

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

In the Matter of:

**AN INVESTIGATION OF NATURAL GAS
RETAIL COMPETITION PROGRAMS**

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)
) **CASE NO. 2010-00146**
)

POST-HEARING BRIEF OF AARP

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COMMISSION**

NOVEMBER 1, 2010

INTRODUCTION

In the April 19, 2010 Order establishing this Case, the Commission framed the question to be investigated in this manner:

This matter is established as an investigation of natural gas retail competition programs to determine if benefits could be derived from these programs, and to determine whether natural gas retail competition programs could be crafted to benefit Kentucky consumers.

April 19, 2010 Order, at p. 5.

AARP believes that the introduction of retail competition in natural gas supply for residential customers has not provided sufficient and sustained benefits to participants in programs across the Nation, and in the only program in Kentucky, to justify imposing the additional risks and costs on ratepayers to support a competitive gas supply environment.¹

ARGUMENT

In direct and rebuttal testimony filed on behalf of AARP, Nancy Brockway identified a number of concerns associated with the introduction of competition in the supply of natural gas to customers of incumbent utilities. While it is conceivable that a regulatory framework *could* be constructed that would *minimize* the risks identified by Ms. Brockway and others², the threshold question is *why* incur the additional risks associated with deconstructing the vertically integrated natural gas utility functions and reconstructing a framework to protect consumers and assure accountability for non-

¹ In the event that the Commission does recommend to the General Assembly that gas supply competition be introduced for all jurisdictional gas utilities, AARP believes that any such program should include the 21 safeguards identified by Commission Staff in the November 3, 2008 Letter, and must fully address the concerns expressed to the General Assembly in the December 7, 2009 Letter.

² The rebuttal testimony of Clay Murphy in particular, summarizes succinctly the risks.

regulated marketers, when there has been no demonstration that the ratepayers will benefit in a sustained and appreciable manner.

AARP believes that the risks of the erosion of consumer protections and the loss of quality of consumer care associated with natural gas supply competition are risks inherent in the lessening of regulatory controls over the gas supply component of utility service.

Deregulation in the natural gas industry has provided a business opportunity for gas marketers and suppliers who are not always careful to respect the customer care or observe norms of consumer protection customers have enjoyed for decades. The Illinois experience with marketing abuses described in Ms., Brockway's testimony, while among the more egregious, is not an isolated problem, since the investigative reporting on the Ohio program reflects similar concerns with erosion of consumer protections.³ The abusive marketing practices in Illinois were so widespread that the state legislature was compelled to enact Public Act 95-1050 took effect April 10, 2009 to better control solicitations and marketer contracts.

While some have argued that the allowance of "choice" is itself a sufficient basis for creating a competitive marketplace for gas supply, the ratepayer's interest is in lower gas supply costs and ultimately lower gas bills.⁴ As noted by Ms. Brockway "Without such

³ Docket No. 08-0175, Citizens Utility Board and AARP vs. Illinois Energy Savings Corp., d/b/a U.S. Energy Savings Corp. Complaint as to marketing practices in Chicago, Illinois, Initial Brief of Citizens Utility Board and AARP, December 7, 2009.

Dan Gearino *Taking Heat*, Columbus Dispatch, May 3, 2009, available at http://www.dispatch.com/live/content/local_news/stories/2009/05/03/gas_main1_new_ART_ART_05-03-09_A1_HADNK51.html.

⁴ The testimony filed on behalf of the "Kentucky Consumers for Energy Choice" (sic) suggests that thousands of Kentuckians were interested in natural gas supply competition, yet the post-hearing data response reflects that the 22,000 persons to whom the KCEC mailing was sent were IGS customers involved in the Columbia Gas Choice program, rather than a random sample of Kentucky natural gas customers. It is hardly a surprise

lower bills, there is no point to deregulation.” The survey conducted by Columbia Gas likewise reflected that the cost of gas supply was the overarching concern among those surveyed.

The evidence both within the Commonwealth and in other states does not support a conclusion that residential customers will benefit financially. The Columbia Choice program has, as the testimony reflects, cost participants some \$21 million over its 10-year experience, a fact of which participants are not informed unless they ask the utility or unless they find the docket for the pilot program and read the annual report. The experience of gas deregulation in Illinois likewise produced a few “winners” (2%) and many more “losers” (98%) among the plans, as is reflected in the data collected by the Illinois Citizens Utility Board. See Exhibit NB-4 to Direct Testimony of Nancy Brockway.

Likewise, the Georgia experience reflects a lack of consumer benefit, with the cost of gas in the deregulated Georgia market much higher than the average price of gas in other southeastern states.⁵

In contrast to the doubtful financial benefits that would be realized by participants in a competitive natural gas supply marketplace, the risks of deconstructing the existing regulatory framework are easily identified. Under the current vertically integrated structure that has served gas customers for decades, the gas utility has a well-established

that of the 22,000 who had elected to choose IGS as their gas supplier, 6,000 would indicate support for choosing a natural gas supplier.

It would be interesting to gauge the depth of that support after Columbia Gas or IGS informed those participating in the Choice program of their gain or loss in such participation over what they would have paid if Columbia had remained their supplier.

⁵ Ken Costello, *Gas Marketing Market Power: The Competitiveness of the Georgia Deregulated Gas Market*, The National Regulatory Research Institute, prepared for the Georgia Public Service Commission, January 2002.

obligation to serve customers, and is subject to the regulatory supervision of the Commission. The gas purchaser and supplier is a regulated utility, aggregating all of the demand from residential, commercial, institutional and some industrial customers, and is reliant on the Commission for approval of its rates and terms and conditions, with a more continuous and long-standing relationship with supervisory authority. It has a positive obligation to obtain and provide sufficient supply, and provides that supply at cost, with the prudence of purchases subject to Commission scrutiny. By contrast, the marketer may have a contractual obligation to supply a particular customer, but in the case of default, a lawsuit is the only means to obtain redress for the marketer's failure (whether by intent or through bankruptcy or business failure), and as noted by Ms. Brockway, for the amounts in question with small consumers, lawsuits are not a practical means of redress.⁶

CONCLUSION

AARP recommends that the Commission advise the General Assembly that Kentucky should not go further down the path towards trying to create a competitive market for natural gas supplies. Consumers who have tried to save money by switching to a non-utility supplier in the Columbia Gas Choice pilot have lost money. There is no proof that customers have saved money overall from supply choice in other states. Rate design options such as “fixed rate” options can be provided to customers by incumbent utilities under a regulatory framework and without losing consumer protections attendant to that regulatory framework, if the Commission determines that it is in the public interest to do

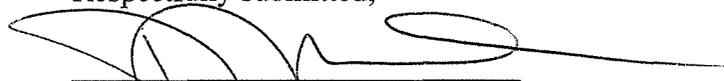
⁶ In some cases, businesses have been successful in limiting their customers to arbitration under rules that consumer advocates argue limit customer rights.

so. Gas commodity competition for residential customers has simply not proven itself to be worth the transition costs and the consumer risks.⁷

With respect to the existing Columbia Gas Choice pilot, AARP believes that the ten-year history and experience gained is sufficient to terminate the pilot program as having been unsuccessful in providing the opportunity for sustained economic benefit to participants. If the Commission does not do so, at a minimum, the pilot should be modified to require a monthly entry on each participant's bill reflecting the running benefit or cost to that customer of participating in the Choice program, and Columbia Gas should be directed to develop an "apples to apples" comparison of all plans offered under the pilot.

With respect to the transportation issues raised by Stand Energy, if that company or any entity believes that the transportation minimum volumes or administrative fees contained in the filed tariffs of any regulated gas utility are unreasonable or discriminatory, there are two avenues open to challenge – in rate cases filed by those utilities or by complaint to the Commission. Introduction of retail competition in gas supply and deregulation of gas suppliers is not necessary to assure nondiscriminatory tariffs for transportation-only utility customers.

Respectfully submitted,



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⁷ Indeed, the testimony of Messrs. Jennings and Murphy reflect that the loss of commercial and institutional sales customers from a partial introduction of gas supply competition could erode the purchasing power of the utility for remaining residential customers.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, this 1st day of November, 2010, to:

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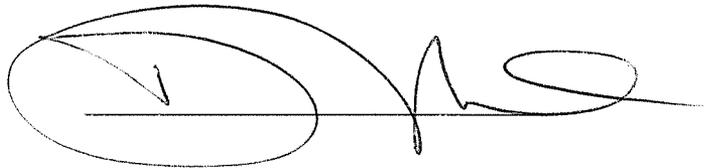
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A handwritten signature in black ink, appearing to read "R. M. Watt, III", written over a horizontal line.