

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

In the matter of: : CASE NO. 2024-00092

THE ELECTRONIC APPLICATION OF :
COLUMBIA GAS OF KENTUCKY, INC. :
FOR AN ADJUSTMENT OF RATES; :
APPROVAL OF DEPRECIATION STUDY; :
APPROVAL OF TARIFF REVISIONS; AND :
OTHER RELIEF :

**INTERSTATE GAS SUPPLY, INC.’S (“IGS”) AND CONSTELLATION NEW ENERGY-
GAS DIVISION, LLC’S (“CNEG”) RESPONSE TO COLUMBIA GAS OF KENTUCKY,
INC.’S MOTION FOR RE-HEARING REGARDING INTERVENTION**

Come Interstate Gas Supply, Inc. (“IGS”) and Constellation New Energy – Gas Division, LLC (“CNEG”), interveners in this action, and in response to Columbia Gas of Kentucky, Inc.’s (“Columbia”) Motion for Rehearing, state the following:

IGS and CNEG requested permissive intervention in this pending rate case. Columbia objected to IGS’s and CNEG’s request.¹ On June 28, 2024 the Commission granted IGS’s and CNEG’s permissive intervention indicating IGS’s and CNEG’s intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.² The decision on intervention lies solely with the Commission, the Commission has discretion to grant or deny motions for permissive intervention and the Commission has significant latitude in those decisions.³ The Commission’s Order to grant permissive intervention to IGS and CNEG is interlocutory in nature.⁴

¹ Columbia’s Response to Motion to Intervene.

² Order herein dated June 28, 2024 – referencing 807 KAR 5:001, Section 4(11).

³ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission*, 407 S.W.2d 127 (Ky.1966).

⁴ *Ashland Public Library Board of Trustees v. Scott*, 610 S.W.2d 895, 896 (Ky.1981).

Columbia has filed a motion for rehearing pursuant to KRS 278.400. Columbia asserts that the Commission’s findings granting intervention were unreasonable⁵ and premised upon a material error.⁶ KRS § 278.400 (emphasis added) specifies:

“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.”

KRS § 278.400 and KRS § 278.410 allow for aggrieved parties to seek relief from final orders of the Commission. The Order granting IGS and CNEG intervention in this proceeding is interlocutory.⁷ The plain language of KRS § 278.400 directs that any party to the proceedings may seek rehearing *after a hearing* within twenty (20) days after the service of the order and the statute directs that notice of the rehearing, if granted, shall be provided in the same manner as notice of an original hearing.⁸ In practice, the Commission will sometimes enter orders on motions for rehearing, without a need of an additional hearing, resolving issues associated with

⁵ Findings are unreasonable where “the evidence presented leaves no room for difference of opinion among reasonable minds.” *In re: Electric Application of Big Rivers Electric Corporation for Annual Review of Its MRSM Charge for Calendar Year 2022*, Case No. 2023-00038, 2023 WL 7220130, at *1 (Ky. P.S.C. Oct. 26, 2023)

⁶ See, p. 3, paragraph 5 of Columbia’s motion for rehearing.

⁷ See, *fn. 4 supra*.

⁸ Notice for a rehearing requirements and a new hearing would seem to contemplate the requirements of 807 KAR 5:001 §9(2)b 2 and 3. “If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.”

final orders.⁹ There is a hearing scheduled in the future on this case on October 21, 2024 at 9:00 a.m. Thereafter, subject to potential briefs the Commission would issue a final Order in this case and then any party aggrieved of the final order would then have twenty (20) days to seek rehearing on their concerns pursuant to KRS § 278.400 as contemplated by the plain language in the statute, “*after a determination has been made by the commission in any hearing...*” which has not occurred in the case at bar yet. Said another way, KRS § 278.400 does not appear applicable to Columbia’s motion and such a request under the statute would not be ripe until after a final hearing.¹⁰ Likewise, expanding the interpretation of KRS § 278.400 beyond its terms to anyone aggrieved of any Order at any point, rather than after a hearing, could overwhelm the Commission with additional motions and arguments already addressed in previous motions, responses and replies.¹¹ From a procedural standpoint, Columbia’s motion should be denied.

Even assuming the Commission construes Columbia’s motion as a request for reconsideration or deems KRS § 278.400 applicable, Columbia’s request should fail as well. The Commission determined that, “IGS and CNEG can assist the Commission in this case in

⁹ See, e.g., Order dated December 7, 2023 of the Commission granting a Petition for Rehearing, *In the matter of: Electric Joint Application Of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates Of Public Convenience And Necessity And Site Combability Certificates And Approval Of a Demand Side Management Plan And Approval Of Fossil Fuel-Fired Generating Unit Retirements*, Case No. 2022-00402.

¹⁰ *But also see, Enviropower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328, (Ky.App.2007)(unpublished and non-binding pursuant to RAP 41)(while non-binding addressing the possibility of a party denied intervention in a CPCN case to file for rehearing regarding intervention pursuant to KRS § 278.400).

¹¹ Such is the case here with the parties already briefing the intervention issue through a motion, response and reply and the Commission provided a thorough June 28th Order addressing reasons to grant permissive intervention. And, if the Commission does not wish to expend resources and address this intervention issue again KRS § 278.400 also allows the Commission to deny a request by doing nothing if it fails to grant a request within twenty (20) days of the motion for rehearing.

developing facts specifically related to tariff impacts and the Choice Program, including revenue and expense tracking within the program; without unduly complicating the proceedings.”¹² Columbia takes issue with certain dicta in the Commission’s Order claiming it was incorrect¹³ however Columbia’s argument is immaterial to the Commission’s discretionary finding that IGS and CNEG can assist the Commission in this case without unduly complicating the proceedings pursuant to 807 KAR 5:001. Likewise, determining the factual merits of Columbia’s argument can be addressed in discovery and any final hearing. The Commission has previously granted IGS intervention into several previous Columbia base rate proceedings.¹⁴ Based on past experience in other Columbia rate cases addressed in *fn. 14* and both parties being an active participant in other cases the Commission has found that IGS’s and CNEG’s intervention is likely to present issues or develop facts that will assist the Commission.¹⁵

Wherefore, IGS and CNEG respectfully request that the Commission deny Columbia’s motion by ruling on it or by inaction by not ruling on it within twenty (20) days as the Commission has previously expended resources and already addressed objections by Columbia by entering the June 28, 2024 Order granting intervention.

¹² See, p. 6 of the Commission’s June 28, 2024 Order granting intervention.

¹³ e.g., Columbia argues that the IT system upgrades in this proceeding are not related to expense tracking. See, p. 3, paragraph 6 of Columbia’s motion for rehearing. Columbia argues that the GCUR only applies to sale tariff rates not Choice. See, p. 4, paragraph 7 of Columbia’s motion for rehearing.

¹⁴ *In the matter of: Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates, Case No. 2007-00008; In the matter of: Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates, Case No. 2009-00141; and, In the matter of: Application of Columbia Gas of Kentucky, Inc. for An Adjustment of Gas Rates, Case No. 2013-00167.*

¹⁵ 2021-00386, *Electronic Tariff Filing of Columbia Gas of Kentucky, Inc. to Extend its Small Volume Gas Transportation Service*. Of note, Columbia also filed a motion for rehearing to the final order in this matter on July 18, 2024 as well.

Respectfully submitted,

/s/Matt Malone

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CERTIFICATE OF SERVICE

I hereby certify that IGS and CNEG's July 24, 2024 electronic filing is a true and accurate copy of IGS and CNEG's pleading and Read 1st Document to be filed in paper medium; that the electronic filing has been transmitted to the Commission on July 24, 2024; that an original and one copy of the filing will not be mailed postage prepaid to the Commission due to pandemic rules; that there are currently no parties excused from participation by electronic service; and that, on July 24, 2024, electronic mail notification of the electronic filing is provided to all parties of record.

/s/Matt Malone

Attorney for Interstate Gas Supply, Inc.

and Constellation New Energy, Gas Division, LLC