

COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Columbia Gas of Kentucky, Inc.)
)
Complainant)
)
v.)
)
Natural Energy Utility Corporation)
)
Defendant)

Case No. 2009-00340

**MEMORANDUM CONTRA
 OF COLUMBIA GAS OF KENTUCKY, INC.
 THE MOTION TO DISMISS OF
 NATURAL ENERGY UTILITY CORPORATION**

On August 20, 2009, Columbia Gas of Kentucky, Inc. (“Columbia”) filed its Complaint in this proceeding. In the Complaint, Columbia alleged that Natural Energy Utility Corporation (“NEUC”) was constructing a main to serve customers currently served by Columbia in Ashland, and that NEUC was doing so without first requesting from the Commission a Certificate of Public Convenience and Necessity as required by KRS 278.020.

On September 11, 2009, NEUC filed its Answer and a Motion to Dismiss the Complaint. In its Motion to Dismiss NEUC alleges that it did not extend its facilities to serve customers currently served by Columbia, but merely relocated a portion of its existing distribution system pipeline and at the same time replaced some of its steel pipe with similar size plastic pipe. NEUC

alleges that it “has not installed new facilities for the purpose of taking its [Columbia’s] customers.”¹

Columbia personnel observed the construction undertaken by NEUC, and it appeared that NEUC constructed new main, in a new trench, for the purpose of serving customers currently served by Columbia. Thus, it appears that there is a genuine issue of material fact – that being is NEUC constructing a new section of main to serve Columbia customers (without a Certificate of Public Convenience and Necessity), or is NEUC merely replacing part of its existing distribution system. Given the existence of this genuine issue of material fact, the Commission should deny the Motion to Strike. Columbia has set forth sufficient allegations to establish a prima facie case. Columbia respectfully requests that the Commission establish a procedural schedule that will provide Columbia with a meaningful opportunity to conduct discovery and to develop testimony and evidence.²

To dismiss a complaint without a hearing, the Commission must find a hearing is not necessary in the public interest or for the protection of substantial rights.³ Columbia notes that its Complaint, and NEUC’s Answer, present significant public policy interests for Commission’s consideration and decision. There are other areas of the Commonwealth where natural gas utilities are in competition with each other, and the Commission’s decision in this case may impact competition in areas where customers have the ability to switch between natural gas utilities without the construction of new mains, or with relatively minimal construction of mains.

WHEREFORE, because there is a genuine issue of material fact, Columbia respectfully requests that the Commission deny NEUC’s Motion to Strike, and establish a procedural sched-

¹ NEUC Motion to Dismiss at 2.

² See, *In Re the Office of Attorney General v. Atmos Energy Corporation*, PSC Case No. 2005-00057, Order (February 2, 2006) at 4-5.

ule that will provide Columbia with an opportunity to conduct discovery and to develop testimony and evidence.

Dated at Lexington, Kentucky this 2nd day of October, 2009.

Respectfully submitted,
COLUMBIA GAS OF KENTUCKY, INC.

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³ Ky. Rev. Stat. § 278.260(2).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra of Columbia Gas of Kentucky, Inc. the Motion to Dismiss of Natural Energy Utility Corporation was served upon the parties on the Service List below by regular U.S. Mail this 2nd day of October, 2009.

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SERVICE LIST

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