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February 18, 2005

Charles E. Lowe, Jr., Esq.  
Post Office Box 69  
Pikeville, Kentucky 41502

Re: Sigma Gas Corporation

Dear Mr. Lowe:

Commission Staff acknowledges receipt of your letter of February 2, 2004 in which you requested a written opinion regarding the lawfulness of your clients' efforts to monitor the operations of Sigma Gas Corporation pending the Commission's review of their application to acquire control of that utility.

Based upon your letter and its review of various documents on file with the Commission, Commission Staff finds the facts are as follows:

- Sigma Gas Corporation is a Kentucky corporation that owns and operates facilities that are used in connection with the distribution, sale and furnishing of natural gas to approximately 778 customers in Saylorsville, Kentucky and the surrounding portions of Magoffin County, Kentucky.
- On October 20, 2004, Sigma Gas Corporation petitioned for relief under Chapter 7 of the U.S. Bankruptcy Code. The court-appointed trustee subsequently abandoned Sigma Gas Corporation's gas system. As a result of a management agreement among Sigma Gas Corporation, the Governor's Office of Local Development, and Auxier Gas Company, Auxier Gas Company is currently managing the day-to-day operations of Sigma Gas Corporation's gas system. The U.S. Bankruptcy Court has approved this agreement.



EQUAL OPPORTUNITY M/F/D

- Mr. Jerome Kanney and Mr. Dennis Rohrer have entered into agreements with the present shareholders of Sigma Gas Corporation to acquire their entire holdings in the utility.
- Mr. Kanney and Mr. Rohrer have applied to the Commission for approval of their proposed acquisition of control of Sigma Gas Corporation.

Your letter presents the following issue: May Mr. Kanney and Mr. Rohrer monitor the financial affairs of Sigma Gas Corporation, including its day-to-day operations, so long as they do not exercise any control or management of the corporation?

The major factor in determining the lawfulness of Mr. Kanney and Mr. Rohrer's proposed action is whether their activities constitute control of Sigma Gas Corporation's operations. They may not control the activities of the utility until the Commission has approved their acquisition of control.

KRS 278.020(5) provides:

No person shall acquire or transfer ownership of, or **control**, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

KRS 278.020(6), in pertinent part, provides:

No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, **shall acquire control**, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect.

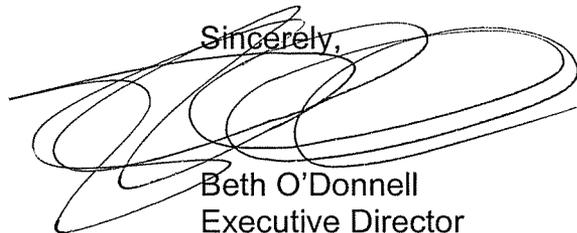
Control is defined as "the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise." Id.

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Commission Staff is of the opinion that the monitoring of Sigma Gas Corporation's operations does not meet the statutory definition of control. Therefore, Mr. Kanney and Mr. Rohrer may monitor the day-to-day operations of Sigma Gas Corporation pending Commission action on their application without violating KRS 278.020(5) or KRS 278.020(6). Please note that should either Mr. Kanney or Mr. Rohrer's activities go beyond monitoring and observing Auxier Gas Company's management of the utility's operations and financial affairs and involve the direction or management of Sigma Gas Corporation's activities, he would be in violation of KRS 278.020 and could be subject to possible civil penalties.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell", is written over the word "Sincerely,". The signature is stylized and somewhat illegible due to overlapping loops.

Beth O'Donnell  
Executive Director

cc: Mr. Garland H. Barr