

**Goss
Samford**

ATTORNEYS AT LAW | PLLC

L. Allyson Honaker
allyson@gosssamfordlaw.com
(859) 368-7740

September 25, 2017

RECEIVED

SEP 25 2017

PUBLIC SERVICE
COMMISSION

Via Hand-Delivery

Mr. John S. Lyons
Acting Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602

Re: *In the Matter of: Purchased Gas Adjustment Filing of B&H Gas Company - Case
No. 2017-00361*

Dear Mr. Lyons:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of B&H Gas Company's Supplemental PGA filing. Please return a file-stamped copy to me.

Please do not hesitate to contact me if you have any questions.

Sincerely,



L. Allyson Honaker

Enclosures

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

SEP 25 2017

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

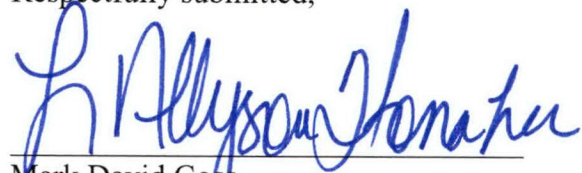
PURCHASED GAS ADJUSTMENT FILING OF) CASE NO.
B&H GAS COMPANY) 2017-00361

NOTICE OF FILING

Comes now B&H Gas Company, ("B&H") by counsel, and hereby gives notice of its filing of a supplemental Purchased Gas Adjustment ("PGA") filing. Pursuant to the Franklin Circuit Court's Order entered on September 19, 2017, granting the temporary injunction from the refund portion of the Commission's May 4, 2017 Order in Case No. 2015-00367, B&H is amending its PGA filed on August 31, 2017 to remove the refund adjustment. A copy of the Franklin Circuit Court's Order is attached to this filing. B&H requests the supplemental PGA be approved for rates effective October 1, 2017.

Done this 25th day of September 2017.

Respectfully submitted,



Mark David Goss
L. Allyson Honaker
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B-325
Lexington, KY 40504
(859) 368-7740
mdgoss@gosssamfordlaw.com
allyson@gosssamfordlaw.com

Counsel for B&H Gas Company

Company Name

Quarterly Report of Gas Cost
Recovery Rate Calculation

Date Filed:

September 25, 2017

Date Rates to be Effective:

October 1, 2017

Reporting Period is Calendar Quarter Ended:

June 30, 2017

SCHEDULE I

GAS COST RECOVERY RATE SUMMARY

<u>Component</u>	<u>Unit</u>	<u>Amount</u>
Expected Gas Cost (EGC)	\$/Mcf	\$5,4410
+ Refund Adjustment (RA)	\$/Mcf	
+ Actual Adjustment (AA)	\$/Mcf	
+ Balance Adjustment (BA)	\$/Mcf	
= Gas Cost Recovery Rate (GCR)		\$ 5.4410
GCR to be effective for service rendered from <u>October 1, 2017</u>		to <u>Dec. 31, 2017</u>

A.	<u>EXPECTED GAS COST CALCULATION</u>	<u>Unit</u>	<u>Amount</u>
	Total Expected Gas Cost (Schedule II)	\$	71,685.18
÷	Sales for the 12 months ended	Mcf	13,029
=	Expected Gas Cost (EGC)	\$/Mcf	\$ 5.5020

B.	<u>REFUND ADJUSTMENT CALCULATION</u>	<u>Unit</u>	<u>Amount</u>
	Supplier Refund Adjustment for Reporting Period (Sch.III)		
+	Previous Quarter Supplier Refund Adjustment	\$/Mcf	
+	Second Previous Quarter Supplier Refund Adjustment	\$/Mcf	
+	Third Previous Quarter Supplier Refund Adjustment	\$/Mcf	
=	Refund Adjustment (RA)	\$/Mcf	

SCHEDULE II

EXPECTED GAS COST

Actual * MCF Purchases for 12 months ended June 30, 2017

(1) Supplier	(2) Dth	(3) BTU Conversion Factor	(4) Mcf	(5)** Rate	(6) (4) X (5) Cost
BTS Oil + Gas			13,084	\$5,4410	71,190.04

Totals 13,084 \$71,190.04

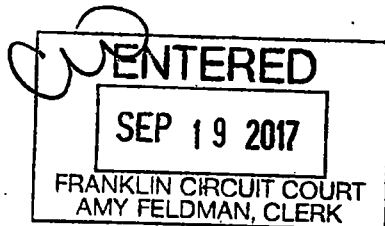
Line loss for 12 months ended June 30, 2017 is 1 % based on purchases of 13,084 Mcf and sales of 13,029 Mcf.

	Unit	Amount
Total Expected Cost of Purchases (6)	\$	71,190.04
÷ Mcf Purchases (4)	Mcf	13,084
= Average Expected Cost Per Mcf Purchased	\$/Mcf	5,4410
x Allowable Mcf Purchases (must not exceed Mcf sales ÷ .95)	Mcf	13,175
= Total Expected Gas Cost (to Schedule IA)	\$	71,685.18

*Or adjusted pursuant to Gas Cost Adjustment Clause and explained herein.

**Based on the most recent Purchased Gas Adjustment filings of Columbia Gas of Kentucky and Peoples Gas KY, LLC as found on the Public Service Commission Web site at www.psc.ky.gov.

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 17-CI-722



**B&H GAS COMPANY and
B&S OIL AND GAS COMPANY**

PLAINTIFFS/PETITIONERS

V.

ORDER

**KENTUCKY PUBLIC SERVICE
COMMISSION, *et al.***

DEFENDANTS/RESPONDENTS

This matter is before the Court on Motion of Plaintiffs/Petitioners, B&H Gas Company and B&S Oil and Gas Company (collectively "Plaintiffs"), for Temporary Injunction. Having heard the arguments of the parties, reviewed the record, and after being sufficiently advised, the Court hereby **GRANTS** the Motion for Temporary Injunction, staying the implementation of the Final Order of the Commission, as more fully explained below.

BACKGROUND

Plaintiffs have brought this action before the Court in an attempt to reverse a Final Order of the Kentucky Public Service Commission ("PSC") entered on May 4, 2017. Plaintiff B&H is a Kentucky natural gas distribution company that supplies gas service to approximately 258 residential, commercial, and industrial customers located in Floyd County, Kentucky. B&H is a "utility" as defined under KRS 278.010(3)(b) and is subject to the PSC's jurisdiction pursuant to KRS 278.040. B&S is a wholesale supplier of natural gas that provides B&H between approximately 95% to 100% of B&H's natural gas needs. Mr. Ulice Bud Rife, Jr. is the president and sole stockholder of B&H, as well as the owner of B&S. In November of 2015, the PSC initiated an investigation into B&H's gas costs pursuant to KRS 278.2207, and the wholesale gas price charged by B&S pursuant to KRS 278.274. More specifically, the investigation centered

around B&H's Gas Cost Adjustment clause along with the price of gas sold by B&S to B&H. The PSC concerned itself with the allegedly higher GCA of B&H as compared to similar local gas distributors.

The underlying proceedings resulted in a Final Order of the PSC on May 4, 2017, directing B&H to refund the amount of \$101,876.00 in alleged over-collections over a twenty-four-month period through the GCA at a rate of \$3.0000 per Mcf, which was to be adjusted when the actual sales volumes and over-collections from December 2016 through March 2017 were known. This amount was based on the PSC's Order from November 24, 2015 that stated that the GCA portion of B&H's rates would be collected subject to refund. That order also required B&H to file GCA applications quarterly with the PSC, the first of which was to be made by September 1, 2017, for B&H's GCA rates effective October 1, 2017. The order required B&H to refund the \$101,876.00 to its retail customers through the GCA, as well as for B&S to refund that amount to B&H through the \$3.0000 Mcf rate.

The Companies objected to the Final Order, arguing that the refund portion of it was unlawful due to its violation of the Filed Rate Doctrine, KRS 278.160. They filed a Motion for Rehearing on May 24, 2017, that the PSC denied in a June 13, 2017 Order, and subsequently filed a Complaint in this Court on July 3, 2017. The Companies now request an injunction to prohibit the PSC from enforcing its May 4, 2017 Final Order, arguing that the enforcement of such an order would lead to irreparable injury to B&H and B&S, as well as to the Companies' customers should the Companies become financially insolvent.

ANALYSIS

Under CR 65.01, if granted, “[a]n injunction may restrict or mandatorily direct the doing of an act.” CR 65.04(1) states that an injunction is warranted when the moving party demonstrates that its “rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.” Under *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky. App. 1978), courts are to consider three factors when evaluating a motion for injunctive relief. Under *Maupin*, the party seeking an injunction must establish: 1) “immediate and irreparable” injury to his personal rights; 2) that the equities weigh in favor of an injunction; and 3) that the case raises a substantial legal question. *Id.* at 698–99.

The Companies argue that the PSC’s Final Order is outside of the scope of the PSC’s authority. The PSC relies upon KRS 278.509, which the Companies stress states that the PSC can only use to order future rates, not order retroactive relief. Such an act would, as the Companies see it, amount to a violation of the Filed Rate Doctrine. Pursuant to *Maupin*, the Companies argue that injunctive relief is appropriate in this case, as the issue over the PSC’s authority is one that raises a substantial legal question, the enforcement of the Final Order would lead to immediate and irreparable injury to the Companies, and the equities in this case weigh heavily in favor of granting the Companies’ request.

a. Immediate and Irreparable Injuria to the Companies

First, as to the question of immediate and irreparable injury, the Court finds that the Companies have satisfied such a showing. The Final Order, as it now stands, was effective as of the date of its entry. Additionally, the order requires that the Companies refund the amount of \$101,876.00 in alleged over-collections over a twenty-four-month period, to be accomplished

through the PSC setting the Companies' GCA at a rate of \$3.0000 per Mcf. As this Court understands the situation and as the PSC explained in the September 13th, 2017 hearing, the PSC has alleged that the Companies have over-collected through a prior GCA rate that the PSC found to be improper. The PSC now wants that amount refunded to the consumers. However, for the PSC to be allowed to move forward with this reimbursement before the underlying merits have been adjudicated in this Court would cause an administrative nightmare should the PSC's final order prove to be an abuse of discretion. Such a reimbursement back to the Companies from the original reimbursement to the consumers would place a burden both on the consumers, and, in the interim period, on the Companies. Further, the Companies have made sufficient allegations as to their solvency under the current Final Order for this Court to find that they have satisfied the immediate and irreparable injury prong of the *Maupin* test. The Court is compelled to maintain the status quo pending adjudication on the merits before it.

b. Equities in Favor of Injunctive Relief

Next, the Companies must show that the equities weigh in favor of granting it injunctive relief. With regard to those equities, the Companies stress that the PSC's action in this case is arbitrary and amounts to retroactive ratemaking outside of the statutory authority granted to the PSC. The equities in this case have been properly outlined and applied by the Companies in regard to the parties effected by the PSC's Final Order. While the Court understands the PSC's concerns of having customers pay proper rates to their gas distributors, B&H and B&S have not claimed to be exempt from the new rates ordered by the PSC, and they have represented to the Court that the new rates are already being put into effect and applied to their consumers' rates. However, the Companies have objected to the PSC's ability to further adjust the rate to offset the previously collected GCA amounts and refund money to the consumers. Furthermore, the Companies have

represented to the Court that the reimbursement amount could place the Companies into insolvency and result in the loss of supply of natural gas to the 258 consumers. Each of these factors taken into account, the Court finds that the equities weigh heavily in favor of maintaining the status quo with regard to enforcement of the Final Order.

c. The Companies Have Raised a Substantial Question of Law

For this Court to determine that there is a substantial question raised, we must examine whether the PSC acted within the scope of its statutory powers; whether the procedures used afforded the Companies due process; and whether the PSC's action was supported by substantial evidence. "If any of these three tests are failed, the reviewing court may find that the agency's action was arbitrary." *Com. Transp. Cabinet Dept. of Vehicle Regulation v. Cornell*, 796 S.W.2d 591, 594 (Ky. App. 1990) (citing *American Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450, 456 (Ky. App. 1964)). The Companies argue that the retroactive ratemaking that PSC has included in the Final Order amounts to an abuse of discretion on behalf of the PSC, as it was outside of the scope of the PSC's statutorily prescribed powers. Further, the Companies argue that the PSC's actions were in direct conflict with KRS 278.160, as the Companies allege that they had their respective rates on file with and approved by the PSC. These allegations are, in the Court's estimation, sufficient to show that the Companies have raised a substantial legal question in accordance with *Maupin*.

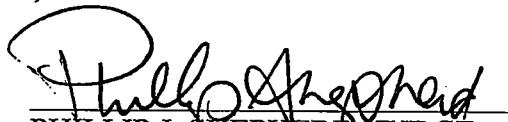
Further, while the PSC argues that the current action is a statutory proceeding governed by KRS 278.410, and should not be subject to the weighing of the equities, the Court finds that, even if this is the case, the Companies have made a sufficient showing to satisfy the equivalent standard laid out in *Commonwealth ex rel. Stephens v. South Central Bell Tel. Co.*, 545 S.W.2d 927 (Ky. 1976). In *South Central Bell*, the Kentucky Supreme Court held that utility companies are entitled

to temporary injunctive relief only if they establish a reasonable probability of success in proving that a rate set is confiscatory. The Court specifically stated that “[r]ates are non-confiscatory, just and reasonable so long as they enable the utility to operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed. . . .” *Id.* at 930–31. This Court finds that the allegations made by the Companies are sufficient to meet the initial injunctive burden to show that the actions taken by the PSC in this circumstance are arguably designed to be confiscatory. Therefore, the Court finds that the Companies have satisfied their burden, and it is appropriate for this Court to stay the enforcement of the PSC’s Final Order in this case, pending a ruling on the merits.

CONCLUSION

For the reasons discussed above, this Court **GRANTS** Plaintiffs/Petitioners’ Motion for a Temporary Injunction, staying the implementation of the Commission’s Final Order until a ruling from this Court on the underlying merits of the case.

SO ORDERED, this 18 day of September, 2017.


PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

DISTRIBUTION:

Hon. Mark David Goss
Hon. David S. Samford
Hon. L. Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KY 40504

Hon. Joe F. Childers
Hon. Bethany Baxter
Joe F. Childers & Associates
300 Lexington Building
201 West Short Street
Lexington, KY 40507

Hon. Larry Cook
Hon. Kent Chandler
Kentucky Attorney General's Office
Office of Rate Intervention
700 Capitol Avenue, Suite 118
Frankfort, KY 40601

Hon. J.E.B. Pinney
Hon. Angela Goad
Kentucky Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, KY 40602