

**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) **CASE NO. 2017-00441**
FOR REVIEW, MODIFICATION, AND)
CONTINUATION OF CERTAIN EXISTING)
DEMAND-SIDE MANAGEMENT AND)
ENERGY EFFICIENCY PROGRAMS)

**REPLY BRIEF OF WAL-MART STORES EAST, LP AND SAM'S EAST, INC.
TO THE INITIAL BRIEF OF LOUISVILLE GAS AND ELECTRIC COMPANY AND
KENTUCKY UTILITIES COMPANY AND THE INITIAL
BRIEF OF THE OFFICE OF THE ATTORNEY GENERAL**

Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart"), by counsel, submit this Reply Brief to the Kentucky Public Service Commission ("PSC" or "Commission"). This Reply Brief is limited to addressing discrete issues set forth in the Initial Briefs of Louisville Gas and Electric Company ("LGE") and the Kentucky Utilities Company ("KU") (collectively, "Companies" or "LGE/KU") and the Office of the Attorney General ("OAG").

ARGUMENT

A. The Companies Fail to Address the Discriminatory Impact of the Opt-Out.

In the Companies' Initial Brief, they argue that their proposed Opt-Out "attempts to give substance" to KRS 278.285(3) and is "consistent with the plain meaning of the text and other Kentucky statutes and Commission precedent."¹ The Opt-Out proposed by the Companies is not consistent with Kentucky law requiring that rates be "fair, just and reasonable"² and that

¹ Companies' Initial Brief, p. 12.

² KRS 278.030(1).

rates not give "any unreasonable preference or advantage" to some customers over others.³ Indeed, approval of the Opt-Out proposed by the Companies creates a scheme where some customers in a rate class are unfairly advantaged over others.

The Companies should not be entitled to use the Opt-Out set forth in KRS 278.285(3) to arbitrarily select winners and losers within a given rate class in a manner that results in discriminatory rates being paid within that rate class. Unfortunately, that is precisely what the Companies' proposed Opt-Out creates. The Companies set their rate schedules and in the process determined that there should be no distinction between customers other than based on their energy usage. In light of this decision *by the Companies*, it would be inherently discriminatory to require some customers to bear the entire cost of the Companies' Demand-Side Management and Energy Efficiency ("DSM/EE") programs while other customers taking service under the same rate schedules do not. Because the Companies have not carried their burden to show that some customers should be advantaged over other customers within the same rate class, the Opt-Out proposed by the Companies should be rejected.

B. Cost Shifting is Inherent in an Opt-Out and is Not Unique to Walmart.

In its Initial Brief, the OAG addresses what it believes would happen if Walmart were permitted to opt-out of the Companies' DSM/EE programs, stating that "the remaining tariff classes of customers will collectively bear the cost shift."⁴ This statement improperly assumes that such result is unique to Walmart opting out, which is categorically untrue. What is true is that customers who are not allowed to opt-out – under whatever definition the Commission ultimately adopts, including the definition proffered by the Companies – will be forced to bear

³ KRS 278.170(1).

⁴ OAG Initial Brief, p. 6.

the costs of the DSM/EE programs⁵ while *any* customers who are allowed to opt-out will not. The cost shifting is not unique to Walmart, but is a function inherent in the Opt-Out. Additionally, while the potential exists for other customers to take advantage of the Opt-Out, Walmart, and presumably other customers, would perform sound business analysis before making a definitive choice to opt-out or possibly continue participation in the Companies' sponsored DSM/EE programs.⁶ Whether Walmart is permitted to opt-out does not alter the fact that the current practice is unfair at best, with flawed misapplication of KSR 278.030(1). Walmart's ability to opt-out should be set by the standard adopted by this Commission under KRS 278.285(3) without consideration to Walmart's unique business circumstances.

⁵ Indeed, if such business customers are paying for their own DSM/EE initiatives in addition to a DSM/EE surcharge, they effectively will be paying twice for DSM/EE.

⁶ In fact, the definitions/parameters offered by Walmart for an Opt-Out would not, as the Companies have suggested, result in every Walmart location being permitted to opt-out. *See* Companies' Initial Brief, p. 13 (stating that "Walmart's...opt-out approach [has] the plain intention of making way for Walmart...to be able to opt out").

CONCLUSION

For the reasons set forth herein and as previously stated in Walmart's Initial Brief, Walmart requests that the Commission deny the Companies' request for approval of the Opt-Out as proposed and require revisions that would produce a more fair result as more fully set forth in Walmart's Initial Brief.

Respectfully submitted,

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Dated: July 9, 2018

CERTIFICATE OF SERVICE

I hereby certify that Walmart's July 9, 2018, electronic filing is a true and accurate copy of the Reply Brief of Wal-Mart Stores East, LP and Sam's East, Inc. to the Initial Brief of Louisville Gas and Electric Company and Kentucky Utilities Company and the Initial Brief of the Office of Attorney General, to be filed in paper medium; and that on July 9, 2018, the electronic filing has been transmitted to the Commission, and that an original and six (6) copies 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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