



STOLL · KEENON · OGDEN
PLLC

2000 PNC Plaza
500 West Jefferson
Louisville, KY 40202
(502) 333-6000
Fax: (502) 333-6099
www.skofirm.com

W. Duncan Crosby III
(502) 560-4263
duncan.crosby@skofirm.com

July 19, 2006

RECEIVED

JUL 19 2006

PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: Case No. 2006-00165; Johnson County Gas Company, Inc.

Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of Joint Response of Johnson County Gas Company, Inc., and Bud Rife to the Allegations Contained in the Commission's June 16, 2006 Order in this Proceeding. Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

W. Duncan Crosby III

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

JOHNSON COUNTY GAS COMPANY, INC.)
AND BUD RIFE, INDIVIDUALLY AND AS SOLE)
OFFICER OF THE UTILITY)

JUL 19 2006

PUBLIC SERVICE
COMMISSION

AN INVESTIGATION INTO THE STATUS AND)
DISCONTINUANCE OF THE KENTUCKY-WEST)
VIRGINIA GAS COMPANY SURCHARGE TARIFF)
OF JOHNSON COUNTY GAS COMPANY, INC.)
AND ALLEGED VIOLATIONS OF A COMMISSION)
ORDER)

CASE NO. 2006-00165

**JOINT RESPONSE OF JOHNSON COUNTY GAS COMPANY, INC., AND BUD RIFE
TO THE ALLEGATIONS CONTAINED IN THE COMMISSION'S
JUNE 16, 2006 ORDER IN THIS PROCEEDING**

Johnson County Gas Company, Inc. ("Johnson County"), and Bud Rife ("Rife") (collectively "Respondents"), in compliance with the requirements of the Public Service Commission of Kentucky's ("Commission") June 16, 2006 Order ("June 16, 2006 Order") in this proceeding,¹ respectfully hereby respond to the allegations concerning Respondents made in the June 16, 2006 Order.

Procedural Background and Commission Allegations

The June 16, 2006 Order initiated this proceeding and found prima facie evidence that Johnson County and Rife violated the Commission's May 26, 2004 Order ("May 26, 2004 Order") in Case No. 2004-00072.² Specifically, the June 16 Order alleged that Respondents failed to meet the requirements of the May 26, 2004 Order by: (1) late filing several quarterly reports concerning Johnson County's billing for, and collection of, a surcharge established to

¹ See June 16 Order at 8, Ordering ¶ 6.

² In the Matter of: Johnson County Gas Company, Inc, and Bud Rife, Individually and as Sole Officer of the Utility - Alleged Violations of Commission Order.

discharge Johnson County's obligations under a Federal Energy Regulatory Commission-approved settlement agreement with Kentucky-West Virginia Gas Company ("Kentucky-West");³ (2) failing to deposit certain collected surcharge funds into an escrow account established for that purpose; (3) failing to make timely payments of the collected surcharge funds from the escrow account to Kentucky-West; and (4) continuing to collect the surcharge after it appears that Johnson County has collected more than the amount it owed to Kentucky-West.⁴ With respect to all of these alleged violations, the June 16, 2006 Order found prima facie evidence that Rife "aided and abetted" Johnson County in committing them.⁵ Because of the alleged violations of the May 26, 2004 Order, the Commission established a hearing date "for the purpose of presenting evidence concerning the status of the Kentucky-West surcharge account, why the surcharge tariff should not be discontinued, why they [Respondents] should not be found in violation of the Commission's Order in Case No. 2004-00072, and why the penalties abated therein shall not be due and payable."⁶ The June 16, 2006 Order further required Respondents to file with the Commission a written response to the Order's allegations.

Response of Johnson County and Rife

In general, Respondents acknowledge that, as set forth in the June 16, 2006 Order, Johnson County has late-filed its reports and used surcharge revenues to pay for current gas purchases; however, Respondents submit that there are important mitigating facts and circumstances not discussed in the Order, facts that lead Respondents to disagree with the Order's characterization of Rife's involvement as "aid[ing] and abett[ing]" and that show that

³ See June 16 Order at 1-2 (referencing FERC Docket Nos. TQ89-1-46-000 et al.).

⁴ *Id.* at 5-6.

⁵ *Id.* at 6-7.

⁶ *Id.* at 7, Ordering ¶ 1. The "penalties abated therein" were a \$4,500.00 penalty for Rife and a \$7,500.00 penalty for Johnson County.

discontinuing the surcharge or financially penalizing either Respondent would be counterproductive. Moreover, Respondents are taking affirmative steps toward becoming fully compliant with all Commission orders and regulations, and respectfully request that the Commission and its staff assist Respondents in becoming compliant and bringing Johnson County into stronger financial health thus enabling it to continue to provide gas service to its customers.

Regarding the allegations that Respondents have not timely filed quarterly reports with the Commission concerning the billing and collection of the Kentucky-West surcharge and that they have made late surcharge payments to Kentucky-West, Respondents acknowledge that certain reports were not timely filed and late payments made, but assure the Commission that all future reports, including the one due by July 30, 2006, for the quarter ending June 30, 2006, will be timely filed and future payments timely made. Concerning the previous reports, Respondents have encountered significant personnel difficulties during the time period in issue, and Rife has had to replace those individuals tasked with completing and filing the reports.⁷ Also, Johnson County changed computer systems last year, a process that appears to have created confusion and delay.⁸ Respondents believe that they now have in place competent bookkeeping staff that will ensure timely delivery of the required quarterly reports to the Commission.

Regarding Johnson County's handling of deposits into the surcharge escrow account, its action should be viewed in the context of the fact that Johnson County simply does not take in enough money to meet its obligations.⁹ As Johnson County's income statements from its 2004

⁷ See, e.g., Rife's letter to the Commission in Case No. 2004-00072, dated April 6, 2005 (received April 18, 2005) (mentioning terminating former secretary and bookkeeper).

⁸ See *id.*

⁹ See *In the Matter of: Application of Johnson County Gas Company, Inc., for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Case No. 99-155, Order at 2-3, ¶2 (September 1, 1999) ("Johnson County requested a smaller increase than it determined necessary to satisfy its revenue requirements due to the likelihood of losing customers if the entire requirement was recovered. Citing Johnson County's concern

and 2005 Annual Reports show, during both years the utility operated at significant net losses.¹⁰ As a practical matter, paying for current gas purchases to keep service flowing to Johnson County's customers was Respondents' paramount priority, which handicapped Respondents' ability to make deposits into the surcharge escrow account. Without adequate funds to pay for both current gas purchases as well as the surcharge retroactively imposed for gas purchases made many years ago, Johnson County opted to use surcharge funds to pay for current gas purchases. Therefore Respondents' intent was not to flout the Commission's orders, but rather to continue providing service to Johnson County's customers.

That notwithstanding, Respondents recognize that the current situation -- using surcharge revenues to pay current expenses -- is not a viable solution, and have retained the Prime Group, LLC, a rate and regulatory consulting company located in Crestwood, Kentucky, to analyze Johnson County's financial situation and utility practices (1) to determine if a rate case is necessary and, if so, how large a rate increase is required, and (2) to recommend best practices for Johnson County to ensure full compliance with Commission orders and regulations, including payment of the remaining balance of the Kentucky-West settlement obligation. Respondents will move swiftly to implement the Prime Group's recommendations.

Given Johnson County's difficult financial situation and the steps Respondents are taking to improve it, Respondents respectfully argue that it is proper and necessary for Johnson County to continue collecting the Kentucky-West surcharge, and it would be counterproductive to fine Respondents. Though it has collected more in surcharge revenues than the amount it owed to Kentucky-West, the fact is that Johnson County has sustained significant net losses over the last

regarding the possible loss of customers, the Staff Report recommended approval of the amount of increase requested by Johnson County even though the increase does not cover the entire revenue deficit as determined by Staff.”).

¹⁰ Johnson County's 2004 Annual Report indicates negative net income of about \$63,670; the 2005 Annual Report shows negative net income of \$201,148.

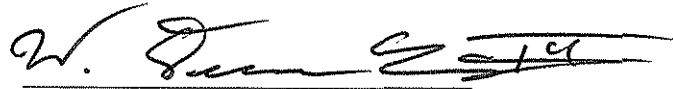
two years, indicating that Johnson County's revenues are insufficient to cover its operating expenses, not that the surcharge should end. Compounding this financial difficulty with fines, particularly when Respondents are taking positive steps toward alleviating the problems and coming into compliance with Commission orders and regulations, could potentially exacerbate Johnson County's already difficult financial condition.

Conclusion

Respondents take seriously the Commission's orders, particularly the orders that have given rise to this proceeding. Because Respondents desire to comply with those orders they have retained counsel and retained the Prime Group to assist them in doing so. And though Respondents acknowledge the Commission's concerns set forth in the June 16, 2006 Order, they deny that any lack of compliance was intended to show disregard for the Commission or its authority; rather, Respondents attempted to serve Johnson County's customers reliably with what likely was and is too little revenue. Because Respondents are taking positive steps to improve the situation and desire to comply with the Commission's orders and regulations, as well as to serve their customers more efficiently and well, Respondents respectfully request that the Commission continue to suspend the penalties previously suspended in the May 24, 2004 Order, and otherwise not impose sanctions on Respondents; instead, Respondents respectfully request that the Commission and its staff assist Respondents in bringing Johnson County into strong financial health.

Dated: July 19, 2006


Respectfully submitted,



C. Kent Hatfield
W. Duncan Crosby III
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 333-6000
*Counsel for Johnson County Gas Company,
Inc., and Bud Rife*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and ten copies of this joint response were hand delivered on the 19th day of June, 2006 to Elizabeth O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601.



Counsel for Johnson County Gas Company,
Inc., and Bud Rife