

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF JEROME A. KANNEY AND )	
DENNIS L. ROHRER FOR AUTHORIZATION OF )	
THE ACQUISITION OF THE CORPORATE STOCK )	CASE NO.
OF SIGMA GAS CORPORATION FROM ESTILL )	2005-00073
BRANHAM, BARKLEY STURGILL, AND RUTH )	
CONLEY CLEMMONS )	

O R D E R

This matter comes before the Commission pursuant to the February 9, 2005 application of Jerome A. Kanney and Dennis L. Rohrer (“Joint Applicants”) for approval to acquire 100 percent of the corporate stock of Sigma Gas Corporation (“Sigma”) pursuant to KRS 278.020(5) and (6). Sigma is a local gas distribution company serving approximately 778 customers in Salyersville in Magoffin County and in parts of Floyd County and Johnson County. Its stock is owned by Ruth Conley Clemons (45 shares), Barkley Sturgill (45 shares) and Estill Branham (10 shares). Sigma filed for Chapter 7 bankruptcy in October 2004 in United States Bankruptcy Court for the Eastern District of Kentucky.

Description of the Proposed Transaction

The Joint Applicants propose to acquire Messrs. Clemons’ and Sturgill’s stock for \$20,000 each and Mr. Branham’s stock for \$15,000.<sup>1</sup> According to the application, once the transfer of ownership has been approved by the Commission, the Joint Applicants

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<sup>1</sup> Application, Exhibit A – Transfer of Stock Documents and Response to the Commission Staff’s Interrogatories and Requests for Production of Documents dated March 29, 2005 (“Staff’s Data Request”), Item 7.

plan to amend Sigma's bankruptcy filing with the goal of restoring Sigma as a viable operating entity.<sup>2</sup>

The Joint Applicants state that they have the financial, technical and managerial abilities to provide a reasonable level of gas service to Sigma's current and potential customers.<sup>3</sup> The Joint Applicants would continue service to Sigma's customers using existing Sigma personnel, employees of Interstate Natural Gas Company ("Interstate") and its affiliates, and/or new employees.<sup>4</sup> The Joint Applicants plan to retain the accounting, billing and collection services of the accountants who currently provide these services to Sigma.<sup>5</sup>

In support of their claim of financial, technical and managerial ability, the Joint Applicants provided summary résumés of potential management and operating personnel currently employed by Interstate or other affiliated companies. In addition to the summary résumés, for several key individuals, the Joint Applicants also provided newspaper and newsletter articles as well as evidence of various awards, certificates and training.<sup>6</sup> Finally, the Joint Applicants provided letters of recommendation from several area banks, a technical college, a coal company and the local YMCA.<sup>7</sup>

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<sup>2</sup> Application at 1.

<sup>3</sup> Id. at 2.

<sup>4</sup> Interstate is a gas production company owned by the Joint Applicants.

<sup>5</sup> Application at 12, Effects on Service or Rates.

<sup>6</sup> Id., Exhibits D through N.

<sup>7</sup> Id., Exhibit C.

## Review and Discussion

KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . 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) provides that “[n]o 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 . . . . The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with the law, for a proper purpose and is consistent with the public interest.”

The Commission Staff issued a data request to the Joint Applicants on March 29, 2005 to obtain additional information and clarify certain issues regarding the Joint Applicants’ financial, technical and managerial ability. The Joint Applicants responded to the Staff’s Data Request on April 14, 2005.

In response to a question about the due diligence performed, the Joint Applicants cite the meetings they’ve held and the reviews they’ve undertaken. The Joint Applicants state that they will work with Sigma’s bankruptcy attorneys to satisfy claims under bankruptcy law<sup>8</sup> and that they plan to follow Bankruptcy Court procedures.<sup>9</sup>

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<sup>8</sup> Id., Item 6.

<sup>9</sup> Id., Item 10.

The Joint Applicants indicated that they have not met with officials of Salyersville or Magoffin County even though these officials represent the area where the greatest numbers of Sigma's customers reside.<sup>10</sup> This is particularly troubling given that the Joint Applicants acknowledge that Salyersville objects to the proposed acquisition and that they were aware that Salyersville planned to submit a bid for Sigma.<sup>11</sup>

In response to a question seeking to clarify their intention to amend Sigma's bankruptcy filing, the Joint Applicants stated that they were considering amending the filing to a Chapter 11 proceeding. In that same response, the Joint Applicants stated that they have not yet developed a formal business plan. However, they stated they would work with Sigma's bankruptcy attorneys.<sup>12</sup>

The Joint Applicants anticipate no changes to Sigma's rates for the first 12 months following the acquisition. However, they state that their intentions for the following 12 months are dependent upon a number of factors including the resolution of Sigma's pending complaint against BTU Gas Company, Inc. in Case No. 2004-00018.<sup>13</sup>

Finally, the Joint Applicants were questioned about changes that would be implemented regarding Sigma's gas procurement practices. The response described the current manner in which Sigma obtains its gas supply and addressed the Joint Applicants' ability to acquire gas from alternate sources.<sup>14</sup>

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<sup>10</sup> Id., Item 9.

<sup>11</sup> Id.

<sup>12</sup> Id., Item 4.

<sup>13</sup> Case No. 2004-00018, Sigma Gas Corporation v. B.T.U. Gas Company, Inc.

<sup>14</sup> Id., Item 12.

## Findings and Decision

In making its determination regarding the Joint Applicants' financial, technical and managerial ability and whether or not the proposed acquisition is in the public interest, the Commission has considered the information included in the application and the Joint Applicants' responses to the data request. We find that the application and data responses do not form a sufficient basis for the Commission to approve the proposed acquisition.

When addressing the existence of a business plan, Joint Applicants responded with regard to requirements of the Bankruptcy Court while ignoring the Commission's perspective. Although certain aspects of a business plan are presented, it appears that many items that would be included in an appropriate plan have yet to be resolved.

The Commission is concerned, for example, with the Joint Applicants vague responses as to how they would handle the significant claims of Sigma's creditors. In addition, the Joint Applicants discuss their intention to expand the system but have provided no indication of how they will access capital or operating funds after the acquisition. As previously noted, the Joint Applicants have submitted letters of recommendation from several area banks. These letters attest to the fact that the Joint Applicants have been customers for several years and are civic minded businessmen, nothing further.<sup>15</sup>

The Joint Applicants provided some detailed information regarding the technical and managerial ability of themselves and 10 employees of Interstate and other affiliated

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<sup>15</sup> The Joint Applicants provided no evidence of their personal financial viability or that of their existing business operations. It is also noted that a letter of credit was not provided.

businesses.<sup>16</sup> However, other than evidence of training courses attended and the ability to operate two very small gas distribution systems, nothing concrete was provided. Although Sigma, with approximately 778 customers, is not a particularly large gas system it is significantly larger than the two small gas systems operated by the Joint Applicants. Therefore, evidence of their ability to operate the two small gas systems does not necessarily translate to an ability to operate Sigma. The Joint Applicants state that accounting, billing, and collection services will be contracted to the current accountants employed by Sigma; however, nothing else is discussed regarding administration or daily operation of the Sigma system.

The Commission is also concerned with the information provided by the Joint Applicants concerning the procurement of a reliable gas supply for Sigma. It appears that the Joint Applicants correctly understand the existing situation where Auxier Road Gas (“Auxier”) purchases and transports Sigma’s gas through Auxier’s distribution lines. The Joint Applicants state that they are considering having Sigma secure its gas from other sources but provide nothing definitive. Based on comments included throughout the application and in the response to the data request, the Joint Applicants appear to be primarily interested in drilling new wells along or near Sigma’s lines. They claim that this approach would not only be good for Sigma but for the local economy as well.<sup>17</sup> Whether or not this claim is accurate, the Commission is concerned with the Joint Applicants’ failure to identify their intended source of gas for Sigma.

Finally, the Commission has significant concerns with the Joint Applicants lack of a business plan. While there is certainly some uncertainty because of Sigma’s

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<sup>16</sup> Application at 3–8.

<sup>17</sup> Id. at 8.

bankruptcy status, the Joint Applicants could have addressed many of the issues that they and Sigma face. Failure to do so does not support a finding that the Joint Applicants have the managerial ability to provide reasonable gas service to Sigma's customers.

For the reasons noted above, the Commission is unable to find that the Joint Applicants have the financial, technical and managerial ability to provide reasonable service. Nor can the Commission conclude that the proposed transaction is consistent with the public interest.

IT IS THEREFORE ORDERED that the request of the Joint Applicants to acquire the corporate stock of Sigma is denied.

Done at Frankfort, Kentucky, this 29<sup>th</sup> day of April, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above the text 'Executive Director'.

Executive Director