

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF COLUMBIA	)	
GAS OF KENTUCKY, INC. TO EXTEND ITS	)	CASE NO.
SMALL VOLUME GAS TRANSPORTATION	)	2021-00386
SERVICE	)	

ORDER

On July 18, 2024, Columbia Gas of Kentucky, Inc. (Columbia Kentucky) filed a motion, pursuant to KRS 278.400, requesting rehearing of the Order entered June 28, 2024, and asking that the Commission reconsider its decision to continue the Choice Program beyond the date proposed by Columbia Kentucky; the establishment of post-hearing informal conferences to be administered by Commission Staff; and the requirement that Columbia Kentucky track revenues and expenses for the Choice program and file reports regarding same. On July 25, 2024, XOOM Energy Kentucky, LLC (XOOM), Interstate Gas Supply, Inc. d/b/a IGS Energy (IGS), and Constellation New Energy Gas Division, LLC (CNEG) (together, Joint Intervenors), all parties granted intervention<sup>1</sup> by the Commission in this matter, filed a joint response to Columbia Kentucky's arguments. On July 31, 2024, Columbia Kentucky filed a reply.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original

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<sup>1</sup> IGS and CNEG were granted intervention by Order dated Jan. 13, 2022. XOOM was granted intervention by Order dated Jan. 25, 2022.

hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>2</sup> An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>3</sup>

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

#### MOTION

Columbia Kentucky first argued that the Choice program is a voluntary tariff, and the Commission’s decision to continue the program over Columbia Kentucky’s objection is outside the Commission’s jurisdiction.<sup>4</sup> Columbia Kentucky alleged that the Commission’s decision to extend the Choice Program, establish post-hearing informal conferences to be administered by Commission Staff, and require Columbia Kentucky to track and file reports on the expenses and revenues of the Choice Program was unlawful and unreasonable.<sup>5</sup>

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<sup>2</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>3</sup> *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

<sup>4</sup> Columbia Kentucky’s Motion for Rehearing (filed July 18, 2024) at 5.

<sup>5</sup> Columbia Kentucky’s Motion for Rehearing at 1.

Columbia Kentucky alleged that no other regulated utility has a program like the Choice Program.<sup>6</sup> Columbia Kentucky also cited to language in an Order in Case No. 2019-00165,<sup>7</sup> which indicated that it was Columbia Kentucky's decision to continue or abandon the program, to argue that the Commission contradicted its past Orders.<sup>8</sup> Columbia Kentucky argued that the Choice Program is not mandated by statute or Commission regulation.<sup>9</sup> Columbia Kentucky cited to the Commission's 1998 decision in Administrative Case No. 367<sup>10</sup> alleging that the case made it clear that local distribution companies in Kentucky could offer customer choice programs to small-volume customers and outlined the framework for any "utility proposing a customer choice program" including issues that any proposed program must address.<sup>11</sup>

Columbia Kentucky also cited to a report issued by the Commission in Case No. 2010-00146,<sup>12</sup> regarding investigating natural gas competition programs, and stated that the current decision contradicts the findings in the report that support the argument that the Commission lacked the statutory authority to require this type of tariff.<sup>13</sup> Columbia Kentucky argued that there is no statutory or regulatory basis by which Columbia

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<sup>6</sup> Columbia Kentucky's Motion for Rehearing at 7.

<sup>7</sup> Case No. 1999-00165, *The Tariff Filing of Columbia Gas of Kentucky, Inc. to Implement a Small Volume Gas Transportation Service, to Continue its Gas Cost Incentive Mechanisms, and to Continue its Customer Assistance Program*, (Ky. PSC March 6, 2020) Order at 5.

<sup>8</sup> Columbia Kentucky's Motion for Rehearing at 5-6.

<sup>9</sup> Columbia Kentucky's Motion for Rehearing at 9.

<sup>10</sup> Administrative Case No. 367, *The Establishment of a Collaborative Forum to Discuss the Issues related to Natural Gas Unbundling and the Introduction of Competition to the Residential Natural Gas Market* (Ky. PSC July 1, 1998), Order.

<sup>11</sup> Columbia Kentucky's Motion for Rehearing at 6.

<sup>12</sup> Case No. 2010-00146, *An Investigation of Natural Gas Retail Competition Programs*.

<sup>13</sup> Columbia Kentucky's Motion for Rehearing at 7.

Kentucky can be ordered to indefinitely extend the Choice Program or even to require Columbia Kentucky to extend the Choice Program further than it proposed.<sup>14</sup>

Joint Intervenors responded that Columbia Kentucky has already made and exhausted these arguments, and in its motion for rehearing, Columbia Kentucky cited no new authorities other than those cited previously in its post-hearing brief, and makes no novel arguments about the Commission's alleged lack of jurisdiction.<sup>15</sup> Joint Intervenors also argued that the Commission's Order in respect to a working group and the tracking of expenses and revenues falls squarely within the Commission's regulatory authority.<sup>16</sup> Joint Intervenors argued that the Commission cannot ensure that the rates that Columbia Kentucky charges for the Choice Program are "fair, just and reasonable" unless Columbia Kentucky tracks the revenues and expenses related to the program and provides that information to the Commission, which the Commission has the authority to require.<sup>17</sup> Joint Intervenors also stated that the Commission has the power to regulate utilities using "all reasonable rules, regulation, and orders of the Commission," with respect to the working group requirements.<sup>18</sup>

Columbia Kentucky next argued that the Commission's finding stating that Columbia Kentucky has a performance-based rate (PBR) sharing mechanism, but Atmos

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<sup>14</sup> Columbia Kentucky's Motion for Rehearing at 8.

<sup>15</sup> Joint Intervenor's Response to Columbia Kentucky's Motion for Rehearing (Joint Intervenor's Response) (filed July 25, 2024) at 3.

<sup>16</sup> Joint Intervenors' Response at 4.

<sup>17</sup> Joint Intervenors' Response at 4.

<sup>18</sup> Joint Intervenors' Response at 4.

Energy Corporation (Atmos) does not, is blatantly false.<sup>19</sup> Columbia Kentucky stated that Atmos does have a PBR sharing mechanism and has established a new case number for its PBR renewal filing.<sup>20</sup>

Columbia Kentucky also argued that the Commission's findings support Columbia Kentucky's position in this case.<sup>21</sup> Columbia Kentucky quoted the Commission's Order to say that the statement:

the Commission did not force the creation of Columbia Kentucky's PBR mechanism nor will force Atmos to develop such a mechanism. However, the Commission has the authority to investigate the mechanism and determine whether or not it results in fair, just and reasonable rates regardless of the utility.<sup>22</sup>

supports its argument that the Commission cannot force Columbia Kentucky to continue a voluntary tariff, but only has the authority to investigate it to determine whether it results in fair, just and reasonable rates.<sup>23</sup> Columbia Kentucky again reiterated that continuing the Choice Program is a discriminatory action by the Commission, outside the jurisdiction of the Commission, and should be reconsidered.<sup>24</sup>

Joint Intervenors stated that nowhere in the motion for rehearing does Columbia Kentucky assert that the Commission's alleged errors were material, and that the argument of inconsistencies is irrelevant under KRS 278.400.<sup>25</sup> Furthermore, Joint

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<sup>19</sup> Columbia Kentucky's Motion for Rehearing at 9.

<sup>20</sup> Columbia Kentucky's Motion for Rehearing at 9.

<sup>21</sup> Columbia Kentucky's Motion for Rehearing at 9.

<sup>22</sup> Order (Ky. PSC June 28, 2024) at 9–10.

<sup>23</sup> Columbia Kentucky's Motion for Rehearing at 9.

<sup>24</sup> Columbia Kentucky's Motion for Rehearing at 9.

<sup>25</sup> Joint Intervenors' Response at 4.

Intervenors stated that Columbia Kentucky failed to meet the standard for a finding of material errors or omissions.<sup>26</sup> As to the Atmos PBR Mechanism, Joint Intervenors argued that, even if the Commission was mistaken in the example that it used, it does not alter the legal basis underlying the example: that the Commission does not compel utilities to institute specific programs.<sup>27</sup>

Columbia Kentucky also argued that the Commission's Order has incorrect statements regarding Columbia Kentucky's administration of the Choice Program, that the Choice Program has not been administered in a way that ensures success.<sup>28</sup> Columbia Kentucky stated that the program was designed in accordance with the parameters set forth in Administrative Case No. 367 and has been modified within the bounds of those parameters with the agreement of Columbia Kentucky and authorization of the Commission in the more than twenty years since.<sup>29</sup>

Columbia Kentucky's next argument asserted that the Commission's ruling was inconsistent with prior Orders.<sup>30</sup> First, Columbia Kentucky stated that reliance on the survey results was inconsistent with prior Commission Orders in voluntary tariff filings of Columbia Kentucky.<sup>31</sup> Columbia Kentucky cited Case No. 2022-00049<sup>32</sup>, its application

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<sup>26</sup> Joint Intervenors' Response at 6.

<sup>27</sup> Joint Intervenors' Response at 5.

<sup>28</sup> Columbia Kentucky's Motion for Rehearing at 10.

<sup>29</sup> Columbia Kentucky's Motion for Rehearing at 10.

<sup>30</sup> Columbia Kentucky's Motion for Rehearing at 10.

<sup>31</sup> Columbia Kentucky's Motion for Rehearing at 11.

<sup>32</sup> Case No. 2022-00049, *Electronic Application of Columbia Gas of Kentucky, Inc. for Approval of the Green Path Rider Pilot Program*.

for approval of the Green Path Rider Pilot Program.<sup>33</sup> Columbia Kentucky stated that, in denying the Green Path Rider, the Commission voiced concerns over survey results but had no concerns relying on surveys in requiring Columbia Kentucky to extend the Choice Program.<sup>34</sup>

Columbia Kentucky argued that the Commission was forcing Columbia Kentucky to continue a voluntary program that was proven to cost Columbia Kentucky's customers millions of dollars more than they would have paid without the Choice Program.<sup>35</sup> Columbia Kentucky argued that not only have the customers historically paid more under the Choice Program, but the new requirements established by the Commission in this proceeding will increase costs, further burden Columbia Kentucky's existing workforce, and require additional resources that are not currently available.<sup>36</sup>

Columbia Kentucky pointed to the working group as something that will increase costs, and argued that the working group is outside of the Commission's authority and denies Columbia Kentucky the fundamental statutory right, created by the General Assembly in KRS 278.030, to establish reasonable rules related to how it conducts business and the conditions under which it provides service.<sup>37</sup> Columbia Kentucky argued that this is arbitrary and unlawful and beyond the Commission's jurisdiction.<sup>38</sup>

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<sup>33</sup> Columbia Kentucky's Motion for Rehearing at 11.

<sup>34</sup> Columbia Kentucky's Motion for Rehearing at 12 citing Case No. 2022-00049, Dec. 6, 2023 Order at 4.

<sup>35</sup> Columbia Kentucky's Motion for Rehearing at 14.

<sup>36</sup> Columbia Kentucky's Motion for Rehearing at 14.

<sup>37</sup> Columbia Kentucky's Motion for Rehearing at 14–15.

<sup>38</sup> Columbia Kentucky's Motion for Rehearing at 16.

Columbia Kentucky argued that this grant of power is so far beyond the duties of Commission Staff, it could open the Commission and Staff to liability for damages to Columbia's customers as a result of the Choice Program.<sup>39</sup> Columbia Kentucky also reiterated that its current software cannot provide the type of expense and revenue information the Commission has stated it would like to evaluate, and the software necessary would require significant investment into unplanned upgrades, which would be a cost born on customers.<sup>40</sup>

Joint Intervenors argued that Columbia Kentucky initially relied on the survey to extend the Choice Program and then reversed course, relying on the survey to end the program, and that Columbia Kentucky arguing against the results is the very definition of inconsistent and violates the well-settled doctrine of quasi-estoppel, citing *Pettit's Adm'r v. Goetz*, 87 S.W2d 99, 102 (Ky. 1935).<sup>41</sup> Joint Intervenors also pointed to the fact that the survey is but one small fact in a larger case, and was only one part of the Commission's consideration that Columbia Kentucky has not met the burden of proof regarding termination.<sup>42</sup>

Finally, Columbia Kentucky argued that it was its contractual right to withdraw from the Settlement Agreement and that the Commission's June 28, 2024 Order appears to be penalizing Columbia Kentucky for exercising its contractual right to terminate the Settlement Agreement for the modifications and additional conditions that were imposed

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<sup>39</sup> Columbia Kentucky's Motion for Rehearing at 16.

<sup>40</sup> Columbia Kentucky's Motion for Rehearing at 17.

<sup>41</sup> Joint Intervenors' Response at 5.

<sup>42</sup> Joint Intervenors' Response at 6.



by the Commission.<sup>43</sup> Columbia Kentucky also argued that the Commission's Order penalized Columbia Kentucky for not carrying out the Choice Program in a manner that this Commission now believes it should have.<sup>44</sup> Columbia Kentucky argued that the Commission is requiring Columbia Kentucky to invest more time, money, and effort into a declining voluntary program, in order to gather enough evidence to evaluate a voluntary program that Columbia Kentucky has requested to terminate.<sup>45</sup> Columbia Kentucky argued that this information has shown that the Choice Program has resulted in overall gas cost to customers in excess of what gas costs would have been without the Choice Program and that participation levels from both customers and marketers has steadily diminished.<sup>46</sup> Columbia Kentucky concluded that in requiring Columbia Kentucky to invest more into a failing program, the Commission's actions are unreasonable, unlawful and could be considered punitive.<sup>47</sup> Columbia Kentucky cited case law and argued that the Commission's actions are outside its statutory authority and constitute a confiscatory and punitive overreach of its plenary ratemaking authority because the actions do not ensure that rates are fair, just and reasonable.<sup>48</sup>

Joint Intervenors argued that the Commission is not seeking to punish Columbia Kentucky for withdrawing from the Joint Agreement; rather, the Commission is exercising its authority to ensure just and reasonable rates as well as to ensure customers may

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<sup>43</sup> Columbia Kentucky's Motion for Rehearing at 18.

<sup>44</sup> Columbia Kentucky's Motion for Rehearing at 18.

<sup>45</sup> Columbia Kentucky's Motion for Rehearing at 18.

<sup>46</sup> Columbia Kentucky's Motion for Rehearing at 19.

<sup>47</sup> Columbia Kentucky's Motion for Rehearing at 19.

<sup>48</sup> Columbia Kentucky's Motion for Rehearing at 20.

continue to choose their natural gas supplier.<sup>49</sup> Joint Intervenors argued that the Commission used its investigative authority under KRS 278.030 and KRS 278.040, which grant the Commission authority to “regulate and investigate utilities and ensure that rates charged are fair, just and reasonable,” and it is not a punitive measure against Columbia Kentucky.<sup>50</sup>

In Columbia Kentucky’s reply, it argued that Joint Intervenors’ arguments that Columbia Kentucky did not present any new evidence, alleged no material errors, and there were no unreasonable or unlawful Commission findings that required rehearing was incorrect.<sup>51</sup> Columbia Kentucky argued that the fact that incorrect information was used as a basis for the Commission’s decision is a material error that resulted in an unreasonable decision.<sup>52</sup>

Columbia Kentucky argued that the Commission went against the entire rationale of the decision in Case No. 2022-00049<sup>53</sup> to support the Commission’s decision in this proceeding and the departure from precedent in less than a year supported Columbia Kentucky’s argument that the decision in the proceeding was unreasonable.<sup>54</sup>

Columbia Kentucky stated that Joint Intervenors pointed out in their response, Columbia has *offered* the Choice Program for more than two decades and that this is

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<sup>49</sup> Joint Intervenors’ Response at 7.

<sup>50</sup> Joint Intervenors’ Response at 8 *citing Kentucky Public Serv. Com’n v. Com. Ex rel. Conway*, 324 S.W.3d 373, 383 (Ky. 2010).

<sup>51</sup> Columbia Kentucky’s Reply in Support of its Motion for Rehearing (Reply) (filed July 31, 2024) at 2.

<sup>52</sup> Columbia Kentucky’s Reply at 2.

<sup>53</sup> Case No. 2022-00049, *Electronic Application of Columbia Gas of Kentucky, Inc. for Approval of the Green Path Rider Pilot Program* (Ky. PSC Oct. 10, 2023).

<sup>54</sup> Columbia Kentucky’s Reply at 3.

evidence that the Choice Program is a voluntary program that the Commission does not have the jurisdiction to mandate that Columbia Kentucky continue to offer, or make available, to its customers.<sup>55</sup>

Columbia Kentucky argued that the Choice Program was not created for Columbia Kentucky to “provide utility service” to its customers but was created to offer Columbia Kentucky’s customers a choice of a natural gas provider.<sup>56</sup> Columbia Kentucky argued that this Commission’s decision is in sharp contrast to all other Commission decisions for the Choice Program related to the public interest.<sup>57</sup>

### DISCUSSION AND FINDINGS

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that, apart from correcting the inaccurate statement referencing Atmos, Columbia Kentucky’s motion for rehearing is denied for the reasons discussed below.

Columbia Kentucky’s argument that the Commission does not have jurisdiction to continue the program over Columbia Kentucky’s objection has already been previously addressed in the June 28, 2024 Order, and Columbia Kentucky has presented no new evidence on the matter. The Commission agrees with the Joint Intervenors as to this argument. The Commission has plenary authority to regulate utilities pursuant to KRS 278.030 and 278.040, and the Commission’s ruling falls squarely within this authority.

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<sup>55</sup> Columbia Kentucky’s Reply at 3.

<sup>56</sup> Columbia Kentucky’s Reply at 4.

<sup>57</sup> Columbia Kentucky’s Reply at 4

Likewise, informal conferences are squarely within the authority of the Commission pursuant to 807 KAR 5:001, Section 9(4). Columbia Kentucky provides no evidence that this expense would be any greater than the expense of a working group.<sup>58</sup> Informal conferences are a way for Commission Staff to facilitate discussion between Columbia Kentucky and other stakeholders, including marketers, regarding the Choice Program. The informal conferences are not binding on the Commission nor do they interfere with Columbia Kentucky's ability to establish reasonable rules related to how it conducts business and the conditions under which it provides service. Rather, informal conferences are meant to help inform the decision making for Columbia Kentucky and the stakeholders as it relates to the Choice Program.

The Commission grants rehearing to the limited extent of correcting a typographical error made by the Commission regarding the statement that Atmos does not have a PBR Sharing Mechanism. The Commission finds that all references to "Atmos Energy Corporation (Atmos)" on page 9 the June 28, 2024 Order, should be stricken. The Commission finds that the references should be replaced with "Duke Energy Kentucky, Inc (Duke Kentucky)." In addition, the Commission finds that all references to "Atmos" on page 10 of the June 28, 2024 Order, should be stricken. The Commission finds that the references should be replaced with "Duke Kentucky." This replacement makes no material change to the Commission's underlying arguments and reasoning.

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<sup>58</sup> Columbia Kentucky participated in working groups pursuant to the final Order issued in Case No. 2017-00115, *Tariff Filing of Columbia Gas of Kentucky, Inc. to Extend Its Small Volume Gas Transportation Service* (Ky. PSC Jun. 19, 2017), Order at 3. Columbia Kentucky did not file a request for rehearing on this final Order. In this matter, the Joint Intervenors filed the Direct Testimony of James Crist (filed Mar. 25, 2022) at 22, which supported continued workgroups.

The Commission disagrees with Columbia Kentucky's interpretation of the Commission's Order as it relates to investigating the PBR mechanism. The Commission does not force utilities to institute programs not required by statute or regulation. However, this program has been created; therefore, the Commission must be able to evaluate the impact and costs on customers when considering if the termination of the program is fair, just and reasonable to rate payors. Columbia Kentucky did not provide sufficient evidence for the Commission to determine that termination of the program was appropriate. For example, Columbia Kentucky has consistently resisted providing evidence of expenses as well as investments related to the program.<sup>59</sup>

Furthermore, the Commission's finds that the continuation of the Choice Program is not discriminatory nor is it unreasonable or unlawful. Columbia Kentucky has previously made similar arguments in briefing, and the Commission spent time in its final Order addressing why such action is not discriminatory. Columbia Kentucky did not present any new evidence here. Likewise, Columbia Kentucky's argument that the Commission made incorrect statements regarding the administration of the program are not a material mistake of fact. Rather, it was a finding that the Commission made based on the evidence presented in this case.

The Commission is troubled by Columbia Kentucky's comments on the Commission's use of survey results as evidence. Columbia Kentucky itself relied on the same survey results when making its arguments in this matter.<sup>60</sup> This survey was

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<sup>59</sup> See Columbia Kentucky's Motion for Rehearing at 17.

<sup>60</sup> See Columbia Kentucky's Post-Hearing Brief (filed Sept. 29, 2023) at 4 and 11.

previously ordered to be conducted by the Commission.<sup>61</sup> The Commission even stated that the survey results should be used by Columbia Kentucky and participating marketers to guide further education efforts.<sup>62</sup> As stated by the Joint Intervenors, this was also not the only evidence considered by the Commission when making its decision.

The Commission takes issue with Columbia Kentucky's characterization of this final Order relative to the final Order in Case No. 2022-00049. As noted, Columbia Kentucky objects to the Commission's reliance on survey results and increased expense related to software upgrades. However, Columbia Kentucky is already seeking several Information Technology (IT) upgrades as part of its current rate case, with Columbia Kentucky admitting it is unsure what the benefits to customers will be.<sup>63</sup> In Case No. 2022-00049, Columbia Kentucky indicated that it was willing to bear a portion of the total expense related to implementing the Green Path Rider with four other NiSource subsidiaries, with no plan to ensure that only participating customers bore the expense.<sup>64</sup> In addition, Columbia Kentucky controls the information collected within a survey. In Case No. 2022-00049, the company proposed a program based on survey results but then stated that "the [c]ompany did not feel that it was necessary to ensure a statistically significant response to the survey" in a footnote.<sup>65</sup> If Columbia Kentucky believes that the

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<sup>61</sup> See Case No. 2017-00115, *Columbia Gas of Kentucky, Inc. To Extend Its Small Volume Gas Transportation Service* (Ky. PSC. June 19, 2017), Order at 4.

<sup>62</sup> Case No. 2017-00115, June 19, 2017 Order at 4.

<sup>63</sup> Case No. 2024-00092, *Electronic Application of Columbia Gas of Kentucky, Inc for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions, and Other Relief* (filed July 10, 2024), Columbia Kentucky's response to Staff's Second Request for Information, Item 23.

<sup>64</sup> Case No. 2022-00049, Columbia Kentucky's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Jun. 23, 2023), Item 1e.

<sup>65</sup> Case No. 2022-00049, Columbia Kentucky's Response to Staff's First Request, Item 8.

survey(s) support its position in any matter before the Commission, the Commission certainly is within its authority to rely on the same information, even if the resulting findings are ones that Columbia Kentucky chooses to interpret differently.

Finally, the Commission finds the argument that the Commission's June 28, 2024 Order was punitive is without merit. Columbia Kentucky's argument is purely speculative, and the company provided no specific allegations that the Commission was punitive. In fact, a utility may disagree with the Commission's findings, but that does not make the Order punitive, unreasonable, or unlawful.

The Commission merely required Columbia Kentucky to maintain the program that has been in existence and extended at Columbia Kentucky's request since the year 2000 and assist the Commission in executing its duty to ensure fair, just and reasonable rates. If Columbia Kentucky genuinely wanted to terminate the program, it could have filed this application, requested termination and then provided the necessary evidence to support its position. Instead, Columbia Kentucky sought to continue the program at least another four years,<sup>66</sup> then flip-flopped when it changed its position in its entirety without providing convincing evidence to overcome other evidence of record supporting a conclusion that continuation of the program was fair, just and reasonable. Columbia Kentucky's "new" position sat in stark contrast to the evidence of record, including to evidence and testimony remitted by Columbia Kentucky. Columbia Kentucky has the burden of proof and failed to present substantial evidence that it should be allowed to terminate a 20-year old program.

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<sup>66</sup> Columbia Kentucky requested to continue the program through March 2025. See proposed Tariff, unnumbered page 30 (filed Oct. 7, 2021).

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's motion for rehearing as to the Commission's decision to extend the Choice Program beyond the date proposed by Columbia Kentucky, establishing post-hearing informal conferences to be facilitated by Commission Staff and requiring Columbia Kentucky to track revenues and expenses for the Choice Program and to file reports regarding same is denied.

2. Columbia Kentucky's motion for rehearing is granted to the limited extent that the Commission acknowledges a typographical error related to Atmos having a PBR sharing mechanism.

3. That all references to "Atmos Energy Corporation (Atmos)" on page 9 the Commission's June 28, 2024 Order, shall be stricken and replaced with "Duke Energy Kentucky, Inc (Duke Kentucky)".

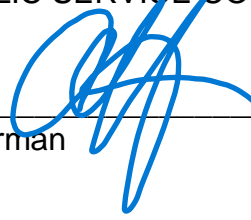
4. That all references to "Atmos" on page 10 of the June 28, 2024 Order, should be stricken and should be replaced with "Duke Kentucky".

5. The remainder of the Commission's June 28, 2024 Order not in conflict with this Order remains in effect.



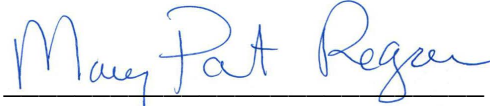
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