

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

**In the Matter of:**

<b>ELECTRONIC JOINT APPLICATION OF</b>	)	
<b>KENTUCKY UTILITIES COMPANY AND</b>	)	
<b>LOUISVILLE GAS AND ELECTRIC</b>	)	<b>CASE NO. 2022-00402</b>
<b>COMPANY FOR CERTIFICATES OF</b>	)	
<b>PUBLIC CONVENIENCE AND NECESSITY</b>	)	
<b>AND SITE COMPATIBILITY</b>	)	
<b>CERTIFICATES AND APPROVAL OF</b>	)	
<b>DEMAND SIDE MANAGEMENT PLAN</b>	)	

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**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 November 18, 2022, Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, "Companies") filed a Notice of Intent to file a Joint Application for Certificates of Public Convenience and Necessity ("CPCNs") and Approval of a Demand Side Management Plan.

2. On December 15, 2022, the Companies filed their Joint Application that sought CPCNs to construct two 621 MW natural gas combined cycle combustion turbine ("NGCC") facilities, one at LG&E's Mill Creek Generating Station in Jefferson County, Kentucky ("Mill Creek NGCC") and one at KU's E.W. Brown Generating Station in Mercer County, Kentucky ("Brown NGCC"), along with on-site natural gas and electric transmission construction associated with those facilities and Site Compatibility Certificates for the Mill Creek NGCC and

Brown NGCC, a CPCN to construct a 120 MWac solar photovoltaic ("PV") electric generating facility in Mercer County, Kentucky ("Mercer Solar Facility"), a CPCN to acquire a 120 MWac solar facility to be built by a third-party solar developer in Marion County, Kentucky ("Marion County Solar Facility"), a CPCN to construct a 125 MW, 4-hour (500 MWh) battery energy storage system ("BESS") facility at KU's E.W. Brown Generating Station ("Brown BESS"), and approval of the Companies proposed 2024-2030 Demand-Side Management ("DSM") and Energy Efficiency ("EE") Program Plan ("Proposed DSM-EE Program Plan") and related changes to the Companies' DSM Cost Recovery Mechanism ("DSM Mechanism"), and requested a declaratory order that the Companies' entry into non-firm energy-only power purchase power agreements ("PPAs") for the output of four solar PV facilities with a combined capacity of 637 MW does not require Commission approval ("Application").

3. On December 22, 2022, the Commission issued an Order rejecting the Companies' Application for filing due to filing deficiencies. Those errors were corrected that same day, and on January 6, 2023, the Commission issued an Order deeming the Companies' Application filed as of January 6, 2023.

4. Walmart has filed a timely request for intervention. As per the Commission's Procedural Order entered on January 6, 2023, the deadline to seek intervention is January 20, 2023.

5. 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."

6. 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.

7. Walmart has the privilege of providing its retail services in the Commonwealth of Kentucky. As one of the largest employers in Kentucky, Walmart directly employs over 31,000 individuals and indirectly supports another 44,000 supplier jobs within the Commonwealth.<sup>1</sup>

8. Walmart is a large commercial customer of the Companies. Walmart has 31 retail facilities in Kentucky that are served by KU. Walmart purchased more than 96.5 million kWh in 2022 from KU, principally under the Time-of-Day Secondary Rate Schedule. Walmart has 18 retail facilities in Kentucky that are served by LG&E. Walmart purchased more than 46.8 million kWh in 2022 from LG&E, principally under the Time-of-Day Secondary and Primary Rate Schedules. Walmart also purchased approximately 1 million therms of natural gas in 2022 pursuant from LG&E pursuant to service under a Firm Commercial Rate Schedule. Energy is one of the single highest operating costs faced by Walmart. The Companies' Application, including the substantial addition of generation resources and the Proposed DSM-EE Program Plan, has the potential to substantially impact Walmart's operations in Kentucky.

9. Furthermore, Walmart has established aggressive and significant companywide renewable energy goals, including to be supplied 100 percent by renewable energy by 2035. The Companies' Application will also substantially impact these Walmart's renewable energy goals.

10. Walmart has a special and unique interest in this case that cannot be adequately represented by any other party. While KRS 367.150(8) imposes a statutory duty on the Kentucky Attorney General's Office of Rate Intervention to represent the interests of "consumers," that duty relates primarily to residential customers. Walmart is not a residential customer and, in any event,

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<sup>1</sup> <https://corporate.walmart.com/about/kentucky>

its interest is as a large commercial customer that takes service on different rate schedules than residential customers.

11. Walmart's interests are also dissimilar to other commercial or industrial customers. Walmart is a single customer that purchases substantial amounts of energy for numerous accounts across multiple locations within the Companies' service territories. Other customers purchasing similar amounts of energy often do so for a single location whereas Walmart's energy needs are for 49 different facilities within the Company's service territory.

12. Walmart was also an active party in the Companies' last DSM/EE Program Plan proceedings at Case Nos. 2014-00003 and 2017-00441. Walmart also participated in the Companies' DSM Advisory Group, which conducted meetings leading up to the filing of the Companies' Application in this case.

13. Walmart invested in EE and DSM measures separate any apart from the Companies' Proposed DSM-EE Program Plan. Walmart is concerned that the Companies' proposed DSM/EE Program Plan may negatively impact Walmart's ability to cost-effectively pursue its own DSM/EE initiatives in the Companies' service territory.

14. All of the above factors make Walmart's interest in this case unique and special.

15. 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 Act<sup>2</sup>, which focuses on protecting the individual consumer rather than an entity like Walmart. Consistent with the mandate in KRS

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<sup>2</sup> See KRS 361.120(2).

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.<sup>3</sup>

16. Testimony that Walmart would present in this proceeding will provide the unique perspective of a commercial customer impacted by the Companies' Application. Walmart's testimony will also be informed by its experience as a customer that maintains operations on a national basis and is attuned to regional and national issues and trends, which include other states that have pursued lower carbon resources. Walmart's unique understanding and input will assist the Commission in adjudicating this case and evaluating the question of whether the relief requested by the Companies or otherwise resolved through settlement is just and reasonable. That perspective cannot be provided or represented by the Office of the Attorney General or by any other party to these proceedings.

17. Walmart was an intervening party and active participant in the Companies' 2020 rate cases, Case Nos. 2020-00349 and 2020-00350, 2018 rate cases, Case Nos. 2018-00294 and 2018-00295, 2016 rate cases, Case Nos. 2016-00370 and 2016-00371, 2014 rate cases, Case Nos. 2014-00371 and 2014-00372, and KU's 2009 rate case, Case No. 2009-00548. Walmart has also actively participated in other filings made by the Companies.<sup>4</sup> Walmart has also been an active

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<sup>3</sup> 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).

<sup>4</sup> For example, Walmart was an active participant in two of KU/LGE's Demand-Side Management and Energy Efficiency Programs Cases. *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; *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.

participant in other proceedings filed by other utilities before this Commission.<sup>5</sup> In all of 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 participating in those 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 Kentucky Power a 9.70 percent return on equity in its 2017 rate case.<sup>6</sup>

18. 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.

19. The attorneys representing Walmart in this proceeding are:

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<sup>5</sup> Walmart was an intervening party and active participant in the Kentucky Power Company ("Kentucky Power") and Liberty Utilities Co. merger case, Case No. 2021-00481, Kentucky Power's rate investigation, Case No. 2021-00370, Kentucky Power's 2020 rate case, Case No. 2020-00174, its 2017 rate case, Case No. 2017-00179, its 2014 rate case, Case No. 2014-00396, its 2013 rate case, Case No. 2013-00197, and its 2009 rate case, Case No. 2009-00459. Walmart's Motion to Intervene in Duke Energy Kentucky's current rate case, Case No. 2022-00372, was approved on January 17, 2023.

<sup>6</sup> *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 ("Kentucky Power 2017 Base Rate Case"), Final Order (Entered Jan. 18, 2018), pp. 29-30, the Commission cited to specifically to Walmart Witness Greg Tillman's testimony regarding nationwide trends on ROE in awarding Kentucky Power a 9.70 percent ROE and rejecting the 9.75 percent ROE proposed in a settlement agreement.

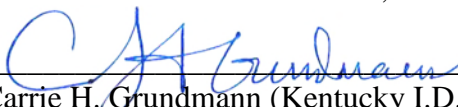
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Ms. Grundmann is authorized to accept service of papers in this proceeding on behalf of Walmart. Walmart also respectfully requests that Mr. Lee be added to the service list. Walmart may file a Motion for Mr. Lee to be admitted *pro hac vice* before this Commission, and subsequent to the Commission granting such request, Walmart requests that Mr. Lee be added to the official service list as an attorney 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

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*Counsel to Walmart Inc.*

Dated: January 18, 2023

**CERTIFICATE OF SERVICE**

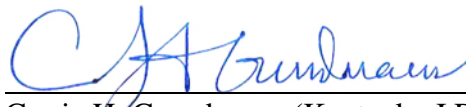
I hereby certify that a copy of the foregoing was served upon parties and/or counsel of record in this proceeding by electronic mail (when available) or by first-class mail, unless otherwise noted, this 18<sup>th</sup> day of January, 2023, to the following:

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