

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)	2022-00395
CONTRACT WITH KRUGER PACKAGING)	

ORDER

On October 28, 2022, Kentucky Utilities Company (KU) submitted a contract for electric service (Contract) with Kruger Packaging (Kruger) via the Commission's electronic tariff filing system,¹ with intent to offer Kruger an economic development rate (EDR) pursuant to the Commission's September 24, 1990 Order in Administrative Case No. 327.² On November 22, 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 26, 2023. Kruger was granted intervention. KU responded to two rounds of discovery from Commission Staff. On March 16, 2023, KU requested that the matter be submitted for decision based upon the existing evidentiary record. As Kruger did not request a hearing and a hearing is not necessary to protect substantial rights, the Commission will adjudicate this case based on the evidence of record.

¹ TFS2023-00528 (filed Oct.28, 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 Order 327).

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 Case No. 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.⁶ Administrative Order 327 contains 18 findings that refined the criteria on which the Commission would evaluate and approve an EDR.⁷ In Administrative Order 327, the Commission also directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.⁸ 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:⁹

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.

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

- 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
- Finding 9: The EDR contract should include a provision providing for the recovery of EDR customer-specific costs over the life of the contract.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.

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

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

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

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

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

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

¹⁶ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 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.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. For existing industrial customers, the EDR should apply only to load which exceeds a minimum 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 for an existing customer or 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

CONTRACT

On October 22, 2021, and October 13, 2022, respectively, KU and Kruger executed the Contract and Special Contract Economic Development Rider for KU to provide service to Kruger under an EDR rate, subject to approval by the Commission.²¹ Kruger planned to invest approximately \$114 million at its facilities.²² Kruger expected to create 147 new jobs as part of this plan.²³ Kruger's estimated load was 3.5 MW beginning

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

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

¹⁹ Administrative Case No. 327, Sept. 24, 1990 Order at 26–27, finding paragraph 12.

²⁰ Administrative Case No. 327, Sept. 24, 1990 Order at 27, finding paragraph 14.

²¹ Application, Attachment 1 at unnumbered page 1 and Attachment 2 at unnumbered page 1.

²² Application, Attachment 2 at unnumbered page 2.

²³ Application, Attachment 2 at unnumbered page 2.

May 2022, increasing to 4.5 MW by May 2027.²⁴ Kruger estimated a 74 percent load factor.²⁵

The Contract term was set at ten years, with Kruger receiving demand charge discount credits during the first five years of the contract term.²⁶ In the event Kruger were to default on the contract by ceasing operations or service, the contract contains a “clawback provision” that would require Kruger to reimburse KU for a percentage of these credits dependent on which contract year the default occurred.²⁷ Kruger will remit a deposit of \$117,500, which is two times Kruger’s recent average bill under KU’s full tariffed rates.²⁸ KU estimated a minimum monthly bill with the EDR discounts of \$41,208.²⁹

KU’s tariff also requires Kruger 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. KU stated Kruger requested incentives under the Kentucky Business Investment program and was preliminarily approved on May 27, 2021.³⁰

²⁴ Application, Attachment 1 at unnumbered page 1.

²⁵ Application, Attachment 2, Appendix A at unnumbered page 1.

²⁶ Application, Attachment 2 at unnumbered page 2.

²⁷ Application, Attachment 2 at unnumbered page 2.

²⁸ KU’s Response to Commission Staff’s Second Request for Information, Item 2(b).

²⁹ Application, Attachment 2, Appendix A at unnumbered page 1.

³⁰ Application, Attachment 3.

DISCUSSION AND FINDINGS

In Administrative Order 327, the Commission directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.³¹ 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.³²

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 Administrative Order 327, Finding 3.

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.³³

The Contract provided the following: (1) the demand charge discounts for the first five years of the contract ranging from 50 percent to 10 percent³⁴; (2) the estimated capital investment of \$114,230,777 and 147 jobs to be created³⁵; (3) an assertion that KU estimated investing \$197,949 in new facilities to serve the EDR Contracted load³⁶; (4)

³¹ Administrative Case No. 327, Sept. 24, 1990 Order at 28, ordering paragraph 1.

³² Administrative Case No. 327, Sept. 24, 1990 Order at 25, finding paragraph 3.

³³ Administrative Case No. 327, Sept. 24, 1990 Order at 25, finding paragraph 4.

³⁴ Application, Attachment 2 at unnumbered page 2.

³⁵ Application, Attachment 2 at unnumbered page 2.

³⁶ Application, Attachment 2, Appendix A at unnumbered page 1. Also, see KU's Response to Commission Staff's First Request for Information (filed Dec. 22, 2022) (Staff's First Request), Item 3, in

minimum estimated bill of \$41,208,³⁷ (5) initial estimated load of up to 3.5 MW and load factor of 74 percent,³⁸ and (6) a ten-year contract term.³⁹ The Commission finds that the Contract 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.⁴⁰

KU's reserve margin and load forecasts were calculated in KU's 2021 Integrated Resource Plan.⁴¹ 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.⁴² KU anticipates it will have excess capacity above the minimum reserve margin of at least 290 MW in each year of the special contract discount period.⁴³ Kruger's estimated initial load of 3.5 MW and final load of 4.5 MW in additional demand does not represent any significant risk of

which KU indicates that the customer-specific fixed costs totaled \$171,483, of which Kruger contributed \$10,360.

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

³⁸ Application, Attachment 2, Appendix A at unnumbered page 1.

³⁹ Application, Attachment 2 at unnumbered page 2.

⁴⁰ Administrative Case No. 327, Sept. 24, 1990 Order at 25, finding paragraph 5.

⁴¹ 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.

⁴² Case No. 2021-00393, *Electronic 2021 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, IRP Vol. III at 4.

⁴³ Application, Attachment 2, Appendix A at unnumbered page 1.

exceeding minimum reserve margin as calculated by KU. The Commission finds that the Contract complies with Administrative Order 327, Finding 5.

Finding 6: Upon submission of each EDR contract, a utility should demonstrate that the discounted rate exceeds the marginal cost associated with servicing 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.⁴⁴

KU provided a marginal cost of service study from August 12, 2022,⁴⁵ 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 Kruger will exceed the marginal costs of adding Kruger's load by \$4,187,959, and over the five-year discount period, will exceed marginal costs by \$1,520,994.⁴⁶ The Commission finds that the Contract complies with 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.⁴⁷

While there was no mention in this proceeding by KU of a commitment to file such reports, KU has committed to doing so in prior EDR contract cases and the Commission expects such reports to be filed. The Commission finds that the Contract complies with Administrative Order 327, Finding 7.

⁴⁴ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 6.

⁴⁵ Application, Attachment 4 at unnumbered title page.

⁴⁶ KU's Response to Commission Staff's Second Request for Information, Item 5, Attachment.

⁴⁷ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 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.⁴⁸

While there was no mention by KU of a commitment to demonstrating that nonparticipating customers are not adversely affected by its EDR customers, KU has committed to providing such information in the past and the Commission expects KU to do so in any future rate proceedings. The Commission finds that the Contract complies with Administrative Order 327, 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.⁴⁹

KU indicated that it installed the necessary facilities to serve Kruger after Kruger made its location decision. The cost of those facilities was \$171,483, of which Kruger contributed \$10,360, resulting in a net KU investment of \$161,123.⁵⁰ KU indicated that it would recover the net cost of the new facilities over the life of the EDR contract through demand rates in excess of Kruger's marginal cost. KU indicated that over the 60 months of the EDR discount period, it would collect demand revenues in excess of demand-related marginal costs of \$372,960. Over the remaining 60 months, KU indicates that the demand revenues will exceed marginal demand-related costs by more than \$600,000.⁵¹ The Commission finds that the Contract complies with Administrative Order 327, Finding 9.

⁴⁸ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 8.

⁴⁹ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 9.

⁵⁰ KU's Response to Staff's First Request (filed Dec. 22, 2022), Item 3(a).

⁵¹ KU's Response to Commission Staff's Second Request for Information, Item 7.

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.⁵²

Kruger has asserted that it plans to make approximately \$114 million in capital investments and its project will create 147 jobs. The Commission finds that the Contract complies 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.⁵³

While there was no mention in this proceeding by KU of a commitment to file such reports, KU has committed to doing so in prior EDR contract cases and the Commission expects such reports to be filed. The Commission finds that the Contract complies 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, the EDR should apply only to load which exceeds a minimum 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 for an existing customer or the minimum usage level required for a new customer.⁵⁴

KU indicated that its 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.⁵⁵ Kruger qualifies as a new customer that meets the minimum requirements.

⁵² Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 10.

⁵³ Administrative Case No. 327, Sept. 24, 1990 Order at 26, finding paragraph 11.

⁵⁴ Administrative Case No. 327, Sept. 24, 1990 Order at 26–27, finding paragraph 12.

⁵⁵ KU's Response to Staff's First Request (filed Dec. 22, 2022), Item 6.

The Commission finds that the Contract complies 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.⁵⁶

Kruger's discount period is five years out of a ten-year contract, with the last five years at standard tariffed rates. The Commission finds that the Contract complies with Administrative Order 327, 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 Order 327 and results in fair, just and reasonable rates under KRS 278.030(1).

IT IS THEREFORE ORDERED that:

1. KU's proposed Contract with Kruger is approved effective on and after the date of service of this Order.
2. KU shall file an annual report with the Commission detailing revenues received from Kruger and the marginal costs associated with serving Kruger.
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.

⁵⁶ Administrative Case No. 327, Sept. 24, 1990 Order at 27, finding paragraph 12.

4. KU 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.

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.

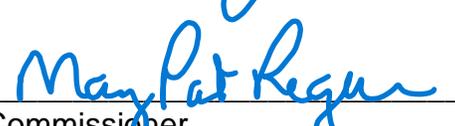
6. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
AUG 28 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00395 DATED AUG 28 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:	_____ kW	_____ kW
	Existing Customers:	_____ kW	_____ kW
	New Customers:	_____ kW	_____ kW
(B) ENERGY/CONSUMPTION			
	Total:	_____ kWh	_____ kWh
	Existing Customers:	_____ kWh	_____ kWh
	New Customers:	_____ kWh	_____ kWh

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