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January 11, 2012

Mr. Larry Rich  
Kentucky Frontier Gas  
2963 Ky. Route 321  
P. O. Box 408  
Prestonsburg, KY 41653

**PSC STAFF OPINION 2012-003**

Dear Mr. Rich:

We are in receipt of your email requesting certain answers with regard to BTU and Cow Creek customers. We understand that Kentucky Frontier Gas, in managing the BTU system for James R. Westenhoefer, Bankruptcy Trustee, has discovered several gas connections that were once Cow Creek (Sigma) customers that are currently connected to the BTU gas system. You state that some of these connections are metered and some are not. You further state that some customers are receiving "free gas" in exchange for certain rights of way. Your question is whether these customers can be switched back to Cow Creek and if they refuse Cow Creek service, can their BTU service be disconnected.

With regard to the issue of "free gas," BTU's tariff does not contain a free gas provision, nor is there any document filed with the Commission permitting BTU to furnish any customer "free gas." BTU has never sought the Commission's approval of a lease, right of way agreement or other contract that would authorize BTU to provide natural gas service at any rate different from what is contained in BTU's filed tariff. Therefore, BTU is not authorized to provide "free gas" to any customer.

Your question about transferring former Cow Creek customers who are being served by BTU back to Cow Creek was specifically addressed in the Commission's Order dated September 11, 2009.<sup>1</sup> This Order provides that all customers once served by Cow Creek but currently connected to the BTU gas system, as well as potential customers who should have been served by Cow Creek, be switched from BTU to Cow Creek after certain notices are given to the affected customers. We have attached that order for your review.

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<sup>1</sup> Case No. 2004-00018, *In the Matter of Sigma Gas Corporation v. BTU Gas Company, Inc.* (filed on January 14, 2004).

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By way of background, in 2004 Cow Creek's predecessor, Sigma Gas Corporation (now "Cow Creek"), filed a formal complaint with the Commission alleging that BTU had extended its gas facilities in and around Salyersville without PSC authorization. BTU had connected a number of potential Cow Creek customers and customers who were served by Cow Creek prior to BTU's extension of its facilities. On June 30, 2009, the Commission found in this case that BTU was not authorized to serve any customer of Cow Creek or any potential customer of Cow Creek in the Salyersville area. BTU was ordered to submit a list of those customers plus any additional customers it may have begun serving in the Salyersville area since June 29, 2004. These affected customers included those listed by BTU in its filing of July 16, 2009, as well as those listed by Cow Creek in its response dated July 24, 2009. This case was concluded on September 11, 2009. On that date the Commission ordered that all these customers, including existing and potential customers, be transferred to Cow Creek. The Commission's Order was very specific regarding the procedure to be followed.

BTU was ordered to give notice to the affected customers by U.S. mail, no later than 15 days from the date of that Order (September 11, 2009), that it would stop serving each customer on or before March 1, 2010. Prior to the March 1, 2010 deadline, BTU was only to disconnect an affected customer's service upon notice from Cow Creek that it was connecting that customer as of a certain date. No later than March 31, 2010, BTU was to remove its gas meters and seal its service lines unless other arrangements for the equipment had been made with Cow Creek. BTU was directed to include the specific language set out in Appendix A of the Commission's September 11, 2009 Order, in its notice to the affected customers.

In that same Order, Cow Creek was directed to give notice to the affected customers, by U.S. Mail no later than 15 days from the date of the Order, that it was the authorized natural gas provider and was to notify the affected customers that a service agreement with Cow Creek was required before gas service would be provided. A copy of Cow Creek's service agreement was to be included with the notice along with a copy of its rates and all charges related to its service. Cow Creek was to notify BTU of the connection date. Cow Creek was directed to include the specific language in Appendix B of the Commission's September 11, 2009 Order, in its notice to the affected customers.

The September 11, 2009 Order is still in effect and it is presumed by the Commission that all the affected customers have received the appropriate notifications from both BTU and Cow Creek and have been transferred to Cow Creek. The affected customer's only alternative is to have all natural gas service terminated. None of the affected customers, including the Salyersville First Baptist Church (identified as the "Dixie Church" in BTU's July 16, 2009 filing), should be receiving natural gas service

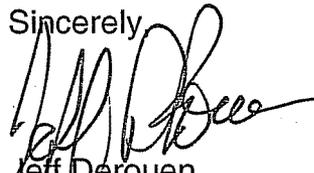
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from BTU, regardless of whether BTU, Cow Creek or a customer prefer otherwise. If any of these customers are currently being served by BTU, this situation must be corrected immediately.

BTU should notify the affected customers in accordance with Appendix A and Cow Creek should notify these same customers in accordance with Appendix B. If any customer fails to sign a service agreement with Cow Creek after proper notice, that customer's service should be disconnected. Kentucky Frontier Gas, as the Court authorized operator of BTU and as the owner of Cow Creek, must comply with the terms of the Commission's September 11, 2009 Order on behalf of both utilities. and evidence that the required notifications have been given should be retained.

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. If you have any questions, please feel to contact Virginia Gregg, Public Service Commission, 211 Sower Boulevard, Frankfort, KY 40601, Telephone 502-564-3940, Ext. 407.

Sincerely,



Jeff Derouen  
Executive Director

VG/kar

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SIGMA GAS CORPORATION	)	
	)	
COMPLAINANT	)	
V.	)	CASE NO. 2004-00018
	)	
B.T.U. GAS COMPANY, INC.	)	
	)	
DEFENDANT	)	

O R D E R

On July 16, 2009, B.T.U. Gas Company, Inc. ("BTU") filed with the Commission a list of customers ("affected customers") pursuant to an Order in this case dated June 30, 2009. On July 24, 2009, Cow Creek Gas, Inc. ("Cow Creek Gas"), the successor to the interest of Sigma Gas Corporation ("Sigma") in this matter, filed a response to the June 30, 2009 Order and to BTU's July 16 response in which it declined to serve certain customers on the affected customers list. On August 19, 2009, BTU filed an objection to the July 24, 2009 response of Cow Creek Gas, stating that Cow Creek Gas should not be allowed to pick and choose those customers it will serve from the affected customers list submitted by BTU. Cow Creek Gas responded, on August 21, 2009, that the Commission stated in its June 30 Order that, if Cow Creek Gas is unable or unwilling to connect any customer on the list, then that customer may be served by BTU. Cow Creek Gas referred to its July 24, 2009 response indicating which customers

it is willing and able to serve and reiterated that BTU should serve the remaining customers.

The Commission, having considered the responses of both parties, has determined upon its own motion to modify the June 30, 2009 Order to clarify the duties and actions of BTU and Cow Creek Gas in regard to the customers. Accordingly, we will make additional findings and issue appropriate instructions relating to the service of each utility for the affected customers.

BTU contends that Finding 11 of the June 30, 2009 Order does not authorize Cow Creek Gas to pick or choose those customers it will serve from BTU's list. BTU is correct. The June 30, 2009 Order found that BTU did not have the authority to serve customers in the former Sigma area and that any customers BTU had gained after January 1, 2004 were also not authorized to be served by BTU. BTU's affected customers list is conclusive as to the customers that Cow Creek Gas is now authorized to serve as the local distribution company. It is Cow Creek Gas's contention that it does not want to interfere with those customers receiving free gas from BTU and therefore elects not to serve the following: Magoffin County Teen Coalition ("Teen Scene"); Burke Arnett; Tom Bailey's home and garage; and Dixie Church.

As to the "free gas" issue, BTU's tariff does not contain a free gas provision,<sup>1</sup> nor is there any document in the file to indicate that either Burke Arnett or Tom Bailey's home and garage are entitled to, or that BTU is required to furnish these locations, "free

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<sup>1</sup> Any "free gas" provision would have to comply with the requirements contained in KRS 278.170(2).

gas.”<sup>2</sup> It is our understanding from the testimony of Mr. Richard Williams, Operations Manager of BTU, that any provision for unmetered gas or “free gas” for Burke Arnett and Tom Bailey’s home and garage was part of a right-of-way agreement or lease for a gas well.<sup>3</sup> However, no such agreement was made part of the record and BTU’s objection does not reference any such agreement. Unless BTU can produce such an agreement or lease and secure Commission approval of its provision for “free gas,” Cow Creek Gas is obligated to serve Mr. Arnett and Mr. Bailey.

Mr. Williams testified that he and his wife paid the gas bill for the Teen Scene.<sup>4</sup> This would seem to be a form of charitable contribution which Mr. and Mrs. Williams may or may not wish to continue, but Cow Creek Gas is required to serve the Teen Scene. This requirement of service would also apply to the Dixie Church customer. The only exception in this case would be if BTU has a legitimate right-of-way or lease agreement with any affected customer that requires BTU to furnish the affected customer with natural gas. No such instrument is in the record. Consequently, Cow Creek Gas is required, as the local distribution company, to provide “adequate service”<sup>5</sup> to all customers in its service area who request natural gas service. Cow Creek Gas may not decline to serve a customer unless it finds it is not able to furnish that customer with adequate service based upon its plant and supplies.

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<sup>2</sup> BTU has not filed any lease or right of way agreement nor has it referenced any such agreement or other contract in its Objection to Cow Creek Gas’s July 24, 2009 filing.

<sup>3</sup> Transcript of Evidence of Formal Hearing of June 29, 2004 (“T.E.”) at 65-68.

<sup>4</sup> T. E. at 66-67.

<sup>5</sup> KRS 278.010(14).

In its response filed on July 24, 2009, Cow Creek Gas indicated it would require a deposit from each affected customer that applies for natural gas service. Under the circumstances of this case, the Commission will require Cow Creek Gas to apply provision 1.b. of its Customer Deposits tariff to all affected customers as though each had made a showing of a satisfactory credit and payment history with the company. Cow Creek Gas may elect to later require a deposit from any affected customer who fails to maintain a satisfactory credit and payment history.<sup>6</sup>

As to the transition of the affected customers from BTU to Cow Creek Gas, the Commission will require both utilities to do the following:

1. BTU is to give notice to the affected customers by U.S. mail, no later than 15 days from the date of this Order, that it will stop serving each customer on or before March 1, 2010. Prior to the March 1, 2010 deadline, BTU will only disconnect an affected customer's service upon notice from Cow Creek Gas that it is connecting that customer as of a certain date. No later than March 31, 2010, BTU will remove its gas meters and seal its service lines unless other arrangements have been made with Cow Creek Gas for the equipment. BTU is to return any affected customer's deposit that it may have retained as it terminates his or her service, but all refunds to affected customers shall be made no later than March 31, 2010. BTU is to file with the Commission an acknowledgement of the customers provided refunds no later than April 15, 2010. BTU is to include in its notice to the affected customers the language contained in Appendix A.

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<sup>6</sup> 807 KAR 5:006, Section 27.

2. Cow Creek Gas is to give notice to the affected customers by U.S. mail, no later than 15 days from the date of this Order, that it is the authorized natural gas service provider and notify them of the requirement of a service agreement. A copy of its service agreement is to be included with the notice along with the waiver of the initial customer deposits. Cow Creek Gas should provide in the letter a copy of its rates and all charges related to its service. Cow Creek Gas is to make direct personal contact with any customer on the affected customers list who has not applied for service by November 1, 2009 pursuant to the notice language contained in Appendix B to determine if the affected customer will either be connected by March 1, 2010 or if he or she is securing an alternate energy source. Upon receipt of an affected customer's application, Cow Creek Gas shall notify BTU of the connection date.

IT IS THEREFORE ORDERED that:

1. BTU shall give notice to each affected customer by U.S. mail, no later than 15 days from the date of this Order, that it will stop serving each customer on or before March 1, 2010.

2. Prior to the March 1, 2010 deadline, BTU will only disconnect an affected customer's service upon notice from Cow Creek Gas that it is connecting that customer as of a certain date.

3. BTU's notice shall contain the language in Appendix A of this Order.

4. BTU shall refund all customer deposits as described herein.

5. Cow Creek Gas shall offer natural gas service to all customers on the affected customers list provided by BTU in its filing of July 16, 2009 and all the customers named in Cow Creek Gas's Response dated July 24, 2009.

6. Cow Creek Gas and BTU shall both notify the affected customers of the transition of service providers as described herein.

7. Cow Creek Gas shall waive initial customer deposits for affected customers as described herein.

8. Cow Creek Gas's notice shall contain the language in Appendix B of this Order.

By the Commission

ENTERED  
SEP 11 2009 *A*  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2004-00018 DATED **SEP 11 2009**

By Order of the Kentucky Public Service Commission, B.T.U. Gas Company, Inc. will no longer provide your natural gas service. The authorized provider of your natural gas service is Cow Creek Gas. You will be receiving a notice and application for service from Cow Creek Gas. No later than March 31, 2010, B.T.U. Gas Company, Inc. will be refunding any deposit you may have made as a condition of securing your natural gas service from B.T.U. Gas Company, Inc. On or before March 31, 2010, B.T.U. Gas Company, Inc. will remove its meters and seal its gas lines. If you have not applied for service through Cow Creek Gas, your natural gas service will be terminated and you must secure a replacement energy source.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2004-00018 DATED SEP 11 2009

By Order of the Kentucky Public Service Commission, Cow Creek Gas, Inc. is solely authorized to provide natural gas service in your service area. We have enclosed an application to initiate service with Cow Creek Gas, Inc. Please fill out the application and return it as soon as possible, but no later than November 15, 2009, so that your new gas service can be connected. Cow Creek Gas, Inc. is waiving the deposit to which we are otherwise entitled and will not charge the \$100 deposit as long as satisfactory payment of your gas bill is maintained. Please contact us at *(insert phone number)* with any questions.

Cow Creek Gas's rates and charges are:

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*(insert most current rates and all service charges)*

If your natural gas service has not been transferred to Cow Creek Gas, Inc. by March 1, 2010, you will have to secure another energy source for your space heating, water heating, cooking, or clothes-drying needs formerly met by natural gas.

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