

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)

_____)
AN INVESTIGATION INTO THE STATUS AND)
DISCONTINUANCE OF THE KENTUCKY-WEST)
VIRGINIA GAS COMPANY SURCHARGE TARIFF)
OF JOHNSON COUNTY GAS COMPANY, INC.)
AND ALLEGED VIOLATIONS OF A COMMISSION)
ORDER)

CASE NO.
2006-00165

O R D E R

Johnson County Gas Company, Inc. ("Johnson Co. Gas") is a local gas distribution company subject to the Commission's jurisdiction. KRS 278.010(3)(b), KRS 278.040. The Federal Energy Regulatory Commission ("FERC") approved a settlement agreement in Docket Nos. TQ89-1-46-000, et al., authorizing Kentucky-West Virginia Gas Company ("Kentucky-West") to surcharge several small Kentucky gas utilities, including Johnson Co. Gas, for past due amounts. The surcharge was intended to discharge Johnson Co. Gas's debt over a 10-year amortization period, beginning in 1991; however, the settlement allowed for the surcharge to be extended for an additional 5 years. On March 1, 1991, in Case No. 10415-B,¹ this Commission

¹ Case No. 10415-B, The Purchased Gas Adjustment Filing of Johnson County Gas Company, Inc.

authorized Johnson Co. Gas to pass the Kentucky-West surcharge through to its customers.

In Case No. 1999-00155,² the Commission required Johnson Co. Gas to deposit all of its Kentucky-West surcharge revenues into a separate interest-bearing account ("surcharge account"). Johnson Co. Gas was also required to use the surcharge revenues solely for the payment of debt to Kentucky-West from that account and to use any surcharge revenues that were not required to pay current billings to pay past due amounts billed by Kentucky-West. After payment of all past due amounts, 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 2003, in a review of information provided by Johnson Co. Gas regarding the current status of its payments to Kentucky-West and the status of the surcharge account, Commission Staff ("Staff") determined that Johnson Co. Gas had not made the monthly deposits ordered by the Commission in Case No.1999-00155, and that it had not remitted excess surcharge revenues to Kentucky-West. Staff's review also revealed that funds were transferred from the surcharge account to another Johnson Co. Gas account.

² 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.

A formal case³ was initiated against Johnson Co. Gas and Bud Rife, personally and as sole officer of Johnson Co. Gas, to review the alleged violations of the Commission's Order in Case No. 1999-00155.

The Commission conducted a formal hearing in the matter on April 27, 2004 at which Mr. Rife testified that he took over as manager on March 20, 1997⁴ and that he was responsible for Johnson Co. Gas's billing and accounting.⁵ He further testified 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 to Kentucky-West.⁶

As a result, the Commission issued an Order on May 26, 2004, finding that Johnson Co. Gas and Bud Rife had willfully violated the Commission's Order of September 1, 1999 for their failure to deposit all surcharge proceeds into the surcharge account, to remit any excess surcharge revenues to Kentucky-West for past due amounts and to accumulate excess surcharge revenues in the surcharge account. Based on these findings, the Commission assessed a penalty of \$7,500 against both Johnson Co. Gas and Bud Rife, individually and as an officer of the utility. The Commission suspended the entire penalty assessed against Johnson Co. Gas and

³ Case No. 2004-00072, Johnson County Gas Company, Inc. and Bud Rife, Individually and as Sole Officer of the Utility, Alleged Violations of Commission Order, initial Order, dated March 17, 2004.

⁴ Video Transcript (V.T.) 11:10:14.

⁵ V.T. 11:18:19.

⁶ V.T. 11:27:05.

suspended \$4,500 of Bud Rife's penalty for a period of one year on the proviso that each party comply with the following conditions:

1. Deposit all surcharge revenues from its customers into the surcharge account, with deposits being made on at least a monthly basis.

2. Use the surcharge revenues collected from its customers for payment of the Kentucky-West FERC surcharge obligation only.

3. 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.

4. Provide a report detailing the amount Johnson Co. Gas had billed and the amounts collected in surcharge revenues from its customers for each month of the period of January 2003 through March 2004. 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 Co. Gas to Kentucky-West as of March 31, 2004. State the amount deposited into the surcharge account each month for the period of January 2003 through March 2004.

5. File quarterly reports within 30 days of the end of each quarter stating the amounts billed and collected in surcharge revenues from its customers for each month during the quarter. State the amount deposited into the surcharge account each month, the payee, and an explanation of all disbursements from the account each month. State the amount invoiced by Kentucky-West for the FERC surcharge each month. Attach a copy of the surcharge account statement for each month during the quarter. The first quarterly report was due July 30, 2004 for the period of April 2004 through June 2004.

6. File with the Commission a detailed plan by which Johnson Co. Gas 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.

The Commission directed that if either party failed to comply with the conditions, the entire suspended penalty would become due and payable.

Pursuant to the Commission's directive in Case No. 2004-00072, Johnson Co. Gas and Bud Rife were required to file reports for the fourth quarter of 2004 by January 31, 2005. Staff's review of the record reveals that, contrary to the Commission's Order of May 26, 2004, Johnson Co. Gas's report for the fourth quarter of 2004 was not filed with the Commission until April 29, 2005. Staff's review further reveals that Johnson Co. Gas and Bud Rife failed to comply with the Commission's Order of May 26, 2004 by their failure to timely file Johnson Co. Gas's reports for the last three quarters of 2005 as these reports were not filed with the Commission until April 10, 2006. In addition, the reports reveal that Johnson Co. Gas and Bud Rife have not made deposits to the surcharge account on a monthly basis and have not made any payments to the surcharge account since April 2005. The quarterly reports also reveal that Johnson Co. Gas and Bud Rife have, contrary to the Commission's Order of May 26, 2004, failed to make payments to Kentucky-West within 30 days of the invoice from Kentucky-West.

Also, based on a review of the quarterly reports, Staff has determined that Johnson Co. Gas and Bud Rife billed Johnson Co. Gas customers for the Kentucky-West surcharge, as of December 2005, a total of \$144,436.45, which is approximately \$7,523.44 more than it owed Kentucky-West. Johnson Co. Gas and Bud Rife actually collected as of that date a total of \$139,084.74, which is approximately \$2,171.73 more than it owed. In Case No. 2004-00072,⁷ the Commission directed Johnson Co. Gas to cease the surcharge to its customers when it had collected surcharge revenues equal to

⁷ Commission Order dated May 26, 2004 at 5.

the amount of the initial debt owed to Kentucky-West. In addition, staff has determined that Johnson Co. Gas still owes \$59,685.90 to Kentucky-West.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Johnson Co. Gas's 2005 Annual Report filed with the Commission lists Bud Rife as its president and manager. In addition, Bud Rife testified that he took over as manager of Johnson Co. Gas on March 20, 1997 and that he is responsible for the billing and accounting at Johnson Co. Gas.

2. A prima facie showing has been made that Johnson Co. Gas violated the conditions set forth in the Commission's May 26, 2004 Order by its failure to timely file quarterly reports, to deposit all surcharge proceeds into the surcharge account, to remit to Kentucky-West excess surcharge revenues for past due amounts and to accumulate any excess revenues in the surcharge account.

3. A prima facie showing has been made that Bud Rife aided and abetted Johnson Co. Gas in its violation of the Commission's May 26, 2004 Order.

4. A prima facie showing has been made that Bud Rife, individually and as sole officer of Johnson Co. Gas, violated the Commission's May 26, 2004 Order by his failure to file timely quarterly reports, to deposit all surcharge proceeds into the surcharge account, to remit to Kentucky-West excess surcharge revenues for past due amounts and to accumulate any excess revenues in the surcharge account.

5. A prima facie showing has been made that Johnson Co. Gas and Bud Rife, individually and as sole officer of Johnson Co. Gas, violated the Commission's May 26, 2004 Order by collecting from Johnson Co. Gas customers total surcharge

amounts in excess of the amount due Kentucky-West and by continuing to charge the customers the surcharge amount.

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

1. Johnson County and Bud Rife, sole officer of Johnson County, shall appear before the Commission on Thursday, July 24, 2006 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky for the purpose of presenting evidence concerning the status of the Kentucky-West surcharge account, why the surcharge tariff should not be discontinued, why they should not be found in violation of the Commission's Order in Case No. 2004-00072, and why the penalties abated therein shall not be due and payable.

2. The official record of the proceeding shall be by video only, unless otherwise requested by a party to this proceeding.

3. The Commission does not favor motions for continuance and will grant them only when such a motion is made in writing and states compelling reasons for granting the motion.

4. Corporate entities are advised that under Kentucky law a corporation, its employees, and any representative, who are not licensed to practice law in Kentucky, are not permitted to make objections, examine, or cross-examine witnesses in administrative hearings.

5. The record in Case No. 2004-00072 is incorporated by reference into the record of this proceeding.

6. Within 20 days of the date of this Order, Johnson County and Mr. Rife each shall file a written response with the Commission concerning the allegations contained herein.

7. Any motion requesting an informal conference with Commission Staff to consider any matter that would aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

Done at Frankfort, Kentucky, this 16th day of June, 2006.

By the Commission

ATTEST:



Executive Director