

Columbia Gas
of Kentucky

A NiSource Company

200 Civic Center Drive
Columbus, Ohio 43215

October 7, 2013

Mr. Jeff Derouen, Executive Director
Public Service Commission
Commonwealth of Kentucky
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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PUBLIC SERVICE
COMMISSION

RE: In the matter of adjustment of rates of Columbia Gas of Kentucky, Inc.,
KY PSC Case No. 2013-00167

Dear Mr. Derouen,

Enclosed for docketing with the Commission are an original and ten (10) copies of *Reply Memorandum in Support of Columbia Gas of Kentucky, Inc.'s Motion to Strike Portions of the Direct Testimony of Attorney General Witness Frank W. Radigan*. Should you have any questions about this filing, please contact me at 614-460-5558.

Very truly yours,

Brooke E. Leslie (GMC)

Brooke E. Leslie
Senior Counsel

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the matter of adjustment of rates of)
Columbia Gas of Kentucky, Inc.) Case No. 2013-00167

REPLY MEMORANDUM IN SUPPORT OF
MOTION OF COLUMBIA GAS OF KENTUCKY, INC.
TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF
ATTORNEY GENERAL WITNESS FRANK W. RADIGAN

The Attorney General's ("AG") response to Columbia Gas of Kentucky, Inc.'s ("Columbia") motion to strike helps clarify certain issues, but not in a way that is helpful to the AG. The AG's concession that "Mr. Radigan is not trying to prove that 8.5% is an appropriate ROE for Columbia . . ." mandates that the testimony at issue be stricken.

The AG's response conflates two distinct evidentiary problems. The first is the AG's attempt to introduce Dr. Woolridge's prior testimony by attaching a copy to Mr. Radigan's testimony. Dr. Woolridge's prior testimony is hearsay. The AG does not dispute this. Instead, it responds to an argument that Columbia did not make; *i.e.*, that *Mr. Radigan's* testimony is hearsay. ("The assertion that Mr. Radigan's calculation of revenue requirement based on an 8.5% ROE is hearsay is

fundamentally unsound.” (Response at 5.) There are several problems with Mr. Radigan’s testimony, but hearsay is not one of them.

The AG argues that Columbia’s right to due process will not be violated by allowing Dr. Woolridge’s testimony into the record because “Columbia will have the opportunity to cross-examine Mr. Radigan at the hearing in this case.” (Response at 2.) But whether Mr. Radigan will be available for cross-examination is not the issue; the issue is whether Dr. Woolridge will be available, and he will not. To the extent Dr. Woolridge’s opinions are allowed into the record in this proceeding, the only witness competent to answer questions about those opinions is Dr. Woolridge – not a surrogate for Dr. Woolridge.

The AG also argues that it 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,” by virtue of a ruling in *Big Rivers Electric Corporation*, Case No. 2012-00535. (Response at 4.) The AG is correct that in *Big Rivers*, the Commission overruled a motion to strike non-party testimony. But there are significant differences in the facts and circumstances of that case and this case. In *Big Rivers*, there was no dispute that the expert, a Harvard-educated PhD, was qualified to render expert testimony about generation capacity issues. The parties’ dispute was isolated to 1 page of 30 pages of testimony, where the expert referenced prior testimony in a different proceeding involving Big Rivers.

The case did not directly implicate due process issues because Big Rivers was a party in both cases. And the testimony Big Rivers sought to strike went to an ancillary point addressed by the opposing expert.

Here, the Commission is not dealing with 1 out of 30 pages of testimony addressing an ancillary issue. Most of Mr. Radigan's single page of testimony centers around Dr. Woolridge's prior testimony. Dr. Woolridge claims to be an ROE expert; Mr. Radigan does not. And unlike the case in *Big Rivers*, Columbia was not a party in the proceeding where Dr. Woolridge's testimony was originally filed. Far from being "dispositive," the AG's reliance on *Big Rivers* is fundamentally misplaced.

Dr. Woolridge's testimony was offered in a different proceeding involving a different company. Subjecting Mr. Radigan to cross examination about Dr. Woolridge's opinions would not remedy the fundamental problem associated with admitting non-party testimony into the record in this case. Dr. Woolridge's testimony should be stricken from this proceeding.

The second evidentiary problem, which AG' confuses with the first, is Mr. Radigan's one page of ROE testimony, separate and apart from his exhibits. As Columbia pointed out in its motion, Mr. Radigan: (a) is not qualified to render an opinion concerning ROE; (b) his opinions are not supported by sufficient facts or data; (c) his opinions are not the product of reliable principles and methods

applied reliably to the facts of this case; and (d) his opinions are irrelevant. The AG responds to the relevance argument by taking the position, in essence, that Mr. Radigan's testimony is relevant because the AG says that it is. No attempt is made to rebut any of Columbia's other three arguments.

Given the AG's acknowledgment that it is "not sponsoring a witness to propose a return on equity in this proceeding," it is difficult to conceive how Mr. Radigan's testimony can pass the basic filter of relevance. The AG is either offering an opinion about ROE or it is not. The AG says it is not. The 8.5% figure is simply a proxy for stating the obvious: that Columbia's revenue requirement will be lower with an 8.5% ROE than the Company's proposed ROE. (*See* Response at 5.) But the same would be true if Mr. Radigan picked 9.5% or 10.5%; either figure would produce a lower revenue requirement than Columbia has proposed. The Commission need not entertain "expert opinion" to confirm an obvious mathematical fact.

For the foregoing reasons, as well as those explained in Columbia's motion, the Commission should strike Mr. Radigan's ROE testimony.

Dated at Columbus, Ohio, this 7th day of October, 2013.

Respectfully submitted,
COLUMBIA GAS OF KENTUCKY, INC.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing *Reply Memorandum in Support of Columbia Gas of Kentucky, Inc.'s Motion to Strike Portions of the Direct Testimony of Attorney General Witness Frank W. Radigan* by regular U.S. Mail, postage prepaid, to the parties on this 7th day of October, 2013.

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