

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	
AND KENTUCKY UTILITIES COMPANY FOR)	
REVIEW, MODIFICATION, AND)	CASE NO. 2017-00441
CONTINUATION OF CERTAIN EXISTING)	
DEMAND-SIDE MANAGEMENT AND ENERGY)	
EFFICIENCY PROGRAMS)	

**KENTUCKY UTILITIES COMPANY AND
LOUISVILLE GAS AND ELECTRIC COMPANY’S RESPONSE TO MOTION TO
INTERVENE OF WAL-MART STORES EAST, LP AND SAM’S EAST, INC.**

Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively “Companies”) respectfully ask the Kentucky Public Service Commission (“Commission”) to deny Wal-Mart Stores East, LP and Sam’s East, Inc.’s (collectively “Walmart”) January 10, 2018 Motion to Intervene. Walmart’s motion should be denied for two principal reasons: (1) the Motion does not demonstrate a special interest in this proceeding because Walmart’s stated interests will be adequately represented by the Attorney General; and (2) the Motion fails to identify any relevant issues or development of relevant facts that will assist the Commission in the resolution of this matter without unduly complicating and disrupting the proceeding. Because Walmart has not satisfied any of the substantive requirements for intervention under 807 KAR 5:001 § 4(11)(b), the Companies respectfully ask the Commission to deny Walmart’s Motion to Intervene.

I. Walmart Has Not Asserted an Interest in this Proceeding that Differs from those of the Companies' Numerous Other Non-Industrial Customers, and Therefore Has Not Asserted a Special Interest in this Proceeding

Walmart has not stated a special interest in this proceeding that will not otherwise be adequately represented, and therefore has not met the first alternative substantive requirement for intervention under 807 KAR 5:001 § 4(11)(b).¹ Walmart asserts that it is a “large commercial customer of the Companies” and “the proposed modifications to the Companies' DSM/EE [Demand-Side Management and Energy Efficiency] Program Plan has the potential to substantially impact Walmart's operations in Kentucky.”² In this regard, Walmart is hardly unique: the Companies are fortunate to have a number of commercial and other large non-industrial customers that use considerable amounts of energy, particularly when viewed across each customer's multiple locations, as Walmart desires to do. Some of those customers, like Walmart, have nationwide or international operations, and have made DSM-EE investments of their own in Kentucky and elsewhere. Certainly the Companies admire and applaud Walmart's DSM-EE efforts, and did note them in the Companies' testimony in this proceeding,³ but that does not make Walmart's interest in this proceeding unique or special, as it is shared by numerous other non-industrial customers.

Indeed, the Commission made this very point when denying Walmart intervention in the Commission's investigation of Kentucky Power Company's DSM-EE programs: “The only interest that Walmart has in the DSM rates and service of Kentucky Power is as a commercial customer with a generalized interest in DSM service. That interest is too remote to justify

¹ 807 KAR 5:001 § 4(11)(b) (“The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.”).

² Walmart Motion to Intervene at 1-2.

³ Testimony of David E. Huff at 11.

intervention here.”⁴ Walmart sought rehearing, making precisely the same argument it makes in its intervention motion in this proceeding, asserting its dedication to its own DSM-EE investments and how the level of the utility’s DSM-EE programming might affect Walmart’s own investments.⁵ The Commission reaffirmed its position in denying Walmart’s motion for rehearing: “Walmart may have a generalized interest in the DSM rates of Kentucky Power, but it offered no factual basis that it had a specific interest in the investigation.”⁶ The same is true here: insofar as Walmart has an interest in the DSM-EE programs and rates at issue in this proceeding, it is no different than those of the Companies’ other non-industrial customers. Those interests will be well represented by the Attorney General, who has exercised his statutory right to intervene in this proceeding and represent the interests of all customers.⁷

II. Walmart’s Real Interest in this Proceeding Is to Convince the Commission to Extend the Statutory Industrial Opt-Out to Large Commercial Customers, Contrary to KRS 278.285(3), Which Is Not a Special Interest

The consistent theme of Wal-Mart’s participation in the Companies’ 2014 DSM-EE case, the Companies’ DSM-EE Advisory Group, and its motion to intervene in this proceeding comes to a single point, namely that Walmart desires to have the right to opt out of the Companies’ DSM-EE programs and charges, which contravenes KRS 278.285(3). Walmart is clear about this interest in its Motion:

Walmart is concerned that the Companies’ proposed DSM/EE Program Plan may negatively impact Walmart’s ability to cost-effectively pursue its own DSM/EE initiatives in the Companies’

⁴ *In the Matter of: Electronic Investigation of the Reasonableness of the Demand Side Management Programs and Rates of Kentucky Power Company*, Case No. 2017-00097, Order at 2 (Apr. 12, 2017).

⁵ Case No. 2017-00097, Order at 1-2 (May 17, 2017) (“Walmart asserts that it has a specific interest in this case because it is dedicated to its own investment in DSM programs and energy efficiency, and is concerned about the level of Kentucky Power’s DSM investment level and programs, as they could have a direct and substantial impact on Walmart’s decision to invest in its own DSM program. Walmart also asserts that, because of its unique perspective as a national presence with experience in DSM investments, it could present facts that could assist the Commission in developing the record in this case.”).

⁶ *Id.* at 2.

⁷ KRS 367.150(8).

service territory, particularly in light of the way that the Companies have defined eligibility for the industrial opt-out measure included in their DSM/EE Program Plan.

As an active participant in the DSM Advisory Group, Walmart provided recommendations to address its concerns with the industrial opt-out measure, but these concerns were not alleviated by the Companies' proposals in this case.⁸

To state the obvious, Walmart is a commercial customer. Indeed, that is how Walmart describes itself: "Walmart is a large commercial customer of the Companies."⁹ Kentucky's DSM-EE statute concerning the assignment of DSM-EE program costs, KRS 278.285(3), states both that the Commission shall assign DSM-EE costs to the class or classes of customers that benefit from the program and that the Commission shall permit individual industrial customers meeting certain criteria to be exempt from DSM-EE programs and charges. There simply is no plausible definition of "industrial" that includes a self-described "commercial customer" that is a "national retailer of goods and services."¹⁰ That the opt-out is limited to industrial customers is a decision the General Assembly made, not the Companies or the Commission; it is a policy only the General Assembly can change. Therefore, Walmart cannot have a valid interest in the Companies' industrial opt-out proposal under current Kentucky law, as the opt-out cannot apply to Walmart. (Even if Walmart could have such an interest, it would not be unique to Walmart, but rather would be shared by numerous other non-industrial customers, and therefore would not be a special interest.)

Furthermore, the interests of actual industrial customers concerning the industrial opt-out will be well represented by Kentucky Industrial Utility Customers, Inc. ("KIUC"), which has

⁸ Walmart Motion to Intervene at 2.

⁹ *Id.* at 1.

¹⁰ *Id.*

moved to intervene in this proceeding. Therefore, even if Walmart could somehow be construed to be “industrial,” KIUC will advocate for industrial interests.

III. Walmart Has Not Demonstrated It Will Present Issues or Develop Facts that Will Assist the Commission without Unduly Complicating the Proceeding

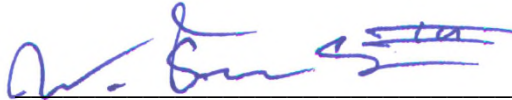
Because Walmart lacks a special interest in this proceeding that is not adequately represented by the Attorney General or KIUC, Walmart may intervene only if it can show that it will present issues or develop facts that will assist the Commission without unduly complicating the disrupting the proceeding. Walmart’s Motion fails to do so. Walmart asserts it was an active participant in the Companies’ previous DSM-EE proceeding and the Companies’ DSM Advisory Group, but those assertions do not mean Walmart will present issues or develop facts that will assist the Commission in this proceeding; indeed, Walmart’s Motion does not state any facts or issues it would present to assist the Commission.¹¹ Walmart claims a general interest as a commercial customer but, as discussed above, its real interest appears to be distorting the industrial opt-out to include commercial customers in contravention of KRS 278.285(3). It is difficult to understand how presenting an argument clearly contrary to statute would assist the Commission, or how it could do anything other than complicate or disrupt the proceeding. The Companies therefore respectfully propose to the Commission that Walmart may make whatever arguments and assertions it likes in the form of public comments, but there is no basis under 807 KAR 5:001 § 4(11)(b) for granting Walmart intervention in this proceeding.

WHEREFORE, Kentucky Utilities Company and Louisville Gas and Electric Company respectfully request that the Commission deny Walmart’s Motion to Intervene.

¹¹ *Id.* at 2.

Dated: January 16, 2018

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company and Louisville Gas and Electric Company's January 16, 2018 electronic filing of the Response to Motion to Intervene of Wal-Mart Stores East, LP and Sam's East, Inc. is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on January 16, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and six copies in paper medium of the Response are being mailed by first class U.S. Mail, postage prepaid, to the Commission on January 16, 2018.

A handwritten signature in blue ink, appearing to read "A. B. Smith", is written above a horizontal line.

*Counsel for Kentucky Utilities Company
and Louisville Gas and Electric Company*