

**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)	
UNDER ITS ECONOMIC DEVELOPMENT)	CASE NO. 2022-00424
RIDER AND DEMAND RESPONSE)	
SERVICE TARIFFS WITH CYBER)	
INNOVATION GROUP, LLC)	

**JOINT INTERVENORS’ RESPONSE TO KENTUCKY POWER COMPANY’S
MOTION FOR PARTIAL REHEARING OR CLARIFICATION**

Mountain Association, Kentuckians for the Commonwealth, Appalachian Citizens’ Law Center, Sierra Club, and Kentucky Resources Council (collectively “Joint Intervenors”) respectfully submit this response to Kentucky Power Company’s motion for a partial rehearing or clarification of the Commission’s September 15, 2023 Order (the “Order”).

Joint Intervenors respectfully submit that the implications of the Commission’s Order are clear: Kentucky Power must follow the language of its Tariff E.D.R., which requires the Company to pass through to Economic Development Rate (“EDR”) customers the costs of any incremental capacity purchases that it makes to serve those customers. The Commission found that “[t]he only logical way to read” the relevant language of Tariff E.D.R. “is that Kentucky Power may only offer EDR contracts in situations in which it must purchase capacity if the cost of capacity necessary to serve the EDR customer offsets the EDR discounts on a dollar-for-dollar basis.”¹ The Commission further found that the “tariff language plainly state[s] that Kentucky Power will obtain generation capacity when sufficient capacity is not available and that the EDR discounts will be offset by the cost of that capacity.”² Finally, the Commission noted that “[t]he

¹ Order at 13.

² *Id.*

tariff creates no exception to the requirement that capacity costs offset the discounts if Kentucky Power is purchasing capacity for the EDR customer and other customers as Kentucky Power suggested.”³

In its motion, Kentucky Power requests partial rehearing or clarification as to whether it should be required to begin following a correct interpretation of this same Tariff E.D.R. language with respect to its other EDR customers. A straightforward reading of the Order confirms that the answer is yes. The Commission stated in the body of the Order that, “based on the provisions of Tariff E.D.R., the incremental capacity purchased should first be assigned to Cyber Innovations under this Contract based on its contribution to the load obligation and then should be assigned, in reverse chronological order, to other EDR customers to which the tariff provision requiring a reduction in discounts applies.”⁴ Further, in ordering paragraph 2, the Commission instructed Kentucky Power to “implement [this] tariff provision regarding pass through of capacity costs.”⁵

Notably, Kentucky Power agrees that it could quickly begin implementing a correct interpretation of Tariff E.D.R. with respect to all of its EDR customers, and the Company does not suggest that additional proceedings before the Commission (beyond a decision on the instant motion) are needed before it is able to do so.⁶ Kentucky Power’s special contracts under Tariff E.D.R. already incorporate the tariff’s language by reference,⁷ and the Company’s other EDR customers are equally bound to follow the same tariff requirements (as correctly interpreted by the Commission in this case) through their own contracts.⁸ Requiring Kentucky Power to

³ *Id.* at 13–14.

⁴ *Id.* at 16.

⁵ *Id.* at 19.

⁶ *See* Kentucky Power Mot. at 2–3.

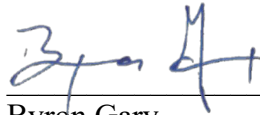
⁷ *See* Order at 14–15 (noting this to be the case with respect to the special contract at issue in this case).

⁸ *See, e.g.*, Order at 12 (citing Case No. 2018-00378, *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service Under Tariff E.D.R.* (Ky. PSC July 9, 2019), Order at 9 (“To the extent Kentucky Power is required to purchase capacity for Big Run [the EDR customer], those costs would be borne by Big Run.”)).

implement the correct interpretation of these tariff requirements for all of its EDR customers would also be fair, just, and reasonable for Kentucky Power’s non-EDR customers, “because customers who are not receiving the discounts are paying, at least in part, for the fixed costs of Kentucky Power’s native generation through demand charges.”⁹

WHEREFORE, Joint Intervenors respectfully request that the Commission grant Kentucky Power’s motion for partial rehearing or clarification and instruct Kentucky Power to begin implementing a correct interpretation of Tariff E.D.R. for all of its EDR customers, as set forth in the September 15, 2023 Order.

Respectfully submitted,



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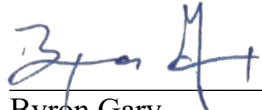
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⁹ See *id.* at

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 October 12, 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.



Byron Gary