

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| APPLICATION OF B & H GAS COMPANY FOR AN ALTERNATIVE RATE ADJUSTMENT |) | CASE NO. 2018-00433 |
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ORDER

This matter arises on the motion of the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) requesting that the Commission initiate an investigation into B & H Gas Company (B & H) pursuant to KRS 278.300. On December 28, 2018, B & H tendered an application¹ requesting a rate adjustment to, among other things, recover \$1,755,823.53 of outstanding debt consisting of six promissory notes, all of which are dated December 28, 2018.² On February 8, 2019, the Attorney General filed the motion requesting that the Commission initiate an investigation into the promissory notes because B & H failed to obtain Commission approval prior to entering into the evidences of indebtedness as required by KRS 278.300.

BACKGROUND

B & H is a Kentucky corporation whose president, director, and registered agent is Bud Rife. In its application, B & H stated that a rate increase was needed to allow B & H to pay its expenses without receiving financial assistance from Bud Rife's non-regulated

¹ B & H's application was rejected due to filing deficiencies, which were subsequently cured and the application was deemed filed on February 4, 2019.

² Application, Unnumbered Attachment of Outstanding Debt Instruments.

companies. The primary reason for the rate increase is to provide B & H with sufficient funds to repay six promissory notes. Of the six promissory notes at issue, five represent funds purportedly borrowed by B & H from affiliated entities, and one represents payment to a law firm for services already provided to B & H. The amounts, parties, and terms of the notes are as follows:

- A no-interest loan for \$3,600.00 from Bud Rife Construction Company for a term of five years, with semiannual payments of \$360.00. Bud Rife Construction Company is a Kentucky corporation whose president and sole officer is Bud Rife. Mr. Rife is the signatory for both parties on this note.
- A no-interest loan for \$490,132.61 from Bud Rife Construction Company for a term of 20 years, with semiannual payments of \$12,253.32. Mr. Rife is the signatory for both parties on this note.
- A no-interest loan for \$53,284.00 from Bud Rife, individually, for a term of 20 years, with semiannual payments of \$1,332.10. Mr. Rife is the signatory for both parties on this note.
- A no-interest loan for \$1,078,528.92 from B & S Gas Company (B & S) for a term of 20 years, with semiannual payments of \$26,963.22. Bud Rife owns and operates B & S Gas Company as a sole proprietorship.³ Mr. Rife is the signatory for both parties on this note.
- A no-interest loan for \$90,815.18 from B & S for a term of 20 years, with semiannual payments of \$2,270.38. Mr. Rife is the signatory for both parties on this note.

³ See Case No. 2016-000204, *B&H Gas Company, B&S Oil and Gas Company, and Mr. Bud Rife, Individually and as an Officer of B&H Gas Company and B&S Oil and Gas Company, Alleged Violation of a Commission Order*, Joint Motion to Reconsider (filed Aug. 29, 2016).

- A promissory note for payment of \$39,462.82 to Goss Samford PLLC (Goss Samford) for a term of five years, with ten payments of \$3,946.28 at an unspecified frequency, for legal services provided by Goss Samford to B & H. Goss Samford is a Kentucky professional limited liability company. Mr. Rife signed on behalf of B & H. Goss Samford had not signed the note tendered with the application.

ATTORNEY GENERAL'S ARGUMENTS

In the motion, the Attorney General explains that, under KRS 278.300, no utility can issue evidences of indebtedness until authorized to do so by the Commission. The exception to that statutory requirement is that, under KRS 278.300(8), notes payable in two years or less, or renewals of such notes, do not require prior Commission approval.

The Attorney General contends that there is no evidence in this proceeding or prior cases that B & H sought Commission approval before entering into any of the six promissory notes at issue. The Attorney General emphasizes that none of the six promissory notes are payable in under two years or renewals of notes payable in under two years, and therefore the exception in KRS 278.300(8) regarding short-term notes is not applicable to the six promissory notes.

The Attorney General argues that the Commission should initiate an investigation into the validity of the six promissory notes before taking substantive action in this proceeding. The Attorney General maintains that heightened scrutiny is necessary because B & H issued all six notes on the same date, which is also the date that B & H tendered its rate adjustment application. The Attorney General further maintains that the notes lack any indication when the referenced debts were incurred, which, based on the amounts and past history of B & H, were "obviously" incurred in the past and not on

December 28, 2018.⁴ The Attorney General contends that the promissory note transaction in this case approximates “non-transparent self-dealing transactions” identified in previous cases for which B & H was found to have engaged in transactions with affiliates that were not at arm’s length, as is required by statutory law.⁵

Because B & H requests recovery of debt that the Commission has not investigated or approved, the Attorney General requests that the Commission initiate an investigation into the six promissory notes prior to taking further action in this proceeding and suspend B & H’s proposed rates until an investigation is completed.

DISCUSSION AND FINDINGS

Legal Standard

The Commission must apply KRS 278.300, the statutory provision for issuing evidences of indebtedness, and 807 KAR 5:076, alternate rate adjustment regulations for small utilities, such as B & H. As the Attorney General noted, KRS 278.300 states that no utility shall issue any evidences of indebtedness until authorized to do so by a Commission order. KRS 278.300(8) states that Commission approval is not required for notes “for proper purposes and not in violation of law” that are payable for periods of two years or less, or are renewals of such notes.

Procedures for a rate adjustment for small utilities with \$5,000,000 or less in gross annual revenue in the immediate past calendar year are provided in 807 KAR 5:076. Section 7(1) of 807 KAR 5:076 provides that an applicant cannot place the proposed rates

⁴ Attorney General’s Motion Requesting Commission to Initiate an Investigation (filed Feb. 8, 2019) at 4.

⁵ *Id.* at 2, citing Case No. 2015-00367, *An Investigation of the Gas Costs of B& H Gas Company Pursuant to KRS 278.2207 and the Wholesale Gas Price it is Charged by its Affiliate, B & S Oil and Gas Company, Pursuant to KRS 278.274* (Ky. PSC May 4, 2017).

into effect until the Commission issues an order approving those rates or six months from the date of filing the application, whichever occurs first. Section 7(2) of 807 KAR 5:076 states that the applicant may place its proposed rates into effect subject to refund if the Commission has not issued its order within six months from the date of filing of the application. Section 17 of 807 KAR 5:076 provides that the Commission may permit deviations from this regulation upon a showing of good cause.

Attorney General's Motion to Initiate an Investigation

Based upon a review of the motion and the case record, and being otherwise sufficiently advised, the Commission finds that the Attorney General established good cause for the Commission to investigate whether B & H violated KRS 278.300 by issuing six promissory notes without the Commission's prior approval. As the Attorney General noted, B & H did not provide evidence of Commission approval of the notes in this case or in previous cases. Commission records reflect that the last time B & H requested authority to enter into an evidence of indebtedness was in Case No. 1994-00513, when the Commission approved B & H's request to borrow \$407,588.90 for a 30-year term to construct natural gas pipelines and related facilities.⁶

B & H has the burden of proof to show that the proposed rate increase is just and reasonable under KRS 278.190(3). The primary reason for the proposed rate increase is to reduce B & H's alleged financial reliance on affiliated companies. Placing B & H on sound financial footing to repay the purported loans represents a significant portion of the requested rate increase. Given that, the Commission concurs that an investigation into the six promissory notes is necessary. This is especially so because Mr. Rife is a

⁶ Case No. 1994-00513, *B & H Gas Company, Inc. Application for Authority to Issue a Note Provision KRS 278.300* (Ky. PSC Aug. 29, 1995).

signatory for both parties on five of the six notes, all the notes were issued on the same date, and the underlying basis for the loans is unclear.

In addition to the validity of the notes, the Commission should investigate whether the notes are necessary for or consistent with the proper performance of B & H, will not impair B & H's ability to perform that service, and are reasonably necessary and appropriate to provide service. Because there is an alleged violation of KRS 278.300, and B & H and Mr. Rife could be assessed a civil penalty if the Commission determines there was a violation, the investigation should be conducted in a separate proceeding from this case.

Effective Date of Rates

The Attorney General also requested that the Commission suspend B & H's proposed rates until an investigation of the alleged violation of KRS 278.300 is completed. As noted above, under 807 KAR 5:076, Section 7(2) provides that B & H's rates could be placed into effect six months after the application was filed if the Commission has not issued an order. B & H's application was deemed filed as of February 4, 2019. Thus, the earliest date that B & H could place its proposed rates into effect, without a Commission order approving the rates, is August 4, 2019.

In the alternative, pursuant to 807 KAR 5:076, Section 17, the Commission could deviate from the regulation upon good cause and hold this proceeding in abeyance for a reasonable period to conduct an investigation into the promissory notes. Section 3 of 807 KAR 5:076 sets forth the record on which a decision about a rate increase should be made, which includes the application filed by the utility. As a trier of fact, there must be sufficient evidence of record for the Commission to weigh in order to reach a decision

whether the proposed rate increase is fair, just, and reasonable. Additionally, the Commission has disallowed rate recovery when the proceeds of an unauthorized loan were used to pay current operating expenses because such action would constitute retroactive ratemaking.⁷ Because the six promissory notes serve as a primary reason that B & H requested a rate increase, the Commission finds that, unless we investigate the validity of those notes, we cannot reasonably rely on the evidence contained in the application, and therefore cannot render a decision whether the proposed rate increase is fair, just, and reasonable.

For the above reasons, the Commission finds that good cause exists to deviate from the regulations set forth in 807 KAR 5:076 and hold this proceeding in abeyance until the separate show cause proceeding is completed. The separate show cause proceeding will be initiated on the same date as this order is issued. The Commission will use its best efforts to timely complete the show cause investigation, but the need to conduct a thorough investigation may result in a decision after August 2019. The Commission cautions that its ability to timely complete the show cause investigation is dependent upon B & H's and Mr. Rife's submitting timely and complete filings in response to Commission orders and requests for information.

SUMMARY OF FINDINGS

A summary of the Commission findings is as follows:

1. Because the six promissory notes at issue are the primary reason that B & H requested a rate increase, unless the Commission investigates the validity of those

⁷ See Case No. 8690, *Application of Glengarry Utilities, Inc., Glengarry Sewage Treatment Plant for an Adjustment of Rates Pursuant to the Alternative Procedure for Small Utilities* (Ky. PSC July 8, 1983) at 7; and Case No. 9303, *Application of Fordhaven, Inc. for an Adjustment of Rates Pursuant to the Alternative Procedure for Small Utilities* (Ky. PSC Aug. 8, 1985) at 8.

notes, we cannot reasonably rely on the evidence contained in the application, and therefore cannot render a decision whether the proposed rate increase is fair, just, and reasonable.

2. Good cause exists to grant the Attorney General's request that the Commission initiate a separate show cause proceeding to investigate the validity of the six promissory notes issued by B & H allegedly without Commission approval in violation of KRS 278.300.

3. Good cause exists to deviate from the procedural time set forth in 807 KAR 5:076, Section 7.

4. This proceeding is held in abeyance pending the completion of an investigation into the six promissory notes issued by B & H.

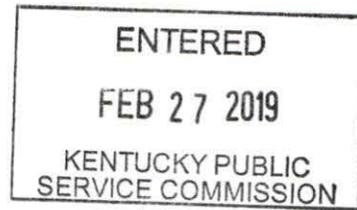
IT IS THEREFORE ORDERED that:

1. The Attorney General's motion requesting the Commission to initiate an investigation pursuant to KRS 278.300 regarding B & H's evidences of indebtedness is granted.

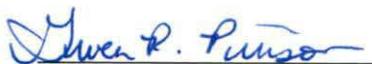
2. This proceeding is held in abeyance until further order of the Commission.

3. B & H shall not put its proposed rate increase into effect until further order of the Commission is issued.

By the Commission



ATTEST:


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