

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF COLUMBIA)
GAS OF KENTUCKY, INC. TO EXTEND ITS) CASE NO. 2021-00386
SMALL VOLUME GAS TRANSPORTATION)
SERVICE)

POST-HEARING BRIEF

Comes now Columbia Gas of Kentucky, Inc., (“Columbia”) by and through counsel, pursuant to the Kentucky Public Service Commission’s (“Commission”) July 28, 2023 Order in this proceeding setting forth the post-hearing procedural schedule and the deadline for submitting a memorandum brief in support of its post-hearing position in this matter, and respectfully states as follows:

I. INTRODUCTION

Columbia filed its tariffs to continue its Small Volume Gas Transportation Service and Small Volume Aggregation Service, commonly known collectively as the “Choice Program” on October 7, 2021. Columbia did not propose any changes to its Choice Program in its tariff filing application. On October 18, 2021, the Commission opened an investigation to determine the reasonableness of Columbia’s proposed tariffs to extend the Choice Program and established a procedural schedule for the review. Interstate Gas Supply, Inc. (“IGS”) and Constellation New Energy – Gas Division, LLC (“CNE”) were

granted intervention on January 13, 2022. XOOM Energy Kentucky, LLC (“XOOM”) was granted intervention on January 25, 2022. Multiple rounds of discovery were conducted by the parties. A Stipulation and Settlement Agreement was entered by Columbia, IGS, CNE and XOOM on September 22, 2022. A hearing was held on September 29, 2022. A post-hearing procedural order was entered by the Commission on October 4, 2022. Post-hearing data requests were filed and responded to by the parties and an addendum to the Stipulation and Settlement Agreement was filed on November 8, 2022. The Commission issued an Order on March 28, 2023 modifying the Stipulation and Settlement Agreement. Columbia filed a Notice to Withdraw from the Stipulation and Settlement Agreement and a Motion to Reopen the Proceeding and Withdraw its Tariff Filing. The Commission denied Columbia’s motion to withdraw its tariff, but granted the motion to reopen the proceeding and set the matter for a second hearing. That hearing was held on July 26, 2023. The remaining procedural schedule allows for briefs from intervenors and a reply brief from Columbia. The case is due to be submitted for a decision by the Commission as of November 4, 2023. Columbia respectfully requests the Commission find that its voluntary Choice Program set forth in its existing tariffs should continue until March 31, 2025.

COLUMBIA’S POSITION REGARDING THE CHOICE PROGRAM

Columbia’s Choice Program has always been filed as a voluntary tariff. As the Commission stated in Case No. 1999-00165, it is Columbia’s decision to continue the program or to abandon it since it is a voluntary tariff.¹ Columbia’s original proposal in its tariff filing application in this proceeding was to continue the Choice Program with no changes through March 31, 2025.²

Each time Columbia has filed to extend the program, it has weighed the pros and cons of continuing the program or ending it. In the development of the tariff filing at issue in this case, Columbia was uncertain about whether the Choice Program provided sufficient benefit to customers, but ultimately decided to pursue its continuation based on the expressed interest of a sampling of customers.³ When an order was entered, modifying⁴ the terms of the Joint Stipulation and Settlement Agreement (“Joint Settlement”), previously submitted in this case, Columbia took that as a sign of things to

¹ See, *In the Matter of: The Tariff Filing of Columbia Gas of Kentucky, Inc. to Implement a Small Volume Gas Transportation Service, to Continue its Gas Cost Incentive Mechanisms, and to Continue its Customer Assistance Program*, Case No. 99-165, p. 5, (March 6, 2000). (“Finally, Columbia requests that the Commission permit it to withdraw its application of April 22, 1999 if the requested relief is not granted. Because the Customer Choice program was filed voluntarily, the Commission finds that it is within Columbia’s discretion to go forward with the program as approved or to abandon it.”); See also, HVR 16:30:35 – 16:33:17.

² See, Columbia’s CHOICE tariff filing (September 30, 2021).

³ See, Hearing Video Record (“HVR”) at 12:06:50 – 12:07:04; 14:54:50 – 14:55:00; 16:11:44 – 16:19:40 (July 27, 2023); See also, Columbia’s Response to Staff’s First Request for Information, p. 1 (November 3, 2021).

⁴ See, Commission Order, pp. 13, 15 (March 28, 2023).

come for the Choice Program, including requirements that would increase the cost to Columbia of providing the program.⁵ After review of the settlement modifications, the responses from the survey, the potential for costs Columbia might have to cover, and reviewing the lack of savings for the participating customers as a whole, Columbia reached the conclusion that it was time to end the Choice Program and move in a different direction.⁶

Columbia filed a Notice to Withdraw from the Stipulation and Settlement Agreement and a Motion to Reopen the Proceeding and Withdraw its Tariff Filing.⁷ The Commission denied Columbia's Motion to Withdraw its Tariff Filing and reopened this proceeding for the limited purpose of hearing testimony concerning extending the CHOICE program for a defined term as proposed by Columbia or extending the CHOICE program permanently as proposed by the intervenors.⁸ Columbia proposes to continue the Choice Program without any changes through March 31, 2025 as was its original application proposed in its initial tariff filing on October 7, 2021.

⁵ See, HVR 11:51:30 – 11:53:35; HVR 12:00:00 – 12:11:12.

⁶ See, HVR 12:06:50 – 12:11:12.

⁷ See, Columbia's Motion to Reopen Case, Withdraw the Tariff Filing, and Temporarily Extend Program, (April 7, 2023).

⁸ See, Commission Order (April 27, 2023) ("April 27th Order").

MARKETERS' POSITIONS

The marketers seek an indefinite extension of the Choice Program and multiple changes that could increase expenses associated with the Choice Program. The marketers have requested items such as increased education, new scripts for Columbia's customer service representatives to inform callers of the Choice Program even when calling on different issues, logos to be placed on bills, etc.⁹ However, the marketers do not want to carry the costs of these changes. The marketers suggest that Columbia, the marketers and even the Commission should pay some of the costs of these changes.¹⁰

The marketers argue that the Choice Program is akin to an insurance product for the participating customers.¹¹ They argue that the participating customers pay a "premium" in order to have a fixed price instead of having the volatility associated with the natural gas market.¹² The marketers argued that customers should have the option to shop for such a product and that Columbia has failed to promote the program to customers.¹³ The marketers also had several ways they believed Columbia could increase awareness of the program.¹⁴

⁹ See, Direct Testimony of Travis Kavulla, pp. 20-22 (March 25, 2023) ("Kavulla Testimony").

¹⁰ See, XOOM Energy Kentucky LLC's Responses to Staff's First Data Requests Item No. 1 (April 18, 2022).

¹¹ See, Kavulla Testimony, p. 5 (March 25, 2023) ("Kavulla Testimony"); see also, HVR 17:10:00 – 17:11:02.

¹² See, *id.*

¹³ See, Kavulla Testimony at 11.

¹⁴ See, *id.* at 12-14.

ARGUMENT

A. The CHOICE Program is an entirely voluntary program and the Commission does not have the authority to order Columbia to extend the Program indefinitely. The Commission should approve Columbia's voluntary request to approve an extension of the voluntary CHOICE Program tariff until March 31, 2025.

Columbia's Choice Program is, and always has been, undertaken voluntarily.¹⁵ It is not mandated by act of the General Assembly, nor Commission regulation. The Commission's 1998 decision in Administrative Case No. 367 made clear that local distribution companies in Kentucky could offer customer choice programs to small-volume customers and outlined the framework for any "utility proposing a customer choice program" including issues that any proposed program must address.¹⁶ The Kentucky General Assembly passed House Joint Resolution 141 during its 2010 Regular Session directing the Commission to investigate natural gas retail competitions programs and submit a report to the Legislative Research Commission. The Commission established Case No. 2010-00146 to carry out that directive and submitted its report into the record closing that proceeding. The Commission's report found that, "regardless of whether the General Assembly mandates expanded transportation services or choice

¹⁵ See, Case No. 99-165 Order p. 5; See also, HVR 16:30:35 – 16:33:17.

¹⁶ See, Administrative Case No. 367, The Establishment of a Collaborative Forum to Discuss The Issues related to Natural Gas Unbundling and the Introduction of Competition to the Residential Natural Gas Market, Order (Ky. P.S.C., July 1, 1998) ("Admin Case 367").

programs or simply allows the LDCs to continue to propose expanding transportation when they deem it appropriate for their individual companies and customers, the General Assembly should grant the Commission additional regulatory jurisdiction.”¹⁷ Further, the Commission found in its report, that it would not be reasonable or consistent with its statutory responsibility to mandate that its regulated utilities offer choice programs or expanded transportation services without additional statutory authority and significant consumer protections.¹⁸ In the more than two decades since its inception, no statute or regulation has been promulgated to promote or order the Commonwealth's utilities to adopt such programs. No other utilities have voluntarily done so. Columbia's pilot program has been informative, but the time has come to recognize that not enough of Columbia's customers are interested in the purported benefits of the Choice Program to outweigh adding costs, both to Columbia and its participants, associated with the direction of the Choice Program advocated by the intervenors in this matter. It is true that Columbia's original position in this case was to extend its Choice Program.¹⁹ It is also true that Columbia entered into a Joint Stipulation to adopt certain changes to its

¹⁷See, Case No. 2010-00146, *An Investigation of Natural Gas Retail Competition Programs*, p. 19.

¹⁸ See, *id.* at p. 22.

¹⁹ See, HVR 9:38:15 – 9:38:20; See also, CHOICE Tariff Filing.

Choice Program.²⁰ However, the Commission's modification of that Joint Stipulation in its March 28, 2023 Order provided Columbia the opportunity to reconsider its position.²¹

In its April 27, 2023 Order, the Commission opined that an evidentiary hearing was needed to “hear testimony concerning extending the CHOICE program for a defined term as proposed by Columbia Kentucky, and extending the CHOICE program permanently, as proposed by the Intervenors.”²² There is no statutory or regulatory basis by which Columbia can be ordered to indefinitely extend the Choice Program. It is a voluntary program, and from its inception the Commission has properly left the continuance or abandonment of the Choice Program to Columbia’s discretion.²³ Columbia is the only utility in Kentucky to offer such a program. No other utility has followed suit. For these reasons, the Commission should approve Columbia’s voluntary request to extend the current CHOICE Program tariff end date to March 31, 2025.

B. The Commission should reject the marketer proposals that would allegedly increase customer awareness or make it easier for customers to participate in the CHOICE Program. Should the Commission consider the marketers’ proposals, the Commission should ensure all additional costs are appropriately understood and all additional costs are borne by participating customers/marketers.

²⁰ See, Joint Stipulation and Settlement Agreement (September 22, 2023).

²¹ See, HVR 11:51:30 – 12:11:12.

²² See, April 27th Order, p. 7.

²³ See, Case No. 99-165, Order p. 5.

The Marketers also make several suggestions to allegedly increase customer awareness and make it easier for customers to participate in the CHOICE Program.²⁴ Columbia opposes each of these proposed changes. If the Commission were to continue the Choice Program indefinitely and be inclined to order the implementation of any changes that would increase the costs of administering the program, then an analysis should be conducted to allow Columbia to determine the costs of implementing such changes and, consistent with Commission precedent, the costs should be borne by the marketers and/or the participating customers. One main component of the Choice Program today is that non-participating customers are not paying any of the costs of the program. This was very important to Columbia and the other original participating entities, including the Commission and the Kentucky Attorney General's Office ("AG")²⁵. The marketers now suggest that the CHOICE Program should be changed to include more advertising; require Columbia's customer service agents to inform customers, when they call on other matters, about the Choice Program; create a trial program to have customers participate when they become new customers of Columbia, apply marketer logos on customer bills, etc. Each of these would increase the costs of the Choice Program. As the Commission stated in its Order addressing issues related to retail competition,

²⁴ See, Kavulla Testimony, pp. 20-21.

²⁵ See, Case No. 99-165, Orders, (January 27, 2000 and March 6, 2000).

marketers who seek to offer competitive services to Kentucky consumers are expected to participate in the education process and to “foot the bill” for their own efforts.²⁶ These costs should not be borne by Columbia or nonparticipating customers. With the negative savings trend continuing, increased costs of the program (which presumably will be passed onto customers by marketers) would most likely continue the trend of increasing the negative savings to participating customers.

The Choice Program has declining marketer participation. At the time of the hearing in this matter, there were seven participating marketers, however, one of those has since stopped providing service to customers.²⁷ In addition to declining marketer participation, customer participation has also declined.²⁸ According to the 2022 annual report filed on June 1, 2022 in Case No.2017-00115, and the 2023 annual report filed May 30, 2023 and was introduced into the record of the hearing as Staff Hearing Exhibit 1, the number of participating customers has declined. The marketers appear to want Columbia to do all of the work in promoting the program including: providing the informational and education materials, changing its website, including marketer logos on Columbia’s bills and training its customer service representatives to discuss the Choice Program with any individuals who call Columbia’s customer service center. The

²⁶ See, Admin Case 367, p. 3.

²⁷ See, HVR 9:37:55 – 9:38:10.

²⁸ See, HVR 9:36:48 – 9:37:14.

marketers fail to offer any changes that would require the marketers themselves to do anything to try to increase customer participation. Further, the marketers have failed to provide sufficient evidence showing that the adoption of similar changes in different venues have actually increased shopping in a manner that benefits end-use customers. Several of the changes advocated for by the marketers are items that the marketers would be able to adopt themselves. If these items will increase customer participation in the Choice Program, wouldn't the marketers, as the only entities that will benefit from this increase, have adopted these changes on their own? For example, the creation of a "dynamic shopping website that allows customers to compare and sort offers by a variety of features" and the "implementation of a multi-faceted consumer education campaign"²⁹ are things that the Choice marketers can engage in themselves. All relevant information to compare marketer offers to Columbia's sales service rates are available in Columbia's quarterly GCA filings. If Columbia's customers benefit from shopping for their supply of natural gas, why have the intervenors in this matter not provided evidence of their own multi-faceted consumer education campaigns or comparison tools from their own websites that clearly show customers these benefits? No such tools exist because Columbia's customers care most about saving money on their natural gas bill,³⁰ and as

²⁹ See, Kavulla Direct Testimony at 21.

³⁰ See, *Summary Report of Findings Columbia Gas of Kentucky Customer CHOICE Survey*, pp 8-10, (October 7, 2021). ("Choice Survey").

the record in this case clearly shows, on the aggregate, that Columbia's customers do not save money through participation in the Choice Program.³¹ For this reason alone, the Commission should only extend the pilot for the duration requested by Columbia.

C. The existence of the CHOICE Program does not substantively impact how Columbia implements its Performance-Based Rate ("PBR") Sharing mechanism and the existence of Columbia's PBR does not impact its decisions on the existence of the CHOICE program.

The Commission asked questions at the hearing and in data requests, regarding the relationship of the Choice Program and Columbia's PBR Sharing mechanism.³² Columbia has come to understand the theoretical logic behind the Commission's thought that there could be a link between these two separate programs. A review of the details of the actual mechanics of the PBR mechanism demonstrates that the Choice Program and the PBR are not related in a manner sufficient to impact Columbia's behavior in effectuating the PBR mechanism or administering the Choice Program.³³

At the July 26, 2023 hearing, Mrs. Cooper stated that she had discussed this issue with the personnel within the company responsible for the implementation of Columbia's PBR and that they did not believe there was a correlation between the two.³⁴

³¹ See, Staff Hearing Exhibit 1, p. 2 ("As of May 2023, Choice customers have saved (74,321,995)."); HVR 15:05:40 – 15:08:28; 16:07:30 – 16:08:00; 16:20:00 – 16:25:28.

³² See, HVR 15:02:50 – 15:05:38; 15:32:45 – 15:45:45.

³³ See, HVR 15:35:30 -15:44:46; see also, Columbia's Responses to Staff's PHDR Item No. 5.

³⁴ See, HVR 15:44:26 – 15:44:56.

In Commission Staff's Post-Hearing Data Requests, Item No. 5, Columbia was asked to provide the incremental PBR sharing that would have been realized by Columbia over the last five years if the Choice Program volumes would have been Columbia commodity sales. As shown in Columbia's response to the post-hearing data request, there would not have been a significant change in the PBR sharing over the past five years if the Choice Program volumes would have been Columbia commodity sales volumes. During the five-year period, Columbia saw decreases in customer participation in the Choice Program, but in those same years there were periods of both increasing and decreasing PBR activity.³⁵

The PBR is a performance-based sharing mechanism. Columbia experiences periods of both zero revenue and revenue loss in the individual components of the PBR.³⁶ Columbia's PBR mechanism consists of three main components. A Transportation Cost Incentive ("TCI"), an Off-System Sales Incentive ("OSSI"), and a Gas Cost Incentive ("GCI").³⁷ In Columbia's analysis, the TCI and OSSI components would not have been impacted by the elimination of CHOICE participation because Columbia would have

³⁵ See, Columbia's Responses to Staff's PHDR, Item No. 5.

³⁶ See, *id.*

³⁷ See, *id.*

needed the capacity for the customers that would have been commodity sales customers and not CHOICE customers.³⁸

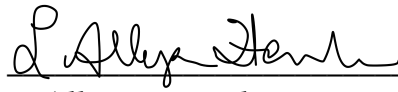
The evidence is uncontroverted that there is not a link between the Choice Program and Columbia's PBR that affects Columbia's behavior. Decisions regarding either program are independent and the existence of one does not rely on or alter the existence of the other.

CONCLUSION

Columbia's Choice Program has been in effect as a pilot program since it was initially approved in Case No. 1999-00165. It has always been filed as a voluntary tariff, and no other LDC in Kentucky has a Choice Program. Columbia is not required to offer such a program, the Commission by its own monition does not have the authority to mandate such a program, and it is within Columbia's discretion to continue or discontinue the Choice Program. Columbia has made changes to the programs over the years, and has even filed to terminate the program, before eventually reaching an agreement with participants to continue the program. Columbia has not taken its positions lightly and has carefully considered its position on continuing the program. Given the orders of the Commission outlining the decision now before it in this case, Columbia asks that the current Choice Program should continue until March 31, 2025.

³⁸ See, *id.* See also, HVR 15:02:50 – 15:05:38.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was filed electronically with the Commission on September 29, 2023 and that there are currently no parties that the Commission has excused from electronic participation in this matter. Pursuant to prior Commission orders, no paper copies of this filing will be made.



Counsel for Columbia Gas of Kentucky, Inc.