

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 August 29, 2016, B&H Gas Company (“B&H”), B&S Oil and Gas Company (“B&S”), and Bud Rife (“Mr. Rife”), individually and as president of B&H and B&S, filed a joint motion for reconsideration pursuant to KRS 278.400 requesting that the Commission reconsider its Order entered August 22, 2016 (“August 22, 2016 Order”), which assessed a penalty of \$500 each against B&H, B&S, and Mr. Rife for violation of a Commission Order in Case No. 2015-00367.<sup>1</sup> In the joint motion, B&H, B&S, and Mr. Rife raise three specific requests for reconsideration: (1) that the Commission assess a single penalty against Mr. Rife only, and not against both Mr. Rife and B&S, because B&S is not a separate entity from Mr. Rife; (2) that the amount of the single penalty assessed against Mr. Rife be reduced from \$500.00 to \$200.00; and (3) that the amount of the penalty assessed against B&H be reduced from \$500.00 to \$200.00.

As a basis for the request to assess a single penalty, Mr. Rife asserts that B&S is a sole proprietorship, and therefore a single penalty is appropriate because B&S is not a

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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 Charged It is Charged by Its Affiliate, B&S Oil and Gas Company, Pursuant to KRS 278.274* (Ky. PSC June 8, 2016), Order.

separate legal entity apart from Mr. Rife. In support of this assertion, Mr. Rife attached to the joint motion a copy of the 2014 federal Schedule C tax form that he filed as a sole proprietorship for B&S.

As a basis for the request to reduce the penalty amount assessed against B&H and Mr. Rife, Mr. Rife asserts that both B&S and B&H operate at a net loss, as documented by federal tax documents that were filed as attachments to the joint motion. Mr. Rife contends that a reduction in the penalty amount assessed against him and against B&H is justified by the alleged distressed financial condition of B&S and B&H.

Based upon a review of the evidence of record, the Commission finds that the joint motion for reconsideration should be denied in its entirety. In regard to the request that a penalty be imposed only on Mr. Rife, and not both Mr. Rife and B&S, the Commission notes that Mr. Rife and B&S are correct only to the extent that, under Kentucky law, a sole proprietor is not a separate legal entity apart from the business that is the sole proprietorship, with the sole proprietor having unlimited personal liability for business-related obligations.<sup>2</sup> However, Mr. Rife mischaracterizes why and against whom the penalties were assessed. First, pursuant to KRS 278.990(1), the Commission may assess a penalty against both a utility and an officer, agent, or employee of a utility for the same willful violation. Second, the penalty was assessed against Mr. Rife as his conduct pertains to both B&S and B&H. Mr. Rife was named as a party to this matter in his official capacity as an officer, agent, or employee of both B&S and B&H. As an officer, agent, or employee of B&S and B&H, respectively, Mr. Rife was found to have willfully violated a Commission Order. For this reason, the

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<sup>2</sup> See *Sparkman v. Consol Energy, Inc.*, 470 S.W.3d 321, 328 (Ky. 2015).

Commission assessed a penalty against Mr. Rife in his official capacity as an officer, agent, or employee of both of the separate entities. The Commission finds that the request for reconsideration of assessing a penalty only against Mr. Rife, and not against both Mr. Rife and B&S, should be denied.

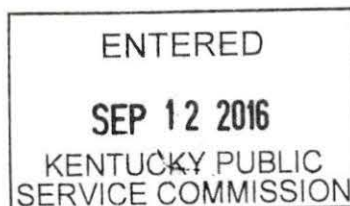
The Commission further finds that the joint request to reduce the amount of the penalty assessed against the parties should be denied. KRS 278.990(1) provides that the Commission may assess a civil penalty in an amount up to \$2,500 for each willful violation of a Commission regulation or order. In determining a penalty amount, the Commission evaluates the nature of the violation and the good faith, or lack of good faith, exhibited in complying with the regulation or order at issue. As noted in the August 22, 2016 Order, B&H, B&S, and Mr. Rife were put on notice three times in Case No. 2015-00367 that failure to comply with a Commission Order could result in the initiation of a show cause proceeding and the imposition of penalties. The nature of the willful violation and lack of compliance despite repeated notice justifies the amount assessed against each entity.

IT IS THEREFORE ORDERED that:

1. B&H's, B&S's and Mr. Rife's joint motion to reconsider is denied.
2. 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.

3. 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



ATTEST:

A handwritten signature in blue ink that reads "Jalina R. Matthews". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Director

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