CASE NUMBER:

99-165

2. That if, on or before ten (10) days after the date of entry of this Opinion and Order, the Respondent files a tariff or tariff supplement, effective upon five (5) days' notice to the Commission, which cancels and supersedes Supplement No. 183 to Tariff Gas-Pa. P.U.C. No. 8, regarding the Columbia Choice Pilot Program, and incorporates the terms and conditions of the settlements with the OTS, the OCA, the OSBA filed on June 24, 1998, and Enron, filed on July 6, 1998. the tariff or tariff supplement proposing the changes to expand the pilot program shall be permitted to become effective.

3. That if the Respondent has not filed a tariff or tariff supplement canceling and superseding the presently proposed pilot program as per Ordering paragraph number two (2) above, on or before ten days of entry of this Opinion and Order, or been granted additional time to do so by order of the Commission:

(a) an investigation on Commission motion shall hereby be instituted, without further order of the Commission, to determine the lawfulness, justness and reasonableness of the rates, rules and regulations proposed is Supplement No. 183, to Gas-Pa. P.U.C. No. 8;

(b) the Office of Administrative Law Judge shall assign this matter to an Administrative Law Judge for the issuance of a Recommended Decision and shall schedule such hearing as necessary;

(c) that a copy of this Opinion and Order shall be served upon the Respondent, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate, and any persons who have filed Formal Complaints against Respondent's proposed pilot program modifications.

4. That this Opinion and Order is without prejudice to any Formal Complaints timely filed against Respondent's proposed modifications.

5. Upon acceptance and approval by the Commission of the tariff filed by Columbia Gas of Pennsylvania, Inc., consistent with this Order, the record at R-00984344 will be marked closed.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 9, 1998
ORDER ENTERED: JUL 09 1998

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

RE: Columbia Gas of Pennsylvania, Inc., Proposed Expansion of Residential and Small Commercial Transportation Pilot into Adams, Beaver, Butler Franklin and York Counties, Pennsylvania -- Supplement No. 183 to Tariff Gas - Pa. P.U.C. No. 8	:	R-00984344

JOINT PETITION FOR SETTLEMENT OF COLUMBIA GAS OF PENNSYLVANIA, INC. AND ENRON CAPITAL AND TRADE RESOURCES, INC.

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Columbia Gas of Pennsylvania, Inc. ("Columbia"), and Enron Capital and Trade Resources, Inc. ("Enron") file this Joint Petition for Settlement ("Joint Petition II") to resolve certain issues in conjunction with Columbia's proposal contained in Supplement No. 183 to Tariff Gas Pa. P.U.C. No. 8 ("Supplement No. 183"). In support thereof, it is represented as follows:

I. BACKGROUND

1. On April 24, 1998, Columbia filed Supplement No. 183 with a proposed effective date of June 23, 1998. Columbia voluntarily extended the proposed effective date until July 10, 1998.

2. In Supplement No. 183, Columbia proposes, inter alia, to:

a. Expand its existing residential and small commercial transportation pilot in Washington and Allegheny Counties, Pennsylvania (the "Choice Pilot") to residential and small commercial customers in the additional counties of Adams, Beaver, Butler, Franklin and York, Pennsylvania. If approved, Supplement No. 183 would increase the number of customers eligible to participate in the pilot from approximately 137,000 to 270,000 customers or about 70% of Columbia's small customers.

b. Continue to provide participating marketers in all counties with capacity options allowing marketers either to receive assignment of Columbia's Firm Transportation Capacity on Columbia Transmission Corporation or certify that the marketer has obtained Firm Transportation Capacity to deliver gas to Columbia's City Gate;

c. Continue to provide for recovery of costs of Firm Transportation Capacity not assigned to marketers through a surcharge ("Customer Choice Rider" or "Rider CC") applicable to all core customers including those participating in the Choice Pilot;[1/]

d. Provide for recovery under Rider CC of Columbia's budgeted costs of educating customers related to the third year of the Columbia Choice Pilot; and

e. To provide for rolling enrollment by customers on a monthly basis.

3. On June 24, 1998, Columbia, the Office of Consumer Advocate ("OCA"), the Office of Trial Staff ("OTS") and the Office of Small Business Advocate ("OSBA") filed a Joint Petition for Settlement ("Joint Petition I") with regard to Supplement No. 183.

4. Enron and Columbia have met both before and after the filing of Supplement No. 183 to discuss issues of interest to Enron raised by Columbia's proposed expansion of Columbia

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1/ The surcharge is applied to customers under the RS, RTS, RPS, SGS and SCT rate schedules.

Choice Pilot and have reached the settlement embodied in this Joint Petition II. As part of such discussion, Columbia has explained that while Columbia and its marketing affiliate Columbia Energy Services (CES) are both wholly owned subsidiaries of Columbia Energy Group, Columbia is both structurally and functionally separate from CES. Each company has its own management structure and each exercises no control over the other. The companies share no operating employees and, although CES maintains a regional office in Pennsylvania, CES and Columbia are currently located in separate buildings. Each company maintains separate books and records. although those books and records are consolidated at the parent level.

5. Columbia has informed OCA, OTS and OSBA, the parties to Joint Petition I, of the terms of this Joint Petition II and believes that such terms are acceptable to the parties to Joint Petition I. Nevertheless, Joint Petition II has been served upon these parties with a letter requesting that they notify the Commission of any objection thereto. Enron takes no position with respect to Joint Petition I.

II. SETTLEMENT

6. Enron and Columbia agree to resolve all issues raised by Enron with regard to Columbia's Supplement No. 183, as follows:

(a) Columbia will adopt, as part of its Rider-Pilot Capacity Assignment (Rider PCA), and agrees to be bound by, the code of conduct contained in the amended Rider PCA tariff provision attached hereto as Appendix "A", and such code of conduct shall govern operations under the Columbia Choice Pilot. The terms of this code of conduct are for the purposes of this Pilot

only. Enron has agreed to this code of conduct in recognition of the preexisting structural and accounting separations already established between Columbia and CES;

(b) Columbia withdraws its request for a fee to be charged to a marketer when a customer already participating in the pilot switches to a new marketer. The tariff pages attached as Appendix "A" delete this proposed charge;

(c) Columbia will apply the allocation procedure attached hereto as Appendix "B" if it must limit elections by marketers to provide firm capacity pursuant to the provisions of Rider PCA and Rider CC;

(d) Columbia will revise the terms of its contract with marketers to reflect the provisions contained in Appendix "C" to clarify and provide further flexibility with regard to the manner in which marketers meet the tariff requirement of providing firm capacity and Columbia's proposed tariff will be revised as reflected in the tariff pages attached hereto as Appendix "A" to make related changes. Columbia agrees that it shall abide by the terms of the marketing agreement set forth in Appendix "C" and that any violation of those terms shall constitute a violation of this settlement; and

(c) If this Joint Petition II is approved by the Commission, the tariff changes contained in Appendix "A" will supersede tariff provisions in Joint Petition I that are amended in Appendix "A."

III. CONDITIONS OF SETTLEMENT

7. Columbia's and Enron's support for the revisions to the Columbia Choice Pilot agreed to herein is conditioned upon the Commission's approval of the terms and conditions of this Joint Petition II without modification. If the Commission modifies such terms and conditions or other terms and conditions of the Columbia Choice Pilot, either party may elect to withdraw from the Joint Petition, and, in such event, this Joint Petition shall be void and of no effect as to such pilot. The Joint Petition is proposed by Columbia and Enron to settle all issues with regard to Supplement No. 183 and is made without admission against, or prejudice to, any position which either party may adopt in any subsequent litigation concerning Supplement No. 183, or litigation in any other proceeding, except as required to implement the Joint Petition, if approved, in future proceedings involving Columbia.

8. Columbia's and Enron's positions on the issues raised by Supplement No. 183 are affected by the fact that it is a pilot which is designed to identify, among other things, the extent to which marketers can serve firm customers without using upstream capacity which Columbia has contracted for to serve its customers. Columbia and Enron specifically reserve the right to advance positions contrary to this Joint Petition in future proceedings before the Commission.

9. Columbia and Enron agree that approval of the settlement is in the public interest.

WHEREFORE, Columbia and Enron, by their respective counsel, request that the Commission approve this Joint Petition II and authorize Columbia to file the tariff supplement attached hereto as Appendix "A", on one day's notice.

Respectfully submitted,

Daniel Clearfield, Esquire
Robert J. Longwell, Esquire
Wolf, Block, Schorr and Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Attorneys for Enron Capital and Trade Resources, Inc.

Michael W. Gang, Esquire
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Morgan, Lewis & Bockius LLP
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101

Kenneth W. Christman, Esquire
Mark R. Kempic, Esquire
Attorneys for Columbia Gas of Pennsylvania, Inc.

Dated: July 6, 1998

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service.	))))	Case No. 94-987-GA-AIR
In the Matter of the Application of Columbia Gas of Ohio, Inc. to Establish the Columbia Customer Choice Program.	)))	Case No. 96-1113-GA-ATA

ENTRY

The Commission finds:

(1) On June 3, 1994, Columbia Gas of Ohio, Inc. (Columbia), filed a notice of intent to file an application for an increase in rates in its entire service area. Also, in addition to the notice of intent and the application to increase rates, a joint stipulation and recommendation was filed by most of the parties to Columbia's prior rate case that would authorize Columbia to increase its rates and to implement a comprehensive package of new services. The joint stipulation and recommendation was supported by Columbia; the staff of the Public Utilities Commission of Ohio; the Ohio Consumers' Counsel; the Industrial Energy Consumers; Honda of America Mfg., Inc.; Enron Energy Services; the city of Toledo; the city of Columbus; the Bay Area Council of Governments, the Greater Cleveland Schools Council of Governments, and the Lake Erie Regional Council of Governments; the Ohio Farm Bureau Federation; and the Industrial End Users-Ohio (the Collaborative). The Commission adopted the 1994 stipulation in its Opinion and Order dated November 29, 1994.

(2) On October 28, 1996, members of the Collaborative filed a proposed amendment to the 1994 stipulation. The 1996 stipulation amendment was the result of the reiteration of the collaborative process contemplated by paragraph 46 of the 1994 stipulation. Among other things, the stipulation amendment provided that Columbia would not file a notice of intent to file an application to increase rates, nor request modification of accounting practices for additional cost deferrals, prior to March 1, 1998, and that, prior to January 1, 1999, there will be no upward base rate adjustment upon its transportation or sales customers, or additional accounting deferrals, except

those that may be necessary to effectuate Columbia's residential transportation program, referred to as "Customer Choice", or those that may result from generic proceedings with industry-wide application. Further, Columbia was permitted to retain in 1996, 1997, and 1998 the revenues retained from historic off-system sales and the revenues retained as a result of continuation of the Federal Energy Regulatory Commission Order 636 transition cost surcharge as set forth in Sections 5 through 9 of the amendment.

(3) On October 17, 1996, Columbia filed for approval Full Requirements General and Small General Transportation Service Tariffs in order to establish its Customer Choice program. This program is to make gas transportation service available to residential, small commercial, and human needs customers. By Opinion and Order dated January 9, 1997, the Commission approved Columbia's Customer Choice program subject to the incorporation of certain recommendations of the Commission's staff and other modifications of the Commission. The first phase of the program, which began on April 1, 1997, is currently in effect in the Toledo/Lucas County area for a one-year period. Continuation and expansion of the program is contingent upon an evaluation of the results of the program during the first year and a satisfactory resolution of the transition cost issues of the program that are being reviewed by the Collaborative prior to the end of the first phase.

(4) On November 28, 1997, the Collaborative, after considerable negotiation, filed what has been entitled a Second Amendment to Joint Stipulation and Recommendation (Second Amendment) in the above captioned cases to address the issue of transition capacity costs associated with continuation of Columbia's Customer Choice program. The Second Amendment also proposes certain modifications to the 1996 amendment to the 1994 stipulation. Except as specifically noted, the Second Amendment is not intended to alter the provisions of the 1996 amendment and the Customer Choice program. Below are some of the more salient terms of the Second Amendment:

(a) Pursuant to the agreement, Columbia would not file a notice of intent to file an application to increase base rates prior to March 1, 1999, and that, prior to January 1, 2000, there will be no

upward base rate adjustment, by rider or otherwise, requested by Columbia upon its transportation or sales customers except in accordance with the limited circumstances set forth in the Second Amendment.

(b) It is the intent of the parties to the Second Amendment that the Customer Choice program be made available throughout Columbia's service territory after the review of the initial phase of the program. The parties intend that an additional pleading will be filed in early 1998 seeking Commission approval of the needed tariff revisions to accomplish this expansion. In keeping with that desire, the Second Amendment seeks approval for a funding mechanism, and the establishment of a transition capacity cost recovery pool, designed to offset the transition capacity costs for the period beginning April 1, 1997 and ending four years from the date of the Commission order approving the expansion and/or continuation of the Customer Choice program. The parties have requested approval of the funding mechanism (and the associated accounting) so that it will be available upon the issuance of a Commission order approving the expansion.

(c) The Second Amendment describes how the transition capacity costs recovery pool will be created and the mechanism for the recovery of those costs. The pool will be comprised of pipeline and storage capacity costs associated with sales customers that migrate to transportation service under the Customer Choice program. Historically these costs have been recovered through the Gas Cost Recovery (GCR) rates. The transition capacity costs from the resulting Customer Choice program shall be identified and removed from Columbia's GCR on a monthly basis and placed into a separate account referenced as the transition capacity costs recovery pool. The funding mechanism for the recovery of the transition capacity costs includes the crediting of revenues retained by

Columbia. These revenues are attributable to voluntary capacity assignments, daily balancing services (the existing Optional Balancing Service in Part 70 Sheet 86 of Columbia's tariff shall be fixed at $.3214/Mcf effective with issuance of this entry and a new Statewide Optional Balancing Service shall be offered at a fee of $.4048/Mcf), interstate pipeline company refunds totaling $21,711,000, FERC Order 636 Transition Cost Surcharge, and a portion of Columbia's annual off-system revenues as set forth in the stipulation. It is agreed to by the parties, however, that the funding mechanism does not guarantee Columbia's recovery of transition capacity costs or program costs, but does offer Columbia the opportunity to recover its transition capacity costs and program costs.

(d) Columbia's Transition Capacity Cost Recovery Rider, contained on Original Sheet 85 of Columbia's tariff, shall be suspended if and when Columbia's Customer Choice program is expanded following the Commission's review of Columbia's existing pilot program, and said rider shall remain suspended unless and until such time that the Collaborative recommends, and the Commission orders, that it be reinstated, with or without modification. The Commission would note that nothing in the stipulation affects the legality of the Transition Capacity Cost Recovery Rider; it is merely being suspended.

(e) The Second Amendment addresses the disposition of off-system sales, as defined by the stipulation, and capacity release revenues. If, and to the extent that off-system sales revenues exceeds $18.2 million for the sixteen-month period ended December 31, 1997, all off-system sales revenue in excess of $18.2 million for said period shall be allocated between the GCR and Columbia, with 50 percent of the revenue being credited to the GCR and 50 percent being retained by Columbia. If, and to the extent that off-system sales revenue exceeds $17.2 million

for calendar year 1998, 1999, 2000, or 2001, all off-system sales revenue in excess of $17.2 million for any such year shall be allocated between the GCR and Columbia, with 50 percent of the revenue being credited to the GCR and 50 percent being retained by Columbia. With regard to capacity release revenues, as defined in Attachment C to the stipulation, for the sixteen-month period ending December 31, 1997, and for calendar years 1998, 1999, 2000, and 2001, Columbia may retain 50 percent of its capacity release revenue, or $3 million, whichever is less, for the period. These revenues described in this paragraph may be booked as earned throughout the term of the program at Columbia's discretion. The Commission will direct Columbia to report in its GCR quarterly filing to whom it makes off-system sales.

(f) Further, the Second Amendment provides for a partial true-up adjustment to address under/over-recovery of transition capacity costs, with Columbia being at risk for 11 percent of under-recovered transition capacity costs. The true-up also provides for a sharing of certain revenue balances over-recovered, with 75 percent being credited to the GCR and 25 percent retained by Columbia.

(g) Columbia will provide to the Commission and the Collaborative reports detailing the status of the Customer Choice program. The reports will be filed with the Commission by May 1 and November 1 of each year through May 1, 2002. The Collaborative agrees to meet in January 2000 to discuss and assess all issues related to the implementation of the Second Amendment. Finally, the Collaborative has set forth in Attachment D to the stipulation the proposed accounting for the matters described in the stipulation, of which it requests Commission approval.

(5) By entry dated December 2, 1997, interested persons were provided the opportunity to file written comments on the

Second Amendment by December 18, 1997 and to file reply comments by December 29, 1997. The East Ohio Gas Company (East Ohio) filed comments to the stipulation and MC2 Inc., the retail energy marketing subsidiary of MidCon Corp., (MC2) filed comments and a motion to intervene. MC2 subsequently filed a notice of withdrawal of its comments and petition to intervene.

(6) East Ohio, although not commenting on the specific terms of the Second Amendment, believes that the Commission should evaluate the stipulation in light of the particulars of Columbia's program and should not evaluate the stipulation as a possible template for other local gas distribution companies (LDCs). East Ohio states that there are other ways of designing an unbundling program to minimize stranded costs such as East Ohio has done with its mandatory capacity assignment provisions of its Energy Choice program. In response to East Ohio's comments, the Commission would note that it is evaluating the Second Amendment in the context of Columbia's program. Its applicability to other LDC gas choice programs would have to be evaluated on a case-by-case basis. The Commission would also like to note that, although MC2 withdrew its intervention, it and other marketers still have the opportunity to participate in future Customer Choice program-related issues and have access to reports, meetings, and information as noted in Columbia's year-end report to the Commission regarding the Customer Choice program.

(7) The Commission finds that the Second Amendment meets the standards for finding that stipulations are reasonable which have been applied in a number of prior Commission proceedings and endorsed by the Ohio Supreme Court. See, *Cincinnati Gas & Electric Co.*, Case No 91-410-EL-AIR (April 14, 1994) and *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 547 (1994). The Commission finds that the Second Amendment balances divergent interests and viewpoints. The stipulation is the product of serious bargaining among capable, knowledgeable parties, as is demonstrated by the extensive expertise and experience in a wide variety of public utility issues possessed by the members of the collaborative. Further, the stipulation benefits ratepayers and the public interest by providing a mechanism to help facilitate the expansion of Columbia's Customer Choice program without increasing existing rates to cover the

costs of expanding the program and associated transition costs. Through a reallocation of current and future revenues received from all classes of ratepayers, as well as gas marketers, Columbia will have the opportunity to recover its costs upon the expansion of the Customer Choice program. Columbia will also be assuming a portion of the costs associated with the program.

This stipulation also does not violate any important regulatory principal or practice. The stipulation provides for continued oversight of the program by the Commission and the Collaborative and will provide Columbia's customers more choices to fulfill their energy needs. At the same time, the stipulation provides Columbia with the incentive to expand its program statewide by providing a mechanism to recover transition capacity costs resulting from the program. In fact, the stipulation supports several regulatory principals relating to the introduction of competition in the energy industries. We observe that the recovery mechanism includes mitigative opportunities and incentives regarding transition capacity costs, contribution from existing transporters, and a contribution from marketers the amount of which grows as their participation expands. Further, while a noticeable portion of the recovery of transition capacity costs depends on Columbia's ability to perform well in the off-system sales market, the proceeds-sharing mechanism, which includes earnings opportunities, provides Columbia the incentive to maximize off-system sales revenues. Finally, the transition capacity costs are recovered without any rate increase to any customer class. The Commission sees this stipulation as providing benefits to all segments of the industry.

The Commission also finds that the rates, terms, and conditions of the Second Amendment are just, reasonable and supported by the attachments to the stipulation. However, the Commission wishes to make certain clarifications. One clarification is regarding Columbia's agreement to maintain its current Customer Choice program activities as shown on Attachment B of the stipulation. We interpret this agreement as a commitment by Columbia to conduct the same type and quality of program activities as those in the Toledo area in a quantity proportionate to the size of the expansion territory to be decided subsequent to the Commission's review of the ongoing customer choice programs conducted this spring.

The dollar amounts shown on Attachment B are not intended as a cap on amounts to be spent in any expanded area, but are merely demonstrative of activity costs incurred by Columbia in the Toledo area. We also wish to make clear that with regard to the future collaborative discussions and recommendation which may alter the terms of the Customer Choice program, implementation of such recommendations would required Commission approval. We would further note that any future discussion or recommendations initiated by the collaborative does not preclude the Commission from taking any action it deems appropriate with regard to the program. Lastly, we note that the parties have agreed to utilize the collaborative process for the purpose of resolving questions related to interpretation and application of the Second Amendment and accompanying tariffs. Although, the parties to the collaborative have the ability informally resolve their disputes, the Commission will be the ultimate arbiter in disputes over interpretations of the stipulation and tariffs.

With those clarifications and observations, the Second Amendment should be approved. As part of the Second Amendment, the parties have submitted proposed tariffs and proposed accounting treatments consistent with the stipulation. The Commission finds that the tariffs and accounting treatments conform to the stipulation, are just and reasonable, and should be approved. The new tariffs shall be effective with the date of the issuance of this entry on a service rendered basis.

It is, therefore,

ORDERED, That the Second Amendment to Joint Stipulation and Recommendation with the proposed tariff changes and accounting treatments be approved and adopted, subject to the clarifications, findings and directive noted in Findings (4) and (7). It is, further,

ORDERED, That Columbia is authorized to cancel and withdraw its present tariffs affected by the Second Amendment and to file in final form four complete printed copies of its revised tariffs which are hereby approved. The tariffs will be effective with the issuance of this entry on a service rendered basis. It is, further,

ORDERED, That a copy of this entry be served upon all parties who received a copy of the December 2, 1997 entry in this matter.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman – See Concurring Opinion Also

Jolynn Barry Butler

Ronda Hartman Fergus

Judith A. Jones

RRG/pdc

Entered in the Journal
JAN 7 1998
A True Copy
Sheryl L. Vigorito
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Notice of Intent of Columbia Gas of Ohio, Inc. to File an Application to Increase Rates.	)))	Case No. 94-987-GA-AIR
In the Matter of the Application of Columbia Gas of Ohio, Inc. to Establish the Columbia Customer Choice Program.	)))	Case No. 96-1113-GA-ATA

CONCURRING OPINION OF CHAIRMAN CRAIG A. GLAZER

Back at the time of the initiation of the Toledo Customer Choice Pilot, I had written separately encouraging the parties to come up with creative mechanisms for recovery of stranded costs rather than simply taxing customers for 100% of these costs through a government-mandated surcharge on their pocketbooks.

I am pleased with all the progress the parties have made on this issue. I believe the stranded cost recovery proposal voluntarily agreed to in this stipulated agreement illustrates that with a lot of dedication and compromise, a "win/win" proposal that balances the needs of all stakeholders can be crafted. I believe the proposal provides an excellent model for addressing this difficult issue.

Most noteworthy is that the recovery mechanism provides mitigation opportunities and incentives to the company relative to this issue. The company does not simply get an automatic return of all its investment in a lump sum. Rather, it is provided incentives and is expected to use its own self-help activities to market its excess capacity in order to offset these costs. Also noteworthy is that there is an element of "marketer pays" wherein a portion of the stranded costs are assigned to the marketers who will otherwise profit in any new open market. Although the marketers will inevitably attempt to pass-through certain of these costs, this proposal introduces market forces and competition into the recovery and pass-through of stranded costs.[1] Such an approach is far preferable to simply taxing all customers 100% for recovery of these costs and using the heavy-handed tools of regulation and government to extract these dollars from customer pockets. Finally, there is an amount (approximately 11%) for which the company is simply at risk and which it needs to recover through its overall financial results rather than as a direct charge to customers.

The proposal accomplishes several purposes—it allows vibrant competition in natural gas to occur at the outset without making stranded cost recovery a barrier to entry. Secondly, it uses creative means for recovery of authorized stranded costs

[1] The East Ohio approach of assigning excess capacity to each of the new entrants (including East Ohio's own affiliate) is another creative use of the "marketer pays" concept.

without either raising rates to customers or requiring long transition periods that hurt competition.

As Ohio debates this issue in electricity, it is noteworthy that many of these very same parties were able to work up a "win/win" solution in the natural gas arena. Although there are certain differences between the two industries, there are also many similarities which would suggest that all policymakers note what has occurred by voluntary agreement of the parties in this important case. My compliments to the parties and our excellent PUCO Staff for being able to craft this significant and creative arrangement.

Craig A. Glazer
Chairman

CAG:dj

Entered in the Journal
JAN 7 1998
A True Copy
Gary E. Vigorito
Secretary

PSC Data Request Set 4
Question No.7
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED OCTOBER 29, 1999

Question No. 7

Provide the identities the nine marketers that have shown an interest in providing service to small volume customers in Kentucky.

Response:

The marketers that have expressed an interest in the proposed small volume gas transportation program are as follows:

Alliance Energy
Columbia Energy Services
Engage Energy
FSG Energy Services
Scana Resources
Southern Gas Company
Stand Energy
United Gas Management
Volunteer Energy

PSC Data Request Set 4
Question No.8
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED OCTOBER 29, 1999

Question No. 8

Provide a copy of the license agreement with Columbia of Ohio for use of the registered service mark, "Customer Choice."

Response:

Please find attached a copy of the license agreement with Columbia Gas of Ohio.

TRADEMARK LICENSE AGREEMENT

This Agreement by and between Columbia Gas of Ohio, Inc., a corporation of Ohio, having its principal place of business at 200 Civic Center Drive, Columbus, Ohio 43216-0117, hereinafter referred to as "LICENSOR", and Columbia Gas of Kentucky, Inc, a corporation of Delaware, having its principal place of business at 200 Civic Center Drive, Columbus, Ohio 43216-0117, hereinafter referred to as LICENSEE", sets forth the terms and conditions under which LICENSOR and LICENSEE has been and will continue to license the use the Service Mark "CHOICE" (Mark), attached hereto as Exhibit A, and effective as of the 2d day of February, 1999.

WHEREAS, LICENSOR is the owner of the entire right, title and interest in and to the Mark for which LICENSOR contemplates filing a United States trademark application for public utility services, namely supplying natural gas and energy services to others, and promoting public awareness of the need for and benefits of using natural gas as an energy source in Class 39; and for which LICENSOR is the owner of the goodwill associated therewith; and

WHEREAS, LICENSEE has, pursuant to oral permission from LICENSOR, used the Mark since August 8, 1996 in connection with its similar services, and desires a written license to use the Mark in connection with public utility services, namely supplying natural gas and energy services to others, and promoting public awareness of the need for and benefits of using natural gas as an energy source in Class 39, which services are advertised and sold or promoted by LICENSEE; and

WHEREAS, LICENSOR desires to maintain and increase recognition of its Mark and the goods and services offered thereunder and regards licensing use of the Mark under conditions insuring the quality of the goods and services rendered thereunder as a vehicle for increasing said

recognition;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. LICENSEE recognizes and acknowledges that the Mark is the exclusive property of LICENSOR and that all use thereof by LICENSEE shall insure to the benefit of LICENSOR.

2. In consideration of One Dollar ($1.00) and other good and valuable considerations, LICENSOR licenses LICENSEE to use the Mark in connection with public utility services, namely, supplying natural gas and energy services to others, and promoting public awareness of the need for and benefits of using natural gas as an energy source in Class 39. The rights to use the Mark may not be sub-licensed or assigned by LICENSEE without prior approval by LICENSOR.

3. LICENSEE agrees that the services which LICENSEE shall offer under the Mark shall be of high quality, and shall be rendered according to such specifications and standards as may be communicated by LICENSOR to LICENSEE from time-to-time. LICENSEE further agrees that LICENSOR shall have the right to check the quality of all services rendered under the Mark, and for that purpose, LICENSOR shall have access to LICENSEE'S premises at reasonable times during regular business hours.

4. LICENSEE agrees that it shall use the Mark only in such form and manner as may be approved by LICENSOR, and in accordance with such specifications and standards as may be communicated by LICENSOR to LICENSEE from time-to-time. All advertising, promotion and other use of the Mark will be in good taste and in such manner as will maintain and enhance the value of the Mark and LICENSOR'S reputation for high quality. Before releasing any advertising, promotion, or other material in which the Mark is displayed, LICENSEE shall

submit to LICENSOR, for its approval, a sample of each intended use of the Mark, including finished art work and printer's proofs, sufficiently far in advance to permit LICENSOR to review the form and manner in which the Mark is displayed. LICENSEE agrees to change any use of the Mark or any proposed use of the Mark of which LICENSOR does not approve. However, LICENSOR shall not unreasonably withhold its approval, and any sample or example of art work submitted to LICENSOR hereunder which as not been disapproved within fifteen (15) days after receipt thereof shall be deemed to have been approved.

5. Should LICENSEE fail to maintain the required standards of quality or otherwise fail to comply with the specifications and standards as communicated by LICENSOR to LICENSEE from time-to-time, LICENSOR may cancel this Agreement forthwith.

6. This Agreement may be canceled by either party on thirty (30) days written notice.

7. Upon termination of the Agreement for any reason whatsoever, LICENSEE shall immediately discontinue all use of the Mark, and will not at any time thereafter use the mark, or any other trademark, service mark or trade name similar thereto or likely to be confused therewith.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the date first written above.

COLUMBIA GAS OF OHIO, INC.

By _____
Andrew J. Sonderman
Secretary and General Counsel
Date Feb. 2, 1999

COLUMBIA GAS OF KENTUCKY, INC.

By _____
Andrew J. Sonderman
Secretary and General Counsel
Date Feb. 2, 1999

Applicant: Columbia Gas of Ohio, Inc.

Address: 200 Civic Center Drive, Columbus, Ohio 43216-0117

Date of First Use: August 8, 1996

Date of First Use in Interstate Commerce: August 14, 1996

Goods/Services: Public utility services, namely supplying natural gas to others

CHOICE

PSC Data Request Set 4
Question No.9
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED OCTOBER 29, 1999

Question No. 9

When it becomes available, provide the opinion form the Kentucky Revenue Cabinet regarding the ability to collect and remit gross receipts and sales taxes from small volume transportation program customers.

Response:

Columbia Gas of Kentucky will provide the Commission with the opinion of the Kentucky Revenue Cabinet regarding gross receipts and sales taxes as soon as it is rendered.

PSC Data Request Set 4
Question No.10
Respondent: Scott Phelps

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED OCTOBER 29, 1999

Question No. 10

Explain if lost stand-by sales revenues are going to be stranded by backing them out of gas cost, or if they are going to be included as revenue opportunities and charged to sales customers through the Gas Cost Adjustment mechanism.

Response:

The impact of lost stand-by revenues will be incorporated in Columbia's Gas Cost Adjustment ("GCA") mechanism and Stranded Cost/Recovery Pool. For customers that switch from stand-by to SVGTS, the actual accounting for lost revenue will be reflected in the Stranded Cost/Recovery Pool via charges for stranded demand and credits for applicable revenue opportunities. In the GCA, there is a decrease in the demand charge recovery generated by Standby Service demand costs and an increase in the Mcf sales volume used in the denominator of the calculation of the per Mcf demand cost of gas. The result is a slight decrease in the demand cost per Mcf used in the Expected Gas Cost component of the GCA.

PSC Data Request Set 4
Question No.11
Respondent: Scott Phelps

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED OCTOBER 29, 1999

Question No. 11

The Testimony of Scott Phelps, page 5, says that to calculate GCR demand stranded cost, small volume transportation program volumes from line 1 are multiplied by the value in line 3A. Proposed page 58 of Columbia's tariff says stranded GCR demand cost will be determined by multiplying the expected demand cost component of Columbia's GCA times the volumes delivered under Rate Schedule SVGTS.

a. Is there a conflict here?

b. Isn't Columbia's proposal for the demand component of the Expected Gas Cost to be calculated using the methodology in line 3?

c. If the tariff is correct, does stranded GCR demand cost reflect demand without choice instead of demand with choice?

d. Is this Columbia's intention? Explain.

Response:

a. In drafting the tariff language on Sheet 58 it appears the new definition of Expected Demand Gas Cost was overlooked. The testimony of Mr. Phelps accurately reflects the calculation of the demand cost that will be stranded *and charged to the Stranded Cost/Recovery Pool.*

b. Yes.

c. The tariff should be revised according to the response in (a) above.

d. Please refer to (a) above.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Commission's Order dated October 29, 1999 was served upon all parties of record by regular U.S. Mail this 12th day of November, 1999.

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
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.	)	CASE NO. 99-165

POST-HEARING BRIEF OF
COLUMBIA GAS OF KENTUCKY, INC.

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November 12, 1999

POST-HEARING BRIEF

I. PROCEDURAL BACKGROUND

On April 22, 1999, Columbia Gas of Kentucky, Inc. ("Columbia") filed an application to implement a small volume transportation program, the CHOICE®[1] program ("CHOICE program" or "the program.") The program was proposed in order to enable residential and small commercial customers to contract with a natural gas marketer for their gas supply. While Columbia will still deliver the natural gas supplies to homes and businesses and operate as the supplier of last resort, this new program will give customers the opportunity to choose and the opportunity to save money. The application also proposed the continuation of the gas cost incentive mechanisms approved by this Commission in Case No. 96-079, as well as the continuation of the Customer Assistance Program.

Although the application was not filed until April 1999, the procedural history for this case actually dates before that time. In Administrative Case No. 367, this Commission stated that it encouraged the idea of small volume transportation programs in the Commonwealth of Kentucky. (*See* "In the Matter of 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," Administrative Case No. 367, Order dated July 1, 1998) Further, the Commission stated that Kentucky companies should engage interested parties in a collaborative dialogue in order to develop such programs for submission to the Commission for approval. Columbia took

[1] Customer CHOICE℠ is a service mark of Columbia Gas of Ohio, Inc. and its use has been licensed by Columbia Gas of Kentucky, Inc. CHOICE® is a registered service mark of Columbia Gas of Ohio, Inc. and its use has also been licensed by Columbia Gas of Kentucky, Inc.

the Commission's statements seriously and in January, 1999 formed a collaborative to develop a small volume transportation program. As stated in Mr. Byars' testimony, the Collaborative included participants from the Office of the Attorney General of the Commonwealth of Kentucky, the Lexington-Fayette Urban County Government ("LFUCG"), and the Community Action Council for Fayette, Bourbon, Harrison, and Nicholas Counties ("CAC"). (Transcript ("Tr.")[2] p. 26) Columbia also enlisted the aid of FSG Energy Services, a natural gas marketer, in order to gain insight from that distinct perspective. (Tr. p. 26) The result of the collaborative discussions is the April 22nd filing, which is not opposed by any party[3].

Various parties, including Louisville Gas & Electric, Stand Energy, CAC, LFUCG, and United Gas Management have formally intervened in this case. None of those parties have presented any adverse testimony or evidence regarding Columbia's proposals. Indeed, the impromptu hearing testimony of Mr. Gerald Borchert of Stand Energy, a natural gas marketer participating in numerous small volume transportation programs, demonstrates the support Columbia has received for the program. (Tr. pp. 144-163)

II. OVERVIEW OF THE CHOICE PROGRAM

A. The CHOICE Program as proposed by Columbia will benefit Columbia's customers.

A primary impetus behind Columbia's CHOICE program is the conviction that all of Columbia's customers should enjoy the opportunity to save money on gas costs that

[2] References to "Transcript" or "Tr." refer to the transcript of evidence from the hearing held on October 12, 1999.

has been enjoyed by large volume customers for almost twenty years. In order to create a program in which small volume customers could enjoy this opportunity, Columbia reviewed transportation programs in other Columbia-served jurisdictions and pulled aspects from each of the programs which were successful and which fit with the needs of Columbia and its Kentucky customers. (Tr. p. 54)

Participation in the program is entirely voluntary. Customers are protected against "slamming" by marketers through the safeguards that have been included in Columbia's sign-up procedures, such as the need for a marketer to have the customer's account number to sign up through Columbia's electronic file system. Customers are also protected against "spamming," the unauthorized inclusion of products/services on a customer's bill, by marketers because Columbia will continue to issue the customer bill. There will not be an opportunity to include other services or products on the bill for which the customer did not contract.

Expected Gas Costs for those customers who choose to continue purchasing gas from Columbia will remain at the same level as if the small volume transportation program did not exist. As stated by Mr. Byars, the program simply presents an opportunity for small volume customers to choose an alternate commodity supplier and possibly save money on their gas costs. (Tr. p. 12) Experience in other Columbia jurisdictions has shown that customers will chose an alternate supplier if given the opportunity, and thereby will save money on their gas costs. As referenced by Mr. Byars, approximately 36 or 37% of customers in Columbia Gas of Ohio, Inc.'s service territory have chosen an alternate supplier under the Columbia Gas of Ohio CHOICE program.

[3] It should be noted that the Attorney General's office does not take a position on Columbia's application. (Tr. p. 29)

Savings have been close to 10% on the residential side and approximately 12% on the commercial side in that program. (Tr. p. 102)

Customers who "choose not to choose" will not be disadvantaged. All levels of distribution service provided to customers today will continue to be provided to Columbia's small volume transportation service customers and Columbia's sales service customers who do not choose an alternate supplier. (Tr. p. 12) Columbia will still provide traditional tariff sales gas at regulated rates to customers. Most notably, Columbia will continue to remain the supplier of last resort for customers electing to receive transportation service and for traditional sales service customers.

As stated in previously submitted data requests and in Mr. Byars' testimony (Tr. p. 74), Columbia has not yet decided whether it plans to exit the merchant function in the future. Therefore, the Commission need not decide larger policy issues such as the definition of a competitive marketplace until Columbia decides to exit the merchant function and no longer serve as the supplier of last resort. Columbia submits that decisions on such policy issues would be premature at this point, and would lack the benefit of information that will be garnered from the actual operation of a CHOICE program in Kentucky.

B. <u>The financial model included in Columbia's CHOICE Program effectively and fairly resolves the issue of stranded costs.</u>

One of the ramifications of a Choice program is the potential for the creation of stranded costs. Columbia defines stranded costs as "those costs incurred by the development of and the implementation of the Customer Choice program that would not have occurred had not the Choice program occurred." (Tr. p. 23) Under this definition, the term "stranded costs" includes costs related to the development of a customer

education program[4] and information technology improvements necessitated by the program. By far the largest driver of stranded costs is costs of long term capacity contracts held by Columbia which will not be fully utilized as customers migrate from traditional sales service to transportation service. These contracts were executed in order to fulfill Columbia's public service obligation and were subject to prudence reviews by the Commission.

If capacity from such contracts is directly assigned to the participating marketers, a small volume gas transportation program can be developed where stranded costs are almost entirely avoided. (Tr. p. 36) The major drawback with such a program, however, is that marketers generally will not participate. Without the flexibility to choose whether to utilize their own capacity, marketers will not have the ability to save customers money and will not make money themselves. (Tr. pp. 35-36) Therefore, in order to develop a successful program, Columbia and the Collaborative determined that it should allow marketers to utilize their own capacity and find an acceptable way to deal with the resulting stranded costs.

The financial model that was presented in Columbia's application is the method that Columbia and the Collaborative have developed to deal with the stranded costs that result from the program. The Collaborative discussed the idea of a customer surcharge, but dismissed the concept as a disincentive to customers to sign up for the CHOICE program. The Collaborative decided that the imposition of a surcharge would unduly complicate the program and would effectively kill the idea of CHOICE and the program

[4] Columbia believes that the development of an effective customer education program is critical to the success of the CHOICE program. Columbia believes that the Commission shares this belief and will commit to sharing its customer education program with the Commission within 30 days after an Order approving the CHOICE program is issued.

before it even started. (Tr. p. 9)

The foundation of the financial model as well as the key to providing the opportunity for customers to save money on their gas bills is the utilization of Columbia's current gas cost incentive program for stranded cost recovery. The Commission approved Columbia's current gas cost incentive mechanisms in Case No. 96-079 by Order dated July 27, 1998. The current gas cost incentive program allows for a sharing of revenue with Columbia retaining 35% of the proceeds from off-system sales. Columbia must work diligently to make these arrangements, so this sharing mechanism is critical to the success of the gas cost incentive program. (Tr. pp. 36-37) Without the sharing mechanism, Columbia could not justify the allocation of effort and resources necessary to complete these transactions.

Columbia and the Collaborative agreed that integrating the gas cost incentive program into the proposed program was the ideal method of recovering stranded costs. This method is the primary reason that stranded costs can be recovered transparently and that a counter-productive customer surcharge can be avoided. Columbia and the Collaborative agreed that the current sharing mechanism of revenues generated by Columbia through off-system sales and capacity release should remain the same. The reason that the sharing should remain the same is that, just as in the current gas cost incentive program, Columbia cannot justify allocating the effort and resources needed to complete these transactions without incentive to do so.

The issue of the method of stranded cost recovery is a complex one that Columbia and the Collaborative took very seriously. Much time and expertise was spent on developing the financial model presented as part of the proposed program. Columbia and

the Collaborative agreed that every attempt should be made to develop a program that will be a success. In fact, while a customer surcharge would have guaranteed stranded cost recovery for Columbia without any risk, Columbia and the Collaborative agreed that the proposed method of recovery would result in a more successful program with more participation and larger cost savings. Without the integration of the gas cost incentive program into the proposed financial model, however, the amount of stranded costs that can be recovered over the life of the program decreases dramatically along with participation in the program by both marketers and customers. Columbia and the Collaborative believe that the program will fail without the integration of the gas cost incentive program into the financial model.

III. IMPLEMENTATION OF THE CHOICE PROGRAM

The Staff cross-examination of Columbia's witnesses during the hearing, as well as follow-up data requests issued on October 29, 1999, in large part related to Columbia's return on equity. Columbia believes that this examination is unnecessary to implement the CHOICE program. Columbia's base rates were approved by the Commission as fair, just and reasonable in Case No. 94-179 and there is no basis on which to change those rates for delivery service to either sales customers or CHOICE customers under the proposed program. (Tr. p. 12)

The issue of stranded cost recovery is a complicated one that deserves careful consideration, but the issue has nothing to do with a utility's base rates or a utility's return on equity. Columbia and the Collaborative developed the proposed program after looking at CHOICE programs in other Columbia-served jurisdictions. One of the early

objectives of the program was that Columbia should be allowed an opportunity to recover fully all stranded and transition costs. Columbia based this objective on the fact that, as Columbia itself would not benefit from this program, it should not have to bear the burden of paying for stranded costs. This issue has been discussed around the country and there are scores of examples where stranded cost recovery has been deemed appropriate by both regulatory and legislative bodies. For instance, Columbia was encouraged by the fact that regulators at the Public Utilities Commission of Ohio and state legislators in Pennsylvania both allowed utilities in those states to recover stranded costs resulting from the transition to a competitive marketplace. Notably, neither body determined that a review of rates or earnings was necessary before determining that stranded cost recovery was appropriate. (See Response and Attachments for Data Request No. 6, dated October 29, 1999)

Columbia and the Collaborative have proposed a fair, just and reasonable method of transitioning to a competitive marketplace. This transition period is only four years long and, in November 2004, Columbia, the Collaborative and the Commission will have the opportunity to create new guidelines for a competitive marketplace moving forward without the burden of the issue of stranded cost recovery to resolve.

Columbia firmly believes that the program as proposed will succeed. The program will allow customers to exercise the same right that industrial customers have had for almost twenty years to choose their natural gas supplier and to have an opportunity to save money on their gas bills. Columbia also firmly believes that the Collaborative approach to developing the program, as was directed by the Commission's Order in Administrative Case No. 367, helped to produce a proposal that carefully

balances the needs of customers and shareholders, while receiving no opposition from any party. While Columbia readily acknowledges the authority of the Commission to review a collaborative's proposal, Columbia also believes that its efforts and the efforts of all of the Collaborative members should be recognized. To that end, Columbia respectfully requests that the Commission approve the proposed program as filed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief was served upon the parties on the attached service list by regular U.S. Mail this 12th day of November, 1999.

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November 11, 1999

Ms. Helen Helton
Executive Director
KY Public Service Commission
P.O. Box 615
730 Schenkel Lane
Frankfort, KY 40602

RE: Case No. 99-165, Columbia Gas

Dear Ms. Helton:

Enclosed please find the original and ten copies of the Brief of the Community Action Council of Lexington-Fayette, Bourbon, Harrison and Nicholas Counties in the above styled case.

I have this day served a copy of the Brief on all parties of record by first class mail.

Sincerely,

Anthony G. Martin
Counsel for CAC

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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	))))))	CASE NO. 99-165

BRIEF OF COMMUNITY ACTION COUNCIL OF LEXINGTON-FAYETTE, BOURBON, HARRISON AND NICHOLAS COUNTIES

CAC supports this application of Columbia Gas, and urges the Commission to adopt it without any significant modification. The program was developed with significant participation from customer representatives and other interested parties, and it has not received any opposition from those representatives or from any person or group. The dialogue which led to this program resulted in modifications which meet perceived problems, and the resulting plan is a very good blueprint for Kentucky's initial gas choice program.

The program will give at least the possibility of alternative supply to those customers who have not had this option in the past. Significantly, this includes CAP participants and other low income customers. Aggregation of CAP customers may allow the CAP program to serve more low income households under the same budget. It will give non-CAP low income households the possibility of aggregation to seek lower cost supplies of natural gas. At any rate, they will not be worse off, as they will not be paying surcharges or higher costs for natural gas as a result of the

Choice program. As Columbia will continue to do all billing for the Choice program and act as supplier of last resort, all existing low income protections will continue to apply.

Large customers have been given this option for many years, while smaller customers have been tied to one supplier. Large customers have received tremendous benefits from being able to transport gas, often to the detriment of remaining customers who have seen additional costs shifted on to them in various rate proceedings. It is not precisely clear how many smaller customers will want to utilize this option, but it certainly is good policy for them to have the same option as larger customers absent compelling reasons to the contrary. CAC sees no compelling reason to prevent this option at this point.

The financial model proposed by the Company will result in a sharing of the risk for stranded costs between ratepayers and the Company. This is accomplished by having a deadband on both sides of anticipated stranded costs and revenue opportunities. This is a superior option to CAC, as opposed to surcharges for costs that may or may not be eventually passed on to ratepayers.

The CAP program will continue under the proposal, and should be able to expand its participation due to cost savings in program costs. At least five areas have been identified for cost savings by the participants in the CAP collaborative. See, PSC Data Request Set 1, Response to Question 61. Some of these costs are startup costs for IT costs, marketing and evaluation, which will be significantly reduced. Other cost savings will come through adopting recommendations arising from the pilot, such as reducing intervention where it has been shown not to be cost-effective. These cost savings will allow additional participants to receive the benefit of participation in the CAP Program.

In addition, the Choice program will provide an opportunity for the CAP group to reduce gas costs due to aggregation of the CAP customers. If the CAP group is able to purchase lower cost natural gas due to aggregation and Choice, additional households will be able to participate in the CAP program without a budget increase, thereby expanding the benefit of the program without cost to either the Company or its ratepayers.

Even at current participation levels, the third year CAP evaluation estimates that over 700 shutoffs have been prevented by the CAP program in that year alone. Payment troubled households have become prompt paying households, and the strain on available resources has been significantly diminished for these households, leaving additional resources to serve other low income households in trouble. This is accomplished through a very minimal charge on Columbia's customers, coupled with a matching contribution from Columbia's shareholders. These positive results have been achieved despite a 23% increase in gas costs during the three year pilot period.

Once again, this program and its financing are balanced and very reasonable, and this very beneficial program is an integral element of the Company Application which should be strongly supported by the Commission. While CAC believes that the evaluation overestimates the cost per household for the CAP program by making the clearly unwarranted assumption that CAP participants would pay all of their bills but for the CAP program, it strongly supports and applauds the Company for proposing to continue this important program. In addition, the aggregation of the CAP group is an innovative and important component of the Choice program which arose out of the collaborative discussions which led to this proposal, and should be recognized by the Commission as an important innovation in this application.

CAC urges the Commission to approve this innovative proposal with all of its

components, and allow all of the customers of Columbia the potential benefits of seeking an alternative supplier for the natural gas needs.

Respectfully submitted,

Anthony G. Martin
Counsel for CAC

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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October 29, 1999

To: All parties of record

RE: Case No. 99-165

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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	)))))))	CASE NO. 99-165

ORDER

IT IS ORDERED that Columbia Gas of Kentucky, Inc. ("Columbia") shall file the original and 10 copies of the following information with the Commission, as agreed at the hearing held in the Commission offices on October 12, 1999. Each copy of the data requested should be placed in a bound volume with each item tabbed. When a response requires multiple pages, each page should be indexed appropriately, for example, Item 1(a), page 2 of 4. With each response, include the name of the witness who will be responsible for responding to questions related thereto. Careful attention should be given to copied material to ensure that it is legible. The response to this request is due no less than 14 days from the date of this Order.

1. Were the rate increases from Case No. 94-179 the primary reasons for the increases in Columbia's earnings for the years 1995, 1996, and 1997?

2. What were Columbia's earnings for the 12 months ended April 1999? Was it 13.8 percent?

3. Why have earnings declined since December 1998?

4. What were Columbia's earnings for the most recent period reported?

5. Provide results of customer satisfaction surveys for the last five years, along with a copy of the surveys.

6. Provide public utility commission decisions in other jurisdictions in which Columbia affiliates have customer choice programs that address recovery of stranded costs. Were the companies allowed to recover 100 percent of stranded costs?

7. Provide the identities of the nine marketers that have shown an interest in providing service to small volume customers in Kentucky.

8. Provide a copy of the license agreement with Columbia of Ohio for use of the registered service mark, "Customer Choice."

9. When it becomes available, provide the opinion from the Kentucky Revenue Cabinet regarding the ability to collect and remit gross receipts and sales taxes from small volume transportation program customers.

10. Explain if lost stand-by sales revenues are going to be stranded by backing them out of gas cost, or if they are going to be included as revenue opportunities and charged to sales customers through the Gas Cost Adjustment mechanism.

11. The Testimony of Scott Phelps, page 5, says that to calculate GCR demand stranded cost, small volume transportation program volumes from line 1 are multiplied by the value in line 3A. Proposed page 58 of Columbia's tariff says stranded GCR demand cost will be determined by multiplying the expected demand cost component of Columbia's GCA times the volumes delivered under Rate Schedule SVGTS.

a. Is there a conflict here?

b. Isn't Columbia's proposal for the demand component of the Expected Gas Cost to be calculated using the methodology in line 3?

c. If the tariff is correct, does stranded GCR demand cost reflect demand without choice instead of demand with choice?

d. Is this Columbia's intention? Explain.

Done at Frankfort, Kentucky, this 29th day of October, 1999.

By the Commission

ATTEST:

Executive Director

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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FRANKFORT, KY. 40602
(502) 564-3940

October 5, 1999

To: All parties of record

RE: Case No. 99-165

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

Stephanie Bell
Secretary of the Commission

SB/sa
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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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	))))))	CASE NO. 99-165

O R D E R

This matter arises upon the motion of United Gas Management, Inc. ("United Gas"), filed August 26, 1999, for full intervention. It appears to the Commission that United Gas has a special interest which is not otherwise adequately represented, and that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. The Commission also recognizes that a procedural schedule was established in this proceeding by Order dated June 24, 1999. The Commission, being otherwise sufficiently advised, finds that United Gas should be granted full rights of a party in this proceeding accepting the procedural schedule as it now stands.

IT IS HEREBY ORDERED that:

1. The motion of United Gas to intervene is granted.

2. United Gas shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. Should United Gas file documents of any kind with the Commission in the course of these proceedings, it shall also serve a copy of said documents on all other parties of record.

Done at Frankfort, Kentucky, this 5th day of October, 1999.

By the Commission

ATTEST:

Executive Director

Columbia Gas® of Kentucky

200 Civic Center Drive
Columbus, OH 43215

Mailing:
P.O. Box 117
Columbus, OH 43216-0117

614-460-6000

September 20, 1999

Ms. Helen C. Helton, Executive Director
Public Service Commission of Kentucky
730 Schenkel Lane
P.O. Box 615
Frankfort, Kentucky 40601

Re: **Case No. 99-165**
In the Matter of 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.

Dear Ms. Helton,

Pursuant to Item 3 of the Public Service Commission's Order dated June 24, 1999, Columbia Gas of Kentucky, Inc. ("Columbia") encloses a duplicate of the notice and request for publication which has been sent in accordance with the provisions set out in 807 KAR 5:011, Section 8(5). Columbia sent the requests for publication to the Lexington Herald Leader, The Ledger Independent, The Floyd County Times, and The Daily Independent.

Thank you for your assistance.

Very truly yours,

Amy L. Koncelik

Amy L. Koncelik
Attorney

Enclosures

cc: Hon. Richard S. Taylor
Attorney at Law
Capital Link Consultants
315 High Street
Frankfort, KY 40601

Hon. Anthony G. Martin
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Community Action Council for
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Nicholas Counties
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Columbia Gas® of Kentucky

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Columbus, OH 43215

Mailing:
P.O. Box 117
Columbus, OH 43216-0117

614-460-6000

September 20, 1999

CERTIFIED MAIL — RETURN RECEIPT REQUESTED

RE: Publication of Notice in Public Service Commission Case No. 99-165

Dear Sir or Madam,

Pursuant to law, Columbia Gas of Kentucky, Inc., is required to publish a legal notice in the above styled case.

Please publish the attached legal notice one time between September 21, 1999 and October 5, 1999.

After the notice has been published, please send **Ms. Sharon Booth** a notarized copy of the enclosed Proof of Publication, and a tear sheet of the page on which the notice appears. Send your billing statement and the Proof of Publication **(separate documents please)** to the attention of **Ms. Sharon Booth**, and we will promptly remit payment.

Please call Sharon Booth at (614) 460-4660 to acknowledge receipt of this request to publish notice, and inform her of the date that the notice will be published. Thank you for your assistance.

Very truly yours,

Amy L. Koncelik
Attorney
Columbia Gas of Kentucky, Inc.

Attachment

PROOF OF PUBLICATION

State of Kentucky

SS:

County of _____

I, _____, being first duly sworn, say that I am _____(Title) of _____, a newspaper printed in _____counties, and of general circulation in said counties, and that the notice attached was published in this newspaper one time on _____, 1999.

_____

Sworn to and subscribed before me this _____ day of _____, 1999.

_____
Notary Public

My Commission expires: _____

SEAL

NOTICE OF HEARING

NOTICE is hereby given that the Public Service Commission of the Commonwealth of Kentucky has scheduled a hearing on 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 for 9:00 A.M., Eastern Daylight Time, October 12, 1999 in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of cross-examination of witnesses and presentation of rebuttal testimony, if any.

COMMUNITY ACTION COUNCIL
for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties

September 20, 1999

The Honorable Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, KY 40602
HAND DELIVERED

In the Matter of:

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	)CASE NO. 99-165

Dear Ms. Helton:

Enclosed for filing in the above case are the original and 10 copies of the written testimony of Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties. Copies of this testimony are being served on all parties on the attached service list by first class mail.

Thank You,

Jack E. Burch
Executive Director

Cc: Service List

(606) 233-4600
FAX: (606) 244-2219
TDD: 1-800-648-6056

P.O. Box 11610 Lexington, Kentucky 40576

CENTRAL OFFICES: 892, 894 & 913 Georgetown Street ◦ Lexington, Kentucky

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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	))))))	CASE NO. 99-165

TESTIMONY OF

JACK E. BURCH
EXECUTIVE DIRECTOR
COMMUNITY ACTION COUNCIL
FOR LEXINGTON-FAYETTE, BOURBON, HARRISON AND
NICHOLAS COUNTIES, INC.

Hand Delivered: September 20, 1999

1. Please state your name, title, organization and business address.

Jack E. Burch, Executive Director, Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, 892 Georgetown St., Lexington, KY 40576.

2. Please describe the organization of the Community Action Council and give a brief description of its activities.

Community Action Council was established in 1965 as a not for profit community action agency of the Commonwealth of Kentucky in accordance with KRS 273.405 et sequens. The Council is governed by Board of Directors representing low-income, public and private sectors of the community. Its mission is to combat poverty. The agency's current budget is approximately $18 million.

There are 245 employees in the Council's four departments: Child Development, Family Support, Transportation, and Management/Administration. Community Action Council programs include: self-sufficiency programs (Head Start Family Service Centers, Operation Family, Project Success, Welfare-to-Work, Hope VI), child development and Head Start, homeless programs, youth programs (Americorp Lexington Works, Shifting Gears),

transportation (Community Action Transit System, Empower KY Region 15 brokerage and program transportation), clothing bank, housing (Shepherd Place), energy and related assistance programs (Columbia Gas Assistance Program, Summer Cooling, LIHEAP, weatherization, and WinterCare), emergency assistance, and community outreach and referrals.

Although the Council's core service territory includes Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, the Council also provides services in other counties and statewide. For example the Council staffs the WinterCare energy fund providing services across much of the state, child development and Head Start extends into Scott County, and transportation brokerage services are provided under contract for Empower Kentucky in a nine county area in the northeastern region of the state.

The Council is uniquely positioned to serve low income populations with energy assistance programs as it has extensive contact with and knowledge of this population. Additionally, Council staff are able to help participants access other Council assistance programs as well as other community resources to address the multiple obstacles and barriers that most low income households face. This comprehensive approach is intended to provide greater stability and self-sufficiency to these households, promoting more responsible utility payments.

3. How has Community Action Council been involved with the Columbia Gas Collaborative in the design of the Choice program?

Several members of Community Action Council's staff attended a series of meetings with the Columbia Gas Collaborative in early 1999, to participate in the development of Columbia Gas' Choice proposal. Community Action Council responded favorably to the general concept of Choice as a way to increase competition in the provision of gas, offering the possibility for lower prices.

Specifically, Community Action Council staff reviewed and provided input regarding the following provisions in the Program Description of Columbia's original filing in this case:

- customer education
- eligibility
- customer enrollment procedures
- certain aspects of the standards of conduct and code of conduct
- dispute resolution
- customer billing
- certain aspects of marketer billing
- Customer Assistance Program.

Although Community Action Council was not in agreement with the Company on each and every aspect of the program, we reached general consensus on most points.

4. Will Choice have the potential to help low income households, and if so, how?

As stated above, I believe that the Choice program, through competition, creates the potential for lower gas commodity prices. It is also notable that the Choice program design includes a provision for Columbia Gas to assume the risk of collecting payment on outstanding customer balances for the gas commodity marketers. This provision will reduce the marketer's perceived (and real) risk of serving low income customers. Low income customers will therefore, presumably, have equal access to the Choice program options to best meet their individual needs. Finally, the Choice program creates an opportunity for the aggregation of customers, including low income customers, to look for better gas rates as a group.

5. Will the Choice program reduce CAP program costs, and if so, how?

The Choice program could reduce CAP program costs. CAP participants will be aggregated and the least cost provider of gas selected. While the individual participant of CAP will continue to pay a fixed amount for their gas service equal to a percentage of income, the cost of the program

per participant would be reduced with lower gas commodity prices. This, in turn, would allow for more participants to be accepted into the CAP program.

6. How has CAP helped low income customers?

The CAP program, according to the Evaluation, was very successful in making gas payments more affordable for low income households. As represented in the Pre-CAP data, low income customers do not always meet their monthly payments, they carry arrearages, they are issued frequent disconnect notices, and they are often disconnected from their gas service. Among CAP participants, significant improvements were made with payments, arrearage reduction, and frequency of disconnect notices, demonstrating improved affordability.

A major purpose of CAP is to insulate low income customers from consequences beyond the household's control. The pilot CAP program was very successful in accomplishing this goal when gas prices increased by approximately 23% in Year 2 of the pilot. For the control group, arrearage levels increased and percentage of customers without arrearages decreased significantly during Year 2. During the same time period, CAP participants continued to improve on these aspects.

Finally, the CAP program has been extremely successful at avoiding customer shutoffs. Shutoffs

create obvious problems for households including not only the turned-off utility service (heat and hot water), but additional fees and managing the logistics of being reconnected. Shutoffs also lead to costs and uncollectibles for Columbia in situations such as when people move and never pay their past due bill. According to the Evaluation, the CAP program resulted in 738 fewer shutoff orders being executed during year 3 of the pilot.

7. Do you agree that the Evaluation report accurately reflects the cost of implementation and operation of the Customer Assistance Program (CAP)?

Yes, with respect to the pilot program, but not with respect to continued operation of the program. Given that the program was a pilot program, administrative costs were higher than they would be during continued operation. Both Columbia Gas and Community Action Council incurred costs in designing the program, developing the database and information technology components, the third party evaluation, and administration and tracking of the three participant and control customer groups. These costs will be significantly reduced or eliminated in continued operation of the program. Further, if the program were to include a greater number of participants in its continued operation, the marginal cost of administration would be small.

It can also be noted that the participants of the pilot program were a uniquely high cost group. The control and participant groups should have been randomly selected from the low income customer universe. However, the pilot Evaluation results show that during the pre-CAP period,

the CAP participants had significantly higher incidence of shutoffs and termination notices, higher average monthly usage and bills, and higher average monthly arrearage levels than the control group. Therefore, the CAP program costs were relatively high for the low income CAP participants served as compared to what the costs would have been for the control group had they been enrolled CAP. It is proposed that in the continued operation of the program, new participants will be accepted into the program on a first-come basis, subject to eligibility, with characteristics and associated costs reflective of the entire low income population, not necessarily the high cost group represented in the pilot.

8. Do you agree with the Evaluation's results regarding the costs per participant in the CAP program?

Yes, the Evaluation presents accurate results regarding the total cost per participant of the CAP program. However, the calculation is based on the assumption that without the CAP program, participating low income customers would have paid 100% of their bills.

Low income customers, as demonstrated by the participants and control groups in the pre-CAP period, carry significant arrearages, are served with numerous disconnection notices, and are disconnected, sometimes leaving behind unpaid bills. For example, the Evaluation's "Normal" group of 225 customers during the one year pre-CAP carried an average monthly arrearage of $71.90, had an average bill of $68.07 but paid only an average of $46.21, and had, collectively,

262 disconnections. These behaviors can be linked to administrative and service costs as well as uncollectibles for Columbia Gas.

The cost of the CAP program therefore should take into account payment behavior in the pre-CAP period, rather than a calculation based solely on the total billed to CAP customers.

VERIFICATION

Jack E. Burch
Executive Director,
Community Action Council for
Lexington-Fayette, Bourbon,
Harrison, & Nicholas
Counties, Inc.

Subscribed and sworn to before me by Jack E. Burch, this the 20th day of September, 1999.

NOTARY PUBLIC
Commission expires: 6/25/01

CERTIFICATE OF SERVICE

I hereby certify that a copy of the enclosed testimony was served upon all parties of record by regular U.S. Mail this 20th day of September, 1999.

Jack E. Burch
Executive Director
Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
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	)	CASE NO. 99-165

RESPONSES TO COMMISSION'S ORDER DATED AUGUST 27, 1999
ON BEHALF OF
COLUMBIA GAS OF KENTUCKY, INC.

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Stephen B. Seiple, Senior Attorney
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Attorneys for
COLUMBIA GAS OF KENTUCKY, INC.

September 10, 1999

PSC Data Request Set 3
Question No.1
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 1

Refer to Columbia's response to item 3(a) of the Commission's Order of July 30, 1999. According to Columbia, the charge would be bundled into the rate the marketer charges the customer. Explain how this allows the customer to accurately compare the marketer's true cost of providing natural gas to what the customer would incur as a customer of Columbia.

Response:

The SVAS rate is an element of the marketer's cost at this stage of the market development. Columbia assumes that the marketer will attempt to recover all of its costs via charges to customers. The simplest comparison for the customer is that which compares the rate of the marketer to Columbia's rate. For either rate to be subject to additions complicates the comparison.

PSC Data Request Set 3
Question No.2
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 2

Refer to the response to item 4 of the Commission's Order of July 30, 1999, where the deadband method is referred to as "an effort to avoid devising a complicated true-up mechanism."

a. Explain why a true-up mechanism would need to be so complicated as to cause the Collaborative to avoid it altogether.

b. Columbia's Gas Cost Adjustment mechanism contains true-up provisions such as Actual Cost and Balancing adjustments. From its perspective, does Columbia foresee that a true-up mechanism would be administratively complicated or unworkable?

Response:

a. Columbia and the Collaborative agreed that the deadband concept was a superior method to a true-up mechanism. Columbia views a true-up as a form of surcharge or sur-credit on the customer at the end of the program. Columbia believes that this more complicated true-up would violate the goal of transparent stranded cost recovery and cause confusion with both sales and CHOICE customers. The deadband concept serves the dual purpose of placing risk on Columbia and avoiding complicated explanations to customers as to what stranded costs are and why a customer must pay a fee now after there wasn't one for the first four years of the program.

b. Both the Actual Cost and Balancing adjustments are transparent to customers. Columbia believes that a true-up mechanism would cause unnecessary complications to customers as it would not be transparent.

PSC Data Request Set 3
Question No.3
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 3

Refer to the response to item 5 of the Commission's Order of July 30, 1999, which discusses the Collaborative's agreement on the use of the deadband.

a. The response indicates that percentages other than 10 percent were discussed. Describe the nature of the discussions and how it was determined that 10 percent was reasonable.

b. Several features of the proposed small volume transportation program are patterned after programs offered by other Columbia distribution companies. Is the 10 percent deadband patterned after any of the programs presently offered by other Columbia distribution companies?

Response:

a. Columbia and the Collaborative agreed upon the deadband amount of 10 percent as the over or under-collected amount is expected to end up within that range.

b. No.

PSC Data Request Set 3
Question No.4
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 4

Refer to the response to item 8 of the Commission's Order of July 30, 1999. Are demand charges anticipated to decrease as customers migrate to alternate suppliers?

Response:

As stated in Columbia's response to the Commission's Order dated July 2, 1999 question 6, the Collaborative agreed that sales customers should pay the same gas cost as if the choice program did not exist. Columbia does not anticipate our demand charges decreasing as customers migrate to alternate suppliers. Therefore, the reasoning, as explained in response to the Commission's Order dated July 30, 1999 question 8, for fixing the expected gas cost determinants in the proposed program.

PSC Data Request Set 3
Question No.5
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 5

Refer to the response to item 9(a) of the Commission's Order of July 30, 1999. Does this response assume that a surcharge would be charged only to customers taking advantage of the small volume transportation program, or to all customers? If the charge were collected on all volumes in the small volume class and did not have to be added only to marketer rates, why would Columbia anticipate customer confusion?

Response:

Columbia and the Collaborative agreed that a customer surcharge would be confusing to customers. Those of us who work with energy issues on a daily basis know what stranded costs are and why they must be recovered. The average customer, however, does not understand what a stranded cost is and why they must pay a surcharge to participate in a program or to have an opportunity to choose whether to participate. The Collaborative dismissed the idea of a customer surcharge for stranded cost recovery entirely. A surcharge would require further explanation to customers who are already trying to understand the new concept of Customer CHOICE. The proposed program was designed so that customers would be compelled to educate themselves about the opportunity to purchase their gas from a marketer. Columbia and the Collaborative agreed that a customer surcharge would discourage customers from investigating Customer CHOICE and, in effect, kill the program before it even started.

PSC Data Request Set 3
Question No.6
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 6

Define "transparency" as Columbia is using it. Does it mean "easily understood and helpful in terms of the clarification it provides as to the actual cost of the program," or does it mean "invisible," or does it mean something else?

Response:

As described in the response to Item No. 5, Columbia and the Collaborative believe, and agreed, that individual customers should not have to concern themselves with learning what a stranded cost is and how it is to be recovered. If the proposed method of recovery is employed then customers will be able to make informed comparisons between Columbia and a marketer without being encumbered with an extra surcharge to figure out. Columbia and the Collaborative agree that the proposed program recovers stranded costs equitably and will attract more customers than will a program with a surcharge.

PSC Data Request Set 3
Question No.7
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 7

Refer to the response to item 10(a) of the Commission's July 30, 1999 Order. What method of recovery do these two Columbia companies now use? Provide a detailed narrative explanation, including the process involved in changing the method of recovery and the tariffs and Orders approving these methodologies.

Response:

Columbia Gas of Ohio discarded the surcharge method of stranded cost recovery after the first year of its initial pilot program. The subsequent program was developed through a collaborative process and uses a variety of revenue sources to recover stranded costs including revenues from off-system sales and capacity release. It is important to note that Columbia Gas of Kentucky and the Collaborative did not dismiss a surcharge as a method of recovery based on the experiences of other Columbia companies, but because we believed that a surcharge would hinder the success of Customer CHOICE in Kentucky.

The response to Item 10(a) of the Commission's Order of July 30, 1999 was incorrect. Only one company, Columbia Gas of Ohio, has changed its method of stranded cost recovery. The other company, Columbia Gas of Pennsylvania, continues to use a customer surcharge for a portion of its stranded cost and transition cost recovery.

PSC Data Request Set 3
Question No.8
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 8

Refer to Columbia's response to item 10(b) of the Commission's July 30, 1999 Order. How has the program in Ohio been structured to ensure that customers do not avoid taxes? Provide copies of all appropriate legislation, orders, and other documentation to support your response.

Response:

According to Columbia Gas of Ohio personnel, the Columbia Gas of Ohio program was not structured to ensure that customers do not avoid taxes but the Ohio Revised Code ("ORC") resolves the situation. The Gross Receipts Tax is levied on the gross receipts of a public utility, which would include receipts from tariff sales volumes. Sales tax, however, is levied on retail sales, which would include commodity sales by the marketers. The end result is that either Gross Receipts and/or Sales tax is collected from both sales and transportation customers. Attached please find the requested information from the ORC. Please note that ORC 5727.38 addresses the gross receipts tax and ORC 5739.02 addresses the sales tax.

subsequent year, receipts from sales to other telephone companies for resale, as defined in division (G) of section 5727.32 of the Revised Code;

(3) For the year ending June 30, 1990, and each subsequent year, receipts from incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight-hundred-type service;

(4) For the year ending June 30, 1990, and each subsequent year, receipts from private communications service as described in division (AA)(2) of section 5739.01 of the Revised Code;

(5) For the year ending June 30, 1990, and each subsequent year, receipts from sales to providers of telecommunications service for resale, as defined in division (G) of section 5727.32 of the Revised Code.

(D) In ascertaining and determining the gross receipts of an electric company, the commissioner shall exclude receipts derived from the provision of electricity and other services to a qualified former owner of the production facilities which generated the electricity from which those receipts were derived. As used in this division, a "qualified former owner" means a person who meets both of the following conditions:

(1) On or before October 11, 1991, the person had sold to an electric company part of the production facility at which the electricity is generated, and, for at least twenty years prior to that sale, the facility was used to generate electricity, but it was not owned in whole or in part during that period by an electric company.

(2) At the time the electric company provided the electricity or other services for which the exclusion is claimed, the person, or a successor or assign of the person, owned not less than a twenty per cent ownership of the production facility and the rights to not less than twenty per cent of the production of that facility.

(E) In ascertaining and determining the gross receipts of a natural gas company, the commissioner shall exclude receipts of amounts billed on behalf of other entities. Transportation and billing and collection fees charged to other entities shall be included in the gross receipts of a natural gas company.

The amount ascertained by the commissioner under this section, less a deduction of twenty-five thousand dollars, shall be the gross receipts of such companies for business done within this state for that year.

HISTORY: 142 v H 171 (Eff 7-1-87); 142 v H 721 (Eff 9-14-88); 143 v S 156 (Eff 12-31-89); 144 v H 298 (Eff 7-26-91); 144 v H 270 (Eff 10-11-91); 144 v H 904 (Eff 12-22-92); 146 v H 476, Eff 9-17-96.

Analogous to former RC § 5727.33 (GC §§ 5475, 5476; 102 v 224, §§ 86, 87; 115 v Pt II, 321; Bureau of Code Revision, 10-1-53; 129 v 1505; 130 v 1324; 132 v H 1; 140 v H 291; 141 v H 201), repealed 142 v H 171, § 2, eff 7-1-87.

Cross-References to Related Sections

Effect of tax reduction on rates, RC § 5727.33.1.

Natural gas companies: modification of existing commission powers not intended, RC § 4929.12.

Receipts derived from certified coal conversion facility not to be included in gross receipts for tax purposes, RC § 5709.35.

Tax credit—

Cost of program to aid communicatively impaired, RC § 5727.44.

Expenses of providing lifeline telephone service, RC § 5727.43.

Tax on gross receipts of certain utilities, RC § 5727.38.

Research Aids

Gross receipts tax on most utilities:
O-Jur3d: Tax § 1119
Am-Jur2d: State Tax § 251
C.J.S.: Tax § 159

CASE NOTES AND OAG

1. (1942) The term "gross receipts," as employed in GC § 5475 (RC § 5727.33), embraces all receipts of a public utility regardless of the form of ownership and without exclusion or deduction of payments by those owning an interest in such utility for service furnished them: Bradley Light, Heating & Power Co. v. Evatt, 140 OS 85, 23 OO 298, 42 NE2d 648.

[§ 5727.33.1] § 5727.331 Effect of tax reduction on rates.

Any reduction in the excise tax on gross receipts paid by a public utility resulting from the exclusion of sales to other public utilities for resale from the determination of gross receipts under sections 5727.32 and 5727.33 of the Revised Code shall be reflected in the rates charged the ultimate consumers in any rate determination affecting such consumers after October 11, 1961.

HISTORY: 129 v 1505 (Eff 10-11-61); 130 v 1324, Eff 1-23-63.

Research Aids

Gross receipts tax on most utilities:
O-Jur3d: Tax § 1119
Am-Jur2d: Pub Util § 177

§ 5727.34 Repealed, 144 v H 904, § 2 [GC § 5477; 102 v 224, § 88; 113 v 625; Bureau of Code Revision, 10-1-53; 125 v 903 (1052); 138 v H 145; 140 v H 291; 141 v H 201], Eff 12-22-92.

This section concerned determination of gross earnings of railroads.

§§ 5727.35, 5727.36 Repealed, 140 v H 291, § 2 [GC § 5479—5481; 102 v 224, §§ 90–92; Bureau of Code Revision, 10-1-53; 135 v H 1338]. Eff 12-1-83.

These sections concerned hearings, corrections, and certification of gross receipts to auditor of state.

§ 5727.37 Repealed, 141 v H 201, § 2 [GC § 5482; 102 v 224, § 93; Bureau of Code Revision, 10-1-53; 135 v H 1338; 138 v H 145; 140 v H 291]. Eff 7-1-85.

This section concerned certification of gross earnings to auditor of state.

[EXCISE AND FRANCHISE TAXES]

§ 5727.38 Excise tax on gross receipts of certain utilities.

On or before the first Monday of November, annu-

ally, the tax commissioner shall assess an excise tax against each public utility except railroad companies. The tax shall be computed by multiplying the gross receipts as determined by the commissioner under section 5727.33 of the Revised Code by six and three-fourths per cent in the case of pipe-line companies and four and three-fourths per cent in the case of all other companies. The minimum tax for any such company for owning property or doing business in this state shall be ten dollars. The assessment shall be certified to the taxpayer and treasurer of state.

HISTORY: GC § 5483; 102 v 324, § 94; 112 v 268; 115 v PUI, 321; 119 v 113; Bureau of Code Revision, 10-1-53; 127 v 139 (Eff 6-14-57); 130 v 1325 (Eff 7-17-63); 133 v H 531 (Eff 8-18-69); 135 v H 1338 (Eff 10-2-74); 139 v H 694 (Eff 1-1-82); 140 v H 291 (Eff 12-1-83); 141 v H 201 (Eff 7-1-85); 143 v S 156. Eff 12-31-89.

Cross-References to Related Sections

Credit for investing in eligible Ohio research and development and technology transfer companies, RC § 5727.41.

Deadline for natural gas company to pay taxes without penalty when not required to file annual statement, RC § 5727.42.

Disbursement of excise taxes and penalties levied on public utilities, RC § 5727.45.

Electronic funds transfer; tax payments, RC § 5727.31.1.

Insufficient funds, tax revenues used for—
- Coal research and other bond service funds, RC § 1555.12.
- Development bond retirement fund, RC § 129.63.
- Highway obligations bond retirement fund, RC § 5528.36.
- Improvements bond retirement fund, RC § 129.55.
- Public improvements bond retirement fund, RC § 129.73.

Mailing of assessment to utility; petition for reassessment, RC § 5727.47.

Organization of domestic and foreign corporations, RC § 5733.16.

Tax credit certificate; issuance and use, RC § 122.15.2.

Tax credit—
- Cost of program to aid communicatively impaired, RC § 5727.44.
- Equal to nonrecurring 9-1-1 charges; credit ceiling, RC § 5727.30.
- Expenses of providing lifeline telephone services, RC § 5727.43.
- Using Ohio coal at compliance facility, RC § 5727.39.1.

Tax refund fund, RC § 5703.05.2.

Utility to file annual statement; periodic reports and tax payments, RC § 5727.31.

Ohio Constitution

Imposition of taxes, OConst art XII, § 3.

Research Aids

Excise tax on gross receipts:
- **O-Jur3d:** Tax §§ 1118, 1119, 1125; Telecom § 89
- **Am-Jur2d:** State Tax § 438
- **C.J.S.:** Tax §§ 121-124

West Key No. Reference
- Tax 103, 105

CASE NOTES AND OAG

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1. (1931) Distribution of gas to consumers through local distribution systems is "intrastate commerce," subject to state excise tax, though transportation to distribution plants was interstate commerce: East Ohio Gas Co. v. Tax Commission, 283 US 465, 51 SCt 499 [affirming 43 F2d 170].

2. (1986) Where an excise tax on the privilege of doing business is measured by the gross receipts for an annual period, the rate may be increased prior to the end of the period: East Ohio Gas Co. v. Limbach, 26 OS3d 63, 26 OBR 54, 498 NE2d 453.

3. (1981) The utilities commission does not have the statutory authority to allow the use of excise tax adjustment clauses: Pike Natural Gas Co. v. P.U.C., 68 OS2d 181, 22 OO3d 410, 429 NE2d 444.

4. (1973) The tax imposed upon public utilities by RC §§ 5727.38 and 5727.81 is not an income tax within the meaning of Ohio Const. Art. XII, § 9: State ex rel. Cleveland v. Kosydar, 36 OS2d 163, 65 OO2d 401, 305 NE2d 803.

5. (1966) Under the doctrine of pre-emption by implication, the General Assembly, by levying a gross receipts tax upon public utilities, has pre-empted the power of a municipality to levy a tax upon the net income of a public utility doing business in that municipality: East Ohio Gas Co. v. Akron, 7 OS2d 73, 36 OO2d 56, 218 NE2d 608.

6. (1946) By levying the gross receipts tax the General Assembly has pre-empted the field of taxation which includes, inter alia, receipts by utility companies from natural gas, electricity and water sold to consumers and local service and equipment furnished to telephone subscribers: Haefner v. Youngstown, 147 OS 58, 33 OO 247, 68 NE2d 64.

7. (1925) General Code §§ 5483, 5485 and 5486 (RC §§ 5727.38, 5727.39 and 5727.40), respectively, lay an occupational tax upon telephone companies, telegraph companies and railroad companies: Cincinnati v. American Tel. & T. Co., 112 OS 483, 147 NE 806.

8. (1974) The gross receipts of a public utility company doing business in Ohio, derived from the sale of electrical energy to an Ohio municipality, are subject to the public utility tax imposed by RC Chapter 5727.: Columbus & Southern Electric v. Porterfield, 41 OApp2d 191, 70 OO2d 404, 324 NE2d 779.

9. (1915) A corporation organized to furnish electric current, heat and water to a group of manufacturing establishments, which does not serve the general public in any way, is not a public utility, but a private corporation, and as such is subject to a franchise tax but not to the excise tax: State v. Factory Power Co., 16 NP(NS) 545.

10. (1983) A county that has contracted with a public utility for telephone service must pay such public utility in accordance with the schedule of rates applicable to such service on file with the Public Utilities Commission, notwithstanding the fact that such rates may include excise tax: OAC No. 83-079.

11. (1936) A municipal corporation has no power to levy a tax as such upon a natural gas company, waterworks company or telephone company for the exercise of the privilege which such company may have under a franchise to use the streets and public places of the municipality for its mains, pipes, poles and wires in the conduct of its business as a public utility: 1936 OAG No. 5297.

12. (1927) Money paid to electric light company by a customer as a condition precedent to receiving current is included in the term "gross receipts" and is subject to the excise tax: 1927 OAG p.967.

13. (1927) Transmission of electric current from West Virginia into Ohio and sale direct to consumer is interstate commerce and not subject to excise tax: 1927 OAG p.995.

§ 5727.39 Tax credit equal to nonrecurring 9-1-1 charges; credit ceiling.

(A) As used in this section:

(1) "9-1-1 system" has the meaning given in section 4931.40 of the Revised Code.

(2) "Nonrecurring 9-1-1 charges" means nonrecurring charges approved by the public utilities commission for the telephone network portion of a 9-1-1 system pursuant to section 4931.47 of the Revised Code.

(3) "Eligible nonrecurring 9-1-1 charges" means all nonrecurring 9-1-1 charges for a 9-1-1 system except:

(a) Charges for a system that was not established pursuant to a plan adopted under section 4931.44 of the Revised Code or an agreement under section 4931.48 of the Revised Code; or

(b) Charges for that part of a system established pursuant to such a plan or agreement that are excluded from the credit by division (C)(2) of section 4931.47 of the Revised Code.

(4) "Current year's percentage change in the consumer price index" means the greater of one or one plus the percentage increase in the consumer price index for all urban consumers (U.S. City average, all items), prepared by the United States department of labor, bureau of labor statistics, for June of the current year over the index for June of the immediately preceding year.

(B) A telephone company shall be allowed credit against the tax computed under section 5727.38 of the Revised Code equal to the amount of its eligible nonrecurring 9-1-1 charges.

The credit shall be claimed in the company's annual statement required under division (A) of section 5727.31 of the Revised Code that covers the twelve-month period in which the 9-1-1 service for which the credit is claimed becomes available for use. If the tax commissioner determines the credit claimed equals the amount of the company's eligible nonrecurring 9-1-1 charges, he shall credit such amount against the total taxes shown to be due from the company for the current year and shall refund the amount of any overpayment of taxes resulting from the application of such credit. If the credit allowed under this section exceeds the total taxes due for the current year, he shall credit such excess against taxes due for succeeding years until the full amount of the credit is granted.

The estimated taxes required to be paid by section 5727.31 of the Revised Code shall be based on the taxes for the preceding year prior to any credit allowed under this section for that year.

(C)(1) Within thirty days after June 18, 1985, the tax commissioner shall compute the amount that represents twenty-five per cent of the total taxes for all telephone companies computed under section 5727.38 of the Revised Code based on the annual statements required to be filed with the commissioner in September, 1984 under section 5727.31 of the Revised Code. Such amount shall constitute the credit ceiling for 1985.

(2) Each October, beginning in 1986, the commissioner shall multiply the preceding year's credit ceiling by the current year's percentage change in the consumer price index. The product thus obtained shall constitute the credit ceiling for the current year.

(D) After the last day a return may be filed by any telephone company that is eligible to claim a credit under this section, the commissioner shall determine whether the sum of the credits allowed for all prior years plus the sum of the credits claimed for the current year exceeds the current year's credit ceiling. If it does, the credits allowed under this section for the current year shall be reduced by a uniform percentage such that the sum of the credits allowed for the current year plus the sum of the credits allowed for all prior years equals the current year's credit ceiling. Thereafter, no credit shall be granted under this division, except for the remaining portions of any credits allowed in the current or any prior years but that have not been granted.

HISTORY: 141 v H 491 (Eff 6-18-85); 141 v H 201. Eff 7-1-85.

Not analogous to former RC § 5727.39 (GC § 5485; 102 v 224, § 96; 115 v Pt II, 322; Bureau of Code Revision, 10-1-53; 130 v 1325; 133 v H 531; 135 v H 1338; 139 v H 694), repealed 140 v H 291, § 2, eff 12-1-83.

Cross-References to Related Sections

Amendment of plan to expand 9-1-1 territory, RC § 4931.45.

Credit to recover nonrecurring charges, RC § 4931.47.

Disbursement of excise taxes and penalties levied on public utilities, RC § 5727.45.

Municipal corporations and townships may establish own system, when, RC § 4931.48.

Research Aids

Tax credit for 911 system:

O-Jur3d: Tax § 1119; Telecom § 89

[§ 5727.39.1] § 5727.391 Tax credit for using Ohio coal at compliance facility.

(A) As used in this section:

(1) "Compliance facility" has the same meaning as in section 4905.01 of the Revised Code. "Compliance facility" also includes both of the following:

(a) A flue gas desulfurization system that is connected to a coal-fired electric generating unit and that either was placed in service prior to the effective date of this section or construction of which was commenced prior to the effective date of this section.

(b) Facilities or equipment that is acquired, constructed, or installed, and used, at a coal-fired electric generating unit primarily for the purpose of handling the byproducts produced by a compliance facility or other coal combustion byproducts produced by the generating unit in or to which the compliance facility is incorporated or connected.

(2) "Ohio coal" has the same meaning as in section 4913.01 of the Revised Code.

(B) An electric company shall be allowed a credit against the tax computed under section 5727.38 of the

chinery and equipment used for, and fuel consumed in, producing or extracting those substances; and machinery, equipment, and other tangible personal property used to treat, filter, pump, alter voltage, or otherwise make the substance suitable for use in the manufacturing operation;

(9) Machinery, equipment, and other tangible personal property used to transport or transmit electricity, coke, gas, water, steam, or similar substances used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation;

(10) Machinery, equipment, and other tangible personal property that treats, filters, cools, refines, or otherwise renders water, steam, acid, oil, solvents, or similar substances used in the manufacturing operation reusable, provided that the substances are intended for reuse and not for disposal, sale, or transportation from the manufacturing facility;

(11) Parts, components, and repair and installation services for items described in division (B) of this section.

(C) For purposes of division (E)(9) of section 5739.01 of the Revised Code, the "thing transferred" does not include any of the following:

(1) Tangible personal property used in administrative, personnel, security, inventory control, record keeping, ordering, billing, or similar functions;

(2) Tangible personal property used in storing raw materials or parts prior to the commencement of the manufacturing operation or used to handle or store a completed product, including storage that actively maintains a completed product in a marketable state or form;

(3) Tangible personal property used to handle or store scrap or waste intended for disposal, sale, or other disposition, other than reuse in the manufacturing operation at the same manufacturing facility;

(4) Tangible personal property that is or is to be incorporated into realty;

(5) Machinery, equipment, and other tangible personal property used for ventilation, dust, or gas collection, humidity or temperature regulation, or similar environmental control, except machinery, equipment, and other tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur;

(6) Tangible personal property used for the protection and safety of workers, unless the property is attached to or incorporated into machinery and equipment used in a continuous manufacturing operation;

(7) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the manufacturing operation;

(8) Machinery, equipment, and other tangible personal property used for research and development;

(9) Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;

(10) Motor vehicles registered for operation on the public highways.

(D) For purposes of division (E)(9) of section 5739.01 of the Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.

HISTORY: 143 v H 531 (Eff 7-1-90); 144 v H 904. Eff 1-1-93.

The effective date is set by section 131 of HB 904.

Cross-References to Related Sections

Retail sale, sales at retail exceptions defined, RC § 5739.01.

Ohio Administrative Code

Use tax; taxable use of tangible personal property manufactured for sale or purchased for resale, OAC 5703-9-04.

ALR

Items or materials exempt from use tax as used in manufacturing, processing, or the like. 30 ALR2d 1439.

Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes. 4 ALR4th 581.

What constitutes direct use within meaning of statute exempting from sales and use taxes equipment directly used in production of tangible personal property. 3 ALR4th 1129.

CASE NOTES AND OAG

1. (1990) Items incorporated into a manufacturing structure are real property not subject to the sales tax. An electrical substation which does not supply power directly to manufacturing machinery is not exempt: Rotek, Inc. v. Limbach, 50 OS3d 81, 552 NE2d 640.

§ 5739.02 Levy of sales tax; purpose; rate; exemptions.

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) The tax shall be collected pursuant to the schedules in section 5739.025 [5739.02.5] of the Revised Code.

The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a sale, the price of which consists in whole or in part of rentals for the use of the thing transferred, the tax, as regards such rentals, shall be measured by the installments thereof.

In the case of a sale of a service defined under division

(MM) or (NN) of section 5739.01 of the Revised Code, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers, and of magazine subscriptions shipped by second class mail, and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of electricity by an electric company, of water by a waterworks company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through wires, pipes, or conduits, and all sales of communications services by a telephone or telegraph company, all terms as defined in section 5727.01 of the Revised Code;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;

(9) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches or by nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization, except that sales made by separate student clubs and other groups of students of a primary or secondary school, and sales made by a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school, shall not be considered to be sales of such school, and sales by each such club, group, association, or organization shall be counted separately for purposes of the six-day limitation. This division does not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution of the United States;

(11) The transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision thereof, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of such structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 [307.69.6] of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons engaged in any of the activities mentioned in division (E)(2) or (9) of section 5739.01 of the Revised Code, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, and "packaging" means placing therein.

(16) Sales of food to persons using food stamp coupons to purchase the food. As used in division (B)(16) of this section, "food" has the same meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs dispensed by a licensed pharmacist upon the order of a licensed health professional authorized to prescribe drugs to a human being, as the term "licensed health professional authorized to prescribe drugs" is defined in section 4729.01 of the Revised Code; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with end-stage renal disease; hospital beds when purchased for use by persons with medical problems for medical purposes; and oxygen and oxygen-dispensing equipment when purchased for use by persons with medical problems for medical purposes;

(19) Sales of artificial limbs or portion thereof, breast prostheses, and other prosthetic devices for humans; braces or other devices for supporting weakened or nonfunctioning parts of the human body; wheelchairs; devices used to lift wheelchairs into motor vehicles and parts and accessories to such devices; crutches or other devices to aid human perambulation; and items of tangible personal property used to supplement impaired functions of the human body such as respiration, hearing, or elimination. No exemption under this division shall be allowed for nonprescription drugs, medicines, or remedies; items or devices used to supplement vision; items or devices whose function is solely or primarily cosmetic; or physical fitness equipment. This division does not apply to sales to a physician or medical facility for use in the treatment of a patient.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales of solar, wind, or hydrothermal energy systems that meet the guidelines established under division (B) of section 1551.20 of the Revised Code, components of such systems that are identified under division (B) or (D) of that section, or charges for the installation of such systems or components, made during the period from August 14, 1979, through December 31, 1985;

(28) Sales to persons licensed to conduct a food service operation pursuant to section 3732.03 of the Revised Code, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

(29) Sales of animals by nonprofit animal adoption services or county humane societies;

(30) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;

(31) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;

(32) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

(33) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire;

(34) Sales to the state headquarters of any veterans' organization in Ohio that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;

(35) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)(35) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled based upon the use of the thing purchased in providing the telecommunications service.

(36) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form. "Investment metal bullion" does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

(37)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential

customers with advertising material described in division (B)(37)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)(37) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(38) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(39) The sale of a motor vehicle that is used exclusively for a vanpool ridesharing arrangement to persons participating in the vanpool ridesharing arrangement when the vendor is selling the vehicle pursuant to a contract between the vendor and the department of transportation;

(40) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

(41) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

(42) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 [5739.02.10] of the Revised Code.

For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

As used in this section, except in division (B)(16) of this section, "food" includes cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not include: spirituous or malt liquors; soft drinks; sodas and beverages that are ordinarily dispensed at bars and soda fountains or in connection therewith, other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, and halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters, and ice.

(C) The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to this section and division (B) of section 5739.01 of the Revised Code does not prevent any of the following:

(1) A municipal corporation or township from levying an excise tax for any lawful purpose not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by this section. If a municipal corporation or township repeals a tax imposed under division (C)(1) of this section and a county in which the municipal corporation or township has territory has a tax imposed under division (C) of section 5739.024 [5739.02.4] of the Revised Code in effect, the municipal corporation or township may not reimpose its tax as long as that county tax remains in effect. A municipal corporation or township in which a tax is levied under division (B)(2) of section 351.021 [351.02.1] of the Revised Code may not increase the rate of its tax levied under division (C)(1) of this section to any rate that would cause the total taxes levied under both of those divisions to exceed three per cent on any lodging transaction within the municipal corporation or township.

(2) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to division (B) of section 5739.024 [5739.02.4] of the Revised Code. Such tax is in addition to any tax imposed under division (C)(1) of this section.

(3) A county from levying an excise tax pursuant to division (A) of section 5739.024 [5739.02.4] of the Revised Code.

(4) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (C) of section 5739.024 [5739.02.4] of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3) of this section.

(5) A convention facilities authority, as defined in division (A) of section 351.01 of the Revised Code, from levying the excise taxes provided for in division (B) of section 351.021 [351.02.1] of the Revised Code.

(6) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (D) of section 5739.024 [5739.02.4] of the Revised Code. Such tax is in addition to any tax imposed under division (C)(3) or (4) of this section.

(7) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (E) of section 5739.024 [5739.02.4] of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3), (4), or (6) of this section.

(D) The levy of this tax on retail sales of recreation

and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

HISTORY: GC § 5546-2; 115 v PtII, 306, § 2; 116 v 41, § 2; 116 v PtII, 69; 116 v PtII, 323; 117 v 761; 122 v 912; 124 v 166; Bureau of Code Revision, 10-1-53; 128 v 421 (Eff 7-1-59); 129 v 1301 (Eff 10-16-61); 130 v 1336 (Eff 1-2-62); 130 v 1347 (Eff 1-23-63); 130 v 1351 (Eff 7-28-63); 131 v 1369 (Eff 9-22-65); 131 v 1374 (Eff 11-5-65); 132 v H 519 (Eff 11-30-67); 132 v S 350 (Eff 9-1-67); 132 v S 207 (Eff 5-3-68); 132 v S 474 (Eff 6-11-68); 134 v S 223 (Eff 12-10-71); 134 v H 475 (Eff 12-20-71); 135 v S 241 (Eff 10-30-73); 135 v H 3 (Eff 11-21-73); 135 v S 244 (Eff 6-13-74); 135 v H 1313 (Eff 9-30-74); 137 v H 291 (Eff 6-15-78); 137 v H 563 (Eff 6-28-78); 137 v H 635 (Eff 9-16-78); 137 v H 8 (Eff 8-20-79); 138 v H 1 (Eff 5-16-79); 138 v H 154 (Eff 8-14-79); 138 v H 355 (Eff 1-1-80); 138 v H 703 (Eff 1-16-81); 138 v H 1112 (Eff 3-23-81); 139 v H 275 (Eff 8-1-81); 139 v H 1 (Eff 8-5-81); 139 v H 604 (Eff 11-15-81); 139 v H 671 (Eff 12-9-81); 139 v S 330 (Eff 6-25-82); 140 v S 231 (Eff 9-20-84); 141 v H 146 (Eff 9-11-85); 141 v H 560 (Eff 9-11-85); 141 v H 335 (Eff 12-11-85); 141 v H 583 (Eff 2-20-86); 141 v H 500 (Eff 5-6-86); 141 v H 54 (Eff 9-17-86); 142 v H 171 (Eff 7-1-87); 142 v S 21 (Eff 10-20-87); 142 v S 92 (Eff 10-20-87); 142 v H 772 (Eff 6-29-88); 142 v S 386 (Eff 3-29-88); 142 v H 708 (Eff 4-19-88); 143 v H 111 (Eff 7-1-89); 143 v S 156 (Eff 12-31-89); 143 v H 531 (Eff 7-1-90); 143 v H 365 (Eff 4-1-90); 144 v H 298 (Eff 8-1-91); 144 v S 131 (Eff 5-15-92); 144 v H 766 (Eff 1-22-93); 144 v H 904 (Eff 1-1-93); 144 v S 350 (Eff 12-22-93); 145 v S 18 (Eff 9-27-93); 145 v H 207 (Eff 6-30-93); 145 v H 152 (Eff 7-1-93); 145 v H 281 (Eff 7-2-93); 145 v H 163 (Eff 5-10-94); 145 v H 715 (Eff 7-22-94); 145 v H 672 (Eff 7-22-94); 146 v H 249 (Eff 7-17-95); 146 v H 117 (Eff 9-20-95); 146 v S 310 (Eff 6-20-96); 147 v H 210 (Eff 3-31-97); 147 v H 215 (Eff 9-29-97); 147 v S 66 (Eff 7-22-98); 147 v H 770 (Eff 7-22-98); 147 v S 142, Eff 3-30-99.

See provisions, § 5 of HB 207 (145 v —) following RC § 5739.02.4.

Cross-References to Related Sections

Penalties, RC § 5739.99

Additional county sales tax, RC § 5739.02.6.

Authority to levy excise tax for convention facilities, RC § 351.02.1.

Consumer to pay sales tax, RC § 5739.03.

County use tax, RC §§ 5741.02.1, 5741.02.3.

Crediting of funds, RC § 5739.21.

Insufficient funds, tax revenues used for—
- Coal research and other bond service funds, RC § 1555.12.
- Development bond retirement fund, RC § 129.63.
- Highway obligations bond retirement fund, RC § 5528.36.
- Improvements bond retirement fund, RC § 129.55.
- Public improvements bond retirement fund, RC § 129.73.

Liability of vendor and consumer for payment of tax, RC § 5739.13.

Limitation for assessments, RC § 5739.16.
- Exemptions for transactions from 11-15-81 through 11-30-81, RC § 5739.16.1.

Local tax schedules; collection, RC § 5739.02.5.

Lodging excise tax, RC § 505.56.

Prepayment of tax by vendor, RC § 5739.05.

Procedure when applicability of tax is indeterminate, RC § 5739.03.1.

Retail sales license, RC § 5739.17.

Tangible personal property tax exempt, RC § 5739.01.

Tax assessment notice contents, RC § 131.02.

Tax refund fund, RC § 5703.05.2.

Title issued without tax payment when vehicle is transferred, RC § 4505.06.

Transit authority tax, RC §§ 5739.02.3, 5741.02.2.

Vendors not required to differentiate in record-keeping between exempt and non-exempt sales, RC § 5739.11.

Ohio Constitution

Excise and franchise taxes, OConst art XII, § 3.

Ohio Administrative Code

Products, personalty construed for tax purposes—
- Automatic data processing and computer services, OAC 5703-9-46.
- Books, manuals, bulletins, lists, OAC 5703-9-43.
- Construction of real property; incorporation into, OAC 5703-9-14.
- Food sold to students by schools, OAC 5703-9-27.
- Newspapers and magazines, OAC 5703-9-28.

Personalty—
- Manufactured for sale or purchased for resale, OAC 5703-9-04.
- Production and fabrication of, OAC 5703-9-20.
- Sold for another, OAC 5703-9-40.
- Used in agriculture, horticulture, OAC 5703-9-23.
- Used in manufacturing, assembling, OAC 5703-9-21.
- Used in mining, OAC 5703-9-22.
- Used in refining, OAC 5703-9-21.

Photostats, photographs and blueprints, OAC 5703-9-38.

Septic tanks, OAC 5703-9-42.

Tires, repaired or retreaded, OAC 5703-9-37.

Transactions; types of sale and service—
- Auctions, OAC 5703-9-30.
- Automatic data processing and computer services, OAC 5703-9-46.
- Cash register adjustment reimbursement, OAC 5703-9-47.
- Conditional sales, OAC 5703-9-17.
- Construction contracts, OAC 5703-9-14.
- Coupons; gift certificates, OAC 5703-9-15.
- Delivery costs, OAC 5703-9-26.
- Exchanged merchandise, OAC 5703-9-12.
- Exemption; certificate forms, OAC 5703-9-03.
- Food stamps, purchases made with, OAC 5703-9-48.
- Installment and credit sales, OAC 5703-9-19.
- Interstate commerce, OAC 5703-9-39.
- Purchases by certain liquidators, OAC 5703-9-35.
- Returned merchandise and rejected services, OAC 5703-9-11.
- Sales of personalty belonging to another, OAC 5703-9-40.
- Trade-ins, OAC 5703-9-12.

Text Discussion

Building contracts, **3 Couse** Chapter 33

Contracts, **1 Couse** Chapter 13

Leases, **3 Couse** Chapter 38

Ohio sales and use taxes, **1 Couse** Chapter 7

Sale of goods, **1 Couse** Chapter 7

Forms

Certificate for exemption from sales tax, **1 Seaver** No. 2.27

Research Aids

Exemptions from tax:
O-Jur3d: Tax §§ 387-399, 404, 406, 417-425
Am-Jur2d: Sales T § 116 et seq
C.J.S.: Tax §§ 1235, 1236

Levy of sales tax:
O-Jur3d: Auto & Veh § 63; Tax §§ 19, 67, 162, 338, 344, 348, 373, 447
Am-Jur2d: Sales T §§ 65-82, 172-187
C.J.S.: Tax §§ 1245-1249

West Key No. Reference
Tax 1241, 1242, 1281-1285, 1291, 1297, 1311-1314

ALR

Applicability of sales or use taxes to motion pictures and video tapes. 10 ALR4th 1209.
Applicability of sales tax to judicial or bankruptcy sales. 27 ALR2d 1219.
Applicability of sales tax to "tips" or service charges added in lieu of tips. 73 ALR3d 1226.
Computer software or printout transactions as subject to state sales or use tax. 36 ALR5th 133.
Consumer list, sales and use taxes on sale or lease of mailing or customer list. 80 ALR4th 1026.
Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes. 15 ALR4th 269.
Exemption of casual, isolated, or occasional sales under sales and use taxes. 42 ALR3d 292.
Exemption of charitable or educational organization from sales or use tax. 53 ALR3d 748.
Eyeglasses or other optical accessories as subject to sales or use tax. 14 ALR4th 1370.
Items or materials exempt from use tax as used in manufacturing, processing, or the like. 30 ALR2d 1439.
Mining exemption to sales or use tax. 47 ALR4th 1229.
Religious organization's exemption from sales or use tax. 54 ALR3d 1204.
Reusable soft drink bottles as subject to sales or use taxes. 97 ALR3d 1205.
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State or local sales, use, or privilege tax on sales of, or revenues from sales of, advertising space or services. 40 ALR4th 1114.
Tax on hotel-motel room occupancy. 58 ALR4th 274.
What constitutes direct use within meaning of statute exempting from sales and use taxes equipment directly used in production of tangible personal property. 3 ALR4th 1129.
What constitutes newspapers, magazines, periodicals or the like, under sales or use tax law exemption. 25 ALR4th 750.
When is corporation, community chest, fund, foundation, or club "organized and operated exclusively for charitable or other exempt purposes" under Internal Revenue Code. 69 ALR2d 871.

Law Review

Analysis and critique of state pre-emption of municipal excise and income taxes under Ohio home rule. C. Emory Glander. 21 OSLJ 343 (1960).
Charities and the Ohio tax laws. Lloyd E. Fisher, Jr. 18 OSLJ 228, 244 (1957).
H.B. 154: Ohio creates renewable energy resource tax incentives and solar access easements. Note. 5 UDayLRev 471 (1980).
H.B. 635: "Use on use" sales tax exemption reenacted. Note. 4 UDayLRev 495 (1979).
Interpretation of exemptions under the new Ohio sales tax. Ronald J. Coffey. 30 CinLRev 457 (1961).
Municipal home rule in Ohio: preemption — theory. George D. Vaubel. 3 ONorthLRev at 1208, 1224, 1231 (1976).
Municipal taxation: a study of the pre-emption doctrine. C. Emory Glander & Addison E. Dewey. 9 OSLJ 72 (1948).
Privileges and immunities of non-profit organizations. Gerard D. DiMarco & Ira O. Kane. 19 ClevStLRev 264 (1970).
Sales and use tax amendments. C. Emory Glander. 12 OSLJ 361 (1951).
Sales and use tax — exemptions. Case note. 13 OSLJ 114 (1952).
State taxation — retail sales tax — exemption of sale of food for consumption off premises where sold. Case note. 15 OSLJ 95 (1954).
Taxation. Ohio Law Survey. 51 CinLRev 218 (1982).
Taxation — sales and use taxes — purchase of cement clinker producing system — excepted — labor costs not excepted. Southwestern Portland Cement Co. v. Lindley, 67 OS2d 417 (1981). Case note. 11 CapitalULRev 377 (1981).

CASE NOTES AND OAG

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Scope of tax

1. (1953) A trustee in bankruptcy is not a "person" within the meaning of that word as defined in RC § 5739.02: In re Payne Corp., 50 OO 467 (Fed).

1.1 (1999) Slag-a-way equipment used by a scrap and nonmetallic slag reclamation company on steelmaker company premises was not exempt under the resale exemption or former RC § 5739.02(B)(16). It was exempt under the manufacturing exception: Stein, Inc. v. Tracy, 84 OS3d 501, 705 NE2d 676.

2. (1996) Devices which send electrical charges to contract muscles, thus supporting a body part, do not qualify as "braces," but may qualify as an "aid to human perambulation": Kempf Surgical Appliances, Inc. v. Tracy, 74 OS3d 517, 660 NE2d 444.

3. (1995) Sales by a company which markets natural gas, but is not a "natural gas company" under RC § 5727.01, do not qualify for exemption under RC § 5739.02(B)(7). This tax policy does not violate the commerce clause: Gen. Motors Corp. v. Tracy, 73 OS3d 29, 652 NE2d 188.

4. (1995) Sales by a company which markets natural gas, but is not a "natural gas company" under RC § 5727.01, do not qualify for exemption under RC § 5739.02(B)(7): Chrysler Corp. v. Tracy, 73 OS3d 26, 652 NE2d 185.

5. (1995) The presumption of taxability was not overcome where the taxpayer's two witnesses had no personal knowledge of how the purchases were used: Kern v. Tracy, 72 OS3d 347, 650 NE2d 428.

6. (1995) Taxation is not prohibited by the interstate commerce clause where, at a terminal located in Ohio, an interstate carrier exercises property rights over property purchased for its own use, even though the property remains in Ohio for only a few hours: Cont. Transport, Inc. v. Tracy, 72 OS3d 296, 649 NE2d 1210.

7. (1994) A photographer's sales of photographs of school children to students or their parents were not exempt under RC § 5739.02(B)(1): Ritchie Photographic v. Limbach, 71 OS3d 440, 644 NE2d 312.

8. (1994) Only those items that are essential to the restraining of movement of the goods to be sold are exempt from taxation under the packaging exception of RC § 5739.02(B)(15): Loctite Corp. v. Tracy, 71 OS3d 401, 644 NE2d 281.

9. (1994) The taxpayer's telecommunication switching product was entitled to exemption under former RC § 5739.02(B)(16) as transportation and handling equipment: AT&T Technologies, Inc. v. Limbach, 71 OS3d 11, 641 NE2d 177.

10. (1992) A carrier may be entitled to exemption under the "public utility service" exemption even though its contract carrier revenues exceed its common carrier revenues: SFZ Transp., Inc. v. Limbach, 66 OS3d 602, 613 NE2d 1037.

11. (1993) The "demurrage" fees charged by a manufacturer of industrial gases when customers did not timely return the cylinders in which the gases were delivered were not exempt from taxation: OsAir, Inc. v. Limbach, 66 OS3d 504, 613 NE2d 618.

12. (1992) Storage tanks bolted to a concrete pad were excepted under RC § 5739.02 as "structures . . . on the land": Universal Oil Co. v. Limbach, 63 OS3d 476, 588 NE2d 858.

13. (1992) Structural steel, aluminum rails and concrete piers and foundations used in construction of rides in amusement park constitute "structures" and "improvements" on the land within the definition of "real property" under RC § 5701.02 and are not subject to sales and use taxes: Kings Entertainment Co. v. Limbach, 63 OS3d 369, 588 NE2d 777.

14. (1992) Packaging line machinery used in placing batteries in blister packs is excepted under RC § 5739.02(B)(15): Union Carbide Corp. v. Limbach, 62 OS3d 548, 584 NE2d 735.

15. (1992) Machine hoppers used for storage and delivery of raw materials prior to transformation into a finished product are not excepted under the "manufacturing" exception. A carton forming and conveying system is not packaging machinery or equipment, or an integral part thereof, and is not entitled to exception on that basis: Ball Corp. v. Limbach, 62 OS3d 474, 584 NE2d 679.

16. (1990) Food-packaging conveyor lines are exempt under RC § 5739.02(B)(15) when they are an integrated and essential part of the packing activity: Kroger Co. v. Limbach, 53 OS3d 245, 560 NE2d 192.

17. (1990) The Way International qualifies as a "church" for purposes of exemption under RC § 5739.02(B)(12): The Way International v. Limbach, 50 OS3d 76, 552 NE2d 908.

18. (1989) The provision of private housing (even at reduced rates) does not, standing alone, demonstrate the charitable purpose required for exemption under RC § 5739.02(B)(12): Columbus Colony Housing, Inc. v. Limbach, 45 OS3d 253, 544 NE2d 235.

19. (1988) "Demurrage" charges assessed when a customer retains cylinders used to deliver industrial gases beyond the "free period" are "sales" under RC § 5739.01, and are not exempt under the "transportation charges" or "packaging" exemptions: Osborne Bros. Welding Supply, Inc. v. Limbach, 40 OS3d 175, 532 NE2d 739.

20. (1988) Scrap metal conveying equipment and engineering drawings were not exempt under RC § 5739.02(B)(16) or (26): General Motors Corp. v. Limbach, 37 OS3d 271, 525 NE2d 779.

21. (1988) Packaging materials are exempt only under RC § 5739.02(B)(15), not under the manufacturing exception: General Mills, Inc. v. Limbach, 35 OS3d 256, 520 NE2d 218.

22. (1987) For purposes of exemption under RC § 5739.02(B)(12), the character of a nonprofit corporation must be found in its motives, its charter, its purposes and its operation: Akron Golf Charities, Inc. v. Limbach, 34 OS3d 11, 516 NE2d 222.

23. (1987) Foundry's sprue handling equipment was exempt under RC § 5739.02(B)(16): General Motors Corp. v. Lindley, 32 OS3d 158, 512 NE2d 660.

24. (1987) OAMCO decision applies retroactively only to cases pending in the Supreme Court at the time of the decision on rehearing: Copperweld Steel Co. v. Lindley, 31 OS3d 207, 31 OBR 404, 509 NE2d 1242.

25. (1986) The exception from sales taxation contained within RC § 5739.02(B)(19) for "braces and other similar medical or surgical devices for supporting weakened or useless parts of the human body" encompasses more than merely braces: Akron Home Medical Services, Inc. v. Lindley, 25 OS3d 107, 25 OBR 155, 495 NE2d 417.

26. (1985) A retailer's entire point-of-sale system, including concentrator and computer units, is exempt where its primary

use is "directly in making retail sales": NCR Corp. v. Lindley, 18 OS3d 332, 18 OBR 375, 481 NE2d 588.

27. (1985) Computer hardware is not within the "manufacturing" exception by virtue of its use in the production of computer software: Interactive Information Systems, Inc. v. Limbach, 18 OS3d 309, 18 OBR 356, 480 NE2d 1124.

28. (1985) Furnishing of federally subsidized housing to residents who pay part or all of their rental costs is not an exclusive use for charitable purposes which will result in tax exemption: National Church Residences v. Lindley, 18 OS3d 53, 18 OBR 87, 479 NE2d 870.

29. (1983) Reliance solely upon the principle of expressio unius est exclusio alterius in construing RC § 5739.01(B) is insufficient to overcome the presumption of taxability embodied in RC § 5739.02 and shield a transaction from imposition of sales taxes: Craftsman Type, Inc. v. Lindley, 6 OS3d 82, 6 OBR 122, 451 NE2d 768.

30. (1982) Sale of semi-trailers titled in another state to a party located in Ohio who already has possession of the trailers pursuant to a lease is not subject to Ohio's sales tax where neither possession nor title were transferred in Ohio: PPG Industries v. Lindley, 1 OS3d 212, 1 OBR 237, 438 NE2d 907.

31. (1982) The gondola cars used to move coal from mines to the utility's plant were exempt from use taxes under RC § 5739.01: Cleveland Electric Illuminating Co. v. Lindley, 69 OS2d 71, 23 OO3d 118, 430 NE2d 939.

32. (1981) Palletizing equipment and shipping vehicles are not within the "packaging" exception: Southwestern Portland Cement Co. v. Lindley, 67 OS2d 417, 21 OO3d 261, 424 NE2d 304.

33. (1981) The taxpayers' milk and ice cream processing equipment and case conveyor system are exempted from sales tax under the "manufacturing" and "packaging" exceptions. The transfers of equipment between related corporate taxpayers were not exempt: Hawthorn Mellody v. Lindley, 65 OS2d 47, 19 OO3d 234, 417 NE2d 1257.

34. (1981) The taxpayer's purchases of planes for resale, even though they were used in the interim in its charter and flight-training services, are exempt from sales tax. Leased airplanes and purchases of the necessary fuel for use by its customers are not exempt: Flitewuys, Inc. v. Lindley, 65 OS2d 21, 19 OO3d 219, 417 NE2d 1371.

35. (1980) Board's decision that the thermal liquid heater, talc application system and elevator safety devices were exempt from sales and use taxes upheld: Logan-Long Co. v. Lindley, 64 OS2d 156, 18 OO3d 378, 413 NE2d 806.

36. (1979) The primary use test does not apply to a sale of fungibles used for both taxable and non-taxable purposes where such use is apportionable before or after sale: (Richardson-Merrell v. Porterfield, 32 OS2d 281, 61 OO2d 501, 291 NE2d 528 (1972), overruled; Emery Industries v. Kosydar, 43 OS2d 34, 72 OO2d 19, 330 NE2d 686 (1975)); B. F. Goodrich Co. v. Lindley, 58 OS2d 364, 12 OO3d 325, 390 NE2d 330.

37. (1978) Demurrage charges are costs arising out of the "transportation of persons or property" and are, therefore, excepted from sales and use taxes pursuant to RC § 5739.02(B)(11): Youngstown Sheet & Tube Co. v. Lindley, 56 OS2d 303, 10 OO3d 423, 383 NE2d 903.

38. (1978) The exemption from the use tax provided by RC § 5739.02(B)(6) does not apply to that portion of a purchase by a dealer in motor vehicle fuel which is not subject to the motor vehicle fuel excise tax, notwithstanding that the primary use of the fuel was in an exempt manner, pursuant to RC § 5739.02(B)(6), and that none of the fuel was earmarked at purchase for a non-exempt use: Kroger Co. v. Lindley, 56 OS2d 138, 10 OO3d 319, 382 NE2d 1359.

39. (1977) Revised Code § 5739.02(B)(12), exempting sales of personal property to charitable organizations from the sales and use taxes, must be strictly construed. Thus sales of linen and laundry materials to a nonprofit corporation organized exclusively to furnish laundry services to hospitals and nursing homes are not exempt. The joint laundry corporation does not itself improve health through alleviating illness, disease, or injury, nor manage a nursing home: Joint Hospital Services, Inc. v. Lindley, 52 OS2d 153, 6 OO3d 371, 370 NE2d 474.

40. (1977) Mailing labels and related machinery are within the "packaging" exception to the sales tax: Highlights for Children, Inc. v. Collins, 50 OS2d 186, 4 OO3d 379, 364 NE2d 13.

41. (1977) Where the lessor of tractors and trailers provides and pays for all the fuel, oil, and grease necessary for operating such equipment based upon a single monthly charge to the lessee, and the lessee fails to demonstrate what portion of that charge is attributed to the cost of providing the fuel only, the entire charge is subject to sales taxes pursuant to RC § 5739.02: Copeland Corporation v. Lindley, 50 OS2d 33, 4 OO3d 87, 361 NE2d 1344.

42. (1976) Blue prints, drawings and instruction booklets used by production workers are exempt from sales and use taxes; copying machines used to reproduce them are not. Payments for computer time-sharing are not exempt. Containers and railroad cars used to ship parts to the buyer's plant for assembly are not exempt. Emerson fans and dust collector equipment are not exempt. Patterns bought by taxpayer for the production of metal castings, though held for use and not for sale, are not exempt: Babcock & Wilcox Co. v. Kosydar, 48 OS2d 251, 2 OO3d 416, 358 NE2d 544.

43. (1976) Display cases and racks whose predominant economic purpose to the taxpayer is to facilitate the marketing of its products are not "packages" within the meaning of the sales tax exception provided by RC § 5739.02(B)(15): Cole National Corp. v. Collins, 46 OS2d 336, 75 OO2d 386, 348 NE2d 708.

44. (1974) The operation on a nonprofit basis of an apartment building for low income tenants, for whom supplemental rent payments are made by an agency of the federal government, is not exclusively for charitable purposes within the meaning of RC § 5739.02(B)(12), where all tenants must pay at least a part of their rent, nonpayment of rent will result in eviction, and no services other than those common to apartment buildings generally are provided for the tenants: Quaker Apartments v. Kosydar, 38 OS2d 20, 67 OO2d 36, 309 NE2d 863.

45. (1973) Sales of live fish to commercial fishing lakes are not excepted from the sales tax: Switzer v. Kosydar, 36 OS2d 65, 65 OO2d 215, 303 NE2d 860.

46. (1973) Palletizers which place cases on pallets and unbound pallets, are not "packages" or "machinery, equipment, and material for use in packing tangible personal property produced for sale, or sold at retail" within the meaning of RC § 5739.02(B)(15), and therefore are not excepted from sales and use taxes: Custom Beverage Packers v. Kosydar, 33 OS2d 68, 62 OO2d 417, 294 NE2d 672.

47. (1972) In order to obtain an exemption from the sales tax of RC § 5739.02 by reason of RC § 5739.01(S), a claimant must show that the thing for which the exception is sought is an "adjunct," used in production to complete a product at the same location and after transformation or conversion has commenced, and, pursuant to RC § 5739.01(E)(2), must also show that the thing is an adjunct to direct use or consumption in production for sale: Canton Malleable Iron Co. v. Porterfield, 30 OS2d 163, 59 OO2d 163, 283 NE2d 434.

48. (1972) Where a non-profit religious corporation affirmatively shows that it otherwise has the essential attributes of a church within the meaning of RC § 5739.02(B)(12), it may not be denied exempt status for the reason that it operates a radio facility in conjunction with and in furtherance of its

religious and charitable activities: Maumee Valley Broadcasting Assn. v. Porterfield, 29 OS2d 95, 58 OO2d 192, 279 NE2d 863.

49. (1972) When a parking garage is an essential and integral part of a proficient operation of a hospital, which is operated exclusively for charitable purposes as defined by RC § 5739.02(B)(12), building materials sold to construction contractors for incorporation into that garage, under a construction contract with the hospital, are materials incorporated into a building used exclusively for charitable purposes, and thus are exempt from Ohio sales and use taxes under RC §§ 5739.02(B)(13) and 5741.02(C)(2): Good Samaritan Hospital v. Porterfield, 29 OS2d 25, 58 OO2d 75, 278 NE2d 26.

50. (1972) The operator of a riding academy who buys and sells horses and whose primary functions are operating a riding school, and boarding and training horses owned by others, is not engaged in farming for sale and/or rendering farming services and is not exempt from the sales tax: Red Fox Stables, Inc. v. Porterfield, 28 OS2d 239, 57 OO2d 472, 277 NE2d 433.

51. (1971) The General Assembly has prescribed a definition of "charitable purposes" for the courts to follow in determining an exemption from state sales taxation: Ohio Children's Society v. Porterfield, 26 OS2d 30, 55 OO2d 17, 268 NE2d 585.

52. (1970) The sales tax act, by its specific terms, levies an excise tax on each retail sale made in Ohio, excluding only those sales excepted from the definition of "retail sale" by RC § 5739.01(E), and those to which the tax is specifically made inapplicable by RC § 5739.02(B): Howell Air, Inc. v. Porterfield, 22 OS2d 32, 51 OO2d 62, 257 NE2d 742.

53. (1970) The rental paid for use of and service rendered by electronic equipment installed upon the subscribers' premises is subject to the Ohio sales tax under the provisions of RC § 5739.02: Bunker-Ramo Corp. v. Porterfield, 21 OS2d 231, 50 OO2d 473, 257 NE2d 365.

54. (1970) Where a private luncheon and dinner club adopts a policy of adding to all food and drink checks a fifteen percent service charge, which is paid to the club and later is paid to the person serving the food or drinks as compensation, such charge must be included in the total amount of the sale and is subject to the sales tax levied in RC § 5739.02: Youngstown Club v. Porterfield, 21 OS2d 83, 50 OO2d 198, 255 NE2d 262.

55. (1969) The "primary use" of an item of equipment, for the purposes of taxing, or excepting from tax, its sale or use under RC §§ 5739.02 and 5741.02, is not to be determined solely from a measure of the relative time it is utilized in a taxable and non-taxable capacity but also from the value of its direct contribution to the product which is processed: Ace Steel Baling, Inc. v. Porterfield, 19 OS2d 137, 48 OO2d 169, 249 NE2d 892.

56. (1968) Paragraph (B)(14) of RC § 5739.02 is a constitutional exercise of the state's power to tax and does not violate the supremacy clause, paragraph two of Article VI of the Constitution of the United States: Smith Fireproofing Co. v. Donahue, 14 OS2d 168, 43 OO2d 259, 237 NE2d 300.

57. (1968) The term, "ownership," as used in RC § 5739.02 embraces the holding of legal title to real property: Smith Fireproofing Co. v. Donahue, 14 OS2d 168, 43 OO2d 259, 237 NE2d 300.

58. (1968) The sale of rare coins at retail, at prices substantially above par value, in this state is a sale of tangible personal property taxable under RC § 5739.02, and is not excluded from the operation of the sales tax statutes by the provision of RC § 5701.03, which defines tangible personal property: Losana Corp. v. Porterfield, 14 OS2d 42, 43 OO2d 112, 236 NE2d 535.

59. (1964) The production of art boards called finished artwork which were subsequently used by a printer to create a finished product could be reasonably and lawfully found to be personal property subject to the sales and use tax: Capyhara Corp. v. Tracy, No. L 93-279 (6th Dist.), 1994 Ohio App. LEXIS 4874.

60. (1991) The animal feed was a mere byproduct produced from waste resulting from the wheat milling process. Thus the vacuum system used to transport the waste was not used in "manufacturing." To qualify under the "packaging" exemption, equipment must be an integral part of the actual packaging process: Mennel Milling Co. v. Limbach, 72 OApp3d 330, 594 NE2d 681.

61. (1990) A party who brings buyers and sellers together and performs certain services in connection with a transaction may be found to be a "vendor" for purposes of the sales tax laws: Southern Contractors, Inc. v. Limbach, 67 OApp3d 237, 586 NE2d 267.

62. (1960) Where a room is furnished and equipped by an employer for the primary purpose of the consuming therein of food prepared for and sold to its employees at retail by a vendor in conjunction therewith, the sale of such food is not exempt from tax under the provisions of Ohio Const. Art. XII, § 12, and RC § 5739.02, and the vendor is liable therefor under RC § 5739.13: Buddies Lunch System, Inc. v. Bowers, 170 OS 410, 11 OO2d 160, 165 NE2d 924.

63. (1959) Under RC § 5709.01, a "sale" occurs when one person becomes obligated under a contract to pay the "price" and another becomes obligated to "transfer tangible personal property"; and by virtue of RC § 5739.02, the Ohio sales tax applies and is collectible as of the time of such sale regardless of the time when the price is actually paid or the property actually transferred: DeVille Photography, Inc. v. Bowers, 169 OS 267, 8 OO2d 281, 159 NE2d 443.

64. (1955) One engaged in the business of producing by photostating, blue-printing, Ozalidding and other similar processes, copies of documents, drawings, photographs, prints, etc., the price thereof charged to the customer being largely dependent on the quantity of copies ordered and the type of processing used in their production, is a vendor, and the purchases of the materials he consumes and uses in his business are not subject to sales and use taxes under RC § 5739.02 and GC § 5546-26 (RC § 5741.02): City Blue Printing Co. v. Bowers, 163 OS 6, 56 OO 3, 125 NE2d 181.

65. (1954) Under the provisions of GC § 5546-9a (RC § 5739.13), the vendor is charged with the legal duty of collecting the sales tax imposed by GC § 5546-2 (RC § 5739.02), and is made personally liable for such amount of such tax as he fails to collect: Mannen & Roth Co. v. Peck, 161 OS 153, 53 OO 68, 118 NE2d 134.

66. (1954) Under the provisions of GC § 5546-9a (RC § 5739.13), the consumer becomes personally liable for the amount of the tax on a sale only in case such consumer refuses to pay to the vendor the tax imposed by GC § 5546-2 (RC § 5739.02), or, in the case of a sale exempt from the application of the tax, refuses to sign and present to the vendor a proper exemption certificate, or signs or presents to the vendor a false certificate, or after signing and presenting a proper certificate uses the items purchased in such manner that the sale would be subject to the tax: Mannen & Roth Co. v. Peck, 161 OS 153, 53 OO 68, 118 NE2d 134.

67. (1953) Within the meaning of the statutory and constitutional language, such food is not sold for consumption on "the premises where sold" when the vending is from booths or by itinerant vendors to purchasers who consume such food wherever else they may wish rather than at the particular points where the sales were made, and such sales are not taxable: Cleveland Concession Co. v. Peck, 159 OS 480, 50 OO 396, 112 NE2d 529.

68. (1953) Under the provisions of Ohio Const. Art. XII, §

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12, and GC § 5546-2 (RC § 5739.02), prohibiting the levy of an excise on the sale of food for human consumption off the premises where sold, the phrase "premises where sold," as used therein, means the limited portion of a building, structure, enclosure or other area in which sales or purchases of food for human consumption are made and which is in the actual possession or under the actual control of the vendor: Cleveland Concession Co. v. Peck, 159 OS 480, 50 OO 396, 112 NE2d 529.

69. (1952) Under RC § 5739.02 and GC § 5546-26 (RC § 5741.02), levying, respectively, sales and use taxes, the presumption obtains that every sale or use of tangible personal property in this state is taxable: National Tube Co. v. Glander, 157 OS 407, 47 OO 313, 105 NE2d 648.

70. (1948) The sale of an article purchased or used for a purpose other than the use or consumption directly in the production by processing of other tangible personal property for sale is subject either to the sales tax levied under RC § 5739.02, or the use tax levied under GC § 5546-26 (RC § 5741.02): Piper v. Glander, 149 OS 109, 36 OO 467, 77 NE2d 714.

71. (1946) By virtue of RC § 5739.02, which has levied a retail sales tax, and GC § 5483 (RC § 5727.38), which (supplemented by HB 196, 120 v 123), has provided for a tax on the gross receipts of utility companies, the state has pre-empted that field of taxation which includes inter alia, receipts by utility companies from natural gas, electricity and water sold to consumers and local service and equipment furnished to telephone subscribers: Haefner v. Youngstown, 147 OS 56, 33 OO 247, 68 NE2d 64.

72. (1946) Sales of packaged fluid milk by a dairy through vending machines located in an industrial plant over which plant or any part thereof the vendor has and exercises no right of control, but has only the right of ingress and egress to service the vending machines by placing therein milk in containers and removing therefrom the coins inserted by purchasers, are sales of food for human consumption off the premises where sold and are not taxable: Castleberry v. Evatt, 147 OS 30, 33 OO 197, 67 NE2d 861.

73. (1945) A transfer of the title to complete eyeglasses or other optical accessories to a patient for a consideration, by one practicing the limited profession of optometry, constitutes a sale within the meaning of the sales tax law (GC § 5546-1 [RC § 5739.01] et seq) and is taxable at the bracket rate provided for in RC § 5739.02: Rice v. Evatt, 144 OS 483, 30 OO 129, 59 NE2d 927 [discussed, 32 OO 475].

74. (1944) A vendor authorized under RC § 5739.02 to prepay sales taxes on his retail sales of tangible personal property and to waive the collection of such taxes from the consumer in the manner provided in GC § 5546-3 (RC § 5739.03), is required to pay such taxes at the rates provided in GC § 5546-2 (RC § 5739.02): Cleveland Concession Co. v. Evatt, 143 OS 551, 28 OO 474, 56 NE2d 174.

75. (1939) Revised Code § 5739.02, insofar as it levies a tax upon the sale of candy and confectionery, is in conflict with Ohio Const., Art. XII, § 12, and is therefore to that extent unconstitutional: Andrews v. Tax Comm., 135 OS 374, 14 OO 250, 21 NE2d 106 [affirming 31 OLA 218].

76. (1987) Computer software, being intangible property, is not subject to the sales tax imposed by former RC § 5739.02, or to the use tax imposed by former RC § 5741.02(A): CompuServe, Inc. v. Lindley, 41 OApp3d 260, 535 NE2d 360.

77. (1985) Under RC § 5739.02, sales are presumed taxable unless proven otherwise, and the taxpayer has the burden of proof to show that contested items had, in fact, been transferred to its manufacturing division. Such a transfer to its manufacturing division exempts such items from sales and use taxes: Timken v. Lindley, 29 OApp3d 181, 29 OBR 211, 504 NE2d 455.

78. (1975) It is necessary for the commissioner to produce proof that the test check was for a representative period, rather than merely relying on the presumptive conclusion of RC § 5739.02: Staten v. Tax Commissioner, 74 OO2d 365 (App).

79. (1975) Although RC § 5739.02 permits a presumption that all sales made in Ohio are subject to sales tax until the contrary is established this statute must be read in conjunction with RC § 5739.10 which permits assessment of the vendor's return upon the basis of test checks for a representative period: Staten v. Tax Commissioner, 74 OO2d 365 (App).

80. (1972) A fruit drink adulterated with substances not present in the pure juice of a particular fruit or particular fruits intended to be represented as the primary ingredient or ingredients of such drink is not a food within the meaning of that term as used in RC § 5739.02 and is subject to the Ohio sales tax: Beatrice Foods Co. v. Porterfield, 33 OApp2d 83, 62 OO2d 140, 292 NE2d 661.

81. (1969) The county use tax authorized to be levied by RC § 5741.02.1 may not be levied by a county upon the storage, use or other consumption of tangible personal property if the transaction by which the tangible personal property was acquired was subjected to the state sales tax levied by RC § 5739.02: OAG No. 69-106.

82. (1969) The county sales and use taxes authorized to be levied by RC §§ 5739.02.1 and 5741.02.1, respectively are in addition to the state sales and use taxes levied by RC §§ 5739.02 and 5741.02, respectively: OAG No. 69-106.

83. (1956) Sales of food to employees in a cafeteria operated by a telephone company are subject to the application of the Ohio sales tax and are not exempted by RC § 5739.02(B)(9) [now (5)]: 1956 OAG No. 7475.

84. (1944) Revised Code § 5739.02 has no application with respect to school lunchrooms operated in accordance with GC § 4839-6 (RC § 3313.81): 1944 OAG No. 6812.

85. (1943) When a consumer purchases coal at the mine and pays the cost of transportation to his place of consumption and the transportation tax, the tax so paid is not a part of the price paid for the coal, as defined in GC § 5546-1 (RC § 5739.01) upon which the tax imposed by RC § 5739.02 is to be computed: 1943 OAG No. 5786.

86. (1943) When a consumer purchases coal from a dealer or mining company which has paid the transportation tax and has added the amount of such tax to the charge made to the consumer, such charge is a part of the price upon which the sales tax imposed by RC § 5739.02 is to be computed: 1943 OAG No. 5786.

87. (1938) When D, an Ohio roofing contractor, purchases a unit oil burner from M, an Ohio manufacturer, and D uses said unit oil burner in his business of installing and laying roofs for his customers, the purchase of such unit oil burner is subject to the retail sales tax as provided by RC § 5739.02 and is not exempt from such tax under any provisions of the retail sales tax act: 1938 OAG No. 2489.

88. (1936) The furnishing of food as meals by hospitals to patients therein for a price or consideration therefor paid or to be paid by or on behalf of such patients, is a taxable sale: 1936 OAG No. 5726.

89. (1935) Sales of water pipe or sewer pipe by the manufacturer to a contractor are taxable where such pipe is purchased by the contractor for use by him in carrying out a contract with a municipal corporation for the construction of a waterworks or sewer system: 1935 OAG No. 5053.

90. (1935) Where an advertising agency purchases electrotypes or mats to be used by a printer in manufacturing some article for such agency who then becomes the owner of the article, the sales to the agency are not subject to the tax; however, if the article thus manufactured or processed by the use of the electrotypes or mats purchased by the agency are not when manufactured the property of the agency, but are

the property of the client of such agency, such sales are retail sales and are subject to the tax: 1935 OAG No. 4549.

91. (1935) A motor transportation company is a "public utility" and sales made to such company for the purpose on its part as the consumer to use or consume the property sold to it in the rendition of its normal and ordinary service as a public utility, are exempt from the sales tax: 1935 OAG No. 3989.

92. (1935) The tax commission has no authority to differentiate between sales involving the immediate transfer of the property sold, and sales involving a subsequent transfer of such property, as to their taxability: 1935 OAG No. 3892.

What are not sales

93. (1953) The Ohio sales tax statute is not applicable to a sale at public auction of property of the estate by the trustee in a liquidation proceeding, pursuant to the order of the bankruptcy court: In re Payne Corp., 53 OO 467 (Fed).

94. (1986) Payment made by the federal government pursuant to Section 1395 et seq., Title 42, U.S. Code (Medicare), is a voluntary payment of an obligation incurred by the program recipient and is not within the tax exemption for sales "not within the taxing power of this state under the Constitution of the United States [RC § 5739.02(B)(10)]:" Akron Home Medical Services, Inc. v. Lindley, 25 OS3d 107, 25 OBR 155, 495 NE2d 417.

95. (1973) Where a leasing contract provides that liquidated damages be paid in the event of a breach thereof and the property which is the subject of the lease is no longer used or available for use by the defaulting party, the monies paid as damages, are not included within the meaning of "sale" and "selling," as used in RC § 5739.01, and "price," as used in RC § 5739.02; hence they are not subject to the Ohio sales tax: Grabler Mfg. Co. v. Kosydar, 35 OS2d 23, 64 OO2d 14, 298 NE2d 580.

96. (1970) Standard gauge rails, ties, spikes, switches, plates and other railroad auxiliary equipment used to construct a railroad system, which system is used by a steel manufacturer to transfer tangible personal property within and between its plants in the process of production for sale by manufacturing, processing, assembling, or refining, are transportation equipment excepted from sales and use taxation by virtue of former RC § 5739.02(B)(18) [now (16)] and RC § 5741.02(C)(2), without regard to whether the property becomes real property: Wheeling Steel Corp. v. Porterfield, 24 OS2d 24, 53 OO2d 13, 263 NE2d 249.

97. (1961) Under RC § 5739.02 and rule 74 of the tax commissioner of Ohio, the sales tax is not assessable against the rentals received by a company under contracts for furnishing, installing and maintaining electrical outdoor advertising signs owned by it and located on premises owned or leased by the company or its customers, where the company alone is responsible for the furnishing, installation, maintenance, inspection, cleaning, painting, illumination, regulation and removal of its signs: Federal Sign & Signal Corp. v. Bowers, 172 OS 161, 15 OO2d 318, 174 NE2d 91.

98. (1990) The exemptions set forth in RC § 5739.02(B) are exemptions from the state sales tax; those statutory exemptions are not applicable to RC § 5739.02.4. (1984 Op. Att'y Gen. No. 84-012, syllabus, paragraph 1, approved and expanded.); OAG No. 90-095.

99. (1936) Where under a license contract or lease providing therefor, office equipment is delivered to a licensee in this state under an agreement set out in the instrument whereby the licensee is required to retain and use such equipment for one year and to pay a stated monthly rental therefor, and the licensee is given the privilege, at his option, of retaining and using the equipment thereafter from month to month at the same rental, the exercise of this privilege does not constitute a transaction which is subject to the sales tax: 1936 OAG No. 6102.

100. (1936) The furnishing of laboratory equipment to students in educational institutions and of materials consumed or used in connection therewith, do not ordinarily constitute a sale of such equipment or of such materials: 1936 OAG No. 5726.

101. (1935) Where an electrotype is sold to a person for the purpose on the part of such person as the consumer to use such electrotype in manufacture or processing of printed matter through the agency of a printer or publisher employed for the purpose, such sale is not a "retail sale" and is not subject to the sales tax: 1935 OAG No. 4549

102. (1935) Sales of equipment to dry cleaning establishments or to laundries, all of which property is to be used in the operation of dry cleaning or laundering, and sales of grain threshing machines to be used in threshing grain, are exempt from the sales tax: 1935 OAG No. 4149.

Exemptions, state and governmental agencies

103. (1996) Revised Code § 5739.02(B)(18) does not exempt all prescription drugs: Am. Cyanamid Co. v. Tracy, 74 OS3d 468, 659 NE2d 1263; Boehringer Ingelheim Pharmaceuticals, Inc. v. Tracy (1996), 74 OS3d 472, 659 NE2d 1267.

104. (1975) The "materials sold to construction contractors for incorporation into a structure or improvement to real property," which qualify for the exception provided in RC § 5739.02(B)(13), are only those materials which ultimately become a part of the completed structure or improvement to real property which is the subject of the contract with the United States government or any of its agencies, or which is accepted when completed by the United States government or any of its agencies; the subject of a contract with an agency of the United States government to build a dam is the permanent dam itself, not a cofferdam which was required in the course of the construction: Al Johnson Constr. Co. v. Kosydar, 42 OS2d 29, 71 OO2d 16, 325 NE2d 549.

105. (1974) The purchase and lease of material, equipment and parts used in performing construction contracts for public utilities and governmental subdivisions are not exempt from sales and use taxation: Wantz Construction Co. v. Kosydar, 38 OS2d 277, 67 OO2d 346, 313 NE2d 360.

106. (1966) Where a contractor agrees with an agency of the United States to construct a post office building specifically suited to the needs of such agency, on land sold and conveyed by such agency to the contractor, and to lease the land and building to such agency by long-term lease, with renewal and purchase options at stated rentals and prices, and no provision is made for the payment by the agency to the contractor of the costs or contract price of such construction, such agency is not an "owner" of the post office building and such contractor is not entitled to sales and use tax exemptions for building and construction materials incorporated therein under the provisions of RC §§ 5739.02(B)(14) [now (13)] and 5741.02(C): Smith Fireproofing Co. v. Donahue, 14 OS2d 168, 43 OO2d 259, 237 NE2d 300.

107. (1942) Dynamite used by a contractor on a public works administration project is not exempt from sales tax under RC § 5739.02(B)(1), where the contract provides for segregation of the labor and material: Kolill Co. v. Evatt, 140 OS 515, 24 OO 530, 45 NE2d 599.

108. (1935) An article purchased by an agent of the sales tax department of the Ohio tax commission with funds made available to him by the state of Ohio, became the property of the state, and the failure of the vendor to collect the tax and cancel a stamp was not a violation of the law since the sale was to the state and specifically exempted under RC § 5739.02: State v. Russell, 3 OO 421 (MC).

109. (1971) Regional Councils of Governments, authorized

by RC Chapter 167., are exempt from the payment of taxes under the sales tax provisions of RC § 5739.02: OAG No. 71-010.

110. (1962) A board of education, pursuant to RC §§ 3313.17 and 3313.36, may accept a donation of a sum of money the use of which is restricted to the purchase of items of equipment for interscholastic teams or groups of students in connection with the athletic program conducted by said board of education; and the purchase of such equipment by said board of education with the funds so donated are exempt from sales tax under RC § 5739.02(B)(1), regardless of the fact that said funds may have been given to the board of education for the purpose of causing the equipment so purchased to be so exempt: 1962 OAG No. 3246.

111. (1960) A port authority created under RC § 4582.01 et seq is a "political subdivision" of the state within the meaning of RC § 5739.02(B)(1): 1960 OAG No. 1158.

112. (1957) Sales of tangible personal property to federal credit unions are not subject to Ohio sales tax: 1957 OAG No. 317.

113. (1941) By the enactment of HR 6687 by the 76th Congress (Oct. 9, 1940), the federal government has not consented to the levy or collection of sales and use taxes from or against itself or its instrumentalities, except in cases where sales are made by its instrumentalities to persons other than those therein defined as authorized purchasers: 1941 OAG No. 3162.

114. (1939) Retail sales made in this state to federal savings and loan associations and to building and loan associations, savings banks and other like institutions which are members of a federal home loan bank, are subject to the sales tax: 1939 OAG No. 306.

115. (1939) National banks and federal land banks are governmental agencies and are subject to state taxation only in the manner provided by U.S. Code, Title 12, § 548 and for this reason RC § 5739.02 does not apply to sales of furniture, equipment and supplies to such banks: 1939 OAG Nos.176, 177.

116. (1936) Sales of materials made to a board of education for the construction of a studium are exempt from the sales tax although a part or all of the moneys used by the board in purchasing such materials were paid into the treasury of the school district on voluntary subscriptions for this purpose: 1936 OAG No. 5751.

117. (1935) Sales of pipe by the manufacturer to a contractor for resale by him, for use by the municipality in the construction of a projected improvement by the use of labor and services rendered by employees of the municipality, are not subject to the sales tax: 1935 OAG No. 5053.

118. (1935) Where a board of education makes direct sales of textbooks or any other books, to its pupils, at a price not to exceed the cost price plus a ten percent markup, the board is not required to be licensed as a vendor and collect the sales tax if in fact the purpose of the board in marking up the price is not to make a profit: 1935 OAG No. 4617.

119. (1935) The state of Ohio is the "consumer" of goods purchased by the superintendent of banks for use in the liquidation of a particular bank, although the purchase price is paid from the assets of the particular bank, under GC § 710-97 (RC § 1113.17 [now RC § 1113.11]), and therefore such sales are not taxable: 1935 OAG No. 4114.

Casual sales

120. (1970) An auctioneer who effects a transfer of title or possession, or both, of tangible personal property, is a vendor within the meaning of RC § 5739.01(C), even though he does not actually transfer title to or possession of that property. Since appellant did not acquire the property "for his own use" in this state, the sales are not "casual," and he cannot validly claim exemption under RC § 5739.02(B)(9): Oberlander v. Porterfield, 28 OS2d 171, 57 OO2d 406, 277 NE2d 198.

121. (1968) The maintaining and servicing of the equipment, including the furnishing of replacement parts and labor, at a fixed charge of twenty cents per mile, is a transaction which is not taxable as a sale under the provisions of RC §§ 5739.01(B) and 5739.02: Material Contractors, Inc. v. Donahue, 14 OS2d 18, 43 OO2d 10, 235 NE2d 525.

122. (1936) A sale of three automobiles over a period of six months by a person who conducts a gasoline service station and holds a vendor's license for the sale of tires and accessories, but who is not engaged in the business of selling automobiles, are casual and isolated sales within the meaning of the act and are exempted from the sales tax: Carnicom v. Tax Comm., 5 OO 348 (CP).

123. (1968) The clerk of courts of each county must collect the sales tax on all sales of motor vehicles made by trustees in bankruptcy pursuant to RC § 4505.06: OAG No. 68-025.

124. (1944) Retail sales or the storage or use of tangible personal property in this state are not within the provisions of the Ohio sales tax law or the Ohio use tax law when the consumer is a foreign nation: 1944 OAG No. 7351.

125. (1941) The retail sales of salvaged automobiles by persons engaged in the business of dismantling, salvaging, and rebuilding motor vehicles are not subject to the sales tax levy if such sales are casual or isolated: 1941 OAG No. 4486.

126. (1938) Even though a "casual and isolated" sale is in open competition with other nonexempt vendors, such sale is nevertheless exempt so long as it is casual and isolated, and regardless of whether or not it is consummated on the premises of the vendor: 1938 OAG No. 3465.

127. (1938) When a religious or charitable organization engages in the continuous selling of meals day after day, such sales are not exempt as being casual and isolated within the meaning of RC § 5739.02 par. (7) [now (B)(18)]: 1938 OAG No. 3465.

128. (1936) Sales of food and of other articles of tangible personal property by ladies' aid societies and by other similar organizations affiliated with churches and church work are usually casual and sufficiently isolated as to time and character to come within the exemption with respect to casual and isolated sales: 1936 OAG No. 5726.

Interstate commerce

129. (1991) Vessel used solely to ferry out-of-state goods from a transfer facility in Ohio to their final destination in Ohio is engaged in interstate commerce: American Steamship Co. v. Limbach, 61 OS3d 22, 572 NE2d 629.

130. (1955) In the enactment of RC § 5739.02, the general assembly intended only to except sales within the state of fuel for vessels, etc., which are used or to be used principally in the transportation of persons or property in interstate or foreign commerce: L. A. Wells Constr. Co. v. Bowers, 164 OS 357, 58 OO 147, 130 NE2d 803.

131. (1948) The state of Ohio has power to impose taxes on the sale and use of trucks, trailers, tires and parts consumed in connection with their operation and used by carriers in interstate commerce: Midwest Haulers, Inc. v. Glander, 150 OS 402, 38 OO 261, 83 NE2d 53.

132. (1943) Generally, where a sale involves delivery of merchandise to a destination outside state where sold, a sales tax by such state may not be applied; however, tax may be applied to sales made on orders accepted within but received from purchasers residing without taxing state by seller maintaining place of business within taxing state, provided delivery is made, not to interstate carrier for transportation beyond state, but to purchaser who comes within state to close transaction and accept delivery: Trotwood Trailers, Inc. v. Evatt, 142

OS 197, 27 OO 168, 51 NE2d 645 [affirming 25 OO 449 (BTA)].

133. (1935) A state cannot tax interstate commerce nor tax business or sales which constitute such commerce or the privilege of engaging in interstate commerce. 1935 OAG No. 4137.

134. (1935) In determining what constitutes interstate commerce, regard must be had in each instance to the facts of the particular case and known established commercial methods: 1935 OAG No. 4137.

Township tax

135. (1981) Pursuant to RC § 505.56 and RC § 5739.02(C)-(1), a township may levy a tax not to exceed three percent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The revenue derived from such tax may be used for any lawful purpose and need not be used to support a convention and visitors' bureau within the county: OAG No. 81-032.

[§ 5739.02.1] § 5739.021 Levy of additional sales tax by county; resolution; referendum; reduction.

(A) For the purpose of providing additional general revenues for the county or supporting criminal and administrative justice services in the county, or both, and to pay the expenses of administering such levy, any county may levy a tax at the rate of not more than one per cent at any multiple of one-fourth of one per cent upon every retail sale made in the county, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, and may increase the rate of an existing tax to not more than one per cent at any multiple of one-fourth of one per cent.

The tax shall be levied and the rate increased pursuant to a resolution of the county commissioners. The resolution shall state the purpose for which the tax is to be levied and the number of years for which the tax is to be levied, or that it is for a continuing period of time. If the tax is to be levied for the purpose of providing additional general revenues and for the purpose of supporting criminal and administrative justice services, the resolution shall state the rate or amount of the tax to be apportioned to each such purpose. The rate or amount may be different for each year the tax is to be levied, but the rates or amounts actually apportioned each year shall not be different from that stated in the resolution for that year. A certified copy of the resolution shall be delivered to the tax commissioner either personally or by certified mail not later than the sixtieth day prior to the date on which the tax is to become effective. Prior to the adoption of any resolution under this section, the board of county commissioners shall conduct two public hearings on the resolution, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing. If a petition for a referendum is filed pursuant to sections 305.31 to 305.41 of the Revised Code, the county auditor with whom the petition was filed shall, within five days, notify the board of county commissioners and the tax commissioner of the filing of the petition by certified mail. If the board of elections with which the petition was filed declares the petition invalid, the board of elections, within five days, shall notify the board of county commissioners and the tax commissioner of that declaration by certified mail. If the board of elections declares the petition to be invalid, the effective date of the tax or increased rate of tax levied by this section shall be the first day of the month following the expiration of thirty days from the date the petition was declared invalid by the board of elections.

(B)(1) A resolution levying or increasing the rate of a sales tax pursuant to this section shall become effective on the first day of the month specified in the resolution but not earlier than the first day of the month following the expiration of sixty days from the date of its adoption, subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into effect on the first day of the month following the expiration of thirty days from the date of notice by the board of county commissioners to the tax commissioner of its adoption. The emergency measure shall receive an affirmative vote of all of the members of the board of county commissioners and shall state the reasons for such necessity.

(2)(a) A resolution that is not adopted as an emergency measure may direct the board of elections to submit the question of levying the tax or increasing the rate of tax to the electors of the county at a special election held on the date specified by the board of county commissioners in the resolution, provided that the election occurs not less than seventy-five days after a certified copy of such resolution is transmitted to the board of elections and the election is not held in February or August of any year. Upon transmission of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. No resolution adopted under division (B)(2)(a) of this section shall go into effect unless approved by a majority of those voting upon it and not until the first day of the month following the expiration of thirty days from the date of notice to the tax commissioner by the board of elections of the affirmative vote.

(b) A resolution that is adopted as an emergency measure shall go into effect as provided in division (B)(1) of this section but may direct the board of elections to submit the question of repealing the tax or increase in the rate of the tax to the electors of the county at the next general election in the county occurring not less than seventy-five days after a certified copy of the resolution is transmitted to the board of elections. Upon transmission of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. The ballot question shall be the same as that prescribed in section 5739.022 [5739.02.2] of

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 9

Refer to the response to item 11 of the Commission's Order of July 30, 1999, which shows Columbia's equity returns for the past five calendar years and the impacts of using non-traditional revenue sources to enhance those returns.

a. Part b of the response indicates that for 1998 off-system sales and state income tax benefits had a $3.3 million impact on net income. In response to item 11 of the Commission's Order of July 2, 1999, Columbia separately identified the net income impacts of these non-traditional revenue sources to be $2.2 million from the tax savings and $1.8 million from the off-system sales for a total of $4.0 million. Provide an explanation and reconciliation of the $4.0 million identified in the earlier response and the $3.3 million impact identified in the response to the Order of July 30, 1999.

b. For the 1998, provide a breakdown that identifies separately the impact on both net income and the percentage return on equity of the tax savings and the off-system sales.

Response:

a. The $1.8 million attributable to off-system sales referred to in the response to Item 11 of the Commission's Order of July 2, 1999 is the pre-tax amount. The impact on net income is actually $1.1 million. Therefore, the response should have indicated a total impact on net income of $3.3 million.

b.

Description	Effect on Net Income ($000)	Effect on Return on Equity
Off-system sales	1,056	1.5%
State income tax due to consolidated net operating loss	2,257	3.2%

PSC Data Request Set 3
Question No.10
Respondent: Scott D. Phelps

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 10

Refer to the response to item 15 (b) of the Commission's July 30, 1999 Order. Is Columbia proposing to fix the benchmark only for the initial three-year period of the small volume transportation program, and then reset it once the more recent historical experience has become more relevant?

Response:

No, Columbia is proposing to reestablish the capacity release benchmark at the time small volume transportation customers begin transporting gas under the program proposed herein. Once so established, Columbia proposes that the capacity release benchmark remain fixed through October 31, 2004.

PSC Data Request Set 3
Question No.11
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 11

Refer to the response to item 19(a) of the Commission's Order of July 30, 1999. The information requested was not supplied. Provide the information as originally requested. At the time the Commission was considering the proposed settlement in Case No. 94-179,[1] what information was provided by Columbia to demonstrate that the rates were cost-justified?

Response:

Columbia maintains its position that, as the Commission approved Columbia's rates as fair, just and reasonable in Case No. 94-179, and that there is no basis on which to justify differing rates for small volume transportation customers and sales customers, its delivery rates for small volume transportation customers under the proposed program are also fair, just and reasonable. All information filed as part of Case No. 94-179 is a matter of public record and is on file at the Commission.

[1] Case No. 94-179, Notice of Adjustment of Rates of Columbia Gas of Kentucky, Inc., On and After July 1, 1994.

PSC Data Request Set 3
Question No.12
Respondent: Judy Cooper

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 12

Provide a copy of the filing made by Columbia Gas of Pennsylvania pursuant to the July 16, 1999 Order of the Pennsylvania Public Utility Commission in Docket No. M-00991249. To the extent that this filing specifically addresses that Commission's requirements to demonstrate that sample tariffs do not allow cost shifts; and to set forth the basis in incremental costs of any proposed billing charge to alternate natural gas suppliers, explain why Columbia has been unable to provide similar information to this Commission.

Response:

Columbia Gas of Kentucky did not possess a copy of Columbia Gas of Pennsylvania's August 2, 1999 filing nor was it aware of the details of the proposed Columbia Gas of Pennsylvania program until this question was posed. Columbia Gas of Kentucky obtained a copy of the filing through the Pennsylvania Public Utility Commission's web site at http://puc.paonline.com/gas/competition/GasRestructuringFilings.htm .As this filing is 438 pages long, Columbia has not included a copy with this response, but instead refers the Commission to the same web site. In addition, please find the attached report for Columbia Gas of Kentucky's proposed program that was modeled after the Columbia Gas of Pennsylvania report referenced in the question.

Columbia Gas of Kentucky, Inc.
Response to Request No. 12
1999 Forecast

	Without Choice				With Choice			
Rate Schedule GSR	Rate	Bills	Volume	Revenue	Rate	Bills	Volume	Revenue
Residential								
Minimum Bill	$ 8.10	1,489,746		$12,066,943	$ 8.10	1,466,926		$11,882,101
First 1 Mcf	0.0000		1,268,138.6	0	0.0000		1,246,627.6	0
Over 1 Mcf	2.1800		10,425,861.8	22,728,379	2.1800		10,213,372.8	22,265,153
CAP Surcharge	0.0150		11,694,000.4	175,410	0.0150		11,460,000.4	171,900
Small Volume Gas Transportation								
Minimum Bill					$ 8.10	22,820		$184,842
First 1 Mcf					0.0000		21,511.0	0
Over 1 Mcf					2.1800		212,489.0	463,226
CAP Surcharge					0.0150		234,000.0	3,510
Total Residential Revenue				$34,970,732				$34,970,732

Rate Schedule GSO	Rate	Bills	Volume	Revenue	Rate	Bills	Volume	Revenue
Commercial and Industrial								
Minimum Bill	$ 22.00	168,324		$3,703,128	$ 22.00	164,458		$3,618,076
First 1 Mcf	0.0000		134,931.3	0	0.0000		131,618.9	0
Next 49 Mcf	2.1800		2,113,853.1	4,608,200	2.1800		2,053,111.2	4,475,782
Next 350 Mcf	2.1149		2,356,343.7	4,983,431	2.1149		2,296,435.0	4,856,730
Next 600 Mcf	2.0149		772,777.3	1,557,069	2.0149		760,293.6	1,531,916
Over 1,000 Mcf	1.8409		641,569.2	1,181,065	1.8409		633,015.9	1,165,319
Small Volume Gas Transportation								
Minimum Bill					$ 22.00	3,866		$85,052
First 1 Mcf					0.0000		3,312.4	0
Next 49 Mcf					2.1800		60,741.9	132,417
Next 350 Mcf					2.1149		59,908.7	126,701
Next 600 Mcf					2.0149		12,483.7	25,153
Over 1,000 Mcf					1.8409		8,553.3	15,746
Total General Service Other Revenue				$16,032,893				$16,032,892

Columbia Gas of Kentucky, Inc.
Response to Request No. 12
1999 Forecast

	Without Choice				With Choice			
Rate Schedule IS	Rate	Bills	Volume	Revenue	Rate	Bills	Volume	Revenue
Customer Charge	$ 135.79	1,080		$146,653	$ 135.79	1,080		$146,653
First 30,000 Mcf	0.6368		219,717.7	139,916	0.6368		219,717.7	139,916
Over 30,000 Mcf	0.3384		0.0	0	0.3384		0.0	0
Total Interruptible Revenue				$286,569				$286,569
Rate Schedule IUS								
Each Mcf Delivered	$ 0.3539	36	39,851.0	$14,103	$ 0.3539	36	39,851.0	$14,103
Small Volume Gas Transportation								
Each Mcf Delivered					$ 0.3539	0	0.0	$0
Total Intrastate Utility Service Revenue				$14,103				$14,103
Rate Schedule IN6								
Commodity Charge	$ 1.7363	12	956.6	$1,661	$ 1.7363	12	956.6	$1,661
Small Volume Gas Transportation								
Each Mcf Delivered					$ 1.7363	0	0.0	$0
Total IN6 Revenue				$1,661				$1,661
Total Revenue				$51,305,958				$51,305,957

PSC Data Request Set 3
Question No.13
Respondent: Judy Cooper

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 13

Provide a proposed billing format for retail gas customers who choose an alternate gas supplier.

Response:

See attached.

Columbia Gas

JOHN DOE
123 MAIN ST
ANYTOWN KY 12345-1234

Please Pay By
Oct 21, 1999

JOHN DOE
123 MAIN ST
ANYTOWN KY 12345-1234

Account Number
1234 5678 999 000 5
07 40 C 2627

P O BOX 2200
LEXINGTON KY 40595-2200

Amount Due
$ 15.67

Amount Paid
$

12345678999000500000000402992621

Please return this portion with your payment payable to **Columbia Gas.**
If paying in person, please bring entire bill with you.

Columbia Gas of Kentucky

Your Account Number
12345678 999 000 5

Billing Summary For : JOHN DOE
123 MAIN ST
ANYTOWN KY 12345-1234

07 40 C 2627

Utility Services

Prior Billing Information

Account Balance on Last Bill	$19.42	
Payments Received as of 09-18-1999 THANK YOU!	-$19.42	
Previous Balance at Billing		$.00

Current Charges for Residential Service

Minimum Monthly Charge	$8.10	
Gas Delivery Charge	$1.52	
Gas Supply Cost From "Marketer's Name"	$5.53**	
School Tax	$.50	
Customer Assistance Program Surcharge	$.02	
Current Month Utility Services Charges		$15.67

Amount Due $15.67

Please Pay Amount Due By October 21, 1999 **$15.67**

Meter Information **Next Meter Reading Date : December 8 , 1999**

Meter Number	Billing Period From	Billing Period To	Days	Meter Readings From	Meter Readings To	Gas Used
0377555 123 Main St	09-08-1999	10-07-1999	29	7759 Calculated	7776 Actual	1.7 MCF

For Your Information :

24-Hour Emergency Phone Number 1-800-432-9515.

Gas Supplier Messages :

As a participant of the Columbia Gas Customer CHOICE Program, your gas is being supplied by "Marketer's Name". This bill reflects Columbia Gas charges for service and delivery of the gas and your supplier's charges for gas supply. For questions about your gas supply charges, please contact "Marketer's Name" at 1-800-xxx-xxxx.

** Current billing charges include:
"Marketers Name" gas supply costs of $5.53 at the the rate of $3.25 per Mcf.

For questions regarding your bill, please call toll-free 1-800-432-9345 before your due date. The Customer Service Center telephone hours are Monday - Friday, 8:00 a.m. - 7:00 p.m. Rate Schedule information is available upon request.

PSC Data Request Set 3
Question No.14
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 14

According to Columbia's Program Description included its Application, an education plan and materials will be developed prior to the start of the moratorium so as to be available at the outset.

a. What is the status of the development of these materials?

b. Is Columbia developing the plan and materials, or are they being developed by a public relations consultant?

c. Provide any details currently available concerning the content of the plan and materials. If no details are available or if these times are not currently under development, what is the proposed timetable for their development.

Response:

a. Columbia has not yet begun the development of its customer education materials.

b. Columbia will work closely with a public relations consultant to develop the materials. The consultant will provide advice regarding media placement and make recommendations for the type of materials to be developed, the frequency of the placement of those materials, and the design of those materials to help ensure the most effective customer education campaign possible.

c. Columbia anticipates developing these materials after the Commission has issued an Order on the proposed program.

PSC Data Request Set 3
Question No.15
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 15

Refer to Columbia's response to item 22 of the Commission's Order of July 30, 1999. Columbia states that services such as distribution are not taxable under the Kentucky Constitution and, therefore, Columbia may not collect gross receipt taxes and sales taxes on the distribution service.

a. Explain why Columbia believes it will be able to collect gross receipts and sales taxes from small volume transportation program customers when it cannot do so from other transportation customers.

b. If Columbia is unable to collect and remit gross receipts and sales taxes from customers receiving service under the small volume transportation program tariff, will Columbia's delivered cost of providing gas to sales customers be higher by the amount of tax collected from those customers? Fully explain your response.

c. If Columbia is unable to collect and remit gross receipts and sales taxes from customers receiving service under the small volume transportation program tariff, has Columbia examined and discussed with school officials the impact this could have on the budgets of affected school districts? Fully explain your response, and provide copies of any correspondence or minutes from meetings with school districts or government agencies regarding the proposed tariff.

Response:

a. As explained in the response to Item 31(b) in the Commission's Order of July 30, 1999, Columbia is not sure whether it should continue collecting gross receipts and sales taxes from small volume transportation customers. Columbia has requested an opinion from the Kentucky Revenue Cabinet in this matter.

b. If Columbia is unable to collect and remit gross receipts and sales taxes from small volume transportation customers, Columbia will continue to collect and remit gross receipts taxes and sales taxes from Columbia's sales customers.

c. Columbia has not met with school officials regarding the proposed program. Columbia, however, is extremely sympathetic to this issue. In fact, Columbia participated in the drafting of the legislation introduced during the 1998 General Assembly Session regarding natural gas unbundling. One of the major reasons for introducing this legislation was to attempt to resolve this situation. Unfortunately, that legislation did not pass. In addition, Columbia has been an active member of the Energy Advisory Committee established by the Utility Tax Policy Task Force. As part of this advisory committee, Columbia has repeatedly made the case for a resolution to these issues.

PSC Data Request Set 3
Question No.16
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 16

Refer to Columbia's response to item 31(b) of the Commission's Order of July 30, 1999. Has Columbia sought an opinion from the Kentucky Revenue Cabinet ("KRC") regarding its ability to collect and remit gross receipts and sales taxes? If yes, has the KRC rendered an opinion? Provide copies of all correspondence exchanged with the KRC on this issue.

Response:

Columbia has met with officials from the Kentucky Revenue Cabinet to request an opinion regarding its ability to collect and remit gross receipts and sales taxes under the proposed small volume transportation program. The correspondence from Columbia to the Revenue Cabinet is attached.

Columbia Gas of Kentucky

Stephen R. Byars
Director
External Affairs

Lexington Office:
PO Box 4241
Lexington, KY 40512-4241

606 288-0227 Phone
606 288-0258 Fax

September 2, 1999

Ms. Dana Mayton
Commissioner of Law
Kentucky Revenue Cabinet
200 Fair Oaks Lane
Frankfort, KY 40602

Re: Utility Taxes

Dear Commissioner Mayton:

Columbia Gas of Kentucky, Inc. has proposed a new, innovative program that may affect the way that certain utility taxes are collected. Columbia has developed and proposed to the Kentucky Public Service Commission a program that will allow its customers to purchase gas from a supplier other than Columbia. Columbia will still deliver the natural gas to each customer's home or business under the program called Customer CHOICE. The purpose of this letter is to request an opinion regarding the applicability of various taxes from the Revenue Cabinet under this program.

For almost twenty years, Columbia and other Kentucky natural gas distribution companies have transported gas for our largest customers. That is, the customer purchased their natural gas from a third-party marketer or supplier while Columbia continued to deliver the gas to the customer's business. Columbia, however, does not ever take title to the gas in such an arrangement. The proposed program before the Public Service Commission is simply an extension of this arrangement that will be offered to all of its customers, including small commercial and residential customers.

Currently, Columbia collects Gross Receipts License Tax for Schools, as imposed by KRS 160.613, et. seq., on residential and small commercial accounts and Sales and Use Taxes, pursuant to KRS Chapter 139, on small commercial accounts. Columbia does not collect Gross Receipts License Tax for Schools or Sales and Use Taxes on large volume transportation service customers. These customers receive a bill from their marketer or supplier for the commodity of natural gas and a separate bill from Columbia for the transportation or delivery of gas to their facility. As the sale of the commodity and the transportation service is separated, Columbia does not levy either Gross Receipts or Sales tax on these customers as services are non-taxable under the Kentucky Constitution. As I'm sure you are aware, Columbia does not collect sales tax on residential customers as KRS Chapter 139 specifically exempts the sale of fuel for heating, water heating, cooking and other residential uses.

Under Columbia's proposed Customer Choice program, all customers would be afforded the opportunity to purchase their natural gas from marketers. Although the program proposes that Columbia still bill customers whether they purchase their gas from Columbia or a marketer, Columbia will still never take title to gas purchased by a customer from a marketer. Columbia will still deliver the gas to each customer's home or business and charge a delivery charge for that service.

Although some recommendations have been made by the Energy Advisory Committee to the Utility Tax Policy Task Force established by the 1998 General Assembly regarding these taxes in a competitive marketplace, Columbia requests an opinion from the Revenue Cabinet on the applicability of Gross Receipts taxes and Sales taxes under its proposed Customer CHOICE program should these recommendations not be accepted by the task force and not be adopted by the 2000 General Assembly. Please find enclosed a copy of Columbia's full filing with the Public Service Commission as well as written testimony, data requests from the Commission and Columbia's responses to the data requests. Thank you very much for your consideration.

Sincerely,

Stephen R. Byars

Enclosures

C: Smitty Taylor w/out enclosures

PSC Data Request Set 3
Question No.17
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 17

If the KRC determines that Columbia cannot collect and remit gross receipt and sales taxes on small volume transportation program volumes, should the Commission declare marketers to be utilities so that they are subject to the same taxes as the incumbent utility? Fully explain you response.

Response:

Columbia and the Collaborative designed the proposed program so that marketers would participate and so that customers would be compelled to educate themselves about the options and choose an alternate supplier if they wanted. Columbia believes quite strongly that, while a well-intentioned gesture, declaring the marketers to be utilities would discourage them from participating in the program, effectively killing the program before it started. As the Commission is aware, the tax problem relating to transportation has existed for almost twenty years. In fact, the volumes being transported under Columbia's current gas transportation tariffs far exceed the volumes expected to be transported under the proposed program. As a result, the current problem is much worse than the incremental problems created by the proposed program. Columbia is extremely sympathetic to the tax situation and will continue to work through the Energy Advisory Committee of the Utility Tax Policy Task Force and through other avenues to educate policy makers about the need for reform of utility taxes.

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 18

Refer to Columbia's response to Item 27 of the Commission's Order of July 30, 1999. Yes, provide Columbia's opinion regarding the appropriateness of Columbia entering into joint purchasing agreements given that Columbia is proposing to open its market to competition from marketing companies, both affiliated and non-affiliated.

Response:

Columbia's response assumes that this question relates to Columbia Gas of Kentucky entering into a joint purchasing agreement with Columbia Energy Services, who is also owned by Columbia Energy Group, for natural gas. At this time, Columbia Gas of Kentucky does not anticipate such a joint purchasing agreement with Columbia Energy Services, nor does Columbia Gas of Kentucky think that it would be appropriate at this time. However, such arrangements are as yet untested, and in a competitive commodity market, ultimately may be worthy of consideration in the future.

PSC Data Request Set 3
Question No.19
Respondent: S. M. Katko

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 19

Refer to Columbia's response to item 29 of the Commission's Order of July 30, 1999. What methodology does Columbia employ to allocate costs that it cannot directly assign?

Response:

The only instance in which Columbia does not directly assign costs relates to transactions with Columbia Service Partners ("CSP"), an affiliated company. Columbia receives periodic billing and other inquiries regarding CSP products and services. Columbia customer service center representatives track the number of CSP-related contacts by separately identifying them in Columbia's customer database. The customer service center's average length of call is applied to the number of contacts to arrive at the time spent on CSP inquiries. Columbia also tracks any additional time dedicated to CSP issues such as billing corrections and other dispute resolution. The customer service center's average wage rate is applied to the total time dedicated to CSP to arrive at the amount to be billed. These transactions are minor in nature; Columbia billed CSP $260.70 for services provided during the first six months of 1999.

PSC Data Request Set 3
Question No.20
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 20

Refer to Columbia's response to item 34 of the Commission's Order of July 30, 1999. Is Columbia aware that many of the telecommunications companies that are subject to the requirements established in Administrative Case Nos. 359[2] and 370[3] do not own facilities in Kentucky (that is, they are not directly connected to customers) and, further, that many of these companies did not exist as Kentucky jurisdictional companies at the time the final orders in these cases were issued?

Response:

No.

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[2] Administrative Case No. 359, Exemptions for Interexchange Carriers, Long-Distance Reselers, Operator Service Providers and Customer-Owned, Coin-Operated Telephone.

[3] Administrative Case No. 370, Exemptions for Providers of Local Exchange service Other Than Incumbent local Exchange service Other Than Incumbent local Exchange Carriers.

PSC Data Request Set 3
Question No.21
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED AUGUST 27, 1999

Question No. 21

Has Pennsylvania's statutory requirement that the Pennsylvania Public Utility Commission license marketers discouraged marketers from participating in Columbia Gas of Pennsylvania's Customer Choice program?

Response:

Columbia does not have any information to suggest whether or not Pennsylvania's statutory requirement had any impact on marketers' decisions to participate in Columbia Gas of Pennsylvania's program.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Commission's Order dated August 27, 1999 was served upon all parties of record by regular U.S. Mail this 10th day of September, 1999.

Stephen B. Seiple (gmc)

Stephen B. Seiple
Attorney for
COLUMBIA GAS OF KENTUCKY, INC.

SERVICE LIST

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COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

August 27, 1999

To: All parties of record

RE: Case No. 99-165

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

Stephanie Bell
Secretary of the Commission

SB/sa
Enclosure

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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	)))))))	CASE NO. 99-165

ORDER

IT IS ORDERED that Columbia Gas of Kentucky, Inc. ("Columbia") shall file the original and 10 copies of the following information with the Commission. Each copy of the data requested should be placed in a bound volume with each item tabbed. When a response requires multiple pages, each page should be indexed appropriately, for example, Item 1(a), page 2 of 4. With each response, include the name of the witness who will be responsible for responding to questions related thereto. Careful attention should be given to copied material to ensure that it is legible. The response to this request is due September 10, 1999.

1. Refer to Columbia's response to Item 3(a) of the Commission's Order of July 30, 1999. According to Columbia, the charge would be bundled into the rate the marketer charges the customer. Explain how this allows the customer to accurately compare the marketer's true cost of providing natural gas to what the customer would incur as a customer of Columbia.

2. Refer to the response to Item 4 of the Commission's Order of July 30, 1999, where the deadband method is referred to as "an effort to avoid devising a complicated true-up mechanism."

a. Explain why a true-up mechanism would need to be so complicated as to cause the Collaborative to avoid it altogether.

b. Columbia's Gas Cost Adjustment mechanism contains true-up provisions such as Actual Cost and Balancing adjustments. From its perspective, does Columbia foresee that a true-up mechanism would be administratively complicated or unworkable?

3. Refer to the response to Item 5 of the Commission's Order of July 30, 1999, which discusses the Collaborative's agreement on the use of the deadband.

a. The response indicates that percentages other than 10 percent were discussed. Describe the nature of the discussions and how it was determined that 10 percent was reasonable.

b. Several features of the proposed small volume transportation program are patterned after programs offered by other Columbia distribution companies. Is the 10 percent deadband patterned after any of the programs presently offered by other Columbia distribution companies?

4. Refer to the response to Item 8 of the Commission's Order of July 30, 1999. Are demand charges anticipated to decrease as customers migrate to alternate suppliers?

5. Refer to the response to Item 9(a) of the Commission's Order of July 30, 1999. Does this response assume that a surcharge would be charged only to

customers taking advantage of the small volume transportation program, or to all customers? If the charge were collected on all volumes in the small volume class and did not have to be added only to marketer rates, why would Columbia anticipate customer confusion?

6. Define "transparency" as Columbia is using it. Does it mean "easily understood and helpful in terms of the clarification it provides as to the actual cost of the program," or does it mean "invisible," or does it mean something else?

7. Refer to the response to Item 10(a) of the Commission's July 30, 1999 Order. What method of recovery do these two Columbia companies now use? Provide a detailed narrative explanation, including the process involved in changing the method of recovery and the tariffs and Orders approving these methodologies.

8. Refer to Columbia's response to Item 10(b) of the Commission's July 30, 1999 Order. How has the program in Ohio been structured to ensure that customers do not avoid taxes? Provide copies of all appropriate legislation, orders, and other documentation to support your response.

9. Refer to the response to Item 11 of the Commission's Order of July 30, 1999, which shows Columbia's equity returns for the past five calendar years and the impacts of using non-traditional revenue sources to enhance those returns.

a. Part b of the response indicates that for 1998 off-system sales and state income tax benefits had a $3.3 million impact on net income. In response to Item 11 of the Commission's Order of July 2, 1999, Columbia separately identified the net income impacts of these non-traditional revenue sources to be $2.2 million from the tax savings and $1.8 million from the off-system sales for a total of $4.0 million. Provide an

explanation and reconciliation of the $4.0 million identified in the earlier response and the $3.3 million impact identified in the response to the Order of July 30, 1999.

b. For 1998, provide a breakdown that identifies separately the impact on both net income and the percentage return on equity of the tax savings and the off-system sales.

10. Refer to the response to Item 15(b) of the Commission's July 30, 1999 Order. Is Columbia proposing to fix the benchmark only for the initial three-year period of the small volume transportation program, and then reset it once the more recent historical experience has become more relevant?

11. Refer to the response to Item 19(a) of the Commission's Order of July 30, 1999. The information requested was not supplied. Provide the information as originally requested. At the time the Commission was considering the proposed settlement in Case No. 94-179,[1] what information was provided by Columbia to demonstrate that the rates were cost-justified?

12. Provide a copy of the filing made by Columbia Gas of Pennsylvania pursuant to the July 16, 1999 Order of the Pennsylvania Public Utility Commission in Docket No. M-00991249. To the extent that this filing specifically addresses that Commission's requirements to: demonstrate that sample tariffs do now allow cost shifts; and to set forth the basis in incremental costs of any proposed billing charge to alternate natural gas suppliers, explain why Columbia has been unable to provide similar information to this Commission.

[1] Case No. 94-179, Notice of Adjustment of Rates of Columbia Gas of Kentucky, Inc., On and After July 1, 1994.

13. Provide a proposed billing format for retail gas customers who choose an alternate gas supplier.

14. According to Columbia's Program Description included in its Application, an education plan and materials will be developed prior to the start of the moratorium so as to be available at the outset.

a. What is the status of the development of these materials?

b. Is Columbia developing the plan and materials, or are they being developed by a public relations consultant?

c. Provide any details currently available concerning the content of the plan and materials. If no details are available or if these items are not currently under development, what is the proposed timetable for their development?

15. Refer to Columbia's response to Item 22 of the Commission's Order of July 30, 1999. Columbia states that services such as distribution are not taxable under the Kentucky Constitution and, therefore, Columbia may not collect gross receipt taxes and sales taxes on the distribution service.

a. Explain why Columbia believes it will be able to collect gross receipts and sales taxes from small volume transportation program customers when it cannot do so from other transportation customers.

b. If Columbia is unable to collect and remit gross receipts and sales taxes from customers receiving service under the small volume transportation program tariff, will Columbia's delivered cost of providing gas to sales customers be higher by the amount of tax collected from those customers? Fully explain your response.

c. If Columbia is unable to collect and remit gross receipts and sales taxes from customers receiving service under the small volume transportation program tariff, has Columbia examined and discussed with school officials the impact this could have on the budgets of affected school districts? Fully explain your response, and provide copies of any correspondence or minutes from meetings with school districts or government agencies regarding the proposed tariff.

16. Refer to Columbia's response to Item 31(b) of the Commission's Order of July 30, 1999. Has Columbia sought an opinion from the Kentucky Revenue Cabinet ("KRC") regarding its ability to collect and remit gross receipts and sales taxes? If yes, has the KRC rendered an opinion? Provide copies of all correspondence exchanged with the KRC on this issue.

17. If the KRC determines that Columbia cannot collect and remit gross receipt and sales taxes on small volume transportation program volumes, should the Commission declare marketers to be utilities so that they are subject to the same taxes as the incumbent utility? Fully explain your response.

18. Refer to Columbia's response to Item 27 of the Commission's Order of July 30, 1999. Yes, provide Columbia's opinion regarding the appropriateness of Columbia entering into joint purchasing agreements given that Columbia is proposing to open its market to competition from marketing companies, both affiliated and non-affiliated.

19. Refer to Columbia's response to Item 29 of the Commission's Order of July 30, 1999. What methodology does Columbia employ to allocate costs that it cannot directly assign?

20. Refer to Columbia's response to Item 34 of the Commission's Order of July 30, 1999. Is Columbia aware that many of the telecommunications companies that are subject to the requirements established in Administrative Case Nos. 359[2] and 370[3] do not own facilities in Kentucky (that is, they are not directly connected to customers) and, further, that many of these companies did not exist as Kentucky jurisdictional companies at the time the final orders in these cases were issued?

21. Has Pennsylvania's statutory requirement that the Pennsylvania Public Utility Commission license marketers discouraged marketers from participating in Columbia Gas of Pennsylvania's Customer Choice program?

Done at Frankfort, Kentucky, this 27th day of August, 1999.

By the Commission

ATTEST:

Executive Director

[2] Administrative Case No. 359, Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones.

[3] Administrative Case No. 370, Exemptions for Providers of Local Exchange service Other Than Incumbent local Exchange Carriers.

United Gas
MANAGEMENT INC.

Kentucky Public Service Commission
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40602 – 0615
Attn. Filings and Dockets
Facsimile (502) 564 3460

August 23, 1999

Dear Sirs;

Regarding Case 99-165, Columbia Gas of Kentucky

Motion to Intervene

United Gas Management, Inc.("United"), by this notice, intends to intervene in the above referenced proceeding. In the event that the Kentucky Public Service Commission accepts United's intervention, United intends to follow the proceeding, review the evidence of other parties, participate in settlement discussions, and possibly file argument. United does not intend to call witnesses or submit evidence, and would only intend to make basic data requests. United does not believe that its intervention would in any way require altering of any existing schedules.

United Gas Management, Inc. is a broker and marketer of energy which operates in four states directly and through subsidiaries. United deals exclusively with residential customers. United hopes that United's experience in other regulatory forums will provide some benefit to this proceeding.

Yours truly,

Brian A. Dingwall
Vice President, Regulatory Affairs

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
THE TARIFF FILING OF COLUMBIA GAS OF	)	
KENTUCKY, INC. TO IMPLEMENT A SMALL	)	CASE NO. 99-165
VOLUME GAS TRANSPORTATION SERVICE,	)	
TO CONTINUE ITS GAS COST INCENTIVE	)	
MECHANISMS, AND TO CONTINUE ITS	)	
CUSTOMER ASSISTANCE PROGRAM	)	

RESPONSES TO COMMISSION'S ORER DATED JULY 30, 1999 ON BEHALF OF COLUMBIA GAS OF KENTUCKY, INC.

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Attorneys for
COLUMBIA GAS OF KENTUCKY, INC.

August 13, 1999

PSC Data Request Set 2
Question No.1
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 1

Refer to the Prepared Direct Testimony of Stephen R. Byars at page 3 where the establishment of the Columbia Collaborative is discussed.

a. The Collaborative consists of Columbia and only three other members. Were other parties solicited to participate in the Collaborative? If yes, identify when these solicitations occurred and the parties to whom they were directed. If no, explain why such a relatively small group was chosen.

b. The program is available to IUS customers. Were any members of this customer group invited to participate in the Collaborative?

c. With a maximum annual limit of 25,000 Mcf usage to be eligible for the proposed program, commercial customers and smaller industrial customers should qualify. Was any input sought from these groups or were any representatives from these groups invited to participate in the Collaborative? If no, explain why.

Response:

a. The Collaborative consists of Columbia and three other parties but a fourth party, FSG Energy Services, while not a formal member of the Collaborative, was consulted several times during the development of the proposed program. No other parties were invited to join the Collaborative. The group was assembled by inviting stakeholder groups that traditionally have been active in Columbia's cases before the Commission and had an interest in the issues being discussed. Columbia believes that the members of the Collaborative ably represent the customer groups that will be affected the most by the proposed program.

b. Columbia has two IUS customers and neither was invited to participate in the Collaborative as they historically have not been active in Columbia's cases before the Commission.

c. No group that represents small commercial customers solely was invited to join the Collaborative. A representative of the Kentucky Industrial Utility Consumers was solicited for input after the program was largely developed. That representative responded favorably to the program but provided no suggestions for improvement. Commercial and industrial customers were not invited to join the Collaborative as Columbia believed that most of the issues related to program development more directly affected residential customers.

PSC Data Request Set 2
Question No.2
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 2

Refer to the Prepared Direct Testimony of Kimra H. Cole at page 8 where it states that "as long as Columbia remains in the merchant function with a regulated gas commodity rate the definition or workable competition is irrelevant."

a. Explain whether the phrase "regulated commodity rate" is the critical portion of this statement.

b. Explain whether a competitive marketplace would exist if Columbia were to retain its merchant function but did not have a regulated commodity rate.

Response:

a. There are really two critical components of this sentence. The first is "Columbia remains in the merchant function". The second is "regulated commodity rate". As long as Columbia is providing an option for gas at a rate being approved by the Kentucky Public Service Commission, a benchmark is being established. All third parties must compete against this benchmark. This makes the definition of "workable competition" irrelevant.

b. As long as Columbia is in the merchant function, it will be natural for customers and marketers to use our pricing as a basis for comparison. The determination of whether this allows a competitive marketplace to exist would be determined by future discussions resulting in a definition of "workable competition".

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 3

Refer to the Prepared Direct Testimony of Kimra H. Cole at page 8 where it states, "The revenues generated under this rate schedule will be credited to the Stranded Cost/Recovery Pool account."

a. Explain how this proposed tariffed rate differs from a surcharge to recover stranded costs associated with the implementation of the small volume transportation program tariff.

b. Since Columbia is proposing to use the proceeds collected under the Small Volume Aggregation Service tariff to offset stranded costs, is Columbia proposing to terminate this tariff once stranded costs have been fully recovered? If not, why not?

c. Explain why Columbia should continue to collect this charge above any stranded costs and retain the first $4 million for return to its shareholders.

d. Does Columbia believe this type of charge provides the transparency it is seeking so that customers can make a clear and understandable choice between a marketer's offer and Columbia's sales rate? Fully explain your response.

Response:

a. I believe the quote is from page 5 and references Rate Schedule SVAS. It is a rate that is charged to the marketer, not directly to the customer. I would expect the charge to be included in the rate that the marketer charges the customer. This allows the customer to compare their rate from the marketer to Columbia's published rate. This simplifies a comparison for the customer.

b. I would expect this issue to be addressed in a future filing, prior to October 2004.

c. Columbia will not know the total stranded cost incurred nor the amount in the recovery pool until a determination is made concerning the future of our interstate pipeline contracts and we gain insight on market participation in our CHOICE program. The $3 million

dollar "dead –band" as determined by the Collaborative is to be a reasonable risk/reward mechanism for Columbia, not a guaranteed revenue opportunity for Columbia's shareholders.

d. Yes. Please refer to 3a.

PSC Data Request Set 2
Question No.4
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 4

Refer to the response to the response to Item 1 of the Commission's Order of July 2, 1999. It states that it would be unlikely for revenue opportunities to exactly match the stranded costs associated with the small volume transportation program; therefore, the "deadband" of $3 million was adopted rather than devise a method to true-up over- or under-recovered revenues. The response also states that the program is designed to have no affect on Columbia's net income, but in the highly likely event that there is either an over- or under-recovery of stranded costs the program will affect Columbia's net income, up to a maximum of $3 million. Given these statements, explain whether the "deadband" approach, as proposed, virtually guarantees that Columbia's net income will be affected by the program.

Response:

The program is designed so as not to affect Columbia's net income. The deadband was agreed to by Columbia and the Collaborative as an effort to avoid devising a complicated true-up mechanism when stranded costs are either under-collected or over-collected. As was stated in the response to Item 1 of the Commission's Order of July 2, 1999, if the match of revenue opportunities and stranded costs does not occur then the program will affect Columbia's net income either negatively or positively, up to a maximum of $3 million.

PSC Data Request Set 2
Question No.5
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 5

Refer to the response to Item 2 of the Commission's Order of July 2, 1999. Provide an explanation for whether there is any particular significance to the 10 percent used to develop the $3 million "deadband". Is there any particular merit to the choice of 10 percent as compared to either five or 15 percent?

Response:

The reason for employing the deadband concept within the financial model is to avoid having to implement a true-up mechanism at the end of the program. The Collaborative discussed other percentages but determined that 10 percent of the stranded costs, and thus the amount of the deadband, was reasonable as the over or under-collected amount is expected to end up within that range. Columbia and the Collaborative agreed that the deadband concept is a much easier, and equitable, method of dealing with the over or under-collected issue than explaining to customers at the end of the program why a true-up is reflected on their bills.

PSC Data Request Set 2
Question No.6
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 6

Refer to the response to Item 4 of the Commission's Order of July 2, 1999. To the extent that GCR calculations currently include credits from capacity release and off system sales, will Columbia's proposal cause the GCR rate to remaining customers to increase?

Response:

There will not be an increase to the current GCR rate. The future GCR's will not include credits for these programs. However, whether future GCR rates will be higher or lower will be determined by the other components of the GCR.

PSC Data Request Set 2
Question No.7
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 7

Refer to the response to Item 5 of the Commission's Order of July 2, 1999. The response refers to the benefit to the customer from having "the opportunity to choose" another gas supplier. Is there some way to quantify this benefit? Explain whether it is Columbia's position that having "the opportunity to choose" outweighs the loss of the incentive plan credits.

Response:

Columbia does not take a position on whether having the opportunity to choose outweighs the loss of the incentive plan credits. As evidenced by the participation rates in other Customer Choice [SM] programs around the country, the opportunity to choose an alternative gas supplier is attractive to many customers. It is impossible to quantify this benefit, however, as each customer makes value judgements based on their own individual circumstances. The benefits of a Customer Choice [SM] program can be numerous. The opportunity to choose an alternative supplier combined with the opportunity to save money on their gas bill are benefits that each customer must consider when making this choice. During the term of the proposed program, however, costs that occur during this transition to Choice [SM] need to be recovered. Columbia and the Collaborative agree that transferring the credits from the GCR rate to the Stranded Cost Recovery Pool is the best method because of its transparency to customers. This method also removes an artificial reduction to Columbia's gas cost against which marketers would have to compete.

PSC Data Request Set 2
Question No.8
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 8

Refer to the response to Item 6 of the Commission's Order of July 2, 1999 where it states that "the Collaborative agreed that it was important for Columbia's sales customers not to pay any additional charges for a Choice program." If the Choice program did not exist, sales customers would continue to receive incentive plan credits that they won't receive under the proposed program. Explain how this result, intended or not, does not cause sales customers to pay more under the proposed program than they would pay without the program.

Response:

The question takes part of the response to Item 6 of the Commission's Order of July 2, 1999 out of context. The response explained why the Collaborative believed that it is appropriate and reasonable to fix the expected gas cost determinants in the proposed program. The response also explained that if the expected gas cost determinants were not fixed then the result would be inflated rates for those customers choosing to continue purchasing their gas from Columbia. Those rates would be inflated because the demand charges would be spread over fewer sales volumes and, in effect, the sales customers would be paying all of the stranded demand costs. The Collaborative agreed that this was important to avoid. Therefore, the proposed program does not increase gas costs for sales customers, it simply eliminates the potential for a credit against gas costs during the term of the program for sales customers.

PSC Data Request Set 2
Question No.9
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 9

Refer to the responses to Items 7 and 8 of the Commission's Order of July 2, 1999.

a. Explain in more detail the nature of the transparency problems associated with a customer surcharge. Provide examples along with the narrative explanation, if necessary.

b. Two other Columbia distribution companies use a customer surcharge. Describe in detail those companies' experience, particularly any problems, with the customer surcharge approach.

c. Provide the results of any customer surveys or other data indicating that customer surcharges are confusing and prevent clear comparisons between incumbent gas supply prices and alternate gas supply prices.

d. Was transparency of stranded cost recovery a primary issue for Collaborative members other than Columbia?

e. Regarding the Collaborative's discussion regarding customer surcharges versus transparency did the idea of Columbia continuing with its current incentive program and remaining sales customers losing their portion of sharing arise? Explain.

Response:

a. Simply put, a customer surcharge to recover transition costs makes it more difficult for a customer to make a clear comparison between Columbia's sales rate and a marketer's cost of gas offer. Under the proposed program a customer may make a quick and clear comparison without having to determine how a surcharge would affect their calculation of savings. For instance, if a customer had to add a monthly surcharge on to a marketer's offer before making a comparison with Columbia's sales rate then additional confusion would inevitably arise.

It should be noted that the goal of the Collaborative was to design a program that would be attractive to customers. The Collaborative agreed that a surcharge would confuse customers and discourage participation. Therefore, the proposed method of the recovery of stranded costs was considered to be the best method for Columbia Gas of Kentucky's customers.

b. Two other Columbia distribution companies did employ customer surcharge methods of recovery but have since gone to a more transparent methodology. The Collaborative did not dismiss the use of a surcharge because of the problems experienced by other Columbia distribution companies but because they thought it would be inappropriate for use with Columbia Gas of Kentucky's customers.

c. Columbia Gas of Kentucky is unaware of any such customer surveys.

d. Yes. The alternative use of a customer surcharge was an issue of concern with each Collaborative member. As stated in response to Item 9. A., the Collaborative desired to design a program that would succeed. The Collaborative believed that a customer surcharge would confuse customers, inhibit participation and thus, create an unsuccessful program.

e. Yes, this issue was discussed. If the incentive credits were retained by sales customers then a customer surcharge would be necessary in order to recover stranded costs. In addition to the concerns expressed earlier by the Collaborative about a customer surcharge, if incentive credits were retained by sales customers and a surcharge added to recover stranded costs, the two would essentially cancel each other out. So, the Collaborative agreed that a transparent method of recovery would simplify the proposed program. Again, the Collaborative agreed that the method described in the proposed program is the best method for Columbia Gas of Kentucky's customers.

PSC Data Request Set 2
Question No.10
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 10

Refer to the response to Item 9 of the Commission's July 2, 1999 Order.

a. For those Columbia companies using a customer surcharge to recover stranded costs, are the average annual savings for residential and small commercial customers net of the surcharge? Explain.

b. Do average annual savings reflect tax avoidance?

Response:

a. The two Columbia companies that used to use a customer surcharge to recover stranded costs no longer employ that method of recovery so the average annual savings described in the response to Item 9 of the Commission's July 2, 1999 Order do not include any impact from a surcharge.

b. Columbia Gas of Ohio's program does not allow customers to avoid taxes. Columbia Gas of Pennsylvania's program does allow for some tax avoidance. Those tax savings are included in the savings described to Item 9 of the Commission's July 2, 1999 Order.

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 11

Refer to the response to Items 10 and 11 of the Commission's Order of July 2, 1999 where Columbia provided its earned return on equity for the past five calendar years and identified two specific items that impacted its 1998 return.

a. Provide the calculations used to produce Columbia's equity returns as shown for the past five calendar years.

b. For each of those years, identify and provide the dollar amount and rate of return impacts of using "non-traditional sources" of revenue to enhance equity returns.

Response:

a.

	Net Income $000	13 Mth Avg Equity $000	Return on Equity %
1994	3,843	49,989	7.7
1995	6,630	53,282	12.4
1996	9,289	57,850	16.1
1997	11,639	67,410	17.3
1998	13,497	70,327	19.2

b.

	Description	Effect on Net Income $000	Effect on Return on Equity* %
1994	None		
1995	None		
1996	Off-system sales	276	0.5
1997	Off-system sales	933	1.4
1998	Off-system sales and State income tax benefit due to consolidated net operating loss	3313	4.7

*Effect on return on equity reflects effect on numerator of ROE calculation only. Denominator would also be affected depending on when items were recorded and dividend payout ratio.

PSC Data Request Set 2
Question No.12
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 12

Refer to the second paragraph of the response to Item 11 of the Commission's order of July 2, 1999. Explain whether the Commission should infer from these statements that it is Columbia's position that once rates are judged to be fair, just, and reasonable that those rates remain fair, just, and reasonable indefinitely regardless of changes in conditions or circumstances.

Response:

Columbia's response to Item 11 of the Commission's Order of July 2, 1999 did not mean to imply any more than what was actually stated. The question Columbia responded to was, "What does Columbia consider to be a fair return on equity under current economic conditions?" Columbia's response to that question was that when rates are reviewed and approved by the Commission as fair, just and reasonable that an arbitrary review of returns on equity does not change the fact that the rates remain fair, just and reasonable.

PSC Data Request Set 2
Question No.13
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 13

Refer to the response to Item 12 of the Commission's Order of July 2, 1999. The original request asked why sales customers should forego their portion of gas cost incentive revenues while Columbia would retain its portion. The response does not address the second part of the question. If the discussions between Columbia and the other members of its Collaborative determined that using revenues from gas cost incentives to recover stranded costs was superior to other potential options, explain how, or why, the Collaborative determined that Columbia should retain its portion of gas cost incentive revenues.

Response:

If the gas cost incentive program was left as it is today then a customer surcharge would be required to recover stranded costs resulting from the proposed program. Under this scenario, the surcharge would be large enough to virtually cancel out the credits from the gas cost incentive program. This mechanism for stranded cost recovery was determined to be cumbersome and confusing to the customer. As a result, the Collaborative agreed that the proposed method would create the most successful program.

The customers are not foregoing their portion of the incentives. The benefit is merely transferred from the GCR to the Stranded Cost Recovery Pool. Thus, all Columbia customers retain their benefits, not just customers that remain with Columbia's sales service. The small volume transportation service customers will continue to benefit as well.

The proposed program includes risk for Columbia to recover the stranded costs resulting from the program. In addition, Columbia has experienced reduced value in the Kentucky capacity release markets in past years but is relying on our ability to pull value from that market during the program years. Because of this risk, the Collaborative agreed that Columbia should have an incentive to generate off-system sales and capacity release revenues sufficient to recover stranded costs and avoid the need for a customer surcharge.

PSC Data Request Set 2
Question No.14
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 14

Refer to the response to Item 13 of the Commission's Order of July 2, 1999, which states that Columbia has not developed a mechanism to recover a potential shortfall in excess of $3 million.

a. Explain whether the Commission should infer from this response that Columbia does not anticipate that there will be a shortfall in excess of $3 million.

b. Other than the length of time between 1999 and the year 2004, provide any specific reasons why Columbia would propose a plan that sets a $3 million "deadband" but does not include a methodology for dealing with a potential under-recovery in excess of the $3 million "deadband."

Response:

a. The Collaborative has not developed a mechanism to recover a potential shortfall or a mechanism to distribute any amounts in excess of the $3 million deadband. Columbia and the Collaborative do think there is a reasonable expectation that under or over recovery of stranded costs will fall within the $3 million deadband.

b. The Collaborative did not establish a mechanism for either over-recovery or under-recovery of stranded costs outside of the deadband because the Collaborative expects the end result to fall within the deadband.

PSC Data Request Set 2
Question No.15
Respondent: Scott D. Phelps

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 15

Refer to the response to Item 14 of the Commission's Order of July 2, 1999.

a. Explain what will happen to that capacity that becomes available due to the small volume transportation program and is not assigned to an alternate supplier.

b. If the intention is to not mingle capacity available for resale and capacity due to the small volume transportation program, is fixing the benchmark through October 31, 2004 appropriate if the capacity arising due to the small volume transportation program fluctuates or grows over time? Explain.

Response:

a. Capacity that becomes available due to the small volume transportation program will be considered stranded for purposes of determining the amount of stranded costs. Columbia will then try to mitigate as much of the stranded cost as possible by way of the capacity release market.

b. Capacity available as a result of the small volume program may rise and fall in coming years. Holding the benchmark constant based on results prior to small volume transportation was recommended by the collaborative because it would establish a level of capacity release that Columbia had historically been able to achieve while singularly responsible for supply gas to the small customers. Entering into a new environment where Columbia is no longer solely responsible for those customers' gas supply, additional capacity may become available that historically Columbia could not have released. The Collaborative agreed that this should not be included in the benchmark. The benchmark was initially established because Columbia had been involved in releasing capacity prior to the incentive plan. The Commission ordered that a sharing of capacity release revenues should not begin at $1 but should recognize the previous activity. The Collaborative followed the same logic.

PSC Data Request Set 2
Question No.16
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 16

Refer to the response to Item 15 of the Commission's Order of July 2, 1999. Columbia states, "The financial model is designed so that stranded costs and revenue opportunities will match exactly at the end of the program, but not necessarily before." Provide a more detailed explanation as to why an exact true-up of stranded cost recovery was rejected by the Collaborative.

Response:

Stranded costs and revenue opportunities are inversely related. Stranded costs are lower in the early years of the program as customers begin to enroll in the program and purchase their gas from marketers and increase in the later years of the program as more customers enroll. Revenue opportunities are higher in the first years of the program and decline throughout the term of the program. As a result, if the financial model trued up on an annual basis then in the first years of the program there would be revenues in excess of stranded costs and in the later years the reverse would occur. If revenues are allowed to be "banked" in the stranded cost recovery pool and used for stranded cost recovery in later years of the program then more stranded costs can be recovered over the term of the program and, ultimately, more customers can take advantage of the program.

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Question No. 17

Refer to the response to Item 17 of the Commission's Order of July 2, 1999. Columbia indicates it believes it would be inappropriate to provide the Commission the definition of a competitive marketplace without consulting its Collaborative first. Columbia has been aware that the definition of a competitive marketplace was an issue in this proceeding since the Commission issued its Order of May 28, 1999. That Order scheduled an informal conference for June 3, 1999, and identified the application's lack of a definition of a competitive marketplace as one of the topics to be discussed at that conference and members of the Collaborative were present at the conference. Explain why Columbia has had no opportunity to discuss this issue with its Collaborative, or chosen not to discuss this issue with its Collaborative, at some point in time between receiving the May 28, 1999 Order and the preparation of its response to the Commission's July 2, 1999 Order.

Response:

Item 17 of the Commission's Order of July 2, 1999 asked Columbia to assume that it would propose to exit the merchant function at some time in the future. Under that assumption, the question asks Columbia to provide a definition of a competitive marketplace for use by the Commission if Columbia ever proposed to exit the merchant function. Columbia and the Collaborative have not reconvened to discuss this issue because Columbia has not determined whether to propose to exit the merchant function some day in the future.

PSC Data Request Set 2
Question No.18
Respondent: M. D. Anderson

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 18

Refer to the response to Item 18 of the Commission's Order of July 2, 1999. Part (i.) asks if the estimated marketer contribution on line 5f is composed of penalties, and the response is, "No." Explain what the estimated marketer contribution consists of.

Response:

The marketer contribution on line 5f is equal to $0.05 per Mcf times the projected Mcf consumed by customers participating in Columbia's Customer Choice Program.

PSC Data Request Set 2
Question No.19
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 19

Refer to the response to Item 21 of the Commission's Order of July 2, 1999. It states that since Columbia's base rates and, as a result, its proposed transportation rates, have already been cost justified and approved by the Commission, Columbia can find no basis to justify differing rates for delivery of gas under the proposed program. Columbia's base rates were approved as part of a settlement in Case No. 94-179.[1]

a. At the time the Commission was considering the proposed settlement in Case No. 94-179, what information was provided by Columbia to demonstrate that the settlement rates were cost justified?

b. Has the Commission been provided any information since the time it approved that settlement that demonstrates that the settlement rates were cost justified then or are cost justified now?

Response:

a. The Commission approved Columbia's rates as fair, just and reasonable in Case No. 94-179. As rates were determined to be fair, just and reasonable, and as Columbia can find no basis on which to justify differing rates for customers who simply choose to purchase their commodity from a different supplier than Columbia, Columbia believes that its delivery rates for customers under the proposed small volume gas transportation program are also fair, just and reasonable.

b. Columbia has not provided any additional information to the Commission regarding base rates since Case No. 94-179.

[1] Case No. 94-179, Notice of Adjustment of Rates of Columbia Gas of Kentucky, Inc. On and After July 1, 1994.

PSC Data Request Set 2
Question No.20
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 20

Refer to the response to Item 22 of the Commission's Order of July 2, 1999. Columbia's GCR rate reflects only gas commodity costs. Marketers' commodity rates will reflect gas commodity costs as well as expenses and profit. Should Columbia's GCA process be modified so that GCR rates reflect all of the same kinds of costs that marketers' rates include? Would such a modification make GCR rates more comparable to marketer rates?

Response:

To modify GCR rates in the manner the Commission suggests would require a complete unbundling of Columbia's rates and relief from its obligation as the supplier of last resort. A true "apples to apples" comparison between GCR rates and marketers prices is only possible if the two have the same obligations and freedoms in pricing and service offerings on which to compete.

PSC Data Request Set 2
Question No.21
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 21

Refer to the response to Item 23 of the Commission's Order of July 2, 1999. Obviously Columbia does not anticipate any cost shifts between sales customers and small volume transportation program customers as indicated in its initial response and supplemental response to the Commission's Order of May 28, 1999, and in its responses to questions raised at the informal conference of June 3, 1999. However, the Commission has not been convinced by Columbia's arguments and does not share Columbia's expectations that there will be no cost shifts between sales customers and small volume transportation program customers. Hypothetically, assuming cost shifts were to occur, provide a response to Item 23 of the Commission's July 2, 1999 Order.

Response:

Columbia does not anticipate any cost shifts between sales customers and small volume transportation customers under the proposed program. As Columbia does not anticipate any cost shifts it is impossible to assume that there will be and then describe a study or report that will be developed for the Commission. As a result, Columbia has not developed a study or report that would show the Commission what adjustments in its rates should be.

PSC Data Request Set 2
Question No.22
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 22

Refer to the response to Item 28 of the Commission's Order of July 2, 1999. Does Columbia currently collect and remit all applicable taxes, such as gross receipt taxes, sales tax and franchise fees from other transportation-only customers? If not, why not?

Response:

Columbia does not currently collect and remit gross receipts taxes, sales tax and franchise fees from transportation customers. When commodity is separated from distribution services gross receipt taxes and sales taxes may not be collected from transportation customers on commodity charges as those amounts are billed by the marketer. In addition, Columbia may not collect gross receipt taxes and sales taxes on the distribution service as it is a service and not taxable under the Kentucky Constitution. Franchise agreements must be interpreted individually to determine whether to collect franchise fees from the distribution service portion of the transportation customer's bill.

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Question No. 23

Refer to the response to Item 35 of the Commission's Order of July 2, 1999. Provide copies of the marketer eligibility requirements which are summarized here, and provide justification for any differences in those requirements and the requirements proposed by Columbia in this proceeding.

Response:

What we provided were the actual marketer requirements.

The requirements that were included in Columbia's filing were the requirements that the Collaborative determined to be best for our market.

PSC Data Request Set 2
Question No.24
Respondent: Kimra Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 24

Do marketers who are rejected in Columbia's certification process have any recourse to appeal? If not, did the Collaborative consider establishing any appeal process? Do Columbia affiliates operating in other jurisdictions have such appeal processes? If so, do they involve the state regulatory Commission?

Response:

The criteria for certification are included in Columbia's tariff. If Columbia rejects a marketer the Commission's complaint procedures would be available to the marketer just as they are to any other customer. The Collaborative did not consider any other appeal process. Columbia is not aware of an appeal process in any other state.

PSC Data Request Set 2
Question No.25
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 25

Refer to the response to Item 40 of the Commission's Order of July 2, 1999. Should an explanation be made in the proposed Aggregation Agreement or tariffs of the 97.5 percent multiplier so that it is clear to marketers and customers?

Response:

Columbia would be receptive to providing information in the proposed Aggregation Agreement regarding the 97.5% multiplier.

PSC Data Request Set 2
Question No.26
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 26

Refer to the response to Item 45 of the Commission's Order of July 2, 1999.

a. Provide any additional Standards of Conduct or Codes of Conduct that are not included in Columbia's proposal but that are a part of such standards and codes in other unbundling programs in which Columbia's affiliates are participating.

b. Explain why Columbia's Standards of Conduct do not include a provision that states that Columbia will abide by a prescribed Cost Allocation Procedure or Manual in recording transactions with affiliates.

c. Provide all cost allocation requirements and all provisions for Commission access to books and records of the utility and its affiliates included in any of the unbundling programs in which Columbia affiliates are participating.

d. With regard to Element No. 12, would Columbia agree to providing the Commission with copies of any complaints regarding compliance with the Standards of Conduct within the 5-day notification period and to additionally provide the Commission the preliminary results of its investigation simultaneously with the communication of those preliminary results to the complainant?

e. With regard to footnote 3, explain why Columbia should be allowed to participate in joint marketing with its affiliates. Will other marketers be given the opportunity to participate in these joint marketing efforts on a simultaneous and non-discriminatory basis as is required in the Columbia Gas of Pennsylvania program?

Response:

a. These are the only ones of which we are aware.

b. Because we directly assign costs and have no cost allocation manual.

c. Columbia is only aware of any such provisions from Ohio. See attached pages from January 9, 1997, and June 18, 1998, orders of the Public Utilities Commission of Ohio.

d. Yes.

e. Columbia currently does not engage in joint marketing, sales, advertising or research and development with its non-regulated affiliates. However, Columbia should be allowed to join with a non-regulated division, affiliate, or subsidiary in promotional, marketing, sales, advertising, or research and development activities, provided that: (1) The quality or availability of regulated service from the utility is not conditioned upon or in any way tied to receipt of service from the utility's unregulated affiliate with whom the joint promotion, marketing, sales, advertising or research and development activities are conducted; and (2) the utility engages in similar joint marketing efforts with any other provider of energy or energy-related products and services upon request, under substantially similar terms and conditions. Other marketers will indeed be given the opportunity to participate in joint marketing efforts on a non-discriminatory basis as is required in the Columbia Gas of Pennsylvania program.

The Staff believes, and the Company has agreed, that any affiliate that provides service to COH and its affiliated marketer should be subject to periodic audits. All books and records of these affiliates shall be open for inspection of the Commission to perform such audits. These audits will assure that the non-affiliated marketers are being treated fairly. The Staff also believes that any ancillary service, such as billing and envelope service, that is not tariffed should be priced uniformly for affiliated and non-affiliated companies and available to all equally. For example if COH provides bill stuffers for the affiliate marketer for $.01 then the market has been established as $.01 and any other competitor should also be charged $.01.

In terms of customer information, the Company has stated during Staff's investigation that they will respond to requests for information from marketers in a like manner to all parties, regardless of the affiliation. The exact provisions under which the information will be supplied will be contained in the contract between the parties. In general, the Company expects to provide the information at cost. Further, COH has assured the Staff that its affiliated marketer will have access to customer information in no different manner than a non-affiliated marketer.

The Staff believes that the GCR management/performance audit of COH following the end of the first year of the program could also be used to review the terms and conditions of information being provided to the affiliate marketer and potential competitors. Further, it should be noted that there is no prohibition on the Commission initiating management and financial audits by its Staff or designees as needed. The Commission will arbitrate unresolved disputes between COH and the respective marketers. With regard to Stand's language changes discussed above, the Staff recommends that COH provide all participating marketers with the same information it provides its own affiliate marketer and not be limited to only those requesting same.

In becoming a marketer and pool operator under this program, COH is requiring the operator to subscribe also to a code of conduct. As part of this code, the Company requires the marketer, in its contract with the customer, to include the marketer's customer service address and telephone number; include a statement describing the marketer's dispute resolution procedure; include a clear presentation of the terms of the gas purchase agreement (e.g., one year), the process, billing, and payment terms; and notice that the continuation of this program is subject to the Commission's approval. Stand does not believe a code of conduct is warranted for marketers.

Staff has reviewed the Marketer's Code of Conduct section and finds such code to be appropriate. Further, the Staff recommends that language should be included that states that marketers will, upon request, provide to the Consumer Services Department (CSD) Staff copies of all informational materials and standard contracts for use in complaint handling. Also, during the course of participation in the program, when material changes are made to this information, marketers will provide copies to the

could give the affiliated marketing company an unfair advantage. The affiliate code of conduct was established to minimize any favoritism a utility might give to an affiliate marketer. While the code provisions seem to have prevented widespread abuse, the staff believes an inherent incentive still exists to favor an affiliated marketing company over a nonaffiliate. Therefore, the staff claims that it will continue to monitor compliance with the codes of conduct by aggressively investigating marketer and customer complaints. The staff asserts that this recommendation is less cumbersome than the original audits suggested by the staff, but would allow the staff the opportunity to monitor the emerging competitive market for potential anti-competitive behavior.

The staff recommends that the Commission reiterate in its order that the prohibition in the affiliate code of conduct against sharing information between the regulated and nonregulated affiliates applies also to the LDC's service company, to the extent it obtains such information from the LDC. The staff also recommends that the LDCs meet with staff within 90 days of the issuance of the order in this proceeding to discuss development of a procedure by which code of conduct requirements directed at the LDC/affiliate relationship can be audited or otherwise verified.

According to the staff, almost all interested parties believe the use of the name and logo (or similar names and logos) of the regulated company by the affiliated marketing company in promotional and advertising spots enhances the name recognition and customer awareness of the affiliated marketing company. Some feel that complete restriction is the only way to solve the problem, while others believe no restrictions are necessary.

The staff contends that proponents of complete restriction have argued that ratepayers created the value of the company name and logo by paying, through rate base, for the creation and mailing of utility bills and bill stuffers (or direct mailings). This information includes the name and logo, and it could be contended that customers should not be exploited by its use. The staff states that some parties believe this is equivalent to asking customers to pay for the direct marketing which they receive, not in terms of an additional expense in the final product, but up-front before a selection on a product is made.

As a possible solution to the affiliate branding issue, the staff cites to a proposal advocated by a commissioner in the California electric restructuring docket in which a utility would be precluded from processing the direct access requests of its affiliate if the affiliates' market share exceeds 20 percent of the direct access market (by volume of kilowatt hours sold) within the utility's service territory. This 20 percent "competitive cap" would be applied separately for each class of customer, residential, commercial, agricultural, and industrial. The staff claims that this competitive cap would not prohibit the affiliates from competing, but would permit entry of enough additional marketers to ensure a competitive market. The application of the competitive cap by market segment would prevent the utility's affiliate from "cream skimming" the more

PSC Data Request Set 2
Question No.27
Respondent: Stephen R. Byars

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Question No. 27

Does Columbia believe it should be allowed to enter into joint purchasing agreements with its affiliates? Fully explain your response.

Response:

Columbia respectfully requests clarification to this question. Does the questioner want Columbia's opinion on entering into joint purchasing agreements as part of its proposed small volume gas transportation program?

PSC Data Request Set 2
Question No.28
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
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IN ORDER DATED JULY 30, 1999

Question No. 28

What types of safeguards does Columbia have in place with regard to the transfer of employees, along with any proprietary information they may have, to affiliates operating in the competitive environment? Does Columbia believe such safeguards are necessary? Fully explain your response.

Response:

Columbia believes it is inappropriate for a regulated utility and a non-regulated affiliate to share operational employees. Columbia employs safeguards designed to immediately suspend an employee's access to proprietary information, particularly customer information, upon completion of their tenure with Columbia. If an employee transfers to another Columbia Energy Group company the suspension of the employee's access to general information, such as e-mail, would be lifted. Access to proprietary information and customer information, however, would be terminated. If an employee leaves the employ of all Columbia Energy Group companies their access to any Columbia information would be terminated.

PSC Data Request Set 2
Question No.29
Respondent: S. M. Katko

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 29

Refer to the response to Item 48 of the Commission's Order of July 2, 1999. Provide Columbia's cost allocation procedures or manual employed in recording affiliate transactions.

Response:

Columbia does not have a cost allocation manual or other written cost allocation procedures for use in recording affiliate transactions as all costs are directly assigned to the greatest extent possible.

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Question No. 30

Refer to the response to Item 49 of the Commission's Order of July 2, 1999. Should marketers be required to file information relevant to complaints and that relate directly to disputes, even if no request is made? If the answer is still no, that this would still be too much of an administrative burden for all concerned, would a requirement that such information be filed for a year after the program starts be more reasonable or advisable?

Response:

No. We see this as an unnecessary step and an administrative burden for any time period.

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Question No. 31

Refer to the response to Item 51 of the Commission's Order of July 2, 1999.

a. How many marketers have supplied input concerning the question of Columbia continuing the billing function?

b. Provide support for Columbia's statement that it believes it will be able to remain collector of franchise fees, gross receipts taxes and sales taxes when applicable if it remains the billing agent.

Response:

a. Columbia has directly sought the input of one marketer, FSG Energy Services, regarding the proposed program. Marketers that have called and asked for details of the proposed program have been informed of this element and have not indicated any concerns with Columbia continuing to provide the billing function.

b. Columbia replied in response to Item 51 of the Commission's July 2, 1999 Order that it believed that it would continue to be able to collect franchise fees, gross receipt taxes and sales taxes on customer choosing to purchase their gas from a marketer. Upon further review, Columbia believes that it will be able to continue to collect and remit franchise fees. Columbia, however, is in the process of seeking an opinion from the Kentucky Revenue Cabinet whether Columbia should collect and remit gross receipt taxes and sales taxes from small volumes gas transportation customers under the proposed program.

PSC Data Request Set 2
Question No.32
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
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Question No. 32

Did the Collaborative discuss the appropriateness of requiring marketers to file tariffs and possibly certain annual information with the Commission? If yes, provide minutes of those discussions and the conclusions reached.

Response:

We discussed this and reached consensus that we wanted to encourage marketers to participate in Columbia's CHOICE Program and that these type requirements could have the opposite affect. There were no actual minutes from any of the Collaborative discussions.

PSC Data Request Set 2
Question No.33
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 33

What is Columbia's opinion regarding a requirement that marketers file some sort of tariff and provide annual information to the Commission?

Response:

Columbia shares the opinion of the Collaborative as described in Response 32.

PSC Data Request Set 2
Question No.34
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 34

In Administrative Case Nos. 359[2] and 370,[3] the Commission imposed certain regulatory requirements on new market entrants. Why would this information not be necessary for the Commission to adequately and efficiently monitor competitive service offerings in the natural gas industry?

Response:

While the Commission receives certain telecommunication information directly from the providers, Columbia believes the present natural gas environment is much different. In 1996 the Kentucky telecommunications toll market had hundreds of suppliers vying to reach Kentucky's entire population. Columbia is but one Kentucky natural gas distribution utility hoping to attract Marketers to compete for its approximately 120,000 residential and small commercial/industrial customers.

Prior to the referenced Commission Orders the telecommunications entities had been subject to the Commission's full jurisdiction. Natural gas marketers have not previously been subject to the Commission's regulation. In 1987 when transportation first became available to an LDC's large volume customers, the Commission found no reason to regulate brokers or dealers.[4] Marketers without physical facilities to directly connect with a customer for delivery were termed brokers or dealers. Marketers with facilities to directly connect with a customer for physical delivery were termed transporters and were subject to regulation as such. It is marketers previously referred to as brokers or dealers that will be eligible for Columbia's program. These marketers and others of the same definition are being offered the opportunity to expand their sales to include Columbia Gas of Kentucky customers. Sales will only be possible if the marketer can create savings for the end-user relative to Columbia's rate. If taking advantage of this opportunity includes becoming a utility, that may eliminate the enthusiasm for participation by marketers.

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[2] Administrative Case No. 359, Exemptions for Interexchange Carriers, Long Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones, Order dated June 21, 1996.
[3] Administrative Case No. 370, Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers, Order dated January 8, 1998.
[4] Administrative Case No. 297, An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers, Order dated May 29, 1987.

PSC Data Request Set 2
Question No.35
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 35

In other jurisdictions such as Ohio where Columbia affiliates are participating in "choice" programs, explain what type of information is provided to the Commission so that it can provide "Apples to Apples" comparative charts.

Response:

Ohio is the only jurisdiction where Columbia distribution companies operate Customer Choice [SM] programs where the Commission publishes apples to apples comparisons of marketers gas cost offers to small volume customers. In Ohio, each marketer selects the rate that they want the Public Utilities Commission of Ohio ("PUCO") to put in the apples to apples chart. Columbia Gas of Ohio does supply the PUCO with a list of approved marketers. The PUCO then solicits the rates from the marketers.

PSC Data Request Set 2
Question No.36
Respondent: Kimra Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 36

Refer to the response to Item 52 of the Commission's Order of July 2, 1999. How much will it cost for Columbia to perform each billing rate change? Provide supporting workpapers.

Response:

Columbia has not undertaken its own study to determine how much it would cost to perform each billing change. The Collaborative intuitively agreed that $25 as used in Ohio and Pennsylvania is a reasonable charge. This approach is also favorable because it will apply only to marketers that exceed the limits set forth in the tariff.

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 37

Refer to the response to Item 53 of the Commission's Order of July 2, 1999.

a. Explain whether the response means that there is no cost support for the proposal for Columbia to retain 2.5 percent of marketer revenues. Was the proposal agreed to by the Collaborative solely because Columbia Gas of Pennsylvania uses the same multiplier?

b. Is any contribution on the part of Columbia to the stranded cost recovery pool reflected in Exhibit A of Columbia's application?

Response:

a. It is impossible to provide cost support for the 2.5 percent multiplier on marketer's receivables as it is simply an estimate. The Collaborative relied on Columbia Gas of Pennsylvania's multiplier amount as a guide and agreed on the amount for use in the proposed program.

b. No.

PSC Data Request Set 2
Question No.38
Respondent: Kimra Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 38

Refer to the response to Item 54 of the Commission's Order of July 2, 1999. How much will it cost Columbia per account per month to provide billing for marketers? Provide supporting workpapers.

Response:

Columbia has not undertaken a study to determine the exact cost of providing billing service to marketers. The Collaborative studied this issue and based on the components of the proposed program determined that the 20 cent rate was reasonable in Kentucky. It is the same rate charged by Columbia of Pennsylvania.

PSC Data Request Set 2
Question No.39
Respondent: Kimra H. Cole

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 39

Refer to the response to Item 58 of the Commission's Order of July 2, 1999. What will be the rate impact on new customers with usage between 6,000 and 25,000 Mcf who no longer qualify for DS service? Will these customers pay more or less as small volume transportation program customers as opposed to being DS customers?

Response:

Whether these customers pay more or less would be determined by the level of stand-by service they would need to contract for with Columbia to meet the 100% peak day requirement and the current cost of the stand-by service under the DS rate schedule.

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 40

Refer to the response to Item 59 of the Commission's Order of July 2, 1999. Will the Actual Cost Adjustment also be calculated by dividing by sales plus Rate Schedule SGVTS volumes? If not, why not?

Response:

No. The total (over)/under recovery amount for the Actual Cost Adjustment will be the net amount of purchased gas cost less the amount debited to the Stranded Cost/Recovery Pool for the reporting period. This net amount is the actual cost of gas purchased for sales customers. Therefore, it will be divided only by sales volumes to compute the ACA factor.

PSC Data Request Set 2
Question No.41
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 41

Refer to the response to Item 61 (b) and (c) of the Commission's Order of July 2, 1999 where it states that "Lowering the cost will permit more low-income customers to participate."

a. Identify which cost is being lowered and explain how lowering that cost is going to benefit Customer Assistance Program ("CAP") participants.

b. Gas commodity costs are not a cost of the CAP plan. If by participating in the Choice program the cost that is being lowered is the gas commodity portion of the CAP participants' bills, explain how lowering that cost will permit more low-income customers to participate.

Response:

a. The statement in the response to Items 61 (b) and (c) that "Lowering the cost will permit more low-income customers to participate" referred to the gas costs paid by each participant. If the cost of gas can be lowered by aggregating the CAP customers and bidding their gas cost to a marketer then their bills will be lower. As a result, more customers can take advantage of CAP while the amount that is contributed from individual customers remains constant. These cost savings would be in addition to the reduced expenses described in detail in the response to Item 61 (a) of the Commission's July 2, 1999 Order.

b. Gas commodity costs are a cost of the CAP plan. Each participant pays a percentage of their total gas bill, delivery charge plus cost of gas, based on their income. So, as described in Item 41 (a), by aggregating the CAP customers and bidding their gas cost to a marketer, each participant will save on their total gas bill. By lowering the participants' bills, each will pay a larger percentage of their monthly bill. This will reduce the shortfall of the program and allow the program to serve additional participants.

PSC Data Request Set 2
Question No.42
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 42

Refer to the response to Item 62, part (a)(4), referring to the third-party evaluator's report at Page 11, Section VII. There Columbia cites the statement that "the data do not provide a clear indication of whether the CAP program has resulted in increased consumption by the participants" as support for the statement in the application that the third-party evaluator's report "substantiates the effectiveness of the program by encouraging energy conservation."

a. The text and tables on page 11 of the third-party evaluator's report immediately preceding the sentence cited by Columbia demonstrate that of the three groups of CAP participants, two groups experienced increased consumption relative to the control group during the three years of the CAP pilot while one group experienced decreased consumption relative to the control group during the period of the pilot program. These results support the final statement in that section of the report, which is the statement cited by Columbia in its response to part (a)(4). In light of the results of the evaluator's analysis, explain how Columbia determined that that statement substantiated the program's effectiveness in encouraging energy conservation.

b. Given the results of the evaluator's analysis explain whether Columbia agrees that the final statement in that section of the report could just as easily been written to say "the data do not provide a clear indication of whether the CAP program has resulted in decreased consumption by the participants."

Response:

a. All CAP program participants were referred to existing state administered weatherization programs. Some CAP program participants were served through the weatherization program that they otherwise may not have been aware of. Thus, while the data do not provide a clear indication of whether the CAP program resulted in a significant increase or decrease in consumption, participation in weatherization will have a long-term effect to decrease consumption.

b. The statement in the evaluator's report was made after asking the research question, "Did energy consumption increase following entry into the CAP program?" Decreased consumption was not a major goal of the CAP program and so was also not a focus of the evaluator's report. In the original development of the CAP pilot program some parties expressed concern that fixed payments might encourage increased consumption. It was therefore agreed that energy use would be evaluated to identify increased consumption.

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 43

Refer to the response to Item 63 (b) of the Commission's Order of July 2, 1999 concerning the Collaborative not seeing the need to include the type of information identified in the CAP tariff.

a. Describe the degree to which the Columbia Collaborative decides what should or shouldn't be included in the tariffs of Columbia Gas of Kentucky.

b. Is there any reason other than that identified in part (b) of the response for why Columbia would oppose its tariff including the type of information identified in the request?

Response:

a. The Collaborative reviewed and accepted each item of the proposed program, including the proposed tariffs, prior to the actual filing at the Commission.

b. Columbia believes that the CAP program was intended to operate within the parameters established by the Commission in its Order in Case No. 94-179. Columbia also believes that the intent of the program was to operate flexibly, using input from the Collaborative to best meet the needs of the program participants, Columbia customers and Columbia shareholders. Columbia is not opposed to filing the CAP Program Description with the Commission as it has done previously.

PSC Data Request Set 2
Question No.44
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 44

Refer to the response to Item 64 of the Commission's Order of July 2, 1999 concerning the benefits of the CAP program. Part (b) of the response, referring to page 14 of the third-party evaluator's report, identified the statement in the report that "The estimated total annual benefits to non-participants is $26,419.23." This figures to roughly $80,000 in benefits over a period of three years. In the same paragraph on page 14 of the report the third-party evaluator states, "The cost of the CAP program for the third year was $332,707." Below that paragraph, in the Summary of CAP Financial Results, the evaluator shows that for the three-year pilot the total cost of the program was $972,515 and that the amount charged to non-participants was $452,851. In his final sentence in that section of the report the evaluator states, "Based on this analysis the program benefits do not outweigh the program costs." Given these results and the third-party evaluator's conclusion explain why Columbia is proposing to continue the CAP program with relatively minor modifications which may not do much to close the gap between the program costs and benefits.

a. In part (a) of the response Columbia states that the continuation of the CAP program as proposed "does not have all of the elements of a permanent program." In Columbia's view does the non-permanent nature of the proposal to continue the CAP program justify its continuation even though it falls short of benefiting all ratepayers as was called for by the Commission when it approved the CAP pilot in 1994?

Response:

Columbia believes that the modifications to the program will help to close the gap between the program costs and benefits. In addition, for the first time, the program administrator will be able to proactively impact the cost of gas to the program's participants. As gas costs make up better than half of a customer's bill, savings to gas cost will reduce expenses even further. This will allow greater participation and help close the gap.

a. Columbia believes that the added modifications to the program and the new element of aggregating program participants will add benefits to more Columbia customers. As these modifications remain to be implemented, it is difficult to estimate the impact of these modifications. Columbia believes that the implementation of the proposed small volume gas

transportation program ("SVGTS") will benefit Columbia's CAP participants and that the continuation of the program during the term of the "SVGTS" will help the Collaborative and the Commission determine the true value of the program to both participants and other Columbia customers.

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 45

Refer to the response to Item 65 of the Commission's Order of July 2, 1999. Explain in detail how introducing Customer Choice produces any new incentives or enhances any existing incentives for Columbia to become more efficient in the management of its gas procurement function.

Response:

Neither of Columbia's previous incentive programs included potential downside for Columbia. This new proposal, expanded to provide solutions for providing customers with choice and for dealing with the issue of stranded costs, includes the risk of a $3 million expense to Columbia if the stranded cost is not managed well.

Columbia has experienced reduced value in its capacity release markets in Kentucky, yet in the proposal, Columbia must be able to create the necessary value from that market in the coming years to help manage the financial balance of the program. To the extent we are not able to do that, we increase our risk related to the $3 million cost at the end of the day.

In addition to these risks, significant contributions from Off System Sales will be required to avoid a potential loss of $3 million to Columbia's shareholders.

Customer CHOICE certainly produces a need for focus by the company on its procurement and capacity management processes. CHOICE and the stranded cost issues that come with it, encourage utilities to develop new ways of thinking about supply planning, and the management of supply and capacity contracts. This focus can lead to a more effective use of industry capacity. Columbia believes this is ultimately beneficial to all of its customers, whether they choose a new supplier of the gas commodity or continue purchasing gas from Columbia.

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 46

Refer to the response to Item 66 of the Commission's Order of July 2, 1999, where it refers to there being two approaches to designing programs to help customers save on the commodity portion of their gas bills.

a. Explain why Customer Choice and an expansion of the existing gas cost incentive mechanisms to include elements such as gas commodity and transportation costs could not co-exist.

b. Identify and describe in detail the relative risks of an expanded, more comprehensive incentive program compared to the risks of a customer choice program such as that proposed by Columbia.

Response:

a. Columbia believes that the national trend to competitive markets in all energy industries will ultimately result in marketers supplying the bulk of natural gas to customers of all classes with the traditional utility serving a much smaller portion of the market. Allowing a utility to include commodity in its gas cost incentive program at the same time it offered Customer Choice would distort the market and impede the transition to a fully competitive market. Columbia believes that the proposed program allows for a smoother transition to a competitive marketplace than a program that includes commodity in a gas cost incentive plan.

b. One reason that its difficult to provide an all-encompassing benchmark while customer CHOICE exists is that the typical umbrella gas cost incentive today involves a fixed price for the utility to beat. This results in the utility needing to lock up a significant amount of volume in forward pricing (fixed price) purchases (this sometimes occurs within minutes of the Commission's signature on the order approving the program). Failing to lock up gas volume at future prices, when so many dollars are at stake, would put too much risk on the shareholders. One could mitigate this risk by increasing the price of gas that the utility needs to be beat, but the customers may end up paying more than they would without the incentive. When this need to lock up prices is combined with a good customer CHOICE program, an unknown variable on the demand side of the equation is created. Such a combination of incentive and CHOICE would

place the LDC in the position of either taking very large risks related to price, or more likely, being placed in the position of needing to purchase costly insurance to protect it from risk. This is the risk of locking in volume and price for a future market that can be either larger or smaller than expected.

Another incentive method is to follow an index. However, Columbia already pursues a least cost purchasing plan. We feel that it is difficult to create much value from such a program, either for our customer or the company. Our experience is that such programs tend to be complex, administratively burdensome, and essentially cause the LDC to purchase at the market to avoid price speculation.

PSC Data Request Set 2
Question No.47
Respondent: Stephen R. Byars

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY
CASE NO. 99-165
INFORMATION REQUESTED BY THE PUBLIC SERVICE COMMISSION
IN ORDER DATED JULY 30, 1999

Question No. 47

Refer to the response to Item 67 of the Commission's Order of July 2, 1999. If an alternative plan were determined by the Commission to be in the public interest in spite of the agreement of the Collaborative, how would Columbia propose to cover stranded costs?

Response:

The question posed implies that an alternative plan to the one agreed upon by the Collaborative would not establish a plan for the recovery of stranded costs incurred by Columbia. Columbia and the Collaborative have agreed on the proposed program taken as a whole and must point out that the program was developed with much discussion, debate and compromise. Columbia followed the direction of the Commission's Order in Administrative Case No. 367 on July 1, 1998 and developed a program in a collaborative setting where there was "an effort to reach compromise consistent with the public and utility shareholder interest" as the Order directs on Page 3. Furthermore, the Order states on the same page that this "will be considered crucial in the Commission's final decision regarding a utility's proposed customer choice program." Columbia maintains that an alternative plan to the one agreed upon by the Collaborative would contradict the Commission's Order and render all collaborative arrangements in the future useless.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Commission's Order dated July 30, 1999 was served upon all parties of record by regular U.S. Mail this 13th day of August, 1999.

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