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October 31, 2011

Hon. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, KY 40602-0615

RE: *In Matter of: Johnson County Gas Co., Inc. and Bud Rife, Individually and as Sole Officer of the Utility, Case No. 2011-00184*

Dear Mr. Derouen:

We are legal counsel to Johnson County Gas Co., Inc. and Bud Rife, individually and as sole officer of the utility (together, "Johnson County" or the "Company"). In that capacity, we are filing this letter in accordance with the September 8, 2011 Intra-Agency Memorandum filed by staff of the Kentucky Public Service Commission (the "Commission") following an informal conference held on August 31, 2011 in the above-referenced case.

On June 10, 2011, the Commission ordered Johnson County to respond to the Commission's allegations that Johnson County failed to comply with two Commission orders: the September 17, 2010 Order in Case No. 2010-00010, and the January 13, 2011 Order in Case No. 2011-00004. The Commission further ordered Johnson County to show cause why it should not be subject to the penalties of KRS 278.990 (1) for the alleged failure to comply with these Commission orders.

Johnson County filed its response to the show cause order on July 28, 2011, and filed a motion for an informal conference on August 15, 2011. During the informal conference on August 31, 2011, Johnson County and Commission staff discussed whether the Company's bankruptcy proceedings would require a stay of this case, and possibly prohibit the Commission from imposing fines against Johnson County and Mr. Rife. This letter is filed pursuant to that conference.

Johnson County should not be subject to any penalty for its alleged failure to comply with the above-mentioned Commission orders because those orders, as well as the present show-cause proceeding, were automatically stayed upon Johnson County's bankruptcy filing on June 27, 2011.

Whenever a debtor petitions for bankruptcy, Section 362 of the Bankruptcy Code requires an automatic stay of the "continuation . . . of a judicial, administrative, or other

proceeding against the Debtor that was or could have been commenced before the commencement of the case under this Title, or to recover a claim against the Debtor that arose before the commencement of the case under this Title” 11 U.S.C. 362 (a)(1). This automatic stay has long been held to be “one of the fundamental debtor protections provided by the bankruptcy laws.” *Midatlantic Nat’l Bank v. New Jersey Dep’t of Environmental Protection*, 474 U.S. 494, 503 (1986).

Courts have widely held that “Congress intended the automatic stay to be quite broad.” See, e.g., *In re Stringer*, 847 F.2d 549, 552 (9th Cir. 1988) (citing 2 L. King, *Collier on Bankruptcy*, para. 362.04, at 362-31 (15th ed. 1988) (“The stay of section 362 is extremely broad in scope and, aside from the limited exception of subsection (b), should apply to almost any type of formal or informal action against the debtor or property of the estate.”)). Moreover, “[a]ny action taken in violation of the automatic stay is void.” *In re Smith*, 86 B.R. 92 (W.D. Mich. 1988) (citing, e.g., *Kalb v. Feuerstein*, 308 U.S. 433 (1940)), *aff’d in part and rev’d in part on other grounds* 876 F.2d 524 (6th Cir. 1989) (reversing only as to imposition of costs and sanctions).

Exceptions to Section 362’s automatic stay are enumerated by statute and “should be read narrowly to secure the broad grant of relief to the debtor.” *In re Stringer*, 847 F.2d 549, 552 (9th Cir. 1988). These exceptions typically relate to issues of particular importance to public policy, including criminal actions or cases involving issues such as child custody, domestic violence, driver’s license suspension, and enforcement of certain Social Security medical obligations. 11 U.S.C. 362 (b)(1), (b)(2)(A)(iii), (b)(2)(A)(v), (b)(2)(D), (b)(2)(G).

Johnson County’s June 27, 2011 bankruptcy filing triggered Section 362’s automatic stay of the continuation of the administrative proceedings in Case No. 2011-00184. 11 U.S.C. 362 (a)(1). Moreover, given the Commission orders that are the subject of the show cause proceedings in Case No. 2011-00184 pertain to Gas Cost Adjustment filings and support requirements, they do not fall into any of the statutory exceptions to Section 362’s automatic stay. See 11 U.S.C. 362 (b) (creating exceptions for, e.g., criminal actions).

Therefore, Case No. 2011-00184 is automatically stayed. Thus, Johnson County cannot be subject to the penalties of KRS 278.990(1) for its alleged failures to comply because the Commission orders in question were automatically stayed on June 27, 2011 pursuant to Section 362 of the Bankruptcy Code, and any orders issued in violation of that stay would be void. See *In re Smith*, 86 B.R. 92 (W.D. Mich. 1988).

Section 362’s automatic stay also extends to the proceedings against Mr. Rife. Kentucky law provides that “[e]ach act, omission, or failure by any officer, agent, or other person acting for or employed by a utility and acting within the scope of employment shall be deemed to be the act, omission, or failure of the utility”; therefore, Mr. Rife’s actions must be considered actions of Johnson County. KRS 278.990(1). Moreover, courts have widely held that “a nonbankrupt codefendant [such as Mr. Rife] may be protected by the automatic stay of section 362(a)(1) if extension of the stay contributes to the debtor’s efforts of rehabilitation or the debtor and nonbankrupt or closely related.” *In the Matter of S.I. Acquisition, Inc.*, 817 F.2d 1142, 1147 (5th Cir.

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1987) (synthesizing cases from a number of courts). Mr. Rife is sufficiently "closely related" to Johnson County to warrant an extension of the automatic stay because he is the sole director of Johnson County, the acts and omissions that are the bases for the Commission's allegations all arose exclusively out of Johnson County business, and those alleged acts or omissions are all imputed to Johnson County. *In re Johns-Manville Corp.*, 33 B.R. 254, 263 (Bankr. S.D.N.Y. 1983) (Section 362 stay extended to bar "taking any action of any type against present, former or future officers, directors or employees of [a debtor] or any of its corporate entities in any lawsuit or other proceeding."); *In re Old Orchard Inv. Co.*, 31 B.R. 599, 603 (Bankr. W.D. Mich. 1983) (Section 362 stay extended to bar "claim brought against the individual partners . . . [that] arose exclusively out of the debtor-partnership's business"); KRS 278.990(1) (director's acts in scope of employment "shall be deemed to be the act, omission, or failure of the utility").

Accordingly, Case No. 2011-00184 should be stayed in its entirety as to both Johnson County and Mr. Rife.

Thank you for your attention to this matter. If you have any further questions, please contact me at (502) 540-2309 or holly.wallace@dinsmore.com.

Very truly yours,

Dinsmore & Shohl LLP



Holly C. Wallace

Cc: Allyson Honaker, Esq.

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