

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On February 4, 2019, B & H Gas Company (B & H) filed an application (Application) with the Commission, pursuant to 807 KAR 5:076, requesting to adjust its rates for natural gas service.¹ B & H requested rates that would increase its annual natural gas sales revenues by approximately \$431,433, an 801 percent increase to pro forma present rate natural gas sales revenues of \$53,874.² Among other things, B & H sought to recover \$1,755,824 of outstanding debt consisting of six promissory notes, all of which are dated December 28, 2018 (Promissory Notes).³

On February 8, 2019, the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), the only intervenor in this matter, requested that the Commission initiate an investigation pursuant to KRS 278.300

¹ B & H tendered its Application on December 28, 2018, which was rejected due to filing deficiencies. B & H subsequently cured the filing deficiencies, and the Application was deemed filed on February 4, 2019.

² See Application, ARF Form 1 - Attachment Revenue Requirement Calculation (Attachment RRC) and ARF Form 1 - Attachment Schedule of Adjusted Operations (Attachment SAO) at 1. Attachment RRC states that the requested increase is an 801 percent increase from present revenues of \$53,874; however, current operating revenues are also identified as \$49,568 on Attachment SAO, from which the requested increase is an 879 percent increase. See also B & H's Second Response to Filing Deficiencies, which calculates operating revenues from current and proposed rates as \$32,927 and \$273,421, respectively, a requested increase of 730 percent.

³ Application, Unnumbered Attachment of Outstanding Debt Instruments.

regarding B & H's failure to obtain Commission approval prior to the issuance of the Promissory Notes and suspend B & H's proposed rates until such investigation is complete. On February 27, 2019, the Commission entered an Order granting the Attorney General's motion and holding this case in abeyance pending the outcome of the investigation initiated in Case No. 2019-00055.⁴ On March 21, 2019, B & H and Bud Rife, individually and as an officer of B & H, filed undated documents revoking the six Promissory Notes.⁵ This matter stands submitted for a decision based on the case record.

BACKGROUND

In its Application, B & H included adjustments that together increase its test-year operating expenses by \$192,752.⁶ B & H included adjustments to increase the amortization expense by \$94,251 to repay the Promissory Notes with the intent to recover past-due operating expenses predominantly incurred from affiliates.⁷ B & H included adjustments totaling \$73,984 to correct the annual report for the improper accounting⁸ of distribution expenses incurred from affiliates, including office rent, truck leases, and

⁴ Case No. 2019-00055, *Electronic Investigation of B & H Gas Company, and Bud Rife, Individually and as an Officer of B & H Gas Company Alleged Violation of KRS 278.300* (Ky. PSC Feb. 27, 2019).

⁵ See Case No. 2019-00055, Response to Order Initiating Investigation, Exhibit A.

⁶ Application, Attachment SAO at 1. This amount is exclusive of adjustments to remove gas costs and related revenues. Consistent with B & H's Gas Cost Recovery (GCR) tariff, gas costs are recovered through the GCR and are therefore removed from base rates through adjustments to test-year revenues and expenses.

⁷ Application, Attachment SAO at 2.

⁸ See Application, 2017 Federal Corporate Tax Return, Form 1120, Schedule K, and Attachment SAO at 2. B & H uses accrual accounting; however, it failed to record expenses that were incurred in the test year because they were not also paid in the test year.

maintenance.⁹ Adjustments were also included to increase administrative and general expenses by \$22,500 for budgeted legal expenses, \$1,667 for the three-year amortization of ongoing training, and \$350 for Kentucky Gas Association membership dues.¹⁰

B & H has made conflicting statements regarding the availability of records;¹¹ the services provided by B & H employees who are also employed by affiliates;¹² the level of recurring expenses¹³ and past due amounts;¹⁴ and the affiliates that operated out of the

⁹ Application, Attachment SAO at 2.

¹⁰ *Id.*

¹¹ See Case No. 2019-00055, B & H's responses to the Attorney General's Initial Request for Information (Attorney General's Initial Request), Item 8.d., Exhibit 8 (a-e) and the Attorney General's Post-Hearing Request for Information (Attorney General's Post-Hearing Request), Item 5.b., Exhibit 2. B & H initially responded that records of past due amounts owed to B & S Gas Company (B & S) were unavailable for a ten-year period "due to loss of records in fire." However, in response to the Attorney General's Post-Hearing Request, B & H provided totals for the period 1999 to 2016.

¹² See Case No. 2019-00055, B & H's responses to Commission Staff's First Request for Information (Staff's First Request), Item 1, Exhibit 1 (j-l) and Item 2, Exhibit 2 (a-e), unnumbered pages 27, 29, and 32 of 534. B & H states that Mr. Rife and Suda Allen receive wages through B & H and also perform work for B & H through Bud Rife Construction Co., Inc. (Rife Construction) which is invoiced to B & H. Further Exhibit 2 (a-e) contains numerous Rife Construction work orders for services which, in conjunction with the \$0 reported for Miscellaneous Service Revenues in B & H's 2015, 2016, and 2017 annual reports, suggest that B & H is not collecting the special charges in its tariff.

¹³ See Case No. 2019-00055, B & H's responses to Staff's First Request, Item 1, Exhibit 1 (a-e) and the Attorney General's Initial Request, Item 16.d, Exhibit 16.d. on unnumbered page 7 of 7. B & H states that office rent was increased from \$1,000 per month to \$2,000 per month in January 2018 due to the recalculation of expenses; however the attached expenses include a late payment penalty for property taxes and do not fully justify rent expense of \$2,000 per month. Also, invoices show that B & H's office rent was increased to \$1,500 per month, starting in October 2017 with no explanation.

¹⁴ See Case No. 2019-00055, B & H's responses to the Attorney General's Initial Request, Item 8.d., Exhibit 8 (a-e), unnumbered pages 12 – 16 of 16, and the Attorney General's Post-Hearing Request, Item 5, Exhibit 2. B & H lists various amounts for the past-due balance of its debt to B & S.

same office as B & H.¹⁵ As stated above, B & H also revoked the six Promissory Notes filed with the Application.

DISCUSSION

Administrative Regulation 807 KAR 5:001, Section 16(1), provides that all applications for a general rate adjustment shall be supported by either a “twelve (12) month historical test period which may include adjustments for known and measurable changes” or a “fully forecasted test period.” When an applicant bases its application on a historical test period, it must provide a “complete description and quantified explanation for all proposed adjustments with *proper support for any proposed changes* in price or activity levels, and any other factors which may affect the adjustment.”¹⁶ (emphasis added). That support should include, at a minimum, some documentary evidence to demonstrate the certainty of some expected change or event.

Additionally, for transactions between a utility and its parent or affiliate, the Commission has historically held that:

[t]he burden of proof is on the utility to demonstrate that the outcome of the transaction is fair, just and reasonable, and is substantially the equivalent of an arms-length transaction. Moreover, if this burden of proof is not met, the Commission will not allow proposed adjustments resulting from such transactions for rate-making purposes.¹⁷

¹⁵ See Case No. 2019-00055, B & H’s responses to the Attorney General’s Initial Request, Item 2, Exhibit 2 (a–d), and Item 16. B & H stated that B & H and Johnson County Gas Company, Inc., are the only entities operated from 497 George Road, Betsy Lane, Ky. However, this is the same address listed as the principal office of Rife Construction with the Kentucky Secretary of State and West Virginia Secretary of State.

¹⁶ Administrative Regulation 807 KAR 5:001, Section 16(4).

¹⁷ See Case No. 9269, *The Application of Public Service Utilities, Inc., - Boone Creeke for a Rate Adjustment Pursuant to the Alternative Rate Filling for Small Utilities* (Ky. PSC Oct. 2, 1985) at 3.

Lastly, the Commission does not allow prior period expenses to be borne by current and future ratepayers. To do so would constitute retroactive ratemaking and would not be consistent with previous decisions by the Commission in this regard. B & H failed to request rate relief as it should have when it became apparent that its rates were deficient. Instead, it chose alternative arrangements to handle its expenses and attempted to delay recovery. The Commission strongly advises B & H to seek rate relief when it becomes necessary. When a utility begins to defer payment of its expenses from affiliates, it may not be construed to be an arms-length transaction and may be denied by the Commission.

Based upon the evidence of record and being otherwise sufficiently advised, the Commission finds that B & H failed to provide sufficient evidence to support its request, and therefore its request is denied. Due to the withdrawal of the Promissory Notes and the inaccuracies in the annual report and data responses, the financial information provided cannot be relied upon as sufficient evidence to support the requested increase in base rates. A utility requesting a rate increase has the burden of proof to show that the rates it seeks are just and reasonable.¹⁸ In reaching a decision whether rates are fair, just, and reasonable, there must be sufficient evidence of record for the Commission, as the trier of fact, to weigh. The Commission finds that it cannot reasonably rely on the information contained in the Application provided by B & H and, therefore, cannot make a determination of the reasonableness of the test-year expenses, adjustments, and resulting revenue requirement as stated therein.

¹⁸ “[T]he burden of proof of showing that an increase of rate or charge is just and reasonable [is] upon the applicant utility.” *Kentucky American Natural Gas Co. v. Commonwealth ex rel. Cowan*, 847 S.W.2d 737, 741 (Ky. 1993).

The Commission further finds that this matter should be dismissed without prejudice, which permits B & H leave to submit a new alternative rate adjustment filing. Additionally, in compliance with 807 KAR 5:076, Section 9, which requires that the test period for alternative rate adjustment filings coincide with the annual report of the immediate past year; B & H's Application was based on its 2017 annual report. B & H has since filed its 2018 annual report with the Commission and, as such, an application based on its 2017 annual report is no longer based on its most recent annual report. Further, B & H should include sufficient information to establish cost justification for transactions with affiliates in any future base rate applications.

SUMMARY

After consideration of the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Based on the foregoing, test-year expenses, adjustments, and resulting revenue requirement as calculated by B & H cannot be reasonably relied upon and should not be accepted.
2. The natural gas service rates proposed by B & H should be denied.

IT IS THEREFORE ORDERED that:

1. The rates proposed by B & H are denied.
2. This case is dismissed without prejudice and removed from the Commission's docket.

By the Commission

ENTERED
JUL 30 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00433

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