

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

THE APPLICATION OF DUKE ENERGY	)	
KENTUCKY, INC., FOR APPROVAL OF AN	)	CASE NO.
ECONOMIC DEVELOPMENT SPECIAL	)	2026-00012
CONTRACT	)	

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**APPLICATION**

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Now comes Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), pursuant to KRS 278.040(2), 807 KAR 5:001, Section 14, and other applicable law, and hereby respectfully requests approval from the Kentucky Public Service Commission (Commission) of its Economic Development (ED) Incentive Special Agreement (Contract) entered into by and between Duke Energy Kentucky and Niagara Bottling, LLC (Niagara or Customer), attached hereto as **Confidential Exhibit A**. In support of this Application, Duke Energy Kentucky respectfully states as follows:

**I. INTRODUCTION**

1. Duke Energy Kentucky is a “utility” as defined in KRS 278.010(3) and is subject to the Commission’s jurisdiction pursuant to KRS 278.040. In accordance with 807 KAR 5:001, Section 14(1), Duke Energy Kentucky is a Kentucky corporation with its principal office and principal place of business at 139 East Fourth Street Cincinnati, Ohio 45202. The Company’s local office in Kentucky is Duke Energy Erlanger Ops Center, 1262 Cox Road, Erlanger, Kentucky 41018. The Company further states that its electronic mail address for purposes of this matter is [KYfilings@duke-energy.com](mailto:KYfilings@duke-energy.com).

2. Duke Energy Kentucky is an investor-owned utility engaged in the electric

and natural gas business. As part of its electric service, Duke Energy Kentucky generates electricity, which it distributes and sells in Boone, Campbell, Grant, Kenton, and Pendleton Counties. Duke Energy Kentucky purchases, sells, stores, and transports natural gas in Boone, Bracken, Campbell, Gallatin, Grant, Kenton and Pendleton Counties, Kentucky.

3. Pursuant to 807 KAR 5:001, Section 14(2), Duke Energy Kentucky states that it was originally incorporated in the Commonwealth of Kentucky on March 20, 1901, and attests that it is currently in good standing in said Commonwealth. A certified copy of Duke Energy Kentucky's Certificate of Existence from the Kentucky Secretary of State is attached as **Exhibit B**, evidencing that the Company is incorporated in the Commonwealth of Kentucky, has no outstanding fees or penalties, no Articles of Dissolution have been filed its most recent annual report has been delivered to the Secretary of State, and it is therefore in good standing.

4. Pursuant to 807 KAR 5:001 Section 8, on May 2, 2025, Duke Energy Kentucky filed with the Commission, its notice of intent to use electronic filing procedures in this proceeding. Copies of all orders, pleadings and other communications related to this proceeding should be directed to:

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Larisa M. Vaysman (98944)  
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## II. BACKGROUND

5. The Commission established Administrative Case No. 327 (Admin. Case No. 327), to examine guidelines for economic development rates (EDR) and EDR agreements offered by electric and gas utilities in the Commonwealth.<sup>1</sup>

6. On September 24, 1990, the Commission entered its Order in Admin. Case No. 327 establishing guidelines governing EDR tariffs, including EDR rates, and EDR agreements. Those guidelines directed jurisdictional gas and electric utilities filing EDR contracts for approval to comply with Findings 3-17 as if they were individually ordered to do so.<sup>2</sup>

7. On February 2, 2005, Duke Energy Kentucky's Development Incentive Rider (Rider DIR), Ky. P.S.C. Electric No. 2, Sheet No. 86, was originally approved by the Commission in Case No. 2004-00253, approximately fifteen years after the Commission's decision on September 24, 1990, in Admin. Case No. 327.<sup>3</sup>

8. On August 26, 2010, the Kentucky Supreme Court affirmed the Commission's approval of Duke Energy Kentucky's Rider DIR in *Pub. Serv. Comm'n of Kentucky v. Commonwealth*.<sup>4</sup> The court also stated that utilities may offer economic development rates to customers subject to Commission approval and compliance with general statutory guidelines regarding reasonableness.<sup>5</sup>

9. While Rider DIR was created to provide a standard tariffed offer for

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<sup>1</sup>Administrative Case No. 327 *An Electronic Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities*, Case No. 19000327 (Ky. PSC Sept. 24, 1990).

<sup>2</sup> *Id.*

<sup>3</sup> *In the Matter of Application of the Union Light, Heat and Power Company for Approval of Its Proposed Economic Development Riders*, Case No. 2004-00253, Order (Apr. 19, 2005).

<sup>4</sup> *Pub. Serv. Comm'n of Kentucky v. Commonwealth*, 320 S.W.3d 660 (Ky. 2010).

<sup>5</sup> *Id.*, p. 662.

qualifying customers to receive a defined ED incentive, the Company must still file any economic development contract, regardless of whether it is offered under the Rider DIR, for Commission review and approval. Indeed, the Commission has the ability to approve ED incentives under other circumstances that support such an incentive.

10. On May 8, 2023, the Commission issued an Order in Case No. 2022-00394 and directed Duke Energy Kentucky to file specific detailed support for Admin. Case No. 327 Findings 5 and 6 in future EDR contract applications, including documentation showing adequate system capacity and reserve margins (Finding 5) and a marginal cost-of-service study demonstrating that discounted rates exceed marginal costs (Finding 6).<sup>6</sup>

### **III. REQUEST FOR APPROVAL OF THE SPECIAL CONTRACT**

11. As set forth in the Contract, Niagara is expected to employ approximately one-hundred and twenty-five (125) new FTE employees and will make a capital investment of approximately Forty-Three Million Dollars (\$43,000,000). Based on Niagara's anticipated new load, as set forth in the Contract, Rider DIR would require Niagara to employ one hundred and fifty (150) new FTE employees. Niagara's anticipated employment, while substantial, falls below this threshold.

12. Niagara has, however, satisfied all other Rider DIR requirements including the minimum load requirement and minimum capital investment requirement as shown in the Contract; and applied for and has been approved to receive economic assistance from the Commonwealth of Kentucky, as evidenced by the letter from the Kentucky Cabinet for Economic Development attached herein as **Exhibit C**. The Kentucky Cabinet for

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<sup>6</sup> *In the Matter of Electronic Tariff Filing of Duke Energy Kentucky, Inc. for Approval of an Economic Development Incentive Service Agreement with Diversey, Inc.*, Case No. 2022-00394, Final Order, p. 11 (Ky. P.S.C. May 8, 2023) (Case No. 2022-00394).

Economic Development's approval as shown in the attached letter supports that the addition of Niagara's operations in the Commonwealth would provide substantial economic development benefits consistent with the Commission's objectives as identified in Admin. Case No. 327, of job creation and capital investment, warranting deviation from the Company's Rider DIR and approval from the Commission.

13. The Contract complies with all applicable requirements of Admin. Case No. 327 Findings 3-17, including the specific directives from the Commission in Case No. 2022-00394 requiring detailed support for Admin. Case No. 327 Findings 5 and 6. As a summary, the Company has listed the applicable Findings and the Company's response to each

- i. Finding 3: EDRs should be implemented by special contracts negotiated between the utilities and their large commercial and industrial customers.<sup>7</sup>

Response: A special agreement negotiated between Duke Energy Kentucky and Niagara is attached hereto as **Confidential Exhibit A**. The Contract meets this Finding as it is a special contract negotiated between and executed by Duke Energy Kentucky and Niagara.

- ii. Finding 4: An EDR contract should specify all terms and conditions of service including, but not limited to, the applicable rate discount and other discount provisions, the number of jobs and capital investment to be created as a result of the EDR, customer-specific fixed costs associated with serving the customer, minimum bill, estimated load,

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<sup>7</sup> Admin. Case No. 327, Order, p. 25 ( Ky. P.S.C. Sept. 24, 1990).

estimated load factor, and length of contract.<sup>8</sup>

Response: The Contract specifies all terms and conditions as required by Finding 4.

- iii. Finding 5: 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.<sup>9</sup>

Response: The Commission, in its May 3, 2024, Order to Case No. 2022-00394 directed Duke Energy Kentucky for future EDR contract filings to provide specific support for “finding 5 showing that Duke Kentucky has adequate system capacity to serve the proposed customer and that the load served will not cause it to fall below a reserve margin considered essential for system reliability.”<sup>10</sup> As a member of PJM Interconnection LLC, since 2011, Duke Energy Kentucky has access to wholesale capacity markets that did not exist at the time of the Commission’s decision in Administrative Case 327 in 1990. Nonetheless, the Company has sufficient capacity to serve its load along with the necessary reserve margins for the duration of the proposed Contract as required by Finding 5. In addition to the Tri-

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Case No. 2022-00394, Order, p. 7 (Ky. P.S.C. May 3, 2024).

annual Integrated Resource Planning process, Duke Energy Kentucky reports on its projected reserve margins annually as part of Administrative Case 387. The Company’s most recent reporting was submitted on March 31, 2025, and showed the following projected reserves. Projected reserve margins are calculated as follows:

$$\text{Projected Reserve Margin (MW)} = \text{Estimated Firm Capacity} - (\text{Annual Peak Demand} * (1 + \text{Required Reserve Margin}))$$

$$\text{Projected Reserve Margin (\%)} = (\text{Estimated Firm Capacity} - (\text{Annual Peak Demand} * (1 + \text{Required Reserve Margin}))) / (\text{Annual Peak Load} * (1 + \text{Planning Reserve Margin}))$$

Year	Annual Peak Load (MW)	Est Firm Cap (MW)	Required Reserve Margin (%)	Projected Reserve Margin (MW)	Projected Reserve Margin (%)
2025	818	864	-6.20%	96	12.5%
2026	819	864	-6.20%	95	12.4%
2027	822	864	-6.20%	93	12.1%
2028	820	864	-6.20%	95	12.3%
2029	818	869	-6.20%	101	13.2%

This data reflects the Spring 2025 Load Forecast. The current fleet consists of, based on summer rating, 600 MW East Bend 2 and 476 MW Woodsdale generating stations plus 9 MW solar (nameplate) and 3 MW of DR. The Company estimated firm capacity of resources using the 2025/26 3IA Final ELCC Class Ratings and the planning reserve margin of -6.20% is based on the 2025/26 3IA Forecast Pool Requirement (FPR) of 0.9380 that was published by PJM on 01/23/2025. Duke Energy Kentucky is not projected to be in a reserve margin deficit through 2029.

Therefore, Duke Energy Kentucky has adequate system capacity to serve the proposed customer and the load served will not cause it to fall below a reserve margin considered essential for system reliability.

- iv. Finding 6: Upon submission of each EDR contract, a utility should demonstrate that the discounted rate exceeds the marginal cost of associated with service the customer. Marginal cost includes both the marginal cost of capacity as well as the marginal cost of energy.<sup>11</sup>

Response: The Commission, in its May 3, 2024, Order to Case No. 2022-00394 directed Duke Energy Kentucky for future EDR contract filings to provide specific support for “finding 6 and demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer, including a marginal cost of service study.”<sup>12</sup> Per the Commissions directive, Duke Energy Kentucky’s Marginal Cost Analysis, included as **Confidential Exhibit D**, demonstrates that the discounted rate exceeds the marginal cost associated with providing service to Niagara.

- v. Finding 7: A utility should file an annual report with the Commission detailing revenues received and marginal costs from EDRs.<sup>13</sup>

Response: Duke Energy Kentucky files this report annually by March 31 for active EDRs.

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<sup>11</sup> Admin. Case No. 327, Order, p. 26 (Ky. P.S.C. Sept. 24, 1990).

<sup>12</sup> Case No. 2022-00394, Order, p. 7 (Ky. P.S.C. May 3, 2024).

<sup>13</sup> Admin. Case No. 327, Order, p. 26 (Ky. P.S.C. Sept. 24, 1990).

vi. Finding 8: 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.<sup>14</sup>

Response: Duke Energy Kentucky commits that in future rate proceedings it will demonstrate through a detailed cost-of-service analysis that nonparticipating ratepayers are not adversely affected by its active EDR customers, including Niagara Bottling.

vii. Finding 9: The EDR should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.<sup>15</sup>

Response: As noted above, no customer-specific fixed costs are anticipated in serving Niagara. Additionally, the Contract provides, in Section 10 page 6, that Duke Energy Kentucky is not obligated to extend, expand or rearrange its facilities if Duke Energy Kentucky, in its sole discretion, determines that existing distribution or transmission facilities are of adequate capacity to serve the customers total load and that any changes in facilities required may result in additional costs to the customer.

viii. Finding 10: The major objectives of EDRs are job creation and capital investment. However, specific job creation and capital investment

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

requirements should not be imposed on EDR customers.<sup>16</sup>

Response: The Contract does not impose specific job creation and capital investment requirements on Niagara; however, it does create a mutual agreed upon expectation.

- ix. Finding 11: All utilities with active EDR contracts should file an annual report with the Commission providing information shown in Appendix A, which is attached to the Administrative Case 327 Order.<sup>17</sup>

Response: Duke Energy Kentucky files this report annually for active EDR contracts.

- x. Finding 12: For new industrial customers, an EDR should apply only to load which exceeds a minimum base level. For existing industrial customers, an EDR shall apply only to new load which exceeds an incremental usage level above a normalized base load. At the time an EDR contract is filed, a utility should identify and justify the minimum incremental usage level and normalized base load required for an existing customer or the minimum usage level required for a new customer.<sup>18</sup>

Response: This information required by Finding 12 can be found within the Contract.

- xi. Finding 13: EDR contracts designed to retain the load of existing customers should be accompanied by an affidavit of the customer

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, pp. 26-27.

stating that, without the rate discount, operations will cease or be severely restricted. In addition, the utility must demonstrate the financial hardship experienced by the customer.<sup>19</sup>

Response: This Finding is not applicable to this particular Contract.

- xii. Finding 14: The term of an EDR contract should be for a period twice the length of the discount period, with the discount period not exceeding five years. During the second half of an EDR contract, the rates charges to the customer should be identical to those contained in a standard rate schedule that is applicable to the customer's rate class and usage characteristics.<sup>20</sup>

Response: The Contract meets the requirements of this Finding. The Contract provides for a two-year discount period, and the total Contract term is for four consecutive years. During the last two years, Niagara will pay the full, undiscounted demand charges (and all other applicable rates and charges) under Duke Energy Kentucky's Rate DT.

- xiii. Finding 15: Gas utilities proposing to offer a discount or waiver of gas main extension costs should provide a detailed cost-benefit analysis which compares, among other things, the expected revenue stream from the new or expanding customer and the number of new jobs and the amount of new capital investment to be created to the total costs

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<sup>19</sup> *Id.*, p. 27.

<sup>20</sup> *Id.*

incurred by the utility by offering such a discount or waiver.<sup>21</sup>

Response: This Finding is not applicable to this particular Contract.

- xiv. Finding 16: EDR contracts that include a discount or waiver of gas main extension costs should include a provision which requires the customer to remain on gas service for a specified term. Gas utilities proposing to offer a discount or waiver of gas main extension costs should provide justification for the required contract term.<sup>22</sup>

Response: This Finding is not applicable to this particular Contract.

- xv. Finding 17: Comments submitted by the Cabinet or other interested parties pertaining to EDR contracts should be filed with the Commission no more than 20 days following the filing of an EDR contract by a utility.<sup>23</sup>

Response: This is not a requirement applicable to an EDR contract per se, while relevant to this Contract the Finding merely states that comments submitted by the Cabinet or other interested parties pertaining to an EDR contract should be filed with the Commission no more than 20 days following the filing of an EDR contract. However, a letter from the Kentucky Cabinet for Economic Development confirming Niagara's eligibility for the Kentucky Enterprise Initiative Act program is attached hereto as **Exhibit C**.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, pp. 27-28.

<sup>23</sup> *Id.*, p. 28.

14. The proposed Contract is reasonable and serves the public interest, as it will generate new jobs and capital investments for the Commonwealth of Kentucky, strengthening economic development in the region. The proposed discounted rate exceeds all marginal costs of serving Niagara, contributes to Duke Energy Kentucky's fixed costs even during the discount period, and does not adversely affect non-participating ratepayers.

15. Duke Energy Kentucky commits to filing an annual report by March 31 of each year with the Commission detailing, for the prior calendar year, revenues received from Niagara and the marginal costs associated with serving Niagara through the term of the Contract, as required by Admin. Case No. 327 Finding 7 and the Commission's Order in Case No. 2022-00394.

16. During any rate proceedings filed by Duke Energy Kentucky while the Contract remains in effect, Duke Energy Kentucky will demonstrate through a detailed cost-of-service analysis that non-EDR ratepayers are not adversely affected by the Contract, as required by Admin. Case No. 327 Finding 8 and the Commission's Order in Case No. 2022-00394.

17. Duke Energy Kentucky further commits to filing annual reports each year providing the information as shown in Appendix A to Case No. 2022-0394, which is the same as Finding 11 of Admin. Case No. 327.

WHEREFORE, Duke Energy Kentucky respectfully requests that its Contract be approved by the Commission as requested herein.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

/s/ Sheena McGee Leach

Rocco O. D'Ascenzo (92796)

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*Counsel for Duke Energy Kentucky, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing is a true and accurate copy of the document in paper medium; that the electronic filing was transmitted to the Commission on January 30, 2026 that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.<sup>24</sup>

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Utility Intervention and Rate Division  
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Frankfort, Kentucky 40601-8204

*/s/Sheena McGee Leach*  
*Counsel for Duke Energy Kentucky, Inc.*

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<sup>24</sup> *In the Matter of Electronic Emergency Docket Related to the Coronavirus COVID-19*, Case No. 2020-00085, Order (Ky. P.S.C. July 22, 2021).

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ECONOMIC DEVELOPMENT SERVICE AGREEMENT

This Economic Development Service Agreement (Agreement) is entered into and effective this 25 day of Nov., 2025 (Effective Date), between Duke Energy Kentucky, Inc. and Niagara Bottling, LLC.

**Definitions:**

“**Commission**” shall mean the Kentucky Public Service Commission.

“**Customer**” shall mean Niagara Bottling, LLC, located at 1440 Bridgegate Dr. Diamond Bar, CA 91765, individually, its affiliates, principals, employees, administrators, representatives, subsidiaries, agents, officers, directors, shareholders, insurers, successors, and assigns.

“**Duke Energy Kentucky**” shall mean Duke Energy Kentucky, Inc., its successors, and assigns.

“**Effective Date**” of this Agreement shall be the date hereof, except that said Effective Date shall be postponed and this Agreement shall not become effective unless and until approval of this Agreement is received from the Commission.

“**Incentive Percentage**” shall mean a monthly reduction of [REDACTED] to the base rate tariff schedule under which the Customer takes service, excluding fuel services, ESM charges, and applicable riders.

“**Incentive Period**” shall mean a period of twenty-four (24) consecutive months.

“**Minimum Peak Demand**” shall mean a minimum monthly peak demand for the Project of [REDACTED] kilowatts (kW) demand.

“**Minimum Load Factor**” shall mean a monthly average load factor of [REDACTED]

“**New Load**” shall mean *a minimum* of 1,000 kW at one delivery point for new non-residential electric load associated with any of the following: (1) initial permanent service to new

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establishments, (2) expansion of existing establishments, or (3) new customers in existing establishments.

“**Operations**” shall refer to all activities and processes by the Customer at the Project in the ordinary course of business.

“**Parties**” shall mean the Customer and Duke Energy Kentucky, collectively.

“**Party**” shall mean either the Customer or Duke Energy Kentucky.

“**Project**” shall mean the facility the Customer is considering locating in the electric service territory of Duke Energy Kentucky at 1731 Garvey Ave. Elsmere, KY 41018.

**Witnesseth:**

**WHEREAS**, the Customer is a new non-residential customer with load associated with initial permanent service to a new establishment within Duke Energy Kentucky’s service area;

**WHEREAS**, the Customer affirms it is not considered a new customer as a result of a change in ownership of an existing establishment, nor that the Customer is seeking renewal of service following interruptions such as equipment failure, temporary plant shutdown, strike, or economic conditions;

**WHEREAS**, the Customer desires to take service under Duke Energy Kentucky’s non-residential tariff schedule, TIME-OF-DAY RATE FOR SERVICE AT DISTRIBUTION VOLTAGE (Rate DT);

**WHEREAS**, the Customer desires to have the terms of this Agreement applied to Duke Energy Kentucky’s non-residential tariff schedules;

**WHEREAS**, the Customer has applied for and received economic assistance from the Commonwealth of Kentucky, local government, or another public agency;

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**WHEREAS**, Duke Energy Kentucky desires to deliver the electrical energy to satisfy the Customer's load requirements;

**WHEREAS**, the Customer shall employ a minimum workforce in Duke Energy Kentucky's service territory of fifty-five (55) full-time equivalent (FTE) employees, and the Customer anticipates making a capital investment at the Project of at least Forty-Three Million Dollars (\$43,000,000);

**WHEREAS**, the Customer affirms that the availability of this Agreement was a factor in its decision to locate its Project in Duke Energy Kentucky's service area; and

**NOW, THEREFORE**, in consideration of providing and receiving service under a non-residential tariff schedule, the Parties specifically agree as follows:

**TERMS AND CONDITIONS:**

1. Customer Location: This Agreement is effective only to the Customer for the Project.
2. Type of Service: The Customer shall be provided with service at 60 Hz alternating current provided at Duke Energy Kentucky's standard distribution voltage.
3. Minimum Demand and Usage: Following the Effective Date of this Agreement, the Customer agrees that its monthly electric peak demand as measured by Duke Energy Kentucky's meters shall be the Minimum Peak Demand and maintain a minimum monthly average load factor of the Minimum Load Factor, starting with the first billing period after the Customer receives service with the Incentive Percentage. Failure to do so will result in no incentive for the billing period.
4. Customer Representations and Warranties: The Customer represents and warrants that it is a new customer to Duke Energy Kentucky's service territory and will employ a *minimum* of fifty-five (55) FTE employees at the Project, with a projected total number of one-hundred and twenty-

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five (125) FTE employees, and will make a capital investment at the Project of at least Forty-Three Million Dollars (\$43,000,000) following the Effective Date of this Agreement.

5. Tariffed Electric Service: The Customer shall comply with all terms of Duke Energy Kentucky's Rate DT, except that pursuant to this Agreement, the Customer's monthly base rate charges for electric service shall be reduced by the Incentive Percentage for the Incentive Period. All subsequent billings shall be at the appropriate full standard service tariff rate.

The Customer shall continue to take service from Duke Energy Kentucky at the Minimum Peak Demand and Minimum Load Factor for a period of two (2) years following the Incentive Period. The Customer agrees to be billed monthly for two (2) years following the Incentive Period based on the greater of: (a) its actual monthly demand and usage levels' as adjusted for billing by Rate DT provisions or (b) its average demand and usage levels during the Incentive Period as adjusted for billing by the Rate DT provisions or (c) the Minimum Peak Demand. The Customer understands that all applicable riders, as listed in the Applicable Riders section of the applicable standard service tariff (Riders), are excluded from the Incentive Percentage. Should any change in the rates or discounts referenced herein be ordered by the Commission, payments by the Customer to Duke Energy Kentucky for service as provided for herein shall thereafter be made upon the basis of such new rates and discounts as changed and/ or approved by the Commission.

6. Term: The term for service under this Agreement is for forty-eight (48) consecutive months, beginning no later than October 1, 2027. The Customer shall provide Duke Energy Kentucky with sixty (60) days' notice to begin receiving the Incentive Percentage for the Incentive Period. All prior and subsequent billings shall be at the appropriate full standard service tariff rate.

This Agreement shall be in full force and effect, enforceable and binding in all respects upon the Effective Date. This Agreement shall not be renewable. If the Customer's demand or

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load factor falls below the Minimum Peak Demand or Minimum Load Factor, respectively, in any given billing period, the Customer understands that there will be no Incentive Percentage applied for that billing period and that the Customer will pay the full tariff rate(s).

7. Net Monthly Billing: The Customer agrees to comply with all terms of the standard tariff rate under which the Customer takes service except that the Customer's tariffed base rate for electric service, less any rate adjustment rider amounts as shown on the standard service tariff, shall be reduced by the Incentive Discount for the Incentive Period. The Customer will pay the full amount of the riders so indicated and agrees that the dollar amount of bill reduction will be derived by Duke Energy Kentucky applying the Incentive Percentage to the Customer's bill excluding any excess facility charges, applicable taxes, and applicable rider charges. In no event shall the expected incremental revenues derived from the discounted rate charges for serving Customer's new or increased load be less than Duke Energy Kentucky's incremental cost of serving the Customer over the length of the minimum term of the Agreement. The Customer will pay the full amount of all riders.

8. Termination of Operations: The Customer agrees that if the Customer ceases Operations at the Project, terminates the Agreement pursuant to paragraph 14 below, or fails to meet the requirements of paragraph 4, the Customer is required to repay the incentive reduction received according to the following schedule, as Duke Energy Kentucky's sole and exclusive remedy under this Agreement, without limiting the Company's rights and remedies under its applicable non-residential tariff schedule(s), Duke Energy Kentucky's electric service regulations KY P.S.C. Electric No. 2 and all rules, regulations and orders of the Commission and other governmental bodies having jurisdiction over this Agreement:

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Year After Start of the Incentive Period During Which Operations Are Ceased or Agreement Is Terminated	Percentage of Incentive Reduction to Be Repaid
1 to 2	100
3	75
4	50

9. Verification of Performance: The Customer agrees to permit Duke Energy Kentucky to verify compliance with the terms and conditions of this Agreement on an annual basis. The Customer agrees to comply with reasonable requests from Duke Energy Kentucky for information in this regard.

10. Changes in Facilities: Duke Energy Kentucky is not obligated to extend, expand or rearrange its facilities if Duke Energy Kentucky, in its sole discretion, determines that existing distribution or transmission facilities are of adequate capacity to serve the customer's total load. Any changes in facilities deemed necessary by Duke Energy Kentucky will be installed and subject to Duke Energy Kentucky's filed electric tariff and may result in additional costs to the Customer that are not included or subject to the Incentive Percentage under this Agreement.

11. Condition Precedent: The provisions of paragraphs 3 through 9 are contingent on the Customer locating the Project in Duke Energy Kentucky's electric service territory.

12. Entire Agreement: This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements, or agreements between the Parties on such subject matter. If, however, a supplemental service agreement is necessary due to complicated installations of electric facilities, any terms of the supplemental service agreement that conflict with this Agreement shall supersede and control this Agreement. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representation, statements or promises in addition to or in any way different than those contained in the Agreement, and that it

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is not entering into the Agreement in reliance upon any representation, statements or promises in addition to or in any way different than those contained in the Agreement, and that it is not entering into the Agreement in reliance upon any representation, statement or promise of the other Party except as expressly stated in the Agreement.

13. Assignment: This Agreement is for the exclusive benefit of the Parties and shall apply to successors and assignees of the Customer as well as Duke Energy Kentucky provided, as to the Customer, it continues to display substantially similar load and usage characteristics as those that presently exist as set forth herein. The Customer shall not assign its rights or obligations under this Agreement without the written consent of Duke Energy Kentucky.

14. Termination: This Agreement shall automatically and immediately terminate if, at any time during the Incentive Period, the Customer fails to comply with the terms and conditions as stated herein or fails to maintain the Minimum Peak Demand or Minimum Load Factor for three consecutive billing periods. The Customer may terminate this Agreement at any time, subject to the repayment obligation in paragraph 8, above, by providing at least 30 days' notice to Duke Energy Kentucky.

15. Severability: If any provision under this Agreement shall be invalid or unenforceable with respect to either Party, the remainder of this Agreement shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. To the extent of any conflict between the terms of this Agreement and the terms of any other agreement between Duke Energy Kentucky and the Customer regarding the rendering of electric service, this Agreement shall prevail. The terms of such other agreement shall otherwise remain unaffected by this Agreement, and, upon termination or expiration of this Agreement, this Agreement shall no longer prevail over any previously conflicting terms of such agreement.

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16. No Waiver of Rights: A failure or delay of either Party to exercise any right or remedy under this Agreement shall not operate to impair, limit, preclude, cancel, waive, or otherwise affect such right or remedy.

17. Regulatory Approvals: The supplying of, and billing for, service and all conditions applying thereto, are subject to the jurisdiction of the Commission, and to Duke Energy Kentucky's Service Regulations currently in effect, as may be amended from time to time, as approved by the Commission. To enable Duke Energy Kentucky to report to the Commission specific information that may be required by the Commission, the Customer shall provide Duke Energy Kentucky with data demonstrating the number of jobs created by the Customer as a result of its Operations at the Project. Such data shall be provided December 31 of the year following the implementation date of this Agreement.

18. Governing Law: This Agreement, the construction of this Agreement, all rights and obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including tort claims), shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Kentucky without giving any effect to any conflict of law doctrine. The terms of this Agreement are subject to, and incorporate by reference, the terms of the applicable non-residential tariff schedule(s), Duke Energy Kentucky's electric service regulations KY. P.S.C. Electric No. 2, on file with the Commission and all rules, regulations and orders of the Commission and other governmental bodies having jurisdiction over this Agreement. In the event of any official action by such governmental body that would require action by Duke Energy Kentucky or the Customer inconsistent with one or more terms of this Agreement or unacceptable regulatory action as determined by Duke Energy Kentucky, the Parties may agree to waive or modify such term or terms. If any agreement to waive

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or modify is not achieved within a reasonable time, either party may elect to terminate this Agreement, subject to the repayment obligation in paragraph 8, above, upon written notice to the other.

19. Amendments: No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding unless made in writing and duly signed by the Party to be obligated by, or to perform, such modification.

20. Indemnification: Duke Energy Kentucky and the Customer shall defend, indemnify, and hold harmless the non-breaching party from any and all claims by third parties, including the government, regarding the enforcement or breach of this Agreement, including, but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of electric service under or in connection with the performance of this Agreement.

21. Notices: All notices, demands, and statements to be given hereunder shall be given in writing to the Parties at the addresses shown below and will be effective upon actual receipt:

To Customer:

Niagara Bottling, LLC  
1440 Bridgegate Dr.  
Diamond Bar, CA 91765

To Duke Energy Kentucky:

Duke Energy Kentucky, Inc.  
139 East Fourth Street  
Cincinnati, OH 45202

or such other address as is provided in writing by the recipient from time to time. Payments shall be made by check, cash, credit card, or electronic funds transfer to the account designated by the payee from time to time.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives as of the 25<sup>th</sup> day of Nov, 2025.

DUKE ENERGY KENTUCKY, INC.

By: 

Title: President

NIAGARA BOTTLING, LLC

By: **Todd Garber** Digitally signed by Todd Garber  
DN: cn=Todd Garber, o, ou,  
email=tgarber@niagarawater.com, c=US  
Date: 2025.11.21 10:47:32 -08'00'

Title: Sr. Corporate Counsel

**Commonwealth of Kentucky**  
**Michael G. Adams, Secretary of State**

Michael G. Adams  
Secretary of State  
P. O. Box 718  
Frankfort, KY 40602-0718  
(502) 564-3490  
<http://www.sos.ky.gov>

**Certificate of Existence**

Authentication number: 356502  
Visit <https://web.sos.ky.gov/ftshow/certvalidate.aspx> to authenticate this certificate.

I, Michael G. Adams, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

**DUKE ENERGY KENTUCKY, INC.**

DUKE ENERGY KENTUCKY, INC. is a corporation duly incorporated and existing under KRS Chapter 14A and KRS Chapter 271B, whose date of incorporation is March 20, 1901 and whose period of duration is perpetual.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that Articles of Dissolution have not been filed; that the most recent annual report required by KRS 14A.6-010 has been delivered to the Secretary of State; and is therefore in good standing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 21<sup>st</sup> day of January, 2026, in the 234<sup>th</sup> year of the Commonwealth.



*Michael G. Adams*

Michael G. Adams  
Secretary of State  
Commonwealth of Kentucky  
356502/0052929



## CABINET FOR ECONOMIC DEVELOPMENT

**Andy Beshear**  
GOVERNOR

Old Capitol Annex  
300 West Broadway  
Frankfort, Kentucky 40601

**Jeff Noel**  
SECRETARY

February 29, 2024

John F. Krug  
Niagara Bottling, LLC  
1440 Bridgegate Dr.  
Diamond Bar, CA 91765

**RE: Niagara Bottling, LLC (Boone County)**  
**KEIA-24-118425**

Dear Mr. Krug:

I am pleased to inform you that the Kentucky Economic Development Finance Authority has approved your request for consideration under the Kentucky Enterprise Initiative Act ("KEIA") program on February 29, 2024. Please note that the approval is contingent upon receipt of a fully executed Agreement.

Enclosed are two Agreements to be signed by an official of the company. **Please have both copies signed and returned to our office by March 30, 2024.** Once the agreements are executed by our office, we will return one original to you for your records.

Upon receipt of a fully executed Agreement your company will be eligible for a Kentucky Sales and Use Tax refund, not to exceed \$200,000, for eligible construction materials and building fixtures. Additionally, the Agreement contains an expiration date that may receive one or more extensions, if necessary, for the project to be completed up to but no later than seven years from the original date of approval. If the approved company would like to request an extension, please send the request to the Office of Financial Services a minimum of 30 days prior to the expiration date.

**Proper documentation of all sales or use tax paid is essential for the company to receive its refund.** Prior to starting your project, it is recommended the company contact the Certification Section Supervisor in the Division of Sales and Use Tax at the Department of Revenue, at 502-564-5170 to ensure the proper documentation will be collected from the contractor and all subcontractors involved in the project. A Department of Revenue representative may also attempt to contact you within 30 days of your KEIA approval to ensure your familiarity with the necessary refund forms.



Niagara Bottling, LLC  
February 29, 2024  
Page Two

The application for refund, **Form 51A200**, and other required forms must be submitted to the Department of Revenue, Sales Tax Division, within 60 days after project completion or expiration of the Agreement, whichever occurs first. You will receive these documents directly from the Department of Revenue. **Exhibit A** of the enclosed Agreement must be completed and returned to the Office of Financial Services at the same time the application for refund is submitted to the Department of Revenue following completion of the project. Failure to submit the application for refund, as described above, could result in the refund being denied.

If you have any questions or need additional information, please contact me at 502-782-1969.

Sincerely,



Brandon Combs  
Incentive Administration Division

Enclosure

c: Tim Bennett  
Danna Ware  
Malcolm Jollie

# Kentucky Cabinet for Economic Development

## KEIA Program Compliance Information

### Compliance Details

[Print or Save](#)

<b>INFORMATION AS OF:</b>	12/23/2025 1:30:07 PM
<b>RECIPIENT:</b>	Niagara Bottling, LLC
<b>PROGRAM NAME:</b>	KEIA
<b>COUNTY NAME:</b>	Kenton
<b>INCENTIVE STATUS:</b>	Active
<b>FORM NUMBER:</b>	118711
<b>AMOUNT OF INCENTIVE CLAIMED:</b>	0.00

**Disclaimer:** The information is believed to be accurate, but is not warranted and is for informational purposes only. While all attempts are made to insure the correctness and accuracy of information in this database, no representation or guarantee, expressed or implied, is made as to the accuracy of the information presented. The Kentucky Cabinet for Economic Development assumes no liability for the accuracy of the information contained in this database.

Project information contained in the database is based on estimates and projections provided by the incentive recipients to project completion. While recipients are required to meet statutory minimum standards for jobs and wages (KRS Chapter 154), they are not always legally bound to meet their own projections, which often far exceed the statutory minimum. Recipient projections and estimates are neither confirmed nor updated in this database during the life of the project. The project status is subject to change during the life of the project based upon actions of KEDFA/BSSC or the recipient.

The database contains projects which are active as of January 1, 2005 through the present. Active projects are those that have received preliminary or final approval and are being monitored for compliance. Projects that were active as of January 1, 2005, but have become inactive since that date are also included.



# Kentucky Cabinet for Economic Development

## Financial Incentive Search Results

Search Criteria

Print or Save

Back to Search Criteria

**Selected Counties:**

Kenton

**Selected Programs - Please see the program names at the bottom of the page:**

Angel, CAP, CSP, Direc, EDB, GIA, Grant, HTP, IEIA, IRB, IRBL, KBI, KEI, KEIA, KESA, KIDA, KIFA, KIRA, KJDA, KJRA, KRA, KREDA, KRHLP, KSBTC, KSFTC, Line, LPP, Metro, SBIR, Small, STIC, TIF

Click on the check mark (✓) when available to search for compliance detail information.

All ▾

Name	Program	Location Type	County Name	Facility Type	Program Status	Average Hourly Wage	Project Cost	Incentive Amount	Initial Jobs	New Jobs	Date of Action/yy/mm/dd	Approv Type	
Niagara Bottling, LLC	KBI	New	Kenton	Manufacturing	Active	37.31	\$129,823,873	\$1,100,000	0	60	2024/06/27	Prelim	
Niagara Bottling, LLC	KEIA	New	Kenton	Manufacturing	Active	0	\$129,823,873	\$200,000	0	60	2024/06/27	Final	

Showing 1 to 2 of 2 entries

**Selected Program Names:**

Program Acronym	Program Name
Angel	Angel Investment Tax Credit
Direc	Direct Loan/KEDFA
GIA	GIA/BSSC
Grant	Grant/KEDFA
IEIA	IEIA - Incentives for Energy Independence Act
IRBL	IRBL - Local Industrial Revenue Bonds
KBI	KBI - Kentucky Business Investment
KESA	KESA - Kentucky Environmental Stewardship Act
KIRA	KIRA - Kentucky Industrial Revitalization Act
KRA	KRA - Kentucky Reinvestment Act
KSFTC	KSFTC - Kentucky Selling Farmer Tax Credit
Line	Line Items
Small	Small Business Loan/KEDFA
CAP	KSBCI - Kentucky Small Business Credit Initiative
CSP	KSBCI - Kentucky Small Business Credit Initiative
EDB	EDB - Economic Development Bonds
HTP	HTP - High-Tech Pool
IRB	IRB/KEDFA
KEI	KEI - Kentucky Entertainment Incentives
KEIA	KEIA - Kentucky Enterprise Initiative Act
KIDA	KIDA - Kentucky Industrial Development Act
KIFA	KIFA - Kentucky Investment Fund Act
KJDA	KJDA - Kentucky Jobs Development Act
KJRA	KJRA - Kentucky Jobs Retention Act
KREDA	KREDA - Kentucky Rural Economic Development Act
KRHLP	KRHLP - Kentucky Rural Hospital Loan Program
KSBTC	KSBTC - Kentucky Small Business Tax Credit
LPP	KSBCI - Kentucky Small Business Credit Initiative
Metro	Metro College/ BSSC
SBIR	SBIR/STTR
STIC	STIC/BSSC
TIF	TIF - Tax Increment Financing



# Kentucky Cabinet for Economic Development

## KBI Program Compliance Information

### Compliance Details

Print or Save

**INFORMATION AS OF:** 12/23/2025 1:33:52 PM  
**RECIPIENT:** Niagara Bottling, LLC  
**PROGRAM NAME:** KBI  
**COUNTY NAME:** Kenton  
**INCENTIVE STATUS:** Active  
**FORM NUMBER:** 118709  
**APPROVAL STATUS:** Preliminary Approval  
**ACCELERATION / ACTIVATION DATE:**

All 

Target Year	Job Target	Minimum Wage Target	Approved Cost Annual Maximum
0	60	\$45.17	
1	60	\$45.17	\$110,000
2	60	\$45.17	\$110,000
3	60	\$45.17	\$110,000

Showing 1 to 4 of 4 entries

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**CONFIDENTIAL PROPRIETARY TRADE SECRET**

**CONFIDENTIAL EXHIBIT D**

**FILED UNDER SEAL**