

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NAVITAS KY)	
NG, JOHNSON COUNTY GAS COMPANY,)	
AND B & H GAS COMPANY FOR APPROVAL)	CASE NO.
OF ACQUISITION, TRANSFER OF)	2020-00396
OWNERSHIP, AND CONTROL OF NATURAL)	
GAS UTILITY SYSTEMS)	

ORDER

This matter arises from a contract provision in the asset purchase agreement (Agreement) between Navitas KY NG (Navitas), and Johnson County Gas Company (Johnson County) and B & H Gas Company (B & H) regarding civil penalties and customer refunds assessed against Johnson County and B & H. On December 28, 2020,¹ Navitas, Johnson County, and B & H filed an application requesting Commission approval of the proposed asset transfer of Johnson County and B & H to Navitas. In the application, the parties requested that the Commission dismiss “all ongoing litigation, investigations, or cases . . . including all fees, fines, and penalties” to which B & H and Johnson County are parties.² The Agreement includes a provision that Navitas, Johnson County, and B & H will work together to eliminate any fines levied against B & H and Johnson County, and to “finally conclude” any pending litigation against B & H and Johnson County.³

¹ The parties submitted a joint application on December 23, 2020, that was rejected for filing due to certain filing deficiencies. Subsequently, the parties filed documents to cure the filing deficiencies, and the application was deemed filed as of December 28, 2020.

² Application at 10.

³ Agreement, Exhibit C at 2.a.

BACKGROUND

At issue here are three proceedings in which the Commission assessed civil penalties for violations of statutes, regulations, and Commission Orders, or directed refunds to customers for overbilling. All three matters are currently pending in state court. Additionally, there is a fourth proceeding investigating potential overbilling that is pending before the Commission that is not addressed in the application or the Agreement.

In Case Nos. 2019-00055 and 2019-00056, the Commission assessed civil penalties totaling \$107,500 against B & H, Johnson County, and Bud Rife, individually, for violations of certain statutes, Commission orders, and tariffs.⁴ B & H, Johnson County, and Bud Rife appealed the civil penalties to Franklin Circuit Court; that proceeding is currently being held in abeyance pending the proposed acquisition.⁵

In Case No. 2015-00367, the Commission required B & H to refund \$101,876 over 24 months to B & H customers for overcollection of the gas cost adjustment (GCA) component of billing, and required B & S Oil Company (B & S), an affiliate of B & H that is also solely owned by Bud Rife, to refund or credit to B & H any portion of the \$101,876 remitted to B & S by B & H, for B & S overcharging the wholesale gas price to B & H.⁶ B & H and B & S appealed the decision to Franklin Circuit Court, which upheld the

⁴ Case No. 2019-00055, *Electronic Investigation of B & H Gas Company, and Bud Rife, Individually and as an Officer of B & H Gas Company Alleged Violation of KRS 278.300* (Ky. PSC Aug. 19, 2019); and Case No. 2019-00056, *Electronic Investigation of Johnson County Gas Company, Inc. and Bud Rife, Individually and as an Officer of Johnson County Gas Company, Inc. Alleged Violation of KRS 278.300, a Commission Order, and a Tariff* (Ky. PSC Aug. 19, 2019). The Commission assessed a \$15,000 civil penalty against B & H; a \$7,500 civil penalty against Johnson County; a \$22,500 civil penalty against Bud Rife, individually; and a civil penalty of \$62,500 against Bud Rife and Johnson County, jointly.

⁵ *B & H Gas Company v. Public Serv. Comm'n*, Franklin Circuit Court, Div. II, Civil Action No. 19-CI-00948 (Sept. 16, 2019).

⁶ 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).

Commission's Order.⁷ B & H appealed the trial court decision to the Court of Appeals, where the matter is being held in abeyance pending the proposed acquisition.⁸

Finally, in Case No. 2020-00012, the Commission is investigating whether Johnson County overcollected the GCA billing component from its customers and whether Hall, Stephens, and Hall Gas Company (Hall), an affiliate for which Bud Rife is the managing partner, overcharged the wholesale gas price paid by Johnson County.⁹ The Commission expects that a decision will be rendered in Case No. 2020-00012 before the statutory date for a decision in this matter of April 27, 2021.

As of the date of this Order, none of the civil penalties has been paid and B & H has not initiated a refund to customers.

DISCUSSION

The Commission notes that, despite the contract provisions, none of the parties to this proceeding has presented the Commission with an offer of settlement regarding the pending litigation. Rather than wait until the March 16-17, 2021 hearing or a final Order to address these issues, the Commission concludes that, for the purpose of administrative efficiency, it should address this issue on its own motion.

Regarding the civil penalties assessed for certain violations of statutes, Commission Orders, and tariffs, in accordance with KRS 278.990, the Commission has a certain discretion in determining whether to reverse its decision to suspend or waive all

⁷ *B & H v. Public Serv. Comm'n*, Franklin Circuit Ct., Div. I, Civil Action No. 17-CI-00722 (Apr. 2, 2020).

⁸ *B & H v. Public Serv. Comm'n*, Ky. Ct. App., No. 2020-CA-0604-MR (Nov. 30, 2020).

⁹ Case No. 2020-00122, *Electronic Investigation of the Gas Costs of Johnson County Gas Company, Inc. and Hall, Stephens and Hall Gas Company Pursuant to KRS 278.2207, and KRS 278.274* (Ky. PSC Apr. 14, 2020).

or part of the civil penalties. The Commission is amenable to considering whether the civil penalties should be suspended or waived if, and only if, the proposed transaction is actually consummated. Under this framework, the Commission would consider waiving all of the civil penalties assessed against B & H, Johnson County, and Bud Rife as a condition subsequent to the Agreement.

Regarding the refund ordered to be paid to B & H customers, the Commission does not have any discretion to waive or reduce this amount. B & H's tariff includes a GCA clause, which allows B & H to revise its rates to reflect changes in wholesale gas cost. The required GCA filings ensure that B & H is made whole for its gas purchases and that it charges its customers the market price for purchased gas, which is in accordance with KRS 278.170(2) and KRS 278.2207. In Case No. 2015-00367, the Commission required B & H to refund customers for overcollection of gas cost because B & H and its affiliated supplier B & S failed to adjust their gas cost rate to reflect the market price of gas. Because the Commission found that B & H's rates were unreasonable and that it had overcharged its customers, the Commission, in accordance with KRS 278.170(2), does not have discretion to suspend or waive the requirement to refund B & H customers for the overcollection of gas cost that was subject to revision through its tariff. However, the Commission notes that B & S, which is not subject to the proposed acquisition and will continue to be solely owned by Bud Rife, is still required to refund to B & H any portion of the \$101,876 in gas cost that was deemed to be overcollected that B & H had paid to B & S.

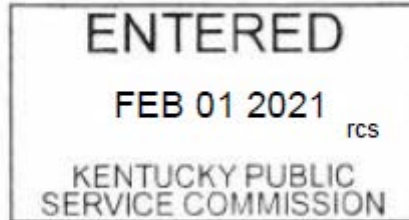
For the same reasons and under the same circumstances discussed above, if the Commission determines that Johnson County, which failed to file quarterly GCA filings

over a significant period, overcharged its customers because Hall charged greater than the market price of gas, then a refund will be due to Johnson County customers. Likewise, the Commission will require Hall to refund to Johnson County any amount deemed to have been overcollected from Johnson County's customers due to Hall charging its affiliate greater than the market price of gas.

Because, by statute, the Commission does not have discretion to waive the required refund of gas cost that it has found to be unreasonable, the Commission finds that Navitas, B & H, and Johnson County must have a plan in place to refund the amount previously ordered in Case No. 2015-00367 to B & H's customers, and potentially to Johnson County's customers as a result of Case No. 2020-00122, as a condition precedent to the Agreement and to Commission approval of the proposed transaction.

IT IS THEREFORE ORDERED that, within 20 days of the date of this Order, Navitas, B & H, and Johnson County, individually or jointly, shall file a written response to the condition subsequent and condition precedent to the Agreement that will be required for the Commission's approval of the transaction. The response must include, at a minimum, an assurance that overcollections of gas cost will be returned to customers in amounts ordered by the Commission, and a timeframe for their return.

By the Commission



ATTEST:



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