COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JUN 21 2010
PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)

AN INVESTIGATION OF NATURAL GAS) Case No. 2010-00146

RETAIL COMPETITION PROGRAMS)

TESTIMONY OF JOHN M. DOSKER

ON BEHALF OF STAND ENERGY CORPORATION

* * * * *

Q. Would you state your name, address and occupation for the record please?

A. My name is John Marshall Dosker. I am an attorney and General Counsel for Stand Energy Corporation, a natural gas supplier and marketing company. Stand Energy Corporation's address is 1077 Celestial Street, Suite 110, Cincinnati, Ohio 45202-1629.

Q. Please provide a summary of your educational background?

A. I have a Bachelors Degree in Political Science (B.A.) from the University of Kentucky and a Juris Doctor (J.D.) from Northern Kentucky University Salmon P. Chase College of Law.

Q. Please provide a summary of your professional legal experience?

A. I have been licensed to practice law in Kentucky since 1987. I served as a Staff Attorney to a Kentucky Court of Appeals Judge for two years; and I practiced law as an associate and junior partner in a Martindale-Hubbell AV rated law firm in the field of litigation representing individuals and corporations in litigation for almost 10 years. I have been employed as In-House Counsel and ultimately General Counsel for Stand Energy Corporation for twelve years. I am admitted to practice before the Courts of the Commonwealth of Kentucky, United States District Court for the Eastern District of Kentucky and the United States Supreme Court. I have the following published appellate decisions *Historic Licking Riverside Civic Assoc. v. City of Covington, et al.* Ky., 774 S.W.2d 436 (1989); *Huddleston v. Hughes*, Ky.App., 843 S.W.2d 901 (1992). *City of Covington v. Board of Trustees of Policemen's and Firefighters' Retirement Fund*, Ky., 903 S.W.2d 517 (1995); *Kenton County Public Parks Corp. v. Modlin*, Ky.App., 901 S.W.2d 876 (1995). I also authored a law review article on Evidence: *The New Kentucky Rules of Evidence, Trojan Horse or Improvement Over Common Law?* 20 N.Ky.L.Rev. 701 (Spring, 1993). I have participated in dozens of utility cases before the Federal Energy Regulatory Commission (FERC); the Public Utility Commission of Ohio (PUCO); the Kentucky Public Service Commission (KPSC); Virginia State Corporation Commission (Virginia SCC); Tennessee Regulatory Authority (TRA), New York Public Service Commission (NYPSC), and the Maryland Public Service Commission (MPSC). I have directed the activities of outside counsel in regulatory proceedings in these states and many others. I am also a former member of the North American Energy Standards Board (NAESB) Executive Committee, Gas Supplier Segment.

Q. **Have you ever submitted pre-filed testimony on behalf of Stand Energy Corporation?**

A. Yes, before the Tennessee Regulatory Authority.

Q. **What is the purpose of your testimony in this proceeding?**

A. The purpose of my testimony is to explain and discuss several important regulatory principles important to promoting real retail competition in natural gas in Kentucky and to correct misstatements and misunderstandings of fact regarding Stand Energy Corporation provided to Legislators and the Press by the Staff of the Kentucky Public Service Commission.

Stand Energy has consistently advocated for expanded gas transportation programs at all of Kentucky's regulated natural gas utilities on behalf of industrial, commercial and governmental customers that do not currently qualify to buy gas from anyone except the regulated utility. "Gas Transportation" is a separate and distinct concept from "Customer CHOICE" which is Columbia Gas of Kentucky's program for residential and small commercial customers. Stand Energy has criticized the Customer CHOICE program because it requires a supplier to utilize "released" interstate pipeline capacity from the Gulf of Mexico. The pipeline capacity is owned by Columbia Gas of Kentucky. A sister Company, either Columbia Gas Transmission, or Columbia Gulf Transmission, owns the interstate pipeline. A gas supplier participating in the Columbia CHOICE program is <u>required</u> to use this pipeline - even if there is a cheaper source of gas and shorter pipeline path available to Columbia Gas of Kentucky.

Q. What is "released capacity"?

A. "Released capacity" is the right to move a stated quantity of natural gas on the interstate pipeline. Released capacity is "excess" or unneeded by the owner of the capacity. The owner of the capacity has a "firm" or guaranteed right to use the capacity when it chooses (except when a *force majeure* event such as a hurricane or damage to the pipeline physically prevents the flow of gas). Released capacity is usually "recallable" or "interruptible" by the owner of the capacity. Released capacity is not a dependable method of transporting gas, especially during the winter heating season from November through March of each year because it is interruptible.

Q. Is Cross Subsidization an issue in Natural Gas competition?

A. Yes. Cross-subsidization is an issue in every state where customers are allowed to participate in transporting natural gas. Stand Energy encourages cost-based charges and rate design in every service territory in Kentucky, to avoid having one class of customers from having interstate pipeline capacity, storage costs and any other costs subsidized by other classes of customers. The three primary classifications of gas customers are Residential, Commercial and Industrial. Preventing cross-subsidization is a basic issue of fairness and economics that should be a continuing goal of every natural gas utility rate case that is handled by the Kentucky Public Service Commission. Stand Energy believes the best competition exists where the costs allocated to the various classes of customers mirrors the cost causation of each of those classes of customers. (Cost Allocation follows Cost Causation).

Q. Does Cross-Subsidization Promote Competition That Benefits Customers?

A. No. Cross-subsidization creates competition between customer classes for a fair and equitable rate design that usually damages the competitive environment because of the lack of regulatory certainty and integrity. I believe this is the current state of the natural gas market in all of the Kentucky LDC's - competition between customer classes! In terms of competition, the existence of cross-subsidization acts as a barrier to gas marketers like Stand Energy whose start-up activities and costs can be very expensive. Many companies will not take the risk of incurring large legal and regulatory start up costs when regulatory uncertainty exists or when the local distribution companies, such as Atmos and Delta in Kentucky have anti-competitive sales programs in place.

Q. Does Stand Energy Corporation compete with any regulated utility in Kentucky?

A. Absolutely not. Stand Energy Corporation does not have any pipe in the ground in Kentucky. Stand Energy is a gas marketer or supplier. Stand Energy takes title to gas and redelivers it to our customers in 14 states. Stand Energy has experience delivering gas to over thirty (35) local distribution companies (LDC's), including most of the Kentucky regulated natural gas utilities.

Q. Does Stand Energy Corporation compete with the unregulated marketing subsidiaries of Atmos and Delta?

A. Yes. Stand Energy <u>does</u> compete with the respective unregulated marketing subsidiaries of Atmos Energy Marketing and Delta Energy Marketing, <u>which are separate and distinct legal entities</u> (subsidiaries) of the parent company regulated utility - a critical distinction in every jurisdiction where it occurs. Stand Energy is similar to these marketing arms, except Stand Energy is privately owned, completely independent and not tied to any utility. It is important to note that neither Atmos Energy Marketing nor Delta Energy Marketing have been made parties to this proceeding nor have they intervened on their own volition. It is imperative that any retail rules developed as a result of this proceeding include restrictions on the competitive activities of those two subsidiaries.

Q. What prevents the unregulated marketing subsidiary of a regulated utility, such as Atmos or Delta, from sharing lawyers, employees, etc. of the regulated utility parent, in other states?

A. Many of the other states where Stand Energy Corporation serves customers have a "Utility Code of Conduct" that has been adopted by the applicable State Utility Regulatory Commission/Public Service Commission or legal ethics rules which prevent that type of dual representation behavior whether at the legal level or the sales/operation level. Even information sharing is prohibited to prevent a utility company from bestowing a competitive advantage upon its unregulated marketing subsidiary over other suppliers competing in the area to supply natural gas.

Q. Describe a typical state utility code of conduct?

A. A typical utility code of conduct describes the permitted relationship between a vertically integrated monopoly utility, such as Atmos and Delta and their regulated or unregulated corporate affiliates or subsidiaries. A typical utility code of conduct will have mechanisms designed to prevent the incumbent utility from raising barriers to competition by favoring their unregulated marketing Affiliate and disadvantaging all other competitors. A typical state utility code of conduct is modeled after FERC Order 497 but is usually more comprehensive - obligating regulated gas utilities to provide the same services, information, and pricing terms to <u>all</u> marketing entities (theirs and others) as well as restricting personnel deployment, establishing complaint procedures, and allowing for reporting and audit oversight.

Q. Does a utility code of conduct help prevent "regulatory evasion"?

A. Yes. Regulatory evasion refers to the forms of direct and indirect harm to consumers caused by the exercise of market power by regulated utilities by the regulated utilities' evasion of economically appropriate cost-based rate regulation. Regulatory evasion is accomplished through anticompetitive discrimination by regulated utilities in favor of their unregulated affiliates. Simply stated this discrimination can occur in three ways: 1) purchases from affiliates at inflated prices or; 2) sales to affiliates at below market prices or; 3) a combination of both. For example, if Atmos the utility is purchasing gas from Atmos Marketing, this practice is likely to increase Atmos the utility's costs (and rates) and discriminates against independent suppliers of natural gas that offer lower prices for equivalent or better service. If Atmos the utility is making preferential sales or provision of services to Atmos Marketing that are not available to other marketers, this practice will increase the costs (and rates) of the utility while decreasing the costs and increasing the profits of the Marketing Affiliate which profits are not shared with Atmos ratepayers! Practices such as these also discriminate against the competitors of Atmos Marketing by charging them higher prices (for services supplied by Atmos the utility) than the prices paid by Atmos Marketing.

Q. Are Atmos or Delta any different than any other regulated utility in this respect?

A. No. No better and no worse. A rate-regulated parent company such as Atmos and Delta with market power, has incentives to engage in such transactions. By shifting profits to the unregulated marketing affiliate, the regulated gas utility evades rate regulation and exercises market power resulting in its captive customers paying higher regulated rates to cover inflated costs. This has been the documented experience of numerous other states and Stand Energy Corporation urges the Kentucky Public Service Commission to adopt a Utility Code of Conduct in addition to a marketer/supplier Code of Conduct.

Q. Are cost-based regulations alone sufficient to prevent abuses?

A. No. A utility whose exercise of market power is constrained by cost-based rate regulation also may find it profitable to evade rate regulation by cross-subsidizing the costs of its unregulated subsidiaries known as "affiliates". This often involves, for example, selling to a subsidiary/affiliate at below-market prices or providing better service to the subsidiary/affiliate than to other gas marketers who are competitors of the subsidiary/affiliate.

Q. Has Stand Energy experienced behavior by any Kentucky Utilities that would be a violation of the Utility Code of Conduct in other states?

A. Yes, Stand Energy Corporation has observed predatory behavior by most of Kentucky's regulated utilities.

Q. Does Any Kentucky Gas Utility have a Code of Conduct?

A. Atmos Energy referred to a Code of Conduct in Kentucky PSC Case No. 97-513 that Atmos had in effect in the State of Georgia. According to the PSC Order in that case, *"It [Atmos] also indicated that it voluntarily follows this same code,**for the most part**, in transactions in other states."* Order at page 3. (Emphasis added). An amended and restated Atmos Code of Conduct, obtained from the Atmos website, is attached hereto as ***Exhibit 1*** to my testimony (attached hereto and incorporated herein as if fully set forth). According to this document, Atmos has internal rules against many predatory practices including conflicts of interest, promoting competition and fair dealing, and honesty with regulators and other government officials. Therefore, if a Utility Code of Conduct was promulgated by the Kentucky Public Service Commission for all the regulated utilities, from Atmos's perspective, it would simply incorporate an existing corporate policy into Kentucky law and give the PSC the power to enforce it.

Q. Should a regulated utility be allowed to impose financial "balancing penalties" on gas marketers and their Kentucky customers when the regulated utility is not financially penalized by the relevant interstate pipeline for that same conduct?

A. No. In many states we have described the appropriate policy as "No Harm No Foul". When penalties are incurred by gas marketers, they should be based upon, and directly related to, actual interstate pipeline costs (penalties) incurred by the regulated utility. If no additional costs or penalties are incurred by the regulated utility, no penalties to the gas marketer should result. Any penalties imposed on gas marketers should be based only on the costs incurred by the regulated utility.

Q. Has Stand Energy ever seen an unregulated utility affiliate, such as Atmos Energy Marketing, successfully manage the transportation assets of the host utility, in this case Atmos Energy Corporation, to the benefit of ratepayers?

A. No. The most recent example we are aware of is in Ohio and Indiana with Vectren the utility and ProLiance the unregulated affiliate <u>and</u> asset manager. ProLiance simply could not stop helping itself to assets paid for by the Vectren ratepayers. Now, only several years removed from the discovery of that bad conduct, ProLiance is no longer managing Vectren's utility assets in either Indiana or Ohio.

Q. What affect would be realized by unbundling the interstate pipeline capacity assets of Kentucky's regulated utilities?

A. <u>If their rates are properly redesigned so that each class pays the costs associated with service to that class</u>, then more customers will be able to transport gas and reduce their costs and benefit from increased competition in the supply of gas. Smaller non-transporting customers who continue to buy their gas from the utility would also benefit if the revenues from gas marketers were used to reduce interstate pipeline demand costs for these smaller non-transporting, residential customers.

Q. What is telemetry and how important is it for gas transportation customers?

A. Telemetry refers to real time gas usage information obtained from a gas meter via an electronic pulse and a dedicated phone line. Telemetry allows the utility, the customer and the customer's supplier to obtain nearly real-time usage information throughout the day so the supplier can adjust gas deliveries (on behalf of the customer) to the utility and remain in balance with the amount of gas being burned by the Customer.

Stand Energy's experience is that the utility, the customer and the gas marketer/supplier can much better manage gas supply issues, especially on systems with daily balancing requirements, with real-time gas measurement (telemetry) from the customer's meter set. There are numerous types of telemetry equipment available on the market. Basically it's a modem attached to the gas meter with a phone line that sends a signal via the phone line or internet to the gas supplier. The gas supplier then uses that data to adjust gas deliveries, in real time, either up or down to avoid utility imbalance penalties. Stand Energy believes that utilities should only be allowed to charge customers the actual cost of the least expensive telemetry equipment capable of performing the needed task. The amount and term of customer telemetry payments should be reasonable and not restrictive.

Q. Has Stand Energy attempted to communicate its concerns to relevant Kentucky legislative committees and to the Kentucky Public Service Commission?

A. Yes, Mark Ward, Stand Energy V.P. of Regulatory Affairs and I testified before the Special Subcommittee on Energy on October 24, 2008 at the E.S. Goodbarn on the

University of Kentucky campus. Our pre-filed testimony before that Committee is attached hereto and incorporated herein as ***Exhibit 2.*** The minutes of that Special Subcommittee on Energy hearing are available on the Kentucky Legislative Research Commission website. The LRC minutes of that meeting, which includes the description of Stand Energy's testimony, are attached hereto and incorporated herein as if fully set forth as ***Exhibit 3.*** The LRC minutes fairly and accurately reflect the events that occurred that day.

Q. Has Stand Energy ever promoted legislation in the Kentucky Legislature?

A. Yes. Stand Energy promoted SB 154. A copy of SB 154 is attached hereto and incorporated herein as ***Exhibit 4.*** There were two energy bills filed in 2009. It is important to understand the two natural gas bills filed during the 2009 legislative session (SB 154 and HB 542), and the issues which they addressed (gas transportation and customer choice), are **not** interchangeable issues. It concerns me deeply that the Kentucky Public Service Commission Staff misunderstands the difference between Customer CHOICE and Gas Transportation. The PSC Staff begins to discuss Customer CHOICE (residential) every time Stand Energy tries to talk about expanding gas transportation for commercial, industrial, governmental and educational customers.

Q. Has Stand Energy ever "attributed the state's budget shortfall in part to a lack of competition in Kentucky's retail natural gas market?"

A. No. Stand Energy stated in correspondence that higher tax revenues and greater royalty payments would result from expanded gas transportation programs. Stand Energy stated that expanding gas transportation would raise tax revenues and gas royalty payments -- Stand Energy did not attribute the state budget shortfall to any specific cause.

Q. Was Stand Energy criticized by the Kentucky PSC Staff for providing an "incomplete narrative" of this proceeding?

A. Yes. Stand Energy was criticized in a letter issued by the PSC to legislators and Kentucky newspapers for not knowing certain facts and events. For example, Stand Energy was criticized for not knowing the strategic position of IGS Energy (a competitor) or the Kentucky Resources Council (a frequent public-interest intervenor) on the issue of Customer CHOICE, which <u>was not relevant to any issue being raised by Stand Energy</u>. Stand Energy also was criticized for not being aware of communications between the PSC and Legislators. Stand Energy does not have access to the private communications between legislators and the PSC and we were never provided copies of the referenced correspondence. Therefore, expecting Stand Energy to know the details of conversations or correspondence it has not been a party to, or been provided a copy of, is patently unreasonable.

Q. Is the Kentucky PSC website user friendly?

A. No. Unfortunately, the Kentucky PSC's website is not as user-friendly as other state commission websites, so relevant documents are not readily available to the public on the website. Even documents that a person <u>knows have been filed with the PSC</u> are often difficult to locate on the Kentucky PSC website. Apparently, consumer education and increasing public access to information are not important components of the PSC's "mission". Consumer education, public access to information and transparency generally all are diminished by the absence of a user-friendly website.

Q. Is "the right to intervene" a "remedy" for customers who want the right to buy gas from sources other than their utility?

A. No. The Kentucky PSC asserts that commercial, industrial and educational customers are not without recourse because KRS 278.260 allows such customers the right to "intervene" in pending rate proceedings. From a practical, business perspective, the problem with intervention in rate cases is that an individual customer would have to hire or have access to an attorney, well-versed and experienced in PSC matters, to represent its interests. That single customer would then be required to engage in "regulatory litigation" against a multi-million or billion dollar utility that prefers the status quo. The utility wins every time.

Q. Has the "right to intervene" been regularly extended to gas marketers by the Kentucky PSC?

A. No. The Kentucky PSC wants the legislature and the public to believe the PSC has an "open door" policy by recommending "intervention in rate cases" for customers as a proper method to change rules, procedures and policies relative to natural gas utilities. That's an interesting position considering the fact that the Kentucky PSC Staff routinely challenges intervention by gas marketers in natural gas utility rate cases. By challenging a marketer's intervention, the PSC sends a clear message that input and scrutiny of the regulatory process are unwelcome. Stand Energy strongly disagrees with the PSC on this point. We think regulatory proceedings should be open to the public and as inclusive as possible. We are unsure of the reason behind the PSC's unprecedented relaxation of previous policy in this case that has allowed all intervenors to be allowed to participate without question or challenge.

Q. Can you give an example?

A. Yes, for example, Columbia Gas of Kentucky filed a rate case with the PSC in 2009 (Case No. 2009-00141) in which the Stand Energy Customer Group attempted to intervene to protect it's customers interests and its competitive interests in Kentucky. In that rate filing, Columbia Gas proposed a new service that would have allowed Columbia to make a profit on the sale of natural gas - - in direct competition with suppliers like Stand Energy without being subject to the same rules as Stand Energy and contrary to Kentucky law! Furthermore, Stand Energy was in possession of **unique** information from our participation in a Pennsylvania regulatory proceeding that disallowed a similar Columbia Gas of Pennsylvania proposal for such a new service. For this reason, Columbia opposed Stand Energy's intervention claiming that the Kentucky Attorney General could adequately protect Stand Energy's unique interests. The Kentucky Attorney General's Office of Rate Intervention made a filing stating that Stand Energy had unique information to present to the Commission - and still the PSC denied Stand Energy's Motion to intervene. The PSC criticized Stand Energy for not providing the name of each customer we serve and each customer we represented in that regulatory proceeding. As a private marketing company our customer list is the most important asset we own. No other PSC in the United States as ever requested a customer list from Stand Energy as a condition of intervention. By the time the PSC ruled on Stand Energy Corporation's revised Motion to intervene, the deadline for filing testimony in that case had passed- effectively silencing Stand Energy. The Kentucky PSC does not have an open-door policy - but it should.

Q. Does the PSC support the inquiry in this case?

A. The answer to that question would appear to be "No". The PSC Staff issued a letter after the announcement of this retail gas investigation that states, "A customer choice program that is targeted to small and medium sized commercial and industrial customers will almost certainly be detrimental to residential customer rates." <u>This statement indicates a pre-judgment of the facts by the Commission Staff who will write the report to the Legislature in this case!</u> The Staff prediction will only be true if the program is developed and designed to fail.

In states that support competition in natural gas, each class of customers is treated separately from other classes of customers (Industrial, Commercial, Residential, etc.). No class subsidizes costs incurred by any other class. In other words, this statement is only true if the Kentucky program is poorly designed. It is not difficult to design a natural gas transportation program that stands on its own merit and pays its own way. Many other states have done so and their programs function very well and treat participants fairly.

Q. Does that conclude your testimony?

A. Yes.

Exh 1

energy

Robert W. Best
Chairman, President and CEO

Message to All Directors, Officers and Employees of Atmos Energy Corporation

The Atmos Energy Corporation Code of Conduct begins with our deep commitment to fairness, mutual respect and participation, which are reflected in the principles set forth in this Code. We also are committed to abide by the letter and spirit of all laws and regulations that apply to our business. Any violations of the Code of Conduct by employees will be grounds for appropriate disciplinary action, including possible termination. Executive officers and outside directors are responsible to the Company's Audit Committee and the full Board of Directors for any such violations.

This Code of Conduct is designed to be a framework within which decisions confronting our directors, officers and employees must be made and it applies to all directors, officers and employees of Atmos Energy Corporation. Once you have read this Code of Conduct, all directors, officers and employees must sign and date the related declaration and return it to the Legal Department in Dallas, Texas.

It is my firm belief that if we adhere to the principles reflected in this Code, we can prosper and truly be proud of our achievements. I am pleased to provide you with this Code and to share with you this commitment to the highest standards of business ethics at Atmos Energy Corporation.

Sincerely,

Robert W. Best

ATMOS ENERGY CORPORATION CODE OF CONDUCT

Guidance and Resources

The Company's success depends in part on each director, officer and employee abiding by the principles in this Code of Conduct. Accordingly, directors, officers and employees are encouraged to read the Code in full. The Company has available a number of resources, people and processes to answer your questions and to provide guidance in interpreting any provision of this Code of Conduct.

Directors may direct any questions or concerns or report any suspected violations of this Code of Conduct to the General Counsel of the Company, who has been designated by the Board of Directors as the Company's Corporate Compliance Officer. Directors must also report any known or suspected violations of the Code to the Chairman of the Audit Committee. Officers and employees may direct questions or concerns, and may report any suspected violations of this Code of Conduct, to your supervisor, any member of management, the Legal Department or the Corporate Compliance Officer. All information provided, including your identity, will be kept confidential to the greatest extent possible unless required to be disclosed by law or for safety purposes. Additionally, the Company has engaged a firm to receive reports on an anonymous basis of any suspected violations of the Code of Conduct through the Atmos Energy Compliance Hotline. The toll-free number for the Hotline is 1-866-543-4065. Any suspected violations of the Code of Conduct may also be reported anonymously over the Internet at the Atmos Energy Compliance Reporting Website at:
https://www.compliancehelpline.com/welcomeAtmosEnergy.jsp.

Respect for People

Each director, officer and employee is important to the success of the Company and must be treated fairly and with respect. Being treated fairly means that individuals are judged according to their own merits and not according to arbitrary factors. The Company is committed to providing a work environment that is free from discrimination and/or harassment of any type, including without limitation, discrimination and/or harassment on the basis of race, color, religion, gender, age, national origin, sexual orientation, citizenship status, disability, or veteran's status. All directors, officers and employees are expected to treat others equitably and fairly. The Company is an equal opportunity employer in hiring and promotion practices, benefits and wages.

Safety

The Company assigns the highest priority to the safety of its directors, officers, employees, customers and the public and maintains a comprehensive employee safety program for the prevention of workplace accidents. Each officer and employee must abide by Company procedures and safe work practices and use all appropriate personal protective equipment. Health and safety information must be accurately recorded, and any violations of health and safety laws or regulations must immediately be reported to a supervisor or through the Company's Compliance Hotline or the Compliance Reporting Website. No officer or employee will be discriminated against in any way for having brought any safety concerns to the attention of management. No director, officer or employee may possess or use weapons on Company premises or in the conduct of Company business.

Drugs and Alcohol

The Company and our customers expect all officers and employees to report to work fit for duty. Being fit for duty means being mentally and physically able to perform our jobs in a safe, efficient and reliable manner. The Company strictly prohibits the unlawful use, possession, manufacture or distribution of any controlled substances on Company property, on Company time or while using Company-supplied vehicles. The Company also prohibits the abuse of legal drugs or medications that may impair performance. The Company retains the right to search all Company property. Any confiscated illegal substances or material evidence will be turned over to appropriate authorities as required by law.

Conflicts of Interest

To maintain the highest degree of integrity in the conduct of the Company's business as well as the independent judgment and actions of all directors, officers and employees, no director, officer or employee should engage in any activity or advance any personal interest that conflicts, or appears to conflict, with the interests of the Company. A conflict of interest is any situation in which a director, officer or employee has two or more duties or interests which are mutually incompatible and may conflict with the proper and impartial discharge of such person's duties, responsibilities or obligations to the Company. For example, an employee may not work for a competitor or supplier of the Company without the Company's knowledge and consent.

Directors should disclose to the Chairman of the Audit Committee and to the Corporate Compliance Officer all situations in which they, or members of their immediate families, have a significant direct or indirect financial interest in others who have transactions with the Company, other than minor investments in large publicly-owned companies. Officers and employees should disclose to their supervisors all situations in which they, or members of their immediate families, have a significant direct or indirect financial interest in others who have transactions with the Company, other than minor investments in large publicly-owned companies. You also must be sensitive to issues of security, confidentiality and conflicts of interest if your spouse or another member of your immediate family is a competitor or supplier of the Company or is employed by one. You should disclose such a situation to your supervisor.

Gifts and Entertainment

The giving and receiving of gifts or entertainment by any director, officer or employee of the Company or by members of his or her immediate family can potentially create problems for such person and the Company. Such acts may be construed as attempts to influence the performance of duties or to favor certain individuals or companies. It is our policy that no director, officer or employee or a member of his or her immediate family may request, accept or give any gifts or entertainment, the giving or receipt of which violates any law, rule or regulation. Any gift that could create an obligation to the donor or recipient or influence the business relationship with the donor or recipient should not be accepted or offered. The Legal Department must be consulted prior to providing gifts or entertainment to third parties, including candidates for public office, public officials or government employees.

Competition

All of the Company's activities are governed by federal and state antitrust and trade regulation statutes. There are many types of activities that in some cases may be violations of federal and state antitrust laws.

For example, certain types of discussions, meetings or arrangements with competitors of the Company, and any agreement, whether formal or informal, or any joint activity involving the Company and any other party, the intent or effect of which is to fix prices, allocate markets or otherwise reduce competition, may violate the antitrust laws. Competitive information must be gathered with care, in accordance with all applicable laws. We must conduct all relations with competitors, including social activities, as if they were completely in the public view. Competitor relations may later be subject to probing examination and unfavorable interpretation.

Fair Dealing

Each director, officer and employee shall attempt to deal fairly and in good faith with each of the Company's customers, shareholders, employees, regulators, suppliers, competitors and others. No director, officer or employee shall in any way attempt to take or take unfair advantage of any person through concealment, manipulation, misrepresentation, fraud, misuse of confidential information or any other unfair dealing practice or act.

Company Assets

Each director, officer and employee has a duty to safeguard Company assets, including cash, inventories, physical plants and equipment, computers, computer software, records, customer information, manpower and Company names and trademarks. Company assets should be used for Company business only.

Corporate Opportunities

No director, officer or employee may (i) personally take for himself or herself opportunities that he or she may discover through the use of Company property, information or position; (ii) use Company property, information or position for personal gain; or (iii) compete directly or indirectly with the Company in the conduct of its business. Directors, officers and employees owe a duty to the Company to advance the Company's interests when the opportunity arises.

Confidential Information

Much of the information the Company uses is confidential, privileged, proprietary or of competitive value to the Company. This confidential information may have been developed by the Company or may belong to others. We are required to keep it confidential. In both instances, we must be careful to guard against disclosure of the information to any individuals outside the Company. All directors, officers and employees must exercise the utmost care when dealing with confidential information and are responsible for maintaining the confidentiality of such information, including Company computer systems and sensitive employee information, such as salary, bonus or performance appraisal data.

The obligation to treat this information as confidential does not end when the director, officer or employee is no longer associated with the Company. No director, officer or employee may disclose any confidential information to a new employer or to any other party after ceasing to be associated with the Company.

Compliance with Laws, Rules and Regulations

The Company is committed to abide by the letter and spirit of all laws, rules and regulations that apply to our business and to our employees, including insider trading laws. For example, from time to time you may receive information about the Company, one of its affiliates, or about another company with whom we do business, that could be valuable to an investor if it were made public. No director, officer or employee may use such "insider" non-public information when trading or recommending securities. No director, officer or employee may buy or sell securities of the Company when in possession of "material nonpublic information" relating to the Company. In addition, directors, officers and employees should also be very careful not to disclose such information to family, friends or any person outside the Company who could act on such information, even if the director, officer or employee receives no benefit from the actions.

Examples of inside information include dividend changes; stock splits or additional offerings; earnings or loss estimates; information relating to possible mergers, acquisitions or sales; developments in major litigation; or other items of Company-wide impact such as financing plans, major contracts or expansion plans.

Accuracy in Documentation

Books and records are to be kept according to generally accepted accounting principles. Accurate and auditable records of all financial transactions must be maintained. Officers and employees must ensure that all Company documents are completed accurately, fully and timely and are properly authorized. The making of false or misleading entries, records or documentation is strictly prohibited. Officers and employees must cooperate fully with the Accounting and Financial Reporting departments, as well as our independent public accountants, by providing complete and accurate information to them to ensure that all of the Company's books and records are accurate. Pursuant to the provisions of the Company's "Employee Complaint Procedures for Accounting and Auditing Matters," attached hereto as Appendix A, all officers and employees of the Company may report any good-faith complaints regarding accounting and auditing matters directly to the General Counsel, as the Corporate Compliance Officer of the Company, or on an anonymous basis by calling the Company's Compliance Hotline at 1-866-543-4065 or reporting such complaint over the Internet at the Company's Compliance Reporting Website at https://www.compliance-helpline.com/welcomeAtmosEnergy.jsp. Such procedures have been established by the Company's Audit Committee of the Board of Directors, in accordance with the provisions of the Sarbanes-Oxley Act of 2002 and related rules of the United States Securities and Exchange Commission.

Questionable Payments Policy

No director, officer or employee may participate in the unethical receipt or payment of Company funds or the maintenance of any unrecorded cash or non-cash funds or assets for the purpose of any such receipts or payments. No director, officer or employee shall take part in any improper payments, bribes, kickbacks or influence payments to any government officials, employees or agents, the purpose of which is to obtain favored treatment with respect to the Company's business or operations.

Honesty with Regulators and Other Government Officials

As a company engaged in the public utility business, a number of federal and state commissions, agencies and other governmental entities extensively regulate us. We must ensure that no inaccurate or misleading reports, certifications, claims or statements are made to any government agency or officials. When dealing with government officials and personnel, directors, officers and employees should also avoid even the appearance of impropriety. Activities must be avoided that could be perceived as attempts to improperly influence and obtain or reward favorable treatment.

Environmental Commitment

It has been and will continue to be the intent of the Company to conduct business in an environmentally responsible manner. The Company is committed to minimizing the release of any substance that may cause environmental damage; minimizing the creation of waste and disposing of all waste through safe and responsible methods; and minimizing environmental risks by employing safe technologies and operating procedures and by being prepared to respond appropriately to accidents and emergencies. The consequences of failing to adhere to our environmental policy may be serious. The Company, as well as individual directors, officers and employees, may be liable not only for the costs of cleaning up pollution resulting from the Company's and our employees' activities, but also for significant civil and criminal penalties.

Political Activities

A number of laws govern the Company's behavior in the political arena. We must be careful to obey these laws. No corporate funds, assets, materials or services may be used to support a particular candidate or political party except as provided by, and in compliance with, all applicable laws and regulations. All directors, officers and employees are encouraged to exercise their rights as citizens to vote. Any director, officer or employee who serves in a public office does so as an individual and not as a representative of the Company. Interested persons are encouraged, but not required, to join political action committees formed by their peers. Under no circumstances shall any director, officer or employee be compensated or reimbursed for any personal political contribution.

Compliance with the Code of Conduct

The Audit Committee of the Board of Directors and the Management Committee of the Company have the responsibility for administering the provisions of the Code of Conduct. However, the day to day responsibility for interpretation and coordination of this Code of Conduct has been delegated to the Corporate Compliance Officer and the Legal Department.

All directors, officers and employees benefit from an atmosphere of ethical conduct. Every director, officer and employee has a duty to adhere to this Code. Directors and officers shall report, in person or in writing, any known or suspected violations of laws, governmental regulations or provisions of this Code to the Corporate Compliance Officer. Directors also must report any known or suspected violations to the Chair of the Company's Audit Committee.

All employees who are aware of suspected misconduct, illegal activities, fraud, abuse of Company assets or violations of the provisions of this Code of Conduct are responsible for reporting such matters to their supervisors, any available management personnel, the Legal Department or the Corporate Compliance Officer. As discussed above under "Accuracy in Documentation," all officers and employees of the Company must submit any good-faith complaints regarding accounting and auditing matters directly to the General Counsel, as the Corporate Compliance Officer of the Company. These contacts may be made anonymously by calling the Company's Compliance Hotline at 1-866-543-4065 or over the Internet at the Company's Compliance Reporting Website at:
https://www.compliance-helpline.com/welcomeAtmosEnergy.jsp.

If you choose to identify yourself, your identity will be kept strictly confidential to the extent possible. No retaliatory action of any type, including discharge, demotion, suspension, harassment or discrimination in any manner, will be taken toward those directors, officers or employees who bring forward a complaint. Complaints will be taken seriously and will be subject to thorough internal investigation to the extent required, and to appropriate corrective actions, including disclosure to appropriate authorities.

Waivers

The provisions of this Code may be waived for directors or executive officers, including the Company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, only by a resolution of the Company's Audit Committee. The provisions of this Code may be waived for employees who are not directors or executive officers by the Company's Chairman of the Board and Chief Executive Officer. Any waiver of this Code granted to a director or executive officer, including the Company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, will be publicly disclosed as required by the listing standards of the New York Stock Exchange and the applicable rules of the Securities and Exchange Commission.

Summary

This Code of Conduct is intended to emphasize the commitment to integrity and fairness by the Company, its Board of Directors and its officers. The Code is not intended to be a complete list of acceptable and unacceptable actions, but merely provides general guidance as to how the Company expects directors, officers and employees to conduct themselves. This Code of Conduct does not constitute a contract of employment or create any contractual rights in favor of the Company or any of its employees. It may be necessary to update or modify this Code to ensure that the Company's Corporate Compliance Program remains effective. The Company reserves the right to modify, eliminate or add to the provisions of this Code of Conduct, with or without advance notice. However, any such amendments to this Code will be publicly disclosed as required by the listing standards of the New York Stock Exchange and the applicable rules of the Securities and Exchange Commission.

If you have any questions about the Code of Conduct, consult your supervisor, any member of Company management, the Legal Department or the Corporate Compliance Officer. You may also call the Company's Compliance Hotline at 1-866-543-4065 or contact us over the Internet at the Company's Compliance Reporting Website at:
https://www.compliance-helpline.com/welcomeAtmosEnergy.jsp.

Approved by the Board of Directors

Amended and Restated August 9, 2005

APPENDIX A

Employee Complaint Procedures for Accounting and Auditing Matters

Any employee of Atmos Energy Corporation or its subsidiaries (collectively, the "Company") may submit a good-faith complaint regarding accounting and auditing matters to the management of the Company without fear of dismissal or retaliation of any kind. The Company is committed to achieving compliance with all applicable securities laws and regulations, accounting standards, accounting controls and audit practices. The Company's Audit Committee will oversee treatment of employee concerns in this area.

In order to facilitate the reporting of employee complaints, the Company's Audit Committee has established the following procedures for (1) the receipt, retention and treatment of complaints regarding accounting, internal accounting controls, or auditing matters ("Accounting Matters") and (2) the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.

Receipt of Employee Complaints

- Employees with concerns regarding Accounting Matters may report their concerns to the General Counsel of the Company.

- Employees may forward complaints on a confidential or anonymous basis to the General Counsel through the Company's Compliance Hotline at 1-866-543-4065 or over the Internet at the Company's Compliance Reporting Website at:
  https://www.compliance-helpline.com/welcomeAtmosEnergy.jsp.

Scope of Matters Covered by These Procedures

The procedures relate to employee complaints relating to any questionable accounting or auditing matters, including, without limitation, the following:

- fraud or deliberate error in the preparation, evaluation, review or audit of any financial statement of the Company;

- fraud or deliberate error in the recording and maintaining of financial records of the Company;

- deficiencies in, or noncompliance with, the Company's internal accounting controls;

- misrepresentation or false statement to or by a senior officer or accountant regarding a matter contained in the financial records, financial reports or audit reports of the Company; or

- deviation from full and fair reporting of the Company's financial condition.

Treatment of Complaints

- Upon receipt of a complaint, the General Counsel will (i) determine whether the complaint actually pertains to Accounting Matters and (ii) when possible, acknowledge re-ceipt of the complaint to the sender.

- Complaints relating to Accounting Matters will be reviewed under Audit Committee direction and oversight by the General Counsel, Internal Audit function or such other persons as the Audit Committee determines to be appropriate. Confidentiality will be maintained to the fullest extent possible, consistent with the need to conduct an adequate review.

- Prompt and appropriate corrective action will be taken when and as warranted in the judgment of the Audit Committee.

- The Company will not discharge, demote, suspend, threaten, harass or in any manner discriminate against any employee in the terms and conditions of employment based upon any lawful actions of such employee with respect to good-faith reporting of complaints regarding Accounting Matters or otherwise as specified in Section 806 of the Sarbanes-Oxley Act of 2002.

Reporting and Retention of Complaints and Investigations

The General Counsel will maintain a log of all complaints, tracking their receipt, investigation and resolution and shall prepare a periodic summary report thereof for the Audit Committee. Copies of complaints and such log will be maintained in accordance with the Company's document retention policy.

Exh Z

PREPARED TESTIMONY OF STAND ENERGY CORPORATION

BEFORE THE

SPECIAL SUBCOMMITTEE ON ENERGY

MONTHLY COMMITTEE HEARING

OCTOBER 24, 2008

1. Please Identify Yourselves?

Answer: Our names are Mark Ward and John Dosker. Mark Ward is Vice-President of Regulatory Affairs and John Dosker is General Counsel. We are both employees of Stand Energy Corporation. John Dosker has been licensed to practice law in Kentucky for 21 years. Mark Ward has spent most of his adult life working on natural gas issues, including over 30 years with the Columbia Gas of Ohio.

2. What is the purpose of Stand Energy's appearance today before this committee?

Answer: The purpose of Stand Energy's appearance before your committee today is to propose that changes be made to the tariffs of Kentucky's major natural gas utilities that would allow Kentucky's smaller commercial and industrial companies, including schools systems and government facilities, the choice to purchase their natural gas supplies through an open, competitive market.

The failure of Retail unbundling in Kentucky can be demonstrated by the Energy Information Administration (EIA) which gathers energy statistics for the U.S. Government. In their December 2007 report, of the 855,000 residential and commercial natural gas customers in Kentucky, only 3.2% of the customers were participating in a retail unbundling program. As a comparison, in Ohio there are 3,540,000 residential and small commercial natural gas customers and 43% of those are participating in a retail unbundling program. These figures do not include very large commercial and industrial customers that have been given the opportunity for over 25 years to purchase their gas supplies from third party suppliers.

3. Why can't smaller commercial customers avail themselves of transportation services today?

Answer: Currently, the major gas utilities in the Commonwealth of Kentucky have barriers in their tariffs that preclude smaller, predominantly winter space-heating customers, to avail themselves of the benefits of gas transportation services similar to what large industrial and commercial customers have been doing in Kentucky for over 20 years.

4. What do you mean by gas transportation services?

Answer: When I speak of gas transportation service I mean the ability of a customer to purchase their natural gas supplies from third party suppliers rather than from the utility or Local Distribution Company (LDC) that sells and delivers their gas currently. A customer chooses a third party supplier, a marketer like Stand Energy, to purchase their gas supplies. That marketer than transports an appropriate quantity of natural gas on interstate pipelines and delivers the gas to the Local Distribution Company (LDC) who than delivers that gas, or an equivalent amount of gas, to the customer's meter.

5. Does Stand Energy presently provide gas transportation services in Kentucky?

Answer: Yes, Stand has been providing gas transportation to large industrial and commercial customers in Kentucky for over 20 years. We currently supply natural gas to a growing number of industrial and commercial customers in the Commonwealth of Kentucky. In addition, Stand Energy also serves the Commonwealth of Kentucky's large administration buildings in Frankfort, a State prison and three state Universities.

6. What benefits does Gas Transportation Service provide to customers?

Answer: There are many benefits to using gas transportation service. First of all, it provides the customer with choices of how they purchase their natural gas supplies and gives them the opportunity to save money over what they would have paid to the utility under the utilities' regulated gas supply charge. For instance, as indicated earlier, Stand Energy serves the Commonwealth of Kentucky's large administration facilities in Frankfort Kentucky. In the over six years we have served these accounts, the Commonwealth has saved over $1,090,000 over what they would have paid if they had purchased their gas supplies from Columbia Gas of Kentucky. In addition to cost savings customers can lock in gas prices to provide themselves a hedge against volatile gas prices, assuring that they keep within internal budget restraints. Basically it allows the customers to shop and compare prices and suppliers in an open and competitive market.

7. Does stand Energy serve any small commercial or industrial customers, including small state facilities or any public school systems in Kentucky?

Answer: No

8. Does Stand Energy serve the smaller customers in any other states?

Answer: Yes, as indicated earlier, Stand operates in over (30) different LDCs in (10) different states, most of which have opened up their systems to transportation programs for smaller commercial customers. We serve many small customers in Ohio, Indiana and Virginia and have for over 20 years.

9. Why are Kentucky utilities different than utilities in other states?

Answer: All the major utilities in Kentucky have incorporated barriers in their tariffs that preclude smaller customers from using gas transportation services. These barriers are either high volumetric thresholds required in order to transport gas, daily or annually, or economic barriers such as high administration fees, meter fees, or mandatory capacity assignments.

10. Can you provide some specifics?

Answer: Yes. I will discuss the barriers incorporated into each of the major LDCs tariffs in Kentucky. Starting with Duke Energy Kentucky, Inc. This utility does not have a tariff that provides transportation service to smaller customers. The only tariff that would be available to a school or small commercial establishment such as a restaurant, dry cleaner, or state office building would be Duke's "Firm Transportation-Large" rate. The customer must use at least 2,000 Mcf per year. For comparative purposes, a Bob Evans restaurant would use approximately 3,000 to 4,000 Mcf per year.

However, to move from sales service on Duke Energy, to transportation service, the customer would have to pay an additional $430 per month, $5,160 per year, per meter, in what is called an "Administration Charge" plus bear the cost of installing an expensive electronic measurement device. While the cost Duke Energy charges to deliver third party supplier gas using transportation is less than what is charged customers who receive Duke sales gas - but because of the Administration Charge a customer would have to use approximately 15,000 Mcf per year, just to break even.

11. Are these barriers the same in Duke Energy's LDCs in other states?

Answer: No. We serve many small customers behind Duke Energy's sister company in Cincinnati, Ohio, just across the river from Duke Energy Kentucky. Duke Energy-Ohio also has a "Firm Transportation-Large" tariff rate. The minimum volume to qualify on this tariff is only 400 Mcf per year and there is no onerous administration fee. Even residential customers can choose to purchase their own gas from a supplier other than Duke Energy. What makes the comparison between the administration charges of $430 and no charge in the two Duke companies even more unreasonable is that both programs are administered by the same Duke office personnel.

12. Can you provide another example?

Answer: Yes, I will next discuss the Louisville Gas and Electric Company. There are two transportation services offered by LG&E, neither benefit smaller, predominantly heat load customers. The first is a "Firm Transportation Service" rate. For customers to avail themselves of this service they must use at least 50 Mcf <u>each and every day of the year</u>. This means using at least 18,250 Mcf per year to qualify. Any customer whose main use of natural gas is for space heating would never use 50 Mcf per day in the summer months. Schools, for instance, could never qualify. Most schools do not use 18,250 Mcf per year and with no or little summer usage, would not qualify for transportation service.

The other rate that is available is only for very large customers and requires an annual usage of 50,000 Mcf. In addition to the large threshold barrier, there is a monthly administration charge of $90 per meter or $1,080 per year plus the cost for installing expensive electronic measurement equipment which must be borne by the customer.

13. What is your next example?

Answer: I next will discuss Columbia Gas of Kentucky. Columbia's "General Transportation" service requires a minimum annual usage of 25,000 Mcf. There is an additional administration charge of $55.90 per month. To Columbia's credit, they are the only LDC in Kentucky that offers a customer Choice program for residential and small commercial customers. The program is currently in phase II, which means if a customer wishes to purchase supplies from an alternate supplier, they must take assignment of firm capacity from Columbia. Taking firm capacity means the LDC assigns pipeline and storage capacity it currently owns to serve the smaller customers. The supplier receiving the assigned capacity pays maximum pipeline rates on an annual basis and can not acquire their own capacity or storage from other sources or take advantage of discounted firm capacity that may be offered by the interstate pipelines that serve Kentucky.

The Columbia Customer Choice program operates very differently from Columbia's traditional gas transportation program offered to customers using over 25,000 Mcf per year. In addition to the mandatory capacity assignment, suppliers are told by Columbia how much gas to deliver each day of the year following a load/demand curve developed solely by Columbia.

Having to follow a load curve precludes the supplier from providing a custom supply portfolio that fits unique customer natural gas requirements. There are other limitations such as rate design, base loading capability, and allowing storage purchase by the customer.

The Columbia Choice program started out to be an effective program for residential and small commercial customers but its effectiveness was lost when they moved into Phase II of their program. The lack of effectiveness can be shown by the EIA report on Retail Unbundling in Kentucky. According to EIA data, in the year 2002 when the program was still in Phase I there were 45,600 residential customers in the Columbia Choice program representing 37% of the residential customers that Columbia served. As of December 2007 the number participating in their Choice program was reduced to only 24,524, down 46% from the 2002 customers enrolled in Choice and only 20% of the total residential accounts.

As in Duke Energy, we also serve many small customers in Columbia's sister company in Ohio. Their minimum for their General Transportation Program is 2,000 Mcf/year and their administration charge is only $6.00 per month. Again, this shows such a stark contrast between two sister company' transportation limits when both programs are administered by the same department of Columbia.

14. What is your next example?

Answer: My last example is the Atmos Energy Corporation. Atmos Energy Corporations' General Transportation program requires a minimum annual usage of 9,000 Mcf per service location. There is an additional $50.00 per month administration fee. There is a "firm carriage service" which also requires an annual usage of 9,000 Mcf and has an annual base charge of $3,000 plus the $600 per year administration fee.

15. What must be done to provide an open, competitive market for the smaller natural gas users in the Commonwealth of Kentucky?

Answer: I believe it is necessary for legislative action or for the Public Service Commission to mandate the gas utilities regulated by the Kentucky Public Service Commission to file a set of tariffs with the Commission that will at a minimum:

- Provide for the aggregate purchasing of natural gas supplies and pipeline transportation services on behalf of eligible customers;
- Lower the minimum threshold to be eligible for gas transportation service to 2,000 Mcf/Year;
- Not require electronic meters or telemetry or other special metering equipment for facilities using less than 10,000 Mcf/Year;
- Assure customers that elect to use transportation service do not pay any more for service than the non-gas charges they would pay under the comparable sales service tariff. An exception could be a modest administration or aggregation fee that reimburses the utility for their actual costs to provide such transportation services.

16. Does this conclude your presentation?

Answer: Yes it does.

Exh 3

SPECIAL SUBCOMMITTEE ON ENERGY

Minutes of the 5th Meeting of the 2008 Interim

October 24, 2008

The 5th meeting of the Special Subcommittee on Energy was held on Friday, October 24, 2008, at 10:00 AM, in Lexington, Kentucky. Senator Brandon Smith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Rick G. Nelson, Co-Chair; Senators Charlie Borders, Tom Buford, Denise Harper Angel, Ernie Harris, and Johnny Ray Turner; Representatives Royce W. Adams, Rocky Adkins, Eddie Ballard, Leslie Combs, Tim Couch, Jim Gooch Jr., Sannie Overly, Tom Riner, and Brent Yonts.

Guests: Representative Robin Webb; Fitz Steel, newly elected member to the House of Representatives; Steve Byers, Legislative Liaison, University of Kentucky; Dennis Rohrer, General Partner of Interstate Gas Company; Judith Casalino, President, American Clean Air Partners; Jim Tracy, University of Kentucky Vice President for Research; Anthony Robertson, student, UK College of Engineering; Robert Daniel Ampleford, Chemical Engineering Co-op Student, Center for Applied Energy Research; Ying Shu, Chemistry, Center for Applied Energy Research; John Dosker, General Counsel, Stand Energy Corporation and Mark Ward, Vice President of Regulatory, Stand Energy Corporation.

LRC Staff: D. Todd Littlefield, Committee Staff Administrator, Taylor Moore, and Susan Spoonamore, Committee Assistant.

The September 19, 2008 minutes were approved, without objection, by voice vote, upon motion made by Representative Rick Nelson and seconded by Representative Royce Adams.

Steve Byers, Legislative Liaison, University of Kentucky, welcomed members to the E.S. Good Barn, University of Kentucky.

Dennis Rohrer, Interstate Gas Company and Judith Casalino, President, American Clean Air Partners discussed the role of natural gas in meeting the critical issue of our state and nation's domestic energy crisis.

Mr. Rohrer explained that natural gas is a vital component of the world's supply of energy and is one of the cleanest, safest, and most useful of all energy sources. He said that natural gas, in the form of compressed natural gas (CNG), has been used as a transportation fuel in vehicles for more than 100 years around the world. The clean burning properties, abundant supply and relatively low cost have made it a popular and environmentally sensitive fuel choice for drivers in Europe, Russia, South American, Australia and New Zealand, the United States and Canada. There are over 8 million natural gas vehicles (NGVs) on the road worldwide with thousands of public, fast-fill refueling stations to support them. Canada has approximately 120 refueling stations that serve 20,000 NGVs.

He said that vehicle applications for NGVs include:

- Transit buses;
- Taxi cabs;
- heavy duty trucks
- Commuters;
- Small and large commercial fleets;
- Light duty trucks and vans;
- Forklifts, and
- Ice resurfacers.

Mr. Rohrer stated that energy from natural gas accounts for 24 percent of total energy consumed in the United States. Deregulation and the move toward cleaner burning fuels have created an enormous market for natural gas across the county. New technology is continually being developed allowing Americans to use natural gas in new and exciting ways.

Judith Casalino explained that the American Clean Air Partners, LLC, is a Kentucky corporation formed to promote and establish alternative fuels with a focus on natural gas for vehicles. She stated that high gasoline prices have had and will continue to have a devastating effect on the economy.

The issue of oil is becoming more critical with each passing year. The wealth of OPEC nations is growing at an alarming rate. Between 2000 and 2007 the oil revenues for OPEC went from $243 billion to $688 billion, not including the price spikes in November and December of 2007, or the revenues from 2008.

The United States ranks 11th in oil reserves with 39.9 billion barrels. Saudi Arabia, Iran, Iraq, Kuwait, and the United Arab Emirates have a total of 716 billion barrels. The U.S. ranks #1 in the world for oil consumption, buying an estimated 82% of its oil from these countries.
She said that historically, until February 17, 2008, oil had been traded in U.S. dollars. Iran opened its own trading exchange in which oil is brokered in Euros instead of dollars, further threatening the U.S. dollar and economy.

Natural gas for vehicles is available, but for unexplained reasons, the U.S. has not maximized its vast natural gas resources to fuel its vehicles. Even at increased natural gas prices, natural gas for vehicles is about half the price of gasoline. Compared to diesel it is even cheaper. It is the cleanest burning alternative fuel today.

Mr. Rohrer stated that natural gas can and should be the driving force to free our country from the grip of high oil prices. To convert just 10% of American cars to CNG would take less than 8 years and would only require an increase in the U.S. natural gas consumption by slightly over 1% per year. There is plenty of natural gas to make electricity, heat our homes and to make chemicals and plastics, and there is plenty of natural gas to convert our transportation fleet from dirty expensive imported oil to clean burning, affordable, abundant, available, American natural gas. Other states are developing infrastructure, but Kentucky has no CNG facilities. Kentucky should be leading this effort because of our abundant resources.

Included in the presentation of Mr. Rohrer and Ms. Casalino there were sixteen initiatives to help promote Compressed Natural Gas (CNG) for vehicles, a copy of which can be found in the LRC Library file.

Sen. Smith asked if the Honda Accord offered a CNG fuel vehicle.

Ms. Casalino stated that it does and there is six month waiting period.

Mr. Rohrer stated that Toyota is in the process of making a CNG vehicle but it will only be offered in California.

Sen. Borders asked if there was some safety from rising prices of natural gas.

Mr. Rohrer and Ms. Casalino stated that there were no assurances for heating costs, but hopefully long-term contracts for the price would help stabilize prices.

Sen. Borders asked how much storage space the CNG fuel cell takes up in a vehicle.

Mr. Rohrer stated that the cells do take up more additional space.

Sen. Borders asked if it would be worth putting our efforts and money into developing the needed infrastructure for CNG vehicles.

Ms. Casalino stated that because supplies are limited, it would take a long time to convert vehicles to CNG.

Rep. Riner asked if CNG would be dangerous in a vehicular accident.

Mr. Rohrer stated that natural gas is the safest fuel available.

Sen. Buford asked how much natural gas was imported.

Mr. Rohrer stated that 1.5% of the natural gas consumed in the U.S. is imported from outside North America.

Sen. Buford asked if the United States would be able to keep up with the demand of natural gas without importing.

Mr. Rohrer and Ms Casaloni stated that most of the natural gas comes from the western part of the U.S., but due to the absence of infrastructure, we are not able to keep up with the demand. Data shows that there are enough natural gas reserves to keep up with demand, but the biggest problem is transporting natural gas. However, natural gas still costs less than oil on a per-btu basis.

Rep. Gooch stated that 1% of the gas comes from Mexico and Canada and asked about LNG.

Mr. Rohrer stated that he did not know how much imported LNG is used in the U.S., but added that LNG is not lucrative in the U.S. due to the price and demand.

Rep. Gooch stated that he agreed we have a good natural gas industry and that we should become independent of foreign oil, but assurances would be needed that electricity demand would not be met with natural gas. That shot prices up and we can't have enough gas for all those uses without price volatility.

Ms. Casalino stated that natural gas reserves are up, productivity is up and tremendous quantities will be available. Electric generation plants can store LNG for peak periods. American Clean Air Partners is working with utilities and others to get LNG for the transport sector.

Rep. Smith asked how much a fuel station would cost to build.

Mr. Rohrer stated that orders for such stations were 36 weeks out in the future in Wisconsin, but most are going to foreign countries. Conversion stations and equipment are not here because of low demand.

Ms. Casalino stated that it would cost $2.1 million to convert a fueling station to CNG, which would include 6 fast-fueling pumps, on a turnkey basis, except for the cost of putting gas lines in. Conversion technology for new vehicles – $12,000 for a car up to $25,000 for large fleet vehicles – are eligible for a $4,000 federal tax credit for conversions for cars, or a $32,000 credit for large trucks.

Rep. Adkins stated that Casalino's and Rohrer's testimony shows Kentucky has vast resources. HB 1 includes language to encourage the conversion of 50% of the state's fleet vehicles to alternative fuels, but with specificity on fuel type.

Mr. Rohrer stated that natural gas continues to be cheaper than petroleum and the investment stays in the United States.

Mr. Jim Tracy, University of Kentucky Vice President for Research stated that energy research is a core mission at UK coming from a variety of sources. He generally described the different types of energy research being performed.

Anthony Robertson, a student at the UK College of Engineering stated that he is the mechanical project manager for the solar car team. Since 1999, the mission has been to finance, design, build and race solar-powered cars. He described the vehicle's history including the mechanical and electrical systems.

He said that the UK Solar Car Team raced in the North American Solar Car Challenge earlier this year traveling 2400 miles from Dallas, Texas to Calgary, Alberta, Canada. The only power source used was the sun. Twenty-four teams from the USA, Canada and Europe entered the race, but only 15 completed the race. He said that the University of Michigan had a budget of $2.4 million and placed 1st; Kentucky placed 11th with a budget of $120,000.

Rep. Smith asked how the solar powered car worked in cloudy weather.

Mr. Robertson stated that it drives slower. But energy is stored in a battery pack.

Rep. Adkins asked about the storage of solar power.

Mr. Robertson stated that silicon cells used for houses are 20% efficient. New cells are approximately 29% efficient and NASA gallium arsenide cells are 35% efficient. Solar storage in Kentucky is not good because the Commonwealth does not have enough sunny days.

Rep. Adkins asked if we could have a project to tie into the grid.

Mr. Robertson stated that we could, especially with net metering and combined with another generation source like wind. Another area is energy farms and expanded research and development at the university standpoint.

Rep. Smith noted the potential impact of renewable energy sources on the use of coal.

Daniel Ampleford from the Center for Applied Energy Research discussed post combustion CO2 capture – impact and future impact.

Ying Shu presented results of her research on high-value carbon materials for energy generation and efficiency, including their potential use as conductors and energy storage devices.

Mark Ward, Vice President of Regulatory Affairs, Stand Energy Corporation, and John Dosker, General Counsel, Stand Energy Corporation, discussed proposed changes to the tariffs of Kentucky's major natural gas utilities that would allow Kentucky's smaller commercial and industrial companies, including school systems and government facilities, the choice to purchase natural gas supplies through an open, competitive market.

Mr. Ward and Mr. Dosker asked that the Kentucky Public Service Commission review and remove the current volumetric thresholds required in order to transport gas, daily or annually, or economic barriers such as high administration fees, meter fees or mandatory capacity assignments. These barriers preclude small customers from using gas transportation services. Removing these barriers would open up the market to other competitors giving consumers a choice.

Rep. Smith stated that he would ask the Public Service Commission to address the issues as requested by Stand Energy. He also asked that the PSC respond, in writing, to Stand Energy and the Special Subcommittee on Energy.

Stephanie Bell, a representative from the Kentucky Public Service Commission stated that she would ask the appropriate colleagues at the PSC to develop a response and perhaps address the committee at a future meeting.

Rep. Robin Webb stated that she has asked Energy staff to request a cost savings analysis for schools and agencies, based on today's testimony.

Meeting adjourned at 12:00 p.m.

Exh. 4

AN ACT relating to bulk natural gas sales.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➾Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, ***278.504 to 278.509,*** 278.541 to 278.544, 278.546 to 278.5462, and 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts;

(2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;

(3) "Utility" means any person except, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

(d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;

(e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

(4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

(5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;

(6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;

(7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;

(8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

(9) "Generation and transmission cooperative" or "G&T" means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;

(10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;

(11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

(12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation

for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, but does not include Voice over Internet Protocol (VoIP) service;

(14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(15) "Commission" means the Public Service Commission of Kentucky;

(16) "Commissioner" means one (1) of the members of the commission;

(17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;

(18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;

(19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;

(20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;

(21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;

(22) "Nonregulated" means that which is not subject to regulation by the commission;

(23) "Regulated activity" means a service provided by a utility or other person, the rates and charges of which are regulated by the commission;

(24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;

(25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;

(26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;

(27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;

(28) "USDA" means the United States Department of Agriculture;

(29) "FERC" means the Federal Energy Regulatory Commission;

(30) "SEC" means the Securities and Exchange Commission;

(31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3 and includes the term "wireless" and service provided by any wireless real time two (2) way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line;[~~ and~~]

(32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law;

(33) "Bulk natural gas sales" means aggregate sales of natural gas and ancillary

services to industrial, commercial, governmental, and educational customers that consume at least two thousand (2000) Mcf of natural gas per year. It does not include distribution service;

(34) "Bulk natural gas supplier" means any person, association, or cooperative corporation, certified by the commission, except municipal corporations, engaged in the furnishing of natural gas and related ancillary services utilizing the facilities of regulated local natural gas distribution companies, to industrial, commercial, governmental, and educational customers that consume at least two thousand (2000) Mcf of natural gas per year. A bulk natural gas supplier shall take legal title to natural gas as an intermediary for redelivery and resale to its customers, to other bulk natural gas suppliers, or to the open market; and

(35) "Aggregation service" means all natural gas supply and transportation services, including storage, provided to the pool of customers served by a bulk natural gas supplier on the system of a local distribution company.

➔SECTION 2. A NEW SECTION OF KRS 278.504 TO 278.509 IS CREATED TO READ AS FOLLOWS:

(1) In order to encourage financial, technical, and managerial competence and expertise, a bulk natural gas supplier shall not operate in Kentucky unless it is certified by the commission.

(2) Certification to operate in Kentucky shall be renewed every two (2) years and shall not be transferred or assigned to any entity other than the applicant without express written permission from the commission.

(3) A bulk natural gas supplier certified to operate in Kentucky shall provide the commission with up-to-date official corporate information, including current contact information, and shall notify the commission of any changes. The commission shall maintain the information on file.

(4) The commission may impose reasonable penalties against bulk natural gas

suppliers that fail to abide by contractual terms with a customer or that fail to comply with administrative regulations promulgated by the commission. Penalties may include revocation, suspension, modification, or limitation of the supplier's certification.

➔SECTION 3. A NEW SECTION OF KRS 278.504 TO 278.509 IS CREATED TO READ AS FOLLOWS:

The commission is authorized to promulgate administrative regulations creating a code of conduct for bulk natural gas suppliers which shall include the following requirements:

(1) A supplier's relationship with its customers shall be contractual. Suppliers shall execute a contract with customers clearly indicating either a fixed price for a fixed quantity of gas for a fixed term, the method for determining a monthly variable price;

(2) A supplier shall not be required to contract with any customer;

(3) Bulk natural gas suppliers shall be subject to the commission's complaint process;

(4) Suppliers and local distribution companies shall be encouraged to comply with the intent of KRS 278.507 regarding maximizing the use of gas produced in Kentucky;

(5) A bulk natural gas supplier shall purchase or obtain the intrastate and interstate pipeline capacity necessary to meet its contractual obligations; and

(6) No special metering, such as telemetering, shall be required unless the customer consumes more than ten thousand (10,000) Mcf annually. If telemetering is required by the local distribution company, only the actual cost incurred to purchase and install telemetry shall be passed through to the bulk natural gas supplier or customer.

➔SECTION 4. A NEW SECTION OF KRS 278.504 TO 278.509 IS CREATED

TO READ AS FOLLOWS:

(1) Each local natural gas distribution company in Kentucky shall, within ninety (90) days of the effective date of this Act, file with the commission schedules showing all rates and conditions of service established by it for bulk natural gas sales by certified bulk natural gas suppliers. These shall be in a form established by the commission and shall include, without limitation and where available, cost-based storage services and peaking services. All charges and fees associated with bulk sales shall be cost-based.

(2) Bulk natural gas suppliers shall not be required to purchase unused or excess pipeline capacity owned or controlled by the local distribution company.

(3) Local distribution companies shall offer aggregation service to bulk natural gas suppliers so that suppliers may aggregate the purchasing, scheduling, nominating, and balancing of the gas supplies necessary to meet the contractual obligations to the pool of customers. Bulk natural gas suppliers will execute and comply with an aggregation service agreement in a form established by the commission. Local distribution companies may establish reasonable, non-discriminatory standards for participation in the aggregation service. Regulated local distribution companies shall provide delivery service for gas and shall maintain the safety and reliability of the distribution system.

(4) Local distribution companies shall not incorporate economic barriers in their gas transportation tariffs to create deterrents to customers who might otherwise wish to purchase gas transportation services. Local distribution companies may collect reasonable fees to recover any actual costs incurred in providing aggregation and gas transportation services which are not recovered through the sale of excess or unused pipeline capacity.

(5) Local distribution companies may require bulk natural gas suppliers to meet reasonable financial security requirements based on the supplier's pool of

customers.

➾SECTION 5. A NEW SECTION OF KRS 278.504 TO 278.509 IS CREATED TO READ AS FOLLOWS:

(1) Bulk natural gas suppliers shall be subject to the provisions of KRS 160.613.

(2) Commercial, industrial, governmental, and educational customers seeking gas transportation service shall pay the same distribution or delivery rate for all quantities of gas transported that the customer would have paid to the local distribution company to receive the same quantity of natural gas if purchased from the local distribution company.

(3) The commission shall promulgate administrative regulations governing transactions between regulated natural gas utilities and their unregulated affiliates, which shall include the following requirements:

(a) If a regulated natural gas utility offers access to utility information, services, or capacity that is unused or excess, to one or more of its affiliates, then it shall give the same notice and offer the same access to all non-affiliated bulk natural gas suppliers certified by the commission on a non-discriminatory basis;

(b) If a regulated natural gas utility offers a discount, rebate, or waiver of a charge, penalty, or fee to one or more of its affiliates, it shall make the same offer to all bulk natural gas suppliers certified by the commission on a non-discriminatory basis;

(c) If a regulated natural gas utility offers non-customer, non-specific information to one or more of its affiliates, it shall give the same information on a timely basis to all bulk natural gas suppliers certified by the commission on a non-discriminatory basis;

(d) If a regulated natural gas utility transfers employees to one or more of its affiliates or accepts transfer employees from one or more of its affiliates,

then the regulated utility shall notify all bulk natural gas suppliers certified by the commission on a non-discriminatory basis; and

(e) If a regulated natural gas utility shares any employees with one or more affiliates, each shared employee shall be specifically named, including a detailed description of the shared functions performed by the employee and the regulated and unregulated affiliates for which the employee performs services. No employees engaged in day-to-day marketing functions may be shared by a regulated utility and one or more of its affiliates.

➔Section 6. KRS 160.6131 is amended to read as follows:

As used in KRS 160.613 to 160.617:

(1) "Department" means the Department of Revenue;

(2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.

(a) "Communications service" includes but is not limited to:

1. Local and long-distance telephone services;

2. Telegraph and teletypewriter services;

3. Postpaid calling services;

4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;

5. Channel services involving a path of communications between two (2) or more points;

6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;

7. Caller ID services, ring tones, voice mail, and other electronic messaging services;

8. Mobile wireless telecommunications service and fixed wireless service as defined in KRS 139.195; and

9. Voice over Internet Protocol (VOIP).

(b) "Communications service" does not include any of the following if the charges are separately itemized on the bill provided to the purchaser:

1. Information services;

2. Internet access as defined in 47 U.S.C. sec. 151;

3. Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;

4. The sale of directory and other advertising and listing services;

5. Billing and collection services provided to another communications service provider;

6. Cable service, satellite broadcast, satellite master antenna television, and wireless cable service, including direct-to-home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996;

7. The sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale, including:

a. Carrier access charges, excluding user access fees;

b. Right of access charges;

c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;

d. Charges for the sale of unbundled network elements as defined in

47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and

e. Charges for use of facilities for providing or receiving communications service;

8. The sale of communications services provided to the public by means of a pay phone;

9. Prepaid calling services and prepaid wireless calling service;

10. Interstate telephone service, if the interstate charge is separately itemized for each call; and

11. If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records;

(3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased;

(4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services;

(5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas***, including bulk natural gas sales as defined in section 1 of this Act***;

(6) "Cable service" has the same meaning as provided in KRS 136.602;

(7) "Satellite broadcast and wireless cable service" has the same meaning as provided in KRS 136.602; and

(8) "Ring tones" has the same meaning as provided in KRS 136.602.