

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF DUKE</b>	)	
<b>ENERGY KENTUCKY, INC. FOR (1) AN</b>	)	
<b>ADJUSTMENT OF ELECTRIC RATES;</b>	)	<b>CASE NO. 2022-00372</b>
<b>(2) APPROVAL OF NEW TARIFFS;</b>	)	
<b>(3) APPROVAL OF ACCOUNTING</b>	)	
<b>PRACTICES TO ESTABLISH</b>	)	
<b>REGULATORY ASSETS AND LIABILITIES;</b>	)	
<b>AND (4) ALL OTHER REQUIRED</b>	)	
<b>APPROVALS AND RELIEF</b>	)	

**INITIAL BRIEF OF WALMART INC.**

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

**I. INTRODUCTION**

After most recently receiving a rate increase in 2020, Duke Energy Kentucky, Inc. ("Duke Energy Kentucky," "DEK," or "Company"), is once again before the Commission requesting a rate increase, a substantial increase of \$63.8 million<sup>1</sup>, among other requests for relief. Walmart intervened in this proceeding to address numerous issues raised by the Company's Application, not least of which is the return on equity ("ROE") the Company should be entitled to earn.

The evidence in this case shows definitively that the appropriate ROE to be awarded to DEK is in the range of 9.55 to 9.60 percent. An ROE at this level will place the Company on par with the ROEs awarded to its affiliates, balances the interests of shareholders and ratepayers, and improves the Company's credit metrics by increasing the ROE from the Company's currently

---

<sup>1</sup> The Company originally sought a rate increase of \$75.2 million; however, the Company revised its requested revenue requirement increase in its Rebuttal Testimony. *See* Rebuttal Testimony of Lisa D. Steinkuhl ("Steinkuhl Rebuttal"), p. 2, line 10 to p. 4, line 9 and p. 6, lines 10-14.

authorized 9.25 percent. By contrast, because the 10.35 ROE requested by the Company will not produce fair, just, or reasonable rates, and it does not balance the interests of shareholders and ratepayers, the Commission should reject it.

In addition to the appropriate ROE to award Duke Energy Kentucky, Walmart addresses other issues raised in the Company's filing and in the evidence presented by the parties in this case<sup>2</sup>, including:

- Whether the Commission should reject the Company's proposal to continue to allocate fixed production plant costs based on the 12 coincident peak ("CP") methodology in favor of the Average and Excess ("A&E") methodology;
- Steps the Commission should take to reduce existing interclass subsidies in the event the Commission approves a rate increase, either at the amount requested by the Company or some lesser amount;
- Support for Commission adoption of the Company's proposal concerning the Clean Energy Connection ("CEC") program; and,
- Changes the Commission should require to the Company's proposed Rate MRC – Electric Vehicle ("EV") Rate Make Ready Credit ("Rate MRC") to adequately safeguard confidential customer load usage data.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

On December 1, 2022, the Company filed an Application for an adjustment in its electric rates, approval of new tariffs, approval of accounting practices to establish regulatory assets and liabilities, and all other required approvals and relief ("Application").

On January 3, 2023, Walmart filed its Motion to Intervene, which was granted by Commission Order dated January 17, 2023. Walmart thereafter filed the Direct Testimony and Exhibits of Steve W. Chriss, Director, Energy Services for Walmart ("Chriss Direct"), on March

---

<sup>2</sup> Not addressed in this Initial Brief is Walmart's position on the Rate DT – Time-of-Use Rate for Service at Distribution Voltage ("Rate DT") structure proposed by the Company. *See* Direct Testimony of Bruce L. Sailors ("Sailors Direct"), p. 10, lines 14-20. As set forth in the Direct Testimony of Steve Chriss, Walmart does not oppose the Company's proposal regarding the Rate DT rate structure as set forth in Company witness Sailors' Direct Testimony. *See* Direct Testimony of Steve W. Chriss ("Chriss Direct"), p. 20, lines 1-19.

10, 2023, which was subsequently corrected on April 7, 2023. Mr. Chriss' testimony focused on the appropriate ROE to award the Company, the revenue allocation proposals made by the Company, a proposal for reducing interclass subsidies existing among customer classes, support for the CEC program proposed by the Company, and proposed revisions to Rate MRC.

A hearing was held in this matter on May 9-11, 2023, and Mr. Chriss appeared in person on behalf of Walmart on May 11, 2023.

### III. ARGUMENT

#### A. The Commission Should Award the Company an ROE of Approximately 9.60 Percent, Consistent with the Recommendations of Attorney General Witness Baudino and Walmart Witness Chriss.

The Commission should reject the 10.35 percent ROE requested by the Company and instead award the Company an ROE of approximately 9.55 to 9.60 percent, as recommended by Attorney General witness Baudino and Walmart witness Chriss. This conclusion is supported by substantial evidence, not least of which is the testimony of the Company's own witnesses and the ROEs recently awarded to DEK affiliates. By contrast, the Company's requested ROE of 10.35 percent<sup>3</sup> is unreasonable, does not result in fair or just rates, and the evidence supporting it should be given little (to no) evidentiary weight by the Commission.

Of the three parties – the Company, Attorney General, and Walmart – to offer evidence as to the appropriate ROE to award DEK in this case, two of those parties – the Attorney General and Walmart – make near identical recommendations. Attorney General witness Baudino recommended an ROE of 9.55 percent<sup>4</sup>, and Walmart witness Chriss supported an ROE consistent with the average ROE for vertically integrated utilities for the period of 2019 through March 2023

---

<sup>3</sup> See Rebuttal Testimony of Joshua C. Nowak, p. 32, lines 10-12 ("Nowak Rebuttal").

<sup>4</sup> Direct Testimony of Richard A. Baudino ("Baudino Direct"), p. 3, lines 5-7.

of 9.61 percent.<sup>5</sup> These similar recommendations find substantial additional support in the evidentiary record.

First, these ROEs are similar to the ROEs awarded in the last six months to the Company's affiliates; Duke Energy Progress, a vertically integrated utility like DEK, was awarded an ROE of 9.60 by the South Carolina Public Service Commission in March 2023; and Duke Energy Ohio, the corporate parent of DEK, was awarded an ROE of 9.50 percent by the Public Utilities Commission of Ohio in December 2022.<sup>6</sup> Of particular relevance here, a report from Moody's issued in April 2023, subsequent to both the Duke Energy Progress and Duke Energy Ohio cases, affirmed the credit ratings for both of these companies, confirming that the investor community did not negatively perceive the ROEs adopted for either of these affiliates.<sup>7</sup> Moreover, Company witness Bauer, Director, Corporate Finance and Assistant Treasurer for Duke Energy Business Services LLC ("DEBS"), said that among the Duke affiliates, it was "important for some consistency" in the ROEs awarded to the affiliates and that you would not want one affiliate to "be an outlier."<sup>8</sup> An ROE in the range of 9.55 to 9.60 percent for DEK would be consistent with ROEs awarded to DEK's sister companies.

Second, an ROE of approximately 9.60 percent would represent a 35-basis point increase in the Company's currently authorized return.<sup>9</sup> Company witness Bauer, the person responsible for

---

<sup>5</sup> Testimony of Steve W. Chriss ("Chriss Direct"), p. 10, lines 12-17.

<sup>6</sup> *See id.*, lines 7-13.

<sup>7</sup> *See* Exhibit DEK-1, p. 1 (affirming the ratings for all Duke affiliates except DEK, which Moody's changed the outlook to negative from stable, including Duke Energy Ohio, whose ROE decreased from 9.84 to 9.50 percent); *see also* Hearing Transcript ("Tr."), May 10, 2023, 14:55:13-14:55:51 (Company witness Bauer).

<sup>8</sup> Hearing Tr., May 10, 2023, 14:55:53-14:56:28 (Company witness Bauer).

<sup>9</sup> *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for 1) an Adjustment of Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief*, Case No. 2019-00271 ("Duke 2019 Rate Case"), Order (issued Apr. 27, 2020), p. 46 (awarding the Company an ROE of 9.25 percent).

interacting with the credit rating agencies on behalf of DEK, confirmed that an increased ROE in the range suggested by Walmart and the Attorney General was unlikely, standing alone, to trigger a downgrade from the credit ratings agencies and, in fact, would likely improve credit metrics since it would increase the cash available to the Company,<sup>10</sup> which is one of the factors Moody's will be assessing when it evaluates a potential downgrade of DEK based on the "outcome of [this] pending electric rate case."<sup>11</sup> Even the Company agrees that the ROE proposed by the Attorney General and Walmart will serve to improve the Company's credit metrics, further bolstering its reasonableness.

The Company's requested ROE, by contrast, lacks reliable evidentiary support, is not fair, just, or reasonable, and, if adopted, would be an outlier when compared to ROEs awarded throughout the United States.<sup>12</sup> As reflected in Attachment JCN-1, the curriculum vitae for the Company's ROE witness, as of the hearing in this matter, he testified as an ROE witness on only four other occasions since 2014.<sup>13</sup> Of the four cases, , two of the cases were for the same water company and a third case was before the Federal Energy Regulatory Commission ("FERC").<sup>14</sup> In the most recent case from August 2022, where Company witness Nowak served as an expert witness, he also recommended an ROE of 10.35 percent; however, in that case the Connecticut Public Utilities Regulatory Authority's Final Order awarded an ROE of 8.70 percent, 165 basis

---

<sup>10</sup> Hearing Tr., May 10, 2023, 14:59:55-15:01:40 (Company witness Bauer).

<sup>11</sup> See Exhibit DEK-1, p. 3.

<sup>12</sup> See Chriss Direct, p. 11, Fig. 1 (noting that DEK's proposed ROE would be the fourth highest ROE awarded to a vertically integrated utility at any time since 2019).

<sup>13</sup> See Direct Testimony of Joshua C. Nowak ("Nowak Direct"), Attachment JCN-1, pp. 4-5; see also Hearing Tr., May 10, 2023, 14:07:10-14:08:22 (Company witness Nowak).

<sup>14</sup> *Id.*

points *below* the recommendation of Mr. Nowak.<sup>15</sup> In addition to Company witness Nowak's limited prior expert experience, the Connecticut Public Utilities Regulatory Authority's willingness to depart so markedly from the utility's recommended ROE suggests that this Commission should give little evidentiary weight to the Company's ROE evidence in this case.

Next, it is important to contextualize the ROE requested by the Company. Not only would it be the fourth highest ROE awarded to any vertically integrated utility at any time since 2019,<sup>16</sup> but, if adopted, it would result in a 110-basis point increase from the Company's currently authorized ROE of 9.25 percent. While Company witness Bauer acknowledged that 100 basis point swings in ROE can occur, he conceded that they occur most often when a utility has gone decades without filing a rate case, which is not the case here since the Company's last rate case was concluded in 2020.<sup>17</sup> Market conditions have certainly changed since the Company's last rate case was decided in 2020; however, there is absolutely zero evidence to suggest that market conditions have changed so substantially in three years as to warrant such a massive increase in the Company's ROE. Instead, the 9.55 to 9.60 percent ROE proposed by the Attorney General and Walmart reasonably reflect the increased risk to the Company in light of current market conditions.

Even were the Commission to place weight on the Company's ROE evidence, it is important to remember that the Commission must nonetheless set an ROE (and resulting rates) consistent with Kentucky law, including KRS § 279.030, which authorizes "[e]very utility...[to] demand, collect and receive *fair, just and reasonable rates* for the services rendered...by it...."<sup>18</sup> The Company has failed – as the party with the burden – to establish that an ROE of 10.35 percent

---

<sup>15</sup> Hearing Tr., May 10, 2023, 14:08:22-14:09:08 (Company witness Nowak) (acknowledging the Final Order but stating the order was on appeal).

<sup>16</sup> See Chriss Direct, p. 11, Fig. 1.

<sup>17</sup> Hearing Tr., May 10, 2023, 14:58:43-14:59:54 (Company witness Bauer).

<sup>18</sup> *Id.* (emphasis added), *see also* Hearing Tr., May 10, 2023, 14:20:46-14:20:59 (Company witness Nowak).

results in fair, just, or reasonable rates. Indeed, the opposite is true. When asked by Chairman Chandler whether Company witness Nowak had ever analyzed what the constitutional minimums are for "fair rates," Mr. Nowak testified as follows:

To me, fairness is always part of the judgment that goes into it...in my mind, when we are looking at what a reasonable cost of equity is, what we're arriving at should be fair. Ultimately, at the end of the day, arriving at the right cost of equity is what is fair to customers. Because we need to ensure there is alignment among shareholders and customers so that we have determined the right cost of equity. The cost of equity is what it is, it is what investors demand in the market, and we want to get that right because we want to align rates based on what we see as the cost of equity with what that cost of equity is in the market. To the extent we don't get that right, you can get a signal from the market that would increase the costs to customers over the long run. If we get the cost [of equity] wrong and the Company is not able to recover its costs, including the cost of equity, then that can raise borrowing costs over time and that can have an effect that would not be fair because then ultimately customers are going to pay more in the long run.<sup>19</sup>

In this case, the issue is not the statement above, but the Company's claim that a 10.35 percent is necessary to attain that alignment. Company witness Bauer testified that an ROE in the mid-nine percent range was unlikely to trigger a credit downgrade,<sup>20</sup> and he further testified that maintaining the Company's current credit rating of Baa1 (rather than seeking to improve one notch) was appropriate to allow the Company to secure capital at reasonable rates.<sup>21</sup> Thus, the undisputed evidence suggests that an ROE in the range of 9.55 to 9.60 percent would achieve the fairness and balance as between investors and customers as discussed by Company witness Nowak. Necessarily, a 10.35 percent ROE would be excessive and would not achieve the appropriate

---

<sup>19</sup> *Id.*, May 10, 2023, 14:20:59-14:22:26 (Company witness Nowak).

<sup>20</sup> *See id.*, May 10, 2023, 14:59:55-15:01:40 (Company witness Bauer).

<sup>21</sup> Hearing Tr., May 10, 2023, 15:28:42-15:30:06 (Company witness Bauer). Admittedly, Company witness Bauer also noted that the Company was currently maintaining approximately a 15 percent FFO-to-debt ratio, which is below the 17 percent downgrade threshold to maintain a Baa1 credit rating. *Id.*, 15:26:10-15:27:10 (Bauer). Thus, while the Company may need to improve its cash flow by 200 basis points, that does not justify awarding the Company an ROE that is grossly in excess of legitimate investor return expectations. Instead, the Commission should consider the other levels available to it, such as adjusting the Company's depreciation rates and/or returning to customers unprotected excess accumulated deferred income tax ("ADIT") more quickly. *See id.*, 15:17:39-15:19:54 (Chairman Chandler discussing with Company witness Bauer the "levers" the Commission can pull to impact the Company's cash flow).

balance. For all the reasons set forth herein, the Commission should reject the 10.35 percent ROE requested by Duke Energy Kentucky in favor of an ROE in the range of 9.55 to 9.60 percent as recommended by Walmart and the Attorney General.

**B. The Commission Should Consider Whether to Allocate Fixed Production Costs Based on the A&E Method Rather Than the 12-CP Methodology.**

In Duke's 2017 and 2019 Base Rate Cases, the Commission approved the use of the 12-CP methodology to allocate fixed production costs.<sup>22</sup> The Company proposes to continue the use of the 12-CP methodology in this case,<sup>23</sup> and its only reason for doing so is that it is what was approved in prior cases.<sup>24</sup> In addition to the 12-CP methodology, the Company also conducted Cost of Service Studies ("COSS") using the A&E and production stacking methods,<sup>25</sup> but the Company does not appear to explain why it determined those methodologies were inappropriate for application here.<sup>26</sup> In light of the Commission's prior approval of the 12-CP method, Walmart does not categorically oppose its use in this case; however, Walmart believes that the A&E method better categorizes and allocates costs based on each class's contribution to the utility's average and peak demands, that these metrics more accurately reflect cost causation for fixed production costs,<sup>27</sup> and the Commission should consider its adoption in this case.

Among other things, the A&E method, by recognizing how a class contributes to both the utility's average and peak demand – rather than just the monthly demand as used under the 12-CP

---

<sup>22</sup> Duke 2019 Base Rate Case, Final Order, pp. 47, 49.

<sup>23</sup> See Direct Testimony of James E. Ziolkowski ("Ziolkowski Direct"), p. 6, line 14-17.

<sup>24</sup> When asked what factors and/or measurables the Company relied upon to eliminate the A&E or production stacking methodology, Company witness Ziolkowski could not identify any. See Hearing Tr., May 10, 2023, 9:44:18-9:45:52 (Company witness Ziolkowski).

<sup>25</sup> Ziolkowski Direct, p. 5, lines 1-8.

<sup>26</sup> See Hearing Tr., May 10, 2023, 9:44:18-9:45:52 (Company witness Ziolkowski).

<sup>27</sup> See Chriss Direct, p. 15, lines 8-19.



methodology – appropriately recognizes that production plant is used to serve energy and demand.<sup>28</sup> The benefit to this method, unlike other methodologies that utilize both energy and demand allocators, is that it does not penalize high load factor customers by counting energy twice.<sup>29</sup> The Company has indicated no opposition to and/or dispute with Walmart's testimony on the A&E methodology, and no other witness offered testimony on it.<sup>30</sup> Thus, should the Commission be inclined to revisit the methodology applicable to the Company's fixed production costs, Walmart supports adoption of the A&E method consistent with the Company's COSS utilizing this methodology.<sup>31</sup>

**C. If the Commission Awards the Company a Revenue Requirement Increase Less Than the Company Requested, Then the Commission Should Take Steps to Further Reduce Subsidies Between Rate Classes.**

In this case, the Company sought a revenue requirement increase of \$75.2 million, which was revised in Rebuttal Testimony to 63.8 million.<sup>32</sup> The Company also acknowledged that certain rate classes, including Rate DT – Secondary, continue to subsidize other rate classes, particularly the residential class.<sup>33</sup> Due to the size of the Company's requested rate increase, and to avoid rate shock for the residential class, the Company only proposed to eliminate five percent of the existing subsidy.<sup>34</sup> While Walmart does not oppose the resulting revenue allocation at the Company's requested revenue requirement, Walmart proposes that the Commission take further steps to reduce

---

<sup>28</sup> *Id.*, p. 15, lines 15-19.

<sup>29</sup> *Id.*, p. 15, lines 19-21.

<sup>30</sup> In its Rebuttal, no Company witness addressed Walmart witness Chriss' recommendation that the Commission consider adopting the A&E methodology to allocate fixed production costs.

<sup>31</sup> *See* Chriss Direct, p. 15, lines 8-13.

<sup>32</sup> Direct Testimony of Amy B. Spiller ("Spiller Direct"), p. 26, line 6 to p. 28, line 6; *see also* Steinkuhl Rebuttal, p. 7, lines 10-14.

<sup>33</sup> *See* Ziolkowski Direct, p. 28, lines 11-18; *see also* Chriss Direct, p. 16, line 19 to p. 18, line 8 and Table 1.

<sup>34</sup> Ziolkowski Direct, p. 28, line 19 to p. 29, line 2; Hearing Tr., May 10, 2023, 9:46:12-9:47:47 (Company witness Ziolkowski) (describing how the Company arrived at a five percent subsidy reduction).

class subsidies if a lesser revenue requirement is approved by the Commission.<sup>35</sup> The Company indicated that it was "amenable" to any change in revenue allocation ordered by the Commission.<sup>36</sup>

Interclass subsidies have persisted for many years in the Company's service territory.<sup>37</sup> Duke attempted to reduce interclass subsidies in the Company's last rate case, but in light of the impacts of the COVID-19 pandemic, the Commission declined to reduce subsidies.<sup>38</sup> Rather than permitting subsidies to persist at current levels, the Commission should take steps to reduce interclass subsidies. To accomplish this, if the Commission awards the Company's requested revenue requirement, the Commission should adopt the subsidy reduction proposed by Company witness Ziolkowski. By contrast, if the Commission awards a revenue requirement less than the \$63.8 million requested by the Company, the Commission should take steps to further reduce interclass subsidies, consistent with the recommendation of Walmart witness Chriss.<sup>39</sup>

**D. The Commission Should Approve the Company's Proposed CEC Program.**

Customers in DEK's service territory,<sup>40</sup> Walmart included, are looking for viable options to secure renewable energy resources and/or be served by renewable energy.<sup>41</sup> While a new

---

<sup>35</sup> Chriss Direct, p. 19, lines 7-20.

<sup>36</sup> Hearing Tr., May 10, 2023, 9:19:10-9:20:26 (Company witness Ziolkowski).

<sup>37</sup> See e.g., *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for 1) an Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All Other Required Approvals and Relief*, Case No. 2017-00321 ("Duke 2017 Rate Case"), Order (issued Apr. 13, 2018), p. 44 (adopting DEK's proposal to reduce interclass subsidies by 10 percent).

<sup>38</sup> See Duke 2019 Rate Case, Final Order, pp. 47-50.

<sup>39</sup> Indeed, since the requested revenue requirement increase as revised by the Company's Rebuttal Testimony is \$11.4 million, or 15 percent, less than the Company originally requested, the Commission could consider allocating this lower revenue requirement in a manner that reduces subsidies even more than the five percent proposed by the Company.

<sup>40</sup> Hearing Tr., May 9, 2023, 9:13:33-9:16:38 (comments from 80 Acres Farms supporting the CEC program).

<sup>41</sup> See Chriss Direct, p. 21, line 1 to p. 23, line 14; Hearing Tr., May 10, 2023, 18:48:07-18:48:25 (Company witness Halstead) (confirming that the CEC program proposed in this proceeding is the same format successfully implemented in Duke Energy Florida's service territory).

proposal for DEK, the CEC program is a tried and tested program that DEK's affiliate, Duke Energy Florida, has successfully implemented.<sup>42</sup> Walmart supports the Company's proposed CEC program as a viable option to support Walmart's renewable energy goals and requests that the Commission approve the Company's request for conceptual approval of the CEC program, including approval of a placeholder tariff set at zero, subject to future approval of a specific renewable resource in a Certificate of Public Convenience and Necessity ("CPCN") proceeding.<sup>43</sup>

The only witness to object to the CEC program was Attorney General witness Kollen, who argued the Commission should reject the CEC program in favor of requiring the Company to provide a "revised and more developed Rider CEC if and when it files a CPCN Application for a new solar facility."<sup>44</sup> In addition to the fact Company witness Halstead explained all the reasons a revised and more developed Rider CEC was unnecessary (beyond what would be approved in a future CPCN),<sup>45</sup> there are at least three additional reasons to reject the Attorney General's arguments on this issue.

First, there is no downside to approving the Company's limited request for conceptual approval of the CEC program as no costs are sought for recovery in this proceeding, and the Commission will have a subsequent opportunity to approve or deny a specific project as part of a CPCN proceeding before any costs will be recovered from ratepayers.<sup>46</sup>

Second, while Attorney General witness Kollen claims that a "more developed Rider CEC is needed," the facts do not support this conclusion. As noted above, the CEC program is modeled

---

<sup>42</sup> Direct Testimony of Paul L. Halstead ("Halstead Direct"), p. 3, lines 8-17.

<sup>43</sup> *See id.*, p. 21, lines 13-18; Hearing Tr., May 10, 2023, 18:45:30-18:46:20 (Company witness Halstead).

<sup>44</sup> Direct Testimony of Lane Kollen ("Kollen Direct"), p. 7, line 21 to p. 8, line 3.

<sup>45</sup> Rebuttal Testimony of Paul L. Halstead ("Halstead Rebuttal"), p. 3, line 7 to p. 5, line 6.

<sup>46</sup> Hearing Tr., May 10, 2023, 18:45:30-18:46:20 (Company witness Halstead).

after an identical program in Florida and, in any event, the Company acknowledges that the CEC program proposed for approval in this proceeding will be updated based on the approval granted in the future CPCPN proceeding.<sup>47</sup>

Finally, and most importantly, approval in this proceeding of the CEC program framework and placeholder tariff will permit the Company to more effectively market the CEC program,<sup>48</sup> which will be relevant when the Commission is faced with a CPCN for approval of a specific renewable resource. While pricing will obviously need to be updated, having a structure in place will give customers confidence of what they would be obtaining were they to signal interest in the CEC program. Moreover, to the extent DEK is able to put forward evidence in a future CPCN that it has obtained commitments sufficient to fully subscribe, over-subscribe, or almost completely subscribe the CEC program, then this will serve as evidence that there is little risk of costs being borne by non-participating customers, a relevant consideration for the Commission.<sup>49</sup>

The reality is that the essence of Attorney General witness Kollen's recommendations are not inconsistent with the Company's requests in this case. The Company has not asked the Commission for final approval of a CEC program; instead, it only seeks approval of an intervening step that will assist the Company, Attorney General, interested parties, and the Commission in assessing approval of a CEC program resource in a future proceeding. The Commission can and should grant the Company's request for a placeholder tariff and conceptual approval of the CEC program framework while *also* making ultimate approval subject to obtaining a CPCN for a resource in a future proceeding.

---

<sup>47</sup> *Id.*, 18:46:21-18:47:02 (Company witness Halstead).

<sup>48</sup> Halstead Rebuttal, p. 4, lines 13-21.

<sup>49</sup> Hearing Tr., May 10, 2023, 18:47:36-18:47:44 (Company witness Halstead).

**E. Subject to Adequate Safeguards for Customer Load Usage Data, Walmart Supports Rate MRC as Proposed by the Company.**

Provided there are adequate protections in place for confidential and proprietary load usage data associated with those customers who opt to participate in the Make Ready Credit ("MRC") program and Rate MRC, Walmart supports both the MRC program and Rate MRC.<sup>50</sup> Consistent with this position, Walmart does not support the recommendations made by Attorney General witness Kollen to combine the Rate MRC with the with Electric Vehicle Supply Equipment ("EVSE") program or to require customers participating in Rate MRC to fully bear the costs.

**1. The Commission should revise the tariff, application, and terms and conditions for Rate MRC to ensure customer usage data is protected.**

Walmart's confidentiality concerns stem largely from the lack of information and explanation provided by the Company. For example, the tariff authorizes the Company to "install...metering and load research devices [that it] deems appropriate to collect customer data about the usage characteristics" of the EV chargers that participate in the program,<sup>51</sup> but it makes no mention of what steps it will take to anonymize the data and/or protect it from unauthorized disclosure.<sup>52</sup> Relatedly, the Company states that customers interested in participating in the program will need to complete an application that includes, among other required items, a "completed customer usage profile."<sup>53</sup> Unfortunately, neither the application nor details of what is

---

<sup>50</sup> Chriss Direct, p. 26, line 20 to p. 27, line 20.

<sup>51</sup> See Chriss Direct, p. 27, lines 4-7 (*quoting* from Schedule L-1, p. 123 of 129, K.Y.P.S.C. Electric No. 2, Original Sheet No. 83, p. 4 of 5).

<sup>52</sup> By contrast, in the context of rolling out Advanced Metering Infrastructure ("AMI"), the Company entered into a settlement agreement with the Attorney General to make clear the sharing of any customer usage data provided to third parties would be "non-specific customer usage data in aggregate form." See *In the Matter of: Application of Duke Energy Kentucky Inc. for (1) A Certificate of Public Convenience and Necessity Authorizing the Construction of an Advanced Metering Infrastructure; (2) Request for Accounting Treatment; and (3) All Other Necessary Waivers, Approvals, and Relief*, Case No. 2016-00152, Order (issued May 25, 2017), Appendix, p. 12.

<sup>53</sup> See Direct Testimony of Cormack C. Gordon ("Gordon Direct"), p. 16, line 8; see also Schedule L-1, p. 122 of 129, K.Y.P.S.C. Electric No. 2, Original Sheet No. 83, p. 3 of 5.

included in the "customer usage profile" were produced by the Company in the course of this case.<sup>54</sup> Finally, the Company indicates that there are terms and conditions applicable to the MRC program that "provide specifics as to how the Company may or may not use program data"; however, those terms and conditions do not appear to have been produced and do not appear to be confided to the tariff.<sup>55</sup> Without this detail and adequate assurances, Walmart cannot support Rate MRC due to concerns over the confidentiality of proprietary load usage data.

Company witness Gordon acknowledged in rebuttal that Walmart's concerns were "reasonable."<sup>56</sup> While Company witness Gordon went on to explain all the ways in which Duke Energy Kentucky will "not use metering and load research devices to expose proprietary and confidential customer EV charging data to competitors,"<sup>57</sup> making revisions to the tariff, application, or program unnecessary, the fact remains that the documents that allegedly provide these adequate protections – the application, the customer usage profile form, and terms and conditions – have not been made available. Furthermore, what is available, namely, the tariff, does not set forth any customer protections. Except in the case of mandatory disclosure to the Commission, the Commission should require the Company to amend the Rate MRC tariff, application, and terms and conditions, to limit the Company's ability to add metering and load research devices or to obtain confidential and proprietary load usage data to situations where the Company and customer reach a mutual agreement as to data privacy and security parameters.<sup>58</sup>

---

<sup>54</sup> Company witness Gordon's Rebuttal Testimony, p. 4, lines 6-7 claimed that Attachment CCG-1 was a "customer usage profile form," however, Attachment CCG-1 is a copy of a 27-page report entitled, "Electric Vehicle Cost-Benefit Analysis" (June 2018). A review of that report reveals no mention of a customer usage profile form.

<sup>55</sup> See Rebuttal Testimony of Cormack C. Gordon ("Gordon Rebuttal"), p. 4, lines 8-16.

<sup>56</sup> *Id.*, p. 3, lines 8-10.

<sup>57</sup> Gordon Rebuttal, p. 3, lines 18-20.

<sup>58</sup> Chriss Direct, p. 27, lines 14-20.

**2. Because all customers benefit from EV growth, the Commission should reject the recommendations of Attorney General witness Kollen.**

Walmart opposes Attorney General witness Kollen's recommendation that Rate MRC be combined with the EVSE program and that the costs of both programs be charged to only participating customers.<sup>59</sup> As DEK notes, not only does Mr. Kollen's proposal lack detail, but as proposed, it is unworkable.<sup>60</sup> Moreover, in proposing that only customers participating in Rate MRC should bear the costs of that program, Attorney General witness Kollen overlooks the "downward pressure on the per unit cost of electricity,"<sup>61</sup> that EV charging, particularly managed charging, can have on the system.<sup>62</sup> Instead, the Commission should acknowledge that there are benefits to all customers associated with incentivizing the growth of EV infrastructure as proposed by the Rate MRC and should reject the recommendations of Attorney General witness Kollen.

**IV. CONCLUSION**

For all the reasons described herein, Walmart respectfully requests that the Commission take the following actions with respect to the Company's Application:

1. Reject the Company's requested ROE of 10.35 percent and instead award DEK an ROE of approximately 9.55 to 9.60 percent;
2. Consider whether to adopt the A&E methodology to allocate fixed production plant costs in lieu of the 12-CP methodology;
3. Take steps to reduce interclass subsidies with the level of subsidy reduction based on the ultimate level of any rate increase authorized by the Commission;

---

<sup>59</sup> See Kollen Direct, p. 59, lines 13-20.

<sup>60</sup> Gordon Rebuttal, p. 7, line 6 to p. 8, line 2.

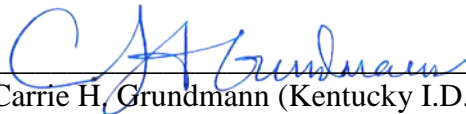
<sup>61</sup> *Id.*, p. 5, line 17 to p. 6, line 5.

<sup>62</sup> See Hearing Tr., May 10, 2023, 20:24:29-20:26:40; 20:27:28-20:31:31 (Company witness Gordon); see also Gordon Direct, p. 4, lines 12-17 (predicting a "net benefit to ratepayers of \$200 per EV" in 2030, or nearly \$4 million in savings).

4. Approve the CEC program as proposed by the Company, subject to final approval in a subsequent CPCN proceeding; and,
5. Approve the Company's proposed Rate MRC, conditioned upon the Company incorporating protections for proprietary and confidential customer usage data in the tariff, application, and terms and conditions.

Respectfully submitted,

SPILMAN THOMAS & BATTLE, PLLC

By   
Carrie H. Grundmann (Kentucky I.D. No. 99197)  
110 Oakwood Drive, Suite 500  
Winston-Salem, NC 27103  
Phone: (336) 631-1051  
Fax: (336) 725-4476  
Email: [cgrundmann@spilmanlaw.com](mailto:cgrundmann@spilmanlaw.com)

*Counsel to Walmart Inc.*

Dated: June 9, 2023



## 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 9<sup>th</sup> day of June, 2023, to the following:

Sarah E. Lawler  
Rocco O. D'Ascenzo  
Larisa Vaysman  
Duke Energy Kentucky, Inc.

139 East Fourth Street  
Cincinnati, OH 45202  
[Sarah.lawler@duke-energy.com](mailto:Sarah.lawler@duke-energy.com)

[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)  
[Larisa.vaysman@duke-energy.com](mailto:Larisa.vaysman@duke-energy.com)

Elizabeth M. Brama  
Valerie T. Herring  
Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
[ebrama@taftlaw.com](mailto:ebrama@taftlaw.com)  
[vherring@taftlaw.com](mailto:vherring@taftlaw.com)

Angela M. Goad  
J. Michael West  
Lawrence W. Cook  
John G. Horne II  
Office of the Attorney General  
700 Capital Avenue, Suite 20  
Frankfort, KY 40601-8204  
[Angela.Goad@ky.gov](mailto:Angela.Goad@ky.gov)  
[Michael.West@ky.gov](mailto:Michael.West@ky.gov)  
[Larry.Cook@ky.gov](mailto:Larry.Cook@ky.gov)  
[John.Horne@ky.gov](mailto:John.Horne@ky.gov)

Joe F. Childers  
Childers & Baxter, PLLC  
300 Lexington Building  
201 West Short Street  
Lexington, KY 40507  
[joe@jchilderslaw.com](mailto:joe@jchilderslaw.com)

Joshua Smith  
Sierra Club  
2101 Webster St., Suite 1300  
Oakland, CA 94612  
[Joshua.smith@sierraclub.org](mailto:Joshua.smith@sierraclub.org)

Kathryn Huddleston  
Sierra Club  
6406 N I-35, Suite 1805  
Austin, TX 78752  
[Kate.huddleston@sierraclub.org](mailto:Kate.huddleston@sierraclub.org)

Kurt J. Boehm  
Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)

James W. Gardner  
M. Todd Osterloh  
Rebecca C. Price  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street, Suite 1500  
Lexington, KY 40507  
[jgardner@sturgillturner.com](mailto:jgardner@sturgillturner.com)  
[tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)  
[rprice@sturgillturner.com](mailto:rprice@sturgillturner.com)

Certificate of Service  
Case No. 2022-00372  
Page 2

Paul Werner  
Hannah Wigger  
Maria Laura Coltre  
Sheppard Mullin Richter & Hampton LLP  
2099 Pennsylvania Avenue NW  
Suite 100  
Washington, DC 20006  
[pwerner@sheppardmullin.com](mailto:pwerner@sheppardmullin.com)  
[hwigger@sheppardmullin.com](mailto:hwigger@sheppardmullin.com)  
[mcoltre@sheppardmullin.com](mailto:mcoltre@sheppardmullin.com)



---

Carrie H. Grundmann (Kentucky I.D. No. 99197)