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COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:

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

INTERSTATE GAS SUPPLY, INC.'S, SOUTHSTAR ENERGY SERVICES LLC'S AND VECTREN SOURCE'S POST-HEARING BRIEF

Comes now Interstate Gas Supply, Inc., SouthStar Energy Services LLC and Vectren Source (hereafter collectively the retail gas suppliers "RGS"), and file the following Post-Hearing Brief in the above-styled matter.

I. Introduction

House Joint Resolution 141 was passed during the 2010 Regular Session of the Kentucky General Assembly. The Resolution directed the Kentucky Public Service Commission to, "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."[1] Key to this process was an acknowledgement that a properly structured market was a critical element and that with a properly structured market it could then be determined what benefits could be derived, that without properly ascertaining those elements key to market structure benefits would be less ascertainable.

The General Assembly requested that the Commission consider the following elements:

(a) The role of the Commission in a competitive marketplace;

(b) The obligation to serve;

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

(c) The supplier of last resort;

(d) Alternative commodity procurement procedures;

(e) Non-discriminatory access to services offered;

(f) Codes of conduct for marketers and affiliates of regulated utilities;

(g) Billing which should include the desirability of the purchase of receivables;

(h) Certification of suppliers;

(i) Transition costs;

(j) Stranded costs;

(k) Uncollectibles;

(l) Disconnections;

(m) Steps necessary to maintain system integrity;

(n) Access to pipeline storage capacity; and

(o) Impacts of new natural gas retail competition programs on existing utility services and customers.

Five classes of parties have been involved in this docket: (i) utilities (Duke Energy, Columbia Gas of Kentucky, Delta Gas, LG&E and Atmos Energy); (ii) residential and small commercial retail gas suppliers (Retail Energy Suppliers Association, Proliance Energy, IGS/Vectren Source/SouthStar and Mx Energy); (iii) consumer groups (AARP, Community Action Council and Association of Community Ministries); (iv) transportation retail gas suppliers (Stand Energy); and (v) large commercial retailer Wal-Mart.

A hearing on the matters related to Joint Resolution 141 was held before the Kentucky Public Service Commission on October 19th and 20th.

At the hearing the parties' presented testimony which demonstrated vastly different positions concerning the elements involved in the collaborative study and what elements were essential to properly structured markets. Likewise, some matters arose well beyond the scope proposed by the General Assembly.

Significantly, the only testimony provided, either directly or indirectly, by actual identifiable consumers spoke in favor of consumer choice. No distinct individual consumer offered any negative evidence or testimony at any stage of the collaborative regarding consumer choice.

Similarly, no witnesses for the utilities, with the exception of Witness Cooper, and Witness Martin whose knowledge was limited to supply operations, had any direct knowledge of the actual operation of any choice programs in or out of Kentucky. In essence, with the exception of Witness Cooper, none of the utility witnesses could testify with direct knowledge about choice programs, and they only opined on anecdotal third party stories presented in the press. They could offer no more than mere supposition or conjecture.

As a practical matter, the General Assembly's request in House Joint Resolution 141 sought information on the elements of a properly structured retail natural gas market, and with those elements identified, what benefits could be derived from such a market – nothing more nothing less. Specifically, the elements suggested by the General Assembly for review espouse a clear desire to see, "if benefits could be derived from these programs, and to determine whether natural gas retail competition programs could be crafted to benefit Kentucky consumers." *Id.*

I. **DOES EXPANSION OF RETAIL NATURAL GAS CHOICE PROGRAMS BENEFIT CUSTOMERS?**

In a word, yes. Intuitively, in any commercial transaction the more options consumers have the better. The more participants in a given market create pricing and service pressures that necessarily accrue to the benefit of purchasers. Beyond the efficiencies created by these pressures, allowing customers a choice to purchase natural gas from an alternate retail supplier permits consumers the opportunity to make their own decision in setting their own cost of gas instead of relying upon the LDC. Likewise, allowing a natural gas retail choice program permits gas customers with budgetary concerns to purchase supply of natural gas from a gas marketer for a fixed time period at a fixed price instead being subjected to fluctuating monthly bills or "true-up" costs from an LDC. For example, in extolling a benefit of a choice program, Witness Mason of Stand Energy described his local dry cleaner in Ohio seeking to hedge his gas supply cost by purchasing a monthly supply of natural gas at a fixed price from a retail gas supplier instead of being subjected to fluctuating variable LDC prices (See Witness Mason day 2 of hearing: 4:52 p.m.). With a choice program, a consumer can determine the price plan that best fits his needs from among multiple suppliers. In a properly structured and functioning choice market, a variety of offers are available from a variety of suppliers, and the ultimate purchasing decision is left to the consumer. Without such choice, consumers are subjected to a one size fits all paradigm from the LDC.

Additionally, as shown from the Matrix Study performed by Columbia Gas of Kentucky customers want a choice of natural gas suppliers regardless of price ("**[p]articipants in the program did agree that they would still participate in the program in order to choose the natural gas supplier, regardless of whether of not they saved money by participating in the program**" ((emphasis added) see p. 7 of the Matrix Study attached to DR Set No. 2 Question 4

to Columbia from the RGS). Nothing in this docket contradicts the public sentiment presented by the Matrix Study and, **all** of the public comments in this docket are in support of retail gas choice.

With respect to price, sometimes the choice customers will come out ahead of the LDC sales customers in gas supply cost and sometimes they will not, e.g. RGS supplier Exhibit "2" at the hearing (Columbia Choice Annual Report from 2005 demonstrating a $14,510,256 total benefit in cost savings compared to sales customers as of December 2004). According to Witness Cooper of Columbia Gas, "except for the most recent period since September 2009, the number of Choice participants billed gas commodity rates below Columbia's gas cost commodity rate has exceeded the number of customers billed rates greater than Columbia's gas cost in most months" (Witness Cooper Rebuttal Testimony p. 3 lines 15-18). Retail gas customers should have the option to obtain natural gas supply from a third party supplier so they have the *opportunity* to: (i) set a fixed price and enjoy the knowledge of price stability on an un-reconciled basis; (ii) obtain a lower price than the LDC offers for gas supply cost; (iii) shop among a variety of other options, like seasonal pricing; and (iv) most importantly take control of their purchasing decisions, purchase those products that best fit with their risks and preferences, and take an active role in energy purchases. Lastly, in order for retail gas customers to have an opportunity for benefits from a natural gas retail choice program, the market needs to be properly structured.

For instance, although in most ways the Columbia of Kentucky choice program is well structured, a structural weakness in the current program is that it has consistently had a potential termination date. Given the capital costs of entering a new market coupled with the expense of finding and maintaining customers, the ongoing "pilot" nature of the program with ongoing

termination dates has limited the actual number of marketers participating in the program as well as the products a supplier is willing to offer, therefore, limiting the choices available to customers. The sunset provision puts limits on some of the products that can be offered by the marketers operating in Kentucky to the detriment of the consumer. Expanding retail choice on a permanent and sustainable basis via legislation will ensure that the programs will continue without the risk of a sunset provision and will expand the number of competitors and competitive options to customers as marketers will no longer be concerned of investing in market entry only to have the program discontinued after a few years. (See Rebuttal Testimony of Witness Petricoff p. 5-6, beginning at line 9 on p. 5 and continuing to line 1 on p. 6)

II. WHAT SHOULD THE COMMISSION FOCUS ON FROM ELEMENTS DESCRIBED BY THE GENERAL ASSEMBLY?

Pursuant to the General Assembly's previous mandate of specified elements to address in this docket, the RGS reiterate their aforementioned comments in this docket regarding same and submit the following additions based upon rebuttal testimony and live testimony from the hearing on October 19th and 20th.

A. The role of the Commission in a competitive marketplace.

The parties agreed that the Commission should play an essential role in the development of a competitive marketplace. Specifically, the parties suggested that the Commission should be the forum in which development of the substantive regulatory rules for retail gas suppliers occurs. Other stakeholders, such as the utilities and competitive natural gas suppliers should also play a key role in this forum. As demonstrated through witness testimony at the hearing on this matter, the actual expertise and experience related to the programs likely rests with the suppliers and entities that possess experience in the other jurisdictions. Experience from collaborative efforts in Ohio demonstrate that the Ohio Commission worked in concert with competitive retail

suppliers, the utilities, the attorney general's office, and interested consumers to develop a viable choice market and the rules related thereto (See Witness Mason day two of hearing: 4:47 p.m.). RGS submits that all parties would benefit from a similar process in Kentucky. Certification processes for those participating in the Choice program at the residential level, wherein the Commission would determine the technical, financial and managerial capabilities of those suppliers would be a critical element of a properly structured program. Further, rules for interaction with residential consumers, such as some standard contract disclosures, process for enrollment of customers through direct mail, telemarketing and internet protocols, as well as well developed rules related to direct contact with consumers through face-to-face solicitation, renewal rules that allow for the effective and meaningful renewal of consumers, are all critical elements of a program and all should be developed through a Commission proceeding. Upon implementation of a retail gas choice program, the Commission, with assistance from the utilities and retail gas marketers, should likely provide consumers information about choice, including basic descriptions of what choice is, how it works, information regarding suppliers and supplier contact, questions consumers should ask when shopping in the market, and even some general information regarding the type and nature of the products that are available in a competitive market from suppliers. The information could be provided through a website, and suppliers could provide some standard information regarding offers that they have from time to time in the market, although with a general understanding provided that for more detail and up-to-date product information consumers should contact the suppliers directly. Lastly, all parties also agreed that the Commission should act as a regulatory body in enforcing marketer and utility codes of conduct in order to provide reasonable consumer protections and that the utilities and marketers participate on a level playing field.

B. **<u>The obligation to serve.</u>**

Simply stated, there need be no loss of the obligation to serve by a utility in a properly structured gas choice program. Certainly other markets have clearly demonstrated that the provider of last resort obligation can effectively and efficiently be shifted to the competitive market with no deterioration in the quality or reliability of service (see Dominion East Ohio, Vectren Energy Delivery of Ohio and Columbia of Ohio programs*)*, although no shift need occur to properly structure a market at the initial stages of market development. In this matter, Columbia Gas of Kentucky, Inc. ("Columbia"), the only LDC maintaining a retail gas choice pilot program in Kentucky, demonstrates this conclusion. Columbia correctly addressed this concern in the design of the Columbia Choice Program through a variety of measures (e.g. mandatory capacity assignment, recallable commodity, marketer financial certifications). As such, according to Witness Cooper of Columbia, "...no customer has ever failed to receive the quantity or quality of natural gas desired for consumption due to the failure of a marketer to deliver gas on behalf of that customer to Columbia." (See p. 7 lines 19-23 of Witness Cooper direct testimony). Columbia also stated, "...Columbia has experienced no loss in its obligation to serve. This ability to guarantee reliable service to all customers is due to the proper design of the Customer Choice program for Columbia's system." (See IGS/Vectren/SouthStar DR No. 1, Question No. 3 to Columbia).

Some parties to this proceeding speculated that the expansion of retail choice will impact the reliability of service and result in a loss of the obligation to serve of participating LDC(s) (e.g. see Direct Testimony of Witness Brockway of the AARP p. 3 lines 25-26). However, there is no credible evidence to support this position and in fact 5.1 million households in multiple states in dozens of utility jurisdictions throughout the U.S that have been successfully shopping

without incident or issue. Succinctly, no utilities have failed on account of participating in a retail choice program and the most credible benchmark on this issue comes from Columbia who operates choice programs in all six of the states in which it has local distribution companies some of which have been in place for more than ten years.

C. **The supplier of last resort (SOLR).**

Most LDCs in this matter suggest that they should remain the SOLR in any choice market. Upon *creation* of a new retail choice program, the RGS generally agree. Moreover, the RGS do not have complaints regarding LDCs remaining in the SOLR position so long as the market is properly structured and there is a level competitive playing field (which is addressed more in depth below). However, experiences from other jurisdictions (e.g. Ohio and Georgia) demonstrate the SOLR role is not a position that *must* be filled by the incumbent utility as a Choice market evolves. For example, Witness Mason discussed the auction process in Ohio (See Witness Mason day two of hearing: 4:45 p.m.).

D. **Alternative commodity procurement procedures.**

An example of alternative commodity procurement procedure is an auction as described by Witness Mason of Stand Energy day two of hearing: 4:45 p.m.). In Ohio, for example, three of the four major utilities have replaced the GCR with an alternative procurement process pursuant to which customers not served by competitive suppliers or government aggregation are served by competitive suppliers who are successful bidders in Commission approved auctions. The price of this service is determined by the monthly NYMEX settlement plus a retail price adjustment determined by the auction process. The retail price adjustment is fixed for the pre-determined auction period. This process eliminates after the fact adjustments to the commodity price thus creating greater market price transparency, allows competitive market forces to set the

"default product" pricing, promotes greater price awareness among consumers of natural gas and the impact consumers can have on their monthly bill as a result of enhanced transparency, affords enhanced opportunities for customer education. It has also been demonstrated in each instance that the resulting competitively bid NYMEX plus price was lower, significantly in most instances, than where the GCR price resulted historically when converted to a NYMEX plus price. (See DR Response No. 2 by IGS/SouthStar/Vectren Source to Duke Energy Exhibit D detailing Public Utility Commission of Ohio Staff reports after auctions in Ohio).

E. **Non-discriminatory access to services offered.**

All parties agreed in this docket that non-discriminatory access to services for all customers should be an element in a successful choice program. In order to achieve non-discriminatory access to choice products, most parties agreed that certain items need to be addressed, including:

- an affiliate and marketer code of conduct and the rules related thereto;
- supplier/utility interaction protocols so that enrollments are processed expeditiously, interactions between supplier and utility are productive, and generally the utility and supplier agree to work in good faith with each other toward resolution of questions and concerns;
- services for which consumers pay through ratemaking are provided on a non-discriminatory basis and on an equal footing regardless of who the commodity provider is (for example, if the utility does not de-contract for commodity assets as a consumer migrates, but notwithstanding the migration continues to require the consumer or the consumer's supplier to pay for those assets, then the assets or the value of those assets must be made available to the consumers through the supplier);

- purchase of receivables programs with utility consolidated billing (so that consumers at all credit risk levels can participate and so that rate-payers continue to have access to the receivables management systems paid for through base rates); and
- generally creating a level playing field so that consumers get the services for which they pay and have good information upon which to make decisions (e.g. apples to apples comparisons).

F. **Codes of conduct for marketers and affiliates of regulated utilities.**

An affiliate code of conduct is appropriate and necessary. An affiliate code of conduct should ensure the creation of a separate non-regulated affiliate with effective functional and physical separation of employees to avoid cross-subsidization and preferential access to information and business systems.

The RGS also advocates the development of a marketer code of conduct to assure compliance with relevant programmatic requirements. The marketer code of conduct can be limited to commodity operational matters to assure the continued integrity of the utility system assuming the existence of Commission-promulgated marketing rules.

G. **Certification of suppliers.**

The RGS believe that certification of a supplier is essential to the creation of a reliable competitive market. The certification process should require the supplier applicant to demonstrate financial, managerial, technical and operational competence to serve residential customers. A certification process provides the Commission with an opportunity to review the capabilities of the supplier, to help ensure that the supplier has the ability to fulfill contracts, interact with customers and will comply with all applicable rules and laws. The certification process also enables continued Commission scrutiny of the supplier in the sense that if the

supplier fails to perform, the Commission would have the ability to restrict the certification, remove the certification or make it conditional on achieving some positive results. Certification through the Commission exists in all well developed programs, including Ohio and Georgia, as well as in Pennsylvania, New York, Maryland, Virginia, Michigan, and Illinois. Ohio Revised Code 4929.20(A) delineates the certification process in Ohio, although greater detail is contained in Ohio Administrative Code Section 4901:1-27. Similar provisions exist in New York in its Uniform Business Practices act, Michigan through Public Act 634 of 2002, Illinois Section 19-110 of the Public Utilities Act ("Act") and 83 Ill. Adm. Code 551 ("Part 551"), Maryland, Virginia and Pennsylvania.

H. **Transition costs.**

It is important to consider transition costs when properly structuring a competitive natural gas market. However, transition costs need to be closely examined so that only the incremental expenses are included in such costs and that the appropriate parties are responsible for those costs. Each utility will likely have differences between the incremental costs associated with creating the necessary infrastructure to support a choice program, so some flexibility needs to be considered in dealing with those costs. It is important to also consider that all similar rate class customers will have similar opportunities when it comes to competitive options, assuming programs are properly structured and include Purchase of Receivables, so sharing costs among similar rate classes is likely the most appropriate structure, for most transition costs.

I. **Stranded costs.**

This is a central issue that must be addressed in properly structuring a market. This issue is fairly easily addressed, although there may be different ways to address it from utility program to utility program. It is the experience of RGS that very few stranded costs, if any, need to be

created; and, typically if stranded costs become problematic they do so as a result of an improperly structured market.

For example, as discussed more fully in RGS testimony, a utility will structure its capacity and storage based upon a calculation of design day needs of its firm customer base, and has likely done so without consideration of competition. As such, if the utility is reticent to de-contract for capacity and storage contracts as customers migrate away from utility commodity service to competitive supply service, in a properly structured market either the capacity and storage assets need to follow the customer as the customer moves from supplier to supplier (on a release and recall basis) or, if the assets are going to remain with the utility then comparable services need to be provided to the party that is responsible for the costs of those assets. For example, Columbia Gas of Kentucky uses a mandatory capacity assignment program and, "the design of Columbia's program avoids stranded costs and shifting costs between Choice participants and Columbia's sales service customers." (see Rebuttal Testimony of Witness Cooper, p. 2 lines 6-8). At times a utility will continue to bill the migrated customer for their share of those costs, but will provide delivery, balancing and peaking services that approximate the value the assets had they been released. An example of this is the Enhanced Firm Balancing Service provided in the Duke Energy-Ohio service territory. In other instances, the assets will be released to the supplier on a recallable basis with the costs of those assets being paid directly by the shipper to the pipeline or storage field provider. An example of this is the Columbia Gas of Ohio program. In either instance the utility remains unaffected in its responsibilities because either the assets can be recalled or are already in its possession and can be used to meet any needs resulting from a defaulting supplier. If, however, the program is structured where the customer or the customer's supplier is required to continue to pay for the assets, yet gets neither

a release nor comparable value in the form of modified delivery, balancing and peaking services, then the migrated customer will be subsidizing either the utility or non-migrated customer, or both. Since most of the remaining costs are recovered through monthly administrative charges and base rates, in order to assure equity and the avoidance of stranded costs, the migrated customer must continue to derive the benefit of the systems paid for through those customer paid rates.

J. **Uncollectibles.**

This is also a critical issue to address when properly structuring a competitive market and is in some ways a subset of the previous question regarding 'stranded costs' as well as the questions regarding equity. All ratepayers in similar classes pay the same base rates, administrative charges and related items. With most retail access programs this does not change even if the commodity supplier changes from the utility to a competitive supplier. The costs associated with an accounts receivables system held by the utility, including call center capabilities, accounting capabilities, information technology, personnel, receivables collection and management, disconnection and reconnection functions and all related systems, people and processes are recovered through base rates and/or administrative charges that are the same for all residential customers. As the customer migrates to competitive suppliers, the utility should remain responsible for the uncollectibles by offering a purchase of receivables program, for a number of reasons including:

(a) continuity of receivables management;

(b) customers continue to receive the benefit of all of the systems for which they pay through the rates;

(c) suppliers can make offers to customers of all credit rating levels; and

(d) disconnection and reconnection protections and processes remain the same for all customers and remain in the purview of the utility.

Because disconnection processes represent the strongest and most effective tool available to ensure customers that can pay do pay for the services they receive, a significant inequity is created if the utility does not have a purchase of receivables program where the utility manages the receivables and uncollectibles. In some instances suppliers have been provided the ability to order shutoff for non-payment, but in those instances other concerns may be created and in at least one jurisdiction where suppliers have that ability, New York, it was determined that POR was a more efficient and effective means of ensuring equity with respect to all aspects of the systems.

Additionally, in the Commonwealth of Kentucky it is important to use a POR program to avoid any concerns regarding school and franchise tax fees. Other parties to this proceeding raised the concern of decreased school and franchise tax fees. A properly structured POR avoids this concern completely according to Columbia Gas, specifically, "[c]olumbia's customer choice program was designed to avoid any negative impact on school or franchise tax revenues and has been succeeded (sic) in maintaining school and franchise tax revenues. This is accomplished by the requirements of the Columbia tariff for billing and collection of marketer rates and remittance of net revenues to marketers." (See DR Response of Witness Cooper to IGS/SouthStar/Vectren Source DR #2; Question No. 2). Witness Cooper echoed these sentiments in the hearing as well (See hearing tape: Witness Cooper: Day One: 11:45 a.m.).

An essential element of any purchase of receivables program is the ability of the utility to remain whole on all uncollectibles. In Ohio all utilities offering competitive programs have bad debt tracker mechanisms, wherein all of the uncollectibles are included in a single rider for each

utility that is paid for by all residential customers regardless of the source of the uncollectible. In other programs, the uncollectibles are included in various mechanisms, although in those programs there is typically a discount to the receivables purchased, in the 1-2% range (typically reflective of the system wide bad debt experience). Flexibility in program design is appropriate as long as the program is designed in an equitable manner so that no customer class is required to pay for these costs in a duplicative manner. The Ohio model is very transparent and equitable, since all customers are proportionally responsible for the uncollectibles and the utility is responsible for effectively managing the receivables for all customers, thereby ensuring that all of the receivables management tools and customer protection protocols are equally applicable to all customers. It is also important to treat the purchased receivables just like any other receivable owned by the utility, so that the same receivables management tools, including collection and disconnection, can be utilized by the utility on a non-discriminatory basis while assuring consistent consumer protections.

K. **Disconnections.**

Summarily, disconnections should be part of a purchase of receivables program, and should be permitted to recover supplier commodity charges subject to the same rules, procedural safeguards, and with the same consumer protections as are in place for utility charges. To do otherwise will allow certain customers to take advantage of the construct of the system, and selectively pay for services and not pay for others. It also unfairly advantages the utility and its customers over shopping customers when disconnections are not permitted, providing the most important tool for persuading those that can pay to pay for services. Inconsistency in disconnection authority also results in an inequity to supplier customers because all customers who have shared the expense of utility systems to manage the receivables, including the

disconnection process should derive the benefit of collection and disconnection leverage to assure that all customers who can pay do pay for utility services. Unnecessary and avoidable administrative and programming costs are incurred if the utility has to differentiate between supplier charges for commodity and utility charges for commodity, with no additional benefit to the system being derived from such separation. This issue was recently considered by the Pennsylvania Public Service Commission and determined that it is appropriate to allow utilities to disconnect for non-payment of supplier natural gas charges. Disconnection for supplier natural gas receivables is permitted in the most competitive programs, including Ohio, New York, Michigan, Pennsylvania, Georgia, and Indiana.

L. Steps necessary to maintain system integrity.

Several elements should be considered in addressing potential concerns regarding the maintenance of system integrity. However, as a preliminary comment, it is important to understand that millions of consumers in dozens of programs currently take natural gas commodity service from alternative natural gas suppliers, and in two states Ohio and Georgia, the utility has essentially removed the entire commodity procurement function from its hands and placed those functions in the hands of competitive commodity suppliers, without any degradation in system integrity or reliability. In fact, it is arguable that system integrity has increased, as the supply commodity procurement function has been dispersed to a wider group of suppliers, instead of concentrated solely within the utility, with multiple parties standing ready to assist in the event of a default. This dispersal spreads capital risks over a more diverse group of suppliers, allows for additional processes and procedures for evaluating risk and protecting against those risks and supplier defaults, and creates a more diverse supply portfolio than any single provider can maintain.

In developing protocols for ensuring continued system integrity, which to the RGS means that regardless of the supply source the system continues to maintain reliability and deliverability of commodity during all periods up to critical day requirements, the following should be considered:

a) State level review and certification of suppliers' financial, technical, managerial and operational capabilities;

b) Utility non-discriminatory application and testing procedure/process wherein the utility would undertake its own credit review process, with predetermined non-discriminatory criteria, test to ensure capability of IT systems for interactions between the supplier and utility, and a technical demonstration of ability by the supplier to meet daily and seasonal delivery requirements;

c) Tariff provisions related to delivery non-compliance charges that are reasonable in scope (such as penalties for failing to meet a delivery requirement on a critical day);

d) The requirement of reasonable collateral (taking into consideration purchased receivables in this process in determining the level). Bonds, letters of credit, parental guarantees and cash are all reasonable forms of collateral. The purpose of the collateral is to provide the utility with collateral to use to offset any impact there may be on the system or customers as a result of a supplier default; and

e) Recallable capacity assignment. This ensures that in the event of a default the party acting as provider of last resort always has available, on a recallable basis, those assets assigned to a defaulting supplier.

M. **Access to pipeline storage capacity.**

For purposes of reducing or eliminating stranded costs associated with pipeline and storage capacity and the establishment of an equitable market structure it is important to ensure that customers receive either the use of those assets for which they pay or a reasonable approximation of those assets through related services. It is possible to ensure that stranded costs are minimized and at the same time that the market is structured equitably without doing a "slice of the system" type of distribution of pipeline and storage assets; however, to do so and continue to charge the customer or supplier for the costs associated with those assets it is imperative that comparable value be provided through balancing, delivery and peaking services. This means that if assets are not released but the costs continue to be borne by those ratepayers or their suppliers for the assets, a flat delivery protocol would need to be established so that suppliers essentially deliver a stable amount of gas throughout the year. Columbia Gas of Kentucky has this type of system and it functions well.

From RGS' perspective, actual or functional access to pipeline and storage assets is a critical issue to be addressed, although there are several ways to structure this element of the program to create dynamic programs. Maintaining flexibility among utilities on this aspect of program development is acceptable, as long as the underlying premise is that the market structure can demonstrate that cost causation is matched up with services and/or assets received, so that there are no stranded costs and migrated customers are not unfairly burdened with costs without equitable services or releases.

N. **Impacts of new natural gas retail competition programs on existing utility services and customers.**

Retail competition does not need to interfere with existing utility services. At the developmental stage of retail competition, whether a consumer selects a competitive product

from a competitive supplier is ultimately up to the consumer to decide. If the program is properly structured a level playing field is constructed where a) costs are appropriately allocated to those receiving the benefit of the assets and services and b) a purchase of receivables program is implemented pursuant to which the utility is held harmless so that all customers can be afforded a choice of supply service alternatives. Also in a properly structured market there should be a Commission certification process and Commission promulgation of consumer protection rules that appropriately balance the interest of the consumer in having a reliable environment in which to shop and the interest of suppliers to compete in a dynamic market. Additionally, the introduction of competition does not displace utility services related to customer payment. Budget billing options, extended payment arrangements and low income assistance programs can continue without impact.

III. **HOW SHOULD A RETAIL CHOICE MARKET BE PROPERLY STRUCTURED**?

A. **Can Current Regulated Reconciled Utility Prices be Compared to Offerings by Retail Gas Suppliers**?

LDC and RGS commodity prices have several significant differences, one of which is the value proposition to the customer. In purchasing gas under the traditional GCR/GCA paradigm the utility is subject to "prudence reviews" in making its gas purchase decisions and, as such, the utility generally makes decisions in a calculated manner to avoid disallowance of its gas purchases in subsequent prudence reviews. Thereafter, in pricing the cost to customers the utilities generally *estimate* the cost of gas for their customers for a period of time subject to a "true-up" or reconciliation period when the actual cost to the utility and hence the cost to the sales customers is determined with the benefit or loss to customers being spread over multiple

periods (e.g. Hearing Tape Day One: Witness Murphy: 3:11 p.m.; Question of Witness Murphy of LG&E by IGS/SouthStar/Vectren Source Counsel: "Do you spread your GCR over multiple months? Answer: "Yes."). Accordingly, the LDCs offer a variable price that generally does not reflect the actual cost of gas supply until "true-up" occurs so the traditional GCR can never have a temporal relevance to the market price at the time consumers are consuming the gas. (see Hearing Tape Day Two: Witness Petricoff 11:28 a.m.).

Conversely, the RGS offer a fixed cost commodity to the consumer – with no "true up". Although competitive suppliers can, and in properly structured markets do, offer a variety of products, fixed, variable, seasonal, caps, collars, and other products, often utility regulated reconciled GCRs are compared to all competitive products without differentiation. There are inherent flaws in comparing GCR rates to competitive rates of any nature, since as previously stated the GCR is not a transparent price. The GCR is an estimate and is reconciled so that it carries prior period adjustments while distorting the actual price in each instance. Even setting aside those issues related to a utility regulated GCR, the LDC's offering is more analogous to a variable rate than a fixed rate, and comparisons for purposes of ascertaining whether a consumer "saved" are misplaced. For instance, variable and fixed home mortgage rates offer very different value propositions, and the attractiveness of one type of mortgage over another will depend on the goals of the individual consumer. Risk aversion will more likely have associated with it a desire for a fixed rate mortgage product, where a more risk tolerant individual will likely gravitate toward a variable rate mortgage product. Although a consumer may, and likely will from time to time look at how mortgage rates are rising and falling in the market after making a selection between a fixed and variable rate mortgage, it is very unlikely the consumer will compare the fixed rate he or she selected to where the market went on a variable rate from the

time of selection forward. And, if the consumer does perform a comparison, it would not likely be to make a value determination as to whether or not they "won" or "lost" but rather would simply be to determine whether on a going forward basis a different selection should be made. (See Hearing Tape Day Two: Witness Petricoff 11:35 p.m.) Similarly, a risk adverse retail choice participant benefits from an RGS product by "locking in" his fixed price for a period of time without having to worry about fluctuating gas supply cost from the LDC. In other words, the customer pays for what the product actually costs minimizing risk of exposure. Fixed prices have value in minimizing risk for a risk averse consumer. Whether savings or loss occur compared to the LDC(s) variable price is dependent upon the function of the market once the price is locked. Likewise, as a practical matter, the RGS fixed price offerings provide a more transparent accurate cost of gas which is not spread across multiple periods subject to reconciliation or "true-up". Counsel for AARP discussed budget billing as an option to gain predictability in price instead of RGS products however budget billing is also subject to "true-up" and hence is basically the same as the utilities' variable fluctuating rate. (See Hearing Tape Day Two: Witness Petricoff 11:44 a.m.). Simply put, RGS commodity prices provide the best, most transparent and truest indicator of gas supply cost rather than variable utility offerings. In short, a risk averse retail choice customer benefits by having the option to choose and **no contrary testimony exists in the record**.

One final note in this section, it has been postulated over the years in various contexts that a utility somehow manages its commodity costs in a way that ensures its commodity purchases are the "least cost" purchases. Stepping back from all of the comments made in this proceeding by all of the parties and looking at this statement alone, it should be obvious that without some means of divining the future, no party can ensure that each purchase it makes is

going to be the lowest possible price for that natural gas. Natural gas can be purchased in physical form, can be backed by natural gas hedges on the futures markets, can be purchased on the spot market, on the NYMEX through a brokerage account, through physical traders, local producers and in each of these instances through a multitude of variations and combinations. To state that any entity could somehow determine from the vast array of all available purchases and sources which will result in the lowest possible price for that natural gas with each purchase, to ensure that the combination of purchases resulted in the lowest possible price each and every time is, frankly, absurd. The timing of purchases along with the skill and knowledge of the individuals making the purchases will, to a great extent dictate the relative comparative costs for those purchases as they compare to other sets of purchases. Timing and structure will be driven by the specific entities goals related to those purchases, and for the competitive market the goal is to provide value and satisfaction for the consumer, whereas the utility is attempting to avoid hindsight disallowance of each purchase. Since the goals are different, the timing and structures will be different, thus achieving different results. During time of market decline, competitive products will undoubtedly appear somewhat less favorable than utility prices, during times of market rise just the opposite, but in both situations allowing consumers the opportunity to select for themselves is the goal all parties should be aspiring to achieve.

B. **Verifying the True Cost of Gas Supply for an LDC and Retail Gas Supplier is an Important Element of a Properly Structured Retail Choice Market**.

All of the LDC(s) receive revenue from basically three sources (not including tariffs): (i) base rates; (ii) customer charge/administrative charge; and (iii) GCA/GCR. Moreover, the LDC(s) receive a "rate of return" on base rates and customer charge/administrative charge but they do not receive any rate of return on gas cost recovery or adjustment (GCR/GCA). This general revenue structure for LDCs incentivizes LDCs toward compartmentalizing

administrative costs, upstream contracts and other costs which should be part of a traditional GCA into base rates in order receive a rate of return on these elements. With respect to a properly structured GCA/GCR, Witness Petricoff discussed the elements of the LDC's gas supply cost with counsel for the AARP, mentioning transmission costs, storage costs, distribution costs and mark up as items, etc, to be included in the GCA/GCR. (See Hearing Tape Day Two: Witness Petricoff 11:41 a.m.).

IV. **What are the Benefits of Residential Choice Programs to Consumers**

There are multiple benefits to consumers of a choice program including but not limited to: (i) hedging price risk; (ii) potential for innovation; and (iii) the opportunity for supply costs below that of the LDC (see Hearing Tape Day Two; Witness Petricoff: 11:25 a.m.). In addition, enabling consumers to take an active role in making purchasing decisions is simply part of the fabric of what makes a capitalistic society function. With choice comes information, control and power, Energy is an important part of everyday life, and through choice, consumers get more information, have the ability to select from a more diverse group of sellers, which forces those sellers to become better at providing services, products and differentiating what each offers from the offers of their competitors, which drives more value to consumers.

With respect to hedging price risk, the benefits of a choice program are obvious. Fixed products avoid "true-up" costs and no party has or could dispute this fact. Witness Mason of Stand Energy articulated a good practical example of hedging price risk when discussing his local dry cleaner. (see Hearing Tape Day Two: Witness Mason: 4:52 p.m.). Witness Mason's local drycleaner sought to budget his natural gas supply cost for the coming year by locking in a fixed supply cost from a RGS or remain with the utility. To the extent that the dry cleaner was risk adverse and he in fact locked in with a retail gas supplier he would pay a fixed supply cost

without any future "true-up" expenses, thus avoiding the LDC's fluctuating variable costs. Along those same lines, thousands of small businesses in the Commonwealth of Kentucky could benefit from the opportunity to hedge their gas supply risk with a fixed contract and avoid the LDC's variable rate – all public comment in this docket supports this argument. The same logic holds true for persons living on a fixed income to the extent they wish to avoid fluctuating bills[2] during the year. Also, regardless of contrary argument, customers want choice, specifically, "**[p]articipants in the program did agree that they would still participate in the program in order to choose the natural gas supplier, regardless of whether of not they saved money by participating in the program**" (emphasis added) see p. 7 of the Matrix Study attached to DR Set No. 2 Question 4 to Columbia from the RGS). Further, over 6,000 Kentuckians joined Kentucky Consumers for Energy Competition, Inc. as presented by IGS/SouthStar/Vectren Source's Witness Ellen Williams. Nothing in this docket has contravened the fact that customers want the opportunity to choose gas suppliers regardless of price.

With respect to the potential for innovation and job creation, to the extent small businesses are provided the opportunity to purchase their supply of natural gas from retail gas suppliers benefits will arise. First, if small businesses have the opportunity to hedge gas supply costs through retail choice, it eliminates price volatility allowing for the business owners to more properly gauge his or her businesses' fiscal health and expenses, thus permitting the owner the ability to make more fiscally responsible decisions for hiring new employees or purchasing more equipment or goods. Second, from an economic standpoint if a market is properly structured opening up retail choice competition allows many retail gas supply companies to compete to supply retail gas. The more retail gas suppliers present means more retail gas suppliers buying gas at different times within the market and the possibility for many variations in price from

[2] As discussed *supra* on p. 22 a "budget billing" option does not avoid "true-up" costs either.

multiple sources – which benefits consumers allowing them to purchase the most beneficial product based on each individuals unique needs.

Opponents of choice have made much of the most recent Columbia Choice Annual Report. This report details an approximate $17,000,000 overall negative cost compared to the Columbia sales customers over the life of the program. This number, devoid of context, is deceptive in that it suggests inherent economic loss to choice costumers. In fact nothing could be farther from the truth. The report and the number have no bearing on an individual consumers experience with gas choice. Consumers enter and leave the gas choice market in a fluid manner - not from calendar year to calendar year. To the degree that price was the primary factor that caused an individual to participate in the choice program at a given time, one can reasonably conclude that if the price no longer provided better savings then that person would leave the program. Conversely if stability and service took precedence in an individual consumer's decision making they would likely stay in the program. With respect to the Columbia Choice Program, one can easily see wide gain and loss fluctuations throughout the life of the program, with the Choice Customers being ahead approximately $14,500,000 as of December 2004. (see IGS/SouthStar/Vectren Source Exhibit #2 – Columbia Choice Annual Report for 2005; see also the Notice of Erratum filed in this docket on October 27, 2010). Likewise, Community Action Council's Buyer's Club demonstrated costs savings below that of the LDC in 17 out of 22 months. (see IGS/SouthStar/Vectren Source Exhibit #4). At the outset of this issue, it is important to point out that choice programs do not guarantee lower gas supply costs rather the *opportunity* for lower priced gas supply costs. However, based on the foregoing and below, it is apparent that Choice programs can provide gas supply costs below that of the LDC.

The reasons for the differing "snapshots" between retail marketers and LDCs in the Columbia Choice Program are varied but according to Witness Petricoff the two biggest years in the Columbia Choice program (e.g. approximately 14,500,000 positive for choice customers in 2004 and 17,000,000 negative for choice customers in 2010) are outliers resulting from major volatility in the natural gas market (Hearing Tape: Witness Petricoff: Day Two: 11:14 a.m.). With respect to the current 17,000,000 negative figure, it arose from the global economic meltdown which Witness Burch of the CAC referred to as, "the greatest economic meltdown since the Great Depression." (see Witness Burch direct testimony p. 2 lines 16-17). More specifically, "gas…sold for an average annual cost of $6.8060 per Dth in 2007, rose 32% to $9.035 per Dth in 2008, only to drop some threefold to $3.986 in 2009." see p. 6 lines 22-23 of Witness Petricoff Rebuttal Testimony and Exhibit "2" of Witness Petricoff's Rebuttal Testimony. In late 2008, retail marketers purchased gas supply for customers as gas supply costs neared record highs seeking to hedge potential risk of gas supply cost increasing further. Customers in turn locked in contracts with the marketers seeking to avoid potentially ballooning gas supply cost. Predictions at the time indicated that gas supply cost would rise well above $20.00 a Dth. However, instead of gas supply cost continuing to rise in 2008, we entered, "the greatest economic meltdown since the Great Depression" (Witness Burch *supra*) and demand for natural gas supply plummeted through the floor (gas sold for $3.986 per Dth in 2009 as opposed to $9.035 per Dth in 2008 – Witness Petricoff *supra*). With this current 17,000,000 negative number, utilities and consumer groups now flippantly second guess the previous decisions of the consumers that lock-in fixed contracts in 2008 and decry the Choice program a failure based on price alone. However, what would their argument have been if: (i) gas supply cost in 2008 and 2009 rose above $15.00 a Dth and continued to remain high; or (ii) this collaborative docket had

occurred in 2005 with the Choice Program showing approximately $14,500,000 in savings compared to Columbia sales customers? In any event, both 2010 and 2005 are outliers regarding price (see Hearing Tape: Witness Petricoff: Day Two: 11:14 a.m.) and do not demonstrate an accurate or true view of the Columbia Choice Program. Review of the other years of the Columbia Choice Program demonstrate a program which fluctuated consistently with totals between approximately $1,500,000 in savings to approximately $4,000,000 in amounts above than the Columbia GCA (see IGS/SouthStar/Vecrtren Source Notice of Erratum). In fact, with respect to the life of the Columbia program, according to Witness Cooper of Columbia Gas, "except for the most recent period since September 2009, the number of Choice participants billed gas commodity rates below Columbia's gas cost commodity rate has exceeded the number of customers billed rates greater than Columbia's gas cost in most months" (Witness Cooper Rebuttal Testimony p. 3 lines 15-18). As such, save the most recent turn of events in 2009, Columbia choice customers consistently had gas supply cost below that of the LDC and choice customers certainly can obtain a price better than that of the LDC consistently.

Without belaboring the issue of price, it is also important to point out that the price comparisons between RGS gas costs and LDC GCA/GCR are not as reliable as one may think, based upon the utility choosing to compartmentalize administrative and at some times commodity costs into base rates or other elements in order to gain a rate of return on a cost component which should be included in the GCR.

Another issue is, as stated previously herein, the GCA/GCR is not a reasonable barometer for comparison of fixed prices. At best, the GCA/GCR is a variable price, setting aside all of the items discussed earlier that make it non-transparent, and should not be used to benchmark fixed price products any more then fixed rate mortgage prices should be benchmarked for performance

against variable rate mortgages. Further, as was indicated by each utility witness, **none** of the costs beyond commodity and demand costs are included in the calculation of a GCA/GCR, and in some instances not even all of the demand costs were included. Rather, administrative, management, IT, hedging and all the costs related to providing commodity service to consumers are collected by utilities through base rates and administrative charges. (See Hearing Tape Witness Martin of Atmos Energy: Day One: 10:27 a.m.; see also Hearing Tape Witness Mitchell Martin of Duke Energy: Day One: 2:40 p.m.). Providing commodity service requires significant investment in people, processes, systems and infrastructure that has significant cost. A competitive supplier has only one source of revenue to offset those costs, its commodity price. For the utility GCA/GCR, those that would use it as a benchmark against competitive prices are completely ignoring the fact that no commodity is provided to any consumer under any GCR/GCA without all of the same category of administrative, overhead and infrastructure costs, none of which are included in the price they would use as a comparison. Further compounding the inappropriateness of the comparison, all of those costs are borne by not only those taking commodity service from the utility, but all of those folks that have decided to shop. By analogy, it would be like Competitor A paying for all of the infrastructure, overhead, IT, payroll of Competitor B, and then using Competitor B's resulting prices as the benchmark for the rest of the market. It does not mean that B would always beat A (for the market timing reasons stated herein), but it does seem logical to assume that B's prices would have an advantage.

V. WHY CAN THE LDC JUST NOT OFFER A FIXED PRICE PRODUCT?

At the hearing, Ms. Mitchell of the Commission Staff and Ms. Cooper of Columbia Gas engaged in the following (Day One of the Hearing 12:23 p.m. to 12:26 p.m.):

Ms. Mitchell: Is it true that Columbia previously offered an option known as Price Protection Service a/k/a PPS?

Ms. Cooper: Yes

Ms. Mitchell: Is it true that PPS would have applied to small volume customers?

Ms. Cooper: Yes

Ms. Mitchell: Is it true that PPS would have allowed the LDC (Columbia) to have offered two options differing from the traditional GCA? One, a fixed price and two, a variable price tied to an index?

Ms. Cooper: I believe so but I was not the primary witness in that docket.

Ms. Mitchell: Assuming that my statement is true (question above) those type of options are the same as those typically offered by the marketers to the choice customers?

Ms. Cooper: (paraphrase) yes those are essentially the same as those offered by the marketer.

Ms. Mitchell: We've heard a lot of talk about having a choice and savings, if it is simply about choice, is it possible for the LDC to provide the same options as a marketer?

Ms. Cooper: Similar, yes.

LDCs receive a territory monopoly in exchange for being regulated and being required to sell natural gas as a "pass through" with allegedly no mark up. As discussed above, the utilities buy gas subject to a prudence review, they then provide a cost *estimate* to their customers subject to a "true-up" which could end up costing customers more or less going forward, and in some cases having the "true-up" cost imbedded over several months going forward, when the actual gas cost is known. Through this traditional GCA paradigm gas supply customers should receive the gas at the utilities' cost including any "true-up" reconciliations. In a recent docket before this Commission case no. 2008-00195, Columbia Gas of Kentucky initially sought to offer options differing from the traditional pass-through mechanism – a fixed price and a variable price tied to an index a fixed-price natural gas purchase option. *See* hearing tape Nov. 19, 2010; 12:23 pm to 12:26 pm (colloquy between Ms. Mitchell of the Commission Staff and Ms. Cooper of Columbia Gas). At the outset of this issue, it is important to point out

that such a discussion regarding the utility offering a fixed product is beyond the scope of this proceeding and there is no evidence in the record here to support how these options would perform or for that matter be allowed as compared to RGS offers. However, in an abundance of caution RGS describes problems with PPS programs below.

More specifically, the conflicting nature of the LDC's GCA requirements in selling commodity as a "pass through" compared to the idea of offering products similar to marketers troubles RGS to the extent this Commission simply assumes that the LDCs can offer such products without diluting their GCA. Likewise, if the utility continues to operate in a traditional GCA paradigm with prudence reviews, many questions which are outside the scope of the General Assembly's mandate for this docket, would need to be examined before assuming that the LDC could offer similar products to the marketers given the LDC(s) mandate to provide natural gas as a "pass through". In this docket, many utilities (with no direct experience in operating gas choice programs) have focused on the idea that customers have not benefitted from retail choice based upon price alone (e.g. p. 5 Rebuttal Testimony of Witness J. Clay Murphy of LG&E). While RGS do not agree with that contention, it goes without saying that the LDC(s) and RGS offer different prices for natural gas supply and, as such, customers will pay potentially more or less than the LDC(s) GCA at any given time. For sake of argument, assume that the Commission permitted any LDC (as the utility and not an affiliate) to offer a fixed product with the same LDC employee buying gas (from the spot market, futures market and from gas supply contracts) for both the GCA customers and customers wishing to buy a "fixed product" (e.g. PPS). RGS have multiple concerns with a utility offering a competitive product. First, under traditional rate making paradigms, a utility is offered a regulated rate of return on their capital assets, which is fulfilled through base rates, administrative and billing fees in a traditional

context. The commodity, however, was intended to be a cost pass through mechanism. When a utility begins to put competitive offers into the market it is virtually impossible to insulate the customers that are purchasing regulated traditional GCR service from the effects of the for-profit products offered by the utility in the same market. For example, the utility will need to make determinations regarding what the pricing will be for both the regulated traditional variable GCR product, while at the same time determining what the price will be for the for-profit fixed price product. Into that decision it will have to make determinations regarding which purchases are attributable to which products, which hedges are allocated to which products, which contracts are attributable to which products, all with the understanding that for the traditional GCR, there is no incentive to allocate only those costs attributable to the variable price traditional product. Also, given that the costs associated with the fixed price or for-profit products will have a direct impact on the profitability of the fixed price or for profit products, there is an incentive to allocate costs to ensure the for-profit products make are profitable. The very nature of the same people purchasing commodity as the utility for the traditional regulated GCR as well as the for-profit products means that although from an accounting standpoint allocations can be made, there is no way to insulate the traditional GCR from the for-profit purchases.

There is also an element of estimated verses actual volume that is a significant component in the risks associated with providing a for-profit product. Due to the nature of the residential customer relationship, the products that are provided by competitive suppliers to natural gas consumers are "full burner-tip" priced products. What this means is that the supplier that prices the product takes on the risk associated with the customer consuming an amount of natural gas that is different than the amount of natural gas the supplier predicts the consumer will use. There is always a difference, monthly and annually, between the amount projected and the

actual consumption due to variations in actual versus normal weather. The variation in the projected usage and the actual usage for the competitive supplier is absorbed by the supplier, both as it relates to the total consumption (on monthly and annual basis) and the variation, therefore in the price paid for those differential volumes and in the consumption itself. For example, a supplier might forecast that a residential consumer will use 100 Mcf/year. Based upon that, the supplier will need to ensure that it can deliver 100 Mcf/year at the fixed price, so will need to hedge that price (either physically, financially or more likely through a combination of both physical and financial hedges). The supplier could anticipate a certain amount of variation in that hedge, but typically cannot vary too far from the anticipated load as it will be assuming more risk. The purchases of hedges (physical and financial) will be based on some heat sensitive curve, ultimately creating a locked in position for the price the supplier is providing the customer. If the customer uses more or less gas during that period, either monthly or annually, then the risk association with that difference falls to the supplier. This includes the risk of the customer leaving the supplier for another supplier or back to the utility for default GCR service before the end of the contract period. The supplier takes the risk for all of these unknowns, and has no regulated GCR service to absorb the differences. In instances where the utility sells for-profit products, there is a regulated GCR in place and there is no way to ensure that the customers that are purchasing traditional services would not be impacted by these differences.

Another issue with the utility selling for-profit products as the utility is the lack of separation between the resources that are being used to take care of utility issues and those being dedicated to the for-profit endeavors. For example, the same call center people will be used to answer calls related to utility issues that will be used to offer for profit products. The same resources will be used for supply, IT, administrative issues and all other aspects of providing

services, without separation, will be used to compete with those providing competitive products. This creates a distortion in the market and allows the utility to compete with access to systems, people and information that is not also provided to the other competitors.

VI. **WHAT OTHER CONCLUSIONS SHOULD THE COMMISSION DRAW FROM THIS DOCKET**?

A. **Allegations of Marketer Trickery and "Tactics" Are Unfounded**.

Several parties to this docket raised concerns regarding consumers being taken advantage of by marketers. For example, on pages 6-14 of her rebuttal testimony, Witness Brockway raised various concerns and losses in consumer protection that have occurred in the states of Illinois, Ohio and New York and the limited recourse of individual customers. However, Kentucky's own experience with retail customer choice belies Ms. Brockway's allegations. Said another way, consumer protection is a laudable and important goal in developing a Choice market. However, the concerns raised by witnesses in this docket, such as Ms. Brockway, fail to have any legitimate correlation to actual customer complaints in the Columbia Choice Program in Kentucky – the most practical benchmark in judging the reality of these allegations.

According to Columbia of Kentucky in case number 2010-00233, in 2008, 10 customers raised a concern regarding a Choice marketer in 2009, 31 customers raised a concern regarding a Choice marketer and in 2010, 13 customers raised a concern regarding a Choice marketer. (see DR responses of Columbia Gas of Kentucky to IGS/SouthStar/Vectren Source Exhibit #2 from the hearing). During these years more than 20,000 customers were involved in the Choice program. While resolution of any customer complaint in a timely professional manner is imperative for the RGS, with respect to the Columbia Choice program, "[w]ith participation in excess of 28,838 since the (Choice) program was extended, annual complaints at the highest level amounted to only about one-tenth of one percent of participating customers." *Id.*

According to Witness Cooper of Columbia, the patterns of abuse (referenced by Witness Brockway) are simply not evident in the Columbia Choice Program. (see Hearing Tape Day One: Witness Cooper: 11:58 a.m.). Likewise, the marketers involved in the Columbia Choice Program have been very responsive to customer complaints. *Id.* There is simply no evidence in Kentucky's own program to support the aggrandized allegations put forth by Ms. Brockway. Regardless, in structuring a proper market thoughtful marketer codes of conduct should be created to maximize appropriate levels of consumer protection for all consumers. Additionally, the Commission should be the appropriate body to regulate marketers in the event a marketer fails to adhere to the code of conduct in dealing with consumers including the ability of the commission to issue sanctions for specific code of conduct violations.

B. **What Experience Did The Witnesses Have With Choice Programs?**

Witness Mark Martin of Atmos Energy indicated the following: (1) that he does not believe that Atmos Energy Corporation would suffer stranded costs if a choice program were mandated without mandatory capacity assignment because customers simply would not migrate to retail gas suppliers (Hearing Tape; Day One; Witness Martin; 10:35 a.m.); (2) that he did not bother to review or analyze the Columbia Choice program in Kentucky (*Id.*); (3) that Atmos Energy Corporation receives 98.5% of its gas supply for all of its customers from Atmos Energy Marketing (an unregulated affiliate of Atmos Energy Corporation that supplies natural gas)(Hearing Tape: Day One: 10:42 a.m.); (4) that he has had no involvement with any of the actual Choice programs in Ohio, New York, Michigan, Indiana, Pennsylvania and limited knowledge of the Illinois Choice programs (Hearing Tape: Witness Martin: 11:18 a.m.); and (5) that the extent of his knowledge regarding Choice programs seems to come from EIA website information. *Id.*

Given the fact that witness Martin reviewed a few websites regarding Choice programs but has no first-hand experience with Choice programs and did not bother to review the migration rates or any other data for Kentucky's only residential choice program in the Columbia territory, it is reasonable to ask whether his testimony should be considered at all. Likewise, Atmos Energy Corporation has significant financial motivations to avoid a residential choice program – Atmos Energy Marketing. Atmos Energy Marketing, Atmos Energy Corporation's unregulated natural gas supplier acts as an "energy manager" and currently provides 98.5% of the natural gas supply for all of Atmos Energy Corporation. Another party providing natural gas supply, be it residential or transportation service, does not financially benefit Atmos Energy Corporation.

IGS/SouthStar/Vectren Source required Witness Brockway of the AARP, to "please identify any gas rate case, GCR cases and collaboratives in which you have been involved and state the nature of your involvement, for the states of Illinois, Indiana, Ohio, Pennsylvania, Georgia, New York or Michigan" (all states with residential choice programs) (see IGS/SouthStar/Vectren Source's post-hearing data request 2). In response, Ms. Brockway indicated that she filed testimony in one gas cost recovery plan case in Michigan in 2006. She also indicated that she participated in an undisclosed gas deregulation collaborative in Massachusetts. Based on these admissions it is safe to conclude that Ms. Brockway has no first-hand experience with any of the states mentioned, including Ohio, regarding residential choice. With respect to Ohio, despite having no experience with Ohio's residential choice programs, Ms. Brockway opined at the hearing that the Ohio program is not a success (Witness Brockway: Day Two: 5:39 p.m.). Her support for this statement came from: (i) a newspaper article; (ii) limited EIA website information; and (iii) conversations with apparently a likeminded individual in Ohio

– named Dave Rinebolt – executive director of Ohio Partners for Affordable Energy. (see AARP post-hearing data request number 1). Both Witness Petricoff of IGS/SouthStar/Vectren Source and Witness Mason of Stand Energy (a former Ohio Commissioner) have tremendous first-hand experience with the creation of the Ohio residential choice programs and they both believe that the Ohio Choice Program is a success. Conversely, Ms. Brockway simply lacks first-hand experience with residential choice programs in almost all jurisdictions. Furthermore, it is clear that Ms. Brockway also did not review the Columbia Choice Program of Kentucky before making allegations regarding marketer "trickery" toward customers. Otherwise she would have recognized that such actions are nonexistent in Kentucky. Also Ms. Brockway's inability at the hearing to recall what information or documents she had reviewed in reaching various conclusions made it impossible for counsel to cross examine her as to the reasonableness of her conclusions. For all of the foregoing the Commission should completely disregard her testimony.

With respect to Witness Cummins of the Association of Community Ministries, Mr. Cummins raised similar concerns to Witness Brockway regarding marketer "trickery" and deceit and the potential for harm to low-income individuals. However, Mr. Cummins also failed to review the results of the Columbia of Kentucky Choice Program for customer complaints despite it being the most practical benchmark for gauging the reality of these concerns (Hearing Tape: Witness Cummins: Day Two: 10:12 a.m.). As discussed above, the list of horrors mentioned by Witness Brockway and Witness Cummins are simply non-existent in the Columbia Choice Program and there is no reason to believe expansion of retail choice would create new concerns.

With respect to Witness Burch of the Community Action Council three important points arose during his testimony. First, receipt of LIHEAP funds has absolutely nothing to do with

who customers choose to supply their natural gas (Hearing Tape: Witness Burch: 6:53 p.m.), second, despite statements to the contrary regarding difficulty in running a "buyers club"[3] Mr. Burch and the "buyers club" successfully beat Columbia's monthly price in at least 17 of 22 months (See IGS/SouthStar/Vectren Source's Exhibit "4" from the hearing), and third, the CAC discontinued the "buyers club" in 2004; contemporaneous to Columbia Choice customers experiencing an approximate $14,500,000 net benefit compared to Columbia sales customers (see IGS/SouthStar/Vectren Source's hearing exhibit "1"). In sum, the CAC's "buyers club" fails to add any relevant experience in regards to properly structuring the residential choice market.

VII. Conclusion.

Expansion of retail choice will benefit the Commonwealth of Kentucky and its citizens. With respect to product offerings, RGS' variety of commodity offerings allow consumers to take charge of their own gas supply cost and RGS fixed rate products are analogous to offering a fixed rate mortgage product compared to the LDCs variable rate product. (see Witness Petricoff hearing tape day 2: 11:23 a.m.). Some customers are more risk adverse and desire fixed rate options to hedge their risk and they should certainly have the option to do so (see, e.g. Witness Mason discussion regarding his dry cleaner: hearing tape day two: 4:52 p.m.). Along those same lines, the LDC can not legitimately offer the same fixed rate products as marketers without invading the province of their GCA. (See Section V *supra* "Why Can the LDC Just Not Offer A Fixed Price Product?). As such, retail gas marketers are best situated to fill the need of those customers wishing to hedge risk in the market with a fixed product.

[3] The Community Action Council operated a "buyers club" within the Columbia Choice Program and the CAC found it was difficult, if not impossible, to operate an independent retail marketing company and offer a fair price to consumers. (Direct Testimony of Witness Burch, p. 6 lines 5-7)

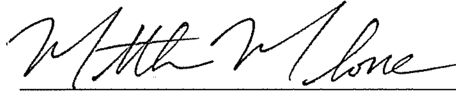
Moreover, with respect to the price, it is apparent that Choice programs can provide gas supply rates below that of the LDC. (see, e.g., IGS/SouthStar/Vectren Source's hearing exhibit "1"). In fact, with respect to the life of the Columbia Choice program, according to Witness Cooper of Columbia Gas, "except for the most recent period since September 2009, the number of Choice participants billed natural gas rates below Columbia's gas costs has exceeded the number of customers billed rates greater than Columbia's gas cost in most months" (Witness Cooper Rebuttal Testimony p. 3 lines 15-18). Lastly, regardless if customers save money compared to a GCA, Kentucky consumers still want the ability to choose[4] their natural gas supplier.

In the foregoing, RGS have discussed in detail appropriate methods to expand retail gas choice which can clearly provide benefit to the Commonwealth of Kentucky and its consumers. Appropriate regulation and rules established through collaborative methods with the guidance of the Commission going forward should allow for retail gas choice to be expanded properly with the essential elements necessary to create a properly structured market. RGS appreciates the Commission's role in this proceeding and respectfully requests that the Commission implement retail choice based upon the methods discussed herein.

[4] See p. 7 of the Matrix Study provide by Columbia Gas of Kentucky.

Respectfully submitted,

HURT, CROSBIE & MAY PLLC



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CERTIFICATE OF SERVICE

Comes Interstate Gas Supply, Inc. ("IGS"), SouthStar Energy Services, LLC ("SouthStar") and Vectren Retail, LLC d/b/a Vectren Source ("Vectren"), individually, and hereinafter, collectively, by counsel, and hereby certifies that an original and twelve (12) copies of the foregoing was served via hand-delivery, upon Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615; furthermore, it was served by mailing a copy by first class U.S. Mail, postage prepaid, on the following, on this 1st day of November 2010.

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