

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC INVESTIGATION OF THE)
REASONABLENESS OF THE DEMAND SIDE) CASE NO. 2017-00097
MANAGEMENT PROGRAMS AND RATES OF)
KENTUCKY POWER COMPANY)

**MOTION OF WAL-MART STORES EAST, LP AND SAM'S EAST, INC. FOR
REHEARING OF THE ORDER DENYING INTERVENTION**

Pursuant to K.R.S. §278.400, Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart"), by its attorneys, hereby respectfully moves that the Kentucky Public Service Commission ("PSC" or "Commission") reconsider the Order issued on April 12, 2017 ("Order Denying Intervention"), denying Walmart's intervention in the above-referenced matter and permit Walmart to participate as a full party in the proceeding. In support of its Motion, Walmart submits as follows:

1. In its Order Denying Intervention, the Commission stated that Walmart "lacks the necessary interest in the DSM programs provided by Kentucky Power sufficient to justify intervention" on the basis that Walmart "offered no factual basis to justify its request since it has not demonstrated that it is likely to assist the Commission in rendering its decision." Order Denying Intervention, p. 2. The Commission stated that Walmart's only interest in Kentucky Power's DSM rates "is as a commercial customer with a generalized interest in DSM service," which "is too remote to justify intervention." *Id.* Additionally, the Order Denying Intervention notes that "the instant proceeding arises not from an application filed by Kentucky Power, but from an Order issued by the Commission on its own motion to investigate the reasonableness of increased spending on DSM programs," an issue settled non-unanimously in a separate

proceeding at Case No. 2012-00578, to which proceeding Walmart was not a party. *Id.*

2. As noted in the Order Denying Intervention, 807 KAR 5:001, Section 4(11) establishes the standards for intervention in a Commission proceeding. *Id.* These standards require that a person moving for intervention in a proceeding must establish *either* "a special interest in the case that is not otherwise adequately represented" *or* that "intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting proceedings." 807 K.A.R. 5:0001, Section 4(11)(b). By the clear language of the rule, if either of these factors is established, such satisfaction alone is sufficient to require the Commission to grant the intervention request and no other burdens are placed upon a potential intervening party by rule or regulation.

3. To that end, Walmart disagrees that Walmart "lacks the necessary interest in the DSM programs provided by Kentucky Power sufficient to justify intervention" and has only "a generalized interest in DSM service." Order Denying Intervention, p. 2. As stated in Walmart's Motion to Intervene, "Walmart is dedicated to its own investment in DSM and energy efficiency ("EE") and therefore is very interested in this case and the potential impact that revisions to KPCo's DSM programs may have on these efforts." Walmart Motion to Intervene, ¶ 3. Far from being just a generalized interest in DSM, Walmart is very concerned that the level of authorized investment by Kentucky Power in its DSM programs and the final scope of the authorized programs could have a direct and substantial impact on Walmart's ability and decisions to invest in such DSM initiatives. Furthermore, at the time of its Motion to Intervene, Walmart clearly established that it is a unique large commercial customer whose interests are not represented by any other party. This remains true. Therefore, Walmart respectfully submits that it has established an interest sufficient to satisfy the requirements for intervention in this proceeding.

4. As it pertains to Walmart's ability to present issues or capacity for developing facts that assist the commission in fully considering the matter, again, as stated in the Motion to Intervene, Walmart is a unique customer with a national presence and extensive experience and investments in DSM technology. This unique perspective is not represented by any party in the proceeding (though the Commission did grant intervention to other customers in other classes based on proper requests for interventions substantially similar to, if less detailed than, the motion filed by Walmart¹). To that end, Kentucky Power has already indicated in this proceeding that the question of increased spending on its DSM programs is one that will directly impact commercial customers and their capacity for DSM measures. *See* KPCO Motion for Interlocutory Order, Filed March 31, 2017, ¶5(c) (explaining that commercial customer demand has already exceeded 2017 contract levels). Whether investment in these programs is expanded or retained at present levels, all customers like Walmart who have heavily invested in their own DSM measures will be impacted by the result of this proceeding, either in their ability to participate in Kentucky Power's programs or in their responsibility for contributing to other customers' participation. Those interests are not represented in this proceeding. Although the scope of the issues that might be raised in the course of this proceeding is currently unclear, Walmart does not have any intention of unduly complicating or disrupting proceedings, and seeks only the opportunity to assist the Commission in fully analyzing the facts pertaining to its unique interest as a large customer with multiple accounts. Walmart respectfully believes that it has satisfied both elements of a proper motion to intervene as a party in this case.

5. Without explicitly denying Walmart's intervention on this basis, the Order Denying Intervention also notes that this proceeding "arises not from an application filed by

¹ *See generally* Kentucky Industrial Utility Customers (KIUC) Motion to Intervene, filed March 6, 2017, and subsequent Order granting KIUC intervention issued April 10, 2017.

Kentucky Power, but from an Order issued by the Commission on its own motion." Order Denying Intervention, p. 2. Walmart certainly appreciates this, but submits that the statutory requirements for a person to demonstrate eligibility to intervene does not differ with the means by which a Commission proceeding has been initiated. Even though 807 K.A.R. 5:001, Section 9(3) clearly establish the Commission's authority to initiate its own investigative proceedings, there is no special requirement contained in this Section for persons seeking to intervene in such proceedings. Under the regulations, there is only one statutory standard for intervention in any Commission proceeding, and that standard is embodied in the requirements of 807 K.A.R. 5:001, Section 4(11), which the Commission has cited and upon which Walmart based its Motion to Intervene. For the reasons already stated herein, Walmart believes that it has satisfied this standard. Therefore, to the extent the Commissions' decision to deny intervention relies on the nature of the initiation of this proceeding, Walmart respectfully submits that such decision was erroneous.

6. Finally, the Order Denying Intervention also notes that this proceeding was initiated by the Commission to investigate a term contained within a *non-unanimous* settlement of a prior case (Case No. 2012-00578) related to the acquisition of a generation station. *Id.* Walmart also appreciates this fact; however, it remains that this investigation is its own proceeding, related entirely to a specific factual question not at issue in that prior case (whether the \$6 million DSM investment level established at the conclusion of that case should be increased), and has been assigned its own case number. To the extent that the Commission's decision to deny Walmart's intervention may rely, in whole or in part, on the notion that participation in a prior proceeding determines eligibility to intervene in an entirely new proceeding involving entirely different facts and evidence that has not previously been in any

record, Walmart is very concerned that the due process rights of countless parties could be impinged, not only in this case but in untold cases that are initiated, whether by utilities or by the Commission, beyond this point.

7. Accordingly, Walmart respectfully submits that it has a direct and substantial interest in the outcome of this proceeding justifying its participation as a full party of record.

WHEREFORE, Walmart respectfully requests that the Kentucky Public Service Commission reconsider its Order denying the Motion to Intervene of Walmart and, in turn, grant Walmart leave to intervene and be made a party to the above-captioned proceeding.

Respectfully submitted,

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By 

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Dated: April 28, 2017

CERTIFICATE OF SERVICE

I hereby certify that Walmart's April 28, 2017, electronic filing is a true and accurate copy of the Motion of Wal-Mart Stores East, LP and Sam's East, Inc., for Rehearing of the Order Denying Intervention to be filed in paper medium; and that on April 28, 2017, the electronic filing has been transmitted to the Commission, and that an original and one copy of the filing will be delivered to the Commission, that no participants have been excused from electronic filing at this time, and served upon the following via Electronic Mail:

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