

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Compliance of Commonwealth of Pennsylvania
With Section 410(a) of the American Recovery and
Reinvestment Act of 2009

Docket Number I-2009-2099881

**Comments of
Wal-Mart Stores East, LP and Sam's East, Inc.**

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I. Introduction

Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Wal-Mart") submits these comments in response to the Investigation Order issued by the Pennsylvania Public Utility Commission (the "Commission") in this proceeding on May 5, 2009. Pursuant to the ordering paragraphs, the Commission requested comments on the appropriate actions, orders, policy statements or regulations that the Commission should adopt to ensure compliance with Section 410(a) of the American Recovery and Reinvestment Act of 2009 or to respond to the potential effect of proposed federal energy legislation, including the issue of rate decoupling and all such measures that have the potential to encourage utility energy efficiency and conservation while ensuring the financial viabilities of the utilities.

Wal-Mart is a national retailer with 153 facilities in the Commonwealth of Pennsylvania. These facilities include Wal-Mart Supercenters, Discount Stores, Sam's Clubs, distribution centers and gas stations. In addition to being one of the largest electric utility customers in Pennsylvania, consuming over 600 million kWh annually, Wal-Mart is a leader in energy efficiency and deployment of demand side management ("DSM") technology. For instance, in moving towards its goal of developing a store prototype that is 30 percent more efficient by the end of this year, Wal-Mart is installing a variety of energy efficiency measures and is auditing the results. Some of the projects already implemented in Wal-Mart facilities include: a centrally controlled energy management system, advanced metering systems (installed in approximately 1,185 United States and 380 United Kingdom facilities); daylight harvesting; highly efficient

HVAC; white membrane roofs; heat reclamation from refrigeration equipment; T8 and LED lighting; and active dehumidification.

Wal-Mart commends the Commission for commencing this proceeding. The energy related provisions of the ARRA have the potential to significantly contribute towards energy efficiency and conservation goals in an economic downturn. Wal-Mart has no recommendations to the Commission with regard to appropriate actions, orders, policy statements or regulations that the Commission should adopt to ensure compliance with Section 410(a) of the American Recovery and Reinvestment Act of 2009. However, as a large commercial customer in Pennsylvania that has heavily invested in energy efficiency technology, Wal-Mart would like to share its expertise with regard to measures, including appropriately designed decoupling mechanisms, that have the potential to encourage utility energy efficiency and conservation while ensuring the financial viabilities of the utilities.

II. DECOUPLING

With the passage of the ARRA and other recent Federal legislation, the term decoupling has been widely discussed. In general, decoupling is a regulatory risk management tool used to increase the opportunity for a utility to earn its authorized rate of return in light of reduced sales that result from the utility's promotion of energy efficiency and conservation. Decoupling works by increasing customer rates to account for reductions in the quantity of energy sold that result from a utility's energy conservation activities. However, a typical problem associated with a decoupling mechanism is the difficulty with isolating only those sales reductions that are a direct result of the utility's energy conservation efforts. For a decoupling mechanism to be

declared just, reasonable, and nondiscriminatory, such mechanism must properly account for reductions caused by circumstances not directly related to the utility's promotion of its energy efficiency programs. In other words, decoupling adjustments should only be allowed to account for the effect of the utility's direct promotion of energy efficiency to its customers.

The utility should not be reimbursed or compensated for normal variances in sales volume, reductions that result from individual customer conservation actions, nor reductions caused by other circumstances not directly related to the utility's promotion of its energy efficiency programs. The following sections describe the many contributors to variations in utility sales that are not related to a utility's promotion of energy efficiency measures and demand-side resource programs.

Individual customer actions: Some examples of an individual customer's proactive and independent actions not resulting from utility energy efficiency programs are:

- investing in more energy efficient appliances;
- taking vacation;
- replacing ordinary light bulbs with compact fluorescent lighting ("CFL");
- investing in improved building insulation; and
- eating out more frequently.

Customers actively engaging in activities to conserve energy are likely to consume less than average amounts of energy. In a decoupling regime, the progress towards energy consumption reductions achieved by the more conscious energy consumer will yield the same increases in energy rates that would result from the utility's progress towards

reducing the volume of energy sold. A flaw in a traditional decoupling mechanism is that all sources of energy reduction generate the same increase in energy rates. In the case of customers that conserve energy on their own, a traditional decoupling mechanism may send the wrong price signal. If a decoupling mechanism is implemented, the Commission should ensure that the mechanism, in coordination with the rate structures in place, permits customers pursuing energy conservation to realize the benefits from their efforts in the form of lower energy bills.

Weather variations: It is very difficult to predict weather variations. During summer, when the weather is hotter than normal, electricity consumption can be expected to be higher than normal. However, if the weather is cooler than normal in the summer, electricity consumption can be expected to be lower than normal. During the winter season, the exact opposite happens; if the weather is warmer than normal, electricity consumption can be expected to be lower than normal, while if the weather is cooler than normal, electricity consumption can be expected to be higher than normal. Weather variations can wreak havoc on utilities' sales forecasts. Weather variation can also have very serious negative consequences to customers when a decoupling mechanism is in place.

If the decoupling mechanism is not normalized by the effect of weather variations, customers will receive conflicting price signals from the utility. In fact, in certain circumstances the price signal from decoupling can actually harm conservation efforts. For example, during summer, in peak periods that exceed utility forecasts (such as an unusually long summer heat wave), a decoupling mechanism without weather normalization will automatically lower rates. In other words, customers will see lower

rates per kWh than without the decoupling mechanism because sales volumes will be above normal levels. Thus, a hotter than expected summer, combined with a decoupling regime, will signal consumers to use more electricity at the time when conservation is most important.

Economic conditions: The general condition of the economy can also have a devastating impact on the utilities' expected sales volume. Generally, when the economic situation is positive, increases in electricity consumption can be expected. In an economic slowdown, decreases in electricity consumption can be expected. Where a general slowdown in the economic condition within the franchise area of a utility is experienced, implementation of decoupling will tend to raise rates when customers are already suffering. Utilities should not receive a decoupling adjustment for reductions in sales volumes that result from economic slowdowns.

Number of customers served by the utility: Ordinarily, when the number of customers served by the utility increases, utility sales volumes also increase. However, there will be circumstances where new customers might have a lower average consumption than the average utility customer, which can lead to a lower overall sales volume per customer. In this scenario, the existing utility customers should not incur higher rates because their consumption patterns and behaviors did not cause the failure of the utility to earn its authorized revenues. Here, decoupling can create an intergenerational inequity, where the enterprise customers are forced to defray the cost of serving new customers. A general base rate case is the appropriate method of adjusting for this type of scenario.

Force Majeure events: Utilities should not recover through decoupling for losses sustained due to power outages during events of force majeure because such losses are not the result of the utility's promotion of energy efficiency. A force majeure event causing a loss of power can include, but not be limited to, natural phenomena such as storms, hurricanes, floods, lightning, earthquake, other occurrences such as explosions and fires, acts of war or public disturbances, riots, insurrection, sabotage, acts of terrorism, and certain actions by governmental authorities. These and many other variables may have a more significant impact on utility sales volumes than the impact of utility energy efficiency programs. Therefore, extreme care must be exercised to account for these natural causes for sales volume variances before allowing rates to be adjusted through the application of revenue decoupling. The impact of these variables in day to day economic activity cannot be ignored.

There are additional issues this Commission should consider with regard to decoupling, including the appropriate forum for implementing such a policy. A general rate case is the appropriate forum for consideration of a decoupling mechanism because it allows for all costs, benefits, and risks to be systematically considered. This is important because single-issue ratemaking between or separate from general rate cases may not involve adjustments to rate of return components, and such adjustments are sometimes required to appropriately reflect the reduction in risk experienced by the utility. Decoupling, by its very nature, is a mechanism to reduce the risk of lost earnings due to reductions in sales, and the Commission needs to consider the impact of the risk reduction from the mechanism on the rate of return for the implementing utility. Several other state utility commissions have adopted such an approach.

For instance, the Oregon Public Utility Commission, in approving a decoupling mechanism for Portland General Electric, reduced the utility's authorized ROE by 10 basis points to "reflect the reduction in the Company's risk."¹ Similarly, the Maryland Public Service Commission, in approving a decoupling mechanism known as the Bill Stabilization Adjustment mechanism, recognized that the mechanism "reduces risk and therefore reduces the Company's cost of capital." Based on that reasoning, the Maryland Commission reduced the utility's ROE by 50 basis points.²

III. STRAIGHT FIXED-VARIABLE RATE DESIGN: AN APPROPRIATE ALTERNATIVE TO THE DECOUPLING CONCEPT

Wal-Mart encourages the Commission to consider an alternative to traditional decoupling. Straight fixed-variable rate design recovers all of the utility's fixed costs through fixed charges and all variable costs through variable charges. The conceptual structure addresses both the customer concerns of intra-class subsidies and the utility concerns of cost under-recovery.

IV. INCENTIVE MECHANISMS THAT PROMOTE ENERGY EFFICIENCY

Wal-Mart anticipates that the dialogue invited with this Commission's request for comments will include the issue of incentive mechanisms for utilities that are designed to promote energy efficiency. Wal-Mart does not oppose the concept of providing utilities with incentives for energy efficiency activities. However, care should be taken to make sure that any utility-sponsored program provides energy efficiency at the least cost to

¹ See *In the Matter of Portland General Electric Company, Request for a General Rate Revision*, Docket UE 197, Order 09-020, p. 29 (Oregon Public Utility Commission, Jan. 22, 2009).

² See *In the Matter of the Application of Potomac Electric power Company to Revise its Rates and Charges for Electric Service and for Certain Rate Design Changes*, Case No. 9092, Order No. 81517, p. 81 (Maryland Public Service Commission, Jul. 19, 2007).

consumers. Additionally, the Commission should ensure that the utility is not compensated for energy efficiency activities that are implemented and funded by the utility's customers. For example, a utility should not be compensated for an individual customer's independent and proactive activities such as purchasing more energy efficient appliances or installing CFLs.

Also, any incentive should not reward the utility for:

- events of Force Majeure;
- changes in the number of customers served by the utility;
- changes in economic conditions; and
- building codes.

These factors could have a tremendous impact on reduced energy usage without any participation on the part of the utility.

The purpose of any incentive mechanism should be to promote the implementation of cost-effective energy efficiency, not to simply financially reward the utility. Thus, the Commission should adopt incentive programs that incorporate concise, well-delineated standards for any incentive awarded. Any incentive plan should incorporate an appropriate disincentive, funded by shareholders or credited to ratepayers, applicable for when the utility fails to meet the standards. Including a penalty for non-performance enables an appropriate balance of risk and reward. A utility may ultimately benefit financially from the incentive, but the utility should not benefit financially from an incentive unless the utility's energy efficiency efforts yield significant energy reductions.

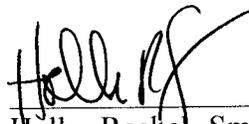
Additionally, Wal-Mart supports allowing third parties the opportunity to provide energy efficiency programs. This type of competition helps to ensure the most cost

effective measures through competition among potential providers, including utilities. There is nothing inherent in utility operations that qualifies them as the best vendors for providing energy efficiency programs. In fact, it could be argued that utilities have the most to lose through successful energy efficiency implementation due to the fact that they are proactively reducing the quantity of product they sell. Competition for the right to provide energy efficiency greatly enhances the likelihood of innovation and cost effectiveness.

V. **CONCLUSION**

Wal-Mart again thanks the Commission for this opportunity to provide input on measures that have the potential to encourage utility energy efficiency and conservation while ensuring the financial viabilities of the utilities. Wal-Mart looks forward to an exchange of information and ideas surrounding the implementation of the ARRA and what it might mean to the Commonwealth of Pennsylvania.

Respectfully submitted,



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