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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF JOHNSON COUNTY)
GAS CO., INC. FOR AN ALTERNATIVE)
RATE ADJUSTMENT)

Case No.
2018-00434

**ATTORNEY GENERAL’S MOTION REQUESTING THE COMMISSION TO
INITIATE AN INVESTIGATION PURSUANT TO KRS 278.300 REGARDING
PETITIONER’S EVIDENCES OF INDEBTEDNESS**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and hereby moves the Commission to initiate an investigation regarding the failure of petitioner Johnson County Gas Company (“JCG”) to seek Commission approval, pursuant to KRS 278.300, prior to issuing the evidences of indebtedness upon which JCG has premised its application in the instant rate case. Additionally, the Attorney General believes the Commission’s investigation of these evidences of indebtedness should include examining their trustworthiness, validity and credibility. In further support of this Motion, the Attorney General states as follows.

A. Petitioner Has Failed to Seek Commission Approval to Issue its Apparent Evidences of Indebtedness

Pursuant to KRS 278.300, no utility can issue evidences of indebtedness until it has been authorized to do so by order of the Commission. Both the record in the instant case, as well as the Commission’s repository of prior cases involving JCG show that the Company has never sought Commission approval of any of the four (4) purported promissory notes JCG submitted in support of its application in the instant Alternative Rate Filing (“ARF”) proceeding.

Moreover, KRS 278.300 (3) mandates that the Commission cannot in any manner approve of the evidences of securities, such as by granting a change in rates, without first conducting an investigation:

The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

KRS 278.300 (8) provides an exception for the statute's applicability to situations in which: (i) a utility's note is payable in periods of not more than two years; or (ii) there are similar notes also payable in periods of not more than two years, that are issued to pay or refund such notes, or to renewals of such notes, not exceeding in the aggregate six (6) years from the date the original note was issued. However, two of the promissory notes contained in JCG's application are payable in twenty (20) years, the third such note is payable in five (5) years, and the fourth note is payable in one (1) year. The total debt evidenced by those three notes is \$144,972, which means that each of JCG's 315 customers are being asked to pay \$460.22 for debt which the Commission has never investigated and approved.

Clearly, KRS 278.300 (8)'s exceptions are inapplicable to JCG's application. Accordingly, the Commission must initiate an investigation into JCG's evidences of indebtedness before it undertakes any substantive action in the instant case. Without such an investigation, JCG would be free to engage in the type of non-transparent self-dealing that has already been documented in many cases brought before the Commission.¹

¹ See, e.g., Case Nos. 2011-00184, and 2004-00072.

B. JCG's Promissory Notes Lack Material Details and Should be Investigated for Their Trustworthiness, Validity and Credibility

JCG's four promissory notes submitted in the instant application were all executed on December 28, 2018, by and between JCG and Bud Rife individually, all on the same date its ARF application was filed. Coincidentally, this is the same date that the promissory notes submitted in support of the simultaneous ARF filing for JCG's affiliate, B&H Gas Company, were entered.² Based simply on the face of the promissory notes, it is clearly impossible that the entire amount of this debt was created on December 28, 2018. Moreover, the promissory notes lack any indication whatsoever of when the referenced debts could have been incurred.³ Further, the ARF application includes nearly \$10,000 per year to amortize these debts. These facts alone call for heightened scrutiny.

In Case No. 2011-00184, the Commission initiated an investigation into the alleged failure of JCG to comply with Commission orders issued in several cases.⁴ As part of the Commission's investigation in that case,⁵ JCG provided Staff with a copy of its bankruptcy petition⁶ which contained, *inter alia*, a reference to an apparent reaffirmation of debts JCG owed to Bud Rife for lease of two trucks, a management services contract with Bud Rife, and rental of two buildings from Bud Rife. The subject matter of the leases identified in JCG's 2011 bankruptcy petition are thus identical with the alleged debts identified in three of the four promissory notes upon which JCG's application in the instant case is premised.

² See Case No. 2018-00433.

³ The test year ending Dec. 31, 2017 is based upon JCG's 2017 annual report filed with the Commission. The annual report indicates that JCG's financial statements were not examined by a certified public accountant.

⁴ Case Nos. 2010-00010 and 2011-00004.

⁵ Case No. 2011-00184, Staff Informal Conference Memorandum dated February 14, 2012.

⁶ U.S. Bankruptcy Court Case No. 11-70410 (EDKY Pikeville Div.).

Nonetheless, JCG would have the Commission accept the promissory notes submitted in this application in an apparent attempt to circumvent the Commission's process and procedures pertaining to an investigation of evidences of indebtedness.

When comparing the promissory notes included within the instant application with prior records, the following facts emerge, which in turn raise further questions:

1. JCG's promissory note to Bud Rife individually states that Mr. Rife has loaned funds or advanced services worth \$47,000, which consists of \$10,000 in unpaid office rent, \$7,200 in unpaid truck rent, and \$30,500 in "past due management fees." However, JCG's 2017 annual report states Mr. Rife was paid a fee of \$64,000 in 2017. In the final order in JCG's last ARF filing,⁷ the Commission approved a total fee for Mr. Rife of \$59,120. By definition, therefore, Mr. Rife's purported "past due management fees" must have occurred before the test period.
2. JCG's promissory note for gas purchases to Hall, Stephens & Hall ("Hall") (an affiliate of JCG for purposes of KRS 278.274), is in the sum of \$82,074. However, JCG's 2017 annual report states the debt owed to Hall is for only \$44,328.⁸ As illustrated in footnote 8 below, a pre-existing debt to Hall has been well-established, although the actual sum owed is far from clear. The mere existence of this debt owed to a gas supplier also calls into question why JCG is not paying Hall through the proceeds of the GCA mechanism.
3. For many years, JCG has been required to share expenses with its regulated affiliate B&H Gas Co. for the lease of two trucks from Mr. Rife, as well as for space in two offices. By this time, if both regulated entities had the opportunity to purchase the trucks and possibly the offices themselves, the cost may have proven lower than remaining in the leases. It appears that remaining in the leases benefits Mr. Rife individually, at the expense of JCG's and B&H's ratepayers. The prudence of these debts should thus be called into question.

⁷ Case No. 2012-00140, Final Order dated June 18, 2013.

⁸ In Case No. 2012-00227, *In Re: Purchased Gas Adjustment Filing of Johnson County Gas Co.*, as set forth in the Commission's Order dated Nov. 29, 2012, JCG, in response to a Staff data request stated that it was in the process of obtaining invoices for gas purchases from Hall, yet JCG failed to provide any such invoices. In that Order, the Commission required JCG to establish a separate interest-bearing account in which to deposit any GCA revenues collected in excess of actual monthly payments for invoiced gas purchases from JCG's other gas suppliers, the proceeds of which were to pay any back-billed invoices received from Hall. On May 3, 2013 JCG, in docket number 2013-00232 filed a motion to modify the Commission's Nov. 29, 2012 Order entered in Case No. 2012-00227, stating that although it opened the separate interest-bearing account, revenues from all sources were insufficient to cover JCG's operating expenses. The Commission's Order dated Oct. 24, 2013 in Case No. 2013-00232 denied JCG's motion, finding that the entry of its final order in JCG's then-pending ARF in Case No. 2014-00140 made the motion moot. Thus the existence of JCG's prior debt to Hall is well-established.

4. Many prior Commission documents indicate that Bud Rife individually, Bud Rife Construction Company, and/or Hall either granted extensions on payments to JCG, or have forgiven at least portions of those debts. It is thus likely that Mr. Rife utilized undocumented set-offs of various funds against other funds. These funds should be carefully traced in order to verify the legitimacy of the promissory notes in the instant application. This will require determining when the purported debts were originally incurred, for what purposes, and the actual amounts.
5. The promissory notes and the Commission's records establish that over the years, Mr. Rife claims to have provided various services to JCG. Documentation should be obtained in order to verify the monetary values placed on these services. Inquiry should also be made to determine whether the fees charged for such services were market-based.
6. Based on these observations, the Commission should inquire as to whether JCG and its affiliates should have a Cost Allocation Manual in place.

Moreover, JCG's debts owed to Mr. Rife individually, and his other business entities are also referenced in JCG's last ARF filing, Case No. 2012-00140.⁹ For example, the written contracts for trucks Mr. Rife leases to JCG, for rental of office space to JCG, and for Mr. Rife's management fee were provided in response to Commission Staff's post-hearing data requests. Those responses also included promissory notes for the same services dated in 2005 and 2011, and lease agreements signed in 2006 and 2012.

The same highly questionable expenses Mr. Rife and his closely-held affiliated companies have used for many years are once again appearing in the instant case, likely being folded back into the promissory notes upon which JCG purports to premise the instant base rate proceeding. The Commission cannot allow base rates to be set based upon the unapproved evidences of indebtedness Mr. Rife has submitted. The shoddy accounting practices of JCG and its affiliates cannot be relied upon, and should be carefully scrutinized.

⁹ See, e.g., Case No. 2012-00140, JCG Responses to PSC 1-6, PSC 1-7 (b)-(c), and PSC 3-2.

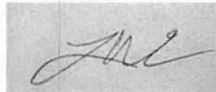
JCG has failed to seek the Commission's approval of the evidences of indebtedness included in the instant application, in violation of KRS 278.300. JCG is requesting approval of amounts in rates to pay for debts that the Commission has never approved. The Commission must therefore initiate an investigation into the trustworthiness, validity and credibility of JCG's evidences of indebtedness prior to undertaking any action in the instant ARF filing.

WHEREFORE, the Attorney General respectfully requests that the Commission:

1. Initiate an investigation pursuant to KRS 278.300 regarding JCG's evidences of indebtedness, including their trustworthiness, validity and credibility ; and
2. Suspend JCG's proposed rates until such time as the KRS 278.300 investigation is completed.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



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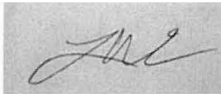
Certificate of Service and Filing

Counsel certifies that an original and five photocopies of the foregoing were served and filed by hand delivery to Ms. Gwen R. Pinson, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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Lexington, KY 40507

Bud Rife, Manager
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P. O. Box 447
Betsy Layne, KY 41605

This 8th day of February, 2019.



Assistant Attorney General