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JUN 24 2010

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JACK B. BATES

IRIS G. SKIDMORE

Via Hand-Delivery

June 24, 2010

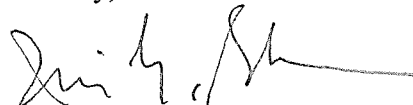
Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: In the Matter of: An Investigation of Natural Gas Retail Competition Programs
Case No. 2010-00146

Dear Mr. Derouen:

Enclosed for filing in the above styled action is an original and ten copies of the Direct Testimony of Jack E. Burch on behalf of the Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc. On June 21, 2010, CAC filed a motion for enlargement of time until June 25 to file testimony.

Sincerely,



Iris G. Skidmore

Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 24 2010

PUBLIC SERVICE
COMMISSION

In the Matter of:

AN INVESTIGATION OF NATURAL) CASE NO:
GAS RETAIL COMPETITION PROGRAMS) 2010-00146

DIRECT TESTIMONY OF JACK E. BURCH ON BEHALF OF CAC

* * * * *

Comes the Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. (CAC), by counsel, and hereby tenders the pre-filed written direct testimony of Jack E. Burch in support of its position in this matter:

Respectfully submitted,



IRIS G. SKIDMORE
Bates and Skidmore
415 W. Main St., Suite 2
Frankfort, KY 40601
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COUNSEL FOR CAC

1 **Q. Please indicate your name, address and describe your current position and**
2 **professional background.**

3 A. My name is Jack E. Burch and I have served as Executive Director of Community Action
4 Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties since 1979. The
5 Council operates 32 neighborhood and community centers and child development centers in six
6 counties and its Administrative and Support Services offices are located at 710 West High Street
7 in Lexington, Kentucky.

8 I received a Masters degree in economics from Vanderbilt University and hold a Bachelors
9 degree from Rhodes College. I am the founder and President of the WinterCare Energy Fund.

10 **Q. Please describe the purpose of your testimony.**

11 The purpose of my testimony is to state the position of the organizations I represent with respect
12 to the potential impact of natural gas retail competition on low-income customers and related
13 policy issues that should be considered by the Commission.

14 **A. Please elaborate on your position and how you have arrived at your conclusions.**

15 As a low-income advocate I am deeply concerned about the potential for natural gas retail
16 competition to result in higher bills for consumers already impacted by the greatest economic
17 recession since the Great Depression. Low-income advocacy and assistance organizations such
18 as community action agencies have insufficient resources for helping all customers in need even
19 at current levels. Kentucky lacks the investment of other states (through public and private
20 means) in helping those who cannot afford energy costs, traditionally because the
21 Commonwealth's costs have been historically lower than in other states. However, any action
22 which serves to increase those bills could have a significant impact on low-income customers,
23 many of whom are disabled and/or senior citizens on a fixed income. Also, through
24 conversations with Council staff members who work with customers in the Columbia Gas

1 service area, I have learned that many customers are confused by retail gas marketing terms and
2 conditions and often feel misled or unfairly treated by marketers.

3 **Q. Have you previously testified before the Commission?**

4 A. Yes. I have testified in dozens of administrative, DSM and rate adjustment cases
5 spanning a period of more than 20 years. Most recently, I have filed testimony in Case No. 2010-
6 00036, *Application of Kentucky American Water Company For an Adjustment of Rates*
7 *Supported by a Full Forecasted Test Year*, and Case No. 2009-00548, *Application of Kentucky*
8 *Utilities Company for a General Adjustment in Base Rates*.

9 **Q. Please describe the organization of Community Action Council and give a brief**
10 **description of its activities.**

11 A. Community Action Council was established in 1965 as a not-for-profit community action
12 agency of the Commonwealth of Kentucky. The Council's governance includes a Board of
13 Directors representing low-income, public and private sectors of the community. Its mission is
14 to combat poverty.

15 There are approximately 280 employees operating and administering the Council's primary
16 programs and services including:

- 17 • self-sufficiency
- 18 • child development
- 19 • homeless programs
- 20 • volunteer programs
- 21 • youth development
- 22 • transportation services
- 23 • clothing banks
- 24 • housing

- 1 • energy assistance and conservation programs
- 2 • emergency assistance
- 3 • community outreach and referrals.

4 Although the Council’s core service territory includes Lexington-Fayette, Bourbon, Harrison and
5 Nicholas counties, the Council also provides services in other Kentucky counties. For example,
6 the Council administers the WinterCare Energy Fund providing services across most of the state;
7 child development services extend into Scott and Madison counties; the Retired and Senior
8 Volunteer Program extends into Jessamine County. The Columbia Gas Energy Assistance
9 Program and WarmWise program and Kentucky Utilities’ Home Energy Assistance Program
10 each provide services throughout the service territory of their respective utilities. The Council
11 also operates the Kentucky American Water Help to Others (H2O) Program throughout the
12 utility’s service area.

13 The Council is uniquely positioned to speak on behalf of low-income populations with utility-
14 related problems as staff members have extensive contact with and knowledge of this population.
15 Additionally, Council staff is able to help participants access other Council assistance programs
16 as well as other community resources to address the multiple obstacles and barriers that most
17 low-income households face. This comprehensive approach provides greater stability and self-
18 sufficiency to these households, supporting a family’s ability to afford necessities such as utility
19 service.

20 The Council is also a member of Community Action Kentucky (CAK), a membership
21 organization which represents Kentucky’s 23 community action agencies throughout the state.
22 While CAK has not intervened in this case, as a member of the organization the Council is able
23 to communicate regularly and as needed to discuss matters impacting low-income customers
24 served by other organizations and thus representing a broader geographic area.

1 **Q. Please describe in detail the Council's programs and services which partner with**
2 **public utilities, especially natural gas companies.**

3 A. The Council operates a number of utility assistance programs in partnership with local
4 utilities, public and private funding sources, and other community action agencies across the
5 state. These programs are described below.

6 In 1983, Community Action Council initiated, with Kentucky Utilities, the establishment of the
7 **WinterCare Energy Fund**. The Council has provided administrative services, financial
8 management and marketing support for the Fund since that time. The Council has also managed
9 the federal **LIHEAP** program (Low-Income Home Energy Assistance Program) serving low-
10 income customers in Fayette, Bourbon, Harrison and Nicholas counties since its inception.

11 Since 1978, the Council has operated a **Weatherization Assistance Program** designed to help
12 low-income individuals and families conserve energy. Weatherization services include caulking,
13 weather-stripping, replacement of thresholds and door sweeps, re-glazing windows and replacing
14 broken glass, outside wall repair, minor roof repair, attic insulating, repairing and replacing
15 skirting around the foundation, under-floor insulation including wrapping pipes and insulating
16 heat ducts, venting the attic and crawl spaces, and repairing or replacing heating equipment and
17 venting systems. The Council operates several additional weatherization and furnace
18 replacement programs including the **Kentucky Clean Energy Corps** project and Columbia Gas
19 of Kentucky's **WarmWise** high-efficiency furnace replacement program for its low-income
20 customers.

21 The Council currently administers a utility funded energy subsidy program serving 850 low-
22 income households in partnership with **Columbia Gas of Kentucky** and the network of
23 community action agencies serving the Columbia Gas service territory. Also, the Council
24 administers a similar energy subsidy program for **Delta Gas**.

1 **Q. Does the Council have any experience in the field of natural gas marketing?**

2 A. The Council operated a natural gas marketing company, aggregating low-income and
3 other customers for collective buying power within the Columbia Gas Choice Program. The
4 Community Action Council Buyers Club, Inc., operated from December 2001 through June
5 2004, serving approximately 2,000 customers at its peak. The operation was discontinued in
6 2004 after the Council found that it was extremely difficult, if not impossible, to operate an
7 independent retail marketing company and offer a fair price to consumers.

8 **Q. Can you explain why the Council is concerned about the effects of natural gas retail**
9 **marketing on customer bills?**

10 A. The higher bills resulting from retail gas competition have been well documented both
11 within the Columbia Gas service area where a pilot program continues and in other states where
12 such competition has been allowed. The flaw is simple – gas marketers must pay for both the
13 commodity and the transmission cost, just like the natural gas utility. The only way for a
14 customer to save money is for the retail marketer to provide the commodity at a substantially
15 cheaper cost than the gas utility for an extended period of time. It has been the Council’s
16 experience, both anecdotally from serving low-income customers with assistance and as a former
17 marketer through the Buyer’s Club, that such savings is not common. In fact, when the
18 marketer’s costs exceed those of the gas utility, the customer will pay more – sometimes
19 substantially more – than they would have otherwise.

20 **Q. Should retail marketing be accepted as resulting in higher bills, are resources for**
21 **energy assistance sufficient to meet the needs of the low-income population?**

22 A. No, resources are not sufficient to meet the needs of the population. Federal LIHEAP
23 funding to the state has been highly variable in the past several years. The WinterCare Energy
24 Fund is limited primarily to individual and corporate donations, which also fluctuate and have

1 declined regularly for more than 5 years. The fund has not significantly increased in the past 10
2 years and, in fact, ratepayer contributions have decreased substantially each of the past 5 years.
3 There continues to be a significant gap between the cost of utility service and the ability of the
4 elderly, the working poor and other low-income households to pay for such service. Current
5 public and private energy assistance initiatives do not come close to addressing this gap. Each
6 year, Community Action Council is forced to turn away hundreds of families who urgently need
7 energy assistance for lack of available funds.

8 **Q. Please explain your concerns about customer confusion or customers being “taken**
9 **advantage of” by natural gas retail marketers.**

10 A. It has been the Council’s experience as a low-income assistance organization in the
11 Columbia Gas service area that marketers often go door-to-door or call customers in low-
12 income neighborhoods and convince them to switch providers without ensuring that customers
13 fully understand their commitment. Customers are sometimes locked into long-term
14 commitments without realizing it and these long-term contracts can result in substantially higher
15 bills over time, leaving the customer with no recourse for returning to the local natural gas utility
16 until the commitment has expired. This practice is especially concerning because of its impact on
17 senior citizens, which represent a large percentage of the low-income individuals assisted by the
18 Council.

19 **Q. Do you have any recommendations with regard to retail natural gas marketing?**

20 A. Yes, it is our recommendation that, if the Commission or the legislature decides to take
21 any action which would expand retail natural gas marketing, that substantial consumer
22 protections be incorporated into the regulatory process. These protections should include:

23

- 1 • Marketers must be required to use the same cost per unit basis as the natural gas utility
2 when advertising and communicating their prices so that consumers can compare offers
3 on an ‘apples to apples’ basis. The utility should ensure that customers have easy access,
4 not limited solely to postings on the internet, to the comparative prices per unit of all
5 available offers.
- 6 • Marketers should be prohibited from ‘locking in’ customers for a fixed period of time.
7 Customers should be able to change marketers or return to the natural gas utility at their
8 discretion. If natural gas marketers want to sell their product in an open market,
9 customers should have the same freedoms.
- 10 • Marketers should be prohibited from signing customers up by telephone unless there is a
11 requirement that, subsequent to any telephone solicitation and customer verbal consent,
12 the marketer must mail written confirmation to the customer with a provision for the
13 customer to confirm his/her consent in writing by return mail.
- 14 • Customers must give consent in writing to the utility before it may release customer’s
15 name, account information, and contact information to a marketer.
- 16 • Marketers may not ‘cherry pick’; they must accept any willing customer who selects
17 them as their supplier.
- 18 • Marketers’ costs of doing business must be completely separate from the utility. No
19 costs, including any losses, may be reassigned by a marketer to the utility.
- 20 • Marketers must reimburse the utility for the costs of all services it provides to the
21 marketers, e.g., if the utility bills and collects payments for the marketers, the marketers
22 must reimburse the utility’s full costs.

23

1 • Any 'stranded' costs to the utility must be borne by the marketers. They may not be
2 passed on to the utility's rate payers.

3 • The natural gas distribution company (utility) must serve as the provider of last resort and
4 it may not refuse gas supply service to any customer on its system. If this guarantee as
5 supplier of last resort results in higher costs to the utility, it should be able to allocate the
6 additional costs, for ensuring an adequate supply, to all marketers on an equitable basis.

7 **Q. Does this end your direct testimony?**

8 A. Yes

9

10

VERIFICATION


I have read the above questions and answers and I affirm that they are correct to the best of my information and belief.



JACK E. BURCH

COMMONWEALTH OF KENTUCKY)
COUNTY OF FAYETTE)

Subscribed to and sworn to before me by Jack E. Burch on the 24th day of June, 2010.



NOTARY PUBLIC
My commission expires: 6/25/2013

CERTIFICATE OF SERVICE

I hereby certify that on 24th day of June, 2010, a true and accurate copy of the foregoing Testimony of Jack E. Burch on Behalf of CAC was served by United States mail, postage prepaid, to the following:

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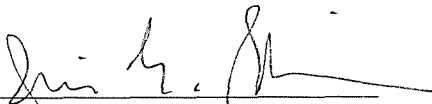
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