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**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**

AUG 29 2007

PUBLIC SERVICE  
COMMISSION

In the Matter of:	)	
	)	
Constellation New Energy-Gas Division, LLC	)	
	)	
Complainant	)	Case No. 2005-00184
	)	
v.	)	
	)	
Columbia Gas of Kentucky, Inc.	)	
	)	
Defendant	)	

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**DIRECT TESTIMONY OF JUDY M. COOPER**  
**IN SUPPORT OF THE STIPULATION AND RECOMMENDATION**

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August 29, 2007

Attorneys for Applicant  
**COLUMBIA GAS OF KENTUCKY, INC.**

1 Q: Please state your name, title and business address.

2 A: My name is Judy M. Cooper. My title is Director of Regulatory Policy at Columbia Gas of  
3 Kentucky, Inc. ("Columbia"), and my business address is 2001 Mercer Road, Lexington,  
4 KY 40512-4241.

5

6 Q: What is the purpose of your testimony?

7 A: My testimony is filed in support of the Stipulation and Recommendation ("Stipulation")  
8 filed with the Kentucky Public Service Commission ("Commission") on October 18,  
9 2006, in this proceeding. My testimony will explain the background and issues in this  
10 Complaint and how, in Columbia's opinion, the Stipulation is fair, just and reasonable.

11

12 Q: Please briefly explain the alleged grounds for the Constellation Complaint in Case No.  
13 2005-00184 .

14 A: On November 17, 2004 Columbia issued a Daily Interruption Notice , also known as a  
15 Daily Delivery Interruption ("DDI")which restricted the amount of natural gas that trans-  
16 portation customers could place into Columbia's distribution system. Several customers  
17 failed to comply with the DDI, continuing to deliver excess gas into Columbia's system.  
18 Accordingly, Columbia assessed penalties against those customers. The Constellation  
19 Complaint stems from its claim that Columbia's Delivery Service Rate tariff was unclear.  
20 Specifically, Constellation claimed it was unaware that Columbia considered a chart read  
21 metering device to be a daily metering device under the aforementioned tariff and, there-  
22 fore, Columbia should refund the assessed penalties. Although Columbia contends the

1 current tariffs were neither ambiguous nor unreasonable, it agrees the language could be  
2 expanded upon and clarified. Thus, Constellation and Columbia reached the Stipulation  
3 to resolve this matter in a fair, just and reasonable manner.

4  
5 Q: Please briefly describe the terms of the Stipulation.

6 A: The Stipulation offered to the Commission for its consideration and approval, requires  
7 Columbia to modify relevant tariffs to better define the situations in which customers are  
8 subject to daily interruptions. The agreed upon tariff revisions are attached herein as At-  
9 tachment A. The parties have also agreed that Columbia will refund to the Constellation  
10 customers half of the penalties assessed by Columbia, in the amount of \$12,558.75. Co-  
11 lumbia will make the refunds by means of bill credits in the bill cycles immediately fol-  
12 lowing the issuance of a Commission Order approving this Stipulation.

13 Columbia will also create an Internet-based report that marketers delivering gas  
14 on behalf of customers to Columbia's city gate can access in order to determine whether  
15 or not a marketer's customers have monthly or daily metering capability. Until Columbia  
16 can develop this report and make it available on the Internet it will mail the report to each  
17 marketer on its system by October 1.

18  
19 Q: Please explain how the total amount of the refund to Constellation New Energy-Gas Di-  
20 vision, LLC ("Constellation") as proposed in the Stipulation is fair, just and  
21 reasonable.

22 A: Whether the refund is fair, just and reasonable is a somewhat subjective determination. It  
23 is not a mathematical formula, and is a matter on which reasonable minds can differ. The

1 initial proposal by each party in this proceeding represented the best possible outcome  
2 based on the facts, as they were understood by each of the parties at the commencement  
3 of this case. Since that time data has been exchanged and the parties have engaged in ex-  
4 tensive negotiations in an attempt to arrive at an outcome that is fair, just and reasonable  
5 to Constellation and Columbia, an outcome which the Commission would, and should,  
6 approve. The compromises which have resulted from these negotiations reflect the pre-  
7 sent best judgment of the parties as to what is fair, just and reasonable for Constellation  
8 and Columbia .

9  
10 Q: Why would the parties be willing to reach a compromise?

11 A: Each of the parties to the Stipulation has vigorously pursued its respective positions in  
12 testimony, exhibits and responses to data requests. However, despite the sincerity of these  
13 individual positions, each party recognizes that a litigated outcome in this proceeding  
14 could result in a decision with which neither it nor the other party would be totally satis-  
15 fied. The parties further recognize that the very nature of litigation entails both risk and  
16 cost. By reaching this compromise, each party has determined that the proposed Stipula-  
17 tion outcome is preferable to other, less favorable outcomes and avoids the costs to Con-  
18 stellation and Columbia that could result as an outcome of litigating the issues in this  
19 case. Through negotiation, each party was able to prioritize its goals in this proceeding  
20 and ensure that those priorities are reflected in the Stipulation.

21  
22 Q: But how does a compromise produce a fair, just and reasonable resolution?

1 A: Each of the parties to this proceeding represents a unique constituency. By vigorously  
2 pursuing the positions of the respective constituencies in negotiations, each party has en-  
3 sured that the priorities of its constituency have been recognized and protected in the  
4 Stipulation. It is the vigorous representation of all constituencies in negotiations, with  
5 each party freely and voluntarily agreeing to the concessions it has made in order to en-  
6 sure its priorities are reflected in the Stipulation, which provides for a fair, just and rea-  
7 sonable resolution.

8

9 Q: What evidence is there for the Commission that each constituency was vigorously repre-  
10 sented in the negotiations that led to this settlement?

11 A: The Stipulation itself reveals the sincerity of the negotiations on all sides. The record in  
12 this proceeding clearly states the positions of the parties. The Commission need only re-  
13 view the positions taken by the parties in this case and compare those positions to the  
14 Stipulation to determine if each constituency was vigorously represented in negotiations  
15 and made appropriate concessions to ensure its priorities were reflected on the Stipula-  
16 tion. Any settlement must be viewed in its entirety rather than evaluated on the basis of  
17 any its individual components. This Stipulation was negotiated in the context of its over-  
18 all result and impact on customers and shareholders.

19

20 Q: Please describe why the attached tariffs that have been modified by virtue of the Stipula-  
21 tion are fair, just and reasonable.

22 A: As a part of the Stipulation, Columbia and Constellation have agreed upon the tariffs at-  
23 tached hereto. The attached tariffs ensure the interests of the constituencies represented

1 by each party have been prioritized and protected in the Stipulation. The tariff revisions  
2 proposed in this Stipulation better articulate the application of interruptions to customers  
3 with daily and non-daily meter reading equipment; and do not change Columbia's opera-  
4 tions or the application of Columbia's tariffs. These tariff revisions were included in Co-  
5 lumbia Application and Stipulation and Recommendation in Case No. 2007-00008. For  
6 the convenience of the Commission, the proposed tariff changes are attached to the Stipu-  
7 lation as Attachment A.

8  
9 Q: Are there any other matters you wish to address at this time?

10 A: Yes. In closing, please note that all of the parties have expended considerable effort to  
11 reach the terms that form the basis of the Stipulation. The parties agree that this Stipula-  
12 tion is reasonable, produces a resolution that is fair, and is in the best interest of all con-  
13 cerned. Together, we submit the Stipulation for the consideration of the Commission and  
14 urge that the terms be approved in its entirety.

15  
16 Q: Does this conclude your direct testimony in support of the Stipulation?

17 A: Yes, it does.



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Direct Testimony of Judy M. Cooper in support of the Stipulation and Recommendation was served by First Class U.S. Mail postage prepaid on the following parties this 29<sup>th</sup> day of August 2007.

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