

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)	

POST-HEARING BRIEF OF JOINT INTERVENORS
KENTUCKIANS FOR THE COMMONWEALTH, KENTUCKY SOLAR
ENERGY SOCIETY, MOUNTAIN ASSOCIATION, AND KENTUCKY
RESOURCES COUNCIL, INC.

Dated: June 29, 2023

Come now Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Mountain Association, and Kentucky Resources Council, Inc., (“Joint Intervenors”) and tender this post-hearing brief in the above-captioned matter. For the reasons set forth below, the proposed economic development rider special contract in this case is not reasonable, does not meet all of the requirements set forth in Administrative Case No. 327, and therefore should be denied.

I. Statement of the Case

On October 7, 2022, Kentucky Utilities Company (“KU” or “Company”) filed, via the Kentucky Public Service Commission’s (the “Commission”) electronic tariff filing system, a proposed Economic Development Rider (“EDR”) special contract with Bitiki KY, LLC (“Bitiki”). Through this special contract, Bitiki is claiming an Economic Development new load of 13,000 kVa, which it had planned to phase in through May 2023.¹ The proposed EDR special contract states that Bitiki plans on creating five jobs with \$25 million in capital investment.² It includes an early termination clause that allows KU to recover through reimbursements of ninety (90) percent of the total EDR credits received by Bitiki if the contract is terminated within the first two years, seventy-five (75) percent if terminated within three to five years, and fifty (50) percent if terminated after five years, and nothing to be reimbursed after five years, as shown below:³

¹ *Filing of Special Contract under Kentucky Utilities Company’s Economic Development Rider (EDR), Bitiki-KY, LLC.* (“KU-Bitiki Proposed Contract”), Attach. 1, at 1, Case No. TFS2022-00371 (Oct. 7, 2022).

² *Id.* at Attach. 2, at 2.

³ *Electronic Tariff Filing of Kentucky Utilities Company for Approval of an Economic Development Rider Special Contract with Bitiki-KY, LLC.*, Bitiki CX Ex-1, Case No. 2022-00371 (May 31, 2022).

	Full Bitiki Demand Charge Revenue	EDR Discount Level	Bitiki Demand Revenue (not including ECR or RARR)	EDR Discount	
Year 1	\$ 2,854,800	50%	\$ 1,427,400	\$ 1,427,400	90% EDR Claw-back if Customer Termination Event occurs Years 1-2
Year 2	\$ 2,854,800	40%	\$ 1,712,880	\$ 1,141,920	90% EDR Claw-back if Customer Termination Event occurs Years 1-2
Year 3	\$ 2,854,800	30%	\$ 1,998,360	\$ 856,440	75% EDR Claw-back if Customer Termination Event occurs Years 3-5
Year 4	\$ 2,854,800	20%	\$ 2,283,840	\$ 570,960	75% EDR Claw-back if Customer Termination Event occurs Years 3-5
Year 5	\$ 2,854,800	10%	\$ 2,569,320	\$ 285,480	75% EDR Claw-back if Customer Termination Event occurs Years 3-5
Year 6	\$ 2,854,800	0%	\$ 2,854,800	\$ 0	50% EDR Claw-back if Customer Termination Event occurs Years 6-10
Year 7	\$ 2,854,800	0%	\$ 2,854,800	\$ 0	50% EDR Claw-back if Customer Termination Event occurs Years 6-10
Year 8	\$ 2,854,800	0%	\$ 2,854,800	\$ 0	50% EDR Claw-back if Customer Termination Event occurs Years 6-10
Year 9	\$ 2,854,800	0%	\$ 2,854,800	\$ 0	50% EDR Claw-back if Customer Termination Event occurs Years 6-10
Year 10	\$ 2,854,800	0%	\$ 2,854,800	\$ 0	50% EDR Claw-back if Customer Termination Event occurs Years 6-10
Total	\$ 28,548,000		\$ 24,265,800	\$ 4,282,800	

Prior to this filing, Bitiki, a cryptocurrency mining company, had already entered into a non-discounted Standard Rate Schedule Retail Transmission Service agreement with KU on 8/31/2022,⁴ and was approved for eligibility to receive up to \$250,000 in tax credits under the Kentucky Enterprise Initiative Act,⁵ which to KU's knowledge, Bitiki has not yet claimed.⁶ The

⁴ KU-Bitiki Proposed Contract, Attach. 2, at 1;

⁵ *Id.* at Attach. 2, at 2. *Id.* at Attach. 3, at 1.

⁶ May 31, 2022, HVT at 11:43:00-11:44:00.

facility has been at least partially constructed and already been operating up to 10 MW, according to KU witnesses, and was recently incorporated into a modified service contract.⁷

On October 27, 2022, Joint Intervenors, along with Kentucky Conservation Committee, filed comments opposing the proposed special contract.⁸ Joint Intervenors raised concerns in those comments that KU had not presented evidence that Bitiki would not choose to locate in KU's service territory in the absence of a discounted EDR rate, that cryptocurrency mining is a uniquely risky and volatile industry because cryptocurrency mining companies seek cheap energy and could relocate elsewhere quickly (presenting acute risks to ratepayers), and that KU had not accurately characterized its 2021 Integrated Resource Plan in the marginal cost analysis accompanying the filing.⁹ Joint Intervenors questioned whether the EDR discounts in the proposed special contract would create new, full-time, local jobs and/or other economic development in KU's territory that would not otherwise exist without the discounted rates being approved, and whether the proposed special contract included adequate protections for ratepayers in the event that Bitiki defaulted or relocated before the contract concluded.¹⁰

On November 4, 2022, the Commission entered an Order establishing a procedural schedule to investigate the reasonableness of the proposed special contract, and suspended the contract until April 5, 2023. The Commission stated the intent to “focus on the applicable level of demand for the economic development discount, given Finding 12 in Administrative Case No.

⁷ May 31, 2022, HVT at 11:34:49, 11:45:20; KU Response to Joint Intervenors' Post-Hearing Data Request 3.1(c) (June 14, 2023). During the hearing, Company witness Bevington mentioned 9.4 MW, but as highlighted in the Company's response, the current operations are for up to 10 MW. For purposes of this brief, current operations will be referenced at 10 MW.

⁸ Comments of Kentucky Resources Council, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Kentucky Conservation Committee, and Mountain Association RE: Special Contract for Economic Development Rider between Kentucky Utilities Company and Bitiki KY, LLC, Case No. TFS2022-00495 (Oct. 27, 2022), attached as App. B to the Nov. 4, 2022 Order in this proceeding.

⁹ *Id.* at 3.

¹⁰ *Id.*

327, and the issues addressed by [Joint Intervenors’] comments regarding collateral and security and whether the proposed special contract fails to adequately characterize KU’s 2021 IRP.”¹¹ Discovery requests and responses were filed in this case, along with pre-filed direct testimony from Joint Intervenors’ witnesses and rebuttal testimony from KU’s witnesses.¹² The Commission held a hearing in this case on May 31, 2023, where KU witnesses Michael E. Hornung, John Bevington, and Stuart A. Wilson testified, along with Joint Intervenors’ witnesses Stacy L. Sherwood and Chelsea Hotaling.

II. Legal Background

The Commission has plenary authority to review contracts proposing EDRs to ensure those proposed rates are fair, just, and reasonable.¹³ KRS 278.030(1) requires that the Commission act to ensure that rates are “fair, just and reasonable.”¹⁴ KRS 278.030(1) states “[e]very utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.” KRS 278.040(1) gives the Commission authority to “regulate utilities and enforce” these provisions.

In Administrative Case No. 327, the Commission created guidelines for how an EDR should be structured and provided the circumstances under which an offering of such rates could be found to be reasonable. The Commission states that an EDR:

¹¹ Order, at 2, Case No. 2022-00371 (Nov. 4, 2022) (footnote omitted).

¹² See numerous Data Requests filed on Nov. 17, 2022, Nov. 18, 2022, Dec. 21, 2022, and June 2, 2023; KU’s responses on Dec. 7, 2022, Jan. 9, 2023, and June 14, 2023; Testimonies of Chelsea Hotaling and Stacy Sherwood (Jan. 17, 2023); Rebuttal Testimonies of Michael E. Hornung, John Bevington, and Stuart A. Wilson (Feb. 21, 2023).

¹³ See *Pub. Serv. Comm’n of Ky. v. Commonwealth of Ky.*, 320 S.W.3d 660, 668 (Ky. 2010) (finding that “a particular EDR is sustainable provided the PSC determines that the rate is reasonable and that determination withstands the appropriate scrutiny on judicial review”); see also *Ky. Pub. Serv. Comm’n v. Com. ex rel. Conway*, 324 S.W.3d 373, 380–83 (Ky. 2010) (discussing the Commission’s plenary authority to investigate and determine fair, just, and reasonable rates).

¹⁴ *Ky. Pub. Serv. Comm’n v. Com. ex rel. Conway*, 324 S.W.3d 373, 380–81 (Ky. 2010).

is considered to be a gas or electric rate discount, offered to large commercial and industrial customers, which is intended to stimulate the creation of new jobs and capital investment both by encouraging existing customers to expand their operations and by improving the likelihood that new large commercial and industrial customers will locate in Kentucky.¹⁵

Guideline 3 of that Order states that “[e]ach utility that offers an economic development rate should be required to document and report any increase in employment and capital investment resulting from the tariff and contract.”¹⁶ The Commission’s Order provides that while there is no minimum requirement, “increased economic activity is the *major objective* of EDRs” and that “[t]wo key indicators of economic activity are job creation and capital investment.”¹⁷ “EDRs are expected to promote growth in both of these areas.”¹⁸ Additionally, the Commission noted in Case No. 2007-00192 that EDRs provide “incentives to new large commercial and industrial customers to locate facilities in Kentucky . . . thereby bringing much needed jobs and capital investment into Kentucky.”¹⁹

In addition, the Commission found in Administrative Case No. 327. that it “seeks to minimize the number of free riders taking advantage of discounted utility rates in Kentucky” to avoid the resulting “revenue loss . . . [that would be] detrimental to the utility and all nonparticipating ratepayers.”²⁰ Defining this “free ridership” concern more specifically, the Commission found that “[c]ustomers who would have decided to locate in Kentucky or expand existing operations even in the absence of rate discounts, but who would take advantage of EDRs

¹⁵ Order, *In re: An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities* at 1, Administrative Case No. 327 (Sept. 24, 1990)

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 10 (emphasis added).

¹⁸ *Id.*

¹⁹ Order, at 13, Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a New Tariff – Brownfield Development Rider, Case No. 2007-00192 (Mar. 7, 2008) (citation omitted).

²⁰ Order, at 14–15, Administrative Case No. 327 (Sept. 24, 1990).

that are offered to aid new or expanding customers, in effect, become ‘free riders’ on the utility system at the expense of all other ratepayers.”²¹

Accordingly, for a proposed EDR contract to be approved under the Administrative Case No. 327 guidelines, a utility must demonstrate that the approval of the proposed EDR is *necessary – both* to spur an increase in economic activity (as measured in increased jobs and/or capital investment) *and* to ensure that this economic activity will occur in the utility’s territory (as opposed to outside of Kentucky). Measured against that yardstick, the proposed EDR special contract here comes up short.

III. Argument

A. KU Has Failed to Show that the Proposed EDR Would Spur More than De Minimis Additional Job Creation.

KU has failed to establish that the proposed EDR contract would spur meaningful additional economic development, as measured by jobs that would be created as a direct result of approval of an EDR for the Bitiki facility. While there is no minimum job requirement to be eligible for an EDR under Administrative Case No. 327, there needs to be a showing that at a minimum *some* appreciable economic development would be spurred by the EDR that would not otherwise occur. Absent such a showing, the Bitiki facility would run the risk of being able to act as a free rider. It would benefit from a discount that does not provide the offsetting economic development that would justify the discount reducing the revenue that would otherwise offset costs to both the utility and nonparticipating ratepayers.²² KU has not provided any evidence

²¹ *Id.* at 14.

²² Although (as was discussed at the hearing) KU has agreed to a “rate freeze” until July 1, 2025, nonparticipating customers would potentially be on the hook for covering the costs of providing discounted rates to Bitiki after that point. May 31, 2022 HVT at 11:26:14: The hearing exhibit introduced by Bitiki shows that even with the first two years of discounts excluded, ratepayers could still be on the hook for over \$1.7 million in subsidies to Bitiki stemming from years 3 through 5 of the proposed EDR discount. Bitiki CX Ex-1.

showing that additional jobs would be created by approval of the EDR beyond the few that might have already been created at the facility, nor has KU shown that they have made reasonable efforts to monitor or assess whether the proposed EDR would result in any additional job creation.

At the hearing in this case, Company witnesses Bevington and Hornung admitted that the only direct evidence they have of the number of jobs that would be created by the Bitiki facility are the statements in Bitiki's application for an EDR that Bitiki planned to create five new jobs at the facility.²³ When asked how many jobs have already been created by the construction and current operation of the facility without the availability of the proposed discounted rate, Company witnesses could not answer.²⁴ Company witness Hornung admitted, however, that he assumed any jobs that would be associated with the facility had already been created.²⁵

KU has also stated that it relied on Bitiki's certification through the Kentucky Economic Development Finance Authority ("KEDFA") for a tax incentive,²⁶ but KU witnesses acknowledged that the Company did not review any of the underlying documents or other information that KEDFA may have reviewed during the certification process.²⁷ Instead, KU relied solely on the conclusions in the KEDFA certification letter and made no effort to determine whether the Commission's approval of an EDR discount for Bitiki would spur any job creation that would not already occur as a result of the KEDFA tax incentives standing alone.²⁸ Company witness Bevington conceded that numerous economic development projects move

²³ May 31, 2022 HVT at 09:22:19, 11:49:00.

²⁴ *Id.* at 09:22:36, 11:49:10.

²⁵ *Id.* at 09:20:49.

²⁶ *Id.* at 11:40:46.

²⁷ *Id.* at 11:43:00.

²⁸ *Id.* at 11:48:30; KU Response to Joint Intervenor's Initial Data Request 1.2 (Dec. 7, 2022).

forward in KU's territory based on KEDFA tax incentives alone,²⁹ and on cross-examination, he was unable to point to any evidence that approval of the proposed EDR would spur the creation of any additional jobs at the site.³⁰ As witness Sherwood pointed out in her testimony, "[m]aking decisions to seek all opportunities to offset upfront costs, such as tax incentives, when expanding or establishing a business is a good business practice and likely something a business would seek regardless of their need for an EDR discount."³¹

Company witnesses also confirmed that there is no written commitment or guarantee that the five planned jobs would actually be created, whether as a result of the proposed EDR or otherwise.³² In addition, KU witnesses conceded that the Company had not obtained any information about the nature of the jobs that Bitiki claimed it would create at the facility. KU witnesses were unable to answer how many of the claimed jobs are based on site vs. remote, how many are full-time vs. part-time, or how many are unique to this site vs. shared across other sites that Bitiki or affiliated companies might operate.³³ A KU employee took a tour of the facility, and Company witness Bevington acknowledged that there did not appear to be any offices at the facility.³⁴ Pictures in the record of this case from a Company site visit illustrate rows of computers without much space to walk through, and no other buildings at the site.³⁵ Neither Company witness Hornung nor Bevington were present during the tour,³⁶ and nothing in the record documents any observations concerning the number of jobs based at the site.

²⁹ Rebuttal Testimony of John Bevington, at 3 (Feb. 21, 2023); May 31, 2022 HVT at 11:36:00.

³⁰ May 31, 2022 HVT at 11:50:00.

³¹ Testimony of Stacy L. Sherwood, at 7 (Jan. 17, 2023).

³² *Id.* at 8; May 31, 2022 HVT at 11:51:00.

³³ May 31, 2022 HVT at 11:51:24.

³⁴ *Id.* at 11:54:05.

³⁵ KU Response to Joint Intervenors' Initial Data Request 1.4 (Dec. 7, 2022), Attach. 3, at 2 of 89.

³⁶ May 31, 2022 HVT at 09:24:20,11:53:20.

In sum, KU has failed to provide any evidence that any new jobs would be created by the Commission's approval of the proposed EDR discount in this case that have not already been created by the construction and operation of the facility without the EDR in place. KU also failed to make reasonable efforts to obtain such evidence to support its request for approval. The Commission should deny the proposed EDR for this reason alone.

B. KU Has Failed to Show that the Proposed EDR Was Necessary to Bitiki's Decision to Locate in KU's Service Territory.

During the period that this case has been pending and even with the proposed EDR for up to 13 MW of capacity having been suspended, Bitiki at least partially made its planned capital investments in the facility, constructing and operating it up to a level of 10 MW,³⁷ which represents a significant amount of the contracted capacity. KU now asserts that Bitiki has paused its expansion from 10 MW to 13 MW, pending the outcome of this case. However, the fact that Bitiki has already made capital investments in the facility up to 10 MW capacity and continued to operate while taking service at standard rates illustrates that Bitiki did not need the EDR to locate its facility in Kentucky, and thus that the proposed EDR should be denied by the Commission. At most, the Commission should only consider approving an EDR for the proposed further 3 MW expansion. Though even with respect to *that* proposed incremental expansion, KU has not provided sufficient evidence that an EDR discount is necessary.

1. There is No Evidence that the Proposed EDR Was Necessary to Bitiki's Decision to Construct and Begin Operating Its Facility.

KU has not provided evidence that Bitiki would locate elsewhere if the Commission does not approve an EDR discount, as is required under Administrative Case No. 327 to demonstrate

³⁷ May 31, 2022 HVT at 11:45:20.

that an EDR is necessary.³⁸ On the contrary, at the hearing in this case, Company witness Bevington conceded that he is not aware of any evidence that Bitiki would not continue to operate its facility at 10 MW capacity if the EDR is not approved.³⁹ Although Mr. Bevington’s rebuttal testimony pointed to an email from Bitiki stating, “[w]e have struggled with determining the best location for our data center expansion,”⁴⁰ nowhere in this email or anywhere else in the record does Bitiki state specifically that it would not locate in KU’s service territory in the absence of an EDR discount. In fact, in another email exchange between KU and Bitiki from August 2022, the Company clarifies that it had “confirmed that we do not need to have the EDR finished to establish service,”⁴¹ and Bitiki in fact began taking service under standard rates, without an EDR in place. The record also reflects that KU transferred the meter point for the site to Bitiki from an affiliated company, UC Processing LLC, which suggests that Bitiki already had interest in locating at the site independently of the possibility of receiving an EDR discount in the future, due to the site already being controlled by an affiliated company.⁴² Other statements from Bitiki that are in the record express a *preference* for receiving an EDR discount (as opposed to not receiving the discount), but do not establish that receiving the discount was *necessary* to Bitiki’s decision to locate in KU’s territory and begin operating.⁴³ The mere fact that Bitiki may have represented 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 — particularly since Bitiki has already constructed its facility and operated without an EDR in place. Bitiki’s choice to construct its facility and expand it up to a 10 MW

³⁸ Order, at 1, Administrative Case No. 327 (Sept. 24, 1990).

³⁹ May 31, 2022 HVT at 11:59:30.

⁴⁰ Rebuttal Testimony of John Bevington, at 6 (Feb. 21, 2023) (citation omitted).

⁴¹ KU Response to Joint Intervenors’ Initial Data Request 1.15 (Dec. 7, 2022), Attach. 1, at 1 of 2.

⁴² Rebuttal Testimony of John Bevington, at 6 (Feb. 21, 2023); May 31, 2022 HVT at 11:58:10.

⁴³ May 31, 2022 HVT at 11:57:20.

capacity level without the EDR in place or assurance that it would become available indicates that the EDR discount was *not* necessary to Bitiki’s decision. Mr. Bevington’s testimony further supports this. He states that he not aware of any evidence that Bitiki would not continue to operate at 10 MW if the EDR is not approved further supports this.⁴⁴

KU witnesses have argued that Bitiki had a “reasonable expectation” that the proposed EDR would be approved by the Commission, despite the fact that the Commission opened this proceeding to investigate the reasonableness of the proposed contract.⁴⁵ However, it is evident that Bitiki had other incentives and an interest in locating in KU’s territory without the EDR contract. Given the absence of evidence that the proposed EDR was *necessary* to Bitiki’s decision to locate in KU’s service territory or to construct and begin operating its proposed facility, it would not have been reasonable for KU or Bitiki to assume that the proposed EDR here met the requirements of Administrative Case No. 327. Commission approval of EDR discounts should not be treated as a rubber stamp or foregone conclusion, as KU appears to be suggesting here.

Nor does the fact that the Commission approved a similar recent contract between East Kentucky Power Cooperative and UMine, LLC. without a formal investigative proceeding require that the Commission approve the KU-Bitiki Proposed Contract, as KU has repeatedly suggested.⁴⁶ The Commission does not 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 the Commission from so doing, particularly in response to public comments

⁴⁴ May 31, 2022 HVT at 11:59:30.

⁴⁵ Rebuttal Testimony of John Bevington, at 7 (Feb. 21, 2023); *see also* Rebuttal Testimony of Michael E. Hornung, at 11–12 (Feb. 21, 2023).

⁴⁶ *See, e.g.*, Rebuttal Testimony of John Bevington, at 4 (Feb. 21, 2023); Rebuttal Testimony of Michael E. Hornung, at 4 (Feb. 21, 2023).

suggesting that such reasonableness may be in doubt, nor from making appropriate findings based on the record evidence before it when it does decide to do so.

2. The Post-Hearing Discovery Responses Do Not Demonstrate that the Proposed EDR Discount is Necessary to the Expansion of the Facility, Let Alone Its Continued Operation.

In a post-hearing discovery response, KU asserts that due to the pendency of this proceeding, Bitiki “pause[d] its increasing investment and electrical demand” at the 10 MW level, “and it caused Bitiki to ask KU to amend the Contract for Electric Service to reflect that pause until the Commission’s decision on the EDR Special Contract was known.”⁴⁷ However in the emails attached to the discovery response, Bitiki itself admits that the remaining MW is “not a significant amount,”⁴⁸ reflecting that the bulk of the investments in the facility have been made – and as noted above, any jobs already created – without the EDR discount. In addition, while Bitiki states that it is now considering not further expanding if the EDR is not approved, it has not stated firmly that it would not expand, just that not expanding from 10 MW to 13MW “would be a possibility.”⁴⁹

This post-hearing discovery response only underscores that the proposed EDR discount was not necessary for the construction of the Bitiki facility, is not necessary to its continued operation at up to 10 MW going forward, and that there is no evidence that approval of the EDR discount at this time would result in any new jobs being created at the facility. At most, the Commission should only consider approving an EDR for the proposed further 3.6 MW expansion — although even with respect to that proposed expansion, KU has not provided sufficient evidence that an EDR discount is necessary. The post-hearing discovery response

⁴⁷ KU Response to Joint Intervenors’ Post-Hearing Data Request 3.1(d) (June 14, 2023).

⁴⁸ *Id.* at Attach. 1, at 3 of 4.

⁴⁹ *Id.*

suggests that approval of the EDR *might* incentivize some additional capital investment by Bitiki to raise its load from 10 MW to 13 MW, but as noted above, the statements in the record do not firmly support this. Nor is there any evidence in the record showing that approval of an EDR would incentivize more than a *de minimus* amount of additional capital investment.

Accordingly, the Commission should deny the proposed EDR.

C. The Commission Should Clarify Minimum Requirements Needed for an EDR Application.

The Commission's Order in Administrative Case No. 327 laid out valuable guidance that utilities must follow to establish that a proposed EDR contract is reasonable and will not unfairly or unjustly burden the utility's other customers. The circumstances of this case have helped surface additional issues on which clarification of how utilities should be implementing the EDR requirements would be valuable, particularly as those requirements should apply to nontraditional industrial customers such as cryptocurrency mining facilities. As Joint Intervenors' witness Sherwood testified, providing EDR rates to cryptocurrency mining facilities poses unique risks because of the volatility of the industry.⁵⁰

In order to determine whether the Administrative Case No. 327 requirements were satisfied for the proposed KU-Bitiki contract, the parties in this proceeding sought thorough discovery critical information, such as whether KU required Bitiki to submit a surety bond and whether KU would incur any costs to bring the Bitiki facility online. This information was not provided with the initial EDR application and thus was absent from the record prior to exchange

⁵⁰ Testimony of Stacy L. Sherwood, at 10–15 (Jan. 17, 2023). At the hearing, KU introduced as an exhibit 2021 legislation stating that the General Assembly intended to use tax policy to encourage the growth of cryptocurrency mining in Kentucky. *Electronic Tariff Filing of Kentucky Utilities Company for Approval of an Economic Development Rider Special Contract with Bitiki-KY, LLC.*, KU CX Ex-1, Case No. 2022-00371 (May 31, 2022).. As Commissioner Chandler noted during the hearing, however, the General Assembly's policy choice to incentivize certain activities using taxpayer funds is distinct and separate from the Commission's mandate to determine whether proposed rates are fair, just, and reasonable. May 31, 2022 HVT at 13:23:32.

of discovery.⁵¹ In addition to denying the proposed EDR in this case, the Commission should also take the opportunity to clarify the minimum requirements needed to support EDR approval requests in the future.

Specifically, as suggested by witness Sherwood, the Commission should require “a more detailed standardized application” that would “provide an efficient way to evaluate all necessary requirements for approval and clearly identify the economic benefits of the EDR with supporting evidence identified.”⁵² Such an application could be structured to solicit information concerning each of the findings of Administrative Case No. 327, which would then streamline the review process for the Commission and interested stakeholders by reducing the need for formal proceedings (including data requests) to create a record of this information.⁵³ Moreover, at the hearing in this case, Ms. Sherwood testified that, at a minimum, the Commission should require an affidavit or equivalent competent evidence be submitted concerning the key requirements that the proposed facility would not locate or expand in the utility’s territory in the absence of the EDR and more specific information about the jobs and capital investment that the applicant might undertake as a result.⁵⁴ These clarifications would aid the Commission and interested stakeholders in evaluating any future requests for approval of EDRs, particularly for

⁵¹ Indeed, once adequate information was provided in discovery, Joint Intervenors found that some of the concerns they had raised in their comments were not present in this case. For example, KU’s responses to data requests made clear that KU was not making any investments at the Bitiki site in order to bring Bitiki on as a customer. *See* Testimony of Stacy L. Sherwood, at 14–15 (Jan. 17, 2023). This information was not publicly available, however, until after KU responded to data requests in this case – it was not included with the EDR application. Similarly, Joint Intervenors raised a number of concerns with KU’s marginal cost analysis, both in their comments and in the testimony of Chelsea Hotaling, that were not addressed by KU until they submitted the rebuttal testimony of witness Wilson.

⁵² Testimony of Stacy L. Sherwood, at 17 (Jan. 17, 2023).

⁵³ *Id.* at 17–19.

⁵⁴ May 31, 2022 HVT at 13:33:00.

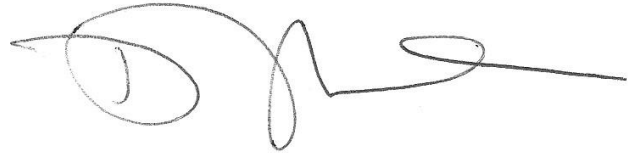
nontraditional and potentially risky industries such as cryptocurrency mining that may have uncertain and/or *de minimus* economic development benefits to Kentucky communities.

The Commission's mandate to ensure that proposed EDR contracts are reasonable and do not unfairly or unjustly burden other customers would be best served if sworn evidence demonstrating that the proposed EDR meets all Administrative Case No. 327 requirements were provided at the time of the application. In its final order in this case, Joint Intervenors encourage the Commission to provide additional guidance to utilities and interested parties concerning these requirements.

IV. Conclusion

WHEREFORE, for the reasons stated herein and on the basis of the written and verbal testimony adduced at hearing, KU has failed to satisfy the prerequisites outlined in Administrative Case No., 327 for approval of the proposed EDR. Specifically, the Company has failed to prove that: (1) the proposed EDR will create additional jobs that have not already been created by the construction and operation of the Bitiki facility, (2) the proposed EDR discount is needed for Bitiki's current or future operations in KU's service territory, and (3) the proposed special contract will result in fair, just and reasonable rates. Therefore, Joint Intervenors respectfully suggest that KU's request for approval of the proposed special contract should be denied.

Respectfully submitted,



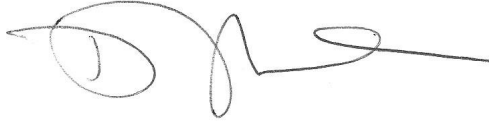
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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was submitted to the Commission on June, 29 2023; that the documents in this electronic filing are a true representations of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.

A handwritten signature in black ink, appearing to read 'Tom FitzGerald', with a long horizontal line extending to the right.

Tom FitzGerald