

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

AN INVESTIGATION OF THE GAS COSTS OF B&H)
GAS COMPANY PURSUANT TO KRS 278.2207 AND) Case No.
THE WHOLESALE GAS PRICE IT IS CHARGED) 2015-00367
BY ITS AFFILIATE, B&S OIL AND GAS COMPANY,)
PURSUANT TO KRS 278.274)

ATTORNEY GENERAL'S MOTION TO COMPEL B&H's and B&S's RESPONSES
TO DATA REQUESTS

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, hereby moves that the Kentucky Public Service Commission ["Commission"] issue an order compelling B&H Gas Company ["B&H"] and B&S Oil and Gas Company ["B&S"; hereinafter referred to jointly as "Joint Respondents"] to respond to data requests issued by the Kentucky Attorney General.

In support of this motion, the Attorney General states on February 10, 2016, Commission Staff ("Staff") issued its First Initial Data Requests to Joint Respondents, which were to file their responses within 14 days (on or before February 24, 2016). Joint Respondents failed to provide any response or motion for an extension to respond to those data requests. Consequently, on March 8, 2016, the Commission issued an order directing the Companies to provide the requested information within ten days of the date of that Order or be subject to a show cause proceeding and potential penalties pursuant to KRS 278.990 for their failure to respond to the request. More than one month following the filing of Staff's Initial Data Requests, Joint Respondents finally filed their responses.

On March 7, 2016 the Attorney General filed his Initial Data Requests with the Commission and mailed them to Joint Respondents. On April 13, 2016, the Commission

granted the Attorney General's motion to set a procedural schedule in this matter, and set a date of April 18, 2016 by which the Joint Respondents were to respond to the Attorney General's Initial Data Requests. Those responses were filed with the Commission on April 18th as required. However, Joint Respondents failed to respond to numerous data requests relevant to the scope of the Commission's inquiry in this matter. The specific data requests to which Joint Respondents failed to provide a response, objected to a request, or provided only a partial or otherwise inadequate response are set forth below with more particularity.

Additionally, on April 29, 2016 both Staff and the Attorney General filed their separate Supplemental Data Requests, in accord with the Commission's April 13, 2016 procedural schedule, and mailed them to Joint Respondents. Pursuant to the Commission's procedural order, Joint Respondents' were to file responses to those data requests no later than May 12, 2016. However, Joint Respondents failed to provide responses to either Staff's or the Attorney General's supplemental data requests, and failed to file any other responsive pleading by that date. Accordingly, the Commission on May 27, 2016 entered an order mandating that Joint Respondents provide the above-referenced responses no later than June 3, 2016, and further, that if Joint Respondents failed to provide responses by that date, a show cause proceeding would be initiated to determine whether to impose penalties pursuant to KRS 278.990 for failure to comply with this order.

On June 1, 2016 Joint Respondents filed a motion for an extension of time within which to respond to Staff's supplemental data requests by June 3, 2016, and to respond to the Attorney General's supplemental data requests by June 13, 2016.¹ In support of their motion, Joint Respondents stated their work on an Alternative Rate Filing ("ARF") has

¹ The second page of that motion requested a different date by which to respond to the Attorney General's supplemental data requests, that of June 14, 2016.

hampered their ability to timely respond to data requests in the instant docket. The Attorney General did not object at that time to Joint Respondent's motion.

On June 6, 2016, Joint Respondents filed their responses to Staff's supplemental data requests, three days later than the date set forth in their previously-filed motion for an extension. On June 8th, the Commission issued an order granting Joint Respondents' request for an extension of time, but noted that *twice* in the instant proceeding, it has had to issue orders compelling them to provide responses to data requests from both Staff and the Attorney General. The Commission's June 8, 2016 Order concluded by finding that ". . . if 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." Unfortunately, Joint Respondents failed to follow the Commission's directive, and did not provide responses to the Attorney General's supplemental data requests until June 15, 2016. Consequently, on June 17, 2016, the Commission issued an order in a new docket, Case No. 2016-00204, to establish a show cause hearing on July 6, 2016 in which Joint Respondents and Mr. Bud Rife, owner of both B&H and B&S, will have to establish why they should not be subject to the penalties set forth in KRS 278.990.

The Attorney General believes that Joint Respondents and Mr. Rife have not adequately demonstrated that they understand the serious nature of the instant investigation. That lack of understanding is apparent in both failing to timely respond to numerous data requests, and even when responses eventually were provided, they have failed in numerous instances to provide adequate responses. The specific initial and

supplemental data requests to which Joint Respondents failed to provide a response, objected to a request, or provided only a partial or otherwise inadequate response are set forth below with more particularity.

A. Attorney General's Initial Data Requests

1. AG 1-6: The requests stated:

“Please state whether Bud Rife, and any individuals related to him by blood or marriage, have received any type or sort of bonus or remuneration during the past five (5) years from the entities listed below, . . . f. Hall, Stephens, & Hall.”

In response to this request, Joint Respondents stated that Mr. Rife has received no bonus or remuneration from Hall, Stephens & Hall [“HSH”]. However, in AG 1-2, Joint Respondents stated that Mr. Rife is the managing partner of HSH, which provides gas to Johnson County Gas Co. Both B&H and Johnson County Gas Co. operate from the same business address. As HSH is a viable business entity, and further as Mr. Rife manages HSH's operations, it thus appears impossible that Mr. Hall would receive no remuneration² of any type or sort from Hall, Stephens & Hall, in effect volunteering his services.

In fact, in Case No. 2012-00140, Mr. Rife's response to post-hearing data requests, as (“Exhibit 1, Disbursement Sheet”) provided a list of the members of Hall, Stephens & Hall. That list identified Mr. Rife as a member of the partnership with a working interest of 0.126740 and a royalty share of 0.197190, which was the third-highest royalty share of the members therein identified. Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide a more adequate and complete response to AG 1-6.

² As defined by the Merriam-Webster dictionary, “remuneration” means “an amount of money paid to someone for the work that person has done.” <http://www.merriam-webster.com/dictionary/remuneration>

2. AG 1-11 asked: "Please provide copies of all documents setting forth the costs B&S incurs in obtaining gas for B&H."

In response to AG 1-11, Joint Respondents stated that B&S' costs incurred in obtaining gas for B&H ". . . are not relevant to this proceeding, and would be burdensome." The only items B&S supplied in response to this request were copies of invoices from B&S to B&H. The Attorney General believes that documentation indicating the gas cost that B&S paid *to the owners of the seven (7) wells* identified in response to AG 1-8 lies at the very heart of this inquiry and thus is far more relevant than invoices B&S sent to B&H. Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide a more adequate and complete response to AG 1-11.

3. AG 1-21 asked: "Is B&H contemplating, or does it have plans to file for bankruptcy?"

Joint Respondents objected and refused to answer this request, stating that answering "would require the public disclosure of confidential trade secrets." The financial stability of B&H and its affiliates is crucial to its on-going ability to providing gas service, including the acquisition of gas supply. If needed, Joint Respondents could file a response under a petition of confidentiality, a procedural tool with which counsel for Joint Respondents is well-familiar. Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide an adequate and complete response to AG 1-21.

4. AG 1-22 asked: "Has B&S ever filed for bankruptcy . . . a. Is B&S contemplating, or does it have plans to file for bankruptcy?"

Joint Respondents objected and refused to answer this request, stating that answering "would require the public disclosure of confidential trade secrets." The financial stability of B&S is crucial to its on-going ability to providing gas supply to B&H. If needed, Joint Respondents could file a response under a petition of confidentiality, a procedural tool with

which counsel for Joint Respondents is well-familiar. Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide an adequate and complete response to AG 1-22.

B. Attorney General's Supplemental Data Requests

1. In AG 2-2 (c), the Attorney General asked: "Provide the sums which: (i) B&H; (ii) B&S; (iii) Johnson County Gas; and (iv) Hall, Stephens & Hall have paid to Bud Rife Construction Co. for each of the past five (5) years."

In response to subparts (iii) and (iv), Joint Respondents objected on grounds of relevance and refused to provide any response. In at least one prior proceeding,³ the Commission has found that Johnson County Gas, and Hall, Stephens & Hall are affiliated. As such, both such entities are *also* clearly affiliated with the two Joint Respondents in the current case, and with Bud Rife Construction Co. The financial stability of any one, or combination of these affiliates can and will directly affect the financial stability of Joint Respondents. B&H's gas costs are an essential part of the financial stability of Joint Respondents and their other affiliates.

Moreover, the Attorney General believes the record in the instant case, and in multiple prior Commission dockets, has amply demonstrated a clear pattern of self-dealing between all of these entities which has contributed to B&H's unduly high gas supply cost, thus harming B&H's ratepayers. As such, this information is highly relevant to the scope of the instant proceeding, and would be helpful for the Commission's decision making process. Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide an adequate and complete response to AG 2-2.

³ Case No. 2012-00227, Order dated Nov. 29, 2012 , p. 2.

2. In AG 2-3, the Attorney General asked: “. . . b. Provide the amount of profit or loss for Hall, Stephens & Hall for each of the past five (5) years”; . . . “e. Provide documentation authorizing the amount of the management fee Mr. Rife earns from both B&H and Johnson County Gas.”

In response, Joint Respondents objected to subpart (b) and refused to provide a response; and also objected to providing the information requested in subpart (e) as it pertains to Johnson County Gas Co.

In at least one prior proceeding,⁴ the Commission has found that Johnson County Gas, and Hall, Stephens & Hall are affiliated. As such, both such entities are also clearly affiliated with the two Joint Respondents in the current case, and with Bud Rife Construction Co. The financial stability of any one, or combination of these affiliates can and will directly affect the financial stability of Joint Respondents. B&H's gas costs are an essential part of the financial stability of Joint Respondents and their other affiliates.

Moreover, the Attorney General believes the record in the instant case, and in prior Commission dockets, has amply demonstrated a clear pattern of self-dealing between all of these entities which has contributed to B&H's unduly high gas supply cost, thus harming B&H's ratepayers. As such, this information is highly relevant to the scope of the instant proceeding, and would be helpful for the Commission's decision making process. Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide an adequate and complete response to AG 2-3.

3. In AG 2-4 (c), the Attorney General asked: “State whether Mr. Rife, and/or any of the officers, directors or partners of: . . . (iii) Johnson County Gas; and (iv) Hall, Stephens & Hall, have any ownership interest of any type or sort, including but not limited to royalties, in these seven (7) gas wells.

With regard to Johnson County Gas, and Hall, Stephens & Hall, Joint Respondents

⁴ Case No. 2012-00227, Order dated Nov. 29, 2012 , p. 2.

objected on relevancy grounds and refused to provide the requested information.

In at least one prior proceeding,⁵ the Commission has found that Johnson County Gas, and Hall, Stephens & Hall are affiliated. As such, both such entities are also clearly affiliated with the two Joint Respondents in the current case, and with Bud Rife Construction Co. The financial stability of any one, or combination of these affiliates can and will directly affect the financial stability of Joint Respondents. B&H's gas costs are an essential part of the financial stability of Joint Respondents and their other affiliates.

Moreover, the Attorney General believes the record in the instant case, and in prior Commission dockets, has amply demonstrated a clear pattern of self-dealing between all of these entities which has contributed to B&H's unduly high gas supply cost, thus harming B&H's ratepayers. As such, this information is highly relevant to the scope of the instant proceeding, and would be helpful for the Commission's decision making process. Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide an adequate and complete response to AG 2-4.

4. In AG 2-5 (b), the Attorney General asked: "Explain why it would be burdensome to obtain copies of documents setting forth the costs B&S incurs in obtaining gas for B&H."

Joint Respondents stated that it is too burdensome to provide the requested documents because [in their minds] ". . . they are not probative or relevant to this proceeding[]," and further, that the copies of B&S invoices sent to B&H provide a sufficient response. However, the question asked for documents establishing the *costs* that B&S incurs in obtaining the gas supplied to B&H; it did not ask for proof of the amount B&S *charges* to B&H. The amount of costs B&S incurs is directly relevant to the scope of this proceeding

⁵ Case No. 2012-00227, Order dated Nov. 29, 2012 , p. 2.

because it goes directly to the heart of the issue of why B&H's gas costs are so much higher than the average gas cost of the other small jurisdictional LDCs. Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide an adequate and complete response to AG 2-5.

5. In AG 2-8 (c) – (e), the Attorney General asked: “. . . c. Provide the gas price per mcf which Hall, Stephens & Hall has charged to Johnson County Gas for each month in the period January 2013 through and including January 2016. d. Please state the quantities of gas (in mcf) that Hall, Stephens & Hall has provided to Johnson County Gas during each of the past five (5) years. e. Of Johnson County Gas' total gas needs during each of the past five (5) years, please state the percentage provided by Hall, Stephens & Hall.

Joint Respondents objected on grounds of relevancy, and refused to provide a response, claiming the questions are “. . . designed to harass or annoy the Respondents;” are “unduly burdensome” and that the requested information “. . . can be found in Johnson County Gas annual reports filed with the Public Service Commission.”

In at least one prior proceeding,⁶ the Commission has found that Johnson County Gas, and Hall, Stephens & Hall are affiliated. As such, both such entities are also clearly affiliated with the two Joint Respondents in the current case, and with Bud Rife Construction Co. The financial stability of any one, or combination of these affiliates can and will directly affect the financial stability of Joint Respondents. B&H's gas costs are an essential part of the financial stability of Joint Respondents and their other affiliates.

Moreover, the Attorney General believes the record in the instant case, and in prior Commission dockets, has amply demonstrated a clear pattern of self-dealing between all of these entities which has contributed to B&H's unduly high gas supply cost, thus harming

⁶ Case No. 2012-00227, Order dated Nov. 29, 2012 , p. 2.


B&H's ratepayers. As such, this information is highly relevant to the scope of the instant proceeding, and would be helpful for the Commission's decision making process.

The requested information is fully relevant to the scope of the instant docket, and was not issued with any intent to "harass or annoy the Respondents" as claimed. Moreover, the information should be readily accessible to Mr. Rife, as he is the principal managing figure in B&H, B&S, Johnson County Gas, and HSH.

Accordingly, the Attorney General requests that the Commission order Joint Respondents to provide an adequate and complete response to AG 2-8.

Respectfully submitted,

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Certificate of Service and Filing

Counsel certifies that an original and seven photocopies of the foregoing were served and filed by hand delivery to Aaron D. Greenwell, Acting 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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this 5th day of July, 2016



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