COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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

COMMENTS OF
DIRECT ENERGY BUSINESS MARKETING, LLC

Pursuant to 807 KAR 5:001 § 4(11)(e) and the Orders of the Kentucky Public Service Commission ("Commission") dated July 21, 2016 and August 31, 2016, Direct Energy Business Marketing, LLC ("Direct Energy") hereby files these written comments for consideration by the Commission in the above-captioned rate proceeding initiated by Columbia Gas of Kentucky, Inc. ("Columbia" or "Company"). By these written comments, Direct Energy respectfully urges the Commission to: (1) reject Columbia's proposal to give the Company unrestricted discretion to require deliveries of customer-owned natural gas at any point that it designates; (2) reject Columbia's proposed tariff change that would allow the Company to return a transportation customer to a Sales Service rate even when under-deliveries have caused no harm to the system; and (3) reject Columbia's proposal that would permit it to use its own commodity purchases rather than index pricing in the cash-out methodology that is used to price sales resulting from under and over-deliveries of natural gas. In the alternative, Direct Energy respectfully requests that the Commission defer ruling on these proposed tariff changes as part of the overall rate proceeding and schedule a hearing, in which Direct Energy is permitted to participate and present testimony on these issues and provide legal arguments prior to a Commission adjudication.

I. BACKGROUND

On May 27, 2016, Columbia filed an Application with the Commission, pursuant to KRS § 278.180 and § 278.190, requesting an increase in its base rates for natural gas distribution service. Columbia also requested approval of additional changes to its existing tariffs and sought permission to defer certain incremental expenses.

Direct Energy provides electricity, natural gas and other energy services to more than 5 million residential homes and businesses across North America. Direct Energy has a unique business model, and extensive experience in providing innovative gas and electricity products and services to residential, small and large commercial and industrial customers, utilities, and government entities. Direct Energy serves commercial and industrial customers through gas transportation programs in Kentucky. In this capacity, Direct Energy serves as an agent for a number of gas transportation program customers in Columbia's service territory, including Color Point which provided notice in this case that Direct Energy was supporting their concerns,[1] in addition to two hospital systems and several industrial accounts.

On June 27, 2016, Direct Energy filed a Motion to Intervene, asserting a direct and special interest in the outcome of this proceeding as a natural gas supplier that currently serves transportation customers throughout Kentucky. Although Direct Energy does not currently serve customers through Columbia's Small Volume Gas Transportation Service ("Choice Program"), it noted that this proceeding seeks to incorporate changes impacting Columbia's large volume transportation program in which Direct Energy currently participates.

[1] Affidavit of Art VanWingerden, Managing Partner of Color Point dated August 10, 2016.

Columbia filed a response opposing Direct Energy's request for intervenor status on July 1, 2016. Direct Energy then filed a reply on July 6, 2016 clarifying that it serves a number of transportation customers in Columbia's service territory, including two hospital systems and several industrial accounts. Since Direct Energy is using Columbia's transportation services, it is currently subject, both directly and on behalf of its customers, to the rates, terms and conditions that are reflected in the tariff at issue in this proceeding. In addition, Direct Energy expressed an interest in expanding its presence in Columbia's service territory.

By Order dated July 21, 2016, the Commission denied Direct Energy's Motion to Intervene. Thereafter, Direct Energy filed a Motion to Reconsider on August 11, 2016. By Order dated August 31, 2016, the Commission denied Direct Energy's Motion to Reconsider. Under the Commission's regulations at 807 KAR 5:001 § 4(11)(e), an entity that is not granted status as an intervenor may file comments for the Commission's consideration in the proceeding. Direct Energy offers the following comments.

II. COMMENTS

A. The Commission should reject Columbia's proposed tariff changes that would give the Company unfettered discretion to designate alternative points of delivery of customer-owned natural gas.

Columbia proposes modifications to Tariff Sheet No. 89, Paragraph 1, which would give it unrestricted authority to designate alternative points of delivery and require the deliveries of customer-owned natural gas at other points of receipt from time to time. Specifically, Columbia proposes to insert the language shown below in bold:

> 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.**

Through the Direct Testimony of Company Witness Judy M. Cooper, Columbia asserts that this flexibility is required when Columbia Gas Transmission, LLC ("TCO") limits capacity to the city gate and creates alternate delivery points to assist storage customers. Specifically, Ms. Cooper stated that: "In order to assist its storage customers, which include Columbia, TCO has provided them with the ability to deliver gas quantities to an alternate designated point located outside of the restricted areas that simulates a city gate delivery."[2]

While Ms. Cooper's rationale may support application of this clause to suppliers participating in Columbia's Choice Program, Direct Energy sees no reason for applying it to transportation customers that utilize their own capacity and do not use storage to meet their monthly requirements. Moreover, contrary to the Company's response to Staff data requests concerning anticipated cost changes,[3] requiring gas to be delivered to a different receipt point usually increases costs as the gas has to be sourced from a more expensive region. As a storage customer of TCO, Columbia is in effect seeking to force suppliers serving transportation customers, and through them transportation customers, to help it meet its own supply obligations. Since this proposed tariff change would increase costs to customers for no legitimate reason, it is

[2] Cooper Direct Testimony at 7.
[3] Response to Staff's Data Request Set Two No. 11 dated July 8, 2016.

inappropriate and should not be permitted. Therefore, this clause should be removed from the tariff or at the very least should apply only to deliveries of gas for Choice Program customers.

B. The Commission should reject Columbia's proposed tariff change that would permit the Company to return a transportation customer to a Sales Service rate even when under-deliveries have caused no harm to the system.

Columbia also proposes to revise Tariff Sheet No. 89, Paragraph 1, to allow the Company to return transportation customers "to the applicable Sales Service rate primarily due to the customer's failure to deliver gas to Columbia for a period of at least five consecutive days."[4] The language that Columbia proposes to add to its tariff provides as follows:

> It is the Customer's obligation to deliver sufficient gas supplies at the points of receipt to Company for redelivery to Customer's facilities. 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 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 rationale offered by Ms. Cooper is that this provision "should encourage Delivery Services customers to schedule gas appropriately and in accordance with the intent of the Tariff and should provide a mechanism for Columbia to take action in the event of non-delivery."[5] Absent from Ms. Cooper's testimony is any data or explanation showing that a problem currently exists warranting the need for this provision. In addition, her rationale ignores all the existing tariff provisions that allow a transportation customer to balance before the end of the month. Under the proposed change, even if there is no harm to the system through the use of existing approved tariff provisions that are not the subject of any proposed modifications, a customer would be forced

[4] Cooper Direct Testimony at 8.
[5] Cooper Direct Testimony at 8.

onto sales service. No evidence was presented in this case to address how this return impacts the transportation customer or the potential impacts to sales service when a large customer is suddenly forced back onto supply.

Columbia has not identified a particular problem that it is experiencing with an insufficient delivery of gas supplies. Similarly, Columbia has not explained why the balancing provisions, including penalty charges, contained in its current tariff are inadequate to address any concerns with under-deliveries.[6] Indeed, even in responding to a request from Staff for information justifying this proposed change, the Company did not point to any failure of customers to deliver gas to the system; instead, it characterized the proposal as being warranted "to get ahead of the curve."[7] When Staff asked a follow-up question seeking specific details, Columbia merely speculated about what could occur as a result of under-deliveries and simply pointed to similar provisions in place for affiliates in other states.[8]

Returning the transportation customer to Columbia's sales service is neither necessary nor appropriate. This outcome would unduly penalize a customer that may not use gas on a daily basis depending on weather or the nature of their business. For instance, during a period of warm weather when a greenhouse, such as Color Point which has appointed Direct Energy as an agent for this case, does not typically need to use gas, it may require heat for one day when the weather dips below a certain temperature to ensure that the plants do not perish. Similarly, a manufacturer could decide to shut down operations during the holiday season and then receive an unexpected large order to fulfill. In either of these scenarios, the current structure would afford the customers and suppliers the opportunity to balance the gas without any harm to Columbia. If the customers

[6] Tariff Sheet No. 91.
[7] Response to Staff's Data Request Set Two No. 12 dated July 8, 2016.
[8] Response to Staff's Data Request Set Three No. 9 dated August 5, 2016.

and suppliers did not achieve this balance, the penalty provisions of the tariff for under-deliveries would apply. However, customers would not be returned to sales service, which adversely affects them in a number of ways. Specifically, they would lose their supply contract, resulting in a potential loss of savings. Such outcome would impact their budgets and cash flow for planned commodity costs that are now unexpected due to a non-negotiated sales service gas price.

Other reasons could also account for deliveries not occurring over a five-day period. Suppliers may have previously over-delivered because the customers were not consuming as much gas as expected. In that scenario, suppliers would suspend deliveries for a period of days until the customer's accounts are balanced. Under Columbia's proposed tariff revision, the Company could force the customer back to sales service if a supplier suspends deliveries while the customer uses gas even if the balancing permitted under the tariff is perfect.

Particularly when existing tariff provisions adequately address imbalances, and Columbia has offered no explanation for why this clause is needed, it appears that its only purpose is to ensure disruption of contracts for transportation customers. When the supplier and customer have balanced for the month, no other purpose is served by forcing the customer back to sales service after the billing period is over. The result of the clause is to punish the customer for using gas while its supplier is not delivering gas even though this scenario causes no problem for Columbia. The ultimate impact of this provision will be economic harm to businesses participating in the Columbia transportation program in Kentucky for a problem that Columbia itself admits does not exist.

Direct Energy's opposition to the proposed tariff change, in addition to Columbia's concern about a possible future event, can easily be addressed by two minor modifications to the language. First, a statement should be added noting that the customer will be returned to sales service if "the gas shortage has not been corrected before the end of the billing period." Second, a sentence should be added to clarify that Columbia will work with customers and suppliers to avoid unnecessary or harmful returns to sales service. The new paragraph would read as follows, with Direct Energy's proposed modifications shown in bold:

> It is the Customer's obligation to deliver sufficient gas suppliers at the points of receipt to Company for redelivery to Customer's facilities. 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 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, **and the gas shortage has not been corrected before the end of the billing period**, the account may be returned to the applicable Sales Service rate at the end of the billing period. **Suppliers, customers and Columbia will work in good faith in such situations to correct the shortage to avoid returns to Sales Service when there has been no harm to the system.**

C. <u>The Commission should reject Columbia's proposal to use its own commodity purchases rather than index pricing in the cash-out methodology.</u>

Columbia further proposes to changes its cash-out methodology in Paragraphs B and D on Tariff Sheet No. 91. Currently, the cash-out methodology uses market index pricing to determine the price that the Company will receive in the event of under-deliveries (average index price times 120%) and over-deliveries (average index price times 80%). Under Columbia's proposal, the commodity purchases made by Columbia would have the potential to increase the prices received by Columbia and lower the prices paid by Columbia. As explained by Ms. Cooper, "under the modified provisions, where Columbia is selling gas to a customer, the gas will be sold at the higher of: (1) 120% of the average index price plus applicable costs to the city gate; or (2) 120% of the highest city gate equivalent commodity purchase by Columbia during the month. Similarly, for instances where Columbia is purchasing gas from a customer under these provisions, the purchase price will be the lower of: (1) 80% of the average index price; or (2) 80% of the lowest city gate equivalent commodity purchase by Columbia during the month."[9]

Referring generally to a need for "operational integrity," Ms. Cooper provides no rationale for the necessity of these changes and only speculates about the need for modifications to assure proper price signals. When asked by Staff to explain the circumstances giving rise to this proposed revision, the Company did not offer any examples of customers choosing not to deliver or deliberately over-delivering gas as suggested.[10] Additionally, in response to a follow-up data request, Columbia provided details about the magnitude of imbalances and described "potential impacts" – again without explaining why existing tariff provisions are inadequate to address these concerns.[11]

While purchasing at the higher of two indexes and selling at the lower of two indexes is burdensome enough, the real problem with Columbia's proposal is the tie-in to its cost of gas as opposed to a published index. Suppliers have no way of determining what Columbia's costs are and whether they are reasonable. The lack of transparency would mean that suppliers would not even have any basis upon which to challenge costs that appear to be excessive. While the Commission could conduct an after-the-fact prudency review, it is unclear whether it would direct the issuance of refunds to transportation customers or suppliers for unreasonable costs.

Further, under a structure that allows Columbia to charge suppliers 120% of the highest price it paid, the Company has no incentive to buy its last increment at a reasonable price. This scenario forces suppliers and ultimately the suppliers' customers to provide an unnecessary subsidy. For example, Columbia can buy 10 Mcf at two, three or ten times the average price and

[9] Cooper Direct Testimony at 9.
[10] Response to Staff's Data Request Set Two No. 13 dated July 8, 2016.
[11] Response to Staff's Data Request Set Three No. 10 dated August 5, 2016.

then sell the gas that ultimately was not needed by the customers at an outrageous price. The same would be true if Columbia sold 10 Mcf for virtually nothing and it could then purchase over-delivered amounts at 80% of this extremely low price.

Permitting Columbia to use its own costs, a variable over which it has significant control, as a measure of what it will pay to or receive from suppliers also gives Columbia too much flexibility and sends inappropriate price signals. Currently, customers and suppliers are buying and selling on the index and the value of the gas bought or sold at any time is at index and should remain there. Subjecting transport customers – businesses that are operating in Kentucky – to higher priced gas interferes with their contracts and budgeted amounts for commodity purchases. All transactions should continue to be done at published indexes and the proposed tariff revisions should not be approved.

In addition, purchasing at 120% of the index and selling at 80% of the index is unreasonable and increases costs to transportation customers, who are essentially subsidizing sales service customers at that point. In order for these penalties to perform as intended, they must serve as an effective deterrent to behavior that may threaten operational integrity – that is, intentionally failing to deliver gas because a supplier perceives that it has an opportunity to sell the gas in some other area and make a greater profit. However, the current penalty bears no measure of the situation on the system caused by the over delivery or under delivery of gas. Therefore, Columbia should be required to reduce the penalty to a level that is just and reasonable. Specifically, since the same result can be achieved by a lower penalty, it should be modified to reflect 110% and 90% of the index.

III. CONCLUSION

By these written comments that are filed following the Commission's denial of Direct Energy's Motion to Intervene, Direct Energy respectfully urges the Commission to: (1) reject Columbia's proposal to give the Company unrestricted discretion to require deliveries of customer-owned natural gas at any point that it designates; (2) reject Columbia's proposed tariff change that would allow the Company to return a transportation customer to a Sales Service rate even when under-deliveries have caused no harm to the system; and (3) reject Columbia's proposal that would permit it to use its own commodity purchases rather than index pricing in the cash-out methodology that is used to price sales that result from under and over-deliveries of natural gas. In the alternative, Direct Energy respectfully requests that the Commission defer ruling on these proposed tariff changes as part of the overall rate proceeding and schedule a hearing, in which Direct Energy is permitted to participate and present testimony on these issues and provide legal arguments prior to a Commission adjudication.

Respectfully submitted,

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