

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE)	
ENERGY AND REGULATORY)	ADMINISTRATIVE
ISSUES IN SECTION 50 OF)	CASE NO. 2007-00477
KENTUCKY'S 2007 ENERGY ACT)	

O R D E R

Pending before the Commission is a motion filed jointly by the Kentucky Oil & Gas Association ("KOGA") and the Stand Energy Corporation Customer Group ("Stand") requesting the joinder of three natural gas distribution utilities as indispensable parties under the Kentucky Rules of Civil Procedure ("CR") 19.01. The three gas distribution utilities sought to be joined as indispensable are Atmos Energy Corporation ("Atmos"), Columbia Gas of Kentucky, Inc. ("Columbia"), and Delta Natural Gas Company, Inc. ("Delta").

The motion claims that this investigation was legislatively mandated by House Bill 1 of the Kentucky General Assembly's 2007 Second Extraordinary Session ("2007 Energy Act"), that said legislation does not limit the investigation to electric generating utilities, and that the Commission has misinterpreted said legislation to apply only to electric generating utilities. The motion further claims that joinder of Atmos, Columbia, and Delta "is appropriate under CR 19.01 because in the absence of the natural gas utilities, the relief envisioned by the Kentucky legislature in ordering this proceeding,

cannot be accorded those already parties.” Finally, the motion states that the gas utilities might have an interest in this proceeding which could be impaired by their absence, and their absence might leave those who are already parties to this proceeding subject to multiple or inconsistent obligations.

Atmos, Columbia, and Delta filed a joint response in opposition to the motion for joinder. The response states that the Commission properly interpreted the 2007 Energy Act to primarily apply to electric generating utilities based on the types of projects and activities identified by the Act as eligible for tax and financial incentives, as well as the four discreet issues enumerated in Section 50 of the Act that are to be reviewed by the Commission. The response also claims that the purpose of the 2007 Energy Act is to address issues of achieving energy independence, not the local distribution of natural gas.

The response argues that, while Stand’s testimony in this case urges tariff modifications by the major gas distribution utilities so that all non-residential customers may choose a competitive gas supplier, switching to a competitive gas supplier does not relate to the legislation’s goals of achieving energy independence, energy efficiency, or lowest life-cycle energy costs. Finally, the Respondents deny that their absence as parties leaves the existing parties subject to multiple or otherwise inconsistent obligations.

Based on the motion and being otherwise sufficiently advised, the Commission finds that, while the Kentucky Rules of Civil Procedure are often cited in our

proceedings, the applicability of those rules is limited to civil actions in the Court of Justice.¹

The 2007 Energy Act directed the Commission to examine its statutes and make recommendations to the Legislative Research Commission ("LRC") regarding the following four issues:

1. Eliminating impediments to the consideration and adoption by utilities of cost-effective demand-management strategies for addressing future demand prior to Commission consideration of any proposal for increasing generating capacity;
2. Encouraging diversification of utility energy portfolios through the use of renewables and distributed generation;
3. Incorporating full-cost accounting that considers and requires comparison of life-cycle energy, economic, public health, and environmental costs of various strategies for meeting future energy demand; and
4. Modifying rate structures and cost recovery to better align the financial interests of the utility with the goals of achieving energy efficiency and lowest life-cycle energy costs to all classes of ratepayers.

Issues Nos. 1 and 2, which reference generating capacity and the use of distributed generation, respectively, apply only to electric utilities. Issue No. 3 references public health and environmental costs and strategies for meeting future energy demand, all factors traditionally associated with coal-fired electric utilities. The last issue, Issue No. 4, references lowest life-cycle energy costs, an analysis traditionally associated with electric utilities that have a choice of fuels to meet their customers' demand. Issue No. 4 also references energy efficiency, a factor which is

¹ See CR 1 and Inter-County Rural Electric Cooperative Corp., et al. v. Public Service Commission, et al., 407 S.W.2d 127, 130 (Ky. 1966).

applicable to electric utilities as well as natural gas utilities. Thus, the four issues enumerated in Section 50 of the 2007 Energy Act relate primarily to electric generation. Section 50 is, of course, in *pari materia* with the remaining sections of the Act, which also relate principally to electric generation and electric energy efficiency.

Further, the Commission finds that, contrary to the claim in the motion, this investigation was not legislatively mandated. Nothing in the 2007 Energy Act directed the Commission to solicit testimony or comments, to conduct a public hearing for interested stakeholders, or to grant any relief. Rather, the legislation directed that the Commission undertake a review of its statutes and compile recommendations on the four issues referenced above. Thus, the Commission was given the discretion to determine how best to conduct its review, compile its recommendations, and identify which utilities, if any, should be required to participate.

Even though the Commission did not require Atmos, Columbia, and Delta to participate in this proceeding, the initiation of this case was publicly noticed through a November 20, 2007 press release posted on our Website. Clearly, Atmos, Columbia, and Delta had knowledge of this proceeding and could have chosen to participate, but they have declined to do so. Their absence will not impede the Commission's task to make recommendations to the LRC.

The motion to join is also based on two incorrect theories. The first incorrect theory is that, absent the participation of Atmos, Columbia, and Delta, "the relief envisioned by the Kentucky legislature in ordering this proceeding, cannot be accorded those already parties."² As discussed above, Section 50 of the 2007 Energy Act neither

² Motion at 3.

ordered the Commission to conduct this public investigation nor directed the Commission to grant any relief to a party or to anyone else. The sole relief envisioned by Section 50 of the 2007 Energy Act is that, on or before July 1, 2008, the Commission will submit its recommendations to the LRC. We presume that the General Assembly will then hold hearings and possibly enact legislation, to the extent deemed necessary and appropriate. Interested stakeholders will have the opportunity to participate in that legislative process to ensure that the issues in Section 50 of the 2007 Energy Act have been properly addressed.

The motion's second incorrect theory is that, absent Atmos, Columbia, and Delta, the existing parties might be subject to multiple or inconsistent obligations. Exactly how that could happen is not explained in the motion. However, as previously stated, this proceeding was not initiated to grant any specific relief to anyone. Since the Commission's jurisdiction is expressly limited to the regulation of utilities, no obligations could be imposed on anyone except a utility. And except where required by statute or regulation, utilities are not typically subject to uniform obligations unless the need for uniformity has been clearly shown. The pending motion contains neither a discussion of the obligations that should be imposed in this case nor the reasons why such obligations must be uniform among the utilities we regulate. Therefore, the motion to join Atmos, Columbia, and Delta as indispensable parties should be denied.

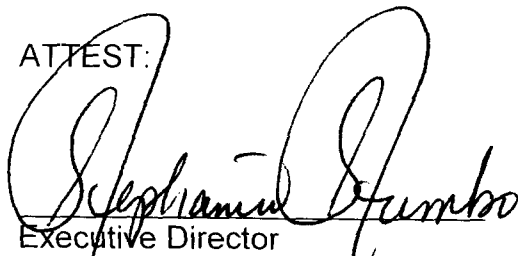
IT IS THEREFORE ORDERED that the motion filed jointly by KOGA and Stand to join Atmos, Columbia, and Delta as indispensable parties is denied.

Done at Frankfort, Kentucky, this 18th day of April, 2008.

By the Commission

Commissioner Clark Abstains.

ATTEST:


Executive Director

Administrative Case No. 2007-00477