

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF JOHNSON)	
COUNTY GAS COMPANY, INC. AND BUD RIFE,)	
INDIVIDUALLY AND AS AN OFFICER OF)	CASE NO.
JOHNSON COUNTY GAS COMPANY, INC.)	2019-00056
ALLEGED VIOLATION OF KRS 278.300, A)	
COMMISSION ORDER, AND A TARIFF)	

ORDER

On February 27, 2019, the Commission initiated this proceeding and directed Johnson County Gas Company, Inc. (Johnson County), and Bud Rife, individually and as an officer of Johnson County, to show cause why penalties should not be imposed, pursuant to KRS 278.990, for failure to comply with KRS 278.300 by entering into three promissory notes without prior Commission approval, for failure to comply with the Commission's March 9, 2012 Order in Case No. 2011-00184, and for failure to comply with Johnson County's Tariff Gas Cost Adjustment (GCA) Clause by failing to file a GCA since 2013.¹ The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention, (Attorney General) is the only intervenor in this matter. A formal hearing was held on April 24, 2019. Mr. Rife and Johnson County responded to post-hearing data requests. Mr. Rife and Johnson County were afforded the opportunity

¹ Case No. 2011-00184, *Johnson County Gas Company, Inc. and Bud Rife, Individually and as Sole Officer of the Utility Alleged Failure to Comply with Commission Orders* (Ky. PSC Mar. 9, 2012); Johnson County Unnumbered Tariff Sheet labelled Gas Cost Adjustment Clause effective January 1, 2001 (filed Dec. 13, 2000).

to file a post-hearing brief but did not file a brief. This matter now stands submitted for a decision.

Johnson County is a local gas distribution company and is subject to the Commission's jurisdiction pursuant to KRS 278.040 and KRS 278.010(3)(c). Mr. Rife has been president, director, and sole stockholder of Johnson County since 1998.² Johnson County provides natural gas service to 279 residential, commercial, and industrial customers in Johnson County, Kentucky.³

Mr. Rife submitted an application on behalf of Johnson County for an alternative rate adjustment (ARF Application) that was deemed filed on February 4, 2019.⁴ At issue in this proceeding are three promissory notes filed as exhibits in the ARF Application. The notes were all executed on December 28, 2018, and represent debt in the amount of \$144,972.00. All three promissory notes represent funds purportedly borrowed by Johnson County from affiliated entities controlled by Mr. Rife or from Mr. Rife in his individual capacity. The amounts, parties, and terms of the three notes are as follows:

- A no-interest loan for \$47,700.00 from Mr. Rife, individually, for a term of 20 years, with semiannual payments of \$1,192.50. Mr. Rife is the signatory for both parties on this note. The note states that Mr. Rife loaned money to

² Case No. 1998-00523, *Application of Mr. Bud Rife and the Kentucky Municipal Gas Utility Investment Trust for the Approval of the Acquisition of the Stock of Johnson County Gas Company, Inc. of Paintsville, Johnson County, Kentucky, by Mr. Rife, and the Issuance of Two Promissory Notes Evidencing Certain Indebtedness of Johnson County Gas* (Ky. PSC Mar. 3, 1999).

³ *Annual Report of Johnson County Gas Company to the Public Service Commission for the Calendar Year Ended December 31, 2017* (2017 Annual Report) (filed July 6, 2018) at 31 of 42.

⁴ Case No. 2018-00433, *Application of Johnson County Gas Company for an Alternative Rate Adjustment* (filed Feb. 4, 2019).

Johnson County to repay \$10,000.00 in past-due office rent; \$7,200.00 in past-due truck rental expenses; and \$30,500.00 in past-due management fees.

- A no-interest loan for \$15,198.00 from Bud Rife Construction Company (Bud Rife Construction) for a term of five years, with semiannual payments of \$1,519.80. 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 the sums to Johnson County for payment for past due services rendered by Bud Rife Construction.

- A no-interest loan for \$82,047.00 from Hall, Stephens, & Hall Gas Company (Hall) for a term of 20 years, with semiannual payments of \$2,051.85. Hall is a partnership whose managing partner is Mr. Rife.⁵ Mr. Rife is the signatory for both parties on this note. The note states that Hall loaned money and advanced services to Johnson County for natural gas deliveries.

On March 21, 2019, Mr. Rife and Johnson County filed into the record of this proceeding a revocation of all three promissory notes, along with a statement that no payments had been made on the three promissory notes. Subsequently, Mr. Rife and Johnson County admitted that payments had been made on the notes.⁶ Mr. Rife and Johnson County asked that this matter be dismissed because all three notes had been revoked. By Order entered March 27, 2019, the Commission found that Mr. Rife and Johnson County failed to establish good cause to dismiss this proceeding and denied the motion to dismiss. At the April 24, 2019 hearing in this matter, counsel for Mr. Rife and

⁵ Case No. 2012-00140, *Alternative Rate Filing Adjustment Application of Johnson County Gas Company*, Responses to Post-Hearing Data Requests (filed May 17, 2013) at Item 1, Exhibit 1.

⁶ Response to Commission Staff's Post-Hearing Request for Information, Item 4.

Johnson County acknowledged that there had been a violation of KRS 278.300 by entering into evidences of indebtedness without prior approval of the Commission.⁷ Counsel explained that he had advised Mr. Rife and Johnson County to execute the notes to consolidate past-due debt owed to other entities owned by Mr. Rife.⁸ Counsel renewed the motion to dismiss this matter because the notes were revoked, which was denied from the bench.⁹

Also at issue here is Johnson County's failure to file quarterly GCAs pursuant to Johnson County's Tariff GCA Clause and the Commission's March 9, 2012 Order in Case No. 2011-00184. To date, Johnson County has failed to file three of the quarterly GCA filings due in 2013; four in 2014; four in 2015; four in 2016; four in 2017; four in 2018; and two in 2019, for a total of 25 missed GCA filings.

DISCUSSION AND FINDINGS

Violation of KRS 278.300 by issuing unauthorized evidences of indebtedness

Regarding the unauthorized promissory notes, 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 three promissory notes at issue are payable in fewer than two years or are renewals of notes payable in under two years. Therefore, the

⁷ Apr. 24, 2019 Hearing Video Transcript (HVT) at 8:58:28.

⁸ *Id.* at 8:59:07.

⁹ *Id.* at 9:01:37.

exception in KRS 278.300(8) regarding two-year notes is not applicable to the three promissory notes, which required Commission approval prior to their issuance.

There is no evidence in this proceeding or prior cases that Johnson County sought or obtained Commission approval before entering into any of the three promissory notes at issue. Commission records reflect that the last time Johnson County requested authority to enter into an evidence of indebtedness was in Case No. 1998-00523, when the Commission approved Johnson County's request to renew two promissory notes in the amounts of \$655,302.00 and \$77,698.00 between Johnson County and the Kentucky Department of Local Government (DLG).¹⁰

In the document filing the revocation of the notes, Mr. Rife and Johnson County stated that they would seek Commission approval prior to entering into any future evidences of indebtedness. At the April 24, 2019 hearing, counsel for Mr. Rife and Johnson County admitted he advised Mr. Rife and Johnson County to execute the notes and that Mr. Rife and Johnson County did not request or obtain Commission approval prior to executing the notes.

As demonstrated by the substantial evidence in the record, there is no question that Mr. Rife and Johnson County entered into evidences of indebtedness without prior Commission approval. As we noted in the February 27, 2019 Order initiating this proceeding, the Commission has had longstanding concerns regarding operation and management of Johnson County by Mr. Rife, the failure to file timely GCAs, and Mr. Rife's and Johnson County's compliance with statutes and regulations enforced by the

¹⁰ Case No. 1998-00523, *Johnson County Gas Company, Inc.* (Ky. PSC Mar. 3, 1999) at 2.

Commission.¹¹ Of particular concern here, the Commission cautioned Mr. Rife in a recent case that he cannot recover past-due expenses, such as those underlying the notes at issue here, through rates collected prospectively from today's customers.¹² From Mr. Rife's and Johnson County's participation in the cases referenced above and in cases involving related entities owned and controlled by Mr. Rife, Johnson County and Mr. Rife had actual notice that each has a duty to comply with statutes and regulations enforced by the Commission.¹³ For the above reasons, we find that Mr. Rife, in his official capacity as the president of Johnson County, and Johnson County have willfully violated KRS 278.300.

KRS 278.990(1) provides that any officer of a utility who willfully violates any provision of KRS Chapter 278 or any regulation promulgated pursuant to KRS Chapter 278 or fails to obey any Order of the Commission or perform any duty imposed upon it under those sections shall be subject to a civil penalty not to exceed \$2,500 per occurrence. KRS 278.990(1) further provides that any utility that willfully violates any provision of KRS Chapter 278 or any regulation promulgated pursuant to KRS Chapter 278 or fails to perform any duty imposed upon it under those sections shall be subject to a civil penalty not to exceed \$2,500 per occurrence. Based upon the evidence of record,

¹¹ See Feb. 27 Order at 2–3.

¹² Case No. 2012-00140, *Johnson County Gas Company* (Ky. PSC June 18, 2013) at 6.

¹³ See Case No. 2016-00204, *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* (Ky. PSC Sept. 12, 2016); 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 June 13, 2017); Case No. 2011-00315, *Investigation of the Failure of B & H Gas Company to File Required Reports* (Ky. PSC Dec. 21, 2011).

the Commission finds that Bud Rife, as president of Johnson County, should be assessed a penalty for his willful violation of KRS 278.300 in the amount of \$7,500, which represents a civil penalty of \$2,500 for each of the three unauthorized promissory notes. The Commission further finds that Johnson County should be assessed a penalty for its willful violation of KRS 278.300 in the amount of \$7,500, which represents a civil penalty of \$2,500 for each of the three unauthorized promissory notes.

Violation of Commission Order and Tariff

The Commission approves GCAs under the statutory authority granted by KRS 278.030(1) to set rates that are fair, just, and reasonable. In Case No. 2011-00184, the Commission directed Johnson County and Mr. Rife to “to comply with the requirements of its GCA tariff.”¹⁴ According to its GCA tariff provision, Johnson County “shall file a gas cost recovery rate (GCR) with the Commission at least 30 days prior to the first day of each calendar quarter”.¹⁵ Johnson County last filed a GCA on February 12, 2013, with an approved gas cost recovery of \$6.4140 per Mcf.¹⁶

At the April 24, 2019 hearing, Mr. Rife admitted that he had not filed the required GCAs on behalf of Johnson County since February 2013, contending that his failure to file the quarterly GCAs resulted from a combination of secretarial issues, an office move, an office fire, and Johnson County’s bankruptcy.¹⁷ The excuses offered by Mr. Rife strain credulity and do not establish good cause for the violation of Johnson County’s tariff or

¹⁴ Case No. 2011-00184, Final Order at ordering paragraph 2.

¹⁵ Johnson County GCA Tariff GCA Clause.

¹⁶ Case No. 2012-00542, *Purchased Gas Adjustment Filing of Johnson County Gas Company* (Ky. PSC Jan. 30, 2013).

¹⁷ April 24, 2019 HVT at 9:25:28.

the Commission Order. Further, Mr. Rife's and Johnson County's failure to file GCAs is not a new issue. The Commission has repeatedly chastised Johnson County and Mr. Rife for failing to file GCAs in accordance with Johnson County's tariff.¹⁸

Based upon the evidence of record, the Commission finds that Bud Rife, as president of Johnson County, and Johnson County should be jointly assessed a penalty for the willful violation of Johnson County's tariff and the Commission Order in Case No. 2011-00184 in the amount of \$62,500, which represents a civil penalty of \$2,500 for each of the 25 occurrences of failure to file a quarterly GCA.

The Commission further finds that Johnson County's gas recovery rate may no longer be reasonable and therefore Johnson County should file its next quarterly GCA report, to be effective October 1, 2019, no later than September 1, 2019. Johnson County should base its next quarterly GCA report on the sales and purchases made for the 12 months ended June 30, 2019. In calculating its total Actual Adjustment (AA), Johnson County should set the Previous Quarter, Second Previous Quarter, and Third Previous Quarter for each adjustment to \$.0000 per Mcf. In order to capture the full true-up adjustment, Johnson County should reconcile the gas costs for the 12 months ended June 30, 2019, when calculating its current quarter AA. When Johnson County files its next quarterly GCA report, it should submit any invoices received from its natural gas suppliers since October 1, 2018. In recent GCA cases, the approved gas cost recovery

¹⁸ See Case No. 2012-00140, Final Order; Case No. 2011-00184, Final Order; and Case No. 2010-00010, *Purchased Gas Adjustment Filing of Johnson County Gas Company* (Ky. PSC Sept. 17, 2010).

rate is approximately \$4.0000 per Mcf.¹⁹ Since February 2013, Johnson County's gas cost recovery rate has been \$6.4140 per Mcf. Thus, it would appear that by failing to file timely GCAs pursuant to its tariff, Johnson County is collecting a gas recovery cost that exceeds the actual costs of purchasing and transporting natural gas.

IT IS THEREFORE ORDERED that:

1. Bud Rife, as president of Johnson County, is assessed a penalty for his willful violation of KRS 278.300 in the amount of \$7,500.

2. Johnson County is assessed a penalty for its willful violation of KRS 278.300 in the amount of \$7,500.

3. Bud Rife, as president of Johnson County, and Johnson County are jointly assessed a penalty of \$62,500 for the willful violation of Johnson County's tariff and a Commission Order.

4. Bud Rife and Johnson County shall pay the assessed penalties of \$7,500 each within 14 days of the date of entry of this Order. Bud Rife and Johnson County shall pay the jointly assessed penalty of \$62,500 within 14 days of the date of entry of this Order. Payments shall be made by certified check or money order made payable to "Kentucky State Treasurer" and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602-0615.

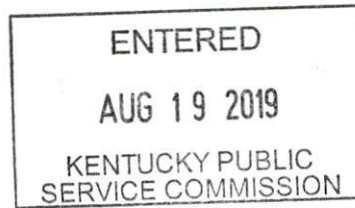
¹⁹ See Case No. 2019-00040, *Purchased Gas Adjustment Filing of Columbia Gas of Kentucky, Inc.* (Ky. PSC Feb. 14, 2019) (approving GCA of \$4.2552 per Mcf); Case No. 2019-00036, *Electronic Purchased Gas Adjustment Filing of Duke Energy Kentucky, Inc.* (Ky. PSC Feb. 14, 2019) (approving GCA of \$4.188 per Mcf); Case No. 2018-00432, *Purchased Gas Adjustment Filing of Sentra Corporation* (Ky. PSC Jan. 31, 2019) (approving GCA of \$4.0229 per Mcf).

5. Bud Rife and Johnson County shall file a quarterly GCA, as directed above, no later than September 1, 2019.

6. Upon payment of \$7,500 by Bud Rife, \$7,500 by Johnson County, and \$62,500 by Bud Rife and Johnson County, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

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By the Commission



ATTEST:


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