

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	CASE NO.
SERVICE; (2) AN ORDER APPROVING ITS 2017)	2017-00179
ENVIRONMENTAL COMPLIANCE PLAN; (3) AN)	
ORDER APPROVING ITS TARIFFS AND RIDERS;)	
(4) AN ORDER APPROVING ACCOUNTING)	
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (5) AN ORDER)	
GRANTING ALL OTHER REQUIRED APPROVALS)	
AND RELIEF)	

ORDER

On August 29, 2017, Kentucky Industrial Utility Customers, Inc. ("KIUC") filed a motion to compel Wal-Mart Stores East, LP and Sam's East, Inc. (jointly, "Walmart") to respond to certain data requests regarding the general employment and economic impact that Walmart contributes to the Commonwealth of Kentucky as testified to by Walmart at a July 24, 2017 hearing in support of its motion to intervene in this proceeding.

On August 14, 2017, KIUC submitted its first set of data requests to Walmart ("KIUC's First Walmart Request") pursuant to a procedural schedule established in this proceeding. KIUC requested that Walmart respond to data requests regarding: 1) the number of full-time and part-time employees that constitute the nearly 30,000 associates employed by Walmart in Kentucky; 2) the names, products provided by, and amount of money Walmart spent with each of Walmart's 848 Kentucky-based suppliers; and 3) the analysis that supported Walmart's assertion that Walmart is indirectly responsible for an additional 35,000 jobs in Kentucky.

On August 28, 2017, Walmart filed its objections to KIUC's First Walmart Request. Walmart asserted that the data requests were irrelevant and moot because they addressed information relevant only to Walmart's motion to intervene, not to the pending rate case, and that the Commission has already granted Walmart's intervention request. Walmart also asserted that the data requests were designed to harass Walmart and cause it to incur additional expense in defending a motion to intervene that was already granted by the Commission. Lastly, Walmart asserted that the information regarding the number of full and part time associates, and Walmart's Kentucky-based suppliers was confidential and competitively sensitive.

In its motion to compel, KIUC argued that, during the July 24, 2017 hearing, Walmart's witness indicated that the company could provide the requested information if asked to do so. KIUC asserted that the information is relevant because the testimony is in the case record, and that Walmart could use its employment and economic impact figures to argue for a beneficial revenue allocation as part of the rate case. KIUC contended that if the parties were unable to examine the veracity of Walmart's statements through discovery, then Walmart should be barred from offering its employment and economic impact figures in this proceeding.

On September 5, 2017, Walmart filed its response to KIUC's motion to compel, asserting that it offered its employment and economic impact figures for the sole purpose of supporting its motion to intervene, which has been granted. Additionally, Walmart attested that it would not offer its employment or economic impact figures as part of any claim related to the rate case. Walmart argued that its previous testimony is irrelevant to the rate case, and thus outside reasonable scope of discovery. Walmart further argued

that KIUC's motion is premature, because any claim that Walmart could raise based on its employment or economic impact figures would be in direct testimony, which will not be filed until October 3, 2017, under the existing procedural schedule. Walmart reiterated that it does not plan to offer direct testimony on its employment or economic figures, but that if it were to do so, KIUC would have the opportunity to timely issue discovery pursuant to the procedural schedule. Walmart requested that the Commission order KIUC to cease raising the issue of Walmart's employment and economic impact figures to the same extent that the Commission accepts and enforces Walmart's assurance to refrain from raising its employment and economic impact figures.

On September 7, KIUC filed a reply requesting, *inter alia*, that, if the Commission decides to deny KIUC's motion to compel, that Walmart, or any party to the proceeding, be prohibited from citing the Walmart employment and economic impact figures.

Having considered the pleadings, and being otherwise sufficiently advised, the Commission finds that KIUC's motion to compel should be denied without prejudice, based upon Walmart's representation that it will not cite its employment or economic impact figures to support any claims it might raise regarding the rate case. The Commission notes that, in its August 3, 2017 Order granting Walmart's request to intervene, the Commission did not rely upon or cite to Walmart's employment or economic impact figures as a basis for granting intervention. A third-party source provided the employment and economic impact figures cited by Walmart, and the underlying data was not independently reviewed by Walmart's representative prior to his testimony at the July 24, 2017 hearing.¹ As such, the employment and economic impact figures are

¹ July 24, 2017 Hearing Video Transcript, 12:42:23.

unsupported data that a party uses at its own peril. For this reason, the Commission further finds that, if any party raises Walmart's employment or economic impact figures subsequent to the date of this Order, the information is a proper subject for discovery and will be subject to discovery at the time it is raised.

IT IS THEREFORE ORDERED that KIUC's motion to compel discovery from Walmart is denied without prejudice.

By the Commission



ATTEST:



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