

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
AMERICAN ELECTRIC POWER COMPANY, INC.,)	
KENTUCKY POWER COMPANY AND LIBERTY)	CASE NO.
UTILITIES CO. FOR APPROVAL OF THE)	2021-00481
TRANSFER OF OWNERSHIP AND CONTROL OF)	
KENTUCKY POWER COMPANY)	

ORDER

This matter arises upon the motion of the Walmart, Inc. (Walmart), filed January 11, 2022, for full intervention in this proceeding.

LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.¹ To date, the Attorney General and Kentucky Industrial Utility Customers, Inc. (KIUC) are the only parties who have been granted intervention.

The statutory standard for permissive intervention, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”²

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11) requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

WALMART'S ARGUMENTS

As a basis for its motion, Walmart explained that it is a large commercial customer of Kentucky Power Company (Kentucky Power) with nine retail facilities in Kentucky Power's service territory. Walmart purchased 27.4 million kWh of electricity from Kentucky Power in 2021, primarily under Industrial General Services Rate Schedule.

Walmart asserted that it has a special interest not otherwise adequately represented. Walmart stated that its interest relates exclusively to being a large commercial customer who energy needs and load profile differ from other customers on the industrial rate schedule and from residential customers. The Attorney General has a statutory duty to represent the interests of consumers, which relates primarily to residential customers. Thus, according to Walmart, the Attorney General cannot adequately represent Walmart's interest as a large commercial customer. Walmart asserted that industrial customers represented by KIUC purchase energy for a single or very few locations. Walmart argued that, in contrast to industrial customers represented by KIUC, Walmart's nine retail facilities have energy needs that differ by location. Additionally, Walmart's load profile differs significantly from other customers taking service under industrial rate schedules because Walmart operates 24 hours per day and does not have load fluctuations typical to KIUC's industrial members, whose energy

usage spikes or declines due to varying schedules and manufacturing processes. Thus, according to Walmart, KIUC could not adequately represent Walmart's interests.

Walmart also asserted that it can present issues and develop facts related to electric rates and service that will assist the Commission in rendering a decision without unduly complicating or disrupting the proceedings. Walmart maintained that its experience with Liberty Utilities Co. (Liberty) in other jurisdictions will enable Walmart to present relevant issues and develop relevant facts. Walmart noted that it has a history of active participation in Commission proceedings, with testimony that provided a perspective different from other parties, especially KIUC. Walmart maintained that it will offer testimony and fully participate at the hearing

DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission finds that Walmart demonstrated that it has a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented. Walmart is a large commercial customer of Kentucky Power, and therefore has an interest in Kentucky Power's rates and service. Walmart's energy needs and load profile are not the same as industrial customers represented by KIUC or residential customers represented by the Attorney General, and thus, to date, no other party represents the same interest as Walmart's interest.

The Commission further finds that Walmart is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complication the proceedings, for the reasons discussed below. Walmart has a history of being an active participant in proceedings, and presenting issues and developing facts, among them issues and facts related to large commercial customers, that have assisted

the Commission in considering matters before it. Walmart has been a party to recent and pending proceedings involving Kentucky Power that are impacted by this proceeding. Finally, based on Walmart's past participation and statements in the motion, the Commission expects that Walmart will be an active participant in this matter through discovery, filing expert testimony, and cross examination at a formal hearing.

Based on the above, the Commission finds that Walmart should be granted full rights of a party in this proceeding. The Commission directs Walmart to the Commission's July 22, 2021 Order in Case No. 2020-00085³ regarding filings with the Commission.

IT IS HEREBY ORDERED that:

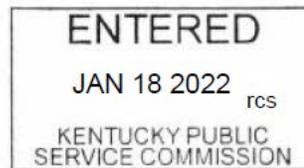
1. The motion of Walmart to intervene is granted.
2. Walmart shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
3. Walmart shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.
4. Walmart shall adhere to the procedural schedule set forth in the Commission's January 6, 2022 Order and as amended by subsequent Orders.
5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of entry of this Order, Walmart shall file a written statement with the Commission that:
 - a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and

³ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

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By the Commission



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