

RECEIVED

July 10, 2009

JUL 13 2009

PUBLIC SERVICE  
COMMISSION

**SENT VIA FAX AND  
OVERNIGHT DELIVERY**

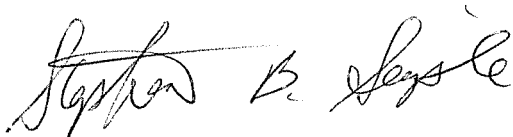
Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
Commonwealth of Kentucky  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

**RE: Case No. 2009-00141**

Dear Mr. Derouen,

Enclosed for filing is Columbia Gas of Kentucky's Memorandum Contra Constellation NewEnergy's Motion to Intervene. 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

Enclosures

cc: All Parties of Record  
Hon. Richard S. Taylor

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

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

---

**COLUMBIA GAS OF KENTUCKY, INC.’S  
MEMORANDUM CONTRA THE  
MOTION TO INTERVENE OF  
CONSTELLATION NEWENERGY-GAS DIVISION, LLC**

---

Now comes Columbia Gas of Kentucky, Inc. (“Columbia”), by and through its attorneys, and files this Memorandum Contra the Motion to Intervene filed by Constellation NewEnergy-Gas Division (“Constellation”) in the above-captioned proceeding.

On June 25, 2009, Constellation filed with the Kentucky Public Service Commission (“Commission”) its Motion to Intervene (“Motion”) requesting full intervenor status in this action pursuant to 807 Ky. Admin. Regs. 5:001 § 3(8)(b). Constellation also served and filed its Requests for Information on June 30, 2009, in compliance with the Commission’s procedural schedule.<sup>1</sup>

The Commission’s Regulation 807 Ky. Admin. Regs. 5:001 § 3(8) governs intervention in Commission proceedings. It provides in part: “If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.” The regulation requires a person seeking to intervene

---

<sup>1</sup> Columbia does not intend to respond to these data requests unless and until the Commission grants Constellation’s Motion.

to establish either: (1) a special interest in the proceeding that is not already adequately represented; or, (2) that the person's intervention is likely to develop facts and issues to assist the Commission without unduly complicating or disrupting the proceeding.<sup>2</sup> Pursuant to this regulation, the Commission granted on May 8, 2009, the Attorney General's motion to intervene to adequately represent the interests of all consumers in the Commonwealth, as required by Ky. Rev. Stat. § 367.150(8).<sup>3</sup>

Constellation fails to meet either of the Commission's two criteria for intervention. Constellation does not provide a factual basis to justify its assertion of a special interest in the proceeding, which is not otherwise adequately represented by other parties of record.<sup>4</sup> In its Motion, Constellation implicitly equates a special interest in this proceeding to its: (1) competitive interest in the proposed PPS and NSS services; and, (2) concern of Columbia's possible subsidization of those programs "through the use of utility employees, utility call centers, advertising in utility bills, the [Columbia] brand and the like."<sup>5</sup> Constellation's concern regarding Columbia's involvement in the marketing and advertising of the proposed PPS and NSS services is already regulated by the Commission Rules and Kentucky law.<sup>6</sup> Moreover, concern over the competitive nature of a new service, a small portion of the rate case, should not provide the sole basis of a *full* intervention. If Constellation is truly concerned solely with the PPS and NSS service, it should have moved for a limited intervention on that specific issue.

Constellation's interests, as a marketer in Columbia's Distribution Service program (i.e., traditional transportation service), are already being adequately represented by the Attorney Gen-

---

<sup>2</sup> *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, PSC Case No. 2009-00141, Order (May 29, 2009) at 1.

<sup>3</sup> *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, PSC Case No. 2009-00141, Order (May 8, 2009).

<sup>4</sup> 807 Ky. Admin. Regs. 5:001 § 3(8).

<sup>5</sup> *In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, PSC Case No. 2009-00141, Motion of Constellation NewEnergy-Gas Division, LLC for Full Intervention (June 25, 2009) at 2.

<sup>6</sup> See Ky. Rev. Stat. § 278.2213(2), (13). See also 807 Ky. Admin. Regs. 5:080 § 6(4).

eral. Under Ky. Rev. Stat. § 367.150(8), the Attorney General does not solely represent one type of consumer, but represents *all* consumers in Kentucky, including Constellation's Distribution Service customers and Constellation itself as a marketer and consumer of Columbia's services. Therefore, because Constellation fails to cite a special interest in this proceeding, which is not already represented by the Attorney General or other intervenors, Constellation should not be permitted to intervene.

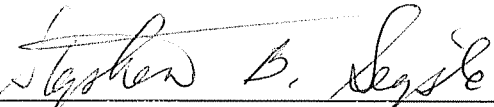
Constellation also fails to specify that it will likely assist the Commission in rendering its decision by identifying issues and developing facts. Constellation's Motion does not explicitly explain or detail how Constellation will identify issues or develop facts for the Commission's benefit. Instead, Constellation relies on the Commission to simply assume it will meet the second criterion if intervention is granted. Thus, Constellation has failed to carry its burden of proof without explicitly addressing this criterion.

Finally, Constellation's Motion provides no evidence or explanation that its intervention will not cause an additional complication in the already burdensome, multi-party rate case proceeding. Therefore, Constellation fails to provide adequate rationale for its intervention as required by 807 Ky. Admin. Regs. 5:001 § 3(8).

**WHEREFORE**, Columbia hereby respectfully requests the Commission deny Constellation's Motion because Constellation fails to satisfy either of the Commission's intervention requirements of 807 Ky. Admin. Regs. 5:001 § 3(8). In the alternative, if the Commission finds Constellation has met the criteria for intervention, Columbia respectfully requests that the Commission grant Constellation a limited intervention status to only address Columbia's proposed PPS and NSS programs.

Dated at Columbus, Ohio, this 10<sup>th</sup> day of July 2009.

Respectfully submitted,  
**COLUMBIA GAS OF KENTUCKY, INC.**

By:   
Stephen B. Seiple (Counsel of Record)

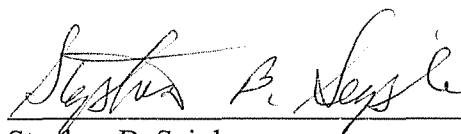
Stephen B. Seiple, Assistant General Counsel  
200 Civic Center Drive  
P.O. Box 117  
Columbus, Ohio 43216-0117  
Telephone: (614) 460-4648  
Fax: (614) 460-6986  
e-mail: sseiple@nisource.com

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 Memorandum Contra of Columbia Gas of Kentucky, Inc., to the Motion to Intervene of Constellation NewEnergy-Gas Division, LLC was served upon all parties of record by regular U. S. mail this 10<sup>th</sup> day of July, 2009.



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

**SERVICE LIST**

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

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

Robert M. Watt, III  
Stoll Keenon Ogden, PLLC  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507

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

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

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