

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA GAS)	
OF KENTUCKY, INC. FOR AN ADJUSTMENT OF)	
RATES; APPROVAL OF DEPRECIATION STUDY;)	CASE NO.
APPROVAL OF TARIFF REVISIONS; AND OTHER)	2024-00092
RELIEF)	

ORDER

On July 18, 2024, Columbia Gas of Kentucky, Inc. (Columbia Kentucky) filed a motion, pursuant to KRS 278.400, requesting reconsideration of the Order entered June 28, 2024, granting intervention to Interstate Gas Supply, Inc (IGS) and Constellation New Energy – Gas Division (CNEG) (jointly, Joint Intervenors). On July 24, 2024, Joint Intervenors filed a response to Columbia Kentucky’s motion for rehearing. On July 29, 2024, Columbia Kentucky filed a reply.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, 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.”¹

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

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 hearings, 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.

Commission regulation 807 KAR 5:001 Section 4(11)(b) states that the Commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

MOTIONS

In Columbia Kentucky's July 18, 2024 motion, Columbia Kentucky argued that the Commission's findings are unreasonable, premised upon a material error, and that Joint Intervenors should not be granted intervention into this proceeding.³

Columbia Kentucky first argued that it is incorrect that NiSource Corporate Service Company's IT system upgrades could impact the Choice Program.⁴ Columbia Kentucky

² *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).

³ Columbia Kentucky's Motion for Rehearing (filed July 18, 2024) at 3.

⁴ Columbia Kentucky's Motion for Rehearing at 3.

stated that the IT system upgrades in this proceeding are not related to expense tracking., but rather related to the scheduling, dispatch, and execution of work on utility assets (the “Work Asset Management” or “WAM Program”).⁵ Columbia Kentucky indicated that the implementation of the WAM will not further the Commission’s objective in Case No. 2021-000386⁶ of requiring Columbia to track expenses and revenues of the Choice Program and allowing intervention by IGS and CNEG on this basis is unreasonable.⁷

Columbia Kentucky next argued that the Commission indicated that Joint Intervenors could develop facts related to tariff changes and the Choice Program but that this is incorrect.⁸ Columbia Kentucky argued that the gas cost uncollectible rate (GCUR) only applies to sales tariff rates and does not apply to participants in the Choice Program, nor has it ever.⁹ Columbia Kentucky also argued that the change to the GCUR is merely an update to the rate.¹⁰ Columbia Kentucky stated that it has not recommended changing the underlying mechanics of the GCUR in Columbia’s tariff since the GCUR was originally approved.¹¹

Lastly, Columbia Kentucky argued that that even if the tariff did affect Choice Program Customers, Joint Intervenors are not the appropriate parties to represent customer interests or to develop facts to assist the Commission regarding customer

⁵ Columbia Kentucky’s Motion for Rehearing at 3.

⁶ Case No. 2021-000386, *Electronic Tariff Filing of Columbia Gas of Kentucky, Inc to Extend its Small Volume Gas Transportation Service* (Ky. PSC. June 28, 2024), Order.

⁷ Columbia Kentucky’s Motion for Rehearing at 3.

⁸ Columbia Kentucky’s Motion for Rehearing at 4.

⁹ Columbia Kentucky’s Motion for Rehearing at 4.

¹⁰ Columbia Kentucky’s Motion for Rehearing at 4.

¹¹ Columbia Kentucky’s Motion for Rehearing at 4.

interests. Rather, Columbia Kentucky argued that the Attorney General, who is an intervenor in the matter, is the appropriate party to represent those interests.¹²

On July 24, 2024, Joint Intervenors filed a response to Columbia Kentucky's motion for rehearing. Joint Intervenors argued that the granting of their intervention is interlocutory, and that the plain language of KRS 278.400 directs that any party to the proceedings may seek rehearing after a hearing within 20 days after the service of the order and the statute directs that notice of the rehearing, if granted, shall be provided in the same manner as notice of an original hearing.¹³ Joint Intervenors argued that KRS 278.400 does not appear applicable to Columbia Kentucky's motion and such a request under the statute would not be ripe until after a final hearing.¹⁴ Joint Intervenors further argued that expanding the interpretation of KRS 278.400 beyond its terms to anyone aggrieved of any Order at any point, rather than after a hearing, could overwhelm the Commission with additional motions and arguments already addressed in previous motions, responses and replies.¹⁵

Joint Intervenors argued that Columbia Kentucky's argument was immaterial to the Commission's discretionary finding that Joint Intervenors can assist the Commission in this case without unduly complicating the proceedings pursuant to 807 KAR 5:001.¹⁶ Joint Intervenors also argued that determining the factual merits of Columbia Kentucky's

¹² Columbia Kentucky's Motion for Rehearing at 4.

¹³ Joint Intervenors' Response to Columbia Kentucky's Motion for Rehearing (filed July 24, 2024) at 2.

¹⁴ Joint Intervenors' Response to Columbia Kentucky's Motion for Rehearing at 3.

¹⁵ Joint Intervenors' Response to Columbia Kentucky's Motion for Rehearing at 3.

¹⁶ Joint Intervenors' Response to Columbia Kentucky's Motion for Rehearing at 4.

argument can be addressed in discovery and any final hearing.¹⁷ Lastly, Joint Intervenors argued that the Commission has previously granted IGS intervention in several previous Columbia Kentucky base rate proceedings.¹⁸

On July 29, 2024, Columbia Kentucky filed a reply in support of its motion for rehearing. Columbia Kentucky argued that Joint Intervenors' belief that Columbia Kentucky cannot request a rehearing on a Commission Order regarding intervention because it is not a final order and is interlocutory in nature is incorrect.¹⁹ Columbia Kentucky stated that its request for rehearing was proper and supported by Commission precedent.²⁰ Columbia Kentucky further argued that the Commission has entertained and ruled upon multiple motions for rehearing on matters where no hearing was held, including matters involving the denial of confidential protection for certain information.²¹ Lastly, Columbia Kentucky reiterated there are no issues contained in its rate application that are relevant to the Choice Program, the mechanics of the tariff, at issue according to Joint Intervenors, have not been changed since originally approved, and argued that Joint Intervenor's participation in this proceeding will unduly complicate the proceedings.²²

¹⁷ Joint Intervenors' Response to Columbia Kentucky's Motion for Rehearing at 4.

¹⁸ Joint Intervenors' Response to Columbia Kentucky's Motion for Rehearing at 4 citing Case No. 2007-00008, *Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates*; Case No. 2009-00141, *Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates*; Case No. 2013-00167, *Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates*.

¹⁹ Columbia Kentucky's Reply (filed July 29, 2024) at 1–2.

²⁰ Columbia Kentucky's Reply at 2.

²¹ Columbia Kentucky's Reply at 3.

²² Columbia Kentucky's Reply at 4.

DISCUSSION AND FINDINGS

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Columbia Kentucky's motion for rehearing on Joint Intervenors' intervention should be denied for the reasons discussed below.²³

Intervention is permissive and is within the sole discretion of the Commission, except for a request by the Attorney General or pursuant to KRS 164.2807(8). The Commission set out the regulatory requirements in its Order, finding that the Joint Intervenors are likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. The Commission's decision to allow intervention of Joint Intervenors is not unreasonable or a material error, but rather is squarely within the discretion of the Commission. Columbia Kentucky has not met its burden of proof to demonstrate that Joint Intervenor's intervention was unreasonable.

Columbia Kentucky's first argument is without merit. Columbia Kentucky argued that NiSource Corporate Service Company's IT upgrades were related to WAM. However, the Commission was referencing the second step of the upgrades, relating to the One Customer Information system.²⁴ Columbia Kentucky stated "The One Customer Information system transformation program has not started, and therefore, the specific

²³ The Commission notes that the Kentucky Court of Appeals has held that interlocutory appeal, pursuant to KRS 278.410, of a denial of permissive intervention is not allowed. *See, generally, Public Service Commission of Kentucky v. Metropolitan Housing Coalition*, 652 S.W.3d 648 (Ky. App. 2022), review denied (Oct. 12, 2022). Although the Court of Appeals did not address interlocutory appeal of a grant of intervention, the Commission believes that the same reasoning would prohibit an interlocutory appeal, pursuant to KRS 278.410, of a grant of permissive intervention.

²⁴ Application, Tab 24, Direct Testimony of Greg Skinner (Skinner Direct Testimony) at 5 stating "the One Customer Information system will provide a better experience for customers and facilitate provision of service to customers."

benefits of the program have not been defined. A planning phase will proceed the start of this program to align on benefits and cost to achieve when the program commences.”²⁵ In Greg Skinner’s Direct Testimony, he stated that this will be further defied in 2024 and 2025.²⁶ The Commission merely said that the IT upgrades could have impacts, not that it would. Furthermore, contrary to the argument presented in the motion, the Commission never stated that the help with expense tracking by the Joint Intervenors would be related to the IT upgrades. The two findings were distinct and separate reasonings for granting intervention to Joint Intervenors.

Next, Columbia Kentucky did not introduce any new information related to the GCUR argument warranting rehearing or a finding of unreasonableness. In its original motion opposing intervention, Columbia Kentucky put forth arguments regarding the GCUR tariff and that representation of customer interests is the Attorney General’s role. The Commission already found that the changes to the GCUR could have an indirect impact on Choice Market participants because Columbia Kentucky is the supplier of last resort. All choice participants, whether customer or supplier, may be indirectly impacted by the GCUR because Columbia Kentucky is the supplier of last resort. Furthermore, Joint Intervenors and the Attorney General have distinct interests, and while Joint Intervenors may bring out facts that help customers, they are not solely representing customer’s interests.

The Joint Intervenors’ development of facts and presentation of issues will assist the Commission in fully considering the matter from a unique perspective and with

²⁵ Columbia Kentucky’s Response to Commission Staff’s Second Request for Information (filed July 10, 2024), Item 23.

²⁶ Skinner Direct Testimony at 5.

developing a robust record in a way that could benefit customers, especially customers who participate in the Customer Choice Program. The Commission's latest Order in Case No. 2021-00386 emphasizes the need for further expense and revenue tracking of the Choice Program, and this case may further develop that issue.²⁷ Joint Intervenors have already asked relevant questions in their data requests, and Commission Staff asked some additional questions in the latest data request based on Columbia Kentucky's responses to Joint Intervenors questions.

Columbia Kentucky repeatedly points to the Joint Intervenors as competitors. However, Columbia Kentucky is a "utility" pursuant to KRS 278.010 and as such is regulated by the Commission. Columbia Kentucky has tariffs for distribution and transmission on file with the Commission. Generally, KRS 278.040 allows the Commission to regulate Columbia's rates and services, as a result of the utility not participating in a competitive market. The Joint Intervenors are impacted by Commission decisions impacting the Columbia Kentucky, specifically as it relates to the Columbia Choice Program. As such, like all intervenors, they may be able to further assist in developing a robust record on related issues.

The Commission notes that Joint Intervenors' role is to help the Commission develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, and not to gain a competitive advantage against Columbia Kentucky. The Commission will consider any motions from Columbia Kentucky to limit Joint Intervenors' ability to access information that could result in a competitive disadvantage to Columbia Kentucky.

²⁷ Case No. 2021-00386, June 28, 2024 Order at 12–13.

IT IS THEREFORE ORDERED that Columbia Kentucky's motion for rehearing is denied.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED

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