

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Proposed Amendments	)	
to the Missouri Public Service Commission's	)	
Rules Relating to the Missouri Energy	)	File No. EX-2016-0334
Efficiency Investment Act	)	

COMMENTS OF WALMART STORES, INC.

Walmart Stores, Inc. ("Walmart") respectfully submits these comments in response to Proposed Amendments to 4 CSR 240-20.094. Specifically, Walmart will address concerns with 4 CSR 240-20.094 (7) (as amended) titled, "Provisions for Customers to Opt-Out of Participation in Utility Demand-Side Programs".

I. WALMART BACKGROUND

1. Currently, Walmart operates 156 retail units in the state of Missouri. This total includes 111 Supercenters, 9 Discount Stores, 16 Neighborhood Markets, 19 Sam's Clubs, and one Walmart on Campus in addition to four Distribution Centers. Walmart currently employs 43,203 associates within the State.¹ In FYE 2017, Walmart expended \$7.3 billion with in-state suppliers and supported over 59,953 supplier jobs.²

2. In 2016 alone, Walmart purchased over 650 million kWh of electric energy from providers within Missouri with a total combined peak demand for all Missouri facilities exceeding 100,000 kW. Further review for calendar year 2016 revealed the following:

- Walmart facilities in GMO territory had a total combined peak demand of over 20,000 kW, and a total combined electrical usage in excess of 120 million kWh.
- Walmart facilities in Ameren territory had a combined peak demand of over 39,000 kW's, and a total combined electrical usage in excess of 209 million kWh.

¹ See <http://corporate.walmart.com/our-story/our-locations#/united-states/missouri>

² Supplier figures supplied by Dun & Bradstreet for FYE 2017.

- Walmart facilities in Empire District Electric Co. territory had a combined peak demand of over 9,000 kW, and a total combined electrical usage in excess of 51 million kWh.

3. In 2005, Walmart set an aspirational goal of being supplied by 100 percent renewable energy. Today, with over 360 installed solar projects, over 60 fuel cells, large on-site wind, off-site energy contracts, 19 energy storage projects, and over 300 electric vehicle chargers, Walmart is making tremendous strides toward making its aspirational goal a reality.

4. Walmart has long been aware that in order to meet its aspirational goal of being supplied by 100 percent renewable energy, energy efficiency would have to play a major role in that process. Based upon its clear understanding of the importance of energy efficiency, on November 4, 2016, Walmart announced the following sustainability goals for 2025 that build upon our existing goals; 1) to be supplied by 50% renewable energy; and 2) use a combination of energy efficiency and renewable energy to reduce emissions in our operations by 18 percent. The above targets are science based, which is driven by the level of decarbonization needed to keep the global temperature increase below 2 degrees centigrade compared to pre-industrial temperatures. More recently, Walmart announced Project Gigaton, an initiative designed to eliminate one gigaton of carbon emissions from its operations and supply chains by 2030.³

5. As discussed above, Walmart has been very pro-active in committing to environmental stewardship in many aspects of its business. More examples of that commitment can be found in the type of energy efficiency programs that are routinely implemented such as:

- a. Sub-metering in approximately 2,000 facilities within the United States and approximately 500 facilities in the United Kingdom;
- b. Daylight harvesting systems that monitor and adjust lighting intensity while automatically adjusting given the amount of light coming in from the skylights;

³ <http://news.walmart.com/2017/04/19/walmart-launches-project-gigaton-to-reduce-emissions-in-companys-supply-chain>

- c. White membrane roofs are placed on the roofs of facilities in certain parts of the country in order to lower the cooling load;
- d. Heat reclamation from our refrigeration systems that can meet up to 70 percent of that facilities hot water needs;
- e. Both interior and exterior LED lighting;
- f. Active dehumidification that enables stores to operate at higher temperatures, thereby using less electricity.
- g. Additionally, all of Walmart's United States stores, including those located in Missouri, are centrally monitored allowing for the capability to control store temperature, lighting, and refrigeration units. Our monitoring system combined with sub-metering also allows us to discover potential malfunctions with certain energy efficient systems much quicker. This early detection allows for repairs to be made sooner thereby saving more energy.

II. INTRODUCTION

6. In 2009, the General Assembly enacted Senate Bill 376, codified at Section 393.1075, and otherwise known as the Missouri Energy Efficiency Investment Act ("MEEIA"). Among other things, that legislation sought to "value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs."⁴ In furtherance of this goal, MEEIA allowed utilities to recover: (1) energy efficiency program costs; (2) lost revenues associated with energy efficiency programs; and (3) earnings opportunities associated with foregone investments in future generation assets.⁵

7. Long before the existence of the MEEIA legislation, large commercial and industrial customers had a financial motivation to implement energy efficiency measures simply as a result of the amount of electricity used and the direct effect that energy efficiency could have on profitability. Recognizing the inequity associated with charging these large companies

⁴ Section 393.1075.3

⁵ *Id.*

for a utility's energy efficiency costs after they had already implemented their own energy efficiency measures, the MEEIA legislation also provided certain large commercial and industrial customers with the ability to opt-out of the utility's costs for implementing the MEEIA legislation.⁶

Specifically, MEEIA provides an option for large commercial and industrial customers to opt-out of a utility's energy efficiency costs if they meet any of three specific thresholds:

- Threshold 1: The customer has one or more accounts within the service territory of the electrical corporation that has a demand of five thousand kilowatts or more;
- Threshold 2: The customer operates an interstate pipeline pumping station, regardless of size; or
- Threshold 3: The customer has accounts within the service territory of the electrical corporation that have, in aggregate, a demand of two thousand five hundred kilowatts or more, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.

8. Consistent with the authority contained in the statute,⁷ the Commission undertook a rulemaking docket to implement the MEEIA legislation.⁸ Included in these rules was 4 CSR 240-20.094(6) enacting the statutory opt-out provisions. Ultimately, the Commission's MEEIA rules, 4 CSR 240-20.093 and 20.094, went into effect on May 30, 2011.

9. Through these comments, Walmart seeks to point out three fundamental problems underlying the proposed revision to the opt-out provision currently found at 4 CSR 240-20.094(6).⁹

First, Walmart asks that the Commission revise Threshold 1 to clarify that a customer is not required to meet the 5,000 kW threshold through a single account. Rather, consistent with

⁶ See, Section 393.1075.7

⁷ See, Section 393.1075.11

⁸ Case No. EX-2010-0368

⁹ Because of the addition of a new rule concerning Utility Market Potential Studies, the new opt-out provision is found at 4 CSR 240-20.094(7).

the statutory reference to “individual accounts”, Walmart suggests that the 5,000 kW threshold can be met through the non-coincident demand of all of a customer’s accounts.

Second, Walmart asks that the Commission provide guidance in order to make Threshold 3 more transparent. As indicated, Threshold 3 requires a company with the requisite peak demand to show that it has implemented a comprehensive energy efficiency program and “can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.” While Staff makes this determination, there is no guidance for customers to independently determine the savings “expected from utility-provided programs.” Rather, after receiving the necessary information from a customer, the Staff makes a unilateral decision regarding eligibility. The Commission should strive for a level of transparency such that customers can determine the level of savings that they can achieve from utility programs.

Third, Walmart urges the Commission to reject the revision that would limit the validity of an opt-out under Threshold 3 to the term of a utility’s MEEIA cycle. Recognizing that the opt-out window is only open from September 1 through October 30, and that the MEEIA cycle does not necessarily coincide with the opt-out window, the revision inevitably creates a mismatch and a period of time in which a customer would not have a valid opt-out and would not be able to make the necessary demonstration to renew its opt-out status.

In addition, tying the opt-out validity to a MEEIA cycle is arbitrary. Instead, any attempt to limit the validity of a Threshold 3 opt-out should be tied to an increase in savings from a utility’s MEEIA programs such that the customer’s previous demonstration of savings no longer qualifies it for opt-out. In other words, the Threshold 3 opt-out should remain in force until the customer’s demonstrated savings no longer meet the statutory criteria.

III. THRESHOLD 1 SHOULD CONSIDER ALL ACCOUNTS

10. Section 393.1075.7 provides three criteria by which a customer can opt-out of a utility's energy efficiency costs. The first criteria is an absolute right to opt-out for customers with a peak demand in excess of 5,000 kW.

Provided that the customer has notified the electrical corporation that the customer elects not to participate in demand-side measures offered by an electrical corporation, none of the costs of demand-side measures of an electrical corporation offered under this section or by any other authority, and no other charges implemented in accordance with this section, shall be assigned to any account of any customer, including its affiliates and subsidiaries, meeting one or more of the following criteria:

1) The customer has one or more accounts within the service territory of the electrical corporation that has a demand of five thousand kilowatts or more.

While the statute references "one or more accounts", the determination of a customer's ability to opt-out under this section has historically precluded a customer from showing a 5,000 kW demand across multiple accounts. Instead, the opt-out determination has required a single account greater than 5,000 kW. Through these comments, Walmart asks that the Commission clarify that the 5,000 kW demand threshold can be met through the aggregate of "one or more accounts."

11. As mentioned, a clarification to allow the 5,000 kW peak demand threshold to be met through multiple accounts is consistent with the statute. Specifically, the section references "one or more accounts" when referencing the 5,000 kW demand threshold. It is illogical to include the phrase "or more accounts" in this section if the determination was to be made simply by considering one single account.

In another location, the statutory section specifically provides that the customer must have a demand "of the individual accounts" of 5,000 kW of more. Again, it is illogical to

provide that the 5,000 demand can be met by individual accounts (notice the use of the plural) if the General Assembly had intended for the threshold to be met by a single account.

12. It is well established that in construing a statute, legislative intent should be found in the plain language of the statute and every word should be given meaning.

The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language. **This Court must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language.** When the words are clear, there is nothing to construe beyond applying the plain meaning of the law. A court will look beyond the plain meaning of the statute only when the language is ambiguous or would lead to an absurd or illogical result.¹⁰

By limiting the determination of whether a customer meets the 5,000 kW demand threshold to a single account, the phrase “or more accounts” is reduced to “superfluous language”. Instead, the entirety of this statutory section, including the phrase “or more accounts” can be given meaning by allowing the 5,000 kW demand threshold to be met through the aggregate demand of multiple accounts.

13. Allowing the 5,000 kW demand requirement in Threshold 1 to be met by multiple accounts is not only consistent with all of the words in the statute, but also with the rationale behind allowing large commercial and industrial customers to opt-out of a utility’s energy efficiency costs. As mentioned, large customers have had a financial incentive to implement energy efficiency measures long before MEEIA was enacted. Recognizing that these customers had self-financed these energy efficiency measures, it was inequitable to then expect them to also pay the utility’s energy efficiency costs. As such, the General Assembly provided a mechanism for certain large customers to opt-out of the utility’s energy efficiency costs. As it applies to this threshold, the General Assembly determined that customers with a peak demand in excess of

¹⁰ *Bateman v. Rinehart*, 391 S.W.3d 441 (Mo. banc 2013) (citations omitted, emphasis added).

5,000 kW had likely already implemented energy efficiency measures and could opt-out of utility energy efficiency costs.

14. Under the historical interpretation, however, this 5,000 kW threshold had to be met by a single account. Such an interpretation is illogical in that it fails to recognize that customers with a specific peak demand over multiple accounts may have an even greater incentive to have self-financed energy efficiency measures. For instance, while Walmart has an aggregate peak demand in the Ameren service area in excess of 39,000 kW, that demand is spread over multiple accounts, none of which individually exceeds 5,000 kW. Therefore, Walmart would not qualify to opt-out under Threshold 1. On the other hand, another customer with a demand that barely meets the 5,000 kW threshold would be allowed to opt-out simply because its demand is contained in one single account. It is undeniable that Walmart, with peak demand over 35,000 kW, would have a greater incentive to implement energy efficiency measures than the customer with a peak demand of only 5,000 kW. Yet, Walmart would not be allowed to opt-out under the easier Threshold 1 simply because its peak demand is dispersed over multiple accounts. Clearly then, an interpretation that mandates that the 5,000 kW peak demand be limited to a single account is not only inconsistent with the strict phrasing of the statute, but also with the logic allowing certain large customers to opt-out of utility energy efficiency costs.

15. The Commission can easily clarify its rule to allow the 5,000 kW peak demand to be met through multiple accounts. Specifically, Walmart recommends the following revision to 4 CSR 240-20.094(7)(A)(1):

The customer has one (1) or more accounts within the service territory of the electric utility that has **an aggregate non-coincident** demand of the individual accounts of five thousand (5,000) kW or more in the previous twelve (12) months.

IV. THRESHOLD 3 SHOULD BE MORE TRANSPARENT

16. For those customers that do not meet the 5,000 kW peak demand in Threshold 1, the statute and rule provides for an alternative criterion to opt-out of utility energy efficiency costs. Specifically, customers with a peak demand of 2,500 kW may be able to opt-out IF they have “a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.”¹¹ As the current and proposed rule provides, the determination of whether the customer’s energy efficiency program can achieve savings at least equal to those expected from utility-provided programs is made by the Commission’s Staff.¹² In making this determination, Staff seeks a large amount of information from the customer regarding its implementation of energy efficiency measures. Once received, Staff then makes its determination without any further input from the entity requesting opt-out status.

17. The problem underlying the determination of whether the customer’s energy efficiency plan achieves necessary savings is found in the fact that there is no transparency. Specifically, while the customer-achieved savings are required to be compared to that “expected from utility-provided programs”, there is no designation or publication of the level of savings that can be “expected from utility-provided programs.” As such, customers are unable to determine whether it can meet this criteria and whether it should undertake the time and effort to apply for opt-out status. In fact, while counsel has inquired of Staff regarding the necessary level of savings needed to opt-out under Threshold 3, he has repeatedly been provided no response. As can be seen, the determination under this provision lacks any transparency.

¹¹ See, Section 393.1075.7(3) and 4 CSR 240-20.094(6).

¹² 4 CSR 240-20.094(6)(E). “For customers filing notification of opt-out under paragraph (6)(A)(3), the staff will make the determination of whether the customer meets the criteria of paragraph (6)(A)(3).”

18. Walmart suggest that the Commission can provide the necessary transparency by requiring an explicit statement, in the context of its approval of each utility's MEEIA programs, as to the level of savings that can be "expected from utility-provided programs." In this way, customers that may seek to opt-out under Threshold 3 will be able to determine whether they meet such a criteria and whether they should proceed with the arduous opt-out process given the time and resources necessary.

V. THRESHOLD 3 VALIDITY SHOULD NOT BE LIMITED BY MEEIA CYCLES

19. Currently, if a customer opts out of a utility's energy efficiency costs, that opt-out is valid for an indefinite period of time.

For that calendar year and each successive calendar year until the customer revokes the notice pursuant to subsection (6)(H), none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 24020.093, 4 CSR 240-20.094, 4 CSR 2403.163, and 4 CSR 240-3.164 or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.¹³

In promulgating this rule, the Commission expressly rejected proposals that customers that opt-out under Threshold 3 should be required to periodically demonstrate that their energy efficiency measures continue to deliver savings at least equal to those expected from utility programs.¹⁴

20. Contrary to the current rule which provides indefinite validity to a customer's opt-out notification, the revised rule would limit the opt-out under Threshold 3 to the length of the utility's approved MEEIA cycle.

Opt-out in accordance with paragraph (7)(A)3, shall be valid for the term of the Missouri Energy Efficiency Investment Act (MEEIA) cycle approved by the commission. Customers who opt-out consistent with paragraph (7)(A)3, may

¹³ 4 CSR 240-20.094(6)(F)(2)

¹⁴ See, 4 CSR 240-20.094 Final Order of Rulemaking, Case No. EX-2010-0368, issued May 14, 2011, at pages 21-22.

apply to opt-out again in successive MEEIA cycles, consistent with the requirements of paragraph (7)(A)3.¹⁵

The proposed revision, to limit the effectiveness of an opt-out under Threshold 3, is both problematic in its application as well as flawed. As these comments demonstrate, if the Commission is determined to change course from the current provision allowing for perpetual opt-out effectiveness, there is a better method for requiring a customer to demonstrate that it continues to achieve savings at least equal to those expected from utility programs.

21. The proposed revision is flawed in that the length of a customer's opt-out under Threshold 3 is directly tied to the length of the utility's MEEIA cycle which is unlikely to coincide with the opt-out window mandated under the rule. As an example, KCPL's MEEIA Cycle 2 became effective, and replaced Cycle 1, on April 1, 2016.¹⁶ Given the revised rule, Walmart's opt-out would have terminated on March 31, 2016 with the end of KCPL's MEEIA Cycle 1. While Walmart may have sought to opt-out again on September 1, 2016, that opt-out would not have become effective until January 1, 2017. Thus, Walmart would have lost opt-out status for a period of 9 months. Undoubtedly, this is contrary to the purpose of allowing large customers to opt-out of a utility's energy efficiency costs. Clearly, tying the effectiveness of an opt-out under Threshold 3 to the term of a utility MEEIA Cycle is illogical and unworkable.

22. If the Commission determines that the effectiveness of Threshold 3 opt-out should be limited, then Walmart suggests that the effectiveness be tied to the statutory comparison of savings achieved under the customer-implemented energy efficiency measures and savings expected from utility programs. For instance, assume that KCPL's current MEEIA programs are expected to result in a 5% reduction in energy usage for commercial and industrial customers. If a customer were to demonstrate that its energy efficiency measures have delivered energy

¹⁵ Revised Rule 4 CSR 240-20.094(7)(A)(4).

¹⁶ See, *Order Approving Expedited Tariffs*, Case No. EO-2015-0240, issued March 23, 2016.

reductions of 13%, then that customer should maintain its opt-out status until such time as KCPL's MEEIA programs are expected to deliver savings in excess of 13% for commercial and industrial customers. It would constitute an unnecessary intrusion on the day to day operations of a customer to be expected to again demonstrate its energy savings when the utility's expected savings have not even reached that level of savings that the customer has already demonstrated. As such, in the event that the Commission desires to limit the effectiveness of Threshold 3 opt-out, then Walmart suggests that proposed rule 4 CSR 240-20.094(6)(A)(4) provide as follows:

Opt-out in accordance with paragraph (7)(A)(3), shall be valid for that period of time until the expected savings from a utility-provided programs are expected to exceed that level demonstrated by the customer. At such point in time, Staff will notify the customer of the increased level of expected savings from the utility-provided programs and that the continued validity of the customer's opt-out will require another application and a renewed demonstration of savings under paragraph (7)(A)(3). Under such circumstances, the customer's opt-out under paragraph (7)(A)(3) will occur on December 31 of the year in which the utility's expected savings exceed that previously demonstrated by the customer. Under no circumstances will the termination of a customer's opt-out status occur in less than 60 days.

VI. CONCLUSION

Through these comments Walmart suggests that the Commission take three steps to improve the opt-out provision reflected in either the current regulations or the proposed rule. Specifically, Walmart suggests:

- 1) The Commission clarify that the 5,000 kW demand contained in Threshold 1 can be met through the non-coincident demand of multiple accounts;
- 2) The Commission provide transparency to Threshold 3 by expressly stating and publishing that level of savings expected from utility-provided programs; and
- 3) To the extent that the Commission seeks to change direction and limit the time for which opt-out under Threshold 3 is effective, then Walmart suggests that the

effectiveness be tied to the level of energy savings expected from utility-provided programs relative to that level already demonstrated by the customer.

WHEREFORE, Walmart respectfully submits the foregoing comments and asks that the Commission consider these comments in the context of its revision of 4 CSR 240-20.094.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is fluid and cursive, with the first name "David" being more prominent and the last name "Woodsmall" following in a similar style.

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