

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF BIG RIVERS)	
ELECTRIC CORPORATION AND JACKSON)	
PURCHASE ENERGY CORPORATION FOR)	
APPROVAL AND CONFIDENTIAL)	CASE NO.
TREATMENT OF A SPECIAL CONTRACT AND)	2021-00282
COST ANALYSIS INFORMATION AND A)	
REQUEST FOR DEVIATION FROM THE)	
COMMISSION'S SEPTEMBER 24, 1990)	
ORDER IN ADMINISTRATIVE CASE NO. 327)	

ORDER

On June 21, 2021, Big Rivers Electric Corporation (BREC) and Jackson Purchase Energy Corporation (Jackson Purchase) (collectively, Joint Applicants) submitted an Agreement for Electric Service (Retail Agreement) with Blockware Mining, LLC (Blockware) and a letter agreement (Wholesale Agreement) between BREC and Jackson Purchase, with intent to offer Blockware an economic development rate (EDR), pursuant to Administrative Case No. 327 (Administrative Order 327).¹ On July 17, 2021, pursuant to KRS 278.190, the Commission, by its own motion, established this case to investigate the reasonableness of the proposed rates, and suspended the effective date of the proposed rates for five months, up to and including December 20, 2021. The Joint Applicants responded to two rounds of data requests, and filed a request on September 16, 2021, for a decision on the existing record. There are no intervenors in this

¹ Administrative Case No. 327 [Docket No. 19000327] (Admin 327 Order), *An Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. PSC Sept. 24, 1990).

proceeding. The matter stands submitted to the Commission for a decision based upon the evidentiary record.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.² Kentucky law provides that a utility may demand, collect and receive fair, just and reasonable rates³ and that the service it provides must be adequate, efficient and reasonable.⁴ KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

In Administrative Order 327 the Commission found that EDRs would provide important incentives to large commercial and industrial customers to either locate or expand their facilities in Kentucky, bringing jobs and capital investment into the Commonwealth.⁵ Administrative Order 327 contains 18 findings that refined the criteria on which the Commission would evaluate and approve an EDR.⁶ In Administrative Order 327, the Commission also directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.⁷ The findings of Administrative Order 327 that are applicable to this proceeding, and therefore comprise the legal standard by which this proposed contract should be evaluated are the following:⁸

² KRS 278.040(2).

³ KRS 278.030(1).

⁴ KRS 278.030(2).

⁵ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 25.

⁶ *Id.* at 24–28.

⁷ *Id.* at 28, ordering paragraph 1.

⁸ Finding 13 is not relevant to this proceeding because it applies to contracts designed to retain the load of existing customers, not to attract new customers. Findings 15 and 16 are not relevant to this proceeding because they apply to gas utilities, not electric utilities. Finding 17, while relevant to this

- Finding 3: EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.⁹
- Finding 4: An EDR contract should specify all terms and conditions, including the rate discount and related provisions, jobs and capital investment created, customer-specific fixed costs, minimum bill, estimated load and load factor, and length of contract.¹⁰
- Finding 5: An EDR contract should only be offered during periods of excess capacity for the utility, and the utility must demonstrate that the EDR contract will not cause it to fall below a reserve margin essential for system reliability.¹¹
- Finding 6: A utility should demonstrate that the EDR exceeds the marginal cost associated with serving the customer.¹²
- Finding 7: A utility should file an annual report with the Commission detailing revenues received and the marginal costs from EDRs.¹³
- Finding 8: A utility should demonstrate that nonparticipating ratepayers are not adversely affected by the EDR through a cost of service analysis.¹⁴
- Finding 9: The EDR contract should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.¹⁵
- Finding 10: The major objectives of EDRs are job creation and capital investment. However, specific job creation and capital investment requirements should not be imposed on EDR customers.¹⁶

proceeding merely states that comments submitted by the Cabinet or other interested parties pertaining to an EDR contract should be filed with the Commission no more than 20 days following the filing of an EDR. No comments have been filed in this proceeding.

⁹ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 25, finding paragraph 3.

¹⁰ *Id.*, finding paragraph 4.

¹¹ *Id.*, finding paragraph 5.

¹² *Id.* at 26, finding paragraph 6.

¹³ *Id.*, finding paragraph 7.

¹⁴ *Id.*, finding paragraph 8.

¹⁵ *Id.*, finding paragraph 9.

¹⁶ *Id.*, finding paragraph 10.

- Finding 11: All utilities with active EDR contracts should file an annual report with the Commission providing information as shown in Appendix A, to Administrative Order 327.¹⁷
- Finding 12: For new industrial customers, an EDR should apply only to load which exceeds a minimum base level.¹⁸ For existing industrial customers, the EDR should apply only to load which exceeds a minimum base level, for new industrial customers, and the EDR contract should identify and justify the minimum usage level required for a new customer.¹⁹
- Finding 14: The term of an EDR contract should be for a period twice the length of the discount period, with the discount period not exceeding five years.²⁰

BACKGROUND

BREC is a generation and transmission cooperative headquartered in Henderson, Kentucky. BREC owns, operates, and maintains electric generation and transmission facilities, and it purchases, transmits, and sells electricity at wholesale to Jackson Purchase. Jackson Purchase, in turn, provides retail electric service to approximately 30,199 consumer-members in Ballard, Carlisle, Graves, Livingston, McCracken, and Marshall counties, Kentucky.²¹

Blockware is a Delaware based C Corporation, originally organized in 2019.²² Blockware operates globally in Canada, China, Japan, Malaysia, and the United States, offering access to a network of commercial data center facilities which provide support

¹⁷ *Id.*, finding paragraph 11.

¹⁸ *Id.*, finding paragraph 12.

¹⁹ *Id.*, finding paragraph 12.

²⁰ *Id.* at 27, finding paragraph 14.

²¹ *Annual Report of Jackson Purchase Energy Corporation to the Public Service Commission for the Calendar Year Ended December 31, 2020* at 33 and 53.

²² Direct Testimony Mark J. Eacret (Eacret Testimony) at 7, lines 4–13.

for cryptocurrency mining operations.²³ The facility that Blockware plans to locate in Paducah, Kentucky, will host mining rigs for mining Bitcoin.²⁴

BREC stated that it has been working with Jackson Purchase and the Greater Paducah Economic Development organization to attract new load to Jackson Purchase's service territory from technology based businesses.²⁵ As a result, Jackson Purchase has proposed a 20-year Retail Agreement with Blockware,²⁶ offering a special economic development rate.²⁷ Because cryptocurrency mining requires copious amounts of computer hardware, it is estimated that 95 percent of Blockware's operating cost will be the cost of its electricity.²⁸ For that reason, competitive power pricing was a critical factor in Blockware's decision in where to locate its facility.²⁹

PROPOSED RETAIL AGREEMENT

The proposed agreement is structured into two periods, the Initial Period, which is further divided into two segments, and the remainder of the contract term. The first segment of the Initial Period runs from the effective date of the Retail Agreement through May 31, 2021.³⁰ During this period, Blockware will pay a monthly demand charge equal to BREC's applicable Large Industrial Customer (LIC) tariff rate times an initial peak of

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 5.

²⁶ Application, Attachment 3 Agreement for Electric Service Article XI at 12.

²⁷ Eacret Testimony at 4.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Application, Attachment 3 Agreement for Electric Service Exhibit C at 1.

█ plus a BREC adder monthly demand charge, plus an energy rate, plus a Distribution adder for all megawatt-hours (MWh) delivered, plus all applicable taxes.³¹ Load served under the LIC tariff will pay the full LIC energy rate including all adders and riders. For load not served under the LIC tariff, Blockware will be responsible for the Midcontinent Independent Transmission System Operator (MISO) Day Ahead energy cost based on the Locational Marginal Price (LMP), including MISO market charges.³²

The second segment of the Initial Period is from June 1, 2021, through May 31, 2022. During this time, Blockware will pay a monthly demand charge equal to the full then-applicable BREC LIC tariff times the applicable initial period peak; plus an energy charge, plus a distribution adder for all MWh delivered, plus all applicable taxes and fees. For any monthly billing demand in excess of the initial period peak and up to the maximum contract demand, a monthly demand charge equal to the sum of the BREC adder, and the Zone 6 Zonal Resource Credit (ZRC) Auction Clearing Price (ACP) times one plus the Planning Resource Margin and again times one plus the Planning Resource Losses percentage in the Planning Resource Auction for the 2021 Planning year plus the Distribution adder and all applicable taxes and fees. BREC's LIC tariff will be applied to all demand exceeding the maximum contract demand.³³

³¹ See Application, Attachment 3, Agreement for Electric Service Exhibit C at 6. The BREC adder is a fixed \$/kW month amount for the first five years after the effective date and escalates at a set percent annually thereafter. The Distribution adder is a fixed \$0/ MWh for the first five years after the effective date and escalates at the same percentage as the BREC escalator annually thereafter.

³² *Id.* at 1, 3, 4, and 5. See Exhibit C, paragraph D, for a complete description of the energy charge calculation.

³³ *Id.*

The final period runs from the end of the Initial Period, through the end of the contract term. During this period, Blockware will pay a monthly demand charge, less an economic development credit (if applicable), plus an energy charge, plus a Distribution adder, plus all applicable taxes and fees. For the monthly demand charge in each Planning Year following the Initial Period, ██████████ of the peak demand for that planning year will be served under BREC's LIC tariff and Blockware will pay the full then-applicable demand charge.³⁴ For each Planning Year following the Initial Period, the remaining ██████████ of the peak demand for that Planning Year will pay a demand charge equal to the sum of the BREC adder, and the Zone 6 ZRC ACP times one plus the Planning Resource Margin and again times one plus the Planning resource Losses percentage in the Planning Resource Auction for the 2021 Planning year plus the Distribution adder and all applicable taxes and fees.³⁵

MISO Planning Years begin June 1 and end the following May 31. Beginning with the MISO 2022 Planning Year (June 1, 2022, through May 31, 2023), Blockware will receive an Economic Development Rate Credit (EDRC) monthly equal to 90 percent of the demand charge applicable to the incremental load that is added during the Planning Years 2022-2030 and that is served under the BREC LIC tariff less one MW.³⁶ Incremental load is defined as the amount by which the peak load estimate for a Planning

³⁴ See BREC's Response to Commission Staff's First Request for Information (filed Aug. 20, 2021) (Response to Staff's First Request), Item 2c. BREC is responsible for the cost of capacity required for this load.

³⁵ See Application, Exhibit C, paragraph D, for a complete description of the energy charge calculation. See also BREC's Response to Staff's First Request Item 2c. The capacity for this load will be purchased through the MISO Planning Resource Auction with Blockware bearing the cost and associated risk.

³⁶ *Id.* at 3, lines 2–5.

Year exceeds the prior Planning Year's peak load estimate. No EDRC will be paid after the beginning of the 2031 Planning Year.³⁷ However, the duration of the EDRC applicable to the incremental load added during a Planning Year will expire in the following order:

- The EDRC applicable to incremental load added during the 2022 Planning Year expires five years after the beginning of the 2022 Planning Year.
- The EDRC applicable to incremental loads added during each of the 2023 and 2024 Planning years respectively expires four years after the beginning of the 2023 and 2024 Planning Years respectively.
- The EDRC applicable to incremental loads added during each of the 2025 and 2026 Planning years respectively expires three years after the beginning of the 2025 and 2026 Planning Years respectively.
- The EDRC applicable to incremental loads added during each of the 2027 and 2028 Planning years respectively expires two years after the beginning of the 2027 and 2028 Planning Years respectively.
- The EDRC applicable to incremental loads added during each of the 2029 and 2030 Planning years respectively expires one year after the beginning of the 2029 and 2030 Planning Years respectively.³⁸

Once the applicable EDRC for any incremental load expires, Blockware's peak load must be equal to or greater than the peak load for the Planning Year in which the applicable incremental load was added for the same number of years that the incremental load earned an EDRC. If Blockware's peak load falls below the applicable minimum level following the expiration of an EDRC in any year, Blockware will refund one year's worth of the EDRC that was earned for that applicable incremental load.³⁹

³⁷ *Id.* at 4.

³⁸ *Id.* at 3–4.

³⁹ *Id.* at 4.

BREC stated that it will be required to install transmission upgrades in order to provide the necessary electric service to the Industrial Park West area where Blockware will be located.⁴⁰ BREC proposed to do this in two stages. The Phase I transmission upgrades are the necessary upgrades to allow Blockware to initially operate within Industrial Park West.⁴¹ These upgrades will enable the Joint Applicants to provide up to 100 Megawatts of electric service to the area.⁴² BREC filed for a Certificate of Public Convenience and Necessity for this project in Case No. 2021-00275.⁴³ The Retail Agreement establishes a Termination Charge, backed by a cash deposit or an irrevocable bank letter of credit from Blockware, which is intended to ensure that BREC recovers its investment in the transmission system upgrades.⁴⁴ Blockware has already provided BREC a \$1.20 million cash deposit on the transmission system upgrades required under Phase I.⁴⁵

Under the Retail Agreement, Blockware has the option to expand or ramp-up its load, which would require Phase II transmission upgrades.⁴⁶ However, Blockware must provide BREC sufficient notice to allow BREC to install the necessary transmission

⁴⁰ Eacret Testimony at 7, lines 21–22, and at 8, lines 1–2.

⁴¹ *Id.* at 7, lines 21–22 and at 8, lines 1–8.

⁴² *Id.* at 8, lines 15–20 and at 9, lines 1–9.

⁴³ Case No. 2021-00275 *Electronic Application of Big Rivers Electric Corporation for a Certificate of Public Convenience and Necessity to Construct a 161 KV Transmission Line in McCracken County, Kentucky* (Ky. PSC Sept. 22, 2021).

⁴⁴ Application, Attachment 3, Agreement for Electric Service at 5–6; see *also* Joint Applicants Responses to Commission Staff’s Second Request for Information (filed Sept. 15, 2021) (Response to Staff’s Second Request), Item 2.

⁴⁵ *Id.*

⁴⁶ Eacret Testimony at 8, lines 15–20, and at 9, lines 1–9.

upgrades to meet the increased demand.⁴⁷ Any Large Industrial Customers locating at Industrial Park West will be required to provide a proportionate share of credit support for the transmission upgrades.⁴⁸

The Joint Applicants maintain that the transmission upgrades will also provide supplementary benefits to BREC such as, reducing transformer load at the McCracken Substation by approximately 30 megawatts, improving transmission line pole reliability by replacing wooden poles with double circuit steel poles, and improving voice and data communication by the installation of a robust and reliable fiber optic network, provided by Blockware.⁴⁹

PROPOSED WHOLESALE AGREEMENT

The Joint Applicants additionally submitted a Wholesale Agreement to supplement BREC's wholesale power contract with Jackson Purchase and to address the requirements for providing service to Blockware.⁵⁰ The Wholesale Agreement includes language establishing the obligations of BREC to provide Jackson Purchase with the power necessary to serve Blockware.⁵¹ Furthermore, the proposed Wholesale Agreement, sets the obligations of Jackson Purchase to bill and collect from Blockware any minimum billing demand charges in excess of measured demand, the Termination

⁴⁷ *Id.* at 8, lines 9–14.

⁴⁸ *Id.* at 9, lines 5–9.

⁴⁹ Response to Staff's Second Request, Item 3.

⁵⁰ Eacret Testimony at 23, lines 9–18.

⁵¹ Application, Attachment 4, "Big Rivers_Wholesale Agreement" at 1, paragraph 2.

Charge, and any other amounts due under the Retail Agreement, which will be then paid to BREC.⁵²

DISCUSSION AND FINDINGS

Requirements of Administrative Order 327

In Administrative Order 327, the Commission directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.⁵³ The following paragraphs will address the findings of Administrative Order 327 that are applicable to this proceeding.

Finding 3: “EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.”⁵⁴

The Joint applicants have submitted the proposed Retail Agreement. The Retail Agreement was executed by Jackson Purchase and Blockware and contains the negotiated terms described above. The Commission finds the proposed Retail Agreement complies with Finding 3 of Administrative Order 327.

Finding 4: *“An EDR contract should specify all terms and conditions of service including, but not limited to, the applicable rate discount and other discount provisions, the number of Jobs and capital investment to be created as a result of the EDR, customer-specific fixed costs associated with serving the customer, minimum bill, estimated load, estimated load factor, and length of contract.”⁵⁵*

The Joint Applicants provided the following: (1) the discount is 90 percent of BREC’s standard LIC tariff Demand Charge for the eligible kilowatts purchased by

⁵² Application, Attachment 4, “Big Rivers_Wholesale Agreement”, page 1, paragraph 4.

⁵³ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 28, ordering paragraph 1.

⁵⁴ *Id.* at 25, finding paragraph 3.

⁵⁵ *Id.* at 25, finding paragraph 4.

Blockware during the applicable incentive periods;⁵⁶ (2) the number of jobs and amount of capital investments estimated by Blockware are 10 full-time jobs and \$25 million respectively, with an estimated recurring annual economic impact of \$5.7 million;⁵⁷ (3) the most recent estimated customer-specific fixed cost are \$1.2 million, and Blockware has provided credit support in this amount;⁵⁸ (4) Blockware will pay a minimum bill equal to the monthly LIC Demand Charge times the applicable peak period;⁵⁹ (5) the Joint Applicants provided load data for Blockware and estimates Blockware to have a load factor of 90 percent after ramp-up;⁶⁰ and (6) the length of the contract is 20 years, beginning after May 31, 2022.⁶¹ The Commission finds that the proposed Retail Agreement complies with Administrative Order 327, Finding 4.

Finding 5: “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 each year of the contract period will not cause them to fall below a reserve margin that is considered essential for system reliability. Such a reserve margin should be identified and justified with each EDR contract filing.”⁶²

The Joint Applicants have requested a partial deviation from Finding 5.⁶³ The Joint Applicants state that BREC projects a slight [REDACTED]

⁵⁶ Eacret Testimony at 13, lines 15-19. See also Response to Staff’s First Request, Item 4 for a detailed example of how application of the discount rate to eligible MWs works.

⁵⁷ *Id.* at 13, lines 20–22 and at 14, lines 1–5.

⁵⁸ *Id.* at 14, lines 6–18 and at 15, lines 1–5.

⁵⁹ *Id.* at 15, lines 6–13.

⁶⁰ *Id.* at 15, lines 14–16.

⁶¹ *Id.* at 15, lines 17–19.

⁶² Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 25, finding paragraph 5.

⁶³ Eacret Testimony at 16, lines 17–18.

██████████⁶⁴ The Joint Applicants averred that the additional load created through the Blockware Agreement, would not affect system reliability, nor create the need for new plant capacity.⁶⁵ Additionally, the expected Blockware load is only a small portion of BREC's total load obligation, and the remaining share of Blockware's load will be served at market-based prices, plus BREC and Jackson Purchase adders.⁶⁶ For example, if Blockware's estimated peak load is 30 MW for the 2022 planning year, BREC is responsible for ██████████. The remaining ██████████ ██████████ will be purchased through the MISO Planning Resource Auction with Blockware bearing the Zone 6 Auction Clearing Price plus the Planning Resource Margin plus Planning Resources Losses, plus BREC's adder.⁶⁷ ██████████

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The Joint Applicants contend that Administrative Order 327 predates the formation of Regional Transmission Organizations, which provide additional system reliability and opportunities to meet load requirements.⁶⁹ BREC states that it sells all of its generation into MISO and purchases all of its load from MISO.⁷⁰ The Commission acknowledges

⁶⁴ *Id.* at 16, lines 4–7.

⁶⁵ *Id.* at 16, lines 10–14.

⁶⁶ *Id.* at 16, lines 10-14 and at 17, lines 14-20.

⁶⁷ Response to Staff's First Request, Item 2b.

⁶⁸ Eacret Testimony at 16, lines 4-10 and Exhibit Eacret-3.

⁶⁹ *Id.* at 17, lines 2–7.

⁷⁰ *Id.* at 17, lines 6–7.

that if additional capacity is needed to serve Blockware's load, BREC can meet this need by making a market purchase, and passing that cost on to Blockware. This scenario was not possible at the time the Commission issued Administrative Order 327, because the energy and capacity markets did not exist as we know them today. At the time Administrative Order 327 was issued, essentially the only option available to an electric utility needing additional capacity to serve an individual customer was incurring the expense of constructing additional generation facilities. Should additional generation facilities be built to serve EDR load, there is the risk that other customers pay an inordinate amount for that new generation, since the EDR load is discounted from retail rates, as well as the risk that the EDR load does not materialize the way it was anticipated, leaving remaining customers to pay the cost of the unnecessary excess capacity. This is no longer necessarily the case, and BREC's Large Industrial Customer Expansion (LICX) tariff permits BREC to make energy purchases to satisfy Blockware's demand and pass the expense on to Blockware.

However, BREC states that it does not anticipate that it will be necessary to make a specific market purchase to cover Blockware's demand for power because of the relatively modest size of Blockware's power requirements served with the EDR.⁷¹ The Commission notes that Kentucky Power Company was granted a similar deviation from the requirement of Administrative Order 327, Finding 5 in Case No. 2018-00378.⁷² For the reasons set forth above, the Commission finds that good cause exists to grant the

⁷¹ *Id.* at 17, lines 9–13.

⁷² Case No. 2018-00378, *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service Under Tariff E.D.R.* (Ky. PSC July 9, 2019).

Joint Applicants' request for deviation from Administrative Order 327, Finding 5; Joint Applicants' request is reasonable; and should be granted.

Finding 6: "Upon submission of each EDR contract, a utility should demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer. Marginal cost includes both the marginal cost of capacity as well as the marginal cost of energy. In order to demonstrate marginal cost recovery, a utility should submit, with each EDR contract, a current marginal cost-of-service study. A current study is one conducted no more than one year prior to the date of the contract."⁷³

The Joint Applicants provided a marginal cost of service study, demonstrating that the discounted rate to Blockware produces revenues that exceed the marginal cost associated with serving Blockware.⁷⁴ The Commission finds that the Retail Agreement meets the requirements of Administrative Order 327, Finding 6.

Finding 7: "Utilities with active EDRs should file an annual report with the Commission detailing revenues received from individual EDR customers and the marginal costs associated with serving those individual customers."⁷⁵

BREC stated it would commit to filing an annual report with the Commission detailing revenues received from Blockware and any other individual EDR customers and the margin costs associated with serving those individual customers as required.⁷⁶ The Commission finds that BREC should file an annual report with the Commission detailing

⁷³ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 26, finding paragraph 6.

⁷⁴ Eacret Testimony at 18, lines 4–13; see also Direct Testimony of John Wolfram (Wolfram Testimony) at 4, lines 14–21.

⁷⁵ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 26, finding paragraph 7.

⁷⁶ Eacret Testimony at 19, lines 1–7.

the revenues received from Blockware and the marginal costs associated with serving Blockware.

Finding 8: “During rate proceedings, utilities with active EDR contracts should demonstrate through detailed cost-of-service analysis that nonparticipating ratepayers are not adversely affected by these EDR customers.”⁷⁷

BREC stated it would commit to demonstrating through detailed cost of service analysis that its member distribution cooperative non-EDR rate payers are not adversely affected by the EDR rate to Blockware and any other EDR customers that may be on the Big Rivers system, for any rate proceedings.⁷⁸ The Commission finds that in all rate proceedings occurring during the term of the Agreement that BREC should provide a detailed cost-of-service-analysis demonstrating that non-EDR ratepayers of its member distribution cooperatives are not adversely affected by the Retail Agreement.

Finding 9: “All EDR contracts should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.”⁷⁹

As discussed previously in this Order, the Agreement establishes a Termination Charge which guarantees the recovery of Blockware’s EDR fixed costs, which are primarily the cost of upgrading the transmission system of BREC to support Blockware’s load requirements.⁸⁰ The Termination Charge protects the Joint Applicants and their customers against early termination of the contract; this is especially important due to the

⁷⁷ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 26, finding paragraph 8.

⁷⁸ Eacret Testimony at 19, lines 8–17.

⁷⁹ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 26, finding paragraph 9.

⁸⁰ Eacret Testimony at 19, lines 18-22 and at 20, lines 1-3 and Application, Attachment 4, “Big Rivers_Wholesale Agreement”, Exhibit B.

highly volatile nature of cryptocurrency.⁸¹ Blockware has already provided a \$1.2 million cash deposit as credit support for the Termination Charge.⁸² The Commission finds that the proposed agreements comply with Administrative Order 327, Finding 9.

Finding 10: "The major objectives of EDRs are job creation and capital investment. However, specific job creation and capital investment requirements should not be imposed on EDR customers."⁸³

The Joint Applicants stated that the proposed agreements do not impose any specific job creation or capital investment requirements on Blockware.⁸⁴ The Commission finds that the proposed agreements comply with Administrative Order 327, Finding 10.

Finding 11: "All utilities with active EDR contracts should file an annual report to the Commission providing the information as shown in Appendix A, which is attached hereto and incorporated herein."⁸⁵

BREC stated that it would commit to filing an annual report with the Commission providing the information shown in Appendix A of Administrative Order 327, so long as it is providing wholesale service to one of its distribution cooperatives with an active EDR contract.⁸⁶ The Commission finds that the proposed agreements comply with Administrative Order 327, Finding 11.

Finding 12: "For new industrial customers, an EDR should apply only to load which exceeds a minimum base level. For existing industrial customers, an EDR shall apply only to new load which exceeds an incremental usage level above a

⁸¹ Response to Staff's Second Request, Item 2.

⁸² *Id.*

⁸³ Administrative Case No. 32 (Ky. PSC Sept. 24, 1990) at 26, finding paragraph 10.

⁸⁴ Eacret Testimony at 20, lines 4–7.

⁸⁵ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 26, finding paragraph 11.

⁸⁶ Eacret Testimony at 20, lines 8–13.

normalized base load. At the time an EDR contract is filed, a utility should identify and justify the minimum incremental usage level and normalized base load required for an existing customer or the minimum usage level required for a new customer.”⁸⁷

The Joint Applicants stated that the proposed EDR applies only to load which exceeds a minimum base level, because the proposed Agreement, provides that Blockware will receive an EDR credit each month equal to the 90 percent of the demand charge applicable to the portion of incremental load served at LIC rates.⁸⁸ The Commission finds that the proposed agreements comply with Administrative Order 327, Finding 12.

Finding 14: *“The term of an EDR contract should be for a period twice the length of the discount period, with the discount period not exceeding five years. During the second half of an EDR contract, the rates charged to the customer should be identical to those contained in a standard rate schedule that is applicable to the customer’s rate class and usage characteristics.”⁸⁹*

The Joint Applicants stated that Blockware will pay the full LIC rate applicable to other Large Industrial customers for the second half (ten years) of the contract.⁹⁰ During the first half of the contract, the Joint Applicants ensured that all incentives will be paid within the first ten years, and that the benefit from any increase in demand lasts a

⁸⁷ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 26–27, finding paragraph 12.

⁸⁸ Eacret Testimony at 20, lines 14–22 and Application, Attachment 4, “Big Rivers_Wholesale Agreement”, Exhibit C Sections B and C pages 2-4.

⁸⁹ Administrative Case No. 327 (Ky. PSC Sept. 24, 1990) at 27, finding paragraph 14.

⁹⁰ Eacret Testimony at 22, lines 2–3.

maximum of five years.⁹¹ The Commission finds that the proposed Retail Agreement complies with Administrative Order 327, Finding 14.

The Commission finds that the proposed agreements meet all applicable requirements for an EDR as articulated in Administrative Order 327, with the exception of Finding 5 of that Order. Further, the Commission finds good cause exists to grant a deviation from the requirement of Administrative Order 327, Finding 5.

Confidentiality

Pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), KRS 278.160(3), and 807 KAR 5:001, Section 13, in requests filed on June 21, 2021, and August 20, 2021, Joint Applicants additionally seek confidential treatment for negotiated terms of the Retail Agreement between Blockware and Jackson Purchase; negotiated terms of the retail electric service agreement between Meade County Rural Electric Cooperative Corporation and Nucor Corporation; and BREC's internal projections related to its annual capacity position, its margins and the Net Present Value of the benefits to its members from the proposed contracts, and its marginal production energy costs. Joint Applicants seek confidential protection of this material for an indefinite term.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."⁹² The exceptions to the free and open examination of public records contained in KRS 61.878, should be strictly construed.⁹³

⁹¹ *Id.* at 21, lines 17–21.

⁹² KRS 61.872(1).

⁹³ KRS 61.871.

The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁹⁴ KRS 61.878(1)(a) grants confidential protection to “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(c)(1) grants confidential protection to “Records . . . [w]hich if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Furthermore, KRS 278.160(3) exempts disclosure of a special contract that contains rates and conditions of service not filed in a utility's general schedule, if the information contained in the special contract satisfies 61.878(1)(c).

In support of its motions, Joint Applicants state that public disclosure of Blockware’s projected power usage and the cost it will pay for power would constitute a clearly unwarranted invasion of personal; privacy for this customer. Further Joint Applicants state that the Commission granted confidential treatment to Kroger Company’s utility bills under KRS 61.878(1)(a) in Case No. 2012-00221⁹⁵ and that the Commission granted confidential treatment for special contract terms in Case No. 2016-00117,⁹⁶ and Case No. 2019-00365.⁹⁷ Joint Applicants also state that BREC’s projections of its production costs, market energy prices, margins, and the Net Present Value of the

⁹⁴ 807 KAR 5:001, Section 13(2)(c).

⁹⁵ Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order (Ky. PSC July 25, 2013).

⁹⁶ Case No. 2016-00117, *Joint Application of Kenergy Corp and Big Rivers Electric Corporation for Approved Contracts*, Order (Ky. PSC June 11, 2019).

⁹⁷ Case No. 2019-00365, *Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation*, Order (Ky. PSC Jan. 22, 2020).

benefits to its members from the proposed contracts is indicative of the market conditions BREC expects to encounter and the prices and terms on which it is willing to buy and sell power. Joint Applicants argue this information could be used to provide its competitors in the energy and credit markets with an unfair advantage. Finally, Joint Applicants state that Jackson Purchase faces competition in the effort to secure economic development prospects, and it is likely that this information, if publicly disclosed, could be used to place Jackson Purchase at a competitive disadvantage in securing future economic development opportunities.

Having considered the motions and being otherwise sufficiently advised, the Commission finds that the information for which confidential treatment was sought in the June 21, 2021 request and the August 20, 2021 motion for confidential treatment meet the requirements found in KRS 61.878(1)(a) and KRS 61.878(1)(c)(1), and should be granted confidential protection.

IT IS THEREFORE ORDERED that:

1. The Joint Applicant's proposed Retail Agreement with Blockware, as described in the application, is approved effective on and after the date of this Order.
2. The Joint Applicant's proposed Wholesale Agreement, as described in the application, is approved effective on and after the date of this Order.
3. The Joint Applicant's proposal to apply an EDR credit to the portion of Blockware's load, as described in the application, is approved.
4. The Joint Applicant's request for deviation from Administrative Order 327, Finding 5 is approved.

5. The Joint Applicants shall file an annual report with the Commission detailing revenues received from Blockware and the marginal costs associated with serving Blockware.

6. During any future rate proceeding, the Joint Applicants shall demonstrate, through detailed cost-of-service analysis, that non-EDR ratepayers are not adversely affected by the Retail Agreement.

7. The Joint Applicants shall file an annual report with the Commission providing the information as shown in Appendix A of Administrative Order 327, which is attached as an Appendix to this Order.

8. The Joint Applicant's June 21, 2021 and August 20, 2021 requests for confidential treatment are granted.

9. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

10. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

11. Joint Applicants shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

12. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Joint Applicants shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the

exclusions from disclosure requirements established in KRS 61.878. If Joint Applicants is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

13. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Joint Applicants to seek a remedy afforded by law.

14. The Executive Director is designated authority to grant reasonable extensions of time for the filing of documents required by this Order upon Joint Applicant's showing of good cause for such extension.

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

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00282 DATED OCT 14 2021

ECONOMIC DEVELOPMENT RATE CONTRACT REPORT

UTILITY: _____

YEAR: _____

	<u>Current Reporting Period</u>	<u>Cumulative</u>		
1) 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 -				
(A) DEMAND				
Total:	_____	Mcf	_____	Mcf
Existing Customers:	_____	Mcf	_____	Mcf
New Customers:	_____	Mcf	_____	Mcf
(B) ENERGY/CONSUMPTION				
Total:	_____	Mcf	_____	Mcf
Existing Customers:	_____	Mcf	_____	Mcf
New Customers:	_____	Mcf	_____	Mcf

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