Columbia Gas® of Kentucky
A NiSource Company

P.O. Box 14241
2001 Mercer Road
Lexington, KY 40512-4241

February 16, 2006

Ms. Beth A. O'Donnell
Executive Director
Kentucky Public Service Commission
P. O. Box 615
Frankfort, KY 40602

RE: PSC Case No. 2005-00446

Dear Ms. O'Donnell:

Enclosed for filing with the Commission are the original and six copies of Columbia Gas of Kentucky's Reply Comments. A Certificate of Service is included. Please call me at (859) 288-0242 should you have any questions about this matter.

Very truly yours,

Judy Cooper

Judy Cooper

Enclosure

cc: Richard S. Taylor

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of the Application of Columbia Gas of Kentucky, Inc. for Authority to Allocate the Proceeds of its Stranded Cost/Recovery Pool.	)))	Case No. 2005-00446

REPLY COMMENTS OF COLUMBIA GAS OF KENTUCKY, INC.

On November 1, 2005, Columbia Gas of Kentucky, Inc. ("Columbia") filed its Application in this docket. By Order dated January 25, 2006, the Commission permitted parties to file written comments or to request a hearing, and established a February 7, 2006 deadline for the filing of such pleadings. The Order also permitted parties to file reply comments by February 16, 2006. On February 7, 2006, the Attorney General filed its Comments. Pursuant to the Commission's January 25,2006 Order, Columbia hereby files its Reply Comments to the Attorney General's Comments.

In its Application, Columbia requested that the Commission modify its Orders issued in Case No. 1999-165, with respect to the disposition of the balance of the Stranded Cost/ Recovery Pool that existed at the end of Columbia's pilot 1999 CHOICE® program. Specifically, Columbia sought Commission authorization to allocate Columbia's Stranded Cost/Recovery Pool balance so that half is refunded to sales and CHOICE customers and so that half is retained by Columbia. In the alternative, Columbia requested that the Commission authorize Columbia to allocate Columbia's Stranded Cost/Recovery Pool balance so that ten percent is allocated to the Community

Action Council for Fayette, Bourbon, Harrison and Nicholas Counties ("CAC") for its existing weatherization program, with the remainder split between Columbia and its sales and CHOICE customers. As Columbia stated at the Informal Conference held in this docket, to the extent the Commission is willing to do so, Columbia's preference is that the Commission approve the alternative so that 10% of the Stranded Cost/Recovery Pool balance is allocated to the CAC weatherization program, and the remaining balance equally split between Columbia and its customers. To the extent the Commission is not willing to allocate any of the Stranded Cost/Recovery Pool balance to the CAC weatherization program, then the balance should be split equally between Columbia and its customers.

In its Comments the Attorney General stated that it supports allocation of 10% of the Stranded Cost/Recovery Pool to the CAC to be used for the installation of high efficiency furnaces as part of the CAC's weatherization program, but recommended that all of the remaining Stranded Cost/Recovery Pool be returned to customers. Columbia disagrees with the Attorney General's Comments for the following reasons.

The Attorney General's explanation of the CHOICE program is incomplete. The Attorney General stated, "[b]y 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." Attorney General Comments at 1. The presence of other suppliers did not impact the demand for natural gas. The fact that the CHOICE program originally permitted other suppliers to obtain pipeline capacity to transport the gas to Columbia is what created Columbia's stranded costs for interstate pipeline demand charges and storage costs. Columbia was permitted to retain 25% of off-system sales revenues, but these revenues were not derived from sales of stored gas purchased for Columbia's sales customers.

The Attorney General's Comments also incorrectly described a sharing mechanism, when the Attorney General stated, "[i]n the event that CHOICE's costs incurred exceeded revenue, the Commission created a mechanism for sharing these costs." Attorney General Comments at 2. Columbia's Application in Case No. 1999-165, which was developed in collaboration with the Office of Attorney General of the Commonwealth of Kentucky, the Lexington-Fayette Urban County Government and the CAC created a sharing mechanism, and the record reflects there was no opposition to the Application by any of the parties. However, the Commission modified the Application and provided no mechanism for sharing any excess of stranded costs over revenue.

The Attorney General opposes further compensating Columbia for the efficient administration of the CHOICE program that resulted in significant net benefits for customers. However, as Columbia noted in its Application, the sharing of the Stranded Cost/Recovery Pool proposed by Columbia would more closely match the collaborative parties' expectations that were inherent in the filing of the application for approval of the 1999 CHOICE program, under which Columbia would have been permitted to retain the first $3 million of the Stranded Cost/Recovery Pool balance. The Attorney General questions Columbia's statements about the parties' expectations regarding the balance in the Stranded Cost/Recovery Pool at the end of the 1999 CHOICE Program. Attorney General Comments at 2-3. The expectation that Columbia might retain or lose $3 million was evidenced by the $3 million deadband contained in the original application, which was not opposed by the Attorney General or any other party.

Columbia also noted in its Application that splitting of the Stranded Cost/Recovery Pool balance would match Columbia's current treatment of the proceeds from Off-System Sales and Capacity Releases, as approved by the Commission in its Order dated March 29, 2005, in Case No. 2004-00462. Because the Stranded Cost/Recovery Pool balance is comprised largely of

revenues generated from Off-System Sales and Capacity Assignments it is appropriate and logical that the disposition of these revenues should match Columbia's current treatment of such incentive revenues.

The Attorney General's final argument is that modification of the terms of the Commission's prior Orders in Case No. 1999-165 would constitute retroactive ratemaking, prohibited under KRS § 278.270. Attorney General Comments at 5. In support of its retroactive ratemaking argument the Attorney General cites *South Central Bell Tel. Co. v. Utility Regulatory Comm'n.*, 637 S.W.2d 649 (1982) for the proposition that "[r]ates found fair, just and reasonable cannot legally be changed on the quality of service rendered." However, this case simply does not support the Attorney General's argument with regard to retroactive ratemaking. The case had nothing to do with retroactive ratemaking, and the term is never referenced in the opinion. Instead, the Court in that case held that the Commission may not adjust a utility's authorized rate of return in a rate case based upon customer service considerations, absent a specific grant of such authority from the General Assembly.

The Commission's most exhaustive discussion of retroactive rate-making was in an order issued in 1997, when the Commission explained,

> The rule against retroactive rate-making is a "generally accepted principle of public utility law which recognizes the prospective nature of utility rate making and prohibits regulatory commissions from rolling back rates which have already been approved and become final." *MGTC, Inc. v. Pub. Serv. Comm'n, 735 P.2d 103, 107 (Wyoming 1987).* It further prohibits regulatory commissions, when setting utility rates, from adjusting for past losses or gains to either the utility, consumers, or particular classes of consumers. The rule "rewards the utility's efficiency and protects the consumer from surprise surcharges allocable to the utility's losses in prior years . . . [and] ensures fairness, stability and certainty by preventing a regulatory agency from reversing prior approved rates." *Wisconsin Power and Light Co. v. Pub. Serv. Comm'n, 511 N.W.2d 291, 297 (Wis. 1994)*

> (Abrahamson, J., dissenting). The rule is limited to traditional or general rate-making proceedings. *MGTC, Inc. v. Pub. Serv. Comm'n, 735 P.2d at 107; Southern California Edison Co. v. Pub. Util. Comm'n, 576 P.2d 945.*

In the Matter of: Kentucky Industrial Utility Customers, Inc.; NSA, Inc.; Alcan Ingot; and Commonwealth Aluminum Corporation v. Big Rivers Electric Corporation, Commission Case No. 95-011, Order (April 1, 1997).

As is evident from the language quoted above, the rule against retroactive ratemaking is limited to rate-making proceedings. The instant docket is not a rate-making proceeding, and thus the rule against retroactive rate-making is simply not applicable in this case.

Furthermore, in this case the Stranded Cost/Recovery Pool balance has not yet been reflected in any rate. The very purpose of this proceeding is to determine the amount of the balance to be incorporated into rates to be prospectively charged to customers. Once that has been determined, Columbia will file revised tariffs that reflect the rates, and customers will thereafter be charged the new rates. There simply is no rate, already approved by the Commission, which is being retroactively altered. Columbia is only asking the Commission to review the amount of the Stranded Cost/Recovery Pool that is to be included in rates, for the first time, and subsequently charged to customers.

WHEREFORE, for the reasons stated herein, the Comments of the Attorney General should be rejected, and Columbia's Application in this docket approved.

Dated at Columbus, Ohio, this 16th day of February 2006.

Respectfully submitted,

COLUMBIA GAS OF KENTUCKY, INC.

By: Stephen B. Seiple (gmc)
Stephen B. Seiple
Lead Counsel

Stanley J. Sagun, Assistant General Counsel
Stephen B. Seiple, Lead Counsel
200 Civic Center Drive
P.O. Box 117
Columbus, Ohio 43216-0117
Telephone: (614) 460-4648
Fax: (614) 460-6986
Email: sseiple@nisource.com

Richard S. Taylor
225 Capital Avenue
Frankfort, Kentucky 40601
Telephone: (502) 223-8967
Fax: (502): 226-6383

Attorneys for
COLUMBIA GAS OF KENTUCKY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Columbia Gas of Kentucky, Inc. was served upon those individuals listed in the Service List below by regular U.S. Mail this 16th day of February 2006.

Stephen B. Seiple (gmc)
Stephen B. Seiple
Attorney for
COLUMBIA GAS OF KENTUCKY, INC.

SERVICE LIST

Hon. Lawrence W. Cook
Hon. Dennis G. Howard II
Assistant Attorneys General
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

Hon. Joe F. Childers
201 W. Short Street
Suite 310
Lexington, KY 40507