COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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

DIRECT ENERGY BUSINESS MARKETING, LLC'S REPLY TO THE OBJECTION AND RESPONSE OF COLUMBIA GAS OF KENTUCKY, INC. TO MOTION OF DIRECT ENERGY BUSINESS MARKETING, LLC TO RECONSIDER

Pursuant to 807 KAR 5:001 § 5(1), Direct Energy Business Marketing, LLC ("Direct Energy") replies to Columbia Gas of Kentucky, Inc.'s ("Columbia") Objection and Response to the motion requesting reconsideration by Direct Energy of the Kentucky Public Service Commission's ("Commission") Order dated June 21, 2016, denying Direct Energy's intervention in this matter. Direct Energy raised new issues in its motion to reconsider that justify the Commission's grant of its request for intervention. Foremost, Direct Energy evidenced that it is specifically authorized by one of its customers, ColorPoint, to represent its interest in this proceeding. Columbia continues to argue that Direct Energy is a competitor and does not have a right to participate in the proceeding, present evidence and cross examine witnesses (as needed) to represent its interests and the interests of its customer. This, however, is an inaccurate conclusion, especially in the context of this proceeding.

Contrary to Columbia's Assertion, It is Not a Competitor of Direct Energy

Columbia claims that Direct Energy's interest in the proceeding is just that of a competitor. This is simply untrue. Direct Energy is not a competitor of Columbia and is not interested in participating in this proceeding to try to cause competitive harm to Columbia. For example, it has no interest in, and does not propose to become involved in the reasonableness of

Columbia's proposed rate increase. Its sole interest is the various changes in Columbia's rules for gas transportation service that could affect its ability to serve its customers, disrupt their service or raise their costs.

By claiming Direct Energy is its competitor, Columbia ignores the fact that if it really is a competitor Columbia is creating an advantage for itself by ensuring customers incur additional costs in order to pursue a transportation option, rather than buying the commodity from Columbia. But Columbia is not a competitor — it provides the delivery service for natural gas purchases from suppliers like Direct, and it acts as a provider of last resort when a customer does not choose to obtain supply from a gas marketer (for whatever reason). If Columbia were a competitor of Direct Energy then it would also have to seek out customers to take its service and would not be allowed to: (1) force customers of gas marketers onto its supply when a customer does not want it; (2) charge astronomical rates for cash out; and (3) direct gas marketers where they must deliver gas. How can Columbia be a "competitor" when it sets the rules which its "competitors" must follow? Simply put — it cannot. Either Columbia is presenting changes to a tariff for transport services that are monopoly services that gas marketers (and their customers) pay for or it is a competitive gas commodity provider. It cannot be both. This proceeding is a rate proceeding to determine matters regarding the monopoly portion of Columbia's services — its delivery service — that is not open to competition.

Columbia's Proposed Tariff Changes Will Impact Direct Energy and Its Customers, Including ColorPoint, Which Specifically Authorized Direct Energy to Represent Its Interests in This Proceeding

Columbia improperly claims that "Direct admits that the proposed transportation tariff changes will not affect Direct, but will affect only its customers."[1] Columbia's assertion is

[1] Objection and Response at 3.

inconsistent with Direct Energy's filings in this matter. As Direct Energy set forth in its Reply in Support of Motion of Direct Energy Business Marketing, LLC for Full Intervention, "Columbia's proposed revisions to its tariffs will directly affect both Direct Energy and its customers."[2]

One proposed modification being made to Tariff Sheet No. 89 grants Columbia virtually unrestricted authority to designate alternative points of delivery and require Delivery Service Customer deliveries at other points of receipt. Columbia's Witness Judy Cooper explained in her testimony that when Columbia Gas Transmission, LLC ("TCO") created alternate delivery points, it was to assist TCO's storage customers (which include Columbia) to deliver gas to a point other than the city-gate. This is unrelated to gas marketers serving customers on the delivery service rate schedules. These gas marketers do not utilize storage; on the contrary, they deliver the gas their customers require each month. Columbia's proposed provision would force gas marketers serving delivery service customers to help Columbia meet its own supply obligations. Requiring gas to be delivered to a different receipt point usually increases gas costs as the gas has to be sourced from a more expensive region. Ultimately this will increase the costs that end user customers must bear. Surely, Direct Energy has a valid interest in exploring the legitimacy of tariff changes that, potentially, could raise the costs that its customers will incur.

The next proposed revision at issue would permit Columbia unilaterally to move a transport customer back to sales service under certain conditions. This provision would permit Columbia to move a customer back to sales service even if the customer is operating in full compliance with the tariff. But the tariff provision is overly broad and vague. Under the

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2 Reply in Support of Motion of Direct Energy for Full Intervention at 2.

proposed language, a greenhouse company, such as ColorPoint, is at risk for being moved back to sales service under the proposed provision because it does not burn gas daily due to fluctuations in weather and growing seasons. If, for example, the temperature is warm but then lowers for even one day, the greenhouse would use gas. This could potentially occur when its banked gas could not cover the gas utilized or during a restriction issued by Columbia. The result would be giving Columbia the authority to switch ColorPoint back to sales service even though ColorPoint elected to obtain services from Direct Energy — and wanted to stay with Direct Energy. The purpose of this proposed modification is unclear other than to ensure disruption of gas marketers' contracts with transport customers. There is no legitimate objective to forcing a customer back to sales service after the billing period is over when the customer and marketer have balanced the customer's account for the month. The effect of the proposed provision is to punish the customer for using gas while its gas marketer is not delivering, even when it does not impact Columbia and could well result in the disruption of the operation of businesses that employ Kentucky residents and contribute to the Kentucky economy.

Columbia also proposes to change its cash-out methodology. Pursuant to Columbia's proposal, when a customer is under-delivered and purchases gas from Columbia to balance that underdelivery (a common occurrence), a marketer will pay 120% of the average index price plus applicable costs to the gate or 120% of the highest city gate equivalent commodity purchased by Columbia during the month. When the customer is over-delivered, Columbia will sell gas at 80% of the index price or 80% of the lowest city gate equivalent commodity purchased by Columbia during the month. It is unreasonable for Columbia to base the cost of gas on costs Columbia incurred as marketers have no way of determining whether those costs are accurate or reasonable. There is no legitimate reason for Columbia to tie-in its cash-out methodology to its

gas costs opposed to a published index as do the vast majority of gas distribution companies. The proposed changes to Columbia's cash-out methodology would serve as a disincentive for Columbia to buy its last increment of gas at a reasonable price and would force marketers (and its customers) to incur unnecessary costs. Conversely, the proposed changes would permit Columbia to sell a minimal amount of gas at an extremely low price and have the opportunity to purchase gas supplies over-delivered at 80% of that low price. Utilizing a published index for purposes of determining gas costs, as Columbia's current tariff requires, is the most appropriate approach.

Columbia contends that Direct Energy's argument that its authorization to represent ColorPoint's interests in this proceeding warrants intervention is identical to Stand Energy Corporation's ("Stand Energy") argument in support of its request for intervention in the 2001 rate case of The Union Light, Heat and Power Company ("ULH&P") which was rejected by the Commission. However, the circumstances surrounding Stand Energy's request for intervention in the ULH&P proceeding are not the same, or even similar. A prominent distinction is that Stand Energy did not provide specific legal documentation evidencing authorization to support a particular customer's interests in the proceeding. The Commission's conclusion in the ULH&P proceeding was that "the interest claimed by SEC [Stand Energy] is actually that of ULH&P's IT customer and that it cannot be asserted by SEC." The Commission should not reach the same conclusion here because Direct Energy has evidenced specific legal authorization from its customer, ColorPoint, to represent its interests in this proceeding. Furthermore, the Commission's regulations do not prohibit marketers from representing the interests of their customers and there was no legal basis to support the Commission's conclusion in the ULH&P

proceeding. From a practical standpoint, having Direct Energy represent the interests of a Kentucky business is more cost efficient and reasonable from the business' standpoint.

Columbia claims that there is a distinction between Kentucky Industrial Utility Customers, Inc.'s ("KIUC") representation of its members' interests and Direct Energy's representation of its customers' interests. Columbia attempts to distinguish the two entities based on KIUC's status as a non-profit corporation and Direct Energy's status as a foreign limited liability company. Columbia's argument is unpersuasive and unfounded. Obviously, none of these Kentucky businesses have become involved in Columbia's rate case for "non-profit" reasons; they each have become involved because they are concerned that Columbia's proposed rules changes involving gas transportation will negatively affect their operations and cost them money. Moreover, both entities have been specifically authorized by a transport customer(s) to represent their particular interests in this proceeding. There is no meaningful difference between KIUC and Direct Energy representing the interests of the same type of customer. However, no other party, including KIUC, has the same goals and interests as Direct Energy and no other party has the same gas supply needs as its customer, ColorPoint. Consequently, Direct Energy's intervention should be granted in this proceeding, just as KIUC's intervention was granted.

Columbia's suggestion that the Attorney General will adequately represent Direct Energy's and ColorPoint's interests in this proceeding is similarly misguided. The Attorney General has previously concluded that it "is not capable of providing the same perspective and representation" that a marketer would in a Columbia rate proceeding.[3] In that prior proceeding,

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[3] *Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Attorney General's Comments Regarding Motion of Constellation New Energy-Gas Division, LLC for Full Intervention, p. 2 (dated July 14, 2009).

the Attorney General supported Constellation New Energy-Gas Division, LLC's ("CNEG") motion for intervention and likened CNEG to the CAC, AARP and the Sierra Club "in that the company has a relationship with its customers and those customers may potentially benefit from the position or arguments which CNEG may advance in this case."[4] This Commission granted CNEG's intervention and acknowledged that the Attorney General did not represent CNEG's interest in the matter.[5]

Columbia overlooks Direct Energy's argument that it serves as an agent for all of its transport customers receiving service in its territory and does not even attempt to rebut this argument in its Objection and Response. Perhaps Columbia was unwilling to contradict its own tariff, which clearly applies to customers or their agents.[6]

Columbia cites a handful of cases to support its position that Direct Energy should not be granted intervention in this proceeding. However, the Commission's prior decisions in those matters do not support denial of Direct Energy's request for intervention. Implying that Direct Energy lacks an interest in this proceeding based on the Commission's conclusion in merger proceedings of Duke Energy Kentucky, Inc. and Louisville Gas and Electric Company fails to provide a reasonable basis to deny intervention in this proceeding. The results of a merger proceeding would not, for example, directly impact the terms of a tariff which contains

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4 *Id.*, p.1.

5 *Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141 (Order dated July 20, 2009), pp. 2-3.

6 Columbia's Tariff provides that: Customers without Daily Metering are subject to Columbia's Issuance of Balancing Service Interruptions (BSIs) that will direct **Customers or Their Agent** to schedule confirmed supply volumes to match Columbia's estimate of their daily usage adjusted for contracted standby sales quantities and/or any balancing service quantities that may be available from Columbia. Second Revised Sheet No. 92; Customers with Daily Metering are subject to Columbia issuance of BSIs that will direct **Customers or their Agents** to adjust usage to match confirmed supply volumes or adjust confirmed supply to match usage adjusted for contracted standby sales quantities and/or balancing services quantities available from the Company. Second Revised Sheet No. 92; Monthly bank transfers will be permitted between one **Customer/Agent** ("transferor") and another **Customer/Agent** ("transferee") located within the same Columbia Gas Transmission Market Area and having confirmed deliveries on the same transmission pipeline. Second Revised Sheet No. 92.

references to and imposes obligations on customers and/or their agents with respect to gas transportation service. Likewise, Delta Natural Gas Company, Inc.'s Pipeline Replacement Rider proceeding is not akin to a rate proceeding.[7] This Commission's denial of an intervention in that proceeding provides no basis for denial of Direct Energy's intervention in this proceeding. Columbia represents that the Commission has previously denied intervention by gas marketers in cases involving Columbia; however, Columbia's broad statement in this regard overlooks the fact that the Commission has previously granted intervention to a gas marketer in a base rate proceeding.[8]

For the reasons set forth above, Direct Energy respectfully requests that the Commission reconsider its prior ruling as Direct Energy (on behalf of itself and its customers) has a special interest in these proceedings because the proposal will directly impact Direct Energy and Direct Energy's interests are not adequately represented. As conveyed in its prior filings in this matter, Direct Energy's participation in this proceeding will not unduly complicate or disrupt the proceeding.

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[7] *An Adjustment of the Pipeline Replacement Rider of Delta Natural Gas Company, Inc.*, Case No. 2012-00136.

[8] *Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Riser, and a Gas Line Surcharge*, Kentucky Public Service Commission Case No. 2012-00222 (Order entered October 2, 2012).

Respectfully submitted,

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Date: August 23, 2016

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FILING NOTICE AND CERTIFICATE

I hereby certify that Direct Energy Business Marketing, LLC's Reply to the Objection and Response of Columbia Gas of Kentucky, Inc. to the Motion of Direct Energy Business Marketing, LLC to Reconsider 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 23, 2016; that copies of these documents were sent via federal express to the Kentucky Public Service Commission on August 23, 2016; and that currently, no party has been excused from participation by electronic service.

Dated: August 23, 2016

Gabriella Cellarosi Daniel

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