

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

In the Matter of:

ELECTRONIC APPLICATION OF)	
KENTUCKY POWER COMPANY FOR (1) A)	
GENERAL ADJUSTMENT OF ITS RATES)	CASE NO. 2023-00159
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)	

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

This proceeding is Kentucky Power Company's ("KPCo," "Kentucky Power," or "Company") first rate case before the Commission since it was announced in April 2023 that the proposed transaction for the sale of Kentucky Power by American Electric Power Company, Inc. to Liberty Utilities Co. had been canceled. It is not, however, the only proceeding presently pending before the Commission concerning the Company's operations. *See e.g., Electronic Investigation of the Service, Rates, and Facilities of Kentucky Power Company*, Case No. 2021-00370. With respect to the issues in dispute in this rate case and before the Commission in this proceeding consistent with applicable law and practice, Walmart is pleased to present to the Commission a comprehensive Settlement Agreement of which Walmart is a signatory, and that is either expressly supported, or not opposed, by all parties to this proceeding. Walmart believes the Settlement Agreement is a fair, just, and reasonable resolution of the issues before the

Commission, addresses the issues of concern to Walmart, and should be adopted in this proceeding.

II. FACTUAL AND PROCEDURAL BACKGROUND

On May 12, 2023, Kentucky Power 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"). The Company subsequently filed its Application on June 29, 2023.

Walmart sought permission to intervene in this docket on August 2, 2023. That request was granted by Commission Order dated August 10, 2023. In addition to Walmart, the following parties were granted permission to intervene as active participants in this docket: Office of the Attorney General through its Office of Rate Intervention ("OAG"), Kentucky Industrial Utility Customers ("KIUC"), SWVA Kentucky, LLC ("SWVA"), and Mountain Association ("MA"), Appalachian Citizens Law Center ("ACLC"), Kentuckians for the Commonwealth ("KFTC"), and Kentucky Solar Energy Society ("KYES") (MA, ACLC, KFTC, and KYES are collectively referred to as the "Joint Intervenors").

In response to the Company's Application, numerous parties filed testimony addressing numerous aspects of the Company's Application, including Walmart,¹ OAG-KIUC,² and Joint Intervenors.³ Subsequent to the filing of that testimony, the parties engaged in settlement negotiations. On November 20, 2023, Kentucky Power filed a Motion to Approve Settlement

¹ Walmart filed the Direct Testimony of Lisa V. Perry ("Perry Direct").

² OAG-KIUC filed the Direct Testimony of Stephen J. Baron ("Baron Direct"), Direct Testimony of Richard A. Baudino ("Baudino Direct"), and the Direct Testimony of Lane Kollen ("Kollen Direct").

³ Joint Intervenors filed the Direct Testimony of Joshua Bills ("Bills Direct"), Direct Testimony of Tyler Comings ("Comings Direct"), and Direct Testimony of Andrew McDonald ("McDonald Direct").

Agreement that was either joined, or not opposed, by all parties to this docket. *See* Testimony of Brian K. West in Support of the Settlement Agreement ("West Settlement Testimony"), at Exhibit BKW-1S ("Settlement Agreement"). The Signatory Parties include KIUC, Walmart, and Joint Intervenors; SWVA and the OAG were non-opposing parties.

The Settlement Agreement contained numerous compromises that yield substantial benefits to ratepayers, some of which are detailed below. First, the Company decreased its requested rate increase by more than 20 percent, reducing the rate increase from \$93,935,727 to \$74,666,028. West Settlement Testimony, p. S2, lines 15-17. Moreover, in reaching this revenue requirement, the Signatory Parties agreed to an allocation that reduced the impact on residential customers. *Id.*, p. S3, line 21 and S8, lines 7-13; Settlement Agreement at Exhibit 3.

Second, the Company agreed to reduce its return on equity ("ROE") from the (already reduced) 9.90 percent⁴ ROE requested in its Application to 9.75 percent for base rates and 9.65 percent for the equity component of its riders. *See* West Settlement Testimony, p. S2, lines 18-20. This ROE is the same return awarded by the Commission to Duke Energy Kentucky, Inc. ("DEK") in Case No. 2022-00372, decided on October 12, 2023.⁵

Next, the Signatory Parties reached a compromise over the Company's proposed Distribution Reliability Rider ("DRR"). As revised by the Settlement Agreement, the DRR will still help address the Company's need for increased capital while also smoothing out rate increases for customers.⁶ On the other hand, the revisions to the DRR negotiated in the Settlement Agreement better protect ratepayers, imposing appropriate limits and guardrails on the Company's

⁴ *See* West Settlement Testimony, S8, lines 15-20 (noting that the Company's evidence allegedly supported an ROE of 10.60 percent, but they voluntarily reduced their requested ROE to 9.90 percent in the Application).

⁵ *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. 2022-00372, Order (issued Oct. 12, 2023), pp. 41-42.

⁶ Direct Testimony of Brian K. West ("West Direct"), p. 18, lines 9-11 and 18-20.

use of the DRR. Initially, the Company's Application appeared to propose to create the DRR without an end date. As set forth in the Direct Testimony of Lisa V. Perry, Walmart initially opposed the DRR, preferring instead that such costs be recovered in base rates. Perry Direct, p. 20, lines 1-11. Ms. Perry noted, however, that should the Commission approve the DRR, it should require Kentucky Power to file a base rate case as early as possible to roll any DRR assets into base rates, and the Commission should reduce the ROE applicable to the rider. *Id.*, p. 22, lines 3-16. Addressing Walmart and other parties' concerns, the Settlement Agreement now provides that the DRR shall automatically sunset after five years if it is not reauthorized by the Commission. Settlement Agreement, ¶ 4(A). In specific response to concerns raised by KIUC/OAG,⁷ the Settlement Agreement also imposes a cap on the amounts that may be recovered through the DRR to 1 percent of the prior year's total retail revenue, and a mechanism for ensuring DRR expenditures were truly incremental to KPCo was included. Settlement Agreement, ¶¶ 4(C)(E).

Finally, although this issue was not opposed by any parties, in the Settlement Agreement the Signatory Parties agreed that the Commission should issue a financing order to securitize the regulatory assets described in the Company's Application. West Settlement Testimony, p. S14, lines 15-20. Securitizing these costs provides substantial benefits to ratepayers.

III. ARGUMENT

A. Walmart Supports the Commission Adopting the Settlement Agreement.

Kentucky law as set forth in KRS § 278.030(1) states that "[e]very utility may demand, collect, and receive fair, just, and reasonable rates for the services rendered or to be rendered by it to any person." Walmart believes the Settlement Agreement entered in this case complies with the fair, just and reasonable standard set forth under Kentucky law and represents a fair resolution of

⁷ See Kollen Direct, p. 62, line 12 to p. 65, line 12 and p. 65, line 14 to p. 66, line 10.

the issues in dispute in this case. Walmart requests that the Commission adopt the Settlement Agreement in its entirety, in part, for the reasons set forth below.

Many of the provisions are aimed at reducing the overall rate increase, limiting the rate impact on all customers. The Company reduced its revenue requirement by more than 20 percent, decreasing the overall requested rate increase from \$93,935,727 to \$74,666,028. West Settlement Testimony, p. S2, lines 15-17. Part of this reduced revenue requirement was a reduction in the ROE from the requested 9.90 percent to 9.75 percent for base rates and 9.65 percent for riders. *See id.*, p. S2, lines 18-20. In light of current financial conditions, including rising interest rates and inflation, Walmart believes that the reduced ROE – which is identical to the ROE recently awarded to DEK – is a substantial compromise. Moreover, it means that a lesser percentage of the rate increase will be allocated to utility profits.

The Signatory Parties were also mindful of the impacts on residential customers. As such, the revenue increase was allocated to other classes, including the industrial class, specifically in order to reduce the level of costs that otherwise would be allocated to residential customers. *Id.*, p. S3, line 21 and p. S8, lines 7-13; Settlement Agreement at Exhibit 3. Again, this is a benefit that results in fair, just and reasonable rates.

Walmart also believes the negotiated revisions to the DRR are beneficial to the utility and its ratepayers. Customers benefit when their utility is financially healthy and when customers are not subject to year-after-year rate increases. While Walmart opposes a DRR with no definitive guardrails or end date, that is not what has been negotiated in the Settlement Agreement. Rather, the DRR will automatically sunset after five years unless reauthorized by the Commission, it is subject to caps and a specific mechanism for calculating what can be spent under the DRR. Settlement Agreement, ¶ 4. These parameters will improve the financial position of the Company,

allow them to make additional investment in their distribution system, and hopefully avoid or delay a future rate case. Because of the specific limitations imposed on the DRR by the Settlement Agreement, Walmart supports its approval as part of the Commission adopting the Settlement Agreement in this case.

These are just some of the benefits under the Settlement Agreement. A utility is entitled by law to collect fair, just and reasonable rates. Walmart supports the Settlement Agreement as reflective of fair, just and reasonable rates and requests its adoption by the Commission.

B. Walmart Supports the Commission Addressing Transmission Cost Allocation in a Separate Proceeding Following Completion of the Company's Study.

During the course of the hearing, the Commission expressed concern with certain aspects of the Company's system, including the increased transmission costs of approximately \$50 million in excess of revenue allocated to Kentucky Power pursuant to the AEP Transmission Agreement. Hearing Tr., November 28, 2023, 10:28:55-10:30:35 (Company witness Wiseman); 15:53:59-15:54:47 and 16:03:58-16:04:23 (Company witness West). Walmart shares the Commission's concerns about the rate impacts on customers in the Company's service territory. With specific respect to the issue of transmission costs, the record confirms that this issue is currently being studied by the Company with plans to present the results of that study to the Commission in the next several months. *Id.*, 10:24:20-10:25:54 and 11:57:05-11:59:07 (Company witness Wiseman). As Company witness West noted, the results of the study are not yet known, and even once they are known, resolving any issues that may be revealed by the study could be legally and factually complex. *Id.*, 16:09:40-16:10:47 (Company witness West). Walmart supports the Commission adopting the Settlement Agreement as drafted and addressing the issue of transmission and transmission cost allocation in a subsequent docket upon receipt of the Company's completed study, which could include Case No. 2021-00370, the *Electronic Investigation of the Service*,


Rates, and Facilities of Kentucky Power Company, or the Company's forthcoming integrated resource plan ("IRP") filing.

IV. CONCLUSION

For the reasons set forth herein, Walmart requests that the Commission adopt the Settlement Agreement in its entirety as a fair, just and reasonable resolution of the issues in this case.

Respectfully submitted,

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Dated: December 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 December, 2023, to the following:

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