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MAR 14 2008

PUBLIC SERVICE  
COMMISSION

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

AN INVESTIGATION OF THE ENERGY ) ADMINISTRATIVE  
AND REGULATORY ISSUES IN SECTION ) CASE NO. 2007-00477  
50 OF KENTUCKY'S 2007 ENERGY ACT )

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**RESPONSE OF COLUMBIA GAS OF KENTUCKY, INC.,  
ATMOS ENERGY CORPORATION AND DELTA NATURAL GAS  
TO THE COMBINED MOTION OF THE  
KENTUCKY OIL & GAS ASSOCIATION AND  
THE STAND ENERGY CORPORATION CUSTOMER GROUP  
FOR JOINDER OF INDISPENSABLE PARTIES UNDER CR 19.01**

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On March 4, 2008, Movants, Kentucky Oil & Gas Association, Inc. and the Stand Energy Corporation Customer Group, filed a motion with the Kentucky Public Service Commission that requested Respondents, Columbia Gas of Kentucky, Inc., Atmos Energy Corporation and Delta Natural Gas, Inc., be joined to this proceeding as indispensable parties. Respondents jointly submit that they are not indispensable parties to this proceeding pursuant to the grounds set forth in the attached Memorandum of Law. Thus, the Kentucky Public Service Commission should deny Movants motion for joinder.

Respectfully Submitted,

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**March 14, 2008**

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**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

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**MEMORANDUM IN SUPPORT OF  
RESPONSE OF COLUMBIA GAS OF KENTUCKY, INC.,  
ATMOS ENERGY CORPORATION AND DELTA NATURAL GAS  
TO THE COMBINED MOTION OF THE  
KENTUCKY OIL & GAS ASSOCIATION AND  
THE STAND ENERGY CORPORATION CUSTOMER GROUP  
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On November 20, 2007, The Kentucky Public Service Commission (“Commission”) initiated on its own motion an investigation into the energy and regulatory issues enumerated in the General Assembly in Section 50 of House Bill 1, enacted during the 2007 Second Extraordinary Session (“2007 Energy Act”). At the onset of this proceeding, the Commission did not interpret the intent of this legislation to include natural gas distribution companies. Movants assert the 2007 Energy Act does not limit the Commission investigation to electric generating utilities and, as such, Respondents were improperly omitted from this proceeding by the Commission.

Movants accurately state that the Commission has interpreted the 2007 Energy Act to apply primarily to electric generating utilities. The Commission hired a consultant, Overland Consulting, to file a report in this docket on March 4, 2008 after gathering “input from Kentucky’s

generating utilities as well as from affected stakeholders.”<sup>1</sup> The Commission further ordered the six jurisdictional generating utilities be made parties to the proceeding and file testimony coincident with the filing of the consultant’s report.<sup>2</sup> The interpretation that the 2007 Energy Act primarily applies to electric generating utilities is not arbitrary and, in fact, is derived specifically from the Kentucky General Assembly and the 2007 Energy Act itself. The General Assembly passed this legislation under the formal title of Incentives for Energy Independence Act, which also became known as the 2007 Energy Act. This formal title confirms the purpose of the 2007 Energy Act as stated by the General Assembly:

The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth to induce the location of innovative energy-related businesses in the Commonwealth in order to advance the public purposes of **achieving energy independence**, creating new jobs and new investment, and creating new sources of tax revenues that but for the inducements to be offered by the authority to approved companies would not exist.

The purpose of this subchapter is to assist the Commonwealth in moving to the forefront of national efforts to achieve energy independence by reducing the Commonwealth’s reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon capture ready manner, construct, retrofit, or upgrade facilities for the purpose of:

- (a) Increasing the production and sale of alternative transportation fuels;
- (b) Increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels, from coal, biomass resources, or waste coal through a gasification process; or

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<sup>1</sup> *In the Matter of: An Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky’s 2007 Energy Act*, Case No. 2007-00477, Order at 2 (Nov. 20, 2007).

<sup>2</sup> *Id.* at 3.

(c) Generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower, or similar renewable resources.<sup>3</sup>

The General Assembly's purpose for passing this legislation is not ambiguous. The General Assembly intended for the 2007 Energy Act to address issues of energy independence, not local distribution of natural gas. The Commission correctly adopted that distinct purpose as evidenced by the Order issued on November 20, 2007 in this docket. Specifically, the Commission stated:

The 2007 Energy Act created various tax and financial incentives aimed generally at entities that develop: (1) facilities which produce alternative transportation fuels; (2) gasification facilities which produce, primarily, alternative transportation fuels, synthetic natural gas, chemicals chemical feedstocks, or liquid fuels; (3) renewable energy facilities which produce electricity; or (4) energy efficient projects which decrease energy consumption in a manufacturing process. The 2007 Energy Act also included incentives for producers of ethanol and renewable diesel.<sup>4</sup>

The 2007 Energy Act creates incentives that target alternative transportation fuels, renewable energy facilities and energy efficiency projects which decrease energy consumption. These incentives are squarely aimed at entities that develop energy products that are capable of addressing issues of energy independence.

The General Assembly directed the Commission to examine its statutes and make recommendations by evaluating specific issues set forth in Section 50 of the 2007 Energy Act. The intent of the General Assembly's directive and the Commission's investigation again becomes clear upon reading the issues presented in the 2007 Energy Act. Those issues are as follows:

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<sup>3</sup> House Bill 1, p. 7. (Emphasis supplied.)

<sup>4</sup> *In the Matter of: An Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky's 2007 Energy Act*, Case No. 2007-00477, Order at 2 (Nov. 20, 2007).

1. Eliminating impediments to the consideration and adoption by utilities of cost-effective demand-management strategies for addressing future demand prior to Commission consideration of any proposal for increasing generating capacity;
2. Encouraging diversification of utility energy portfolios through the use of renewables and distributed generation;
3. Incorporating full-cost accounting that considers and requires comparison of life-cycle energy, economic, public health, and environmental costs of various strategies for meeting future energy demand; and
4. Modifying rate structure and cost recovery to better align the financial interests of the utility with the goals of achieving energy efficiency and lowest life-cycle energy costs to all classes of ratepayers.<sup>5</sup>

These issues undoubtedly demonstrate that the General Assembly has directed the Commission to examine entities that are primarily engaged in electric generation, such as: generating capacity; the use of renewables and distributed generation; various strategies for meeting future energy demand; and, achieving energy efficiency and lowest life-cycle energy costs. The Commission's interpretation that the 2007 Energy Act applies primarily to electric generating utilities is correctly aligned with the issues propounded by the General Assembly. Respondents are natural gas local distribution companies and are not involved in electric generation or issues surrounding energy independence. Accordingly, Respondents are not indispensable parties, nor does the failure to join Respondents leave existing parties subject to multiple or otherwise inconsistent obligations.

Notwithstanding the fact that the 2007 Energy Act focuses on electric generating utilities, Stand Energy makes a blanket assertion that modification to rate structures of Kentucky's major natural gas utilities will achieve energy efficiency and lowest life-cycle energy costs to ratepayers.<sup>6</sup> The issue of whether natural gas customers are able to participate in gas transportation ser-

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<sup>5</sup> Id. at 1.

<sup>6</sup> Id., Pre-Filed Testimony of Mark T. Ward at 2 (Mar. 3, 2008).

vices does not, in any fashion, relate to energy independence, achieving energy efficiency or lowest life-cycle energy costs. The rationale of Movants fails to even remotely promote the purpose and intent of the General Assembly in passing the 2007 Energy Act. Movants' assertions also fail to contemplate the proper procedure in which rate structures should be modified under KRS Section 278.180. Movants motion for joinder is merely an attempt to circumvent the traditional rate case procedure and bootstrap rate structure issues to legislation focused on electric generating utilities and energy independence.

Furthermore, joinder of Respondents will not present issues and develop facts that will assist the Commission in fully considering the 2007 Energy Act initiatives. It will, however, serve to unduly complicate or disrupt the proceedings. The six electric generating utilities filed extensive information and testimony on November 29, 2007. Overland Consulting has already conducted an investigation and filed a comprehensive report on March 4, 2008 regarding the aforementioned issues of the 2007 Energy Act, which incorporated data presented by the November 29, 2007 filing of the generating utilities. Lastly, the Commission is scheduled to file a report and recommendations with the Legislative Research Commission by July 1, 2008. Respondents have not participated in this proceeding at any level to date and would require significant time to adequately represent any position. Thus, joinder of Respondents will cause undue delay in the timeline of this proceeding.

**WHEREFORE**, for the reasons discussed herein Respondents respectfully request that the Commission deny Movants Motion for Joinder.



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**March 14, 2008**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Response of Columbia Gas of Kentucky, Inc., Atmos Energy Corporation and Delta Natural Gas to the Combined Motion of the Kentucky Oil & Gas Association and the Stand Energy Corporation Customer Group for Joinder of Indispensable Parties under CR 19.01 was served by First Class U.S. Mail postage prepaid on the following parties this 14<sup>th</sup> day of March 2008.

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