

June 26, 2009

**SENT VIA FAX AND
OVERNIGHT DELIVERY**

Mr. Jeff Derouen
Executive Director
Public Service Commission
Commonwealth of Kentucky
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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JUN 29 2009

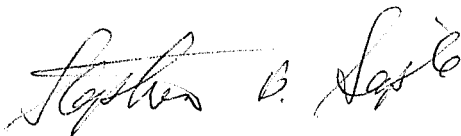
PUBLIC SERVICE
COMMISSION

RE: Case No. 2009-00141

Dear Mr. Derouen,

Enclosed for filing is Columbia Gas of Kentucky's Reply to the Comments of the Attorney General and Reply of the Stand Energy Corporation Customer Group. One copy is being faxed, and the original and eleven (11) copies are being sent by overnight delivery. Please docket the fax copy, and upon receipt of the overnight delivery please docket the original and ten (10) copies and return the extra copy to me in the self addressed stamped envelope enclosed. Should you have any questions about this filing, please contact me at 614-460-4648. Thank you!

Sincerely,



Stephen B. Seiple
Assistant General Counsel

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: the Application of Columbia)
Gas of Kentucky, Inc. for an Adjustment in) Case No. 2009-00141
Rates.)

**COLUMBIA GAS OF KENTUCKY, INC.'S
REPLY TO THE
COMMENTS OF THE ATTORNEY GENERAL AND
REPLY OF
STAND ENERGY CORPORATION CUSTOMER GROUP**

Now comes Columbia Gas of Kentucky, Inc. (“Columbia”), by and through its attorneys and replies to the Reply to Memorandum Contra to Motion to Intervene filed by Stand Energy Corporation Customer Group (“Customer Group”) and the Comments filed by the Attorney General of the Commonwealth of Kentucky in the above-captioned proceeding.

On June 9, 2009, Customer Group filed with the Kentucky Public Service Commission (“Commission”) its Motion to Intervene requesting full intervenor status in this action pursuant to 807 KAR 5:001 § 3(8). Columbia filed its Memorandum Contra to the Motion to Intervene on June 15, 2009. The Attorney General of the Commonwealth of Kentucky (“Attorney General”) filed his Comments regarding Customer Group’s Motion to Intervene on June 17, 2009. Customer Group filed its Reply to Columbia’s Memorandum Contra to Customer Group’s Motion to Intervene on June 23, 2009.

A. Attorney General's Comments

The Attorney General, in his Comments, claims he will be unable to provide the same representation that Customer Group would provide in this matter.¹ However, the Commission's standard for intervention does not utilize the "same representation" standard. Instead, the Commission's rules provide that a person is permitted to intervene if that person's interests are not *adequately* represented.² Under KRS § 367.150(8), the Attorney General is to represent the interests of all Kentucky consumers, which includes the interests of the individual members of the Customer Group. There is no indication in the Attorney General's pleading that the Attorney General cannot adequately represent the interests of the Customer Group members.

The Attorney General also supports the Customer Group's intervention under the second criterion in 807 KAR 5:001 § 3(8). The Attorney General believes that Customer Group's intervention "would likely lead to the presentation of unique issues or to the development of relevant facts that may assist the Commission in the instant case."³ The Attorney General, similar to Customer Group, fails to disclose what unique issues or facts Customer Group would present that other intervenors cannot. Generalizations and vague references to unique perspectives neither warrant intervention, nor satisfy the statutory criteria for intervention.

¹ *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, PSC Case No. 2009-00141, Attorney General's Comments regarding Motion of Stand Energy Corporation Customer Group to Intervene (June 17, 2009) at 1.

² 807 KAR 5:001 § 3(8).

³ *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, PSC Case No. 2009-00141, Attorney General's Comments regarding Motion of Stand Energy Corporation Customer Group to Intervene (June 17, 2009) at 1.

B. Customer Group's Reply

1. The Commission Should Reject All Comments And Arguments Raised By Customer Group Regarding Stand Energy Corporation.

A reading of the Customer Group's Motion to Intervene makes it nearly impossible to determine Stand Energy Corporation's status with respect to the requested intervention. Parts of the pleading can be read to infer that Stand Energy Corporation is merely the representative of Stand Energy Corporation's customers, and Stand Energy Corporation itself is not part of the Customer Group. Other parts of the pleading seem to infer that Stand Energy Corporation is part of the Customer Group seeking intervention in this case. This ambiguity alone should lead the Commission to deny Customer Group's Motion to Intervene.

Customer Group raises the contention that "it is virtually impossible to separate the interests of Stand Energy Corporation and the interests of its customers – the Stand Energy Corporation Customer Group."⁴ The Commission, however, has found differently. In the 2001 Union Light, Heat and Power Company ("ULH&P") rate case, the Commission denied Stand Energy Corporation's petition to intervene because "the interest claimed by [Stand Energy Corporation] is actually that of ULH&P's [Interruptible Transportation] customer and that it cannot be asserted by [Stand Energy Corporation]."⁵ In the ULH&P rate case, the Commission ruled that Stand Energy Corporation could not represent the interests of ULH&P's transportation customers, which included Stand Energy Corporation's customers. Similar to the ULH&P rate case, Stand Energy Corporation's customers are end use customers who take service under Columbia's tariff provisions regarding gas transportation service. As Customer Group admits, it

⁴ *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, PSC Case No. 2009-00141, Reply of Stand Energy Corporation Customer Group to Memorandum Contra to Motion to Intervene of Stand Energy Corporation Customer Group (June 23, 2009) at 3.

⁵ *In the Matter of Adjustment of Gas Rates of the Union Light, Heat and Power Company*, PSC Case No 2001-00092, Order (September 13, 2001) at 2.

is generally made up of “transporting Columbia customers.”⁶ To permit Customer Group to assert that its interests are undeniably intertwined within those of Stand Energy Corporation would undermine the Commission’s ULH&P precedent.

To the best of Columbia’s knowledge, the Customer Group is not a legal entity. It is not a formal association. Even if Stand Energy Corporation is included as a member in Customer Group, Stand Energy Corporation’s interests are separate and distinct from its customers. However, if Stand Energy Corporation is not a member of Customer Group, then Stand Energy Corporation is attempting to cloak the group in secrecy, and is unilaterally asserting that it is the self-appointed representative and guardian of its customers’ interests. This ad hoc group lacks standing to assert Stand Energy Corporation’s rights, just as Stand Energy Corporation lacks standing to attempt to protect the rights of its customers. If Stand Energy Corporation wants to intervene in this proceeding to protect its rights as a corporation, then it should so move. However, Stand Energy Corporation has no standing to represent the rights of its customers, particularly where there has been no showing that the customers have authorized such action.⁷

2. Customer Group Failed To Distinguish And Explain Why The Commission’s Order In Case No. 2007-00477 Does Not Require It To Disclose Its Constituents.

In Columbia’s Memorandum Contra, Columbia argued Customer Group should be required to disclose its constituency to the Commission because the Commission required other organizations representing multiple customers to disclose their constituency members’ identities. In Case No. 2007-00477, the Commission ordered the Kentucky Industrial Utility Customers,

⁶ *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, PSC Case No. 2009-00141, Reply of Stand Energy Corporation Customer Group to Memorandum Contra to Motion to Intervene of Stand Energy Corporation Customer Group (June 23, 2009) at 2, 3.

⁷ If the Commission does not deny Customer Group’s Motion to Intervene for the reasons set forth herein, the Commission should consult with the Kentucky Bar Association to determine whether in-house counsel for Stand Energy Corporation can represent the interests of that company’s customers without running afoul of the unauthorized practice of law restrictions.

Inc., which petitioned for intervention but failed to identify which customers it represented, to publicly supplement its application with the identities of the electric and gas customers which it was representing.⁸ Customer Group, in its Reply, simply ignores the case and states, “Notwithstanding the KIUC case, Stand Energy Corporation would be injured by the forced disclosure of the names of its customers.”⁹ If the Commission does not reject the Customer Group’s motion to intervene, which it should do for the reasons discussed above, the Commission should require Customer Group to disclose the membership of its Group to ensure Customer Group’s interests are not already being adequately represented. The Commission should uphold its precedent notwithstanding Customer Group’s assertion that such disclosure would injure another entity, not a party to this proceeding, because there has been no sufficient demonstration of any harm that would allegedly result.

3. Though Columbia Knows Stand Energy Corporation’s End-Use Customers, Columbia And The Commission *Do Not* Know Which Customers Are Members Of Customer Group.

Customer Group asserts that because Columbia knows the identity of Stand Energy Corporation’s customers, it automatically knows the identity of the constituents which comprise the Customer Group.¹⁰ However, this reasoning is flawed. Customer Group has never clearly stated whether it is comprised of all customers of Stand Energy Corporation, select customers of Stand Energy Corporation, all customers and Stand Energy Corporation, or select customers and Stand Energy Corporation. If all of Stand Energy Corporation’s customers are members of Customer Group, Customer Group fails to provide proof that all of Stand Energy Corporation’s customers consented to be a member of this group. If there are Stand Energy Corporation

⁸ *In the Matter of an Investigation of the Energy and Regulatory Issues in Section 50 of Kentucky’s 2007 Energy Act*, PSC Case No. 2007-00477, Order (December, 3, 2007).

⁹ *In the Matter of the Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, PSC Case No. 2009-00141, Reply of Stand Energy Corporation Customer Group to Memorandum Contra to Motion to Intervene of Stand Energy Corporation Customer Group (June 23, 2009) at 2.

¹⁰ *Id.*

customers that are not part of the Customer Group, Columbia is not suggesting that the identity of such customers be disclosed.

Moreover, Columbia's knowledge of the identity of Stand Energy Corporation's customers is irrelevant to the Commission's knowledge of the proposed intervenor's composition to determine whether Customer Group's interests are adequately represented. Finally, contrary to Customer Group's assertion that Columbia's motives should be questioned,¹¹ Columbia is not attempting to harass Customer Group, but is instead requesting information pertinent to aid the Commission in its determination of whether Customer Group's interests are adequately represented. Rate cases are complex enough, with multiple parties representing differing views. All Columbia requests is that the parties to the case represent real parties in interest, and that all parties know with whom they are dealing so as to foster the most efficient exploration of issues possible.

Finally, if Customer Group believes the public disclosure of its constituent members would be harmful to the individual members of Customer Group, then Columbia would be willing to enter into a protective agreement with Customer Group to protect the public disclosure of its constituents. However, unless Customer Group discloses the identities of the members intervening in this action, the Commission will be unable to determine the adequacy of Customer Group's representation and should, therefore, disregard Customer Group's arguments.

¹¹ *Id.*

4. Stand Energy Corporation, Not Customer Group, Should Assert Its Defenses Regarding Its Legal Rights As A Corporation To Protect Its Trade Secrets And Competition.

Customer Group argues that “Stand Energy Corporation would be injured by the forced disclosure of the names of its customers.”¹² Customer Group continues by stating, “Stand Energy [Corporation] 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, [sic] public, regulatory matter.”¹³ As Customer Group states, Stand Energy Corporation does have the opportunity to protect its proprietary interests. However, if Stand Energy Corporation is a member of Customer Group, it must bring its own defenses as a separate party to this proceeding. Moreover, Customer Group, a group separate from Stand Energy Corporation, cannot assert Stand Energy Corporation’s defenses and legal arguments.

Similarly, Customer Group argues that Columbia’s new service, NSS, will compete directly with Stand Energy Corporation.¹⁴ If Stand Energy Corporation is a member of Customer Group, then it should assert this defense in its individual capacity as a corporation and marketer, as it allegedly did in the Pennsylvania case. Obviously, the other members of Customer Group may or may not have participated in the Pennsylvania proceeding, further demonstrating why the interests of Stand Energy Corporation and its customers are not synonymous. Columbia’s proposed NSS also does not compete with Customer Group, whose members are serviced by Columbia. One has to wonder if Stand Energy Corporation is not in fact trying to shield its customers from Columbia’s proposed new offerings in an effort to dampen any competitive impact that Columbia’s new offerings might have should Stand Energy Corporation’s customers have an interest in any of the new service offerings.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 4.

Therefore, Stand Energy Corporation should have moved to intervene if it wants to protect all or part of its customer lists instead of relying upon Customer Group to improperly assert Stand Energy Corporation's defenses.

5. The Determination Of Intervention Is Not Dependent Upon Fairness To Customers, But Is Instead Dependent Upon The Commission's Criteria, Which Includes Adequacy Of Representation.

Customer Group argues that it should be permitted to intervene "because of the legal costs and expertise required to actively participate in complicated regulatory proceedings."¹⁵ Customer Group further advocates that denying these customers' intervention "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."¹⁶ Cost of advocacy, however, is not a valid justification for intervention into a Commission proceeding. The Commission's Regulation 807 KAR 5:001 § 3(8) provides that an intervenor is permitted to join a proceeding if that person either: (1) has a special interest in the proceeding that is not already adequately represented, or (2) is likely to develop facts and issues to assist the Commission without unduly complicating or disrupting the proceeding. The cost of advocacy is not considered as part of the criteria for intervention. Particularly where, as here, no one knows the identity of the customers in the Customer Group or whether Stand Energy Corporation is a member of Customer Group, and there has been no allegation that the customers have authorized Stand Energy Corporation to act as their legal representative in this proceeding.

Instead, the Commission is to focus on the adequacy of representation of a rate payer's interest. This interest, as stated above in Columbia's response to the Attorney General's Comments, is adequately represented by the Attorney General.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

C. Conclusion

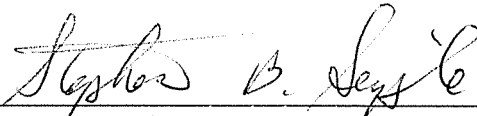
The Commission should continue to follow its precedent and deny intervention of Customer Group. As detailed herein, Customer Group fails to meet the criteria prescribed in the Commission's rules for intervention. Customer Group also attempts to support its intervention by citing and asserting the interests of Stand Energy Corporation; however, Customer Group lacks standing to assert the interests which are not its own or those of all of its members. Conversely, Stand Energy Corporation lacks standing to assert the rights of its customers. If the real party in interest is Stand Energy Corporation, then that corporation, as a separate legal entity from Customer Group, should move to intervene to assert its rights, but not those of its customers. Finally, the Attorney General, as the state entrusted representative of all Kentucky customer interests, can adequately represent the interests of Customer Group and its constituents.

WHEREFORE, Columbia hereby respectfully requests that the Commission deny Customer Group's Motion to Intervene for the reasons explained herein. In the alternative, if the Commission finds that Customer Group has standing to intervene, Columbia respectfully requests that the Commission require the disclosure of the Customer Group members, and prescribe specific limitations as to the issues Customer Group may pursue.

Dated at Columbus, Ohio, this 26th day of June 2009.

Respectfully submitted,

COLUMBIA GAS OF KENTUCKY, INC.

By: 

Stephen B. Seiple (Counsel of Record)

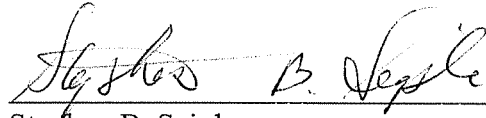
Stephen B. Seiple, Assistant General Counsel
Daniel A. Creekmur, Counsel
200 Civic Center Drive
P.O. Box 117
Columbus, Ohio 43216-0117
Telephone: (614) 460-4648
Fax: (614) 460-6986
Email: sseiple@nisource.com
dcreekmur@nisource.com

Richard S. Taylor
225 Capital Avenue
Frankfort, Kentucky 40601
Telephone: (502) 223-8967
Fax: (502): 226-6383

Attorneys for
COLUMBIA GAS OF KENTUCKY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of Columbia Gas of Kentucky, Inc., was served upon all parties of record by regular U. S. mail this 26th day of June, 2009.



Stephen B. Seiple
Attorney for
COLUMBIA GAS OF KENTUCKY INC.

SERVICE LIST

John M. Dosker
Stand Energy Corporation
1077 Celestial Street, Suit #110
Cincinnati, OH 45202-1629

Dennis G. Howard, II
Lawrence W. Cook
Office of the Attorney General
1024 Capitol Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

Iris G. Skidmore
Bates & Skidmore
415 W. Main Street, Suite 2
Frankfort, Kentucky 40601

William H. May, III
Matthew R. Malone
Hurt, Crosbie & May PLLC
127 West Main Street
Lexington Kentucky 40507

David F. Boehm
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suit 1510
Cincinnati, Ohio 45202

Vincent A. Parisi
Interstate Gas Supply, Inc.
5020 Bradenton Avenue
Dublin, Ohio 43017

Tom Fitzgerald
Liz D. Edmondson
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, Kentucky 40602-1070

W. L. Wilson
Leslye M. Bowman
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507