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July 27, 2011

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JUL 28 2011

PUBLIC SERVICE
COMMISSION

Via Federal Express

Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: *Johnson County Gas Company, Inc. and Bud Rife, Individually, and as Sole Office of the Utility; Alleged Failure to Comply with the Commission's Orders, Case No. 2011-00184*

Dear Mr. Derouen:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky is an original and 11 copies of the response to show cause order on behalf of Johnson County Gas Company, Inc. and Bud Rife.

Please return a file-stamped copy of the response to show cause order in the self-addressed, stamped envelope provided.

Very Truly Yours,

DINSMORE & SHOHL LLP

Holly C. Wallace *with permission*
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Holly C. Wallace

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Enclosures
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

JOHNSON COUNTY GAS COMPANY, INC.)
AND BUD RIFE, INDIVIDUALLY, AND AS)
SOLE OFFICER OF THE UTILITY)
_____)
ALLEGED FAILURE TO COMPLY WITH)
COMMISSION ORDERS)

CASE NO.
2011-00184

RESPONSE TO SHOW CAUSE ORDER

Johnson County Gas Company, Inc. (“Johnson County”) and Bud Rife (“Rife”) (collectively, “Respondents”), by counsel, hereby respond to the show cause order of the Kentucky Public Service Commission (the “Commission”) in the above-referenced matter. As explained more fully below, the Respondents should not be subject to penalties under KRS 278.990.

Johnson County is a small gas distributor serving approximately 320 customers in rural Johnson County, Kentucky. As a small gas distributor, Johnson County is a utility within the meaning of KRS 278.010. Johnson County is subject to the jurisdiction of the Commission pursuant to KRS 278.040 which provides that “[t]he Commission shall have exclusive jurisdiction over the regulation of rates and service of utilities....” Rife is the President of Johnson County, and he was acting within his capacity as President of the company with regard to all matters asserted herein.

In accordance with its gas cost adjustment (“GCA”) clause, Johnson County files quarterly applications to adjust its GCA rate. On or about January 7, 2010, Johnson County filed a quarterly application to adjust its GCA rate. In support of its application, the company

provided transaction confirmation forms from Equitable Energy, LLC along with invoices from Bradco Oil Company and Constellation Energy. The company also provided natural gas futures NYMEX prices for 2009. Additionally, in response to data requests issued by Commission staff, the company provided written responses along with correspondence with Constellation Energy, contracts with Bradco Oil Company as well as additional invoices from Bradco Oil Company and EQT Energy, LLC. By order dated September 17, 2010, the Commission found that the “documents supplied to date provide the Commission with sufficient information to determine that Johnson County’s proposed rates will result in a decrease to Johnson County’s customers, are reasonable and should be approved for service on and after the date of this order.” *Order*, In the Matter of: Purchased Gas Adjustment Filing on Johnson County Gas Company, Case No. 2010-00010 (September 17, 2010). By way of that same order, the Commission ordered Johnson County to file its next GCA application by December 1, 2010.

A. THE RESPONDENTS DID NOT WILLFULLY VIOLATE THE COMMISSION’S SEPTEMBER 17, 2010 ORDER IN CASE NO. 2010-00010.

Pursuant to the Commission’s September 17, 2010 order in Case No. 2010-00010, Johnson County issued its next GCA application and revised tariff on December 29, 2010. The application was received by, and filed with, the Commission on January 3, 2011. Johnson County and Rife recognize that the company did not file its GCA application by December 1, 2010, as ordered by the Commission. The Respondents state, however, that they did not willfully violate the Commission’s order.

KRS 278.990 provides:

Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures,

aids or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25.00) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

Id. (emphasis added)

At the time that Johnson County filed its GCA application, the company was without outside counsel as its previous attorney had been sanctioned by the Kentucky Bar Association and had his license suspended. Additionally, as is common with small, rural utilities, Johnson County relies on just a couple individuals to handle most aspects of the business including billing, collections, bookkeeping, customer service, management and regulatory filings. Moreover, as a gas company, the winter months are the busiest for Johnson County. This combination of factors explains why Johnson County filed its GCA application late; there was no willful intention on the part of Rife or Johnson County to violate the Commission's order.

The Respondents nonetheless recognize that the company should have filed the GCA application by December 1, 2010 or moved the Commission for an extension of time to file the application on January 3, 2011. The Respondents state that they have retained the undersigned special counsel to assist them with regulatory matters before the Commission and that on a going-forward basis they will comply with Commission orders and move for an extension of

time, as they have already demonstrated in this case, if they believe they will be unable to meet a Commission-ordered deadline. Therefore, the Respondents respectfully state that they have not willfully violated the Commission's order, and as such should not be subject to penalties under KRS 278.990. **In all events, the Respondents apologize to the Commission and commit to no such event occurring again.**

B. THE RESPONDENTS DID NOT WILLFULLY VIOLATE THE COMMISSION'S JANUARY 13, 2011 ORDER IN CASE NO. 2011-0004.

As explained above, in an effort to substantially comply with the Commission's September 17, 2010 order, Johnson County filed its quarterly GCA application on January 3, 2011. As with its prior GCA filing, Johnson County provided supporting documentation for its application including invoices from Bradco Oil Company and EQT Energy, LLC, along with natural gas futures NYMEX prices.

By order dated January 13, 2011, the Commission ordered Johnson County to respond to Commission staff's first set of data requests. Regrettably, Johnson County did not respond to the data requests as ordered, although the company's failure to respond was not motivated by any willful intention to violate the Commission's order. Rather, the company was experiencing significant financial trouble and therefore did not have all of the payment-related information requested by Commission staff. Additionally, based on its understanding of advice by bankruptcy counsel, the company was fearful of disclosing its inability to pay all of its expenses. Moreover, the company provided at least some of the information requested by Commission staff with its GCA application and with the previous quarter's application. Thus, fearful of disclosing that it was close to filing bankruptcy, and without the benefit of advice from regulatory counsel, the company failed to respond to the data requests. The company has since filed for Chapter 11 bankruptcy.

C. CONCLUSION

The Respondents regrettably admit that Johnson County failed to comply with the two Commission orders. As explained above, however, the failure to comply was not willful within the meaning of KRS 278.990, but rather was the product of its financial troubles and its lack of legal counsel. The Respondents recognize and respect the Commission's authority and have taken affirmative steps to ensure the company is able to comply with Commission orders on a going-forward basis; namely, Johnson County has retained the undersigned counsel to advise and represent it with regard to Commission matters.

For these reasons, the Respondents have not willfully violated the Commission's orders, and should not be subject to penalties under KRS 278.990. Moreover, as Rife was at all times acting within his capacity as President of Johnson County, his actions are deemed to be those of the company, therefore he should not be subject to penalties under the statute.

Respectfully submitted,

 *Holly C. Wallace w/permission st.*

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