

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
P. O. Box 615  
Frankfort, KY 40602

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SEP 20 2010

PUBLIC SERVICE  
COMMISSION

September 20, 2010

RE: Case No. 2010-00146

Dear Mr. Derouen:

Columbia Gas of Kentucky, Inc. hereby files an original and ten copies of its Response to the Motion of Stand Energy Corporation to Compel Responses to Data Requests.

If you have any questions, please contact me. Thank you.

Sincerely,

*Brooke E. Leslie (gmc)*

Brooke E. Leslie  
Counsel

Enclosures

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SEP 20 2010

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: An Investigation of Natural Gas ) Case No. <sup>2010-0046 JMC</sup> ~~2009-00340~~  
Retail Competition Programs. )

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**RESPONSE OF COLUMBIA GAS OF KENTUCKY, INC. TO THE  
MOTION OF STAND ENERGY CORPORATION  
TO COMPEL RESPONSES TO DATA REQUESTS**

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Now comes Columbia Gas of Kentucky, Inc. (“Columbia”), by and through its attorneys and responds to the Motion to Compel Responses to Data Requests (“Motion”) filed by Stand Energy Corporation (“Stand Energy”) in the above-captioned proceeding.

On August 27, 2010, Stand Energy filed its Motion to Compel (“Motion”) requesting responses to its First Set of Data Requests Numbers 001 A – J, 002 A – B, 003 A – C, 007 A – C, and 009 A – F. To support its Motion, Stand Energy relies upon its own interpretation of this proceeding as an investigation not into possible future retail competitive gas programs, but instead as an investigation into the current CHOICE program of Columbia and other irrelevant tariff provisions regarding traditional transportation service. Unfortunately, Stand Energy has ignored both the General Assembly’s legislative mandate for this proceeding and the initial order of the Public Service Commission of Kentucky (“Commission”) opening this investigation.

Contrary to Stand Energy’s interpretation, the Commission and the General Assembly have established this proceeding for one sole purpose: “[T]o commence a collaborative study of natural gas retail competition programs to determine if benefits could be derived from these programs, and to determine whether natural gas retail competition programs could be crafted to

benefit Kentucky consumers.”<sup>1</sup> To achieve this purpose, the General Assembly directed the Commission to “consider and examine elements that shall be incorporated into any *proposed* natural gas retail competition program. The report shall examine the following issues which need to be addressed in order to adequately protect the public interest in any *new* natural gas retail competition program.”<sup>2</sup> Finally, the General Assembly concluded its resolution by stating, “Nothing in this joint resolution shall be construed to interfere with *existing* natural gas retail competition programs, including the continuation or extension of programs.”<sup>3</sup>

Similar to the General Assembly, the Commission ordered that, “This matter is established as an investigation of natural gas retail competition programs to determine if benefits *could* be derived from these programs, and to determine whether natural gas retail competition programs *could* be crafted to benefit Kentucky consumers.”<sup>4</sup> The Commission noted that it was establishing this proceeding “for the purpose of studying the issues raised by the General Assembly.”<sup>5</sup> Since this Order, the Commission and other parties to this proceeding have utilized the discovery process as a means to provide information for a study of possible competitive retail markets. As evidenced by its data requests, Stand Energy is unilaterally attempting to expand the scope of the proceeding to delve into issues associated with traditional transportation programs that are separate and apart from natural gas retail competition programs.

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<sup>1</sup> H.J.R. Res. 141, 2010 Gen. Assem., Reg. Sess. at § 1 (Ky. 2010).

<sup>2</sup> *Id.* at § 3 (emphasis added).

<sup>3</sup> *Id.* at § 4 (emphasis added).

<sup>4</sup> *In the Matter of: An Investigation of Natural Gas Retail Competition Programs*, PSC Case No. 2010-00146, Order (April 19, 2010) at Finding 1 (emphasis added).

<sup>5</sup> *Id.* at 5.

## **Data Requests 001 A – J, 002 A – B.**

Columbia objected to this data request because Stand Energy attempted to solicit information regarding its traditional transportation service, an irrelevant topic not at issue in this proceeding.<sup>6</sup> Stand Energy contends these data requests are relevant because the gas transportation tariffs are the only basis for retail competition between natural gas marketers in Kentucky.<sup>7</sup> This is simply wrong. Columbia has a set of tariffs that govern its CHOICE retail competition program. Columbia's tariffs for its traditional transportation program are separate and apart from its CHOICE program tariffs. Thus, contrary to Stand Energy's assertion, it is Columbia's CHOICE program tariffs, not its tariffs for traditional transportation service, that provide the basis for retail competition.

Further, Stand Energy asserts that for the Commission to find the data requests irrelevant would "completely frustrate and ignore the legislature's directive to investigate competition in retail natural gas in Kentucky."<sup>8</sup> Stand Energy also supports its Motion by stating, "If the PSC allows Columbia to avoid Stand Energy's legitimate and relevant questions in this proceeding, we are hopeful the legislature will obtain information via subpoenas to Columbia personnel to answer questions live, under oath, before appropriate committee(s)."<sup>9</sup> These assertions are simply incorrect. Stand Energy has failed to address the objection raised by Columbia, and Stand Energy has not demonstrated its claim of material relevancy. The Commission recently acknowledged that, "It is a long-recognized legal principle, with regard to discovery, that such proceedings must be kept within reasonable bounds and restricted to questions having substantial

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<sup>6</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Columbia Gas of Kentucky, Inc. Response to First Information Request of Stand Energy (July 29, 2010) at Data Requests 001A – J, 002 A – B.

<sup>7</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Stand Energy Corporation's Motion to Compel Responses to Data Requests from Columbia Gas of Kentucky, Inc. (August 27, 2010) at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

and material relevancy.”<sup>10</sup> The data requests regarding traditional transportation utility service do not have a substantial or material relevancy to this matter. As stated above, the General Assembly passed House Joint Resolution 141 to open an investigation into the Commission establishing a retail natural gas market in Kentucky. This investigation was not intended to “interfere with existing programs,” but instead to be a “comprehensive study of natural gas retail competition programs.”<sup>11</sup> Though Stand Energy attempts to redefine the parameters of retail natural gas competition to include traditional transportation programs and tariffs, it is evident from the data requests posed by Stand Energy that it is more concerned with its own interaction and transactions with Columbia than the Commission’s study. The fact of the matter is that the Commission, in its Order, did not state any intention to delve into each public utility’s traditional transportation service. Therefore, because Stand Energy has not supported the relevancy of its data request, the Commission should deny its Motion with regard to Data Requests 001 A – C and 002 A – B.

**Data Requests 003 A – C, 007 A – C.**

Columbia objected to these overly broad data requests because Stand Energy attempted to elicit information which was burdensome to research.<sup>12</sup> More importantly, information regarding existing tariff waivers (Data Request 003) and delivery requirements contained in Columbia’s tariff (Data Request 007) is not reasonably calculated to lead to discovery of admissible information in a proceeding designed to investigate the potential of Kentucky establishing a

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<sup>10</sup> *In the Matter of MCI Communications Services, Inc., Bell Atlantic Communications, Inc., Nynex Long Distance Company, TTI National, Inc., Teleconnect Long Distance Services & Systems Company, and Verizon Select Services, Inc. v. Windstream Kentucky West, Inc., Windstream Kentucky East, Inc.-Lexington, and Windstream Kentucky East, Inc.-London*, PSC Case No. 2007-00503, Order (May 14, 2010) at 5 (citing *Humana, Inc. v. Fairchild*, 603 S.W.2d 918 (Ky. Ct. App. 1980)).

<sup>11</sup> H.J.R. Res. 141, 2010 Gen. Assem., Reg. Sess. at §§ 1, 4 (Ky. 2010).

<sup>12</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Columbia Gas of Kentucky, Inc. Response to First Information Request of Stand Energy (July 29, 2010) at Data Requests 003 A – C. 007 A – C.

retail natural gas competition program.<sup>13</sup> As Stand Energy acknowledges in its Motion, “This information is essential to understand how Columbia *enforces* its tariff”<sup>14</sup> and how Columbia “*enforces* pipeline delivery requirements.”<sup>15</sup> However, the enforcement of Columbia’s tariff provisions is not at issue this proceeding. Evidenced from the General Assembly’s joint resolution and the Commission’s opinion, this proceeding is an investigation into the benefits and feasibility of natural gas retail competition programs in Kentucky.<sup>16</sup>

Stand Energy believes that if the Commission denies its motion, “the parties have no way of knowing whether Columbia is fairly enforcing its tariff as approved by the Kentucky PSC or granting waivers in an anti-competitive or discriminatory manner.”<sup>17</sup> A general investigation into retail competition programs is not the appropriate forum in which to address any utility’s enforcement of existing tariffs. If Stand Energy believes that any utility is inappropriately enforcing its tariffs then the proper forum in which to address such issues is a case specific to that utility. In essence, Stand Energy is inappropriately attempting to utilize the Commission’s investigation proceeding as an investigation into Columbia’s operations. The Commission should uphold the General Assembly’s resolution and utilize its provisions to guide this investigation. Therefore, the Commission should deny Stand Energy’s Motion as to Data Request 003 A – C and 007 A – C.

**Data Request 009 A – F.**

Columbia objected to this data request, subparts A through E, because Stand Energy

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<sup>13</sup> *Id.*

<sup>14</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Stand Energy Corporation’s Motion to Compel Responses to Data Requests from Columbia Gas of Kentucky, Inc. (August 27, 2010) at 5 (emphasis added).

<sup>15</sup> *Id.* at 6 (emphasis added).

<sup>16</sup> H.J.R. Res. 141, 2010 Gen. Assem., Reg. Sess. at § 1 (Ky. 2010).

<sup>17</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Stand Energy Corporation’s Motion to Compel Responses to Data Requests from Columbia Gas of Kentucky, Inc. (August 27, 2010) at 5.

sought information that was not relevant to the Commission’s Investigation of Retail Competition and not reasonably calculated to lead to admissible evidence.<sup>18</sup> To support its Motion, Stand Energy believes its data request is relevant to determine “the existence of a potentially cheaper source of market-priced gas...[to] reduce Columbia’s cost to serve.”<sup>19</sup> As stated above, however, the General Assembly did not initiate this proceeding to interfere with existing natural gas retail competition programs.<sup>20</sup> Instead, the Commission and the General Assembly established this proceeding to investigate the possibility and practicability of establishing a statewide natural gas retail competition program.<sup>21</sup>

Stand Energy also attempts to support its data request to determine the issue of whether natural gas utilities have disregarded Kentucky law. The law Stand Energy believes to have been ignored by Columbia is Ky. Rev. Stat. § 278.507, characterized as “a clear legislative mandate to the Kentucky Public Service Commission.” Stand Energy’s reliance upon Ky. Rev. Stat. § 278.507 is misplaced, both because it was passed by the General Assembly in 1984, not alongside of the House Joint Resolution 141 prompting this proceeding, and it only states the “policy of the Public Service Commission.”<sup>22</sup>

Moreover, any specific investigations into the gas suppliers and rates of Columbia’s CHOICE program, as Stand Energy believes this data request and Data Request 009 F will

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<sup>18</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Columbia Gas of Kentucky, Inc., Response to First Information Request of Stand Energy (July 29, 2010) at Data Request 009A – E.

<sup>19</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Stand Energy Corporation’s Motion to Compel Responses to Data Requests from Columbia Gas of Kentucky, Inc. (August 27, 2010) at 8.

<sup>20</sup> H.J.R. Res. 141, 2010 Gen. Assem., Reg. Sess. at § 4 (Ky. 2010).

<sup>21</sup> H.J.R. Res. 141, 2010 Gen. Assem., Reg. Sess. at § 1 (Ky. 2010).

<sup>22</sup> Ky. Rev. Stat. § 278.507(1).

elicit,<sup>23</sup> should have been raised in a Columbia specific case. Similar to subparts A through E, Data Request 009 F concerns Columbia's Small Volume Gas Transportation Service (SVGTS) program.<sup>24</sup> Stand Energy requests information regarding gas supply and delivery points in Columbia's SVGTS, the tariff under which Columbia serves CHOICE customers. To support the relevance of this request, Stand Energy simply asserts "[t]he Commission needs to require Columbia to answer this question."<sup>25</sup> Stand Energy neither explains why Columbia's response is deficient nor provides an explanation as to how this Data Response is relevant to this proceeding.

Therefore, because Stand Energy requested information exceeding the scope of the Commission's study its Motion should be denied as to Data Request 009 A – F.

**WHEREFORE**, Columbia hereby respectfully requests the Commission deny Stand Energy's Motion to Compel because Stand Energy's data requests are not relevant, overly broad and vague, and exceed the scope of this proceeding.

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<sup>23</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Stand Energy Corporation's Motion to Compel Responses to Data Requests from Columbia Gas of Kentucky, Inc. (August 27, 2010) at 8.

<sup>24</sup> *Id.* at 7.

<sup>25</sup> *In the Matter of: The Investigation of Natural Retail Competition Programs*, PSC Case No. 2010-00146, Stand Energy Corporation's Motion to Compel Responses to Data Requests from Columbia Gas of Kentucky, Inc. (August 27, 2010) at 9.

Dated at Columbus, Ohio, this 20<sup>th</sup> of September 2010.

Respectfully Submitted,  
**COLUMBIA GAS OF KENTUCKY, INC.**

By: Brooke E. Leslie (gmc)  
Brooke E. Leslie

Stephen B. Seiple, Assistant General Counsel  
Brooke E. Leslie, Counsel  
200 Civic Center Drive  
P.O. Box 117  
Columbus, Ohio 43215-0117  
Telephone: (614) 460-5558  
Facsimile: (614) 460-6986  
E-mail: sseiple@nisource.com  
bleslie@nisource.com

Richard S. Taylor  
225 Capital Avenue  
Frankfort, Kentucky 40601  
Telephone: (502) 223-8967  
Facsimile: (502) 226-6383  
E-mail: attysmitty@aol.com

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

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Response of Columbia Gas of Kentucky, Inc. to the Motion of Stand Energy Corporation to Compel Responses to Data Requests* was served by regular U.S. Mail to the following parties on this 20<sup>th</sup> day of September, 2010.

*Brooke E. Leslie (gmc)*

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Brooke E. Leslie  
Attorney for  
**COLUMBIA GAS OF KENTUCKY, INC.**

John M. Dosker  
Stand Energy Corporation  
1077 Celestial Street, Suite 110  
Cincinnati, OH 45202-1629

Iris G. Skidmore  
Bates & Skidmore  
415 W. Main Street, Suite 2  
Frankfort, Kentucky, 40601-1841

John B. Brown  
Delta Natural Gas Company, Inc.  
3617 Lexington Road  
Winchester, Kentucky 40391

Matthew Malone  
Hurt, Crosbie & May PLLC  
127 W. Main Street  
Lexington, Kentucky 40602-1070

Rocco D'Ascenzo  
Duke Energy Kentucky, Inc.  
139 East Fourth Street, R. 25 At II  
P.O. Box 960  
Cincinnati, Ohio 45201

Thomas Fitzgerald  
Liz D. Edmondson, Esq.  
Kentucky Resources Council, Inc.  
P.O. Box 1070  
Frankfort, Kentucky, 40602-1070

Lonnie E. Bellar  
Louisville Gas & Electric Company  
220 W. Main Street  
P.O. Box 32010  
Louisville, Kentucky 40202

Katherine K. Yunker  
John B. Park  
Yunker & Park, PLC  
P.O. Box 21784  
Lexington, Kentucky 40522-1784

Dennis Howard, II  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204

Michael T. Griffith  
111 Monument Circle, Suite 2200  
Indianapolis, Indiana 46204

Mark Martin  
Atmos Energy Corporation  
3275 Highland Pointe Drive  
Owensboro, Kentucky 42303

Lisa Kilkelly  
Legal Aid Society  
416 W. Muhammad Ali Blvd., Suite 300  
Louisville, Kentucky 40202-2812

Robert M. Watt, III  
Stoll Keenon Ogden PLLC  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507

Carroll M. Redford, III  
Miller, Griffin & Marks, PSC  
271 W. Short Street, Suite 600  
Lexington, Kentucky 40507

Trevor L. Earl  
Reed Weitkamp Schell & Vice PLLC  
500 West Jefferson Street, Suite 2400  
Louisville, Kentucky 40202-2812

Mark David Goss  
Frost Brown Todd LLC  
250 West Main Street, Suite 2800  
Lexington, Kentucky 40507-1749