

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| INVESTIGATION INTO COLUMBIA GAS OF |) | CASE NO. |
| KENTUCKY, INC. PURSUANT TO KRS 278.250 |) | 2020-00313 |
| AND KRS 278.260 |) | |

ORDER

The Commission, on its own motion, establishes this proceeding, pursuant to KRS 278.250 and KRS 278.260, to investigate whether Columbia Gas of Kentucky, Inc. (Columbia) delayed the implementation of the uniform administration of Columbia's home energy assistance (HEA) program in contravention of deadlines and uniform contract provisions established by Commission Order.

On May 4 2020, the Commission issued an Order in Case No. 2019-00366 establishing program attributes, including uniform administrative, funding, and eligibility standards applicable to HEA programs offered by Columbia; Delta Natural Gas Company, Inc. (Delta); Duke Energy Kentucky, Inc. (Duke Kentucky); Kentucky Power Company (Kentucky Power); Kentucky Utilities Company (KU); and Louisville Gas and Electric Company (LG&E).¹

One of the parameters set forth in the May 4, 2020 Order was that Community Action Kentucky, Inc. (CAK) would serve as the single HEA administering agency and would subcontract front-office functions to community-level nonprofit organizations in

¹ Case No. 2019-00366, *Electronic Investigation of Home Energy Assistance Programs Offered by Investor-Owned Utilities Pursuant to KRS 278.285(4)* (Ky. PSC May 4, 2020).

each utility's service territory. This required CAK to first enter into contracts with each utility to administer the respective HEA programs. Only after the utility contracts were executed could CAK enter into contracts with subcontracting agencies in each utility's service territory. Thus, the May 4, 2020 Order established parameters for contracts between CAK and each utility and between CAK and each subcontractor. These parameters were established to ensure uniform contract terms, streamline negotiations, and reduce legal fees incurred by CAK in negotiating the contracts with the various parties. The Commission's parameters for contracts between CAK and the utilities allowed for amendment only for the types of fees included in the administrative fee, which was capped at 10 percent of the total HEA program funds expended and must be directly related to HEA program administration.² The parameters also allowed for contracts between CAK and subcontracting agencies to incorporate the necessary differences in utility-specific HEA program benefits and prioritization criteria.³

Finally, the May 4, 2020 Order established deadlines that required CAK to enter into formal contracts with subcontracting agencies no later than September 2, 2020, and file a copy of the executed contracts no later than September 17, 2020.

On September 1, 2020, CAK requested an extension until September 15, 2020, to file executed contracts. CAK explained that it was awaiting approval of a draft utility contract template (Utility Contract Template); and a template for the subcontracts between CAK and each subcontracting community agency (Subcontractor Contract

² *Id.* at 11.

³ *Id.* at 8, 20, and 24.

Template), consistent with the terms of the May 4, 2020 Order. The Commission timely granted CAK's request by Order entered September 2, 2020.

On September 14, 2020, CAK filed a status report, stating that a draft of the Utility Contract Template was distributed for review by the utilities on August 26, 2020, and that a revision of the Utility Contract Template based on utility-requested changes was distributed for review by the parties on September 4, 2020. After a minor revision, CAK distributed the final version of the Utility Contract Template to all parties on September 8, 2020. By September 14, 2020, CAK had fully executed contracts with Kentucky Power, LG&E, KU, and Delta.⁴ CAK stated that each executed contract contained the exact same contract terms as set forth in the Utility Contract Template.

Despite receiving the Utility Contract Template on August 26, 2020, and having the opportunity to propose revisions prior to the Utility Contract Template being finalized on September 8, 2020, Columbia filed untimely revisions to the finalized Utility Contract Template on September 14, 2020.

On September 15, 2020, CAK filed notice that it was entering into formal contracts with subcontracting agencies serving Kentucky Power's, LG&E's, KU's, and Delta's respective service territories using the Subcontractor Contract Template, and would file the executed contracts with the Commission on or before September 30, 2020, in compliance with the deadline for filing the subcontractor contracts established in the May 4, 2020 and September 2, 2020 Orders.

⁴ The Commission notes that all four utilities are sophisticated parties represented by counsel who appear regularly before the Commission and that have significant experience in utility law and negotiating agreements.

On September 21, 2020, CAK filed a request for guidance regarding Columbia's submission of redlined contracts that differed from the Utility Contract Template that was finalized on September 8, 2020, and executed by four of the utilities by September 14, 2020. Because Columbia's contract with CAK could not be executed with terms consistent with the May 4, 2020 Order, CAK could not enter into contracts with the subcontractors to administer Columbia's HEA program and would miss the deadline established by the Commission.

By Order entered September 25, 2020, the Commission approved the Utility Contract Template and Subcontractor Contract Templates, finding that each satisfied the program attributes established by the Commission to implement uniform parameters for ratepayer-funded HEA programs. The Commission also determined that show cause proceedings should be opened to afford Columbia the opportunity to explain why it would not enter into the a contract with CAK based upon the Utility Contract Template filed with and approved by the Commission.

In the May 4, 2020 Order, the Commission found that:

[D]elaying implementation of uniform HEA program parameters will frustrate the very purpose of this proceeding: to establish HEA program parameters that advance consistent, effective, and accountable HEA programs across the Commonwealth that are beneficial to and easily accessed by eligible low-income customers, and result in increased benefits to all ratepayers. Approving piecemeal implementation of the uniform parameters extends the ongoing unevenness and inequity in the existing HEA program structure into the future.⁵

⁵ Case No. 2019-00366, *Electronic Investigation of Home Energy Assistance Programs Offered by Investor-Owned Utilities Pursuant to KRS 278.285(4)* (Ky. PSC May 4, 2020) at 21.

By failing to enter into an agreement with CAK, Columbia ignored the timeline and guiding principles established by Commission Order and thus delayed implementation of uniform HEA program parameters in contravention of the Commission's May 4, 2020 Order.

Therefore, based on the evidence of record and being otherwise sufficiently advised, the Commission opens this investigation to determine whether Columbia delayed the implementation of the uniform administration of Columbia's HEA program in contravention of deadlines and uniform contract provisions established by Commission Order. The Commission finds that a formal hearing should be scheduled to afford Columbia the opportunity to present its position for not timely entering into a uniform contract with the HEA administering agency, and show cause why it should not be subject to the civil penalties prescribed in KRS 278.990 for failure to comply with a Commission Order.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate whether Columbia delayed implementation of the uniform administration of Columbia's HEA program in contravention of deadlines and uniform contract provisions established by Commission Order.

2. Within ten days of the date of entry of this Order, Columbia shall submit to the Commission a written response that sets forth a narrative explanation in support of Columbia's failure to enter into a contract with CAK with terms consistent with the Utility Contract Template approved by the Commission.

3. A hearing in this matter shall be held on Thursday, October 15, 2020, at 9 a.m. Eastern Daylight Time, in the Richard Raff Hearing Room (Hearing Room 1) at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky.

4. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video transcript shall be made of the hearing.

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By the Commission



ATTEST:

A handwritten signature in blue ink, appearing to read "M. D. Chel", written over a horizontal line.

Acting Executive Director

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