

**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 CONTINUATION OF CERTAIN )  
EXISTING DEMAND-SIDE MANAGEMENT )  
AND ENERGY EFFICIENCY PROGRAMS )**

**CASE NO. 2017-00441**

**REBUTTAL TESTIMONY OF  
RICK E. LOVEKAMP  
MANAGER, REGULATORY STRATEGY/POLICY  
LG&E AND KU SERVICES COMPANY**

**Filed: April 24, 2018**

1 **Q. Please state your name, position, and business address.**

2 A. My name is Rick E. Lovekamp. I am Manager of Regulatory Strategy/Policy for LG&E  
3 and KU Services Company, which provides services to Louisville Gas and Electric  
4 Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively  
5 “Companies”). My business address is 220 West Main Street, Louisville, Kentucky.

6 **Q. What is the purpose of your rebuttal testimony?**

7 A. The purpose of my rebuttal testimony is to address the testimony by witness Kenneth  
8 E. Baker filed on behalf of Wal-Mart Stores East, LP and Sam’s East, Inc. (collectively  
9 “Walmart”) regarding the Companies’ proposed industrial opt-out from demand-side  
10 management and energy-efficiency (“DSM-EE”) programs and charges. Although the  
11 Companies appreciate Walmart’s significant energy-conservation efforts, it remains  
12 the Companies’ view that the General Assembly did not intend to include commercial  
13 customers, including large retailers like Walmart, in the industrial opt-out provided in  
14 KRS 278.285(3). In addition, as I discuss below, the Commission’s authority  
15 concerning DSM-EE programs does not extend to approving a program proposed by  
16 an entity other than a utility, including the “self-direct” program proposed by Mr.  
17 Baker, which is effectively a DSM-EE opt-out for commercial customers that is  
18 contrary to the requirements of KRS 278.285(3). Also, I note that the Companies  
19 already offer and are proposing to continue offering what is in many respects a self-  
20 direct program, though one with benefits that potentially exceed those of other self-  
21 direct programs, namely the Nonresidential Rebates Program.

22 **Q. What are the statutory criteria for an industrial customer to opt out of DSM-EE**  
23 **under KRS 278.285(3)?**

1 A. As indicated by the bracketed numbers I have included in the statutory text below, KRS  
2 278.285(3) provides four criteria for an industrial customer to opt out of a utility's  
3 DSM-EE programs and costs:

4 The commission shall allow [1] individual industrial  
5 customers [2] with energy intensive processes [3] to  
6 implement cost-effective energy efficiency measures in  
7 lieu of measures approved as part of the utility's demand-  
8 side management programs [4] if the alternative  
9 measures by these customers are not subsidized by other  
10 customer classes.

11 The Companies' opt-out proposal attempts to give substance to each of the statutory  
12 criteria in a way that is consistent with the plain meaning of the text and other Kentucky  
13 statutes and Commission precedent. A summary of the Companies' opt-out proposal  
14 is below:

- 15 1. Industrial customers are defined to be nonresidential customers engaged in  
16 activities primarily using electricity or gas in a process or processes involving  
17 either the extraction of raw materials from the earth or a change of raw or  
18 unfinished materials into another form or product.
- 19 2. Customers with energy-intensive processes are defined to be those taking  
20 service under rates for customers with high electric or gas demand. Only meters  
21 served under those high-demand rates are eligible to opt out.
- 22 3. Customers self-certify that they have implemented cost-effective energy  
23 efficiency measures not subsidized by other rate classes related to the meters  
24 they seek to opt out.
- 25 4. To minimize gaming and subsidization concerns, customers cannot opt out any  
26 meter that has participated in a DSM-EE program for 36 full billing cycles after  
27 ceasing to participate in the program.

1 Walmart’s proposed opt-out approach, on the other hand, distorts the plain  
2 meaning of the first two statutory criteria in an attempt to construe large retail stores  
3 with high load factors as industrial customers with energy intensive processes.

4 **The Companies’ Definition of “Industrial Customer” Is Consistent with Relevant**  
5 **Authorities; Walmart’s Proposed Definition Is Not**

6 **Q. Mr. Baker asserts, “The Commission should reject the industrial opt-out as**  
7 **proposed by the Companies because it arbitrarily excludes energy intensive**  
8 **customers taking service under industrial rates ....”<sup>1</sup> Do the Companies have**  
9 **industrial rates?**

10 A. The Companies do not have industrial rates for electric service; rather, the Companies’  
11 electric rate schedules for firm, non-temporary service are almost exclusively  
12 distinguished by electrical demand rather than the purpose for which the customer uses  
13 the service.<sup>2</sup> LG&E does have an industrial rate for gas sales service, namely Rate  
14 IGS. Notably, no Walmart locations take service under Rate IGS. Therefore, the  
15 Companies’ opt-out proposal does not “arbitrarily exclude[] energy intensive  
16 customers taking service under industrial rates.”

17 **Q. Mr. Baker argues that because the General Assembly did not define “industrial”**  
18 **in KRS Chapter 278, the Commission has “considerable latitude” to determine**  
19 **who may opt out by defining the term.<sup>3</sup> Do you agree?**

20 A. Certainly the Commission may exercise its authority to interpret KRS 278.285(3)  
21 within reasonable bounds of the plain meaning and express language of the statute. But  
22 the notion that Mr. Baker appears to advocate, namely that the Commission should

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<sup>1</sup> Baker at 3.

<sup>2</sup> Exceptions are for service to residences, volunteer fire departments, and all-electric schools.

<sup>3</sup> Baker at 7.

1 work from a clean slate in defining “industrial,” is incorrect. Instead, the Commission’s  
2 exercise of discretion should be guided by Kentucky statutes, standard energy-sector  
3 definitions, and the Commission’s own precedent.

4 Although Mr. Baker is correct that the General Assembly did not define the  
5 term in KRS Chapter 278, it did define “industrial entity” in KRS 56.440(6) to be “any  
6 corporation, partnership, person, or other legal entity, whether domestic or foreign,  
7 which will itself or through its subsidiaries and affiliates construct and develop a  
8 manufacturing, processing, or assembling facility on the site of an industrial  
9 development project financed pursuant to this chapter.” In KRS 139.010(15)(a), the  
10 General Assembly defined “machinery for new and expanded industry” in relevant part  
11 to be machinery “[u]sed directly in a manufacturing or processing production process  
12 ...” Also, the General Assembly has repeatedly treated “commercial” or “business”  
13 as being distinct from “industrial.”<sup>4</sup> In the context of these Kentucky statutory  
14 provisions, the Companies’ proposed definition of industrial customers as  
15 “[n]onresidential customers ... engaged in activities primarily using electricity [or gas]  
16 in a process or processes involving either the extraction of raw materials from the earth  
17 or a change of raw or unfinished materials into another form or product” is entirely  
18 reasonable and consistent with the General Assembly’s repeated usage and definition  
19 of similar terms.

20 The Companies’ proposed definition of industrial is also consistent with other  
21 commonly accepted definitions, particularly with respect to the energy sector. For

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<sup>4</sup> *E.g.*, KRS 177.830 defines “Commercial or industrial zone,” “Unzoned commercial or industrial area,” and “Commercial or industrial activities”; KRS 216.2925(2) addresses “business or industrial establishments”; and KRS 216B.020(2)(c) also addresses “business or industrial establishments.”

1 example, the U.S. Energy Information Agency (“EIA”) defines “industrial sector” as  
2 follows:

3 An energy-consuming sector that consists of all facilities  
4 and equipment used for producing, processing, or  
5 assembling goods. The industrial sector encompasses the  
6 following types of activity: manufacturing (NAICS  
7 codes 31-33); agriculture, forestry, and hunting (NAICS  
8 code 11); mining, including oil and gas extraction  
9 (NAICS code 21); natural gas distribution (NAICS code  
10 2212); and construction (NAICS code 23). Overall  
11 energy use in this sector is largely for process heat and  
12 cooling and powering machinery, with lesser amounts  
13 used for facility heating, air conditioning, and lighting.<sup>5</sup>

14 This definition would obviously exclude Walmart (and refers to NAICS codes, to  
15 which Walmart also objects), but is in accordance with the Companies’ proposed  
16 definition of “industrial.” Notably, the EIA’s definition of “commercial sector” clearly  
17 includes the energy service Walmart takes from the Companies.<sup>6</sup>

18 Similarly, the American Gas Association defines “industrial service” to be  
19 “service to customers engaged primarily in a process which either involves the  
20 extraction of raw materials from the earth or a change of raw unfinished materials into  
21 another form or product.”<sup>7</sup> This is in contrast to the association’s definition of  
22 commercial service, which would clearly include Walmart: “[S]ervice to customers  
23 engaged in wholesale or retail trade, agriculture, communications, finance, fisheries,  
24 forestry, government, insurance, real estate, transportation, etc., and to customers not

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<sup>5</sup> Energy Information Administration, Electric Power Monthly with Data for January 2018 (published March 2018), available at [https://www.eia.gov/electricity/monthly/current\\_month/epm.pdf](https://www.eia.gov/electricity/monthly/current_month/epm.pdf) (accessed Mar. 29, 2018).

<sup>6</sup> *Id.* (“Commercial sector: An energy-consuming sector that consists of service-providing facilities and equipment of: businesses; Federal, State, and local governments; and other private and public organizations, such as religious, social, or fraternal groups. The commercial sector includes institutional living quarters. It also includes sewage treatment facilities. Common uses of energy associated with this sector include space heating, water heating, air conditioning, lighting, refrigeration, cooking, and running a wide variety of other equipment.”).

<sup>7</sup> American Gas Association online glossary, available at <https://www.aga.org/natural-gas/glossary/c/> (accessed Mar. 30, 2018).

1 directly involved in other classes of service.”<sup>8</sup> Again, these energy-sector definitions  
2 show the reasonableness of the Companies’ proposed definition of “industrial” and that  
3 Walmart is clearly a commercial customer, not an industrial customer.

4 Finally, the Commission has repeatedly approved the Companies’ definition of  
5 “industrial,” both for DSM-EE and gas-rate purposes.<sup>9</sup> The Companies’ proposed  
6 definition of “industrial” for DSM-EE purposes, though it differs from its previous  
7 definition in that it removes the NAICS code references to which Walmart has  
8 previously objected, is fundamentally consistent with the Companies’ previous  
9 Commission-approved definitions. Thus, rather than abandoning long-standing  
10 precedent to accept a definition of “industrial” that would include big-box retail stores,  
11 the Companies respectfully submit the Commission should accept the Companies’  
12 proposed definition, which accords with Kentucky statutes, standard energy-sector  
13 definitions, and the Commission’s own orders.

14 **Q. Mr. Baker argues that the Commission has previously expressed concerns over**  
15 **using NAICS codes in defining “industrial,” and the Companies’ proposed**  
16 **definition of “industrial” is faulty because it eliminates the NAICS codes while**  
17 **retaining their content.<sup>10</sup> How do you respond?**

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<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g., In the Matter of: Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Order (June 22, 2017); *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy-Efficiency Programs*, Case No. 2014-00003, Order (Nov. 14, 2014); *In the Matter of: Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2014-00372, Order (June 30, 2015); *In the Matter of: Joint Application of Louisville Gas and Electric Co. and Kentucky Utilities Co. for Review, Modification, and Continuation of Existing, and Addition of New Demand-Side Management and Energy Efficiency Programs*, Case No. 2011-00134, Order (Nov. 9, 2011).

<sup>10</sup> Baker at 8-9.

1 A. The Companies’ proposed definition of “industrial” neither uses nor relies on NAICS  
2 codes. As I demonstrated above, the Companies’ proposed definition is reasonable and  
3 consistent with other Kentucky statutes, energy-sector definitions, and Commission  
4 orders. What those authorities show is that most people in most contexts would not  
5 define the term “industrial customer” to include big-box retailers even when excluding  
6 NAICS codes from the definition, and there is no reason at all to believe the General  
7 Assembly intended to include them.

8 Indeed, the Commission order to which Walmart cites as expressing concern  
9 over using NAICS codes to define “industrial customer” indicates the Commission did  
10 not believe a revised “industrial customer” definition, even absent NAICS codes, would  
11 encompass Walmart:

12 Walmart filed testimony and a post-hearing brief. Its  
13 argument was that it should not be subject to the select  
14 NAICS codes, and that customers who reach a  
15 benchmark level of 15 million kWh per year should be  
16 able to elect whether or not to participate in the  
17 Companies' DSM-EE programs and not be assessed a  
18 monthly commercial DSM charge. *The industrial opt-*  
19 *out is available only for industrial customers, not*  
20 *commercial customers, even if those commercial*  
21 *customers are energy intensive and have implemented*  
22 *energy-efficiency measures.* We nonetheless believe that  
23 Walmart has raised a legitimate concern about how the  
24 Companies use the NAICS codes.<sup>11</sup>

25 Therefore, whatever the Commission’s concern was at that time concerning the use of  
26 NAICS codes, it seems clear the Commission did not believe resolving that concern  
27 would result in Walmart being included in the definition of “industrial customer.”

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<sup>11</sup> *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy-Efficiency Programs*, Case No. 2014-00003, Order at 26 (Nov. 14, 2014) (emphasis added).



1 **Q. What is the Companies' concern with the definition of "industrial" Walmart has**  
2 **proposed for DSM-EE opt-out purposes?**

3 A. The Companies' concern is that Walmart's proposed definition has nothing at all to do  
4 with a customer's being industrial, and that, by Walmart's own admission, it would be  
5 over-inclusive. Finally, the criteria Mr. Baker proposes for "industrial" are also part of  
6 his proposed definition of "energy intensive," rendering superfluous the term  
7 "industrial" as used in KRS 278.285(3).

8 Mr. Baker proposes to define "industrial customer" solely by the electric rate  
9 schedule under which a customer takes service (he does not discuss DSM-EE as it  
10 relates to gas service):

11 [R]ather than limiting the opt-out to only certain  
12 industrial rate schedules, Walmart believes that all of the  
13 Companies' largest "industrial" rate schedules (i.e., Rates  
14 RTS, FLS, TODP, and TODS) should qualify for the opt-  
15 out set forth in KRS 278.285(3). *This broad definition*  
16 *would capture all of the Companies' industrial energy*  
17 *users, as well as all of their largest users in general.*<sup>12</sup>

18 As I noted previously, the Companies do not have industrial electric rate classes, which  
19 presumably is why Mr. Baker enclosed "industrial" in quotation marks when describing  
20 Rates RTS, FLS, TODP, and TODS as industrial. In reality, none of those rate classes  
21 is defined by the purpose for which the customer is taking service; rather, each is  
22 delimited by peak demand or other service characteristics. Echoing Mr. Baker, if the  
23 General Assembly had intended the DSM-EE opt-out to be available to high-demand  
24 or high-usage customers irrespective of the nature of the customer's business, it could

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<sup>12</sup> Baker at 11 (emphasis added).

1 have done so. Instead, the General Assembly used the term “industrial customer,”  
2 which the Companies believe should be given its plain and ordinary meaning.

3 In addition, note that even Mr. Baker appears to have another definition of  
4 “industrial” in mind when propounding this rate-class-based definition: “This broad  
5 definition would capture all of the Companies' industrial energy users, as well as all of  
6 their largest users in general.”<sup>13</sup> In other words, Walmart’s proposed definition of  
7 “industrial customer” would include all actual industrial customers as well as large non-  
8 industrial customers, including big-box retailers, convention centers, and schools.  
9 Therefore, by Mr. Baker’s own admission his proposed definition is over-inclusive and  
10 reveals there is another working definition of “industrial” Mr. Baker has not articulated  
11 but clearly is using.

12 Lastly, Mr. Baker defines “energy-intensive” to be a customer with a minimum  
13 average monthly load factor of at least 60% (with no explanation or support for  
14 choosing 60%) and with a demand sufficient to take service under Rates TODS, TODP,  
15 FLS, or RTS.<sup>14</sup> Though similar in certain respects to the Companies’ definition of  
16 “energy-intensive,” Mr. Baker’s definition has the significant detriment of including  
17 the entirety of his definition of “industrial,” rendering the term “industrial customer”  
18 entirely superfluous in KRS 278.285(3). Here, Mr. Baker’s strained definition of  
19 “industrial” is swallowed up in his somewhat plausible definition of “energy-  
20 intensive,” which, in addition to the other reasons I discussed above, shows his

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<sup>13</sup> *Id.*

<sup>14</sup> Baker at 12. Walmart’s response to the Commission Staff’s DR No. 1 provides no additional meaningful support for a 60% load-factor requirement, noting only that it is somewhat higher than the average load factor for customers taking service under Rate TODS according to data the Companies provided in the record of their 2016 rate cases. Why 60% is less arbitrary than 55% or 75% is something Walmart does not address.

1 definition of “industrial” is faulty because it renders “industrial” superfluous in the  
2 statutory text.

3 **The Companies’ Proposed Definition of “Energy-Intensive Processes” Is Well-**  
4 **Supported and Aligns with the Historical Energy Intensities of the Companies’**  
5 **Industrial Customers**

6 **Q. Mr. Baker states that the Companies have not offered support for their definition**  
7 **of “energy intensive.”<sup>15</sup> How do you respond?**

8 A. Mr. Baker is incorrect. The DSM Advisory Group materials attached to the testimony  
9 of Gregory S. Lawson document the discussions among the Companies and the rest of  
10 the group about how to define “energy-intensive”; Walmart representatives  
11 participated in those discussions, so Walmart should be aware of the support the  
12 Companies provided for their proposed definition.<sup>16</sup> Among the items noted in those  
13 materials that support of the Companies’ proposed definition are bullet points noting  
14 the definition’s advantages:

- 15 • Rate determines intensity level
- 16 • Aligns with tariffs designed for large energy needs
- 17 • Eliminates subjectivity<sup>17</sup>

18 In addition, the materials include a slide showing a significant difference in peak  
19 demand and energy usage between industrial customers taking service under rate  
20 schedules with peak demands up to and including Rate TODS and those taking service  
21 under Rate TODP or higher demands:<sup>18</sup>

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<sup>15</sup> *Id.* at 9.

<sup>16</sup> Lawson Exh. GSL-1.

<sup>17</sup> Lawson Exh. GSL-1 at 124.

<sup>18</sup> *Id.* at 119.

	Average of kW or kVA	Max of kW or kVA	Min of kW or kVA	Average of FC Annual kWh
GS	178	888	49	372,094
PS Sec	234	1,939	51	882,869
PS Pri	336	2,470	58	1,030,353
TODS	707	2,645	52	3,587,564
TODP	3,831	76,238	250	19,751,749
RTS & FLS	15,487	192,168	250	71,071,776

Energy  
Intensive

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Finally, there is an inherent plausibility in having “energy-intensive” defined in terms of demand for electricity or gas that is markedly higher than non-industrial customers. In standard English, “intensive” is defined as “of, relating to, or marked by intensity or intensification: such as ... highly concentrated,” and “intensity” is defined as “the quality or state of being intense; especially: extreme degree of strength, force, energy, or feeling.”<sup>19</sup> It is therefore sensible to define an “energy-intensive process” as one that requires a large amount of energy over any given short time interval. Any energy-consuming process will consume a large amount of energy over long time periods; presumably the General Assembly used the modifier “energy-intensive” to distinguish processes that use large quantities of energy over short time-spans from those that do not, making peak demands (and rate classes based on peak demands) a reasonable ground for defining “energy-intensive” in the Companies’ DSM-EE tariff provisions. Therefore, the Companies believe their definition of “energy-intensive” is well supported.

<sup>19</sup> Taken from Merriam-Webster’s online dictionary, available at <https://www.merriam-webster.com/> (accessed Apr. 4, 2018).

1 **Q. Do you have any concerns regarding Walmart’s proposed definition of “energy**  
2 **intensive”?**

3 A. In addition to the concern I discussed earlier concerning the overlap between Walmart’s  
4 definitions of “industrial” and “energy intensive,” I have two other concerns. First,  
5 defining “energy intensive” in terms of a minimum monthly average load factor of at  
6 least 60% is not obviously sensible, particularly in the context of a statutory provision  
7 concerning “industrial customers with energy intensive processes.” There are  
8 numerous low-load but high-load-factor processes, e.g., an LED light that is constantly  
9 lit, no one of which would reasonably be described as energy intensive, but a customer  
10 with enough such processes taking service through a single meter might take service  
11 under one of the rate schedules Walmart has proposed be included in the definition of  
12 “energy intensive.” Typically a genuinely industrial customer would not have many  
13 processes of that kind, and certainly would not primarily or exclusively have processes  
14 of that kind, and such processes, even taken together, would not appreciably contribute  
15 to an industrial customer’s peak load. Often, industrial customers have high peak loads  
16 and relatively low load factors due to the energy intensity of manufacturing or similar  
17 processes that demand high amounts of energy over relatively short timeframes. That  
18 is why the Companies’ definition of “energy intensive” does not include a load-factor  
19 requirement.

20 Second, as I noted above, there is a significant difference between the peak load  
21 and energy use of industrial TODS customers and industrial TODP customers, whereas  
22 there is not nearly as dramatic a difference in peak load among TODS, Power Service,  
23 and even General Service industrial customers. Therefore, the Companies’ definition

1 of “energy intensive” as including only those meters served under electric Rates TODP,  
2 FLS, and RTS appears more likely to include customers with genuinely energy-  
3 intensive processes than does Walmart’s proposed definition.

4 Notably, Mr. Baker did not address LG&E’s gas-related definition of “energy  
5 intensive.” The Companies therefore assume Walmart does not object to it.

6 **Q. Mr. Baker further states, “Walmart recommends that the Commission**  
7 **grandfather all existing opt-out customers. Walmart would also not oppose a**  
8 **proposal that very large customers (e.g., above 5 MW) be able to opt-out**  
9 **regardless of load factor.”<sup>20</sup> How do you respond?**

10 A. First, there are no “opt-out customers” today. The Companies do not currently offer  
11 DSM-EE programs to industrial customers, so Walmart’s proposed grandfathering  
12 would grandfather no customers at all.

13 Second, Walmart cannot have it both ways: either load factor is a component of  
14 energy intensity or it is not. As I explain above, the Companies do not believe load  
15 factor is a sensible criterion to include in defining energy intensity. Plenty of energy-  
16 intensive industrial processes, such as arc furnaces, are exceedingly energy intensive  
17 in terms of peak demand but have relatively low load factors, yet it would not be  
18 credible to challenge the eligibility of an arc furnace for the industrial opt-out as the  
19 Kentucky General Assembly has formulated it. But the Companies respectfully  
20 suggest it makes no sense to define energy-intensive as sometimes having a load-factor  
21 requirement and sometimes not. The Companies therefore respectfully recommend  
22 that the Commission reject Walmart’s position.

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<sup>20</sup> Baker at 12.

1 **Walmart's Participation in the Companies' DSM-EE Programs Is Widespread and**  
2 **Would Prevent It from Opting Out**

3 **Q. Does Walmart's participation in the Companies' DSM-EE programs create any**  
4 **obstacles to Walmart's ability to opt out of the Companies' DSM-EE charges?**

5 A. Yes. Mr. Baker does not address the opt-out criteria the Companies proposed to help  
6 ensure other customer classes do not subsidize an opting-out customer's energy-  
7 efficiency measures. Therefore, it is reasonable to assume Walmart does not object to  
8 those criteria.

9 But those criteria might create an obstacle to Walmart's ability to opt out of the  
10 Companies' DSM-EE charges. As Mr. Baker discusses in his testimony, Walmart  
11 participates in the Companies' DSM-EE programs at 35 locations in the Companies'  
12 service territories.<sup>21</sup> The Companies' opt-out proposal would preclude any meter from  
13 being opted out that had participated in a DSM-EE program within the previous 36 full  
14 billing cycles.<sup>22</sup> Therefore, at least with respect to those 35 locations, and possibly  
15 others that previously participated in DSM-EE programs, Walmart might not be able  
16 to opt out otherwise qualifying meters for a period of time (if the Commission approves  
17 the Companies' opt-out proposal in that regard) even if the Commission ultimately  
18 defines the industrial opt-out criteria to include Walmart.

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<sup>21</sup> Baker at 5.

<sup>22</sup> See Lovekamp Direct Exhibits REL-8 and REL-9.

1 Walmart’s “Self-Direct” Proposal Is Effectively a Commercial Opt-Out  
2 and Is Contrary to Statute

3 **Q. Mr. Baker proposes a self-direct program as an alternative to including Walmart**  
4 **in the industrial opt-out.<sup>23</sup> Could the Commission approve such a program in this**  
5 **proceeding?**

6 A. No, the Commission could not approve such a program in this proceeding for several  
7 reasons. First, the “program” as Mr. Baker describes it would essentially be an opt-out  
8 for commercial customers, which would be contrary to the clear statutory directive of  
9 KRS 278.285(3) that customer classes benefitting from DSM-EE programs should pay  
10 the costs of the programs: “The commission shall assign the cost of demand-side  
11 management programs only to the class or classes of customers which benefit from the  
12 programs.” As Mr. Baker testifies, Walmart benefits from the Companies’ DSM-EE  
13 programs for commercial customers not merely as a potential participant, but very  
14 much as an active participant. Therefore, it would be contrary to statute for Walmart  
15 to effectively opt out of the Companies’ DSM-EE charges and programs for  
16 commercial customers.

17 Second, KRS 278.285 provides that the Commission may consider and approve  
18 only those programs proposed by the applying utility. More specifically, KRS  
19 278.285(1) limits the Commission’s authority in this proceeding to reviewing for  
20 reasonableness the proposals made by the Companies: “The commission may  
21 determine the reasonableness of demand-side management plans *proposed by any*  
22 *utility under its jurisdiction.*”<sup>24</sup> This limit on the Commission’s authority means the

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<sup>23</sup> Baker at 16-18.

<sup>24</sup> Emphasis added.



1 Commission may not require the Companies to extend, expand, or even offer DSM-EE  
2 programs; the Commission must focus only on the proposal before it.<sup>25</sup> Certainly the  
3 Commission may approve all, part, or none of a utility’s DSM-EE proposal, and it may  
4 propose alternative programming for a utility to consider and accept, as the  
5 Commission did regarding LG&E’s Home Energy Assistance proposal in Case No.  
6 2001-00323.<sup>26</sup> Thus, the Commission may approve or deny in whole or in part the  
7 Companies’ Application, but may not grant Walmart’s request by requiring the  
8 Companies to offer a “self-direct” program for commercial customers.

9 **Q. Do you have any other concerns regarding Walmart’s proposed “self-direct”**  
10 **approach?**

11 A. Yes. Mr. Baker proposes a benchmark level of 15 million kWh per year aggregated  
12 across all sites in the particular utility territory as a criterion for participating in  
13 Walmart’s proposed “self-direct” opt-out for commercial customers. 807 KAR 5:041  
14 §9(2) states, “The utility shall regard each point of delivery as an independent customer  
15 and meter the power delivered at each point. Combined meter readings shall not be  
16 taken at separate points, nor shall energy used by more than one (1) residence or place

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<sup>25</sup> In 2009, SB 51 was introduced to expressly permit the Commission to order a utility to file a DSM plan. (*See* <http://www.lrc.ky.gov/record/09RS/SB51.htm>, last visited Sept. 29, 2014). The General Assembly’s refusal to enact this legislation is evidence of legislative intent to limit the Commission’s authority to review DSM plans, not require them.

<sup>26</sup> *In the Matter of: Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, People Organized and Working for Energy Reform, Kentucky Association for Community Action, and Jefferson County Government for the Establishment of a Home Energy Assistance Program*, Case No. 2001-00323, Order (Jan. 29, 2002); Case No. 2001-00323, Order (Dec. 27, 2001). In that case, the Commission rejected LG&E’s HEA proposal as not conforming to the requirements of KRS 278.285 and made another HEA proposal for LG&E to consider: “Accordingly, based on the evidence of record, the Commission will approve a modified HEA program, subject to acceptance by LG&E ....” Case No. 2001-00323, Order at 21 (Dec. 27, 2001). LG&E then filed a petition for rehearing that largely rejected the Commission’s proposal and made a revised HEA proposal. Case No. 2001-00323, Order at 1-2 (Jan. 29, 2002). And it was LG&E’s proposal on rehearing that the Commission approved; the Commission did not claim to exercise authority to impose upon LG&E the Commission’s own HEA proposal, although the Commission did impose certain reporting and administrative requirements as a condition of approval. *Id.* at 2-3.

1 of business on one (1) meter be measured to obtain a lower rate.” The proposal by Mr.  
2 Baker ignores this regulatory restriction and traditional rate-making principles by  
3 proposing to aggregate usage across customer sites, all in the service of a “self-direct”  
4 commercial opt-out that is contrary to statute irrespective of the criteria Walmart  
5 proposes.

6 Finally, the proposed “self-direct” program lacks some crucial characteristics  
7 that would distinguish it from a commercial opt-out. First, Walmart appears to be  
8 proposing to cease paying DSM-EE charges entirely: “The Commission should allow  
9 any non-residential customer who has electric usage above a benchmark level for all of  
10 its sites aggregated under one of the Companies to elect to not participate in KU’s or  
11 LG&E’s DSM program if it commits to achieve its own DSM/EE savings.”<sup>27</sup>  
12 According to the American Council for an Energy-Efficient Economy, the entity to  
13 which Walmart directed the Commission Staff in Walmart’s response concerning self-  
14 direct programs,<sup>28</sup> genuine self-direct programs typically involve the continuing  
15 payment of DSM-EE charges with an opportunity for qualifying customers to obtain  
16 funds or credits for efficiency investments or results, while at least some of the funds  
17 remain with the utility to fund program administration and to support DSM-EE  
18 programs for other customers.<sup>29</sup> In addition, genuine self-direct programs tend to have  
19 more rigorous measurement and verification requirements than Walmart’s proposed  
20 affidavit approach,<sup>30</sup> though Walmart says it is willing to entertain a reporting

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<sup>27</sup> Baker at 16.

<sup>28</sup> Walmart Response to Commission Staff DR No. 3 (Apr. 19, 2018).

<sup>29</sup> See American Council for an Energy-Efficient Economy, “Self-Direct Programs for Large Energy Users,” available at <http://aceee.org/sector/state-policy/toolkit/industrial-self-direct> (accessed April 12, 2018).

<sup>30</sup> *Id.* (“[G]ood self-direct programs typically require customers to make their own cost-effective energy efficiency investments, and program administrators measure and verify energy efficiency savings.”).

1 requirement if reports are required no more often than triennially.<sup>31</sup> Therefore,  
2 Walmart’s proposed “self-direct” program really is more of a commercial opt-out than  
3 a genuine self-direct program, and should be rejected under KRS 278.285(3) as an  
4 impermissible commercial opt-out and because the Companies have not proposed it.

5 **Q. Based on the criteria you discuss above concerning genuine self-direct programs,**  
6 **do the Companies already offer a program that is similar to, and arguably**  
7 **superior to, self-direct programs?**

8 A. Yes. The Companies’ Nonresidential Rebates Program resembles a self-direct program  
9 in at least two important respects, and it arguably has the potential to provide greater  
10 benefits to participants. First, customers can choose among a prescribed list of  
11 preapproved energy-saving measures to implement, or they can seek incentives for any  
12 energy-efficiency project, subject to preapproval by the Companies and verification of  
13 expected energy savings, much like typical self-direct programs. Second, the  
14 maximum annual incentive per customer facility is \$50,000, which could easily exceed  
15 the DSM-EE charges paid related to that facility, making the Companies’ program  
16 better than typical self-direct programs for some participants. Therefore, adding a  
17 genuine self-direct program to the Companies’ DSM-EE portfolio is unnecessary  
18 because the Companies already have a tried, tested, and successful program of that  
19 type, namely the Nonresidential Rebates Program. What the Companies do not have,  
20 do not need, and indeed cannot have under Kentucky law is the “self-direct” program  
21 Walmart has proposed, which is largely indistinguishable from a commercial opt-out.

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<sup>31</sup> Baker at 17.

1 **Conclusion and Recommendation**

2 **Q. Do you have any concluding remarks?**

3 A. Yes. To reiterate an important point I made at the beginning of my testimony, the  
4 Companies appreciate and applaud the energy-conserving efforts Walmart has made  
5 across the Companies' service territories. Walmart is indisputably a leader in this area.

6 But the Companies do not believe that Walmart's admittedly large retail  
7 operations make it an industrial customer in any sense that is consistent with the  
8 established meaning of "industrial" as used in Kentucky statutes, the energy sector, and  
9 by the Commission in its orders, precluding Walmart from availing itself of an  
10 industrial opt-out. And KRS 278.285(3) simply does not permit non-industrial opt-  
11 outs, requiring the members of each rate class to pay the costs of Commission-approved  
12 programs available to that class. Therefore, the Commission must deny all of  
13 Walmart's requested relief in this proceeding.

14 **Q. What do you recommend to the Commission?**

15 A. I continue to recommend that the Commission approve the Proposed DSM-EE Program  
16 Plan as filed. The Companies have engaged in rigorous DSM-EE analysis and planning  
17 to ensure programs are consistent with regulatory requirements, encourage customer  
18 participation, and provide opportunities for customers to equitably contribute to and  
19 benefit from the Companies' DSM-EE offerings.

20 **Q. Does this conclude your testimony?**

21 A. Yes.

VERIFICATION

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

The undersigned, **Rick E. Lovekamp**, being duly sworn, deposes and says that he is Manager Regulatory Strategy/Policy for Louisville Gas and Electric Company and Kentucky Utilities Company, an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.

  
Rick E. Lovekamp

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 14<sup>th</sup> day of April 2018.

 (SEAL)  
Notary Public

My Commission Expires:  
JUDY SCHOOLER  
Notary Public, State at Large, KY  
My commission expires July 11, 2018  
Notary ID # 512743

**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 CONTINUATION OF CERTAIN )  
EXISTING DEMAND-SIDE MANAGEMENT )  
AND ENERGY EFFICIENCY PROGRAMS )**

**CASE NO. 2017-00441**

**REBUTTAL TESTIMONY OF  
GREGORY S. LAWSON  
MANAGER, ENERGY EFFICIENCY PLANNING & DEVELOPMENT  
LG&E KU SERVICES COMPANY**

**Filed: April 24, 2018**

1 **Q. Please state your name, position and business address.**

2 A. My name is Gregory S. Lawson. I am the Manager, Energy Efficiency Planning &  
3 Development, for LG&E KU Services Company, which provides services to Louisville  
4 Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”)  
5 (collectively “Companies”). My business address is 220 West Main Street, Louisville,  
6 Kentucky.

7 **Q. What is the purpose of your rebuttal testimony?**

8 A. The purpose of my rebuttal testimony is to address the testimony of Cathy Hinko on  
9 behalf of the Metropolitan Housing Coalition (“MHC”). In particular, I explain that  
10 the Companies’ proposed demand-side management and energy-efficiency (“DSM-  
11 EE”) portfolio should be highly appealing to the interests represented by Ms. Hinko  
12 based on her expressed concerns about the collection of DSM-EE funds versus where  
13 program funding ultimately is spent. Also, I note that increasing the Companies’ DSM-  
14 EE programs in terms of funding or kind would likely exacerbate the very concerns  
15 Ms. Hinko expresses. Finally, I explain why it is impermissible to include externalities  
16 in DSM-EE cost-benefit analyses.

17 **Q. Did the Companies consider low-income concerns when formulating their  
18 proposed DSM-EE Program Plan?**

19 A. Absolutely. The Companies have extensive experience in serving low- and fixed-  
20 income customers, and have made significant and ongoing efforts to understand and  
21 address the issues such customers face. Among those efforts is including low-income  
22 representatives, including MHC, in the Companies’ DSM-EE Advisory Group. The  
23 Companies’ proposed DSM-EE Program Plan shows the Companies’ continuing

1 commitment to deploying the WeCare program in cost-effective ways to help low-  
2 income customers become more energy-efficient; indeed, as I discuss further below,  
3 WeCare is the largest program in the proposed DSM-EE Program Plan by a wide  
4 margin. Therefore, although the Companies have a number of concerns with Ms.  
5 Hinko’s testimony, which I address below, we remain firmly committed to working  
6 together with MHC and other low-income advocates whenever reasonably possible to  
7 be of assistance to low- and fixed-income customers.

8 **Q. Ms. Hinko expresses concern that low- and fixed-income customers have**  
9 **difficulties paying their energy bills.<sup>1</sup> Will the Companies’ proposed DSM-EE**  
10 **Program Plan tend to decrease bills for customers generally, including low- and**  
11 **fixed-income customers?**

12 A. Yes. One of the benefits of the Companies’ proposed DSM-EE Program Plan is that it  
13 requires significantly less revenue than the Companies’ current DSM-EE portfolio,  
14 which means the Companies are proposing to collect less from customers through  
15 DSM-EE charges. To be clear, the Companies’ current and previous Commission-  
16 approved DSM-EE portfolios are and were cost-effective and reasonable. But load  
17 conditions have changed significantly in recent years, requiring major changes to the  
18 Companies’ DSM-EE programs going forward to ensure they continue to provide  
19 benefits that exceed their costs. As a result, the DSM-EE Program Plan presented in  
20 this proceeding is markedly smaller and has a lower revenue requirement than the  
21 Companies have requested in over a decade. One consequence of a small portfolio and  
22 revenue requirement is that all residential customers will enjoy a reduced DSM-EE rate

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<sup>1</sup> See Hinko at 4-6.



1 on their bills. This DSM-EE rate reduction should be particularly helpful to customers  
2 with low or fixed incomes, and should therefore be welcome news to MHC.

3 **Q. Ms. Hinko states, “Demand Side Management is one way of making sure that**  
4 **families, the elderly and disabled and low-wage workers can be stable by**  
5 **controlling cost.”<sup>2</sup> How will the Companies’ proposed DSM-EE Program Plan**  
6 **help the customers about whom Ms. Hinko is concerned?**

7 A. In addition to reducing their DSM-EE rate, the proposed DSM-EE Program Plan  
8 revises the Companies’ DSM-EE portfolio so that the WeCare program, which targets  
9 low-income customers, moves from being one of the largest programs in the portfolio  
10 to being the largest single program in the residential portfolio by a wide margin.  
11 Indeed, WeCare’s budget is well more than double than the next-largest residential  
12 DSM-EE program for all plan years except 2019, when it is nearly double.<sup>3</sup> In addition,  
13 the Companies are requesting in this proceeding to increase the maximum income  
14 requirement of the WeCare program so that it matches that of the Weatherization  
15 Assistance Program, which is 200% of the federal poverty level. This will allow more  
16 low-income customers to participate in the program. The Companies have also  
17 proposed to allow master-metered multifamily buildings to qualify for WeCare  
18 program services, broadening the scope of low-income customers who can receive  
19 benefits from WeCare. The Companies have proposed these changes as a result of  
20 working with, and receiving input from, low-income groups about how to better serve  
21 these customers. Therefore, the Companies’ proposed DSM-EE Program Plan aligns

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<sup>2</sup> *Id.* at 6.

<sup>3</sup> *See* Lawson Direct at 20.

1 well with MHC’s expressed interest in having DSM-EE programming help “elderly  
2 and disabled and low-wage workers ... be stable by controlling cost.”

3 **Q. Ms. Hinko testifies that low-income areas have larger proportions of older housing  
4 stock, are segregated by race, and have higher percentages of single-parent  
5 households.<sup>4</sup> She further states, “Investing in these areas to bring down cost is  
6 imperative.”<sup>5</sup> How do you respond?**

7 A. The Companies agree that the challenges faced by their low- and fixed-income  
8 customers are real and significant, and believe that their proposed residential DSM-EE  
9 portfolio, with its heavy emphasis on WeCare, is particularly targeted toward helping  
10 reduce energy costs for those most in need.

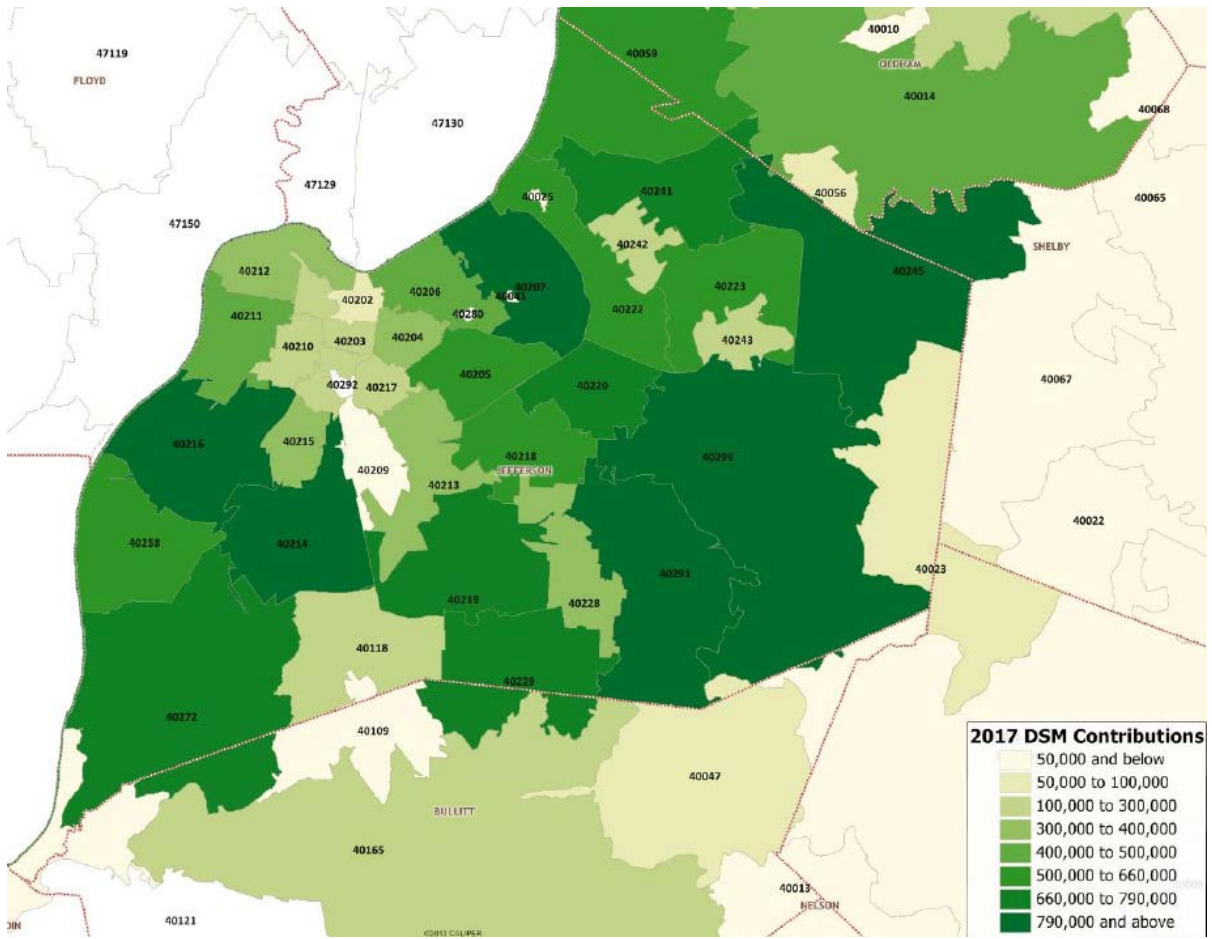
11 But the Companies want to be exceedingly clear that they do not discriminate  
12 in rates or service among customers based on race, sex, national origin, ethnicity,  
13 marriage status, age, or any other non-utility-service-related characteristic. Such  
14 discrimination would be prohibited by KRS 278.030(3) and KRS 278.170(1).

15 Indeed, the Companies’ proposed DSM-EE Program Plan, due to its heavy  
16 emphasis on WeCare, has a residential revenue collection versus benefit distribution  
17 pattern in Jefferson County that would appear favorable from MHC’s perspective. The  
18 map below shows the DSM-EE residential revenues LG&E collected in Jefferson  
19 County and some surrounding areas during calendar year 2017, which should be  
20 roughly representative of the relative concentrations of revenue collections across the  
21 proposed DSM-EE Program Plan period (2019-2025):

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<sup>4</sup> See Hinko at 6-10.

<sup>5</sup> *Id.* at 7.



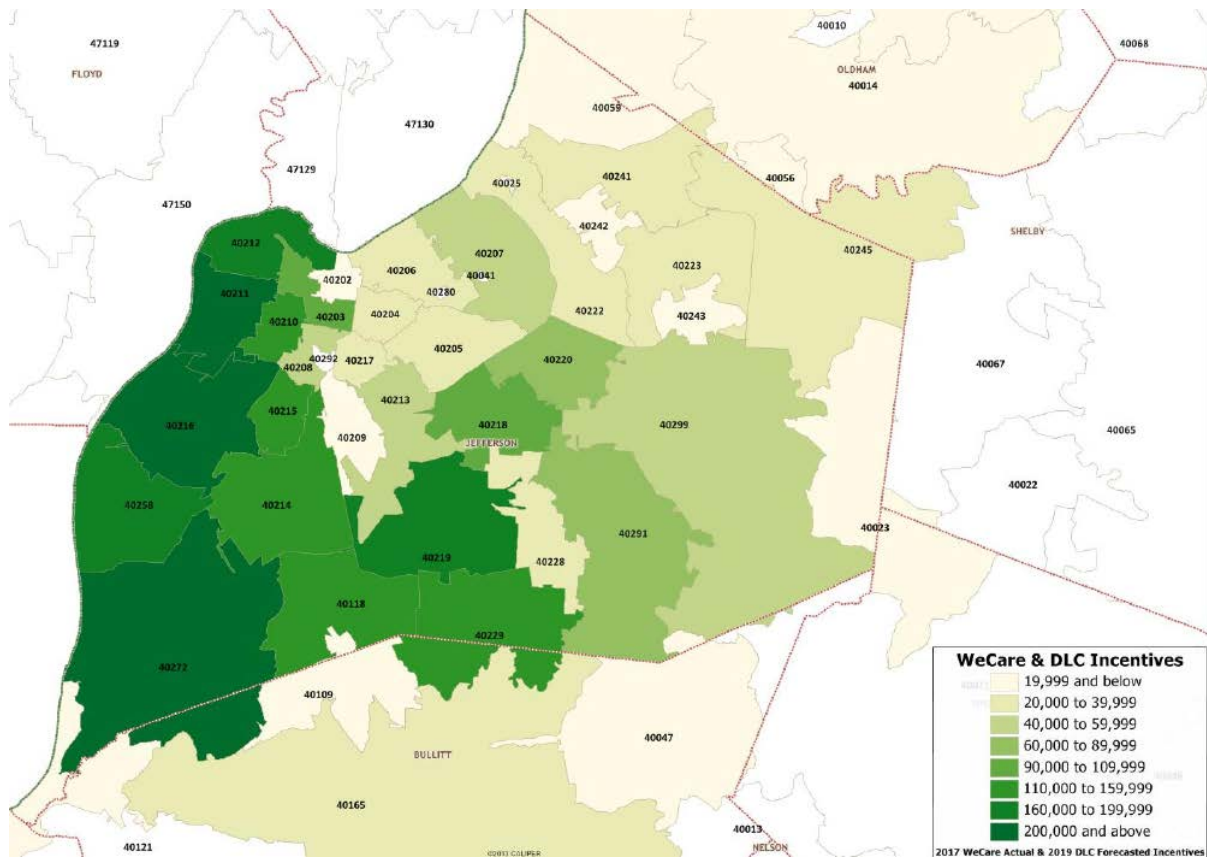
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The following map shows the projected distribution of DSM-EE benefits from the WeCare and Residential and Small Nonresidential Demand Conservation Programs for 2019 (using actual 2017 WeCare data and projected 2019 demand conservation data):



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**Q. Have the Companies sought to inform all customers, including low- and fixed-income customers, about the Companies' DSM-EE program offerings?**

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**A.** Yes. The Companies' advertising and customer education efforts have extended across all geographies in their service territories and used multiple advertising and education media to attempt to reach all customers. Those efforts have included direct mail campaigns, city bus and bus shelter advertisements, billboards, newspaper, television

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1 and radio advertisements, and other efforts designed to reach customers of all kinds  
2 across the Companies' entire service territory. The Companies have made special  
3 efforts to reach out to and include low-income customers in their programs, including  
4 working with low-income groups to aid in enrolling such customers and inviting MHC  
5 and other low-income advocates to participate in the Companies' DSM-EE Advisory  
6 Group. In addition, the Companies made special customer outreach and education  
7 efforts through the WeCare program that included holding or attending almost 200  
8 events in calendar year 2017 that resulted in 1,200 WeCare enrollments. In short, the  
9 Companies have made significant efforts to ensure all customers, including low-  
10 income customers, are aware of the Companies' DSM-EE programs.

11 **Q. Ms. Hinko criticizes the Companies for not providing gas data in its response to**  
12 **Question No. 9 of MHC's Second Set of Data Requests and "posits that areas of**  
13 **high poverty and racial segregation (and for which we have zoning maps showing**  
14 **the square footage to be considerably less per residence than in affluent areas that**  
15 **are 98% white) and where gas heat predominates, are the areas**  
16 **disproportionately in need of programs lowering energy usage."**<sup>6</sup> **How do you**  
17 **respond?**

18 A. Not providing gas data in response to MHC's request was an oversight that first came  
19 to the Companies' attention through Ms. Hinko's testimony; it was not an intentional  
20 withholding of information. The Companies filed on April 9, 2018, a supplemental  
21 response to MHC's request containing gas data responsive to MHC's request, presented  
22 by zip code and over the same time period as the electric data the Companies previously

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<sup>6</sup> Hinko at 11.

1 provided.<sup>7</sup> The data does not obviously support MHC’s hypothesis. First, it is  
2 important to observe from Ms. Hinko’s data that gas heat predominates across the  
3 entirety of LG&E’s Jefferson County service territory.<sup>8</sup> Second, looking again to the  
4 Companies’ data on gas usage, certainly it is true that some of the highest percentage  
5 reductions in usage between 2011 and 2017 occurred in wealthier zip codes, e.g., 40025  
6 and 40027. But most zip codes across Jefferson County were very close to the  
7 countywide average decrease of 19%. Indeed, the three zip codes Ms. Hinko identified  
8 in her testimony as not being in wealthier parts of Jefferson County, namely 40210,  
9 40211, and 40212, all had above-average gas-usage decreases from 2011 to 2017 of  
10 21%, 21%, and 20%, respectively.

11 That being said, the Companies do not doubt that low- and fixed-income  
12 customers could benefit from DSM-EE programs targeted to their needs. As I said  
13 above, WeCare is the program aimed at such needs, and the Companies’ proposed  
14 DSM-EE Program Plan is heavily weighted toward WeCare. Presumably, therefore,  
15 MHC should support the Companies’ proposed DSM-EE Program Plan.

16 **Q. Ms. Hinko argues that the Commission should “[m]oderniz[e] the [DSM-EE]  
17 cost/benefit analysis to include externalities,” in part because “[u]tilities costs have  
18 skyrocketed,” making “DSM programs ... essential.” Do you agree with Ms.  
19 Hinko’s assertions?**

20 A. The Companies agree that cost-effective DSM-EE programs are important to help  
21 customers contain their utility costs. But I do not agree that utility costs have

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<sup>7</sup> Supplemental Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Metropolitan Housing Coalition’s Second Set of Data Requests dated February 21, 2018 (Apr. 9, 2018).

<sup>8</sup> See Hinko at 11 (Map 15).

<sup>9</sup> Hinko at 12.

1 skyrocketed, at least with respect to the LG&E data Ms. Hinko presents. The “15-year  
2 cost comparison” tables presented at the top of page 12 of Ms. Hinko’s testimony show  
3 that a combined LG&E electric and gas customer with the usage levels shown (1,000  
4 kWh and 70 Ccf) would have had a bill of \$209.71 in August 2008 based on the charges  
5 shown. The same usage levels applied to the same charges LG&E billed for usage in  
6 the month of February 2018 would have resulted in a total bill of \$194.46. In other  
7 words, without adjusting for inflation, the combined electric and gas bill in August  
8 2008 was higher in nominal dollar terms than the bill for the same amount of  
9 consumption in February 2018 by more than \$15.00. Adjusting for inflation, the  
10 August 2008 bill expressed in February 2018 dollars would be \$238.34, more than \$40  
11 higher than the actual February 2018 bill would have been for that level of electric and  
12 gas usage.<sup>10</sup> Decreased charges for the same consumption in both real and nominal  
13 terms across almost ten years do not constitute “skyrocketing” utility bills.

14 Even if August 1998 were deemed to be the appropriate date for comparison,  
15 the inflation-adjusted bill for the same usage would have come to \$161.62 in February  
16 2018 dollars, meaning a roughly 1% real annual increase in cost between August 1998  
17 and February 2018. If January 2013 were deemed to be the appropriate date for  
18 comparison, the inflation-adjusted bill for the same usage would have come to \$173.56  
19 in February 2018 dollars, meaning a roughly 2.3% real annual increase in cost between  
20 January 2013 and February 2018. Though the increases using these points of  
21 comparison are real, they cannot reasonably be described by any objective measure as  
22 “skyrocketing.”

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<sup>10</sup> All inflation calculations were conducted using the U.S. Bureau of Labor Statistics CPI Inflation Calculator available at <https://data.bls.gov/cgi-bin/cpicalc.pl> (accessed April 3, 2018).

1 More importantly, they do not provide any basis for the Commission to exceed  
2 its legal bounds by including externalities in DSM-EE cost-benefit calculations. The  
3 Commission has previously recognized that its jurisdiction extends only to the rates  
4 and service of utilities,<sup>11</sup> and in the Companies’ 2014 DSM-EE proceeding declined to  
5 take into account so-called non-energy benefits.<sup>12</sup>

6 Finally, as I discussed above, the Companies’ proposed DSM-EE Program Plan  
7 will reduce, not increase, DSM-EE rates. If MHC is concerned about “skyrocketing”  
8 utility bills, it would seem consistent to applaud decreasing DSM-EE rates, not to seek  
9 to include externalities in cost-benefit analyses, which presumably would result in  
10 increased DSM-EE programs, costs, and rates without commensurate utility rate or  
11 service benefits.

12 **Q. Do you agree with MHC’s arguments in favor of including externalities in DSM-  
13 EE cost-benefit analyses based on actions taken by Metro-Louisville?**

14 A. No. None of what Ms. Hinko testifies about concerning Louisville’s hiring of a Chief  
15 Resilience Officer or forming a Department of Sustainability alters this Commission’s  
16 jurisdiction.<sup>13</sup> Whatever the merits of Urban Heat Island Project and its reports and  
17 conclusions, or those of the Louisville Metro Department of Health and Wellness  
18 concerning health equity, they do not affect the Companies’ cost to provide service,

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<sup>11</sup> *In the Matter of: Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, Case No. 2012-00222, Order at 4 (Oct. 17, 2012) (quoting *Enviro Power, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at 3 (Ky. App. 2007) (not to be published) (“[R]ates’ or ‘service’ ... are the only two subjects under the jurisdiction of the PSC.”)).

<sup>12</sup> *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy-Efficiency Programs*, Case No. 2014-00003, Order at 26 (Nov. 14, 2014)

<sup>13</sup> See Hinko at 13.



1 and therefore are not jurisdictional to the Commission and cannot be included in DSM-  
2 EE cost-benefit analyses.

3 In addition, Ms. Hinko does not specify which externalities she believes the  
4 Commission should require the Companies and other utilities to include in their DSM-  
5 EE cost-benefit analyses, or how such externalities should be included. She also does  
6 not address whether increasing DSM-EE charges would have externality-costs that  
7 might exceed externality-benefits; presumably both kinds of externalities would need  
8 to be included to avoid having misleading and inaccurate cost-benefit studies.  
9 Therefore, MHC has not presented a developed proposal upon which the Commission  
10 could act, which is another reason for the Commission to refuse to do so.

11 **Q. Ms. Hinko cites to two maps attached to her testimony concerning cancer and**  
12 **asthma in Jefferson County analyzed by race and sex, and asserts, “Failing to**  
13 **include externalities has a disproportionately negative impact on people in fair**  
14 **housing and public accommodation protected categories and m[a]y transgress**  
15 **federal law using the analysis of ... [a] 2015 U.S. Supreme Court decision ....”<sup>14</sup>**  
16 **Do you agree?**

17 A. No. Yet again, the effect of the Companies’ proposed DSM-EE Program Plan, as  
18 shown in the maps I provided above, will be to direct the lion’s share of residential  
19 DSM-EE benefits to the areas Ms. Hinko believes most need them, including the areas  
20 shown in her maps related to asthma and cancer. Moreover, this will occur without any  
21 accounting for the externalities Ms. Hinko supports but has not described, which would  
22 appear to eliminate any concern about possible transgressions of federal law to which

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<sup>14</sup> Hinko at 14.

1 Ms. Hinko alludes. Therefore, MHC should support the Companies' proposed DSM-  
2 EE Program Plan.

3 This point applies with equal force in response to Ms. Hinko's assertions that  
4 MHC desires to see DSM-EE funds used geographically in proportion to the areas from  
5 which DSM-EE funds are collected, and that "MHC believes that an assessment should  
6 be done to determine the amount of money coming from low-income neighborhoods  
7 in DSM charges with a concomitant study on where the DSM money is spent."<sup>15</sup> The  
8 analysis Ms. Hinko requests is provided in the maps in my testimony above, and what  
9 it shows would appear to be favorable from MHC's perspective.

10 **Q. Ms. Hinko states, "The new program that allows people to track usage on their**  
11 **computer seems to ignore the technology gap in low income households."**<sup>16</sup> **To**  
12 **which "new program" is Ms. Hinko referring?**

13 A. I assume Ms. Hinko is referring to the Companies' AMS Customer Offering, which the  
14 Companies proposed and the Commission approved in Case No. 2014-00003, a case in  
15 which MHC intervened and Ms. Hinko testified. Although it is true the AMS offering  
16 has not been as well subscribed in the areas of Ms. Hinko's concern, about 1/5 of the  
17 residential AMS meters deployed to date in Jefferson County have been installed in zip  
18 codes with higher concentrations of low-income customers. Therefore, the customers  
19 about whom MHC are concerned have participated in the offering to an appreciable  
20 extent.

21 **Q. Ms. Hinko then states, "That new program [presumably the AMS Customer**  
22 **Offering], combined with rebates for appliances beyond the financial capability**

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<sup>15</sup> Hinko at 15.

<sup>16</sup> *Id.*

1           **of low-income people and not used by landlords of lower-rent areas, may result in**  
2           **inequity.”<sup>17</sup> Are the Companies offering an appliance-rebate program as part of**  
3           **their proposed DSM-EE Program Plan?**

4    A.    No. It is not clear why Ms. Hinko addresses a program not included in the Companies’  
5           proposed DSM-EE Program Plan.

6    **Q.    Ms. Hinko concludes her testimony by arguing, “Other programs should be**  
7           **considered as well.”<sup>18</sup> Did the Companies consider other DSM-EE programs or**  
8           **measures before filing their proposed DSM-EE Program Plan?**

9    A.    Yes. As I described in my direct testimony and as shown in the DSM Program Review  
10           attached to my direct testimony as Exhibit GSL-2, the Companies and their vendor,  
11           Cadmus, reviewed and evaluated numerous possible DSM-EE programs and measures.  
12           Ultimately, the only programs and offerings that were cost-effective were included in  
13           the Companies’ proposed DSM-EE Program Plan.

14   **Q.    What do you recommend to the Commission?**

15   A.    I continue to recommend that the Commission approve the proposed DSM-EE Program  
16           Plan as filed. The Companies’ Proposed DSM-EE Program Plan will achieve cost-  
17           effective demand and energy savings and is the product of thorough analysis, cost-  
18           benefit testing, and collaboration with the DSM-EE Advisory Group, of which MHC  
19           is a member and participant.

20   **Q.    Does this conclude your testimony?**

21   A.    Yes.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 15.

