

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY)	
UTILITIES COMPANY FOR APPROVAL OF AN)	CASE NO.
ECONOMIC DEVELOPMENT RIDER SPECIAL)	2022-00371
CONTRACT WITH BITIKI-KY, LLC)	

ORDER

On October 7, 2022, Kentucky Utilities Company (KU) submitted a contract for electric service (Contract) with Bitiki-KY, LLC (Bitiki) via the Commission’s electronic tariff filing system,¹ with intent to offer Bitiki an economic development rate (EDR), pursuant to Administrative Case No. 327 September 24, 1990 Order.² On November 4, 2022, 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 April 5, 2023. Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Mountain Association, and Kentucky Resources Council (collectively, Joint Intervenors) and Bitiki were granted intervention.

KU responded to two rounds of data requests from Commission Staff and two rounds of data requests from Joint Intervenors. Joint Intervenors responded to one round of data requests each from Commission Staff and KU. A hearing was conducted on May 31, 2023. KU responded to post-hearing data requests from Commission Staff and from

¹ TFS2022-00495 (filed Oct. 7, 2022).

² Administrative Case No. 327 [Docket No. 19000327], *An Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. PSC Sept. 24, 1990) (Administrative 327 Order).

Joint Intervenors. KU, Bitiki, and Joint Intervenors filed post-hearing briefs and reply briefs. The matter now stands ready 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.³ KRS 278.030 provides that a utility may demand, collect and receive fair, just and reasonable rates⁴ and that the service it provides must be adequate, efficient and reasonable.⁵ KRS 278.170(1) prohibits a utility from giving unreasonable preference or advantage to any person as to rates or subjecting any person to any unreasonable prejudice or disadvantage. KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

In Administrative 327 Order, 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.⁶ Administrative 327 Order contains 18 findings that refined the criteria on which the Commission would evaluate and approve an EDR.⁷ In Administrative 327 Order, the Commission also directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.⁸ The findings of Administrative 327 Order that are

³ KRS 278.040(2).

⁴ KRS 278.030(1).

⁵ KRS 278.030(2).

⁶ Administrative Case No. 327, Sept. 24, 1990 Order at 25.

⁷ Administrative Case No. 327, Sept. 24, 1990 Order at 24–28.

⁸ Administrative Case No. 327, Sept. 24, 1990 Order at 28, ordering paragraph 1.

applicable to this proceeding, and therefore comprise the legal standard by which this proposed contract should be evaluated are the following:⁹

- Finding 3: EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.¹⁰
- 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.¹¹
- 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.¹²
- Finding 6: A utility should demonstrate that the EDR exceeds the marginal cost associated with serving the customer.¹³
- Finding 7: A utility should file an annual report with the Commission detailing revenues received and the marginal costs from EDRs.¹⁴
- Finding 8: A utility should demonstrate that nonparticipating ratepayers are not adversely affected by the EDR through a cost-of-service analysis.¹⁵

⁹ 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 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.

¹⁰ Administrative Case No. 327, Sept. 24, 1990 Order at 25, ordering paragraph 3.

¹¹ Administrative Case No. 327, Sept. 24, 1990 Order at 25, ordering paragraph 4.

¹² Administrative Case No. 327, Sept. 24, 1990 Order at 25, ordering paragraph 5.

¹³ Administrative Case No. 327, Sept. 24, 1990 Order at 26, ordering paragraph 6.

¹⁴ Administrative Case No. 327, Sept. 24, 1990 Order at 26, ordering paragraph 7.

¹⁵ Administrative Case No. 327, Sept. 24, 1990 Order at 26, ordering paragraph 8.

- 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.¹⁶
- 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.¹⁷
- 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 327 Order.¹⁸
- Finding 12: For new industrial customers, an EDR should apply only to load which exceeds a minimum base level.¹⁹ 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.²⁰
- 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.²¹

CONTRACT

On August 31, 2022, and September 28, 2022, respectively, KU and Bitiki executed the Contract and Special Contract Economic Development Rider for KU to provide service to Bitiki under an EDR rate, subject to approval by the Commission.²² Bitiki planned to invest approximately \$25 million in its facilities located at a former coal

¹⁶ Administrative Case No. 327, Sept. 24, 1990 Order at 26, ordering paragraph 9.

¹⁷ Administrative Case No. 327, Sept. 24, 1990 Order at 26, ordering paragraph 10.

¹⁸ Administrative Case No. 327, Sept. 24, 1990 Order at 26, ordering paragraph 11.

¹⁹ Administrative Case No. 327, Sept. 24, 1990 Order at 26, ordering paragraph 12.

²⁰ Administrative Case No. 327, Sept. 24, 1990 Order at 26, ordering paragraph 12.

²¹ Administrative Case No. 327, Sept. 24, 1990 Order at 27, ordering paragraph 14.

²² Application, Attachment 1 at unnumbered page 1 and Attachment 2 at unnumbered page 1.

mining site in Waverly, Kentucky to build and develop a cryptocurrency mining facility.²³ Bitiki expected to create five new jobs as part of this plan.²⁴ Bitiki's estimated load was 2 MW as of September 28, 2022, increasing to 13 MW by May 2023.²⁵ Bitiki estimated a 95 percent load factor.²⁶

The Contract term was set at ten years, with Bitiki receiving demand charge discount credits during the first five years of the contract term.²⁷ In the event Bitiki were to default on the contract by ceasing operations or service, the contract contains a "clawback provision" that would require Bitiki to reimburse KU for a percentage of these credits dependent on which contract year this default occurred.²⁸ Bitiki also obtained a surety bond in amount of \$1.275 million as a security against default.²⁹ This amount

²³ Application, Attachment 2 at unnumbered page 2 and KU's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Dec. 7, 2022), Item 4a.

²⁴ Application, Attachment 2 at unnumbered page 2.

²⁵ Application, Attachment 1 at unnumbered page 1.

²⁶ Application, Attachment 2, Appendix A at unnumbered page 1.

²⁷ Application, Attachment 2 at unnumbered page 2, stating "The Total Demand Charge for the twelve (12) consecutive monthly billings and the subsequent four consecutive twelve (12) monthly billing periods, thereafter, shall be reduced by 50%, 40%, 30%, 20%, 10%, respectively (the "EDR Credits"). All subsequent billing shall be at the full charges stated in the applicable rate schedule after this five (5) year period."

²⁸ Application, Attachment 2 at unnumbered page 2, stating "If a Customer Termination Event occurs during the first two years of the Initial Contract Term, the Customer shall reimburse the Company for 90% of the total EDR Credits received by the Customer. If a Customer Termination Event occurs during the third, fourth or fifth years of the Initial Contract Term, the Customer shall reimburse the Company for 75% of the total EDR Credits received by the Customer. If a Customer Termination Event occurs at any time during the final five years of the Initial Contract Term, the Customer shall reimburse the Company for 50% of the total EDR Credits received by the Customer."

²⁹ KU's Response to Staff's First Request, Item 1(c), Attachment 2. See also KU's Post-Hearing Brief at 5. The deposit is based on two-twelfths of the annual bill at full tariffed rates.

represented a deposit of two-twelfths the annual projected billing per KU's tariff.³⁰ KU estimated a minimum monthly bill with the EDR discounts of \$147,000.³¹

KU's tariff also requires Bitiki to certify that it has been qualified by the Commonwealth of Kentucky for benefits under programs reviewed and approved by the Kentucky Economic Development Finance Authority (KEDFA).³² Bitiki's parent company Bitiki Blockchain, LLC executed an agreement with KEDFA on March 31, 2022.³³

MARGINAL COST OF SERVICE STUDY

KU's marginal cost study identified four components of marginal costs: production demand, production energy, transmission, and distribution. Production demand and transmission costs were estimated based on a noncoincident peak.³⁴ KU relied on the 2021 IRP to estimate the capacity additions used in the marginal cost study, projecting that additional capacity resources would be needed in 2028.³⁵ KU calculated that the capacity reserve margin considered essential for system reliability was 1,058 MW.³⁶ Through the first five years of the special contract, KU's projected reserve margins result in excess capacity projections ranging from 274 MW to 414 MW.³⁷ The estimated cost of the projected capacity resource was based on the National Renewable Energy

³⁰ P.S.C. No. 20, Original Sheet No. 102.1 (issued July 20, 2021), effective July 1, 2021.

³¹ Application, Attachment 2, Appendix A at unnumbered page 1.

³² P.S.C. Electric No. 13. Original Sheet No. 71.1 (issued July 20, 2021), effective July 1, 2021.

³³ Application, Attachment 3(b).

³⁴ Application, Attachment 4 at 2 and 9.

³⁵ Application, Attachment 4 at 2.

³⁶ Application, Attachment 2, Appendix A at unnumbered page 1.

³⁷ Application, Attachment 2, Appendix A at unnumbered page 1.

Laboratory's 2020 Annual Technology Baseline (NREL ATB).³⁸ The production energy costs were forecasted based on variable costs for each hour of 2023.³⁹ Transmission costs were estimated based on the 2022 business plan for transmission capacity additions.⁴⁰ KU stated it does not anticipate building additional infrastructure to serve Bitiki because transmission and distribution lines to the Bitiki site are already in place due to the presence of the former coal mining facility.⁴¹

KU provided a marginal cost study analysis showing that the special contract will generate revenue sufficient to cover the variable costs related to serving Bitiki and make a contribution towards fixed costs.⁴² Specifically, the analysis shows that Bitiki will produce total monthly revenues of \$387,951 while the marginal cost to serve Bitiki would be \$341,054. In performing its analysis, KU used the five-year average discount of 30 percent.⁴³ KU provided an annual analysis which showed the discounted rate would not exceed the marginal cost to serve for the first year; however, overall, the discounted rate will exceed the marginal cost to serve.⁴⁴

Joint Intervenors argued that KU's marginal cost of service study failed to include all anticipated costs, failed to consider whether Bitiki's load factor should have resulted in

³⁸ KU's Response to Staff's First Request, Item 2(b).

³⁹ Application, Attachment 4 at 9–10.

⁴⁰ Application, Attachment 4 at 10.

⁴¹ Application, Attachment 4 at 11 and Rebuttal Testimony of Michael Hornung (Hornung Rebuttal Testimony) at 6, lines 1-2

⁴² Application, Attachment 5.

⁴³ Application, Attachment 5.

⁴⁴ KU's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Jan. 9, 2023), Item 4, Attachment.

coincidence factor being applied to the marginal demand and transmission costs, and failed to correctly calculate loss factors.⁴⁵ With regard to production demand costs, Joint Intervenors contended that the 2021 IRP is no longer relevant for planning purposes and KU has filed an application for a certificate of public convenience and necessity (CPCN) for two natural gas combined cycle (NGCC) generating units, not included in the 2021 IRP.⁴⁶ Joint Intervenors argued that the projected costs of the NGCC from the CPCN case should be used to estimate the capacity addition costs and should include operations and maintenance (O&M) expenses and firm gas transportation.⁴⁷ Joint intervenors also argued that the production demand and transmission should be based on the coincident peak, due to the high load factor of Bitiki, and a loss-factor should be incorporated for all components to reflect transmission losses.⁴⁸

KU agreed that the coincident peak is a better estimate given Bitiki's high load factor and that transmission loss factors should be included, as discussed in the Marginal Cost of Service Study.⁴⁹ KU argued that the NREL ATB was a reasonable estimate at the time of the filing and projected costs from the CPCN case will not be finalized until a decision is rendered in late 2023.⁵⁰ KU claimed that the marginal cost study demonstrates that the Bitiki special contract will produce revenues in excess of expenses, regardless of the basis for production demand estimates, including the 2020 or 2021 NREL ATB, CPCN

⁴⁵ Direct Testimony of Chelsea Hotaling (Hotaling Direct Testimony) at 3, lines 8-14.

⁴⁶ Hotaling Direct Testimony at 5 and 9.

⁴⁷ Hotaling Direct Testimony at 9.

⁴⁸ Hotaling Direct Testimony at 10–11.

⁴⁹ Rebuttal Testimony of Stuart Wilson (Wilson Direct Testimony) at 3.

⁵⁰ Wilson Rebuttal Testimony at 5–8.

cost estimates, or PJM's 2026/2027 Cost of New Entry (CONE).⁵¹ KU also argued that the actual production demand costs are likely zero because additional load of less than 135 MW would not delay any capacity retirements or accelerate any capacity additions.⁵²

AVAILABILITY OF EDR DISCOUNTS

Joint Intervenors recommended that the special contract not be approved by the Commission.⁵³ Joint Intervenors stated that minimum requirements for investment and job creation should be established, and that KU did not establish that Bitiki would not have located its facility at the present site without the discounted rate.⁵⁴

KU argued that the Kentucky Cabinet for Economic Development would have considered job creation as part of its analysis of tax incentives under the Kentucky Enterprise Initiative Act.⁵⁵ KU also argued that its tariff provision that requires certification that the customer has been qualified for benefits by KEDFA removes any subjectivity from KU's decision making on EDR contracts and ensures that potential EDR customers present bona fide economic development prospects.⁵⁶ KU also asserted that Bitiki had represented that five jobs would be created for the project and there was no reason to assume that representation was made in bad faith. KU also argued that Bitiki represented that EDR credits were an important consideration in establishing full operations and Bitiki

⁵¹ Wilson Rebuttal Testimony at 10.

⁵² Wilson Direct Testimony at 19.

⁵³ Direct Testimony of Stacy L. Sherwood (Sherwood Direct Testimony) at 3.

⁵⁴ Sherwood Direct Testimony at 3–4.

⁵⁵ Rebuttal Testimony of John Bevington (Bevington Rebuttal Testimony) at 3.

⁵⁶ Bevington Rebuttal Testimony at 3–4.

did not make the final decision to locate in KU's territory until KEDFA approval was granted and EDR discounts could be reasonably expected.⁵⁷

COLLATERAL AND SECURITY

KU added a provision to the EDR contract which provides for diminishing repayment of EDR discounts if a customer terminates service before the end of the contract term.⁵⁸ KU does not require additional security or collateral from EDR customers beyond an estimated deposit, which Bitiki provided in the form of a \$1.275 million surety bond.⁵⁹ KU stated that it would pursue collection as a creditor in the event that Bitiki files for bankruptcy or ceases operations before the end of the contract term.⁶⁰

Joint Intervenors argued that, due to cryptocurrency's volatility, the special contract poses an increased risk to other ratepayers.⁶¹ Joint Intervenors contended that cryptocurrency mining operations are inherently risky because electricity costs drive the location of the facilities, which can relocate quickly. Joint Intervenors argued minimum safeguards should be established for all cryptocurrency mining operations, regardless of tariff type.

KU argued that the minimal investment needed to serve Bitiki, the line extension policy, and customer deposit are sufficient to insulate KU's customers from the risk that Bitiki will cease operations before the end of the contract term.⁶²

⁵⁷ Bevington Rebuttal Testimony at 5–6.

⁵⁸ Hornung Rebuttal Testimony at 15.

⁵⁹ KU's Post-Hearing Brief at 5.

⁶⁰ KU's Response to Staff's First Request, Item 1(d).

⁶¹ Direct Testimony of Stacy L. Sherwood at 3-4.

⁶² KU's Post-Hearing Brief at 7.

DISCUSSION AND FINDINGS

In Administrative 327 Order, the Commission directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.⁶³ The following paragraphs will address the findings of Administrative 327 Order 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.⁶⁴

KU submitted the proposed Contract and Economic Development Rider, executed by both parties. These documents contain the negotiated terms of the special contract. The Commission finds the proposed Contract complies with Finding 3 of Administrative 327 Order.

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.⁶⁵

The Contract provided the following: (1) the demand charge discounts for the first five years of the contract ranging from 50% to 10%,⁶⁶ (2) the estimated capital investment of \$25 million and five jobs to be created,⁶⁷ (3) an assertion that no fixed costs would be

⁶³ Administrative Case No. 327, Sept. 24, 1990 Order at 28, ordering paragraph 1.

⁶⁴ Administrative Case No. 327, Sept. 24, 1990 Order at 25, ordering paragraph 3.

⁶⁵ Administrative Case No. 327, Sept. 24, 1990 Order at 25, ordering paragraph 4.

⁶⁶ Application, Attachment 2 at unnumbered page 2.

⁶⁷ Application, Attachment 2 at unnumbered page 2.

necessary to serve Bitiki's load,⁶⁸ (4) minimum estimated bill of \$147,000,⁶⁹ (5) estimated load of up to 13 MW and load factor of 95 percent,⁷⁰ and (6) a ten year contract term.⁷¹ No fixed minimum number of jobs or amount of investment is necessary or required by precedent. However, KU has demonstrated consideration of the actual economic benefits by including qualification by KEDFA in its tariff. The Commission finds that the Contract complies with Administrative 327 Order, 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.⁷²

KU's reserve margin and load forecasts were calculated in KU's 2021 Integrated Resource Plan.⁷³ KU's minimum reserve margin considered essential for system reliability was calculated based on its Net Peak Load multiplied by 17 percent, which is its summer reserve margin requirement established in its 2021 IRP.⁷⁴ KU anticipates it will have excess capacity above the minimum reserve margin of at least 274 MW in each year of the special contract discount period. Bitiki's estimated 13 MW in additional

⁶⁸ Application, Attachment 2, Appendix A at unnumbered page 1.

⁶⁹ Application, Attachment 2, Appendix A at unnumbered page 1.

⁷⁰ Application, Attachment 2, Appendix A at unnumbered page 1.

⁷¹ Application, Attachment 2 at unnumbered page 1.

⁷² Administrative Case No. 327, Sept. 24, 1990 Order at 25, ordering paragraph 5.

⁷³ Case No. 2021-00393, *Electronic 2021 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, IRP Vol. I (filed Oct. 19, 2021), at 5-41, 5-42.

⁷⁴ KU's Response to Joint Intervenors' First Request for Information (filed Dec. 7, 2022), Item 13(b), citing Case No. 2021-00393, IRP Vol. III at 4.

demand does not represent any significant risk of exceeding minimum reserve margin as calculated by KU. The Commission finds that the Contract complies with Administrative 327 Order, Finding 5.

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.

KU provided a marginal cost of service study from August 12, 2022,⁷⁵ less than a year before the execution of the Contract. KU provided calculations demonstrating that over the ten-year period of the Contract, revenue derived from Bitiki will exceed the marginal costs of adding Bitiki's load by \$9,909,767, and over the five-year discount period, will exceed marginal costs by \$2,813,785.⁷⁶ The only year in which the marginal costs would not exceed the revenue would be in year one of the contract, in which an \$8,203 shortfall would occur.⁷⁷ KU will reach a break-even point in year two of the contract. Since no additional infrastructure is necessary to serve Bitiki, if Bitiki were to default, demand and energy marginal costs would be avoided and no fixed costs would be incurred because KU does not plan to add capacity to serve Bitiki. The Commission finds that the Contract complies with Administrative 327 Order, Finding 6.

Finding 7: Utilities with active EDRs should file an annual report with the Commission detailing revenues received from

⁷⁵ Application, Attachment 4 at unnumbered title page.

⁷⁶ KU's Response to Staff's Second Request, Item 4, Attachment.

⁷⁷ KU's Response to Staff's Second Request, Item 4, Attachment.

individual EDR customers and the marginal costs associated with serving those individual customers.⁷⁸

KU has committed to include Bitiki in its annual EDR report upon approval by the Commission.⁷⁹ The Commission finds that the Contract complies with Administrative 327 Order, Finding 7.

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.⁸⁰

KU committed that in future rate proceedings it will demonstrate through detailed cost-of-service analysis that nonparticipating ratepayers are not adversely affected by its EDR customers, including Bitiki. KU also stated that it will not seek a rate increase before July 1, 2025.⁸¹ The Commission finds that the Contract complies with Administrative 327 Order, Finding 8.

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.⁸²

No fixed costs would be incurred because infrastructure is already in place to serve Bitiki; therefore, the Commission finds that the Contract complies with Administrative 327 Order, 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.

⁷⁸ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 7.

⁷⁹ Hornung Rebuttal Testimony at 8.

⁸⁰ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 8.

⁸¹ Hornung Rebuttal Testimony at 8.

⁸² Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 9.

Bitiki has asserted that it plans to make \$25 million in capital investments and its project will create five jobs. KU is not required to demonstrate minimum levels of investment or job creation. The Commission has no reason to doubt the veracity of Bitiki's assertions. The Commission finds that the Contract complies with Administrative 327 Order, 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.⁸³

KU has committed to include Bitiki in its annual EDR report upon approval by the Commission.⁸⁴ The Commission finds that the Contract complies with Administrative 327 Order, 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 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.⁸⁵

KU's tariff states that the EDR is available to new customers contracting for a minimum monthly billing load of 1,000 KVA and at least a 50 percent load factor. Bitiki qualifies as a new customer that meets the minimum requirements. The Commission finds that the Contract complies with Administrative 327 Order, Finding 12.

Finding 14: The term of an EDR contract should be for a period twice the length of the discount period, with the

⁸³ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 11.

⁸⁴ Hornung Rebuttal Testimony at 11, lines 19-20.

⁸⁵ Administrative Case No. 327, Sept. 24, 1990 Order at 26-27, ordering paragraph 12.

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.

Bitiki's discount period is five years out of a ten-year contract, with the last five years at standard industrial customer rates. The Commission finds that the Contract complies with Administrative 327 Order, Finding 14.

Having reviewed the record and being fully advised, the Commission finds that KU's EDR special contract filing should be approved because it complies with all provisions of Administrative 327 Order and results in fair, just and reasonable rates under KRS 278.030(1). The risk of adverse effect on nonparticipating ratepayers is very low. The Contract is likely to cover its variable cost of service and contribute to fixed costs.

IT IS THEREFORE ORDERED that:

1. KU's proposed Contract with Bitiki is approved effective on and after the date of this Order.
2. KU shall file an annual report with the Commission detailing revenues received from Bitiki and the marginal costs associated with serving Bitiki.
3. During any future rate proceeding, KU shall demonstrate, through detailed cost-of-service analysis, that non-EDR ratepayers are not adversely affected by the Contract.
4. KU shall file an annual report with the Commission providing the information as shown in Appendix A of Administrative 327 Order, which is attached as an Appendix to this Order.

5. Within 20 days of the date of service of this Order, KU shall file with the Commission, using the Commission's electronic Tariff Filing System, the special contract as approved herein.

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

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PUBLIC SERVICE COMMISSION

[Signature]
Chairman

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Signed on
behalf
of VC
in Admission*

Angie Hutton
Vice Chairman

ManPat Regan
Commissioner

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AUG 07 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Linda C. Bridwell
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00371 DATED AUG 07 2023

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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