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

O R D E R

On November 16, 2022, Kentucky Power Company (Kentucky Power) submitted a Contract for Electric Service (Contract) with Cyber Innovation Group, LLC (Cyber Innovation) via the Commission's electronic tariff filing system,[1] with intent to offer Cyber Innovation an economic development rate (EDR), pursuant to Administrative Case No. 327 (Administrative Order 327).[2] On December 15, 2022, pursuant to KRS 278.190, the Commission, by its own motion, established this case to investigate the reasonableness of the proposed rates, and suspended the effective date of the proposed rates for five months, up to and including May 15, 2023. Mountain Association, Kentuckians for the Commonwealth, Appalachian Citizens' Law Center, Sierra Club, and Kentucky Resource Council (collectively, Joint Intervenors), Kentucky Industrial Utility Customers, Inc. (KIUC) and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), were granted intervention.

[1] TFS2022-00555 (filed Nov. 16, 2022).

[2] Administrative Case No. 327 [Docket No. 19000327], *An Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. PSC Sept. 24, 1990), Order (Administrative Order 327).

Kentucky Power responded to two requests for information from Commission Staff, Joint Intervenors, and the Attorney General. Joint Intervenors responded to one request for information from Kentucky Power and Commission Staff. A hearing was conducted on July 25, 2023. Kentucky Power responded to post-hearing requests for information from Commission Staff and Joint Intervenors. Kentucky Power, the Attorney General, and Joint Intervenors filed post-hearing briefs and Kentucky Power and Joint Intervenors filed reply briefs. This matter now stands ready for a decision based upon the evidentiary record.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.[3] KRS 278.030 provides that a utility may demand, collect, and receive fair, just and reasonable rates[4] and that the service it provides must be adequate, efficient and reasonable.[5] KRS 278.170(1) prohibits a utility from giving unreasonable preference or advantage to any person as to rates or subjecting any person to any unreasonable prejudice or disadvantage. KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness. KRS 278.160(1) requires a utility to file schedules showing all rates and conditions for service established by it and collected or enforced.

In Administrative Order 327, the Commission found that EDRs would provide important incentives to large commercial and industrial customers to either locate or

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[3] KRS 278.040(2).

[4] KRS 278.030(1).

[5] KRS 278.030(2).

expand their facilities in Kentucky, bringing jobs and capital investment into the Commonwealth.[6] Administrative Order 327 contains 18 findings that refined the criteria on which the Commission would evaluate and approve an EDR.[7] In Administrative Order 327, the Commission also directed that a jurisdictional utility filing an EDR contract must comply with findings 3–17.[8] The findings of Administrative Order 327 that are applicable to this proceeding and therefore comprise the legal standard by which this proposed contract should be evaluated are the following:[9]

- Finding 3: EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.[10]

- Finding 4: An EDR contract should specify all terms and conditions, including the rate discount and related provisions, jobs and capital investment created, customer-specific fixed costs, minimum bill, estimated load and load factor, and length of contract.[11]

- Finding 5: An EDR contract should only be offered during periods of excess capacity for the utility, and the utility must demonstrate that the EDR contract will not cause it to fall below a reserve margin essential for system reliability.[12]

- Finding 6: A utility should demonstrate that the EDR exceeds the marginal cost associated with serving the customer.[13]

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[6] Administrative Order 327 at 25.

[7] Administrative Order 327 at 24–28.

[8] Administrative Order 327 at 28.

[9] Findings 15 and 16 are not relevant to this preceding because they apply to gas utilities, not electric utilities. Finding 17, while relevant to this proceeding 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 or an EDR. No comments have been filed in this proceeding.

[10] Administrative Order 327 at 25.

[11] Administrative Order 327 at 25.

[12] Administrative Order 327 at 25.

[13] Administrative Order 327 at 26.

- Finding 7: A utility should file an annual report with the Commission detailing revenues received and the marginal costs from EDRs.[14]

- Finding 8: A utility should demonstrate that nonparticipating ratepayers are not adversely affected by the EDR through a cost-of-service analysis.[15]

- Finding 9: The EDR contract should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.[16]

- Finding 10: The major objectives of EDRs are job creation and capital investment. However, specific job creation and capital investment requirements should not be imposed on EDR customers.[17]

- Finding 11: All utilities with active EDR contracts should file an annual report with the Commission providing information as shown in Appendix A, to Administrative Order 327.[18]

- Finding 12: For new industrial customers, an EDR should apply only to load which exceeds a minimum base level.[19] For existing industrial customers, the EDR should apply only to load which exceeds a minimum base level, for new industrial customers, and the EDR contract should identify and justify the minimum usage level required for a new customer.[20]

- Finding 13: EDR contracts designed to retain the load of existing customers should be accompanied by an affidavit of the customer stating that, without the rate discount, operations will cease or be severely restricted.[21]

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[14] Administrative Order 327 at 26.

[15] Administrative Order 327 at 26.

[16] Administrative Order 327 at 26.

[17] Administrative Order 327 at 26.

[18] Administrative Order 327 at 26.

[19] Administrative Order 327 at 26.

[20] Administrative Order 327 at 26.

[21] Administrative Order 327 at 26.

- 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.[22]

PROPOSED SPECIAL CONTRACT

On November 8, 2022 and November 7, 2022 respectively, Kentucky Power and Cyber Innovations executed the Contract for Kentucky Power to provide service to Cyber Innovations under an EDR rate, subject to the approval of the Commission.[23] Cyber Innovations planned to invest approximately $3.5 million in its facilities in Pike County.[24] Cyber Innovations estimated it will create ten full-time jobs as part of this plan.[25] Cyber innovations estimated maximum load would be 7 MW by January 2023.[26] Cyber Innovations estimates a 90 percent load factor.[27] Cyber Innovations would take service under Kentucky Power's Demand Response Service tariff, with 1 MW designated firm demand and the remaining 6 MW subject to interruption.[28]

The term of the Contract was set at ten years, with Cyber innovations receiving demand charge discount credits during the first five year of the contract term.[29] The Contract included a "clawback" provision that would allow Kentucky Power to recover rate discounts from Cyber Innovations in the event it were to default on the Contract and

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[22] Administrative Order 327 at 27.

[23] Application, Attachment 1.

[24] Application, Attachment 1 at 1.

[25] Application, Attachment 1 at 1.

[26] Application, Attachment 1 at 1.

[27] Application, Attachment 1 at 6.

[28] Application, Attachment 1 at 20.

[29] Application, Attachment 1 at 8 and 7.

Kentucky Power filed an executed contract addendum that provided for security of the clawback provision. As is required by all customers, Cyber Innovations is required to pay a deposit of two-twelfths the annual projected billing per Kentucky Power's tariff.[30]

MARGINAL COST ANALYSIS

Kentucky Power's marginal cost study identified four components of marginal cost: production demand, production energy, transmission, and distribution.[31] Kentucky Power originally provided a marginal cost summary that estimated annual net revenue of $174,061 from the Contract.[32] Kentucky Power provided three additional iterations of its marginal cost analysis that showed nominal net revenues ranging from $380,177 to $4,746,579, depending on the total revenue forecasts.[33] Kentucky Power stated the energy costs are estimated using the PJM Day-Ahead Locational Marginal Pricing and transmission expenses were based on additional PJM Network Integration Transmission Service (NITS) costs.[34] Kentucky Power estimated that the base and Fuel Adjustment Clause (FAC) revenue would equal the increased energy costs. Kentucky Power also estimated that PJM NITS expenses would increase by 5 percent annually.[35]

Kentucky Power argued that the analysis should not include capacity costs for Cyber Innovations, because Kentucky Power will be generally capacity deficient after the

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[30] Kentucky Power's Response to Joint Intervenors' First Request for Information, Item 10.

[31] Application, Attachment 3 and Kentucky Power's Response to Attorney General's First Request for Information (Attorney General's First Request), Item 1.

[32] Application, Attachment 3.

[33] Kentucky Power's Response to Commission Staff's First Request for Information (Staff's First Request), Item 1, Attachment 1, and Kentucky Power's Response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Item 9, Attachment 1 and Item 11, Attachment 1.

[34] Kentucky Power's Response to Staff's First Request, Item 4.

[35] Kentucky Power's Response to Staff's First Request, Item 1, Attachment 1.

expiration of the Rockport Unit Power Agreement, but provided estimated capacity costs based on contracts with affiliates and PJM Interconnection, LLC (PJM) Net Cost of New Entry (CONE).[36] Kentucky Power's witness acknowledged that with the expiration of the Rockport UPA in December 2022 that Kentucky Power found itself in a capacity short position such that it had to contract for the capacity.[37] Kentucky Power's IRP, which it referred to in this matter,[38] indicated that Kentucky Power does not have the installed capacity (ICAP) and existing capacity contracts to meet its existing customers' estimated load beginning in 2026.[39] Kentucky Power intends to make up the difference and provide capacity for Cyber Innovations via market purchases through PJM.[40] Kentucky Power has asserted that with planned capacity purchases through PJM, and because capacity has never been directly assigned to particular customers, it will have the necessary excess capacity to serve Cyber Innovations' expected load.[41]

INTERVENOR POSITIONS

Joint Intervenors asserted that the Contract should not be approved by the Commission.[42] Joint Intervenors stated that cryptocurrency mining customers are inherently risky and that insufficient evidence was provided that Cyber Innovations would

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36 Rebuttal Testimony of Bria West (West Rebuttal Testimony) (filed Apr. 6, 2023) at 7–8 and Kentucky Power's Response to Staff's First Request, Item 4(c).

37 West Rebuttal Testimony at 6-7.

38 Kentucky Power's Response to Staff's First Request, Item 5(c).

39 Case No. 2023-00092, *Electronic 2022 Integrated Resource Planning Report of Kentucky Power Company* (filed Mar. 20, 2023), IRP at 320, Exhibit G-11.

40 Kentucky Power's Response to Staff's First Request, Item 5(c).

41 West Rebuttal Testimony at 8.

42 Direct Testimony of Stacy Sherwood (Sherwood Direct Testimony) (filed Mar. 3, 2023) at 20.

not locate its facility within the service territory absent the discount.[43] Joint Intervenors also argued that approving the EDR contract would be contrary to both Administrative Case No. 327 and Kentucky Power's Tariff EDR, because Kentucky Power does not have sufficient capacity.[44] Joint Intervenors also argued that the bond offered by Cyber Innovations did not offer enough security.[45]

The Attorney General argued that the Contract should not be approved by the Commission because the marginal cost analysis is unreasonable, and Kentucky Power does not have excess capacity with which to serve Cyber Innovations.[46] The Attorney General asserted that transmission costs are understated due to an escalation factor that does not reflect recent trends.[47] The Attorney General argued that the marginal cost analysis is flawed because it does not evaluate the revenues and expenses on a net present value basis.[48]

DISCUSSIONS AND FINDINGS

The following paragraphs will address the findings of Administrative Order 327 and related tariff provisions that are applicable to this proceeding:

> Finding 3: EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.

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[43] Sherwood Direct Testimony at 5; Joint Intervenors' Post-Hearing Brief at 12-14.

[44] Joint Intervenors' Post-Hearing Brief at 6–8.

[45] Joint Intervenors' Post-Hearing Brief at 8-9; *see also* Joint Intervenors Post-Hearing Reply Brief.

[46] Attorney General's Post-Hearing Brief at 3.

[47] Attorney General's Post-Hearing Brief at 11.

[48] Attorney General's Post-Hearing Brief at 11.

Kentucky Power submitted the proposed Contract, executed by both parties. These documents contain the negotiated terms of the special contract. The Commission finds the proposed Contract complies with Finding 3 of Administrative Order 327.

> 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, estimated load factor, and length of contract.[49]

Kentucky Power has established the following: (1) all discounts for the first five years of the contract;[50] (2) the estimated capital investment of $3.5 million and 5 to 10 jobs to be created;[51] (3) estimated load of up to 7 MW and load factor of 90 percent;[52] and (4) a ten-year contract term.[53] No fixed minimum number of jobs or amount of investment is necessary or required by precedent. The Commission finds that the Contract complies with Administrative Order 327, Finding 4.

> 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.[54]

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[49] Administrative Order 327 at 25, ordering paragraph 4.

[50] Application, Attachment 1 at 7.

[51] Application, Attachment 1 at 1 and Attachment 2 at 2.

[52] Application, Attachment 1 at 1.

[53] Application, Attachment 1 at 6.

[54] Administrative Order 327 at 25, ordering paragraph 5.

Kentucky Power does not dispute that when it entered into the EDR contract and, as of the hearing in this case, that it did not own or have contracts for sufficient generation capacity to serve Cyber Innovations during the term of the EDR contract.[55] Kentucky Power's witness acknowledged that with the expiration of the Rockport UPA in December 2022 that Kentucky Power found itself short on capacity such that it had to contract for the capacity.[56] Kentucky Power indicated that it had or would make short-term capacity purchases of between 57.6 and 152.4 MW through 2028 to meet the capacity requirement for a Fixed Resource Requirement (FRR) entity in PJM.[57] Further, beginning in 2028, Kentucky Power indicated that it would need over 700 MW of generation capacity to meet its FRR capacity requirements.[58] Thus, even by its own standard (i.e., meeting PJM capacity requirements), Kentucky Power would need additional capacity to serve its load during the term of the Contract with Cyber Innovations.

However, Kentucky Power argued that the Commission previously approved an amendment to its Tariff E.D.R. that allows it to offer EDR contracts when it is capacity-short so long as the EDR discounts are reduced commensurately with the cost of capacity procured on the EDR customer's behalf. Kentucky Power asserted that the EDR contract could be approved with the discounts offset by capacity costs.[59] Kentucky Power also argued that it would not be fair, just or reasonable to offset the discounts in this case, because it is purchasing additional capacity to serve all customers, not just Cyber

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[55] July 25, 2023 Hearing Video Transcript (July 25, 2023 HVT) at 09:53:00–09:54:01.

[56] West Rebuttal at R6.

[57] *See* Kentucky Power's Response to the Attorney General's First Request, Item 23, Attachment 2.

[58] *See* Kentucky Power's Response to the Attorney General's First Request, Item 23, Attachment 2.

[59] Kentucky Power's Brief at 15.

Innovation, and "[a]ll customers pay for incremental generation cost and capacity costs are not assigned to individual customers based on their share of incremental generation required to serve them."[60]

Joint Intervenors argued that approving the EDR contract would be contrary to both Administrative Case No. 327 and Kentucky Power's Tariff EDR, because Kentucky Power does not have sufficient capacity. Joint Intervenors stated that Kentucky Power's new position on the meaning of Tariff E.D.R. is plainly inconsistent with the original intent behind the tariff which capped Kentucky Power's ability to offer EDR contracts at 250 MW based on the amount of excess capacity it already had in hand under the Rockport UPA. Joint Intervenors argued that Kentucky Power's new interpretation of its Tariff EDR as allowing it to procure year by year whatever additional capacity it might need, at whatever price it might be available, creates an unreasonable risk to Kentucky Power's other customers (who may be forced to subsidize any new EDR customers) of exposure to both the capacity and energy markets.[61]

The Attorney General similarly argued that the Kentucky Power has insufficient capacity and therefore that the EDR contract should not be approved. The Attorney General noted that Kentucky Power's argument that its PJM membership and compliance with PJM's FRR plan satisfies any service adequacy requirements is illogical and inconsistent with Kentucky law. The Attorney General also argued that Kentucky Power's Tariff E.D.R. allows it "offer EDRs when it is capacity short, if and only if, it recovers all marginal costs driven by the contract from the EDR customer." The Attorney General

[60] West Rebuttal at R6-R7.

[61] Joint Intervenors' Brief at 6-8.

asserted that Kentucky Power sought to offer Cyber Innovations an EDR contract without requiring Cyber Innovations to cover the marginal costs arising from the contract. The Attorney General argued that if Kentucky Power is unwilling or unable to track the marginal costs when it is capacity short, that the Commission should revert to strictly limiting applications of Tariff E.D.R. to periods of excess capacity.[62]

As noted by Kentucky Power, the Commission did previously allow Kentucky Power to deviate from Finding 5 of Administrative Order 327. Specifically, in Case No. 2014-00336, the Commission approved an amendment to Kentucky Power's Tariff E.D.R. to include a "provision that the EDR will be offered when sufficient generating capacity is available, but that if it is not available to serve an EDR customer, Kentucky Power will procure the capacity with the cost reducing the customer's otherwise eligible billing demand discount under the proposed Tariff E.D.R."[63] In Case No. 2018-00378, the Commission further explained that deviation, stating:

> Lastly, we note that Kentucky Power's Tariff E.D.R. includes a provision that permits Kentucky Power to purchase capacity on the E.D.R. customer's behalf when the company does not have sufficient generating capacity. The provision provides that costs associated with the capacity procured on behalf of the E.D.R. customer will reduce on a dollar-for-dollar basis the customer's demand discount. To the extent Kentucky Power is required to purchase capacity for Big Run [the EDR customer], those costs would be borne by Big Run.[64]

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[62] Attorney General's Brief at 4–10.

[63] Case No. 2014-00336, *Application of Kentucky Power Company for (1) Approval of an Economic Development Rider; (2) for any Required Deviation from the Commission's Order in Administrative Case No. 327; and All Other Required Approvals and Relief* (Ky. PSC. Mar. 4, 2015), Order at 2.

[64] 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.

The provision of Kentucky Power's Tariff E.D.R. referred to in Case No. 2014-00336 and Case No. 2018-00378 states, in relevant part, that:

> The Company will offer the EDR to qualifying customers with new or increased load when the Company has sufficient generating capacity available. When sufficient generating capacity is not available, the Company will procure the additional capacity on the customer's behalf. The cost of capacity procured on behalf of the customer shall reduce on a dollar-for-dollar basis the customer's [Incremental Billing Demand Discount (IBDD) and Supplemental Billing Demand Discount (SBDD)]. Such reduction shall be capped so that the customer's maximum demand charge shall be the non-discounted tariff demand charge. The reduction will be applied in reverse chronological order beginning with the most recent customer to receive discounted service under this tariff. The last customer to sign up for the EDR tariff would be the first customer responsible for paying the cost of incremental capacity purchases. In any year during the discount period in which the customer pays the full tariff demand charge for all twelve months, the Company will reduce the term of the contract by one year. [65]

The only logical way to read the quoted language 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.

The second and third sentences of the quoted tariff language plainly state 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. The 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. In fact, Kentucky Power's Tariff E.D.R. explicitly contemplates that the cost

[65] P.S.C. KY. No. 12 Original Sheet No. 37–1.

of incremental capacity purchases will first be assigned to the most recent EDR customers, which is consistent with assigning incremental capacity costs to EDR customers before other customers.

Assigning incremental capacity purchases to EDR customers first, to the extent of their discounts and contribution to the need, is also reasonable 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,[66] and therefore it is fair to give them credit for that generation first when seeking to determine which load resulted in incremental capacity purchases. Further, it is consistent with the primary premise of EDR rates that the EDR customers paying discounted rates will cover the incremental costs necessary to provide their service as well as a portion of the fixed costs that otherwise would have been paid by other ratepayers.[67] Thus, the Commission finds that Kentucky Power should not be granted a deviation from the requirement that Cyber Innovations' discounts be offset by the cost of incremental capacity purchases necessary to serve its load.

Kentucky Power's Contract with Cyber Innovations incorporates the terms and conditions of its Tariff E.D.R. by reference.[68] Further, while Kentucky Power argues for a different interpretation of the tariff provision, there is nothing in the Contract that would render that tariff provision inapplicable, so the tariff provisions will require that discounts

[66] July 25, 2023 HVT at 09:45:00–09:54:01.

[67] Administrative Order 327 at 6–7.

[68] Application, Attachment 1 at 8 ("To the extent not expressly modified by this Contract, the Company's Terms and Conditions of Service, as filed with the Commission, including any amendments thereto, are incorporated by reference and made a part of this Contract.").

be reduced based on the cost of incremental capacity necessary to serve the load. Thus, the Commission finds that the proposed Contract complies with Finding 5 of Administrative Order 327, as modified for Kentucky Power.[69]

However, the Commission notes that this finding is based on the expectation that the cost of incremental capacity to serve Cyber Innovations will actually be used to offset discounts. Despite making capacity purchases following the expiration of the Rockport UPA, Kentucky Power claims that it has no incremental capacity purchases for this Contract or for any of its other EDR customers "because the existing EDR customers are captured within the replacement capacity necessary for the loss of the Rockport UPA," and "[t]herefore, no incremental capacity was purchased."[70] The Commission finds that the manner in which Kentucky Power determined that incremental capacity purchases have not been made is inconsistent with the facts and its Tariff E.D.R.

In the November 16, 2022 letter that Kentucky Power filed with the Contract, Kentucky Power explained that "it will be required" to purchase generation capacity to serve its customers, including Cyber Innovations, in December 2022 due to the expiration of the Rockport UPA.[71] If Kentucky Power was not serving an EDR customers' load, however small, then it would not need to consider that load when making capacity purchases, and it would not have had to make at least a portion of capacity purchases

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[69] The Commission also notes that Cyber Innovation's load will not materially affect Kentucky Power's capacity needs such that procuring capacity to serve the load will not place Kentucky Power's customers at significant risk. An EDR customer with a significant load could place customers at significant risk even if they were covering the immediate cost of capacity, because it could be necessary to make significant capacity additions to serve them. Thus, there could be circumstances in which an EDR would not be justified even if discounts were being offset by capacity costs.

[70] Kentucky Power's response to Staff's Post-Hearing Request, Item 1.

[71] Application at 3.

necessary to serve load following the expiration of the Rockport UPA. This is especially true given that Kentucky Power has or expects to obtain capacity through short-term capacity purchases in each year through 2028 in amounts that will allow it to exactly meet its expected load obligation (i.e., its PJM capacity requirement).[72] Thus, 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[73] and then should be assigned, in reverse chronological order, to other EDR customers to which the tariff provision requiring a reduction in discounts applies.

> Finding 6: 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.

Kentucky Power provided a number of marginal cost studies showing overall net revenue under the Contract, although the assumptions of the studies concern the Commission for multiple reasons. As discussed above, the Commission will require Kentucky Power to adhere to the tariff provisions regarding the pass through of capacity costs. With this pass-through, the risk that Cyber Innovations will not cover its marginal cost of service is the same as any other customer. Kentucky Power also added a Security Addendum to

[72] *See* Kentucky Power's Response to the Attorney General's First Request, Item 23, Attachment 2.

[73] The Commission notes that Kentucky Power used the term load obligation in this matter to refer it capacity requirement as an FRR entity in PJM. Since Kentucky Power was short on capacity under this standard, it was not necessary to further explorer in this matter whether additional more stringent capacity requirements should apply. However, to the extent that Kentucky Power is later required or determines that a different metric should be used to determine the generation capacity it must maintain, then the metric used to assess an EDR customers contribution to the capacity requirement should be modified accordingly.

the Contract. While additional clarity regarding the Security Addendum would have been useful (and likely necessary in a case involving more risk), it does provide some additional security against the prospect that Cyber Innovations will not cover its costs, which is already low given the marginal cost analysis and likely offsets to the discounts. The Commission finds that the Contract complies with Administrative Order 327, Finding 6.

> Finding 9: All EDR contracts should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.[74]

The contract incorporates the marginal cost study showing a net positive revenue for the ten-year term of the Contract, therefore recovering fixed costs incurred to provide service to Cyber Innovations. As discussed above, the Commission has concerns about the risk inherent in the forecasts underlying the study; however, Kentucky Power does not anticipate any projects specific to Cyber Innovations.[75] The Commission finds that with regards to the distribution investments, the Contract complies with Administrative Order 327, Finding 9.

> Finding 10: The major objectives of EDRs are job creation and capital investment. However, specific job creation and capital investment requirements should not be imposed on EDR customers.

The Commission has no reason to doubt that jobs will be created and capital will be invested as a result of the Contract. No minimum investment or number of jobs is required. The Commission finds that the Contract complies with Administrative Order 327, Finding 10.

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[74] Administrative Order 327 at 26, finding paragraph 9.

[75] Kentucky Power's Response to Staff's First Request, Item 2. *See also* Kentucky Power's Response to Commission Staff's Second Request for Information, Item 2. Kentucky Power stated that any substation upgrades would benefit all customers served from that substation.

> 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.[76]

Kentucky Power's EDR tariff is available to customers with at least 500 kW of demand. Cyber Innovations' load is above the minimum required. The Commission finds that the Contract complies with Administrative Order 327, Finding 12.

> Finding 13: EDR contracts designed to retain the load of existing customers should be accompanied by an affidavit of the customer stating that, without the rate discount, operations will cease or be severely restricted.

Finding 13 is not directly relevant, because the Contract pertains to Cyber Innovations service at a new location and facility separate from its existing facilities such that it would not be considered to be an existing customer. However, Kentucky Power Tariff E.D.R. does indicate that new customers must demonstrate that absent the availability of EDR rates that the customer would locate outside Kentucky Power's territory.

Cyber Innovations provided evidence to Kentucky Power of its ability to get favorable rates in other jurisdictions in support of its contention that it would have located elsewhere if it did not have access to the EDR rates.[77] Further, while Cyber Innovations began operations before it entered into the Contract, the evidence indicates that the parties were discussing an EDR rate for the facility at issue in this case as early as April

[76] Administrative Order 327 at 26–27, ordering paragraph 12.

[77] Application, Attachment 1

2022,[78] and that Cyber Innovations had experience with Kentucky Power's Tariff E.D.R. Thus, despite the timing of the Contract, the Commission finds that Cyber Innovations would not have moved forward with the facility at issue in the Contract absent the availability of the E.D.R. rate.

> 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 charged 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.

Cyber Innovations' discount period is five years out of a ten-year contract, with the last five years at standard industrial customer rates. The Commission finds that the Contract complies with Administrative Order 327, Finding 14.

IT IS THEREBY ORDERED that:

1. Kentucky Power's proposed Contract with Cyber Innovation is approved effective on and after the date of this Order.

2. Kentucky Power shall implement its tariff provision regarding the pass through of capacity costs.

3. Kentucky Power shall file an annual report with the Commission detailing revenues received from Cyber Innovations.

4. During any future rate proceeding, Kentucky Power shall demonstrate, through detailed cost-of-service analysis, that non-EDR ratepayers are not adversely affected by the Contract.

[78] Kentucky Power's response to Staff's Post-Hearing Request, Item 7.

5. Kentucky Power shall file an annual report with the Commission providing the information as shown in Appendix A of Administrative 327 Order, which is attached as an Appendix to this Order.

6. Within 20 days of the date of service of this Order, Kentucky Power shall file with the Commission, using the Commission’s electronic Tariff Filing System, the special contract as approved herein.

7. This case is closed and removed from the Commission’s docket.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED

SEP 15 2023 rcs

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00424 DATED SEP 15 2023

ECONOMIC DEVELOPMENT RATE CONTRACT REPORT

UTILITY:______________________________________ YEAR:_______

	Current Reporting Period		Cumulative	
1) Number of EDR Contracts -				
Total:	______		______	
Existing Customers:	______		______	
New Customers:	______		______	
2) Number of Jobs Created -				
Total:	______		______	
Existing Customers:	______		______	
New Customers:	______		______	
3) Amount of Capital Investment -				
Total:	______		______	
Existing Customers:	______		______	
New Customers:	______		______	
4) Consumption -				
(A) DEMAND				
Total:	______	Mcf	______	Mcf
Existing Customers:	______	Mcf	______	Mcf
New Customers:	______	Mcf	______	Mcf
(B) ENERGY/CONSUMPTION				
Total:	______	Mcf	______	Mcf
Existing Customers:	______	Mcf	______	Mcf
New Customers:	______	Mcf	______	Mcf

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