

October 3, 2020

Kentucky Public Service Commission
PO Box 615
211 Sower Blvd.
Frankfort, KY 40602

To Whom It May Concern,

Pursuant to 807 KAR 5:001 and Public Service Commission Order in Case No. 2020-00085, B&H Gas Company is filing its responses to Commission Staff's initial request for information electronically. B&H will submit the same documents in paper medium once the State of Emergency has ceased.

Please feel free to contact me at (606) 478-5851 or bandhgas@mikrotec.com if there are any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bud Rife", with a long horizontal flourish extending to the right.

Bud Rife, President
B&H GAS COMPANY INC

Enclosures

I am the Witness responsible for responding to the questions related to the information provided in Commission Staff's Initial Request for Information to B&H Gas Company and Case No. 2020-00294. I believe that the response is true and accurate to the best of my knowledge. I would like to apologize to the Commission for any inconvenience caused by the errors that were made in Case No. 2020-00294 application. Every precaution possible will be taken to prevent such errors in future filings.

A handwritten signature in cursive script, reading "Suda Allen", is written above a horizontal line.

Signature

Case No. 2020-00294

Commission staff's initial request for information to B&H Gas Company Inc.

1. a. The application would not upload electronically, so it was sent by email to PSCED@ky.gov on September 2, 2020. B&H was informed by email it was received and assigned Case No. 2020-00294. B&H assumed that once it was given a Case No. it became part of the case record and no further action was required. However, on September 15, 2020 an email was received by B&H stating that the case needed to be filed into the case record. B&H Staff then attempted to send the files electronically several times with no success. On September 16, 2020, B&H staff contacted Brandon Bruner and was assisted in filing the records electronically and they were successfully added to the case record.

b. B&H staff made several attempts but could not get it filed on September 1, 2020 due to internet service issues and had no choice but to send it by email on September 2, 2020.

2. Please see the electronic version of the requested excel spreadsheet in a file marked as B&H GCA Application.xlsx.

3. a. This is an error please see Exhibit 3 for corrections.

b. This is the total of all the invoices billed by B&S for gas within the last 12 months ended June 30, 2020.

4. a. This is an error please see Exhibit 3 for corrections.

b. This is an error please see Exhibit 3 for corrections.

c. This is an error please see Exhibit 3 for corrections.

d. This is an error please see Exhibit 3 for corrections.

e. The MMBtu in column (2) was multiplied by the rate in column (5).

5. The total purchases is 16,148, please see Exhibit 3 for corrections.

6. Please see Exhibit 6. B&H was sent this spreadsheet by PSC staff and was told it is required to use this calculation method due to B&H heat rate of gas.

7. a. Please see Exhibit 7a.

b. The contract start date is October 1, 2019 and ends October 1, 2023.

c. B&H received no billings from Diversified during the months of October 2019 and November 2019.

d. Please see Exhibit 7d from Case No. 2020-00175. The bill was not received until after Case No. 2020-00056 was completed.

e. B&H has several commercial customers who are open for business year-round and their usage increases substantially during the winter months. B&H residential customers usage also increases greatly during cold months.

f. B&S can meet the demand of its ratepayers. Ratepayers in the B&H Gas area consist mainly of elderly people who tend to like their homes extremely warm during the winter months. Extra gas is sometimes needed when temperatures fall low to maintain a constant flow of gas so as not to allow meters to freeze off and leave customers without any heat.

g. That is the last billings before B&H turned off the valve.

8. That is the old meter that EQT had installed many years ago prior to the take over by Diversified. B&H has no knowledge why Diversified used this reference to the meter. Diversified did not want to provide gas at that location any longer due to low production and required B&H to relocate the meter. Once they were made aware of this, they removed it from B&H billing.

9. Please see Exhibit 9.

10. Please see Exhibit 10.

11. Please see Exhibit 11.

12. Please see Exhibit 12.

Exhibit 3

SCHEDULE II EXPECTED GAS COST

Actual Mcf Purchases for 12 months ended	June 30, 2020
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(1) Supplier	(2) Mmbtu	(3) Conversion Factor Btu	(4) Mcf	(5) Rate	(6) (4) x (5) Cost
B&S Oil / Gas		1.357	14,912	\$3.48840	\$76,873.93
Diversified Energy Marketing	1,607	1.30016	1,236	\$3.71756	\$5,974.12

Totals			16,148		\$82,848.05
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Line loss for 12 months ended	June 30, 2020	is based on purchases of	16,148	Mcf	
and sales of	15,714	Mcf.	2.76		

	Unit	Amount
Total Expected Cost of Purchases (6)		\$82,848.05
/ Mcf Purchases (4)		16,148.00
= Average Expected Cost Per Mcf Purchased		\$5.1305
x Allowable Mcf Purchases (must not exceed Mcf sales / .95)		16,148.00
= Total Expected Gas Cost (to Schedule IA)		\$82,848.05

Exhibit 6

Columbia's most recent GCA case	2020-00253				
Columbia US rate	4.081				
Columbia heat rate	1.1010	Heat rate differential	1.232516	Columbia heat adjusted price	5.0299
Peoples' most recent GCA case	2020-00186				
Peoples EGC	2.4533				
Peoples purchase volumes DTH	232316				
Peoples purchase volumes MCF	189646				
Peoples heat rate	1.2250				
B&H heat rate	1.357	Heat rate differential	1.107757	Peoples heat adjusted price	2.7177
Average of twice Peoples rate and Columbia	3.4884				

Exhibit 7a

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF THE
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated ~~January 31, 2020~~ October 1, 2019

by and between ^{ACF}

Diversified Energy Marketing, LLC

and

B & H GAS CO. INC.

BR

Diversified Energy Marketing LLC and Counterparty shall be referred to herein collectively as the "parties", and each individually as a "party". If the terms of these Special Provisions and the terms of the Base Contract for Sale and Purchase of Natural Gas ("Base Contract") conflict, the terms of these Special Provisions shall govern. Capitalized terms used but not defined in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Sections referenced in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

Section 1

In Section 1.2, replace the word "or" between "transmission" and "telephone" in the second sentence with "," and add the phrase "internet messaging service, or other electronic means of communication" after "conversation" and before "with" in the second line of this section.

In the last sentence of Section 1.3, replace the phrase "where the parties have selected the Oral Transaction Procedure of the Base Contract" after "recorded conversation," and before "(iii)" with the following:

"data in a computer system, trade tickets, and/or instant message service records,"

Section 8

Amend Section 8.2 by deleting the words "THIS SECTION 8.2" and inserting the words "THIS SECTION 8.2 AND SECTION 8.6."

Add the following sentence at the end of Section 8.3:

"Neither party shall be obligated to indemnify, defend, or hold the other party harmless to the extent any liability, suit, action, damage, loss or expense arises out of or in connection with any negligent act, negligent failure to act or willful misconduct on the part of the other party, its officers, agents or employees."

Add the following as new Section 8.6:

- "8.6 Each party represents and warrants to the other party, as of the date of the Base Contract and these Special Provisions, of each transaction hereunder, and of each delivery of Gas in connection with such transaction, that:
- 8.6.1 It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;
- 8.6.2 The execution of, and delivery and performance under, this Contract does not violate or conflict with any law, rule, or regulation applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets, or any contractual restriction binding on or affecting it or any of its assets;
- 8.6.3 There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, governmental body or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Contract or its ability to perform its obligations under the Contract;
- 8.6.4 It is not relying upon any representations of the other party, other than those set forth in the Contract; and
- 8.6.5 It has entered into the Contract and has made its trading and investment decisions related thereto (including the suitability thereof), with a full understanding of the material terms and risks, and its ability to assume the risks of the same, and based upon its own judgment and any advice from any advisors as it has deemed necessary and not in reliance upon any view expressed by the other party."

Section 10

Exhibit 7a

Amend Section 10.2 by:

(a) adding the phrase “, provided that such amount is not the subject of a bona fide dispute pursuant to Section 7.4” immediately after “such payment is due”, in line (9),

(b) deleting word “or” in front of “(ix)” in line (9),

(c) adding the following phrase before “then the other party” in line (10):

“(x) breach any material covenant or obligation under the Contract (except to the extent constituting a separate Event of Default or an obligation the remedy for breach of which is set forth in Section 3), if such breach is not cured within five (5) Business Days of notice of a demand for cure;

(xi) consolidate or amalgamate with, or merge with or into, or transfers all or substantially all its assets to another entity, or if its Guarantor does any of the foregoing, and: (a) the resulting entity’s creditworthiness is materially weaker than that of such party or other entity immediately prior to such action; (b) the resulting entity fails to assume all the obligations of such party or other entity under the Contract; or (c) the benefits of any Credit Support Obligation fails to extend (without the consent of the Non-Defaulting Party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under the Contract;

(xii) make a materially incorrect or misleading representation or warranty under the Contract, or a Credit Support Obligation expires or terminates with respect to the obligations of a party under the Contract without such party providing a replacement Credit Support Obligation in a form substantially similar to the expired or terminated Credit Support Obligation, or the failing or ceasing of such Credit Support Obligation to be in full force or effect for the purpose of this Contract (other than in accordance with the terms of the Contract) before the satisfaction of all obligations of such party under this Contract to which such Credit Support Obligation relates, without the written consent of the other party; and

(xiii) with respect to a party’s Guarantor only, the failure of such Guarantor’s guaranty to be in full force and effect for purposes of this Contract (other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each transaction to which such guaranty shall relate;”

(d) adding the following before the “.” in the last sentence of the section:

“; provided that no suspension of performance shall continue for more than thirty days unless an Early Termination Date has been declared and the Defaulting Party is given notice thereof in accordance with Section 10.3”

In Section 10.3.1, add the following as a third paragraph:

“The Non-Defaulting Party shall also aggregate the costs that the Non-Defaulting Party incurs in liquidating and accelerating each Terminated Transaction, or otherwise settling obligations arising from the cancellation and termination of each Terminated Transaction, including brokerage fees, commissions, and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party including costs associated with hedging its obligations, transaction costs associated with obtaining replacement suppliers or markets (e.g. brokerage fees, or other such payments), additional transportation costs, and like costs incurred in moving replacement Gas to or from the Delivery Point, and reasonable attorneys’ fees and other reasonable litigation costs incurred in connection with enforcing its rights under this Contract and such costs shall be due to the Non-Defaulting Party.”

In Section 10.3.2, add the following as a new paragraph at the end of the section:

“The Non-Defaulting Party will give the Defaulting Party Notice of any setoff effected under this section provided that failure to give such notice shall not affect the validity of the Setoff. Nothing in this paragraph shall be deemed to create a charge or other security interest. The rights provided by this section are in addition to and not in limitation of any other right or remedy entitled (whether by operation of law, contract, or otherwise). “Setoff” as used herein means setoff, offset, combination of accounts, right of retention or withholding or similar right of requirement to which the Non-Defaulting Party is entitled or subject to (whether arising under this contract, another contract, applicable law or otherwise) that is exercised by, or imposed on, the Non-Defaulting Party.”

Exhibit 7a

Section 10.5 is deleted in its entirety and replaced with the following:

"10.5. Without limiting the applicability of any other provision of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended (the "Bankruptcy Code") (including without limitation Sections 362, 546, 553, 556, 560, 561 and 562 thereof and the applicable definitions in Section 101 thereof), the Parties acknowledge and agree that: (i) this Contract constitutes a "forward contract" and/or "swap agreement" and this Contract constitutes a "master netting agreement" as defined in Section 101 of the Bankruptcy Code; (ii) each party is a "master netting agreement participant," a "forward contract merchant" and/or a "swap participant" as defined in the Bankruptcy Code; (iii) the rights of the Parties under Section 10.3 of this Base Contract constitute "contractual rights" to liquidate, terminate or accelerate, as applicable, this Contract; (iv) any margin or collateral (including any Adequate Assurance of Performance that has been posted) provided hereunder, or under any margin, collateral, security, or similar agreement related hereto and all payment obligations of any party to the other hereunder constitute a "margin payment" or a "settlement payment" as defined in Section 101 of the Bankruptcy Code; and (v) the Parties are entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code. Each party further agrees that the other party is not a "utility" as such term is used in Section 366 of the Bankruptcy Code, and each party agrees to waive and not to assert the applicability of the provisions of Section 366 of the Bankruptcy Code in any bankruptcy proceeding involving such party. In addition, each party agrees that, for any Gas actually consumed (rather than resold) by such party, if Gas is not delivered pursuant to this Contract, the local gas distribution utility for such party is the provider of last resort and can provide such party's Gas consumption needs."

Section 11

In the first sentence of Section 11.1, (i) delete the phrase "and Imbalance Charges under Section 4," and (ii) delete the comma between Section 7 and Section 10.4 and replace it with the word "and".

In the last sentence of Section 11.1, delete and replace the phrase "as further defined in Section 11.2" with the phrase "and that could not have been prevented or overcome by the exercise of due diligence using commercially reasonable efforts."

In Section 11.2:

(a) In the first line of Section 11.2 delete and replace the words "but not be limited to" with the phrase "solely to the extent the definition of Force Majeure is otherwise satisfied";

(b) Delete the "and" in front of "(v)"; and

(c) Insert the following before the period at the end of the first sentence: "; and (vi) any other cause, whether of the kind herein enumerated or otherwise, that is not reasonably within the control of the party claiming suspension, and that could not have been prevented or overcome by the exercise of due diligence using commercially reasonable efforts."

Amend Section 11.3 by:

(a) replacing "curtailment" with "loss, interruption or curtailment" in the second line thereof;

(b) adding "on any transporter necessary to effect receipt or delivery of Gas hereunder" between "transportation" and "unless" in the second line thereof; and

(c) replacing "curtailed" with "lost, interrupted or curtailed, and then only to the extent of such loss, interruption or curtailment of primary, in-path Firm transportation on the affected pipeline segment" between "curtailed" and the semicolon immediately thereafter, in the third line thereof.

In Section 11.4, add the following after the "." at the end of the section:

"The parties further agree that upon the occurrence and continuance of any event of Force Majeure, neither party shall be obligated to purchase or sell Gas hereunder if such purchase or sale would result in material economic impact to such party under the subject transaction."

Add the following as a new Section 11.7:

"11.7. Without restricting the generality of Section 15.3, if an event of Force Majeure occurs, the party affected may, in its sole discretion and without notice to the other party, determine not to make a claim of Force Majeure and to waive its rights hereunder as they would apply to such event. Such determination or waiver shall not preclude the affected party from claiming Force Majeure in respect of any subsequent event, including any event that is substantially similar to the event in respect of which such determination or waiver is made."

Section 14

Delete the second sentence of the section and replace it with the following:

“Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation should be utilized. For the purposes of the foregoing sentence, if more than one quotation is the same as the other quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.”

Section 15

Section 15.10 is amended by:

(i) deleting the parenthetical in line (2) and replacing it with the following: “(other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or the party’s Affiliates and the Affiliates’ employees, lenders, royalty owners, counsel, accountants and other agents, or prospective purchasers of all or substantially all of a party’s assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential)”;

(ii) deleting the word “or” in line (7), and

(iii) adding the phrase “(vi) information that is or becomes generally available to the public other than as a result of a disclosure by the receiving party or (vii) information that was already in a party’s files on a non-confidential basis prior to disclosure” after the word “index” prior to the period in line (8).

Add the following as a new Section 15.13:

“15.13 WAIVER OF JURY TRIAL. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS CONTRACT.”

Add the following as new Section 15.14:

“15.14 This Contract shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed.”

Add the following as new Section 15.15:

“15.15 Each party irrevocably waives its rights, including under Sections 4 and 5 of the Natural Gas Act, to file a complaint, request an investigation or make a unilateral rate-change request seeking (a) an order from FERC finding that the rates agreed to by the Parties in this Agreement are unjust and unreasonable; or (b) any refund with respect to such rate(s). Each party agrees not to make such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter. Absent the agreement of both Parties to a proposed change, the standard of review for changes to any section of the Agreements proposed by a party (to the extent that any waiver as set forth in this Section 15.14 is unenforceable or ineffective as to such party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).”

