

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:)
)
Constellation NewEnergy-Gas Division, LLC)
)
Complainant)
)
v.)
)
Columbia Gas of Kentucky, Inc.)
)
Defendant)

Case No. 2005-00184

STIPULATION AND RECOMMENDATION

It is the intent and purpose of the parties to this proceeding, namely Columbia Gas of Kentucky, Inc. (“Columbia”) and Constellation NewEnergy-Gas Division, LLC (“Constellation”) to express their agreement on a mutually satisfactory resolution of all of the issues in the instant proceeding.

It is understood by the parties hereto that this Stipulation and Recommendation is not binding upon the Public Service Commission (“Commission”). The parties have expended considerable efforts to reach the agreements that form the basis of this Stipulation and Recommendation and the parties agree that this Stipulation and Recommendation, viewed in its entirety, constitutes a reasonable resolution of all issues in this proceeding.

In addition, the adoption of this Stipulation and Recommendation will eliminate the need for the Commission and the parties to expend significant resources in litigation of this proceeding, and eliminate the possibility of, and any need for, rehearing or appeals of the Commission’s final order herein. It is the position of the parties hereto that this Stipulation and Recommendation is supported by sufficient and adequate data and information, and is entitled to serious consideration by the

Commission. Based upon the parties' participation in settlement conferences and the materials on file with the Commission, and upon the belief that these materials adequately support this Stipulation and Recommendation, the parties hereby stipulate and recommend the following:

1. Columbia's tariffs should be modified to better define the situations in which customers are subject to daily interruptions. The agreed upon tariff revisions are incorporated hereto as Attachment A. The tariff revisions include only clarifications, and do not change Columbia's operations nor will they change application of Columbia's tariffs. The parties respectfully request that the revised tariffs become effective thirty days after the issuance of a Commission order approving this Stipulation and Recommendation. Within fourteen days of the filing of this Stipulation and Recommendation Columbia will promptly send each of its transportation customers a letter in which Columbia advises the customers of the proposed tariff revisions, including the text of the revised tariff provisions.

2. In November 2004 Columbia issued a notice to its transportation customers, directing them to restrict their banking and balancing on Columbia's system. This notice was issued pursuant to Columbia's tariff sheet 15 under the section entitled "Penalty Charge For Failure to Interrupt." Columbia has traditionally referred to such notices as "Daily Delivery Interruption" ("DDI") notices. A number of the transportation customers who used Constellation as their gas marketer did not restrict their deliveries as expected by Columbia. As a result, Columbia billed the transportation customers a total of \$25,192.50, and Constellation in its complaint filed in this proceeding has disputed these penalties. In order to settle this disputed claim, the parties have agreed that Columbia will refund half of the penalties – \$12,558.75¹ – to the customers against whom the penalties were assessed. Columbia will make the refunds to the customers on a pro rata basis based upon the penalty amounts paid by each customer. Columbia will make the refunds by means of bill credits in the bill cycles immediately following the issuance of a Commission order approving this Stipulation and Recommendation.

¹ This refund amount reflects the fact that \$75 of the original amount in dispute has already been refunded to one of the customers.

3. Columbia will create an Internet-based report that marketers delivering gas on behalf of customers to Columbia's city gate can access in order to determine whether or not a marketer's customers have monthly or daily metering capability. Columbia and Constellation acknowledge that this Internet-based report is a source of information which a marketer can use to clarify whether a marketer's customers have monthly or daily metering capability. This report will be designed in a way that will allow marketers to run the report as frequently as needed in order to obtain current information on the customers for which they are agent. It will be up to each marketer to run this report as frequently as needed to obtain current customer information. Until Columbia can develop this report and make it available on the Internet Columbia will mail the report to each marketer on its system by October 1 of each calendar year.

4. Columbia already sends to customers and their agents a flow letter in which Columbia confirms agent change information and other types of account information, including whether or not the customer has monthly or daily metering capability. Columbia agrees to continue sending these flow letters to customers and their agents.

5. Each party hereto waives all cross-examination of the witnesses of the other parties hereto unless the Commission rejects this Stipulation and Recommendation.

6. If the Commission issues an order adopting this Stipulation and Recommendation in its entirety, each of the parties hereto agrees that it shall file neither an application for rehearing with the Commission, nor an appeal to the Franklin County Circuit Court with respect to such order.

7. If this Stipulation and Recommendation is not adopted in its entirety, each party reserves the right to withdraw from it and require that hearings go forward upon any or all matters involved herein, and that in such event the terms of this Stipulation and Recommendation shall not be deemed binding upon the parties hereto, nor shall such Stipulation and Recommendation be admit-

ted into evidence or referred to or relied upon in any manner by any party hereto, the Commission, or its Staff in any such hearing.

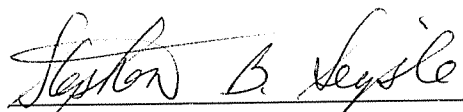
8. The Stipulation and Recommendation is made without any admission against, or prejudice to, any position which any party may adopt in the event of any subsequent litigation of this proceeding.

9. The Stipulation and Recommendation may not be cited as precedent in any future proceeding, except to the extent required to implement the operative paragraphs of this Stipulation and Recommendation.

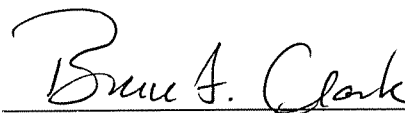
10. This Stipulation and Recommendation is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner which is fair and reasonable. The Stipulation and Recommendation is the product of compromise. This Stipulation and Recommendation is presented without prejudice to any position which any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of this Stipulation and Recommendation. This Stipulation and Recommendation does not preclude the parties from taking other positions in proceedings of other public utilities or any other proceeding.

11. The parties hereto agree that the foregoing Stipulation and Recommendation is reasonable and in the best interests of all concerned, and urge the Commission to adopt the Stipulation and Recommendation in its entirety.

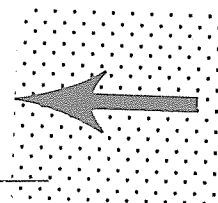
AGREED, this 17th day of October, 2006.



Stephen B. Seiple
Attorney for
Columbia Gas of Kentucky, Inc.



Bruce F. Clark
Attorney for
Constellation NewEnergy-Gas Division



October 17, 2006

Date

October 17, 2006

Date

ATTACHMENT A

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COLUMBIA GAS OF KENTUCKY, INC.

**GENERAL TERMS, CONDITIONS, RULES AND REGULATIONS
APPLICABLE TO DELIVERY SERVICE RATE SCHEDULES ONLY
(Continued)**

5. VOLUME BANK

Customers must subscribe to the Banking and Balancing Service set forth on Sheet Nos. 39, 40 and 41 to be eligible for the provisions of the Volume Bank section described herein. Customers without daily metering equipment must subscribe to the Banking and Balancing Service. Daily metering means a meter device that is capable of measuring usage daily. Daily usage and measurement can be obtained from an electronic meter device, or a charted meter device.

(T) Deleted: demand reading

Customers who have installed daily metering equipment and who choose not to subscribe to the Banking and Balancing Service will be placed on a daily cash-out provision, defined as follows. On days when Customer's deliveries are less than their usage, the Company will sell gas to the Customer at the Customer's applicable sales rate schedule. On days when Customer's deliveries are greater than their usage, Company may, at its option, purchase the excess deliveries at Company's Weighted Average Commodity Cost of Gas (WACCOG).

(T) Deleted: demand reading

Under the Banking and Balancing Service, Company has established a system to account for Customer's volumes received by Company but not delivered to Customer at its facilities during the same monthly billing cycle. Such undelivered volumes shall be called a volume bank and Customer shall be permitted to receive such banked volumes at a later date at Company's discretion.

The total volume bank of Customer shall not at any time exceed a 'bank tolerance' of five percent (5%) of Customer's Annual Transportation Volume. If, at any time, Customer's volume bank exceeds the bank tolerance, Company may require Customer to immediately reduce or stop deliveries until its volume bank of gas is equal to or less than the bank tolerance. In addition, if Customer's deliveries to Columbia on any day vary significantly from Customer's consumption on that day, Columbia may require Customer to immediately bring Customer's deliveries and consumption into balance.

In either case, Company may, on its own initiative, take such actions as are necessary to (1) immediately bring Customer's deliveries and consumption into balance or (2) reduce Customer's volume bank to a level which is equal or less than the bank tolerance permitted under this section. The Company further reserves the right to set limitations prior to, or during the course of a month, on how much gas can be scheduled by the Customer in an effort to control Customer's banking activity.

Daily Delivery Interruption (DDI)

Customers without Daily Metering are subject to Columbia's issuance of Daily Delivery Interruptions (DDIs) that will direct Customers or their Agent to schedule confirmed supply volumes to match Columbia's estimate of their daily usage adjusted for contracted standby sales quantities and/or any balancing service quantities that may be available from Columbia. Columbia shall provide a DDI percentage and direct Customers or their Agents to schedule confirmed supply volume equal to plus or minus 3% of the DDI percentage times the Customers' Maximum Daily Quantity (MDQ). This is referred to as the DDI volume. Daily Delivery Interruptions may require the scheduling of a DDI volume in excess of Customers' MDQ when forecasted operating conditions exceed the Company's design criteria. Failure to comply with a Daily Delivery Interruption will result in the billing of the charges below assessed against the DDI difference. The DDI difference is defined as the shortfall between the DDI volume and actual daily supply deliveries during a cold weather DDI, and the overage between the DDI volume and the actual daily supply deliveries during a warm weather DDI.

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DATE OF ISSUE: October 17, 2006
Issued by: Herbert A. Miller

DATE OF EFFECTIVE: _____
President

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COLUMBIA GAS OF KENTUCKY, INC.

(A) Twenty-five dollars (\$25) Mcf times the DDI difference; and

(B) The payment of all other charges incurred by Columbia as a result of Customer noncompliance on the date of the DDI difference.

Customers with Daily Metering are subject to Columbia's issuance of DDIs that will direct Customers or their Agents to adjust usage to match confirmed supply volumes or adjust confirmed supply to match usage adjusted for contracted standby sales quantities and/or balancing services quantities available from the Company. Failure to comply with a DDI will result in the billing of the following charges to the DDI difference, which is defined as the difference between the actual daily usage and the confirmed supply volume, plus or minus 3%.

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In the event Customer's volume bank exceeds the five percent (5%) bank tolerance, Customer is subject to the FSS and SST overrun charges of the Columbia Gas Transmission Corporation. In addition, if the Customer's exceeded bank tolerance causes the Company to incur a storage overrun penalty, Customer is subject to the penalty.

In the event service hereunder is terminated, Company will deliver to Customer volumes of Customer's gas which Company is holding pursuant to this Volume Bank section during the three monthly billing cycles following the date of termination. However, should Customer fail to take

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