

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

**In the Matter of:**

|  |   |                            |
|--|---|----------------------------|
| <b>ELECTRONIC APPLICATION OF</b>           | ) |                            |
| <b>KENTUCKY POWER COMPANY FOR (1) A</b>    | ) |                            |
| <b>GENERAL ADJUSTMENT OF ITS RATES</b>     | ) | <b>CASE NO. 2023-00159</b> |
| <b>FOR ELECTRIC SERVICE; (2) APPROVAL</b>  | ) |                            |
| <b>OF TARIFFS AND RIDERS; (3) APPROVAL</b> | ) |                            |
| <b>OF ACCOUNTING PRACTICES TO</b>          | ) |                            |
| <b>ESTABLISH REGULATORY ASSETS AND</b>     | ) |                            |
| <b>LIABILITIES; (4) A SECURITIZATION</b>   | ) |                            |
| <b>FINANCING ORDER; AND (5) ALL OTHER</b>  | ) |                            |
| <b>REQUIRED APPROVALS AND RELIEF</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 May 12, 2023, Kentucky Power Company ("KPCo" or "Company"), filed a Notice of Intent to file an Application for (1) a general adjustment of its rates for electric service; (2) approval of tariffs and riders; (3) approval of accounting practices to establish regulatory assets and liabilities; (4) a securitization financing order; and (5) all other required approvals and relief ("Application").
2. The Company subsequently filed its Application on June 29, 2023.
3. The Commission has set an August 3, 2023, deadline for Motions to Intervene, thus Walmart's intervention is timely as it is filed prior to the Commission-established deadline.

4. 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."

5. 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.

6. 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 30,000 individuals and indirectly supports another 57,000 supplier jobs within the Commonwealth.<sup>1</sup>

7. Walmart is a large commercial customer of KPCo, operating nine retail facilities in KPCo's service territory, and purchasing more than 28.3 million kWh during the previous twelve months from KPCo, principally under the Industrial General Service Rate Schedule. In light of the significant amount of electricity purchased by Walmart, any modification to the Company's rates has the potential to substantially impact Walmart's operations and personnel in Kentucky.

8. Walmart's electricity needs -- and the impact of KPCo's Application on Walmart's facilities within the Company's service territory -- are unique both as compared to other commercial customers and to customers who take service from the Company under the Industrial General Service Rate Schedule. First, Walmart is a single customer that purchases substantial amounts of energy for numerous accounts across multiple locations within the Company's service territory. Other customers purchasing similar amounts of energy often do so for a single or only a handful of locations whereas Walmart's energy needs are for nine different facilities. Second,

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

Walmart's load profile differs significantly from other customers in its rate class because it typically operates 24-hours a day and does not have the load fluctuations often seen from other customers in its rate class who may see spikes or declines in energy usage due to manufacturing or production processes that vary with changes in economic conditions. Each of these factors make Walmart's interest in this case unique and special.

9. Walmart's interests in this case cannot be adequately represented by any other party. While KRS 367.150(8) – a part of Kentucky's Consumer Protection Act<sup>2</sup> – 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 as a group. Consistent with the mandate set forth in KRS 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> Walmart is not a residential customer and, in any event, its interest is as a single, large commercial customer that takes service on different rate schedules than residential customers. Thus, the Kentucky Attorney General's Office of Rate Intervention will not represent Walmart's interests in this proceeding.

10. Testimony that Walmart is likely to present in this proceeding will provide the unique perspective of a commercial customer impacted by KPCo's requested rate increase. 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. Walmart's unique understanding and input will assist the Commission in adjudicating this case and evaluating

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

<sup>3</sup> Indeed, in *In the Matter of Application of Big Rivers Electric Corporation for Approval to Modify MRSB 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).

the question of whether the rate increase requested by the Company or otherwise resolved through settlement is just and reasonable for all rate classes. That perspective cannot be provided or represented by the Office of the Attorney General or by any other party to these proceedings.

11. Walmart is an active participant in KPCo's rate investigation, Case No. 2021-00370. Walmart was also an intervening party and active participant in the Company's and Liberty Utilities Company's merger case, Case No. 2021-00481, KPCo's 2020 rate case, Case No. 2020-00174, its 2017 rate case, Case No. 2017-00179, its 2014 rate case, Case No. 2014-00396, and its 2013 rate case, Case No. 2013-00197.

12. Walmart has also participated in numerous proceedings before this Commission involving Kentucky Utilities Company ("KU") and Louisville Gas & Electric Company ("LG&E")<sup>4</sup> and Duke Energy Kentucky, Inc. ("Duke")<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 KPCo a 9.70 percent return on equity in its 2017 rate case.<sup>6</sup>

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<sup>4</sup> Walmart has also been an active participant before this Commission in matters filed by KU/LG&E, including their 2020 rate case, Case Nos. 2020-00349 and 2020-00350, their 2018 rate case, Case Nos. 2018-00294 and 2018-00295, their 2016 rate case, Case Nos. 2016-00370 and 2016-00371, and their 2014 rate case, Case Nos. 2014-00370 and 2014-00371. Walmart was also an active party in KU/LG&E's last demand side management ("DSM")/energy efficiency ("EE") proceedings at Case Nos. 2014-00003 and 2017-00441. Walmart is currently an active participant in KU/LGE's Application for certificates of public convenience and necessity and site compatibility certificates and approval of a DSM plan and approval of fossil fuel-fired generating unit retirements, Case No. 2022-00402.

<sup>5</sup> Walmart is currently an active participant in Duke's rate case, Case No. 2022-00372.

<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 ("KPCo 2017 Base Rate Case"), Final Order (entered Jan. 18, 2018), pp. 29-30, the Commission cited to specifically to Walmart Witness Greg

13. Walmart expects to present the testimony of Lisa Perry, Senior Manager, Utility Partnerships at Walmart, and may choose to present testimony of other witnesses not yet identified.

14. The attorneys representing Walmart in this proceeding are:

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Ms. Grundmann and Ms. Mullins are 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.

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Tillman's testimony regarding nationwide trends on ROE in awarding KPCo a 9.70 percent ROE and rejecting the 9.75 percent ROE proposed in a settlement agreement.

**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: August 2, 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 2<sup>nd</sup> day of August, 2023, to the following:

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