

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF B & H GAS)	CASE NO.
COMPANY, AND BUD RIFE, INDIVIDUALLY AND)	2019-00055
AS AN OFFICER OF B & H GAS COMPANY)	
ALLEGED VIOLATION OF KRS 278.300)	

ORDER

The Commission, on its own motion, establishes this proceeding to conduct a formal investigation to determine whether there are any reasons why penalties should not be imposed upon B & H Gas Company (B & H) and Bud Rife, individually and as an officer of B & H, pursuant to KRS 278.990, for failure to comply with KRS 278.300 by entering into six promissory notes.

B & H is a Kentucky corporation in good standing with the Kentucky Secretary of State. As a local gas distribution company, B & H is subject to the Commission's jurisdiction pursuant to KRS 278.040 and KRS 278.010(3)(c). Mr. Rife, who owns 100 percent of the stock of B & H, is president, director, and registered agent of B & H. B & H provides natural gas service to 258 residential, commercial, and industrial customers in Floyd County, Kentucky.¹ B & H and Mr. Rife have the responsibility to ensure that B & H complies with statutes and regulations enforced by the Commission and orders issued pursuant to the Commission's statutory authority to regulate a utility's rates and service.

¹ *Annual Report of B & H to the Public Service Commission for the Calendar Year Ended December 31, 2017* (2017 Annual Report) (filed July 6, 2018) at p. 31 of 42.

Under KRS 278.250 and KRS 278.260, the Commission is authorized to investigate and examine the condition of any utility subject to its jurisdiction, including any practice or act relating to the utility service. Under KRS 278.280, if the Commission finds that any practice or act is unjust, unreasonable, unsafe, improper, inadequate, or insufficient, then the Commission has the authority to determine the just, reasonable, safe, proper, adequate, or sufficient practice or method to be observed. If the Commission determines that B & H or Mr. Rife violated any provision of KRS Chapter 278; KRS 278.990 authorizes the Commission to assess civil penalties not to exceed \$2,500 for each offense against a utility and against any officer, agent, or employee of a utility who willfully violates any provisions of KRS 278, Commission regulations, or orders.

DISCUSSION

The Commission has longstanding concerns regarding the operation and management of B & H by Mr. Rife. Mr. Rife owns or controls several entities that provide affiliate services to B & H, including office space, leased vehicles, management services, and wholesale natural gas. In Case No. 2016-00204,² the Commission assessed a civil penalty against B & H, Mr. Rife, and another company controlled by Mr. Rife, B & S Oil and Gas Company (B & S) for their failure to comply with a Commission Order. In Case No. 2015-00367,³ the Commission found that B & H's agreements to purchase gas from B & S were not arm's length transactions as required by affiliate transactions, that B & S's

² 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* (Aug. 22, 2016).

³ 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). B & H appealed the Commission's decision and the matter is pending in Franklin Circuit Court, Civil Action No. 17-CI-00722.

charge for gas was in excess of market cost, and ordered refunds of monies B & H over-collected from customers due to passing through B & S's gas charges that exceeded market rates through the utility's Gas Cost Component. In Case No. 2011-00315,⁴ the Commission assessed a civil penalty against B & H for its failure to file annual financial and statistical reports in violation of KRS 278.230(3). In Case Nos. 2016-00257 and 2006-00073,⁵ the Commission dismissed pending rate adjustment cases when B & H failed to timely cure filing deficiencies after being afforded multiple opportunities to cure the deficiencies.

This matter arises from an alternative rate adjustment application (ARF Application) filed by Mr. Rife on behalf of B & H in Case No. 2018-00433. In its ARF Application, B & H stated that it required a rate increase to allow B & H to pay its expenses without receiving financial assistance from Mr. Rife's non-regulated companies. The primary reason for the rate increase was to provide B & H with sufficient funds to recover \$1,755,823.53 of outstanding debt consisting of six promissory notes, all executed on December 28, 2018, the same date the ARF Application was filed. B & H filed the six notes as outstanding evidences of indebtedness attachments to the ARF Application as required by 807 KAR 5:076, Section 4(b).

Of the six promissory notes, five represent funds purportedly borrowed by B & H from affiliated entities controlled by Mr. Rife, and one represents payment to a law firm

⁴ Case No. 2011-00315, *Investigation of the Failure of B & H Gas Company to File Required Reports* (Ky. PSC Dec. 21, 2011).

⁵ Case No. 2016-00257, *Alternative Rate Adjustment Filing of B & H Gas Company* (Ky. PSC July 26, 2017); Case No. 2006-00073, *Application of B & H Gas Company to Revise Certain Non-Recurring Charges* (Ky. PSC May 30, 2006).

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 (Bud Rife Construction) for a term of five years, with semiannual payments of \$360.00. Bud Rife Construction is a Kentucky corporation whose president and sole officer is Mr. Rife. Mr. Rife is the signatory for both parties on this note. The note states that Bud Rife Construction loaned money to B & H, but does not provide further information.
- A no-interest loan for \$490,132.61 from Bud Rife Construction for a term of 20 years, with semiannual payments of \$12,253.32. Mr. Rife is the signatory for both parties on this note. The notes states that Bud Rife Construction loaned money and advanced services to B & H, but does not provide further information.
- A no-interest loan for \$53,284.00 from Mr. 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. The notes state that Mr. Rife loaned money and advanced services to B & H, but does not provide further information.
- A no-interest loan for \$1,078,528.92 from B & S for a term of 20 years, with semiannual payments of \$26,963.22. Mr. Rife owns and operates B & S as a sole proprietorship.⁶ Mr. Rife is the signatory for both parties on this note. The notes states that B & S loaned money and advanced services to B & H, but does not provide further information.

⁶ 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 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. The note states that B & S loaned money to B & H, but does not provide further information.

- 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.

Violation of KRS 278.300, Unauthorized Issuance of Evidences of Indebtedness

Under KRS 278.300, a utility cannot issue any evidences of indebtedness until authorized to do so by Commission order. The exception to that provision is contained in KRS 278.300(8), which 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.

As an initial matter, none of the six promissory notes are payable in under two years or are renewals of notes payable in under two years. Therefore, the exception in KRS 278.300(8) regarding two-year notes is not applicable to the six promissory notes, which required Commission approval prior to their issuance.

There is no evidence in this proceeding or prior cases that B & H sought or obtained Commission approval before entering into any of the six promissory notes at issue. 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 from the Kentucky Department of Local Government (DLG) for a 30-year term to construct natural gas pipelines and related facilities.⁷ Additionally, in B & H's most recent annual report, it reported \$405,671.00 in long-term debt, which represents the DLG loan previously approved by the Commission.⁸ The annual report also reports a note payable to Bud Rife Construction Company with a balance of \$26,891; there is no evidence that B & H sought or obtained Commission approval of this note.

FINDINGS

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. *Prima facie* evidence exists that B & H failed to comply with KRS 278.300, as set forth in the above discussion.
2. The Commission finds that *prima facie* evidence exists that Bud Rife, in his official capacity as president of B & H and individually, failed to comply with KRS 278.300, as set forth in the above discussion.
3. This show cause proceeding should be initiated to determine whether there are any reasons why penalties should not be imposed upon B & H and its president, Bud Rife, pursuant to KRS 278.990, for failure to comply with KRS 278.300.
4. A procedural schedule should be established for the orderly processing of this show cause proceeding. The procedural schedule is attached as an Appendix to this Order.

⁷ 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).

⁸ 2017 Annual Report at p. 21 of 42.

5. The Attorney General should be made a party to this proceeding based upon the motion he filed in the ARF proceeding requesting that the Commission initiate an investigation of the unauthorized debt. The Attorney General may file a motion to withdraw if he does not wish to be a party to this proceeding.

IT IS THEREFORE ORDERED that:

1. Within ten days of the date of entry of this Order, B & H and Bud Rife shall submit to the Commission a written response to the allegations contained in this order.

2. B & H and Bud Rife shall appear in Hearing Room No. 1 of the Commission offices in Frankfort, Kentucky, at 9a.m. Eastern Daylight Time, on April 24, 2019, to show cause why they should not be subject to penalties pursuant to KRS 278.990 as described in finding paragraph 3 of this Order.

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

4. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

5. The record in Case No. 2018-00433 is incorporated by reference into this proceeding.

6. The Attorney General shall be made a party to this proceeding.

7. Any party filing a paper with the Commission shall file an electronic copy in accordance with the electronic filing procedures set forth in 807 KAR 5:001, Section 8, and shall also file the original in paper medium with the Commission.

8. Pursuant to 807 KAR 5:001, Section 8(10), within seven days of entry of this Order, B & H and Bud Rife shall file a written statement with the Commission that:

a. Certifies that they possess the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

9. The procedural schedule set forth in the Appendix to this Order shall be followed.

10. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding which is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Further, KRS 278.040(2) requires that a person seeking intervention must have an interest in the rates or service of a utility, as those are the only matters that are subject to the Commission's jurisdiction. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. In addition, any motion to intervene filed after March 8, 2019, shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

11. Responses to requests for information shall be appropriately bound, tabbed, and indexed, with the original in paper medium and an electronic version to the Commission.

a. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

b. Each response shall include the name of the witness responsible for responding to the questions related to the information provided.

c. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or an association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

d. A party shall make timely amendment to any prior response if it obtains information that indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

e. For any request to which a party fails or refuses to furnish all or part of the requested information that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

f. Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request.

g. Any party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that the personal information cannot be read.

By the Commission

ENTERED
FEB 27 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00055

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00055 DATED **FEB 27 2019**

Last day for intervention requests to be accepted.....03/08/19

All initial requests for information to B & H and Bud Rife shall
be filed no later than 03/08/19

B & H and Bud Rife shall file responses to initial requests for
information no later than..... 03/21/19

All supplemental requests for information to B & H and Bud Rife
shall be filed no later than..... 03/29/19

B & H and Bud Rife shall file responses to supplemental requests
for information no later than..... 04/12/19

Public Hearing to be held in Hearing Room 1
of the Commission's offices at 211 Sower Boulevard,
Frankfort, Kentucky, for the purpose of cross-examination
of witnesses of B & H and Bud Rife 04/24/19

Post-Hearing Briefs, if any To be scheduled

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