

SEC

STAND ENERGY CORPORATION

1077 Celestial Street • Rookwood Bldg • Suite 110
Cincinnati, Ohio 45202-1629
(513) 621-1113
(800) 598-2046
(513) 621-3773 Fax

August 27, 2010

VIA UPS NEXT DAY AIR SAVER

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

RECEIVED

AUG 30 2010

PUBLIC SERVICE
COMMISSION

Re: Case No. 2010-00146

Dear Mr. Derouen:

Enclosed for filing in the above-captioned matter with the Commission are the original and ten (10) copies of Stand Energy Corporation's Motion To Compel Data Request Responses to Delta Natural Gas Company.

Thank you for your prompt attention to this filing. If you have any questions about this filing, please contact me at (513) 621-1113.

Sincerely,

John M. Dosker
General Counsel

Encls.

cc: All parties of record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 30 2010

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:)
AN INVESTIGATION OF NATURAL GAS) Case No. 2010-00146
RETAIL COMPETITION PROGRAMS)

STAND ENERGY CORPORATION'S MOTION TO COMPEL RESPONSES TO DATA
REQUESTS FROM DELTA NATURAL GAS COMPANY

Intervenor, Stand Energy Corporation ("Stand Energy"), by and through counsel, submits the following motion to compel discovery from Delta Natural Gas Company ("Delta"). Stand Energy moves the Commission to compel Delta to provide complete responses to Stand Energy's data requests issued on July 15, 2010. As grounds for this motion, Stand Energy has set out each data request at issue, each response provided by Delta, and discussion of why the motion to compel should be granted:

Stand - All LDC's 1-6:

With regard to your relationship with an "Asset Manager", if any, respond to the following if they are applicable:

- A. Identify each agreement and contract document between you and your Asset Manager.
- B. Identify any written agreements and contracts that superseded or were successors to the agreement(s) Identified in (A) above.

C. For the years 2008, and 2009, (i) Identify both the total revenues paid to your Asset Manager and the total revenues received from your Asset Manager under the agreement Identified in (A) above, (ii) Identify how the revenues Identified in (i) are allocated among the recipient(s) of that revenue, (iii) for the revenues Identified in (i), categorize and Identify the nature of the transaction that generated the revenues, such as, for example, revenues from utilized pipeline capacity transactions, revenues from commodity transactions, revenues from hedges and options, etc.

DELTA'S RESPONSE to 1-6(c): Objection. The information sought is not relevant to the subject matter of this proceeding nor is it reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the information requested is confidential and proprietary both to Delta and its asset manager and disclosure of such information to Stand would cause competitive harm to Delta, its subsidiaries and its asset manager as Stand as acknowledged in its testimony herein that it is a competitor of Delta and its subsidiaries. Stand could use the information sought regarding the revenue paid to the asset manager under the agreements and the nature of the transactions to gain a competitive advantage over Delta, its subsidiaries and its asset manager. Disclosure of the information to Stand will work a clearly defined and very serious injury to Delta, its subsidiaries and its asset manager. See, *In the Matter of Green River Steel Corporation v. Kentucky Utilities Company*, Case No. 100300, Order dated January 6, 1989 at 2-3, 5-6 and authorities cited therein.

DISCUSSION OF DELTA'S RESPONSE

Delta claims disclosure of the information would work a "clearly defined and very serious injury to cause competitive harm to Delta, its subsidiaries and its asset manager." Citing,

In the Matter of Green River Steel Corporation v. Kentucky Utilities Company, Case No. 10300.

The first problem with this response is that Delta's Asset Manager has not been identified. Stand Energy has no way of debating the competitive harm that might befall an unnamed entity. Due process requires transparency here. It's entirely possible that Delta's asset manager **IS** one of its subsidiaries. This information was not provided, and as such, the Order cited by Delta requires disclosure of the information because Delta has failed to meet the initial required burden of proof described in that Order for protection to be granted by the Commission.

According to the Order cited by Delta, "[t]o prevent discovery of such information, a party must first demonstrate that 'disclosure will work a clearly defined and very serious injury.' Citing, U.S. v. IBM, 67 F.R.D. 40, 46, (S.D.N.Y. 1975). If this requirement is met, the burden shifts to the party seeking discovery to establish that disclosure of the information is relevant and necessary. Upon such a showing, a balancing of interests occurs." **Id., Order at 2**. In that PSC case cited by Delta, Green River Steel was requesting the name and identity of other KU customers, the disclosure of which by KU, might reveal operating characteristics of those companies, KU argued. The PSC Ordered that unless those other customers were competitors of Green River, there would be no risk of competitive disadvantage to KU or its other customers. The discovery was allowed, as it should be here.

Delta has failed to "clearly define the very serious injury" that would befall it or its unnamed asset manager or its unnamed subsidiary. Simply mimicking the language required by the Order is not sufficient. Nor is Delta's obvious desire to avoid scrutiny of any kind sufficient to prevent the Commission from ordering the discovery be produced. Delta has failed to meet the required initial burden of proof.

Finally, Stand Energy did NOT state in any Testimony that it was a competitor of Delta Natural Gas. Delta omitted any page, line or author citation to the alleged Stand Energy Testimony. The statement by Delta was false and misleading and intended to misrepresent facts to the Commission. We would expect the Commission to punish such behavior.

Stand Energy Corporation does compete with Delta Natural Gas Marketing, a completely separate legal entity which has chosen not to intervene in this investigatory proceeding into retail natural gas issues. Therefore, Delta Natural Gas Company, the regulated utility, lacks standing to raise objections for its marketing subsidiary (which has chosen not to intervene in this proceeding to protect its own alleged interests) or those of the unnamed asset manager.

The requested information will help the Commission and the parties evaluate the lack of competition in the Delta service territory and the reasons for the stranglehold on market share enjoyed by Delta and its subsidiaries. That is one of the stated purposes of this investigatory proceeding - - to investigate competitive retail natural gas issues! There is very little competition in the Delta service territory. This Commission has been given clear direction by the legislature. Delta should be ordered to respond to Stand Energy Data Request 1-6(c).

Stand - Delta 1-9 Data Requests At issue and Delta's Response thereto:

- A. How many of your customers are using transportation services from Delta? (53)
- B. Of the number above, how many customers are using one of Delta's non-regulated Affiliates as their natural gas supplier?

DELTA'S RESPONSE: Objection. See the objection in the response to Item 1-6(c) herein. Moreover, the release of the requested information to Stand concerning the

number of customers using a Delta Affiliate is likely to cause Delta and its affiliates competitive harm in respect of (sic) Stand.

DISCUSSION OF DELTA'S RESPONSE

Delta claims disclosure of how many of its 53 on-system transportation customers (Response to Data Request 1-9[a]), that are currently served by a Delta Affiliate will cause Delta "competitive harm". This is a ridiculous claim. Without the volume of natural gas used by each transportation customer, or the identity of specific customers, the raw number is useful for essentially one purpose - showing that a Delta subsidiary or Delta subsidiaries, have a stranglehold on competition. There is no way a competitor could obtain a competitive advantage with the information requested from Delta. There is no legitimate reason why Delta should not be compelled to answer this simple question. No competitive harm will befall Delta from being required to answer the question. Regulatory or public scrutiny of relevant facts is not "competitive harm". The information withheld by Delta is not protected by law.

D. Of your total 2009 natural gas sales, what percentage was from regulated sales? What percentage was from non-regulated sales?

DELTA'S RESPONSE: Objection. See the objection in the response to Item 1-6(c) herein. Moreover the release of the requested information to Stand concerning the percentage of regulated and non-regulated sales is likely to cause Delta and its affiliates competitive harm in respect of (sic) Stand.

DISCUSSION OF DELTA'S RESPONSE

Delta claims disclosure of the raw percentage (no specific dollar amount was requested) of regulated sales v. non-regulated sales, for 2009 will cause Delta "competitive harm". This is

also a ridiculous claim. With only a raw percentage and without the volume of natural gas used by regulated vs. unregulated customers, the raw percentage is useful for essentially one purpose - showing that a Delta subsidiary or Delta subsidiaries, have a stranglehold on competition. There is no way a competitor could obtain a competitive advantage with the information requested from Delta. There is no legitimate reason why Delta should not be compelled to answer this simple question. No competitive harm will befall Delta from being required to answer the question. Regulatory or public scrutiny of relevant facts is not "competitive harm". The information withheld by Delta is not protected by law.

F-1. Are both regulated and non-regulated gas supply purchases purchased under the same contract with M&B?

DELTA'S RESPONSE: Objection. See the objection in the response to Item 1-6(c) herein. Moreover the release of the requested information to Stand concerning the details of Delta's relationship with M & B is likely to cause Delta and its affiliates competitive harm in respect of (sic) Stand.

DISCUSSION OF DELTA'S RESPONSE

In the response to the previous question (1-9(E)), Delta disclosed that gas supplies for its regulated and unregulated subsidiaries are purchased by the same employees. Subpart (F) inquired whether those employees purchase regulated and non-regulated supplies under the same contract with M & B that is disclosed in other regulatory filings.

The response to this data request will yield important information in understanding the structure (but absolutely no confidential details) of Delta's relationship with what appears to be its primary natural gas supplier as well as the separation of functions, or lack thereof, within the

Delta gas supply function - - which is highly relevant to the issue of "Codes of Conduct for marketers and affiliates of regulated utilities." (**Element No. 6, page 4, of the Commission's April 19, 2010 initial Order in this docket**). The request also may be relevant to the Commission inquiry into "non-discriminatory access to services offered" (**Element No. 5, page 4, of the Commission's April 19, 2010 initial Order in this docket**). Delta has not provided sufficient justification to meet its initial burden of proof. Delta should be required to answer this question. There is no way Stand or any other competitor could obtain a competitive advantage with the information requested from Delta. There is no legitimate reason why Delta should not be compelled to answer this simple question. No competitive harm will befall Delta from being required to answer the question. Regulatory or public scrutiny of relevant facts is not "competitive harm". The information withheld by Delta is not protected by law.

G. What percentage of your non-regulated gas supplies are produced in Kentucky?

DELTA'S RESPONSE: Objection. See the objection in the response to Item 1-6(c) herein. Moreover the release of the requested information to Stand concerning the details of Delta's affiliates' unregulated gas supplies is likely to cause Delta and its affiliates competitive harm in respect of (sic) Stand.

DISCUSSION OF DELTA'S RESPONSE

The previous question asked how much Kentucky-produced gas was sold by the regulated arm of Delta. The answer was "less than 2%". The question objected to here is how much Kentucky-produced gas is sold by the unregulated marketing arm? The answer to this question is relevant to the requirement contained in KRS 278.507 to promote Kentucky-produced gas "*to facilitate greater utilization of the natural gas produced or available for*

production within the state, where this can be done without detriment to the customers of utilities under jurisdiction of the Commission." See Also, Response to Question 1-9(F-1). Stand Energy believes that the required use of Kentucky-produced gas will assist in the development of a more competitive retail natural gas market in Kentucky.

H. In Delta Natural Gas Company's Kentucky PSC Case No. 2010-00116 you identified 2009 Special Contracts usage as 1,955,008 Mcf. What percentage of that volume is supplied by your non-regulated marketing affiliate?

DELTA'S RESPONSE: Objection. See the objection in the response to Item 1-6(c) herein. Moreover the release of the requested information to Stand concerning the source of gas supplied to Delta's special contract customers is likely to cause Delta and its Affiliates competitive harm in respect of (sic) Stand.

DISCUSSION OF DELTA'S RESPONSE

Delta claims disclosure of the raw percentage of special contracts that are supplied natural gas by Delta's unregulated subsidiary will cause Delta "competitive harm". This claim must fail. The raw percentage is useful for essentially one purpose - showing that a Delta subsidiary has a stranglehold on competition in the Delta service territory. There is no way a competitor could obtain a competitive advantage with the information requested from Delta. Therefore, there is no legitimate reason why Delta should not be compelled to answer this simple question. No competitive harm will befall Delta from being required to answer the question. Regulatory or public scrutiny of relevant facts is not "competitive harm". The information withheld by Delta is not protected by law. See Also, Response to Question 1-9(F-1).

I. Do you allow your non-regulated marketing affiliate to use reserved pipeline capacity (owned by you and paid for by your ratepayers) to deliver gas to the Transportation customers of your unregulated marketing affiliate on your local distribution system? Is the price paid by Delta Natural Gas Marketing discounted? If so, by how much?

DELTA'S RESPONSE: Objection. See the objection in the response to Item 1-6(c) herein. Moreover the release of the requested information to Stand concerning its pipeline practices and its relationships with its affiliates is likely to cause Delta and its affiliates competitive harm in respect of (sic) Stand.

DISCUSSION OF DELTA'S RESPONSE

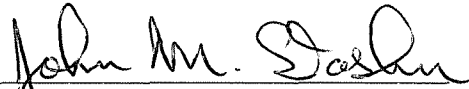
The response to this data request will yield important information in understanding the structure of Delta's relationship with its unregulated marketing arm as well as the separation of functions, or lack thereof, within the Delta gas supply function - - which is highly relevant to the issue of "Codes of Conduct for marketers and affiliates of regulated utilities." (**Element No. 6, page 4, of the Commission's April 19, 2010 initial Order in this docket**). The request also is highly relevant to the Commission inquiry into "non-discriminatory access to services offered" (**Element No. 5, page 4, of the Commission's April 19, 2010 initial Order in this docket**). Delta may be required by law to offer pipeline capacity to other gas suppliers on a non-discriminatory basis. If Delta is allowing its marketing arm to use valuable ratepayer assets at less than market rates, then competition is suffering and so are the Delta ratepayers. Certainly the answers to those questions are relevant to this case.

Delta has not provided sufficient justification to prevent the discovery under the legal standard relied upon by Delta. Regulatory or public scrutiny of relevant facts is not "competitive harm". The information withheld by Delta is not protected by law.

CONCLUSION

Stand Energy's data requests to Delta were reasonable and relevant to the subject matter of this case. Stand Energy did not request any specific customer information or any confidential or proprietary business information. There is absolutely no legitimate reason why Delta should not be required to fully answer all of Stand Energy's data requests. The intent of this proceeding to investigate competition in retail natural gas will not be realized otherwise.

Respectfully Submitted,



JOHN M. DOSKER (KBA #82089)
GENERAL COUNSEL
Stand Energy Corporation
1077 Celestial Street, Suite #110
Cincinnati, OH 45202-1629
(Phone) (513) 621-1113
(Fax) (513) 621-3773
jdosker@stand-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of Stand Energy Corporation's Motion to Compel Responses to Delta Natural Gas Company were served upon the following parties of record via U.S. Mail postage prepaid on August 27, 2010.

Ms. Judy Cooper
Manager, Regulatory Services
Columbia Gas of Kentucky, Inc.
2001 Mercer Drive
P.O. Box 14241
Lexington, KY 40512-4241

Dennis Howard, II, Esq.
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204
Assistant Attorney General
Utility & Rate Intervention Division

Iris. G. Skidmore
Bates & Skidmore
415 W. Main Street, Suite 2
Frankfort, Kentucky 40601-1841
Counsel for CAC

Matthew Malone, Esq.
Hurt, Crosbie & May
127 W. Main Street
Lexington, Kentucky 40507-1320
Counsel for IGS, SouthStar & Vectren

Rocco D'Ascenzo, Esq.
Senior Counsel
Duke Energy Kentucky, Inc.
139 East Fourth Street R 25 AT II
P.O. Box 960
Cincinnati, Ohio 45201

Lonnie E. Bellar
V.P. State Regulation
Louisville Gas & Electric Company
220 W. Main Street
P.O. Box 32010
Louisville, Kentucky 40202

John B. Brown
Chief Financial Officer, Treasurer
Delta Natural Gas Company, Inc.
3617 Lexington Road
Winchester, Kentucky 40391

Brooke E. Leslie, Esq.
Columbia Gas of Kentucky, Inc.
200 Civic Center Drive
P.O. Box 117
Columbus, Ohio 43216-0017

Mike Martin
V.P. Rates & Regulatory Affairs
Atmos Energy Corporation
3275 Highland Pointe Drive
Owensboro, Kentucky 42303

Robert M Watt, III
Stoll, Keenon Ogden, PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507

Tom Fitzgerald, Esq.
Liz D. Edmondson, Esq.
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, Kentucky 40602-1070
Counsel for AARP

Lisa Kilkelly, Esq.
Legal Aid Society
416 West Muhammad Ali Boulevard
Suite 300
Louisville, Kentucky 40202
Counsel for ACM

Trevor L. Earl, Esq.
Reed, Weitkamp, Schell & Vice, PLLC
500 West Jefferson Street
Suite 2400
Louisville, Kentucky 40202-2812
Counsel for MX Energy

Michael T. Griffiths, Esq.
111 Monument Circle
Suite 2200
Indianapolis, Indiana 46204
Counsel for Proliance

Katherine K. Yunker, Esq.
John B. Park, Esq.
Yunker & Park, PLC
P.O. Box 21784
Lexington, Kentucky 40522-1784
Counsel for ProLiance & RESA


JOHN M. DOSKER