



SPILMAN THOMAS & BATTLE, PLLC

ATTORNEYS AT LAW

304.720.3437

e-mail: npreservati@spilmanlaw.com

February 2, 2017

Donald L. Kopp, II
Harrison County Circuit Clerk
301 West Main Street
Clarksburg, West Virginia 26301

**Re: Riley Natural Gas Company v. Berry Energy, Inc.
Civil Action No. 15-C-365-3**

Dear Mr. Kopp:

Enclosed for filing please find *Plaintiff's Response to Defendant's Motion to Dismiss Complaint*. As evidenced by the Certificate of Service, service has been made upon counsel of record.

Should you have any questions or concerns, please do not hesitate to contact me directly.

Regards,

Nicholas S. Preservati

cc: Honorable James A. Matish
Jonathan R. Marshall, Esq.

NSP/ads/9222206

Spilman Center 300 Kanawha Boulevard, East Post Office Box 273 Charleston, West Virginia 25321-0273
www.spilmanlaw.com 304.340.3800 304.340.3801 fax

West Virginia

North Carolina

Pennsylvania

Virginia

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RILEY NATURAL GAS COMPANY,
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-365-3

BERRY ENERGY, INC.,
a West Virginia corporation,

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS COMPLAINT**

INTRODUCTION

Berry Energy, Inc. ("Berry") has moved to dismiss Riley Natural Gas Company's ("Riley") Complaint on the basis that it contains claims that should have been filed as compulsory counterclaims in the matter of *Adkins Energy, Inc., et al., v. Dominion Transmission, Inc., et al.*, 5:16-cv-151 (N.D. W.Va. 2016). This argument is nonsense because the claims set forth in Riley's Complaint do not "arise out of the same transaction or occurrence" as the claims in the *Adkins*' First Amended Complaint. In the *Adkins* case, forty-two (42) plaintiffs contend that they were forced to enter into two unconscionable contracts in 2008, a Gateway Firm Contract and a Gas Sales Contract.

The plaintiffs in the *Adkins* case allege that Riley breached the two contracts by refusing to allow the plaintiffs to deliver less gas than the amounts set forth in the Gateway Firm Contracts and by transporting gas purchased from the plaintiffs on pipelines other than the Gateway Project pipelines. The plaintiffs also allege numerous causes of action for fraud.

breach of fiduciary duty, fraudulent inducement, fraudulent misrepresentation, and civil conspiracy related to the alleged contract negotiations between Plaintiffs and Riley in 2008. Finally, the *Adkins* plaintiffs allege that it is unconscionable to force them to honor commitments they made in 2008, when natural gas prices were at historically high levels, given the dramatic drop in natural gas prices that occurred in 2012.

In this case, Riley negotiated an agreement with Sutton Oil & Gas ("Sutton") in 2008. Riley did not enter into, or even negotiate, an agreement with Berry in 2008. Four (4) years later, Berry voluntarily purchased numerous oil and gas assets from Sutton. As part of their purchase agreement, Sutton assigned its agreement with Riley to Berry in February of 2012. One month later, Riley and Berry negotiated a single letter agreement incorporating all of their obligations to each other as part of their new relationship (the "Letter Agreement"). The Letter Agreement signed by Riley and Berry in March of 2012 is the agreement that is the subject of this lawsuit. Unlike the alleged agreements in the *Adkins* lawsuit, the Letter Agreement does not contain a provision that allows Berry to reduce the volume of gas that it is required to sell to Riley. Also unlike the agreements in the *Adkins* case, the Letter Agreement does not prohibit Riley from transporting gas purchased from Berry on pipelines other than the Gateway Project pipelines. Finally, unlike in the *Adkins* case, the letter Agreement was executed after the dramatic drop in natural gas prices, not before.

Berry is wrong when it argues Riley's claims in this case arise from the same transaction or occurrence as those in the *Adkins* case. The *Adkins* case and this case involve different agreements with different terms that were negotiated in different decades. The *Adkins* case involves forty-two (42) gas producers alleging that they were forced to enter into the alleged contracts in 2008. This case involves one gas producer that voluntarily entered into a single

letter agreement in 2012. Accordingly, Riley's claims in this case are not compulsory counterclaims in the *Adkins* case. As such, the Berry's motion to dismiss should be denied.

STATEMENT OF FACTS

I. ALLEGATIONS IN THE ADKINS FIRST AMENDED COMPLAINT

1. The services that pipeline companies provide include firm transportation and interruptible transportation. ¶ 8 n.1.

2. Firm transportation involves a guaranteed commitment by the pipeline company to transport the seller's gas. *Id.*

3. Interruptible transportation does not constitute a guaranteed commitment to transport the seller's gas. *Id.* If there is not enough space on the pipeline to transport all of the gas that sellers want to ship, those sellers with firm transportation contracts receive priority over sellers with interruptible transport contracts. *Id.*

4. Because firm transportation involves a guaranteed commitment, sellers must pay the pipeline company more money in order to reserve firm transportation.

A. The Announcement of the Gateway Project

5. In April 2008, Dominion Transmission, Inc. ("DTI") announced its plans for the Gateway Project. *Id.* at ¶ 84. The work would include upgrades to DTI's existing pipeline as well as the construction of a pipeline from West Virginia to a DTI facility near Oakford, Pennsylvania. *Id.*

6. DTI allegedly stated that the Gateway Project would enable gas produced in West Virginia and southern Pennsylvania to be sold into the Northeast and Mid-Atlantic regions of the United States. *Id.* at ¶ 85.

7. DTI allegedly stated that gas shipped on the Gateway Project would be delivered to a single Primary Delivery Point located in Oakford, Pennsylvania. *Id.* at ¶ 86.

8. DTI and its affiliates allegedly represented that the Gateway Project was required to avoid a future bottleneck problem on DTI's existing pipeline system that would inhibit natural gas extracted from West Virginia from reaching the delivery point. *Id.* at ¶ 91.

9. On April 1, 2008, DTI announced that the "Open Season" for the Gateway Project would run from April 1, 2008 through April 25, 2008. *Id.* at ¶ 93. DTI announced that entities wishing to ship natural gas on the Gateway Project pipelines would be required to reserve the maximum daily quantity of gas that they would transport. *Id.*

10. In its announcement, DTI set forth the credit requirements that sellers would be required to satisfy in order to transport their natural gas on the Gateway Project. *Id.* at ¶ 95. Because those credit requirements were stringent, Plaintiffs allege that they were not able to enter into contracts directly with DTI to ship their gas on the Gateway Project pipelines. *Id.*

B. The Contracts with DFS

11. Plaintiffs allege that, upon DTI's announcement in April 2008, Dominion Field Services, Inc. ("DFS") "affirmatively assumed, and even demanded," a role as Plaintiffs' representative in conjunction with the Gateway Project. *Id.* at ¶ 94.

12. Plaintiffs allege that DFS required them to estimate the volume of gas that they desired to transport on the Gateway Project pipeline for a ten-year period beginning in 2011 or 2012. *Id.* at ¶ 10, 96.

13. Plaintiffs allege that, in July 2008, Joseph Vanzant ("Vanzant") updated them on DFS's discussions with DTI about the Gateway Project. *Id.* at ¶¶ 99-102. DFS allegedly advised

that DTI had stated that any seller who wished to transport gas on the Gateway Project pipelines would be required to sign a contract with DTI by September 22, 2008. *Id.* at ¶ 100.

14. Plaintiffs allege that DFS was negotiating with DTI on their behalf, and would not permit them to communicate directly with DTI. *Id.* at ¶¶ 105-07.

15. Plaintiffs allege that DFS pressured unspecified Plaintiffs to sign two separate ten-year contracts with DFS: (1) a contract in which the Plaintiff agreed to pay for space on the Gateway Project pipelines that DFS has purchased from DTI, which Plaintiffs collectively define as the "Gateway Firm Contracts," and (2) a separate contract in which the Plaintiff agreed to sell gas to DFS, which DFS would then transport on the Gateway Project. Plaintiffs collectively refer to these contracts as the "Gas Sales Contracts."

Id. at ¶¶ 8, 14, 102, 108.

16. The Gateway Firm Contracts required these unspecified Plaintiffs to pay DFS several separate fees per month. *Id.* at ¶ 110.

17. The price that DFS was required to pay for the gas under the Gas Sales Contracts was tied to an index price for natural gas at Dominion Transmission, Inc. Appalachia ("DTI-Appalachia") at the time that DFS sold the gas to a third party. *Id.* at ¶ 14.

C. The Contracts with Riley

18. Plaintiffs allege that "Riley forced natural gas producers to sign nearly identical contracts based on similar threats that if they did not sign the ten-year contracts, the producers would not be able to ship their gas." *Id.* at ¶ 109. The Gateway Firm Contracts that Riley allegedly forced gas producers to sign contained "nearly identical language" to those that DFS signed with other producers. *Id.* at ¶ 111.

19. Plaintiffs allege that, because unspecified Plaintiffs had signed Gateway Firm and Gas Sales Contracts with DFS, Riley -- another gas marketer in the area -- was able to convince other unspecified Plaintiffs to sign similar contracts with Riley. *Id.* at ¶ 21.

D. The Collapse of Natural Gas Prices and Plaintiffs' Attempts to Reduce Their Commitments to Sell Gas

20. DTI received authorization from the Federal Energy Regulatory Commission ("FERC") to construct and operate the Gateway Project in June 2011. *Id.* at ¶ 116.

21. DTI began transporting natural gas through the Gateway Project pipelines in September 2012. *Id.* at ¶ 119. However, Plaintiffs allege that the natural gas market had undergone dramatic changes and gas prices had generally plummeted by that time. *Id.*

22. As a result of the lower prices, the costs that certain Plaintiffs allegedly incurred to produce the natural gas exceeded the price that DFS and/or Riley is obligated to pay them for the gas. *Id.* at ¶¶ 123-28. Certain Plaintiffs claim that they may actually be losing money. *Id.*

23. Plaintiffs allege that they have asked DFS and Riley to decrease the volume of gas that Plaintiffs must deliver under the Gateway Firm Contracts in light of the low gas prices, but that DFS and Riley have refused to "adjust the contracts." *Id.* at ¶ 16.

24. Plaintiffs further allege that natural gas producers who did not sign ten-year contracts with DFS or Riley in 2008 have nevertheless been permitted to ship their gas on the Gateway Project pipelines. *Id.* at ¶ 130.

E. The Claims Against Riley

25. In Count I, Plaintiffs allege that Defendants DFS and Riley breached fiduciary duties that they purportedly owed to Plaintiffs. Plaintiffs allege that Riley agreed to act as Plaintiffs' agent or advisor in negotiating with DTI, and then made various misrepresentations to Plaintiffs. *Id.* at ¶¶ 140(c), 141(b), 142(c)-(d), and 171.

26. In Count III, Plaintiffs allege that Defendants DFS and Riley breached contracts with Plaintiffs. *Id.* at ¶¶ 190-97. It appears that Plaintiffs allege that Riley breached certain of the contracts identified as Gateway Firm Contracts by refusing to allow Plaintiffs to deliver less gas than the amounts set forth in the Gateway Firm Contracts and transporting gas purchased from Plaintiffs on pipelines other than the Gateway Project pipelines. *Id.*

27. In Count IV, Plaintiffs allege that Defendants DFS, Vanzant, and Riley engaged in fraud during the negotiation of the Gateway Firm Contracts in 2008. Plaintiffs allege that these three defendants misrepresented that (1) Plaintiffs would be able to reduce the volume of gas that they were required to sell without penalty, (2) only producers who signed Gateway Firm Contracts would be permitted to sell natural gas that would be transported on the Gateway Project pipelines, and (3) gas purchased from Plaintiffs would be transported on the Gateway Project pipelines. *Id.* at ¶ 201.

28. In Count V, Plaintiffs allege that Defendants DFS and Riley breached joint venture agreements. Plaintiffs allege that they “entered into a joint venture with DFS and/or Riley for the production, transportation and sale of natural gas” and that Riley breached the joint venture by failing to act solely in the interest of the joint venture. *Id.* at ¶¶ 207-08.

29. In Count VI, Plaintiffs allege that Defendants DFS, Vanzant, and Riley are liable for unjust enrichment. Plaintiffs allege that they paid management fees under Gateway Firm Contracts, and were forced to sell gas to DFS or Riley under the Gas Sales Contracts, with respect to volumes of gas that Plaintiffs were not permitted to reduce. *Id.* at ¶¶ 211-13.

30. In Count VII, Plaintiffs seek to rescind as unconscionable the Gateway Firm Contracts and Gas Sales Contracts that they signed with “DFS and/or Riley.” Plaintiffs allege that they had no choice but to sign their contracts, which are supposedly unfair because Plaintiffs

must pay fees regardless of (1) the volume of gas that Plaintiffs sell to DFS and/or Riley and (2) the amounts that DFS and/or Riley pay for the gas. *Id.* at ¶¶ 221-30.

31. In Count VIII, Plaintiffs allege that Defendants DFS and Riley fraudulently induced them to sign the Gateway Firm Contracts and Gas Sales Contracts by misrepresenting that (1) only producers who ten-year contracts would be permitted to sell natural gas that would be transported on the Gateway Project pipelines and (2) gas purchased from Plaintiffs would be transported on the Gateway Project pipelines. *Id.* at ¶¶ 232-35.

32. In Count IX, Plaintiffs seek a declaration that an event of force majeure excuses performance of their obligations under the Gateway Firm Contracts. Plaintiffs assert: "It would be economically irrational for Plaintiffs to produce gas at a loss, after taking into consideration the shrinkage fees, and other operational costs." *Id.* at ¶¶ 240-41.

33. In Count X, Plaintiffs allege that Defendants engaged in a civil conspiracy. Plaintiffs allege (upon information and belief) that Riley combined with the other defendants to force Plaintiffs to sign ten-year contracts in lieu of pursuing other "options for the transportation and marketing of their gas." *Id.* at ¶¶ 244-47.

34. In Count XI, Plaintiffs allege that Defendants DFS and Riley were negligent. Plaintiffs allege that (1) DFS and Riley owed a duty of reasonable care to Plaintiffs and (2) DFS and Riley breached that duty by misrepresenting or omitting facts in negotiating the Gateway Firm Contracts and Gas Sales Contracts. *Id.* at ¶¶ 525-53.

35. In Count XII, Plaintiffs allege that Defendants DFS and Riley made negligent misrepresentations. Plaintiffs allege that DFS and Riley misrepresented that (1) Plaintiffs would be able to reduce the volume of gas that they were required to sell without penalty, (2) only producers who signed Gateway Firm Contracts would be permitted to sell natural gas that would

be transported on the Gateway Project pipelines, and (3) gas purchased from Plaintiffs would be transported on the Gateway Project and sold at the price available at Oakford Station. *Id.* at ¶ 260.

36. In Count XIII, Plaintiffs allege that two Defendants (DFS and Riley) violated the West Virginia Consumer Credit and Protection Act codified at W. a. Code § 46A-6-101 *et seq.* (The “WVCCPA”). Plaintiffs allege that DFS and Riley misrepresented that (1) Plaintiffs would be able to reduce the volume of gas that they were required to sell without penalty, (2) only producers who signed Gateway Firm Contracts would be permitted to sell gas that would be transported on the Gateway Project pipelines, and (3) gas purchased from Plaintiffs would be transported on the Gateway Project and sold at Oakford Station. *Id.* at ¶ 269.

II. FACTUAL ALLEGATIONS IN THE INSTANT ACTION

37. Riley entered into an agreement with Sutton on August 28, 2008 for the purchase of natural gas. On February 9, 2012 Sutton sold various gas meters and assigned its agreement with Riley to Berry. On March 1, 2012 Riley and Berry replaced the assigned agreement originally between Riley and Sutton with the Letter Agreement, which is the subject of this litigation. (See Letter Agreement attached to Plaintiff’s Complaint as the sole attachment).

38. According to the terms of the Letter Agreement, Berry committed to deliver on a firm basis a monthly volume of gas in dth/day to Riley. Berry also committed to paying a firm transportation rate per dth of capacity reserved by Riley in the Gateway Project Facility, as well as paying a management fee to Riley.

39. Riley filed the instant breach of contract action as a result of Berry’s continued failure to: 1) deliver the monthly volumes of gas; 2) pay the firm transportation rate; and 3) pay the management fee according to the terms of the Letter Agreement.

III. NATURAL GAS PRICES

40. At the time DTI announced its open season for the gateway project on April 1, 2008, the Henry Hub Natural Gas Spot Price was \$10.18 per million Btu. (See United States Energy Information Administration Historical Gas Prices attached hereto as "Exhibit A").

41. At the time Riley and Berry entered into the Letter Agreement in March of 2012, the Henry Hub Natural Gas Spot Price was \$2.17 per million Btu. (See Exhibit A). At the time Riley filed the instant action against Berry in September of 2016, the Henry Hub Natural Gas Spot Price was \$2.99 per million Btu. (See Exhibit A).

LEGAL ANALYSIS

A counterclaim is compulsory if it "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." *W.Va. R. Civ. P. 13(a)*. To determine whether a crossclaim arises out of the same transaction or occurrence as the original action, there are three non-exclusive factors to be considered: (1) the identity of the facts and law between the initial claim and the cross claim; (2) the mutuality of proof and whether substantially the same evidence will support or refute both the complaint and the crossclaim; and (3) the logical relationship between the original claim and the crossclaim. *J.A. Street & Associates, Inc. v. Thundering Herd Development, LLC*, 228 W.Va. 695; 724 S.E.2d 299 (2011). In this case, all three factors weigh against Berry. Accordingly, its motion to dismiss should be denied.

A. The facts and law supporting Riley's claim in this lawsuit differ from the facts and law supporting the Plaintiffs' alleged claims in the *Adkins* case.

The factual differences between the *Adkins* case and this case are significant. In the *Adkins* case, each of the forty-two (42) Plaintiffs alleges they were forced to enter into two separate and distinct agreements in 2008. The Plaintiffs allege that the 2008 agreements allowed them to reduce the volume of gas that they were required to sell without penalty, but that Riley

refused to allow them to so reduce the amounts in breach of the agreements. The Plaintiffs also allege that the 2008 agreements prohibited Riley from transporting gas purchased from Plaintiffs on pipelines other than the Gateway Project pipelines.

In this case, Riley and Berry did not enter into two separate agreements. They entered into a single Letter Agreement. Also, the Letter Agreement that is the subject of this litigation does not contain either of the two contractual provisions that are at issue in the *Adkins* case. More specifically, the Letter Agreement does not allow Berry to reduce the amount of gas that it must provide and it does not restrict the transportation of Berry's gas to the Gateway Project Facilities. Therefore, the two cases are addressing different contracts with different terms that were executed four (4) years apart from each other. Finally, from the time the Plaintiffs in the *Adkins* case negotiated their contracts in 2008 until the time Riley and Berry entered into the Letter Agreement in 2012, the price of natural gas had dropped by seventy-nine percent (79%). Given the contractual, temporal and financial differences in these two cases, it is clear that they do not arise out of the same transaction or occurrence.

The two cases are also supported by dramatically different law. The Plaintiffs in the *Adkins* case allege the following causes of action: (1) breach of fiduciary duty; (2) Aiding and Abetting Breach of Fiduciary Duty; (3) Fraud; (4) Breach of Joint Venture; (5) Unjust Enrichment; (6) Unconscionability; (7) Fraudulent Inducement; (8) Force Majeure; (9); Civil Conspiracy; (10) Negligence; (11) Negligent Misrepresentation; and (12) violations of the WVCCPA.¹ None of these causes of action are present in the current action and it is undeniable that each of these causes of action contains different elements than does the breach of contract claim in this case. Therefore, there is a wide divergence in the law supporting the numerous

¹ The remaining cause of action is for the alleged breach of two contracts that do not exist in this case.

causes of action in the *Adkins* case as compared to the law supporting Riley's breach of contract claim in this case.

B. The mutuality of Proof is different in the two cases.

The factual allegations and causes of action in the *Adkins*' First Amended Complaint center on contracts that were negotiated and executed in 2008. In addition, the vast majority of the alleged causes of action in the *Adkins* case involve allegations of fraud or negligence. The Letter Agreement at issue in this case did not even exist until four years *after* the alleged misconduct in the *Adkins* case.

In regards to the actual evidence, the contracts at issue in the *Adkins* case are different from the Letter Agreement in this case. The individuals that negotiated the contracts in the *Adkins* case in 2008 are different from the individuals that negotiated the Letter Agreement in 2012. The price of gas at the time the contracts were negotiated in the respective cases differs greatly. Finally, and equally importantly, the causes of action in the two cases are significantly different. The parol evidence rule limits the evidence that may be used in the instant breach of contract case, while such evidence is not so limited in the negligence and fraud claims. Also, the evidence needed to prove Riley's breach of contract claim is insufficient to prove the Plaintiffs' fraud and negligence claims in the *Adkins* case. Simply stated, these two cases involve different claims involving different contracts that were executed at significantly different times and that were negotiated and executed by different people. They are significantly more different than they are alike, and as such, they do not arise out of the same transaction or occurrence.

C. There is no logical relationship between the claims in the Adkins First Amended Complaint and Riley's Breach of Contract Claim in this case.

The allegations in the *Adkins* case involve alleged fraudulent misrepresentations and other alleged abusive or unconscionable conduct that occurred in 2008. The negotiations

between Riley and Berry did not occur until 2012. The Letter Agreement between Riley and Berry was not executed until 2012. It is extremely important to note that nowhere in the First Amended Complaint in the *Adkins* case is it alleged that any fraudulent misrepresentations or fraudulent negotiations occurred in 2012. Nowhere in the First Amended Complaint does it allege that the contracts in dispute were executed in 2012. There is no logical connection between the two cases because they involve different claims that arise out of different transactions and occurrences. Just because the two cases involve the Gateway Project Facilities does not mean they arise out of the same transaction or occurrence. To analogize Berry's argument, two lawsuits involving two different automobile accidents with different cars and different drivers that occurred four years apart arise from the same transaction or occurrence simply because they occurred on the same road.

Riley's breach of contract claim is not logically, legally, or factually related to the claims contained in the *Adkins* lawsuit. As such, Riley's claim against Berry does not belong in that case. At this point, the pertinent question is not whether Riley's claim against Berry belongs in the *Adkins* case. The pertinent question is why are Berry's claims against Riley in the *Adkins* case? The *Adkins* case relates to gas producers being forced to enter into two specific contracts in 2008 based upon alleged fraudulent misrepresentations that also occurred in 2008. Since Berry was not a party to the 2008 negotiations, and since Berry did not enter into any agreements with Riley in 2008, why is it a plaintiff in the *Adkins* case? The simple answer is that Berry should not be a plaintiff in the *Adkins* case. Because all of the potential claims between Riley and Berry arise from different transactions and occurrences than those giving rise to the claims in the *Adkins* case, the entire dispute should be resolved in the instant lawsuit. Consequently,

Riley's instant claim is not a compulsory counterclaim and Berry's motion to dismiss should be denied.

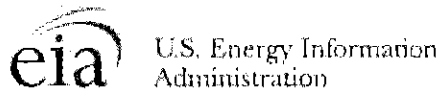
WHEREFORE, Riley Natural Gas Company respectfully requests that this Honorable Court deny Berry Energy, Inc's Motion to Dismiss, and any other relief it deems appropriate.

RILEY NATURAL GAS COMPANY,

By Counsel,



Nicholas S. Preservati (WVSB # 8050)
SPILMAN THOMAS BATTLE, PLLC
P.O. Box 273
Charleston, West Virginia 25321
Telephone: (304) 721-3437
Facsimile: (304) 340-3801



NATURAL GAS

OVERVIEW DATA ANALYSIS & PROJECTIONS

GLOSSARY

FAQS

Returning Pages

- Natural Gas Futures Prices (NYMEX)

View History ☐ Daily ☐ Weekly ☒ Monthly ☐ Annual

Download Data (XLS File)

Henry Hub Natural Gas Spot Price

DOWNLOAD

Dollars per Million Btu

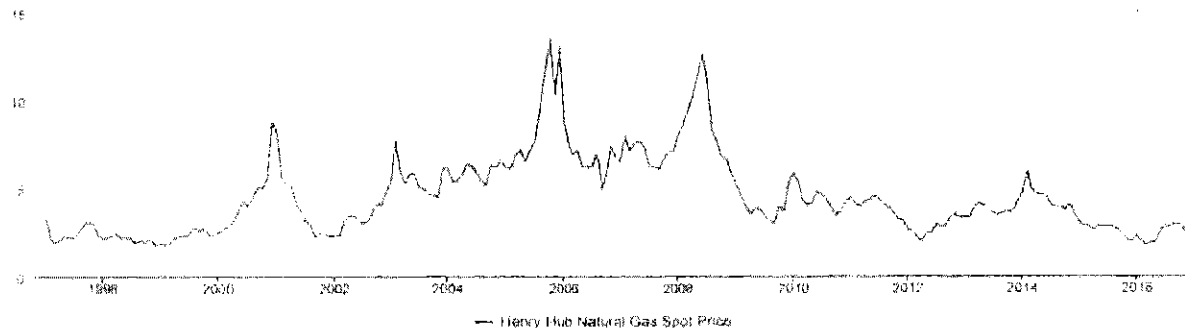


Chart Tools

Chart Tools

no analysis applied

This series is available through the EIA open data API and can be downloaded to Excel or embedded as an interactive chart or map on your website.

Henry Hub Natural Gas Spot Price (Dollars per Million Btu)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1997	3.45	2.15	1.84	2.03	2.25	2.20	2.19	2.49	3.88	3.07	2.91	2.35
1998	2.09	2.23	2.24	2.41	2.14	2.17	2.17	1.83	2.02	1.91	2.12	1.72
1999	1.85	1.77	1.70	2.15	2.26	2.39	2.31	2.80	2.55	2.71	2.57	2.16
2000	2.40	2.66	2.79	3.04	3.59	4.29	3.99	4.41	5.06	5.02	5.52	8.90
2001	8.17	5.81	5.23	5.19	4.19	3.72	3.11	3.97	2.19	3.46	2.38	2.30
2002	2.32	2.12	2.01	3.41	3.50	3.26	2.90	3.09	3.55	4.11	4.04	4.74
2003	3.43	3.71	3.93	3.26	5.81	5.42	5.03	4.99	4.82	4.63	4.47	6.13
2004	6.14	8.12	5.39	5.72	6.31	6.17	5.93	5.41	5.13	6.15	6.17	6.58
2005	6.15	6.14	6.46	7.16	6.47	7.18	7.63	9.51	11.75	13.42	10.30	13.05
2006	8.69	7.91	5.89	7.56	9.15	6.23	6.17	7.14	4.90	5.85	7.41	6.73
2007	6.58	6.00	5.11	7.00	7.64	7.13	6.23	6.32	6.98	6.74	7.19	7.13
2008	7.99	8.54	9.41	10.18	11.27	12.69	11.09	8.36	7.67	6.74	6.68	5.82
2009	5.24	4.52	3.96	3.46	3.83	3.80	3.18	3.14	2.79	4.01	1.96	5.53
2010	5.83	5.11	4.39	4.02	4.14	4.86	4.43	3.32	3.69	3.42	3.71	4.25
2011	4.49	4.09	3.97	4.24	4.31	3.54	4.47	4.06	3.90	3.91	3.54	4.17
2012	2.51	2.51	2.17	1.95	2.43	2.46	2.95	3.84	2.83	3.12	3.51	3.14
2013	3.13	3.17	2.84	4.17	4.04	3.83	3.62	3.45	3.62	3.68	3.64	3.61
2014	4.74	6.00	4.90	4.00	4.58	4.59	4.05	3.91	3.10	3.78	4.12	3.48
2015	2.99	2.87	2.85	2.81	2.85	2.78	2.84	2.77	2.66	2.34	3.09	1.93
2016	2.28	1.99	1.71	1.92	1.92	2.59	2.82	2.82	3.09	2.98	2.15	3.54

NA = No Data Reported, -- = Not Applicable, N/A = Not Available, W = Withheld to avoid disclosure of individual company data

Release Date: 12/8/2017
Next Release Date: 2/1/2017

Returning Pages

- Natural Gas Futures Prices (NYMEX)

EXHIBIT

EXHIBIT

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RILEY NATURAL GAS COMPANY,
a West Virginia corporation,

Plaintiff,

v.

Civil Action No. 15-C-365-3

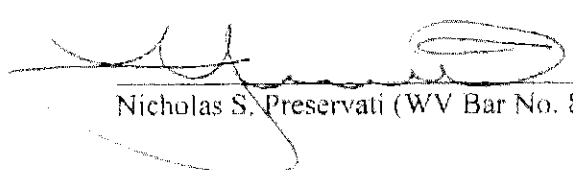
BERRY ENERGY, INC.,
a West Virginia corporation,

Defendant.

CERTIFICATE OF SERVICE

I, Nicholas S. Preservati, counsel for Plaintiff, do hereby certify that a true and exact copy of "*Plaintiff's Response to Defendant's Motion to Dismiss Complaint*" was served upon counsel of record via facsimile, the 2nd day of February, 2017, and addressed to the following:

Jonathan R. Marshall (WVSB #10580)
BAILEY GLASSER LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555
Facsimile: (304) 342-1110
Counsel for Defendant


Nicholas S. Preservati (WV Bar No. 8050)