

# STITES & HARBISON<sup>PLLC</sup>

ATTORNEYS

421 West Main Street  
Post Office Box 634  
Frankfort, KY 40602-0634  
(502) 223-3477  
(502) 223-4124 Fax  
www.stites.com

December 11, 2006

## HAND DELIVERED

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
P. O. Box 615  
Frankfort, KY 40602

RECEIVED

DEC 11 2006

PUBLIC SERVICE  
COMMISSION

Bruce F. Clark  
(502) 209-1214  
(502) 223-4386 FAX  
bclark@stites.com

RE: *Constellation NewEnergy-Gas Division, LLC v. Columbia Gas of Kentucky, Inc.*  
PSC Case No. 2005-00184

Dear Ms. O'Donnell:

Please find attached an original and eight (8) copies of Constellation's Response to First Data Request of Commission Staff dated November 30, 2006 in the above-referenced case. Copies of this Response have been served on all parties of record.

If you have any questions concerning this filing, please let me know.

Yours very truly,

STITES & HARBISON, PLLC

  
Bruce F. Clark

BFC:pjt

Enclosure

cc: Stephen B. Seiple, Esq.  
Richard S. Taylor, Esq.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of :

CONSTELLATION NEW-ENERGY-GAS DIVISION, LLC )

COMPLAINANT )

CASE NO.  
2005-00184

V. )

COLUMBIA GAS OF KENTUCKY, INC. )

DEFENDANT )

**CONSTELLATION NEW-ENERGY-GAS DIVISION, LLC'S  
RESPONSE TO FIRST DATA REQUEST OF COMMISSION STAFF**

DATED: December 11, 2006

**REQUEST**

Refer to Paragraph 1 of the Stipulation and Recommendation. State whether the language of Columbia's Delivery Service Rate tariff was, as written, ambiguous and unreasonable. Explain the response.

**RESPONSE**

Constellation takes no position on Columbia's Delivery Service Rate tariff in total, but only that portion of the Delivery Service tariff that is the focus of the Stipulation and Recommendation. Constellation agrees with the statement in Paragraph 1 of the Stipulation and Recommendation that the subject tariff provision "should be modified to better define the situations in which customers are subject to daily interruptions." The proposed modification provides a clarification of the term "daily metering," which is sufficiently responsive to the relief requested by Constellation in its Complaint (when coupled with the action Columbia agrees to take in Paragraph 10 of the Stipulation and Recommendation).

## REQUEST

Refer to Paragraph 2 of the Stipulation and Recommendation. Explain why the refund agreed to by the parties does not violate KRS 278.160 and KRS 278.170.

- a. Explain how the refund amount was determined.
- b. Explain how the parties determined the amount of refund that would be applied to each customer.
- c. Explain how the refund amount will be applied to the customers and provide an example.

## RESPONSE

The Stipulation and Recommendation entered into between the parties presents an agreed upon resolution to a dispute over the term “daily metering” as contained in Columbia’s Delivery service Rate tariff. This clarification will allow Constellation to interpret and apply Columbia’s interruption notices without the confusion which existed before. The monetary resolution proposed in the Stipulation and Recommendation does not reflect a change in rates or conditions for service (KRS 278.160), or discrimination (KRS 278.170) because the rate included in the tariff has not been adjusted.

The settlement herein addresses issues over the applicability of a tariff, and not the rate contained in the tariff. The Commission has jurisdiction over complaints, such as the one filed by Constellation in this case; and the parties Stipulation and Recommendation simply requests the Commission to approve their agreed upon resolution. Such an approval would not result in any “unreasonable preference or advantage” under KRS 278.170.

- a. Explain how the refund amount was determined.

### Response

The total amount of penalties assessed to Constellation’s customers by Columbia was \$25,192.50. In the course of negotiating a settlement to the Complaint in a manner that achieved consensus for Constellation and Columbia, each party agreed to amend its initial position; ultimately, reaching agreement on refunding half of the penalties assessed. Constellation also refers Commission Staff to Columbia’s response to this same question in the First Data Request of Commission Staff to Columbia Gas of Kentucky, Inc., Item No. 5a.

WITNESS: Ralph Dennis

- b. Explain how the parties determined the amount of refund that would be applied to each customer.

**Response**

Determining the amount of refund to each customer on a pro rata basis based upon the penalty amount paid by each customer was the only equitable manner Constellation could discern. Constellation also refers Commission Staff to Columbia's response to this same question in the First Data Request of Commission Staff to Columbia Gas of Kentucky, Inc., Item No. 5b..

- c. Explain how the refund amount will be applied to the customers and provide an example.

**Response**

Customers will be provided a credit on their bills equal to the amount of the refund received by each customer. The credit will be applied on the next bill mailed by Columbia to the customer following the Commission's approval of the Stipulation and Recommendation. For an example, Constellation respectfully refers Commission Staff to the answer provided by Columbia in the First Data Request of Commission Staff to Columbia Gas of Kentucky, Inc., Item No. 5c.