

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

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	
SPECIAL CONTRACT WITH EBON)	CASE NO. 2022-00387
INTERNATIONAL, LLC)	

**REPLY BRIEF OF JOINT INTERVENORS
MOUNTAIN ASSOCIATION, KENTUCKIANS FOR THE COMMONWEALTH,
APPALACHIAN CITIZENS' LAW CENTER, SIERRA CLUB, AND KENTUCKY
RESOURCES COUNCIL, INC.**

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Dated: August 11, 2023

I. Introduction

Come now Joint Intervenors Mountain Association, Kentuckians for the Commonwealth, Appalachian Citizens' Law Center, Sierra Club and Kentucky Resources Council, Inc. ("Joint Intervenors") and tender this reply brief in the above-captioned matter. For the reasons set forth below and in Joint Intervenors' Opening Brief, Kentucky Power Company ("Kentucky Power" or "the Company") has failed to show that the proposed special contract is reasonable and adequately protects ratepayers from increased costs and therefore should be denied. In particular, the proposed special contract includes a discount modeled after an Economic Development Rate ("EDR") but fails to adhere to all the requirements set forth in Administrative Case No. 327 and the Company's Tariff E.D.R.

II. Argument

A. Kentucky Power Has Not Proven that the Approval of the Special Contract Would Lead to Economic Benefits that Outweigh the Risks to Ratepayers

The Commission should deny Kentucky Power's request for approval of the proposed special contract because Kentucky Power has failed to show that the stated economic benefits it claims would be created by this contract are enough to offset the multiple increased costs and risks to ratepayers. While Joint Intervenors agree wholeheartedly that economic development is sorely needed in eastern Kentucky, this proposed special contract is not the solution. Economic development should not come at severe risk to ratepayers. This special contract has the potential to cause more harm than benefit to the region. Kentucky Power's lack of sufficient generating capacity to serve its own customers, let alone a new 250 MW facility, will lead to increased costs to

ratepayers and significantly increased risk of market exposure, that are not justified by the Company's overstated claims of benefits from the contract.¹

Kentucky Power's contract addendum with Ebon does not guarantee that Ebon will create the 100-125 jobs that were previously predicted.² Rather, without explaining the discrepancy, the addendum requires Ebon only to guarantee 25 new jobs during Phase One and 50 total new jobs for Phase Two of the facility.³ This severely undercuts Kentucky Power's claims of economic development benefits based on job creation at the site, especially when considering that the IMPLAN modeling exercise performed by the Company was based only on a "generic industry standard" that likely inflated the benefits estimates much further.⁴ Moreover, Kentucky Power's modeling assumes that Ebon will create higher-salaried jobs that will provide disproportionately large benefits, but Ebon has not guaranteed it will create those jobs and they are in fact the ones that Ebon is least likely to create at the site because (unlike lower-salaried maintenance and security jobs at the site) they could be located remotely.⁵ Due to all of these factors, the estimates produced by Kentucky Power of economic development benefits from the project are completely unreliable and should be given no weight by the Commission.

B. Kentucky Power Has Not Proven the Special Contract Satisfies the Requirements Set Forth in Administrative Case No. 327.

This proposed special contract should be denied because it contains an EDR-

¹ *Post-Hearing Brief of Joint Intervenor Mountain Association, Kentuckians for the Commonwealth, Appalachian Citizens' Law Center, Sierra Club and Kentucky Resources Council, Inc*, Case No. 2022-00387 (Aug. 8, 2023) at 18–21.

² *Id.* at 18.

³ *Id.*

⁴ *Id.* at 19.

⁵ *Id.* at 18.

type discounted rate but does not adhere to the ratepayer protections required by Administrative Case No. 327 for EDR contracts.⁶ In *PSC of Ky. v. Commonwealth*, 320 S.W.3d 660 (Ky. 2010), the Court relied significantly on the Public Service Commission oversight role as arbiter of the reasonableness of a proposed reduced utility rate, in upholding EDRs as being consistent with KRS 278.170. This Commission has established the standards and findings necessary to differentiate allowable from unreasonable preferences or advantages prohibited by KRS 278.170(1), and the grant of discounted “economic development” rates by Kentucky Power outside of those criteria established in Administrative Case No. 327 would constitute an unreasonable preference and an unreasonable classification within the meaning of KRS 278.030(3).

Because of Kentucky Power’s lack of sufficient generating capacity alone, this special contract should be denied as being unreasonable and inconsistent with Administrative Case No. 327 criteria. Kentucky Power does not dispute that it would have to purchase additional capacity to serve Ebon, increasing costs for other customers since Ebon would not be solely responsible for paying for those costs.⁷ And Kentucky Power also concedes that there is a risk to customers of further capacity cost increases if Ebon fails to curtail under Rider D.R.S., and none of the provisions that the Company cites as “provid[ing] meaningful protection for the Company and its other customers”⁸ would in fact fully protect against or mitigate that risk.⁹

Purchasing additional capacity through bilateral contracts also leaves Kentucky

⁶ *Id.* at 8–10.

⁷ *Id.* at 17.

⁸ *Post-Hearing Brief of Kentucky Power Company*, Case No. 2022-00387 (Aug. 8, 2023) at 29.

⁹ *Post-Hearing Brief of Joint Intervenors* at 12–13.

Power's customers with even greater exposure to price fluctuations in energy markets.¹⁰ Further, adding a new load of up to 250 MW could lead to an increase in wholesale energy market prices that would be passed on to all Kentucky Power ratepayers.¹¹

Additionally, the Company's floor price mechanism also fails the requirements of an EDR contract, extending Ebon access to EDR discounts past the halfway mark of the contract in violation of Administrative Case No. 327 requirements.¹² In its opening brief, Kentucky Power admits that this billing mechanism "has the effect of smoothing out Ebon's bills over the life of the Special Contract by allowing any credits remaining in the floor price bank after the first five years of the Special Contract to be used to reduce Ebon's bills rendered in the latter five years of the Special Contract."¹³ This provides another benefit to Ebon while skirting around an additional protection under Administrative Case No. 327, lengthening the time period over which Kentucky Power's customers must bear increased risks from the contract and departing from the purpose of EDRs to provide a short-term incentive to a new customer.

Although Kentucky Power tries to argue that its customers would be worse off without the proposed special contract¹⁴ if Ebon were to take service under general rates provided for in Tariff I.G.S., Kentucky Power also makes the contradictory argument that Ebon would be unwilling to locate in Kentucky Power's service territory if the proposed special contract is not approved.¹⁵ In fact, evidence that a customer would not locate in

¹⁰ *Id.* at 11.

¹¹ *Id.* at 17.

¹² *Id.* at 8.

¹³ *Post-Hearing Brief of Kentucky Power Company* at 11.

¹⁴ *Id.* at 11–12, 19.

¹⁵ July 20, 2023, HVT at 12:08:00; 15:26:30.

the Company's territory without a discounted rate is required to show eligibility for an EDR rate under Administrative Case No. 327.¹⁶ Thus, Kentucky Power's contentions that its customers would face even more costs if Ebon were to take service for up to 250 MW at standard rates is a red herring, since the Company itself is arguing that Ebon would never do that.

Kentucky Power's references to "the General Assembly's policy to bring companies like Ebon to Kentucky"¹⁷ also miss the mark. One of the key purposes of Senate Bill 255 was to promote "[i]ncreasing the usage of electricity in areas which have an abundant supply due to the loss of manufacturing businesses across the state."¹⁸ As Kentucky Power does not have sufficient generating capacity to serve its existing customers, let alone a new 250 MW customer that would increase its energy requirements by approximately 37%,¹⁹ the proposed special contract with Ebon is not consistent with the General Assembly's policy goals and the Commission should not give weight to these arguments. Further, nothing in the General Assembly's legislative findings suggested that encouragement of cryptocurrency ventures should be at the cost of protection of other ratepayers.

III. Conclusion

WHEREFORE, for the reasons stated herein and in Joint Intervenors' Opening Brief, Joint Intervenors respectfully urge the Commission to deny Kentucky Power's

¹⁶ Order, *In re: An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities* at 14, Administrative Case No. 327 (Sept. 24, 1990).

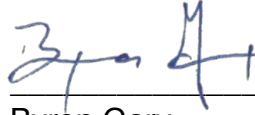
¹⁷ *Post-Hearing Brief of Kentucky Power Company* at 22.

¹⁸ KRS 154.27-020(3)(e) (adopted by the legislature and signed by the Governor in 2021, see 2021 Ky. Acts Ch. 141 (SB 255)).

¹⁹ July 20, 2023, HVT at 09:30:00.

request for approval of the proposed special contract.

Respectfully submitted,



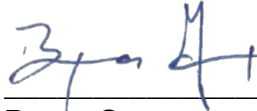
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CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on August 11, 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 blue ink, appearing to read "Byron Gary", is written above a horizontal line.

Byron Gary