COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:
AN INVESTIGATION OF NATURAL GAS)
RETAIL COMPETITION PROGRAMS) CASE No. 2010-00146

ATTORNEY GENERAL'S BRIEF

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and files the following brief in the above-styled matter.

GENERAL STATEMENT OF THE CASE

The Commission opened this docket pursuant to a legislative mandate to study whether natural gas retail competition could be crafted to benefit Kentucky consumers.[1] Moreover, in its order initiating this case on 19 April 2010, the Commission noted the guidance which the General Assembly had provided but, having previously studied the issue in Administrative Case No. 297 in 1987 and Administrative Case No. 367 in 1998, the Commission stated that the list of elements would not be exhaustive.[2]

Extensive discovery was had by all the parties as well as the Commission itself. Moreover, many intervenors in the case pre-filed written direct testimony and subsequently testified under cross-examination at the evidentiary hearing lasting two full days on October 19th and 20th. When all was said and done, 14 parties were entitled to meaningful participation in this collaborative effort.

[1] Kentucky General Assembly 2010 Regular Session, House Joint Resolution 141.
[2] Order, at pages 4 and 5. It is also worth noting that in neither of these prior studies has the Commission ordered state-wide retail gas competition programs.

ARGUMENT

From an end-user perspective, retail natural gas competition, if it is to be effective in this Commonwealth, should result in benefits consisting of at least: 1) better service; 2) better quality; and 3) better/lower rates. Because a marketer in a natural gas competitive environment provides only the commodity while the local distribution company ["LDC"] continues to provide the infrastructure and all necessary services, the first benefit is, by definition, unachievable by the marketer.[3] In addition, the marketers purchase their gas from the same sources that the local distribution companies use in their procurements.[4] Accordingly, benefit number two is likewise unattainable. Hence, the focus turns to the third benefit – better/lower cost for the ratepayer.

Depending on a ratepayer's level of sophistication in understanding, and perhaps even luck in natural gas pricing, he may fair well if competition exists if he "locks" in at a price that turns out better than that which he might otherwise have to pay with a "floating" price as charged by the natural gas company.[5] Hence, competition may be advantageous for some customers but only if they are "generally more sophisticated"[6] or "very well informed."[7] However, the results from the Columbia

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[3] VR 20 Oct. 2010, beginning at 11:05:00.
[4] VR 20)ct. 2010, beginning at 11:05:55; *see also* beginning at 11:42:25.
[5] This comment needs to be explained for the average layperson who does not realize how the LDC charges for the commodity. In particular, the LDC's profit is derived solely from the *delivery* of the gas not on the gas *itself*. The price is set on at least a quarterly basis whereupon the LDC returns to the PSC for a truing up of costs through the gas cost adjustment ["GCA"] clauses in its tariffs. If the company overcharged for its actual costs paid for the gas, then the over collection is used to offset the prices predicted for the next period. Conversely, the opposite result may also occur where the company may have under-collected and thus prices for the next period are adjusted upwardly. Hence, the price may float over time as this adjustment is reoccurring constantly so that the company recovers its actual costs but makes no profit on the commodity over time.
[6] VR 20 Oct. 2010, beginning at 16:14:20.

Choice Program indicate, that on the aggregate for the ten year period, ratepayers did not experience an overall benefit from savings on their bills. As noted from the IGS/SouthStar/Vectren's Exhibit 3 introduced at the hearing and subsequently corrected on 26 October 2010, over the ten year period of the program's existence, customers lost $17,280,299 – a number that raises concerns about long-term cost benefits.[8] Granted, a review of the exhibit indicates that there were certain years when the participants actually saved money; however, at the end of the day in the proverbial game, they lost.

Moreover, PSC Hearing Exhibit 1 directly establishes that among the states allowing retail natural gas competition programs, LDCs almost always charged a lower average price in the residential sector than that charged by marketers. This may be due to the fact that none of an LDC's overhead costs are recovered through the GCA clauses, while all of a marketer's costs are in fact recovered through gas costs. Those marketer overhead costs are passed on to residential consumers, while the same customers are paying for the LDC's overhead through base rates.[9]

Marketers appear to argue that LDCs have no incentive to obtain the lowest prices for the gas they procure from the open market. However, the LDCs have faced significant competition from electric utilities for space heating customers. The reality of competition is supported through the fact that all recent LDC rate cases have established that the companies are experiencing declining customer bases. Finally, the

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[7] VR 20 Oct. 2010, 16:54-00 through 16:55:00; and 16:58:20 through 17:00:00.
[8] IGS is currently a participant in the Columbia Choice Program.
[9] See, e.g. VR 19 Oct. 2010, 15:17:20.

marketers did not introduce any evidence throughout the course of the instant proceeding that would establish that the LDCs are charging significantly over and above NYMEX prices; this can be borne out by an examination of GCA filings.

For the foregoing reasons, it is questionable that retail natural gas competition would be cost-effective for consumers at this time. However, if the Commission should decide to allow competition, the Commission should consider establishing numerous conditions, among them: (a) requiring the marketers to make clear and conspicuous disclosure of all terms and conditions in *any* contact, whether directly or indirectly, with potential participants in its program; (b) establishing a comprehensive education program and system, with on-line databases and personnel to assist consumers in determining the cost or benefits of aligning themselves with a marketer, including clear and conspicuous disclosures and definitions of all terms and conditions,; (c) establishing a licensing regime with consumer protections to guard against any potential misrepresentations on behalf of marketing agents / brokers, including but not limited to the mandatory use of telephonically recorded verification by independent, impartial, authorized agents;[10] (d) in the event a licensing regime is established, it should be recognized this would have a definite fiscal impact on the Commission such that it should be provided adequate funding for the additional staff necessary to insure proper, adequate and meaningful enforcement with substantial penalties for marketers' non-compliance; (e) allow residential customers to terminate their contracts early with

[10] The Attorney General does not believe that a mere "Code of Conduct" alone such as advocated by several of the marketers is enough to provide meaningful consumer protections.

only reasonable fees to be assessed against them and, in the event that the Commission determines that misrepresentations were used to lure the customers into the contracts, then no fees shall be assessed and any commodity costs over and above those which would have been charged by the customers' natural gas company(ies) shall be refunded, with interest, by the marketer to the customers; (f) any additional impacts that LDCs would incur due to having to being compelled to deal with marketers, such as for information technology purposes, should be borne solely by the marketers, and not the LDC which would be forced to pass those costs on to their entire rate base; and (g) insuring that no double charges for pipeline and storage fees are passed on to customers.

Respectfully submitted,

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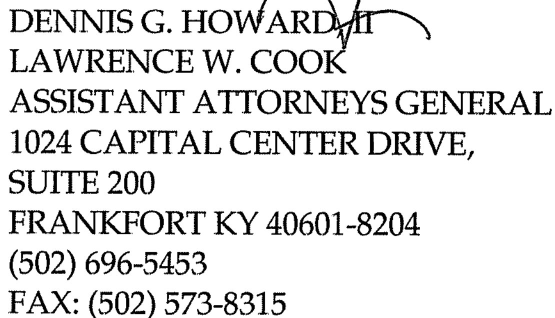

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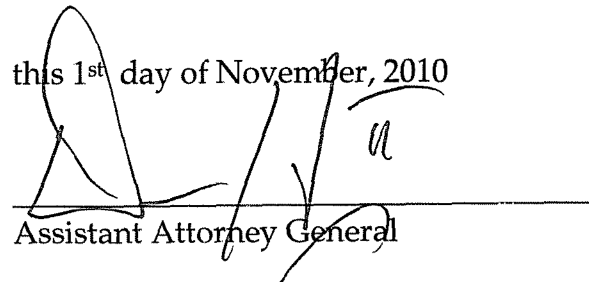

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