

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF B&S OIL & GAS)	
COMPANY FOR INITIAL RULES, REGULATIONS)	CASE NO.
AND RATES FOR FURNISHING GAS SERVICE)	2021-00484
PURSUANT TO KRS 278.485)	

ORDER

On December 21, 2021, B&S Oil & Gas Company (B&S) filed a tariff to establish initial rates, rules, and regulations pursuant to KRS 278.485 and 807 KAR 5:026, which govern farm-tap systems.¹ B&S proposed an effective date of January 20, 2022, for rates for service to its prospective farm-tap system. The proposed tariff was suspended until June 19, 2022. B&S responded to three rounds of discovery from Commission Staff. On May 5, 2022, B&S requested a hearing. Because there are no intervenors in this case and a hearing is not necessary in the public interest, the Commission will adjudicate this case based on the evidence of record.

BACKGROUND

¹ A "farm-tap system" is a natural gas system in which retail gas service is provided to customers within one-half air mile of any producing well or gathering line, pursuant to KRS 278.485.

B&S, owned and operated by Bud Rife as a sole proprietorship,² owns approximately ten gas wells located in Floyd County, Kentucky.³ Until November 9, 2021, B&S provided natural gas to Navitas KY NG, LLC (Navitas KY); B&S no longer provides natural gas to Navitas KY's Floyd County gas system due to a disagreement between the two parties.⁴ Navitas KY's Floyd County gas system was formerly known as B&H Gas Company (B&H) and owned by Mr. Rife, until B&H was acquired by Navitas KY as approved by the Commission in Case No. 2020-00396.⁵

B&S stated that its system currently consists of only gas wells,⁶ which are shut in and not producing gas.⁷ B&S does not currently provide any farm-tap service but has estimated that it will have approximately 20 prospective customers within a one-half air mile of its lines once construction of those lines is complete.⁸ B&S stated that the prospective customers are within five feet to one-half air mile of Navitas KY's distribution

² 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* (Ky. PSC Sept. 26, 2016), Joint Motion to Reconsider (filed Aug. 29, 2016).

³ A letter from B&S which accompanied the tariff filing (filed Dec. 21, 2021) stated that B&S owns ten gas wells. B&S's Response to Commission Staff's Third Request for Information (Staff's Third Request) (filed June 22, 2022), Item 2(f) provided the location and permit numbers for nine gas wells. B&S's Response to Staff's Third Request, Item 7 indicated the existence of nine gas wells.

⁴ B&S's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Mar. 24, 2022), Item 10.

⁵ Case No. 2020-00396, *Electronic Application of Navitas KY NG, Johnson County Gas Company, and B & H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems* (Ky. PSC Apr. 27, 2021). The transfer of control was completed April 30, 2021.

⁶ B&S's Response to Staff's Second Request, Item 11(d).

⁷ B&S's Response to Staff's Third Request, Item 3(a).

⁸ B&S's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Feb. 24, 2022), Items 11 and 12 and B&S's Response to Staff's Third Request, Item 2(a).

lines and may already be provided gas service by existing providers in the area.⁹ B&S stated it has no knowledge of whether the prospective customers are already provided gas service.¹⁰

B&S stated that it planned to construct a gas line beginning in spring of 2022 between its wells and Diversified Oil and Gas (Diversified) and to begin selling the gas from its wells to Diversified once construction is complete; however, B&S stated that construction has not begun because it “has not been able to get [PSC] approval and therefore, has not been able to begin installing lines.”¹¹ B&S stated that it does not have a contract with Diversified, but Diversified has expressed interest during telephone conversations in purchasing gas during the winter months to maintain the pressure of its system.¹²

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and services of utilities in Kentucky,¹³ including natural gas distribution companies. KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness. Farm-tap systems are not considered utilities under KRS 278.010, because they do not furnish gas service to the public, but merely are

⁹ B&S’s Response to Staff’s First Request, Item 9 and B&S’s Response to Staff’s Second Request, Item 9. B&S attempted to identify existing providers in the area. Columbia Gas of Kentucky, Inc. and Navitas KY are local distribution companies, subject to full Commission jurisdiction of rates and service. Peoples Gas KY, LLC (now owned and operated by Delta Natural Gas Company, Inc.) and Interstate Natural Gas and Kinzer Gas (now served by Kentucky Frontier Gas Company, LLC) are farm-tap systems.

¹⁰ B&S’s Response to Staff’s Second Request, Item 9(a).

¹¹ B&S’s Response to Staff’s Third Request, Item 3(b).

¹² B&S’s Response to Staff’s Third Request, Item 4(b).

¹³ KRS 278.040(2).

obligated to offer gas service to customers in close proximity to the production or gathering facilities. The Commission also has limited jurisdiction to regulate the retail rates of gas pipeline companies that do not meet the definition of a utility but provide limited retail gas service pursuant to KRS 278.485.

KRS 278.485 requires every gas pipeline company obtaining gas from producing wells located within the state of Kentucky to provide service, upon request, to an owner whose property is located within one-half air mile of the company's producing gas well or gas gathering pipeline. A farm-tap system's retail rates and charges are governed by 807 KAR 5:026, Section 9, which provides for farm-tap companies to charge rates filed with and approved by the Commission, but it does not specifically establish a review process for initial rates.¹⁴ Under the farm-tap regulation, "gas company" is defined as "the owner of any producing gas well or gathering line" and "gathering line" is defined as "a pipeline that transports gas from a current production facility to a transmission line or main."¹⁵

Farm-Tap Status

The Commission has found that the function of a pipeline determines its classification and has determined that a gas system which only sells gas to retail customers is not a farm-tap system but a distribution system.¹⁶ B&S's system currently consists solely of non-producing gas wells, so the ultimate function of the system cannot be determined at this time. Without a wholesale customer, the lines would not be

¹⁴ 807 KAR 5:026, Section 9(1).

¹⁵ 807 KAR 5:026, Section 1(4) and Section 1(5).

¹⁶ Case No. 2017-00120, *Pollitt Enterprises, Inc., Whitney Clark Pollitt, Individually, Amanda Deeann Pollitt, Individually, and Basil C. Pollitt, Individually, d/b/a The Gas Group, Inc. a/k/a The Gas Group Alleged Violations of KRS 278.020, KRS 278.160, KRS 278.140, and 807 KAR 5:006, Section 4(2)* (Ky. PSC Dec. 27, 2017), Order at 3 and 10–14.

classified as gathering lines and any provision of service to retail customers would require a certificate of public convenience and necessity,¹⁷ which B&S has not requested. B&S could not produce any written document corroborating its statement that Diversified is interested in purchasing gas from B&S and was unwilling to begin construction of the pipeline system before rates are set for retail customers served pursuant to the farm-tap statute and regulations.

SUMMARY AND FINDINGS

Currently, B&S has neither producing wells nor gathering lines from which it could provide farm-tap service. Until the lines to Diversified or another wholesale customer are completed and there is a contract to buy B&S's gas, B&S would not be considered a farm-tap system. B&S stated that it is waiting for Commission approval to construct the gathering lines; however, it does not need Commission approval for such construction. Farm-tap rates will not be approved until B&S meets the definition of a "gas company" per 807 KAR 5:026. B&S stated it has not received a request for farm-tap service in the past 20 years¹⁸ so it seems unlikely that any potential customer will be adversely affected by the delay of rates until the lines are constructed, the wells are producing, and B&S meets the requirements to be a farm-tap system. Based on a review of the record and being otherwise sufficiently advised, the Commission finds that B&S is not currently an operational gas company, is not capable of delivering gas to the wholesale market, and is therefore not a farm-tap system and is not eligible for rates established pursuant to KRS 278.485 and 807 KAR 5:026.

¹⁷ KRS 278.020.


¹⁸ B&S's Response to Staff's Third Request, Item 6.

IT IS THEREFORE ORDERED that:

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

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PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

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