

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

In the Matter of the Electronic Application of Kentucky Power :
Company for (1) A General Adjustment of Its Rates for Electric :
Service; (2) An Order Approving Its 2017 Environmental : **Case No 2017-00179**
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. :

REPLY OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

Kentucky Industrial Utility Customers, Inc. (“KIUC”) submits this Reply to the Response of Wal-Mart Stores East, LP and Sam’s East, Inc. (“Wal-Mart”) filed September 5, 2017 in the above-captioned proceeding. As explained below, Wal-Mart’s Response fails to provide a sufficient basis upon which to deny KIUC’s Motion to Compel. However, if the Commission decides not to compel Wal-Mart to provide responses to KIUC, then at minimum, it should clarify that the economic and employment impact figures contained in the Testimony in Support of Intervention of Gregory W. Tillman filed by Wal-Mart on July 21, 2017 (“Testimony”) cannot be cited by Wal-Mart in any subsequent stage of this proceeding.

KIUC must first address Wal-Mart’s spurious claims that KIUC did not comply with 807 KAR 5:001, Section 4(12)(e)(3), which requires a party seeking to compel a response to a request for information to include in its motion “[t]he efforts taken to resolve any disagreement over the production of the requested information.” KIUC did in fact describe those efforts in its Motion, explaining in detail (with transcript cites) its initial attempts to derive the requested information at the July 24, 2017 hearing held in this proceeding as well as Wal-Mart’s inability to address KIUC’s questions at that time.¹ KIUC also explained how Wal-Mart’s witness volunteered that KIUC could request the more detailed

¹ KIUC Motion to Compel at 2.

information sought at a later stage of this proceeding.² Finally, KIUC explained the content of its August 14, 2017 data requests as well as Wal-Mart's objections to those requests.³ KIUC's Motion was therefore fully compliant with 807 KAR 5:001, Section 4(12)(e)(3).

Wal-Mart also repeatedly attempts to characterize KIUC's efforts merely to secure some additional detail with respect to the economic and employment impact figures that Wal-Mart itself chose to place in the record as harassment or a waste of time. Wal-Mart even goes so far as to call KIUC's efforts "*frustrating*" and "*perplexing*." Yet parties familiar to Commission proceedings should be well aware that claims contained in their testimony are subject to the due process rights of other intervenors, including the right to submit discovery requests testing the veracity of those claims. That intervenors actually choose to exercise those due process rights should come as no surprise. Indeed, Wal-Mart anticipated that it may receive such data requests (as well as the way it would compile responses to such requests) at the July 24, 2017 hearing.⁴

Nor did KIUC submit voluminous data requests on Wal-Mart. KIUC submitted three data requests that sought types of information that Wal-Mart already had indicated it would be able to produce.⁵ The scope of those data requests pales in comparison to the amount of discovery commonly exchanged among parties to Commission proceedings. Moreover, KIUC submitted those requests for good reason, given that the economic and employment impact figures cited by Wal-Mart are now in the record and could be used in later stages of this proceeding in a manner adverse to KIUC. Wal-Mart may state that it does not currently *intend* to use those figures at a later stage of this proceeding, but there is nothing actually barring Wal-Mart (or other parties) from doing so.

Contrary to Wal-Mart's allegations, KIUC is not re-litigating matters already resolved. KIUC admittedly did not oppose Wal-Mart's intervention in this proceeding. Hence, there was no need for KIUC to file for rehearing of the Commission's decision to grant that intervention, as Wal-Mart suggests.

² Id. at 2-3.

³ Id. at 2.

⁴ Tr. (July 24, 2017) at 1:05:10.

⁵ Id. at 1:05:10.

Rather, KIUC's concern relates to how the economic and employment impact figures in the Wal-Mart Testimony, which are now in the record of this proceeding, could be used as the case progresses. This concern is not allayed or rendered irrelevant merely because Wal-Mart is now a party to this proceeding. Because Wal-Mart (or another party) can still seek to use those figures in a manner adverse to KIUC in subsequent stages of this proceeding, it is only fair that KIUC be provided some supporting detail behind those figures.

Wal-Mart attempts to distinguish between the economic and employment impact figures cited in its Testimony and the underlying Dun & Bradstreet information used to compile those figures, arguing that its witness did not actually rely upon the Dun & Bradstreet information. This is a distinction without a difference. Without the underlying Dun & Bradstreet data, the publicly available information relied upon by Wal-Mart's witness would not exist.

Wal-Mart tries to throw up additional confidentiality roadblocks to producing the requested information, arguing that "*the only appropriate way*" to accommodate KIUC's requests would be for Commission Staff, the Attorney General, or other non-KIUC parties to travel to Wal-Mart's Bentonville, Arkansas headquarters and view the information *in camera*. This approach would presumably not apply to Wal-Mart's response to KIUC Question 1-3, given that Wal-Mart did not object to that request on the basis of confidentiality. And it is difficult to conceive how KIUC Question 1-1, asking Wal-Mart simply to break down its claim of "*nearly 30,000 associates*" into part-time and full-time employees within Kentucky, warrants that high degree of confidentiality protection or how producing such information to KIUC's counsel would adversely impact Wal-Mart's ability to compete in the Commonwealth. With respect to KIUC Question 1-2, KIUC counsel recognizes that the supplier information requested may be competitively sensitive, but submits that such information should be made available, at minimum, to non-KIUC parties upon execution of a confidentiality agreement without the imposition of any travel requirement.

WHEREFORE, for the foregoing reasons, KIUC respectfully moves that the Commission issue an order directing Wal-Mart to provide complete responses to KIUC Questions 1-1 through 1-3 no later than October 27, 2017. If the Commission chooses not to compel Wal-Mart to provide the information requested by KIUC, then it should still bar Wal-Mart (or any other party) from citing that Testimony in the subsequent stages of this proceeding.

Respectfully submitted,



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