

**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>	)	

**REPLY BRIEF OF WALMART INC.**

Walmart Inc. ("Walmart"), by counsel, respectfully submits this Reply Brief to the Kentucky Public Service Commission ("Commission") in the above matter. This Reply Brief is limited to addressing issues raised in the Initial Briefs of Duke Energy Kentucky, Inc. ("Duke Energy Kentucky," "DEK," or "Company"), the Attorney General ("Attorney General" or "AG"), Kroger Co. ("Kroger"), and Sierra Club.

**I. ARGUMENT**

**A. The Commission Should Reject the Return on Equity ("ROE") Requested by the Company Because All Reliable Evidence Supports an ROE of 9.55 to 9.60 Percent.**

Walmart agrees with the testimony of Company witness Bauer as cited in the Company's Initial Brief that:

[a]n adequate ROE will allow the Company to generate earnings and cash flows to properly compensate equity investors for their capital at risk while protecting debt investors with a higher degree of credit quality. High credit quality improves financial flexibility by providing more readily available access to the capital markets on reasonable terms, and ultimately lower debt financing costs.<sup>1</sup>

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<sup>1</sup> Direct Testimony of Christopher R. Bauer ("Bauer Direct"), p. 9, lines 7-12.

From Walmart's perspective, the emphasis must be on an *adequate* ROE. In this case, the Company makes an illogical leap that an ROE of 10.35 percent is the sort of adequate ROE envisioned by Company witness Bauer or the Company's investors. As Walmart indicated in its Initial Brief, the evidence in this case proves that the *adequate* ROE in this case is in the range of 9.55 to 9.60 percent, consistent with the recommendations of Walmart witness Chriss and Attorney General witness Baudino.

**1. The Company failed to exclude unreasonable results when making its ROE recommendation.**

The Company contends that its ROE recommendation must be adopted because it is "based on the range of results produced by four methodologies," which include the Constant Growth Discounted Cash Flow ("DCF") model, the Capital Asset Pricing Model ("CAPM"), the Bond Yield Plus Risk Premium ("Risk Premium") model, and the Expected Earnings Analysis.<sup>2</sup> The Commission has certainly signaled that "it is appropriate to present multiple methodologies to estimate ROEs, and it is the Commission's role to analyze the various approaches presented...."<sup>3</sup> The Commission has not, however, indicated that the *results* of each of the methodologies presented should be given equal weight, that each of the methodologies produce reasonable results, or that the ROE ultimately adopted must be within the range of every single methodology presented to the Commission. Quite simply, the mere fact that DEK's expert ran four separate calculations and then derived an ROE recommendation from the range of those results does not inherently make the requested ROE a reasonable one.

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<sup>2</sup> DEK Initial Brief ("I.B."), p. 51.

<sup>3</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.

Both Attorney General witness Baudino and Company witness Nowak presented multiple methodologies with a range of results. For example, Mr. Baudino's methodologies produced a range of results from 8.30 percent to 12.48 percent.<sup>4</sup> Similarly, Mr. Nowak's analysis produces a range of estimates between 9.27 percent and 11.39 percent<sup>5</sup> (Direct) and 9.92 percent to 10.86 percent<sup>6</sup> (Rebuttal). Mr. Nowak's and Mr. Baudino's ultimate recommendations differ, however, because Mr. Baudino correctly determined that certain of his results should be given little or no weight – including the 12.48 percent CAPM results – as the resulting ROE recommendations produced by those methodologies were "implausibly high and represents an extreme outlier."<sup>7</sup> Mr. Nowak, by contrast, deemed none of his results to be implausible or unreasonable, which is surprising since any ROE above 10.60 percent would represent the *highest* awarded ROE to any utility across the country during the period of 2019 through the present.<sup>8</sup> Because Attorney General witness Baudino assessed his analytical results for reasonableness as part of making his ROE recommendation in this case, the Commission should place greater weight on his testimony than Company witness Nowak.

**2. The Company's Initial Brief misstates the level of support from Intervenor witnesses for the Company's ROE analysis and recommendation.**

In the Company's Initial Brief, it argues that the "Company's ROE analyses conducted here, as well as their underlying data, have been characterized as generally reasonable and reliable by Intervenor witnesses in this proceeding."<sup>9</sup> This statement misconstrues the evidentiary record in numerous respects. First, while the Company claims that Intervenor *witnesses* (implying more than

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<sup>4</sup> Direct Testimony of Richard A. Baudino ("Baudino Direct"), p. 30, Table 1.

<sup>5</sup> Direct Testimony of Joshua C. Nowak ("Nowak Direct"), p. 49, lines 17-20.

<sup>6</sup> Rebuttal Testimony of Joshua C. Nowak ("Nowak Rebuttal"), p. 32, lines 8-10.

<sup>7</sup> Baudino Direct, p. 30, lines 9-14.

<sup>8</sup> See Direct Testimony of Steve W. Chriss ("Chriss Direct") at Exhibit SWC-3 (Corrected) (noting that Duke Energy Florida, Inc., was awarded an ROE of 10.60 percent in 2021).

<sup>9</sup> DEK I.B., p. 52.

one) support the Company's analyses and data, the Company's Initial Brief only cites to statements and/or testimony from Attorney General witness Baudino.<sup>10</sup> Second, the portions of Mr. Baudino's testimony upon which the Company relies relates solely to Company witness Nowak's DCF results, which were in the range of 9.15 percent to 9.48 percent (Direct)<sup>11</sup> and then 9.88 to 10.00 percent in Rebuttal,<sup>12</sup> neither of which support the Company's requested ROE of 10.35 percent.

**3. Walmart witness Chriss' testimony assists the Commission in assessing the reasonableness of the ROE recommendations made in this case.**

The Company criticizes Walmart witness Chriss for not conducting "any DCF, CAPM, Risk Premium, or Expected Earnings analyses" and for "fail[ing] to perform any marked-based analysis to assess past authorized ROEs relative to the current or future environment in which the Company will be working to attract investors."<sup>13</sup> Walmart witness Chriss was clear as to the nature and purpose of his testimony. Indeed, Mr. Chriss never claimed that he was conducting such analysis but was instead offering his testimony to, among other things, "provide a general gauge of reasonableness for the various cost of equity analysis presented in this case."<sup>14</sup> And Mr. Chriss' testimony provides a mechanism by which the Commission can check the reasonableness of the Company's requested ROE in this case, and it confirms that the 10.35 percent ROE is not reasonable as compared to (1) ROEs awarded across the United States; and, (2) most importantly, ROEs awarded in the last several months to Duke Energy Kentucky affiliates.<sup>15</sup>

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<sup>10</sup> DEK I.B., p. 52 and fn. 335.

<sup>11</sup> Baudino Direct, p. 34, lines 14-15.

<sup>12</sup> Hearing Transcript ("Tr."), May 11, 2023, 18:40:10-18:42:18 (Attorney General witness Baudino).

<sup>13</sup> DEK I.B., pp. 52-53.

<sup>14</sup> Chriss Direct, p. 11, line 10 to p. 12, line 7.

<sup>15</sup> More importantly, the ROEs adopted by the Company's affiliates in December 2022 and March 2023 is good evidence of what is necessary to attract investors.

**4. Factoring in recent ROE decisions from March and April 2023 does not result in ROEs near the 10.35 Percent requested by DEK.**

During the hearing in this matter, the Company identified two ROE decisions that had been decided subsequent to the date Walmart witness Chriss filed his pre-filed Direct Testimony in this case<sup>16</sup> and argued that the inclusion of these decisions in Mr. Chriss' prior calculations results in numbers that are "closer to the Company's requested ROE in this case."<sup>17</sup> While this is directionally accurate, the Company went too far when it claimed that "[w]hen the analysis of past authorized ROEs is limited to decisions for comparable companies (*i.e.*, vertically-integrated electric utilities), in capital market conditions that are similar to the current environment (*i.e.*, recent cases in 2023), the average authorized ROE demonstrates the reasonableness of the Company's requested ROE."<sup>18</sup>

The math simply does not compute. Per Walmart witness Chriss Exhibit SWC-3, as updated by the two recent decisions identified by the Company during the hearing, the average ROE awarded to vertically integrated utilities in 2023 is 9.76 percent.<sup>19</sup> This average ROE is not only fully outside the ROE range of 9.85 percent to 10.85 percent identified by Company witness Nowak, but it is 59 basis points *below* the 10.35 percent ROE requested by the Company.<sup>20</sup> Even were the Commission to focus on ROEs awarded to vertically integrated utilities in 2023 when assessing the appropriate ROE to award to Duke Energy Kentucky in this case, it would not support the 10.35 percent ROE requested by the Company, but it would instead support an ROE much closer to the recommendations of Attorney General witness Baudino and Walmart witness Chriss.

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<sup>16</sup> See DEK I.B., p. 55 at fn. 357.

<sup>17</sup> DEK I.B., p. 55.

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

<sup>19</sup> Including all decisions decided – not just the two identified at the hearing – since Walmart witness Chriss submitted his testimony, the average ROE for vertically integrated utilities as of June 4, 2023 is 9.69 percent. See *In the Matter of the Application of Potomac Edison Company for Adjustments to its Retail Rates for the Distribution of Electric Energy*, Public Service Commission of Maryland Case No. 9695, Direct Testimony of Alex J. Kronauer at Exhibit AJK-3 (filed June 9, 2023).

<sup>20</sup> Nowak Rebuttal, p. 32, lines 10-12.

**B. Walmart Does Not Take a Position on the Appropriate Capital Structure to Award to Duke Energy Kentucky.**

In the Company's Initial Brief, it mentions "Walmart witness Chriss's capital structure recommendation;"<sup>21</sup> however, Walmart did not make such a recommendation. While Walmart witness Chriss' exhibits and documentation supporting its ROE recommendation contained capital structure information for other utilities, Walmart witness Chriss did not – and Walmart continues not to – take any position on the appropriate capital structure for Duke Energy Kentucky as part of this proceeding.

**C. The Commission Should Decide Whether the 12 Coincident Peak ("CP") is the Appropriate Methodology to Recover Capacity-Related Costs.**

The Company's Initial Brief only summarily addresses its request that the Commission continue to employ the 12-CP methodology to allocate capacity-related costs to customer classes but offers no argument for why it is the appropriate methodology to adopt in this case, aside from the fact it is a generally accepted methodology and has been adopted in prior cases.<sup>22</sup> Kroger witness Bieber attempted to provide justification for continued use of the 12-CP, noting that it is an appropriate methodology to allocate capacity-related costs when "monthly peaks lie within a narrow range."<sup>23</sup> While Kroger alleges that the Company's monthly peaks "generally fall within a narrow range," Fig. JB-1 contradicts this claim because it confirms that there is great divergence in the Company's monthly peaks.<sup>24</sup> For example, the months of January, March, April, October, November, and December are all at or below 600 MW, while June, July, and August are much closer to 800 MW.<sup>25</sup> The difference between 600 MW monthly peaks and 800 MW monthly peaks is a variance of 25 percent, which is not a "narrow range" of monthly peaks.

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<sup>21</sup> DEK I.B., p. 58.

<sup>22</sup> DEK I.B., pp. 59-60.

<sup>23</sup> Kroger I.B., p. 2.

<sup>24</sup> *See id.*

<sup>25</sup> *Id.*

The evidence presented by Kroger coupled with the arguments made by Walmart in its Initial Brief warrant the Commission reconsidering whether the 12-CP methodology is an appropriate methodology for allocating capacity-related costs. In the event the Commission concludes that it is not the appropriate methodology, the Commission should adopt Walmart witness Chriss' recommendation that the Commission adopt the average and excess ("A&E") method as it is the only other methodology recommended for adoption in this case.

**D. Walmart's Subsidy Reduction Proposal is the Only Proposal to Allocate Costs to Classes Assuming the Commission Approves a Lower Revenue Requirement Than Requested by DEK in its Application.**

Duke Energy Kentucky was the only party to purport to address Walmart's subsidy reduction proposal;<sup>26</sup> however, the Company's position on Walmart's proposal is unclear. In response to Mr. Chriss' proposal, the Company states only that "[b]ecause the Company's revenue apportionment is aligned with its [class cost of service study ("CCOSS")] results and the regulatory principles of gradualism and rate shock mitigation, the Company urges the Commission to approve its requested CCOSS."<sup>27</sup> The Company has not taken a position on how much existing subsidies in rates can be reduced if a revenue requirement less than the Company requested (including, but not limited to the lowered revenue requirement adopted in Rebuttal Testimony) is adopted by the Commission.<sup>28</sup> Indeed, it seems logical that the Company should support class-based subsidy reductions greater than five percent if the total revenue requirement is something less than \$75.2 million.<sup>29</sup>

As noted by Walmart in its Initial Brief, Company witness Ziolkowski admitted that the Company arrived at the five percent subsidy reduction proposal after looking at the rate impacts

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<sup>26</sup> DEK I.B., pp. 60-61.

<sup>27</sup> *Id.* p. 61.

<sup>28</sup> The Company did not respond in Rebuttal Testimony to Walmart witness Chriss' subsidy reduction proposal.

<sup>29</sup> The Company already decreased its requested revenue requirement as part of its Rebuttal Testimony.

associated with various other, higher subsidy reduction percentages.<sup>30</sup> At the end of the day, the five percent equates to a dollar value, and clearly, the Company determined that the total dollar amount rate increase attributed to subsidized rate increases based on the Company's original revenue requirement was reasonable. It stands to reason then that the Company should support those same *total* dollars being allocated to subsidized rate classes, even under a lower revenue requirement. Where possible, the Commission should take steps to move rates closer to the cost to serve. This case – where the Company has already reduced its original requested increase and the Commission may reduce it further (especially if a lower ROE is awarded) – presents such an opportunity, and Walmart requests that the Commission consider an allocation of costs that further reduces interclass subsidies.

**E. The Commission Should Reject Sierra Club's Revisions to Rate DT – Time-of-Use for Service at Distribution Voltage ("Rate DT").**

The Commission should reject the recommendations by Sierra Club to modify Rate DT because Rate DT is a general commercial rate, not an electric vehicle ("EV") charging rate.<sup>31</sup> At best, Sierra Club's evidence merely suggests that EV users, including direct current fast charging ("DCFC") or larger fleet customers, *may* be on this rate, not that they are the only users on this rate.<sup>32</sup> All of Sierra Club's recommendations, however, are based on trying to incentivize off-peak charging of EVs, which is not appropriate to apply to a generically applicable tariff like Rate DT. Walmart locations in the Company's service territory, for example, take service primarily on Rate DT.<sup>33</sup> Because Sierra Club's recommendations are based on an underlying premise of Rate DT that simply does not exist, the Commission should reject their proposed revisions to Rate DT.

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<sup>30</sup> 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).

<sup>31</sup> Sierra Club I.B., pp. 42-45.

<sup>32</sup> Sierra Club I.B., p. 42.

<sup>33</sup> Chriss Direct, p. 3, lines 2-6.



Aside from the mismatch of the Sierra Club's recommendations vis-à-vis those who actually take service under Rate DT, Sierra Club's proposal to move distribution demand costs from a demand charge – as DEK recommends – to a volumetric charge<sup>34</sup> is inconsistent with cost causation and introduces inappropriate cost shifts from lower load factor customers to higher load factor customers. There is no dispute that the costs at issue are fixed, demand costs. Recovering them on a volumetric basis for Rate DT is unreasonable, and the Commission should reject Sierra Club's requests that the Commission alter Rate DT. Sierra Club's recommendations would be more appropriately applied to a stand-alone EV charging rate structure, the creation of which would not be opposed by Walmart.

**F. The Attorney General Offers Insufficient Reasons for Rejecting the Clean Energy Connection ("CEC") Program.**

According to the Attorney General, "a significant issue of concern to the Attorney General is if the program is not fully subscribed to, then nonparticipating customers will be required to pay for the CEC program through their electric rates."<sup>35</sup> In light of this stated concern, it is surprising that the Attorney General would reject the Company's requests in this case for approval of the CEC program as: (1) there are no costs sought for recovery based on the Company's requests; (2) there will be a future certificate of public convenience and necessity ("CPCN") proceeding where the Attorney General and other parties can contest the costs of a CEC resource; and (3) by approving the Company's requests, the uncontested evidence establishes that approval in this case will *improve* the Company's ability to determine interest in the CEC program, which is relevant to assess whether any program would be under subscribed.<sup>36</sup> Quite simply, approval of the

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<sup>34</sup> Sierra Club I.B., p. 44.

<sup>35</sup> Attorney General I.B., p. 54.

<sup>36</sup> Walmart I.B., 12.

Company's requests in this proceeding serves to alleviate the Attorney General's concerns of a CEC resource being undersubscribed.

The Attorney General's only other concern with the Company's CEC program is the claim that there is "no specificity as to how the subscription fees will be calculated."<sup>37</sup> Contrary to the Attorney General's claims, the Company has plainly articulated *how* it will calculate the costs and credits of the CEC program.<sup>38</sup> While there are no specific numbers presented, the Company makes clear that those details will be set forth in a future CPCN proceeding when a specific resource is put forward for approval.<sup>39</sup> The framework remains the same as what is being proposed in this case, the CPCN will simply update the specific values. Thus, all of the Attorney General's questions and concerns<sup>40</sup> can – and will – be answered as part of a future CPCN proceeding. There is no need to defer or delay granting the Company limited requests herein related to the CEC program based on the Attorney General's concerns. The future CPCN, which the Company contemplates filing, will provide all the detail the Attorney General seeks. For these reasons, the Commission should reject the Attorney General's arguments related to the CEC program and should instead approve the CEC program subject to approval of a specific resource in a future CPCN proceeding.

**G. The Commission Should Reject the Attorney General's Proposed Revisions to the Rate Make Ready Credit ("Rate MRC").**

The Commission should reject the revisions to Rate MRC proposed by the Attorney General,<sup>41</sup> including the recommendation to require program participants to fully fund the costs of

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<sup>37</sup> Attorney General I.B., p. 54.

<sup>38</sup> Rebuttal Testimony of Paul L. Halstead ("Halstead Rebuttal"), p. 3, lines 9-18.

<sup>39</sup> Halstead Rebuttal, p. 3, lines 18-19.

<sup>40</sup> See Attorney General I.B., p. 55

<sup>41</sup> One of the Attorney General's recommendations is that Rate MRC be "completely voluntary." *Id.*, pp. 48-49. As per the Attorney General's own description of Rate MRC as proposed by the Company, it is a voluntary program. *Id.*, p. 47.

Rate MRC rather than spreading the costs among all customer classes.<sup>42</sup> The Attorney General's opposition to Rate MRC is based on the potential that increased load could trigger costly upgrades to the system;<sup>43</sup> however, there is no guarantee that increased EV load will trigger such upgrades. Among other things, the Company stated in discovery that it has already planned in its Integrated Resource Plan ("IRP") for some load growth stemming from EV adoption.<sup>44</sup> The Company further indicated that it has mechanism at its disposal, including managing charging programs, to incentivize EV usage during off-peak hours, which would have the dual effect of avoiding the need for incremental investment and reduce costs to all customers.<sup>45</sup> Quite simply, the evidentiary record<sup>46</sup> simply does not justify the Attorney General's proposed revision to Rate MRC.

The evidence in this case suggests that it is more likely than not that Rate MRC, particularly when coupled with time-of-use rates and managing charging, can effectively incentivize EV load growth in a way that places downward pressure on rates to the benefit of all customers.<sup>47</sup> Because there are benefits to all customers from Rate MRC, the Commission should reject the Attorney General's requests that participating customers bear all costs of Rate MRC.

## **II. CONCLUSION**

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

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<sup>42</sup> See Attorney General I.B., pp. 47-49.

<sup>43</sup> *Id.*, p. 48.

<sup>44</sup> Duke Energy Kentucky's response to the Attorney General's First Request, Item 32.

<sup>45</sup> *Id.*


<sup>46</sup> The Commission should give little to no weight to the Attorney General's citation to Duke Energy Kentucky's response to the Attorney General's First Request, Item 32 and the related reference Kelly Blue Book. The aforementioned reference to Kelly Blue Book was not in Duke Energy Kentucky's *response* to a discovery request, but rather was set forth in the question posed by the Attorney General. Furthermore, citing this one statistic paints an incomplete picture by neglecting to mention, among other things, the costs of used EVs.

<sup>47</sup> Walmart I.B., p. 15.

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 capacity 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;
4. Reject the revisions to Rate DT proposed by Sierra Club and instead adopt the revisions to rate DT proposed by the Company;
5. Reject the Attorney General's recommendation to reject the CEC program and instead approve the CEC program as proposed by the Company, subject to final approval of a specific project in a subsequent CPCN proceeding; and,
6. Reject the Attorney General's recommendations regarding Rate MRC and instead adopt 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,

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Dated: June 19, 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 19<sup>th</sup> day of June, 2023, to the following:

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