

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA GAS	)	
OF KENTUCKY, INC. FOR ANNUAL	)	CASE NO.
ADJUSTMENTS TO THE SAFETY MODIFICATION	)	2022-00342
AND REPLACEMENT PROGRAM	)	

ORDER

On January 17, 2023, Columbia Gas of Kentucky, Inc. (Columbia Kentucky) filed a motion for rehearing, pursuant to KRS 278.400, of the Commission's December 28, 2022 Order denying Columbia Kentucky's proposed Safety Modification and Replacement Program (SMRP) rates and approving different SMRP rates. Columbia Kentucky asserted that the Commission Order did not take Columbia Kentucky's ending balance of 2022 expenditures into account when calculating the rate and that the portion of the Order that instead used a thirteen-month average of the 2023 expenditures was based upon a material omission, was unreasonable, and was inconsistent with KRS 278.509 and Commission precedent. Columbia Kentucky requested rehearing and modification of the Order using the ending balance of 2022 expenditures to calculate rates.

LEGAL STANDARD

Under KRS 278.400, which establishes the standard of review for rehearing motions, rehearing is limited to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when

“the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup> An Order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup> By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

Columbia Kentucky argued that the Commission’s December 28, 2022 Order was based upon a material omission, was unreasonable, and was inconsistent with KRS 278.509 and Commission precedent. KRS 278.509 states:

Notwithstanding any other provision of law to the contrary, upon application by a regulated utility, the commission may allow recovery of costs for investment in natural gas pipeline replacement programs which are not recovered in the existing rates of a regulated utility. No recovery shall be allowed unless the costs shall have been deemed by the commission to be fair, just, and reasonable.

### ARGUMENT

Columbia Kentucky argued that the Order is unreasonable and unlawful, based on its interpretation of KRS 278.509 and related precedent. Columbia Kentucky argued that the General Assembly’s implied goal with the enactment of KRS 278.509 was to provide utilities with a timely and cost-efficient procedure to recover the costs of gas main replacement projects and the December 28, 2022 Order is inconsistent with that implied

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<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>2</sup> *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

purpose. Columbia Kentucky asserted that the 2022 net SMRP capital amounts included in base rates from Columbia Kentucky's last base rate case<sup>3</sup> are an unreasonable under-accounting of the recovery of 2022 safety and pipeline costs as the 2022 investments are fully in-service and functioning. Columbia Kentucky has already made the 2022 safety investments and those were fully in place providing service to customers for the 2023 recovery period.

Columbia Kentucky stated that the Commission's elimination of the adjustment in the subsequent rider year of the base rate recoveries versus the actual test year recoveries delayed the recovery of the return on and of SMRP-project investment costs until Columbia Kentucky's next rate case and also eliminated Columbia Kentucky's ability to recover the corresponding incremental post-test year costs associated with the test year SMRP investments. Columbia Kentucky argued that the exclusion of the 2022 expenditures from SMRP rates disincentives utilities like Columbia Kentucky from making safety related capital investments outside of rate case test years. By Columbia Kentucky's calculation, the amount disallowed by the Commission's exclusion of the ending balance of 2022 expenditures is \$24,482,174 of SMRP-project investment costs not rolled into base rates. Columbia Kentucky asserted that the elimination of the ending balance of 2022 expenditures does not allow for Columbia Kentucky to earn the approved rate of return on capital riders.

Columbia Kentucky again argued that the 2022 ending balance is appropriate to include because base rates only include the 13-month average of 2022 expenditures and

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<sup>3</sup> Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Dec. 28, 2021), Order.

therefore do not include the “total cost” of its 2022 SMRP.<sup>4</sup> Columbia Kentucky asserted that the Commission’s treatment of the true-up from budgeted test-year SMRP investments levels to the actual test-year end balances in the SMRP recovery calculation represents a departure from past precedent for Columbia Kentucky’s SMRP and the Commission has recognized that utilities are entitled to rely on past precedent from Commission Orders when making business decisions.<sup>5</sup> Columbia Kentucky claimed that its request during its base rate case<sup>6</sup> was dependent on prior Commission precedent and that the Commission did not order or indicate in that case that it would be making a change to Columbia Kentucky’s SMRP rates going forward.

Columbia Kentucky also argued that the Commission’s December 28, 2022 Order relied on precedent that was distinguishable from the present case. In Case No. 2020-00229,<sup>7</sup> the Commission stated that using the ending balance to calculate a pipeline replacement rider resulted in the utility collecting a return on investments it has not yet made. Columbia Kentucky argued that the present case is distinguishable because it has already made the 2022 safety investments and those were fully in-place providing service to customers for the 2023 recovery period and therefore would not be collecting a return on investments it has not yet made.

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<sup>4</sup> Columbia Kentucky’s Response to Commission Staff’s First Request for Information, Item 1(a).

<sup>5</sup> Case No. 2018-00263, *Johnson v. Peoples Gas KY, LLC* (Ky PSC Mar. 27, 2020), Order at 17.

<sup>6</sup> Case No. 2021-00183, (Ky. PSC Dec. 28, 2021), Order.

<sup>7</sup> Case No. 2020-00229, *Electronic Application of Atmos Energy Corporation for PRP Rider Rates*, (Ky. PSC Sept. 30, 2020), Order at 3.

## DISCUSSION AND FINDINGS

Columbia Kentucky's motion does not allege that additional evidence should be considered or that a material error was made, only that a material omission was made in the calculation of the SMRP rates. The Order addresses the issue of including the 2022 ending balance in the 2023 SMRP rates and stated that the 2022 expenditures were included in base rates in Case No. 2021-00183, so therefore, it is inappropriate to include any portion in the 2023 SMRP rates.<sup>8</sup>

Columbia Kentucky is able to recover its 2022 capital expenditures, including the amount in excess of those forecasted in Case No. 2021-00183. Columbia Kentucky acknowledged that recovery is simply delayed by the Commission's recovery methodology.<sup>9</sup> Columbia Kentucky disagreed with this delay because of its effect on the recovery of property tax and depreciation and because recovering the 2022 investments only in base rates results in a lower rate of return on SMRP expenditures.<sup>10</sup> However, Columbia Kentucky is the master of its own petitions regarding rate case filings and the incorporation of SMRP costs into base rates. As stated in the Order, Columbia Kentucky proposed and was approved to incorporate the SMRP into base rates through the test period ending December 31, 2022. Pursuant to 807 KAR 5:001, Section 16(6)(c), Columbia Kentucky was required to utilize a 13-month average rate base for the forecasted period, with the intent that rates would be set to recover the forecasted

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<sup>8</sup> Order at 2–3 (Ky. PSC Dec. 28, 2022). Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Dec. 28, 2021).

<sup>9</sup> Columbia Kentucky's Motion for Rehearing (filed Jan. 17, 2023) at 10.

<sup>10</sup> Columbia Kentucky's Motion for Rehearing at 10–12.

expenditures as they were incurred, on average. Columbia Kentucky is correct that regulatory lag is decreased when expenditures are recovered through riders, but that does not establish that Columbia Kentucky is entitled to rider recovery for capital expenditures included in rate base for base rates.<sup>11</sup> As stated in Case No. 2020-00327 regarding the use of ending balances to compute the SMRP rates, the Commission finds no reason to continue with an erroneous methodology.

As noted above, KRS 278.509 states “the commission **may** allow recovery of costs for investment in natural gas pipeline replacement programs which are not recovered in the existing rates of a regulated utility.” (Emphasis added.)<sup>12</sup> KRS 278.509 is permissive and does not mandate that the Commission approve a pipeline replacement rider.<sup>13</sup> The statute does not require the Commission to grant rider recovery. The only mandates in the statute are limitations on the permissive authority granted to the Commission that prohibit the Commission from allowing a utility to recover costs through a rider unless the costs are fair, just and reasonable, as well as not recovered in existing rates. Therefore, contrary to Columbia Kentucky’s assertions regarding the intent of the KRS 278.509, the Commission’s Order would be consistent with the statute unless it approved recovery of costs that were not fair, just and reasonable or were recovered in existing rates.

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<sup>11</sup> While using a 13-month average does decrease the return component included in rates, rate base is still considered fully recovered and the calculation of rate base includes the full amount of the capital expenditures forecasted at the time. The Commission has long held that base rates are not subject to true-up, therefore Columbia Kentucky’s proposal to include amounts in excess of its base rate forecasted capital expenditures is particularly impermissible.

<sup>12</sup> KRS 278.509.

<sup>13</sup> KRS 278.509 was adopted in response to arguments that the Commission did not have the authority to approve pipeline replacement riders absent the permissive grant of authority in the statute. See *Ky. Public Service Commission v. Conway*, 324 S.W.3d 373, 380-1 (Ky. 2010).

Having considered the motion and the case record, the Commission finds that Columbia Kentucky's motion for rehearing should be denied. KRS 278.509 allows, but does not require, the Commission to allow recovery of costs for investment in natural gas pipeline replacement programs that are not recovered in existing rates. The Commission has, however, granted recovery of Columbia Kentucky's pipeline replacements costs, subject to the limitations of KRS 278.509.

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's motion for rehearing is denied.
2. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

  
Chairman

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Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director



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