

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF COLUMBIA GAS OF	)	CASE NO.
KENTUCKY, INC. FOR AN ADJUSTMENT	)	2016-00162
IN RATES	)	

ORDER

This matter arises upon the motion of Direct Energy Business Marketing, LLC ("Direct Energy"), filed June 27, 2016, for full intervention in this case. Direct Energy describes itself as a North American affiliate of Centrica PLC, a leading international provider of energy and other energy-related services. Direct Energy states that it has a direct and special interest in the outcome of this proceeding as a natural gas supplier that currently serves transportation customers and commercial and industrial customers behind Louisville Gas and Electric Company, Delta Natural Gas Company, Atmos Energy Corporation, and Duke Energy Kentucky. Direct Energy states that while it does not currently serve customers through Columbia Gas of Kentucky, Inc.'s ("Columbia") Small Volume Gas Transportation Service ("Choice Program"), the outcome of this proceeding could impact whether Direct Energy participates in the program in the future.

In its response filed July 1, 2016, Columbia points out that Direct Energy does not serve customers in Columbia's Choice Program, is not a customer of Columbia, and in fact sells gas to ten of Columbia's traditional transportation customers, making Direct Energy a competitor of Columbia, which does not provide grounds for full intervention.

Columbia further argues that possible side effects on Direct Energy as a result of this proceeding are an insufficient basis to grant intervention.

In Direct Energy's reply filed July 6, 2016, Direct Energy clarified that it serves a number of customers in Columbia's service territory, including two hospital systems and several industrial accounts. Direct Energy maintains that it is the natural gas supplier for over 12 large customers and provides service using Columbia's transportation service as set forth in its tariff. As such, Direct Energy argues that it is currently subject, both directly and on behalf of its customers, to the rates, terms, and conditions that are reflected in the tariff at issue in this proceeding. In addition, Direct Energy asserts that it is actively interested in expanding its presence in Columbia's service territory, and that it is concerned about rule changes that might harm its ability to do so.

Based on the motion to intervene and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.<sup>1</sup> The Court of Appeals has held that the Commission's discretion to grant or deny a motion for intervention is not unlimited, and enumerated the limits on the Commission's discretion: one arising under statute, the other under regulation.<sup>2</sup> The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an

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<sup>1</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

<sup>2</sup> *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."<sup>3</sup>

The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11)(a), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, we find that Direct Energy does not receive natural gas service from Columbia and is not a customer of Columbia. Rather, Direct Energy is a competitive supplier of retail natural gas service. Thus, Direct Energy lacks the necessary interest in the natural gas rates or natural gas service of Columbia sufficient to justify intervention.

With respect to gas service in Kentucky, supplying competitive natural gas is not prohibited per se, but may be authorized by the Commission. In the case of Columbia Gas, the Commission has authorized tariffs permitting all classes of customers to obtain competitive supplies of natural gas through its transportation programs. Thus, the only interest that Direct Energy arguably has in the natural gas rates and service of Columbia is as a competitor, and that interest is too remote to justify intervention here.

The Commission further finds that an investigation of expanding retail natural gas competition in Kentucky markets was conducted in Administrative Case No. 2010-00146.<sup>4</sup> The Commission's decision in that investigation was to not mandate

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> Administrative Case No. 2010-00146, *An Investigation of Natural Gas Retail Competition Programs* (Ky. PSC Dec. 28, 2010).

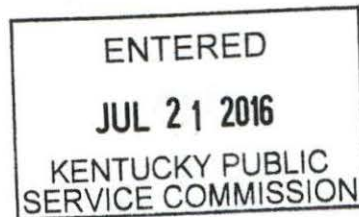
competitive retail natural gas programs in Kentucky without additional statutory authority and consumer protections. Consequently, the Commission will not revisit those issues with regard to Columbia's Choice Program in this case, and Direct Energy's status as a competitive supplier of natural gas does not justify its intervention in this case.

Also pending before the Commission is Direct Energy's motion filed on June 27, 2016 for admission *pro hac vice* of Daniel Clearfield. Based on the Commission's decision herein to deny Direct Energy's motion to intervene, its motion for admission *pro hac vice* is moot.

IT IS THEREFORE ORDERED:

1. Direct Energy's motion to intervene is denied.
2. Direct Energy's motion for admission *pro hac vice* of Daniel Clearfield is denied as moot.

By the Commission



ATTEST:

  
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