

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF B & H GAS)	
COMPANY, AND BUD RIFE, INDIVIDUALLY AND)	CASE NO.
AS AN OFFICER OF B & H GAS COMPANY)	2019-00055
ALLEGED VIOLATION OF KRS 278.300)	

ORDER

On February 27, 2019, the Commission initiated this proceeding and directed B & H Gas Company (B & H) and Bud Rife, individually and as an officer of B & H, to show cause why penalties should not be imposed, pursuant to KRS 278.990, for failure to comply with KRS 278.300 by entering into six promissory notes without prior Commission approval. The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention, (Attorney General) is the only intervenor in this matter. A formal hearing was held on April 24, 2019. Mr. Rife and B & H responded to post-hearing data requests. Mr. Rife and B & H were afforded the opportunity to file a post-hearing brief but did not file a brief. This matter now stands submitted for a decision.

B & H is a local gas distribution company that is subject to the Commission's jurisdiction pursuant to KRS 278.040 and KRS 278.010(3)(c). Mr. Rife, who owns 100 percent of the stock of B & H, has been president, director, and registered agent of B & H since 1989.¹

¹ Case No. 89-018, *The Joint Application of Ulice Bud Rife, Jr., and John M. Bradley and Debbie L. Bradley for the Approval of the Acquisition of B & H Gas Company, Inc. of Stanville, Floyd County, Kentucky, by Ulice Bud Rife, Jr.* (Ky. PSC May 17, 1989).

Mr. Rife submitted an application on behalf of B & H for an alternative rate adjustment (ARF Application) that was deemed filed on February 4, 2019.² At issue in this proceeding are six promissory notes filed as exhibits to the ARF Application. The notes were all executed on December 28, 2018, and represent debt in the amount of \$1,755,823.53. Of the six promissory notes, five represent funds purportedly borrowed by B & H from affiliated entities controlled by Mr. Rife, and one represents promised payment to a law firm for services already provided to B & H. The amounts, parties, and terms of the notes are as follows:

- A no-interest loan for \$3,600.00 from Bud Rife Construction Company (Bud Rife Construction) for a term of five years, with semiannual payments of \$360.00. Bud Rife Construction is a Kentucky corporation whose president and sole officer is Mr. Rife. Mr. Rife is the signatory for both parties on this note. The note states that Bud Rife Construction loaned money to B & H, but does not provide further information.
- A no-interest loan for \$490,132.61 from Bud Rife Construction for a term of 20 years, with semiannual payments of \$12,253.32. Mr. Rife is the signatory for both parties on this note. The note states that Bud Rife Construction loaned money and advanced services to B & H, but does not provide further information.
- A no-interest loan for \$53,284.00 from Mr. Rife, individually, for a term of 20 years, with semiannual payments of \$1,332.10. Mr. Rife is the signatory

² Case No. 2018-00433, *Application of B & H Gas Company for an Alternative Rate Adjustment* (filed Feb. 4, 2019).

for both parties on this note. The note states that Mr. Rife loaned money and advanced services to B & H, but does not provide further information.

- A no-interest loan for \$1,078,528.92 from B & S Oil and Gas (B & S) for a term of 20 years, with semiannual payments of \$26,963.22. Mr. Rife owns and operates B & S as a sole proprietorship.³ Mr. Rife is the signatory for both parties on this note. The note states that B & S loaned money and advanced services to B & H, but does not provide further information.

- A no-interest loan for \$90,815.18 from B & S for a term of 20 years, with semiannual payments of \$2,270.38. Mr. Rife is the signatory for both parties on this note. The note states that B & S loaned money to B & H, but does not provide further information.

- A promissory note for the payment of \$39,462.82 to Goss Samford PLLC (Goss Samford) for a term of five years, with ten payments of \$3,946.28 at an unspecified frequency, for legal services provided by Goss Samford to B & H. Goss Samford is a Kentucky professional limited liability company. Mr. Rife signed on behalf of B & H. Goss Samford had not signed the note tendered with the application.

On March 21, 2019, Mr. Rife and B & H filed into the record of this proceeding a revocation of all six promissory notes, along with a statement that no payments had been made on the six promissory notes. Mr. Rife and B & H asked that this matter be dismissed because all six notes had been revoked. By Order entered March 27, 2019, the

³ See Case No. 2016-00204, *B & H Gas Company, B & S Oil and Gas Company, and Mr. Bud Rife, Individually and as an Officer of B & H Gas Company and B & S Oil and Gas Company, Alleged Violation of a Commission Order* (filed Aug. 29, 2016), Motion for Reconsideration, Exhibit A, 2014 Schedule C Profit or Loss from Business (Sole Proprietorship) tax filing.

Commission found that Mr. Rife and B & H failed to establish good cause to dismiss this proceeding and denied the motion to dismiss.

At the April 24, 2019 hearing in this matter, counsel for Mr. Rife and B & H acknowledged that there had been a violation of KRS 278.300 by entering into evidences of indebtedness without prior approval of the Commission.⁴ Counsel explained that he had advised Mr. Rife and B & H to execute the notes to consolidate past-due debt owed to other entities owned by Mr. Rife.⁵ Counsel renewed the motion to dismiss this matter because the notes were revoked, which was denied from the bench.⁶

DISCUSSION AND FINDINGS

Under KRS 278.300, a utility cannot issue any evidences of indebtedness until authorized to do so by Commission Order. The exception to that provision is contained in KRS 278.300(8), which states that Commission approval is not required for notes “for proper purposes and not in violation of law” that are payable for periods of two years or less or are renewals of such notes.

As an initial matter, none of the six promissory notes at issue are payable in fewer than two years or are renewals of notes payable in under two years. Therefore, the exception in KRS 278.300(8) regarding two-year notes is not applicable to the six promissory notes, which required Commission approval prior to their issuance.

There is no evidence in this proceeding or prior cases that B & H sought or obtained Commission approval before entering into any of the six promissory notes at

⁴ Apr. 24, 2019 Hearing Video Transcript (HVT) at 8:58:28.

⁵ *Id.* at 8:59:07.

⁶ *Id.* at 9:01:37.

issue. In the document filing the revocation of the notes, Mr. Rife and B & H stated that they would seek Commission approval prior to entering into any future evidences of indebtedness.⁷ At the April 24, 2019 hearing, counsel for Mr. Rife and B & H admitted he advised Mr. Rife and B & H to execute the notes and that Mr. Rife and B & H did not request or obtain Commission approval prior to executing the notes.

As demonstrated by the substantial evidence in the record, there is no question that Mr. Rife and B & H entered into evidences of indebtedness without prior Commission approval. As noted in the February 27, 2019 Order initiating this proceeding, the Commission has had longstanding concerns regarding Mr. Rife's operation and management of B & H, and Mr. Rife's and B & H's compliance with statutes and regulations enforced by the Commission.⁸ Of particular concern here, the Commission cautioned Mr. Rife in a recent case that he cannot recover past-due expenses, such as those underlying the notes at issue here, through rates collected prospectively from today's customers.⁹ Further, based upon previous show cause proceedings, B & H and Mr. Rife had actual notice that each has a duty to comply with statutes and regulations enforced by the Commission.¹⁰ Mr. Rife and B & H have the ultimate responsibility for ensuring compliance with applicable statutes and regulations, and for executing

⁷ Response (filed Mar. 21, 2019) at 1.

⁸ See Feb. 27, 2019 Order at 2–3.

⁹ Case No. 2012-00140, *Alternative Rate Filing Adjustment Application of Johnson County Gas Company* (Ky. PSC June 18, 2013) at 6.

¹⁰ See Case No. 2016-00204, *B & H Gas Company, B & S Oil and Gas Company, and Mr. Bud Rife, Individually and as an Officer of B & H Gas Company and B & S Oil and Gas Company, Alleged Violation of a Commission Order* (Ky. PSC Sept. 12, 2016); Case No. 2015-00367, *An Investigation of the Gas Costs of B & H Gas Company Pursuant To KRS 278.2207 and the Wholesale Gas Price It is Charged by its Affiliate, B & S Oil and Gas Company, Pursuant To KRS 278.274* (Ky. PSC June 13, 2017); Case No. 2011-00315, *Investigation of the Failure of B & H Gas Company to File Required Reports* (Ky. PSC Dec. 21, 2011).

evidences of indebtedness without prior Commission approval. For the above reasons, we find that Mr. Rife, in his official capacity as president of B & H, and B & H have willfully violated with KRS 278.300.

KRS 278.990(1) provides that any officer of a utility who willfully violates any provision of KRS Chapter 278 or any regulation promulgated pursuant to KRS Chapter 278 or fails to obey any Order of the Commission or perform any duty imposed upon it under those sections shall be subject to a civil penalty not to exceed \$2,500 per occurrence. KRS 278.990(1) further provides that any utility that willfully violates any provision of KRS Chapter 278 or any regulation promulgated pursuant to KRS Chapter 278 or fails to perform any duty imposed upon it under those sections shall be subject to a civil penalty not to exceed \$2,500 per occurrence.

Based upon the evidence of record, the Commission finds that Bud Rife, as president of B & H, should be assessed a penalty for his willful violation of KRS 278.300 in the amount of \$15,000, which represents a civil penalty of \$2,500 for each of the six unauthorized promissory notes. The Commission further finds that B & H should be assessed a penalty for its willful violation of KRS 278.300 in the amount of \$15,000, which represents a civil penalty of \$2,500 for each of the six unauthorized promissory notes.

IT IS THEREFORE ORDERED that:

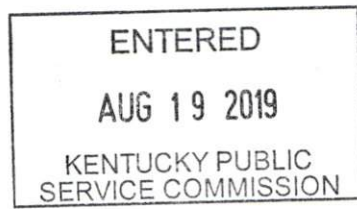
1. Bud Rife, as president of B & H, is assessed a penalty for his willful violation of KRS 278.300 in the amount of \$15,000.
2. B & H is assessed a penalty for its willful violation of KRS 278.300 in the amount of \$15,000.

3. Bud Rife and B & H shall pay the assessed penalties of \$15,000 each within 14 days of the date of entry of this Order. Payments shall be made by certified check or money order made payable to "Kentucky State Treasurer" and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602-0615.

4. Upon payment of \$15,000 by Bud Rife and \$15,000 by B & H, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

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By the Commission



ATTEST:


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