COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 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	))))))	CASE NO. 2024-00101

O R D E R

On, April 19, 2024,[1] the Commission initiated this investigation into East Kentucky Power Cooperative, Inc.'s (EKPC) revised tariff sheets, filed on March 29, 2024,[2] setting forth proposed adjustments to its existing tariff for Qualified Cogeneration and Small Power Production Facilities (QF Tariff). EKPC provided notice of the changes to the following Qualifying Facilities on EKPC's system: Cox Waste-To-Energy, Inc.; Global Mail, Inc; Fleming County Schools; Kentucky Army National Guard (KYARNG); Mac Farms, Inc.; Swope Enterprises, LLC; and Swope Hyundai, LLC.[3]

BACKGROUND

EKPC is a generation and transmission cooperative that provides wholesale electric service to 16-member distribution cooperatives who provide retail electric service to end-use customers. All distribution cooperatives have filed proposed QF tariffs mirroring EKPC's proposed revisions, with the exception of Jackson Energy Cooperative

[1] Order (Ky PSC Apr. 19, 2024).

[2] Tariff Filing (issued Mar. 29, 2024) (filed Apr. 11 2024).

[3] Tariff Filing, unnumbered PDF pages 19-34.

Corporation. The 15 distribution cooperatives and their corresponding tariff filing numbers are as follows:

Big Sandy R.E.C.C.	(TFS2024-00152)
Blue Grass Energy Cooperative Corp.	(TFS2024-00129)
Clark Energy Cooperative, Inc.	(TFS2024-00134)
Cumberland Valley Electric, Inc.	(TFS2024-00148)
Farmers R.E.C.C.	(TFS2024-00142)
Fleming-Mason Energy Cooperative, Inc.	(TFS2024-00146)
Grayson R.E.C.C.	(TFS2024-00132)
Inter-County Energy Cooperative Corporation	(TFS2024-00135)
Licking Valley R.E.C.C.	(TFS2024-00130)
Nolin R.E.C.C.	(TFS2024-00125)
Owen Electric Cooperative, Inc.	(TFS2024-00147)
Salt River Electric Cooperative Corp.	(TFS2024-00143)
Shelby Energy Cooperative, Inc.	(TFS2024-00144)
South Kentucky R.E.C.C.	(TFS2024-00140)
Taylor County R.E.C.C.	(TFS2024-00131)

EKPC proposed an effective date of June 1, 2024. By Order dated April 19, 2024, the Commission suspended the proposed tariffs for five months from June 1, 2024, up to and including October 31, 2024, and established a procedural schedule.[4] There are no intervenors in this proceeding.

During the pendency of the case, EKPC submitted responses to three rounds of data requests from Commission Staff.[5] EKPC initially requested a hearing and an informal conference;[6] an informal conference (IC) was held on August 27, 2024,[7] to discuss the case details, and EKPC subsequently withdrew its request for a formal

[4] Order (Ky. PSC Apr. 19, 2024).

[5] EKPC's Response to Commission Staff's First Request for Information (Staff's First Request) (filed May 29, 2024); EKPC's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed June 26, 2024); EKPC's Response to Commission Staff's Third Request for Information (Staff's Third Request) (filed Aug. 2, 2024).

[6] EKPC's Motion for Hearing (filed Aug. 14, 2024).

[7] IC Memo (Ky PSC Sept. 4, 2024).

hearing, opting to submit the case based on the existing administrative record.[8] This matter now stands submitted for a decision.

LEGAL STANDARD

The Commission's review of tariff rates is set forth in KRS 278.030, which provides that a utility may collect fair, just and reasonable rates, and that the service the utility provides must be adequate, efficient and reasonable. The Commission promulgated regulations that govern small power production and cogeneration tariffs in 807 KAR 5:054 pursuant to Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA). Section 5(2)(a) of 807 KAR 5:054, , requires electric utilities to provide their avoided energy costs for the current year and each of the next five years. Section 5(2)(b) of 807 KAR 5:054, requires electric utilities to provide their annual plans for capacity resources for the next ten years. Section 7 of 807 KAR 5:054, establishes the basis for compensation paid by an electric utility for the purchase of output from a QF, defined as either a cogeneration facility or small power production facility.

Standard rates for purchases from a QF with a design capacity of 100 kW or less, as established in 807 KAR 5:054, Section 7(2), must be just and reasonable to the electric customers of the utility, in the public interest and nondiscriminatory, and must be based on avoided costs, subdivided into an energy component and a capacity component. Avoided costs are defined in 807 KAR 5:054, Section 1(1), as incremental costs to the "…utility of electric energy or capacity or both, which if not for the purchase from the qualifying facility, the utility would generate itself or purchase from another source."

[8] EKPC's Notice to Withdraw Request for Hearing (filed Aug. 29, 2024).

Standard rates for purchases from a QF with a design capacity of 100 kW or more, established in 807 KAR 5:054, Section 7(4), are based on avoided costs, subdivided into an energy component and a capacity component. The rates are used only as a basis for negotiating a final purchase rate with the QF. Negotiated rates must be just and reasonable to the electric customers of the utility, in the public interest and nondiscriminatory.

Pursuant to 807 KAR 5:054, Section 7(2) and Section 7(4), the rates for power offered on an as-available basis are based on the utility's avoided energy costs estimated at the time of delivery, and rates for power offered on a legally enforceable basis are based, at the option of the QF, on either avoided costs at the time of delivery or avoided costs at the time the legally enforceable obligation (LEO) is incurred.

PROPOSED QF TARIFFS

EKPC, and its distribution cooperatives,[9] proposed several changes to their QF tariffs. First, EKPC and its distribution cooperatives proposed to change the structure of the QF tariffs. Currently, the tariffs are divided into four separate tariffs based on the size of the QF and whether the QF is dispatchable or non-dispatchable. Under the proposal, the QF tariffs will be divided into four separate tariffs based on the size of the QF and whether the QF is a grid-connected QF or a co-located QF.[10] EKPC stated that the revised structure better aligns the QF tariffs with the PURPA regulation, specifically

[9] Jackson Energy Cooperative Corporation, as noted earlier in the Order, did not file a new QF tariff mirroring EKPC's proposed tariff. For the remainder of the Order, the Commission will reference "EKPC and its distributive cooperatives". At no time, does this statement include Jackson Energy Cooperative Corporation.

[10] Tariff Filing at unnumbered PDF pages 1-4 (March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.).

PURPA's "as-available" requirement, which requires electric utilities to purchase only that energy which is made available by the QF to the utility.[11]

EKPC and its distribution cooperatives proposed to increase the Market Administration Fee from $0.00011 per kWh to $0.00014 per kWh.[12]

EKPC and its distribution cooperatives proposed revisions as to when capacity purchases from QFs would be applicable.[13] EKPC proposed to offer the option to receive capacity payments to grid-connected QFs, but not co-located QFs, arguing that it is appropriate to not provide a capacity purchase option to a co-located QF.[14] EKPC stated that as a load serving entity responsible to satisfy PJM's capacity requirement obligations, it would need to commit any capacity resource in the PJM capacity market in order to offset its load obligation and that reducing its energy needs is not the same as reducing its load obligation in the PJM capacity market.[15] EKPC argued that committing co-located QF generation in the PJM capacity market introduces performance risk that cannot be reasonably mitigated.[16] EKPC goes on to argue that a co-located QF already receives the full benefit of offsetting its retail costs up to its monthly consumption and that once the retail load offsets all of its consumption with a co-located QF, the QF is selling energy on an as-available basis.[17] Finally, EKPC argued that it has no control over the performance

[11] EKPC's Response to Staff's First Request, Item 1.

[12] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[13] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[14] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[15] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[16] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[17] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

or availability of a co-located QF and that since all generation resources committed in the PJM capacity market are expected to deliver all committed capacity when called upon, EKPC and its distribution cooperatives and their retail customers would bear the ultimate risk of non-performance.[18] For grid-connected QFs, EKPC will offer the option for the QF to sell capacity, but if a QF elects to sell capacity, the QF would assume all Performance Assessment Interval (PAI) penalties associated with non-performance.[19] In addition, EKPC will require credit assurance in accordance with the resource-specific requirements within a special contract.[20]

EKPC proposed to update the capacity purchase rates based upon an anticipated capacity need within the next five years.[21] EKPC stated that its next most likely generation resource would be a Reciprocating Internal Combustion Engine (RICE).[22] Therefore, EKPC proposed to base the capacity purchase rates on the avoided cost of the RICE unit.[23] In addition, EKPC indicated that it would consider the QF's resource-specific Effective Load Carrying Capability (ELCC) as published by PJM for the applicable delivery year when calculating the final capacity value for a QF.[24]

Finally, to align with past Federal Energy Regulatory Commission (FERC) decisions, EKPC proposed to revise the tariff to reflect that its obligation to purchase

[18] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[19] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[20] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[21] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[22] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[23] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[24] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

energy produced by a Small Power Producer QF is limited to five MW while a Cogeneration QF purchase obligation is limited to 20 MW.[25]

DISCUSSION AND FINDINGS

Having reviewed the relevant record and being otherwise sufficiently advised, the Commission finds that EKPC's proposed tariff revisions should be approved. The Commission's determination is based on several key considerations as discussed below.

First, EKPC's revised structure appropriately reflects PURPA requirements by limiting compensation to energy that QFs make available to EKPC, rather than all energy generated. For co-located QFs serving specific loads, compensation would apply only to energy above their on-site needs. This ensures EKPC fulfills PURPA's "as-available" provision. In addition, the changes reduce the likelihood a facility would be overcompensated.

Second, the proposed capacity payment structure properly recognizes operational realities. Co-located QFs, which do not offset EKPC's capacity obligations to PJM, will not receive capacity payments, reflecting that their output does not reduce system-wide reliability obligations. Only grid-connected QFs will have the capacity payment option, subject to appropriate performance assurances that protect EKPC and its customers.

Third, the energy rates maintain consistency with PJM's real-time locational marginal pricing (LMP), reflecting EKPC's cost neutrality in procuring equivalent energy. The adjusted market administration fee accurately reflects EKPC's costs for QF tariff

[25] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

management, ensuring no financial impact on other ratepayers from QF participation, as ordered in Case No. 2017-00212.[26]

Fourth, while EKPC's connection-type distinction differs from other utilities' approaches, the Commission finds this structure is justified by EKPC's specific operational needs and alignment with PURPA requirements. The framework provides enhanced clarity regarding the distinct contributions and requirements of grid-connected QFs versus co-located QFs.

Discussing the projected shortfall in Case No. 2023-00153, the Commission noted that, with a winter capacity deficit, PJM’s Base Residual Auction (BRA) would provide no reliable value, as it procures an annual product based on summer supply.[27] To address this issue the Commission adopted the use of a proxy simple-cycle combustion turbine (CT), generation generally available year round, to calculate the avoided capacity costs to derive fair, just and reasonable rates for its cogeneration customers.[28] The

[26] Case No. 2017-00212, *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 Tariff and the Implementation of Separate Tariffs for Power Purchases from Solar Generation Qualifying Facilities* (Ky. PSC Mar. 27, 2018), Order at 3-4, 8-9. The Commission approved the tariffs as filed, which included the market administration fee, proposed to be updated yearly to reflect the expense of the administrative burden to participating in PJM and that QFs should pay their share of those costs.

[27] Case No. 2023-00153, *Electronic 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* (Ky. PSC Oct. 31, 2023), Order at 9. Also, in EKPC’s 2021 filing to update its QF tariffs, the Commission found that the use of the most recent BRA capacity market clearing price was appropriate and should be used as the proxy for the avoided capacity cost component of the QF tariffs.[27]

[28] Case No. 2023-00153, Oct. 31, 2023 Order.

Commission noted that a CT is the best generic substitute as it is generally regarded as the least-cost capacity resource, and has variable sizing.[29]

However, on September 20, 2024, EKPC filed for a certificate of public convenience and necessity (CPCN) for Reciprocating Internal Combustion Engines (RICE) generation units in Case No 2024-00310.[30] While Case No. 2024-00310 is still pending, EKPC asserted in its CPCN application that its particular capacity needs are better satisfied by a series of RICE generation units rather than a CT.

The Commission, while it generally has used a generic CT for proxy prices for avoided capacity payments, has also ordered the use of other proxy prices if a generator has shown that it plans to build, or has received permission to build, a new generation source. For example, in Case No. 2023-00102,[31] the Commission ordered Big Rivers Electric Corporation (BREC) to use the proxy cost natural gas combined cycle (NGCC) to establish avoided capacity costs. The Commission based its decision to use the NGCC as the proper proxy cost because BREC had forecast a capacity deficit in its then current Integrated Resource Plan and stated that it was likely to address the capacity deficit by constructing an NGCC unit. Similarly, in Case No. 2023-00404,[32] the Commission

[29] Case No. 2023-00153, Oct. 31, 2023 Order at 10, *citing* to numerous cases where the Commission has used a CT as a generic substitute for calculating avoided capacity costs.

[30] Case No. 2024-00310, *Electronic Application of East Kentucky Power Cooperative, Inc. For 1) A Certificate of Public Convenience and Necessity to Construct a New Generation Resource; 2) A Site Compatibility Certificate; And 3) Other General Relief* (filed Sep. 20, 2024). A final Order has not been issued in this case. The case is referenced to indicate EKPC's intent to address the capacity deficit.

[31] Case No. 2023-00102, *Electronic Tariff Filing of Big Rivers Electric Corporation for Approval of Proposed Changes to Its Qualified Cogeneration and Small Power Production Facilities Tariffs* (Ky. PSC Dec. 15, 2023).

[32] Case No, 2023-00404, *Electronic Tariff Filings of Louisville Gas and Electric Company and Kentucky Utilities Company to Revise Purchase Rates for Small Capacity and Large Capacity Cogeneration and Power Production Qualifying Facilities and Net Metering Service-2 Credit Rates*, (Ky. PSC Aug. 30, 2024).

ordered Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, LG&E/KU), to use the costs for constructing an NGCC to calculate avoided capacity costs. The Commission found that the costs of constructing an NGCC were appropriate to use for calculating avoided capacity costs because LG&E/KU had recently received a CPCN to construct an NGCC.

Accordingly, considering the evidence in the record and being otherwise sufficiently advised, the Commission finds that the cost characteristics of a RICE unit should be used to calculate EKPC's avoided costs. The Commission finds these rates appropriately balance EKPC's obligations under PURPA with the interests of its customers while maintaining financial neutrality and operational clarity in its QF program implementation. Additionally, even though its application for CPCNs is still pending, EKPC has demonstrated and met its burden of proof that it is planning on procuring and constructing RICE units, within PURPA's ten-year planning horizon, to address any capacity deficit that may arise during that time.

In regard to rates, EKPC proposed a $0 capacity rate for its QF two year contract terms utilizing the calculated capacity deficit occurring in winter of 2028 and the standard set out in the final Order in Case No. 2023-00153.[33] The Commission notes that in Case No. 2024-00310, EKPC provided information that demonstrated the utility now anticipates a capacity deficit starting in 2025 due to its expansion plan.[34] However, considering the

[33] March 29, 2024 Letter from Chris Adams to Ms. Linda C. Bridwell, P.E.

[34] Case No. 2024-00310, Direct Testimony of Julia Tucker, Attachment JJT-3.

timing of EKPC's current filings for which no Commission final Order has been issued,[35] the Commission finds that it should continue to allow zero avoided capacity costs in this instance considering the totality of the circumstances and based on the likelihood the Commission will reevaluate this decision in either EKPC's next base rate case or QF case, whichever comes first. Additionally, the Commission expects EKPC to file additional evidence and testimony to support a zero avoided capacity cost moving forward considering evidence filed in other proceedings of EKPC's long-term load forecast model showing a capacity need sooner than expected.

IT IS THEREFORE ORDERED that:

1. The proposed tariffs and rates filed by EKPC, and its distribution cooperatives, are approved.

2. The terms, rates, and charges for EKPC, and its distribution cooperatives as discussed in this Order, are fair, just and reasonable and are approved for service rendered on and after the date of service of this Order.

3. Within 20 days of the date of service of this Order, EKPC and its distribution cooperatives shall file with the Commission, using the Commission's electronic Tariff Filing System, new tariff sheets setting forth the rates, terms, and conditions approved herein and reflecting their effective date and that they were approved by this Order.

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

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[35] The Commission notes that, in addition to Case No. 2024-00310, EKPC filed other CPCNs for additional generation; Case No. 2024-00370, *Electronic Application of East Kentucky Power Cooperative, Inc. for 1) Certificates of Public Convenience and Necessity to Construct New Generation Resources; 2) for a Site Compatibility Certificate Relating to the Same; 3) Approval of Demand Side Management Tariff; and 4) Other General Relief* (filed Nov. 25, 2024).

PUBLIC SERVICE COMMISSION

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ENTERED

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