RECEIVED
NOV 01 2010
PUBLIC SERVICE COMMISSION

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 STAND ENERGY CORPORATION

INTRODUCTION

Stand Energy Corporation ("Stand Energy"), by counsel, respectfully submits this Post-Hearing Brief to the Public Service Commission in the above-captioned proceeding.

I. House Joint Resolution 141

The legislation enabling this regulatory proceeding to evaluate retail natural gas competition programs in Kentucky was House Joint Resolution 141, passed in 2010. The Preamble to that legislation states:

> . . . *In order to ensure price transparency and to create purchasing options for consumers, and with the understanding that competition is reliant upon properly structured markets supported by both regulated and competitive business entities, natural gas retail competition programs should be evaluated.*

II. The History of Gas Transportation - Kentucky PSC Administrative Case 297

Kentucky was one of many states that started to deregulate natural gas in the mid-1980's in response to changes in Federal Energy law. The Kentucky PSC conducted an investigation into natural gas issues 23 years ago in Administrative Case No 297, *An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers* (Ky. PSC May 29, 1987). Stand Energy was an active party in both the 1987 and 2010 proceedings - the **only**

gas marketing company that can make that statement. The 1987 proceeding addressed many of the same issues as the 2010 proceeding. A copy of the final order in the 1987 case is in the record of this case as Exhibit A to the Commission's April 19, 2010 Order. Pages 47-55 of the 1987 Order are attached hereto as **Appendix 1.** In the 1987 final Order the Commission stated, *". . . transportation should be contingent **only** on the availability of adequate capacity to deliver the gas. As long as utilities have unused capacity in their systems, transportation will help maximize the efficient use of those facilities."* (***Id***. at pp. 47-48, emphasis added).

The development of gas transportation programs in each of Kentucky's five largest natural gas utilities was the end-result of Administrative Case 297 because the utilities held excess capacity then, and continue to hold excess capacity, beyond that required to serve their customers most days of most years. This is because utility "best practice" currently includes retaining sufficient capacity to serve a "peak day" so long as the utility retains the obligation as supplier of last resort (SOLR). In1987 this excess capacity, paid for by ratepayers, was made available to marketers to encourage limited competition on each utility system. Unfortunately, competition was only possible for customers above the "minimum volume thresholds" to qualify to transport gas which threshold each utility was allowed to establish, "to help balance the utility's planning and contractual needs." (***Id.*** at p. 54). Those minimum volume thresholds are now 23 years old and need to be modified to allow more customers to participate in and benefit from gas transportation programs.

III. Natural Gas Transportation is a Contract-Based Business

Unlike rate-regulated "sales service" from the utility, gas transportation is a contract-based business. In addition to the requirement that appropriate enabling tariffs be filed by the

utility, the rights and duties of the parties are spelled out by written contract. This contract based structure was approved by the U.S. Supreme Court decisions in ***United Gas Pipeline Co. v. Mobile Gas Service Corp.***, 350 U.S. 332, (1956) (interpreting a contract under the National Gas Act); and ***FPC v. Sierra Pacific Power Co.***, 350 U.S. 348 (1956) (interpreting a contract under the Federal Power Act). These cases have become collectively known as the "***Mobile-Sierra Doctrine***". The Supreme Court decisions were intended to, and have in fact, enhanced contract certainty in the context of utility rate regulation. At the Federal, interstate level, public electric and natural gas utilities must file all rates and charges for the transportation or sale of natural gas ("schedules") that are subject to FERC regulation. Such "schedules" may be filed tariffs or contracts.

The same legal principles apply to the intra-state transportation of natural gas in Kentucky and regulation by the Kentucky Public Service Commission. The actual schedules (tariffs and contracts) for gas transportation service behind Kentucky's utilities are in place and only require modification of the volumes eligible to transport. High volume thresholds have the affect of limiting competition by limiting the number of qualifying customers in any given utility service territory. All of the various transportation and customer contracts necessary for gas transportation service between and among Kentucky's utilities, gas producers, gas marketers, and gas transportation customers were developed long ago between and among those parties and none of these contracts will be difficult to modify or update to accommodate modifications and improvements in gas transportation programs.

IV. Energy Information Agency - Commercial Customers Save Money vs. Utility

Public Service Commission Staff introduced a document from the Energy Information Agency (EIA, a Branch of DOE, as PSC Exhibit 1 attached hereto as **Appendix 2**). The PSC

used the top portion of the document to cross-examine a witness on a residential gas issue. However, Stand Energy submits that PSC Exhibit 1 is equally persuasive as evidence in support of gas transportation. The bottom portion of PSC Exhibit 1is titled "Commercial" and displays the success of transportation programs for larger volume customers in eight selected states and the District of Columbia for the years 2007 and 2008. Comparing the "Marketer Average Price" to the "LDC Average Price" in 2007, only Georgia had a lower LDC Average Price. The Marketer Average Price was lower in the seven other states and the District of Columbia in 2007. For 2008, only Florida and Georgia had lower "LDC Average Prices". The "Marketer Average Price" was lower in the six other states and the District of Columbia. The relevant figures from PSC Exhibit 1 are reproduced below.

COMMERCIAL

	2007		**2008**	
	LDC Avg. Price	**Marketer Avg. Price**	**LDC Avg. Price**	**Marketer Avg. Price**
D.C.	$15.08	**$13.38**	$16.11	**$13.41**
Florida	$13.47	**$12.76**	**$14.40**	$14.59
Georgia	**$12.76**	$13.32	**$14.12**	$14.34
Maryland	$13.28	**$11.90**	$14.34	**$12.63**
Michigan	$10.38	**$9.41**	$11.20	**$9.71**
New York	$12.55	**$11.16**	$12.89	**$12.84**
Ohio	$12.31	**$11.47**	$13.78	**$12.33**
Pennsylvania	$13.58	**$11.63**	$14.90	**$13.50**
Virginia	$12.35	**$11.48**	$13.61	**$12.05**

V. Further "Unbundling" is Required To Expand Gas Transportation.

It is time for Kentucky to take the next step in natural gas unbundling. The task of fair unbundling is simply fair assignment or allocation of costs among rate classes. Stand Energy submits that each class of customers (Industrial, Commercial and Residential) should be

responsible to pay for the costs incurred to serve that customer class. "*The fact that transportation service can replace sales service, thereby resulting in increased gas costs for remaining sales customers, points out the need for proper assignment of costs in establishing what services are made available (by the LDC) and what their rates will be.*" *An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers* (Ky. PSC May 29, 1987 at p. 52). This statement about the "proper assignment of costs" in unbundling of gas costs was true 23 years ago and it is still true today.

The fair apportionment of costs among classes can be accomplished by utilizing a class cost of service study. As described by Witnesses Don Mason, Mark Ward, and Howard Petrocoff - a collaborative process involving Commission Staff, Utilities, Marketers and Customers worked very well in Ohio to accomplish the best result for all concerned. It is up to the Kentucky Commission to decide how to implement modifications and improvements to gas transportation. However, a collaborative process will most likely have more success than an adversarial process.

ARGUMENT

I. Expansion of Existing Gas Transportation Programs.

Stand Energy's position in this administrative case was unique. Stand Energy was the only party to the proceedings advocating for the modification and expansion of existing Kentucky gas utility transportation programs to allow smaller industrial, commercial, educational and governmental gas customers the ability to purchase their natural gas supply in a competitive market. Stand Energy knows from 25 years experience in serving these types of customers that the ability to "control the natural gas budget" through the use of hedging and natural gas storage programs, is often times as important to this class of customers as the ultimate price paid for the

natural gas. The commercial, industrial, educational and governmental class of natural gas customers is more sophisticated in business and contract matters than the average residential customer and therefore deserves the opportunity to try to save money in a competitive gas market and to control their natural gas budget. All of these natural gas products and services are offered by gas marketers. None are available from a utility, nor should they be, as is discussed more fully later in this Brief.

II. Kentucky Must Remove Barriers To Expanded Gas Transportation

The time is right in Kentucky to remove barriers to expanded gas transportation. These barriers include high daily usage requirements and/or high annual thresholds need to qualify for gas transportation. Tariffs that require a customer to use gas every day of the year exclude the majority of "heat load" customers such as schools and government facilities, which use more gas during heating season and often no gas during the Summer. Penalizing customers who switch from sales service (from the utility) to transportation service (from a supplier) with high monthly administrative charges has excluded thousands of Industrial, Commercial, Educational and Governmental customers from the use of gas transportation. For example, Mr. Mitch Martin, Witness for Duke Energy testified that the same staff, department and utility facilities are used to administer both the Duke Ohio and the Duke Kentucky gas transportation programs yet they have significantly different administration charges. (10/19/20 Testimony of Mitch Martin, 2:46:06 p.m. *et. seq.*).

A. All Market Participants Must Be Subject to the Same "Level Playing Field" Rules. Existing Affiliate Rules Must Be Enforced

In order to protect and promote that competition which presently exists in Kentucky, it is necessary to enforce existing rules which attempt to control the behavior of "nonregulated affiliates." In Kentucky, there are presently two nonregulated affiliates of natural gas utilities performing gas marketing within the Kentucky service territory of the regulated utility and other states as well, in the case of Atmos Energy Marketing. Delta Resources is the nonregulated subsidiary of Delta Natural Gas and Atmos Energy Marketing is the nonregulated subsidiary of Atmos Energy Corporation.

Testimony at the hearing disclosed what appear to be several obvious violations of the existing affiliate rules in Kentucky, codified at KRS. 278.2213. (A copy of KRS 278.2213 is attached hereto as **Appendix 3)** Relevant provisions of KRS 278.2213 are set out below in italics followed by discussion of relevant testimony:

(4) *All utility company employees engaged in the merchant function shall abide by all standards promulgated by applicable FERC orders and regulations.*

Glenn Jennings, CEO of Delta Natural Gas testified that Delta Resources, the nonregulated utility does not have any employees. All marketing functions are carried out by employees of the regulated utility - a clear violation of several provisions of the statute. (10/19/20 Testimony of Glenn Jennings, 2:19:50 p.m. *et. seq.*).

(5) *No utility company employee shall share any confidential customer information with the utility's affiliates unless the customer has consented in writing, or the information is publicly available or is simultaneously made publicly available.*

The same employees are performing both the utility and marketing functions at Delta. These employees cannot help but to "share" confidential customer information with the utility's affiliate with every single affiliate transaction they perform because they same people perform

both functions. The customer's right to confidentiality and to benefit from competition is defeated by Delta's lack of separation of the utility and marketing functions. ***Id***.

(6) *All dealings between a utility and a nonregulated affiliate shall be at arms length.*

Again, with the same Delta Natural Gas employees performing both the utility and marketing functions, it is impossible to have an "arms length" transaction. ***Id***.

(10) *Except as provided in subsection (5) of this section, if a utility is engaged in a nonregulated activity, marketing employees for the nonregulated activity shall not have access to the customer information provided to the utility when the customer places an order for regulated service.*

Delta Natural Gas is in clear violation of this provision by not having separate marketing employees. Mr. Jennings testified that the same employees buy gas for both the regulated and nonregulated companies. ***Id.***

(11) *A utility shall not provide any type of undue preferential treatment to a nonregulated affiliate to the detriment of a competitor.*

Delta Natural Gas cannot help but to bestow an advantage on Delta Resources when the same employees are performing both the utility and marketing functions. Likewise, Atmos Energy Marketing receives a huge advantage from Atmos Energy Corporation through the use of the Atmos logo and associated Atmos Brand without any disclaimer as required by Kentucky law. By not indicating that Atmos Energy Marketing is nonregulated on every single page of the website where the Atmos logo appears is a violation of KRS 278.2213 (13), set out below.

(13) *The utility's name, trademark, brand or logo shall not be used by a nonregulated affiliate in any type of visual or audio media without a disclaimer. The commission shall develop specifications for the disclaimer. The disclaimer shall be approved by the commission prior to use in any advertisement by the utility's affiliate.*

Mr. Dosker was questioned under cross-examination by PSC Staff regarding other violations of existing codes of marketer conduct. Mr. Dosker testified (and the Commission can

also take Administrative Notice of the fact), that Atmos Energy Marketing is utilizing the "Atmos" Corporate Name and Logo on every single page of "Atmosenergymarketing.com", its website. (10/20/20 Testimony of John Dosker, 2:32:54 p.m. *et. seq*.). Further, every single employee identified on the Atmos Energy Marketing website as a marketing employee - has an e-mail address with the extension of (ending with) "Atmos.com" instead of AtmosEnergyMarketing.com or some other name to distinguish it from the Atmos utility. There is no legitimate reason that a business the size of Atmos Energy Marketing, operating in multiple states, should not be required to maintain separate e-mail addresses from the regulated utility. That would appear to be the letter and the intent of existing Kentucky law.

B. All Marketers Must Pay School Taxes and Franchise Taxes

Several utilities in this case suggested in their pre-filed direct testimony that Kentucky collections for school taxes and franchise taxes might decrease as a result of retail competition. Stand Energy agrees that Kentucky should not suffer any loss of tax revenues because of modifications to gas transportation programs. For this reason, Stand Energy affirmatively states that Stand Energy does not owe any Kentucky franchise taxes and Stand Energy is paying every dollar of Utility Gross Receipts License Tax (school tax) that it owes on its Kentucky gas sales.

In contrast, Mr. Mark Martin, CEO of Atmos Energy Corporation, under cross-examination could not state affirmatively whether Atmos Energy Marketing was paying the 3% gross receipts school tax (Utilities Gross Receipts License Tax) on natural gas it sells in Kentucky nor did Mr. Martin provide affirmation or confirmation of that question in Atmos' Post-Hearing Data Requests. Atmos Energy Marketing engaged in "regulatory evasion" by being voluntarily absent from these proceedings "investigating retail natural gas competition".

The Kentucky PSC should hold the regulated gas company, Atmos Energy Corporation, responsible and require a written response to that legitimate and relevant question.

It is entirely possible that the overwhelming majority of Atmos Energy Marketing customers are so large as to qualify for an "Energy Direct Pay Certificate" which streamlines tax filings with the Kentucky Department of Revenue. If not however, and if Atmos Energy Marketing is not collecting and remitting the School Tax in Kentucky, then Atmos Energy Marketing is depriving Kentucky school children of financial resources to which they are legally entitled.

These examples clearly show the Kentucky Public Service Commission needs to monitor the activities of Atmos Energy Marketing and Delta Resources, the nonregulated marketing arms of Atmos and Delta, much more closely to assure that all existing laws and regulations applicable to retail natural gas competition are enforced; to assure an equal playing field for all gas suppliers; to support what competition that does presently exist in Kentucky for the sale of natural gas, and; to ensure that all applicable Kentucky school and franchise taxes are being collected and remitted.

C. A Marketer Code of Conduct Should Apply to All Market Participants, And a Supplier Code of Conduct Should Apply To Nonregulated Affiliates.

Attached hereto and incorporated herein as **Appendix 4 and 5** are the Columbia Gas of Kentucky, Inc. "Code of Conduct" and "Standards of Conduct" from a Columbia filed tariff. Stand Energy believes that the Columbia "Code of Conduct" is an excellent example of the type of rules the PSC should adopt for all marketers in Kentucky. Likewise, the Columbia "Standards of Conduct" are an excellent example of rules that should apply to nonregulated affiliates. Stand Energy continues to believe that the most competition in Kentucky would result from prohibiting all nonregulated affiliates from doing business in the service territory of a

parent or related company. In the absence of complete prohibition of related marketing companies, implementation and enforcement of adequate Standards of Conduct against Atmos Energy Marketing and Delta Resources would be an improvement over current practices.

D. Kentucky School Energy Managers Project ("SEMP")

Although there was no testimony on this subject, the Commission can take Administrative Notice of Acts of the Kentucky Legislature. The Kentucky General Assembly passed House Bill 2 in 2008 which requires school districts to respond to rising energy costs by focusing on the management of its various uses of energy. The bill was codified into law as KRS 160.325 and became effective July 15, 2008. Recently, Kentucky has received federal funding for this program under the American Recovery and Reinvestment Act which pays for an "energy manager" for each Kentucky public school district. Attached hereto as **Appendix 6** is a copy of a Herald-Leader Newspaper Article from July 8, 2010 announcing "***School districts use stimulus dollar to hire energy managers.***" These energy managers are currently developing energy management plans to present to their respective Boards of Education. Each Kentucky utility could develop a gas transportation program to meet the needs of schools in conjunction with the Kentucky "SEMP" Program. Because Schools and Government Facilities are both "heat load" and also both "taxpayer funded" facilities, it would make sense to include Government facilities in each expanded utility transportation program as well. Now is the time for the Public Service Commission to coordinate with other branches of Kentucky government to modify energy programs.

III. There is a Lack Of Competition in the Kentucky Natural Gas Market

"Market Power" is the power that a business has in a relevant market in the absence of effective competitive constraints in that market. A business usually has market power if it controls a large portion of the market. Market power gives businesses the ability to engage in unilateral anti-competitive behaviors such as predatory pricing and the creation of overcapacity or other barriers to entry into the market. The key to market power is to preclude competition through barriers to entry. The government can create additional barriers to entry such as awarding a "franchise" or monopoly power in a utility's service territory. This dominance makes it very difficult for other businesses to enter the market and compete. In economic analysis, ratios and percentages are the most common measures of market power.

Mark Martin's testimony (10/19/20 Testimony of Mark Martin, 10:38:37 p.m. *et. seq*.), confirmed that Atmos Energy Corporation has 217 transportation customers of which 170 (78%) are served by Atmos' nonregulated company, Atmos Energy Marketing. Further, 60% of all gas sold by Atmos is to Industrial customers. Stand Energy asked Atmos Energy Corporation in Data Request 1.1 whether the cost to deliver gas to a transportation customer is the same as the cost to deliver the gas to a sales customer. The Atmos Response: "*The company does not believe that there is any delivery cost difference in transporting gas for transportation customers versus sales customers*."

Mr. Glenn Jennings testified (10/19/20 Testimony of Glenn Jennings, 10:38:37 p.m. *et. seq*.), and confirmed that Delta has 53 transportation customers of which 31 are served by Delta Resources (58%) and that Delta Resources delivers 36% of total Delta system deliveries which means that more than 1/3 of the system sales are currently nonregulated. Stand Energy asked Delta Natural Gas in Data Request 1.1 whether the cost to deliver gas to a transportation

customer is the same as the cost to deliver the gas to a sales customer. The Delta Response: "The on-system base transportation rate is the same as the base rate for customers whether they have gas transported or not."

Mr. Clay Murphy testified for LG&E in pre-filed Direct Testimony including Page 14, line 5, "Consequently, large volume transportation programs can be considerably less burdensome in terms of cost and risk than the smaller volume transportation programs . . ." and Page 4, lines 15-19 where he expresses the opinion that "less consumer protections are required for large volume customers." (emphasis added). LG&E responded to Stand Energy Data Request #1-9(A) & 1-9(B) that there are no public or private schools using gas transportation on the LG&E system and only four (4) government facilities, classified as public authorities, who use gas transportation.

IV. Savings Realized by Stand Energy Customers.

Stand Energy presented spreadsheets, invoices and testimony demonstrating significant financial savings that have been realized by the Commonwealth of Kentucky both in their large administration offices in Frankfort and the State Reformatory in La Grange Kentucky. In total the savings for the Commonwealth of Kentucky (and by extension - the Kentucky taxpayer) amounts to close to Two Million (**$2,000,000.00**) Dollars. Additionally, Stand provided similar evidence of savings for a large motel complex behind LG&E (savings of **$22,714.00**) realized from 7/05 to 5/10), a large privately owned industrial customer behind Duke Kentucky (savings of **$169,806.54** realized from 11/06 - 8/10), a small commercial customer also behind Duke Kentucky territory (savings of **$11,650** realized from 1/05 - 8/10) and finally an industrial facility, Stand Energy's only customer behind Delta Gas (savings of **$89,088.48** realized from 1/05 - 8/10).

No utility, marketer, other party, or PSC Staff member rebutted Stand Energy's testimony or evidence on customer natural gas savings.

Only LG&E witness Clay Murphy, claimed that the savings reported by the large motel complex would have been reduced by some unstated dollar amount by LG&E's OFO (operational flow order) charges. Because OFO charges are assessed against the customer and the marketer is not provided a copy by LG&E, Stand Energy has no way of substantiating Mr. Murphy's claim. Furthermore, because Mr. Murphy did not provide the specific dollar amount of these alleged OFO charges against the motel, none of Stand Energy's evidence of customer savings has been rebutted. Clearly, Stand Energy has proven the potential for industrial, commercial, educational or governmental customers to save significant amounts of money on natural gas costs (or to control a natural gas budget) by participating in a gas transportation program. Kentucky's Businesses, Schools and Government entities that cannot currently transport natural gas, deserve the chance to be allowed to decide what is in their own best interests regarding natural gas transportation.

V. Promote the Use of Kentucky Produced Gas and Related Job Creation.

Kentucky producers are within the geologic footprint of "Devonian Shale" which has significant potential for drilling and natural gas production. Because most economists have stated that personal and small business spending will be required to pull the national economy from recession, and with the prospect of new jobs with small companies across the country related to natural gas, - - Kentucky needs to be a national leader in promoting the production of natural gas. None of the utilities in this case reported utilizing more than 3% of their total system deliveries from locally produced gas!

Nevertheless, Stand Energy has been criticized in this case by various parties for suggesting that expanding the purchase of Kentucky produced natural gas would increase Kentucky tax revenues. In support of this position Stand Energy cites to the final Order in Administrative Case 297 from 1987, "*End-users who can arrange for its own supply of lower cost natural gas should be allowed access to the existing distribution network. This enhances competition for the acquisition of natural gas and in accord with KRS 278.507 may facilitate greater use of natural gas produced in Kentucky.*" (*An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers* (Ky. PSC May 29, 1987) at p. 53).

VI. Fixed Price Options From Utilities Would Stifle Natural Gas Competition.

The gas transportation products and services offered by marketers should not be allowed to be offered by regulated utilities because such offerings by utilities would destroy existing competition and prevent the development of any further competition. Attempts by utilities to mirror products and services currently offered by marketers should not be allowed. Because the utilities are not required to follow their own transportation tariff terms and conditions, marketers and gas suppliers would not be able to compete with offering utilities because the utility and marketer would be subject to different rules. Eventually, competition is destroyed and the utility is the only entity left from whom the customer can purchase their natural gas.

In term of price volatility, as natural gas has evolved into a commodity, the price swings have become larger and more volatile. Because marketers currently offer products and services to help industrial, commercial, educational and governmental customers manage and control their gas costs, including fixed price contracts, financial hedges, etc., the correct solution is to expand gas transportation options not to allow fixed price offerings by utilities. This is a critical distinction between transportation programs and CHOICE programs. Customers in

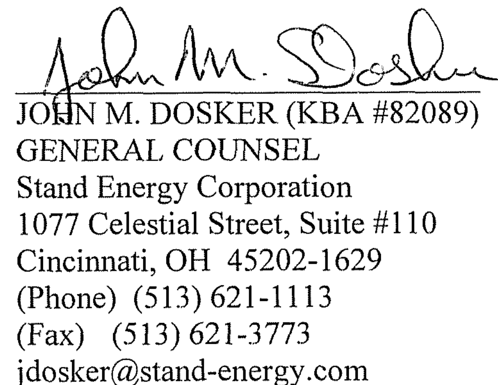
transportation programs can initiate a partial lock of prices or needed gas volumes - part of a portfolio approach to gas buying. This portfolio approach is not possible under any CHOICE program. CHOICE contracts are either all fixed or all variable pricing.

CONCLUSION

The enabling legislation from the Kentucky Legislature directed this proceeding to evaluate competition in retail natural gas programs and ensure "price transparency and to create purchasing options for consumers, and with the understanding that competition is reliant upon properly structured markets supported by both regulated and competitive business entities". The record in this case is clear that gas transportation has been good for Kentucky's Industrial, Commercial, Educational and Governmental customers who have been fortunate enough to take advantage of the program. Real and substantial savings can be realized vs. the utility sales rate.

It is time for Kentucky to expand existing gas transportation programs by lowering the volumetric thresholds required to qualify. Programs to allow competitive natural gas service to schools and federal, state and local governmental facilities should all be developed. Consumer protections for both marketers and nonregulated gas marketing companies must be developed and enforced if Kentucky is to remain economically competitive in the 21st century.

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 I served true and accurate copies of the Post-Hearing Brief of Stand Energy Corporation on this 1st day of November, 2010 by regular U.S. Mail upon the following parties of record and their representatives or counsel:

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.
Lawrence W. Cook, Esq.
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204
Assistant Attorneys General
Utility & Rate Intervention Division

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

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

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

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
Counsel for Delta Natural Gas Co. Inc.

Mark R. Hutchinson
Wilson, Hutchinson, Poteat & Littlepage
611 Frederica Street
Owensboro, Kentucky 42301
Counsel For Atmos Energy Corporation

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

Holly Rachel Smith, Esq.
Hitt Business Center
3803 Rectortown Road
Marshall, VA 20115
Counsel for Walmart

JOHN M. DOSKER

APPENDICES

Appendix 1 Administrative Case No 297, *An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers* (Ky. PSC May 29, 1987) Pages 47-55.

Appendix 2 Energy Information Agency, Natural Gas Annual Report, Table 24, *Average Price of Natural Gas Delivered to Residential and Commercial Sector Consumers by Local Distribution and Marketers in Selected States, 2007 - 2008.*

Appendix 3 Complete Copy of KRS 278.2213.

Appendix 4 "Code of Conduct" from Columbia Gas of Kentucky filed tariff, First Revised Sheet No. 37, Superseding Original Sheet No. 37, P.S.C. Ky. No. 5.

Appendix 5 "Standards of Conduct" from Columbia Gas of Kentucky filed tariff, First Revised Sheet 37i, Superseding Original Sheet no. 37i, P.S.C. Ky. No. 5.

Appendix 6 July 7, 2010, Lexington Herald-Leader Article, "*School districts use stimulus dollars to hire energy managers*"

APPENDIX 1

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE IMPACT OF)
FEDERAL POLICY ON NATURAL GAS) ADMINISTRATIVE
TO KENTUCKY CONSUMERS AND SUPPLIERS) CASE NO. 297

INDEX

PROCEDURAL BACKGROUND 1

CURRENT STATUS 3

DEFINITIONS 5

OBJECTIVES 7

Unique Features of the Natural Gas Industry 11

Federal Regulatory History 12

Transition, 1982-1985 14

PSC JURISDICTION 17

Subsidiary Operations 21

COMPETITION 21

ACQUISITION PRACTICES 24

Incentives in Gas Acquisition 31

UNBUNDLING OF SERVICES AND RATES 33

COST OF SERVICE 38

Submission and Selection of Cost-of-Service Studies 43

Selection of Cost-of-Service Methodology 45

TRANSPORTATION 47

Burden of Proof 47

Priority of Service 49

Tariffs 52

SERVICE AREAS 55

BYPASS 56

ORDERS 68

generic approach. KIUC believes the coincident demand or peak responsibility method explained in Gas Rate Fundamentals is most appropriate.[98]

The Commission finds that there are significant differences among Class A LDCs that merit case-by-case decisions on cost-of-service methodologies. The Commission is of the opinion that each Class A LDC should schedule an informal conference early in the development of its cost-of-service study. The Commission staff, as well as intervenors from the company's last rate case, should be invited to participate.

As several commenters stated, there are a variety of techniques available for cost-of-service studies. The Commission acknowledges that there is not a single acceptable method to prepare such a study. Each LDC is encouraged to choose the method it finds appropriate.

The Commission is concerned about cost-of-service methodologies that place all the emphasis on maximum design day as a way to allocate costs. This method may result in an inappropriate shift of costs to the residential customer class. For this reason, cost-of-service methodologies should give some consideration to volume of use.

TRANSPORTATION

Burden of Proof

In accord with KRS 278.490 and KRS 278.505, transportation should be contingent only on the availability of adequate capacity

---

98 T.E., page 197.

to deliver the gas. As long as utilities have unused capacity in their systems, transportation will help maximize the efficient use of those facilities.

In this case, the Commission asked the question of who should bear the burden of proof when a request for transportation service is made. GTE,[99] KIUC,[100] Southern,[101] and Stand Energy[102] support placing the burden of proof on utilities to show they cannot transport natural gas upon request. According to Southern, there would be no practical or theoretical way for a customer to prove that the utility's system had transportation capacity which the utility denied it had; conversely, the utility could easily demonstrate such lack of capacity if it exists.[103]

LG&E believes the burden of proof should fall on the one proposing the transportation.[104] WKG is neutral on shifting the burden of proof.[105] In WKG's opinion, if a regulated utility holds itself out to be an open access transporter, the proper

---

[99] GTE response to Commission's Order dated January 17, 1986, Question No. 12d, Page 6.

[100] KIUC response to Commission's Order dated January 17, 1986, Question No. 12d, Page 5.

[101] Southern response to Commission's Order dated January 17, 1986, Question No. 12, page 13.

[102] Stand Energy response to Commission's Order dated January 17, 1986, Question No. 12.

[103] _Ibid_.

[104] LG&E response to Commission's Order dated January 17, 1986, Question No. 12d, page 5.

[105] WKG response to Commission's Order dated January 17, 1986, Question No. 12d, pages 12 and 13.

forum is already in place to require the utility to show cause before the Commission why it cannot transport a particular supply of natural gas.[106]

The Commission is of the opinion that the LDC is best able to determine the capacity of its system. The burden of proof should rest on the LDC to show why it cannot transport gas. This responsibility will require the LDC to disclose distribution capacity information to avoid duplication of facilities. While this provision avoids undue restriction of large volume end-users access to cheaper sources of natural gas, it allows competition to develop when surplus capacity on the LDC is not available.

Priority of Service

In its January 17, 1986, Order the Commission asked, "What should be the priority on allocating transportation and supply capacity of the LDC among its customers?" Columbia responded, "(t)he protection of high-priority gas consumers and the integrity of their supplies on either a peak or annual basis must be assured."[107] Delta assigned top priority to full-service loads supplied by the LDC, followed in descending priority by interruptible LDC loads, firm transportation and interruptible transportation.[108] WKG proposed an extensive priority arrangement

---

106 Ibid.

107 Columbia response to Commission's Order dated January 17, 1986, Question No. 13, page 12.

108 Delta response to Commission's Order dated January 17, 1986, Question No. 13, page 7.

headed by sales customers under the LDCs' historic curtailment categories (i.e., preference to firm and high priority users).[109]

LG&E simply stated that supply and transportation capacity should always be allocated such that human needs requirements are satisfied before all other requirements.[110] GTE also recognized the human element in its comment that priority within a class during a gas shortage should be based on social needs, as are the existing allocation categories, and not on transportation versus retail.[111]

KIUC[112] and Xebec[113] shared the opinion that all types of firm service should receive priority over all types of interruptible service.

In its Draft Order, the Commission proposed that firm service should have priority over interruptible service within the guidelines of current curtailment tariffs. Comments filed by KIUC in response to the Draft Order supported the Commission's proposal.[114]

---

[109] WKG response to Commission's Order dated January 17, 1986, Question No. 13, page 16.

[110] LG&E response to Commission's Order dated January 17, 1986, Question No. 13, page 6.

[111] GTE response to Commission's Order dated January 17, 1986, Question No. 13, page 8.

[112] KIUC response to Commission's Order dated January 17, 1986, Question No. 13, page 6.

[113] Xebec response to Commission's Order dated January 17, 1986, Question No. 13, page 3.

[114] KIUC response to Commission's Order dated September 30, 1986, page 2.

During the subsequent hearing on the Draft Order, GTE[115] and Columbia[116] testified that there is no difference between firm sales and firm transportation in terms of quality of service received; therefore, there should be no difference in curtailment priority between the two. Delta, in its testimony, sought to define two types of curtailment and distinguish curtailment priorities depending on whether the need for curtailment arose because of facility constraints or supply shortages.[117]

The Commission is of the opinion that a distinction may be made in reasons for curtailment. In general, the Commission finds that firm sales and firm transportation should always be awarded a higher priority than interruptible sales and interruptible transportation.

It is reasonable that when a supply shortage develops, the one using that supply should be curtailed. If the shortage is in sales system gas supply, then the sales customers should be curtailed in order of priority given in approved curtailment procedures. If the supply shortage is in gas which the LDC merely transports, then the transportation customer or customers whose supply is diminished should be curtailed.

Should the need for curtailment arise because of facility constraints, firm customers--be they sales or transportation--should have priority over interruptible customers. Within this

115 T.E., page 179.

116 T.E., page 149.

117 T.E., pages 44-46.

division, priority should be assigned as in the company's approved curtailment procedures.

A customer has the option to choose among various service offerings and should receive the priority of service for which he is willing to pay the associated charges. The Commission is of the opinion that the distinction in curtailment priorities should be consistent with the risk one incurs in making purchasing decisions. But in all cases, human needs must take priority.

Tariffs

The fact that transportation service can replace sales service, thereby resulting in increased gas costs for remaining sales customers, points out the need for proper assignment of costs in establishing what services are made available and what their rates will be. The Commission has been moving gradually toward unbundling of services. The rates for transportation service on the five Class A LDCs are generally set at the gross margin. Therefore, the LDC has an opportunity to obtain a contribution to fixed costs. The Commission has allowed the transportation rate to be flexed up or down to compete with alternate fuels.

The current transportation tariffs of Columbia and ULH&P limit availability by requiring an alternate fuel capability except by special contract. The tariffs of Delta, LG&E, and WKG do not contain this requirement. The object of the Commission is to encourage use of the LDCs' system by maintaining nondiscriminatory open transportation tariffs. In addition, LDCs may make available transportation tariffs to compete with alternate fuels,

subject to the Commission's approval, on a case-by-case basis. End-users who can arrange for its own supply of lower cost natural gas should be allowed access to the existing distribution network. This enhances competition for the acquisition of natural gas and in accord with KRS 278.507, may facilitate greater use of natural gas produced in Kentucky.

The Commission finds that LDCs should offer transportation on a nondiscriminatory basis. This means that transportation will be available to any end-user who can arrange for its own supply of natural gas unless the capacity simply does not exist. The Commission is aware that problems do occur with load balancing and accounting for receipt and delivery of natural gas in transportation. Thus, availability may be subject to a minimum volume requirement that will address these concerns.

The Commission finds that guidelines are appropriate to assist the natural gas utilities in revising transportation tariffs. The Commission will examine proposed transportation tariffs on a case-by-case basis. Utilities may be allowed to deviate from these guidelines based upon the circumstances of their service areas and customer needs. While the Commission is requiring all Class A LDCs and other intrastate transporters of natural gas to file a nondiscriminatory transportation tariff, its precise form and conditions may vary.

Transportation service should be provided without discrimination as to type and location of customer. All utilities should offer nondiscriminatory transportation, subject to available capacity, to any customer who requests it on a first come, first

served basis. It shall be presumed that capacity is available on the utility's system. The burden of proof shall be on the utility to prove that capacity is not available.

For each transportation service a fixed rate shall be established which reflects an appropriate assignment of costs, considering both variable costs and fixed costs of the system.

Concerning the Commission's questions at the hearing on January 7, 1987, the Class A LDCs all supported the allowance of transportation tariffs designed to compete with alternate fuels. Such a flex tariff would include provisions to flex up or down from a fixed charge to compete with alternate fuels. The Commission is of the opinion that utilities may offer a flexible transportation rate to meet alternate fuel competition with the understanding that the utility must document and fully support the necessity to change the fixed rate in its next general rate case. In instances where the transportation rate is flexed from the fixed rate, the utility should notify the Commission. Further, the Commission will not allow flexing to subsidize competition by reducing transportation rates below cost.

At the discretion of the LDC a contract may be required for transportation service. The availability of transportation service may have a minimum volume requirement, subject to the Commission's approval, to help balance the utility's planning and contractual needs. The volume level should be determined by each utility and included in its tariff.

The location of entry points necessary for the transportation of gas through a utility's system should be determined by that

transporting utility. The burden of proof shall be on the utility to demonstrate why a connection cannot be made at a specific location. Any construction necessary to accomplish each connection should be conducted or supervised by the transporting utility. All connections should be made at the expense of the one requesting the service. The transporting utility should own and maintain each connection made with it.

An LDC maintains no obligation to provide sales service to a transportation customer who fails to purchase standby sales service or some other means of reserving capacity. Transportation customers retain no entitlements to previous gas purchases beyond contract provisions.

SERVICE AREAS

Gas utility tariffs generally list the communities which the utility serves. The Commission finds it undesirable to designate a precise geographical area for each utility's service area. Although the Commission will not establish maps for natural gas service areas, any user of natural gas is assumed to be a customer of the distribution company serving other residential, commercial, and industrial customers in the vicinity. Likewise, any new customer would be presumed a customer of the LDC. This will allow the LDC first opportunity to serve customers and promote use of the LDC's facilities, yet the territories will remain open to provide access to competition.

Some of the parties suggested that this arrangement is unlawful delegation of the Commission's authority. However, the Commission is merely presuming that the LDC has the ability to

APPENDIX 2

Table 24. Average Price of Natural Gas Delivered to Residential and Commercial Sector Consumers by Local Distribution and Marketers in Selected States, 2007-2008
(Nominal Dollars per Thousand Cubic Feet)

State	Residential							
	2007				2008			
	Local Distribution Company Average Price[a]	Marketer Average Price[b]	Combined Average Price[c]	Percent Sold by Local Distribution Company	Local Distribution Company Average Price[a]	Marketer Average Price[b]	Combined Average Price[c]	Percent Sold by Local Distribution Company
Florida	20.55	23.23	20.61	97.79	21.11	25.00	21.19	97.78
Georgia	14.64	18.02	17.53	14.35	15.46	18.73	18.26	14.43
Maryland	14.95	16.26	15.17	83.26	15.98	16.54	16.08	83.15
New Jersey	14.45	16.50	14.48	98.35	15.15	18.07	15.21	97.98
New York	R15.79	15.46	R15.73	R82.34	16.79	16.57	16.75	80.64
Ohio	13.05	13.95	13.47	53.01	14.60	14.45	14.52	52.47
Pennsylvania	14.56	15.77	14.66	92.01	16.14	17.05	16.22	91.82
Virginia	15.33	16.28	15.42	90.29	16.25	15.67	16.20	90.72

State	Commercial							
	2007				2008			
	Local Distribution Company Average Price[a]	Marketer Average Price[b]	Combined Average Price[c]	Percent Sold by Local Distribution Company	Local Distribution Company Average Price[a]	Marketer Average Price[b]	Combined Average Price[c]	Percent Sold by Local Distribution Company
District of Columbia	15.08	13.38	R13.69	R18.62	16.11	13.41	13.89	17.93
Florida	13.47	12.76	13.07	43.63	14.40	14.59	14.51	42.94
Georgia	R12.76	13.32	R13.21	R19.81	14.12	14.34	14.30	19.34
Maryland	13.28	11.90	12.30	29.12	14.34	12.63	13.14	29.63
Michigan	10.38	9.41	10.02	62.51	11.20	9.71	10.66	63.57
New York	R12.55	R11.16	R11.82	R47.12	12.89	12.84	12.86	45.76
Ohio	12.31	11.47	11.74	R32.16	13.78	12.33	12.79	31.14
Pennsylvania	13.58	11.63	12.77	R58.52	14.90	13.50	14.30	56.70
Virginia	12.35	11.48	11.99	58.84	13.61	12.05	12.98	59.14

[a] Price derived from Form EIA-176, "Annual Report of Natural and Supplemental Gas Supply and Disposition."
[b] Price derived from Form EIA-910, "Monthly Natural Gas Marketer Survey."
[c] Prices combined by weighting percent sold by local distribution companies versus percent sold by marketers according to volumes reported on Form EIA-176.
R Revised data.

Note: Prices represent the annual-average retail price for volumes delivered to residential and commercial customers by marketers who report on Form EIA-910, "Monthly Natural Gas Marketer Survey," and local distribution companies who report on Form EIA-176, "Annual Report of Natural and Supplemental Gas Supply and Disposition." Both sets of prices include the cost of the gas commodity/supply and all transportation and delivery charges. Since the prices reflect each State's aggregate of multiple local distribution companies and marketers, a comparison of the aggregate prices may not represent the realized price savings that an individual customer might have obtained. Localized tariff rates, distinct contract/pricing options, and contract timing may affect the price differential between marketers and licensed distribution companies. Additionally, the 2005 hurricane season may have affected future contract offerings beginning in 2006 as prices rose sharply during that period.

Sources: Energy Information Administration (EIA), Form EIA-176, "Annual Report of Natural and Supplemental Gas Supply and Disposition"; and Form EIA-910, "Monthly Natural Gas Marketer Survey."

PSC EXHIBIT 1

APPENDIX 3

278.2213 Separate recordkeeping for utility and affiliate -- Prohibited business practices -- Confidentiality of information -- Notice of service available from competitor.

The provisions of this section shall govern a public utility company's activities related to the sharing of information, databases, and resources between its employees or an affiliate involved in the marketing or the provision of nonregulated activities and its employees or an affiliate involved in the provision of regulated activities.

(1) A utility and its affiliate shall be separate corporate entities and maintain separate books and records. If a utility and nonregulated affiliate have common officers, directors, or employees, the fees, compensation, and expenses of the individuals involved shall be subject to the cost allocation requirements set forth in KRS 278.2203 and 278.2207. Any utility that provides nonregulated activities shall separately account for all investments, revenues, and expenses in accordance with its filed cost allocation manual.

(2) A utility shall not provide advertising space in its billing envelope to its affiliates or for its nonregulated activities unless it offers the same to competing service providers on the same terms it provides to its affiliates. This subsection applies to nonregulated activities only.

(3) A utility shall not attempt to persuade customers to do business with its affiliates by offering rebates or discounts on tariffed services.

(4) All utility company employees engaged in the merchant function shall abide by all standards promulgated by applicable FERC orders and regulations.

(5) No utility employee shall share any confidential customer information with the utility's affiliates unless the customer has consented in writing, or the information is publicly available or is simultaneously made publicly available.

(6) All dealings between a utility and a nonregulated affiliate shall be at arm's length.

(7) Employees transferring from the utility to an affiliate shall not disclose to the affiliate confidential information or take with them any competitively sensitive materials.

(8) Neither a utility nor its employees or agents shall solicit business on behalf of an affiliate or for its nonutility services.

(9) A utility that carries out any research and development or joint marketing and promotion with its affiliate for its nonregulated activities shall be subject to the cost allocation requirements set forth in KRS 278.2203.

(10) Except as provided in subsection (5) of this section, if a utility is engaged in a nonregulated activity, marketing employees for the nonregulated activity shall not have access to the customer information provided to the utility when the customer places an order for regulated service.

(11) A utility shall not provide any type of undue preferential treatment to a nonregulated affiliate to the detriment of a competitor.

(12) A utility shall notify the customer that competing suppliers of a nonregulated service exist if:

(a) The utility receives a request for a recommendation from a customer seeking a specific service which is offered by the utility's affiliate or by the utility itself; and

(b) The utility mentions itself or its affiliate when making the recommendation to the customer.

(13) The utility's name, trademark, brand, or logo shall not be used by a nonregulated affiliate in any type of visual or audio media without a disclaimer. The commission shall develop specifications for the disclaimer. The disclaimer shall be approved by the commission prior to use in any advertisement by the utility's affiliate.

(14) A utility shall not enter into any arrangements for financing nonregulated activities through an affiliate that would permit a creditor upon default to have recourse to the assets of the utility.

(15) A utility shall inform the commission of all new nonregulated activities begun by itself or by the utility's affiliate within a time to be set by the commission.

(16) Start-up costs associated with the formation of a nonregulated affiliate shall not be included in the utility's rate base.

(17) The commission may require the utility to file annual reports of information related to affiliate transactions when necessary to monitor compliance with these guidelines.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 511, sec. 8, effective July 14, 2000.

APPENDIX 4

COLUMBIA GAS OF KENTUCKY, INC.

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS
APPLICABLE TO
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

CODE OF CONDUCT

Each Marketer participating in Columbia's Small Volume Gas Transportation Service program shall:

1. Communicate to customers, in clear understandable terms, the customers' rights and responsibilities. This communication shall include: (a) the Marketer's customer service address and telephone number; (b) a statement describing the Marketer's dispute resolution procedures; (c) a statement that the Marketer must provide the customer with thirty (30) days written notice prior to discontinuing service; and (d) notice that the program is subject to ongoing Commission jurisdiction.

2. Provide in writing to customers pricing and payment terms that are clear and understandable. This should include an explanation for the customer to allow them to compare the offer to Columbia's Gas Cost Adjustment rate exclusive of taxes and delivery charges.

3. Accept any Columbia customer eligible for Rate Schedule Small Volume Aggregation Service that seeks to enroll, and offer at least one billing rate available to all eligible customers if Marketer is accepting new/renewed customers.

4. Refrain from engaging in communications or practices with customers which are fraudulent, deceptive, or misleading;

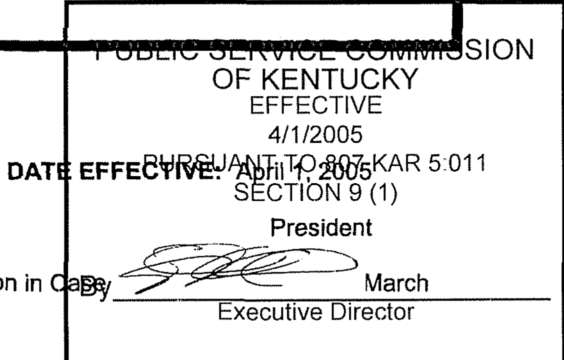
5. Deliver gas to Columbia on a firm basis on behalf of the Marketer's participating customers.

6. Undergo a credit evaluation, at the Marketer's expense, to assure that the Marketer is sufficiently credit-worthy to protect against damages resulting from any failure to deliver gas.

7. Provide customers a "regulatory out" provision in all contracts which allows contracts to be terminated without penalty should the small volume gas transportation program be terminated prior to the end of the contract.

8. Provide Columbia and customers at least thirty (30) days notice prior to the end of the customer contract term of the Marketer's intent to discontinue service to the customer.

9. To the maximum extent possible attempt to resolve disputes between the Marketer and its customers.



DATE OF ISSUE: April 12, 2005 **DATE EFFECTIVE:** April 1, 2005

ISSUED BY: Joseph W. Kelly President

Issued by authority of an Order of the Public Service Commission in Case ... March 29, 2005

COLUMBIA GAS OF KENTUCKY, INC.

GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS
APPLICABLE TO
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)

CODE OF CONDUCT - Continued

10. No less than sixty (60) days and no more than ninety (90) days prior to the expiration of a contract that automatically renews for period of six (6) months or longer, the Marketer shall notify the customer of their right to renew, terminate or renegotiate the contract. Such notice shall include any proposed changes in the terms and conditions of the contract.

If a Marketer fails to deliver gas in accordance with the requirements of the program, Columbia shall have the power, in its sole discretion, to suspend temporarily or terminate such Marketer's participation in the program. If the Marketer is expelled from the program, customers in the Marketer's Aggregation Pool shall revert to Columbia sales service, unless and until said customers join another Marketer Aggregation Pool. Upon termination of a Marketer, Columbia shall notify Marketer's customers of the action and advise said customers that they have been returned to traditional sales service as of a date certain. The customers shall be informed of their opportunity to choose another Marketer and the options for enrollment.

In the event Columbia seeks to suspend or terminate a Marketer from the program, Columbia shall first notify the Marketer of the alleged violations which merit suspension or termination. Such notice shall be in writing and sent ten business days prior to the suspension or termination. Copies of the notice will also be provided to the Commission.

CREDIT WORTHINESS

Marketers will be evaluated to establish credit levels acceptable to Columbia. Marketers not meeting the necessary credit level will be required, at Columbia's option, to provide additional security in the form of an irrevocable letter of credit, cash deposit, and/or appropriate guaranty to be certified.

Marketers are required to provide the following information for evaluation:

1. Most recent audited financial statements;
2. Most recent annual report to shareholders, 10K or 10Q, if applicable;
3. IRS Form 990 (for Non-Profit Corporations), if applicable;
4. List of parent company and affiliates;
5. Names, addresses, and telephone numbers of three (3) trade references; and
6. Names, addresses, and telephone numbers of banking institution contacts.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
4/1/2005
PURSUANT TO 807 KAR 5:011
SECTION 9 (1)

DATE OF ISSUE: April 12, 2005

DATE EFFECTIVE: April 1, 2005

ISSUED BY: Joseph W. Kelly

By
Executive Director

Issued by authority of an Order of the Public Service Commission in Case No. 2004-00462 dated March 29, 2005

APPENDIX 5

COLUMBIA GAS OF KENTUCKY, INC. P.S.C. Ky. No. 5

GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS
APPLICABLE TO
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)

DISPUTE RESOLUTION

Each Marketer shall cooperate with Columbia and the Kentucky Public Service Commission to answer inquires and resolve disputes for customers served under Columbia's Small Volume Gas Transportation Service Rate Schedule. As part of this ongoing cooperation the following is required:

1. Marketer must provide a local or toll-free telephone number for customers to obtain information on their account and a method to resolve disputes with the Marketer. The Marketer shall provide a copy of the method to resolve disputes to Columbia and the Commission along with the name and phone number of a contact person from the Marketer whom the Commission and Columbia may contact concerning customer complaints and who has the authority to resolve complaints.

2. Marketer will, upon request by Columbia or the Commission, provide copies of all informational materials and standard contracts, including updates to these materials if substantially changed. Marketer will also provide copies of individual contracts as needed in order to resolve customer complaints.

3. Each Marketer shall cooperate with Columbia and the Commission to answer inquiries and resolve disputes. If a Marketer fails to negotiate or resolve customer disputes that arise from the customer's contract, complaints may be brought to the Commission through its normal complaint handling procedures.

STANDARDS OF CONDUCT

Columbia will adhere to the following Standards of Conduct for Marketing Affiliates and Internal Merchant Operations:

1. Columbia must apply any tariff provision relating to transportation services in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

2. Columbia must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

3. Columbia may not, through a tariff provision or otherwise, give any Marketer or any Marketer's customers preference in matters, rates, information, or charges relating to transportation service including, but not limited to, scheduling, balancing, metering, storage, standby service or curtailment policy. For purposes of Columbia's program, any ancillary service provided by Columbia that is not tariffed will be priced uniformly for all Marketers and available to all equally.

4. Columbia must process all similar requests for transportation in the same manner and within the same approximate period of time.

DATE OF ISSUE: April 12, 2005 **DATE EFFECTIVE:** April 1, 2005

ISSUED BY: Joseph W. Kelly President

Issued by authority of an Order of the Public Service Commission in Case [illegible] March 29, 2005

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
4/1/2005
PURSUANT TO 807 KAR 5:011
SECTION 9 (1)
By
Executive Director

GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS
APPLICABLE TO
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)

STANDARDS OF CONDUCT – Continued

5. Columbia shall not disclose to anyone other than a Columbia Gas of Kentucky employee any information regarding an existing or proposed gas transportation arrangement, which Columbia receives from: (i) a customer or Marketer, (ii) a potential customer or Marketer, (iii) any agent of such customer or potential customer, or (iv) a Marketer or other entity seeking to supply gas to a customer or potential customer, unless such customer, agent, or Marketer authorizes disclosure of such information in writing.

6. If a customer requests information about Marketers, Columbia should provide a list of all Marketers operating on its system, but shall not endorse any Marketer nor indicate a preference for any Marketer.

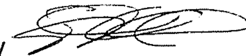
7. Before making customer lists available to any Marketer, Columbia will use electronic mail to provide notice to all Marketers of its intent to make such customer list available. The notice shall describe the date the customer list will be made available, which shall in no case be less than three working days after the date of the notice, and the method and terms under which the customer list will be made available to all Marketers.

8. To the maximum extent practicable, Columbia's operating employees and the operating employees of its marketing affiliate must function independently of each other. This includes complete separation of the regulated utility Company's procurement activities from the affiliated marketing company's procurement activities.

9. Columbia shall not condition or tie its agreements for gas supply or for the release of interstate pipeline capacity to any agreement by a gas supplier, customer or other third party in which its marketing affiliate is involved.

10. Columbia and its marketing affiliate shall keep separate books of accounts and records.

11. Neither Columbia nor its marketing affiliate personnel shall communicate to any customer, marketer or third party the idea that any advantage might accrue for such customer, marketer or third party in the use of Columbia's service as a result of that customer's marketer's or other third party's dealing with its marketing affiliate.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
4/1/2005
PURSUANT TO 807 KAR 5:011
SECTION 9 (1)
By 
Executive Director

COLUMBIA GAS OF KENTUCKY, INC.

**GENERAL TERMS, CONDITIONS, RULE AND REGULATIONS
APPLICABLE TO
SMALL VOLUME AGGREGATION SERVICE RATE SCHEDULE ONLY (Continued)**

STANDARDS OF CONDUCT - Continued

12. Columbia shall establish a complaint procedure for issues concerning compliance with these Standards of Conduct. All complaints, whether written or verbal, shall be referred to the General Counsel of Columbia. The General Counsel, or his/her designee, shall orally acknowledge the complaint within five (5) working days of receipt. The General Counsel, or his/her designee, shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and specific claim. The General Counsel, or his/her designee, shall communicate the results of the preliminary investigation to the complainant in writing within thirty (30) days after the complaint was received including a description of any course of action which was taken. The General Counsel, or his/her designee, shall keep a file with all such complaint statements for a period of not less than three years.

13. Columbia Gas of Kentucky's name or logo will not be used in its marketing affiliate's promotional material, unless the promotional material discloses in plain, legible or audible language, on the first page or at the first point where Columbia Gas of Kentucky's name or logo appears, that its marketing affiliate is not the same company as Columbia Gas of Kentucky.

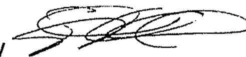
PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
4/1/2005
PURSUANT TO 807 KAR 5:011
SECTION 9 (1)

DATE OF ISSUE: April 12, 2005

DATE EFFECTIVE: April 1, 2005

ISSUED BY: Joseph W. Kelly

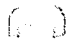
President



By ______________
Executive Director

Issued by authority of an Order of the Public Service Commission in Case ... March 29, 2005

APPENDIX 6



Kentucky.com
LEXINGTON HERALD-LEADER

Back to web version

Thursday, Jul 8, 2010

Posted on Wed, Jul. 07, 2010

School districts use stimulus dollars to hire energy managers

By Jim Warren
jwarren@herald-leader.com

With 92-degree heat pushing up electrical demand, officials from Kentucky school districts met in Lexington Wednesday afternoon to start working on ways to help their schools cut energy costs.

The session opened three days of orientation and training for 35 newly hired school energy managers who will be charged with helping up to 130 Kentucky public school districts use energy more efficiently, and incorporate energy conservation into student curriculums. The effort could reach more than 1,000 schools, officials said.

The energy managers — most of whom are starting work this week — were hired with federal economic stimulus dollars funneled through the Kentucky School Boards Association and the Kentucky Department of Energy Development and Independence.

Some of the managers will work for individual districts, but most will work with multiple districts. Officials hope school districts will continue the effort after the initial $2.5 million in federal funds runs out in two years.

John Davies, state deputy commissioner of energy development and independence, said the program will allow Kentucky to manage school energy use on a comprehensive basis for the first time.

The need is critical, Davies said. He noted that Kentucky schools paid about $183 million to transport, heat, cool and provide lighting for students in 2008, about $93 million more than in 2000. Overall, he said, the state's schools now spend about $272 per student, per year on energy needs.

The Fayette County Public Schools have hired two energy managers: Britney Thompson, a mechanical engineer who will develop ideas for more efficient energy use across the district; and Tresine Logsdon, a former Henry Clay High School science teacher who will focus on including energy in curriculums throughout the county schools.

Thompson said energy-saving efforts probably would focus on simple steps first, such as updating lighting systems or developing policies to limit the amount of time buses spend idling while loading or unloading students at schools.

"There are a lot fairly easy things we could do up front, and more things we could change as we go along," she said. "I'm sure I'll be working with school maintenance directors. The school janitors will be key ... because they really know what is going on in their schools."

Meanwhile, Logsdon said several student programs she used as sponsor of Henry Clay's Green and Healthy Schools initiatives could be used across the Fayette district to get students more involved in energy conservation.

One Henry Clay conservation effort involved installing programming to shut down school computers when they were not needed, she said.

"A big part of what students can do is raise awareness and create habit and culture change," Logsdon said.

Reach Jim Warren at (859) 231-3255 or 1-800-950-6397 Ext. 3255

© 2010 Kentucky.com and wire service sources. All Rights Reserved. http://www.kentucky.com