COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY KENTUCKY, INC. FOR APPROVAL OF AN ECONOMIC DEVELOPMENT SPECIAL CONTRACT	))))	CASE NO. 2026-00012

<u>O R D E R</u>

Duke Energy Kentucky, Inc. (Duke Kentucky), pursuant to KRS 278.040(2) and 807 KAR 5:001, Section 14, filed an application on January 30, 2026, seeking approval of its economic development incentive special agreement[1] (the Contract) with Niagara Bottling, LLC (Niagara), including approval of a deviation from its Development Incentive Rider (Rider DIR).[2] Commission Staff issued, and Duke Kentucky responded to, one set of requests for information.[3] There are no intervening parties. Duke Kentucky has not requested a hearing. Because the Commission finds that a hearing is not necessary or in the public interest, the Commission will adjudicate this case on the evidence in the record.

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[1] Duke Kentucky's Application, Exhibit A.

[2] Ky. P.S.C. Electronic No. 2, Sheet No. 86 (issued May 1, 2020), effective May 1, 2020.

[3] Duke Kentucky's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Apr. 10, 2026).

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.[4] KRS 278.030 provides that a utility may demand, collect and receive fair, just and reasonable rates[5] and that the service it provides must be adequate, efficient and reasonable.[6] 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 economic development riders (EDR) 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.[7] Administrative Order 327 contains 18 findings that refined the criteria on which the Commission would evaluate and approve an EDR.[8] In Administrative Order 327, the Commission also directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.[9] The findings of Administrative Order 327 that are applicable to this proceeding, and therefore comprise

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[4] KRS 278.040(2).

[5] KRS 278.030(1).

[6] KRS 278.030(2)

[7] Administrative Case No. 327, (Ky. PSC Sept. 24, 1990), Order at 25.

[8] Administrative Case No. 327, (Ky. PSC Sept. 24, 1990), Order at 24–28.

[9] Administrative Case No. 327, (Ky. PSC Sept. 24, 1990), Order at 28, ordering paragraph 1.

the legal standard by which this proposed contract should be evaluated are the following:[10]

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

- 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.

- 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.

- Finding 6: A utility should demonstrate that the EDR exceeds the marginal cost associated with serving the customer.

- Finding 7: A utility should file an annual report with the Commission detailing revenues received and the marginal costs from EDRs.

- Finding 8: A utility should demonstrate that nonparticipating ratepayers are not adversely affected by the EDR through a cost-of-service analysis.

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

- 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.

- 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.

- 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

[10] Finding 13 is not applicable because it pertains to retaining existing customers, which is not the case in this proceeding. Findings 15 and 16 refer to gas utilities and are thus not relevant to this proceeding. Finding 17 is relevant to this proceeding but merely requires comments by the Economic Development Cabinet, or other interested parties, pertaining to an EDR contract be filed with the Commission no more than 20 days after filing an EDR contract.

level and normalized base load for an existing customer or the minimum usage level required for a new customer.

- 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.

DEVELOPMENT INCENTIVE RIDER

Rider DIR was approved by the Commission in Case No. 2004-00253.[11] The economic development section of Rider DIR is available to non-residential customers for load associated with initial permanent service to new establishments, expansion of existing establishments, or new customers in existing establishments who make application to Duke Kentucky for service under the economic development program.[12] The new load must be a minimum of 1,000 kW at one delivery point.[13] Customers taking service under the Economic Development section of Rider DIR are expected to employ an additional workforce of 25 full-time equivalent (FTE) employees per 1,000 kW of new load and the additions must occur after Duke Kentucky approved service under Rider DIR.[14] The tariff also states that the new load should result in capital investment of one million dollars per 1,000 kW of new load provided that such investment is accompanied by a net increase in full time equivalent employees in Duke Kentucky's service area and the capital investment must occur after Duke Kentucky approved service under Rider DIR.[15]

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[11] Case No. 2004-00253, *Application of the Union Light, Heat and Power Company for Approval of Its Proposed Economic Development Riders* (Ky. PSC Apr. 19, 2005).

[12] P.S.C. KY No. 2, Third Revised Sheet No. 86 at 1.

[13] P.S.C. KY No. 2, Third Revised Sheet No. 86 at 1.

[14] P.S.C. KY No. 2, Third Revised Sheet No. 86 at 1.

[15] P.S.C. KY No. 2, Third Revised Sheet No. 86 at 1.

Rider DIR requires customers to comply with all terms of the standard tariff rate except that the customer's total bill for electric service, less any rate adjustment rider amounts shown in the standard tariff, will be reduced by up to 50 percent for a period of 12 months.[16] The customer must maintain a minimum demand and maintain a monthly average load factor of 40 percent.[17] Failure to do so would result in the customer being billed a minimum bill based on the minimum demand specified in the service agreement and a monthly average load factor of 40 percent.[18] Finally, the customer must continue to take service at the same or greater demand and usage levels for a period of at least two years following the 12-month incentive period.[19]

In approving Rider DIR, the Commission stated that Duke Kentucky had shown that its economic development incentive rates were designed to recover the variable costs of serving the new or expanded load and to make a contribution to its fixed costs.[20]

CONTRACT

Duke Kentucky and Niagara entered into the proposed Contract on November 25, 2025, subject to the Commission's approval.[21] The Contract states that Niagara is expected to employ 125 new FTE employees and is expected to make a capital

[16] P.S.C. KY No. 2, Third Revised Sheet No. 86 at 2.

[17] P.S.C. KY No. 2, Third Revised Sheet No. 86 at 3.

[18] P.S.C. KY No. 2, Third Revised Sheet No. 86 at 3.

[19] P.S.C. KY No. 2, Third Revised Sheet No. 86 at 3.

[20] Case No. 2004-00253, Apr. 19, 2005 Order at 6.

[21] Application, Exhibit A at 1.

investment of approximately $43,000,000.[22] The Contract term is 48 consecutive months.[23] The service terms require that:

> The Customer shall continue to take service from Duke Energy Kentucky at the Minimum Peak Demand and Minimum Load Factor for a period of two (2) years following the Incentive Period. The Customer agrees to be billed monthly for two (2) years following the Incentive Period based on the greater of: (a) its actual monthly demand and usage levels' as adjusted for billing by Rate OT provisions or (b) its average demand and usage levels during the Incentive Period as adjusted for billing by the Rate OT provisions or (c) the Minimum Peak Demand. The Customer understands that all applicable riders, as listed in the Applicable Riders section of the applicable standard service tariff (Riders), are excluded from the Incentive Percentage.[24]

The Contract is not renewable[25] and contains a provision allowing Duke Kentucky to verify performance.[26] Finally, the Contract also states that the contract will:

> automatically and immediately terminate if, at any time during the Incentive Period, the Customer fails to comply with the terms and conditions as stated herein or fails to maintain the Minimum Peak Demand or Minimum Load Factor for three consecutive billing periods. The Customer may terminate this Agreement at any time, subject to the repayment obligation in paragraph 8, above, by providing at least 30 days' notice to Duke Energy Kentucky.[27]

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[22] Application, Exhibit A at 3–4.

[23] Application, Exhibit A at 4.

[24] Application, Exhibit A at 4.

[25] Application, Exhibit A at 4.

[26] Application, Exhibit A at. 6.

[27] Application, Exhibit A at 7.

DISCUSSION AND FINDINGS

For the reasons stated below, and based on the record, the Commission approves Duke Kentucky's EDR Contract with Niagara and finds that Duke Kentucky's request to deviate from its Rider DIR requirements establishing an FTE per 1,000 KWh standard is reasonable based upon the specific facts established in this proceeding and should be granted.

Beginning with Finding 3, we consider each relevant Administrative Case 327 finding in turn.

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

Pursuant to this finding, Duke Kentucky submitted the proposed Contract. As described above, the submitted Contract contains its negotiated terms. The Commission finds the proposed Contract satisfies 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.

Duke Kentucky's proposed Contract includes all specified terms, including clear termination conditions and payback provisions should Niagara not perform, thus protecting current ratepayers. The Commission finds Duke Kentucky satisfies 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.

Duke Kentucky is a Reliability Pricing Model (RPM) member of PJM Interconnection, L.L.C. (PJM). Consequently, Duke Kentucky used the unforced capacity (UCAP) methodology to calculate its planning reserve margin.[28] When Duke Kentucky filed its application in this case, it utilized the same projected reserve margins that it reported in Administrative Case 387 on March 31, 2025. During the pendency of this proceeding, Duke Kentucky submitted an updated report in Administrative Case 387 on March 31, 2026. Duke Kentucky provided the updated projected reserve margin.[29] The table below shows the updated figures:[30]

Year	Annual Peak Load (MW)	Est Firm Cap (MW)	Required Reserve Margin (%)	Projected Reserve Margin (MW)	Projected Reserve Margin (%)
2026	891	889	-7.09%	61	7.42%
2027	910	868	-7.40%	25	3.02%
2028	904	890	-5.99%	40	4.68%
2029	906	932	-8.47%	103	12.42%
2030	957	932	-8.43%	56	6.37%

[28] Admin. Case No. 387, *Electronic Review of the Adequacy of Kentucky's Generation Capacity and Transmission System* (filed Mar. 31, 2026) Duke Energy Kentucky, Inc.'s 2025 Annual Responses in Admin Case No. 387, Item 7.

[29] Duke Kentucky's Response to Staff's Request, Item 1.

[30] Duke Kentucky's Response to Staff's Request, Item 8.

Compared to its prior year projected reserve margin report, Duke Kentucky projects a meaningfully lower projected reserve margin between 2026–2030 than it had in 2025. However, Duke Kentucky does not project being in a reserve margin deficit for any year of the contract term. Moreover, Duke Kentucky's participation in PJM gives it access to the Retail Transmission Organization's (RTO) wholesale capacity markets. Taking into consideration the short (24-month) discount period, Niagara's relatively small minimum monthly peak demand requirement [redacted] and the fact that Duke Kentucky will not be in a reserve margin deficit, the Commission finds that Finding 5 has been satisfied.

> 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.

Duke Kentucky provided a marginal cost of service study as part of its application which shows that the revenue derived from serving Niagara pursuant to the proposed Contract will exceed its marginal costs.[31] The Commission finds that Finding 6 is therefore satisfied.

> 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.

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[31] Application, Exhibit D.

Duke Kentucky generally files its annual report of its economic development rider contracts in Case No. 2022-00394.[32] Duke Kentucky provided its annual report in this case.[33] The Commission finds that Finding 7 is satisfied.

> 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.

Duke Kentucky committed in its application in this case that, in future rate proceedings, it will conduct a detailed cost-of-service analysis that demonstrates that nonparticipating ratepayers are not adversely affected by its active EDR customers, including Niagara.[34] The Commission finds that Finding 8 is satisfied.

> 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

Duke Kentucky does not anticipate any customer-specific fixed costs in serving Niagara. Moreover, the Contract includes a provision which states that Duke Kentucky is not obligated to “extend, expand or rearrange its facilities” if Duke Kentucky determines those facilities are sufficient to serve Niagara.[35] Additionally, the Contract also states that any changes to its facilities in order to serve Niagara will cause Niagara to incur additional costs.[36]

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[32] Case No. 2022-00394, *Electronic Tariff Filing of Duke Energy Kentucky, Inc. for Approval of an Economic Development Incentive Service Agreement with Diversey, Inc.* (March 30, 2026) Annual Report for 2025.

[33] Duke Kentucky’s Response to Staff’s Request, Item 4.

[34] Application at 9.

[35] Application, at 9 and Exhibit A at 6.

[36] Application at 9 and Exhibit A at 6.

> 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.

As stated above, Niagara and Duke Kentucky agreed that the Contract's expectation is that Niagara provide approximately 125 FTE positions and make approximately $43 million in capital investments. On its own, the job creation and investment figures would satisfy Finding 10. However, Duke Kentucky provides service pursuant to Rider DIR which establishes more stringent requirements, specifically, 25 FTE positions per 1,000kW of new load and $1 million per 1,000kW of new load.[37] Duke Kentucky's application states that Niagara's expectation of adding 125 FTE positions fails to satisfy Rider DIR because, based on the anticipated new load Niagara would be required to create 150 new FTE positions.[38]

The Commission generally disfavors deviating from tariffs. Therefore, the Commission must find good cause to do so. In this instance, the Commission considers Rider DIR's employment requirement in light of Administrative Case 327. In the Commission's Administrative Case 327 final Order, it reasoned that "while job creation and increases in capital investment are the desired outcome of EDRs, requiring specific levels of job creation and capital investment for EDR eligibility might, in some instances, impede rather than promote economic activity."[39] Moreover, the Commission recognizes now, as it did in Administrative Case 327, that specific job creation and capital investment

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[37] P.S.C. KY No. 2, Third Revised Sheet No. 86

[38] Application at 4.

[39] Administrative Case 327, Sept. 24, 1990 Order at 10–11.

requirements are arbitrary.[40] When considering the significant capital investments and job creation expected from Niagara,[41] the Commission finds that good cause exists to grant Duke Kentucky's request for deviation. However, the Commission cautions Duke Kentucky that this deviation should not be relied on in future applications.

> 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.

Duke Kentucky has filed the relevant annual report already, and therefore the Commission finds that Finding 11 is satisfied.

> 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.

Rider DIR establishes that new load must be at least 1,000 kW at one delivery point. The Contract specifies minimum peak demand and minimum load factor figures in excess of its Rider DIR requirements and thus the Commission finds that it satisfies 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

[40] Administrative Case 327, Sept. 24, 1990, Order at 11.

[41] *See* Application, Exhibit C. Niagara also secured a Sales and Use tax refund from the Kentucky Economic Development Finance Authority under the Kentucky Enterprise Initiative Act program. Notably, Rider DIR also requires that customers apply for and receive economic assistance from state or local governments, or other public agency prior to allowing the customer to take service under Rider DIR.

schedule that is applicable to the customer's rate class and usage characteristics.

The Contract is for four years, with Niagara receiving its discounted rate for the first two years and then taking service under the full tariffed rates for the final two years. The Commission finds that Finding 14 is satisfied.

Finally, with regards to Finding 17, which requires comments submitted by the Cabinet or other interested parties to be filed with the Commission within 20 days following the filing of an EDR contract, Duke Kentucky has provided a letter from the Kentucky Cabinet for Economic Development as Exhibit C.[42]

Based on the Commission's review of the record, as discussed above, and being otherwise sufficiently advised, the Commission finds that the Contract between Duke Kentucky and Niagara should be approved.

IT IS THEREFORE ORDERED that:

1. The agreement between Duke Kentucky and Niagara is approved and effective on and after the date of service of this Order.

2. The Commission grants Duke Kentucky's request for a deviation from Rider DIR.

3. Duke Kentucky shall file an annual report with the Commission detailing revenues received from Niagara and the marginal costs associated with serving Niagara.

4. During any future rate proceeding, Duke Kentucky shall demonstrate, through detailed cost of service analysis, that non-EDR ratepayers are not adversely affected by the Contract.

[42] Application, Exhibit C.

5. Duke Kentucky 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.

6. Within 20 days of the date of service of this Order, Duke Kentucky shall file with the Commission, using the Commission's electronic Tariff Filing System, the special Contract as approved herein.

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

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Entered on this 2nd day of July, 2026.

PUBLIC SERVICE COMMISSION

Angie Hatton
Chair

Mary Pat Regan
Vice Chair

Andrew W. Wood
Commissioner

Barry L. Mayfield
Commissioner

ATTEST:

Linda C. Bridwell, PE
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2026-00012 DATED JUL 02 2026

ECONOMIC DEVELOPMENT RATE CONTRACT REPORT

UTILITY: ____________________________________ YEAR: _______________

	Current Reporting Period		Cumulative	
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

Service List for 2026-00012

* Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

* Larisa M. Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

* Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

* Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

* Sheena McGee Leach
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

* Denotes served by Email