Columbia Gas of Kentucky
A NiSource Company

August 22, 2007

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PUBLIC SERVICE COMMISSION

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Interim Option Comments

Dear Ms. O'Donnell:

On behalf of Columbia Gas of Kentucky, Inc. ("Columbia"), I hereby offer the following comments in regard to the meeting held at the Public Service Commission ("Commission") on August 16, 2007 to discuss the Order and Opinion of the Franklin Circuit Court ("Circuit Court") entered on August 1, 2007 in Case No. 06-CI-269. Columbia commends the Commission for holding this meeting and recognizing the concerns and positions of all stakeholders.

Columbia asserts that the Commission should continue with proceedings as usual, under the first interim option, as this option is the only legally correct position. The Circuit Court characterized its order as a "judgment," and accordingly applies only to the parties to that proceeding. See Circuit Court Order and Opinion at 8 and KY Civ. Pro. §54.01. Even if the Commission applies the Circuit Court order to the utility industry as a whole, the Commission must recognize that the only issue decided by the Circuit Court applies to the narrow topic of Accelerated Mains Replacement Program ("AMRP"). The Circuit Court expressly held that, "[a]bsent statutory authority for an interim review and surcharge, the cost of the AMRP must be considered in the context of a rate case." See Circuit Court Order and Opinion at 8. While the Court also stated, "this Court finds the PSC may not allow a surcharge without specific statutory authority authorization" this statement is overly broad when considered in relation to the aforementioned holding and issue on appeal and is, therefore, dicta. Circuit Court Order and Opinion at 7.

Columbia further contends the Commission is bound by the legal principle of *stare decisis* and must give due weight and consideration to applicable precedent. It is undisputed that *National-Southwire*[1], which enables adjustment of rates outside a general rate case, was upheld at the Court of Appeals of Kentucky. Such precedence not only binds the Commission *and* the

[1] *National-Southwire Aluminum Co. v. Big Rivers Electric Corp.*, 785 S.W.2d 503 (Ky. App. 1990).

Franklin Circuit Court to act within those enunciated applications of law in present proceedings, but also disallows an interpretation of law to the contrary.

Outside of legal arguments that support the first interim option, Columbia also notes the inevitable consequences that will result if the Commission proceeds with either the second or third interim option. The second interim option to adhere to the principles of law established in the Circuit Court's order would force Columbia, and all other utility companies, to engage in a continual cycle of full-blown rate case filings under KRS Chapter 278. In order to timely recover its gas cost expenses, such filings would necessarily occur within months of each other, which would cause Columbia, and likely all utility companies, stakeholders and the Commission, to dramatically increase staffing levels and programming costs. The net effect of this wave of rate cases is that Columbia will be unable to send accurate and timely price signals to the market because cost recovery mechanisms will not be expedient. Moreover, this will lead to increased customer charges to enable recovery of the costs of such regulatory proceedings. Although it is difficult to quantify such an enormous impact, Columbia's estimated out-of-pocket expense for its recent 2007 rate case, Case No.2007-00008, alone was $255,000. This does not include internal costs that Columbia incurs to process and prosecute rate cases, nor does it include the costs other parties, including the Commission, bear when cases are filed and prosecuted.

The third interim option to continue to process cases involving automatic recovery mechanisms, but make any prospective recoveries subject to refund also presents serious credit market and corporate securities implications. If the revenue collected by Columbia, and by all other utilities, through all recovery mechanisms is subject to refund then financial ratings, credit markets and corporate securities could become extremely vulnerable and volatile. This would in turn, again, result in increased customer charges to enable utility companies to secure proper capitalization.

I would again like to express Columbia's appreciation for the efforts of the Commission in this endeavor. If the Commission determines to convene a legislative working group, Columbia is willing to participate, but remains cautious about the extent to which any legislation may actually be required. Please do not hesitate to contact me with any questions regarding these comments.

Very Truly Yours,

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