COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF AMERICAN ELECTRIC POWER COMPANY, INC., KENTUCKY POWER COMPANY AND LIBERTY UTILITIES CO. FOR APPROVAL OF THE TRANSFER OF OWNERSHIP AND CONTROL OF KENTUCKY POWER COMPANY	**)))))))**	**CASE NO. 2021-00481**

<u>POST-HEARING BRIEF OF WALMART INC.</u>

Walmart Inc. ("Walmart"), by counsel, respectfully submits its Post-Hearing Brief to the Kentucky Public Service Commission ("Commission") in the above matter and states as follows:

I. <u>INTRODUCTION</u>

Walmart recognizes that the standard for approval of a transaction of this type is set forth in KRS 278.020 (6) and (7), and requires that:

> (6) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.
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> (7) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. . . . The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. . . .

For purposes of its Post-Hearing Brief, Walmart focuses predominantly on three aspects of this case that relate to whether the Commission should find that this transaction is "in the public interest," including: (1) the renewable energy goals of Liberty Utilities Co. ("Liberty") as compared to American Electric Power Company ("AEP"); (2) Liberty's commitment to convene a stakeholder process within 60 days of closing to consider one or more renewable energy offerings as recommended by Walmart; and (3) the credit to customers proposed collectively by AEP and Liberty versus the alternative credit proposed jointly by the Kentucky Industrial Utility Customers, Inc. ("KIUC") and the Office of the Attorney General ("AG").

II. FACTUAL AND PROCEDURAL BACKGROUND

On January 4, 2022, AEP, Kentucky Power Company ("Kentucky Power" or "KPCo"), and Liberty (collectively, "Joint Applicants") filed a Joint Application for Approval of the Transfer of Ownership and Control of Kentucky Power to Liberty ("Application"). The Joint Applicants requested Commission approval to transfer ownership of Kentucky Power's common stock from its parent company, AEP, to Liberty resulting in Kentucky Power becoming a wholly owned subsidiary of Liberty.

On January 11, 2022, Walmart filed its Motion to Intervene, which was granted by Commission Order dated January 18, 2022. Walmart thereafter filed the Direct Testimony and Exhibit of Lisa V. Perry, Senior Manager, Energy Services for Walmart on February 21, 2022. Ms. Perry's testimony focused on Walmart's request that Liberty create a stakeholder group to consider and develop a renewable energy offering to be proposed for Commission approval. Ms. Perry testified during the course of the hearing conducted in this matter on March 28-29, 2022.

III. ARGUMENT

A. The Renewable Energy Goals of AEP and Liberty are Practically Identical.

Much concern has been expressed about Liberty's (and its corporate parent, Algonquin Power and Utilities Corporation's ("Algonquin")) stated corporate renewable energy goal of being net zero carbon by 2050,[1] and whether, if Liberty successfully acquires KPCo, KPCo will also share its corporate parent's renewable energy goal.[2] Emphasizing this point is a red herring because KPCo's *current* corporate parent already has the exact same renewable energy goal. Specifically, AEP has pledged to reduce its carbon emissions by 80 percent (based on 2000 baseline levels) by 2030 and to be net zero carbon by 2050.[3] Such a commitment is commonplace among nearly all electric utilities in the United States, including the corporate parents of two other investor-owned utilities in this Commonwealth, Duke Energy Kentucky, Inc. ("Duke")[4], and Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LGE").[5] Liberty's corporate energy goals are not a reason to reject this transaction.

It is additionally worth noting that, under AEP's ownership, KPCo is slated to build 450 MW of solar and 1,000 MW of wind, totaling 1.45 GW, by 2030.[6] By contrast, Liberty only estimates the potential need for up to 1.1 GW of replacement energy stemming from the cessation of the Rockport plant in 2022 and Mitchell plant in 2028, among other potential retirements or transfers. While Liberty admits that it has often found solar to be the least expensive resource, it committed to studying what makes sense from a long-term perspective based on reliability and customer benefit, among other considerations, and to bring forward future resource proposals as part of integrated resource plan filings with the Commission.[7] Ultimately, resource additions will

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[1] *See* https://algonquinpower.com/sustainability/net-zero-2050.html (last visited Apr. 6, 2022).

[2] Mar. 28, 2022, Transcript ("Tr."), 14:54:18 to 14:54:42.

[3] Liberty Hearing Ex. 1, p. 35.

[4] *See* https://news.duke-energy.com/releases/duke-energy-expands-clean-energy-action-plan#:~:text=Duke%20Energy%20is%20executing%20an,zero%20carbon%20emissions%20by%202050. (setting net zero carbon goal by 2050).

[5] https://www.pplweb.com/sustainability/climate-action/ (PPL Corporation, the parent of KU and LGE, setting a net zero carbon goal by 2050).

[6]Liberty Hearing Ex. 1, p. 13.

[7] Mar. 28, 2022, Tr., 9:56:15-9:57:55.

be chosen, in part, based on what is in the best interest of customers.[8] Liberty's ownership of KPCo in no way alters this fundamental concept.

B. **<u>The Commission Should Find that Liberty's Commitment to Convene a Stakeholder Process to Consider Renewable Energy Offerings Benefits the Public Interest</u>.**

Liberty has committed to convene a stakeholder process within sixty (60) days of the closing of the acquisition in order to consider and develop one or more renewable energy offerings to be proposed for Commission approval.[9] Walmart was the party to make this original recommendation,[10] and Walmart is pleased that Liberty is willing to adopt this proposal without being ordered by the Commission that they do so. A broad, inclusive stakeholder process is the best method to consider bringing viable, economic renewable energy options to Kentucky.

Walmart has operations throughout KPCo's service territory. Its employees and customers are the very people who bear the burden of the costs of the electricity provided by KPCo. While Walmart certainly believes in expanding renewable energy and has articulated significant corporate goals to that end,[11] it has never pursued those goals untethered from the economics of such projects, and it does not intend to do so here. Rather, it has long been Walmart's position that the pursuit of renewable energy not only benefits the environment, but it also can be the most economic choice. That perspective applies here, too.

The stakeholder process recommended by Walmart is precisely that – a process where <u>all</u> interested stakeholders can meet to discuss potential paths forward for renewable energy options in Kentucky. Some work has already been done with KPCo under AEP management, but Walmart

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[8] Mar. 28, 2022, Tr., 9:58:27-9:58:47.

[9] Rebuttal Testimony of Peter Eichler ("Eichler Rebuttal"), p. 27, lines 6-9.

[10] Direct Testimony of Lisa V. Perry ("Perry Direct"), p. 9, lines 8-13.

[11] *Id.*, p. 3, lines 5-14.

would like to consider additional opportunities. No interested party or group, even those who may deem themselves opposed to renewable energy, should see Walmart's request as adopted by Liberty as somehow excluding them from the conversation. Quite the contrary, this stakeholder process presents an opportunity for all parties to discuss how renewable energy may become part of KPCo's future in an inclusive and collaborative way. Walmart hopes that the Commission and other interested parties view the willingness of Liberty to engage with stakeholders on this immensely divisive topic as a benefit to the public interest as it reflects – as Liberty has stated – a desire to work collaboratively with the KPCo customer base.

C. Any Customer Benefits Awarded by the Commission Should Be Reasonable.

Two groups of parties, AG/KIUC and AEP/Liberty, have identified customer benefits that they claim should or would occur as a result of this transaction. As a general proposition, Walmart supports the concept of providing benefits to customers. Indeed, in transactions of this type, it is Walmart's experience that some type of credit to customers is commonplace. There is, however, substantial disagreement among the parties regarding how much of a credit is warranted. If the Commission approves this transaction and determines that some type of credit should be awarded to customers, Walmart recommends that the Commission identify a credit that has a reasonable likelihood of providing benefit to all customers.

The AG/KIUC calculate that of the total purchase price of $2,846 million, approximately $585 million is the premium paid by Liberty to AEP to acquire KPCo.[12] Based on this calculated "acquisition premium" of $585 million, AG/KIUC argue that AEP should compensate KPCo's customers a total of $578 million for "quantifiable harms."[13] In the abstract, Walmart is certainly

[12] Direct Testimony of Lane Kollen ("Kollen Direct"), p. 3, line 20 to p. 4, line 7.

[13] *Id*. at 9, lines 15-21.

not opposed to a customer benefit of this magnitude; however, the undisputed evidence is that the transaction will not go forward if the Commission adopts the AG/KIUC position.[14] In essence, should the Commission adopt the AG/KIUC recommendation, it would operate as a proxy to reject the transaction.

By contrast, Liberty and AEP have agreed to up to a three-year deferral of the Big Sandy Decommissioning Rider ("BSDR"), which they describe as a "rate holiday,"[15] and will commit $40 million to the Eastern Kentucky Fuel Relief Fund to address high bills resulting from volatile fuel prices.[16] In total, these commitments are estimated to represent $135.1 million in benefits to customers.[17]

While Walmart and other parties appreciate Liberty's willingness to support securitization legislation,[18] that willingness does not guarantee customer benefit. The largest stated customer benefit – the $95.1 million – is only realized if securitization legislation is successfully enacted.[19] Moreover, the exact amount of that benefit will depend on the terms ultimately secured.[20] Finally, as the Commission noted, and as acknowledged in Liberty witness Eichler's Rebuttal Testimony, customers will incur a "carrying charge" during this rate holiday of the BSDR,[21] and, regardless of securitization, the term will be extended such that customers are paying monies back over a

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[14] Mar. 28, 2022, Tr., 9:55:08-9:56:15.

[15] Eichler Rebuttal, p. 1, lines 16-20; p. 11, line 5 to p. 12, line 11; *see also* Mar. 28, 2022, Tr., 10:03:22 to 10:03:36.

[16] Eichler Rebuttal, p. 10, line 18 to p. 11, line 2.

[17] *Id.*, p. 11, lines 14-16; *see also* KIUC Cross Ex. 1.

[18] Mar. 28, 2022, Tr., 10:04:54-10:05:18 (Liberty committing to seeking securitization legislation); 10:35:48 to 10:36:06 (KIUC noting support for securitization).

[19] *Id.* at 10:37:21 to 10:37:43.

[20] As per KIUC Cross Ex. 1 as clarified at the hearing, Liberty assumed a 20-year bond at 3.5 percent.

[21] Mar. 28, 2022, Tr., 10:06:02 to 10:07:42 (with the carrying charge, customers will pay interest on interest because interest is already being paid as part of the current BSDR).

longer period.[22] Thus, while the Liberty/AEP proposal will provide some limited benefit, the exact benefit to be received by customers is unknown at this time. Moreover, based on the evidence from AG/KIUC, it may not appropriately and reasonably reflect the impact of this transaction on customers.

To the extent the Commission determines that some amount of monies needs to be returned to customers, Walmart supports the surcredit rider mechanism set forth in AG/KIUC witness Kollen's testimony,[23] including the rate allocation methodology proposed by AG/KIUC.[24] While Walmart takes no position on whether some amount of monies should be allocated specifically to address transmission-related harms,[25] Walmart does not support a requirement that KPCo seek, with or without the assistance of AEP, to create a KPCo standalone transmission zone at this time.[26] Instead, based on the number of unknown variables as discussed in Liberty witness Herling's testimony,[27] Walmart's supports Liberty's commitment to study the issue and to make a decision within the next two years.[28]

IV. <u>CONCLUSION</u>

The Commission should find that Liberty's commitment to be net carbon free by 2050 is not contrary to the public interest. Relatedly, the Commission should find that it is in the public interest for Liberty to agree to convene a broad stakeholder group in order to consider future renewable energy offering to present to the Commission for approval. Finally, to the extent the

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[22] *Id*.; *see also* Eichler Rebuttal, p. 11, lines 19-21; Mar. 28, 2022, Tr., 11:44:38-11:44:45 (noting that securitization assuming a 20-year bond, would likely extend repayment to 2045).

[23] Kollen Direct, p. 10, lines 10-13.

[24] Mar. 29, 2022, Tr., 17:43:38-17:45:27.

[25] *See* Direct Testimony of Stephen J. Baron ("Baron Direct"), p. 27, lines 10-14;

[26] *See id.*, p. 14, line 6 to p. 16, line 6.

[27] *See generally* Direct Testimony of Steven R. Herling ("Herling Direct").

[28] *See* Eichler Rebuttal at PE-R4, p. 1.

Commission properly determines that some level of credit must be given to customers in order to approve the transaction, any such credit should not be so significant as to prevent the transaction from moving forward. To that end, Walmart supports the Commission returning any credit to customers via the surcredit rider proposed by AG/KIUC, including the cost allocation methodology described by AG/KIUC witness Baron.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon parties and/or counsel of record in this proceeding by electronic mail (when available) or by first-class mail, unless otherwise noted, this 12th day of April, 2022, to the following:

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