



rational grounds for striking any portion of Mr. Radigan's testimony; thus, its motion should be denied.

#### Introduction

The bulk of Mr. Radigan's testimony proposes four adjustments to Columbia's revenue forecast. A portion of that testimony presents "the revenue impact of changing the allowed return on equity down to 8.5% instead of the requested 11.25%." Radigan Direct Testimony at p.3, lines 13-15. Mr. Radigan's aim is to provide the Commission with an alternative view of Columbia's revenue requirement. One such method for achieving that end is to provide the Commission with a revenue requirement based on an alternative ROE. Mr. Radigan achieves the desired goal by utilizing an ROE of 8.5% as opposed to the 11.25% requested by Columbia. While Columbia may not agree with the 8.5% figure Mr. Radigan utilized in calculating the revenue requirement, it seems – at best – needlessly inflammatory to allege that "[t]he AG is plainly grasping at straws." Motion to Strike at 3. Indeed, it is clearly in the best interest of both the Commission and ratepayers for the Commission to have access to alternative revenue requirements, including those based on an ROE other than one posed by the inherently biased applicant.

#### Due Process

Although the Attorney General agrees with Columbia that all parties should be afforded due process, including the right to cross-examine witnesses, Mr. Radigan's discussion of ROE does not implicate Columbia's procedural due process rights. Columbia will have the opportunity to cross-examine Mr. Radigan at the hearing in this case. The mere fact that portions of Mr. Radigan's testimony rely on opinions he developed through review of J. Randall Woolridge's direct testimony, as well as ROE's granted in other cases, does not render Mr.

Radigan incapable of answering questions about those opinions. Mr. Radigan appropriately attached the testimony as an exhibit to his testimony due to the fact that he had relied on it in forming his opinions. Columbia is free to request information through discovery requests regarding Mr. Radigan's opinions on ROE<sup>1</sup>, free to cross examine him at the hearing on those opinions, and free to present witnesses to rebut his testimony.

Columbia inexplicably relies on *Jessamine-South Elkhorn Water District*, Case No. 2012-00470, 2013 Ky. PUC Lexis 377 (April 30, 2013) to support their assertion that Mr. Radigan's testimony denies them due process. The citing of this case is questionable, at best, because the *Jessamine* decision hinged on a post hearing brief that quoted testimony from an unrelated Commission Proceeding. The Commission makes clear in the *Jessamine* Order that the due process concern in that case stemmed from a **lack of notice issue and lack of opportunity to address** said issue. In the instant matter, Columbia has notice of the issue and more than adequate opportunities to address the 8.5% ROE. Mr. Radigan is available to respond to pre-hearing discovery requests, and will be available at the hearing for Cross-examination. Furthermore, Columbia is free to present evidence or testimony of its own, both in rebuttal and during the evidentiary hearing, to oppose Mr. Radigan's testimony regarding the 8.5% ROE. The Attorney General is not attempting to inject new testimony into the record after a hearing has taken place as Columbia would appear to suggest. On the contrary, the Attorney General has provided Columbia with Mr. Radigan's direct testimony long before the hearing is to take place. Simply stated, Mr. Radigan very appropriately provides direct testimony that includes background information he reviewed when formulating his opinions on Columbia's revenue

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<sup>1</sup> Note that in Columbia's 25 September 2013 Data Request Served Upon the Office of the Attorney General, Question 30, Columbia requests information regarding Mr. Radigan's experience with ROE but DOES NOT avail itself of the opportunity to request any further information regarding his opinions or alternative materials he relied on when using 8.5% ROE to calculate the proposed alternative revenue requirement.

requirement, a portion of which is based on an 8.5% ROE, and Columbia has ample opportunity to respond to Mr. Radigan's testimony.

The situation currently before the Commission is analogous to a recent ruling the Commission made in *Application of Big Rivers Electric Corporation for An Adjustment of Rates*, Case No. 2012-00535, where the Commission found that on the basis of an intervener's representation that an expert witness would be made available to answer questions regarding non-party expert witness testimony from another case, "the inclusion of those prior testimonies as exhibits to the [intervener's expert] testimony in this proceeding does not violate Big Rivers' rights to due-process." Order entered 24 June 2013, pages 2-3. That ruling is dispositive of the issue currently before the Commission. Specifically, the Attorney General is entitled to enter into evidence Mr. Radigan's testimony, part of which relies on non-party testimony made in another proceeding before this Commission.

a. Relevance

Columbia's concerns regarding the relevance of Mr. Radigan's testimony, and his accompanying exhibits, are unfounded. Mr. Radigan's testimony, including the portions Columbia has moved to strike, are aimed at assisting the Commission in assessing the full range of options with regard to Columbia's revenue requirement. Mr. Radigan presents the Commission with a variety of proposed alternatives to the revenue requirements Columbia has claimed. In order to fully assess the impact of Columbia's claimed revenue requirement, an alternative ROE must also be considered. Mr. Radigan relied on materials when determining what an appropriate ROE was for the purpose of calculating Columbia's revenue requirement. Considering that the information Mr. Radigan relied on and testified about translates to a nearly \$5 million swing in charges to

ratepayers, Columbia's insistence that Mr. Radigan's testimony is irrelevant proves to be erroneous.

b. Hearsay

The assertion that Mr. Radigan's calculation of revenue requirement based on an 8.5% ROE is hearsay is fundamentally unsound. First and foremost, Commission hearings are not governed by rules of evidence. Notwithstanding that fact, hearsay is defined, in part, by Federal Rules of Evidence 801(c)(2) as "a statement that a party offers in evidence to prove the truth of the matter asserted in the statement." Mr. Radigan is not trying to prove that 8.5% is an appropriate ROE for Columbia, but merely that an 8.5% ROE would appropriately reduce Columbia's revenue requirement by \$4.8 million.<sup>2</sup> As opposing counsel acknowledged no less than four (4)<sup>3</sup> times in their Motion to Strike, "the AG is not sponsoring a witness to propose a return on equity in this case." Direct Testimony of Frank W. Radigan, page 33, line 14. The 8.5% ROE is merely a variable used in a formula by Mr. Radigan to determine an appropriate revenue requirement for Columbia. Mr. Radigan's direct testimony and exhibits demonstrate a rational basis for forming the opinion that a more reasonable revenue requirement could be achieved by utilizing an 8.5% ROE.

Conclusion

Recent decisions by this Commission support the Attorney General's position that Mr. Radigan's testimony should be admitted in its entirety. Furthermore, any due process claims posited by Columbia are unfounded based on the very obvious fact that Columbia will have ample opportunity to address the testimony of Mr. Radigan both before and during the hearing.

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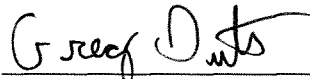
<sup>2</sup> The \$4.8 million figure originates in the Radigan Direct Testimony at page 34, line 12, and is based on information provided by Columbia in their responses to AG questions 1-119, 1-120 and 1-212. (For every 50 ROE basis points, Columbia's revenue requirement in this case is reduced by \$875,445.)

<sup>3</sup> Motion to Strike pages 2, 3-4, 11, and 12.

WHEREFORE, the Attorney General respectfully requests that the Commission deny Columbia's Motion to Strike portions of Mr. Radigan's testimony.

Respectfully submitted,

JACK CONWAY  
ATTORNEY GENERAL



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GREGORY T. DUTTON  
DENNIS G. HOWARD, II  
JENNIFER BLACK HANS  
ASSISTANT ATTORNEYS GENERAL  
1024 CAPITAL CENTER DRIVE,  
SUITE 200  
FRANKFORT KY 40601-8204  
(502) 696-5453  
FAX: (502) 573-1009

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Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Honorable Stephen B Seiple  
Attorney at Law  
Columbia Gas of Kentucky, Inc.  
P.O. Box 117  
Columbus, OH 43216-0117

Richard S Taylor  
225 Capital Avenue  
Frankfort, KY 40601

Honorable David F Boehm  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

Honorable David J. Barberie  
Managing Attorney  
Lexington-Fayette Urban County Government  
Department Of Law  
200 East Main Street  
Lexington, KENTUCKY 40507

Honorable John M Dosker  
General Counsel  
Stand Energy Corporation  
1077 Celestial Street  
Building 3, Suite 110  
Cincinnati, OHIO 45202-1629

Brooke E Leslie  
Columbia Gas of Kentucky, Inc.  
200 Civic Center Drive  
P.O. Box 117  
Columbus, OHIO 43216-0117

Honorable Matthew R Malone  
Attorney at Law  
Hurt, Crosbie & May PLLC  
The Equus Building  
127 West Main Street  
Lexington, KENTUCKY 40507

Honorable Iris G Skidmore  
415 W. Main Street  
Suite 2  
Frankfort, KENTUCKY 40601

this 1st day of October, 2013



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Gregory T. Dutton  
Assistant Attorney General