

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOHNSON COUNTY GAS COMPANY,)
INC. AND BUD RIFE, INDIVIDUALLY AND)
AS SOLE OFFICER OF THE UTILITY)
_____)

CASE NO.
2004-00072

ALLEGED VIOLATIONS OF)
COMMISSION ORDER)
)

O R D E R

Johnson County Gas Company, Inc. ("Johnson County Gas") is a local gas distribution company subject to the Commission's jurisdiction pursuant to KRS 278.040. As part of a settlement in the Federal Energy Regulatory Commission ("FERC") Docket Nos. TQ89-1-46-000, et al., Johnson County Gas, and several other small Kentucky gas utilities were authorized to charge a surcharge to their customers to pay past due amounts owed to Kentucky-West Virginia Gas Company ("Kentucky-West"). The surcharge was intended to discharge a debt owed by each of the companies over a 10-year amortization period, beginning in 1991; however, the settlement allowed for a 5-year extension to the original 10-year amortization period.

On May 6, 1999, Johnson County Gas filed an application for a rate adjustment pursuant to 807 KAR 5:076, the Commission's alternative rate filing procedure, and the

case was docketed as Case No. 1999-00155.¹ Commission Staff performed a limited financial review of the operations of Johnson County Gas for the test year ending December 31, 1998. As a result of that review, the Order in Case No. 1999-00155 required Johnson County Gas to deposit all Kentucky-West surcharge revenues into a separate interest-bearing account (“surcharge account”). Johnson County Gas was to make all payments to Kentucky-West from that account and was further ordered to use any excess surcharge revenues not required to pay current billings to pay past-due amounts billed by Kentucky-West. Any excess amounts collected were to accumulate in the bank account to be paid to Kentucky-West at the end of the amortization period.

In April 2003, Johnson County Gas was requested by Staff to provide information regarding the current status of its payments under the terms of the FERC settlement and the status of the surcharge account. As a result of that report and further review by Staff, it was determined that Johnson County Gas had not made monthly deposits as ordered. Nor had the utility remitted excess surcharge revenues to Kentucky-West. Staff’s review also revealed funds were transferred from the surcharge account to another Johnson County Gas account.

Johnson County Gas and Bud Rife, personally and as sole officer of Johnson County Gas, were ordered to appear before the Commission on April 27, 2004, for the purpose of presenting evidence concerning their alleged failure to deposit surcharge proceeds into a surcharge account and to make payments pursuant to the Order of

¹ Case No. 1999-00155, Application of Johnson County Gas Company, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities, Order of September 1, 1999.

September 1, 1999. Neither Johnson County Gas nor Bud Rife filed any response as directed in the Order.

A formal hearing was held before the Commission on April 27, 2004. Upon convening the hearing, the Commission noted that both Johnson County Gas and Mr. Rife were properly notified of the hearing, but that no one was present for Johnson County Gas or Mr. Rife.

Beverly Davis of the Commission's Financial Audit Branch testified that Johnson County Gas reported surcharge collections of \$26,754.05 for 2000, 2001, and 2002 but deposited only \$20,184.86 into the surcharge account during that time. She reported that payments of \$8,683.09 were made to Kentucky-West for that time period. She reported that surcharge revenues of \$6,366.21 were billed during 2003 through the time of the field visit in October; however, no deposits were made into the surcharge account during that same time, and no disbursements to Kentucky-West were made from the account. She stated that Johnson County Gas has reported total surcharge collections of \$117,473.00 for 1992 through the end of 2002 and that payments to Kentucky-West through that time totaled \$59,418.75, for a difference of \$58,054.25. Ms. Davis also testified that a field visit had been scheduled for March 31 through April 2, 2004 with the office employee at Johnson County Gas. She testified that in a subsequent telephone conversation, Mr. Rife cancelled the field visit and said he was holding the records and would not allow Staff access to the records of Johnson County Gas.

The hearing was suspended after approximately 15 minutes because Mr. Rife called the Commission indicating that he was en route. When Mr. Rife appeared, he was not represented by an attorney and was advised that he could not represent

Johnson County Gas but could ask questions of witnesses and testify on his own behalf.

Mr. Rife was sworn in and testified that he had not retained an attorney for Johnson County Gas because the company needed money for other purposes. He said he has lost 150 customers due to high gas prices. He said Johnson County Gas does not make much money and it has always struggled financially. He said he spends money where it is needed and pays Kentucky-West when he can. Mr. Rife stated that Kentucky-West had not sent bills for several months during 2002 because they had overbilled Johnson County Gas. He said he owns an unregulated construction company that provides financial support to both Johnson County Gas and B & H Gas Company, another LDC owned by Mr. Rife. He indicated that he is paid for operating Johnson County Gas, including seeing to its billing, accounting, meter reading, and all other aspects of operation except construction. Mr. Rife questioned Ms. Davis regarding his last rate case² and elicited testimony regarding the fact that he could have justified a higher rate in his last rate case but did not request the entire amount because he was afraid of losing customers.

Mr. Rife admitted that he had not deposited surcharge revenues from his customers as required by the Order in Case No. 1999-00155 and that he had used surcharge revenues for purposes other than payment of Kentucky-West. Mr. Rife testified that the financial difficulties of Johnson County Gas resulted from a \$30,000

² Case No. 1999-00155. While the Commission found in that case that Johnson County Gas had requested rates smaller than necessary for fear of losing customers, the Commission also directed Johnson County Gas to monitor its financial situation and report to the Commission if its cash flow was not sufficient to meet its obligations.

property loss due to fire and gas loss attributable to lines broken by sewer construction and lines washed out during flooding. Mr. Rife indicated these problems compelled him to use surcharge revenues for operations. When asked how Johnson County Gas will fund the remaining obligation to Kentucky-West after it is required to discontinue surcharge collections from its customers, Mr. Rife testified he will use revenues from other sources as he has always done.

The Commission reminds Johnson County Gas and Bud Rife that Johnson County Gas is required to pay a surcharge to Kentucky-West as approved by FERC as part of a settlement in Docket Nos. TQ89-1-46-000, et al. That surcharge is intended to discharge a debt for unrecovered gas costs over a 10-year amortization period begun in 1991. If not paid by the end of the initial period, the agreement provides for an automatic 5-year extension through 2005. Since that debt has not been discharged, the automatic extension period is now in effect. The settlement provides that any balance outstanding at the end of the extension period will be billed as a lump sum. Johnson County Gas had an initial debt of \$136,913.01. When total surcharge revenues from the customers of Johnson County Gas equal the amount of the initial debt, Johnson County Gas must stop billing its customers for the surcharge.

Mr. Rife was questioned by Staff concerning a lack of cooperation in scheduling a field visit to examine the records of Johnson County Gas and its affiliated company, B & H Gas Company. It was agreed that a field visit by Commission Staff is scheduled to begin June 1, 2004, at 11:00 a.m., Eastern Daylight Time. Mr. Rife agreed to be present and have all records available to Staff at the office of Johnson County Gas.

Having reviewed the evidence of record that was presented in the formal hearing and being otherwise sufficiently advised, the Commission finds that:

1. The Order in Case No. 1999-00155 dated September 1, 1999 is a final Order from which all rights of appeal have been exhausted.

2. Bud Rife is the sole officer of Johnson County Gas.

3. Johnson County Gas did not file a written response with the Commission concerning the allegations within 20 days of the date of the March 17, 2004 Order.

4. Bud Rife did not file a written response with the Commission concerning the allegations within 20 days of the date of the March 17, 2004 Order.

5. Johnson County Gas is in willful violation of the Commission's Order of September 1, 1999, in that it has not deposited all surcharge proceeds into the surcharge account, it has not remitted to Kentucky-West excess surcharge revenues for past due amounts, and it has not accumulated excess surcharge revenues in the surcharge account.

6. Bud Rife at all times herein was acting as an officer of the utility within the scope of his employment and has willfully aided and abetted Johnson County Gas in the willful violation of the Commission's Order of September 1, 1999 by not depositing all surcharge proceeds into the surcharge account; by not remitting to Kentucky-West its excess surcharge revenues; and by not accumulating its excess surcharge revenues in the surcharge account.

The Commission, on its own motion, HEREBY ORDERS that:

1. Johnson County Gas is assessed a civil penalty of \$2,500.00 for each of the three violations, for a total of \$7,500.00. However, the entire civil penalty assessed

upon Johnson County Gas is suspended for a period of one year upon completion of the conditions set out herein. If any of the conditions are not met, the entire suspended penalty shall become due and payable.

a. Johnson County Gas shall deposit all surcharge revenues from its customers into the surcharge account, with deposits being made on at least a monthly basis.

b. Johnson County Gas shall not use the surcharge revenues collected from its customers for any purpose other than payment of the Kentucky-West FERC surcharge obligation.

c. Johnson County Gas shall pay amounts invoiced by Kentucky-West for the FERC surcharge from the surcharge account by the due date or within 30 days of the invoice, whichever is earliest.

d. Within 30 days of the date of this Order, Johnson County Gas shall provide a report detailing the amount Johnson County Gas has billed and the amounts collected in surcharge revenues from its customers for each month of the period of January 2003 through March 2004. The report shall also state the amount paid to Kentucky-West and the amount invoiced by Kentucky-West for the FERC surcharge for each month of the same time period, and the balance of the total remaining outstanding obligation of Johnson County Gas to Kentucky-West as of March 31, 2004. Additionally, the report shall state the amount deposited into the surcharge account each month for the period of January 2003 through March 2004.

e. Thereafter, Johnson County Gas shall file quarterly reports stating the amounts billed and collected in surcharge revenues from its customers for each

month during the quarter. The quarterly report shall also state the amount deposited into the surcharge account each month, the payee, and an explanation of all disbursements from the account each month. The quarterly report shall also state the amount invoiced by Kentucky-West for the FERC surcharge each month. A copy of the surcharge account statement for each month during the quarter shall be attached to the report. The quarterly reports and attachments shall be filed no later than 30 days after the end of the quarter, with the first quarterly report being due July 30, 2004 for the period of April 2004 through June 2004.

f. Within 30 days of the date of this Order, Johnson County Gas shall file with the Commission a detailed plan by which it will become current on its debt and meet its remaining obligation to Kentucky-West. This plan should recognize that, according to the settlement agreement, Kentucky-West could require any obligation still outstanding at the end of the 5-year extension period to be paid in a lump sum.

2. Bud Rife, individually and as an officer of the utility, is assessed a civil penalty of \$2,500 for each of the three willful violations, a total of \$7,500. Of that amount, \$3,000 shall be paid within 30 days from the date of this Order by cashier's check payable to "Kentucky State Treasurer" and mailed or delivered to the Office of the General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602. The balance of \$4,500 is suspended for a period of one year upon completion of the following conditions. If any of the conditions are not met, the entire suspended penalty of \$4,500 shall become due and payable. Bud Rife may comply with the conditions herein by signing as a corporate officer and timely filing all the required filings of Johnson County Gas.

a. Bud Rife shall deposit all surcharge revenues from the customers of Johnson County Gas into the surcharge account, with deposits being made on at least a monthly basis.

b. Bud Rife shall not use the surcharge revenues from the customers of Johnson County Gas for any purpose other than payment of the Kentucky-West FERC surcharge obligation.

c. Bud Rife shall pay amounts invoiced by Kentucky-West for the FERC surcharge from the surcharge account by the due date or within 30 days of the invoice, whichever is earliest.

d. Within 30 days of the date of this Order, Bud Rife shall provide a report detailing the amount Johnson County Gas has billed and the amounts it has collected in surcharge revenues from its customers for each month of the period January 2003 through March 2004. The report shall also state the amount paid to Kentucky-West and the amount invoiced by Kentucky-West for the FERC surcharge for each month of the same time period, and the balance of the total remaining outstanding obligation of Johnson County Gas to Kentucky-West as of March 31, 2004. Additionally, the report shall state the amount deposited into the surcharge account each month for the period of January 2003 through March 2004.

e. Thereafter, Bud Rife shall file quarterly reports stating the amounts billed and collected in surcharge revenues from its customers for each month during the quarter. The quarterly report shall also state the amount deposited into the surcharge account each month, the payee, and an explanation of all disbursements from the account each month. The quarterly report shall also state the amount invoiced by

Kentucky-West for the FERC surcharge each month. A copy of the surcharge account statement for each month during the quarter shall be attached to the report. The quarterly reports and attachments shall be filed no later than 30 days after the end of the quarter with the first quarterly report being due July 30, 2004 for the period April through June 2004.

f. Within 30 days of the date of this Order, Bud Rife shall file with the Commission a plan in detail as to how Johnson County Gas will become current and meet its remaining obligation to Kentucky-West. This plan should recognize that, according to the settlement agreement, Kentucky-West could require any obligation still outstanding at the end of the 5-year extension period to be paid in a lump sum.

3. It is a further condition for the partial suspension of the above penalties that Johnson County Gas and Bud Rife shall cooperate with Commission Staff in the examination of all the books, accounts, papers, and records of Johnson County Gas and its affiliated company, B & H Gas Company. Said examination is scheduled to begin June 1, 2004, at 11:00 a.m., Eastern Daylight Time, at the office of Johnson County Gas, and all books, accounts, papers, and records of Johnson County Gas and its affiliated company, B & H Gas Company, shall be present at the utility office and be made available to Commission Staff. Such examination shall continue from day to day until such time as Commission Staff has completed its examination.

Done at Frankfort, Kentucky, this 26th day of May, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director

Case No. 2004-00072