

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 Rider And Demand)
Response Service Tariffs With Cyber Innovation)
Group, LLC)

Case No. 2022-00424

REBUTTAL TESTIMONY OF
BRIAN K. WEST
ON BEHALF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.**

2 A. My name is Brian K. West. My position is Vice President, Regulatory & Finance for
3 Kentucky Power Company (“Kentucky Power” or the “Company”). My business address
4 is 1645 Winchester Avenue, Ashland, Kentucky 41101.

II. BACKGROUND

5 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
6 **BACKGROUND.**

7 A. I received an Associate’s degree in Applied Science (Electronics Technology) and a
8 Bachelor’s degree in Business Management, both from Ohio University, in 1987 and 1988,
9 respectively. I obtained a Master of Business Administration degree from Ohio Dominican
10 University in 2008.

11 I began my utility industry career when I joined Ohio Power Company as a
12 customer services assistant in Portsmouth, Ohio in 1989. This was a supervisor-in-training
13 position, where I worked in each area of the office (*e.g.*, cashiering, new service, and credit
14 and collections) to gain knowledge and experience with every aspect of managing an area
15 office. After completing the training program, I initially supervised meter readers in the
16 Portsmouth office until being promoted to office supervisor in 1993. In 1997, when the

1 area offices closed, I transferred to Chillicothe, Ohio and accepted the position of customer
2 services field supervisor, with responsibility for managing customer field representatives
3 who primarily worked with customers on high-bill and other inquiries.

4 In 2000, after American Electric Power Company (“AEP”) merged with Central
5 and South West Corporation, I moved to Columbus, Ohio, where I held various positions
6 in Customer Operations, mostly in process improvement and supporting regulatory filings.
7 In 2008, I transferred to AEP’s Regulatory Services department, where I supported various
8 filings before public service commissions in Arkansas, Indiana, Michigan, Ohio,
9 Oklahoma, Tennessee, Texas, Virginia, and West Virginia, as well as the Public Service
10 Commission of Kentucky (“Commission”).

11 In 2010, I was promoted to regulatory case manager, with responsibility for energy
12 efficiency/demand response filings, integrated resource plan filings, and various renewable
13 filings across AEP’s service territory. In 2016, I moved to a case manager role with primary
14 responsibility for most Appalachian Power Company filings before the Public Service
15 Commission of West Virginia, the Virginia State Corporation Commission, and the
16 Tennessee Public Utility Commission. I accepted the position of Director of Regulatory
17 Services for Kentucky Power in February 2019. I assumed my current position as Vice
18 President, Regulatory & Finance for Kentucky Power Company in January 2021.

19 **Q. WHAT ARE YOUR RESPONSIBILITIES AS VICE PRESIDENT, REGULATORY**
20 **& FINANCE FOR KENTUCKY POWER?**

21 A. I am primarily responsible for managing the regulatory and financial strategy for Kentucky
22 Power. This includes planning and executing rate filings for both federal and state
23 regulatory agencies, as well as filings for certificates of public convenience and necessity

1 before this Commission. I am also responsible for managing the Company's financial
2 operating plans. Included as part of this responsibility is the preparation and coordination
3 of various capital and operation and maintenance ("O&M") budgets to ensure that adequate
4 resources such as debt, equity, and cash are available to build, operate, and maintain
5 Kentucky Power's electric system assets used to provide service to the Company's retail
6 and wholesale customers.

7 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

8 A. Yes. I have filed testimony in support of Kentucky Power's regulatory filings since 2019.
9 Most germane to my testimony in this case, I filed testimony in Case No. 2022-00387, an
10 application for approval of a special contract with Ebon International, LLC.

11 **Q. DID YOU OFFER DIRECT TESTIMONY IN THIS PROCEEDING?**

12 A. No.

III. PURPOSE OF REBUTTAL TESTIMONY

13 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

14 A. The purpose of my rebuttal testimony is to address certain positions taken by Stacy L.
15 Sherwood, witness for Mountain Association, Kentuckians For The Commonwealth,
16 Appalachian Citizens' Law Center, Sierra Club, and Kentucky Resources Council, Inc.
17 (collectively, "Joint Intervenors") with respect to the contract for electric service under
18 Tariff E.D.R. and Rider D.R.S. ("Contract") with Cyber Innovation Group, LLC ("Cyber
19 Innovation") at its Rockhouse Facility in Hatfield, Pike County, Kentucky.

20 **Q. ARE YOU SPONSORING ANY REBUTTAL EXHIBITS?**

21 A. No.

IV. CONTRACT SUMMARY

1 **Q. CAN YOU PLEASE DESCRIBE GENERALLY THE TERMS OF THE**
2 **PROPOSED CONTRACT WITH CYBER INNOVATION?**

3 **A.** The Contract with Cyber Innovation is based on the Company's Tariff I.G.S. (Industrial
4 General Service), Tariff E.D.R. (Economic Development Rider) and Rider D.R.S.
5 (Demand Response Service). Cyber Innovation will take service under Tariff I.G.S. and
6 receive discounts as outlined in Tariff E.D.R., specifically, the Incremental Billing Demand
7 Discount ("IBDD"). Per Tariff E.D.R., a new customer must have at least a monthly
8 maximum billing demand of 500 kW, and Cyber Innovation plans to operate its Rockhouse
9 Facility at approximately 7,000 kW. Cyber Innovation applied for Tariff E.D.R. and meets
10 all requirements to receive IBDD. In addition, Cyber Innovation agreed to participate in
11 Rider D.R.S. for the full 10-year term of the Contract (see Addendum to the Contract).
12 Further, Cyber Innovation agreed to be interrupted without receiving D.R.S. credits for the
13 first year of the Contract.

14 **Q. WHY DID THE COMPANY ENTER INTO THE PROPOSED CONTRACT WITH**
15 **CYBER INNOVATION?**

16 **A.** Cyber Innovation completed the Company's Application for Economic Development
17 Rider Discount and met all requirements of Tariff E.D.R. The Company's process for
18 entering into EDR contracts was provided in the Company's response to Joint Intervenors
19 data request 1-15. Further, the Company's standard practice for cryptocurrency projects in
20 its service territory is to require all infrastructure upgrades to be paid for by the customer
21 and to collect a deposit equal to 2/12^{ths} of the estimated annual bill, excluding any

1 discounts. Cyber Innovation has paid a deposit and met all other requirements. Therefore,
2 the Company entered into the Contract with Cyber Innovation.

3 Cyber Innovation is currently operating its similar but larger Long Fork Facility under a
4 Commission-approved EDR contract (TFS2022-00073). The Long Fork EDR contract is
5 virtually identical to the Contract at issue in this case.

6 **Q. DOES CYBER INNOVATION QUALIFY FOR A SUPPLEMENTAL BILLING**
7 **DEMAND DISCOUNT (“SBDD”) UNDER TARIFF E.D.R.?**

8 A. No. Cyber Innovation does not plan to hire the required number of employees to qualify
9 for the SBDD. Cyber Innovation will only receive the IBDD, which is tied to load
10 requirements.

11 **Q. WILL THE PROPOSED CONTRACT BRING ECONOMIC DEVELOPMENT**
12 **BENEFITS TO THE COMPANY’S SERVICE TERRITORY?**

13 A. Yes. Company Witness Clark provides more detail on the economic development benefits
14 in her testimony.

15 **Q. DOES CYBER INNOVATION OTHERWISE FULLY QUALIFY FOR TARIFF**
16 **E.D.R.?**

17 A. Yes. Cyber Innovation has met all of the requirements of the Company’s Tariff E.D.R. as
18 well as the Order in Administrative Case No. 327.¹ Attorney General Witness, Stacy
19 Sherwood, argues at page 14 of her testimony that because it is unclear if Cyber Innovation
20 will bring sustained economic development, the Commission should deny approval of the
21 Contract. However, as Ms. Sherwood recognizes on page 15 of her testimony, there exist
22 no requirements for a ‘minimum level of economic development’ to qualify for EDR

¹ https://psc.ky.gov/pscscf/2022%20cases/2022-00424//20221116_Kentucky%20Power%20Contract%20Filing%20Cyber%20Innovation.pdf

1 discounts in Tariff E.D.R. or the Order in Administrative Case No. 327. The Company
2 cannot, and neither should the Commission, impose additional subjective criteria on
3 customers who fully meet the current objective requirements of Tariff E.D.R.

4 **Q. DID THE COMPANY TREAT CYBER INNOVATION DIFFERENTLY, OR**
5 **IMPOSE DIFFERENT REQUIREMENTS, WHEN CONSIDERING ITS EDR**
6 **APPLICATION?**

7 **A.** No. The Company must treat all customers equally and not unreasonably discriminate
8 against any of them based on their industry or otherwise. It would be a slippery slope to
9 start picking and choosing which customers qualify for Tariff E.D.R. based on their
10 business model.

11 **Q. DOES THE PROPOSED CONTRACT CONTAIN PROVISIONS THAT DEVIATE**
12 **FROM KENTUCKY POWER'S STANDARD EDR CONTRACT?**

13 **A.** Based on the Company's interpretation of its tariff, no, it does not. Kentucky Power finds
14 itself in a capacity short position after the expiration of the Rockport UPA and must
15 contract for capacity to serve all of its customers. Finding Number 5 of the Order in
16 Administrative Case No. 327 permits E.D.R. contracts to be offered only during times of
17 excess capacity. However, Tariff E.D.R. permits Kentucky Power to offer E.D.R. contracts
18 during periods when it is capacity short. In that instance, Tariff E.D.R. includes provisions
19 that reduce the customer's E.D.R. credits when market purchases are required under certain
20 circumstances.²

21 The Company interprets this tariff provision not to apply here. First, because of the
22 expiration of the Rockport UPA in December 2022, the Company is required to purchase

² See P.S.C. Ky. No. 12 Original Sheet No. 37-1, Terms and Conditions, Section (1).

1 excess capacity to serve all customers, not just Cyber Innovation. All customers pay for
2 incremental generation cost and capacity costs are not assigned to individual customers
3 based on their share of incremental generation required to serve them. It would not be fair,
4 just, or reasonable for the Company to impose such a requirement on a customer. Thus,
5 the provision of Tariff E.D.R. reducing credits in the event capacity purchases are required
6 to serve the E.D.R. customer are inapplicable because the Company will not be purchasing
7 excess capacity solely to serve Cyber Innovation.

8 Second, Cyber Innovation has designated 1,000 kW of Firm Capacity beginning in
9 year one of the Contract, while the remaining 6,000 kW of Cyber Innovation's load remains
10 interruptible under Rider D.R.S. Thus, only 1,000 kW of the Cyber Innovation load will
11 be counted toward the Company's PJM capacity requirements; little additional capacity
12 would need to be purchased to serve Cyber Innovation.

13 The Company requested in its initial contract filing here that, given the novel
14 situation presented by the expiration of the Rockport UPA, the Commission confirm
15 Kentucky Power's interpretation of Finding Number 5 of the Administrative Case No. 327,
16 the provisions of Tariff E.D.R., and the Company's application of the same to the Contract.
17 To the extent the Commission does not confirm the Company's interpretation, the
18 Company respectfully requests a deviation from Finding 5 in order to effectuate the
19 ultimate purpose of Tariff E.D.R. and encourage economic development through such
20 contracts in the Company's service territory

21 Moreover, Kentucky Power has previously submitted two similar EDR contracts
22 for the Commission's approval through the Commission's Tariff Filing System (TFS2022-
23 73 and TFS2022-249) prior to this contract being submitted. Within the transmittal letters

1 accompanying those filings, the Company included the same request for the Commission
2 to either “confirm Kentucky Power’s interpretation of Finding Number 5 of the
3 Administrative Case No. 327, the provisions of Tariff EDR, and the Company’s application
4 of the same to the Contract” or to grant “a deviation from Finding 5 in order to effectuate
5 the ultimate purpose of Tariff EDR and encourage economic development through such
6 contracts in the Company’s service territory.”

7 The Commission approved both of those E.D.R. contracts, which became effective
8 March 31, 2022, and June 10, 2022, respectively. The Company understood the
9 Commission’s approval of the contracts as either confirming the Company’s interpretation
10 of Finding Number 5, or granting any required deviation.³

11 **V. JOINT INTERVENORS CONCERNS**

12 **Q. HAS CYBER INNOVATION PROVIDED A SECURITY DEPOSIT?**

13 A. Yes. Cyber Innovation has paid a security deposit calculated based on the Company’s
14 Terms and Conditions of Service, Section 4, at Sheet No. 2-3 (2/12^{ths} of the estimated
15 annual bill excluding any discounts)⁴ and is consistent with 807 KAR 5: 006, Section 8.

16 **Q. HAS CYBER INNOVATION PROVIDED A SURETY BOND TO ENSURE
17 REPAYMENT OF ANY TARIFF E.D.R. DISCOUNTS RECEIVED SHOULD
18 THERE BE A DEFAULT?**

19 A. At this time, no. This is because, as a matter of practice, Cyber Innovation has indicated it
20 would rather not incur the extra expense to do so unless the Commission approves the

³ See the Company’s response to AG’s data request 1-8.

⁴ See the Company’s responses to Joint Intervenors data requests 1-10 and 1-13.

1 Contract. However, the Company has discussed this with Cyber Innovation and Cyber
2 Innovation is willing to post a surety bond should the Commission approve the Contract.

3 **Q. WHY DID CYBER INNOVATION CONSTRUCT THE ROCKHOUSE FACILITY**
4 **AND BEGIN OPERATIONS PRIOR TO RECEIVING COMMISSION**
5 **APPROVAL OF THE CONTRACT?**

6 A. Cyber Innovation constructed a similar but larger facility at its Long Fork location and is
7 currently operating under a Commission-approved contract virtually identical to the
8 Contract at issue in this case (TFS2022-00073). Cyber Innovation expected that the
9 Contract for the Rockhouse Facility would be approved in a similar manner (*i.e.*, via a 30-
10 day tariff filing) without issue. Therefore, Cyber Innovation chose to move forward with
11 constructing and operating the Rockhouse Facility until such time as the Contract is
12 approved.

13 **Q. WOULD CYBER INNOVATION HAVE LOCATED THE ROCKHOUSE**
14 **FACILITY IN THE SERVICE TERRITORY ABSENT THE E.D.R. DISCOUNT?**

15 A. No. Cyber Innovation completed the Company's required Application for Economic
16 Development Rider Discount form for Tariff E.D.R. where they provided the following
17 response to Question 5, which requires "A statement that without the EDR discount, the
18 customer would locate elsewhere or choose not to expand within Kentucky Power's service
19 territory:"

20 a. We would most definitely locate elsewhere if it were not for the savings from
21 the EDR. Currently in Wyoming we can buy term power for \$0.04 and in Texas
22 for \$0.044.

23 b. The EDR allows us to continue to build our footprint in Eastern Kentucky.
24 Prior to this site ("Rockhouse") we applied for and received EDR approval for an
25 adjacent site ("Long Fork"), which is a 20 MW facility.

1 c. Our capital plans have us completing a total of 50 additional megawatts by
2 2023 with Rockhouse being a big part of the effort.⁵

3 **Q. AT PAGE 5 OF MS. SHERWOOD’S TESTIMONY, THERE SEEMS TO BE AN**
4 **INCONSISTENCY WITH SOME OF HER SUMMARY FINDINGS. CAN YOU**
5 **COMMENT ON THESE INCONSISTENCIES?**

6 A. Yes. As background, in Case No. 2022-00387, an application for approval of a special
7 contract with Ebon International, LLC (“Ebon”), Ms. Sherwood argued that the remaining
8 211 MW under the 250 MW cap for Tariff E.D.R. should be assigned to Ebon, thus limiting
9 their opportunity for discounts. Ms. Sherwood made this argument while disregarding that
10 the Ebon Special Contract was filed as a special contract and not under Tariff E.D.R.

11 Then, in her Direct Testimony here, Ms. Sherwood states in the fourth and fifth
12 bullet points of her summary findings:

13 “It’s uncertain if the Commission will approve the special contract for the Ebon
14 facility in Case No. 2022-00387, and if so, whether that load will be applied to
15 KPCO’s limit under the EDR tariff.”

16 [...]

17 “Given the influx of cryptocurrency facilities within Kentucky, the Commission
18 should consider prohibiting any further capacity under the EDR being allocated to
19 cryptocurrency versus other industries that may provide greater economic
20 benefits.”

21 First suggesting that the remaining MW in the Company’s Tariff E.D.R. be
22 subscribed to a cryptocurrency project and then suggesting that the same Tariff E.D.R. be
23 prohibited from adding any further capacity from cryptocurrency projects is contradictory.

⁵ See Attachment 2 at 2, Initial Contract Filing, filed herein on December 13, 2022.

1 Ms. Sherwood cannot have it both ways. In fact, these two diametrical positions only
2 further bolster the Company's decision to file the Ebon Special Contract as a special
3 contract, and not under Tariff E.D.R.—so that entities like Cyber Innovation may take
4 advantage of the remaining MW under Tariff E.D.R.

5 Further, House Bill 230 and Senate Bill 255, both adopted by the Kentucky General
6 Assembly and signed into law by the Governor in 2021, incent and encourage the
7 development of cryptocurrency and blockchain projects in the Commonwealth. It would
8 seem contrary to those laws to restrict or prohibit capacity from cryptocurrency or
9 blockchain projects under the Company's Tariff E.D.R. Company Witness Clark discusses
10 these two bills in more detail in her testimony.

VI. CONCLUSION

11 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

12 A. Yes, it does.

