

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Ohio</b>	)	
<b>Edison Company, The Cleveland Electric</b>	)	
<b>Illuminating Company and The Toledo</b>	)	
<b>Edison Company for Authority to Provide</b>	)	<b>Case No. 14-1297-EL-SSO</b>
<b>For a Standard Service Offer Pursuant to</b>	)	
<b>R.C. 4928.143 in the Form of an Electric</b>	)	
<b>Security Plan</b>		

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**POST-HEARING BRIEF OF  
WAL-MART STORES EAST, LP AND SAM'S EAST, INC.**

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Lisa M. Hawrot (Ohio Bar ID 0080098)  
Spilman Thomas & Battle, PLLC  
Century Centre Building  
1233 Main Street, Suite 4000  
P.O. Box 831  
Wheeling, WV 26003-8731  
Phone: (304) 230-6973  
Fax: (304) 2 30-6951  
E-mail: lhawrot@spilmanlaw.com

Derrick Price Williamson  
Spilman Thomas & Battle, PLLC  
1100 Bent Creek Blvd., Suite 101  
Mechanicsburg, PA 17050  
Phone: (717) 795-2740  
Fax: (717) 795-2743  
E-mail: dwilliamson@spilmanlaw.com

Carrie M. Harris  
Spilman Thomas & Battle, PLLC  
310 First Street, Suite 1100  
P.O. Box 90  
Roanoke, VA 24002-0090  
Phone: (540) 512-1829  
Fax: (540) 342-4480  
E-mail: charris@spilmanlaw.com

*Counsel to Wal-Mart Stores East, LP  
and Sam's East, Inc.*

Dated: February 16, 2016

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**POST-HEARING BRIEF OF WAL-MART STORES EAST, LP  
AND SAM'S EAST, INC.**

Wal-Mart Stores East, LP, and Sam's East, Inc. (collectively, "Walmart"), by its attorneys, respectfully submit this post-hearing brief to the Public Utilities Commission of Ohio ("Commission") in the above-referenced proceeding concerning the Application of Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, the "Companies") for approval of a standard service offer ("SSO") and Electric Security Plan ("ESP"). Walmart actively participated in this proceeding and caused to be admitted into the evidentiary record the Direct Testimony and Exhibits of Steve W. Chriss, Walmart's Senior Manager, Energy Regulatory Analysis, as Walmart Exhibit 1.<sup>1</sup> Through the testimony of Mr. Chriss, Walmart addressed discrete issues regarding the Companies' proposed Return on Equity ("ROE"), the multiple rate riders it employs, and its proposed Retail Rate Stability Rider ("Rider RRS").

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<sup>1</sup> Transcript Volume XXI, p. 4088.

On December 1, 2015, the Companies filed their Third Supplemental Stipulation and Recommendation ("Third Supplemental Stipulation")<sup>2</sup> to amend the terms of the ESP. As with the Prior Stipulations, the Third Supplemental Stipulation was entered into by a subset of parties to this case ("Signatory Parties"). Under the Third Supplemental Stipulation, among other terms, the three-year term of their ESP commencing on June 1, 2016, and proceeding through May 31, 2019, would be modified to an eight-year term commencing on June 1, 2016, and concluding on May 31, 2024 ("Delivery Period").<sup>3</sup> The Companies also agreed to modify the term of Rider RRS from a fifteen-year term to the new eight-year term of the ESP.<sup>4</sup> The ROE was changed from 11.15 percent to 10.38 percent.<sup>5</sup> The Third Supplemental Stipulation also contains an agreement to freeze base distribution rates during the entirety of the Delivery Period.<sup>6</sup>

Neither the terms of the Third Supplemental Stipulation nor any of the Prior Stipulations alter Walmart's position in any way in this proceeding. Walmart continues to oppose approval of

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<sup>2</sup> Prior to the Third Supplemental Stipulation, three other stipulations were filed in this proceeding, as follows: (1) Companies Exhibit 2, the Stipulation and Recommendation, filed on December 22, 2014, as modified by Companies Exhibit 2a, the Stipulation and Recommendation Errata filed on January 21, 2015 (jointly, "Stipulation"); (2) Companies Exhibit 3, the Supplemental Stipulation and Recommendation, filed on May 28, 2015 ("Supplemental Stipulation"); and (3) Companies Exhibit 4, the Second Supplemental Stipulation and Recommendation filed on June 4, 2015 ("Second Supplemental Stipulation") (collectively the Stipulation, Supplemental Stipulation and Second Supplemental Stipulation are hereinafter referred to as the "Prior Stipulations").

<sup>3</sup> Companies Exhibit 154, Third Supplemental Stipulation, p. 7, Section V(A)(1); see Companies Exhibit 155, Fifth Supplemental Testimony of Eileen M. Mikkelsen, p. 3, lines 18-20; p. 7, lines 4-6; see also Companies Exhibit 156, Revised Term Sheet; see also Transcript Volume XXXVI, p. 7603, lines 3-5 (Testimony of Companies witness Eileen M. Mikkelsen).

<sup>4</sup> Companies Exhibit 154, Third Supplemental Stipulation, p. 7, Section V(B)(1); see Companies Exhibit 155, Fifth Supplemental Testimony of Eileen M. Mikkelsen, p. 3, lines 22-24; p. 11, lines 4-5; see also Transcript Volume XXXVII, p. 7932, lines 17-20 (Testimony of Companies witness Eileen M. Mikkelsen).

<sup>5</sup> Companies Exhibit 155, Fifth Supplemental Testimony of Eileen M. Mikkelsen, p. 7, lines 6-7; see also Companies Exhibit 156, Revised Term Sheet; see also Transcript Volume XXXVI, p. 7603, lines 9-10 (Testimony of Companies witness Eileen M. Mikkelsen). The Third Supplemental Stipulation also includes a provision governing any grid modernization efforts undertaken by the Companies. See Companies Exhibit 154, Third Supplemental Stipulation, p. 10, Section V(D)(3). Under the Third Supplemental Stipulation, any grid modernization efforts would be subject to an ROE of 10.38 plus a 50 basis point adder, making the total ROE for any grid modernization 10.88 percent. Id.

<sup>6</sup> Id. at p. 13, Section V(G)(1).

the Companies' proposed ESP and Rider RRS. As such, consistent with Walmart witness Chriss' prior testimony, Walmart respectfully requests that:

1. The Commission require the Companies to file a base rate case to consolidate its numerous rates and riders such that any resulting base rate changes would be effective on or before May 31, 2019;
2. The Commission approve an ROE in the range of 9.91 percent to 10.02 percent to calculate the Companies' relevant revenue requirement in this case;<sup>7</sup> and,
3. The Commission reject the Companies' proposed Rider RRS.

## **I. ARGUMENT**

### **A. The Commission Should Direct the Companies to File a Full Base Rate Case for New Base Rates to be Effective on or before May 31, 2019.**

The Companies' rates are inordinately complex, and the Companies' proposal here does not lessen that complexity.<sup>8</sup> In fact, the Companies' proposal in this case makes changes to nine existing rate riders, creates two new rate riders, and eliminates six other rate schedules, riders, or portions thereof, while leaving nearly 30 other rate schedules and riders unchanged.<sup>9</sup> For a commercial customer such as Walmart who wishes to engage in a bill analysis, it must examine more than 30 rates schedules or riders as well as applicable base rates to determine the billing impact.<sup>10</sup> As a company who operates throughout the United States, Walmart deals with numerous electric utilities. In Walmart's experience, the Companies' rate schedules require more extensive analysis than most other utilities with which it does business.<sup>11</sup> The situation with the Companies is, simply put, untenable, and it is quite frankly unreasonable to force customers to

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<sup>7</sup> See Walmart Exhibit 1, Direct Testimony of Steve W. Chriss, p. 12, line 19 to p. 13, line 3; see also Transcript Volume XXI, p. 4066, lines 9-12; p. 4071, lines 3-7 (Testimony of Walmart witness Steve W. Chriss, stating that although he is not recommending a specific ROE, he does believe the ROE should be comparable to one for a vertically integrated utility.)

<sup>8</sup> See Companies Exhibit 1, Application, Attachment 2.

<sup>9</sup> See id.; see also Walmart Exhibit 1, Direct Testimony of Steve W. Chriss, p. 5, line 5 to p. 6, line 3.

<sup>10</sup> Id. at p. 6, lines 5-10.

<sup>11</sup> Transcript Volume XXI, p. 4058, lines 19-23 (Testimony of Walmart witness Steve W. Chriss).

undertake such a complex and confusing review of the Companies' rate and rider framework simply to understand their monthly electric bills.

Accordingly, the Commission should take this opportunity to evaluate ways to simplify the Companies' rate structure.<sup>12</sup> In pertinent part, the Commission should require the Companies to file a base rate case timed to coincide with the conclusion of the initial proposed ESP term so the multitude of cost elements reflected in the currently overwhelming number of (current and as proposed) rates and riders can be examined and potentially rolled into base rates.<sup>13</sup>

As set forth above, under the Third Supplemental Stipulation the Companies propose to extend the term of the ESP from the current three-year period to an eight-year term commencing on June 1, 2016, and ending on May 31, 2024.<sup>14</sup> As part of this extension, the Third Supplemental Stipulation proposes a base distribution rate freeze during the entire eight-year term of the ESP.<sup>15</sup> Walmart opposes the Third Supplemental Stipulation, any extension of the ESP period, or any base rate freeze. It remains Walmart's position that the Commission should order the Companies to file a base rate distribution case to coincide with the conclusion of the current ESP term ending on May 31, 2019. Even if the Third Supplemental Stipulation were to be approved by this Commission, Walmart believes the Commission should refuse to freeze base rates as proposed by the Third Supplemental Stipulation and should, instead, order the Companies to file a base rate case to address the complexity of the Companies' current rate schedules. If a base rate case is not set for a definite future implementation date, customers will

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<sup>12</sup> Walmart Exhibit 1, Direct Testimony of Steve W. Chriss, p. 6, lines 10-14.

<sup>13</sup> See id.

<sup>14</sup> Companies Exhibit 154, Third Supplemental Stipulation, p. 7, Section V(A)(1); see Companies Exhibit 155, Fifth Supplemental Testimony of Eileen M. Mikkelsen, p. 3, lines 18-20; p. 7, lines 4-6; see also Companies Exhibit 156, Revised Term Sheet; see also Transcript Volume XXXVI, p. 7603, lines 3-5 (Testimony of Companies witness Eileen M. Mikkelsen).

<sup>15</sup> Companies Exhibit 154, Third Supplemental Stipulation, p. 13, Section V(G)(1); see Companies Exhibit 155, Fifth Supplemental Testimony of Eileen M. Mikkelsen, p. 3, lines 20-21; p. 13, lines 6-7..

be plagued indefinitely with a multi-part rate structure that is virtually impossible for any individual customer to analyze for purposes of evaluating current and proposed bill impacts.

**B. The Commission Should Approve an ROE in the Range of 9.91 Percent to 10.02 Percent in Calculating Relevant Revenues in this Case.**

In the Third Supplemental Stipulation, the Companies have proposed an ROE of 10.38 percent.<sup>16</sup> The Commission should reject the Companies' requested ROE as it is unreasonable and inconsistent with ROEs awarded by other utility regulatory commissions in 2012, 2013, and through December 2014.<sup>17</sup> Since 2012, there has been a declining trend in awarded ROEs nationwide, which makes the Companies' requested ROE particularly unreasonable.

Between 2012 and December 2014, SNL Financial reported on 119 electric utility rate case ROEs authorized by commissions across the country to investor owned electric utilities.<sup>18</sup> Of these 119 reported cases, the average authorized ROE is only 9.89 percent, and the range of reported ROEs is 8.72 percent to 10.95 percent.<sup>19</sup> In reviewing the SNL Financial data to distribution only utilities, the average reported ROE is even lower at only 9.56 percent.<sup>20</sup> Thus, the ROE requested by the Companies here exceeds the average ROE awarded nationally since 2012 whether viewing all electric utilities or distribution only utilities. In fact, the Companies' requested ROE under the Third Supplemental Stipulation is 49 basis points above the national average for all electric utilities and 82 basis points above the national average for distribution

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<sup>16</sup> Companies Exhibit 155, Fifth Supplemental Testimony of Eileen M. Mikkelsen, p. 7, lines 6-7; see also Companies Exhibit 156, Revised Term Sheet; see also Transcript Volume XXXVI, p. 7603, lines 3-5 (Testimony of Companies witness Eileen M. Mikkelsen). Any grid modernization efforts would be subject to an ROE of 10.88 percent, which is calculated based on an ROE of 10.38 percent plus a 50 basis point adder. See Companies Exhibit 154, Third Supplemental Stipulation, p. 10, Section V(D)(3). Prior to the Third Supplemental Stipulation, the Companies requested an ROE of 11.15%. See Companies Exhibit 27, Direct Testimony of Steve Staub, p. 2, line 14.

<sup>17</sup> Walmart Exhibit 1, Direct Testimony of Steve W. Chriss, p. 11, lines 1-4.

<sup>18</sup> Id. at p. 11, lines 13-16.

<sup>19</sup> Id. at p. 11, lines 16-17.

<sup>20</sup> Id. at p. 12, lines 1-5.

only utilities. Thus, regardless of what average ROE the Commission considers, the Companies' requested ROE represents a significant divergence from ROEs awarded nationally.

More important than just amount of the ROE awarded is the context in which it was awarded; ROEs awarded from 2012 through December 2014 reveal a declining trend nationally. This trend serves as further proof that the Companies' requested ROE of 10.38 percent is too high and must be rejected. In 2012, the average ROE for distribution only utilities was 9.75%.<sup>21</sup> By 2013, that number had dropped to 9.37%.<sup>22</sup> If the ROEs awarded to Commonwealth Edison and Ameren Illinois in 2012 and 2013 are excluded from this calculation as they are set by statutory formula, the national average authorized ROE for distribution only utilities was 9.8 percent in 2012 and 9.56 percent in 2013.<sup>23</sup> The average awarded ROE in 2014 was only 9.51%, meaning the last three years have been characterized by a steady decline in the average awarded ROE.<sup>24</sup>

A similar decline can be seen in the average ROE for vertically integrated utilities.<sup>25</sup> From 2012 to 2014, the average ROE during this three-year period for vertically integrated utilities was 10.02 percent.<sup>26</sup> If broken down by year, the average ROE in 2012 was 10.1 percent; in 2013 it was 9.97 percent; and for 2014 it was 9.91 percent.<sup>27</sup> Thus, regardless of whether you are comparing vertically integrated or distribution only utilities, it is clear that there has been a nationwide trend towards declining authorized ROEs. In light of this declining trend, the Companies requested ROE of 10.38 percent is clearly unreasonable. Instead, the

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<sup>21</sup> Id. at p. 12, lines 7-14.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id. at p. 12, lines 16-20.

<sup>26</sup> Id.

<sup>27</sup> Id. at p. 13, lines 1-3.



Commission should adopt an ROE in the range of 9.91 percent to 10.02 percent, which is consistent with the nationwide trend and the average ROE awarded nationally.<sup>28</sup>

**C. The Commission Should Reject the Companies' Proposed Rider RRS.**

The Commission should reject Rider RRS as an improper shifting of the risk from an unregulated affiliate to the Companies' customers.<sup>29</sup> It is not appropriate to require captive distribution customers of a regulated utility to financially assist an unregulated affiliate that operates in the competitive wholesale generation market.<sup>30</sup> This is particularly true under the terms of the proposed Rider RRS, which treats the Companies' customers as if they were taking service in a traditional vertically integrated utility paradigm, but fails to provide the sort of regulatory oversight that ordinarily governs vertically integrated utilities. The Commission should reject the Companies' proposal as it would provide regulatory protection of unregulated generation assets at a cost that exceeds what ratepayers would pay if those assets were owned by a vertically integrated utility,<sup>31</sup> all without the burden of Commission oversight.<sup>32</sup>

At its heart, Rider RRS is a mechanism to transfer the risk exposure of FirstEnergy Solutions Corporation's ("FES") ownership of the Davis-Besse Nuclear Power Station ("Davis-Besse"), the W.H. Sammis Plan ("Sammis"), and the FES-share of the output of the Ohio Valley Electric Corporation ("OVEC") to the Companies' customers.<sup>33</sup> The benefits to be reaped by this arrangement flow to FES, who receives revenue assurance for practically all of the costs of

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<sup>28</sup> See id. at p. 12, line 19 to p. 13, line 3; see also Transcript Volume XXI, p. 4066, lines 9-12; p. 4071, lines 3-7 (Testimony of Walmart witness Steve W. Chriss, stating that although he is not recommending a specific ROE, he does believe the ROE should be comparable to one for a vertically integrated utility.)

<sup>29</sup> Walmart Exhibit 1, Direct Testimony of Steve W. Chriss, p. 9, lines 12-16.

<sup>30</sup> Id.

<sup>31</sup> As set forth above, the Companies have proposed a ROE of 10.38 percent under the ESP, which grossly exceeds the average of ROEs awarded nationally since 2012 and is at the high end of the range of all awarded ROEs from 2012 through December 2014. See id. at p. 10, lines 1-3.

<sup>32</sup> Id. at p. 10, lines 3-7.

<sup>33</sup> Id. at p. 13, lines 10-14.

operating the Davis-Besse and Sammis plants as well as FES' share of the OVEC plants<sup>34</sup> for a period of eight years.<sup>35</sup> Under Rider RRS, the Companies' customers will shoulder the costs of operating these plants, but neither its customers nor this Commission will have any real ability to determine how those plants will run so as to impact how or how much costs are incurred.

Aside from the Commission's ability to review actual proposed costs as part of its consideration of Rider RRS in this current proceeding, the only going forward regulatory oversight comes in the form of a proposed audit process limited to a review "for mathematical errors."<sup>36</sup> As reflected in the Third Supplemental Stipulation, the scope of this review is limited to "annual compliance reviews . . . to ensure that actions taken by the Companies when selling the output from generation units included in Rider RRS into the PJM market were not unreasonable."<sup>37</sup> This limited going forward, after-the-fact review is an additional basis upon which Walmart believes proposed Rider RRS should be rejected. While there does not appear to be any limit to Staff's ability to audit those going-forward costs, there is no indication that Staff will have any authority "in its review . . . to determine what happens in the things that happen over there [at the plants]."<sup>38</sup> Specifically, it is not clear that the Commission would have any authority to direct or review the planning and costs incurred by FES in managing the plants.<sup>39</sup> If

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<sup>34</sup> Id. at p. 13, lines 14-18.

<sup>35</sup> See Companies Exhibit 154, Third Supplemental Stipulation, p. 7, Section V(B)(1).

<sup>36</sup> See Companies Exhibit 7, Direct Testimony of Eileen M. Mikkelsen, p. 14, line 21 to p. 15, line 22. This level of review is unchanged by the Third Supplemental Stipulation. See Companies Exhibit 154, Third Supplemental Stipulation, p. 8, Section V(B)(3)(a) (stating that "[t]he rigorous review process set forth in the Companies' ESP IV filing in the testimony of Company Witness Mikkelsen supporting the Application shall be adopted").

<sup>37</sup> Id.

<sup>38</sup> Transcript Volume XXI, p. 4062, line 12 to p. 4063, line 15 (Testimony of Walmart witness Steve W. Chriss).

<sup>39</sup> Walmart Exhibit 1, Direct Testimony of Steve W. Chriss, p. 10, lines 12-16; see also Companies Exhibit 7, Direct Testimony of Eileen M. Mikkelsen, p. 14, line 21 to p. 15, line 22.

the Staff audit process envisioned by the Companies merely means that "things will happen and those costs will show up for audit," then that is insufficient regulatory oversight of Rider RRS.<sup>40</sup>

The Commission's ability to audit decisions or costs incurred after-the-fact is an uncertain authority. The Commission will ultimately have no authority to limit or prohibit costs from being incurred with respect to the Davis-Besse, Sammis, or the OVEC plants. Commission oversight is particularly important in the case of the Sammis and OVEC coal plants, which may be forced to make significant expenditures to comply with federal regulations, all of which would be the responsibility of the Companies' customers.<sup>41</sup> If this were a traditional, vertically integrated utility, the Commission would have significant, far-reaching authority to review costs incurred with the operation of the plants before those costs could be passed along to the utility's customers, and other parties would have opportunities and due process rights of participation.

Under Rider RRS, the Companies and FES can obtain the cost recovery guarantees from customers that it would ordinarily only obtain if these entities were vertically integrated, while simultaneously avoiding this Commission's regulatory oversight. The risk of customers bearing the costs of imprudently incurred expenses are too high. Because the Commission's authority to make any changes once Rider RRS has been approved is basically non-existent, the Commission should reject Rider RRS.

## **II. CONCLUSION**

As set forth above, neither the Prior Stipulations nor the Third Supplemental Stipulation entered into by the Companies and the Signatory Parties has altered Walmart's position in this proceeding. It has been and continues to be Walmart's position that the ESP and Rider RRS should be rejected by the Commission for all the reasons stated above.

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<sup>40</sup> Transcript Volume XXI, p. 4063, lines 13-15 (Testimony of Walmart witness Steve W. Chriss).

<sup>41</sup> Walmart Exhibit 1, Direct Testimony of Steve W. Chriss, p. 10, lines 17-21.

**WHEREFORE**, Walmart respectfully requests that:

1. The Commission require that the Companies file a base rate case such that any resulting base rate changes would be effective on or before May 31, 2019;
2. The Commission approve an ROE in the range of 9.91 percent to 10.02 percent to calculate the Companies' relevant revenue requirement in this case; and,
3. The Commission reject the Companies' proposed Rider RRS.

Respectfully submitted,

**/s/ Lisa Hawrot**

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Lisa M. Hawrot (Ohio Bar ID 0080098)  
Spilman Thomas & Battle, PLLC  
Century Centre Building  
1233 Main Street, Suite 4000  
P.O. Box 831  
Wheeling, WV 26003-8731  
Phone: (304) 230-6973  
Fax: (304) 230-6951  
E-mail: lhawrot@spilmanlaw.com

Derrick Price Williamson  
Spilman Thomas & Battle, PLLC  
1100 Bent Creek Blvd., Suite 101  
Mechanicsburg, PA 17050  
Phone: (717) 795-2740  
Fax: (717) 795-2743  
E-mail: dwilliamson@spilmanlaw.com

Carrie M. Harris  
Spilman Thomas & Battle, PLLC  
310 First Street, Suite 1100  
P.O. Box 90  
Roanoke, VA 24002-0090  
Phone: (540) 512-1829  
Fax: (540) 342-4480  
E-mail: charris@spilmanlaw.com

*Counsel to Wal-Mart Stores East, LP, and Sam's East, Inc.*

Dated: February 16, 2016

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Post-Hearing Brief*, submitted on behalf of Wal-Mart Stores East, LP, and Sam's East, Inc., was served by electronic mail, upon the following Parties of Record on this 16<sup>th</sup> day of February, 2016.

/s/ Lisa Hawrot

Lisa M. Hawrot (Ohio Bar ID 0080098)

[ajay.kumar@occ.ohio.gov](mailto:ajay.kumar@occ.ohio.gov)  
[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)  
[athompson@taftlaw.com](mailto:athompson@taftlaw.com)  
[barthroyer@aol.com](mailto:barthroyer@aol.com)  
[bingham@occ.state.oh.us](mailto:bingham@occ.state.oh.us)  
[blanghenry@city.cleveland.oh.us](mailto:blanghenry@city.cleveland.oh.us)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)  
[callwein@keglerbrown.com](mailto:callwein@keglerbrown.com)  
[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)  
[Christopher.Miller@icemiller.com](mailto:Christopher.Miller@icemiller.com)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)  
[dfolk@akronohio.gov](mailto:dfolk@akronohio.gov)  
[dparram@taftlaw.com](mailto:dparram@taftlaw.com)  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[dwolff@crowell.com](mailto:dwolff@crowell.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[gas@smxblaw.com](mailto:gas@smxblaw.com)  
[ghiloni@carpenterlipps.com](mailto:ghiloni@carpenterlipps.com)  
[ghull@eckertseamans.com](mailto:ghull@eckertseamans.com)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)  
[Gregory.Dunn@icemiller.com](mailto:Gregory.Dunn@icemiller.com)  
[hmadorsky@city.cleveland.oh.us](mailto:hmadorsky@city.cleveland.oh.us)  
[Jeanne.kingery@duke-energy.com](mailto:Jeanne.kingery@duke-energy.com)  
[Jeffrey.mayes@monitoringanalytics.com](mailto:Jeffrey.mayes@monitoringanalytics.com)  
[Jennifer.spinosi@directenergy.com](mailto:Jennifer.spinosi@directenergy.com)  
[Jeremy.Grayem@icemiller.com](mailto:Jeremy.Grayem@icemiller.com)  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)  
[jiang@calfee.com](mailto:jiang@calfee.com)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)

[kevin.moore@occ.ohio.gov](mailto:kevin.moore@occ.ohio.gov)  
[Kristin.henry@sierraclub.org](mailto:Kristin.henry@sierraclub.org)  
[kryan@city.cleveland.oh.us](mailto:kryan@city.cleveland.oh.us)  
[larry.sauer@occ.ohio.gov](mailto:larry.sauer@occ.ohio.gov)  
[LeslieKovacik@toledo.oh.gov](mailto:LeslieKovacik@toledo.oh.gov)  
[Marilyn@wflawfirm.com](mailto:Marilyn@wflawfirm.com)  
[matt@matthewcoxlaw.com](mailto:matt@matthewcoxlaw.com)  
[Maureen.grady@occ.ohio.gov](mailto:Maureen.grady@occ.ohio.gov)  
[mdortch@kravitzllc.com](mailto:mdortch@kravitzllc.com)  
[meissnerjoseph@yahoo.com](mailto:meissnerjoseph@yahoo.com)  
[mfleisher@elpc.org](mailto:mfleisher@elpc.org)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)  
[mkl@smxblaw.com](mailto:mkl@smxblaw.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[msoules@earthjustice.org](mailto:msoules@earthjustice.org)  
[ricks@ohanet.org](mailto:ricks@ohanet.org)  
[rkelter@elpc.org](mailto:rkelter@elpc.org)  
[rlehfeldt@crowell.com](mailto:rlehfeldt@crowell.com)  
[rparsons@kravitzllc.com](mailto:rparsons@kravitzllc.com)  
[rsahli@columbus.rr.com](mailto:rsahli@columbus.rr.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[Schmidt@sppgrp.com](mailto:Schmidt@sppgrp.com)  
[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)  
[sfisk@earthjustice.org](mailto:sfisk@earthjustice.org)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  
[Thomas.lindgren@puc.state.oh.us](mailto:Thomas.lindgren@puc.state.oh.us)  
[Thomas.mcnamee@puc.state.oh.us](mailto:Thomas.mcnamee@puc.state.oh.us)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[todonnell@dickinsonwright.com](mailto:todonnell@dickinsonwright.com)  
[tony.mendoza@sierraclub.org](mailto:tony.mendoza@sierraclub.org)

[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)  
[twilliams@snhslaw.com](mailto:twilliams@snhslaw.com)  
[William.michael@occ.ohio.gov](mailto:William.michael@occ.ohio.gov)  
[Wttpmlc@aol.com](mailto:Wttpmlc@aol.com)  
[yalami@aep.com](mailto:yalami@aep.com)

Attorney Examiners:

[Gregory.price@puc.state.oh.us](mailto:Gregory.price@puc.state.oh.us)  
[Mandy.willey@puc.state.oh.us](mailto:Mandy.willey@puc.state.oh.us)  
[Megan.addison@puc.state.oh.us](mailto:Megan.addison@puc.state.oh.us)

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Summary: Brief Post-Hearing Brief of Wal-Mart Stores East, LP and Sam's East, Inc.  
electronically filed by Derrick P Williamson on behalf of Wal-Mart Stores East, LP and Sam's  
East, Inc.