

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of: )  
 )  
 THE ELECTRONIC TARIFF FILING OF )  
 COLUMBIA GAS OF KENTUCKY, INC. TO ) Case No. 2021-00386  
 EXTEND ITS SMALL VOLUME GAS )  
 TRANSPORTATION SERVICE )  
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COLUMBIA GAS OF KENTUCKY, INC.'S  
MOTION TO REOPEN CASE, WITHDRAW THE TARIFF  
FILING, AND TEMPORARILY EXTEND PROGRAM

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Comes now Columbia Gas of Kentucky, Inc. (“Columbia” or “Company”), by counsel, and respectfully moves that the Kentucky Public Service Commission (“Commission”) reopen the above-captioned case in the Commission’s docket for the limited purpose of the filing of this motion; that Columbia moves for leave to withdraw its September 30, 2021 electronic tariff filing to continue its Small Volume Gas Transportation Service tariff and Small Volume Aggregation Service tariff (“CHOICE Program”), upon which the Commission established the above-captioned case, and allow this Motion to serve as notice that Columbia intends to terminate its Customer CHOICE Program; and that the Commission temporarily extend the CHOICE Program under the

terms applicable prior to the Commission’s March 28, 2023 Final Order<sup>1</sup> (“Final Order”) to permit the orderly and smooth transition under established rules so that Columbia may reasonably maintain service to its customers during a transition period.

1. On September 30, 2021, Columbia submitted an electronic tariff filing, requesting the continuation, without modifying any aspect, of the CHOICE Program.<sup>2</sup> On October 18, 2021, the Commission opened a proceeding to investigate the proposed tariff changes and set a procedural schedule to guide its review.<sup>3</sup> Between November 11, 2021 and January 14, 2022, Interstate Gas Supply, Inc. (“IGS”) and Constellation New Energy (“Constellation”), jointly and XOOM Energy Kentucky, LLC (“XOOM”) filed motions to intervene (collectively, “Intervenors”). These motions were granted on January 13, 2022<sup>4</sup> and January 25, 2022.<sup>5</sup> On March 17, 2022, the Commission extended the CHOICE program through the duration of the Commission’s review of the case at the request of the Intervenors.<sup>6</sup> Columbia submitted both direct and supplemental testimony of Judy M. Cooper on January 18, 2022 and April 29, 2022, respectively.<sup>7</sup> Columbia also submitted

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<sup>1</sup> *In the Matter of the Electronic Tariff Filing of Columbia Gas of Kentucky, Inc. to Extend its Small Volume Gas Transportation Service*, Case No. 2021-00386, Order (“Final Order”) (March 28, 2023).

<sup>2</sup> *Id.* Electronic Tariff Filing of Columbia Gas of Kentucky, Inc. (“Tariff Filing”) (September 30, 2021).

<sup>3</sup> *Id.* Order (“Investigation Order”) (October 18, 2021).

<sup>4</sup> *Id.* Order (“IGS/CNEG Intervention Order”) (January 13, 2022).

<sup>5</sup> *Id.* Order (“XOOM Intervention Order”) (January 25, 2022).

<sup>6</sup> *Id.* Order (“Procedural Extension Order”) (March 17, 2022).

<sup>7</sup> *Id.* Prepared Direct Testimony of Judy M. Cooper (“Cooper Direct Testimony”) (January 1, 2022) and Rebuttal Testimony of Judy M. Cooper (“Cooper Rebuttal Testimony”) (April 29, 2022)

responses to initial, supplemental, and post-hearing data requests from the Commission<sup>8</sup> and XOOM.<sup>9</sup>

2. On September 22, 2022, Columbia and the Intervenors (“Stipulating Parties”) filed a Joint Stipulation and Settlement Agreement (“Stipulation”),<sup>10</sup> resolving the issues raised in this case. The Stipulation contained the following language (“Section 7”):

Effect of Non-Approval: If the Commission does not accept and approve this Stipulation in its entirety or imposes any additional conditions or requirements upon the signatory Parties, then: (a) any Party may elect, in writing docketed in this proceeding, within ten (10) days of such Commission Order, that this Stipulation shall be void and withdrawn by the Parties hereto from further consideration by the Commission and neither Party shall be bound by any of the provisions herein; and (b) each Party shall have the right, within twenty (20) days of the Commission’s Order, to file a petition for rehearing, including a notice of termination of and withdrawal from the Stipulation; and, (c) in the event of such termination and withdrawal of the Stipulation, neither the terms of this Stipulation nor any matters raised during the settlement negotiations shall be binding on any of the signatory Parties to this Stipulation or be construed against any of the signatory Parties. Should the Stipulation be voided or vacated for any reason after the Commission has approved the Stipulation and thereafter any implementation of the terms of the Stipulation has been made, then the Parties shall be returned to the status quo existing at the time immediately prior to the execution of this Stipulation.<sup>11</sup>

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<sup>8</sup> *Id.* Columbia Gas of Kentucky, Inc. Response to Staff’s First Request for Information (November 11, 2021); Columbia Gas of Kentucky, Inc. Response to Staff’s Second Request for Information (February 18, 2022); Columbia Gas of Kentucky, Inc. Response to Staff’s Post-Hearing Request for Information (October 21, 2022)

<sup>9</sup> *Id.* Columbia Gas of Kentucky, Inc. Response to XOOM’s First Request for Information (February 19, 2022); Columbia Gas of Kentucky, Inc. Response to XOOM’s Second Request for Information (March 18, 2022)

<sup>10</sup> *Id.* Joint Stipulation and Settlement Agreement (“Joint Stipulation”) (September 22, 2022).

<sup>11</sup> Joint Stipulation, Section 7, at 5.

3. The Stipulation also contained the following language:

Complete Agreement: This Stipulation constitutes the complete agreement and understanding among the Parties hereto, and any and all oral statements, representations or agreements made prior hereto or contained contemporaneously herewith shall be null and void and shall be deemed to have been merged into this Stipulation.<sup>12</sup>

4. After an evidentiary hearing,<sup>13</sup> the Stipulating Parties filed, on November 8, 2022, an Addendum to the Joint Stipulation and Settlement Agreement (“Addendum”)<sup>14</sup> to clarify the Stipulating Parties’ intent that the CHOICE Program could be modified prior to its stipulated expiration and to place additional guardrails around the Gas Choice Working Group (“GCWG”). The Addendum did not modify the above-quoted language from Section 7. Further, it contained an agreement that “[e]xcept as revised or clarified herein, all provisions of the Stipulation remain unaffected by this Addendum.”<sup>15</sup>

5. On March 28, 2023, the Commission issued an Order in this case (“Final Order”), which modified the Stipulation and imposed additional requirements on Columbia. The Final Order also closed the case and removed it from the Commission’s docket.<sup>16</sup> The Commission’s modifications represent the imposition of additional conditions or requirements, as contemplated by Section 7 of the Stipulation. On April 7,

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<sup>12</sup> *Id.*, Section 9, at 6.

<sup>13</sup> See *In the Matter of the Electronic Tariff Filing of Columbia Gas of Kentucky, Inc. to Extend its Small Volume Gas Transportation Service*, Case No. 2021-00386, Evidentiary Hearing (accessible at <https://www.youtube.com/watch?v=DcrQVS7WJ-s>) (September 29, 2022).

<sup>14</sup> *Id.* Addendum to Joint Stipulation and Settlement Agreement (“Addendum”) (November 8, 2022).

<sup>15</sup> Addendum, Section 3.b., at Page 3 of 4.

<sup>16</sup> Final Order at 16.

2023, Columbia exercised its right to void and withdraw the Stipulation in writing through a notice filed in this case.

6. Columbia respectfully moves, pursuant to 807 KAR 5:001, Section 5, that the Commission reopen this case for the limited purpose of consideration of this Motion. Because the Stipulation is now void, good cause exists to reopen this case in order to address the below procedural requests.

7. Columbia moves for leave to withdraw the September 30, 2021 electronic tariff filing, in which Columbia proposed to continue the CHOICE Program through March 31, 2025, and to allow this Motion to serve as notice that it intends to terminate the CHOICE program with the final annual reconciliation period being July 31, 2024. Columbia is not required by any provision of law or regulation to adopt or maintain a CHOICE program. Columbia intends to outline its proposed transition plans and file an application with the Commission by June 30, 2023. Columbia anticipates that customers transitioning from the CHOICE Program to sales service will be completed by the first billing cycle of August 2024. Further, Columbia also intends to request the adoption of a tariff similar to that which existed prior to the adoption of the CHOICE Program whereby eligible commercial and industrial customers may enroll in delivery service through an eligible natural gas supplier. Columbia will provide public and customer notice of both of these tariff changes. In order to effectuate this, Columbia must take the first step of withdrawing its initial tariff filing in this case.

8. Finally, Columbia respectfully moves the Commission to temporarily extend the CHOICE Program according to the terms and tariff sheets applicable prior to the Final Order until July 31, 2024. This is contemplated by the Stipulation, which provides that upon the filing of a notice to withdraw, “the Parties shall be returned to the status quo existing at the time immediately prior to the execution of this Stipulation.”<sup>17</sup> Prior to the filing of the tariff adjustment that initiated this case, the CHOICE Program was to expire on March 31, 2022. Upon the withdrawal of this tariff modification, the CHOICE Program would otherwise terminate. As the Commission recognized in its March 17, 2022 Order extending the CHOICE Program during the pendency of this case, “abruptly terminating the contracts currently in place is not consistent with the principle of establishing reasonable rules to govern the conduct of a regulated utility’s business and the conditions under which it shall be required to render service found in KRS 278.030(2).”<sup>18</sup> In order to maintain reasonableness of Columbia’s service, additional time is needed to provide customers, CHOICE providers, and the Commission the ability to consider Columbia’s forthcoming plans to wind down the CHOICE Program. This need was recognized by Witness Judy M. Cooper in her April 29, 2022 Rebuttal Testimony:

...an orderly and smooth transition would allow for planned communications by Columbia and suppliers to customers, with a reasonable advanced notice. This would best be accomplished by establishing a schedule of actions and dates for the winding down of the program. Participating suppliers should be made aware of the date after

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<sup>17</sup> Joint Stipulation, Section 7 at 5.

<sup>18</sup> Procedural Extension Order at 3.

which there would be no new customer enrollments, existing customers should be notified of the date when the program would be discontinued, and the changes should occur outside of the heating season and in consideration of Columbia's billing cycle and the associated gas delivery month.<sup>19</sup>

9. Good cause exists for the Commission to grant the above motions. As a result of Columbia's exercise of its right to withdraw and the associated voidance of the Stipulation, certain procedural steps related to the CHOICE Program are needed in order to effectuate a transition to the future state. Columbia intends to address these issues in its forthcoming filing containing the provisions to wind down the CHOICE Program. However, in order to mitigate unintended consequences, more time is needed. Granting the motions presented herein will provide Columbia the requisite time to transition away from the CHOICE Program towards a future state that will be well-ordered and beneficial for Columbia's customers.

WHEREFORE, on the basis of the foregoing, Columbia respectfully prays the Commission to reopen the above-captioned case in the Commission's docket for the limited purpose of the filing of this motion; that Columbia moves for leave to withdraw its September 30, 2021 electronic tariff filing to continue its Small Volume Gas Transportation Service tariff and Small Volume Aggregation Service tariff ("CHOICE Program"), upon which the Commission established the above-captioned case, and allow this Motion to serve as notice that Columbia intends to terminate its Customer CHOICE

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<sup>19</sup> Cooper Rebuttal Testimony at Pg. 8, Lines 2-11.

Program; and that the Commission temporarily extend the CHOICE Program under the terms applicable prior to the Commission's March 28, 2023 Final Order to permit the orderly and smooth transition under established rules so that Columbia may reasonably maintain service to its customers during a transition period.

This 7th day of April 2023.



Respectfully submitted,

*/s/ John R. Ryan* \_\_\_\_\_

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## CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document; that the electronic filing was transmitted to the Commission on April 7, 2023; that on this same day the parties listed below have been electronically served a copy of this document; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

*/s/ John R. Ryan*

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**XOOM Energy Kentucky, LLC**

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