

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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

**REQUEST FOR HEARING OF JOINT INTERVENORS  
KENTUCKIANS FOR THE COMMONWEALTH, KENTUCKY SOLAR ENERGY  
SOCIETY, MOUNTAIN ASSOCIATION, AND KENTUCKY RESOURCES  
COUNCIL**

Kentuckians for the Commonwealth (“KFTC”), Kentucky Solar Energy Society (“KYES”), Mountain Association (“MA”), and the Kentucky Resources Council, Inc. (“KRC”) (collectively the “Joint Intervenors”) respectfully move the Commission for the entry of an order setting a formal hearing in this proceeding. In support of this motion, Joint Intervenors state as follows.

On October 27, 2022, the Joint Intervenors filed Comments<sup>1</sup> regarding the Economic Development Rider Special Contract between Kentucky Utilities (“KU”) and Bitiki-KY, LLC (“Bitiki”) requesting that the Commission open a formal proceeding to investigate the full impacts of the Proposed Special Contract (“KU-Bitiki Contract”) for 13 MW of capacity. Joint Intervenors’ Comments highlighted that the KU-Bitiki Contract: (1) did not demonstrate that the proposed agreement would not occur in the absence of the discounted rate, (2) did not protect

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<sup>1</sup> Attached to the Commission’s Nov. 4, 2022, Order in this proceeding as Appendix B.

ratepayers from the unique risks and volatility of cryptocurrency mining, and (3) included a marginal cost analysis that misstated KU's 2021 Integrated Resource Plan. On November 4, 2022, the Commission entered an Order establishing a procedural schedule to investigate the reasonableness of the KU-Bitiki Contract and suspended the contract until April 5, 2023.<sup>2</sup> The Commission's Order additionally allowed for parties to request a hearing no later than February 28, 2023.

Joint Intervenors filed testimony from witnesses Stacy Sherwood and Chelsea Hotaling that discussed the issues in this proceeding, recommended that the Commission adopt additional criteria for review of EDR contracts with cryptocurrency facilities and accompanying marginal cost analyses, and recommended that the Commission reject the KU-Bitiki Contract. As Ms. Sherwood's testimony emphasizes, the Bitiki facility has already been constructed and is operating, and the evidence presented by KU does not establish that an EDR discount is necessary for the facility to expand its load further.<sup>3</sup> Nor does KU provide evidence that establishes that Commission approval of an EDR discount is necessary to spur any additional investment or job creation beyond the investments that Bitiki has already made and the jobs already created by the construction and operation of the facility.<sup>4</sup>

The Commission determined in Administrative Case No. 327 that an EDR discount should not be extended to potential or existing customers unless the applicant can prove that the increased energy load would not occur absent the discount.<sup>5</sup> The Commission also determined that utilities should only be able to offer EDR discounts "to those new and existing

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<sup>2</sup> Nov. 4, 2022 Order.

<sup>3</sup> Sherwood Testimony at 6-7, 15-16.

<sup>4</sup> *Id.* at 8-10, 15-16.

<sup>5</sup> Order, *In re: An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities*, at 10 (Ky. P.S.C. Sept. 24, 1990).

customers who require such an incentive to locate new facilities in the state and to expand existing ones.”<sup>6</sup> This is to prevent the freeriding that would result from allowing EDR customers who might otherwise pay standard rates to take advantage of EDR discounts at the expense of existing customers.<sup>7</sup> And although the Commission has declined to impose specific job creation or investment requirements in connection with EDR contracts, the Commission found that the creation of at least some new jobs and investment is “the major objective” of EDR discounts,<sup>8</sup> and that utilities must be required to document that such jobs and investments are in fact being created by the EDR discounts that they offer.<sup>9</sup>

KU’s rebuttal testimony in this case only underscores that the Company has failed to meet these requirements for the KU-Bitiki Contract. KU witness Bevington’s testimony makes clear that KU does not know how many jobs have actually been created at the Bitiki facility, does not know whether any more jobs or investment would result from the Commission approving an EDR discount for the facility, and does not believe that it should be required to find out before the Commission decides this case.<sup>10</sup> The mere fact that Bitiki may have represented early in the process, before it constructed its facility, that it would like to receive an EDR discount, does not absolve KU or Bitiki of demonstrating that the requirements established by the Commission in Administrative Case No. 327 have been met now that circumstances have changed and the facility has already been constructed without an EDR in place.<sup>11</sup> Similarly, KU’s argument that the Commission should not consider the Bitiki facility’s

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<sup>6</sup> *Id.* at 15,

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Bevington Rebuttal Testimony at 4-5.

<sup>11</sup> Nor does the fact that the Commission approved a similar recent contract between EKPC and UMine LLC without a formal investigative proceeding require that the Commission approve the KU-Bitiki Contract, as KU repeatedly suggests. *See, e.g.*, Bevington Rebuttal Testimony at 4; Hornung Rebuttal Testimony at 4. The Commission does not

current operations and whether an EDR discount is actually needed here to spur additional jobs and investment<sup>12</sup> ignores the important role of Commission oversight in protecting existing customers from utilities offering discounted rates to customers who do not really need them. KU appears to be suggesting here that Bitiki had a “reasonable expectation” that it would receive EDR discounts solely because KU had offered them, prior to Commission approval.<sup>13</sup> Commission approval of EDR discounts should not be treated as a rubber stamp or foregone conclusion, as KU appears to be suggesting here.

WHEREFORE, the Joint Intervenors respectfully request that the Commission set a date for a formal hearing in this proceeding.

Respectfully submitted,



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Ashley Wilmes, Esq.  
Tom FitzGerald, Esq.  
Kentucky Resources Council, Inc.  
P.O. Box 1070  
Frankfort, KY 40602  
(859)312-4162  
Ashley@kyrc.org  
FitzKRC@aol.com

*Counsel for Joint Intervenors  
Kentucky Resources Council,  
Metropolitan Housing Coalition,  
Kentuckians for the Commonwealth,  
Kentucky Solar Energy Society, and  
Mountain Association*

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have the resources to open a formal proceeding to investigate the reasonableness of every contract for which a utility requests approval, but that does not preclude it from making appropriate findings based on the record evidence before it when it does decide to do so.

<sup>12</sup> See Bevington Rebuttal Testimony at 7.

<sup>13</sup> *Id.*

**CERTIFICATE OF SERVICE**

This is to certify that electronic version of the *Request for Hearing of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Mountain Association, and the Kentucky Resources Council, Inc.* in this action is being electronically transmitted to the Commission on February 28, 2023, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

  
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Ashley Wilmes, Esq.