COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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. 2024-00354**

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

Duke Energy Kentucky, Inc. ("DEK" or "Company"), is before this Commission seeking its fourth rate increase in just seven years.[1] Since the Company's last rate case, which was decided in October 2023, the Company has seen an improvement in its financial condition vis-à-vis the going-in position of the last rate case. Thus, while there have been inflationary pressures that impact the Company's credit metrics and borrowing costs, these pressures must be balanced against the improved financial condition of the Company, particularly as the Commission determines the return on equity ("ROE") to award the Company in this case. Based on the evidence presented by Walmart and other parties, Walmart recommends that the Commission reject the 10.85 percent ROE requested by the Company in favor of a more reasonable ROE, closer to the Company's currently authorized ROE of 9.75 percent.

[1] Hearing Transcript ("Tr."), May 21, 2025, 16:07-16:19 (Company witness Spiller).

In addition to ROE, Walmart has addressed two rate design issues: (1) proposed changes to Rate DT, Time-of-Day Rate for Service at Distribution Voltage ("DT"); and (2) the need for rate design specific to public-facing electric vehicle ("EV") charging. During the course of the evidentiary hearing, Walmart and the Company were largely able to resolve or narrow their differences on these issues. Thus, Walmart requests that the Commission's Final Order reflect the extent of agreement and/or narrowed disagreement with respect to both of these issues.

Finally, DEK is seeking a revenue requirement increase of $69.987 million in this case.[2] While the Company attempted to allocate the increase in a manner that would reduce interclass subsidies, substantial subsidies remain. Thus, if the Commission awards an overall revenue requirement less than the $69.987 million requested, Walmart asks that the reduced revenue requirement be allocated consistent with the proposal made by Walmart, which would have the effect of further reducing interclass subsidies and bringing all rate classes closer to their respective costs of service. Walmart's proposal has the added benefit of ensuring that all rate classes would still benefit from a reduction in the overall revenue increase.

II. FACTUAL AND PROCEDURAL BACKGROUND

On December 2, 2025, the Company filed an Application for an adjustment in its electric rates, approval of new tariffs, approval of accounting practices to establish regulatory assets and liabilities, and all other required approvals and relief ("Application").

On January 2, 2025, Walmart filed its Motion to Intervene, which was granted by Commission Order dated January 17, 2025. Walmart thereafter filed the Direct Testimony and Exhibits of Lisa V. Perry, Director, Utility Partnerships – Regulatory for Walmart ("Perry Direct"), on March 5, 2025. Ms. Perry's testimony focused on the appropriate ROE to award the Company,

[2] Hearing Tr., May 21, 2025, 15:25-15:48 (Company witness Spiller).

the proposed cost of service studies and revenue allocation, the Company's proposed production plan cost allocation methodology including two alternative methodologies, proposed additional language to Rate DT, the need for a tariff specifically for third-party owned public EV chargers, and the Company's Account Management team for its large customers.

A hearing was held in this matter on May 21-22, 2025, and Ms. Perry appeared in person on behalf of Walmart on May 22, 2025.

III. ARGUMENT

A. The Commission Should Reject the 10.85 Percent ROE Requested by the Company and Instead Award an ROE of Approximately 9.75 Percent.

The Company's requested ROE of 10.85 percent is unreasonable and should be rejected by the Commission. Instead, the Commission should award the Company an ROE that is close to the Company's currently-authorized ROE of 9.75 percent. This conclusion is supported by substantial evidence in the record, including the testimonies of Office of Attorney General ("OAG") witness Baudino and Walmart witness Chriss, as well as evidence put forward by the Company itself during the course of the hearing.

1. *The 10.85 Percent ROE Requested by the Company is Unreasonable*.

An ROE of 10.85 percent would represent a 110-basis point increase over the Company's currently authorized ROE. There is no regulatory support from this Commission[3] or other Commissions around the country for an increase of that magnitude from one rate case to the next, particularly where it has only been less than two years since the Company's last rate case was

[3] In the Company's last rate case, the Commission similarly rejected the Company's request for a 110-basis point increase (from 9.25 to 10.35 percent), ultimately awarding the Company an ROE of 9.75 percent. *See 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 ("2022 Rate Case"), Final Order (issued Oct. 12, 2023), pp. 30, 41.

decided.[4] Indeed, were the Commission to adopt an ROE of 10.85 percent, it would result in DEK being awarded the second highest ROE currently awarded to any utility *in the country* by a state regulatory commission, second only to Alaska Power Company, which due to its terrain and location has historically had above-average ROEs.[5] The Company has put forward no evidence to justify it being awarded the second highest ROE in the entire country.

An awarded ROE of 10.85 percent would also be an outlier vis-à-vis other affiliates of DEK by a substantial margin.[6] The highest currently authorized ROE for any Duke Energy affiliate is the 10.30 percent awarded to Duke Energy Florida, LLC ("DEF"), which sits in a jurisdiction prone to severe weather, including hurricanes. Yet again, there is no evidence in the record to suggest that the Company is as risky as DEF, let alone so much riskier than DEF that it warrants an ROE 55 basis points above the 10.30 percent authorized to DEF.

In fact, the Company's own evidence suggests that it is in a better financial position than it was going into the 2022 Rate Case,[7] which cuts against the Company's request to increase its ROE. In the Company's last rate case, it expressed the need – as it does in this case – to maintain strong credit ratings.[8] In support of its requests in the 2022 Rate Case, the Company noted that its Funds from Operations ("FFO")-to-debt rating had recently fallen below 17 percent, which is a credit

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[4] *See* Company's Response to Walmart-DR-02-0006. Further, in the Company's 2022 Rate Case, the Company conceded that large jumps in authorized ROE (such as the one requested by the Company) generally only happen when a utility has gone decades without filing a rate case. *See* 2022 Rate Case, Hearing Tr., May 10, 2023, 14:58:43-14:59:54 (Company witness Bauer). The Company has barely gone two years without filing a rate case.

[5] *See* Perry Direct, p. 12, Fig. 1 and Exhibit LVP-2; *see also* Hearing Tr., May 22, 2025, 00:20:16-00:20:42 (Company witness Nowak).

[6] *See* Walmart Exhibit 1, Company's Response to AG-DR-01-136, Attachment 1 (ROEs awarded to Duke Energy affiliates).

[7] While the Company's long-term debt has increased from a cost percent of 4.377 in the 2022 Rate Case to 4.929 in the current case, the weighted cost difference is only a few basis points. *Compare* 2022 Rate Case, Final Order, pp. 33-34 and Application, Volume 11, Schedule J-1 at 2. Over this same time period, however, the Company has also improved the cost percent for its short-term debt. *Id.*

[8] *See* 2022 Rate Case, Direct Testimony of Christopher Bauer, p. 9, line 13 to p. 10, line 3.

rating downgrade threshold,[9] and the Commission mentioned this evidence specifically when addressing the rate of return and capital structure awarded to the Company in the 2022 Rate Case.[10]

By contrast, in this case, while the Company also expresses the need to maintain strong credit ratings,[11] it provides no evidence to suggest those ratings are currently in jeopardy. In fact, the Company reported that as a direct result of the Commission's Final Order in the 2022 Rate Case, in 2024, Moody's "changed its outlook [for the Company] to 'stable' from 'negative,'" *i.e.*, reflecting an improved outlook for the Company, and S&P affirmed its ratings for the Company.[12] Both Moody's and S&P made those decisions in light of a 9.75 percent ROE, which was 60 basis points below the ROE requested by the Company in the 2022 Rate Case. The Commission's decision in the 2022 Rate Case had the intended result: the Company increased its FFO-to-debt from below the 17 percent downgrade threshold to approximately 21 percent (for both 2023 and 2024), and the Company projects that it will remain in the 18 to 20 percent range, well above any potential downgrade threshold, moving forward.[13]

An additional reason to reject the ROE evidence from the Company is the Commission's prior precedent in the 2022 Rate Case. The Company relies upon the same expert as the 2022 Rate Case, who uses the same models as in the 2022 Rate Case.[14] For the same reasons that the Commission disregarded the Company's ROE recommendations in the 2022 Rate Case, it should similarly disregard those recommendations here as being too high.

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[9] *See* Rebuttal Testimony of Christopher Bauer ("Bauer Rebuttal"), p. 8, lines 2-3.

[10] 2022 Rate Case, Final Order, p. 33.

[11] Direct Testimony of Thomas J. Heath ("Heath Direct"), p. 12, lines 7-23.

[12] Heath Direct, p. 9, lines 10-20; Hearing Tr., May 21, 2025, 6:04:56 to 6:05:20 (Company witness Heath).

[13] Hearing Tr., May 21, 2025, 6:05:20 to 6:07:20 (Company witness Heath).

[14] Hearing Tr., May 22, 2025, 15:45:01-19:05 (Company witness Nowak) (acknowledging he used the same risk premium as the 2022 Rate Case).

2. *<u>An ROE in or around 9.75 percent is reasonable</u>*.

There is a wealth of evidence supporting an ROE near the Company's currently authorized ROE of 9.75 percent. OAG witness Baudino ultimately recommended an ROE of 9.65 percent, which is derived from the average of his Capital Asset Pricing Model ("CAPM") and discounted cash flow ("DCF") results.[15] The average of Mr. Baudino's DCF results was 9.92 percent,[16] and the forward looking market return under the CAPM was 9.75 percent exactly.[17] Similarly, Walmart witness Perry likewise presented evidence that the average ROE for vertically integrated utilities authorized from 2022 through January 8, 2025, is 9.73 percent.[18] Even if the Commission were to only look at the most recently decided cases presented by Ms. Perry, *i.e.*, decisions from 2024, the average authorized ROE for vertically integrated electric utilities in 2024 was 9.84 percent.[19] Looking to the first quarter of 2025, *i.e.*, January through March 2025, the average was comparable to 2024 at 9.83 percent.[20] All of this evidence points towards a narrow band of approximately 9.65 to 9.85 percent as being the appropriate ROE for the Company. For all the reasons mentioned, the Commission should reject the 10.85 percent ROE requested by DEK in favor of a ROE of approximately 9.75 percent.

B. <u>The Commission Should Reject the 20 MW Threshold Proposed by Duke Energy for Rate DT and Instead Adopt a Higher MW Threshold.</u>

The Company proposed to add language to Tariff Sheet No. 41 applicable to Rate DT to address "new large loads locating in the service area and claiming service needs that require large,

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[15] Hearing Tr., May 22, 2025, 04:11:37-04:11:47 (OAG witness Baudino).

[16] Hearing Tr., May 22, 2025, 4:15:00-4:15:18 (OAG witness Baudino); *see also* Direct Testimony of Richard A. Baudino ("Baudino Direct"), Table 1, p. 33.

[17] Baudino Direct, Table 1, p. 33.

[18] Perry Direct, p. 10, lines 17-18 and Exhibit LVP-2.

[19] Perry Direct, p. 10, line 20; *see also* Hearing Tr., May 22, 2025, 4:13:22-4:13:30 (OAG witness Baudino).

[20] Hearing Tr., May 22, 2025, 4:13:45-4:14:49 (OAG witness Baudino).

concentrated investments by the local utility."[21] The added language would obligate new loads of 20 MW or more, where significant system investments are required, to execute a revised service agreement with specific credit requirements and minimum demand charges equal to 75 percent of the long-term customer projected service need, and associated termination provisions.[22] While Walmart did not object to the concept of specific tariff provisions applicable to large load customers, Walmart objected to the 20 MW threshold as "too low," arguing that it could "unintentionally include customers who are not typically viewed as 'large load customers,' especially with the inclusion of aggregated premises."[23] Walmart instead proposed a 75 MW threshold.[24] The Company opposed this higher 75 MW threshold as being "too high."[25]

During the hearing in this matter, Company witness Sailers was cross-examined about the minimum size for which the new tariff provisions under Rate DT should apply, including whether the Company would accept a 50 MW minimum size threshold.[26] While the Company stated it likely would not support a 50 MW threshold even were Walmart to propose it in a post-hearing brief, the Company was open to increasing the minimum threshold to 40 MW.[27]

If the Commission elects to adopt the new tariff language for Rate DT for new "large load customers," it should reject the 20 MW threshold initially proposed by the Company. The Company did not conduct any analysis or calculations or other objective grounds to support the 20 MW threshold but instead relied amorphously on unnamed individuals throughout other Company

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[21] Direct Testimony of Bruce L. Sailers ("Sailers Direct"), p. 11, lines 2-8.

[22] *Id*. at 11, lines 11-15.

[23] Perry Direct, p. 26, lines 14-20.

[24] *Id*. at 27, lines 1-7.

[25] Rebuttal Testimony of Bruce Sailers ("Sailers Rebuttal"), p. 2, lines 13-14.

[26] Hearing Tr., May 22, 2025, 2:06:37-2:07:00 (Company witness Sailers).

[27] Hearing Tr., May 22, 2025, 2:07:27-2:07:48 (Company Witness Sailers).

departments.[28] While Walmart would prefer and recommends that the proposed tariff language for Rate DT apply to new loads of 50 MW or more, Walmart additionally recommends that the Commission reject the 20 MW threshold originally proposed by the Company, and if the Commission is unwilling to adopt a 50 MW threshold then it should adopt a threshold no lower than 40 MW consistent with Company witness Sailers' statements as expressed at the hearing.

C. The Commission's Final Order Should Address the Agreement of Walmart and the Company to Discuss EV Rate Design for Public Facing EV Charging.

Walmart has plans to build its own publicly accessible EV charging stations at Walmart stores across the country over the next few years.[29] Key to the development of this EV charging network is the development of EV-specific rates designed for public charging at third-party locations.[30] Because the Company does not currently offer rates specific to EV charging,[31] Walmart recommends that the Commission require the Company to work with interested stakeholders to develop an EV charging-specific rate and for such rate to be proposed within six months of a Final Order in this case.[32] Incentivizing development of a public EV charging network will support the industry as a whole and courage EV adoption by eliminating range anxiety and other challenges EV drivers face.[33] Building out a public EV charging network is key to support the evolving EV industry, and it is important to have availability of EV-specific distribution rate options for public Direct Current Fast Chargers ("DCFCs").[34]

In developing a public-facing EV charging rate, Walmart witness Perry explained what

[28] Sailers Rebuttal, p. 3, lines 3-9.

[29] Perry Direct, p. 28, lines 18-20.

[30] *Id.* at 27, lines 14-17.

[31] *Id.* at 27, lines 10-13.

[32] *Id.* at 30, lines 13-20.

[33] *Id.*at 28, lines 3-5.

[34] *Id.* at 28, lines 3-12.

type of rate design Walmart believed should be adopted. First, Walmart recommended an energy-only rate design that helps incentivize investment in the EV-charging infrastructure.[35] Second, Ms. Perry noted that this rate normally needs to apply to demands under 15 percent because above that percentage, it is appropriate for the charging station to take service under a more traditional tariff containing a demand charge.[36] Finally, Walmart also believes that a rate can be designed with the goal of recovering the revenue requirement through the energy charge; however, Ms. Perry also recommends that there needs to be some flexibility as we work to get the rate design right for this fledgling industry.[37]

While the Company does not necessary endorse the need for EV-only rate design, and instead, prefers what it claims is a "non-discriminatory rate," the Company expressed a willingness to meet with Walmart and other interested stakeholders to discuss rate design.[38] Further, while the Company suggested that it would be willing to file such rate design (assuming a rate was developed) as part of its next base rate case,[39] the Company was also open to discussions that could result in the Company proposing a rate appropriate to public EV charging even prior to the next rate case, assuming an appropriate rate could be developed.[40]

As part of its Final Order in this case, the Commission should Order the Company to undertake a stakeholder process to discuss the issue of public-facing EV rate design. Further, the Commission should Order the Company to file a letter in this docket within six months of the Final Order being issued in this case to report on the status of such stakeholder discussions,

[35] Hearing Tr., May 22, 2025, 5:01:00-5:02:03 (Walmart witness Perry).

[36] *Id.* at 5:03:06-5:03:40 (Walmart witness Perry).

[37] *Id.* at 5:06:33-5:07:20 (Walmart witness Perry).

[38] Sailers Rebuttal, p. 4, lines 4-6; Hearing Tr., May 22, 2025, 2:02:56-2:03:10 (Company witness Sailers).

[39] Sailers Rebuttal, p. 4, lines 16-19.

[40] Hearing Tr., May 22, 2025, 2:03:10-2:03:56 (Company witness Sailers).

including whether and when the Company expects to put forward public-facing EV rate design for the Commission's consideration.

D. **<u>The Commission Should Further Reduce Rate Class Subsidies as Recommended by Walmart Witness Perry if the Commission Awards the Company a Revenue Requirement Less than Requested by the Company</u>**.

The Company has acknowledged that there are subsidies embedded in its rates, and while the Company took steps in this case to reduce the subsidies in rates, it did not eliminate them.[41] Walmart witness Perry's testimony confirms the subsidization embedded in the Company's proposed rates, revealing which classes are subsidizing other classes and which classes are being subsidized.[42] Because of the magnitude of an approximately $70 million rate increase on customers, Walmart did not propose to further address subsidies under the Company's as-requested revenue requirement;[43] however, if the Commission awards an ROE below the revenue requirement requested by the Company, whether due to a lower ROE or some other process, then Walmart recommends that the Company take steps to further address subsidies embedded in rates as set forth in Ms. Perry's testimony.[44]

Specifically, Walmart recommends that the Commission allocate the delta between the requested revenue requirement and the awarded revenue requirement as follows:

- 50 percent of the delta should be evenly applied to all classes and

[41] *Id.* at 1:54:40-1:54:56 (Company witness Ziolkowski).

[42] Perry Direct, p. 22 at Table 1 and lines 1-6.

[43] *Id*. at 23, lines 5-10.

[44] *Id*. at 24, lines 6-18.

- The remaining 50 percent should be applied to reduce the revenue requirement of subsidizing classes, except that in no event should a subsidizing rate class move to a subsidized position.[45]

The Company has acknowledged that Walmart witness Perry's proposal is a fair and reasonable method for apportioning a reduced revenue requirement, and no party expressed any opposition to this proposal.[46]

IV. CONCLUSION

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

1. Reject the Company's requested ROE of 10.85 percent and instead award DEK an ROE of approximately 9.75 percent.
2. Set the threshold for the new tariff provisions application to "large loads" under Rate DT (and other applicable rate schedules) at no lower than 40 MW.
3. Order the Company to undertake a stakeholder process to discuss the issue of public-facing EV rate design, and within six months of the Final Order being issued in this case, file a letter in this docket to report on the status of such stakeholder discussions.
4. If the Commission awards the Company a revenue requirement less than requested by the Company, the Commission should apportion the reduced revenue requirement consistent with the recommendation of Walmart witness Perry to further reduce interclass subsidization.

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[45] *Id.*

[46] Hearing Tr., May 22, 2025, 1:54:58-1:55:50 (Company witness Ziolkowski).

5. Grant such other and further relief as the Commission deems appropriate.

Respectfully submitted,

SPILMAN THOMAS & BATTLE, PLLC

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Counsel to Walmart Inc.

Dated: June 16, 2025

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 16th day of June, 2025, to the following:

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