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PUBLIC SERVICE COMMISSION

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November 1, 2010

RE: *AN INVESTIGATION OF NATURAL GAS RETAIL COMPETITION PROGRAMS*
Case No. 2010-00146

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of the Post-Hearing Brief of Louisville Gas and Electric Company in the above-referenced matter.

Should you have any questions please contact me at your convenience.

Sincerely,

Rick E. Lovekamp

cc: Parties of Record

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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

POST-HEARING BRIEF OF LOUISVILLE GAS AND ELECTRIC COMPANY

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November 1, 2010

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INTRODUCTION

This proceeding was initiated by the Public Service Commission ("Commission") in response to House Joint Resolution 141, which grew out of two bills – House Bill No. 542 and Senate Bill No. 154 – introduced in the Kentucky General Assembly's 2009 Session. Both of those bills would have mandated LDCs in Kentucky to expand current gas transportation programs. The House bill was the broader of the two, in that it would have mandated gas retail choice down to the residential level. The Senate bill, on the other hand, was more focused on small commercial and industrial customers.[1] Neither of the two bills passed, and the aforementioned Joint Resolution was enacted, directing the Commission to investigate "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."[2]

Each jurisdictional natural gas distribution utility with 15,000 or more customers in Kentucky was made a party to this proceeding, and the Attorney General along with a number of consumer advocacy groups, marketers and marketer advocacy groups subsequently sought and were granted full intervention. A procedural schedule was established, allowing for two rounds of discovery, as well as pre-filed direct and rebuttal testimony. An evidentiary hearing was held over the course of October 19 and 20, 2010, with post-hearing data requests issued to several parties. Post-hearing briefs then followed.

[1] Both bills would have applied to smaller, high priority space-heating customers, unlike existing large volume transportation programs that generally provide service to process gas consumers. Those small, space-heating customers place greater hourly and daily demands on the gas distribution system because their loads vary significantly with weather. Moreover, unlike large customers that secure their own gas supplies, smaller high-priority customers cannot generally make alternate arrangements if their marketer fails to deliver, and it would be infeasible to physically isolate individual small, space-heating customers from the gas system in the event their supplies are not delivered by marketers. Direct Testimony of J. Clay Murphy on behalf of LG&E, p. 14, line 18 to p. 15, line 13.

[2] Order of the Commission, Case No. 2010-00146, Dated April 19, 2010.

House Joint Resolution 141 stated, in its preamble, that "[i]t is the policy of the Commonwealth of Kentucky to ensure that Kentucky natural gas customers receive reliable natural gas services at fair, just and reasonable rates…." There can be no question but that this policy is being, and has long been, well met under Kentucky's traditional regulation of natural gas transportation and distribution. Under that regulatory framework, LDCs are incented to operate their systems safely and efficiently on a least-cost basis, and customers are provided reliable service at competitive, low rates. The question, then, is this: Can expanded unbundling better meet the public policy of ensuring reliable service for customers at fair, just and reasonable rates?

In considering that question, the well-worn maxim "If it ain't broke, don't fix it" would seem to apply. The push for mandatory, expanded unbundling – which is being driven by those with a financial self-interest – would turn Kentucky's stable, proven and successful regulatory environment on its head, with absolutely no assurance of any tangible benefit to customers and with many potential risks for LDCs and customers alike, including risks of higher commodity and system costs and threats to reliability.[3] As set forth in detail below, evidence from the experience in other states as well as the pilot program of Columbia Gas of Kentucky ("Columbia") does not support mandating expanded natural gas unbundling, especially when the public policy of reliable service at fair, just and reasonable rates is in mind. In consequence, the Commission should issue a report to the General Assembly which recommends that expanded unbundling not be mandated in the Commonwealth.

[3] See Cross-Examination of J. Clay Murphy by Stand Energy Corporation ("Stand"), Video Record, Part 1 of 2, 15:23:25 to 15:23:51.

ARGUMENT

Any move towards further natural gas unbundling in Kentucky carries significant risk for both residential and small commercial and industrial consumers as well as for the local distribution company ("LDC"). Under retail choice programs, responsibility for the very product which LDCs are obligated to provide to their customers is removed from the LDCs' management and passed to a third party marketer, and as a consequence the natural gas component of the service provided by LDCs – and the price at which it is sold – is removed from the Commission's regulation.[4] In exchange, customers are likely to see higher costs on average over time, and to face the potential of decreased system reliability and other risks. The only clear winners in any expansion of retail choice programs are marketers, who gain the opportunity to earn a profit on the sale of natural gas to the same customers to whom the LDCs sell gas at no profit.

I. The Commission Should Recommend to the General Assembly that Expanded Unbundling Not Be Mandated in Kentucky.

a. Expanded Unbundling is Unlikely to Result in Ratepayer Savings

Although parsing their words carefully, those advocating for expanded retail unbundling in this proceeding have suggested that customers will save money through expanded unbundling.[5] The evidence, however, is clear and overwhelmingly to the contrary.

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[4] The cost of gas is the largest component of a customer's bill, typically accounting for between 60% and 80% of a typical residential customer's bill. Murphy Direct, p. 6, lines 8-9.

[5] For example, Stand used limited, self-selected data to claim cost-savings for its customers over what would have been paid had those customers purchased gas supplies from Columbia or LG&E. Testimony of Mark Ward on behalf of Stand, unnumbered page 5. Stand provided additional data in response to a post-hearing data request, purporting to show savings achieved for other customers. In performing that calculation for a large customer of Duke Kentucky supplied with gas by Stand, Stand has reflected avoided LDC distribution charges, attempting to take credit for the customer's willingness to accept a different character of service when the customer elected interruptible transportation service in lieu of firm sales service. Such an "apples to oranges" comparison distorts the analysis significantly. When only the gas commodity costs are considered, the customer actually spent over

In Ohio, held out by some of the marketers in this proceeding as a retail choice model for Kentucky to follow,[6] natural gas prices have "shot above the national average from 2005 to 2008, representing a total difference for customers of $796 million."[7] In Illinois, an analysis of plans offered by twelve marketers from 2003 to June 2010 revealed that 11 of the 12 marketers offered to sell gas to customers at a cost, on average, that was higher than the price of the LDC.[8] As noted by the Illinois Citizens Utility Board, when a customer takes service from a marketer, that customer is "simply gambling that the unregulated supplier will do a better job buying gas than the utility."[9]

Here in Kentucky, Columbia's pilot CHOICE program, which has been in place since 2000, has resulted in residential and small commercial and industrial consumers paying, over the life of the program, an aggregate $17.3 million more than would have been the case if they had stayed with the LDC.[10] Not only have customers enrolled in Columbia's program experienced losses over its long-run operation, six out of each of the program's ten years have resulted in losses for these consumers.[11]

$294,000 more with Stand as compared to sales gas from Duke Kentucky. This is opposed to the claimed savings of approximately $170,000 stated by Stand in the post-hearing data response.

[6] Direct Testimony of Donald Mason on behalf of Stand, p. 3, lines 8-9; Cross-Examination of Donald Mason by LG&E, Video Record, Part 2 of 2, October 20, 2010, 16:45:54 to 16:46:36.

[7] Rebuttal Testimony of Pamela L. Jaynes on behalf of LG&E, Exhibit 1, p. 1 of 7. See also Rebuttal Testimony of J. Clay Murphy on behalf of LG&E, p. 6, line 3.

[8] Direct Testimony of Nancy Brockway on behalf of AARP, p. 16, lines 15-17 and Exhibit NB-4. Moreover, the one marketer who was able to offer savings to customers over that time period only saved customers an average of under $10 over the contract term. All other customers lost money, with the largest loss over $1,300. Brockway Direct, p. 17, lines 1-4.

[9] http://www.citizensutilityboard.org/GasMarketMonitor.php; Direct Testimony of Pamela L. Jaynes on behalf of LG&E, p. 20, lines 2-5.

[10] Jaynes Direct, p. 20, line 19-21.

[11] See IGS Hearing Exhibit 3, as corrected by October 26, 2010 Notice of Erratum. The experience of the Columbia pilot over a decade provides very meaningful guidance, as it is not merely a short-term "snapshot" of information. Indeed, Stand witness Mason testified that it takes "at least 3 years" of experience to make a judgment on the price experience under an unbundling regime. Cross-Examination of Donald Mason by Duke Kentucky, Video Record, Part 2 of 2, October 20, 2010, 16:33:00 to 16:33:12.

And, according to the Energy Information Administration ("EIA"), the average of the prices charged by marketers to residential customers in eight states with retail choice in 2008 was higher than the average of the regulated prices charged by the LDCs within those respective states – $ 17.76 per Mcf charged by marketers on average compared to $16.44 per Mcf charged by LDCs on average.[12] When comparing the average residential rate for Kentucky to the average rates for those same states, the average residential price shown by EIA for Kentucky was lower at $13.84 per Mcf.[13] Admittedly, while there may be more than one factor affecting the total all-in rate paid by these consumers, a significant portion of a customer's total bill is comprised of gas costs. It appears that gas costs are negatively impacting the total prices paid by residential customers in states with retail choice. Similar comparisons can be made for commercial customers.

Of course, LDCs in Kentucky may recover only their actual gas supply costs from customers. Marketers, on the other hand, may make a profit through a mark-up of the natural gas commodity itself. Moreover, Kentucky LDCs are required to "seek to obtain the least-cost reliable supply of natural gas" for their ratepayers,[14] and their purchasing decisions are subject to regular prudence reviews by this Commission.[15] Marketers' purchasing decisions are not similarly subject to regulatory guidance or oversight. Consequently, further unbundling results in a *de facto* loss of consumer protections to which residential and small commercial and industrial consumers are entitled. It is, therefore, no surprise that marketers, who purchase gas in

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[12] Jaynes Direct, p. 22, lines 1-11. See also Cross-Examination of Nancy Brockway by LG&E, Video Transcript, Part 2 of 2, October 20, 2010, 17:30:15 to 17:30:26.
[13] See Staff Hearing Exhibit 2, EIA Table 23. By comparison, the average residential price for LG&E was $12.98 per Mcf.
[14] Order of the Commission, Administrative Case No. 297, May 29, 1987 at p. 28; Order of the Commission, Administrative Case No. 384, July 17, 2001 at p. 18.
[15] Murphy Direct, p. 11, lines 6-21.

the very same marketplace as LDCs, but without regulatory purchasing parameters or limitations on mark-ups, simply cannot sustain savings for customers over time.[16]

The evidence from sustained experience with retail choice in Kentucky and in other states establishes that, as with any gamble, while a customer may periodically "win" by purchasing gas from a marketer at a locked-in price, over time that customer will "lose" by paying more than would have been the case with regulated service from an LDC.[17]

b. Implementing Expanded Unbundling is Likely to Cost Ratepayers.

Beyond the higher average commodity costs that customers can expect over time, an expansion of retail choice also brings about incremental non-gas costs that may be borne by all LDC ratepayers. Specifically, as a result of expanded unbundling initiatives, stranded and transition costs could increase the costs to all ratepayers in order to provide customers with the "right to choose" – regardless of whether they in fact choose to make a pact with the marketer.[18] Implementing and providing expanded choice offerings for residential and small commercial and industrial customers will not be free.

Transition costs are those costs incurred by the utility as it implements changes to facilitate retail unbundling or expanded transportation options.[19] Examples of transition costs that have arisen in other states include costs for education of customers, training of LDC employees, modification of billing systems, creation and maintenance of new gas tracking

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[16] As noted earlier, this has been the evidence of the Columbia program which shows over a ten-year period that losses have accumulated to $17.3 million dollars and that participation is declining. IGS Hearing Exhibit 3, as corrected by October 26, 2010 Notice of Erratum. See also Cross-Examination of Nancy Brockway by LG&E, Video Record, Part 2 of 2, October 20, 2010, 17:30:15 to 17:30:26.

[17] Furthermore, the notion that a fixed price for natural gas, whether offered by either a marketer or an LDC will eliminate the variability in a customer's total bill is a spurious one given the fact that the volume of gas consumed by a customer varies significantly with weather, which is the single largest factor in determining a customer's total bill.

[18] Murphy Direct, p. 30, line 20 to p. 31, line 2.

[19] Murphy Direct, p. 28, lines 8-10; Murphy Rebuttal, p. 16, lines 1-9; Direct Testimony of Glenn Jennings on behalf of Delta Natural Gas Company, Inc., p. 9, lines 15-21; Direct Testimony of Mark Martin on behalf of Atmos Energy Corporation, p. 7, lines 18-23.

systems and electronic bulletin boards, and establishment and implementation of new credit, collection and payment procedures.[20] None of those costs or the on-going costs of incremental personnel required to implement these programs would be incurred by the LDC absent expanded unbundling options, either at the residential or small commercial and industrial level, and while some of those costs (such as billing system modification) might only be incurred initially, many could be expected to be ongoing, resulting in a permanently higher level of costs for all ratepayers.[21]

Stranded costs arise when expenses incurred on behalf of customers and included in either the LDC's base rates or gas cost recovery mechanism may no longer be required in the face of retail choice or expanded unbundling options for customers.[22] Such costs would arise as a result of consumers electing to purchase gas from a marketer rather than the LDC. These costs could include interstate pipeline capacity (including storage), on-system storage assets, and gas supply agreements.[23]

Other costs would also likely arise as a result of expanded unbundling options in the Commonwealth. If the utility is expected to be the supplier of last resort, and step in to deliver gas in the event of a marketer default or other failure to deliver, then the LDC must have gas supplies, pipeline capacity and storage on hand in that event, and doing so would create duplicative costs to be able to ensure reliable service to all customers.[24] In addition, LDCs could expect marketers to first seek to enter into arrangements with the LDCs' larger customers with the best load factors. Such "cherry-picking" or "cream-skimming" would compromise the

[20] Murphy Direct, p. 28, line 13 to p. 29, line 15.
[21] Id., p. 29, line 17 to p. 30, line 2.
[22] Murphy Direct, p. 30, lines 6-9; Brockway Direct, p. 23, lines 6-17; Martin Direct, p. 7, line 24 to p. 8, line 12; Jennings Direct, p. 10, lines 1-9.
[23] Murphy Direct, p. 30, lines 9-13.
[24] Murphy Direct, p. 18, lines 5-10.

LDC's ability to maintain a higher purchase load factor and, therefore, more favorable prices for all customers.[25] Higher supply costs would be compounded by the decreased flexibility that LDCs will have to manage their procurement activities in ways that now allow them to optimize system operations and provide lower gas costs to all customers.[26] Even a move to lower minimum consumption thresholds in existing transportation rate schedules, which LG&E opposes, would impact the costs assigned to, and the distribution rates and other charges for, those rate schedules.[27]

c. There is No Widespread Support for Expanded Unbundling in Kentucky.

Although any argument of customer savings, or avoidance of costs by LDCs, under a choice regime is ultimately a fiction, the marketers nevertheless contend that customers are interested in choice just for the sake of having choice, [28] and that customers apparently do not require any cost/benefit analysis associated with that ability to choose. As evidence for this claim, the marketers point to a mailing conducted by Kentucky Consumers for Energy Choice ("KCEC")[29] as well as a comment in a report on a survey conducted in connection with

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[25] Brockway Direct, p. 4, lines 1-2; Cross-Examination of Glenn Jennings by AARP, Video Record, Part 1 of 2, October 19, 2010, 14:17:15 to 14:17:50; Cross-Examination of J. Clay Murphy by AARP, Video Record, Part 1 of 2, October 19, 2010, 15:40:51 to 15:42:15.

[26] Murphy Direct, p. 7, lines 3-6.

[27] Murphy Rebuttal, p. 24, lines 1-13. LG&E regularly evaluates its threshold requirements and has concluded that its existing transportation thresholds are appropriate. Cross-Examination of J. Clay Murphy by Stand, Video Record, Part 1 of 2, October 19, 2010, 15:26:18 to 15:28:25. See also Cross-Examination of Nancy Brockway by Vice-Chairman Gardner, Video Record, Part 2 of 2, October 20, 2010, 18:34:30 to 18:35:35.

[28] Direct Testimony of Ellen Williams on behalf of Interstate Gas Supply Inc., SouthStar Energy Services, LLC and Vectren Source (collectively "IGS"), p. 2, lines 15-17. See also Re-Direct of Howard Petricoff, Video Record, Part 2 of 2, October 20, 2010, 11:25:05 to 11:25:22, wherein the "expert" witness for IGS noted that although "some or even the majority of customers" may be better served staying with their LDC, it is still valuable to some to have choice even if they will pay more taking service from a marketer.

[29] Ms. Williams was unsure if the correct entity name was Kentucky Consumers for Energy Choice, as set forth in her pre-filed testimony, or Kentucky Consumers for Energy Competition as appears on the group's website. Cross-Examination of Ellen Williams by Delta, Video Record, Part 2 of 2, October 20, 2010, 11:53:50 to 11:54:00. However, post-hearing data responses filed on behalf of IGS refer to the name of the entity as Kentucky Consumers for Energy Competition. IGS Response to Post-Hearing Data Request No. 1.

Columbia's CHOICE program. On close examination, however, neither supports the conclusion that there is wide support for expanded unbundling in Kentucky.

First, the marketers claim that KCEC received "overwhelming" support for expanded customer choice in response to a letter sent to its members.[30] In point of fact, the KCEC mailing to its members only generated responses from around 500 individuals, which represents less than .0006% of Kentucky's natural gas customers – hardly an "overwhelming" voice of support for expanded unbundling.[31] Moreover, that mailing was orchestrated and paid for by IGS and was clearly designed to achieve a specific result, as it was directed only to Columbia customers who were members of KCEC (an organization which exists to promote expanded unbundling and which is funded by one or more marketers) and expressly sought only feedback in support of retail choice.[32] The mailing even included a postage-paid return envelope in an obvious effort to boost return rates.

Second, the marketers point to language in the Customer CHOICE Survey conducted for Columbia, wherein 52 out of 70 respondents stated that they "would still want the ability to choose the natural gas supplier" even if they learned they had not saved money in the Columbia program.[33] That response must be noted in the context of other findings within that same survey, however, recognizing that 80% of the participants in the Columbia program "joined because they were guaranteed lower rates"[34] and that half of the respondents were "unclear whether or not they had saved money in the Customer CHOICE program."[35] Furthermore, it is entirely understandable that some respondents would theorize that they would want the continued option

[30] Williams Direct, p. 2, lines 19-22.
[31] Cross-Examination of Ellen Williams by Delta, Video Record, Part 2 of 2, October 20, 2010, 11:54:10 to 11:54:53.
[32] See attachment to Williams Direct; IGS Response to Post-Hearing Data Request No. 1. (a) and (b) It would appear at least questionable whether KCEC is anything other than a front for the interests of IGS.
[33] See attachment to Columbia Response to Data Request No. 2-004 propounded by IGS, p. 18.
[34] Id., p. 7.
[35] Id., p. 18.

to choose their supplier, given that there appeared to be no consequence to customers from having such a choice available – either in terms of the higher costs they would pay to have such a program available or in terms of the higher costs that might result if they did elect to select a marketer.[36]

Moreover, even where expanded retail choice is available to customers, participation levels are far from robust. The consumer survey conducted for Columbia revealed that only 17% of participants in the survey had been involved with the CHOICE program in Kentucky at any point.[37] Similarly, according to the EIA, only about 15% of the residential customers that have access to retail choice programs in the United States actually choose to participate in those programs.[38] And, two states – Ohio and Georgia – account for more than 60% of the customers enrolled in retail choice programs as of the end of 2009.[39] Interestingly, most retail customers in both of those states can no longer choose to purchase gas pursuant to a regulated price offered by an LDC because many of the LDCs in those states have chosen to exit the merchant function.[40] Excluding the states of Georgia and Ohio, only 7% of customers in the remaining jurisdictions with natural gas choice programs have exercised their option to choose a marketer.[41] Twenty-nine states do not have LDCs with choice programs.

It is telling indeed that the only cries for expanded natural gas unbundling options in Kentucky are coming from marketers or those affiliated with them.[42] Not a single customer

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[36] See also Cross-Examination of Nancy Brockway by Commission Staff, Video Record, Part 2 of 2, October 20, 2010, 18:30:14 to 18:30:46.
[37] Id., p. 7.
[38] Jaynes Direct, p. 4, lines 4-6.
[39] Id., p. 5, lines 5-6.
[40] Id., lines 6-13.
[41] For selected state participation rates, see Jaynes Rebuttal, p. 3, line 19 to p. 6, line 6.
[42]Even the limited public comments in this proceeding were orchestrated, and even financially subsidized, by Stand. Cross-Examination of John Dosker by Duke Kentucky, Video Record, Part 2 of 2, October 20, 2010, 13:57:08 to 13:58:15; Cross-Examination of John Dosker by Delta, Video Record, Part 2 of 2, October 20, 2010, 14:48:39 to 14:54:35; Stand Response to Post-Hearing Data Request by Delta, pp. 2-3 and related unnumbered attachments.

intervened in this proceeding to advocate for retail unbundling; not a single customer independently provided public comments in favor of further unbundling at the hearing; and, most telling of all, consumer advocate intervenors all oppose the expansion of retail unbundling.[43] The lack of interest from both residential and small commercial and industrial customers supporting expanded unbundling in this proceeding, coupled with the experience of low participation levels in programs in Kentucky and across the nation, is clear evidence that Kentucky consumers are not clamoring for the upending of traditional regulation in the Commonwealth.

d. Expanded Unbundling Carries Risks to System Reliability.

However, even if there were some overwhelming push for expanded retail choice among ratepayers, and the concerns over increased costs could be resolved, there remain other undue risks that weigh against such expansion. In particular, there are significant hurdles with regard to reliability and potential consumer abuse under expanded unbundling.

Under the vertically-integrated, regulated utility structure that exists in Kentucky presently, the gas utility has an established obligation to serve and is responsible for ensuring that adequate supply is delivered to its city gate stations and then distributed on to its customers. With an expanded choice or unbundling regime, the LDC retains overall responsibility for gas system reliability, but importantly loses control over the delivery of gas into its system, and any failures by marketers to deliver adequate volumes of gas to meet customer loads are then left for management by the LDC, which must balance customer loads and step into the breach if a marketer fails to deliver.[44] That scenario creates significant operational burdens on the LDC and

[43] The Attorney General is a possible exception in that he has not yet made clear any public position.

[44] Murphy Rebuttal, p. 7, line 15 to p. 8, line 5; Brockway Direct, p. 21, line 22 to p. 22, line 15. Experience in Kentucky reveals that, even with regard to larger industrial customers, marketers typically fail to deliver the correct supply on behalf of the customer. Cross-Examination of J. Clay Murphy by Stand, Video Record, Part 1 of 2,

presents the potential that all customers – regardless of whether they are under contract with a marketer – may have their supply reliability affected.[45]

e. Expanded Unbundling Carries Risks to Consumer Protections.

The other area of significant risk relates to consumer abuse by marketers. While the marketers in this proceeding scoff at the notion that there are any risks of widespread abuse, the experiences in other states with broadened choice are replete with specific examples of abuse. Such conduct includes (in addition to a failure to deliver as discussed above): slamming, misleading or false representations about savings, failure to fully or accurately describe contract terms, aggressive or "hard-sell" marketing, confusing or undisclosed teaser rates for short periods, hard to read contracts, high cancellation terms, and automatic contract renewals.[46] An investigation by the *Columbus Dispatch* in Ohio found that "hundreds of customers" in that state "have complained [to the Public Utilities Commission] about aggressive solicitations, misleading offers and high bills."[47] In Illinois, one marketer ultimately admitted in a complaint proceeding before that state's Commerce Commission that it had received nearly 6,000 consumer complaints during just a two-year period, including complaints of false promises of savings or protections against price increases, slamming, false claims that the marketer was representing the utility in contacting the customer, and agents taking advantage of non-English speaking or elderly customers who did not understand the transaction.[48] Such tactics have necessitated ongoing

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October 19, 2010, 15:28:52 to 15:29:13. And experience in other states reveals that some suppliers exit a state when profits do not materialize, leaving customers without service and resulting in those customers being dumped back on the LDC, which must then be prepared to serve with little or no notice. Brockway Direct, p. 21, line 22 to p. 22, line 3. Marketers in New Jersey, Ohio, Georgia, Kansas, Missouri, Kentucky, Virginia, and New York have been reported to have failed to deliver gas for customers. Jaynes Direct, p. 27, line 9 to p. 28, line 4.

[45] Murphy Rebuttal, p. 8, lines 4-5.

[46] Jaynes Direct, p. 22, line 14 to p. 26, line 16; Jaynes Rebuttal, p. 23, line 1 to p. 25, line 4; Brockway Direct, p. 5, line 5 to p. 12, line 2.

[47] Jaynes Rebuttal, Exhibit 1, p. 5 of 7.

[48] Brockway Direct, p. 6, lines 3-19; Docket No. 08-0175, Citizens Utility Board and AARP v. Illinois Energy Savings Corp.

efforts by various states to enact additional protections for consumers, with no evidence that abusive tactics can in fact be curtailed.[49]

II. ANY EXPANSION OF RETAIL CHOICE SHOULD BE VOLUNTARY AND MUST HOLD THE LDC HARMLESS.

As set out above, there are significant concerns associated with any expansion of unbundling programs. The adoption of a full retail choice program that would extend to residential customers, or even the expansion of transportation programs to smaller commercial or industrial customers, should be left to the discretion of the LDC that must implement, manage and administer the program. And because the risk of operating its system under any broadened unbundling program falls on the LDC, it should be up to the LDC to design and implement any such program(s) at its discretion, so that the LDC can tailor the program (subject to Commission approval) to its particular circumstances and maintain reliable gas service for all customers.

In addition, the following items should be considered as a part of any LDC proposals with regard to any further unbundling in Kentucky:[50]

- Marketers must have an obligation to serve, requiring the provision of service on a non-discriminatory basis.
- The Commission must be prepared (and funded) to handle the additional administrative burden that will come with its additional duties to regulate the marketplace to ensure that it is open and transparent to all participants, to enforce the marketer's obligation to serve, to certify marketers, and to handle complaints from consumers.

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[49] Brockway Direct, p. 10, lines 6-8 and p. 14, lines 2-4; Cross-Examination of Nancy Brockway by LG&E, Video Record, Part 2 of 2, October 20, 2010, 17:28:36 to 17:30:14.

[50] These items are discussed in greater detail in the testimony of LG&E. See Murphy Direct, p. 15, line 15 to p. 36, line 17.

- Any expansion of natural gas unbundling must also leave the LDC indifferent in terms of net revenue, by allowing recovery of all costs incurred as a result of the implementation and ongoing provision of unbundled services. All costs borne by the LDC, including transition costs, stranded costs and costs associated with continuing to serve as the "supplier of last resort," should be recovered from the marketers through the term of the unbundling program.
- LDCs should have the ability to propose alternative commodity pricing structures for their delivery to customers, beyond the current single average rate embodied in the LDC's gas cost recovery mechanism.
- An appropriate code of conduct should be imposed on marketers and enforced through a certification process, to ensure non-discriminatory service and to attempt to guard against consumer abuse.
- LDCs should not be required to provide billing services for the marketer, but should have the option to provide billing services for the marketer, to bill only the LDC's charges, or to bill some combination of both. However, all prudently incurred billing costs should be recoverable by the LDC from the marketers.
- LDCs should be allowed to continue billing large volume transportation customers pursuant to current billing processes.
- Marketers should be certified by the Commission, with periodic review and reassessment of the certification, consistent with the guidelines included in Appendix B of the Commission's Order of April 19, 2010.

- If there is a consolidated billing program, LDCs should retain responsibility for physical disconnection and reconnection of customers for non-payment, and should have the authority to disconnect a customer for non-payment of a marketer's charges.
- The LDC must retain operational control of pipeline capacity and storage activities for system reliability, such as, for example, by having the ability to release its pipeline capacity to participating marketers on a mandatory and recallable basis.
- LDCs should be able to secure acceptable surety from marketers participating in any extension of gas transportation options.

In sum, to the extent that there may be any further unbundling in Kentucky, such unbundling should ensure that customers receive tangible, sustainable economic benefits; that system reliability not be diminished; that real and enforceable consumer protections be provided; that costs be appropriately assigned to responsible parties; and that the utility be rewarded for bearing the risks imposed upon it.

CONCLUSION

The current structure of the marketplace in Kentucky provides transparency and protections to customers. LDCs secure and manage natural gas in a highly competitive marketplace, and must do so reliably and at the lowest possible prices or risk loss of customers who could switch to alternative fuels or electricity. The Commonwealth's LDCs are guided by Commission orders in prudently purchasing natural gas supplies, interstate pipeline transportation and storage, and are required to sell gas at cost to customers. This structure benefits customers by providing them with safe and reliable natural gas at a fair, just and reasonable price.

The Commission has conducted a robust investigation of the issues surrounding expanded unbundling and the evidence does not support any expansion. Further retail unbundling brings no assurance of sustainable savings to customers. In fact, the evidence from Columbia's CHOICE pilot in Kentucky and permanent programs in many other states is that customers will pay more on average when purchasing gas through a marketer. Moreover, expanded unbundling will impose additional burdens and costs upon LDCs, negatively impacting costs for all consumers, and presents significant risks to reliability.

Accordingly, and for all of the reasons set forth above, the Commission should report to the General Assembly that further unbundling should not be mandated, but should also highlight the protections which must be in place in the event expanded unbundling is nonetheless put into place.

Respectfully Submitted,

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