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Via Hand-Delivery

November 1, 2010

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

RECEIVED

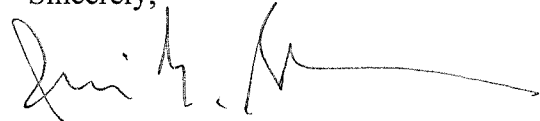
NOV 01 2010
PUBLIC SERVICE
COMMISSION

Re: In the Matter of: An Investigation of Natural Gas Retail Competition Programs, Case No. 2010-00146

Dear Mr. Derouen:

Enclosed for filing in the above styled action is an original and ten copies of the Post-Hearing Brief of the Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc..

Sincerely,



Iris G. Skidmore

Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

NOV 01 2010

In the Matter of:

PUBLIC SERVICE
COMMISSION

AN INVESTIGATION OF NATURAL) CASE NO:
GAS RETAIL COMPETITION PROGRAMS) 2010-00146

**POST HEARING BRIEF OF COMMUNITY ACTION
COUNCIL FOR LEXINGTON-FAYETTE, BOURBON,
HARRISON, AND NICHOLAS COUNTIES, INC.**

* * * * *

Comes the Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. (CAC), by counsel, and submits the following Post Hearing Brief in opposition to expansion of natural gas retail competition programs for residential customers:

CAC presented evidence through the direct testimony of Jack E. Burch, CAC's Executive Director since 1979, and the founder and President of WinterCare Energy Fund. CAC is a not for profit community action agency of the Commonwealth of Kentucky established in 1965. CAC's mission is to combat poverty. CAC operates 32 neighborhood and community centers and child development centers in six (6) counties. (Pre-Filed Testimony of Jack E. Burch, p. 2).

CAC also operates a number of utility assistance programs, partnering with local utilities, public and private funding sources, and community action agencies across the state. In addition to providing administrative services, financial management, and marketing support for the WinterCare Energy Fund since it was established in 1983, CAC has also managed the Federal Low-Income Home Energy Assistance Program (LIHEAP) since its inception. CAC has operated the Weatherization Assistance Program since 1978, and operates the Kentucky Clean Energy Corps project and Columbia Gas of Kentucky's WarmWise high energy furnace replacement program for low-income customers. CAC administers utility funded energy subsidy programs for Columbia Gas and Delta Gas. (Pre-Filed Testimony of Jack E. Burch, p. 5).

CAC has direct and relevant experience in the area of natural gas marketing. From December, 2001 through June, 2004, CAC operated the Community Action Council Buyers Club, Inc. within the Columbia Gas Choice Program. CAC formed this company in an attempt to aggregate low-income and other customers for collective buying power within the Choice Program. At its peak, it served approximately 2000 customers. It was discontinued, however, after CAC determined that it was not able to offer a savings to consumers on a sustained basis. (Pre-Filed Testimony of Jack E. Burch, p. 6).

ARGUMENT

I. COLUMBIA GAS OF KENTUCKY INC.'S CUSTOMER CHOICE PROGRAM HAS NOT SAVED CUSTOMERS MONEY.

From November, 2000 through 2010, the Columbia Gas of Kentucky Customer Choice Program has cost customers cumulatively \$17,280,299 more than if they had stayed with Columbia Gas of Kentucky. (Video Transcript, October 19, 2010, 11:37:19 – 11:37:55 and IGS Exhibit 3). Public dollars have had to be used by CAC for low-income customers to make up this differential. (Video Transcript, October 20, 2010, 18:43:03 – 18:43:23). Mr. Burch testified that 90% of the funds that CAC has available to assist its clients with their energy bills are federal dollars. Consequently, some portion of the \$17,280, 299 cost to customers who chose a marketer has been paid by tax dollars. (Video Transcript, October 20, 2010, 18:43:24 – 18:43:57). When CAC has used LHEAP money to cover this increase, it diminishes CAC's ability to serve other low-income customers. Mr. Burch stated simply: "The more you pay out per individual, the fewer individuals you are able to help." (Video Transcript, October 20, 2010, 18:45:07 – 18:45:30).

The 17 million cumulative gas cost to customers in the Choice Program is particularly troubling for customers living at or below the federal poverty level. Persons living on Social Security or who are responsible for 100% of their medical expenses are some among the low-

income persons who do not have sufficient income for housing, food, energy, or medicine. Paying more for gas than is necessary takes money out of use for increases in the costs of other necessities. (Video Transcript, Jack E. Burch, October 20, 2010, 18:44:15 – 18:45:06).

Results of the Columbia Choice Program over a ten year period is the best argument against expanded retail competition.

II. CAC'S EXPERIENCE WITH ITS BUYER'S CLUB IS INSTRUCTIVE.

Ten years ago, CAC participated in the collaborative process for the Columbia Choice Program. CAC advocated for a written contract and the ability to leave a marketer at any given time by notification. Because its concerns for low income customers were not addressed in the collaborative, and in an attempt to obtain a better price for its low-income customers, CAC formed the Community Action Council Buyer's Club, Inc. to negotiate directly with marketers and get the best possible price through the buying power of a large group. The Buyer's Club committed to sell below Columbia's price, make zero profit, and allow customers to leave when they chose. (Video Transcript, October 20, 2010, 18:45:57 – 18:47:36). In the period between December, 2001 and August, 2003, the Buyer's Club worked to its customers' advantage, and was able to sell gas to its customers at prices below Columbia's. (Video Transcript, October 20, 2010, IGS Exhibit 4). However, by 2004, the Buyer's Club had to be shut down because it was not performing well. (Video Transcript, October 20, 2010, 18:45:57 – 18:47:36). Even with the assistance of its broker, the Buyer's Club was unable to successfully project into the future. (Video Transcript, October 20, 2010, 18:47:53 – 18:48:56).

The only way for a customer to save money is for the retail marketer to provide the commodity at a substantially cheaper cost than the utility for an extended period of time. CAC's experience with the Buyer's Club shows that even with zero profit, customers could not benefit for an extended period of time. CAC urges the Commission to consider CAC's experience with

the Buyer's Club in making its decision on expansion of retail competition for the residential customers.

III. NOT ONLY HAS THE CHOICE PROGRAM FAILED TO SAVE CUSTOMERS MONEY OVER TIME, IT HAS ALSO CAUSED CONFUSION AMONG CUSTOMERS.

Columbia Gas of Kentucky's 2008 survey conducted by Matrix Group on the Choice Program showed that 17.2% of the 407 customers surveyed (70) had participated in the Choice Program. Out of the 70 that had participated in the Choice Program, 80% were guaranteed lower rates or thought it would be cheaper. The survey results show that almost half of the respondents were unclear whether they had saved money in the Choice Program. (Video Transcript, October 19, 2010, 11:34:04 – 11:34:44 and IGS Exhibit 2). Through 2008, the year of the survey, customers who had opted for a marketer in the Choice Program had in fact paid \$4,450,323 more than if they had stayed with Columbia Gas. (Video Transcript, October 19, 2010, 11:36:19 – 11:36:53 and IGS Exhibit 3).

Mr. Burch testified that low-income customers, especially seniors, are often very confused about what they have signed or to what they have agreed. He explained that low-income persons get telephone solicitations and then come to CAC with no understanding of the commitment they have made. Customers get locked into long-term contracts that can cause them to pay substantially more over time, and they have no ability to return to the local utility until the commitment has expired. Mr. Burch urged that after a solicitation customers should be given a proposed agreement written for a 6th grade education level, and the customer should be given time to contact a social services agency for assistance in understanding the agreement. (Video Transcript, October 20, 2010, 18:57:20 – 18:58:17 and Pre-Filed Testimony of Jack E. Burch, p. 7).

**IV. THE KCEC “SURVEY” OF ITS MEMBERS IS NOT A CREDIBLE
GUAGE OF KENTUCKIANS’ INTEREST IN EXPANDED
RETAIL COMPETITION.**

The Commission should not be persuaded by the rebuttal testimony of Ellen Williams concerning the Kentucky Consumers for Energy Choice or “KCEC” (the actual name appears to be Kentucky Consumers for Energy Competition). One of the original directors of KCEC is a member of the firm representing IGS, Inc. Ms. Williams, who stated that she was a volunteer spokesperson for KCEC, participated as a lobbyist on behalf of IGS, Inc. and SouthStar Energy Services, LLC in the last two legislative sessions. (Video Transcript, October 20, 2010, 12:04:33 – 12:04:54 and 12:09:05-12:09:25).

The source of the 22,000 persons mailed informational packets to join KCEC were persons already enrolled in the Columbia Choice Program and came from IGS Energy, Inc. The letters were printed on IGS Energy, Inc. letterhead. In addition, IGS Energy, Inc. paid for the mailing. (Post Hearing Data Request Response 1 submitted by Interstate Gas Supply, Inc., Southstar Energy Services, LLC, and Vectren Retail, LLC d/b/a/Vectren Source).

With regard to Ms. Williams’ testimony about the overwhelming support of choice from the letters sent out to 1000 of the 6000 members of KCEC, it is clear that this mailing was not a statistically credible survey. Executive Director of KCEC, Dan Bayens, picked 1000 persons from the 6000 members of KCEC, and he prepared the mailing in-house. The mailing was basically a petition to the PSC for the selected members of KCEC to sign in favor of expanded choice.

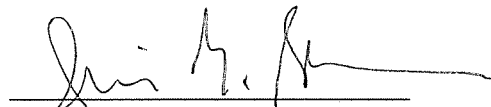
**V. SAFEGUARDS AND PROTECTIONS MUST BE PUT IN
PLACE IF THE COMMISSION RECOMMENDS EXPANSION
OF RETAIL NATURAL GAS COMPETITION.**

Persons living at or near the poverty level are the most vulnerable among us. It is essential that safeguards and protections be put in place if there is any expansion of retail natural

gas competition for residential customers. Customers must be able to make side by side “apples to apples” comparisons (comparative per unit prices) of the marketers’ prices and the utility’s prices. This information should be readily accessible to any customer asked to make a choice. (See Pre-Filed Testimony of Jack E, Burch, p. 8-9). Many customers are not sophisticated enough to compare prices on the marketers’ and the utility’s respective web sites or on the annual reports on the PSC’s web site, where Columbia claims information is accessible. (See Video Transcript, October 19, 2010, 11:38:00 – 11:38 51).

Marketers should not be permitted to lock in customers for a fixed period of time. Telephone solicitation should be prohibited unless there is a subsequent written confirmation that allows the customer to confirm his or her consent in writing. Customers names should not be released to marketers unless they consent and marketers should not be permitted to “cherry pick” their customers. Marketers must be required to reimburse the utility for the costs of all services the utility provides to the marketer, and the marketer’s costs and losses should be borne by the marketer and not reassigned to the utility. The utility should not have stranded costs passed on to its rate payers. Finally, the utility must be the provider of last resort and may not refuse gas supply service to any customer in its system. If being the provider of last resort results in additional costs to the utility, the marketers should bear those costs. (See Pre-Filed Testimony of Jack E, Burch, p. 8-9).

Respectfully submitted,



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CERTIFICATE OF SERVICE

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