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

**In the Matter of:**

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| **ELECTRONIC JOINT APPLICATION OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND SITE COMPATIBILITY CERTIFICATES AND APPROVAL OF DEMAND SIDE MANAGEMENT PLAN AND APPROVAL OF FOSSIL FUEL-FIRED GENERATING UNIT RETIREMENTS** | ) | **CASE NO. 2022-00402** |

**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

There are many issues to be decided by this Commission in response to the Joint Application filed by Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, "Companies") regarding the future generation mix for the Companies. The factual and legal framework governing many, but not all, of these decisions has been fundamentally altered by the passage of Senate Bill 4 ("SB 4"), which became law in the Commonwealth in March 2023, three months after the Companies' Joint Application was filed with the Commission. Notwithstanding the new legal framework applicable to many aspects of the Companies' Application, Walmart believes that the Companies have carried their burden with respect to most of their requests in this case. Based on the evidentiary record developed in this case, Walmart believes that the Commission should take the following actions in response to the Companies' Application:

1. Grant the Companies' request to retire Mill Creek Generating Station ("Mill Creek") Units 1 and 2 and E.W. Brown Generating Station ("Brown") Unit 3;[1]

2. Authorize the Companies to retire Haefling Units 1 and 2 and Paddy's Run Unit 12 upon any of these units experiencing a major mechanical issue;

3. Grant Certificates of Public Convenience and Necessity ("CPCN") to construct two natural gas combined cycle units totaling 621 MW, one at Mill Creek ("Mill Creek 5") and the other at Brown ("Brown 12"), along with associated transmission construction at those facilities;

4. Grant a CPCN permitting the Companies to construct a battery energy storage system ("BESS") at Brown ("Brown BESS"), subject to the Companies providing periodic reports in this docket concerning the Companies' operational experience with Brown BESS, including, but not limited to, lessons learned, reliability impacts, cost savings, peak demand impacts, and emissions reductions;

5. Grant CPCNs for the Companies to construct solar electric generating facilities in Mercer County, Kentucky and Marion County, Kentucky;

6. Approve the Companies' proposed 2024-2030 Demand-Side Management ("DSM") and Energy Efficiency ("EE") Program Plan ("Proposed DSM-EE Program Plan") while also instructing the Companies to take steps to better engage commercial and industrial customers ("C&I") customers in the DSM Advisory Group process;

7. Support the four solar power purchase agreements ("PPAs") proposed by the Companies, but reject the Companies' proposal to recover the costs of such PPAs through the Fuel Adjustment Clause ("FAC") and instead adopt a methodology and cost recovery framework that recognizes the fixed nature of the investment and the energy and capacity benefits of these resources, which could include adopting Kentucky Industrial Utility Customers' ("KIUC") witness Lane Kollen's recommendation to recover solar PPA costs through a rider/surcharge similar to the Companies' Environmental Surcharge ("ES") and Retired Asset Recover ("RAR") riders; and

8. Instruct the Companies to undertake a more thorough and comprehensive analysis of membership in a regional transmission organization ("RTO") or independent system operator ("ISO"), including PJM Interconnection, LLC ("PJM") and Midcontinent Independent System Operator ("MISO").

[1] Walmart does not take a position regarding the Companies' request for approval to retire Ghent Unit 2, except to note that with the Commission's approval of the two new natural gas combine cycle combustion turbine ("NGCC") facilities, it is unclear whether the Companies need the generating capacity provided by Ghent Unit 2.

## II. FACTUAL AND PROCEDURAL BACKGROUND

On December 15, 2022, the Companies filed their Joint Application for Certificates of Public Convenience and Necessity, Site Compatibility Certificates, and Demand-Side Management and Energy Efficiency Plan ("Joint Application") with the Commission. That Joint Application sought CPCNs to construct (i) two 621 MW net summer rating NGCC units, one at Mill Creek and the other at Brown; (ii) two 120 MWac solar generating units, one in Mercer County, Kentucky and the other in Marion County, Kentucky; and (iii) a 125 MW four-hour BESS at Brown.[2] Additionally, the Companies sought approval of its Proposed DSM-EE Program Plan and a Declaratory Order that Commission approval of four solar PPAs was not needed.[3] The Companies' analysis deemed these resources to represent the most economic mix of resources to serve customers' energy needs at the lowest reasonable cost.[4]

As part of their request for approval of the above supply-side resources, the Companies' analysis also demonstrated that it was economic to retire three coal units: Mill Creek 2, Ghent 2, and Brown 3.[5] A fourth coal unit – Mill Creek 1 – was already scheduled for retirement at the end of 2024.[6] The Companies also indicated in their Joint Application that they planned to retire three small frame simple cycle combustion turbines – Haefling Units 1 and 2 and Paddy's Run Unit 12 – in 2025.[7]

Walmart sought permission to intervene in this docket on January 18, 2023. That request was granted by Commission Order dated February 8, 2023. In addition to Walmart, the following

[2] Joint Application, pp. 1-3.

[3] *Id*.

[4] *Id*., p. 11.

[5] *Id*., pp. 6-7 at ⁋⁋ 15-16.

[6] *Id*., p. 9, n. 3(1).

[7] *Id*., n. 3(2).

parties were granted permission to intervene as active participants in this docket: KIUC, Office of the Attorney General through its Office of Rate Intervention ("OAG"), Sierra Club, Metropolitan Housing Coalition ("MHC"), Kentuckians for the Commonwealth ("KFTC"), Kentucky Solar Energy Society ("KYSES") and Mountain Association ("MA") (MHC, KFTC, KYSES, and MA are collectively referred to as the "Joint Intervenors"), the Kentucky Coal Association, Inc. ("KCA"), Mercer County Fiscal Court ("Mercer County"), Lexington-Fayette Urban County Government ("LFUCG"), and Louisville/Jefferson County Metro Government ("Louisville Metro").

Subsequent to the filing of the Companies' Joint Application, on March 29, 2023, SB 4 became law in the Commonwealth of Kentucky. SB 4 created a rebuttable presumption against the closure of any "fossil fuel-fired electric generating unit," which can only be overcome with evidence "sufficient for the Commission to find that":

(a) The utility will replace the retired electric generating unit with new electric generating capacity that:

1. Is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area;

2. Maintains or improves the reliability and resilience of the electric transmission grid; and

3. Maintains the minimum reserve capacity requirement established by the utility's reliability coordinator;

(b) The retirement will not harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law; and

(c) The decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency.

The passage of SB 4 called into question the Companies' plans to retire Mill Creek 1 and 2, Ghent 2, Brown 3, Haefling Units 1 and 2, and Paddy's Run Unit 12 ("Fossil Fuel Electric

Generating Units"). In response, on May 10, 2023, the Companies filed a second Joint Application seeking authority to retire the Fossil Fuel Electric Generating Units consistent with the requirements of SB 4 ("SB 4 Application").[8] The Commission consolidated the Companies' Joint Application and SB 4 Application into a single proceeding via Order dated May 16, 2023.[9]

As part of the SB 4 Application, the Companies presented their 2023 Fossil Fuel-Fired Generating Unit Retirement Assessment ("Retirement Assessment")[10] that, among other things, established that the portfolio of resources proposed in the Joint Application had present value of revenue requirement ("PVRR") benefits ranging from $344 million to $1.3 billion, improved system resilience, and maintained reliability as measured by the loss of load expectancy ("LOLE") and seasonal reserve margins.[11]

In response to the Companies' Applications, numerous parties filed testimony, including KIUC,[12] KCA,[13] Sierra Club,[14] Louisville Metro, LFUCG, Joint Intervenors,[15] and Mercer

[8] *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2023-00122 ("SB 4 Application Case"), SB 4 Application, p. 1.

[9] SB 4 Application Case, Order (entered May 16, 2023), p. 3.

[10] *See* SB 4 Application at Ex. SB4-1.

[11] *See* SB 4 Application Case, Direct Testimony of Stuart A. Wilson ("SB 4 Wilson Direct"), p. 3, lines 11-18; *see also* SB 4 Application Case, Direct Testimony of Lonnie A. Bellar ("SB 4 Bellar Direct"), p. 11, lines 7-10 and Table 3 (arguing the Companies will have created dispatchability with the portfolio of resources proposed in the SB 4 Application versus the Fossil Fuel Electric Generating Units); p. 13, line 1 to p. 14, line 6 and Tables 4 and 5 (indicating that the proposed portfolio of new supply side resources "meet" the reliability requirements of SB 4 because the Companies' proposed portfolio meets the 3.57 LOLE from the Companies' most recent reserve margin study); and p. 15, line 17 to p. 16, line 2 and Table 6 (stating the proposed portfolio is more resilient than maintaining the Fossil Fuel Electric Generating Units with respect to Start-up Times, Ramp Rate, and Dispatchability Rate).

[12] KIUC filed the Direct Testimony of Lane Kollen ("Kollen Direct").

[13] KCA filed the Direct Testimony of Emily S. Medine ("Medine Direct").

[14] Sierra Club filed the Direct Testimony of Michael Goggin ("Goggin Direct"). Sierra Club, Louisville Metro, and LFUCG jointly sponsored the Direct Testimony of Andrew Levitt ("Levitt Direct").

[15] Joint Intervenors filed the Direct Testimony of Jim Grevatt ("Grevatt Direct"), the Direct Testimony of John D. Wilson ("Joint Intervenor Witness Wilson Direct") the Direct Testimony of Andy McDonald ("McDonald Direct"), and the Direct Testimony of Anna Sommer ("Sommer Direct").

County.[16] Of the parties filing testimony, only KIUC and KCA opposed the Companies' proposal to close the Fossil Fuel Electric Generating Units. While KCA opposed the Companies' proposal to close any of the coal-fired Fossil Fuel Electric Generating Units, arguing the request was premature and the Companies had not met their SB 4 burden,[17] KIUC witness Kollen only opposed the Companies' proposal to close Ghent 2.[18] By contrast, other parties agreed (either explicitly or implicitly) that the Companies had met their burden under SB 4 to justify closure of the Fossil Fuel Electric Generating Units.[19]

## III. ARGUMENT

### A. The Commission Should Grant the Companies' Requests for CPCNs for Two NGCC Units at Mill Creek and Brown and to Close Mill Creek Units 1 and 2 and Brown Unit 1.

The evidence in this case supports closure of at least six of the seven[20] Fossil Fuel Electric Generating Units: Mill Creek 1 and 2, Brown 3, Haefling Units 1 and 2, and Paddy's Run Unit 12,[21] not only because the Companies have put forward a least cost set of resources to serve ratepayer energy needs, but also because the Companies have met their burden under SB 4 to overcome the presumption against closure regarding these units.[22] Upon the closure of these units, the Companies have put forward reliable, resilient replacement resources in the form of two NGCC

[16] Mercer County filed the Direct Testimony of Sarah Steele ("Steele Direct").

[17] Medine Direct, p. 4, line 1 to p. 5, line 2.

[18] Kollen Direct, p. 6, lines 2-12. For each of the other six Fossil Fuel Electric Generating Units, Mr. Kollen either supported or did not oppose the Companies' other requests. *See id*., p. 5, lines 16-19.

[19] *See* Wilson Direct, p. 4, lines 3-5 (stating expressly that the Companies should be found to have rebutted the presumption in SB 4); *see also, e.g.,* Levitt Direct (taking no position on the SB 4 Application, but identifying other ways in which the Companies can meet their energy and capacity needs without new NGCC units).

[20] Walmart does not take a position at this time on the Companies' request to retire Ghent Unit 2.

[21] KIUC supports closure of each of these units. *See* Hearing Transcript ("Tr."), Aug. 29, 2023, 14:07:48-14:08:08 (cross-examination of KIUC witness Kollen).

[22] *Id.*, 14:08:08-14:08:18 (cross-examination of KIUC witness Kollen) (noting KIUC's position that the Companies' met their SB 4 burden to overcome the presumption).

units to be sited at Mill Creek and Brown.[23] The only party to oppose the above retirements is KCA. For the reasons discussed below, the Commission should find that the Companies have met their burden under pre-existing law and SB 4 to justify their requests to close Mill Creek Units 1 and 2, Brown 3, Haefling Units 1 and 2, and Paddy's Run Unit 12, and to replace those resources with two new NGCC units.

**1. *Environmental regulations other than the Good Neighbor Rule ("GNR") impact the continued viability of the Companies' coal plants*.**

The modeling performed in this case revealed that it was in ratepayers' best interest to retire the Fossil Fuel Electric Generating Units on the schedule proposed by the Companies[24] in favor of the supply-side resources identified in the Application.[25] In opposing the Companies' requests to close the Fossil Fuel Electric Generating Units as premature, KCA focused on the status of the Environmental Protection's Agency's ("EPA") GNR and the stay issued by the Sixth Circuit Court of Appeals.[26] Neither of these arguments warrant rejection of the Companies' requests.[27]

First, while it is true that the GNR is not a final and enforceable regulation, the evidence in the record established conclusively that numerous other, entirely independent EPA regulations exist that would impose similar obligations on the Companies to address emissions at the Fossil Fuel Electric Generating Units, nearly all of which would require the installation of Selective

[23] *Id*., 14:08:20-14:08:47 (cross-examination of KIUC witness Kollen) (noting that KIUC either supports and/or does not oppose the Companies' proposal to build to NGCC units).

[24] Direct Testimony of Lonnie E. Bellar ("Bellar Direct"), p. 3, line 17-21; *see also* Rebuttal Testimony of Lonnie E. Bellar ("Bellar Rebuttal"), p. 4, line 9 to p. 6, line 6.

[25] This was true even if the Companies operating the NGCC units at a 50 percent capacity factor to consistent with the EPA's Section 111(b) regulations. *See* Rebuttal Testimony of David S. Sinclair ("Sinclair Rebuttal"), p. 63, line 7 to p. 64, line 14; *see also* Companies' Responses to Commission Staff Data Requests, Set 5, No. 2 and Set 6, No. 2.

[26] *See* Medine Direct, p. 5, line 17 to p. 6, line 8 and p. 13, lines 11-14.

[27] Indeed, the Companies contend that the GNR has no relevance to the decision to retire both Brown 3 and Mill Creek 1 as there are entirely independent and sufficient justifications for retiring those units. *See* Bellar Rebuttal, p. 21, lines 9-13.

Catalytic Reduction ("SCR") technology on units lacking such technology.[28] Thus, the Companies properly calculated the cost impact to ratepayers of foregoing those investments – as well as other annual operation and maintenance ("O&M") costs – in favor of newer resources, including the NGCC units.

Furthermore, in planning to site the new NGCC at the Brown and Mill Creek sites, the Companies acted in the best interests of ratepayers by making use of existing infrastructure and reuse of a brownfield – rather than a greenfield site.[29] These sites already have existing Title V air permits, and by replacing older coal units with new NGCC, the Companies were able to engage in a "netting" process that avoided the obligation to comply with more stringent environmental regulations that would otherwise have been triggered if the NGCC projects were deemed major modifications.[30] Indeed, the record was undisputed that the Companies could not have made use of the Brown and Mill Creek sites while *also* keeping Brown 3 and Mill Creek Units 1 or 2 open without substantial additional costs.

Second, a closer inspection of the stay issued by the Sixth Circuit reveals that it is procedural, not substantive in nature.[31] The likely outcome from the Sixth Circuit will be to give the state a second opportunity to draft a State Implementation Plan ("SIP") before being subject to any Federal Implementation Plan ("FIP"). Regardless of whether emissions are addressed via SIP or FIP, the EPA standards that must be satisfied will remain the same. As such, the Commission

[28] Hearing Tr., Aug. 24, 2023, 14:15:10-14:16:42 and 15:16:20-15:19:45 (cross-examination of Companies' witness Imber).

[29] Hearing Tr., Aug. 24, 2023, 11:26:27-11:28:22 (cross-examination of Companies' witness Imber).

[30] Hearing Tr., Aug. 24, 2023, 15:37:16-15:39:28 (cross-examination of Companies' witness Imber).

[31] Hearing Tr., Aug. 24, 2023, 11:44:04-11:47:4045 (cross-examination of Companies' witness Imber); *see also* Rebuttal Testimony of Philip A. Imber ("Imber Rebuttal"), p. 7, line 18 to p. 8, line 21.

should place little weight on the import of the Sixth Circuit's stay or the lack of finality for the GNR.

### 2. *The Companies successfully rebutted the presumption against retirement under SB 4 for Mill Creek Units 1 and 2 and Brown 3.*

Under SB 4, the Companies must present evidence sufficient to overcome the presumption against closure of the Fossil Fuel Electric Generating Units, including evidence that retired generation will be replaced with new electric generating capacity that is (i) dispatchable; (ii) maintains or improves the reliability and resilience of the electric transmission grid; and (iii) maintains the minimum reserve capacity requirement established for the utility.[32] The evidence presented in this case establishes that the Companies met each of these requirements.[33]

First, there is no doubt that the NGCC units are dispatchable, meaning they will be able to be dispatched in response to dispatch instructions between the economic minimum and maximum.[34] In fact, the Companies put forward evidence that the NGCC units will be *more* dispatchable than the Fossil Fuel Electric Generating Units.[35] The only party to dispute this evidence was KCA. According to KCA witness Medine, the Companies "do not demonstrate [that] the replacement resources are equally dispatchable to the ones they propose for early retirement."[36] KCA's arguments on dispatchability must be rejected.

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[32] SB 4 § 2(2)(a)(1)-(3). SB 4 also requires the Companies to establish that retirement will not cause any "net incremental costs" to be recovered from ratepayers that could be avoided by continuing to operate the Fossil Fuel Electric Generating Units. *Id*. at § 2(2)(b). Walmart's brief addresses this latter requirement in Section III(A)(3), below.

[33] Joint Intervenors agreed with the Companies that they met the above obligations under SB 4. *See* Joint Intervenor Witness Wilson Direct, p. 13, lines 16-22, p. 14, lines 4-17, p. 23, line 19 to p. 25, line 12, p. 28, lines 3-5.

[34] *See* SB 4 Bellar Direct, p. 9, line 7 to p. 10, line 18; *see also* SB 4 Wilson Direct, Ex. SB4-1, pp. 11-12. Some parties argued that the solar PPAs do not satisfy SB 4, s*ee* Kollen Direct, p. 19, line 14 to p. 20, line 2; however, the Companies are not relying on the solar PPAs to satisfy the requirements of SB 4. Bellar Rebuttal, p. 11, line 18 to p. 12, line 3.

[35] SB 4 Bellar Direct, p. 11, line 7 to p. 8, line 3 and Table 3.

[36] Medine Direct, p. 4, lines 16-20.

KCA witness Medine seeks to read language into SB 4 that does not exist. Ms. Medine repeatedly claims that the NGCC units do not have the "same" dispatchability profile as the Fossil Fuel Electric Generating Units.[37] Importantly, SB 4 does not require the new generating capacity to maintain or improve dispatchability. Instead, SB 4 merely requires that the "new electric generating capacity" be dispatchable, and there is no doubt that the NGCC units are dispatchable. While Ms. Medine makes the claim that the dispatchability profiles of the Fossil Fuel Electric Generating Units differs from the NGCC proposed by the Companies, there appears to be no analysis supporting her claim in her Direct Testimony. The Commission should find that the Companies have met their burden to establish that the NGCC units are dispatchable within the meaning of SB 4.

Second, to establish that the Companies' requests either maintain or improve the reliability and resilience of the electric transmission grid, the Companies first put forward evidence that their proposed resources meet or exceed the results of their most recent reserve margin study, which set minimum reserve margin targets of 17 percent in the summer and 24 percent in the winter.[38] According to the Companies, maintaining adequate reserve margins "is consistent with Senate Bill 4's definition of 'reliability,'" which is defined as "having adequate electric generating capacity to safely deliver electric energy in the quantity, with the quality, and at a time that the utility customers demand.[39]

For resilience, which SB 4 defines as "having the ability to quickly and effective respond to and recover from events that compromise grid reliability"[40] the Companies identified three

[37] Medine Direct, p. 6, lines 22-23.

[38] SB 4 Bellar Direct, p. 12, line 4 to p. 14, line 16 and Tables 4 and 5; *see also* SB 4 Wilson Direct, Ex. SB4-1, pp. 13-15.

[39] SB 4 § 1(2).

[40] SB 4 § 1(3).

metrics to assess the resilience of their proposed portfolio since SB 4 did not identify any metrics indicative of resilience: start-up times, ramp rate, and dispatchability rate.[41] Under each of these three metrics, the proposed resources scored better than the Fossil Fuel Electric Generating Units the Companies propose to retire.[42]

Yet again, KCA was the only party to put forward evidence claiming that the Companies failed to demonstrate that the new resources will "maintain or improve reliability and resiliency."[43] A review of KCA witness Medine's testimony on these issues seems to focus exclusively on the fact that the NGCC units will not have "onsite fuel storage."[44] Companies' witness Bellar refuted Ms. Medine's claims that coal is somehow more reliable than natural gas because it can be inventoried on site, noting that it is costly to maintain coal inventory, and further, that it is necessary to maintain inventory on site because of how long it takes to transport coal to the site, which ranges from one to nine days based on the form of transportation.[45] Such transportation issues do not exist with natural gas, which is nearly instantaneous.

Other than identifying the lack of on-site fuel storage, KCA fails to explain how this makes the NGCC either less reliable or less resilient. In any event, the Companies confirm that they are exploring the ability to store back-up fuel on site,[46] and the costs of those fuels are believed to be covered by the contingency budgets already in place for the NGCC units. The Companies have also taken steps to reduce supply risks by siting the NGCC units at different sites and having a

[41] SB 4 Bellar Direct, p. 15, lines 9-16.

[42] *Id*., p. 15, line 17 to p. 16, line 2 and Table 6; *see also* SB 4 Wilson Direct, Ex. SB4-1, pp. 15-16.

[43] Medine Direct, p. 4, lines 16-20.

[44] *See, i.e., id*., p. 6, lines 20-23, p. 10, lines 12-14.

[45] Rebuttal Testimony of David S. Sinclair ("Sinclair Rebuttal"), p. 56, line 14 to p. 58, line 12.

[46] *See* Bellar Rebuttal, p. 8, lines 13-23.

diverse gas supply.[47] Additionally, both the Companies and Texas Gas took steps to troubleshoot issues that arose during Winter Storm Elliott and have/are taking steps to correct those issues.[48] When viewed holistically, the evidentiary record shows that the NGCC are at least – if not more – reliable and resilient than the Fossil Fuel Electric Generating Units.

Finally, in response to SB 4's requirement that the replacement generating capacity "maintains the minimum reserve capacity requirement established by the utility's reliability coordinator," the Companies note that the Tennessee Valley Authority ("TVA"), the Companies' reliability coordinator, does not "prescribe a reserve capacity requirement for the Companies."[49] Instead, reserve margins are set by the Companies and subject to Commission review based on reserve margin studies.[50] The portfolio of resources proposed by the Companies exceeds the Companies' seasonal minimum reserve margins for the 2028 time period,[51] and it does not appear that any party disputes the Companies' evidence on this issue.

### 3. *The Commission should find that the Companies proved there is no net incremental costs associated with closing the Fossil Fuel Electric Generating Units, rejecting KCA's suggestion that the Companies needed to perform a rate impact analysis.*

Under SB 4, the Commission must also assess whether retirement of a fossil fuel generating unit will cause "the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate" the units.[52] KCA witness Medine claims that SB 4 has a focus on "affordability of the customer's electric utility rate"[53] and whether there is an "adverse

[47] Bellar Direct, p. 7, lines 12-21.

[48] Bellar Rebuttal, p. 18, line 15 to p. 19, line 7 and Ex. LEB-1.

[49] *See* SB 4 Bellar Direct, p. 18, lines 3-12.

[50] *Id*., p. 12, lines 13-15.

[51] *Id*., p. 12, lines 18-21 and Table 5, p. 14; *see also* SB 4 Wilson Direct, Ex. SB4-1, pp. 16-18.

[52] SB 4 § 2(2)(b).

[53] Medine Direct, p. 6, lines 9-14 and p. 6, line 24 to p. 7, line 2.

impact on customers' electric rates."[54] Consistent with Ms. Medine's interpretation of SB 4, she criticizes the Companies for calculating a 30-year net present value ("NPV") analysis rather than a 10-year residential rate impact analysis.[55] The Commission should reject KCA witness Medine's arguments on these points as being inconsistent with the plain language of SB 4 and cherry-picked arguments intended to support KCA's preferred outcome – denial of the Companies' Applications.

A review of SB 4 confirms that it does not mention affordability or impose any obligation on a utility to perform a rate impact analysis.[56] Instead SB 4 requires the Companies to prove that there are no net incremental costs that could be avoided by keeping the coal plants open. The phrase "net incremental costs" is a term of art that has a clear and unambiguous meaning, *i.e.*, the costs above sunk costs (costs already reflected in rates) that the Companies will/will not incur based on a proposed course of action. The NPV analysis and PVRR calculations performed by the Companies are the proper way to determine what, if any, net incremental costs exist.

By contrast, the 10-year residential rate impact analysis requested by KCA witness Medine is a cherry-picked statistic intended to support KCA's preferred outcome: the denial of the Companies' requests. It is undisputed that rates will be higher during the first 10 years; however, the evidence is equally clear that the NPV over the 30-year period evaluated by the Companies is a benefit to ratepayers of more than $600 million,[57] and rates are lower than they would otherwise be if the Companies' proposal is not adopted.[58] KCA offers no legitimate justification for limiting the Commission's focus to only the first 10 years of a project, nor can they; such a request does

[54] *Id*., p. 6, line 24 to p. 7, line 2.

[55] Hearing Tr., Aug. 29, 2023, 9:09:00-9:15:52 (cross-examination of KCA witness Medine) (arguing in favor of a 10-year residential rate impact analysis).

[56] Rebuttal Testimony of Robert M. Conroy ("Conroy Rebuttal"), p. 10, lines 5-15.

[57] *See* Companies' Response to KCA Data Request, Set 3, No. 29.

[58] Conroy Rebuttal, p. 10, line 21 to p. 11, line 9.

not square with SB 4's requirement to consider "*any* net incremental costs." Had the General Assembly wanted to require a utility to perform a rate impact analysis, it could have required it. Rather, the General Assembly required the utilities to present evidence of net incremental costs. Nothing in SB 4 supports the KCA's proposal to cherry-pick a slice of time to support their requested outcome, let alone a requirement to present rate impact analyses. The Commission should assess the Companies' requests based on PVRR and NPV, which reflects substantial ratepayer benefits from pursuing the Companies' recommendations, including closure of the Fossil Fuel Electric Generating Units, and reject KCA's proposal.

### B. The Companies' Proposal to Close Haefling Units 1 and 2 and Paddy's Run Unit 12 Upon a Major Economic Occurrence is Reasonable and Uncontested.

No parties presented record evidence contesting the Companies' proposals to close Haefling Units 1 and 2 or Paddy's Run Unit 12 in approximately 2025 when any of those units experience a major economic occurrence.[59] Closer inspection of KCA's objections to closure of any of the Fossil Fuel Electric Generating Units reveals that KCA only addressed three of the Companies' coal units, specifically Mill Creek 2, Brown 3, and Ghent 2.[60] For all the reasons Walmart believes the Companies met the requirements of SB 4 to retire the coal-fired Fossil Fuel Electric Generating Units, Walmart equally believes the Companies have met their burden with respect to the retirement of Haefling Units 1 and 2 and Paddy's Run Unit 12, and the Commission should authorize their retirement on the schedule proposed by the Companies.

[59] For example, KCA, which argues the Companies have not met their burden under SB 4 with respect to Brown 3, Ghent 2, and Mill Creek 2, makes no mention of whether the Companies met their burden to close the Haefling or Paddy's Run Units. *See* Hearing Tr., Aug. 29, 2023, 8:41:55-8:44:00 (cross-examination of KCA witness Medine) (indicating analysis was limited to Brown 3, Ghent 2, and Mill Creek 2).

[60] Ms. Medine admitted that she did not assess Mill Creek 1 because that retirement decision preceded the Companies' Applications in this case.

### C. **Walmart Supports a CPCN for Brown BESS Subject to Periodic Reporting**.

On the one hand, the Companies argue that Brown BESS is part of a least reasonable cost portfolio of resources.[61] On the other hand, the Companies also seem to acknowledge that "having the Brown BESS will allow the Companies to gain valuable experience with stored power,"[62] implying that the benefit is more in the experience to be gained by the Companies. Some parties, namely KIUC, oppose Brown BESS, arguing that it is not necessary from a reliability standpoint (though simultaneously acknowledging that Brown BESS improves reliability)[63] and is too costly.[64] While Walmart agrees with KIUC's observations about the cost of Brown BESS, it ultimately agrees with the Companies that the benefits of the technology, including the Companies gaining operational experience with stored power, warrant granting the Companies a CPCN to construct Brown BESS. At the same time, Walmart believes the Companies should provide contemporaneous updates concerning the Companies' experiences with Brown BESS, including but not limited to, lessons learned, reliability impacts, cost savings, peak demand impacts, and emissions reductions, as well as any other metrics the Commission may deem worthy of tracking. In this way, the Companies, Commission, Commission Staff, and parties will be kept up-to-date as to the benefits of Brown BESS and the Companies' experience with the technology. Walmart supports at least semi-annual updates, if not quarterly updates, and requests that the Commission order the updates to be filed in this docket and served upon parties of record as a condition of granting a CPCN for Brown BESS.

[61] Bellar Direct, p. 22, lines 9-11.

[62] *Id*., p. 22, lines 13-14.

[63] Kollen Direct, p. 15, lines 21-24

[64] *Id*., p. 16, line 17 to p. 17, line 9.

### D. Subject to the Commission's Adoption of the Stipulation and Recommendation Between the Companies and Mercer County, the Commission Should Grants CPCNs for the Companies-Owned Solar Projects in Mercer and Marion Counties.

The Commission should approve CPCNs for the proposed Companies-owned solar projects in Mercer and Marion Counties, subject to approval of the Stipulation by and between the Companies and Mercer County.[65] All parties, except KCA, either approve and/or do not oppose CPCNs for these solar projects.[66] Moreover, while KCA witness Medine's position can be broadly described as supporting no change in the generation mix, which presumably includes these two Companies-owned solar projects, KCA witness Medine offers no specific objections to them. Approving these solar projects will diversify the Companies' generation mix at the lowest cost to ratepayers, thus, the Commission should approve these projects subject to adoption of the Stipulation by and between the Companies and Mercer County.

### E. The Commission Should Approve the Companies' Proposed DSM-EE Program Plan and Order the Companies to Improve Methods for Obtaining Feedback and Involvement from C&I Customers.

Walmart supports the Proposed DSM-EE Program Plan proposed by the Companies and recommends its approval by the Commission. Notwithstanding Walmart's support of the Proposed DSM-EE Program Plan, Walmart also sees opportunities for improving the DSM Advisory Group process in order to better engage the Companies' C&I customers.

A review of the meeting minutes from the DSM Advisory Group confirms that the majority of attendees represent residential and low-income customer interests.[67] With limited time and

[65] *See* Stipulation and Recommendation (filed Aug. 15, 2023).

[66] KIUC does not oppose these CPCNs. *See* Kollen Direct, p. 5, lines 17-18. Both Sierra Club and the Joint Intervenors also support the Companies' requests. *See* Sinclair Rebuttal, p. 7, lines 17-24 (noting the parties' positions from Direct Testimony).

[67] *See* Direct Testimony of John Bevington ("Bevington Direct"), Ex. JB-2 at November 10, 2022, DSM Advisory Group Meeting Minutes, page 1 of 4; *see also* Hearing Tr., Aug. 28, 2023, 18:43:15-18:46:32 (cross-examination of Companies' witness Bevington).

resources, it is often difficult to engage C&I customers on EE/DSM issues of interest to them, including the DSM Advisory Group, especially where the meetings are dominated by residential and low-income issues. While engaging C&I customers can be challenging, their participation in the DSM Advisory Group process is critical to reducing energy usage as these customers are often the most energy intensive in the Companies' service territory.

Companies' witness Bevington noted that C&I customers can speak with their key account representatives about EE/DSM opportunities.[68] These one-on-one conversations are not a substitute for the collaborative process of the DSM Advisory Group. Moreover, even where one-on-one discussions are occurring between a customer and their key account representative, there is presently no clear pathway for those discussions to make their way to other C&I customers for their consideration, let alone to the DSM Advisory Group for discussion and analysis. Without such engagement, it is likely that opportunities for effective C&I EE/DSM programs are being missed.

The Companies acknowledged during the hearing that there is a benefit to discussing C&I-specific EE/DSM programs with customers who could take advantage of those programs,[69] thus, Walmart requests that the Commission order the Companies to take steps to better evaluate EE/DSM programs for C&I customers. Such steps may include holding separate DSM Advisory Group meetings devoted to C&I customers and/or setting aside specific blocks of time at the DSM Advisory Group meetings to deal solely with EE/DSM programs that may be of interest to C&I customers. The Commission may also want to order the Companies to reach out to its larger

[68] *See* Hearing Tr., Aug. 28, 2023, 18:50:56-18:52:32 (cross-examination of Companies' witness Bevington).

[69] *Id*., 18:52:33-18:53:43.

customers, particularly those that are statutorily prohibited from opting out of utility-sponsored EE/DSM and notifying them of the opportunity to participate in the DSM Advisory Group.

### F. Walmart Does Not Oppose the Four Solar PPAs But Agrees with KIUC that Cost Recovery Should Be Addressed.

In this case, the Companies seek a Declaratory Order that no Commission approval of the solar PPAs is necessary.[70] Walmart supports the solar PPAs proposed in this case. Among other reasons, the solar PPAs are a pass-through cost for the Companies for which they do not earn a return and which will be recovered from customers on a levelized basis for the life of these contracts.[71] Moreover, these resources were selected from an all-source Request for Proposals ("RFP") as part of the least cost solution for customers.[72]

While Walmart does not oppose the solar PPAs, Walmart does have concerns with how the costs of the solar PPAs might be recovered from customers. In a prior case involving an energy-only, non-firm solar PPA, the Commission authorized recovery through the Companies' Fuel Adjustment Clause ("FAC") proceedings, and it appears the Companies make a similar proposal here, which would recover the costs of these PPAs on a per kWh basis.[73] Unlike the prior case, these are must take, long-term PPA contracts rather than non-firm, energy only contracts. Recognizing these inherent differences, KIUC witness Kollen has proposed that the costs of the solar PPAs, which are costs that result from investments in fixed assets, should be allocated and recovered in a manner that appropriately recognizes both the energy and capacity benefits of these solar PPAs even though they are priced on a per MWh basis.[74] Walmart agrees with this concept.

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[70] Joint Application, p. 3; *see also* Direct Testimony of Robert M. Conroy ("Conroy Direct"), p. 6, lines 15-19.

[71] Hearing Tr., Aug. 24, 2023 17:47:05-17:48:40.

[72] *Id*.

[73] Rebuttal Testimony of Robert M. Conroy ("Conroy Rebuttal"), p. 3, lines 7-10.

[74] Kollen Direct, p. 20, line 16 to p. 21, line 9; Hearing Tr., Aug. 29, 2023, 14:11:12-14:12:05 (cross-examination of KIUC witness Kollen).

Mr. Kollen proposes a new rider for the purpose of recovering the costs of the solar PPAs.[75] Mr. Kollen sees three benefits with a rider, including: (1) it gives the Commission the chance to pre-approve these contracts rather than the after-the-fact review that occurs in the FAC; (2) it provides dollar-for-dollar recovery under the contracts, eliminating the risk of recovery under the FAC framework;[76] and (3) it will allow a different cost allocation methodology other than a per kWh calculation.[77] While Walmart generally opposes the creation of new riders, in this case, Mr. Kollen's reasons for suggesting a new rider outweigh Walmart's general opposition to a new rider. For these reasons, Walmart does not oppose Mr. Kollen's proposal to create a rider solely for recovering the costs of the solar PPAs and supports KIUC's desire for a cost allocation methodology that recognizes the energy *and* capacity benefits of these resources. At this time, Walmart does not take a position at this time on the specific cost allocation methodology proposed by Mr. Kollen, which is based upon how costs are allocated under the Companies' ES and RAR riders, but notes that it would appear that Mr. Kollen's methodology would better reflect the energy and capacity benefits of the solar PPAs than recovery of these costs through the FAC.[78]

### G. Walmart Supports Further and Ongoing Analysis by the Companies Concerning Membership in an RTO/ISO.

Walmart generally supports membership in RTOs/ISOs because of the potential for decreased utility costs, expanded access to renewable generation facilities, and improved grid reliability. Particularly when coupled with customer choice, Walmart has first-hand experience with cost savings in RTO/ISO markets. In this case, there is conflicting testimony as to the benefits

[75] *See* Kollen Direct, p. 21, lines 5-9; Hearing Tr., Aug. 29, 2023, 14:10:40-14:11:12 (cross-examination of KIUC witness Kollen).

[76] Hearing Tr., Aug. 29, 2023, 14:25:30-14:27:20, 14:34:00-14:34:16 (Commission questions of KIUC witness Kollen).

[77] Hearing Tr., Aug. 29, 2023, 14:12:10-14:13:20 (cross-examination of KIUC witness Kollen).

[78] Kollen Direct, p. 21, line 11 to p. 22, line 12.

of RTO/ISO membership. On the one hand, the Testimony of Andrew Levitt, which was jointly sponsored by Sierra Club, LFUCG, and Lexington Metro, put forward numerous arguments in support of the benefits of the Companies' membership in an RTO/ISO, specifically, PJM.[79] The conclusions reached by Mr. Levitt stand in stark contrast to the Companies' corrected RTO study, which was filed in May 2023, and concluded that RTO membership "at this time likely would not benefit customers."[80]

While there are differing opinions on the value of RTO/ISO membership at least three things are clear. First, markets are in a state of flux due to interconnection issues and the changing energy mix, which RTOs/ISOs are responding to with various market reforms.[81] It is understandable that the Companies would want greater clarity on these issues prior to assessing the "value" of RTO/ISO membership. Second, the Companies have confirmed that they are not opposed to joining an RTO/ISO, but they want there to be "clearly demonstrated sustained net-benefits for customers…,"[82] which suggests that further and ongoing analysis of RTO/ISO membership is warranted. Third, the Commission need not decide whether the Companies should join an RTO/ISO *in this case*. Instead, it is sufficient for the Companies to continue to study this issue on an ongoing basis. In this respect, Walmart recommends that the Commission require the Companies to consider and evaluate RTO/ISO membership as a component of the Companies' integrated resource plans ("IRP") and when seeking a CPCN to construct new resources in future proceedings.

[79] *See generally* Levitt Direct.

[80] *See* Companies' Response to Sierra Club Data Request Set 2, No. 26(b) at Attachment 1.

[81] *See, e.g.*, Levitt Direct, p. 28, n. 49 (*citing* the PJM Proposal on Capacity Market Reform); *see also* Sierra Club's Response to Companies' Data Request No. 12.

[82] Sinclair Rebuttal, p. 34, lines 12-19.

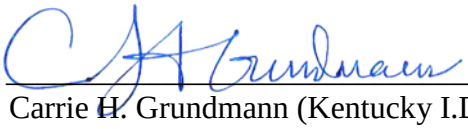
## IV. CONCLUSION

For the reasons set forth herein, Walmart requests that the Commission take the following actions in response to the Companies' requests:

1. Authorize the Companies to retire Mill Creek Units 1 and 2, Brown Unit 3, Haefling Units 1 and 2, and Paddy's Run Unit 12;
2. Grant CPCNs to construct two NGCC units at Mill Creek and Brown, respectively;
3. Grant CPCNs for the Brown BESS, subject to the reporting metrics recommended by Walmart;
4. Grant CPCNs for the Companies-owned solar projects in Mercer and Marion Counties, subject to the Stipulation and Recommendation entered into by and between the Companies and Mercer County;
5. Approve the Companies' Proposed DSM-EE Program Plan, but order the Companies to take steps to better engage C&I customers;
6. Signal support for the four solar PPAs but adopt a cost allocation methodology that recognizes fixed nature of the investment and the energy and capacity benefits of these resources, rejecting the Companies' proposal to recover these costs on a per MWh basis through the FAC; and
7. Order the Companies to continue to evaluate RTO/ISO membership, including as part of future IRP and CPCN filings with this Commission.

Respectfully submitted,

SPILMAN THOMAS & BATTLE, PLLC

By 

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Dated: September 22, 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 22nd day of September, 2023, to the following:

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