

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

Application of Columbia Gas of Kentucky, : Case No. 2016-00162  
Inc. for an Adjustment of Rates :

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**DIRECT ENERGY BUSINESS MARKETING, LLC’S MOTION TO  
RECONSIDER ORDER DENYING MOTION TO INTERVENE**

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Pursuant to 807 KAR 5:001 § 5(1), Direct Energy Business Marketing, LLC (“Direct Energy”) hereby moves for reconsideration of the Kentucky Public Service Commission’s (“Commission”) Order dated June 21, 2016, denying Direct Energy’s intervention in this matter. The Order denying Direct Energy’s intervention, while acknowledging that Direct Energy provides services to customers of Columbia Gas of Kentucky, Inc. (“Columbia”), finds that the “only interest that Direct Energy arguably has in the natural gas rates and service of Columbia is as a competitor, and that interest is too remote to justify intervention here.”<sup>1</sup> The Commission’s finding does not take in to consideration that Direct Energy, directly and as an agent for its customers, is subject to the rates and service terms and conditions that are imposed by Columbia for General Distribution Service (“GDS”). In addition, after the Commission’s denial of Direct Energy’s Motion to Intervene, Direct Energy received authorization from one of Columbia’s ratepayers, Color Point, LLC (“Color Point”), to represent its interests in this proceeding.

In support of its motion to reconsider, Direct Energy states as follows:

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<sup>1</sup> Order dated June 21, 2016 at 3.

*I. Direct Energy is a Not a Competitor to Columbia*

In its Order, the Commission asserts that Direct Energy's only interest in this proceeding is as a competitor to Columbia.<sup>2</sup> However, the Commission ignores that Direct Energy serves as an agent, administratively and operationally, for its customers. Consequently, Direct Energy has certain obligations as agent of certain transportation customers in Columbia's service territory and is bound by the rates, terms and conditions of Columbia's tariff for GDS service. Direct Energy is required to operate under Columbia's tariff in order to serve its customers – the requirements are not voluntary.

Local distribution companies ("LDC"), including Columbia, are prohibited from making a profit on the supply of natural gas. LDCs are directed to pass gas costs through to their customers with no profit and then recover the cost of natural gas supply pursuant to gas cost recovery and gas cost adjustment filings. Instead of earnings profits on the purchase and resale of the natural gas commodity, LDCs profit from the distribution of gas with a guaranteed rate of return.

The Commission should also take into consideration that Direct Energy is not currently serving customers through Columbia's Choice Program. In sum, Columbia does not compete against Direct Energy or other marketers to sell natural gas. For the reasons outlined above, the Commission's finding that Direct Energy is merely a competitor to Columbia is clearly erroneous.

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<sup>2</sup> Order dated June 21, 2016 at 3.

*II. Direct Energy Has a Special Interest in the Rates or Service of Columbia as it Serves as an Agent for its Transportation Customers*

Direct Energy has a direct and special interest in the outcome of this proceeding as a natural gas marketer serving as an agent for a number of customers in Columbia's service territory. The Commission improperly concluded that Direct Energy lacks the necessary special interest in the natural gas rates or service of Columbia to justify intervention. However, the Commission has the authority "to reconsider and change its orders during the time it retains control over any question under submission to it."<sup>3</sup> Direct Energy urges the Commission to reconsider its finding that Direct Energy lacks the necessary interest in this proceeding.

Direct Energy serves as an agent, administratively and operationally, for a number of customers in Columbia's service territory, including two hospital systems and several high profile industrial accounts. The Commission previously recognized in its approval of a settlement agreement between a natural gas marketer and Columbia that natural gas marketers serve as agents on behalf of their customers.<sup>4</sup> This is also evidenced by Columbia's tariff which contains numerous references to and imposes obligations on customers and/or their agent.<sup>5</sup> No other party has the same business model and goals as Direct Energy, which serves customers with unique business models and unique gas supply needs. Accordingly, Direct Energy meets all of the requirements for intervention in this proceeding.

As previously explained in its prior filings, Direct Energy has a serious concern with Columbia's proposal to modify its tariff so that Columbia may change the delivery points under

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<sup>3</sup> *Union Light, Heat & Power v. Kentucky Public Service Commission*, 271 S.W.2d 361, 365-66 (Ky.App. 1954).

<sup>4</sup> *Constellation New Energy-Gas Division v. Columbia Gas of Kentucky, Inc.*, Case No. 2005-00184 (Order issued March 26, 2008).

<sup>5</sup> Reference General Terms, Conditions, Rules and Regulations Applicable to Delivery Service Rate Schedules Only.

which Direct Energy is required to deliver gas to its transportation customers.<sup>6</sup> The pertinent language is as follows:

Subject to the limitations of Company's pipeline capacity in its system, Company will accept deliveries of Customer's gas at the point(s) of receipt, less applicable retainage, for redelivery to Customer's facilities, in Mcf. Such gas volumes delivered to Company and redelivered to Customer shall be limited to the annual and maximum daily transportation volumes for each facility or, at Company's discretion, lesser volumes if Customer's expected requirements are projected to be less than stated contract quantities. These volume levels shall represent the actual expected requirements of Customer's facilities and may be exceeded only with the prior consent of Company. **Notwithstanding anything herein to the contrary, in order to support reliable service on Company's system, Company may require Customer deliveries at other point(s) of receipt as designated by Company from time to time. It is the Customer's obligation to deliver sufficient gas supplies at the points of receipt to Company for redelivery to Customer's facilities.**

Direct Energy also has concerns with Columbia's proposal to change its cash-out mechanism for transportation customers that are served by marketers.<sup>7</sup> These changes will impact the costs that Direct Energy incurs to serve its transportation customers and will likely be passed onto the end user customers.

### **III. *Direct Energy Seeks to Intervene to Oppose a Columbia Proposed Tariff Provision that Could Raise Customer Rates and Disrupt Their Current Service***

In addition, Direct Energy Seeks to Intervene to Oppose a Columbia proposed tariff provision that could raise customer rates and disrupt their current service. Columbia has proposed the following addition as Section 1 of the General Terms, Conditions, Rules and Regulations Applicable to Delivery Rate Schedules Only of its Tariff:

**If for a period of at least five (5) consecutive days in one billing period, the Company: (1) has not received gas supply for Customer's**

<sup>6</sup> Prepared Direct Testimony of Judy M. Cooper on Behalf of Columbia at 6.

<sup>7</sup> Prepared Direct Testimony of Judy M. Cooper on Behalf of Columbia at 8-9.

account, and (2) the account's bank balance is insufficient to cover the consumption or the customer did not have access to its bank balance due to the Company's issuance of a Balancing Service Interruption, and (3) the customer consumed gas on one or more days during such five (5) day period, the account may be returned to the applicable Sales Service rate at the end of the billing period. The volumes of Customer-owned gas transported by Company, including banked volumes, to Customer at its facilities during each monthly billing cycle will be considered the first gas through the meter, as explained in Section 4, herein.<sup>8</sup>

If approved, Columbia's proposed tariff revision may revert customers (who have affirmatively decided to contract with Direct Energy or another marketer) back to Sales Service if, in a five day period, Columbia has not received gas supply for the ratepayer's account, the balance is insufficient to cover consumption or Columbia issues a Balancing Service Interruption, and the customer consumed gas on one or more days during that five day period. The provision does not take account of the fact that many large customers may have little or no gas demand during certain periods, and the proposed tariff fails to reference the end of month balancing opportunity that would permit a supplier to correct any underdelivery in a timely and reasonable fashion.<sup>9</sup> The result is that, as written, existing GDS customers might find themselves suddenly thrust back onto sales service, losing the benefit of their contract price as well as potentially favorable terms and conditions they have negotiated with their marketer. (They also would be forced to stay on sales service for a full year before they were allowed to avail themselves of market-based services).

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<sup>8</sup> Columbia Gas of Kentucky, Inc. of Lexington, Kentucky, Rates, Rules and Regulations for Furnishing Gas for the Entire Service Area of the Company, Second Revised Sheet No. 89 Superseding First Sheet No. 89 (Date of Issue: May 27, 2016) (Proposed Effective Date: June 27, 2016)(Emphasis and underline added).

<sup>9</sup> Section 5 Banking and Balancing Service of the General Terms, Conditions, Rules and Regulations Applicable to Delivery Rate Schedules Only; Sheet Nos. 91-92.

Columbia's proposed revision is neither reasonable nor necessary and potentially could impose significant additional costs on customers that do not have constant consumption levels year-round. This flawed provision would terminate a ratepayer's transportation agreement and return the ratepayer to the applicable Sales Service rate at the end of the billing period for a period of one year, without regard to the ratepayer's affirmative decision to obtain supply through a marketer.

One of Direct Energy's customers, Color Point, has specifically authorized Direct Energy to represent its interests in this proceeding with respect to this issue. Color Point is a greenhouse business that distributes plants to retailers such as Lowes, Sam's Club and Rural King stores. Color Point's business model is unique in that its gas supply needs vary drastically with the growing seasons. There may be times during the year where Color Point consumes no gas or minimal amounts of gas and thus could be materially harmed by this proposed provision. Color Point is a ratepayer of Columbia Gas and has a substantial interest in this proceeding which could affect gas transportation costs and its ability to continue receiving service from Direct Energy. Direct Energy has supplied gas to Color Point since November 2013. Since then, Direct Energy has served as Color Point's agent, administratively and operationally, to contract with Columbia for delivery services and to interact with Columbia to effectuate delivery of natural gas. As evidenced by the Affidavit of Art VanWingerden, President of Color Point, in Appendix A, Color Point has appointed Direct Energy to act on its behalf for the purposes of advancing Color Point's interests in this proceeding with respect to the proposed Section 1 of the General Terms, Conditions, Rules and Regulations Applicable to Delivery Rate Schedules Only.

Color Point has a direct and special interest in the outcome of this proceeding as approval of the above-referenced tariff revision will affect the cost of delivery of natural gas and impact

its ability to continue to receive natural gas supply from Direct Energy. No other marketer or party has the same business model or goals as Color Point so its interests are not adequately protected in this proceeding. Color Point, through its agent, Direct Energy, is likely to present issues or facts to assist in the Commission's review of the matter that others are not likely to be otherwise presented.

***IV. Direct Energy Is 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 concluded in this proceeding that two transportation customers – AK Steel Corporation (Ashland Works) and Toyota Motor Manufacturing, Kentucky, Inc. - participating via Kentucky Industrial Utility Customers, Inc. (“KIUC”) will likely “present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.”<sup>10</sup> Direct Energy submits that the Commission should conclude the same for Direct Energy's involvement in this proceeding.

Direct Energy serves as an agent, administratively and operationally to effectuate delivery of natural gas, for over 12 large customers in Columbia's territory that are subject to the rates, terms and conditions of Columbia's tariff. Moreover, Direct Energy is familiar with many of Columbia's proposed tariff revisions as a result of its involvement in the Columbia Gas of Maryland, Inc. and Columbia Gas of Pennsylvania, Inc.'s rate proceedings. Direct Energy's status as agent for its customers and its specific authorization to represent Color Point's interest in this proceeding, coupled with its experience addressing these issues in matters pending at the Maryland Public Service Commission and the Pennsylvania Public Utility Commission,<sup>11</sup>

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<sup>10</sup> Order dated July 27, 2016 at 1, approving KIUC's Amended Motion to Intervene Out-of-Time.

<sup>11</sup> *Pennsylvania Public Utility Commission, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2016-2529660, Pre-hearing Order (Entered April 29, 2016); *In the Matter of the Application of Columbia Gas of Maryland, Inc. for Authority to Increase Rates and Charges*, Case No. 9417, Public Utility Law Judge Division -

evidence that Direct Energy is likely to present issues and develop facts that will assist the Commission in evaluating this matter. Finally, inclusion of Direct Energy in this matter will not complicate and disrupt the proceeding as Direct Energy does not anticipate requesting extensions to any of the remaining deadlines in this matter.

**WHEREFORE**, for the forgoing reasons and the reasons provided in its Motion to Intervene and Reply in Support of Motion for Full Intervention, Direct Energy respectfully requests that the Commission reconsider its previous decision and grant Direct Energy full intervenor status.

Respectfully submitted,

Handwritten signature of Gabriella Cellarosi Daniel, Esquire, with the initials "ASJ" written above the signature.

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Date: August 11, 2016

Counsel for Direct Energy Business Marketing, LLC

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Ruling on Direct Energy Business, LLC and Direct Energy Business Services, LLC's its late filed Petition to Intervene and for Leave to File (June 29, 2016)(Mail Log No. 194126).



FILING NOTICE AND CERTIFICATE

I hereby certify that Direct Energy Business Marketing, LLC's Motion To Reconsider Order Denying Motion To Intervene is a true and accurate copy of the document(s) to be filed in paper medium with the Public Service Commission (which include a cover letter serving as the required Read1st document); that the electronic submission of these documents to the Commission was performed on August 11, 2016; that copies of these documents were sent via federal express to the Kentucky Public Service Commission on August 12, 2016; and that currently, no party has been excused from participation by electronic service.

Dated: August 11, 2016

*G Daniel / ADG*

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Gabriella Cellarosi Daniel, Esq.

Counsel for Direct Energy Business Marketing, LLC