COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

IN THE MATTER OF:	)	
	)	
ELECTRONIC TARIFF FILING OF KENTUCKY	)	
POWER COMPANY FOR APPROVAL OF A	)	
SPECIAL CONTRACT WITH EBON	)	**CASE NO. 2022-0387**
INTERNATIONAL, LLC	)	

POST-HEARING RESPONSE BRIEF OF THE ATTORNEY GENERAL AND KENTUCKY INDUSTRIAL UTILITY CUSTOMERS

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The Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention ("Attorney General") and Kentucky Industrial Utility Customers, Inc. ("KIUC") (collectively "AG-KIUC") submit this Post-Hearing Brief in Response to the Initial Post-Hearing Brief filed by Kentucky Power Company ("Kentucky Power" or "Company") on August 8, 2023.

I. Administrative Order No. 327 Applies To This Special Contract.

Kentucky Power argues, "[m]arginal cost studies, although not required to be submitted in support of a special contract, can be helpful tools to demonstrate at a high level whether the rates in a special contract will result in a net cost or benefit to serve that customer."[1] Kentucky Power is not correct. Marginal costs studies are required to be submitted in support of special contracts like this one.

Administrative Order No. 327 requires:

> Upon submission of each EDR contract, a utility should demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer. Marginal cost includes both the marginal cost of capacity as well as the marginal cost of energy. In order to demonstrate marginal cost recovery, a utility should submit, with each EDR contract, a current marginal cost-of-service study. A current study is one conducted no more than one year prior to the date of the

[1] Kentucky Power's Initial Post-Hearing Brief at 20.

> contract. EDRs should be implemented by special contracts negotiated between the utilities and their large commercial and industrial customers.[2]

There is no question that this special contract is an EDR contract governed by Administrative Order No. 327.

> For the purposes of [Administrative Order No. 327], an economic development rate ("EDR") is considered to be a gas or electric rate discount, offered to large commercial and industrial customers, which is intended to stimulate the creation of new jobs and capital investment both by encouraging existing customers to expand their operations and by improving the likelihood that new large commercial and industrial customers will locate in Kentucky.[3]

The character of the special contract at issue plainly makes it an EDR contract. The special contract with Ebon offers discounted electric rates to a large commercial customer for the purpose of causing Ebon to create jobs and invest capital in the service territory. These facts are undisputed. Further, the Commission specifically contemplated that EDRs would be implemented as special contracts.

> EDRs should be implemented by special contracts negotiated between the utilities and their large commercial and industrial customers.[4]

Thus, this special contract is exactly the type of EDR contract that must be subjected to the ratepayer protections of Administrative Order No. 327. Kentucky Power's refusal to acknowledge its applicability is unsurprising. If Kentucky Power were to acknowledge that Administrative Order No. 327 applied, it would be admitting to the applicability of requirements the special contract simply does not meet.

II. The Special Contract Violates Administrative Order No. 327.

[2] Administrative Order No. 327 at 35-36.
[3] Administrative Order No. 327 at 1.
[4] Administrative Order No. 327 at 34-35.

The special contract violates Administrative Order No. 327 in at least three material ways: (1) it is not limited to a period of excess capacity, (2) it relies on flawed marginal cost analysis, and (3) existing ratepayers will be adversely affected by the special contract.

First, Administrative Order N0. 327 limits offers of EDR contracts to periods of excess capacity.

> EDRs should only be offered during periods of excess capacity. Utilities should demonstrate, upon submission of each EDR contract, that the load expected to be served during each year of the contract period will not cause them to fall below a reserve margin that is considered essential for system reliability. Such a reserve margin should be identified and justified with each EDR contract filing.[5]

Kentucky Power does not have the generating capacity to serve its existing customers, let alone this huge new 2 billion KWh (2 GWh) load at discounted rates, without undue reliance on PJM energy market purchases.[6] Kentucky Power's current native load energy requirement is approximately 5.4 billion KWh (5.4 GWh) per year.[7] The Ebon load will increase that by 37%.[8] This will greatly increase PJM energy market exposure for all customers and subject them to additional fuel adjustment clause ("FAC") rate increases.

The Company's proposal is particularly egregious given the Commission's recently opened Adequate Service Investigation in Case No. 2021-00370. In large part because of extraordinarily high purchase power costs incurred to serve the energy needs of the existing customer base, the Commission opened an investigation into whether Kentucky Power is providing adequate service. Buying an additional 2.0 GWh of energy from PJM to serve Ebon

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[5] Administrative Order No. 327 at 35.
[6] KIUC Hearing Exhibit 1. page 3.
[7] KIUC hearing Exhibit 2, page 1.
[8] Baron Direct Testimony at 4.

and socializing those purchase power costs among all ratepayers will make the current situation exponentially worse.

Second, Kentucky Power has failed to demonstrate that the revenues generated by the special contract exceed the marginal costs it causes, and in fact, those revenues do not exceed those costs.

> Upon submission of each EDR contract, a utility should demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer. Marginal cost includes both the marginal cost of capacity as well as the marginal cost of energy. In order to demonstrate marginal cost recovery, a utility should submit, with each EDR contract, a current marginal cost-of-service study. A current study is one conducted no more than one year prior to the date of the contract.[9]

As detailed in AG-KIUC's Initial Post-Hearing Brief, the Company's marginal cost analysis was highly flawed. The Company erred by (1) misstating Year 5 revenue, (2) failing to consider the revenue effect of the incremental discount, (3) making unreasonable assumptions related to transmission cost escalation, (4) assuming the special contract would not drive increased energy costs, and (5) by failing to consider the net present value of the marginal costs.[10]

Third, the failure to cover marginal costs will lead to the violation of yet another requirement of Administrative Order No. 327, the requirement that existing ratepayers are not to be adversely affected.

> During rate proceedings, utilities with active EDR contracts should demonstrate through detailed cost-of-service analysis that nonparticipating ratepayers are not adversely affected by these EDR customers.[11]

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[9] Administrative Order No. 327 at 35-36.
[10] See Initial Post-Hearing Brief of AG-KIUC at 9-16.
[11] Administrative Order No. 327 at 36.

The Ebon Special Contract will increase base rates by at least $92.9 million (nominal) $68.8 million (present value) over ten years.[12] That amounts to at least $33 per year for ten years for each of Kentucky Power's 133,000 residential customers.[13] In Year Two alone, the rate increase to the average residential customer will be at least $54.[14] Nonparticipating ratepayers will be adversely affected if the Ebon special contract is approved.

III. Conclusion

Kentucky Power has an obligation to serve ratepayers by offering fair, just and reasonable rates. The special contract would result in rates for non-participating ratepayers that are unjust, unfair, and unreasonable. Ebon is eligible to take service in the territory just like any other ratepayer, but it must not receive benefits that substantially burden all other existing ratepayers. The Commission should deny approval for the special contract with Ebon.

[12] Baron Direct Testimony at 7.

[13] Id.

[14] Id. Exhibit 4. Net cost to entire system in Year 2 $15,337,591.

Respectfully submitted,

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