

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF THE COMMONWEALTH OF KENTUCKY**

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

**XOOM ENERGY KENTUCKY, LLC’S  
REPLY TO COLUMBIA GAS OF KENTUCKY, INC.’S RESPONSE TO  
XOOM ENERGY KENTUCKY, LLC’S MOTION FOR INTERVENTION**

XOOM Energy Kentucky, LLC (“XOOM”), pursuant to 807 KAR 5:001, Section 5(3), by counsel, respectfully offers its Reply to Columbia Gas of Kentucky, Inc.’s (“Columbia”) response to XOOM’s Motion for Intervention in the above captioned proceeding. In support of this Reply, XOOM states as follows:

1. XOOM has a special interest in this case that is not already adequately represented. Further, XOOM will present issues and develop facts that will assist the Commission in fully considering the matter. XOOM will do all of this without unduly complicating or disputing the proceedings, as evidenced by XOOM’s agreement to abide by the existing procedural schedule. Accordingly, XOOM has met the standard for intervention required by 807 KAR 5:001E, Section 4(11)(a). For this reason, XOOM respectfully requests that the Commission grant its Motion to Intervene, reject the arguments made by Columbia in opposition, and provide XOOM with all of the rights and obligations of a party to this case.

2. In its Response to XOOM’s Motion to Intervene, Columbia fails to address XOOM’s argument that it will present issues and develop the facts from a currently unrepresented perspective. XOOM is a competitive service provider (“CSP”) with substantial experience in

Columbia’s customer Choice program and products in other jurisdictions similar to the proposed Green Path Rider. As noted in XOOM’s Motion to Intervene, CSPs already provide products in competitive choice markets similar to the Green Path Rider proposed by Columbia.<sup>1</sup>

3. Additionally, Columbia does not dispute XOOM’s concern that the addition of the Green Path Rider may significantly harm competitive choice in Columbia’s service territory. In fact, after XOOM’s motion to intervene in this case, Columbia acknowledged in Case No. 2022-00386 that the Green Path Rider may end up directly competing with products offered by CSPs.<sup>2</sup> XOOM can assist with full and complete development of the record on what the Green Path Rider will do to competitive choice in Kentucky and how it will impact suppliers trying to do business in the state.

4. Columbia also argues that XOOM’s intervention request should be considered untimely and that XOOM has not established good cause to allow its untimely intervention.<sup>3</sup> However, the Commission does not prohibit untimely interventions. The Commission stated in its June 6 Order that “any motion to intervene filed after the date established in the procedural schedule shall also show good cause for being untimely.”<sup>4</sup> XOOM recognizes that its motion to intervene was untimely and explained its good cause for untimeliness in its Motion to Intervene.

5. At the time of the Commission’s June 6 Order, XOOM did not have local counsel for this matter. Therefore, at the time the Commission issued the order establishing the procedural schedule, XOOM could not intervene.<sup>5</sup> As stated in its Motion, XOOM “did not anticipate the

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<sup>1</sup> XOOM Motion to Intervene at ¶ 7.

<sup>2</sup> Case No. 2022-00386, Testimony of Judy Cooper, Hearing Video Transcript (July 26, 2023) at 14:02:11 – 14:02:37.

<sup>3</sup> Columbia Response at ¶¶ 5, 7.

<sup>4</sup> XOOM Motion to Intervene at ¶ 7; *see also* Case No. 2022-00049, *In the Matter of the Electronic Application of Columbia Gas of Kentucky, Inc., for Approval of the Green Path Rider Pilot Program*, Order at ¶ 5 (Jun. 6, 2023).

<sup>5</sup> The Commission has held that “any attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission, must engage a member of the Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.” *See* Case No. 2016-00370, *In the Matter of Electronic Application of Kentucky Utilities Company for an*

Commission entering a procedural order with a one-day deadline for intervention requests” but “worked diligently to obtain local counsel” upon issuance of that order.<sup>6</sup> Once XOOM obtained local counsel for this matter, it filed its intervention request as soon as practicable.

6. Furthermore, Columbia asserts that XOOM has not illustrated how its participation will be helpful to the Commission.<sup>7</sup> This is not accurate. As XOOM outlined above and in its intervention request, XOOM can present evidence on impacts to customers participating in Columbia’s Choice program, as well as impacts to suppliers like XOOM. Commission Staff asked Columbia to “discuss the possible impacts of the proposed Green Path Rider on Columbia Kentucky sales customers who might otherwise be interested in participating in Choice marketers’ green product offerings.”<sup>8</sup> In response, Columbia acknowledged that it was “generally aware of the fact that certain retail CHOICE marketers offer products, but does not have specific details of each individual contract between retail CHOICE marketers and customers participating in that program.”<sup>9</sup> However, unlike Columbia, XOOM and its parent company, NRG Energy, Inc. (“NRG”), have subject matter expertise on CSP gas carbon offset offers, including experience on how such offers work. The inclusion of XOOM in this proceeding will provide the Commission and Staff with a CSP perspective that will assist the Commission in determining the possible impacts of the proposed Green Path Rider on suppliers offering green products. Such consideration of potential impacts will result in a fully developed record in this proceeding.

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*Adjustment of its Electric Rates and for Certificates of Public Convenience and Necessity*, Order at 2 (citing Administrative Case No. 249, *Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky* (Ky. PSC Jun. 15, 1981) at 2); *see also* 807 KAR 5:001, Section 4(4) (“[a] person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2).”).

<sup>6</sup> XOOM Motion to Intervene at ¶ 10.

<sup>7</sup> Columbia Response at ¶ 6.

<sup>8</sup> *See* Staff Set 1-12.

<sup>9</sup> *See* Columbia’s Response to Staff Set 1-12.

7. Additionally, Commission Staff has demonstrated an interest in understanding Columbia's offerings of similar programs in other jurisdictions and reasonings for why similar proposals have been rejected.<sup>10</sup> XOOM and other NRG affiliates have participated in these other jurisdictions where Columbia has proposed a Green Path Rider. Accordingly, XOOM is able to provide additional insight for why some of Columbia's Green Path Rider programs have been rejected. XOOM believes such insight will prove to be valuable in the Commission's determination of whether to approve Columbia's Application.

8. XOOM's intervention in this proceeding is not prejudicial to Columbia as XOOM is willing to accept the current procedural schedule. Under the current procedural schedule, XOOM is unable to ask Columbia any requests for information as the deadline for such requests has expired. However, Columbia retains the ability to issue discovery requests to XOOM. Therefore, there is no harm to Columbia in permitting XOOM to intervene and participate in this matter.

WHEREFORE, XOOM respectfully requests that the Commission grant its Motion to Intervene, reject Columbia's arguments in opposition, and provide XOOM all the rights and obligations of a party in this matter.

Respectfully submitted,

XOOM ENERGY KENTUCKY, LLC

By Counsel

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<sup>10</sup> See Staff Set 1-4 ("State whether other NiSource subsidiaries have similar programs. If so, provide descriptions of those programs. If not, state whether similar programs are or will be requested in other jurisdictions. If not, explain why."); *see also* Staff Set 2-3 ("Refer to Columbia Kentucky's response to Staff's First Request, Item 4. Provide a summary of the reasoning for the rejection of each of the Green Path Rider programs proposed in Pennsylvania and Maryland, and the substance of the objection of the parties to the proposed program in Ohio that was withdrawn as a result of a settlement.").

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*Counsel for XOOM Energy Kentucky, LLC*

Dated: July 31, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that XOOM’s July 31, 2023 electronic filing is a true and accurate copy of the foregoing; that the electronic filing has been transmitted to the Commission on July 31, 2023; that pursuant to the Commission’s July 22, 2021 Order in Case No. 2020-00085, an original and one copy of the filing are excused from being mailed to the Commission; that there are currently no parties excused from participation by electronic service; and that, on July 31, 2023, electronic mail notification of the electronic filing is provided to all parties of record.

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*/s/ Dennis G. Howard, II*  
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