
S T O L L

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C. KENT HATFIELD
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May 23, 2005

RECEIVED

MAY 23 2005

PUBLIC SERVICE
COMMISSION

Ms. Beth O'Donnell
Executive Director,
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

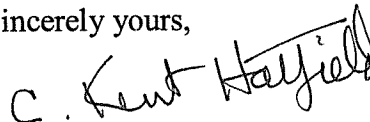
Re: Case No. 2005-00073

Dear Ms. O'Donnell:

Enclosed please find the original and ten (10) copies of Joint Applicants' Petition for Rehearing in the above-referenced case. An extra copy is enclosed for your file stamp. Please return the extra copy in the enclosed, self-addressed postage paid envelope.

Your assistance in this matter is greatly appreciated.

Sincerely yours,



C. Kent Hatfield
Deborah T. Eversole
Counsel to Joint Applicants,
Jerome A. Kanney and Dennis L. Rohrer

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 23 2005

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)

**APPLICANTS' VERIFIED PETITION FOR RECONSIDERATION
OR, IN THE ALTERNATIVE, FOR REHEARING**

Jerome A. Kanney and Dennis L. Rohrer ("Joint Applicants"), by counsel, for their Verified Petition for Reconsideration or, in the Alternative, for Rehearing, pursuant to KRS 278.400, state as follows:

INTRODUCTION

On April 29, 2005, the Commission entered its Order (the "April 29 Order") denying Joint Applicants' petition to acquire control of Sigma Gas Corporation ("Sigma"). The April 29 Order, at 5, indicates that the Joint Applicants had not provided "sufficient basis" for approval and that the Commission, consequently, was "unable to find" that Joint Applicants have the financial, technical, and managerial ability to provide reasonable service, or that the transaction is consistent with the public interest [April 29 Order at 7].

Until the day they received the Commission's Order, Joint Applicants were wholly unaware that their petition and responses to data requests, submitted without counsel, had, in the Commission's view, failed to make their case. Joint Applicants have

now engaged counsel and are confident that their case can, and will, be made on rehearing, if not by this Petition alone.

This Petition addresses the information deficiencies the Commission noted in its April 29 Order, as follows:

-Deficiency: The Commission stated that Joint Applicants had provided “no evidence of their personal financial viability or that of their existing business operations” and no “letter of credit” [April 29 Order at 5, n. 5];

Response: Joint Applicants attach, as Exhibit 1 hereto, a copy of a Commercial Loan Commitment from Community Trust Bank, Inc., approving an unsecured \$250,000 line of credit, which funds will be available to be used for Sigma after its emergence from bankruptcy. Joint Applicants attach, as Exhibit 2 hereto, a summary of the business operations of Interstate Natural Gas Company (“Interstate”), one of the largest natural gas producers in eastern Kentucky, demonstrating the nature and scope of its natural gas operations. Joint Applicants also file, contemporaneously herewith, and under seal, their Personal Financial Statements demonstrating their personal financial viability.

-Deficiency: The Commission stated that Joint Applicants had provided too little discussion of their proposed business plan and of the proposed “administration or daily operation of the Sigma system” after its emergence from bankruptcy [April 29 Order at 6]:

Response: In this Petition, Joint Applicants explain the distribution of employee responsibility as to the day to day operation and administration of the Sigma system and provide further discussion of their proposed business plan.

-Deficiency: The Commission stated that Joint Applicants had provided too little information with regard to procurement of a reliable gas supply for Sigma [April 29 Order at 6];

Response: Exhibit 2 hereto describes the resources available to Interstate Natural Gas Company. In addition, this Petition otherwise describes Joint Applicants' access to capital to ensure adequate gas to Sigma's customers and demonstrates that Joint Applicants will ensure an adequate gas supply for Sigma. Moreover, Joint Applicants pledge herein that existing supply arrangements for Sigma will not be disturbed unless and until adequate, reliable alternative means of obtaining gas, that are at least as cost-effective as those means currently employed, have been secured.

- Deficiency: The Commission stated its concern that Joint Applicants had not met with local officials, as the City of Salyersville objects to the proposed acquisition and wishes to buy Sigma's assets itself [April 29 Order at 4].

-Response: Mr. Kanney spoke at length to the Mayor of Salyersville on May 19, 2005, with regard to the future of Sigma. The conversation was a cordial one, during which Mr. Kanney offered assurances that Sigma's customers will be supplied with adequate gas if Joint Applicants' Petition is approved. The Mayor asked Mr. Kanney to speak to the City Council, and Mr. Kanney plans to do so. If the transfer is approved, Joint Applicants pledge that their door will remain

open to Salyersville City officials who wish to discuss the best interests of Sigma's customers.

Joint Applicants note that their door will also remain open to officials of the Magoffin and Floyd County governments, whose constituents also are served by Sigma and who notably have *not* objected to the proposed transfer. Joint Applicants also note that fewer than half of Sigma's present customers reside within the City of Salyersville. However, as in *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH*, P.S.C. No. 2002-00018 (Final Order dated May 30, 2002; Order on Rehearing dated July 10, 2002) the City's desire to acquire the utility does not control this case.¹

Joint Applicants urge the Commission to enter an expedited finding that the additional information filed in and with this Petition is sufficient to demonstrate that the application should be approved. The bankruptcy proceeding has dragged on for months, with accompanying disruption and uncertainty as to the utility's future. In addition, as of this filing, the Governor's Office for Local Development ("GOLD") continues to pay Auxier Road Gas Company ("Auxier") for management services. Joint Applicants stand ready to provide management services to Sigma if such management agreement is terminated, or when the Commission approves this acquisition, whichever is earlier.

¹ To the extent that the April 29 Order implies a predisposition that the City of Salyersville should obtain Sigma, it is somewhat puzzling. While Joint Applicants admire the City, it has no experience whatever with natural gas utility operations, and certainly has offered the Commission no proof of its managerial, technical, and financial ability to take on such a project. Moreover, if Salyersville acquired Sigma's assets, Sigma's customers would lose the protection afforded by Commission regulation, as Salyersville is not a "utility" regulated by the Commission. KRS 278.010.

Joint Applicants offer a speedy conclusion to the bankruptcy proceeding and experienced, fresh new management committed to restoring and ensuring Sigma's financial health. The information provided herein establishes Joint Applicants' financial, technical, and managerial competence to operate the system, their financial commitments to the system, their plans for the system, and the positive contribution to the public interest that will result from the transfer. Joint Applicants emphasize that speedy Commission action approving the application is very much in the public interest.

However, if the additional information provided in this Petition is insufficient to assuage Commission concerns, the Joint Applicants request that the Commission schedule a hearing in this matter so that Joint Applicants may, consistent with their entitlement to due process of law, be made aware of any continuing, unaddressed Commission concerns and be given an opportunity to respond to those concerns.

ARGUMENT

I. JOINT APPLICANTS' DEMONSTRATION OF FINANCIAL, TECHNICAL, AND MANAGERIAL ABILITIES TO PROVIDE REASONABLE UTILITY SERVICE, AS SUPPLEMENTED HEREIN, ESTABLISHES THAT THE PROPOSED TRANSFER SHOULD BE APPROVED.

The Commission noted in its April 29 Order, at 5-6, that Joint Applicants' successful operation of two gas utilities in Kentucky, Dema Gas Company, Inc. ("Dema") and Cow Creek Gas, Inc. ("Cow Creek"), and the Commission's specific findings of technical, financial, and managerial expertise in the cases in which Joint

Applicants acquired those utilities,² does not establish their credentials to operate Sigma's larger system. Joint Applicants respectfully submit that their experience with Dema and Cow Creek do, at the very least, demonstrate that they and their employees are skilled and knowledgeable with regard to operation of regulated local distribution companies, with regard to serving gas utility customers in Kentucky, and with regard to state and federal regulatory requirements, including safety requirements. Joint Applicants have, for example, an Operator Qualification Plan pursuant to federal regulations that specifies specific system skills and responsibilities and Joint Applicants' employees qualified to perform those responsibilities. A similar plan would, of course, be developed for Sigma. Joint Applicants note that the most recent report from Commission Staff resulting from an inspection of Dema stated that no deficiencies whatever were found [July 7, 2003 Letter of Eddie B. Smith, PE, Manager, Gas Branch, PSC Division of Engineering, to Mr. Kanney, Exhibit 3 hereto]. The most recent report concerning Cow Creek found only one – its O&M and Emergency Plans included names of Commission employees who had, without Joint Applicants' knowledge, left the Commission. Joint Applicants corrected the O&M and Emergency Plans immediately [May 30, 2002 Letter of Eddie B. Smith,

² See *Application of Elizabeth Stephens Bierbauer Attorney-in-Fact for D.C. Stephens, d/b/a Leslie Oil and Gas Company and Cow Creek Gas, Inc. for Approval of Sale to Cow Creek Gas, Inc. Pursuant to KRS 278.020(4),(5), P.S.C. Case No. 94-321* (Final Order dated January 6, 1995) (finding that Mr. Kanney and Mr. Rohrer have “financial, technical, and managerial abilities to provide reasonable service” and noting Mr. Kanney’s years of work for “various gas companies for many years, including B&H Gas System, a provider of natural gas and services in Floyd County”); *Application of Jerome A. Kanney and Dennis L. Rohrer and Mary Leslie and Susan A. Branham for the Approval of the Acquisition of the Stock of Dema Gas Company, Inc. (Dema) of Prestonsburg, Floyd County, Kentucky, PSC Case No. 99-232* (Final Order dated August 3, 1999) (approving Joint Applicants’ acquisition of Dema from the two other joint applicants in that case on the basis that they have the “financial, technical, and managerial ability to provide reasonable service”).

PE, Manager, Gas Branch, PSC Division of Engineering, to Mr. Kanney and Mr. Kanney's response, collectively, Exhibit 4 hereto].

However, Joint Applicants' demonstrated expertise in running these utilities is not the sum total of their qualifications to operate Sigma. They own and operate, in addition to the two regulated gas utilities, Interstate, one of the largest producers of natural gas in eastern Kentucky, which expects to drill approximately 50 wells this year and currently operates over 340 wells. Interstate and related companies have over sixty (60) employees and contract workers, many more than Sigma. Additional information concerning Interstate is attached hereto at Exhibit 2. The size and scope of Sigma's operation, in short, is not beyond either the ability or the experience of the Joint Applicants.

Joint Applicants' business expertise has been recognized in numerous honors and awards, some of which were described to the Commission in the initial application in this case. Since that application was filed, Joint Applicants have been named as finalists in the Ernst & Young Entrepreneur of the Year Awards for south central Ohio and Kentucky ["Ernst & Young Names Award Finalists," *The Courier-Journal*, May 7, 2005, Exhibit 5 hereto].

Next, Joint Applicants' employees who will be responsible for the day-to-day operation of Sigma are well-trained, well-qualified, and experienced. Joint Applicants provided in their initial filing the names and qualifications of their employees. The Commission indicated, however, in its April 29 Order, that the information was not sufficiently concrete. Accordingly, additional specificity as to employee duties in the operation of Sigma is provided herein.

First, Joint Applicants themselves, whose qualifications and experience are described in the initial application in this case, and who have been in business together in the gas industry for sixteen years, plan to be hands-on managers of the Sigma system. They will maintain awareness of every aspect of Sigma's operations, just as they carefully manage their current, successful businesses.

Next, the Superintendent charged with responsibility for the day-to-day operations of Sigma, and reporting to Mr. Kanney and Mr. Rohrer, will be Kevin Garrett. Specific qualifications of, and training completed by, Mr. Garrett are included in the initial application. Mr. Garrett will deal with such aspects of running the system as installing meters, ensuring regulatory compliance, and responding to customer complaints and to the Commission's Division of Consumer Services. Mr. Garrett has been an employee of Joint Applicants since 1998 and is well-qualified to perform these duties.

Michael Burke, CPA, is another key employee who will perform significant duties for Sigma. Mr. Burke's many years of experience and qualifications are given in the initial application in this case. Mr. Burke, who serves as controller of Interstate, will perform financial services and analysis for Sigma, preparing financial reports, overseeing bookkeeping and cost allocation, and reporting directly to Joint Applicants.

The additional employees whose qualifications were described in the initial application, many of whom possess relevant professional degrees, and who have worked in the gas industry for years, constitute additional human resources available to ensure, on a proper and thoroughly documented allocated-cost basis, that Sigma will provide safe, adequate, and reliable gas service for years to come.

Joint Applicants also are well-qualified financially to operate Sigma. Contemporaneously with this Petition, Joint Applicants file their personal financial statements so establishing. In addition, Exhibit 1 to this Petition demonstrates that, on signature alone, Joint Applicants have been given a \$250,000 line of credit which will be available for Sigma after it emerges from bankruptcy. The Commission need have no concern with regard to Joint Applicants' personal financial viability, their ability to obtain access to necessary capital, or their willingness to commit financial resources to the operation of Sigma.

Joint Applicants are well-qualified financially, technically, and managerially to operate Sigma, and will bring an excellent team of employees to the tasks ahead. The statutory standard of KRS 278.020(4) is more than met.

II. THE PUBLIC INTEREST WILL BE SERVED BY APPROVING THE PROPOSED TRANSFER.

A. Joint Applicants Are Well-Qualified to Provide the Fresh, Innovative Management Sigma Needs, and The Proposed Transaction Meets And Exceeds the Public Interest Standard Set Forth By the Commission In Prior Orders.

Joint Applicants offer innovative, energetic management and new ideas that, coupled with the much-needed fresh financial start from the bankruptcy proceeding, will resuscitate the long-troubled Sigma. This new management will constitute a clean break from the troubled past that is very much in the public interest.

The public interest standard for utility transfers in general was definitively described by the Commission in 2002 in another case in which the local government opposed the transfer with a view toward acquiring the utility (Kentucky-American Water Company) itself:

“Any party seeking approval of a transfer of control must show that the proposed transfer will not adversely affect the existing level of utility service or rates *or* that any potentially adverse effects can be avoided through the Commission’s imposition of reasonable conditions on the acquiring party. The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, enhanced service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable.”³

The Commission then rejected arguments made by the Kentucky Attorney General and the Lexington-Fayette Urban County Government that a “transfer of control must produce readily quantifiable benefits to be in the public interest,” reasoning that “we find no authority to support such a proposition. Such a standard runs counter to existing Commission precedent. Moreover, while this standard may be achievable in limited instances, most transfers of control that are presented to this Commission would be unable to meet this standard.”⁴

The acquisition of Sigma by Joint Applicants more than meets the standard described in *Kentucky-American*. As the Commission stated, even if adverse effects would otherwise potentially arise from an acquisition, the public interest standard is still met if those effects can be avoided through Commission imposition of reasonable conditions. There will be no adverse effects here; but even if there were, the Commission should consider what reasonable conditions might mitigate any problems it may foresee rather than denying the application outright.

³ *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH*, P.S.C. No. 2002-00018, at 9, *quoting* Final Order dated May 30, 2002 (Order on Rehearing dated July 10, 2002) (the “*Kentucky-American* case”).

⁴ *Id.*, at 9-10.

The Commission's Order approving the transfer of the Kentucky assets of Verizon South, Inc. ("Verizon") to Kentucky ALLTEL, Inc. ("ALLTEL") is a case in point.⁵ The Commission in its Order expressed a number of serious concerns about the acquirer, including the Nebraska Public Service Commission's conclusion that ALLTEL had in fact provided "substandard customer service" after acquiring a utility in that state, consisting of "excessive hold time, significant billing errors, excessive static, and untimely service repair."⁶ Other problems noted by the Kentucky Commission included ALLTEL's inability to provide certain customer services that Verizon had provided⁷ or to replicate the operational support systems ("OSS") that Verizon had made available to competing carriers under federal law.⁸ The Commission also considered ALLTEL's position on certain issues "very troubling."⁹ Nevertheless, the Commission approved the transfer, conditioning it upon thirteen written conditions. Those conditions included monthly service quality reports, corrective action reports, an advisory as to "any other services currently offered by Verizon that it will not provide," and regular meetings with Commission staff.¹⁰

The Commission, should it continue to perceive some problem with the proposed transfer even after receiving the evidence provided herein, should offer the Joint Applicants the same opportunity it gave to ALLTEL and impose reasonable reporting and monitoring conditions rather than denying the application.

⁵ *Petition by ALLTEL Incorporated to Acquire the Kentucky Assets of Verizon South, Incorporated*, Case No. 2001-00399 (Order dated Feb. 13, 2002)(the "ALLTEL Order").

⁶ ALLTEL Order at 5-6.

⁷ ALLTEL Order at 7.

⁸ ALLTEL Order at 9-12.

⁹ ALLTEL Order at 12.

¹⁰ ALLTEL Order at 19-20.

The application, as clarified and supplemented herein, meets – indeed, *exceeds* -- the public interest standard set forth in previous Commission orders. It should be approved.

B. Acquisition of Sigma by Joint Applicants Will Serve The Public Interest By Creating New Access to Capital And Experienced, Capable New Management.

Sigma's customers need the expertise, the financial strength, and the fresh ideas brought to the table by Joint Applicants. The transfer to Joint Applicants obviously will not cause harm over and above leaving the utility in its present state and permitting it to flounder on in bankruptcy under interim management.

But even prior to the bankruptcy, Sigma's troubles, and those of its predecessor in Salyersville, were many and varied, as the Commission is well aware. The Salyersville Gas Company, Inc., system was acquired by Sigma after the former had gone into bankruptcy.¹¹ In numerous orders subsequent to this acquisition, the Commission catalogued ongoing troubles and sought to come to grips with them. *See, e.g., The Application of Sigma Gas Corporation for Approval of Financing*, P.S.C. No. 99-074 (Order dated October 1, 1999)(the "Financing Order"). In that case, Sigma sought financing of \$1,511,759.99 from the Department of Local Government ("DLG") to pay, among other things, settlement of a judgment against it, delinquent property taxes, and costs of construction for which it had failed to obtain prior Commission approval pursuant to statute. The Commission expressed its concern at Sigma's accumulating obligations: in "less than six years, Sigma has increased its outstanding long-term debt

¹¹ *The Joint Application of Sigma Gas Corporation and Salyersville Gas Company, Inc., for Approval of the Acquisition of Assets of Salyersville Gas Company, Inc.*, Case No. 93-349 (Final Order Approving dated Dec. 15, 1993).

and current and accrued liabilities by nearly \$1.4 million. Neither principal nor interest has been paid to DLG by Sigma since the issuance of the loans. Sigma has also been in arrears to its gas suppliers.” [Financing Order at 4]. The Commission declared that “Major improvements in the management and operations of the company are essential if the company is to remain operational.” [Financing Order at 5].

Joint Applicants stand ready to provide those major improvements. Given the desperate current condition of the utility, and its otherwise troubled history, there should be no doubt that putting the utility in the hands of Joint Applicants would benefit the utility and its ratepayers. This acquisition would place the utility into the hands of people who have operated gas utilities, and other gas operations, for years; who have been recognized repeatedly for their acumen by the business and natural gas communities; and whose reputation, financial resources, and expertise will resuscitate this utility, provide instant access to capital, and ensure reasonable and adequate gas service to its customers for many years to come.

The Commission in its April 29 Order indicated that it will not issue an approval until it is given specific plans. There remain real obstacles to development of a full and specific business plan for this utility, as it remains in bankruptcy. It is possible that claimants against the bankruptcy estate would rely on some portions of the plan to maximize their claims, thereby financially injuring Sigma and its customers. Such a result is no more desirable to the Commission than to Joint Applicants. Moreover, a full description of the manner in which Sigma’s creditors’ claims will be handled is, at this point, impossible. That is a matter within the jurisdiction of the bankruptcy court, and Joint Applicants will not be able to make these decisions – although they are confident

that their financial and managerial abilities, together with the \$250,000 line of credit they pledge to Sigma's use after its emergence from bankruptcy -- will ensure the financial health of Sigma after these claims have been dealt with by the court.

However, Joint Applicants recognize that the Commission requires as concrete a record as possible to enable it to approve the Application. Joint Applicants state that, although the bankruptcy court ultimately has jurisdiction over the issue, Joint Applicants' attorneys have been in contact with GOLD and have offered assurances that Joint Applicants will work with GOLD to settle its claims in a mutually satisfactory manner. In addition, Commission Acting General Counsel Gerald Wuetcher, who has been involved in the bankruptcy proceeding, will be kept apprised of all developments and may provide input as the Commission directs.

C. Joint Applicants' Plan to Develop Local Gas Production to Serve Sigma Customers Explicitly Serves the Public Interest as Set Forth By The Kentucky General Assembly And Will Benefit Sigma's Customers.

As Joint Applicants have stated previously, they plan to drill new wells near the Sigma line to ensure that a plentiful supply of natural gas is available to Sigma's customers. In the meantime, Joint Applicants will continue to obtain gas from Sigma's existing suppliers. While gas from other lines will continue to be obtained for Sigma's customers during the development of these new wells, and will remain available as a backup supply to ensure adequacy of service, there is no question that development of Kentucky's own gas resources serves the public interest as explicitly stated by the General Assembly:

It is hereby declared to be the public policy of this Commonwealth to foster conservation of all mineral resources, to encourage

exploration for such resources, to protect correlative rights of land and mineral owners, to prohibit waste and unnecessary surface loss and damage and to encourage the maximum recovery of oil and gas from all deposits thereof now known and which may hereafter be discovered; and to promote safety in the operation thereof. To that end, KRS 353.500 to 353.720 is enacted and shall be liberally construed to give effect to such public policy.

KRS 353.500.

In addition, the General Assembly has explicitly charged this Commission with the duty to facilitate greater use of natural gas produced in Kentucky:

278.507 Public Service Commission’s policy to facilitate greater use of natural gas produced in Kentucky; commission’s duties and prohibited activities

(1) It shall be the policy of the Public Service Commission to facilitate greater utilization of the natural gas produced or available for production within the state, where this can be done without detriment to the customers of utilities under jurisdiction of the commission.

On information and belief, most of the natural gas currently used by Sigma is produced out of state. Moreover, Sigma currently has excess pipeline capacity which Joint Applicants plan to maximize. Joint Applicants’ development of Kentucky’s gas resources will serve the General Assembly’s purpose to ensure “maximum recovery” of Kentucky gas resources, even as it benefits the local area significantly by generating new jobs, royalties to mineral owners, and retail sales of supplies from area businesses. In addition, the Commission’s approval of the proposed transfer will facilitate greater use of Kentucky’s natural gas resources pursuant to its statutory duty as defined by KRS 278.507.

Joint Applicants’ plan to develop new intrastate gas resources will not harm Sigma’s customers. On the contrary: the customers will be assured of adequate gas through Interstate’s current supplies and new resource development in addition to those

supplies currently available. In addition, the funds pledged to the operation of Sigma after its emergence from bankruptcy, and Joint Applicants' access to capital, as shown by Joint Applicants' \$250,000 unsecured line of credit as well as by the glowing recommendations provided by banking officials and attached to the original application in this case, will ensure that Sigma can obtain adequate gas supplies regardless of the productivity of any new wells drilled near Sigma's lines.

After Joint Applicants' acquisition of Sigma, then, Sigma's customers will not only be assured of the availability of gas from current sources; they will also have access to Interstate's capacity as well as its new production. Joint Applicants pledge, however, that they will continue to purchase gas delivered by Columbia, through Auxier Road, to ensure that the supply will not falter. They will continue to purchase gas pursuant to these current arrangements until supplies that are at least as cost-effective and reliable are obtained. Kentucky production will supplement this supply. However, the ultimate impact of the proposed acquisition upon Sigma's access to gas supply will only be to enhance it, as new sources become available and as Joint Applicants ultimately connect Sigma's lines with other pipelines for additional backup at competitive rates.

Sigma's gas supply will be secure, and Kentucky resources will be further developed as a result of the proposed transfer. The public interest standard is met.

III. SHOULD THE COMMISSION DETERMINE THAT THIS PETITION DOES NOT SUFFICIENTLY CURE THE EVIDENTIARY GAPS IN THE RECORD IN THIS CASE, JOINT APPLICANTS ARE ENTITLED TO A FORMAL HEARING.

Joint Applicants have made every effort to address in this Petition each and every issue raised by the Commission in its April 29 Order. Moreover, they continue to urge upon the Commission the public interest in a speedy approval of their application. As soon as an approval is issued, new management will be able to operate the utility directly, and will begin to bring it out of bankruptcy, thereby ending the confusion and uncertainty that have concerned local officials and Sigma's customers. However, if additional Commission concerns that could result in denial of the Petition continue to exist, Joint Applicants respectfully request a formal hearing so that those concerns can be fully understood and addressed.

Joint Applicants are entitled to no less.

The goal of Constitutionally-guaranteed procedural due process is "to minimize the risk of substantive error, to assure fairness in the decision-making process, and to assure that the individual affected has a participatory role in the process. The touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard 'in a meaningful manner.'" *Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996), quoting *Loudermill v. Cleveland Bd. Of Educ.*, 721 F.2d 550, 563 (6th Cir. 1983), *aff'd*, 470 U.S. 532 (1985). Due process thus requires that a person before a tribunal be given a full opportunity to respond "with awareness of the recommendations and arguments to be countered." *United States v. Cabbage*, 430 F.2d 1037, 1039 ((6th Cir. 1970). See also *Kentucky American Water Company v.*

Commonwealth, 847 S.W.2d 737, 741 (Ky. 1993) (finding that parties to a Commission case are “entitled to know what evidence is being considered and are entitled to an opportunity to test, explain and/or refute that evidence”).

Joint Applicants’ request was initially denied without formal hearing. They have made their best effort, using the April 29 Order as guidance, to supplement the record as directed. If additional information is needed, or if issues remain unaddressed, Joint Applicants are entitled to a formal hearing where they will be informed of those issues and given the opportunity to address them in a full and meaningful manner.

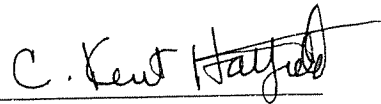
CONCLUSION

Given Sigma’s troubled past, its current condition, and the fresh start offered by the experienced and respected Joint Applicants, it is clear that the proposed transfer more than meets the public interest standard as set forth by the Commission in *Kentucky-American* and *Alltel*. The transfer will also serve the public interest as defined by the General Assembly in KRS 353.500 and KRS 278.507. Joint Applicants also believe that the information provided in and with this petition, and under seal in a contemporaneous filing, establish, pursuant to concerns expressed in the Commission’s Order of April 29, that they have the technical, financial, and managerial expertise to operate a gas utility – and, in fact, to provide Sigma’s customers with a new assurance of reasonably priced, reliable gas service for years to come. The sooner the application is approved, the sooner Joint Applicants may assume direct management of the utility and begin the process of bringing it out of bankruptcy.

For these reasons, Joint Applicants respectfully request that the Commission consider the new evidence provided herein and enter its Order approving the proposed

transfer. In the alternative, should the Commission continue to entertain doubts with regard to the proposed transfer, Joint Applicants request a formal hearing so that they can be apprised of those doubts and can address them prior to final disposition of this case.

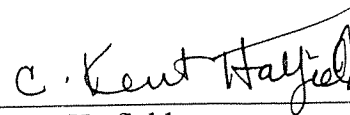
Respectfully submitted,



C. Kent Hatfield
Deborah T. Eversole
Stoll, Keenon & Park, LLP
2650 AEGON Center
400 West Market Street
Louisville, Kentucky 40202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition has been furnished by first-class mail this 23rd day of May, 2005 to the parties listed on the service list of the Kentucky Public Service Commission posted on the Commission's Internet site as of this date.



C. Kent Hatfield

Estill R. Branham
Manager
Sigma Gas Corporation
P.O. Box 22
Salyersville, Kentucky 41465

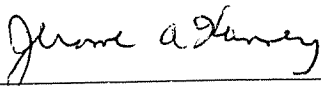
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Salyersville, Kentucky 41645

Barkley J. Sturgill
Fitzpatrick, Osbornem, Heaberlin
& Sturgill, PSC
Legal Arts Building
119 E. Court St., 2nd Floor
Prestonsburg, Kentucky 41653

VERIFICATION

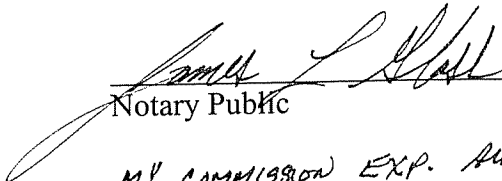
Commonwealth of Kentucky)
)
County of Pike)

Jerome A. Kanney, being first duly sworn, deposes and says that he has read the foregoing Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes them to be true.



Jerome A. Kanney

Subscribed and sworn to before me, this 20TH day of May, 2005.




Notary Public
MY COMMISSION EXP. AUG. 30, 2008

VERIFICATION

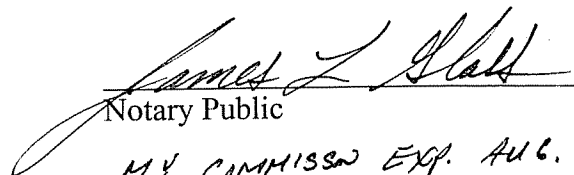
Commonwealth of Kentucky)
)
County of Pike)

Dennis L. Rohrer, being first duly sworn, deposes and says that he has read the foregoing Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes them to be true.



Dennis L. Rohrer

Subscribed and sworn to before me, this 20th day of May, 2005.



Notary Public
MY COMMISSION EXP. AUG. 30, 2008



building communities...built on trust®

P. O. Box 2947
Pikeville, Kentucky 41502-2947
606-432-1414

346 North Mayo Trail
Pikeville, Kentucky 41501-1492

COMMERCIAL LOAN COMMITMENT

May 17, 2005

Jerome A. Kanney and Dennis L Rohrer or Nominee
PO Box 3385
Pikeville, KY 41502

RE: Line of Credit to provide funding for the acquisition of Sigma Gas Corporation
(herein, the "Project")

Dear Mr. Kanney & Mr. Rohrer:

We are pleased to inform you that your application for financing for the above mentioned Project (herein, the "Loan") has been approved by Community Trust Bank, Inc. (herein, the "Bank"), subject to the following terms, conditions, and requirements:

1. **BORROWER:** Jerome A. Kanney and Dennis L. Rohrer or Nominee
2. **AMOUNT:** \$250,000 to be evidenced by the promissory note of the Borrower.
3. **TERM:** 12 months
4. **INTEREST RATE:** WSJ Prime + 1%
5. **ANNUAL FEE:** 1%

6. **PURPOSE:** To provide funding for the acquisition of Sigma Gas Corporation
7. **COLLATERAL:** Unsecured
8. **FEES AND COSTS:** Borrower will pay all fees and costs related to the loan or otherwise incurred by the Bank, even in the event the loan does not close for any reason including, but not limited to: document preparation and security interest perfection.
9. **LOAN AGREEMENT:** Subject to the negotiation of a definitive loan agreement satisfactory to the Bank, and all other loan documents as approved by the Bank's counsel.
10. **FINANCIAL CONDITION:** Provided no substantial adverse changes have occurred in the financial positions of the Borrower or the Guarantors since their application for this loan and that the financial statements the Bank has already received are complete and accurate.

11. This Commitment Letter shall terminate on May 20,2005 unless accepted by the Borrower. If this commitment is accepted, the loan (line of credit) closing must occur by September 30, 2005. If the loan (line of credit) does not close by that date, the commitment shall expire.

All understandings and agreements previously made between the parties hereto are merged into this agreement which fully expresses the agreement with neither party relying upon any statement or representation made by the other not embodied in this agreement. This agreement may not be changed orally, and may not be assigned by the Borrower.

Please review this commitment, and if it meets your approval, please sign the acceptance below and return one originally executed copy to me.

Sincerely



Stephen Belcher
Senior Vice President

c. File

I/we hereby acknowledge the acceptance of the terms of the aforementioned loan commitment.

"BORROWER"

JEROME A. KANNEY

BY: Jerome A. Kanney

TITLE: _____

DATE: 5-17-05

DENNIS L. ROHRER

BY: Dennis L. Rohrer

TITLE: _____

DATE: 5-17-05

State of NY
County of Putnam

The foregoing instrument was acknowledged before me this 17 day of May, 2005 by **Jerome Kanney**.

[Signature]
Notary Public
My Commission Expires: 3-16-06

State of NY
County of Putnam

The foregoing instrument was acknowledged before me this 17 day of May, 2005 by **Dennis Rohrer**.

[Signature]
Notary Public
My Commission Expires: 3-16-06

Significant Events in the History of Interstate Natural Gas Company and Related Companies

- 1989** Interstate Natural Gas Company (Interstate) was formed by Jerome A. Kanney and Dennis L. Rohrer.
- Interstate purchased 18 wells from Meridian/UMC Petroleum in the Perry, Martin and Letcher Counties.
 - Interstate drilled 3 gas wells.
- 1990** Interstate drilled 8 gas wells.
- Dennis L. Rohrer received the Society of Petroleum Engineers award for Outstanding Leadership and Service as the Chairman of the East Kentucky Section.
- 1991** Interstate drilled 3 gas wells.
- 1992** Interstate drilled 3 gas wells.
- 1993** Interstate drilled 2 gas wells.
- 1994** Interstate drilled 4 gas wells.
- 1995** Interstate moved its Pikeville office from Hibbard Street to Thompson Road.
- Jerome Kanney sold CPA clients and entered natural gas business full time.
 - Interstate drilled 5 gas wells.
- 1996** Interstate drilled 9 gas wells.
- 1997** Interstate drilled 8 gas wells.
- 1998** Interstate purchased 2 Barksdale wells.
- Jerome A. Kanney and Dennis L. Rohrer purchased Brushy Gap Coal & Gas, Inc. (3 wells), Eureka Gas, Inc. (1 well) and Cracker Oil and Gas Company (1 well) from the John Allen family in November.
 - Interstate drilled 10 gas wells.
 - Dennis L. Rohrer was given the Outstanding Community Service Award by the Rotary Club of Pikeville.
 - Jerome A. Kanney was given the Outstanding Community Service Award by the Rotary Club of Pikeville.

1999 Interstate purchased 7 wells in Pike and Floyd Counties from Eastern States.

- Interstate purchased 5 wells in Knott and Martin Counties from Columbus Hobbs.
- Interstate purchased 4 wells in Martin County from Pentex Energy.
- Interstate drilled 3 gas wells.
- Interstate developed Greenberry Hall Estates - 28 home sites for sale.
- Jerome A. Kanney received the Pikeville Area Family YMCA's Outstanding Leadership Award for the Partners with Youth Drive.

2000 Interstate drilled 6 gas wells.

- Interstate purchased 12 wells from Baiden Gas Company in December. The majority of the wells (9) are located in Martin County and 3 wells are located in Lawrence County.
- Jerome A. Kanney received the Outstanding Service Award for recruiting 20 new members for the Rotary Club of Pikeville.

2001 Interstate drilled 16 gas wells.

- Dennis L. Rohrer received the Kiwanis Club Citizen of the Year Award.
- Dennis L. Rohrer was selected Volunteer of the Year by the Pike County Chamber of Commerce.
- Jerome A. Kanney was the Rotarian of the Year, in recognition of Outstanding Dedication & Service to the Rotary Club of Pikeville.

2002 Interstate drilled 13 gas wells.

- Interstate expanded its administrative office on Thompson Road, adjacent to the Wal-Mart Super center.
- Interstate acquired its maintenance and construction field office at Mims Branch.
- Interstate developed Quail Valley Subdivision – 15 home sites for sale.
- Interstate purchased 18 Cohen and Schneider wells located in Lawrence County.
- Interstate purchased interest in 7 wells in Martin County from Southers.

- 2003** A new Schramm drilling rig was purchased by Crossrock, Inc., a related company to Interstate.
- Crossrock drilled 9 contract wells.
 - Interstate drilled 26 gas wells.
 - Jerome A. Kanney received the Rotary International's Vision Award for the Polio Fundraising and Membership Growth.
- 2004** Interstate drilled 29 gas wells.
- Crossrock drilled 27 contract wells.
 - Interstate acquired its production office at Mims Branch.
 - Jerome A. Kanney and Dennis L. Rohrer, the owners of Interstate Natural Gas Company, were selected by Eastern Kentucky University as Entrepreneurs of the Year.
 - Interstate Natural Gas Company was selected by the Pike County Chamber of Commerce as the Business of the Year.
- 2005** Thru 5-18-05 Interstate has drilled 30 gas wells.
- Thru 5-18-05 Crossrock has drilled 1 contract well.
 - Interstate Natural Gas Company was selected as the only finalist from Kentucky in the Construction Category for the Ernst & Young 2005 Entrepreneur of the Year Award for South Central Ohio and Kentucky.
 - Jerome A. Kanney was elected chairman of the Board of the Pikeville Area Family YMCA for the 9th consecutive year. The YMCA has 2400 members.
 - Jerome A. Kanney will become President of the 120 member Pikeville Rotary Club on July 1, 2005.
 - Interstate and affiliated companies employ over 60 employees.



Paul E. Patton, Governor

Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
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FRANKFORT, KENTUCKY 40602-0615
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(502) 564-3940
Fax (502) 564-1582

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Chairman

Gary W. Gillis
Vice Chairman

Robert E. Spurlin
Commissioner

July 7, 2003

Mr. Jerome Kanney
President
Dema Gas Company, Inc.
P. O. Box 3385
Pikeville, KY 41502

RE: Natural Gas Facilities Inspection of Dema Gas Company, Inc. ("Dema")

Dear Mr. Kanney:

On June 11-12, 2003, Mr. Earl H. Alderman, Jr. conducted a comprehensive safety inspection of Dema's natural gas facilities in Dema, Kentucky. No deficiencies were found. A copy of a report of that inspection is attached for your review. The previous inspection of Dema was on March 24, 2000 and resulted in one violation that was corrected.

Please review the enclosed inspection report. If you have any questions or need additional information, please contact Mr. Earl H. Alderman, Jr. at (502) 564-3940. This closes the inspection for 2003 and no additional correspondence is necessary.

We appreciate your continued interest in the safe operation of your natural gas facilities.

Sincerely,

Eddie B. Smith, PE
Manager, Gas Branch
Division of Engineering

EBS:EHA:dcp
0006100

Attachment



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

COMPREHENSIVE INSPECTION REPORT

DEMA GAS COMPANY, INC.
Pikeville, Kentucky

July 7, 2003

BRIEF

Mr. Earl H. Alderman, Jr. conducted a comprehensive inspection of the natural gas facilities of Dema Gas Company, Inc. ("Dema") in Dema, Kentucky on June 11-12, 2003. This inspection was conducted in accordance with the Public Service Commission's ("PSC") policy of inspecting all jurisdictional operators. Natural gas operators are jurisdictional to the PSC under KRS 278.040, 278.495, 278.992 and also through a 5(a) Agreement with the United States Department of Transportation, Office of Pipeline Safety, for the enforcement of the federal pipeline safety laws, 49 U.S.C. § 60101 et seq. and regulations promulgated thereunder.

INSPECTION

Dema is a gas distribution company serving 13 customers in the Knott County area of Eastern Kentucky.

A review was made of Dema's Operating and Maintenance, Emergency, Damage Prevention, Operator Qualification and Anti-Drug Plans during the office portion of the inspection. Also during the office visit, records were reviewed concerning the leak survey, system patrolling, odorization, valve maintenance, and regulator and relief valves.

Report -- Dema Gas Company, Inc.
July 7, 2003
Page 2

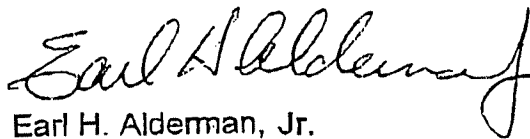
During the field inspection, checks were made on the systems regulators, along with checks on main line valves and residential meter settings. Mr. John Allen, Jr., assisted me on this inspection.

FINDINGS AND RECOMMENDATIONS

No deficiencies were observed during the inspection. It is recommended that a copy of this report be sent to Dema for its information.

It is also recommended that in order for Dema to safely operate its natural gas system, maintenance personnel must have training on the safe and proper ways to respond to leakage calls and also how to handle gas in an emergency. This training is available through the Kentucky Gas Association. Further information on the Kentucky Gas Association training seminars may be obtained by contacting Dr. Paul Lyons, Kentucky Gas Association, 310 C.C. Lowry Drive, Murray, Kentucky 42071, (270) 753-2151 or (800) 455-9427, E-mail Address: p.lyons@kygas.org, web address: <http://www.kygas.org>.

Respectfully submitted,



Earl H. Alderman, Jr.
Gas Utility Investigator

ES5

EHA:dcp
0306100



Paul E. Patton, Governor

Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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Fax (502) 564-1582

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Chairman

Gary W. Gillis
Vice Chairman

Robert E. Spurlin
Commissioner

May 30, 2002

Jerome A Kanney
Cow Creek Gas Inc.
P. O. Box 3385
Pikeville, KY 41502

RE: Natural Gas Facilities Inspection

Dear Mr. Kanney:

On March 12 and 14, 2002, Mr. Earl H. Alderman, Jr. conducted a comprehensive safety inspection of the natural gas facilities of Cow Creek Gas Inc. ("Cow Creek"), in Floyd County, Kentucky. A copy of a report of that inspection is attached for your review. The previous inspection of Cow Creek's facilities was June 17, 1999. During that comprehensive inspection, six deficiencies were found and corrected.

Your facility does not appear to be in general compliance with applicable PSC regulations. You will note that one deficiency was found during the comprehensive safety inspection. You are requested to respond to this report, outlining a correction schedule for the cited deficiency, by July 5, 2002. If you have any questions or need additional information, please contact Earl H. Alderman, Jr. at (502) 564-3940.

We appreciate your continued interest in the safe operation of your natural gas facilities.

Sincerely,

Eddie B. Smith, PE
Manager, Gas Branch
Division of Engineering

EBS:EHA:dcp/0202900

Attachment



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

COMPREHENSIVE INSPECTION REPORT

COW CREEK GAS, INC.
Pikeville, Kentucky

April 23, 2002

BRIEF

Earl H. Alderman, Jr. conducted a comprehensive inspection of the natural gas facilities of Cow Creek Gas, Inc. ("Cow Creek") on March 12 and 14, 2002. This inspection was conducted in accordance with the Public Service Commission's ("PSC") policy of inspecting all jurisdictional operators. Natural gas operators are jurisdictional to the PSC under KRS 278.040, 278.495, 278.992 and also through a 5(a) Agreement with the United States Department of Transportation, Office of Pipeline Safety, for the enforcement of the federal pipeline safety laws, 49 U.S.C. § 60101 et seq. and regulations promulgated thereunder.

INSPECTION

Cow Creek is a privately owned, gas distribution system operating in Floyd County, Kentucky, and serves approximately 31 customers.

A review was made of Cow Creek's Operating and Maintenance, Emergency, Damage Prevention, Operator Qualification and Anti-Drug Plans during the office portion of the inspection. Also during the office visit, records were reviewed concerning the leak survey, system patrolling, odorization, valve maintenance, and regulator and relief valves.

During the field inspection, checks were made on main line valves, residential and commercial meter settings and regulator stations.

John Allen, Jr. assisted me on this inspection.

Report – Cow Creek Gas, Inc.
May 30, 2002
Page 2

FINDINGS

One deficiency was observed during the inspection. Cow Creek's Operating and Maintenance ("O&M") and Emergency Plans have not been updated. 49 CFR Part 192.605(a).

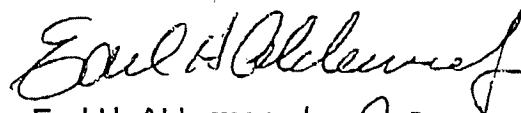
RECOMMENDATIONS

It is recommended that Cow Creek update its O&M and Emergency Plans as required.

It is further recommended that a copy of this report be sent to Cow Creek directing that it respond by July 5, 2002 with a schedule of compliance to the cited deficiency for Commission approval.

It is hoped that maintenance personnel from Cow Creek be encouraged to attend the various training seminars conducted throughout the state. The training available for maintenance personnel on the safe and proper ways to respond to leakage calls, how to handle gas in an emergency, and how to safely operate a natural gas system is available through the Kentucky Gas Association ("KGA"). Further information on the KGA training seminars may be obtained by contacting Dr. Paul Lyons, KGA, 310 C.C. Lowry Drive, Murray, Kentucky 42071, (270) 753-2151 or (800) 455-9427, E-mail Address: p.lyons@kygas.org, web address: <http://www.kygaz.org>.

Respectfully submitted,



Earl H. Alderman, Jr. *gms*
Gas Utility Investigator *EB*
Gas Branch

EHA:dcp
0202900

INTERSTATE NATURAL GAS COMPANY
P.O. Box 3385
347 Thompson Road
Pikeville, KY 41502
606/437-6147
Fax 606/432-5103

June 4, 2002

Eddie B. Smith, PE
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

RE: Natural Gas Facilities Inspection on Cow Creek Gas Inc.

Dear Mr. Smith:

Cow Creek Gas Inc. received your letter dated May 30, 2002, in regards to Earl H. Alderman Jr.'s inspection of our natural gas facilities located on Cow Creek, in Floyd County, Kentucky and are hereby responding to the one deficiency found.

Findings: One deficiency was observed during the inspection. Cow Creek's Operating and Maintenance (O&M) and Emergency Plans have not been updated.

Response: Cow Creek Gas Inc.'s O&M and Emergency Plans contained some names and phone numbers of the Public Service Commission staff that were no longer with the Public Service Commission. We were not aware those staff members were no longer employed by the Public Service Commission. It was verified on March 12, 2002, by Mr. Alderman, the names and phone numbers of the Public Service Commission staff that we needed to have updated in our O&M and Emergency Plans. These updates were made to all of our records on March 12, 2002.

Thank you very much for your time and attention in this matter.

Very truly yours,



Jerome A. Kanney
President
Cow Creek Gas Inc.

Business

The Courier-Journal | courier-journal.com/business

D

Dan Blake, editor
dblake@courier-journal.com
582-4651, phone
582-4360, fax

SATURDAY

MAY 7, 2005

Ernst & Young names award finalists

Finalists for the Ernst & Young Entrepreneur of the Year Awards from south central Ohio and Kentucky have been announced. Winners will be announced June 16.

Finalists from Kentucky are:

► **Construction:** Denny Rohrer, partner, and Jerry Kanney, partner, Interstate Natural Gas, Pikeville.

► **Financial Services:** Donald Thompson, president, Thompson Associates, Louisville; Tony Weber, president, Veredus Asset Management, Louisville.

► **Healthcare:** Dr. Cameron Durrant, president, Pediamed Pharmaceuticals, Florence; Steven Salman, CEO, Healthcare Underwriters, Louisville.

► **Master Category:** Juanita Burks, president, J.P. Burks Construction Co., Louisville; Bill Samuels, president, Maker's Mark Distillery, Loretto.

► **Retail:** Kent Taylor, chairman, Texas Roadhouse, Louisville; Greg Scheller, president, Scheller's Fitness & Cycling, Louisville.

— From staff and
wire reports