SEP 17 2013

## COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF COLUMBIA GAS OF KENTUCKY, INC.	)	CASE NO.
FOR AN ADJUSTMENT OF RATES FOR GAS SERVICE	)	2013-00167

ATTORNEY GENERAL'S NOTICE OF OBJECTION TO KIUC'S LETTER DATED 11 SEPTEMBER 2013 OR, IN THE ALTERNATIVE, MOTION TO AMEND PROCEDURAL SCHEDULE

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and files his notice of objection to the letter filed in the record on or about 12 September 2013<sup>1</sup> by the Kentucky Industrial Utility Customers ("KIUC") or, in the alternative, moves the Commission to amend its procedural schedule to afford the Attorney General the right to file surrebuttal testimony to KIUC. As grounds for this notice and motion the Attorney General states the following.

On 16 July 2013 the Commission entered an order establishing the procedural schedule in the above case.<sup>2</sup> The order provides, in relevant part pertaining to the filing of testimony, that the intervenors shall file testimony on 11 September 2013 and that Columbia shall file rebuttal testimony on 23 October 13. No provision exists for any intervenor to file rebuttal testimony. Indeed on or before 11 September, the Attorney General; Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nichols Counties; and Interstate Gas Supply, Inc.

Although the letter was dated and emailed on 11 September 2013, it was not filed in the record until 12 September.

<sup>&</sup>lt;sup>2</sup> The Procedural order that was initially entered on 17 June 2013 was amended by this order pursuant to a motion by the Attorney General to extend the schedule given the Attorney General's time constraints related to other Commission's procedural deadlines. See motion dated 8 July 2013 by the Attorney General.

filed intervenor testimony. KIUC, however, merely filed a letter of record on 12 September 2013 stating that "[it] will not file Direct Testimony in the above-referenced matter, but reserves the right to file Rebuttal to testimony of other intervenors." Based purely on the procedural schedule, no such right exists. Moreover, the original procedural order dated 17 June 2013 required that "[A]ny objections or motions relating to discovery or procedural dates shall be filed upon four business days' notice or the filing party shall explain, in writing, why such notice was not possible." KIUC did not file any objection or motion relating to discovery or **procedural dates** until by way of its letter wherein it seemingly seeks to alter the procedural schedule to file something which is not permitted. Last, any right a party has or may have to file rebuttal testimony by definition exists to rebut testimony that has been filed against that party's original or direct testimony. Having filed no direct testimony renders any right to file rebuttal testimony illogical and that rebuttal testimony should not be considered. KIUC is always free to exercise the sole remedy available to it under these facts and circumstances, that of filing a brief in which it may contest any position asserted by other intervenors.

In the event the Commission determines that KIUC is entitled to some sort of procedural due process right to file rebuttal testimony against any of the intervenors, then the other intervenors should be entitled with the same procedural due process right to rebut KIUC's testimony. To do otherwise would enable KIUC to wait until well into the litigation after the other intervenors have filed their positions and then file their expected contrary position – thus creating great prejudice to the other intervenors. Accordingly, if KIUC's request is granted, the Attorney General respectfully requests that he be entitled to file surrebuttal testimony to KIUC in

<sup>3</sup> See letter of record.

<sup>&</sup>lt;sup>4</sup> See Order dated 17 June 2013, paragraph 8.

the event the Attorney General elects to do so, and that the procedural schedule be amended to reflect that right.

WHEREFORE, the Attorney General respectfully objects to KIUC's letter or, in the alternative, that the Attorney General be afforded the right to file surrebuttal testimony to KIUC and that the procedural schedule be amended to reflect same.

Respectfully submitted,

JACK CONWAY ATTORNEY GENERAL

DENNIS G. HOWARD, II

GREGORY T. DUTTON JENNIFER BLACK HANS

ASSISTANT ATTORNEYS GENERAL

1024 CAPITAL CENTER DRIVE,

**SUITE 200** 

FRANKFORT KY 40601-8204

(502) 696-5453

FAX: (502) 573-1009

## Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Honorable Stephen B Seiple Columbia Gas of Kentucky, Inc. P.O. Box 117 Columbus, OH 43216-0117 Richard S Taylor 225 Capital Avenue Frankfort, KY 40601

Honorable David J. Barberie Managing Attorney Lexington-Fayette Urban County Government Department Of Law 200 East Main Street Lexington, KY 40507

Honorable David F Boehm Boehm, Kurtz & Lowry 36 East Seventh Street Suite 1510 Cincinnati, OH 45202

Honorable John M Dosker Stand Energy Corporation 1077 Celestial Street Building 3, Suite 110 Cincinnati, OH 45202-1629 Brooke E Leslie Columbia Gas of Kentucky, Inc. 200 Civic Center Drive P.O. Box 117 Columbus, OH 43216-0117

Honorable Matthew R Malone Hurt, Crosbie & May PLLC The Equus Building 127 West Main Street Lexington, KY 40507

Honorable Iris G Skidmore 415 W. Main Street Suite 2 Frankfort, KY 40601

this 17th day of September, 2013

Gregory T. Dutton

**Assistant Attorney General**