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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF B & H GAS Co. FOR) Case No.
AN ALTERNATIVE RATE ADJUSTMENT) 2018-00433

**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 B&H Gas Company (“B&H”) to seek Commission approval, pursuant to KRS 278.300, prior to issuing the evidences of indebtedness upon which B&H has premised its application in the instant rate case. The total of the debt identified in B&H’s application is \$1,755,821, which means that each of B&H’s 258 customers are being asked to pay \$6,805.50 for debt which the Commission has never investigated and approved. 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 B&H show that the Company has never sought Commission approval of any of the six (6) purported promissory notes B&H

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, none of the six promissory notes contained in B&H’s application are payable in under two years; in fact, four of those notes are payable in twenty (20) years, while two are payable within five (5) years.

Clearly, KRS 278.300 (8)’s exceptions are inapplicable to B&H’s application. Accordingly, the Commission must initiate an investigation into B&H’s evidences of indebtedness before it undertakes any substantive action in the instant case. Without such an investigation, B&H 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., In Re: *An Investigation of the Gas Costs of B&H Gas Co. Pursuant to KRS 278.2207 and the Wholesale Gas Price it is Charged by its Affiliate, B&S Oil & Gas Co., Pursuant to KRS 278.274*, Case No. 2015-00367.

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

B&H's six promissory notes submitted in the instant application were all executed on December 28, 2018, by and between B&H 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 B&H's affiliate, Johnson County Gas, 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 \$100,000 per year to amortize these debts. These facts alone call for heightened scrutiny.

In Case No. 2016-00257, B&H filed an ARF application, but later voluntarily withdrew the case.⁴ In the application to that case, B&H identified outstanding debts owed to its affiliated entities, Bud Rife Construction Co., as well as to B&H's primary gas supplier, B&S Oil & Gas Co. ("B&S"), which totaled \$200,799.⁵ Those same sums were identified in B&H's 2016 and 2017 annual reports under the "Accounts Payable to Associated Companies" category. The 2017 Annual Report indicates that the balance remained the same throughout the year. Thus this debt sum was incurred prior to 2016, and no payments were made on it during the 2017 test year. Yet in the instant application, this \$200,799 debt figure is almost certainly included within the promissory notes that B&H would have the Commission accept as appropriate evidences of indebtedness, in an apparent attempt to

² See Case No. 2018-00434.

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

⁴ See Case No. 2016-00257, Order dated July 26, 2017.

⁵ Case No. 2016-00257, Application p. 18.

circumvent the Commission's process and procedures pertaining to an investigation of evidences of indebtedness.

Additionally, most of the debt evidenced in the B&H promissory note executed in favor of B&S in the sum of \$1,078,598.92 obviously was incurred years ago. In Case No. 2015-00367 ("Gas Cost Investigation Case"), the Commission found that due to the affiliate relationship between B&S and B&H, KRS 278.2207 requires that gas purchases from B&S are to be priced at B&S's fully distributed cost, but in *no event greater than market*.⁶ B&H's last GCA application prior to the initiation of the Gas Cost Investigation Case occurred on March 19, 2008,⁷ when B&H raised its GCA to \$9.38/mcf. The Commission expressly found in the Gas Cost Investigation Cost that by 2012, market prices had dropped significantly such that B&H should have submitted another GCA filing to lower its gas cost to an appropriate market-based level.⁸ Thus from 2012 through the date that B&H filed its first GCA adjustment following the conclusion of the Gas Cost Investigation Case, B&S' gas cost charged to B&H was *in excess of market*. Such in-excess-of-market costs represent unreasonable profit to B&S, which Mr. Rife is now once again attempting to collect, this time through B&H's base rates. It is therefore highly likely that a significant portion of the claimed debt included in B&H's promissory note to B&S is illegitimate, and must be carefully scrutinized before the Commission sets any rates in in the instant action.

Moreover, during the Gas Cost Investigation case, Mr. Rife submitted over 600 pages of unbound and unindexed invoices, cancelled checks and correspondence in an attempt to

⁶ Case No. 2015-00367, Final Order dated May 4, 2017, p. 10 (this case is on appeal in Franklin Circuit Court, Case No. 17-CI-722, Div. 1, on the limited issue of whether the Commission has the authority to require B&H to refund a portion of the excess gas costs charged to its customers, and does not affect the Commission's authority and ability to assess B&H's evidences of indebtedness in the instant base rate proceeding).

⁷ Case No. 2008-00101.

⁸ Case No. 2015-00367, Final Order dated May 4, 2017, pp. 19-23.

support B&S' outrageously high gas costs and resulting profits.⁹ Those documents, together with other evidence in that case including Mr. Rife's testimony during the evidentiary hearing in that matter, establish the following:

1. Mr. Rife asserted that it was necessary for ratepayers to pay for cable TV with premium movie channels¹⁰ brought into Mr. Rife's home so that he could run his daycare business there;¹¹
2. Mr. Rife asserted it was appropriate for ratepayers to pay the insurance premiums on his Corvette which he sometimes uses to read meters,¹² and the insurance premiums for the homes he leases to his employees to live in;¹³
3. Regarding receipts for gasoline purchased for vehicles B&S uses,¹⁴ Mr. Rife has "no clue" which one of his businesses was using that vehicle, because he has three people working for him who can use any of the 25-30 vehicles he owns;¹⁵
4. Mr. Rife has never performed any cost allocations between his businesses to determine their separate costs;¹⁶ Based on these observations, the Commission should inquire as to whether B&H and its affiliates should have a Cost Allocation Manual in place.
5. Mr. Rife believed that "exorbitant" costs have ". . . been coming out of B&S, it's not going into my pocket;"¹⁷ yet a 2015 income statement produced in discovery¹⁸ reveals that approximately \$225,000 in payments of various sorts were paid to either Mr. Rife or one of the closely-affiliated companies he owns.
6. For many years, B&H has been required to share expenses with its regulated affiliate Johnson County Gas Co. ["JCG"] 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

⁹ Case No. 2015-00367, B&H and B&S's Supplemental Response to their Joint Response to the AG's Initial Data Requests and Supplemental Data Requests, Consistent with the Commission's October 20, 2016 Order, filed Oct. 31, 2016.

¹⁰ Case No. 2015-00367, Attorney General Hearing Exhibit 2 (cable TV bills).

¹¹ Id., Video Transcript of Evidence ["VTE"] 3:22:27 – 3:23:31.

¹² Id., AG Hearing Ex. 3 and VTE 10:37:40 – 10:39:02, and 1:01:30 – 1:02:16.

¹³ Id., AG Hearing Ex. 4 and VTE 10:39:58 – 10:41:2; PSC Hearing Ex. 3 and VTE 12:59:45 – 1:00:43.

¹⁴ Id., AG Hearing Ex 6.

¹⁵ Id., VTE 11:12:33 – 11:14:58. *See also* VTE time references 10:37:40 – 10:39:02, and 3:30:32 – 3:30:38 regarding the number of vehicles Mr. Rife owns.

¹⁶ Id., VTE 1:28:56 – 1:30:16.

¹⁷ Id., VTE 10:12:32 -10:12:49.

¹⁸ Id., Response to AG 1-24, Exhibit B; and 3:27:09 – 3:29:18.

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. Many prior Commission documents indicate that Bud Rife individually, Bud Rife Construction Company, and/or B&S either granted extensions on payments to B&H, 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.
8. The promissory note payable to Mr. Rife individually, and the Commission's records establish that over the years, Mr. Rife and B&H's affiliates claim to have provided various services to B&H. 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.

The same highly questionable expenses Mr. Rife and his closely-held affiliated companies used in an attempt to defend B&H's then-exorbitant GCA are now likely being folded back into the promissory notes upon which B&H 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 B&H and its affiliates cannot be relied upon, and should be carefully scrutinized.

B&H has not sought the Commission's approval of the evidences of indebtedness included in the instant application, in violation of KRS 278.300. B&H 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 B&H'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 B&H's evidences of indebtedness, including their trustworthiness, validity and credibility; and

2. Suspend B&H's proposed rates until such time as the KRS 278.300 investigation is completed.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



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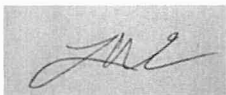
Certificate of Service and Filing

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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This 8th day of February, 2019.



Assistant Attorney General