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

Missouri Public
Service Commission

In the Matter of the Application of Kansas City)	<u>Case No. ER-2006-0314</u>
Power & Light Company for Approval to Make)	Tariff No. YE-2006-0594
Certain Changes in its Charges for Electric Service)	
to Begin the Implementation of Its Regulatory Plan.)	

**MOTION OF WAL-MART STORES EAST, L.P.
FOR RECONSIDERATION OF COMMISSION'S ORDER DISMISSING WAL-MART
STORES EAST, L.P. AND REQUESTING EXPEDITED TREATMENT**

COMES NOW, Wal-Mart Stores East, L.P. ("Wal-Mart"), by and through its counsel, pursuant to 4 CSR 240-2.160, and submits this Motion for Reconsideration ("Motion") to the Public Service Commission of the State of Missouri (the "Commission") and respectfully requests that the Commission withdraw its September 5, 2006 Order Dismissing Wal-Mart Stores East, L.P. ("September Order"). The Commission should grant Wal-Mart's Motion and reinstate Wal-Mart's party status as soon as possible because its September Order is unjust, unreasonable, and potentially unlawful given due process concerns raised herein.¹

In support thereof, Wal-Mart states as follows:

1. Wal-Mart is a large commercial customer of Kansas City Power & Light Company ("KCP&L") and operates eighty-one (81) Super centers, thirty-six (36) Discount Stores, fifteen (15) Sam's Clubs, and four (4) distribution centers in the State of Missouri. As of July 2006, Wal-Mart employed 42,187 associates in the State of Missouri. In fiscal year (FY) 2006², Wal-Mart spent approximately \$5,047,450,133 for merchandise and services from 1,986 suppliers in the State of Missouri. As a result of Wal-Mart's relationship with these suppliers,

¹ 4 CSR 240-2.160, states that "Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable."

² Wal-Mart's FY 2006 begins February 1, 2005 through January 31, 2006.

Wal-Mart supported 94,604 supplier jobs, collected on behalf of the State of Missouri approximately \$444 million in sales taxes in FY ending 2006, paid \$44.6 million in state and local taxes for FY ending 2006, and donated approximately \$6,787,445 in cash and in kind to local causes and organizations within the communities they serve in the State of Missouri in 2005. It is estimated that in the last twelve months, Wal-Mart purchased more than 40,000,000kWh of electricity from KCP&L for services in Missouri, worth more than \$1.7 million.

2. The September Order abrogating the Commission's July 17, 2006 Order ("July Order") Granting Wal-Mart's Motion to Intervene Out-of-Time as filed by counsel ("Intervention") causes Wal-Mart substantial and irreparable harm. In its July Order, the Commission explicitly found that Wal-Mart's Intervention, which was not opposed by any party in this proceeding, was in the public interest, and by granting the motion, implicitly found that good cause existed to grant the late-filed Intervention. The September Order causes Wal-Mart substantial and irreparable harm because Wal-Mart relied upon these findings and incurred great expense to participate as an active party by filing testimony, participating in settlement discussions, filing to qualify its non-Missouri attorneys with the Missouri Supreme Court, engaging an expert consultant, reassigning appropriate personnel, and incurring other expenses. Neither Wal-Mart, nor the Commission, will benefit from these efforts if the Commission's July Order is not reinstated. Wal-Mart should be allowed to remain in this proceeding because: (1) its participation will benefit the Commission and assist it in achieving its goal to approve fair rates for all classes of KCP&L's customers; (2) a party greatly and uniquely affected by the outcome of this proceeding will be allowed to represent its interests; (3) no other party is objecting to its participation; (4) its participation has not and will not delay these proceedings; (5) the

Commission's recent change in policy regarding late interventions should be applied solely on a prospective basis in the first instance; and (6) it is fundamentally unfair to reverse the Commission's July Order after Wal-Mart, in good faith, has invested so much in these proceedings.

3. Wal-Mart stated in its Intervention that it filed late because it needed to analyze its business interests. In support of its Intervention, Wal-Mart further explains it filed late because it has 136 stores with various load characteristics in Missouri and, in order to analyze its business interests, needed additional time beyond the intervention deadline to analyze the detailed KCP&L filing, hire an expert and counsel and pursue its interests regarding cost of service and rate design in accordance with the procedural schedule. Wal-Mart then also became aware that the procedural schedule anticipated that cost of service and rate design would be the subject of testimony later in the schedule, and thus its Intervention would be justified prior to the commencement of that phase of the proceeding, for good cause shown.

4. Wal-Mart understands that the purpose of the deadline for intervention is to keep an efficient docket, but it is undisputed that Wal-Mart's participation has not and will not delay this case. Wal-Mart appreciates the Commission's goal to treat similarly situated parties the same and that the Commission was presented with the five month out-of-time motion to intervene of W. Bill Dias and 1.Paystation.com in this proceeding ("Dias Motion"). However, Wal-Mart's Intervention is materially different and distinguishable from the Dias Motion, for the reasons the Commission expressed in its order denying the Dias Motion³ and, additionally, because the Commission already granted Wal-Mart's Intervention and Wal-Mart has taken

³ See *Order Denying Motion for Leave to File Application to Intervene Out of Time of W. Bill Dias, Natural person, and W. Bill Dias D/B/A 1.Paystation.com, and Denying Intervention* at 5 (September 5, 2006).

significant action as a party by filing testimony and otherwise fully participating in this proceeding.

5. Wal-Mart relied upon the Commission's rules and past precedent allowing late-filed interventions for good cause shown and had no reason to believe that the Commission would reverse its July Order on its own motion, especially when no other party in the proceeding protested Wal-Mart's motion to intervene and certainly not without sufficient notice to Wal-Mart or any party to the proceeding, and an opportunity for Wal-Mart to defend its rights and to be heard by the Commission.⁴ Wal-Mart understands the Commission's desire to strictly implement its deadlines, but respectfully requests that the Commission enforce a more stringent policy to deny late-filed interventions solely on a prospective basis.

6. Wal-Mart also respectfully requests that the Commission expedite its ruling on this Motion. Given the September 15, 2006 effective date of the September Order, Wal-Mart's status as a party is uncertain and it is unclear whether further participation by Wal-Mart, by filing rebuttal testimony and further developing its settlement positions would be permitted by the Commission or other parties to the proceeding.

7. In support of its Intervention, Wal-Mart stated that: (a) it has direct interests in the above-captioned proceeding and that the outcome of the proceeding may have substantial effect on Wal-Mart, which interests cannot not be adequately represented by any existing or future participant in these proceedings given Wal-Mart's unique nature and interests; and (b) it did not file an intervention earlier in the proceeding because it needed time to review the filing and analyze its business interests as they related to the proceeding. Critically, Wal-Mart's

⁴ Although the Commission posted on its September 5, 2006 Agenda the "Order Dismissing Wal-Mart," such posting does not provide sufficient notice to a party that adverse action shall be taken against it, or even provide a party any ability to participate or challenge such adverse action.

intervention was not opposed by any participant in the proceeding, nor did it cause delay or prejudice the rights of other parties in the proceeding. Given the findings of the July Order and Wal-Mart's substantial reliance upon the Commission's July Order, the Commission should continue to allow Wal-Mart to participate as a party.

8. The Commission's July Order stated that "Commission Rule 4 CSR 240-2.075(4) allows the Commission to grant intervention to a person who has an interest different from that of the general public and which may be adversely affected by a final order arising from the case, or if granting intervention would serve the public interest." The Commission's July Order found that Wal-Mart met the standard and therefore the Commission granted Wal-Mart's application and allowed Wal-Mart to intervene. Given that the Intervention was filed late and argued good cause, implicit in the July Order is a finding that Wal-Mart demonstrated good cause for its late filed intervention. At no time after Wal-Mart's Intervention was granted, was there an indication that the July Order's failure explicitly to state "good cause" would be later used against Wal-Mart to harm its substantial and unique interests in this proceeding by dismissing it as a party.

9. The Commission in the past has granted late filed interventions if the intervention allows the Commission to consider one or more viewpoints, if it serves the public interest, or if the late intervention would not cause disruption to the proceeding. Pursuant to the Commission's July Order, Wal-Mart continues to meet this standard and accordingly was appropriately allowed to intervene and should be allowed to continue its active party status.⁵

⁵ See *In Re: Union Electric Company*, Case No. EO-2006-0240, 2006 Mo. PSC Lexis 363 (Mar. 28 2006) (granting party status to an entity who filed a late intervention and stating that the entity demonstrated "good cause" because they had interests different from that of the general public, their interest may be adversely affected by the final order arising from the case, and the intervention would not disrupt the ongoing proceeding); see also *In the Matter of the Joint Application of Utilicorp United Inc.*, Case No. EM-2000-369, 2000 Mo. PSC Lexis 883 (July 6 2000) (granting an entity's late motion to intervene party status where entity already filed rebuttal testimony and entry into case would not cause any delay in the resolution of the case).

10. The Commission's September Order indicates that good cause does not exist because Wal-Mart has another opportunity to participate in the next rate case that might be filed in February 1, 2007 by KCP&L. Contrary to this finding, good cause did and continues to exist to allow Wal-Mart's continued participation in this proceeding. Specifically, Wal-Mart has unique characteristics and interests in the instant proceeding, and the Commission found as much in its July order and has issued no finding to the contrary, including in the September Order. Indeed, as indicated in its initial testimony, Wal-Mart has specific and unique interests in KCP&L's rate design and cost of service now being considered in the instant proceeding, which interests should be addressed in this proceeding and not in a subsequent rate proceeding.⁶ Parties in the instant proceeding could settle the issues, or the Commission could render substantive findings, which will bind Wal-Mart prior to and beyond the subsequent rate proceedings. KCP&L may not file a subsequent rate proceeding, or might agree through settlement not to file until a later time, or to file only regarding certain issues. The offer of participation in later proceedings yet to be filed is not sufficient to address Wal-Mart's current and unique concerns that can only be addressed in the current proceeding. Indeed, as a current party to the proceeding, Wal-Mart already has filed substantive testimony and engaged in settlement discussion focused on its unique interests.

11. Wal-Mart will suffer substantial harm at this juncture if it is dismissed from this proceeding. As indicated in Wal-Mart's Intervention, its Direct Testimony, the July Order, and as discussed herein, Wal-Mart's interests are unique and cannot be adequately represented by any other party in this proceeding. Wal-Mart's continued participation will provide the Commission

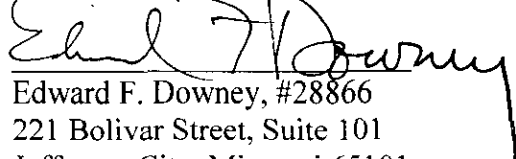
⁶ Wal-Mart's has specific and unique interests in KCP&L's rate design and cost of service, because it has multiple facilities and accounts served by KCP&L and is possibly one of KCP&L's largest commercial customers when all accounts and loads are aggregated.

an additional viewpoint in considering KCP&L's proposed rate increase and serves the public interest. If dismissed, Wal-Mart will be harmed because it has expended and continues to expend significant resources because of the Commission's July Order. Wal-Mart will be harmed further because it cannot continue to pursue its unique interests in this proceeding. Because Wal-Mart has already, in good faith, expended both time and resources as an active party in this proceeding, dismissing Wal-Mart as a party at this time causes Wal-Mart substantial harm, because its interests will no longer be represented despite Wal-Mart's good faith efforts to protect its interests.

WHEREFORE, Wal-Mart respectfully requests that this Motion for Reconsideration be granted prior to September 15, 2006 and that Wal-Mart be reinstated as a party.

Respectfully submitted,

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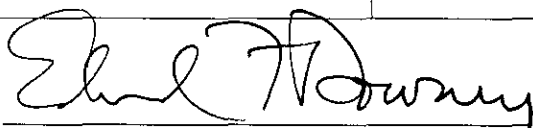
Attorneys for Wal-Mart Stores East, L.P.

Dated: September 7, 2006

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Motion of Wal-Mart Stores East, L.P. for Reconsideration of Commission's Order Dismissing Wal-Mart Stores East, L.P. and Requesting Expedited Consideration was deposited in the United States Mail, first class postage prepaid, this 7th day of September, 2006, to the following:

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County of Jackson, Missouri Jeremiah Finnegan 1209 Penntower Office Center 3100 Broadway Kansas City, KS 66101	Empire District Electric Company Dean Cooper 312 East Capital P.O. Box 456 Jefferson City, MO 65102	Ford Motor Company Diana Vuylstek 211 N. Broadway St. Louis, MO 63102
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