

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF DELTA NATURAL GAS  
COMPANY, INC. FOR AN ORDER DECLARING ) CASE NO.  
THAT IT IS AUTHORIZED TO CONSTRUCT, OWN ) 2013-00365  
AND OPERATE A COMPRESSED NATURAL GAS )  
STATION IN BEREA, KENTUCKY

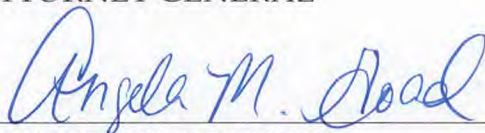
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ATTORNEY GENERAL'S POST-HEARING BRIEF

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Respectfully submitted,

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## ATTORNEY GENERAL'S POST-HEARING BRIEF

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and for his post-hearing brief in the above-styled matter states as follows:

### **I. STATEMENT OF THE CASE**

Delta Natural Gas Company, Inc., ("Delta") is a Kentucky corporation and public utility engaged in the sale of natural gas in Kentucky.<sup>1</sup> On October 3, 2013, Delta filed an application with the Public Service Commission of Kentucky ("the Commission") seeking approval to construct, own and operate a compressed natural gas station ("CNG Station") at its existing facilities on Glades Road in Berea, Kentucky.<sup>2</sup> Delta proposes to construct compressors, tanks, dispensing pumps and card readers for credit cards, along with any other such construction that may be necessary for the operation of the CNG Station.<sup>3</sup> Initially Delta estimated that the cost of construction of the CNG Station would total \$ 1,293,105<sup>4</sup>; however, during the public hearing held on September 16, 2014 Delta submitted an updated increased estimate of 1,333,550.<sup>5</sup> In arriving at this sum, Delta assumes it will be able to deduct up to \$250,000 in tax incentives related

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<sup>1</sup> *Application of Delta Natural Gas Company, Inc., for An Order Declaring That It is Authorized to Construct, Own and Operate A Compressed Natural Gas Station in Berea Kentucky*, Case No. 2013-00365 (October 2, 2013) ("hereinafter Application") at 1.

<sup>2</sup> Application at p. 1.

<sup>3</sup> Application at p. 2.

<sup>4</sup> Direct Testimony of Wesolosky, Exhibit II, Schedule III. *See also*: Video Transcript of Evidence ("VTE") at 14:10:50-14:11:00.

<sup>5</sup> VTE at 14:11:15-14:11:27. *See also*: Delta Hearing Exh. 1.

to sales tax, income tax and severance tax, from the Kentucky Economic Development Finance Authority.<sup>6</sup>

Delta estimates the annual cost of operation of the CNG Station will be approximately \$20,000.<sup>7</sup> Delta proposes to reduce its operating costs by upgrading up to eleven fleet vehicles and using the CNG Station to fuel the new vehicles.<sup>8</sup> According to Delta, the annual fuel cost for a CNG vehicle is lower than a vehicle which uses gasoline.<sup>9</sup> Delta also plans to make the CNG Station available to the public for the sale of natural gas as a motor vehicle fuel.<sup>10</sup>

Delta proposes to initially finance the cost of construction of the proposed CNG Station either with internally generated cash, short-term debt through Delta's bank line of credit, or a combination of both.<sup>11</sup> However, once in service, Delta plans to include the construction and operating costs of the CNG Station in the rate base which will be recoverable as an increase to customers' bills by way of Delta's volumetric rate.<sup>12</sup> Assuming the station construction price of \$1,333,550 and the station not selling any CNG to the public, Delta estimates that the average monthly impact to the residential

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<sup>6</sup> Delta's Responses to PSC-1 Post-Hearing Data Request. *See Also:* PSC Hearing Exhibit 1 Schedules I-III (September 24, 2014). *See Also:* Direct Testimony of Wesolosky, p. 6, lines 9-13.

<sup>7</sup> Direct Testimony of Morphew, p. 8, lines 15-17. *See Also:* Direct Testimony of Wesolosky, p. 3, lines 12-14.

<sup>8</sup> Application at p. 2. *See Also:* Direct Testimony of Morphew, p. 7, lines 9-10. *See Also:* Direct Testimony of Wesolosky, p. 4, line 13-16.

<sup>9</sup> Direct Testimony of Wesolosky, p. 4, line 22.

<sup>10</sup> Application at p. 2. *See Also:* Direct Testimony of Morphew, p. 8, lines 5-6.

<sup>11</sup> Application at p. 4. *See Also:* Direct Testimony of Wesolosky, p. 3, lines 7-9.

<sup>12</sup> Application at p. 4. *See Also:* Direct Testimony of Brown, p. 10-11.

customer will be \$.00509 per centum cubic-feet (“ccf”) resulting in a charge of \$0.24 per month or \$2.85 per year on the average residential customer.<sup>13</sup>

Delta has requested that the Commission issue a declaratory order pursuant to 807 KAR 5:001, Section 18 and KRS 278.508 authorizing the company to construct, own and operate the CNG Station consistent with the amended tariffs proposed by the company.<sup>14</sup> In the alternative, if the Commission finds that KRS 278.020(1) applies, Delta has requested that the Commission issue it a certificate of public convenience and necessity authorizing the construction of the CNG Station.<sup>15</sup>

The Attorney General, by and through his Office of Rate Intervention, sought and was granted intervention by Order of the Commission on November 22, 2014.<sup>16</sup> On January 8, 2014, Interstate Gas Supply, Inc., (“IGS”) and Clean Energy Fuels Corporation, Inc., (“Clean Energy”) (hereinafter collectively “CNG Retailers”) filed a joint motion seeking discretionary intervention.<sup>17</sup> By Order dated February 24, 2014, the Commission granted intervention to the CNG Retailers on a joint basis as one party.<sup>18</sup> Further, the Commission referenced that the matter presented “unique issues...not previously addressed” and the provisions of KRS 278.508 that “specifically preclude the Commission from regulating ‘the rates, terms, and conditions of service for

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<sup>13</sup> Delta’s Responses to AG-1 Post-Hearing Data Request and Delta’s Responses to AG-1 Posting Hearing Data Request Schedules I (September 24, 2014)

<sup>14</sup> Application at p. 1.

<sup>15</sup> *Id.*

<sup>16</sup> Case No. 2013-00365, Order (November 22, 2014).

<sup>17</sup> Case No. 2013-00365, Interstate Gas Supply, Inc. and Clean Energy Fuels Corp., Inc., Motion to Intervene (January 8, 2014).

<sup>18</sup> Case No. 2013-00365, Order (February 24, 2014) at 5.

the sale of [sic] natural gas ... for use as a motor vehicle fuel.”<sup>19</sup> Relying on its preliminary analysis of KRS 278.508 as intending “to create a competitive environment for the sale of natural gas that will be used as motor vehicle fuel,” the Commission found that the CNG Retailers adequately demonstrated their special interest in the proceeding.<sup>20</sup>

On May 19, 2014, the Attorney General requested a public evidentiary hearing to consider this matter of first impression in Kentucky. The Commission conducted a public hearing on this matter on September 16, 2014.

## II. ARGUMENT

As a matter of first impression for the Commonwealth of Kentucky, Delta’s proposal automatically strikes discord between the jurisdictional oversight of the Commission and the fundamental intent of relevant Kentucky law. Delta, a *regulated* natural gas utility, proposes to construct, own, operate and supply fuel to a retail CNG fueling station offering *unregulated* sales of CNG as a motor vehicle fuel to the public. Further, Delta proposes to operate this *unregulated* enterprise as part of its *regulated* utility operations and place the construction costs, operating expense and risk in the company’s regulated rate base and revenue requirement as well as on the backs of ratepayers. Not only does this discord offend traditional ratemaking policy, the proposal contravenes the letter and intent of KRS 278.508. Further, even assuming *arguendo* that a regulated utility could be permitted to construct and operate an

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<sup>19</sup> *Id.* at pp. 4-5.

<sup>20</sup> *Id.* at 5.

unregulated CNG Station, Delta has failed to meet the requirement for a CPCN under KRS 278.020.

#### A. DELTA'S PROPOSAL VIOLATES KRS 278.508

As enacted by the Kentucky General Assembly, KRS 278.508 states, in full:

- (1) Notwithstanding any other provisions of this chapter, the rates, terms, and conditions of service for the sale of natural gas to a compressed natural gas fuel station, retailer, or to any end-user for use as motor vehicle fuel, *shall not be subject to regulation by the Kentucky Public Service Commission.* Any utility provider of such a nonregulated service shall keep separate records and books of account adequate to allow the commission to allocate costs and revenues and to perform other acts that will assist the commission in enforcing this section.
- (2) The transportation, distribution, or delivery of natural gas to any compressed natural gas fuel station, retailer, or any end-user for use as a motor vehicle fuel, shall continue to be subject to regulation by the Kentucky Public Service Commission. Upon request by the utility, the commission shall set flexible rates which provide a fair opportunity to compete with other motor fuels. Price adjustment pursuant to these flexible rates are not rate changes for purposes of this chapter.
- (3) The sales or transportation transactions described in this section *shall not adversely affect the regulated utility's cost or costs,* or the availability of natural gas to its utility sales customers.<sup>21</sup>

Delta's as-applied proposal fails to comply with the clear language of KRS 278.508.

First, the evidence presented demonstrates that the CNG Station will adversely impact its regulated operations in violation of KRS 278.508(3). Specifically, Delta proposes to recover over \$1.3 million in construction costs for the CNG Station by increasing its volumetric charge to ratepayers upon both those within the vicinity of Berea and those residing well beyond Berea into its

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<sup>21</sup> KRS § 278.508 (Emphasis Supplied).

entire service territory.<sup>22</sup> The President and CEO, Glenn Jennings, confirmed at the public hearing that Delta's customers from all twenty-three (23) counties it serves would be forced to pay for the CNG Station exclusively located in Berea.<sup>23</sup> The Attorney General considers it to be inherently unfair to force all of Delta's customers from across the state of Kentucky to pay for a CNG Station that is only potentially beneficial, if at all, to those ratepayers located near Berea.

Furthermore, contrary to Delta's assertions that the rate impact is *de minimis*, all residential ratepayers will recognize an increase of \$0.24 per month.<sup>24</sup> During the course of the public hearing Delta's Chief Financial Officer, Treasurer, and Secretary John Brown was asked if he was aware that there are roughly twenty (20) natural gas local distribution companies that are jurisdictional to the Commission in Kentucky, and nearly all of them large and small, charge lower rates than Delta.<sup>25</sup> Mr. Brown responded to this question by stating that the company is merely asking for a "de minimis" or "immaterial" rate increase on the customer bills.<sup>26</sup> Thus, from this answer it appears that Delta has not given any valid consideration as to the rate burden that its customers already bear, which is higher than most other natural gas customers in the state, evidenced by the fact that it is now asking the Commission to force the ratepayers to bear all of the costs of the proposed CNG Station as well.

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<sup>22</sup> See Delta's Service Area Map: [http://www.deltagas.com/service\\_area.html](http://www.deltagas.com/service_area.html)

<sup>23</sup> VTE at 16:06:17-16:07:14. See Also: Direct Testimony of Wesolosky, p. 4, lines 1-10.

<sup>24</sup> Delta's Responses to AG-1 Post-Hearing Data Request and Delta's Responses to AG-1 Posting Hearing Data Request Schedules I (September 24, 2014). VTE at 11:48:25-11:48:51.

<sup>25</sup> VTE at 11:47:50-11:48:51. See Also: VTE 12:25:22-12:25:35.

<sup>26</sup> *Id.* See Also: Direct Testimony of Brown, p. 12, lines 20-21.

The plain language of KRS 278.508(3) prohibits any adverse impact upon the regulated utility's costs, with no exception for a "de minimis" or "immaterial" impact. Thus, under KRS 278.508(3) it makes no difference whether Delta's requested rate increase were exorbitant or minuscule, for the simple fact that any rate increase will adversely affect the regulated utility's costs, and hence does not comply with the statute.

Second, the Attorney General agrees with the Commission's "preliminary review of KRS 278.508(1) that the intent of the statute is to create a competitive environment for the sale of natural gas that will be used as a motor vehicle fuel."<sup>27</sup> Delta's proposal stands in direct opposition to the clear intent of the General Assembly to foster a competitive environment for CNG as a motor vehicle fuel. The value of competition in the CNG Station market is clear from the testimony of the CNG Retailers wherein they assert that it is bad public policy to allow regulated natural gas distribution companies to build CNG Stations and recover those costs from the ratepayers.<sup>28</sup> The CNG Retailers accurately point out that since vehicle refueling is not a natural monopoly service it is inappropriate to grant Delta an authorized rate of return and cost recovery for the CNG Station.<sup>29</sup>

The CNG Retailers expert witness, Dave Mrowzinski, further testified that Delta has severely underestimated the fixed and variable costs of the proposed

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<sup>27</sup> Order (February 24, 2014) at 5.

<sup>28</sup> Direct Testimony of Dave Mrowzinski, p. 4, lines 13-17.

<sup>29</sup> *Id.* at lines 17-19.



CNG Station, which in turn will cause the ratepayers to bear much higher risks than Delta has proffered.<sup>30</sup> If Delta is permitted to recover its costs of the CNG Station exclusively from the ratepayers, with no risk to its shareholders, this will clearly create an anti-competitive advantage for Delta in the CNG marketplace.<sup>31</sup> Private entities would be strongly discouraged from entering into a market to compete against a regulated company such as Delta, which has all of its CNG Station infrastructure and operation costs paid by the captive ratepayers. With this dynamic, a private CNG Station would be unable to compete with the regulated entity that has its CNG Station subsidized by the ratepayers. For these reasons, Delta's proposal directly violates the fundamental intent of KRS 278.508 to allow a competitive market environment for the sales of CNG as a motor vehicle fuel.

Moreover, Delta's arguments regarding ratepayer subsidies of CNG in other states are not applicable to Kentucky. Delta argues that the Commission should approve its pending application since the Utah Legislature, Utah Public Service Commission, and the natural gas utilities passed legislation in that state forcing the ratepayers to pay for portions of the CNG Station infrastructure and operating costs.<sup>32</sup> However, Delta conveniently omits from its testimony that the Kentucky General Assembly had the opportunity and declined to even consider a bill that would have permitted Delta to pursue this type of proposal.

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<sup>30</sup> Direct Testimony of Mrowzinski, p. 4, lines 10-12.

<sup>31</sup> Direct Testimony of Mrowzinski, p. 13, lines 5-6.

<sup>32</sup> Direct Testimony of Brown, p. 3, lines 16-23. *See Also*: VTE 10:55:33-10:55:47.

During the 2014 Kentucky Legislative session, Kentucky House Bill 560 was introduced and, as drafted, would have created a new section of KRS Chapter 278 to establish a mechanism whereby a natural gas utility may recover in rates part of the cost of building out infrastructure to fueling stations so that the station may offer natural gas as a vehicle fuel.<sup>33</sup> Delta's witness Brown admitted at the public hearing that the General Assembly did not pass HB 560, and in fact has never passed any laws that would allow Delta to force the ratepayers to bear the risk and costs of the construction and operation of a CNG Station.<sup>34</sup> One can only conclude from the evidence that Delta is requesting that the Commission grant it authority that the Kentucky Legislature has not and would not bestow.

Consequently, Delta's application should be denied since it is evident that the pending proposal to force its captive ratepayers to pay for the CNG Station construction and operating costs violates both the fundamental intent and plain reading of KRS 278.508.

**B. DELTA FAILS TO DEMONSTRATE NEED UNDER KRS 278.020**

Delta argues that a CPCN is not required, but the Attorney General disagrees. KRS 278.020(1) provides, in relevant part, that:

- (1) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any services enumerated in KRS 278.010 ... until that person *has obtained*

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<sup>33</sup> H.B. 560 (2014) introduced as AG Hearing Exhibit No. 1

<sup>34</sup> VTE 10:56:00-10:56:55.

from the Public Service Commission a certificate that public convenience and necessity require the service or construction.<sup>35</sup>

Furthermore, KRS 278.020(4) states, in full:

- (4) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.<sup>36</sup>

Delta's pending application requesting, in the alternative, a CPCN to build a CNG Station fails to show that there is a demand and need for the station in Berea, and hence fails to comply with KRS 278.020.

Prior to a utility commencing construction upon any new facility in the Commonwealth of Kentucky, KRS 278.020(1) requires the utility to first prove<sup>37</sup> that the requested facility is required for public convenience and necessity, and "the utility must demonstrate a need for such facilities and an absence of wasteful duplication."<sup>38</sup> The Kentucky Supreme Court has held and the Commission has enforced that "need" requires "a showing of a substantial inadequacy of existing service, involving a

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<sup>35</sup> KRS § 278.020(1) (Emphasis Supplied).

<sup>36</sup> KRS § 278.020(4) (Emphasis Supplied).

<sup>37</sup> "The burden of demonstrating the reasonableness of a proposed rule or condition of service is upon the utility." *In the Matter of Hardin County Water District No. 1*, Case No. 2009-00113, 2010 WL 4250014 (Ky.P.S.C.), citing *Energy Regulatory Commission v. Kentucky Power Company*, 605 S.W.2d 46,50 (Ky. App. 1980)(applicants before an administrative agency have the burden of proof). Further, administrative findings must be based on substantial evidence. *Kentucky Board of Nursing v. Ward*, 890 S.W.2d 641, 642 (Ky. App. 1994).

<sup>38</sup> See *In Re: The Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main*, Case No. 2007-00134, (Ky. PSC Apr. 25, 2008) at 29 (citing *Kentucky Utilities Co. v. Public Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952)). See Also: *Citizens for Alternative Water Solutions v. Kentucky Public Serv. Comm'n* 358 S.W. 3d 488, 490 (Ky. App. 2012).

*consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated.”*<sup>39</sup>

Delta has not submitted any evidence to the Commission that would demonstrate there is a current consumer market sufficiently large to make a CNG Station economically feasible, and hence has not proven there is “need” for a CNG Station in Berea, Kentucky as KRS 278.020 and the prevailing case law explicitly requires. To the contrary, when the Attorney General requested that Delta provide the number of customers that have transportation vehicles that operate on CNG and would therefore be potential consumers at the proposed CNG Station, Delta responded that it, “...does not know the number of Delta’s customers who have transportation vehicles that operate on CNG.”<sup>40</sup>

Likewise, Delta responded to the Commission’s request to provide an estimate of how many CNG powered vehicles operate within its service area by asserting, “...[t]here are no other known present or proposed CNG fueling stations in the Berea area by either regulated or private investors. Being no known present CNG fueling stations in the Berea area, Delta estimates there are no CNG-powered vehicles currently operating within the Berea service area.”<sup>41</sup>

Delta further testified at the public hearing that there is no present demand or

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<sup>39</sup> *Id.* at 29 (citing *Kentucky Utilities*, 252 S.W.2d at 890). (Emphasis supplied.) See also: *In the Matter of: Application of Natural Gas of Kentucky for Approval of Construction of an Intrastate Natural Gas Pipeline, Issuance of a Certificate of Convenience and Necessity, and Approval of Financing*, Case No. 2014-00257 (October 2, 2014).

<sup>40</sup> Delta’s Response to AG 1-10. See Also: VTE 10:19:45 - 10:19:52.

<sup>41</sup> Delta’s Response to PSC 1-7. See Also: Delta’s Response to AG 2-18. See Also: VTE 10:20:14 - 10:20:38

need for a CNG Station in its service territory.<sup>42</sup> In fact, Delta's witness John Brown admitted at the hearing that even though there was no current demand for a CNG Station, Delta interprets "need" as the need to sustain the environment and reduce dependence on foreign transportation sources.<sup>43</sup> However, when asked whether Delta could provide any statute, Kentucky case law, or Commission precedent that defines need in this way, Mr. Brown acknowledged that he could cite to no authority that defines need in this manner.<sup>44</sup> Thus, based upon the evidence Delta has presented to the Commission, it has not proven that there is a consumer market that is sufficiently large to make a CNG Station in Berea economically feasible.

In addition to the disconcerting fact that Delta has no evidence that a consumer market exists for a CNG Station, Delta similarly testified that it did not conduct a market analysis, or any research at all, to determine if the CNG Station that Delta wants to force the captive ratepayers to exclusively fund, will ever be economically feasible.<sup>45</sup> Delta regrettably offers circular reasoning to support its application instead of market analysis research or economic feasibility data. Witness Brown testified at the hearing that instead of performing research on economic feasibility, Delta has made the "assumption" that once the CNG Station is built then people will purchase natural gas vehicles and conversion would take place.<sup>46</sup> In other words, it appears Delta is relying on the *build it and they will come* approach. Conversely, Witness Brown also

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<sup>42</sup> VTE 10:17:00 - 10:21:13. *See Also:* 10:23:19 - 10:23:30.

<sup>43</sup> VTE 10:18:37 - 10:19:07.

<sup>44</sup> VTE 10:19:08 - 10:19:17.

<sup>45</sup> VTE 10:26:20 -10:27:05. *See Also:* 10:29:43 - 10:32:30. *See Also:* Delta's Response to PSC 2-6. *See Also:* Delta's Response to AG 1-2.

<sup>46</sup> VTE 10:29:43 - 10:30:10.

testified that Delta understood it would be “difficult for a consumer” to justify and be able to afford a natural gas vehicle since its average cost is around \$10,000 more than an identical regular gasoline model.<sup>47</sup> This leaves the question unanswered as to whether residential ratepayers can afford, or would even be willing to pay significantly more money for a natural gas vehicle, since Delta did not deem it necessary to perform research on this very important issue.

To further cement the fact that the CNG Station will not be economically feasible Delta blatantly admits that the utility, “...believes the companies building CNG Stations across the country have not built in Kentucky, and particularly Delta’s service territory, because they have concluded it is not economically viable to build stations in those rural locations. Delta agrees ... that it is not reasonable to expect a CNG fueling station in Delta’s service territory to initially be profitable.”<sup>48</sup> Delta goes on to state, “[t]he entire premise for Delta’s proposal is the assumption that building a station in Berea, Kentucky is not currently economically feasible – for Delta or anyone else at this point. Although Delta has not performed an economic analysis of a Berea CNG Station because of an absence of meaningful data, it is hopeful that it will become profitable once its existence is known to potential users of CNG.”<sup>49</sup> By Delta’s own admissions, the proposed CNG fueling station is not economically feasible and thus does not comply with KRS 278.020.

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<sup>47</sup> VTE 10:32:00 – 10:32:30. *See Also:* Delta’s Response/ Attachment to PSC 1-4. *See Also:* Delta’s Response to AG 1-35. *See Also:* Delta’s Response to PSC 2-2. *See Also:* Delta’s Response to AG 2-4. *See Also:* Delta’s Response to AG 1-74.

<sup>48</sup> Delta’s Response to PSC 2-6. VTE 10:36:45 – 10:37:00.

<sup>49</sup> *Id.*

When the question is posed to Delta as to why its shareholders should not fund the proposed CNG project instead of the ratepayers, the simple response is that there would not be acceptable rate of returns or profitability to invest shareholder dollars.<sup>50</sup> Delta also admits that if a private enterprise were using shareholder funds to build a CNG Station then it, “would likely perform a market analysis.”<sup>51</sup> So it appears that Delta is unwilling to use its shareholder funds for a risky investment, but there is no hesitation to use the captive ratepayer funds to build the proposed CNG Station that admittedly has no current consumer base, will not be initially profitable, if ever, and where absolutely no research has been conducted to determine economic feasibility.

The Attorney General posits that Delta (1) has failed to show that burdening captive ratepayers with the risk of a potentially uneconomic investment is reasonable or otherwise supported by statute; and (2) has failed to demonstrate need, which is required for a CPCN. Nonetheless, the Attorney General supports the legislative intent to expand CNG as a vehicular fuel in a manner that does not adversely impact ratepayers and that fosters fair competition. As such, the Attorney General is not opposed to a CNG Station being built by Delta as an unregulated enterprise, using shareholder funds and/or as a public/private partnership between Delta and the City of Berea using grant or other funding mechanisms.<sup>52</sup>The Attorney General cannot support forcing Delta’s captive ratepayers spread out across twenty-three (23) counties

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<sup>50</sup> Delta’s Response to PSC 2-6. *See Also:* Delta’s Response to PSC 1-1.

<sup>51</sup> Delta’s Response to AG 1-54(d).

<sup>52</sup> *See*, Direct Testimony of John Brown, p. 6, lines 12-22. (Delta’s witness John Brown discusses how two cities in Kentucky, Carrollton and Somerset, use city tax dollars to fund construction and operation of CNG Stations.)

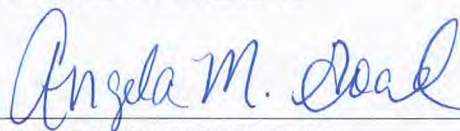
to fund a CNG Station that is exclusively located in Berea, has no current customer base, and where no market analysis on economic feasibility has been performed. Since Delta's pending application requesting a CPCN to build a CNG Station fails to show that there is a demand and need for the station in Berea, it therefore fails to comply with the plain reading of KRS 278.020 and should be denied.

### III. CONCLUSION

The Attorney General strongly objects to forcing captive ratepayers to fund Delta's CNG Station since the proposal contravenes the letter and intent of both KRS 278.508 and KRS 278.020; and should therefore be denied.

Respectfully submitted,

JACK CONWAY  
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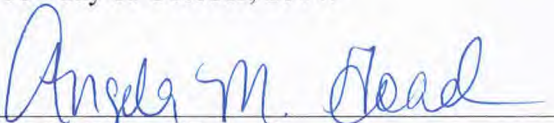
*Certificate of Service and Filing*

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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This 16<sup>th</sup> day of October, 2014.

  
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Assistant Attorney General