

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA)
GAS OF KENTUCKY, INC. FOR APPROVAL OF) CASE NO. 2022-00049
THE GREEN PATH RIDER PILOT PROGRAM)

COLUMBIA GAS OF KENTUCKY, INC.'S
MOTION FOR REHEARING

Comes now Columbia Gas of Kentucky, Inc. ("Columbia"), by counsel, pursuant to KRS 278.400 and other applicable law, and does hereby request the Commission to grant rehearing to correct the Commission's October 30, 2023 Order in the above-styled case ("the Order"), specifically that the Commission's decision not to approve Columbia's proposed Green Path Rider is unlawful and unreasonable, respectfully stating as follows:

I. BACKGROUND

Columbia filed an Application with the Commission for approval of its Green Path Rider and such Application was accepted for filing as of May 3, 2023. Columbia responded to three sets of data requests from the Commission Staff. The Commission issued its Order in this case on October 30, 2023.

II. APPLICABLE LAW AND STANDARD OF REVIEW

KRS 278.400 governs motions for rehearing, which provides the Commission with the ability to correct findings based on material errors or omissions, or to correct findings that that are unreasonable or unlawful.¹ The statute states, in its entirety:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

A Commission Order is unreasonable when “the evidence presented leaves no room for difference of opinion among reasonable minds.”² An Order of the Commission

¹ *Electronic Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Network’s Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to unserved and Underserved Households and Businesses of the Commonwealth*, Case No. 2021-00365, Order (Ky. PSC May 19, 2022) at 1–2.

² *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

is unlawful when it is deemed to be in violation of a state or federal statute, or a constitutional provision.³

III. ARGUMENT

The Commission's decision to deny approval of the pilot Green Path Rider meets the threshold for rehearing and is therefore worthy of reconsideration. In making its determination, the Commission expressed concern with Columbia's reliance on survey results related to interest in the program by customers that the Commission believes are insufficiently robust and speculative.⁴ The Commission also doubts that many customers would participate in the program proposed by Columbia due to its proposed cost.⁵ The Commission additionally points out the rejection of the Green Path Rider program as proposed by other NiSource local distribution companies in other states.⁶ Further, the Commission opines that the Green Path Rider product is not materially different than what customers can contract for themselves, and points to the existing Choice program as an option for customers and observes that include environmentally friendly products are offered in the Choice program.⁷

³ *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

⁴ Order at 7-8.

⁵ Order at 7, 9.

⁶ Order at 8.

⁷ Order at 9-10.

The Commission's Order is unlawful and unreasonable for several reasons that warrant rehearing and approving Columbia's proposed pilot Green Path Rider program.

The Commission applied an unlawful standard of review to Columbia's Application. An "increased" adequate, efficient, and reasonable standard is an improper standard of review.

In its Order, the Commission lays out the legal standard for review of Columbia's Application. The Commission cites KRS 278.030(1) for the collection of fair, just, and reasonable rates, and cites KRS 278.030(2) for Columbia's obligation to provide utility service that is adequate, efficient, and reasonable.⁸ The Commission describes Columbia's responsibility to provide adequate, efficient, and reasonable natural gas service at the lowest reasonable cost possible, and goes on to reject Columbia's Application as it does not effectuate increased adequate, efficient, and reasonable service.⁹ (emphasis added).

The Commission's Order is unlawful as increased adequate, efficient, and reasonable service is not the standard Columbia must meet for approval. "[T]he Commission is a creature of statute and its powers are purely statutory, having only such powers as conferred expressly, by necessity, or by fair implication."¹⁰ Further, When a statute is plain on its face, its language is conclusive.¹¹ The statute at issue is plain on its

⁸ Order at 2.

⁹ Order at 9.

¹⁰ *Kentucky Industrial Utility Customers, Inc. v. Kentucky Public Service Commission*, 504 S.W.3d 695, 705 (Ky. App. 2016).

¹¹ *In the Matter of: Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, 1997 Ky. PUC LEXIS 53 (January 29, 1997) at*4, citing *Lynch v. Commonwealth, Ky.*, 902 S.W.2d 813, 814

face and unambiguous. The addition of the word "increased" unlawfully interprets the statute by adding a word (and hurdle) that the legislature did not include in the statute. Further, Columbia can find no precedent where the Commission has held any utility to this enhanced standard. The Commission's decision is unlawful as it is beyond the Commission's authority and the Commission should grant rehearing to apply the correct standard of review.

The Commission's decision is additionally unlawful as the Commission has not found, nor is there any basis to find, that Columbia's service to any customer will be diminished in any way by approving Columbia's Green Path Rider application. Columbia has demonstrated that the Green Path Rider will be a value add to customers while Columbia continues to safely provide the adequate, efficient, and reasonable service it currently provides. Columbia's Application meets the statutory threshold under KRS 278.030(2) and should be approved by the Commission.

The Commission should reconsider its order and approve Columbia's Green Path Rider application under a correct application of KRS 278.030(2).

(1995); see also *Lincoln County Fiscal Court v. Dept. of Public Advocacy, Ky.*, 794 S.W.2d 162, 163 (1990) (where statute's words are "clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written").

Potential customer interest in the Green Path Rider, coupled with the low risks to customers, warrants reconsideration of the Commission's Order and approving the Green Path Rider application.

The Commission's order is unreasonable as it prevents customers from voluntarily purchasing a product that will offset their carbon footprint. The Commission should allow Columbia to offer this voluntary program to customers who have this particular interest. Columbia's consultant identified a potential market of almost 36,000 residential and approximately 13,900 commercial customers that would be more likely to purchase environmentally ("green") products.¹² Additionally, Columbia's survey showed strong interest for customers being given a choice of using renewable energy, 63% said that using RNG was appealing to them, and 15% of customers indicated they would be willing to pay more for renewable energy.¹³ While Columbia acknowledges the Commission's concern about the small number (0.6%) of customers that would likely initially purchase the pilot product, such a result is to be expected from a pilot program. Every program needs to start somewhere, and the Commission should allow Columbia to run pilot programs to determine if customers will voluntarily choose a differentiated product like the Green Path Rider.¹⁴

¹² See, Columbia Response to 3rd Set of Data Requests, No. 3 (August 15, 2023) and Columbia Response to 2nd set of Data Requests, No. 1 (July 21, 2023).

¹³ Evans testimony at 7-8.

¹⁴ The Commission states it is "supportive of providing customers choice and product differentiation, insofar as customers seek it." Order at 7.

Moreover, Columbia shares the Commission's sensitivity to costs. Columbia naturally has every incentive to keep the Green Path Rider cost low to entice more customers to try out its pilot program. And customers can cancel at any time without penalty after just one billing cycle on the program.¹⁵ The risk to customers is small, and contained even if a customer ultimately decides the program is not for them.

For these reasons, it is unreasonable for the Commission to not even allow such a product offering to get off the ground given the potential interest in the Green Path Rider, in particular when the risk to individual customers is so low.

III. CONCLUSION

Columbia respectfully requests that the Commission grant this Motion and reconsider its decision to reject the proposed Green Path Rider. The Commission should modify its October 30, 2023 Order in this case in a manner that adopts Columbia's originally proposed Green Path Rider without modification.

This 17th day of November, 2023.

¹⁵ Evans testimony at 10.

Respectfully submitted,

/s/ Joseph M. Clark

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on November 17, 2023; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, no paper copies of the filing will be made.

/s/ Joseph M. Clark

Counsel for Columbia Gas of Kentucky, Inc.