Commonwealth of Kentucky
Before the Public Service Commission

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PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF	)	
COLUMBIA GAS OF KENTUCKY, INC. FOR	)	
AUTHORITY TO ALLOCATE THE PROCEEDS	)	Case No. 2005-00446
OF ITS STRANDED COST/RECOVERY POOL	)	

ATTORNEY GENERAL'S COMMENTS

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Columbia's "CHOICE" program, created on a pilot basis over the course of three orders in PSC Case No. 99-165 (copies attached), expired on March 31, 2005.[1] CHOICE allowed customers to choose between one of several different gas marketers allowed to operate within Columbia's system. By way of agreement between Columbia and the different marketers, all gas would be supplied through Columbia's in-place distribution system, and Columbia would administer costs and billings associated with the other marketers' sale of gas over Columbia's network.

By virtue of the fact that other suppliers were operating in Columbia's territory and thus diminishing demand, Columbia incurred charges for gas storage that were designated as stranded costs. However, the Commission provided incentives for Columbia to reduce these costs via, among other things,

[1] A new CHOICE Program has since been initiated, via the Commission's March 29, 2005 order in 2004-00462. The new program began on April 1, 2005. At the informal conference held on January 30, 2006, Columbia indicated there are no stranded costs in the new program.

allowing it to retain 25% of off-system sales of stored gas to other utilities (which resulted in proceeds of $2,958,427). In the event that CHOICE's costs incurred exceeded revenue, the Commission created a mechanism for sharing these costs. At the same time, it ordered a refund should any excess revenues result. In an order dated May 19, 2000, the Commission provided that:

> ". . . in the event that the stranded cost/recovery pool [2] contains excess revenues at the end of the pilot program, the excess should be credited on a throughput basis to both sales and Customer Choice customers." Id. at p. 2.

Revenues ended up exceeding costs by $3,595,743. Columbia is now seeking a distribution of the pool funds that differs from the terms of the PSC's order. Columbia wishes: (a) to keep 45% of the proceeds as an after-the-fact reward for its efficient operation of the program; (b) to allow 45% to be shared between both its regular sales customers and the CHOICE participants; and (c) to allow 10% to be distributed to intervenor Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. ("LCAC"). Columbia points out that under this proposal, its 45% share (which is approximately $1.62 million) would be the rough equivalent of 10% of the total sum the CHOICE program saved Columbia's customers (approximately $19,000,000 [3]), when added to the $3.6 million recovered from the pool. Columbia states that this distribution would be in accord with the parties' expectations

[2] Hereinafter: "the pool."

[3] This amount saved is based on what CHOICE customers actually paid to alternative marketers as opposed to what they would have paid under Columbia's otherwise applicable GCA rates.

when the program was first conceived in 1999.[4] Columbia's proposal for the PSC to modify its original ruling in this regard is based on the assertion that Columbia should be rewarded for saving its customers so much money.

LCAC proposes to use its share of the proceeds to finance the purchase and installation of high-efficiency furnaces in the homes of approximately 119 of its clients having the least energy-efficient furnaces. LCAC states that the provision of furnaces will produce long-term positive impacts, estimated at a net lifecycle savings of $2,835 per assisted household. Further, LCAC pointed out in the January 30, 2006 informal conference that if the Commission follows the terms of the original order and distributes the proceeds to Columbia's sales and CHOICE customers, each customer would receive only about $10.

The Attorney General believes that LCAC's proposal to allow 10% of the proceeds to go to furnace replacement is laudable. The current heating season has produced record high, or near-record high energy prices, which yields a disproportionate impact on low-income customers. In light of these extenuating circumstances , the Attorney General believes that the best proposal for sharing the pool revenues would be a distribution of 90% to Columbia's customer base, and the remaining 10% to be distributed to LCAC to be used for the installation of high efficiency furnaces in the homes of its clients having the least energy efficient furnaces.

[4] Columbia does not cite any objective evidence or agreement in this regard that might substantiate this contention. In its original proposal, Columbia sought to retain the initial $3 million in excess revenues (the "dead-band" approach) and distribute any revenues in excess thereof to its customers. (See order of 1-27-2000, p. 5). The Attorney General has no recollection of any such agreement.

The Attorney General believes that this proposal best protects the interests of all parties. Columbia's customers should be entitled to the benefit of their bargain. Both CHOICE customers and Columbia encountered risk in seeking gas supply from alternative marketers. The difference between the two, however, is that Columbia has been allowed to recover its stranded costs solely to preserve the benefit of the regulatory compact/bargain. Columbia has not only mitigated its risks, it has indeed profited via adherence to the Commission-mandated remedy: incentive rewards. Columbia's efficient response to the incentive has yielded its just result – retention of 25% of off-system sales should constitute payment in full. Yet Columbia is returning in the instant case for a second bite of the apple. By contrast, Columbia's customer base has yet to receive the full benefit of its bargain.

Although Columbia's customers who did not participate in the CHOICE program did not take the same risk as CHOICE participants, nonetheless they, too, are entitled to a credit/refund because they paid for the incentive to Columbia that accompanied the off-system sales – but for the CHOICE program, there would have been no incented sales.

The Attorney General believes that under the foregoing 90% / 10% proposal, Columbia's customer base would still receive a rebate in the range of $10. Although this may not prove highly meaningful to most customers, this would not be the case for those most in need. This case is somewhat analogous to a HEAP case. The Attorney General's position in those cases has been that any mandated contributions from customers that go toward paying the bills of low income customers should be very low, primarily because such mandated contributions carry a disproportionate negative impact on customers with lower income. In this case, Columbia's customer base would be well-served to receive a refund or credit. Although some customers may view this one-time rebate/credit as nominal, those lower income customers who either already receive HEA assistance, or are on the verge of needing it, will doubtlessly view it as significant.

Lastly, if the Commission was to modify the terms of its prior order, such an action would constitute retroactive ratemaking, which is prohibited under KRS 278.270. Allowing Columbia to retain the excess revenues from the stranded cost pool would not only affect the company's overall rate structure in a retrospective fashion, it would change a rate that was fair, just and reasonable based on service. Rates found fair, just and reasonable cannot legally be changed on the quality of the service rendered. South Cent. Bell Tell. Co. v. Utility Regulatory Comm., 637 S.W.2d 649 (Ky. 1982).

The Attorney General urges the Commission to allow Columbia's customer base to receive 90% of the $3.6 million in pool proceeds, and award the remaining 10% to LCAC in accordance with the proposal outlined above. In the alternative, in the event the Commission believes that circumstances do not warrant a deviation from the previous order, the Attorney General requests that 100% of the pool proceeds be refunded to the ratepayers.

Respectfully submitted,

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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing Attorney General's Comments were served and filed by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, it was served by mailing a true and correct of the same, first class postage prepaid, to:

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This 7th day of February, 2006.

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