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Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
P. O. Box 615
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November 1, 2010

RE: Case No. 2010-00146

Dear Mr. Derouen:

Columbia Gas of Kentucky, Inc. hereby files an original and ten copies of its Post-Hearing Brief. If you have any questions, please contact me. Thank you.

Sincerely,

Brooke E. Leslie (gmc)

Brooke E. Leslie
Counsel

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: An Investigation of Natural	)	
Gas Retail Competition Programms	)	Case No. 2010-00146

POST-HEARING BRIEF OF COLUMBIA GAS OF KENTUCKY, INC.

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November 1, 2010

POST HEARING BRIEF

I. INTRODUCTION

The Kentucky Public Service Commission ("Commission") initiated this proceeding in order to develop a record upon which to base a study to be submitted to the Kentucky General Assembly. In this study the Commission is to inform the General Assembly whether natural gas retail competition programs can be crafted to benefit customers. The Commission's experience with Columbia Gas of Kentucky, Inc.'s ("Columbia") ten-year CHOICE program indicates that the Commission should respond to the General Assembly that natural gas retail competition programs can indeed be crafted to benefit customers. However, this does not mean that the General Assembly should mandate the imposition of natural gas retail competition programs upon all gas utilities. The better approach is to maintain the current status, which permits the Commission to authorize natural gas retail competition programs for any LDC. Each individual LDC should be permitted to decide whether or not a similar retail competition program might be right for its customers. This approach affords the Commission and the Commonwealth's gas utilities with maximum flexibility to decide whether natural gas retail competition programs are appropriate for any particular utility, and, if so, to devise and tailor programs that best fit the needs of each individual utility and its customers.

II. PROCEDURAL BACKGROUND

On April 12, 2010, the Kentucky General Assembly passed House Joint Resolution 141 directing the Commission to commence a collaborative study "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 customers.[1]" Consequently, on April 19, 2010, the Com-

[1] Kentucky General Assembly 2010 Regular Session, House Joint Resolution 141 at 1.

mission commenced the above-captioned investigation into natural gas retail competition programs and made all jurisdictional natural gas distribution utilities in Kentucky parties to the proceeding. Several other entities intervened and a procedural order was established.

Columbia submitted written direct testimony, rebuttal testimony and several responses to data requests. Testimony was filed by many other interested parties. A hearing was held on October 19 and 20, 2010, and the Commission directed that any party interested in filing a brief do so by November 1, 2010.

III. BRIEF HISTORY OF COLUMBIA'S CHOICE PROGRAM

In Case No. 1999-165 Columbia introduced its CHOICE program, which is an entirely voluntary tariff offering that allows Columbia's small volume customers (annual usage below 25,000 Mcf) to purchase their natural gas commodity supply from a certified marketer with Columbia continuing to provide transportation service for the commodity and maintaining the distribution function.[2] Columbia has successfully implemented its CHOICE program since November 2000. While the program has undergone some changes, the goal of giving Columbia's customers the opportunity to choose their commodity supplier has been maintained throughout its history.[3]

Columbia's CHOICE program is structured to meet its unique needs as a natural gas utility. In order to draft a program to meet the needs of Kentucky consumers, Columbia collaborated with several interested parties including the Attorney General, community action agencies and

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[2] Direct Testimony of Judy Cooper, p. 3, lines 13-14.

[3] For large usage customers, those consuming greater than 25,000 Mcf, Columbia has maintained it traditional gas transportation program for over 25 years. Together with CHOICE, all Columbia customers may choose their natural gas supplier.

various marketers.[4] Over the course of the ten-year program, Columbia's CHOICE program has evolved to meet three main objectives:

1.) The program must provide an opportunity for residential and small commercial customers to have additional gas supply options available, and that provide an opportunity for reduced gas prices and/or more stable gas prices, while maintaining reliability of service;

2.) The program must allow Columbia to recover its costs of administering the program, and should provide incentives that will encourage Columbia to promote the CHOICE program; and,

3.) Customers who choose to continue to purchase their gas supply using Columbia's traditional sales service should not incur any additional charges because of the implementation of a CHOICE program.[5]

Another important feature of Columbia's CHOICE program is the elimination of stranded costs through the mandatory assignment of capacity.[6] As such, the program is designed to avoid any adverse impact on existing utility services and remaining customers.

IV. BENEFITS OF COLUMBIA'S CHOICE PROGRAM

A. OPPORTUNITY FOR SAVINGS

When Columbia designed its CHOICE program, one of the goals was to give customers the opportunity to save money. At no point in Columbia's program were savings guaranteed to participating customers.[7] While there have been several points in time where Columbia's CHOICE customers may not have realized any savings, the opportunity to save has existed since

[4] Direct Testimony of Judy Cooper, p. 5, lines 6-17.
[5] Direct Testimony of Judy Cooper, p. 6, lines 23-38.
[6] *Id.* at p. 7, lines 10-13.
[7] Rebuttal Testimony of Judy Cooper, p. 3, lines 21-22.

the program's inception. Some opponents of a retail competition program claim that the "$17 million loss" that Columbia's CHOICE customers have endured in aggregate over the ten years of the program is evidence of the program's lack of success. This undue emphasis upon savings, and the characterization of this point in time analysis as a "loss," is misleading. The correct picture is that, over a ten-year period, the group of CHOICE customers has paid, in the aggregate, approximately 4% more for their natural gas supply than non-CHOICE customers.[8]

During the ten-year life of Columbia's CHOICE programs, customers have realized aggregate savings in some years and in others they have not. For example, in 2001, CHOICE customers had realized an aggregate savings of $1,458,148. In 2005, CHOICE customers had an aggregate savings of $14,510,256 and in 2006, CHOICE customers had realized an aggregate savings of $11,367,613.[9] Throughout the hearing, AARP kept referring to a "$17 million loss," but there have not been any actual losses. Rather, at certain points in time CHOICE customers have paid more for their gas from a marketer than they would have paid if they had gotten the gas from Columbia. As noted by Vectren's witness Howard Petricoff on cross-examination, the only "loss" incurred by the customer at any given point in time is the lost opportunity cost to save money if he or she had stayed with the LDC as the supplier. The customer, for whatever reason, chose to go with a marketer and therefore got exactly for what he or she bargained.

Many customers in Columbia's CHOICE program have fixed price contracts. When gas prices rise customers on such contracts spend less for gas than they would have had they remained LDC customers. Conversely, customers on fixed price contracts see larger lost opportunity costs when gas prices fall. Thus, not surprisingly, Columbia's CHOICE customers have realized the most savings when the price of gas was at its highest. For example, the NYMEX

[8] See Re-Direct Examination of Judy Cooper, October 19, 2010.
[9] IGS Exhibit 3, as amended by erratum October 26, 2010.

monthly settle price for gas was at its highest in 2005-2006.[10] In those two years, CHOICE customers realized the most savings.

However, since that time natural gas prices have dropped dramatically. Many customers who locked into a price during a time period when gas was higher than it is currently, are now paying more than Columbia's tariff customers. In addition, Columbia's Gas Cost Adjustment was recently abnormally low because of a large adjustment being passed back to customers. As a result, Columbia's Gas Cost Adjustment was actually below the NYMEX price.

This illustrates that the calculation of savings or lost opportunity costs is more than anything a function of time. It is a snapshot at a point in time, and the results can vary greatly depending on when the snapshot is viewed. In the case of Columbia's program the current snapshot reveals aggregate lost opportunity costs, but largely because of the recent dramatic declines in natural gas prices and because of a large adjustment in Columbia's Gas Cost Adjustment. At many earlier points in time similar snapshots would have shown aggregate savings for Columbia's CHOICE customers. What the customers has always had is the o*pportunity* to save which is paramount to the success of Columbia's CHOICE program.

The General Assembly's directive asked the Commission to conduct a study as to whether a retail competition program could be crafted to benefit customers. The legislature did not define the term "benefits" Those opposed to natural gas retail competition programs have focused upon savings almost as if that is the only possible benefit. Such a narrow view is self-serving. As evidenced by the increasing number of customers participating in Columbia's CHOICE program despite the lack of savings over recent years, Columbia has successfully designed a CHOICE program that fits the needs of its customers without guaranteeing savings.

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[10] *Id.*

B. GREATER CONTROL OVER ENERGY SUPPLY

Columbia's CHOICE program offers plenary benefits, other than savings, to customers. One of the most important benefits is the opportunity for a consumer to become an active participant in the natural gas market by having the ability to choose his or her own gas supplier. This opportunity to have control over the commodity is available for Columbia's large volume and commercial transportation customers and it only makes sense to give residential and small commercial customers the same opportunity given that the market for the gas commodity is a competitive market.

Kentucky consumers have expressed an interest in the ability to choose their own gas suppliers. In a customer satisfaction survey conducted by the Matrix Group of Lexington, Kentucky in 2008, 75% of Columbia CHOICE participants who responded to the survey indicated they wanted the ability to choose their natural gas supplier, even if they learned they had not saved money in the program thus confirming that customers value the ability to have greater control over their energy supply.[11]

Also, in 2008, the Kentucky Consumers for Energy Choice ("KCEC") was formed during a legislative session to add consumers' voices to the discussion about consumers' right to choose natural gas commodity products. In 2009, KCEC sent informational packets to 22,000 residential customers asking whether they would support the right to choose a natural gas supplier. Over 6,000 customers responded, ultimately joining KCEC.[12]

While customer participation in CHOICE declined from a peak of 52,649 in 2002, Columbia has seen a steady increase in participation since 2008. As of April 2010, over 32,000 customers were enrolled in the CHOICE program - nearly 25% of eligible customers. This steady

[11] See Columbia's Response to IGS Second Set of Data Requests, Request 4.
[12] Rebuttal Testimony of Ellen Williams p.5, lines 15-23; p.6, lines 1-3.

increase is further evidence of more interest by customers to exert control over their energy sources. Columbia anticipates these numbers to continue to grow as the market becomes more competitive.

C. INNOVATIVE PRICING OPTIONS

Another measurable benefit to Columbia's CHOICE program is the opportunity to choose from a wide variety of pricing options to meet the financial and energy needs of the individual customer. For example, marketers have the ability to set a fixed price for the natural gas commodity without having to "true-up" at the end of the year. This opportunity is especially important for those individuals living on fixed incomes or for those who are simply risk adverse to volatile natural gas prices. In his rebuttal testimony, Vectren witness Howard Petricoff described a situation where a consortium of public school districts aggregated their load and set it out for bid to in order to obtain fixed prices. Similarly, he described a restaurant chain that simply wanted the lowest price possible and contracted for a variable price pegged to the NYMEX monthly closing price.[13] The natural gas utilities simply do not currently have the flexibility to offer such innovative pricing options.

D. CONSUMER PROTECTIONS

The opponents of natural gas retail competition programs also expressed concerns about consumer protection issues. Columbia shares this concern and has designed its CHOICE program to prevent and deter marketer misconduct. The consumer protection concerns raised simply have not been significant issues in Columbia's CHOICE program. Based on the Kentucky experience, they are false fears. The experience in Columbia's CHOICE program demonstrates that a program can be designed to provide adequate consumer safeguards. The major safeguards incorporated in Columbia's program are described below.

[13] Rebuttal Testimony of Howard Petricoff p.5, lines 15-22.

First, Columbia's tariff requires that third party suppliers submit to a Marketer Certification process to determine whether each supplier has the adequate managerial, financial and technical abilities to provide the service it intends to offer.[14] The marketer must undergo a determination of credit worthiness by Columbia and enter into a contract with Columbia that reiterates Columbia's tariff requirements. That contract is filed with the Commission along with the name and address of the marketer, contact person for dispute resolution, a copy of the marketer's dispute resolution procedures and certification that the marketer is creditworthy a copy of the marketer's standard contract.[15]

Further, Columbia's tariff includes a Code of Conduct by which all marketers must abide. Attached to the testimony of Columbia witness Cooper and also on file with the Commission is Columbia's Code of Conduct for marketers. Some of the notable provisions require the marketer to "communicate to customers, in clear and understandable terms, the customers' rights and responsibilities" and to "provide in writing to customers pricing and payment terms that are clear and understandable." The Code of Conduct also requires that marketers include an explanation for the customer to allow them to compare the marketer's offer to Columbia's Gas Cost Adjustment rate. The Code of Conduct prohibits the marketers from "engaging in communications or practices with customers which are fraudulent, deceptive, or misleading" or from excluding any eligible Columbia customer as long as the marketer has an offer of gas available. Under Kentucky's consumer protection law, the Attorney General also has the right to bring actions against methods which are false, fraudulent or misleading.

Jack Burch from the Community Action Counsel expressed concerns over telephone solicitations by marketers. On cross examination, Mr. Burch specifically testified that marketers

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[14] Direct Testimony of Judy Cooper, p. 12, lines 14-23.
[15] *Id.*

should not be able to contract with costumers via telephone unless there was written confirmation to the customer. However, Columbia's tariff specifically governs telephone solicitations and already requires written confirmation of any telephone solicitation.[16] Further, when a consumer enters into a contract as a result of a telephone solicitation, the consumer has seven days to rescind the contract.[17] Thus, Mr. Burch's concerns are met by Columbia's comprehensive tariff. In fact, most, if not all, of Mr. Burch's suggestions for consumer protections that are contained in his direct testimony are already part of Columbia's tariff.[18]

Nancy Brockway of AARP recounted several instances of marketer abuse in other states that have retail unbundling.[19] However, Ms. Brockway did not provide one single instance of marketer abuse in Kentucky, where Columbia has had an active CHOICE program since 2000. When questioned about the lack of consumer complaints in Kentucky on cross examination, Ms. Brockway said without further explanation that the lack was due to the fact Columbia's program was "only" a pilot program. If AARP Brockway had any first hand knowledge of Columbia's CHOICE program she would have realized that the reason there haven't been the number and extent of complaints by Columbia's CHOICE customers over the past ten years is because Columbia designed its program in a fashion that protects customers from marketer abuse and enforces protection of customers for inappropriate behavior

Finally, Columbia's CHOICE customers bear no risk of being left without gas supply if the marketer fails to deliver or simply exits the marketer function. Columbia remains the supplier of last resort in all circumstances and the consumer suffers no consequences as a result.[20] While some opponents of CHOICE question the reliability of service, Columbia maintains the obliga-

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[16] Direct Testimony of Judy Cooper, Exhibit 1.
[17] *Id.*
[18] Direct Testimony of Jack Burch, p. 8, lines 1-22.
[19] Direct Testimony of Nancy Brockway, p. 3-18.
[20] Direct Testimony of Judy Cooper, p. 7, lines 18-23.

tion to serve the customer is responsible for all meter reading, billing, collections, disconnection procedures and operational integrity of the distribution system.[21] In a similar vein, Columbia's tariff customers bear no hardship due to Columbia's CHOICE program. Marketers are required to pay the costs of the program and therefore tariff customers are not subsidizing CHOICE customers.[22]

E. RELIABILITY OF SERVICE

Columbia has designed its CHOICE program in a manner that does not compromise reliability of service. The responsibility of contracting for upstream pipeline capacity required for the reliable firm delivery of gas supplies to firm customers is determined by, and remains, with Columbia.[23] In order to maintain system integrity, this responsibility must remain with Columbia. Columbia's distribution system is complex and Columbia is the only party that is able to fully understand the demands and obligations at each of these points of receipt.[24] Columbia has a large number of receipt points and must be able to manage delivery obligations. CHOICE marketers are assigned portions of Columbia's capacity to serve customers that may move between CHOICE marketers and Columbia's sales service in a manner that eliminates stranded costs. The mandatory assignment of capacity coupled with Columbia's contracting for upstream capacity helps ensure system integrity of the distribution system and reliable commodity service for the customers.[25]

As stated above, Columbia remains the supplier of last resort and CHOICE customers bear no risk of being without natural gas service. Columbia remains solely responsible for the integrity of the distribution system. Further, marketers go through and intense certification proc-

[21] *Id.*
[22] *Id.* at p.8, lines 3-15.
[23] *Id.* at p. 9, lines 1-22.
[24] *Id.*
[25] *Id.* at p. 10, lines 1-8.

ess, including a credit check, to ensure that the marketers have the knowledge and resources to actually provide the natural gas commodity. All of these protections are designed to ensure that all of Columbia's customers are guaranteed reliability of service.

F. SCHOOL TAX REVENUES

The design of Columbia's CHOICE program insures that franchise and school tax revenues are collected and remitted to the appropriate authorities in the same manner that franchise and school tax revenue is collected for other tariff services.[26] As a result, there have not been any negative impacts on franchise and school tax revenues as a result of Columbia's CHOICE program. This demonstrates that natural gas retail competition programs can be designed so that there is no detrimental impact upon the Commonwealth's tax revenues.

V. COLUMBIA'S LARGE-VOLUME RETAIL COMPETITION PROGRAM

Columbia's large volume customers, those with an annual usage greater than 25,000 Mcf, have had access to third-party suppliers and LDC transportation service for more than 25 years. Despite this fact, Stand Energy used this docket as a platform to advocate the lowering of the minimum thresholds for each LDC's traditional transportation service. In fact, at several points during his cross-examination, Mr. Dosker admitted that Stand is not concerned about retail competition programs for Kentucky's residential costumers. Stand has improperly used this investigation as an opportunity to not only criticize Commission Staff, but to make irrelevant blanket accusations against all of the LDC's, including Columbia.[27] Columbia's traditional transportation tariff and the similar transportation tariffs of other LDCS are not the focus of this investigation nor has Stand made any compelling arguments as to why the minimum threshold should be low-

[26] Columbia's Response to Commission's First Set of Data Requests, Request 5.
[27] See generally the Direct Testimony of John Dosker.

ered. Therefore, the Commission should make no recommendations to the General Assembly related to the LDC's traditional large volume transportation tariffs.

VI. CONCLUSION

The Public Service Commission has approved a workable retail natural gas competition program for Columbia that: (1) responds to the increasing demand of customers to have some control over the source of their natural gas energy supplies responds; (2) provides consumer protection through a vigorous Code of Conduct; (3) appropriately avoids cross-subsidization between CHOICE and non-CHOICE customers; (4) protects school tax and franchise fee revenues; and, (5) ensures reliability for customers because the regulated utility continues as the supplier of last resort. To recommend legislation that would eliminate CHOICE based on experiences in other states that have not occurred in Kentucky would be unfair to Kentucky customers and reduce competition in the marketplace. Rather, the Commission should recommend that no changes in legislative structure are required to provide adequate competition and the Commission should retain the authority to approve or disapprove CHOICE and gas transportation programs presented by individual natural gas distribution companies.

Respectfully submitted by,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post Hearing Brief of Columbia Gas of Kentucky, Inc., was served upon all parties of record by regular U. S. mail this 1st day of November, 2010.

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