

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF COLUMBIA)	
GAS OF KENTUCKY, INC. TO EXTEND ITS)	CASE NO.
SMALL VOLUME GAS TRANSPORTATION)	2021-00386
SERVICE)	

ORDER

On September 30, 2021, Columbia Gas of Kentucky, Inc. (Columbia Kentucky) submitted a tariff filing through the Commission's electronic Tariff Filing System to continue its Small Volume Gas Transportation Service (SVGTS) tariff and Small Volume Aggregation Service (SVAS) tariff, commonly known collectively as the "CHOICE program," under the program's current terms and conditions, through March 31, 2025. Extension of the CHOICE program was last approved in Case No. 2017-00115¹ and was scheduled to run through March 31, 2022. In this case, an initial tariff filing was made after a survey and report were filed in Case No. 2020-00402.² The September 30, 2021 tariff filing proposed an effective date of April 1, 2022.³ On October 18, 2021, the Commission issued an Order finding that an investigation was necessary to determine the reasonableness of the proposed tariffs to extend the CHOICE program, and that such

¹ Case No. 2017-00115, *Tariff Filing of Columbia Gas of Kentucky, Inc. to Extend Its Small Volume Gas Transportation Service* (Ky. PSC June 19, 2017).

² Case No. 2020-00402, *Electronic Investigation of Columbia Gas of Kentucky, Inc.'s Filing of Customer Choice Survey Results* (Ky. PSC Aug. 26, 2022). This case was incorporated by reference into this matter by the Aug. 26, 2022 Order).

³, Initial Tariff Filing (filed Oct. 7, 2021) unnumbered at PDF pages 28-31.

investigation should occur through a formal proceeding rather than through the more informal tariff filing process.⁴ The Commission issued a procedural schedule attached as an Appendix to the October 18, 2021 Order.

On December 7, 2021, the Commission issued an Order finding that the procedural schedule should be revised, and that Columbia Kentucky should serve a copy of its tariff filing on all approved CHOICE program marketers.⁵ On March 17, 2022, the Commission issued an Order continuing the CHOICE program under its then-existing terms and conditions until a final Order is issued in this proceeding. Choice program marketers Interstate Gas Supply (IGS) and Constellation New Energy, Gas Division, LLC (CNEG), (collectively, Joint Intervenors); and XOOM Energy Kentucky, LLC (XOOM) sought and were granted intervention.⁶

Columbia Kentucky responded to four requests for information from Commission Staff,⁷ and two requests for information from XOOM.⁸ Columbia Kentucky filed direct and rebuttal testimony.⁹ The Joint Intervenors and XOOM collectively filed the direct

⁴ Order (Ky. PSC Oct. 18, 2021) at 2, ordering paragraph 1.

⁵ Order (Ky. PSC Dec. 7, 2021) at 2, ordering paragraphs 1-2.

⁶ Order (Ky. PSC Jan. 13, 2022) (granting IGS and CNEG intervention); Order (Ky. PSC Jan. 25, 2022) (granting XOOM intervention).

⁷ Columbia Kentucky's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Nov. 11, 2021); Columbia Kentucky's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Feb. 18, 2022); Columbia Kentucky's Response to Commission Staff's Third Request for Information (Staff's Third Request) (filed July 19, 2023); Columbia Kentucky's Response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request) (filed Oct. 21, 2022).

⁸ Columbia Kentucky's Response to XOOM's First Request for Information (XOOM's First Request) (filed Feb. 19, 2022); Columbia Kentucky's Response to XOOM's Second Request for Information (XOOM's Second Request) (filed Mar. 18, 2022).

⁹ Direct Testimony of Judy Cooper (Cooper Direct Testimony) (filed Jan. 1, 2022) and Rebuttal Testimony of Judy Cooper (Cooper Rebuttal Testimony) (filed Apr. 29, 2022).

testimony of James Crist.¹⁰ Additionally, XOOM filed the direct testimony of Travis Kavulla,¹¹ and all intervenors initially responded to two requests for information from Commission Staff.¹²

On September 22, 2022, the parties filed a Joint Stipulation and Settlement Agreement (Settlement) setting forth, among other things, an agreement that the CHOICE program be extended through March 31, 2030, and that Columbia Kentucky file, on or before September 30, 2029, an application permitting the Commission and stakeholders an opportunity to evaluate the CHOICE program and consider extending it.

On September 27, 2022, Columbia Kentucky, XOOM and the Joint Intervenors filed testimony in support of the Settlement.¹³ A formal hearing was held on this matter on September 29, 2022. At the hearing, the parties expressed a desire to file an addendum to the Settlement, which they filed on November 8, 2022 (Addendum).

On March 28, 2023, the Commission issued a final Order in this matter. In the final Order, the Commission allowed the testimony of several persons to be incorporated in

¹⁰ Direct Testimony of James L. Crist on behalf of IGS, CNEG, and XOOM (Crist Direct Testimony) (filed Mar. 25, 2022). Revised Testimony of James Crist (filed Oct. 5, 2022).

¹¹ Direct Testimony of Travis Kavulla (Kavulla Direct Testimony) (filed Mar. 25, 2022), Revised Direct Testimony of Travis Kavulla (filed Sep. 26, 2022).

¹² XOOM's Response to Commission Staff's First Request for Information (XOOM's Response to Staff's First Request) (filed Apr. 18, 2022); Joint Intervenors Response to Commission Staff's First Request for Information (Joint Intervenors Response to Staff's First Request) (filed Apr. 18, 2022); CNEG's Response to Commission Staff's Post-Hearing Request for Information (filed Oct. 21, 2022), IGS's Response to Commission Staff's Post-Hearing Request for Information (filed Oct 21, 2022); and XOOM's Response to Commission Staff's Post-Hearing Request for Information (filed Oct 21, 2022).

¹³ Kavulla Testimony in Support of Settlement (filed Sept. 28, 2022), and Letter Addressing Testimony in Support (filed Sept. 28, 2022).

the record.¹⁴ The Commission also accepted the Settlement as modified within the Order.¹⁵

On April 7, 2023, Columbia Kentucky sought leave to withdraw its September 30, 2021 electronic tariff filing, serve as notice that it intends to terminate its CHOICE Program as well as a request to implement a temporary extension of the CHOICE program until July 31, 2024 to facilitate a transition. The intervenors in this case, Joint Intervenors and XOOM, filed a joint response to Columbia Kentucky's motion on April 14, 2023, and Columbia Kentucky filed a reply to the Intervenors response on April 19, 2023. On April 27, 2023, the Commission issued an Order granting the requests, in part and denying, in part. The Commission found that, as a result of Columbia Kentucky withdrawing from the settlement, the parties were returned to the position they occupied prior to the submission of the Settlement.¹⁶ The Commission reopened the proceeding for the purposes of holding a formal hearing where the Commission heard testimony concerning extending the CHOICE program for a defined term as proposed by Columbia Kentucky initially, and extending the CHOICE program permanently, as proposed by the Intervenors.¹⁷ The Commission denied the request to withdraw the tariff filing and temporarily extend the CHOICE program.¹⁸

¹⁴ Order (Ky. PSC Mar. 28, 2023) at 15.

¹⁵ Order (Ky. PSC Mar. 28, 2023) at 15.

¹⁶ Order (Ky. PSC April 27, 2023) at 7.

¹⁷ Order (Ky. PSC Apr. 27, 2023) at 8.

¹⁸ Order (Ky. PSC Apr. 27, 2023) at 8. The Commission noted that the tariff filing was pursuant to a Commission Order in Case No. 2017-00115, June 19, 2017 final Order.

A second hearing was held on July 26, 2023.¹⁹ Each party responded to a post hearing data request.²⁰ On September 29, 2023, Columbia Kentucky filed a post-hearing brief.

In its post-hearing brief, Columbia Kentucky requested the Commission extend approval of the existing Customer Choice tariff until March 31, 2025. In support of its positions, Columbia Kentucky stated that the CHOICE program is an entirely voluntary program, and the Commission did not have the authority to order Columbia to extend the Program indefinitely.²¹ Columbia Kentucky argued that the Commission should approve Columbia's voluntary request to approve an extension of the voluntary CHOICE program tariff until March 31, 2025, in part, because there is no statutory or regulatory basis by which Columbia Kentucky can be ordered to indefinitely extend the Choice Program.²² Columbia Kentucky reiterated that the CHOICE program is a voluntary program, and from its inception, the Commission has properly left the continuance or abandonment of the CHOICE program to Columbia's discretion.²³

Columbia Kentucky argued that the Commission should reject the marketer proposals. However, Columbia Kentucky noted that, should the Commission consider

¹⁹ Hearing Order was issued on July 10, 2023 after an initial Order had set the hearing for July 5, 2023.

²⁰ As noted above in footnote 7 and footnote 12.

²¹ Columbia Kentucky's post-hearing brief at 3 citing Case No. 1999-00165 *Tariff Filing of Columbia Gas of Kentucky, Inc. to Implement a Small Volume Gas Transportation Service, to Continue its Gas Cost Incentive Mechanisms, and to Continue its Customer Assistance Program* (Ky. PSC Mar. 6, 2000) at 5 ("Finally, Columbia requests that the Commission permit it to withdraw its application of April 22, 1999 if the requested relief is not granted. Because the Customer Choice program was filed voluntarily, the Commission finds that it is within Columbia's discretion to go forward with the program as approved or to abandon it."); Columbia Kentucky's Post-Hearing Brief at 6-8.

²² Columbia Kentucky's Post Hearing Brief at 8.

²³ Columbia Kentucky's Post-Hearing Brief at 8.

the marketers' proposals, the Commission should ensure all additional costs are appropriately understood and borne by participating customers/marketers.²⁴ Columbia Kentucky stated that the existence of the CHOICE program does not substantively impact how Columbia Kentucky implements its Performance-Based Rate (PBR) Sharing mechanism, and the existence of Columbia Kentucky's PBR does not impact its decisions on the existence of the CHOICE program.²⁵ Regarding the interplay between the CHOICE and PBR programs, Columbia Kentucky argued that the decisions regarding either program are independent and the existence of one does not rely on or alter the existence of the other.²⁶

XOOM and the Joint Intervenors (collectively, Intervenors) filed a post-hearing brief on October 18, 2023. The Intervenors' brief requested that the Commission permanently extend the CHOICE program and to direct Columbia Kentucky to implement additional customer education efforts and enhancement programs.²⁷ The Intervenors stated that making the CHOICE program permanent would be a just and reasonable decision, consistent with Kentucky law.²⁸ The Intervenors argued that Columbia Kentucky's arguments that the program is now somehow unreasonable is disingenuous.²⁹ The Intervenors argued the program is reasonable, as customers want the ability to choose and, furthermore, making the program permanent will reduce suppliers' regulatory and

²⁴ Columbia Kentucky's Post-Hearing Brief at 8-12.

²⁵ Columbia Kentucky's Post-Hearing Brief at 12-14.

²⁶ Columbia Kentucky's Post-Hearing Brief at 14.

²⁷ Intervenors' Post-Hearing Brief (filed Oct. 18, 2023) at 1.

²⁸ Intervenors' Post-Hearing Brief at 7-8.

²⁹ Intervenors' Post Hearing Brief at 7-8.

economic risk of participation, opening the door for additional suppliers to invest in Kentucky.³⁰ The Intervenor cited to *Kentucky Pub. Serv. Comm'n. v. Com. ex rel. Conway*³¹ which they argue confirms that the Commission has the plenary authority to make the program permanent.³² The Intervenor also stated it was their expectation that the above revenues would offset the incremental costs.³³ The Intervenor requested that a working group be established, to consist of interested stakeholders, staff, and anyone else that desires to participate.³⁴

On November 3, 2023, Columbia Kentucky filed a response brief and maintained that the CHOICE program has always been voluntary, and cited to the Commission's 1998 Order in Admin. Case No. 367 and 1999 Order approving the CHOICE program as voluntary as well as putting forth arguments regarding unenacted proposals before the Kentucky General Assembly relevant to expanded gas transportation service.³⁵ Columbia Kentucky stated that requiring it to continue administering a program no other company is required to maintain is discriminatory.³⁶ Columbia Kentucky argued that the Commission does not have the authority to mandate a program but instead to allow Columbia Kentucky to continue the program.³⁷ Columbia Kentucky requested the

³⁰ Intervenor's Post-Hearing Brief at 8-9.

³¹ *Kentucky Pub. Serv. Comm'n. v. Com. ex rel. Conway*, 324 S.W.3d 373, 383 (Ky. 2010).

³² Intervenor's Post-Hearing Brief at 15-17.

³³ Intervenor's Post-Hearing Brief at 24-25.

³⁴ Intervenor's Post-Hearing Brief at 21.

³⁵ Columbia Kentucky's Post-Hearing Reply Brief (filed Nov. 3, 2023) at 3-4.

³⁶ Columbia Kentucky's Post-Hearing Reply Brief at 3-4.

³⁷ Columbia Kentucky's Post-Hearing Reply Brief at 4-5.

Commission deny the Intervenors' proposed education and program enhancements.³⁸ Columbia Kentucky reiterated its position that the current program and existing tariff be extended through March 31, 2025.³⁹

The case now stands submitted on the record for a decision.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.⁴⁰ Kentucky law provides that a utility may demand, collect and receive fair, just and reasonable rates⁴¹ and that the service it provides must be adequate, efficient and reasonable.⁴² Kentucky law also provides that a utility must file with the Commission schedules of all rates and conditions for service established by it and collected or enforced.⁴³ KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

KRS 278.170 states that

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

³⁸ Columbia Kentucky's Post-Hearing Reply Brief at 7-14.

³⁹ Columbia Kentucky's Post-Hearing Reply Brief at 14-15.

⁴⁰ KRS 278.040(2).

⁴¹ KRS 278.030(1).

⁴² KRS 278.030(2).

⁴³ KRS 278.160(1).

DISCUSSION AND FINDINGS

Having reviewed the record and the evidence before it, the Commission finds that Columbia Kentucky shall continue the CHOICE program until March 31, 2028, with the following stipulations as discussed below.

As an initial matter, Columbia Kentucky argued that the Commission's actions, should Columbia Kentucky be required to continue the program, are discriminatory.⁴⁴ However, Columbia Kentucky's evidence supporting this allegation was insufficient, and thus they failed to prove that the Commission's actions in this case are unreasonably prejudicial or disadvantageous to Columbia Kentucky. The Commission did not make any distinction and has not indicated how it would respond to any other gas utility creating a program similar to Columbia Kentucky's CHOICE program. Columbia Kentucky created this program, not the Commission, and as such, Columbia Kentucky should actually operate the program in the way it was intended. The Commission's responsibilities are set out in KRS 278.030 and KRS 278.040. The terms and conditions outlined in this Order are a result of the Commission's appropriate exercise of its authority to meet its statutory obligations.

Given Columbia Kentucky's allegations of discrimination, the Commission finds it worth noting that there are other programs in existence that not every gas utility has adopted. Specifically, Columbia Kentucky has a PBR sharing mechanism, but Atmos Energy Corporation (Atmos) does not. Columbia Kentucky has never argued that the PBR sharing mechanism's approval or continuation results in discriminatory Commission action. In fact, the Commission did not force the creation of Columbia Kentucky's PBR

⁴⁴ Columbia Kentucky's Post-Hearing Reply Brief at 3-4.

mechanism nor will force Atmos to develop such a mechanism. However, the Commission has the authority to investigate the mechanism and determine whether or not it results in fair, just and reasonable rates regardless of the utility.

The Commission issued a final Order in this case on March 28, 2023, and it contained the history of the CHOICE program.⁴⁵ Based on the entirety of the record, the Commission finds that since its inception, the CHOICE program has not been administered in a manner to ensure its success. However, this conclusion cannot be reached without also noting that, for this program to be successful, the marketers must buy in to the CHOICE program as well.

The Commission has concerns that customers do not have adequate information on the options and process of securing gas service from marketers.⁴⁶ Also, the evidence does not support the conclusion that Columbia Kentucky has invested in the CHOICE program in the manner envisioned. Because of Columbia Kentucky's lack of commitment, the market participants have not invested. It's an endless loop of blame resulting in a lack of tangible evidence of the program's success or failure.

Once created, the CHOICE program became a service regulated by the Commission. The Commission does not believe that Columbia Kentucky has met its burden of proof regarding termination of the CHOICE program nor provided sufficient evidence for the Commission to decide about whether the CHOICE program is or could be successful, and whether termination would be fair, just and reasonable to customers.

⁴⁵ Order (Ky. PSC Mar. 28, 2023) at 5-8.

⁴⁶ See *i.e.* Case No. 2020-00402, Survey Report (filed July 9, 2021) at 7, in which 51.5 % of surveyed customers were not aware of the CHOICE program, and 14.3% of customers don't know whether or not they were current participants in the program.

Indeed, the evidence supports that there is demand for consumer choice, first from the customer side, as evidenced by Columbia Kentucky's Survey Report, with 23.5 percent of residential customers stating that the ability to choose from whom you buy your gas supply whether you save money or not as very important, while 35.2 percent of customers stated that these reasons were somewhat important.⁴⁷ Columbia Kentucky also "indicated that customers participating in the program have the desire for a choice in supplier of the natural gas commodity consumed" .⁴⁸ Furthermore, there is support for the CHOICE program from market participants, as evidenced by the arguments of the three different intervenors.

The Commission's March 28, 2023 Order in this matter adopted the Settlement Agreement and the Addendum submitted by the parties, as modified by the Commission. The Settlement Agreement contained discussion of several items, including a working group.⁴⁹ The working group guidelines and procedures were outlined, and the Commission made modifications to certain working group items.⁵⁰ The Commission also ordered that Columbia Kentucky develop a method to track its costs to administer the CHOICE program and to provide an accounting of those costs and all collections from marketers in its annual CHOICE program reports.⁵¹

As acknowledged by its adoption, the Commission viewed the Settlement and its Addendum as a viable attempt at making the CHOICE program workable in order to

⁴⁷ Case No. 2020-00402, Survey Report at 10.

⁴⁸ Judy Cooper Direct Testimony at 5.

⁴⁹ Order (Ky. PSC Mar. 28, 2023) at 10-11, 13-14 and Appendix A and Appendix B.

⁵⁰ Order (Ky. PSC Mar. 28, 2023) at 10-11, 13-14 and Appendix A and Appendix B.

⁵¹ Order (Ky. PSC Mar. 28 2023) at 12.

evaluate its value. However, the Commission has serious concerns that the working group as laid out in the Settlement Agreement and Addendum would not function as intended. This is highlighted by the fact that Columbia Kentucky withdrew from the Settlement Agreement after the Commission's laid out procedural changes to the working group. The Commission finds that the working groups as outlined in the Settlement Agreement and Addendum as modified in the March 28, 2023 Order shall be created with further modifications as described below.

In order to ensure consistency and administrative transparency, these meetings will be run by Commission Staff as post-hearing informal conferences. Columbia Kentucky, all marketers providing service, or interested in providing gas service shall participate in every meeting. As part of this responsibility, Commission Staff shall schedule these informal conferences, set the agenda and facilitate. Commission Staff will create a memorandum for the record, keep minutes, and maintain the records for each informal conference. The informal conference will occur twice a year through December 2028 or upon further Order by the Commission. The initial informal conference and time will be August 28, 2024 at 9 a.m. Eastern Daylight Time. The agenda of the first meeting is attached as Appendix A. The initial informal conference shall address essential issues, including customer education.

The Commission expects Columbia Kentucky to calculate and track the costs of and revenues from administering the program, including but not limited to the costs and cost savings for customers in association with their selection of a specific CHOICE marketer. The Commission made clear in the final Order that Columbia Kentucky was to

track expenses and revenues related to this program.⁵² Columbia Kentucky continues to be unable to provide that information, even after all these years. The Commission's frustration with the lack of financial documentation related to this program cannot be understated. The Commission reiterates its earlier order⁵³ and notes that this is not an endorsement of the financial proposals by the Intervenors. The Commission cannot evaluate the CHOICE program appropriately without this information.⁵⁴ Columbia Kentucky shall provide the financial information on a yearly basis, beginning on March 1, 2025, for the period beginning from the date of this Order until December 31, 2024. The information shall break down the expenses by cost code as well as the category of each expense.

The Commission appreciates Columbia Kentucky's willingness to begin the program and will evaluate the program fully once all the necessary information has been provided.

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's request to terminate the CHOICE program is denied.

⁵³ "The Commission finds that Columbia Kentucky shall develop a method to track its costs to administer the CHOICE program and to provide an accounting of those costs and all collections from marketers in its annual CHOICE program reports. The \$0.05 per Mcf charge for volumes sold by marketers and the \$0.20 per customer monthly billing charge have remained unchanged since the inception of the CHOICE program, and the 2 percent of CHOICE customer revenues retained by Columbia Kentucky is little changed from the original 2.5 percent approved in 2000. The Commission recognizes that it is in Columbia Kentucky's and its sales customers' interests to cover all CHOICE-related costs and risk of cost shifts through the collections from marketers. The Commission must also ensure, however, that the charges to marketers are fair, just and reasonable, and that they do not contribute unreasonably to Columbia Kentucky's profits. The Commission anticipates the application Columbia Kentucky will file in 2029 will address these issues." Order (Ky. PSC Mar. 28, 2023) at 12-13.

⁵⁴ KRS 278.990 sets the civil penalty for each willful violation of a statute, administrative regulation or failure to comply with a Commission Order.

2. Columbia Kentucky shall continue the CHOICE program until March 31, 2028.

3. Working groups as outlined in the Settlement Agreement and Addendum as modified in this Order shall be created and the parties to this matter, and all other interested marketers, shall participate in informal conferences facilitated by Commission Staff.

4. The first informal conference shall take place on August 28, 2024 at 9 am Eastern Daylight Time at 211 Sower Blvd., Frankfort, Ky 40601.

5. The agenda as discussed in the Order is attached as an Appendix.

6. Columbia Kentucky shall track both the costs and the revenues, including the specific information discussed in the Order, associated with the CHOICE program.

7. Columbia Kentucky shall file the financial information, as ordered in ordering paragraph 6, for the period beginning from the date of service of this Order until December 31, 2024, by March 1, 2025.

8. Columbia Kentucky shall file the financial information as ordered in ordering paragraph 6 by March 1 for every calendar year following until such time as the Commission issues an Order relieving them of that responsibility.


PUBLIC SERVICE COMMISSION



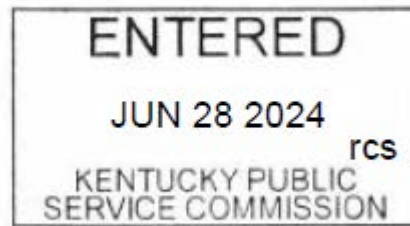
Chairman



Vice Chairman



Commissioner



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2021-00386 DATED JUN 28 2024

AGENDA

Commission Staff hereby gives notice that the following topics are to be discussed at the informal conference in this proceeding.

1. Information Sharing: Issues include breadth and timing of sharing customer information between marketers and utility; and increased sharing between the parties.
2. Publicity: Issues include customers' knowledge of enrollment in the Choice Program; notice to customers regarding initial participation; updates on changes to the program; and increased prominence on Columbia Kentucky's website.
3. Shopping Website: Conversation about a shopping website or an easy access website for customers to have increased ability and information on the Choice Program.
4. Expiration of Products and Services: Discussion involving notification to customers upon expiration of products or services and placement on a differing rate.
5. Credit Requirements for Marketers: Discussion involving credit requirements for marketers and the risks of defaulting or bankruptcy.
6. Operational Questions: Discussion on Columbia Kentucky as the provider of last resort.

Commission Staff notes that the above list of topics is not exhaustive and that other topics may be discussed at the informal conference.

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