

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

B&H GAS COMPANY, B&S OIL AND GAS	)	
COMPANY, AND MR. BUD RIFE,	)	CASE NO.
INDIVIDUALLY AND AS AN OFFICER OF B&H	)	2016-00204
GAS COMPANY AND B&S OIL AND GAS	)	
COMPANY, ALLEGED VIOLATION OF A	)	
COMMISSION ORDER	)	

ORDER

On June 17, 2016, the Commission initiated this proceeding and directed B&H Gas Company ("B&H"), B&S Oil and Gas Company ("B&S") (collectively "Companies"), and Bud Rife, individually and as an officer of B&H and B&S, to show cause why penalties should not be imposed for failure to comply with the Commission's June 8, 2016 Order in Case No. 2015-00367.<sup>1</sup> An evidentiary hearing was held on July 6, 2016, at which Mr. Rife testified on behalf of the Companies and himself, individually.

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

1. B&H is a local gas distribution company subject to the Commission's jurisdiction pursuant to KRS 278.040.
2. Bud Rife is the president and owner of B&H and is the president and owner of B&S, B&H's primary wholesale gas supplier.

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<sup>1</sup> 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 8, 2016).

3. B&S is an affiliate of B&H<sup>2</sup> and, pursuant to KRS 278.274(3)(b), is subject to the jurisdiction of the Commission as if it were a utility, as defined in KRS 278.010.

4. On November 24, 2015, the Commission opened Case No. 2015-00367 as an investigation of the gas costs of B&H pursuant to KRS 278.2207, and of the wholesale gas price it is charged by its affiliate, B&S, pursuant to KRS 278.274.

5. On February 19, 2016, in Case No. 2015-00367, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), was granted intervention. On April 29, 2016, pursuant to the procedural schedule established by our Order of April 13, 2016, the AG issued supplemental data requests to the Companies, to which the Companies were required to file responses by May 12, 2016.

6. On June 1, 2016, in Case No. 2015-00367, the Companies filed a motion for an extension of time to file responses to the AG's supplemental requests. In our June 8, 2016 Order, the Companies were directed to respond to the AG's supplemental requests by June 13, 2016. Finding paragraph 3 of our Order put the Companies and Mr. Rife on notice that failure to file the responses as directed could result in the initiation of a show cause proceeding and stated that:

[I]f responses to the AG's request for information are not received by June 13, 2016, a show cause proceeding may be initiated to determine whether there are any reasons why penalties should not be imposed upon the Companies pursuant to KRS 278.990 for their failure to comply with this Order.<sup>3</sup>

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<sup>2</sup> KRS 278.010(18).

<sup>3</sup> This was the third notice of this type given the Companies and Mr. Rife during this proceeding.

The Companies did not file responses to the AG's supplemental requests by the June 13, 2016 deadline as directed, and asserted that their failure to comply was the result of B&H being a very small utility with limited office staff and capacity,<sup>4</sup> and that the responses were dispatched to the Commission on June 14, 2016, the date that had been requested in the Companies June 1, 2016 motion for an extension of time and the date that the Companies had mistakenly believed to be the deadline.<sup>5</sup> The responses were received by the Commission on June 15, 2016.

7. Where the act that a utility is required to perform is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance.<sup>6</sup>

8. B&H and B&S have willfully failed to comply with our June 8, 2016 Order.

9. Bud Rife, in his official capacity as the president of B&H and B&S, has willfully failed to comply with our June 8, 2016 Order.

10. 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.

11. 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 fails to obey any order of the Commission or perform any duty imposed upon it under

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<sup>4</sup> The Companies' Response to Order Regarding Alleged Violation of a Commission Order (filed July 1, 2016) ("Response") at 1.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> See *Re Dyke Water Company*, 55 PUR3d 342 (Cal. P.U.C. 1964).

those sections shall be subject to a civil penalty not less than \$25 and not more than \$2,500.

12. B&H should be assessed a penalty of \$500 for its willful violation of our June 8, 2016 Order in Case No. 2015-00367.

13. B&S should be assessed a penalty of \$500 for its willful violation of our June 8, 2016 Order in Case No. 2015-00367.

14. Bud Rife, as President of B&H and B&S, should be assessed a penalty of \$500 for his willful violation of our June 8, 2016 Order in Case No. 2015-00367.

IT IS THEREFORE ORDERED that:

1. B&H is assessed a penalty of \$500 for its willful violation of our June 8, 2016 Order in Case No. 2015-00367.

2. B&S is assessed a penalty of \$500 for its willful violation of our June 8, 2016 Order in Case No. 2015-00367.

3. Bud Rife, as President of B&H and B&S, is assessed a penalty of \$500 for his willful violation of our June 8, 2016 Order in Case No. 2015-00367.

4. B&H, B&S, and Bud Rife shall pay the assessed penalties of \$500 each within 14 days of the date 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.

5. Upon payment of \$500 by B & H, \$500 by B & S, and \$500 by Bud Rife, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission

ENTERED  
AUG 22 2016  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2016-00204

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