COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

MOTION OF JOINT INTERVENORS MOUNTAIN ASSOCIATION, KENTUCKIANS FOR THE COMMONWEALTH, APPALACHIAN CITIZENS' LAW CENTER, SIERRA CLUB, AND KENTUCKY RESOURCES COUNCIL, INC. FOR A HEARING AND THE ESTABLISHMENT OF A PROCEDURAL SCHEDULE

Mountain Association ("MA"), Kentuckians for the Commonwealth ("KFTC"), Appalachian Citizens' Law Center ("ACLC"), Sierra Club, and 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 the foregoing motion, Joint Intervenors state as follows.

On November 17, 2022, the Joint Intervenors filed Comments[1] regarding the Electric Service and Rider Demand Response Service Addendums between Kentucky Power Company ("KPCO") and Ebon International, LLC ("Ebon"), requesting that the Commission open a formal proceeding to investigate the full impacts of the Proposed Special Contract ("KPCO-Ebon Contract") for a planned 250 MW of capacity, surpassing KPCO's current Economic Development Rider cap. Joint Intervenors' Comments highlighted that the KPCO-Ebon

[1] Attached to the Commission's Nov. 23, 2002 Order in this proceeding as Appendix B.

Contract: (1) effectively acts as an economic development rate, and should be treated as such, (2) did not demonstrate that the proposed facility would not locate in KPCO's territory in the absence of the discounted rate, (3) did not protect ratepayers from the unique risks and volatility of cryptocurrency mining, and (4) was being proposed at a time when KPCO is capacity short, thus adding more potential risk and costs to ratepayers. On November 23, 2022, the Commission entered an Order establishing a procedural schedule to investigate the reasonableness of the KPCO-Ebon Contract and suspended the contract until April 26, 2023.[2] The Commission's Order additionally allowed for parties to request a hearing no later than March 22, 2023.

Joint Intervenors filed testimony from witnesses Stacy Sherwood and Chelsea Hotaling that discussed the issues in this proceeding, recommended criteria for Commission review of EDR contracts with cryptocurrency facilities and associated marginal cost analyses, and recommended that the Commission reject the KPCO-Ebon Contract. As Ms. Sherwood's testimony emphasizes, the evidence presented by KPCO does not establish that an EDR discount is necessary for Ebon to build a facility in KPCO territory, nor that Ebon will actually hire locally the number of jobs that it claims it will create (as opposed to creating fewer jobs and/or hiring remote workers to fill those positions).[3] Accordingly, KPCO has not presented sufficient evidence that the Proposed Special Contract will have a meaningful economic development benefit for the local economy in KPCO's territory. Nor does the Proposed Special Contract protect KPCO's existing customers from the unique risks posed by the volatile nature of cryptocurrency mining or from potential additional costs due to raises in property taxes from KPCO's land lease to Ebon or due to KPCO adding a large new discounted load at a time when

[2] Nov. 23, 2022 Order.
[3] Sherwood Testimony at 15-18.

it is capacity short.[4] Leasing the land to Ebon also leads to the potential opportunity costs of forgoing using the land for renewable energy generation, and the new load from the Ebon facility will likely also contribute to increased greenhouse gas emissions and other pollution impacts from the Big Sandy Generating Station and other coal- or gas-fired generation.[5]

Just this week, the Company announced in its newly-filed Integrated Resource Plan that it now plans to extend the life of the Big Sandy plant until 2041,[6] in part to serve Ebon's load, which KPCO confirmed is included in its IRP load forecast (notwithstanding that the Commission has not yet approved the Proposed Special Contract).[7] As Ms. Hotaling's testimony points out, the KPCO-Ebon Contract would reap the benefits of an EDR tariff and should be considered subject to its limits, including the requirement that the discounted Ebon load not accelerate or increase the Company's need for additional capacity.[8] Ms. Hotaling also highlights that Ebon's load could have an impact on increasing electricity prices, and that the Proposed Contract's Floor Price Bank could allow Ebon to extend the benefit of discounted rates beyond the five-year period to which this Commission has previously limited EDR discounts.[9]

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.[10] The Commission also determined that utilities should only be able to offer EDR discounts "to those new and existing

[4] *Id.* at 18-21.
[5] *Id.* at 19-23; Hotaling Testimony at 17-18.
[6] *See* the Company's recently filed IRP in Case No. 2023-00093 (Mar. 20, 2023).
[7] West Rebuttal Testimony at R10-R11.
[8] Hotaling Testimony at 9-10.
[9] *Id.* at 17-21.
[10] 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."[11] 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.[12] 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,[13] 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.[14]

KPCO's rebuttal testimony in this case acknowledges that the Proposed Special Contract contains EDR discounts, but the Company nonetheless requests that the Commission approve the contract outside of KPCO's approved EDR Tariff, effectively proposing to double the total amount of load to which KPCO can offer discounts.[15] Moreover, KPCO fails to address in its rebuttal the requirement in its EDR Tariff that it not seek to add discounted load that would accelerate the Company's plans for additional capacity.[16] KPCO's request that the Commission ignore these critical guardrails placed on EDR contracts to protect the Company's existing customers would put those customers at risk of the multiple additional costs and harms that Joint Intervenors' testimony identifies, whereas the Company's claimed economic development benefits of the Proposed Special Contract are uncertain and unsubstantiated.

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

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[11] *Id.* at 15.
[12] *Id.* at 10.
[13] *Id.* at 8.
[14] *Id.* at 3.
[15] West Rebuttal Testimony at R4-R6.
[16] *See* Sherwood Testimony at 13.

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 March 22, 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.

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Tom FitzGerald