

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)	

REPLY BRIEF OF BITIKI-KY, LLC

Bitiki-KY, LLC (“Bitiki”) submits this Reply Brief to the Post-Hearing Brief of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Mountain Association, and Kentucky Resources Council, Inc. (“Joint Intervenors”).

Joint Intervenors assert that Kentucky Utilities Company (“KU”) failed to satisfy the prerequisites outlined in Administrative Case 327. Joint Intervenors allege three areas on non-compliance with Administrative Case 327. They assert that *“the Company failed to prove that: (1) the proposed EDR will create additional jobs that have not already been created by the construction 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.”*¹

1. Administrative Case 327 Does Not Impose Specific Job Creation Criteria.

Joint Intervenors assert that *“KU Has Failed To Show that the Proposed EDR Would Spur More than De Minimis Additional Job Creation.”*² They claim that the five new jobs that Bitiki has planned for its facility are insufficient to satisfy the criteria Of Administrative Case 327

¹ Joint Intervenor Post-Hearing Brief at 16.

² Id. at 7.

and that KU failed to demonstrate that approval of the EDR would result in additional jobs “*beyond the few that might have already been created at the facility...*”³

Joint Intervenors misconstrue Administrative Case 327. While direct job creation is a major objective of EDRs, Administrative Case 327 does not impose any specific job creation criteria. “*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.*”⁴ The Commission determined that requiring specific job creation criteria might be counterproductive. Mandating specific job creation criteria “*might, in some instances, impede rather than promote economic activity.*”⁵

Instead of requiring that EDR customers create a specific number of jobs, utilities were given flexibility “*to design EDRs according to the needs of their customers and service areas...*”⁶ This flexibility “*should be implemented by special contracts negotiated between the utilities and their large commercial and industrial customers.*”⁷

Therefore, the five new jobs that this project is expected to create are sufficient to comply with Administrative Case 327. Moreover, this EDR special contract was not primarily about jobs. KU did not agree to a rate discount because of five new jobs. Instead, KU agreed to a rate discount in order to incentivize the development of a 13 Mw new load that can utilize existing transmission and substation infrastructure, and which provides incremental revenue for the benefit of all consumers. Over a ten-year projected term, this contract results in fixed cost contribution of at least \$10.9 million to \$14.4 million and could be as high as \$24.4 million.⁸

³ Id. at 8-9.

⁴ Administrative Case 327, September 24, 1990, Order at 26 (emphasis added).

⁵ Id. at 11.

⁶ Id. at 25.

⁷ Id.

⁸ Bitiki Post-Hearing Brief at 3-4.

This does not include fixed cost payments through KU's environmental surcharge and Retired Asset recovery Rider.⁹

Lower electric rates for all consumers through contributions to existing fixed costs will promote economic development in other parts of the economy. This is the central purpose of economic development programs. *“Increased economic activity is the major objective of EDRs.”*¹⁰

2. With Respect To New Load EDRs (As Opposed To Load Retention EDRs), Administrative Case 327 Does Not Require The Evidence That Joint Intervenors Demand.

Joint Intervenors claim that KU failed to comply with Administrative Case 327 because it failed to demonstrate that the proposed EDR was necessary for Bitiki to locate in its service territory.¹¹ This is their *“free rider”* argument.

However, Administrative Case 327 does not require the evidence that Joint Intervenors demand. Administrative Case 327 made 18 Findings. Finding 1 generally describes the importance of economic development. Finding 2 generally describes the flexibility given to utilities to customize their EDR programs. Finding 18 addresses certain then existing EDR programs. Findings 3-17 establish the binding EDR requirements that shall be followed prospectively. *“When filing EDR contracts, all jurisdictional gas and electric utilities shall comply with Findings 3-17 as if the same were individually so ordered.”*¹²

With respect to new load EDRs, nothing in Findings 3-17 requires the evidence demanded by Joint Intervenors. Load retention EDRs for existing customers are different. Load retention EDRs require: 1) a customer affidavit documenting the need for a rate discount; and 2) a

⁹ Id. at 4.

¹⁰ Administrative Case 327, September 24, 1990, Order at 10.

¹¹ Joint Intervenors Post-Hearing Brief at 10-14.

¹² Administrative Case 327, September 24, 1990, Order at 28.

demonstration by the utility of customer hardship. “13. *EDR contracts designed to retain the load of existing customers should be accompanied by an affidavit of the customer stating that, without the rate discount, operations will cease or be severely restricted. In addition, the utility must demonstrate the financial hardship experienced by the customer.*”¹³

Neither Bitiki nor KU was on notice that the evidence required for load retention EDRs would also be required for new load EDRs; indeed, no such evidentiary requirement exists or was otherwise set forth in Administrative Case 327. The attempt of Joint Intervenors to change the requirements of Administrative Case 327 is improper.

Moreover, no utility could ever fully satisfy the criteria proposed by Joint Intervenors. Joint Intervenors would require KU to prove a negative. KU could never demonstrate what might have happened had it not offered an EDR to Bitiki.

Importantly, the EDR process is self-policing. KU would not have offered an EDR discount if it did not reasonably believe that it was necessary. This is especially true during a base rate stay-out when shareholders bear the full cost of discounted rates. KU’s base rates are frozen through July 1, 2025, and no EDR discount can be reflected in rates at least until then. KU has decades of experience in economic development and, absent evidence of bad faith, it is appropriate to defer to its judgment.

3. **The Proposed Special Contract Will Result In Fair, Just and Reasonable Rates.**

In its Conclusion, Joint Intervenors make the blanket assertion that this EDR will not result in fair, just and reasonable rates. There is very little analysis to support this assertion.

¹³ Id. at 27.

Administrative Case 327 Finding 8 requires evidence that “*nonparticipating ratepayers are not adversely affected by these EDR customers*”.¹⁴ Pursuant to Finding 6, that evidence should be a study showing that “*the discounted rate exceeds the marginal cost associated with serving the customer*”.¹⁵

KU provided four marginal cost-of-service studies, all of which demonstrated that the incremental revenue from the new load will exceed the incremental cost of serving it each year over the ten-year contract.¹⁶ The contribution to fixed costs will be at least \$10.9 million to \$14.4 million. This contribution to fixed costs will lower the rates of all other customers. The very stringent EDR claw-back provisions and \$1.275 million surety bond are additional levels of protection that “*nonparticipating ratepayers are not adversely affected*” by this EDR.

KU has designed and implemented a special contract rate structure that benefits all consumers. Accordingly, this special contract should be approved.

Respectfully submitted,

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¹⁴ Administrative case 327, September 24, 1990, Order at 26.

¹⁵ Id.

¹⁶ Wilson Rebuttal at 8-19.