

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF COLUMBIA)	
GAS OF KENTUCKY, INC. TO EXTEND ITS)	CASE NO.
SMALL VOLUME GAS TRANSPORTATION)	2021-00386
SERVICE)	

ORDER

This matter is before the Commission on a motion to reopen this proceeding filed by Columbia Gas of Kentucky, Inc. (Columbia Kentucky) on April 7, 2023. Columbia Kentucky also seeks leave to withdraw its September 30, 2021 electronic tariff filing in which it sought the continuation of the Small Volume Gas Transportation Service (SVGTS) tariff and Small Volume Aggregation Service (SVAS) tariff, commonly known collectively as the “CHOICE program.” Finally, Columbia Kentucky seeks a temporary extension of the CHOICE program until July 31, 2024. The intervenors in this case, Interstate Gas Supply (IGS); Constellation New Energy, Gas Division, LLC (CNEG); and XOOM Energy Kentucky, LLC (XOOM) (collectively, Intervenors) filed a joint response to Columbia Kentucky’s motion on April 14, 2023, and Columbia Kentucky filed a reply to the Intervenors response on April 19, 2023.

Having reviewed the motion, response, and reply, and being otherwise sufficiently advised, the Commission finds that Columbia Kentucky’s motion should be granted in part and denied in part for the reasons set forth below.

BACKGROUND

In its final Order in Case No. 2017-00115,¹ the Commission ordered Columbia Kentucky to file an *application* to “continue, modify or terminate,”² its CHOICE program, on or before September 30, 2021. Although the Commission’s Order specified that Columbia Kentucky was to file an application, Columbia Kentucky submitted a tariff filing via the Commission’s electronic Tariff Filing System on September 30, 2021, indicating it proposed to continue the CHOICE program under its current terms and conditions through March 31, 2025. On October 18, 2021, the Commission opened this proceeding to investigate the reasonableness of the proposed tariff. On March 17, 2022, the Commission issued an Order continuing the CHOICE program under its existing terms and conditions until a final Order is issued in this proceeding.

Columbia Kentucky responded to three requests for information from Commission Staff³ and two requests for information from XOOM.⁴ Columbia Kentucky filed direct and rebuttal testimony,⁵ in which Judy Cooper, Director of Regulatory Affairs for Columbia

¹ Case No. 2017-00115, *Tariff Filing of Columbia Gas of Kentucky, Inc. to Extend Its Small Volume Gas Transportation Service* (Ky. PSC June 19, 2017).

² Case No. 2017-00115, June 19, 2017 final Order at 5.

³ Columbia Kentucky’s Response to Commission Staff’s First Request for Information (Columbia Kentucky’s Response to Staff’s First Request) (filed Nov. 11, 2021); Columbia Kentucky’s Response to Commission Staff’s Second Request for Information (Columbia Kentucky’s Response to Staff’s Second Request) (filed Feb. 18, 2022); and Columbia Kentucky’s Response to Commission Staff’s Post-Hearing Request for Information (Columbia Kentucky’s Response to Staff’s Post-Hearing Request) (filed Oct. 21, 2022).

⁴ Columbia Kentucky’s Response to XOOM’s First Request for Information (Columbia Kentucky’s Response to XOOM’s First Request) (filed Feb. 19, 2022), and Columbia Kentucky’s Response to XOOM’s Second Request for Information (Columbia Kentucky’s Response to XOOM’s Second Request) (filed Mar. 18, 2022).

⁵ Direct Testimony of Judy Cooper (Cooper Direct Testimony) (filed Jan. 1, 2022) and Rebuttal Testimony of Judy Cooper (Cooper Rebuttal Testimony) (filed Apr. 29, 2022).

Kentucky, testified that Columbia Kentucky was seeking continuation of the CHOICE program until at least March 31, 2025.⁶ Intervenors jointly filed the direct testimony of James Crist.⁷ Additionally, XOOM filed the direct testimony of Travis Kavulla,⁸ and Intervenors responded to two requests for information from Commission Staff.⁹

On September 22, 2022, the parties filed a Joint Stipulation and Settlement Agreement (Settlement) setting forth, among other things, an agreement that the CHOICE program be extended through March 31, 2030, and that Columbia Kentucky file, on or before September 30, 2029, an application permitting the Commission and stakeholders an opportunity to evaluate the CHOICE program and consider extending it. A formal hearing was held on this matter on September 29, 2022. At the hearing the parties expressed a desire to file an addendum to the Settlement,¹⁰ which they filed on November 8, 2022 (Addendum). On March 28, 2023, the Commission issued an Order accepting the Settlement and Addendum, with modifications.

LEGAL STANDARD

The standard of review for motions for rehearing is established in KRS 278.400, which limits rehearing to new evidence not readily discoverable at the time of the original

⁶ Cooper Rebuttal Testimony at 5. In Columbia Kentucky's rebuttal testimony, Ms. Cooper testified that Columbia Kentucky was "willing to extend the CHOICE program until March 31, 2027. . ."

⁷ Direct Testimony of James L. Crist on behalf of IGS, CNEG, and XOOM (Crist Direct Testimony) (filed Mar. 25, 2022). Revised Testimony of James Crist (filed Oct. 5, 2022).

⁸ Direct Testimony of Travis Kavulla (Kavulla Direct Testimony) (filed Mar. 25, 2022), Revised Direct Testimony of Travis Kavulla (filed Sep. 26, 2022).

⁹ XOOM's Response to Commission Staff's First Request (filed Apr. 18, 2022); Joint Intervenors Response to Staff's First Request (filed Apr. 18, 2022); CNEG's Response to Commission Staff's Post-Hearing Request for Information (filed Oct. 21, 2022), IGS's Response to Commission Staff's Post-Hearing Request for Information (filed Oct 21, 2022); XOOM's Response to Commission Staff's Post-Hearing Request for Information (filed Oct 21, 2022).

¹⁰ Hearing Video Transcript of the September 29, 2022 hearing (HVT) at 11:38:35 through 11:39:21.

hearing, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹¹ An Order can only be unlawful if it violates a state or federal statute or constitutional provision.¹²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearing, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.¹³ Kentucky law provides that a utility may demand, collect and receive fair, just and reasonable rates¹⁴ and that the service it provides must be adequate, efficient and reasonable.¹⁵ Kentucky law also provides that a utility must file with the Commission schedules of all rates and conditions for service established by it and collected or enforced.¹⁶ KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

¹¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

¹² *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

¹³ KRS 278.040(2).

¹⁴ KRS 278.030(1).

¹⁵ KRS 278.030(2).

¹⁶ KRS 278.160(1).

DISCUSSION AND FINDINGS

The Commission will treat Columbia Kentucky's motion to reopen as a motion for rehearing. The Commission makes this decision not because the March 28, 2023 Order contained any material errors, omissions, or findings that were unreasonable or unlawful, but because Columbia Kentucky has acted in a manner that has wasted time and resources, and the Commission must resume examination of the future of the CHOICE program absent the Settlement. Columbia Kentucky had ample opportunity to evaluate the CHOICE program between the Commission's June 19, 2017 final Order in Case No. 2017-00115 and September 31, 2021, when Columbia Kentucky made a tariff filing requesting continuation of the CHOICE program. Columbia Kentucky was required by the Commission's final Order in Case No, 2017-00115, to file an application seeking to continue, modify, or terminate the CHOICE program by September 31, 2021. The Commission expected such an application would be thoughtfully made by Columbia Kentucky after thoroughly examining the costs of the program and its benefits to Columbia Kentucky's customers. Instead, Columbia Kentucky made an electronic tariff filing seeking to continue the program under its current terms, agreed to a Settlement with the marketer intervenors, and then withdrew from the Settlement and completely changed its position after the Commission devoted time and resources to considering the Settlement.

Throughout this proceeding Columbia Kentucky has maintained that it was its intention and desire to continue the CHOICE program. Columbia Kentucky's tariff filing specifically asked to have the program continued until March 31, 2025.¹⁷ Columbia

¹⁷ Columbia Gas of Kentucky Tariff Filing made September 30, 2021 (filed Oct. 7, 2021), Seventh Revised Sheet No.33.

Kentucky's witness testified that Columbia Kentucky was willing to extend the program through March 31, 2027.¹⁸ Columbia Kentucky signed the Settlement and its Addendum agreeing to continue the program through March 31, 2030. At no time during the 18 months from the time Columbia Kentucky made its tariff filing to the Commission's Order approving the Settlement did Columbia Kentucky espouse an intention to end the CHOICE program. There was absolutely no reason why Columbia Kentucky could not have proposed to terminate the CHOICE program by making an application to do so on or before September 31, 2021, or by amending its filing in this proceeding prior to the Commission entering an Order approving the Settlement and extending the program.

At the formal hearing on September 29, 2022, the Commission took testimony in support of the Settlement, at which time it became apparent that the parties had not fully thought out how the Gas Choice Working Group (GCWG) proposed in the Settlement would operate. The parties then filed the Addendum which provided clarification on some of the workings of the GCWG. Only after the Commission entered an Order approving the Settlement with slight modifications intended to clarify the Commission's expectations of the GCWG did Columbia Kentucky reverse its position and announce its intention to terminate the program. Contrary to Columbia Kentucky's assertions, the Commission did not impose any additional conditions or requirements on the parties related to the Settlement. The Commission merely provided clarity on some GCWG procedural rules the parties included in their Settlement and required Columbia Kentucky to track the revenues and expenses from the CHOICE program. It should be noted that the latter action is consistent with the Commission's long-standing intention that non-participating

¹⁸ Cooper Rebuttal Testimony at 5.

customers should not subsidize the CHOICE program. The Commission's long-standing intention was cited by Columbia Kentucky's witness Ms. Cooper extensively, and was an issue of significant examination at the evidentiary hearing in this matter.

Because Columbia Kentucky has withdrawn from the Settlement, the Commission finds the parties are returned to the position they occupied prior to the submission of the Settlement. On May 6, 2022, Columbia Kentucky filed a motion stating that a hearing in this matter was not necessary, and that Columbia Kentucky, while willing to participate in a formal hearing if the Commission desired, requested a decision be made on the record. On May 6, 2022, XOOM filed a motion requesting a formal hearing. The Commission finds that this proceeding should be reopened for the purposes of holding a formal hearing where the Commission will hear testimony concerning extending the CHOICE program for a defined term as proposed by Columbia Kentucky, and extending the CHOICE program permanently, as proposed by the Intervenors. The Commission will set the date for the formal hearing by separate Order.

Columbia Kentucky's April 7, 2023 motion also seeks leave to withdraw the September 30, 2021 tariff filing. Because this filing was made pursuant to a Commission Order¹⁹ and was not a voluntary filing on the part of Columbia Kentucky, the motion for leave to withdraw the tariff filing is denied.

Lastly, Columbia Kentucky's motion seeks to temporarily extend the CHOICE program until July 31, 2024. By Order issued March 17, 2022, the Commission extended the CHOICE program under its existing terms and conditions until a final Order is issued in this proceeding. As the Commission is re-opening this proceeding, the CHOICE

¹⁹ Case No. 2017-00115, June 19, 2017 final Order.

program remains extended under its current terms and conditions until this matter is closed.

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's motion to re-open this proceeding is granted.
2. The Commission shall set a hearing date by separate Order.
3. Columbia Kentucky's motion to withdraw its September 30, 2021 tariff filing is denied.
4. Columbia Kentucky's motion to temporarily extend the CHOICE program until July 31, 2024, is denied.
5. Columbia Kentucky's CHOICE program remains extended under its current terms and conditions until the final Order in this proceeding.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


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