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June 22, 2009

VIA FACSIMILE TRANSMISSION (502)564-3460
&
VIA UPS NEXT DAY AIR SAVER

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Case No. 2009-00141
Columbia Gas of Kentucky, Inc.
General Rate Case

Dear Mr. Derouen:

Following this transmittal is a fax copy of Stand Energy's *Memorandum Supporting the Intervention of the Stand Energy Corporation Customer Group.*

The Original of this document and ten (10) copies will be delivered to you via UPS Next Day Air Saver Envelope tomorrow.

Thank you for your prompt attention to this filing and you may contact me if you require any further information.

Sincerely,

John M. Dosker

John M. Dosker
General Counsel

Encls.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

APPLICATION OF COLUMBIA GAS OF KENTUCKY, INC. FOR AN ADJUSTMENT OF RATES FOR GAS SERVICE	)))	CASE NO. 2009-00141

MEMORANDUM SUPPORTING THE INTERVENTION OF THE STAND ENERGY CORPORATION CUSTOMER GROUP

The Stand Energy Corporation Customer Group submits the following Memorandum Supporting its Motion to Intervene in this case.

Procedural Posture

Columbia Gas of Kentucky ("Columbia") filed an application for a rate increase on May 4, 2009. The filing contains thousands of pages bound into eight (8) volumes. Because Volume 6 of the filing was not available on the Public Service Commission website, Stand Energy Corporation contacted Columbia and obtained Volume 6 directly from Columbia . (To date, Volume 6 is still not available to the public on the Kentucky PSC website).

The Stand Energy Customer Group filed a Motion to formally intervene in the case on June 9, 2009. On June 16, 2009 Columbia Gas of Kentucky filed a Memorandum Contra the Intervention of the Stand Energy Customer Group. Columbia filed the Memorandum Contra notwithstanding the fact that many other requests of other parties to intervene in the case were completely ignored by Columbia.

Columbia's Memo Contra

Columbia contends that in order for the Commission to determine the adequacy of Stand Energy's representation of its customers, the Commission must know the membership of the Stand Energy Customer Group. (*Columbia Memo Contra Intervention* p.3). This is an interesting argument considering that Columbia, as the distribution utility, knows the exact identity of every single transportation customer being served by Stand Energy Corporation at any given point in time. Therefore, the motive for Columbia's position should be questioned.

Columbia relies on a 2007 PSC case in which the KIUC was required to publicly disclose its members that KIUC was representing in that case. (*Columbia Memo Contra Intervention* p.2). Notwithstanding the KIUC case, Stand Energy Corporation would be injured by the forced disclosure of the names of its customers. Stand Energy should be allowed to protect its rights in any forum where they are threatened. Here, Columbia knows that a Customer List is the most valuable asset of any marketing company. By attempting to force disclosure of Stand Energy's customer list, Columbia is attempting to eliminate a voice of dissent. The Kentucky Public Service Commission should not fall for this ploy to silence dissent. Stand Energy is a Kentucky corporation and it has the right to protect its confidential and proprietary customer list from disclosure as a condition precedent to participation in an important, public, regulatory matter.

Stand Energy routinely intervenes in Columbia Gas of Ohio cases before the Public Utilities Commission of Ohio; Stand Energy has intervened in a Columbia Gas of Pennsylvania case before the Pennsylvania PUC and Stand Energy regularly intervenes in FERC cases involving the Columbia Gas Transmission and Columbia Gulf Transmission pipelines. Except for Kentucky, no other jurisdiction Stand Energy is are aware of, State or Federal, has ever required the disclosure of a marketer's customer list. Requiring Stand Energy, or any energy marketer, to identify its customers would be a punitive measure, unjustified by any facts, and designed to intimidate Stand Energy and other marketers from participation in this and future regulatory cases. Columbia Gas of Kentucky is attempting to silence dissent by raising the alleged due process rights of others. Columbia Gas already knows the identity of every Stand Energy customer. Requiring public disclosure of Stand Energy's customers would be improper and contrary to Kentucky public policy.

Stand Energy has engaged in regulatory advocacy of policies that benefit transportation of natural gas on behalf of customers for twenty-five (25) years. Most of Stand Energy's customers could not afford to participate in these proceedings with a subsidiary of NiSource - a billion dollar company - because of the legal costs and expertise required to actively participate in complicated regulatory proceedings. Further, and most importantly, it is virtually impossible to separate the interests of Stand Energy Corporation and the interests of its customers - the Stand Energy Corporation Customer Group.

Columbia claims that it would be "unfair" to allow the intervention without requiring disclosure of customers. Rather, to deny Stand Energy Corporation Customer Group standing to intervene would deny these transporting Columbia customers the ability to share the costs of advocacy and ensure their interests are represented and their voices are heard. Fundamental fairness dictates that the Stand Energy Corporation Customer Group should be allowed to intervene.

Columbia has suggested that the Attorney General of Kentucky can adequately represent the interests of Stand Energy Corporation Customer Group and therefore intervention is not appropriate. In Comments filed herein on June 17, 2009, the Attorney General stated, "The Attorney General is <u>not</u> capable of providing the same perspective and representation that

SECCG would in this matter." (*Attorney General Comments,* p.1, emphasis added) and that, "... a full and just resolution of the issues in the instant matter cannot be made without granting SECCG full intervention." (*Id.* at p. 2) (Emphasis added).

Columbia's Proposed Negotiated Sales Service (NSS) Is A Threat To Competition.

Stand Energy is an active marketer of natural gas on the Columbia System. Columbia Gas of Kentucky proposes a new service (NSS) that will compete directly with Stand Energy and other gas marketers in Kentucky without being subject to all of the costs and expenses borne by gas marketers. Columbia Gas of Kentucky, the regulated utility with a state granted monopoly on distribution in its territory, proposes not only to compete in the sale of natural gas but also to bestow upon itself a competitive advantage in the sale of natural gas in the COH territory that is improper and against the public policy of the Commonwealth of Kentucky.

If Stand Energy Corporation is required to disclose its customer list, than the same fundamental fairness and due process arguments should compel Columbia Gas of Kentucky, Inc. to disclose the name of every one of its customers who will be eligible to receive NSS Service under this new Columbia proposal. In order to maintain a level playing field for competition within the retail sale of natural gas in Kentucky, Columbia should be required to disclose the complete list of customers to which Columbia proposes to offer NSS service to determine whether each eligible Columbia customer's interests are being protected in this proceeding.

Stand Energy has unique expertise to lend to this case. Stand Energy actively participated as a party in a 2005 Pennsylvania Public Utility Commission case in which a NiSource sister company, Columbia Gas of Pennsylvania proposed changes almost exactly the same as those being proposed in this case in Kentucky in 2009. Attached hereto and incorporated herein as *if* fully set forth as Exhibit 1, is a "Motion" issued by the Vice-Chairman of the Pennsylvania PUC explaining his vote. In Pennsylvania, Columbia proposed a new service called OSS (Optional Sales Service) which would have allowed the utility (not an unregulated subsidiary) to make a profit on the sale of the natural gas commodity (as opposed to a statutory rate of return on the distribution of natural gas) to large customers. This proposed service would have placed the utility in direct competition with numerous gas marketers/suppliers in Pennsylvania without all of the costs and obligations imposed on the marketers/suppliers.

The major issues in the Columbia Gas of Pennsylvania case are all raised in this Columbia Gas of Kentucky case. Ultimately, The Pennsylvania Public Utility Commission correctly determined that approving the filing would have destroyed what little competition existed in the Columbia of Pennsylvania territory at the time. Stand Energy's participation in this Kentucky case should not change the same result from being reached by the Kentucky Public Service Commission.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was hand-delivered or mailed, first class postage prepaid, this 22nd day of June 2009, to the following parties of record:

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Lexington, Kentucky 40507-1310

John M. Dosker
JOHN M. DOSKER

Exhibit 1

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105

Pennsylvania Public Utility Commission, Natural Gas Suppliers, Stand Energy Corporation, Independent Oil & Gas Association of PA, Office of Small Business Advocate, Office of Consumer Advocate, and Volunteer Energy Services, Inc. v. Columbia Gas of Pennsylvania, Inc.	PUBLIC MEETING OCT. 27, 2005 OCT-2005-OSA-0342 R-00049783 R-00049783C0001 R-00049783C0002 R-00049783C0003 R-00049783C0004 R-00049783C0005 R-00049783C0007

MOTION OF
VICE CHAIRMAN JAMES H. CAWLEY

I believe that Columbia Gas of Pennsylvania Inc.'s ("Columbia") proposed tariff Rider OSS should be rejected. This rider essentially would allow Columbia to individually negotiate customer specific rates without regard to any demonstration of system benefits, which could lead to unlawful discrimination between customers,[1] and raises some concerns relative to the filed rate doctrine of Section 1302 and 1303 of the Code. 66 Pa.C.S. §1302-1303. While the Commission has permitted negotiated rates in the past, these rates were largely based on a demonstration of overall system-wide benefits associated with retention of load from competing fuels and economic development. However, the record here is insufficient to support approval of Rider OSS.

It is also clear that Columbia's proposed OSS rider is substantially different from Equitable's FSS service. In the Commission's decision to approve Equitable's FSS program, the Commission considered a variety of factors in deciding whether Equitable's fixed rate service should be viewed as a competitive service. These factors included whether the service is competitively neutral, whether the service would adversely affect Natural Gas Suppliers ("NGSs"), whether the rate offers are to be made on a limited basis, and whether safeguards are in place to prevent the Natural Gas Distribution Companies from having an advantage over NGSs in attracting customers to the fixed rate.

As to the first point, parties have raised important issues about the competitive fairness of the OSS proposal, including, but not limited to, administrative cost assignment, rules applicable to delivery service, billing inequities, and code of conduct issues. Many of these same issues have been referenced as raising barriers to competition in the *Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply*

[1] Section 1304 of the Public Utility Code, 66 Pa. S.C. §1304, requires that no public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

Market.[2] It is therefore prudent to address some of these issues in the Natural Gas Industry Stakeholders process before potentially causing any harm to the development of competitive markets.

As to the second point, OSBA is correct in concluding that "the new services will compete with other competitors' offerings, and could change the competitive landscape."[3] It is apparent from the record that Rider OSS is a competitive offering, by either Columbia's utility marketing division or marketing operation, that exceeds its Supplier of Last Resort (SOLR) obligation, and, as such, it is likely to have an adverse effect on retail gas competition.

Lastly, Rider OSS is substantially different from the FSS program approved by this Commission for Equitable. OSS targets large customers, provides Columbia with the ability to make offers to customers at any time, at any rate, subject only to a floor and cap, and is sourced from a common pool of supply.

THEREFORE, I MOVE THAT:

1. The Recommended Order of the Office of Special Assistants be modified, consistent with this Motion.
2. The Office of Special Assistants prepare the appropriate Order consistent with this Motion.

10/27/05 James H Cawley

DATE James H. Cawley

[2] Docket No. I-00040103.
[3] OSBA M.B., p. 6.