

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF THE PIPE	)	CASE NO.
REPLACEMENT PROGRAM RIDER OF	)	2012-00136
DELTA NATURAL GAS COMPANY, INC.	)	

ORDER

On June 8, 2012, Stand Energy Corporation (“Stand”) filed a Motion for Full Intervention. Stand states that it has differing commercial goals and direction than Delta Natural Gas Company, Inc. (“Delta”), the Attorney General, or any other party or prospective party in this case and no other participant can or will adequately represent or protect the interests of Stand. Stand states that its participation in this proceeding will lead to the presentation of relevant facts and issues that will assist the Commission without unduly complicating, disrupting, or delaying the proceedings. It agrees to accept the record as it currently exists and to be bound by all procedural schedules and Orders.<sup>1</sup>

Stand describes itself as a Kentucky corporation, whose office is in Cincinnati, Ohio, that is engaged in the marketing of natural gas to public and private customers

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<sup>1</sup> On Feb. 29, 2012, Delta Natural Gas Company (“Delta”) filed for an adjustment to its pipe replacement program rates. On April 17, 2012, the Commission established this case in order to further review the proposed tariff and suspended the tariff’s implementation up to and including September 22, 2012, with the Commission’s stated intention to expedite its review to the extent possible. On May 14, 2012, Commission Staff issued its First Request for Information to Delta and Delta responded on May 25, 2012. On June 8, 2012, Commission Staff issued its Second Request for Information to Delta with Delta’s response due on June 22, 2012. Stand’s Motion to Intervene was also filed on June 8, 2012.

in over 13 states, including Kentucky, with experience delivering natural gas behind more than 33 local distribution companies, including customers behind Delta. Stand states that it has almost 28 years of experience in federal and state regulatory proceedings involving natural gas.

Stand's motion to intervene states that Delta's proposal will adjust the rates of all classes of service within the Delta system—residential, small non-residential, large non-residential, and interruptible service customers—and that it would be appropriate for Delta to use this opportunity to expand its gas transportation programs for commercial, industrial, governmental, and other public entities by establishing lower volumetric thresholds for customers to transport gas. Stand contends that there is a conflict of interest for Delta Natural Gas marketing to serve the overwhelming majority of transportation accounts behind Delta.

Finally, Stand maintains that the Commission's Order of April 17, 2012 suspending Delta's tariffs for five months allows for the possible performance of a class cost-of-service study on the Delta system to properly determine appropriate volumetric thresholds and align the various service classifications accordingly.

On June 19, 2012, Delta filed a Response and Objection to Stand's Motion Out-Of-Time For Full Intervention based upon several concerns. Specifically, Delta argues that this case has advanced well past the time that a motion for full intervention would have been timely; that the issues in this proceeding are limited to a determination of the reasonableness of Delta's proposed adjustments under its PRP Rider tariff and do not require that Delta perform a class cost of service study on the Delta system which is customarily utilized in general rate proceedings and not in proceedings regarding

periodic, between rate case adjustments, such as the PRP Rider Adjustment and Gas Cost Adjustment. Finally, Delta argues that Stand's arguments in favor of its full intervention demonstrate that its intervention would not present issues or develop facts that would assist the Commission in fully considering the matters before it in this proceeding without unduly complicating or disrupting the proceedings.

Based on Stand's motion to intervene and Delta's response and objection to Stand's motion to intervene, and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the Attorney General, pursuant to KRS 67.150(8). Intervention by all others is permissive and is within the sound discretion of the Commission.<sup>2</sup>

In an unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR1 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that "the PSC retains the power in its discretion to grant or deny a motion for intervention," but that this discretion is not unlimited. The Court then enumerated the limits on the Commission's discretion in ruling on motions for intervention: one arising under statute; the other arising under regulation.

The statutory limitation, KRS 278.040(2), requires that the person seeking intervention has an interest in the rates or service of a utility as those are the only two subjects under the jurisdiction of the Commission. The regulatory limitation of 807 KAR 5:001, Section 3(8) requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to

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<sup>2</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. It is under these statutory and regulatory criteria that the Commission reviews a motion to intervene.

In analyzing the pending Motion to Intervene, we find that Stand does not receive natural gas service from Delta and is not a customer of Delta. Rather, Stand is a competitive supplier of natural gas.

With respect to gas service in Kentucky, supplying competitive natural gas is not prohibited or required per se, but may be authorized by the Commission. In fact, the Commission has authorized some classes of customers to obtain competitive supplies of natural gas through the transportation programs of local distribution companies. An investigation of expanding retail natural gas competition in Kentucky markets was concluded in Administrative Case No. 2010-00146 (“Admin. 2010-00146”),<sup>3</sup> a case in which Stand was granted intervention and fully participated. In that case, the Commission found the following:

[I]t would not be reasonable or consistent with its statutory responsibility to mandate that its regulated utilities offer choice programs or expanded transportation services without the additional statutory authority and consumer protections . . . and without the opportunity to review each utility’s proposed transportation service offerings and its current rate design.

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The Commission believes that existing transportation thresholds bear further examination, and the Commission

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<sup>3</sup> Administrative Case No. 2010-00146, *An Investigation of Natural Gas Competition Programs* (Ky. PSC Dec. 28, 2010).

will evaluate each LDC's tariffs and rate design in each LDC's next general rate proceeding.<sup>4</sup>

The only interest that Stand arguably has in the natural gas rates and service of Delta is as a competitor, and even that interest is too remote to justify intervention here. There is nothing in the Application to suggest that Delta is now requesting, or will at some definitive time in the future, request authority to explore its existing transportation thresholds outside a general rate case.

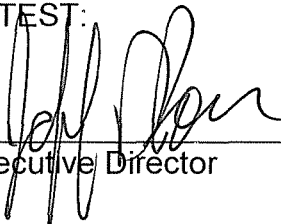
Consequently, the Commission will not revisit the issues addressed in Admin. Case No. 2010-00146 in this matter, which involves only an adjustment of Delta's pipeline replacement program rider that was approved in Case No. 2010-00116, a general rate proceeding in which Stand did not request to intervene.<sup>5</sup> Based upon the above, Stand's status as a competitive supplier of natural gas does not justify its intervention in this limited proceeding.

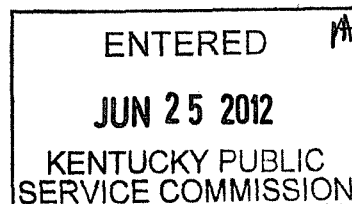
IT IS THEREFORE ORDERED that Stand's motion to intervene is denied.

By the Commission

Commissioner Breathitt is abstaining from this proceeding.

ATTEST:

  
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Executive Director



<sup>4</sup> Id. at 23.

<sup>5</sup> Case No. 2010-00116, *Application of Delta Natural Gas Company, Inc. for an Adjustment of Rates* (filed April 23, 2010).

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