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JUN 16 2005

COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE
COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:

Constellation NewEnergy-Gas Division, LLC)

COMPLAINANT)

VS.)

Case No. 2005-00184

Columbia Gas of Kentucky, Inc.)

DEFENDANT)

FORMAL COMPLAINT

The complaint of Constellation NewEnergy-Gas Division respectfully shows:

1. Constellation NewEnergy-Gas Division, LLC ("CNEG"), 9960 Corporate Campus Drive, Suite 2000, Louisville, Kentucky, 40223, is a Kentucky-based business duly registered with the Office of Secretary of State. CNEG is a natural gas marketer which provides natural gas commodity and related services to commercial and industrial customers throughout the United States and Canada.
2. Columbia Gas of Kentucky, Inc. ("CKY"), 2001 Mercer Road, Lexington, Kentucky, 40511, is a natural gas distribution utility regulated by the Kentucky Public Service Commission (PSC). CKY provides local distribution service to numerous

~~commercial and industrial end users who have retained CNEG to manage their gas~~

supply requirements. Some CKY operational and management actions and decisions are handled from its offices at 200 Civic Center Drive, Columbus, Ohio, 43215.

3. CNEG's principal business is managing the commodity supply accounts for commercial and industrial customers, which includes arranging for the supply and delivery of natural gas to the city gate of local utility systems that serve CNEG's customers. CNEG's business includes providing gas supply and related services for numerous customers who are provided local distribution services by CKY, hereinafter referred to as CNEG's "CKY customers." CNEG's CKY customers receive service via CKY's Delivery Service tariff.
4. CNEG files this formal complaint on its behalf and on behalf of its CKY customers.¹
5. In the course of managing the accounts of its CKY customers CNEG arranges for the purchase of each customer's natural gas supply requirements on a daily and monthly basis, as well as acquiring the necessary interstate pipeline transportation capacity enabling delivery of the commodity to the appropriate city gate on CKY's system. CKY takes delivery of the supply at its city gate(s) and distributes the customers' gas supplies to their respective plants or facilities.

¹ CNEG's CKY customers include: . . .

[Pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(a) and 61.878(1)(c)1, CNEG is requesting that the Commission treat this information as confidential and proprietary.]

~~6. On November 17, 2004, CKY posted a Daily Interruption Notice (“DIN”), also~~
referred to by CKY as a Daily Delivery Notice (“DDN”). Attached as CNEG Exhibit 1 is the referenced DIN/DDN (referred to hereinafter as a DDN). The DDN required Delivery Service customers without daily measurement to deliver their supply at a level no more than 33 percent of the Customer’s Maximum Daily Quantity. Delivery Service customers with daily measurement were required to deliver their supply at a level no more than their actual daily demand. In response to the DDN, based on information from CKY that was available to CNEG designating which of its CKY customers was daily metered, CNEG adjusted delivery of supplies to CKY’s city gates so that each CNEG customer would comply with the DDN.

7. Subsequently, in January 2005 CNEG determined that some of its CKY customers were billed penalties by CKY for alleged noncompliance with its November 17, 2004 DDN. Since January, CNEG has discussed these penalties with CKY, expressing its belief that the penalties were inappropriate, and that CNEG’s CKY customers had complied with the DDN. During the course of these discussions CNEG became aware of additional customer-related information only available to and used by CKY; information that was a determining factor in the assessment of penalties, but which had never been provided to CNEG or its CKY customers. In fact, CNEG was unaware the information existed until after the post-penalty discussions with CKY.

~~8. By letter dated February 9, 2005, (attached as CNEG Exhibit 2²), CNEG requested~~

that CKY (a) credit CNEG customers the amount of any penalty assessed due to the DDN issued November 17, 2004 (and which continued through November 20); (b) provide appropriate and up-to-date information to CNEG on a quarterly basis regarding CKY's designation of CNEG's customers; and, (c) address the lack of information provided to CNEG and CNEG's non-telemetered customers who are expected to comply to DDNs as a daily-metered customer.

9. By letter dated March 24, 2005 (attached as CNEG Exhibit 3³), more than six weeks after CNEG's letter to CKY dated February 9, 2005, and more than two months after first raising the concern, CKY notified CNEG that CKY would not waive the assessed penalties. During the lapse of response, rather than respond to the objections raised by CNEG as agent for the customers, CKY continued to bill for the penalties and directly contact customers for payment. In its letter, CKY did not acknowledge the lack of information available to customers and CNEG during the November 17, 2004 DDN; information, which if available, would have likely clarified the status of some CKY customers and CNEG's subsequent response on their behalf to the DDN.

10. Due to the lack of clear and timely information, CNEG believes the penalties were inappropriately assessed by CKY and, further, that CKY should refund its penalty charges to the affected customers. CNEG also requests that the PSC require CKY to

² [Pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(a) and 61.878(1)(c)1, CNEG is requesting that the Commission treat this information as confidential and proprietary.]

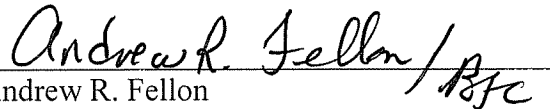
³ [Pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(a) and 61.878(1)(c)1, CNEG is requesting that the Commission treat this information as confidential and proprietary.]

~~provide to CNEG previously unavailable, customer related information that clearly~~

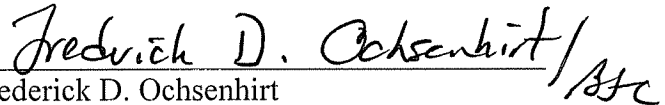
identifies its CKY customers as daily metered or not daily metered accounts on a continuing basis to facilitate DDN-related actions.

WHEREFORE, CNEG respectfully requests that the PSC order CKY to refund penalties assessed to CNEG's customers during the November 17, 2004 DDN, and order CKY to provide CNEG on a continuing basis appropriate customer-related information that identifies the CKY customers as either daily metered or not daily metered accounts.

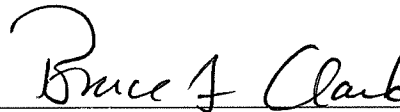
Dated this 10th day of June, 2005.



Andrew R. Fellon
President, Constellation NewEnergy-Gas
Division, LLC



Frederick D. Ochsenhirt
Counsel to Constellation NewEnergy-Gas
Division, LLC



Bruce F. Clark
STITES & HARBISON, PLLC
421 West Main Street
P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477
COUNSEL FOR CONSTELLATION
NEWENERGY-GAS DIVISION, LLC

DAILY INTERRUPTION NOTICE

Columbia Gas of Kentucky, Inc. (CKY)
Posted on 11/17/2004 10:06 AM

Effective Gas Day(s): November 18 - 22, 2004

Required Action: DAILY DELIVERY INTERRUPTION

CKY's Volume Banking and Balancing Service is being restricted for the reasons cited below. As a result, Delivery Service customers without daily measurement are required to deliver confirmed scheduled supply that is **no more than 33%** of the Customer's Maximum Daily Quantity (MDQ). (Please take note that this percentage may change each gas day during the OFO period. Notice will be sent the gas day before the percentage change is to be effective).

Delivery Service customers with daily measurement are required to deliver confirmed scheduled supply that is **no more than** their actual daily demand.

Marketers serving SVGTS rate schedule (Choice) customers are required to deliver confirmed scheduled supply that is no more than the gas supply demand curve for each of the marketer's Aggregation Pools.

Reason(s) for Notice: Warmer than normal temperatures, coupled with CKY's pipeline storage injection rights for November limit CKY's ability to accommodate positive imbalances between transportation customer supply and demand.

Reversals of these conditions could cause a change or withdrawal of this Notice and the required actions related to it.

Estimated Duration: 5 Days

EXHIBIT

CNEG

1

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)

VS.)

Case No. 2005-00184

Columbia Gas of Kentucky, Inc.)

DEFENDANT)

PETITION OF
CONSTELLATION NEWENERGY-GAS DIVISION, LLC
FOR CONFIDENTIAL PROTECTION

Constellation NewEnergy-Gas Division, LLC (“CNEG”) petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(a) and 61.878(1)(c)1 to grant confidential protection to certain information relating to a list of CNEG customers, which information is provided in paragraph number four of CNEG’s Formal Complaint being filed concurrent with this Petition. In support of this Petition, CNEG states as follows:

1. Concurrent with the filing of this Petition, CNEG is filing a Formal Complaint (“Complaint”) against Columbia Gas of Kentucky, Inc. (“CKY”).

~~2. CNEG indicates at paragraph number four of the Complaint that it is being filed also~~

on behalf its CKY customers affected by the actions of CKY, as detailed in the Complaint. Further, Exhibits 2 and 3 to the Complaint contain the names of certain CKY customers.

3. The Kentucky Open Records Act exempts from disclosure certain information that is generally recognized as personal in nature. KRS 61.878(1) (a). The Commission should grant confidentiality to the list of customer names CNEG provides in paragraph number four of its Complaint, and referenced in Exhibits 2 and 3 to the Complaint, because disclosure would invade the rights of privacy of the individuals involved. Clearly, these customers have the expectation that CNEG will maintain the confidentiality of their names and relationship with CNEG unless disclosure of such information is formally granted to CNEG by these customers. Further, this expectation of privacy is memorialized by contract, in which CNEG is required to take all reasonable action to ensure that the existence of the contract and its terms remain confidential. CNEG has not sought such approval from these customers since public disclosure of their names is not germane to the issues raised in the Complaint, and because the names of these customers are already known to the Defendant.

4. The Kentucky Open Records Act exempts from disclosure information that is generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. KRS 61.878(1) (c) 1. The Commission should accord confidential treatment

~~to the information provided in paragraph number four of CNEG's Complaint, and~~

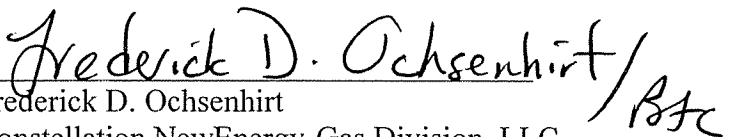
referenced in Exhibits 2 and 3 to the Complaint, because disclosure of these customers' names would provide competitors of CNEG an unfair commercial advantage.

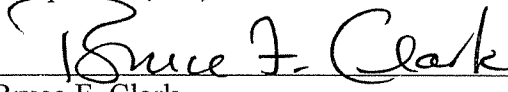
5. In accordance with the provisions of 807 KAR 5:001, Section 7, one copy of the list of customers in paragraph four of CNEG's Complaint, and Exhibits 2 and 3 to the Complaint, with the confidential information highlighted, and ten (10) copies of the Complaint without the confidential information are herewith filed with the Commission.

WHEREFORE, Constellation NewEnergy-Gas Division, LLC respectfully requests that the Commission grant confidential protection.

Dated: June 10, 2005

Respectfully submitted,


Frederick D. Ochsenhirt
Constellation NewEnergy-Gas Division, LLC
9960 Corporate Campus Drive
Suite 2000
Louisville, Kentucky 40223
Telephone: (502) 214-6388


Bruce F. Clark
STITES & HARBISON, PLLC
421 West Main Street
P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477
COUNSEL FOR CONSTELLATION
NEWENERGY-GAS DIVISION, LLC