

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE FAILURE OF B & H GAS) CASE NO. 2011-00315
COMPANY TO FILE REQUIRED REPORTS)

ORDER

On October 12, 2011, the Commission ordered B & H Gas Company ("B & H Gas") to show cause why it should not be penalized for failing to comply with KRS 278.230(3). A hearing in this matter was held on October 27, 2011. No representative appeared on behalf of B & H Gas.

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

1. B & H Gas is a Kentucky company that owns, controls, operates, and/or manages facilities in the Commonwealth of Kentucky which are used for the production, manufacture, storage, distribution, sale and/or furnishing of natural or manufactured gas, or a mixture of same, to or for the public for compensation. It is therefore a utility subject to Commission jurisdiction.¹

2. KRS 278.230(3) directs every utility, when required by the Commission, to file with it any report or other information that the Commission reasonably requires.

3. 807 KAR 5:006, Section 3(1), requires every utility to file with the Commission on or before March 31 of each year a financial and statistical report of its utility operations for the preceding calendar year on forms furnished by the Commission.

¹ KRS 278.010(3)(b).

4. On or about December 15, 2010, the Commission mailed to B & H Gas, at its address of record, the Commission's standard form for the annual financial and statistical report, two copies of the Commission's standard form for report of gross earnings derived from intrastate business, and a letter of instruction to complete the forms for the 2010 calendar year operations.

5. As of April 1, 2011, B & H Gas had neither filed these reports for the 2010 calendar year operations nor requested an extension of time in which to make such filing.

6. On May 2, 2011, B & H Gas filed its report of gross earnings derived from intrastate business for the 2010 calendar year operations. On December 9, 2011, B & H Gas revised its report of gross earnings derived from intrastate business for the 2010 calendar year operations.

7. On December 12, 2011, B & H Gas electronically filed its annual financial and statistical report for the 2010 calendar year operations. B & H Gas, however, did not file signed, notarized copies of its annual financial and statistical report for the 2010 calendar year operations as required.

8. Where the act which a utility is required to do is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance.²

9. B & H Gas has willfully failed to comply with KRS 278.230(3).

10. KRS 278.990(1) provides that any utility that willfully violates any provision of KRS Chapter 278 or any regulation promulgated pursuant to KRS Chapter 278 or

² See *Re Dyke Water Company*, 55 PUR3d 342 (Cal. P.U.C. 1964).

fails to perform any duty imposed upon it under those sections shall be subject to a civil penalty not less than \$25 and not more than \$2,500.

11. B & H Gas should be assessed a penalty of \$2,500 for its willful failure to comply with KRS 278.230(3).

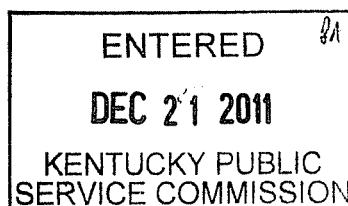
IT IS THEREFORE ORDERED that:

1. B & H Gas is assessed a penalty of \$2,500 for its willful failure to comply with KRS 278.230.

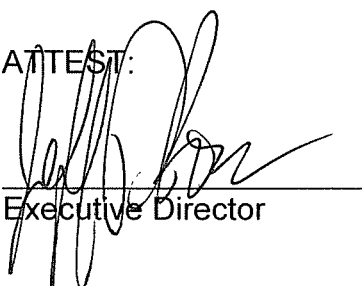
2. B & H Gas shall pay the assessed penalty within 14 days of the date of this Order. Payment shall be made by certified check or money order made payable to "Kentucky State Treasurer" and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602-0615.

3. Within 20 days of the date of this Order, B & H Gas shall file with the Commission a signed, notarized copy of its annual financial and statistical report for its 2010 calendar year operations.

By the Commission



ATTEST:


Executive Director

Case No. 2011-00315

Bud Rife
President
B & H Gas Company
P. O. Box 339
Harold, KY 41635