

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**RESPONSE OF
KENTUCKY UTILITIES COMPANY
TO
KENTUCKIANS FOR THE COMMONWEALTH
KENTUCKY SOLAR ENERGY SOCIETY
MOUNTAIN ASSOCIATION
KENTUCKY RESOURCES COUNCIL, INC.
POST-HEARING DATA REQUESTS
DATED JUNE 2, 2023**

FILED: JUNE 14, 2023

KENTUCKY UTILITIES COMPANY

**Response to Kentuckians for the Commonwealth, Kentucky Solar Energy Society,
Mountain Association, and Kentucky Resources Council, Inc.**

Post-Hearing Data Requests

Dated June 2, 2023

Case No. 2022-00371

Question No. 3.1

Responding Witness: John Bevington / Michael E. Hornung

Q-3.1. Please refer to Joint Intervenors' cross-examination of KU witness John Bevington, beginning at approximately 11:32 on May 31, 2023.

- a. Please provide copies of any of the "ongoing" communications between KU and Bitiki-KY concerning construction of the Proposed Facility that have not previously been provided in response to discovery in this case.
- b. Please provide copies of any documents concerning Mr. Bevington's statements in his testimony that the Commission's approval of the Proposed Special Contract would result in additional expenditures by Bitiki-KY in the Proposed Facility.
- c. Please provide copies of any documents reflecting the "contract modification" requested by Bitiki-KY and any communications between KU and Bitiki-KY concerning the requested "contract modification."
- d. Please explain in detail whether and/or how the requested "contract modification" would modify the Proposed Special Contract, including whether and/or how Bitiki-KY's request would modify the EDR agreement at issue in this case. To the extent not provided in response to paragraphs (a) through (c) above, please provide copies of any documents in KU's possession that support this answer.

A-3.1.

- a. See attached. Email addresses and phone numbers have been redacted.
- b. See the communications between KU and Bitiki-KY provided in response to part (a). See also the attached Bitiki-KY bills, which show Bitiki-KY was growing its load as anticipated until it became clear that EDR discounts could

be significantly delayed by this proceeding.¹ As Bitiki-KY representative Cliff Ford noted in his April 1, 2023 email to KU, “Without the EDR being in place as we expected, we’ve paused our growth plans.”² Mr. Ford states in a later email, “Things are in limbo without knowing the EDR status as it was in our base case/budget. Not having the EDR approved in early 2023 has caused significant concern – I don’t think we understood that we could be in this situation given the KEIA approval process we went through in March of 2022.”³ In the same email, he states in response to a KU inquiry that if the EDR contract were approved, “I feel confident our load would grow to fill the available capacity [i.e., 13 MVA].”⁴ Therefore, there is ample reason to believe that (1) Bitiki-KY’s location and growth at its current site was premised on receiving timely EDR contract approval and (2) Bitiki-KY will grow its load to its anticipated 13 MVA after EDR contract approval.

- c. See attached for the amended Contract for Electric Service between Bitiki-KY and KU under Standard Rate RTS and the response to part (d). See attachments in response to part (a) for communications between KU and Bitiki-KY on the amended contract for electric service.
- d. Bitiki’s Contract for Electric Service with KU is not a special contract; rather, it is a contract for service under KU’s tariff Rate RTS and does not require Commission approval. It does not affect the EDR Special Contract that is the subject matter of this proceeding. The EDR Special Contract provides for five years of EDR discounts to begin up to 12 months following the Commission’s approval of the special contract. Given the procedural schedule the Commission has established in this proceeding, there is no need to amend the EDR Special Contract.

The need to amend the Contract for Electric Service arose because it included increasing contract demands based on the parties’ belief that the Commission would accept the EDR Special Contract within 30 days of filing. That assumption was reasonable because no other KU EDR Special Contract had been litigated since at least 2011. The unexpected delay and uncertainty caused by this proceeding prompted Bitiki to pause its increasing investment and related electrical demand, 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. KU does not ordinarily amend such contracts, but the changed circumstances here were beyond both parties’ reasonable expectations at the time they entered into the contract. It was therefore reasonable to amend the contract in this unusual case.

¹ Individual customer billing information is considered confidential and is being filed under seal pursuant to a Petition for Confidential Treatment.

² See part (a) Attachment 1 at page 3.

³ *Id.* at 2.

⁴ *Id.* at 3.

McElmurray, Scott

From: Cliff Ford <[REDACTED]>
Sent: Tuesday, May 23, 2023 10:26 AM
To: McElmurray, Scott
Subject: RE: Base Contract Capacity Modification

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

Thanks for the feedback.

Hoping we get a resolution on our outstanding EDR contract requests in a few days! Is there any new information on that front from your side?

From: McElmurray, Scott <[REDACTED]>
Sent: Tuesday, May 23, 2023 9:25 AM
To: Cliff Ford <[REDACTED]>
Cc: McElmurray, Scott <[REDACTED]>
Subject: FW: Base Contract Capacity Modification

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Cliff,

I wanted to reach out and let you know I have not forgotten this request for holding the base contract at the 10,000 kva level (versus 13,000 on current contract). I hope to have feedback from legal this week with an amended contract stating as much. Thank you for your patience.

Scott McElmurray

Senior Key Account Manager | Economic Development & Key Accounts | LGE & KU
One Quality Street, Lexington, KY 40507
O: [REDACTED] | C: [REDACTED] | E: [REDACTED]

Business Use

From: Cliff Ford <[REDACTED]>
Sent: Friday, April 21, 2023 10:21 AM
To: McElmurray, Scott <[REDACTED]>
Cc: Mehanna, Charles <[REDACTED]>
Subject: RE: Base Contract Capacity Modification

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

I've put some notes in red below. These notes are my opinion. Ultimately, senior management will decide how we proceed.

Things are in limbo without knowing the EDR status as it was in our base case/budget. Not having the EDR approved in early 2023 has caused significant concern – I don't think we understood that we could be in this situation given the KEIA approval process we went through in March of 2022. If possible, I would like to discuss potential modifications based on the two different outcomes – let me know your availability.

From: McElmurray, Scott <[REDACTED]>
Sent: Thursday, April 20, 2023 9:05 AM
To: Cliff Ford <[REDACTED]>
Cc: McElmurray, Scott <[REDACTED]>; Mehanna, Charles <[REDACTED]>
Subject: RE: Base Contract Capacity Modification

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Cliff,

Good morning, as a follow up to this email discussion, I have met internally and have a few questions. Our internal discussions have been around amending the current contract that would allow for "pausing / delaying" the final level of contract demand (13,000 kva). In your mind what would this look like?

- Next level increase 13,000 kva set to begin with May billing (discussing delaying and keeping at the last level of 10,000 kva which we have already moved into) – We have approximately 400 kW planned. It's the last part of our initial contract that was delayed by several months. Moving the base contract to 10MVA would work well for Bitiki.
- What is your plan/expectations following a decision on the EDR? Our business plan/model was based on moving forward with additional machine orders after our last expected delivery in January 2023. Based on when the EDR was submitted to the PSC for review, and given the KEIA approval, we were under the impression this would time very well with the 2023 Q2-Q3 Bitmain order window. As we both know, the EDR review/delay has made this plan invalid.

- If approved, purchase more equipment to gain the 13,000 kva as originally planned? I feel confident our load would grow to fill the available capacity. To be clear, I currently have no approval to order additional machines given we couldn't execute on our initial approved plan (because the EDR wasn't approved when required).
 - When would this begin (purchasing of additional equipment)? Since we missed the Q2-Q2 order window, we'll have to submit our model/request once the EDR is approved. I can't give an estimated time at this point.
- If not approved, stop increase of site? We are waiting for the EDR to make a decision. I don't want to speak for senior management. Not expanding would be a possibility.

Please let me know your thoughts and if you would like to discuss further. Thank you.

Scott McElmurray

Senior Key Account Manager | Economic Development & Key Accounts | LGE & KU

One Quality Street, Lexington, KY 40507

O: [REDACTED] | C: [REDACTED] | E: [REDACTED]

Business Use

From: Cliff Ford <[REDACTED]>

Sent: Saturday, April 1, 2023 9:03 AM

To: McElmurray, Scott <[REDACTED]>

Subject: Base Contract Capacity Modification

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

Scott,

Without the EDR being in place as we expected, we've paused our growth plans. It's not a significant amount, but we were billed for an additional 631.3 kVA on base. I don't want this to get out of hand over the next few months. Once the EDR is approved, it will take a few months to get back on track. We can discuss this when you get back from vacation, but it's something I don't want to forget to address before April billing.

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reliance upon, this information by persons or entities other than the intended recipient is not allowed. If you received this message and the information contained therein by error, please contact the sender and delete the material from your/any storage medium.

McElmurray, Scott

From: McElmurray, Scott
Sent: Thursday, May 25, 2023 1:39 PM
To: Cliff Ford
Cc: Rahn, Derek; Mehanna, Charles; McElmurray, Scott
Subject: RE: Bitiki-LLC Contract Amendment (Contract Capacity as it relates to EDR Approvals)

Cliff,

Sorry I missed your call earlier; I assume this email was the subject matter. As per the EDR contract (see insert below), once the EDR is approved by the PSC, the customer will have 12 months to start the discount period and flow through the subsequent 5-year period at the discounted percentages. Obviously the 10-year provision plays into that as well. I hope that this answers your questions. Please let me know if you have any additional questions or comments. Thank you.

This EDR Contract is supplemental to, and by agreement made a part of, the Electric Service Contract for the purpose of applying provisions of the Company's Economic Development Rider, Standard Rate Rider EDR ("EDR"), to Customer.

Customer has represented that it anticipates investing **\$25,000,000** in its facilities located at **1274 State Route 141 Waverly, KY** (the "EDR Location"), creating approximately **5** new jobs, which economic development will generate the EDR Contracted Load for the Initial Contract Term (as defined below). Therefore, Company hereby agrees to furnish, and Customer agrees to take, EDR service pursuant to the terms and conditions of Standard Rate Rider EDR, as currently approved by the PSC or as may be modified in the future and approved by the PSC.

The initial term of this EDR Contract shall be ten (10) years beginning, at the option of Customer, no later than **12 months following approval of this Special Contract by the PSC (the "Initial Contract Term")**.

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. Upon termination of the Initial Contract Term, service will continue in accordance with the terms of the Standard Rate Schedule.

Scott McElmurray

Senior Key Account Manager | Economic Development & Key Accounts | LGE & KU

One Quality Street, Lexington, KY 40507

O: [REDACTED] | C: [REDACTED] | E: [REDACTED]

Business Use

From: Cliff Ford <[REDACTED]>

Sent: Thursday, May 25, 2023 12:51 PM

To: McElmurray, Scott <[REDACTED]>

Cc: Rahn, Derek <[REDACTED]>; Mehanna, Charles <[REDACTED]>

Subject: RE: Bitiki-LLC Contract Amendment (Contract Capacity as it relates to EDR Approvals)

EXTERNAL email. STOP and THINK before responding, clicking on links, or opening attachments.

Someone has asked for clarification on the discount period. Whenever the EDR is approved (goes into effect), will the 5-year discount window also start at this time?

For example, let's say the EDR doesn't get approved until July of 2023. We wouldn't lose any of the 5-year discount window by signing this amendment – correct?

From: McElmurray, Scott <[REDACTED]>

Sent: Wednesday, May 24, 2023 3:39 PM

To: Cliff Ford <[REDACTED]>

Cc: Rahn, Derek <[REDACTED]>; Mehanna, Charles <[REDACTED]>; McElmurray, Scott <[REDACTED]>

Subject: Bitiki-LLC Contract Amendment (Contract Capacity as it relates to EDR Approvals)

CAUTION: This is an email from an external sender. Use caution when clicking on links, opening attachments or responding.

Cliff,

Good afternoon, I left you a voicemail this morning to discuss the attached Amendment (and reference contracts) related to the Base Contract Capacity for Bitiki-KY, LLC. I wanted to go ahead and get them in your hands for review. Please review and let me know what questions/comments you have regarding the subject. I would like to get this in place prior to the May 30th date in order for us to avoid any unnecessary transactions. Feel free to return my call and we can discuss further. Thank you for your patience on this matter. Regards.

Scott McElmurray

Senior Key Account Manager | Economic Development & Key Accounts | LGE & KU

One Quality Street, Lexington, KY 40507

O: [REDACTED] | C: [REDACTED] | E: [REDACTED]

Business Use

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The entire attachment is
Confidential and
provided separately
under seal.

AMENDMENT TO CONTRACT FOR ELECTRIC SERVICE

Customer Account [REDACTED]

Kentucky Utilities Company (“Company”) and Bitiki-KY, LLC (“Customer”) enter into this Amendment to Contract for Electric Service as of May 24, 2023.

Witnesseth:

WHEREAS, Company is in the business of providing retail electric service in the Commonwealth of Kentucky subject to the jurisdiction of the Kentucky Public Service Commission (“KPSC”);

WHEREAS, Company and Customer entered into a Contract for Electric Service dated August 31, 2022, a copy of which is attached hereto as Attachment A (“Contract”), under which Company currently provides electric service to Customer under Standard Rate Schedule Retail Transmission Service (RTS);

WHEREAS, at the time Company and Customer entered into the Contract, Company and Customer anticipated entering into a Special Contract for Economic Development Rider Service (“EDR Contract”);

WHEREAS, Company and Customer did enter into an EDR Contract on September 28, 2022, and a copy of which is attached hereto as Attachment B, which provides for certain demand-charge discounts to apply to Customer’s bills after KPSC approval of the EDR Contract;

WHEREAS, at the time of entering into the Contract and the EDR Contract, Company and Customer anticipated KPSC approval of the EDR Contract prior to May 1, 2023, which approval the KPSC has not yet granted;

WHEREAS, the Contract set forth Contract Capacity adjustments at certain dates anticipating that the EDR Contract would receive KPSC approval prior to May 1, 2023; and

WHEREAS, both Company and Customer desire to amend the Contract’s Contract Capacity adjustment provisions because Company and Customer agreed upon Customer’s increasing Contract Capacity anticipating KPSC approval for the EDR Contract prior to May 1, 2023, which approval the KPSC has not yet granted;

NOW, THEREFORE, in consideration of the mutual agreements made herein, the parties agree as follows:

The table in the Comments section of the Contract, which sets forth the Contract Capacity adjustment dates and levels for Company’s billing of Customer, is amended to read as follows in its entirety:

AMENDMENT TO CONTRACT FOR ELECTRIC SERVICE

Customer Account [REDACTED]

Adjustment Date	Adjusted Capacity Level
November 2022 Billing Month	4,000 kVA
January 2023 Billing Month	6,000 kVA
March 2023 Billing Month	10,000 kVA
First Full Billing Month Following KPSC Approval of the EDR Contract	13,000 kVA

Company and Customer affirm and ratify all other provisions of the Contract in all respects.

IN WITNESS WHEREOF, Customer and Company have executed this Amendment to Contract for Electric Service on the day and year first above written.

Kentucky Utilities Company

Bitiki-KY, LLC

By:



E. Scott McElmurray
Senior Key Account Manager

Title

By:

Customer


KIRK D. THOLEN
SR. VICE PRESIDENT

Title