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 International, LLC	)))	Case No. 2022-00387

REPLY BRIEF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

The Company has identified and attracted a great match in Ebon that will bring much-needed load, significant jobs, and meaningful economic development to eastern Kentucky. Securing a customer with significant load and other benefits to the Company's service territory via special contract rates is vital in the Company's efforts to improve the current economic reality of the service territory. The Company and the intervenors fundamentally disagree as to whether it is valuable and beneficial to grow Kentucky Power's load base. AG-KIUC and the Joint Intervenors miss the mark with arguments that are neither factually significant or credible, nor focused on what is important for the Company's service territory and its customers. This case is straightforward and the Company has submitted credible evidence that the rates contained in the Special Contract are fair, just, and reasonable, and are designed to cover Ebon's variable costs and make a contribution to fixed costs.

The Special Contract should be approved based on all of the circumstances presented. It is axiomatic that the purpose of special contracts is to provide discounted rates to certain customers for an agreed-upon time period in order to attract that customer to locate in the service territory and take service from Kentucky Power. The discounts and terms of service offered to Ebon here are substantially similar to those offered to other industrial customers, including those contracts offered under the Company's Tariff Economic Development Rider ("E.D.R."), which were not opposed and were approved by the Commission. The Company's evidence supports approval based on the standards by which special contracts have been approved in the past. Ebon, and the proposed Special Contract, should not be held to different standards or have additional unreasonable requirements imposed upon it than other similarly situated special contract customers. To do so would be to unreasonably discriminate against Ebon.

The intervenors protestations with respect to singular aspects of the marginal cost analysis and other aspects of the Special Contract distort the real issues in this case, and upon which the Commission should focus its review. AG-KIUC's main argument against the Company's marginal cost analysis focuses on only one rate component of the marginal cost study to claim that it is unreasonable in its entirety and that the Special Contract should be denied. This singular focus, particularly when the Company's full holistic view of the cost to serve Ebon shows a net benefit, is incomplete at best and misleading at worst. The focus on the reasonableness of the Big Sandy lease terms, the IMPLAN model analysis, and the fact that Ebon is an LLC entity are red herrings or unsupported by evidence. The intervenors' attempts to distract the Commission's review of the Special Contract with the investigation proceeding in Case No. 2021-00370, that is still in its infancy, is a last ditch effort in their attempts to preclude by any means necessary Ebon from receiving reasonable discounts that were not opposed and were approved for other similarly situated customers in the recent past.

The Commission should not be distracted by AG-KIUC and Joint Intervenors' unsupported or unreasonably inflated claims that distract from the evidence provided by the Company in this case that the proposed Special Contract is reasonable, is designed to cover Ebon's variable costs and make a contribution to fixed costs, and that warrants approval based on the circumstances presented and the Commission's prior standards.

II. ARGUMENT

A. The Purpose Of Special Contracts.

KRS 278.160 prohibits utilities from charging, demanding, collecting, or receiving from customers a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, but also contemplates special contracts that contain rates and conditions of service not filed in a utility's general schedule. 807 KAR 5:011, Section 13 allows

utilities to enter into special contracts with customers that establish "rates, charges, or conditions of service not contained in its tariff," and directs the utility to file a copy of the special contract with the Commission. Thus, rates contained in special contracts are agreed upon by the Company and the customer and necessarily deviate from the rates contained in the Company's tariff. It is illogical that any customer would agree to a contract rate higher than that provided by the Company's tariff. Therefore, at their most basic level, special contracts provide for discounted rates for certain customers that are not extended to most other customers. The agreed-upon discounts are often based on the circumstances of the customer and are aimed at attracting or retaining that entity as a customer of Kentucky Power. The Commission reviews these special contracts and approves them if they are reasonable and if the rates have the effect of covering the customer's variable costs and make a contribution to fixed costs.[1]

B. Ebon Must Not Be Unreasonably Discriminated Against Or Treated Disparately From Other Similarly Situated Special Contract Customers.

The arguments advanced by AG-KIUC and the Joint Intervenors, and the unreasonable and discriminatory requirements they recommend be imposed, are contrary to the purpose of special contracts. Not only are such proposed requirements not imposed on any current customer of Kentucky Power, if such requirements were imposed on other special contract customers going forward, it would be virtually impossible for the Company to find any customer (including Ebon) that would agree to such terms, and actually locate and operate in the service territory.

[1] *See* Order at 6-7, *In The Matter Of: Electronic Application Of Kentucky Power Company For Approval Of A Contract For Electric Service With Mc Mining, LLC*, Case No. 2019-00124 (Ky. P.S.C. August 23, 2019); Order at 9 n. 36, *In The Matter Of: Electronic Application Of Duke Energy Kentucky, Inc. For Approval Of A Special Contract And For Waiver Of 807 KAR 5:041, Section 6(2)(C)*, Case No. 2021-00192 (Ky. P.S.C. March 4, 2022) (*citing* Order, *In The Matter Of: Filing Of Special Industrial Contracts By Atmos Energy Corporation*, Case No. 2017-00035 (Ky. P.S.C. April 12, 2017)).

For example, AG-KIUC assert that the proposed Special Contract should only be approved subject to the following five conditions:

- Increasing the total number of interruptions from 20 three-hour increments to 60 three-hour increments—meaning that the Company would be able to call for interruptions a total of 180 hours per year. This is three times the amount of interruptions allowed under Rider D.R.S.
- Imposing 1,752 interruption buy-through hours during "periods of high PJM market energy prices" where Ebon would be given the choice to interrupt or "buy-through" the interruption at market energy prices. This is in addition to the 180 peak-shaving interruption hours that are also recommended. AG-KIUC also do not define what "high PJM market prices" means.
- Making Ebon directly responsible for "added generation and transmission capacity costs" if Ebon fails to fully curtail 100% of its interruptible load.
- Imposing credit and security requirements, beyond those already required by the Company's terms and conditions of service and the proposed Special Contract, solely because Ebon is an LLC entity.
- Requiring all Ebon employees to reside in Kentucky and to be paid a minimum of $60,500 per year, increasing with inflation. AG-KIUC would also require a penalty to be imposed upon Ebon for not complying with this recommended requirement.

Despite the evidence in this record demonstrating that Ebon is no differently situated than any other industrial customer currently served by Kentucky Power under a special contract, AG-KIUC recommend such conditions even though none are currently required of <u>any</u> current Kentucky Power customer, whether served under a tariff or special contract.

There are no customers participating in Rider D.R.S. that are subject to anywhere near 60 interruption events, or 180 interruption hours, per year. Such a requirement is unsupported by the record and is unreasonable. The Company has successfully operated under the current level of interruptions allowed by Rider D.R.S. Ebon, simply because of the size of its load, should not be required to interrupt more than other D.R.S. customers. It also would be unreasonable to expect a customer to be subject to materially higher interruptions without a corresponding materially higher credit. In addition, allowing 180 hours (or 7.5 days) of interruption per year would be uneconomical for Ebon.

There also are no customers subject to buy-through provisions tied to "periods of high PJM market energy prices" (which phrase AG-KIUC fail to define). The unreasonableness of this proposed requirement is only further exacerbated by the fact that it would be in addition to the proposed tripling of the number and hours of interruption allowed under the Special Contract. AG-KIUC essentially recommend that Ebon be interrupted for a total of 1,932 hours per year, which amounts to 80.5 days of potential interruption. This would be challenging for any customer trying to run a business, particularly without being compensated for such a requirement being imposed.

There are no customers of Kentucky Power, whether served under a tariff or a special contract, that are currently directly assigned any increased generation capacity or transmission costs that may be caused by the customer if they fail to curtail 100% of their interruptible load. The Company has maintained throughout this proceeding that it does not, and it would be unreasonable to, assign generation capacity costs or transmission costs directly to any customer, including any current customer that may be causing such an increase.[2] In addition, under the

[2] The Company has recognized that some customers taking service under Tariff E.D.R. may be subject to the discount reduction/offset provisions of Tariff E.D.R. should the Company be required to make an incremental

terms of the Commission-approved Rider D.R.S. the DRS Event Failure Charge only applies if the customer curtails less than 90% of its interruptible load. This provision was included to provide flexibility in curtailing, and was mostly aimed at those customers whose loads are not as easily interruptible as Ebon's, like traditional manufacturing customers. Simply because Ebon's load is more easily interruptible, the requirement proposed by AG-KIUC is inappropriate and arbitrary. Further, allowing 180 hours of interruption would place on Ebon a disproportionate burden relative to other customers in connection with Company's obligation to implement Rider D.R.S.

There are no current LLC customers from which Kentucky Power has required some kind of additional security or parental guarantee, and imposing this requirement specifically on Ebon is arbitrary and unreasonable. AG-KIUC assert that the Special Contract Addendum providing for the discount claw back is "worthless." They base this statement on sweeping and prejudicial generalizations that because Ebon is an LLC it is a shell company that has no assets and is judgment proof. The evidence shows otherwise. The Special Contract states that Ebon, not its parent, will make the investment in the Ebon Facility.[3] Thus, Ebon will have substantial assets that could be used to satisfy a judgment obtained by the Company or to pay Ebon's creditors in any bankruptcy proceeding. Ebon also has committed to make substantial investment in the property required to construct and operate the planned facility. AEP's credit and risk team evaluated Ebon prior to the Company entering into the Special Contract and determined that because Ebon will pay for all customer-specific fixed costs up front, no additional security, such

capacity purchase on behalf of the E.D.R. customer post-Rockport UPA expiration. *See* the Company's response to Commission Staff's PHDR 11 (July 28, 2023). However, those specific provisions of Tariff E.D.R. would not apply here because the Special Contract is not being filed under Tariff E.D.R. and for all other reasons previously stated by the Company throughout this proceeding.

[3] *See* Contract for Firm Electric Service Between Kentucky Power Company and Ebon International, LLC dated August 23, 2022 ("Special Contract"), at Recital No. 5.

as a letter of credit, was required. There is no evidence upon which to reasonably base a requirement for additional security from Ebon.

Finally, there are no current customers of Kentucky Power that are required to employ only Kentucky residents and provide a minimum salary or face penalty. In addition, AG-KIUC's assertion that the minimum salary should be $60,500 per year is arbitrary and not based on any evidence. Nor is it supported by any of the actual requirements for the specific job(s) at the Ebon Facility. Such a requirement is unreasonable and potentially unconstitutional.

Ebon must be treated the same as other similarly situated customers and must not be unreasonably discriminated against. The proposed Special Contract should be subject to the same evidentiary standards and other requirements that other similarly situated customers are and have been.

1. Commission Precedent Allows The Approval Of Special Contracts Based On The Particular Facts Presented.

Commission precedent recognizes that special contracts may be approved as reasonable based on the circumstances presented.[4] In making this reasonableness determination, the Commission further specifically recognizes the importance of 1) economic development to Kentucky Power's service territory, and 2) the addition and retention of industrial load.[5] In a similar special contract case filed in 2020, Kentucky Power "request[ed] approval of the Special Contract in order to assist the deteriorating financial position of an existing manufacturer in its service territory."[6] The Commission stated that it was "aware of the declining economic circumstances, increased unemployment, and low median household income for the residents of

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[4] *See* Order, *In The Matter Of: Electronic Application Of Kentucky Power Company For Approval Of A Contract For Electric Service With Air Products And Chemicals, Inc.*, Case No. 2020-00019 (Ky. P.S.C. April 23, 2020).

[5] *Id*.

[6] *Id.* at 6.

Kentucky Power's service territory."[7] The circumstances that warranted approval of that special contract are similar to those here.

First, in support of the special contract in the 2020 case, the Company "explain[ed] that its service territory and the entire region in eastern Kentucky are in a distressed financial condition with high unemployment, high poverty rates, declining population, and declining economic activity."[8] It further explained that the terms of the special contract would provide the customer with the flexibility necessary to continue its operations, "which in turn would help stabilize the economy in Kentucky Power's service territory."[9] The Company has submitted similar evidence in this case. The economic situation in the Company's service territory since 2020 has not improved. Customer count and load have continued to decrease, and the poverty level and unemployment rate have continued to increase. The economic situation likely would have been worse had the Commission not approved the special contract in the 2020 case and the customer was forced to cease operations. Securing Ebon to the service territory, which is only made possible through the Special Contract, similarly will help stabilize the economy in Kentucky Power's service territory through the addition of new load, full-time well-paying jobs, increased capital investment in the local area, increased local economic activity, and increased local tax revenue.

Second, in the 2020 case, Kentucky Power presented testimony that, without the rates established in the special contract, the customer would cease operations at its facility, "resulting in direct and indirect adverse results through the loss of $3.2 million of non-fuel revenues and the collateral impact on increased unemployment and loss of wages from the loss of

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[7] *Id.*

[8] *Id.* at 2.

[9] *Id.*

manufacturing jobs."[10] Similarly here, the Company has provided testimony and documentary evidence from Ebon itself that absent the rates established in the proposed Special Contract, Ebon would not locate in the service territory. In addition to significant revenues, Ebon and the Ebon Facility unequivocally will bring significant well-paying jobs, capital investment, local economic activity, and local tax revenue to the Company's service territory. It will also bring much-needed load over which the Company's fixed costs may be spread, to the benefit of all other customers. Without approval of the Special Contract, the Company, the service territory, and other customers would experience "direct and indirect adverse results" stemming from those benefits never materializing.

Third, the Commission found that the Company's marginal cost study provided in the 2020 case represented "credible evidence in support of its assertion that the rates established in the Special Contract will cover all of the variable cost to serve [the customer], will increase [the customer's] contribution to fixed costs, and will not adversely impact the rates of other customers."[11] Importantly, although still reliable, the marginal cost study presented in the 2020 case did not take into account energy, generation capacity, or transmission costs for the additional load. The marginal cost study provided by the Company in this case (Exhibit LMK-R1) was, in fact, more detailed than the marginal cost study provided in the 2020 case. Here, the Company's marginal cost study (Exhibit LMK-R1) does consider energy, generation capacity, included at the request of Commission Staff,[12] and transmission costs. The Company's most

[10] *Id.* at 6.

[11] *Id.*

[12] The Company maintains that after the expiration of the Rockport UPA in December 2022, the Company is required to purchase capacity to serve all customers. Thus, the Company does not assign capacity purchases to individual customers during times when it is purchasing capacity to serve all customers, and the marginal cost study that does not include generation capacity costs, *see* Exhibit LMK-R1, is reasonable.

recent marginal cost study (KPCO_R_KPSC_PHDR_4_Attachment1) also considers escalated transmission costs and revenues, also included at the request of Commission Staff. Both demonstrate a net positive cost to serve Ebon. Thus, by the same standards, the Company's marginal cost study presented in this case (either Exhibit LMK-R1 or KPCO_R_KPSC_PHDR_4_Attachment1) likewise represents credible evidence that the rates established in the Special Contract will cover all of the variable costs to serve Ebon, that Ebon will contribute to fixed costs, and will not adversely impact the rates of other customers.

In the 2020 case, the Commission found that the proposed special contract was "reasonable under the particular facts presented."[13] The particular facts presented in the 2020 case are substantially similar to those presented here. The economic situation in the Company's service territory has not improved; Ebon will not locate in Kentucky absent the approval of the Special Contract; the Company, the service territory, and other customers would experience "direct and indirect adverse results" if the Special Contract is not approved; and the Company's marginal cost study represents credible evidence that the rates established in the Special Contract will cover all of the variable costs to serve Ebon, that Ebon will contribute to fixed costs, and will not adversely impact the rates of other customers.

Yet, the customer in the 2020 case did not face the same opposition, and was not subjected to any of the unreasonable and unsupported conditions recommended by AG-KIUC here.[14] The Commission should not hold Ebon, and the proposed Special Contract with Ebon, to different standards than those applied to other similarly situated customers in substantially

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[13] Order at 6, *In The Matter Of: Electronic Application Of Kentucky Power Company For Approval Of A Contract For Electric Service With Air Products And Chemicals, Inc.*, Case No. 2020-00019 (Ky. P.S.C. April 23, 2020).

[14] Notably, KIUC's position is rendered more arbitrary here because it is in direct contradiction with the Commission's order in the 2020 case discussed herein, which concerned an industrial customer that is a member of KIUC in other proceedings.

similar circumstances whose special contracts were approved. To do so would be to unreasonably discriminate against Ebon.

The Commission should also question whether, if the potential customer in this matter were a coal company, a steel mill, or other traditional manufacturer, the Attorney General or KIUC would be voicing such strong opposition and proposing such extreme conditions on approval of the Special Contract. If a traditional manufacturing customer represented it would bring 100-125 jobs, would make a $250 million investment (including $85 million of permanent investment), were offered the same discounts, were subject to the same floor price mechanism, and were subject to all the other protections provided by the proposed Special Contract, would the same conditions of approval be recommended by the Attorney General or KIUC? They were not when it came to the approval of the special contract in the 2020 case, which boasted meaningful but substantially less economic benefit, and which contract is still in effect.

Quite simply, the location of the Ebon Facility in the service territory will bring significant jobs, investment, local economic benefits, and local tax revenue that undoubtedly will benefit residential and other customers in Kentucky Power's service territory. And, it will bring those jobs and those benefits to residents of a Kentucky county that have not seen a new company locate there since 2008. Yet, the Special Contract is opposed.

2. The Company And Intervenors Fundamentally Disagree As To Whether It Is Beneficial To Grow Kentucky Power's Load Base.

The Company and the intervenors fundamentally disagree as to whether it is beneficial to grow Kentucky Power's load base. In any event, the addition of the Ebon load <u>will</u> reduce fixed costs currently borne by residential customers, the members of KIUC, and all other customers. Those costs will be lower than they otherwise would be absent Ebon being a customer of Kentucky Power. When additional slices must be cut from the pie, all other slices get smaller. In

addition, the Attorney General and KIUC advocate for Kentucky Power to build new generation and rely less, or not at all, on market energy purchases. That new generation comes at substantial cost to build. Utilities must attract load in order to further spread the costs of building that generation or other capital projects, which makes that investment more affordable for customers than it otherwise would be. The addition of a new 250 MW load will also reduce residential and other customers' share of those costs.

C. Tariff E.D.R. And The Order In Administrative Case No. 327 Do Not Govern Here.

The requirements contained in the Company's Tariff E.D.R. and the Order in Administrative Case No. 327 do not apply to the proposed Special Contract because the Company has not filed the Special Contract pursuant to its Tariff E.D.R. The Joint Intervenors allege that the Company is filing the proposed Special Contract outside of its Tariff E.D.R. in an attempt to circumvent its requirements, and that the proposed billing structure does not comply with Tariff E.D.R. requirements. The Company has already explained its reasoning for filing the contract as a Special Contract rather than under Tariff E.D.R. and will not repeat them here. Consistent with KRS 278.160 and 807 KAR 5:011, Section 13, the Company is permitted to enter into special contracts that vary from the rates and terms of its tariffs, and the Company has done so, with the approval of the Commission, on several occasions. The Special Contract should therefore be reviewed under those same standards and requirements.

1. Even If Tariff E.D.R. And The Order In Administrative Case No. 327 Did Govern, The Special Contract Should Still Be Approved.

Nonetheless, even if Kentucky Power did file the contract under Tariff E.D.R. the contract still should be approved. Aside from the current MW cap for Tariff E.D.R. participation, the proposed Special Contract is consistent with all provisions of the tariff and even provides additional protections not required by Tariff E.D.R. First, the Company's evidence shows that

Ebon's "operations, by their nature, will promote sustained economic development based on plant and facilities investment and job creation."[15] Ebon plans to make a $250 million investment ($85 million of which will be in permanent infrastructure), and plans to bring 100-125 jobs. Ebon's estimated demand for both Phase 1 and Phase 2 of the Special Contract far exceed the "monthly maximum billing demand" required by Tariff E.D.R. (which is only 500 kW).[16] The July 23, 2023 Addendum to the Special Contract makes clear that Ebon will meet the minimum job requirements (25 jobs) to receive the Supplemental Billing Demand Discount under Tariff E.D.R., however, Ebon anticipates hiring far in excess of that minimum (100-125 jobs).[17] Finally, Ebon has sufficiently demonstrated that absent the discounts provided by the Special Contract, Ebon would locate outside the service territory or its facility would not be placed into service.[18]

The Special Contract offers discounts modeled after those available in Tariff E.D.R. The July 23, 2023 Addendum also incorporates the discount claw back provisions provided by Tariff E.D.R., which would require Ebon to pay back any such discounts received if it discontinues service prior to the end of the contract term. The Special Contract also includes additional protection that is not provided by Tariff E.D.R., in the form of the floor price mechanism. Tariff E.D.R. provides for formula discounts that do not include a floor price. The Company added this mechanism to the Special Contract for the purpose of ensuring that the rates offered to Ebon were designed to cover all variable costs to serve Ebon and make a contribution to fixed costs.

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[15] *See* Kentucky Power Company Tariff Sheet No. 37-1.

[16] *Id.,* Availability of Service, Section (1).

[17] *Id.*, Section (2).

[18] *Id.*, Section (3).

Absent the MW cap, the proposed Special Contract plainly meet <u>every</u> minimum requirement to take service under Tariff E.D.R., and it is consistent with other contracts previously filed pursuant to Tariff E.D.R. and approved by the Commission. The Special Contract even contains additional protections for the Company and other customers that are not provided in Tariff E.D.R.

The Special Contract also would meet nearly every requirement for approval in the Order in Administrative Case No. 327 ("Order"). The requirements of that Order are not rigid and allow for some flexibility at the discretion of the utility. First, the Company has demonstrated through marginal cost analysis that the rates contained in the proposed Special Contract are designed to cover variable costs, including marginal capacity costs and energy costs, and make a contribution to fixed costs. The Commission explicitly found in the Order that "EDRs which are designed to recover all marginal costs and make a contribution to a utility's system fixed costs will benefit all nonparticipating ratepayers."[19] In addition, Ebon will pay for all customer-specific fixed costs.

The Order does not set fixed minimum demand requirements, capital investment levels, or minimum job creation requirements, and the Commission recognizes that there are other benefits that may be realized through EDRs:

> [W]hile job creation and increases in capital investment are the desired outcome of EDRs, requiring specific levels of job creation and capital investment for EDR eligibility might, in some instance, impede rather than promote economic activity. For instance, such a requirement might prevent a customer from participating in an EDR program even if tangible economic benefits unrelated to job creation or capital investment would have been realized.[20]

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[19] Order, Administrative Case No. 327 at 17.

[20] *Id.* at 10-11.

The Commission further found that such rigid requirements would "be arbitrary and would not recognize the needs and characteristics of individual service areas…"[21] Nonetheless, Ebon will bring with it significant load, capital investment, and jobs, far in excess of the levels contemplated by the Order or required by Tariff E.D.R., and will also bring significant economic benefits to a service territory that desperately needs them.

While the Order states that "EDRs should only be offered during time periods of excess capacity," it is important to note that the Company's Commission-approved Tariff E.D.R. allows the Company to offer EDRs during times when the Company is capacity sufficient and capacity short. The Company maintains that it is capacity sufficient. In any event, because this Special Contract was not filed pursuant to Tariff E.D.R. or the Order in Administrative Case No. 327, the Commission is not confined by their requirements, and should review the contract based on whether it is reasonable, whether the rates contained therein are designed to cover Ebon's variable costs and make a contribution to fixed costs, and in consideration of the significant economic benefits that it will bring. This review still would be in the spirit of the Order in Administrative Case No. 327 and would enable desperately-needed economic development in eastern Kentucky.

D. AG-KIUC's Claims With Respect To The Marginal Cost Study Focus Mainly On One Specific Item While The Company Provides The Complete Holistic View.

The Company has already addressed the fact that AG-KIUC Witness Baron's marginal cost analysis is unreasonable because it fails to commensurately escalate Tariff P.P.A. revenues with transmission costs. The Company's marginal cost study (KPCO_R_KPSC_PHDR_4_Attachment1) corrects for this by also escalating Tariff P.P.A.

[21] *Id.* at 11.

revenues, and demonstrates that the marginal cost to serve Ebon is a net benefit, even when taking escalating transmission costs (and revenues) into account.

AG-KIUC also claim that the Company's marginal cost study includes an "energy modeling error" by not accounting properly for market purchases and the effect that Ebon's energy requirements could have on the FAC rate paid by other customers. AG-KIUC claim that the cost of market energy purchases 1) will always be more than the cost of native generation, and 2) will substantially increase after the addition of Ebon's load and then be socialized, at great cost, to other customers. AG-KIUC's claims are flawed for two reasons.

The assumption that Mitchell and Big Sandy are always producing below-market cost energy and that Ebon would always increase the FAC rate is incorrect. There are times when it is more economical for those units not to run and for the Company to purchase energy from the market. In addition, AG-KIUC's assumption that Ebon will "take a significant portion of the below-market energy produced by Mitchell and Big Sandy that is currently benefiting existing ratepayers" is misleading. The Company sells all of its native generation into the PJM market and buys back what it needs to serve its customers. That certain customer classes "receive" certain types of energy, whether from native generation or market purchases, is a non sequitur. Ebon would not be "taking" lower priced energy from any existing customers, and to assert as such is a prejudicial mischaracterization.

More importantly, AG-KIUC's focus on a singular aspect of the marginal cost analysis (market purchases and the FAC), instead of the holistic total-cost view as demonstrated in the Company's marginal cost analysis, provides and incomplete and misleading picture. The Company's evaluation of total revenue from Ebon, including FAC revenue, shows that total revenue from Ebon is greater than the marginal cost to serve Ebon over the life of the Special

Contract. This evaluation accounts for market energy purchases averaging $43.05/MWh. Focusing on an increase in only one rate component of the marginal cost study is incomplete at best and misleading at worst.

E. The IMPLAN Model Provides Meaningful Evidence Upon Which The Commission May Rely.

AG-KIUC's arguments that the Company's IMPLAN model analysis is unreasonable and overstated, and that the IMPLAN analysis essentially has no value, is a red herring. The IMPLAN analysis was never meant to predict the future or provide a detailed analysis of the economic benefits to be realized from Ebon locating its facility in Lawrence County. IMPLAN is a model and is meant to be instructive. It is a standard tool used widely in the economic development industry, and the analysis is performed not to demonstrate specific outcomes, but to get information about the direction of economic development and a high-level quantification of such benefits. There is no doubt that adding the jobs and investment made possible by the Ebon Facility to the local economy will provide substantial benefit to the residents of Eastern Kentucky. The jobs and investment proposed by Ebon are valuable within the context of Eastern Kentucky's economic reality. In addition, contrary to the intervenors' assertions, the IMPLAN model does take into account Ebon's specific industry, as cryptocurrency mining is included in the "data processing" industry code under which the analysis was run. The IMPLAN analysis thus provides meaningful evidence instructive to the Commission in the review of the Special Contract.

F. The Ebon Lease Is Reasonable And Appropriate.

Joint Intervenors' argument that the Company failed to demonstrate that it has maximized the potential benefits to customers from leasing property at the Big Sandy site to Ebon is another red herring for two reasons. First, there is no requirement that the Company "maximize" the

potential benefits realized from leasing a portion of the Big Sandy site where Big Sandy Unit 2 once stood in order for the Special Contract to be approved. Second, the Company's evidence demonstrates that the Company *has* maximized the potential benefits of leasing this property. In order to be leased to another customer in practically any other industry, substantial improvements and site work would have to be performed, which would increase the cost of serving all Kentucky Power customers. Ebon is uniquely suited to locate and begin operating on the property in its current state, at no additional site development cost. In addition, the Company would have leased the property, in its current state, to another customer under the same or similar rent terms consistent with its present commercial value. Ebon is not being given advantageous rent terms. Put simply, if the Company followed Joint Intervenors suggestion and waited to lease the property to another customer (who may never come), substantial cost would be incurred to make the site ready, which would increase the cost to serve all customers.

G. The Show Cause Proceeding Has No Bearing On Whether The Proposed Special Contract Should Be Approved.

The intervenors' reliance on the show cause order issued by the Commission in Case No. 2021-00370 ("Show Cause Order") to advance the arguments that the Company's application is inappropriate or should be denied, is completely misplaced. The Show Cause Order has no bearing on this proceeding and whether the proposed Special Contract should be approved. The Commission issued the Show Cause Order in that case pursuant to KRS 278.018(3) raising concerns about the Company's capacity and energy planning strategy and providing the Company the opportunity to respond to the alleged concerns. The Company filed its response to that Show Cause Order providing evidence that the Company's capacity and energy position and overall strategy comply with Kentucky law. Pursuant to the procedure proscribed by that statute, after the Company has been given a meaningful opportunity to respond, notice, and a full

hearing, the Commission will determine whether any deficiencies actually exist and give the Company the opportunity to cure any deficiencies. No findings as to the adequacy of the Company's capacity or energy position or overall strategy have yet been made according the procedure mandated by KRS 278.018(3). Therefore, the intervenors' reliance on the Show Cause Order is inappropriate here and should be given no weight in the Commission's review of the proposed Special Contract.

III. CONCLUSION

For the reasons set forth above and in the Company's Initial Post-Hearing Brief, the Company has demonstrated the proposed Special Contract with Ebon is reasonable, and that the rates contained therein are fair, just, and reasonable. The Company has also demonstrated that the rates contained in the Special Contract have the effect of covering Ebon's variable costs and make a contribution to existing fixed costs. In addition, the Ebon Special Contract allows the Company to secure Ebon and desperately needed economic development to the Company's service territory, to the benefit of all customers and local residents. The Commission should approve the proposed Special Contract for these reasons.

Respectfully submitted,

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