COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA GAS OF KENTUCKY, INC. FOR: 1) A DECLARATION THAT CONSTRUCTION OF A LOW PRESSURE SYSTEM SAFETY IMPROVEMENT IS AN EXTENSION OF ITS SYSTEM IN THE ORDINARY COURSE OF BUSINESS; 2) IN THE ALTERNATIVE, FOR THE ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUCH CONSTRUCTION; 3) APPROVAL OF AN AMENDMENT AND EXPANSION OF ITS ACCELERATED MAIN REPLACEMENT TARIFF TO ITS SAFETY MODIFICATION AND REPLACEMENT TARIFF; AND 4) APPROVAL TO MODIFY THE 2019 AMRP CONSTRUCTION PLAN	)	CASE NO. 2019-00257

ORDER

On July 29, 2019, Columbia Gas of Kentucky, Inc. (Columbia Kentucky), filed an application requesting a declaration that its construction to enhance the safety of its low-pressure gas distribution systems (LP Program) is an extension of its system in the ordinary course of business. Alternatively, Columbia Kentucky requests a Certificate of Public Convenience and Necessity (CPCN) be issued for the LP Program. The application further requests approval of an amendment of Columbia Kentucky's accelerated main replacement tariff and for a modification of its 2019 Accelerated Main Replacement Program (AMRP) construction plan.

Pursuant to an Order issued on August 2, 2019, a procedural schedule was established for the orderly processing of this matter. The procedural schedule provided for a deadline for requesting intervention and two rounds of discovery upon Columbia Kentucky's application. There are no intervenors in this matter, and Columbia Kentucky filed responses to one round of discovery issued by Commission Staff.

On September 6, 2019, Columbia Kentucky filed a motion for a deviation from 807 KAR 5:011, Section 8(2)(b)(3), which requires a utility to publish a notice for three consecutive weeks in a newspaper of general circulation in the utility's service area. Columbia Kentucky states that the *Booneville Sentinel* was scheduled to run Columbia Kentucky's notice for three consecutive weeks beginning the week of July 24, 2019. Columbia Kentucky informs that the *Booneville Sentinel* ran the notice as scheduled the first two weeks, but failed to run the notice for a third consecutive week on August 7, 2019, at no fault of Columbia Kentucky. Columbia Kentucky states that the notice was run on August 21, 2019. Columbia Kentucky asserts that a deviation should be provided given that Columbia Kentucky's customers received the requisite notice on three separate occasions and would have the opportunity to participate in this proceeding. Having reviewed the motion, the Commission finds that Columbia Kentucky's request for a deviation is reasonable and should be approved.

On September 19, 2019, Columbia Kentucky filed a motion requesting that the matter be decided on the established record without the need for a formal hearing. Having reviewed the motion, the Commission finds that Columbia Kentucky's motion is reasonable and should be approved. Therefore, the Commission will decide this matter based on the existing record without the need for a formal hearing.

COLUMBIA KENTUCKY'S APPLICATION

Columbia Kentucky is an indirect wholly owned subsidiary of NiSource Inc. (NiSource),[1] and is one of seven natural gas local distribution companies under the NiSource corporate umbrella.[2] Columbia Kentucky provides natural gas service to approximately 135,700 customers in 30 Kentucky counties.[3]

In September 2018, Bay State Gas Company d/b/a Columbia Gas of Massachusetts (Columbia Gas of Massachusetts) experienced a series of fires and explosions in the Merrimack Valley region as a result of over pressurization of its low-pressure gas distribution system.[4] In addition to significant damage to Columbia Gas of Massachusetts's distribution system and residential and commercial property damage, there were several injuries, including one fatality.[5] Columbia Kentucky states that, immediately after this incident, NiSource took action to enhance the safety of its low-pressure gas distribution systems across its seven-state operating territory, including Columbia Kentucky's service territory.[6]

Columbia Kentucky currently has 52 low-pressure gas delivery systems, comprised of 515 miles of low-pressure main serving approximately 40,000 customers in 16 counties and 23 municipalities in Kentucky.[7] As of the beginning of 2019, Columbia

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[1] Application, paragraph 6.

[2] Direct Testimony of Kimra H. Cole at 5.

[3] *Id.*

[4] Columbia Kentucky's response to Commission Staff's First Request for Information (Staff's First Request), Item 1. *See also* https://www.ntsb.gov/news/press-releases/Pages/NR20190924.aspx.

[5] *Id.*

[6] *Id.*

[7] Application, paragraph 10.

Kentucky operates 204 district stations that control pressure within its low-pressure systems.[8] According to Columbia Kentucky, nearly all of its customers that are supplied from an elevated pressure system, i.e., systems operating above one psig, have a service regulator in proximity to their meter that is designed to control the pressure to a level suitable for their appliances.[9] In contrast, pressure control for customers on low-pressure systems occurs at the district station.[10] Columbia Kentucky notes that it generally operates its low-pressure system between 10 and 12 inches of water column (w.c.) to meet the requirements of 49 CFR 192.623, in addition to the 7 inches w.c. minimum delivery pressure that is required by Columbia Kentucky's tariff.[11] Specifically, Columbia Kentucky utilizes four general control configurations at its district stations to achieve overpressure protection: wide-open monitor/control regulator, working monitor/control regulator, wide-open monitor/control regulator/secondary relief valve, and control regulator/primary relief valve.[12]

Columbia Kentucky maintains that, although its existing system complies with all applicable standards, the LP Program is a key element of its Safety Management System (SMS), which is based on the American Petroleum Institute's Recommended Practice 1173 and consists of a comprehensive set of standards and best practices for the oil and natural gas industries based on similar programs in the transportation, airline, and nuclear

[8] Direct Testimony of Gary E. Sullivan (Sullivan Testimony) at 8.

[9] Sullivan Testimony at 13.

[10] *Id.*

[11] *Id.* at 13–14.

[12] *Id.* at 8–9. Columbia Kentucky states that the wide-open monitor and regulator is the most frequently utilized control configuration for overpressure protection in its low-pressure systems.

industries.[13] Columbia Kentucky notes that its low-pressure gas distribution systems have redundant control and monitor regulators, but that this design does represent a potential common mode of failure.[14] Columbia Kentucky maintains that the LP Program is a prudent investment for achieving overall risk reduction by providing an additional layer of protection for its low-pressure customers.[15] According to Columbia Kentucky, the first element of the LP Program was to conduct a field review of all of its low-pressure district stations, update its mapping and GIS information, and conduct an engineering design evaluation to support enhanced field practices as well as asset modifications.[16] In addition, Columbia Kentucky implemented enhanced damage prevention practices by providing additional on-site station monitoring when excavation was planned to occur within specified distances of affected low-pressure stations.[17] Columbia Kentucky also enhanced work rules for tie-ins necessary during construction or maintenance activities in low-pressure systems that also included station monitoring.[18]

Columbia Kentucky states that the capital investments associated with the LP Program are to be made in two phases.[19] Columbia Kentucky indicates that Phase I began in April 2019 and includes installing automatic shut-off valves (ASV) as the primary

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[13] Application, paragraph 11.

[14] Columbia Kentucky's response to Staff's First Request, Item 1.

[15] Application, paragraph 11.

[16] Sullivan Testimony at 14–15.

[17] *Id.* at 15.

[18] *Id.*

[19] *Id.*

form of overpressure protection in its low-pressure systems.[20] Columbia Kentucky advises that the ASV is designed to fulfill both the maximum and minimum allowable operating pressure requirements of 49 CFR 192.623.[21] Also, as part of Phase I, Columbia Kentucky will install low-pressure gas regulators on two small systems supplying those customers that perform the same function as the overpressure equipment at the district station.[22] Columbia Kentucky will also be installing electronic instrumentation at each district low-pressure station that can inform NiSource's Gas Control should one of the ASVs activate, as well as sense other abnormal operating conditions.[23] Columbia Kentucky estimates that Phase I of the capital investments associated with the LP Program will be approximately $11,152,514.[24]

Columbia Kentucky informs that, as of July 31, 2019, it has installed over 80 ASVs at the cost of $2,473,748.[25] Columbia Kentucky also informs that no work has started on the low-pressure gas regulators or on the installation of the electronic monitoring devices.[26] With respect to the capital investments in Phase I of the LP Program, Columbia Kentucky asserts that the added overpressure protection is consistent with and in the spirit of continuously assessing and implementing measures intended to reduce risks as

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[20] *Id.*

[21] Sullivan Testimony at 17.

[22] *Id.* at 15.

[23] *Id.*

[24] *Id.*

[25] Application, paragraph 14, and Columbia Kentucky's response to Staff's First Request, Item 6, Attachment A.

[26] Application, paragraph 14.

required by the Gas Distribution Pipeline Integrity Management elements described in Subpart P of 49 CFR Part 192 and Part 192.1007 (5)(d) in particular.[27]

Columbia Kentucky conducted a functionality analysis to evaluate several options for its low-pressure gas distribution safety enhancement plan. Columbia Kentucky initially evaluated completely eliminating all low-pressure pipe and stations through pipeline replacements and upgrading the customers to medium pressure.[28] Columbia Kentucky eliminated this option, noting that the cost to replace low-pressure pipe and stations would range between $300 and $400 million.[29] Other options considered by Columbia Kentucky included the installation of ASVs at each district station, the installation of shut-off valves at the customer's residence, and the installation of full relief valves at every station.[30] Columbia Kentucky indicates that the analysis included examining the threats mitigated by each option such as control line failure, compound regulator failure, bypass valve leak through, bypass valve human error, and venting large volumes of gas.[31] According to Columbia Kentucky, the best value solution was determined to be the installation of ASVs at each regulator station.[32] Columbia Kentucky notes that the ASVs could be retrofitted into the existing set at a majority of its stations rather than rebuilding the entire station, which allows for much more timely installation to protect customers at a much lower cost

[27] Sullivan Testimony at 17.

[28] Sullivan Testimony at 24.

[29] *Id.*

[30] Columbia Kentucky's response to Staff's First Request, Item 15.

[31] *Id.*

[32] *Id.*

than would have occurred with large station rebuilds.[33] In contrast, Columbia Kentucky points out that the installation of full relief valves presented construction difficulties and required more time to acquire additional land rights and space and obtain permits to allow for the installation of the valve.[34] Another challenge with full capacity relief valves would be the public nuisance and additional safety risks created by discharging large volumes of gas to the atmosphere, which would often occur under electrical conductors or be restricted by trees.[35] Columbia Kentucky states that the estimated average cost of a full capacity relief design, including material, labor, and overhead, is $19,116.[36] The average actual cost to date for installing ASVs for six such stations already completed is $16,372.[37] Likewise, Columbia Kentucky concludes that the installation of shut-off devices at customers' homes only proved cost-efficient for gas systems with a small number of customers.[38]

Columbia Kentucky states that Phase II of the LP Program is currently being contemplated, but that it would include the elimination of the station bypass valves altogether.[39] Columbia Kentucky avers that bypass valves pose potential risks of overpressure by leak through or incorrect operation.[40] Columbia Kentucky informs that

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[33] *Id.*

[34] *Id.*

[35] Sullivan Testimony at 24–25.

[36] *Id.* at 26.

[37] *Id.*

[38] Columbia Kentucky's response to Staff's First Request, Item 15.

[39] Sullivan Testimony at 16.

[40] *Id.* *See also*, Columbia Kentucky's response to Staff's First Request, Item 12.a.

the risk of overpressure due to bypasses will be assessed and compared with other system risks and prioritized accordingly.[41]

Columbia Kentucky asserts that the Commission's decision in Case No. 2018-00281 has created doubt as to whether a CPCN is necessary based upon the Commission's articulation of a new two percent standard.[42] In particular, Columbia Kentucky points to the following language in the Commission's May 7, 2019 Atmos Order:

> The Commission has frequently found, based on specific facts presented by a utility, that the construction of a proposed facility, other than an office building, is in the ordinary course of business and does not require a CPCN if the cost represents less than two percent of the utility's net utility plant, and will not require financing approval by the Commission.[43]

Columbia Kentucky points out that the estimated cost of the LP Program of $11.2 million represents approximately 3.28 percent of Columbia Kentucky's net utility plant, which was $339,513,396 as of December 31, 2018.[44] In light of the Atmos Order, Columbia Kentucky states that it has stopped work on the LP Program and filed this application to clarify whether a CPCN is necessary for the LP Program. Columbia Kentucky interprets the Atmos Order as continuing the long line of precedent that holds that ordinary course extension questions should be reviewed based upon their own unique fact and that the particular circumstances in Case No. 2018-00281 have not given

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[41] *Id.*

[42] Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019) (Atmos Order).

[43] Case No. 2018-00281, May 7, 2019 Order at 55–56.

[44] Application, paragraph 21.

rise to a new black letter law standard that lacks flexibility and omits room for critical judgment.

Columbia Kentucky requests a declaration that a CPCN is not required for the LP Program, noting that it undertook the program in good faith belief that a CPCN was not required.[45] Columbia Kentucky asserts that the LP Program improves the safety of its existing distribution system by mitigating risks associated with low-pressure systems, that the LP Program does not involve the expansion of its system beyond its present locations, and that there will be no wasteful duplication of plant, equipment, property, or facilities.[46] Columbia Kentucky contends that the LP Program will not conflict with the existing service of other utilities and will have no impact on the services provided by other natural gas distribution companies.[47] Lastly, Columbia Kentucky avers that the capital cost of the LP Program will not have a material impact upon its financial condition, nor will the investment require Columbia Kentucky to immediately increase customer charges.[48] Columbia Kentucky states that it will fund the LP Program work through internally available funds and/or debt issuances previously approved by the Commission.[49]

To the extent the Commission determines that a CPCN is necessary for the LP Program, Columbia Kentucky asserts that the LP Program is needed to enhance the safety of Columbia Kentucky's low-pressure distribution system.[50] Columbia Kentucky

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[45] Application, paragraph 18.

[46] Application, paragraph 19.

[47] Application, paragraph 20.

[48] Application, paragraph 21.

[49] Direct Testimony of Judy M. Cooper (Cooper Testimony) at 10.

[50] Application, paragraph 33.

states that the LP Program was developed in response to the incident in Massachusetts that involved an overpressure event and that the program is consistent with the continual assessment and implementation of measures that address risks as they emerge, as required by the Gas Distribution Integrity Management elements set forth in Subpart P of 49 CFR Part 192 and Part 192.1007 (5)(d) in particular.[51] Columbia Kentucky lastly argues that the LP Program would not result in wasteful duplication of facilities, nor will it interfere with any other utility's ability to serve its customers, noting that the program is focused upon system improvements to Columbia Kentucky's existing distribution system.[52] Accordingly, Columbia Kentucky requests, in the alternative, that a CPCN be authorized for the LP Program.

With respect to Columbia Kentucky's request to amend Tariff AMRP to the Safety Modification and Replacement Program Rider (Tariff SMRP), the company states that the proposed name change more accurately reflects the purpose of the rider, which has always been the safety and modernization of Columbia Kentucky's system for the benefit of customers, employees, and the general public.[53] Columbia Kentucky also requests to expand the scope of Tariff SMRP to cover not only the replacement of aging pipeline mains, services, and facilities, but also the LP Program and any other subsequent programs that would involve enhancing Columbia Kentucky's ability to provide safe and reliable natural gas service where the costs of such programs are not already recovered in base rates.[54] Columbia Kentucky states that while only the investment associated with

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[51] *Id.*

[52] Application, paragraph 37.

[53] Cooper Testimony at 6.

the LP Program is at issue in this proceeding, Columbia Kentucky reserves the right to bring additional safety modification investments, which may be identified through the company's implementation of SMS, to the Commission for consideration and approval on an annual basis, under its expanded tariff.[55]

Columbia Kentucky informs that its proposed Tariff SMRP is similar to the riders and mechanisms of the following gas utilities that have been approved by the Commission to include a variety of risk reduction projects and associated cost recovery: Atmos Energy Corporation's Pipeline Replacement Program; Duke Energy Kentucky Inc.'s transition of its AMRP to an Accelerated Service Line Replacement Program; Louisville Gas and Electric Company's Gas Line Tracker (GLT) and inclusion of a Transmission Modernization Program and Steel Service Line Replacement Program in its GLT Rider.[56] Columbia Kentucky states that the rates for Tariff SMRP will remain the same as those currently in effect for Tariff AMRP and that no change in rates to customers is proposed at this time.[57] Columbia Kentucky proposes to include the forecasted LP Program costs for the calendar year 2020 in its October 2019 annual filing, with rates to become effective with January 2020 Unit 1 billing.[58] Any costs associated with the LP Program in 2019 would be included in its next true-up filing expected to be in March 2020.[59]

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[54] *Id.* at 7–8.

[55] Application, paragraph 40.

[56] Cooper Testimony at 8–9.

[57] *Id.* at 10.

[58] *Id.*

[59] *Id.*

DISCUSSION

Declaratory Request

In light of the language in the Atmos Order regarding the statement that the Commission has frequently found that the construction of a proposed facility does not require a CPCN if the cost of the facility represents less than two percent of the utility's net utility plant, Columbia Kentucky states that it is unclear whether the Commission has established a new bright-line policy with respect to how it determines whether a construction project is required to have a CPCN or whether such project qualifies as an extension in the ordinary course of business for which a CPCN is not necessary. Because the cost of the LP Program represents approximately 3.28 percent of Columbia Kentucky's net plant investment, Columbia Kentucky seeks clarity on the Atmos Order and requests a declaration that a CPCN is not required for the LP Program.

Upon our review of the Atmos Order, the Commission finds that the Order does not set forth any new bright-line, 2 percent standard for determining whether a proposed facility would require a CPCN. The reference to the 2 percent of net utility plant investment in the Atmos Order reflects the internal threshold that was used by Atmos in support of its position that the construction projects at issue in Case No. 2018-00281 should be considered extensions of existing systems in the ordinary course of business. Applying Atmos's own 2 percent threshold, the Commission determined that Atmos should have filed a CPCN application for at least three non-pipeline replacement projects. More importantly, the Commission further stated that:

> In the future, when Atmos is analyzing whether it needs to file an application for a CPCN with the Commission, Atmos should, as a starting point, use the total cost of the construction of the facilities instead of solely fiscal or calendar

> year costs. Any construction of facilities that creates wasteful duplication, or conflicts with certificates granted to other utilities, or that will materially affect the utility's financial condition, or that will result in increased charges to customers, is not in the ordinary course of business and does require a CPCN.[60]

The Commission's admonition to Atmos does not set forth any new bright-line rule with respect to an analysis of the ordinary course of business exception to the CPCN requirement. Rather, this language is consistent with, and reflective of, the Commission's historical practice of determining whether a project requires a CPCN on a case-by-case basis, grounded upon the unique facts of each particular case. On a going-forward basis, Columbia Kentucky, as well as all other jurisdictional utilities, should perform this analysis to determine whether a capital project requires a CPCN.

In the final order in Case No. 2014-00171 (NKWD Order), the Commission stated that "[w]hether the proposed project requires a CPCN hinges upon whether the project is deemed to be within the ordinary course of business. Construction projects which are in the ordinary course of business do not require a CPCN."[61] The NKWD Order then cited to KRS 278.020(1) and 807 KAR 5:001, Section 15(3), as the statutory and regulatory provisions, respectively, that govern the CPCN process.[62] The NKWD Order further elaborated the Commission's standard of review in determining whether a proposed project is in the ordinary course of business and does not require a CPCN:

> In assessing whether a proposed project is a system extension in the ordinary course of business, Kentucky courts

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[60] Atmos Order at 57–58.

[61] Case No. 2014-00171, *Application of Northern Kentucky Water District for Approval of Dixie Highway Water Main Improvements, issuance of a Certificate of Convenience and Necessity and Approval of Financing* (Ky. PSC Aug. 6, 2014) Order at 2.

[62] *Id.*

> have traditionally looked to the size and scope of a project in the context of the monetary cost involved. The Commission has similarly adopted this method and likewise looks to the scale of a proposed project in relation to the relative size of the utility and its present facilities. The proposed method of financing a project is not necessarily determinative of whether a project requires a CPCN; rather the Commission looks to whether the facilities would result in wasteful duplication, compete with existing facilities or involve sufficient capital to materially affect the utility's financial condition.[63]

In reviewing the facts related to Columbia Kentucky's LP Program, the proposed project represents an increase in Columbia Kentucky's total net utility plant of 3.28 percent. The Commission finds that such an increase in total net utility plant to be ordinary in nature, as it does not materially affect Columbia Kentucky's existing financial condition and will not require an immediate adjustment of its rates. The Commission further finds that the LP Program will neither create wasteful duplication of the existing plant nor conflict with any existing utility services given that the project involves improvements to Columbia Kentucky's existing low-pressure systems to reduce the risk of over pressurization. Accordingly, the Commission finds that the LP Program is a project that is an extension of Columbia Kentucky's existing gas distribution system in the ordinary course of business and does not require a CPCN.

Having determined that the LP Program does not require a CPCN, the Commission finds that Columbia Kentucky's alternative request for approval of a CPCN is moot.

<u>Amendment and Expansion of Tariff AMRP</u>

Columbia Kentucky also requests authority to expand its existing Tariff AMRP to include safety modifications, thereby changing the name of Tariff AMRP to Tariff SMRP. According to Columbia Kentucky, the expansion of this tariff is consistent with the original

[63] *Id.* (citations omitted).

goal of Tariff AMRP to accelerate the deployment of prudent investments in the safety and reliability of its natural gas system. Columbia Kentucky states that the new Tariff SMRP would cover system safety modifications in addition to the projects associated with its pipeline replacement program.

Columbia Kentucky further requests to amend its 2019 AMRP construction plan to include the LP Program. Notwithstanding our finding that the LP Program does not require a CPCN, Columbia Kentucky acknowledges that any future safety modification investments via Tariff SMRP would have to be reviewed and approved by the Commission before such investments can be recovered via Tariff SMRP.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Columbia Kentucky's request to expand its Tariff AMRP to Tariff SMRP, as described above, is reasonable and should be approved. The Commission notes that Phase II of the LP Program has not been finalized. When Columbia Kentucky finalizes the details of Phase II, it should file all relevant information as was provided in this case as part of its annual October 15th filing to update the projected costs for the upcoming calendar year. The Commission further finds that Columbia Kentucky's request to amend its 2019 AMRP construction plan to include the LP Program is reasonable and should also be approved, but that this is limited to only the investments associated with Phase I of the LP Program and only for LP Program costs that will be incurred on a prospective basis, i.e., costs associated with Phase I of the LP Program that will be incurred by Columbia Kentucky on and after the date of the issuance of this Order approving the amendment of Columbia Kentucky's 2019 AMRP construction plan to include the LP Program. Costs incurred before the approval of Columbia Kentucky's amendment of its 2019 AMRP construction plan cannot be recovered through the Tariff SMRP because the prohibition of retroactive ratemaking precludes Columbia Kentucky from recovering costs associated with, at the time, unapproved changes to its Tariff AMRP. Reasonable costs of the LP Program incurred prior to the date of this Order are eligible for recovery by Columbia Kentucky in future base rate cases.

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's request for a declaration that the proposed LP Program is an ordinary extension of existing systems in the usual course of business not requiring a CPCN is granted.

2. Columbia Kentucky's alternative request for the issuance of a CPCN for the proposed LP Program is denied as moot.

3. Columbia Kentucky's request to amend and expand the existing Tariff AMRP to become Tariff SMRP as described herein is granted.

4. Columbia Kentucky's proposed Tariff SMRP is approved for service rendered on and after the date of the entry of this Order.

5. Columbia Kentucky's request to include the LP Program in its 2019 AMRP construction plan is granted to the extent described in this Order.

6. Within 20 days of the date of this Order, Columbia Kentucky shall file with the Commission, using the Commission's electronic Tariff Filing System, its revised tariff as set forth in this Order reflecting that it was approved pursuant to this Order.

7. Columbia Kentucky motion for a deviation from the notice publication requirements is granted.

8. Columbia Kentucky's motion for a decision based on the record is granted.

9. This case is closed and removed from the Commission's docket.

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By the Commission

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KENTUCKY PUBLIC
SERVICE COMMISSION

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