

August 20, 2009

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

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AUG 21 2009

PUBLIC SERVICE  
COMMISSION

Re: Columbia Gas of Kentucky, Inc.  
General Rates Case No. 2009 - 00340

Dear Mr. Derouen:

Please find attached an original and ten (10) copies of the Complaint of Columbia Gas of Kentucky, Inc. and Request for a Deviation of a Commission Rule and Request for Expedited Consideration. This is the complaint submitted via fax to the Commission on August 20, 2009.

Very truly yours,

*Stephen B. Seiple (gmc)*

Stephen B. Seiple  
Assistant General Counsel

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 21 2009

PUBLIC SERVICE COMMISSION

In the Matter of: )  
 )  
 Columbia Gas of Kentucky, Inc. )  
 )  
 Complainant )  
 )  
 v. )  
 )  
 Natural Energy Utility Corporation )  
 )  
 Defendant )

Case No. 2009-00340

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COMPLAINT  
 OF COLUMBIA GAS OF KENTUCKY, INC.  
 AND REQUEST FOR A DEVIATION OF A COMMISSION RULE  
 AND REQUEST FOR EXPEDITED CONSIDERATION

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The complaint of Columbia Gas of Kentucky, Inc. ("Columbia") respectfully shows:

(a) That Complainant, Columbia Gas of Kentucky, Inc., is a Kentucky corporation with its principal office located at 2001 Mercer Road, P.O. Box 14241, Lexington, KY 40512-4241.

(b) That Defendant, Natural Energy Utility Corporation ("NEUC"), is a Kentucky corporation with its principal office located at 2560 Hoods Creek Pike, Ashland, KY 41101. NEUC is a regulated natural gas utility subject to the jurisdiction of the Public Service Commission.

(c) That NEUC is attempting to initiate natural gas service to customers currently served by Columbia, without first obtaining a certificate of public convenience and necessity, as further set forth below.

(d) Columbia currently provides service to customers in Ashland, Kentucky. By Order dated July 27, 2009, in Case No. 2009-00278, the Commission issued a Certificate of Convenience and Necessity to Columbia authorizing Columbia to bid on a franchise in Ashland so that Columbia may continue serving its customers in the city.

(e) Three of Columbia's commercial customers in a "strip" mall shopping center in Ashland have requested that Columbia discontinue their service. The customers stated that the reason for the requested disconnection of service was because the customers "were changing gas service to another provider." Columbia has reason to believe that these customers are requesting disconnection of their service with Columbia so that they can initiate service with NEUC.

(f) Upon information and belief, Columbia believes that NEUC intends to serve these three Columbia customers off of a two-inch main that NEUC constructed for the primary purpose of serving customers within Columbia's traditional Ashland service territory. It appears to Columbia that NEUC stands ready to serve these customers immediately upon Columbia's disconnection of service.

(g) KRS 278.020 limits the construction that a utility may undertake without obtaining prior Commission approval. This statute requires a utility to obtain from the Commission a Certificate of Public Convenience and Necessity before constructing any facilities unless the facilities are ordinary extensions of existing systems in the usual course of business.

(h) The General Assembly did not define "ordinary extensions." In order to provide some definition the Commission promulgated 807 KAR 5:001, Section 9(3). Under this administrative regulation, an extension is in the ordinary course of business if it: (1) does not result in sufficient capital outlay to materially affect the constructing utility's financial condition or require an increase in the constructing utility's rates; (2) does not conflict with the service of a ju-

risdictional utility operating within the same area; and, (3) does not result in wasteful duplication of plant. See *In Re Natural Energy Utility Corporation v. Columbia Gas of Kentucky, Inc.*, PSC Case No. 2003-00422, Order (September 1, 2004) at 5.

(i) NEUC's construction of a main to serve customers currently served by Columbia does conflict with Columbia's existing service in Ashland, and results in wasteful duplication of plant. While Kentucky law does not establish exclusive service territories for natural gas utilities, the Commission has recognized that utilities have general service areas and another utility's extension into that area cannot be considered an extension in the ordinary course. *Id.* at 7.

(j) To the best of Columbia's knowledge and belief, NEUC has not filed an application requesting the issuance of a Certificate of Public Convenience and Necessity for Ashland's plans to serve customers currently served by Columbia.

(k) Columbia therefore requests that the Commission expedite its consideration of this Complaint and promptly order that NEUC may not serve any customers currently served by Columbia in Ashland until NEUC has filed, and the Commission has approved, an application requesting a Certificate of Public Convenience and Necessity. Expedited Commission action on this Complaint is required so that Columbia does not lose commercial customers due to the improper and unlawful actions of NEUC.

**Request for Deviation from 807 KAR 5:006, Section 12(1)**

(l) As explained above, three of Columbia's customers have requested that their natural gas service be disconnected as of August 18, 2009. Columbia received these requests on July 22, 2009. Pursuant to 807 KAR 5:006, Section 12(1) Columbia has three business days in which to effectuate the disconnections of service. If the service has not been disconnected as requested after the expiration of the three business days the customers are not responsible for the

charges associated with utility service beyond the end of the three-day period. Columbia did not disconnect service on August 18.

(m) Pursuant to 807 KAR 5:006, Section 27, Columbia requests a deviation from 807 KAR 5:006, Section 12(1) so that Columbia will not be forced to disconnect the three customers, nor be required to provide free service. Columbia would like to maintain service to the three customers, with the customers being responsible for the natural gas service provided, during the pendency of this dispute. In order to do so, the Commission will need to grant Columbia a deviation from 807 KAR 5:006, Section 12(1). Should the Commission decide to grant Columbia the relief sought herein, and prohibit NEUC from providing service to Columbia's existing customers until NEUC applies for and receives a Certificate of Public Convenience and Necessity, customers should not be left without natural gas service. Maintaining service to customers, with the concomitant responsibility of paying for such utility service, during the pendency of a dispute constitutes good cause for the granting of a deviation from the cited Commission rule. Columbia therefore requests that the Commission maintain the status quo until the Commission has acted upon this Complaint.

**WHEREFORE**, Columbia respectfully requests that the Commission: (1) promptly order that NEUC may not serve any customers currently served by Columbia in Ashland until NEUC has filed, and the Commission has approved, an application requesting a Certificate of Public Convenience and Necessity; (2) grant Columbia a deviation from 807 KAR 5:006, Section 12(1) so that it need not immediately disconnect the service of customers, and so that customers remain responsible for all gas consumed during the pendency of this Complaint; and, (3) promptly rule upon this Complaint and Request for Deviation from 807 KAR 5:006, Section 12(1) so that Columbia is not adversely impacted by NEUC's improper and unlawful actions.

Dated at Columbus, Ohio this 20<sup>th</sup> day of August 2009.

Respectfully submitted,  
**COLUMBIA GAS OF KENTUCKY, INC.**

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