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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

An Investigation of Natural Gas Retail Competition Programs	Case No. 2010-00146

Post-Hearing Brief of the Retail Energy Supply Association

Pursuant to House Joint Resolution 141, and by order issued April 19, 2010, the Kentucky Public Service Commission ("Commission") initiated 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. Following the submission of direct and rebuttal testimony on behalf of the parties, the exchange of data requests, and a two-day hearing in which consumer advocates, utilities, and retail gas suppliers all participated, Retail Energy Supply Association ("RESA") submits there is ample support for the Commission to conclude that a statewide retail competition program with uniform minimum standards and utility-level flexibility could be crafted to benefit Kentucky consumers. RESA respectfully submits this Post-Hearing Brief in support of its position.[1]

I. BENEFITS OF COMPETITION

A. Unique Product Offers

A principal benefit of competition is to provide customers alternative energy options that are not normally or easily offered by a utility, such as fixed-price contracts. While a utility may

[1] RESA's position is supported by the pre-filed Direct Testimony of Teresa Ringenbach, RESA's responses to data requests, and Ms. Ringenbach's testimony at the hearing on October 20, 2010, which started at approximately 12:15 p.m.

be able to offer a product that appears to have similarities with a true fixed-price contract,[2] the utility's ability to recover its costs renders any likeness illusory. As noted by AARP witness Nancy Brockway in her testimony at the hearing, a fixed price product from the utility would not be the same as a fixed price product from a supplier so long as reconciliation of the utility's costs occurs. (10/20/10 Video, 18:31:30-18:33:42).

For the same reason, a utility budget-bill offering cannot provide customers the same certainty as a supplier fixed-bill product. Specifically, due to the ability of a utility to fully recover costs, under a budget-bill product there is a true-up of all under- or over-recovery. In a supplier fixed bill product, the supplier commits to a set dollar amount for the customer's commodity costs. There is no true-up, even if actual costs are higher or lower. The benefit to the customer is the peace of mind knowing that the price is guaranteed; there is no risk of a potentially costly and unexpected true-up for under-recovery of costs.

Retail competition also can benefit customers that choose variable-price offerings. Atmos and others have argued that because utilities pass on their costs with no mark-up, a supplier that is a for-profit entity would not be able to beat the utility price. Yet clearly Columbia Gas Choice program suppliers did beat the utility price in certain years. Also, opponents of competition fail to consider that utilities now contract with many of the same suppliers that would participate in a retail choice program. Competition thus could in some instances eliminate the utility as middleman and therefore eliminate a cost that is passed through to the customer by the utility. Another argument made was that because utilities commonly hedge commodity costs for their customers, they must always do better than a supplier. This

[2] At the hearing, Commission Staff pointed to the Columbia Gas Price Protection Service (Rate PPS) as a possible way a utility could offer the security of a fixed-price product. (10/19/10 Video, 12:23:34-12:27:45).

ignores, however, that suppliers hedge for their specific customers and not a generic utility load. Where a utility must beat a benchmark, a supplier is not locked into how much or how little to hedge and therefore controls its hedging costs in response to the market.

B. Total Product Value Including Price Certainty, Budget Certainty, and Savings

While it is true that customers pick offers for different reasons — potential savings being only one – the Intelometry report commissioned by Direct Energy (and produced by RESA as Attachment 1[3] to its responses to the initial data requests) clearly shows that there were money-saving offers available to customers in Ohio between 2001 and 2008. The Intelometry report specifically showed that had customers switched to the lowest offers available during that period, there would have been a $567 million in savings.

No opponent of retail competition addressed or disputed the specific finding of savings in Ohio contained in the Intelometry report.[4] Rather, in an attempt to call into question the benefits of competition, opponents of retail choice cited: newspaper articles that when more closely examined include disclaimers on estimates used to fill in gaps of data; a study from the Citizens Utility Board of Illinois ("CUB") that, until the fall of 2009, only included offers which were made public and not all offers; and an EIA report that does not separate out distribution rates from commodity rates.

Regarding the CUB study in Illinois, it is important to note that prior to the fall of 2009, there was no requirement for suppliers to disclose their offers to CUB or the Illinois Commerce Commission, and suppliers often would not publicly post special offers such as renewal offers, win-back offers and affinity offers. The report cited by AARP and other opponents of

[3] RESA produced one CD containing all attachments to all of its responses to initial data requests.

[4] The only question raised about the report was whether a consultant hired by a supplier could be independent – one could call into question the value of AARP's witness in that same regard.

competition dates back to 2003 but does not include all offers available to customers during that time but only those of which CUB was aware. (10/20/10 Video, 12:27:04-12:29:08). Even today, CUB methodology continues to lump all offers together going back to 2003 unless one clicks on the individual offers. In addition, certain offers such as mixed-bill or seasonal are excluded as rare,[5] but a review of the ICC offer site shows these offers are regularly available.

The incompleteness of the data contained in the CUB report clearly undermines its reliability and utility to the Commission in this proceeding. Moreover, the study does not purport to value non-price benefits provided by many offerings.

Opponents of competition also focused on a cumulative, to-date price comparison showing no savings when discussing the Columbia Gas of Kentucky report on retail competition. The report also shows, however, that in certain years there were cumulative savings. Moreover, the fact that there is a cumulative lack of savings in any given year or period does not mean that offers (and customers) with savings did not exist within such year or period.

Opponents of retail competition also cited an EIA report to suggest that Kentucky has lower average gas prices than some states with competitive markets because of a lack of competition at the retail level in Kentucky. The average prices listed in the report, however, include both distribution and commodity charges, making it impossible to ascertain whether

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[5] As noted on CUB's website:

> Two other types of plans are not included in the Gas Market Monitor because they are rare and because they are difficult to track. Mixed plans offer a combination of fixed and variable rates at different times of the year. Also not included are some offers by an unregulated sister company to Nicor Gas, called Nicor Advanced Energy. For some plans, that company charges prices that differ by individual customers. One example is "Lock 12," which charges you a set monthly bill for a year, depending on your own past usage and other factors—plus a hefty markup. With such atypical plans, it's impossible to make the apples–to-apples comparisons featured in the Gas Market Monitor.

http://www.citizensutilityboard.org/GasMarketMonitor.php/

distribution rates or commodity prices account for the differences. (*See* PSC Hearing Ex.s 1 and 2).

Not only was it apparent from evidence that competitive suppliers are able to provide valuable products to customers which do meet individual customer's energy needs, but it also showed customers are interested in these products. At one point, the Community Action Council had an offering with approximately 2,000 participants. That program ended when a fixed price no longer offered savings but there was no evidence that other products were investigated. In addition, there has been significant shopping by, and offerings to, customers in states that have implemented all of the necessary components of a competitive market. For example, a cursory review of the Illinois Commerce Commission website and the Ohio Apples to Apples website both show offers outside of the traditional fixed versus variable rate structure put forward by opponents in Kentucky.[6]

C. Tax Revenue

A properly implemented retail competition program should not affect the collection or amount of local tax revenue. At the hearing, for example, the witness for Columbia Gas testified that Columbia continues to collect and remit local school taxes and franchise fees, and that Columbia's choice program has had no effect on the amount of tax. (10/19/10 Video 12:00:00-12:00:40). RESA submits that a retail competition program can and should be designed to be tax-revenue neutral.

Additionally, implementation of a retail competition program in Kentucky has the potential to increase local and state tax revenue by bringing new businesses to the state. In its responses to discovery requests, RESA provided evidence that retail unbundling has generated

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[6] *See* http://www.icc.illinois.gov/ags/products.aspx and http://www.puco.ohio.gov/puco/applestoapples/index.cfm

new business activity and spawned new businesses in other states, including the Intelometry report (at page 5) and an economic benefit report from the Illinois Chamber of Commerce on the benefits produced by energy businesses in Illinois. (RESA provided copies of the Intelometry report and the Illinois report as Attachments 1 and 24, respectively, to its Responses to Initial Data Requests.) Any new business in the state will create increased revenue. No opponent disputed this or showed evidence that there would be a loss of revenue from competition.

II. NECESSARY MARKET COMPONENTS

RESA and competitive suppliers in their testimony have advocated for minimum statewide market components to provide a level playing field in order to achieve effective competition in Kentucky.[7] All suppliers in the case have agreed that utility ratepayers and shareholders should not subsidize retail suppliers. In fact, suppliers have requested assurance that there is no one side subsidizing the other. Columbia Gas of Kentucky has shown that stranded costs and implementation of a Choice Program can be done without subsidies in a fair manner.

It has been argued that because of the variances between distribution company systems, there can be no mandatory, statewide implementation of a choice program. It is true that balancing, capacity contracts, and system needs vary with each utility, but that makes the need for general guidelines all the more important. The guidelines would provide a framework for each utility to implement a choice program in a manner that provide for a safe and reliable delivery of gas on its specific system, in a competitively neutral manner. The essential components of all successful choice programs include: purchase of receivables by the utility;

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[7] Regulatory bodies of states such as Ohio and Pennsylvania have also recognized these components as necessary for a robust competitive market. (*See, e.g.,* Final Order and Action Plan of Pennsylvania PUC, Docket No. I-00040103F0002, provided as Attachment 3 to the Direct Testimony of Teresa Ringenbach).

capacity moves with the customer; supplier licensing; consumer protections; a strong role for Commission staff; and consumer education.

A. Purchase of Receivables

Purchase of receivables ("POR") has been recognized on both the electric and gas sides as a fundamental component to growing a competitive market. For example, the Pennsylvania PUC recognized the need for purchase of receivables with utility consolidated billing as necessary for fundamental competition. (Final Order and Action Plan of Pennsylvania PUC, Docket No. I-00040103F0002, provided as Attachment 3 to the Direct Testimony of Teresa Ringenbach).

POR programs are not a subsidy to suppliers. To the contrary, the discount rate of the program should be designed to cover the utility's administrative costs to implement the program. Customers have paid for the utility billing systems and should continue to have access to those systems without paying a supplier for new a billing system. POR creates a simple collection point for customers in a manner to which they are accustomed. They will continue to receive all of their natural gas costs on a single bill with a single collection point. Without POR, a customer with an arrearage would need to enter into separate payment arrangements with the utility and the supplier. As a result, a customer could face two different payment plans or even collection efforts by either the utility or supplier but not the other, resulting in needless customer confusion. POR simplifies the payment process and is a glide-path approach to introducing customers to competitive options by retaining the billing format and procedure to which they are accustomed. In short, POR makes the transition to retail competition smoother for the customer without imposing costs on the utility.

B. Capacity Moves With Customer

RESA has asked that capacity move with the customer. AARP Witness Nancy Brockway in her Direct Testimony appears to approve of capacity moving with customers and then in rebuttal testimony switches her opinion. (*Compare* Direct Testimony of Nancy Brockway, at p. 24 *with* Rebuttal Testimony of Nancy Brockway, at p. 8). Columbia of Kentucky has shown a reduction in costs when they moved to a capacity assignment. LG&E contends in testimony that there will be stranded costs but does not look at some of the ways to avoid these costs, such as assignment of recallable capacity so reliability is ensured on the system, stranded costs are avoided, and no supplier is excluded from making competitive offers due to a lack of available capacity.

C. Licensing

RESA and suppliers all support licensing requirements by the Commission. It is imperative that the Commission be able to review and approve qualified suppliers seeking to do business in the Commonwealth. Suppliers must have the managerial, technical, and financial qualifications to support the sale of gas to residential and small commercial customers and to manage the capacity that moves with them. In addition, the Commission should have the disciplinary authority over suppliers, including the ability to revoke the license of any supplier that violates the terms or requirements of its license. In addition to Commission licensing, there also could be utility-specific requirements such as financial and systems testing.

D. Consumer Protections

Opponents to retail competition have brought up misrepresentations by suppliers and misleading marketing in other states. Supplier misconduct, however, has been limited to a small number of companies (some no longer in business), and in general occurred in states that had not yet adopted clear and enforceable consumer protection standards to prevent poor marketing practices. In fact, many states in recent years have implemented these standards and seen the problems virtually eliminated. RESA supports strong consumer protection standards that should include marketing disclosures, contract disclosures, and utility affiliate rules. In addition, non-compliance with these rules should result in fines or potential revocation of the supplier's license.

E. PSC Staff Role

RESA has recommended that the Commission assign an office or dedicated staff to help develop, implement, and oversee a competitive market program. Staff would coordinate working groups and act as a point of contact for issues that arise as the market opens. By having staff or a Commission office dedicated to competitive markets, many of the rules and requirements can be worked through in working groups prior to formal adoption of regulations. This would allow for a more informal discussion of issues, and also permit faster implementation of rules and a quicker response to new or previously unknown issues that arise as the market progresses. Supplier assessments help support the costs of such staff involvement in other states.

F. Consumer Education

The final component necessary for a truly effective competitive market is consumer education. Ensuring that customers understand not only how to compare offers but also that service will not be affected by a switch to a different supplier are all necessary to avoid confusion and complaints. RESA encourages the Commission to look at "apples-to-apples" charts used in other states and especially the Illinois Consumer Counsel's ("ICC") online compilation of product offerings.[8] The ICC's chart allows for side-by-side comparison of offers selected by the shopping customer, an interactive spreadsheet that shows utility and supplier

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[8] Shopping customers can create comparison charts at http://www.icc.illinois.gov/ags/products.aspx.

rates together so customers can truly see what is and is not a new charge. Lastly, the ICC chart allows a supplier to update the chart with new offers daily so as the market changes, competitive suppliers can react accordingly versus other states which only allow for weekly updates.

States have funded consumer education efforts in a variety of ways. In some states, suppliers pay for some efforts, and in others riders or state funds pay for consumer education.

III. UTILITY SPECIFIC REQUIREMENTS

A. Stranded costs

Utilities should be allowed to recover costs incurred to implement and run a choice program. Stranded costs necessarily will be utility specific. For example, at the hearing Mitchell Martin testified that Duke Energy Kentucky uses the same billing system as its affiliate in Ohio where a choice program is already in place. (10/19/10 Video, 14:44:40). As such, there should be little cost to update its billing system to handle a choice program in Kentucky. Columbia has shown a reduction in stranded costs by simply moving capacity with the customer. Other utilities may face higher stranded costs, but a review of capacity contracts and system changes on a utility specific level will be necessary to determine what those costs may be. Such a review should also account for possible benefits to the utility, such as off system sales.

B. Exit the merchant function

RESA does not advocate that utilities fully exit the merchant function at the outset of a choice program. RESA does note that in Ohio, there were savings when utilities moved from a traditional GCR structure to auctions. In this situation, the auction suppliers are simply the supplier of the default commodity. RESA would also like to clarify that in these auction states and in states in which utilities have fully exited the merchant function, the utility continues to remain in the distribution role and, as part of that role, continues to balance and maintain system integrity.

IV. CONCLUSION

Competition unquestionably can bring benefits to customers that are not achievable in a traditional utility setting. Moreover, Kentucky is in a position to develop a choice program that builds upon not only the lessons learned through the Columbia Gas Choice program, but also the experience of other states with competitive markets and the solutions they have devised to address barriers and other problems they have encountered. As such, the Commission should conclude in this proceeding that customers can derive benefits from choice programs, and that a choice program with the minimum statewide standards proposed by RESA would benefit Kentucky retail customers. RESA also recommends that based on these conclusions, the Commission work toward implementing a mandatory statewide choice program by first convening working groups of interested stakeholders to develop the minimum standards and guidelines necessary to ensure a vibrant retail market for natural gas that benefits Kentucky customers. The Commission can then order natural gas utilities to develop choice programs subject to these standards, or, alternatively, recommend to the General Assembly that it enact legislation mandating retail choice programs and establishing minimum statewide guidelines.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 1st day of November, 2010, the original and ten (10) copies of the foregoing were hand delivered to the Commission for filing, and a copy was served, via U.S. Mail, first-class, postage prepaid, on each person at the address shown on the attached Service List.

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