

**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 SERVICE; (2) APPROVAL)
OF TARIFFS AND RIDERS; (3) APPROVAL)
OF ACCOUNTING PRACTICES TO)
ESTABLISH REGULATORY ASSETS AND)
LIABILITIES; (4) APPROVAL OF A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY; AND (5) ALL OTHER)
REQUIRED APPROVALS AND RELIEF)**

CASE NO. 2020-00174

MOTION TO INTERVENE OF WALMART INC.

Pursuant to K.R.S. § 278.310 and 807 KAR 5:001 Section 4(11), Walmart Inc. ("Walmart"), by its attorneys, respectfully requests that the Kentucky Public Service Commission ("Commission") permit it to intervene and become a party in the above-captioned matter. In support of its Motion to Intervene, Walmart states as follows:

1. On May 29, 2020, Kentucky Power Company ("KPCo" or "Company") filed a Notice of Intent to file an Application for (1) a general adjustment of its rates for electric service; (2) approval of tariffs and riders; (3) approval of accounting practices to establish regulatory assets and liabilities; (4) approval of a certificate of public convenience and necessity; and (5) all other required approvals and relief.

2. The Company subsequently filed its Application on June 29, 2020.

3. The Commission has not yet set a deadline for the filing of requests for leave to intervene.

4. Under 807 KAR 5:001, Section 4(11)(b), the Commission shall grant leave to intervene if it finds that "a timely motion for intervention" was made, that the party seeking intervention has "a special interest in the case that is not otherwise adequately represented," or that "intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly disrupting the proceedings."

5. Walmart is a national retailer of goods and services throughout the United States. Walmart's principal office is at 2608 SE J Street, Bentonville, AR 72716.

6. Walmart has the privilege of providing its retail services in the Commonwealth of Kentucky and directly employs over 28,000 individuals and indirectly supports another 40,000 supplier jobs within this Commonwealth.¹ Indeed, Walmart is one of the largest employers in Kentucky.

7. Walmart is a large commercial customer of the Company. Walmart has 9 retail facilities in Kentucky that are served by the Company. Walmart purchased more than 31 million kWh in 2019 and over 12 million kWh so far in 2020 from KPCo, principally under the Industrial General Service Rate Schedule. In light of the significant amount of electricity purchased by Walmart, any modification to the Company's rates has the potential to substantially impact Walmart's operations and personnel in Kentucky.

8. Walmart's electricity needs -- and the impact of KPCo's Application on Walmart's facilities within the Company's service territory -- are unique both as compared to other commercial customers and to customers who take service from the Company under the Industrial General Service Rate Schedule. First, Walmart is a single customer that purchases substantial amounts of energy for numerous accounts across multiple locations within the Company's service

¹ <https://corporate.walmart.com/our-story/locations/united-states/kentucky>

territory. Other customers purchasing similar amounts of energy often do so for a single or only a handful of locations whereas Walmart's energy needs are for 9 different facilities. Second, Walmart's load profile differs significantly from other customers in its rate class because it typically operates 24 hours a day² and does not have the load fluctuations often seen from other customers in its rate class who may see spikes or declines in energy usage due to manufacturing or production processes that vary with changes in economic conditions.

9. Each of these factors make Walmart's interest in this case unique and special.

10. No other party could adequately represent Walmart's unique interests in this proceeding. While it is true that the Office of the Attorney General has a statutory mandate pursuant to KRS 367.150(8) to represent consumers' interests, it does not have a mandate to represent a subset or a single customer's interests. Moreover, when read in context, KRS 361.150(8) is part of Kentucky's Consumer Protection Act³, which focuses on protecting the individual consumer rather than an entity like Walmart. Consistent with the mandate in KRS 361.150(8) and the Kentucky Consumer Protection Act's focus on the individual consumer, the Attorney General has historically focused most closely on issues impacting residential consumers in cases of this nature.⁴

11. Testimony that Walmart would present in this proceeding will provide the unique perspective of a commercial customer impacted by KPCo's requested rate increase. Walmart's testimony will also be informed by its experience as a customer that maintains operations on a

² Some of Walmart's operating hours have been adjusted due to the COVID-19 pandemic.

³ See KRS 361.120(2).

⁴ Indeed, in *In the Matter of Application of Big Rivers Electric Corporation for Approval to Modify MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, Case No. 2020-00064 at Post-Hearing Brief of Attorney General, pp. 2-3, the Attorney General advocated for a "per customer" as opposed to a "per kWh" bill credit mechanism, which favored residential customers over other types of customers (e.g., commercial and industrial).

national basis and is attuned to regional and national issues and trends. Walmart's unique understanding and input will assist the Commission in adjudicating this case and evaluating the question of whether the rate increase requested by the Company or otherwise resolved through settlement is just and reasonable for all rate classes. That perspective cannot be provided or represented by the Office of the Attorney General or by any other party to these proceedings.

12. Walmart was an intervening party and active participant in the Company's 2017 rate case, Case No. 2017-00179, its 2014 rate case, Case No. 2014-00396, and its 2013 rate case, Case No. 2013-00197.⁵ In all these matters, Walmart has advocated specifically on its own behalf and for other similarly situated customers, offering testimony that provided a perspective different from all other parties and witnesses offering testimony in these proceedings. Moreover, Walmart did so in a way that provided a more complete record for Commission consideration and without disrupting the proceedings. Indeed, the Commission relied, in part, on testimony provided by Walmart in awarding KPCo a 9.70 percent return on equity ("ROE") in its 2017 rate case.⁶

13. Walmart expects to present the testimony of Lisa Perry, Walmart's Senior Manager, Energy Services, and may choose to present testimony of other witnesses not yet identified.

⁵ Walmart has also been an active participant before this Commission in matters filed by Kentucky Utilities ("KU") and Louisville Gas & Electric ("LG&E"), including their 2018 rate case, Case Nos. 2018-00294 and 2018-00295, their 2016 rate case, Case Nos. 2016-00370 and 2016-00371, and their 2014 rate case, Case Nos. 2014-00370 and 2014-00371.

⁶ In *"In the Matter of Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2017 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 Requested Approvals and Relief,"* Case No. 2017-00179 ("KPCO 2017 Base Rate Case"), Final Order (Entered Jan. 18, 2018) at p. 29-30, the Commission cited to specifically to Walmart Witness Greg Tillman's testimony regarding nationwide trends on ROE in awarding KPCo a 9.70 percent ROE and rejecting the 9.75 percent ROE proposed in a settlement agreement.

14. The attorneys representing Walmart in this proceeding are:

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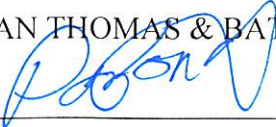
Mr. Parker is authorized to accept service of papers in this proceeding on behalf of Walmart. Walmart also respectfully requests that Ms. Grundmann and Mr. Naum be added jointly to the service list. Walmart plans to file motions for Ms. Grundmann and/or Mr. Naum to be admitted *pro hac vice* before this Commission, and subsequent to any Commission grant of such requests, Walmart requests that Ms. Grundmann and Mr. Naum be added to the official service list as attorneys authorized to accept service of papers in this proceeding.

WHEREFORE, Walmart respectfully requests that it be granted leave to intervene and be made a party to the above-captioned proceeding.

Respectfully submitted,

SPILMAN THOMAS & BATTLE, PLLC

By



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Counsel to Walmart Inc.

Dated: July 2, 2020

CERTIFICATE OF SERVICE

I hereby certify that Walmart's July 2, 2020, electronic filing is a true and accurate copy of the Motion to Intervene; and that on July 2, 2020, the electronic filing has been transmitted to the Commission. Pursuant to the Commission's Order dated March 24, 2020, in Case No. 2020-00085, and in accord with all other applicable law, counsel certifies that an electronic copy of the foregoing was served by email to the following. A physical copy of the filing will be submitted to the Commission within 30 days after the Governor lifts the current State of Emergency.

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