

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

Before the Commission are motions of B.T.U. Gas Company, Inc. (“Defendant”) to file an answer out of time and for an extension of time to respond to the Commission’s Order of February 23, 2004. For reasons set forth below, the motions are rejected for filing.

On January 14, 2004, Sigma Gas Corporation (“Complainant”) filed with the Commission a formal complaint against Defendant. Pursuant to 807 KAR 5:001, Section 12(4)(b), the Commission, on January 22, 2004, directed the Defendant to either satisfy the matters complained of or file an answer within 10 days of service of our Order. While the record indicates that the Defendant received actual notice of the Order on January 26, 2004, the record does not indicate the receipt of any answer within the required time. On February 23, 2004, the Commission entered an Order noting the absence of an answer in the record, directing both parties to provide certain

information no later than March 15, 2004, and setting this matter for hearing on April 6, 2004.

On March 15, 2004, the Defendant moved for an additional 15 days in which to respond to the Order of February 23, 2004. Attached to the Defendant's motion is its answer to the complaint. In its motion, the Defendant asserts that it mailed this pleading to the Commission on January 30, 2004. We will consider the motion as a motion to file its answer out of time and as a motion to extend the Defendant's time for complying with the Order of February 23, 2004.

Richard Williams signed both pleadings. His status requires our rejection of both pleadings. The Kentucky Secretary of State's Office identifies the Defendant as a Kentucky corporation.¹ The Kentucky Bar Association does not list Mr. Williams as an attorney licensed to practice in Kentucky.²

No person may engage in the practice of law in Kentucky without first obtaining a license to practice. SCR 2.100. The practice of law is "any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services." Kentucky Supreme Court Rule 3.020. It includes, as Kentucky's highest court held in Kentucky State Bar Association v. Henry

¹ See Kentucky Secretary of State Online Business Database Service at [http://www.sos.state.ky.us/obdb/\(dimeti45qu3yocywfheawbb0\)/home.aspx](http://www.sos.state.ky.us/obdb/(dimeti45qu3yocywfheawbb0)/home.aspx) (last visited Mar. 19, 2004).

² See Kentucky Bar Association Web site at <http://www.kybar.org/index.cfm> (last visited Mar. 19, 2004).

Vogt Machine Co., Ky., 416 S.W.2d 727 (1967), the representation of a corporation before a state administrative agency.

As to our own proceedings, this Commission has adopted a similar position and has required that those representing the interests of others before us be licensed attorneys. In a previous case, this Commission ordered that:

[A]ny attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission, must engage a member of the Kentucky Bar Association. It logically follows that if an unlicensed attorney may not represent a client before this Commission, neither may a layman.

Administrative Case No. 249, Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky (Ky. PSC June 15, 1981) at 2.

Commission regulations concerning formal complaints incorporate, at least in part, these sentiments. 807 KAR 5:001, Section 12(2), states in part: "Complaints by corporations or associations, or any other organization having the right to file a complaint, must be signed by its attorney and show his post office address." The regulation requires that an attorney represent a corporation or other organization from the outset of a complaint proceeding.³

Based on the above, the Commission finds that neither the Defendant's answer nor its response complies with Kentucky law and therefore should not be accepted for filing. We further find that the Defendant should be permitted to file an answer and a response to the Order of February 23, 2004 that complies with 807 KAR 5:001 within 7

³ See Charles B. Looney v. Harrison County Water Association, Case No. 1999-00284 (Ky. PSC Aug. 11, 1999); Robert Hatfield v. Bath County Water District, Case No. 1999-00436 (Ky. PSC Dec. 6, 1999).

days of the date of this Order. The Defendant's failure to submit a timely answer that complies with this administrative regulation will be considered as an admission of all allegations contained in the complaint and will constitute grounds for the entry of an Order granting the Complainant's requested relief.

IT IS THEREFORE ORDERED that:

1. Defendant's motions and answer are rejected.
2. Within 7 days of the date of this Order, Defendant shall submit an answer that complies with 807 KAR 5:001. Failure to submit a timely answer that complies with this administrative regulation will be considered as an admission of all allegations contained in the complaint and will constitute grounds for the entry of an Order granting the Complainant's requested relief.
3. Within 7 days of the date of this Order, Defendant shall file its response to the Commission's Order of February 23, 2004.
4. Service of any document shall be in accordance with 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

Done at Frankfort, Kentucky, this 24th day of March, 2004.

By the Commission

ATTEST:


Executive Director