICX Tariff may help facilitate additional economic development in its service territory, noting that several companies have recently expressed interest in expanding in BREC's service territory.[28]

DISCUSSION

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the retail agreement and the wholesale agreement associated with the provision of electric service to the new Nucor steel plate mill in Brandenburg, Kentucky, is reasonable and should be approved. Based upon BREC's economic analysis, the contract rates to be paid by Nucor for the first ten years of the contract is expected to make a contribution to fixed costs and cover incremental costs associated with the special contracts. BREC states that it will use bilateral contracts and the energy associated with the solar purchase power agreements (PPAs) that are the subject of the pending Case No. 2020-00183 matter[29] as a hedge to mitigate against both price exposure and carbon exposure for BREC and Meade County RECC.[30] BREC further states that it will have a significant portion of the energy required by the Nucor plate mill facility under the retail contract hedged if the solar PPAs are approved in Case No. 2020-00183.[31] BREC also affirmatively states that it will seek hedges for the fixed pricing after

[28] Smith Testimony at 6 of 6.

[29] Case No. 2020-00183, *Electronic Application of Big Rivers Electric Corporation for Approval of Solar Power Contracts* (application filed June 24, 2020). The Commission notes that the solar purchase power agreements (PPAs) will be needed to provide electric service to the new Nucor facility under the Nucor retail electric service agreement and thus Nucor will be obligated to pay the contract price of those solar PPAs.

[30] BREC's and Meade County RECC's response to Commission Staff's Third Request for Information, Item 2.

[31] *Id.*

all regulatory approvals have been obtained.[32] The remaining term of the special contract is structured to provide a significant contribution to fixed costs on the BREC system as well as recovery of the incremental costs associated with the expansion. Moreover, BREC's economic analysis of the terms of the special contract results in significant benefits to the BREC system overall. The special contract would also enable BREC to attract a substantial load to its system and contribute to further the economic development of BREC's footprint and the nearby region. While the contract contains a specific provision that would allow BREC to recover certain of its investment in upgrading its facilities to provide service to the new Nucor facility, the record does not reflect whether Nucor is obligated under the terms of the contract to pay all of the fixed costs incurred to serve the new plate mill facility, including those associated with the solar purchase power agreements, in the event Nucor is unable to expand its plate mill facility operations in Brandenburg. The Commission concludes, however, that the overall structure of the retail electric service agreement is reasonable and should provide benefits to BREC, Meade County RECC, and their customers.

In light of BREC's unique circumstances, the Commission also finds that the terms of the proposed LICX Tariff are reasonable and should be approved. We note that just over seven years ago BREC sustained a significant loss of its native load when two aluminum smelters exited the BREC system by terminating their respective power agreements with BREC.[33] The two smelter loads amounted to approximately 850 MW,

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[32] *Id.*

[33] *See* Case No. 2020-00064, *Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief* (Ky. PSC June 25, 2020) final Order at 3.

reflecting more than one half of BREC's then native load.[34] BREC has since worked diligently in mitigating the loss of the two smelter loads by marketing its power, pursuing off-system sales opportunities, and engaging in economic development activities. BREC's efforts have resulted in purchase power agreements with several entities that will generate revenues, provide benefits to BREC's members, and stem the effects of the loss of the smelter loads. BREC's economic development efforts have also resulted in securing the Nucor plate mill facility in Brandenburg which will significantly increase BREC's native load and will result in BREC being in a capacity deficit position for a short period of time in the near future. Thus, within the span of a decade, BREC will have completely reverse its situation from that of having significant excess capacity to increasing its load obligation to the point of being capacity deficit for several years until the expiration of its off-system sales contracts. The Commission commends BREC for its successful efforts in mitigating the loss of the smelter loads. It is under these extreme circumstances that the Commission finds the terms of the proposed LICX Tariff to be a reasonable accommodation to allow BREC the ability to be able to access the market-based power to maintain a capacity-to-load balance while also requiring that the rate paid by a customer taking power under the LICX Tariff will provide net benefit to existing customers.[35] The Commission notes that the addition of the Nucor load falls between BREC's most recent Integrated Resource Plan (IRP) filing and it next IRP filing. Given the increased demand obligation associated with Nucor load in conjunction with the

[34] *Id.*

[35] The Commission notes that Kentucky Power Company's Tariff E.D.R. (Economic Development Rider) has a similar provision that allows Kentucky Power Company (Kentucky Power) to procure capacity on the Tariff E.D.R. customer's behalf during periods when Kentucky Power does not have sufficient generating capacity available. *See* Kentucky Power's Tariff E.D.R. (Economic Development Rider), P.S.C. Ky. No. 11, Original Sheet No. 37-1, Terms and Condition Section (1).

expected retirements of its Coleman Generating Station and its Reid Generating Station Unit 1, the Commission looks forward to reviewing BREC's upcoming IRP filing.

Although neither BREC nor Meade County RECC has an economic development rider (EDR) tariff, the retail electric service agreement provides for a fixed demand charge that amounts to a discounted rate during the second rate structure phase of the agreement. Given the nature of the discounted rate, the Commission will impose certain requirements that are typically associated with a contract developed pursuant to an EDR tariff. Accordingly, the Commission will require BREC and Meade County RECC to demonstrate as part of its cost of service studies filed in any subsequent matter during the period of time when the Nucor retail agreement is in effect that shows that BREC's or Meade County RECC's other ratepayers are not adversely affected by the contract rate paid by Nucor during the retail electric service agreement. BREC and Meade County RECC should also file annual reports detailing the financial impacts of the Nucor retail electric service agreement as well as the impact the Nucor load has on BREC's credit ratings.

IT IS HEREBY ORDERED that:

1. The retail contract for electric service between Meade County RECC and Nucor and the wholesale letter agreement between BREC and Meade County RECC as described in the application is approved.

2. The proposed LICX Tariff as described in the application is approved effective on and after the date of entry of this Order.

3. Within 20 days of the date of this Order, BREC and Meade County RECC shall file with the Commission, using the Commission's electronic Tariff Filing System, the retail contract for electric service and wholesale letter agreement approved herein.

4. Within 20 days of the date of this Order, BREC shall file with the Commission, using the Commission's electronic Tariff Filing System, the LICX Tariff sheets approved herein reflecting their effective date and that they were approved pursuant to this Order.

5. During any rate proceedings by BREC or Meade County RECC filed subsequent to the effective date of the Nucor retail electric service agreement and the wholesale letter agreement and throughout the terms of these two agreements, BREC or Meade County RECC shall demonstrate through detailed cost of service analysis that its other ratepayers are not adversely affected by the contract rate paid by Nucor during the retail electric service agreement. This demonstration should also be made if either BREC or Meade County RECC file a cost of service study in any matter other than a rate proceeding.

6. BREC and Meade County RECC shall file as part of BREC's annual filing required by ordering paragraph 10 of the Commission's June 25, 2020 Order in Case No. 2020-00064 information detailing the financial impacts of the Nucor retail electric service agreement and the impact the Nucor load has had on BREC's credit ratings.

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

By the Commission

ENTERED

AUG 17 2020 rcs

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