

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA GAS	)	CASE NO.
OF KENTUCKY, INC. FOR APPROVAL OF THE	)	2022-00049
GREEN PATH RIDER PILOT PROGRAM	)	

ORDER

On December 29, 2022, Columbia Gas of Kentucky, Inc. (Columbia Kentucky) tendered an application for approval of a new tariff for the Green Path Rider Pilot program. On January 19, 2023, the Commission issued a deficiency letter, noting Columbia Kentucky's failure to comply with 807 KAR 5:011, Section 8, public notice as well as customer notice. In its January 30, 2023 response to the deficiency letter, Columbia Kentucky asserted that it did not have to publish notice in compliance with 807 KAR 5:011, Section 8,<sup>1</sup> and requested the Commission make a declaration confirming its assertion or, in the alternative, grant a deviation.<sup>2</sup>

LEGAL STANDARD

The notice requirements for a new tariff are set forth in 807 KAR 5:011, Section 8. Commission regulation 807 KAR 5:011, Section 8, reads as follows:

A utility shall provide notice if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.

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<sup>1</sup> Columbia Kentucky's Request for Declaration or Motion for Deviation (Declaration or Deviation Motion) (filed on Jan. 30, 2023) at 2–4.

<sup>2</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 3–4.

Commission regulation 807 KAR 5:011, Section 15, permits the Commission to grant deviations from the regulations in 807 KAR 5:011 for good cause shown.

### COLUMBIA KENTUCKY'S RESPONSE TO THE DEFICIENCY LETTER

In response to the deficiency letter, Columbia Kentucky stated that a notice of the tariff filing made pursuant to 807 KAR 5:011, Section 8(2), was not required.<sup>3</sup> As a basis for this assertion, Columbia Kentucky stated that none of the expenses from the program would be recovered from nonparticipating customers.<sup>4</sup> Maintaining its position, Columbia Kentucky cited to two cases in which the Commission did not require notice, outside of a rate case, when the utility requested to initiate a tariff offering of a voluntary program.<sup>5</sup> Columbia Kentucky argued that the regulation contains two prongs and only when both are met is a utility required to provide customer notice of proposed tariff changes.<sup>6</sup> According to Columbia Kentucky, notice is required when a utility proposes a change, revision, or initiation of a charge, fee, condition of service, or a rule regarding the provision of service in combination with the proposal affecting the amount a customer pays or affecting the quality, delivery, or rendering of a customer's service.<sup>7</sup> In this case, Columbia Kentucky claims only customers volunteering to add the Green Path Rider to

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<sup>3</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 1–2.

<sup>4</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 1–2.

<sup>5</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 2, citing Case No. 2019-00378, *In the Matter of the Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Implement a New Green Energy Option for Non-Residential Retail Customers* (Ky. PSC Mar. 25, 2020); and Case No. 1999-00165, *In the Matter of the Tariff Filing of Columbia Gas of Kentucky, Inc. to Implement a Small Volume Gas Transportation Service, to Continue its Gas Cost Incentive Mechanisms, and to Continue its Customer Assistance Program* (Ky. PSC Jan. 27, 2000).

<sup>6</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 2–3.

<sup>7</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 2–3.

their bill will be affected, not all customers; therefore, the voluntary program does not require notice.

However, if the Commission believes notice is required, Columbia Kentucky requested that a deviation be granted. According to Columbia Kentucky, the program is voluntary, and Columbia Kentucky is taking steps to educate its customers about the program.<sup>8</sup> Columbia Kentucky has posted program information on its website and a link to the case filings.<sup>9</sup> It has also posted notice of this filing at their office.<sup>10</sup> Columbia Kentucky indicated that it may take up to 30 days to ensure that publication of the notice has occurred in all of the necessary papers, which would make it unable to comply within 10 days.<sup>11</sup>

#### DISCUSSION AND FINDINGS

Based upon the motion and case record and being otherwise sufficiently advised, the Commission finds that Columbia Kentucky should not have the discretion to determine when the filing of a tariff requires notice and when it may not. In this case, the Commission finds that Columbia Kentucky should not be granted a full deviation from 807 KAR 5:011, Section 8(2). The Commission finds that Columbia Kentucky should provide customer notice of this filing pursuant to 807 KAR 5:011, Section 8(2)(3), at least once, instead of the required three times.

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<sup>8</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 2–3.

<sup>9</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 3–4.

<sup>10</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 4.

<sup>11</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 4.

The Commission acknowledges that the notice requirements in 807 KAR 5:011, Section 8, have not been applied consistently. Even though the utilities in the two cases cited by Columbia Kentucky were not required to publish notice as part of their tariff filing, the Commission did require the utilities in Case No. 2016-00274<sup>12</sup> to publish notice, at least once, under circumstances similar to the instant case. Regardless, the Commission finds that a utility should not have the discretion to decide when notice is required.

Going forward, the Commission will expect a utility to provide customer notice pursuant to the applicable regulations or, in the alternative, request a deviation from the Commission. The regulation requires notice to be given if the proposal affects the amount a customer pays.<sup>13</sup> The regulation does not require that the tariff change has to affect every customer. The Green Path Rider proposal will increase the bills of the volunteering customers. Commission regulation 807 KAR 5:011, Section 8, references that “the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service . . . .” An additional tariff offering, which arguably benefits a customer and could be of interest to the customer, is clearly a change to the provision of service, and in this case, the participating customer’s bill is also impacted. The Commission strives for transparency and requiring a customer be kept informed of opportunities to participate in programs championed as environmentally friendly yet will still impact their wallet is just as important as a tariff directly impacting service.

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<sup>12</sup> Case No. 2016-00274, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of an Optional Solar Share Program Rider* (Ky. PSC Aug. 12, 2016), Order (granting deviation upon motion of the utility).

<sup>13</sup> 807 KAR 5:011, Section 8.

The deficiency letter required Columbia Kentucky to resolve the deficiency within ten days. Columbia Kentucky stated that it could not provide notice to its customers in less than 30 days due to the publication deadlines of the various newspapers.<sup>14</sup> The Commission recognizes the reality of publication deadlines and finds that Columbia Kentucky should be given 30 days from the service date of this Order to provide notice to its customers at least one time. The Commission's decision to allow a partial deviation is influenced by the fact that Columbia Kentucky has taken steps to notify the public including the posting of a notice at their office and on their website.

IT IS HEREBY ORDERED that:

1. Columbia Kentucky's request for a deviation from public notice requirements is denied.
2. Columbia Kentucky shall publish notice of this filing in a prominent manner in a newspaper of general circulation in each county of its service territory at least once in order to give notice to all its customers.

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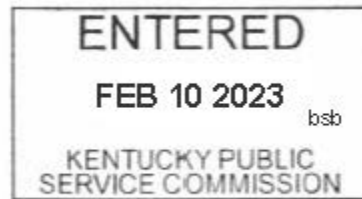
<sup>14</sup> Columbia Kentucky's Jan. 30, 2023 Declaration or Deviation Motion at 4.

PUBLIC SERVICE COMMISSION

  
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