



S T O L L · K E E N O N · O G D E N

P L L C

2000 PNC Plaza  
500 West Jefferson  
Louisville, KY 40202  
(502) 333-6000  
Fax: (502) 333-6099  
[www.skofirm.com](http://www.skofirm.com)

W. DUNCAN CROSBY, III  
(502) 560-4263  
[duncan.crosby@skofirm.com](mailto:duncan.crosby@skofirm.com)

April 15, 2008

RECEIVED

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PUBLIC SERVICE  
COMMISSION

Ms. Stephanie L. Stumbo  
Executive Director  
Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

**RE: *Sigma Gas Corporation v. B.T.U. Gas Company***  
***Case No. 2004-00018***

Dear Ms. Stumbo:

Enclosed please find an original and ten copies of Cow Creek Gas, Inc.'s Motion to Intervene and for the Commission to Issue a Final Order in this Proceeding.

Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

W. Duncan Crosby, III

WDC:jms  
Enc.

cc: Karen Chrisman, Esq.  
John N. Hughes, Esq.

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>SIGMA GAS CORPORATION, COMPLAINANT</b>	)	
	)	
<b>V.</b>	)	<b>CASE NO. 2004-00018</b>
	)	
<b>B.T.U. GAS COMPANY, DEFENDANT</b>	)	

**MOTIONS OF COW CREEK GAS, INC.**  
**TO INTERVENE AND FOR THE COMMISSION TO**  
**ISSUE A FINAL ORDER IN THIS PROCEEDING**

Cow Creek Gas, Inc. (“Cow Creek”), by counsel, hereby moves the Commission to issue an order granting full intervention in this proceeding to Cow Creek as Sigma Gas Corporation’s successor in interest. As the Commission noted in its March 17, 2008 Order in this proceeding, the Commission approved the transfer of the assets of Sigma Gas to Cow Creek and DLR Enterprises, Inc., by order dated November 21, 2007, which asset transfer was completed on January 11, 2008. Cow Creek therefore has direct financial and operational interests in this proceeding, which interests no other party to this proceeding can or will represent.<sup>1</sup>

Cow Creek further moves the Commission expeditiously to issue a final order on the merits of the record in this proceeding, the substance of which is far from moot. A review of the record reveals that Defendant B.T.U. Gas Company (“B.T.U.”) has admitted to extending service to Sigma Gas’s (now Cow Creek’s) customers without first obtaining the requisite certificates of public convenience and necessity.<sup>2</sup> B.T.U.’s willful acts in extending and providing service to Sigma’s former customers were and are flagrant violations of KRS 278.020 and 807 KAR 5:001

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<sup>1</sup> See 807 KAR 5:001 Section 3(8).

<sup>2</sup> See *Sigma Gas Corp. v. B.T.U. Gas Co.*, Case No. 2004-00018, Response to Commission Order dated February 23, 2004 (March 29, 2004); .

§9(2). Though B.T.U. alleged that all of B.T.U.'s service extensions were "in the ordinary course of business," the language of 807 KAR 5:001 §9(3) proves B.T.U.'s assertions are false:

Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area ....

Furthermore, in Administrative Case No. 297, the Commission issued its definitive interpretation of KRS 278.020 and 807 KAR 5:001 §9 in such matters, stating:

[A] utility proposing physical bypass of an LDC in order to accommodate the use of natural gas by an end-user should be required to make application to this Commission requesting a certificate of convenience and necessity to bypass the LDC. No construction of any sort should be permitted before the certificate proceedings are completed. The Commission finds this necessary to prevent duplication of facilities and to protect the public interest.<sup>3</sup>

It is difficult to imagine a more wasteful duplication of services than to run gas lines to customers already being served, and in this proceeding B.T.U. has admitted to building such wasteful lines without first seeking the Commission's authority to do so.

The Commission has addressed similar situations in the past and held the proper remedy to be the cessation of service from the offending gas provider. In *In the Matter of: Delta Natural Gas Co., Inc. v. Tranex Corp.*, the Commission held that Annville Gas Transmission, Inc. had wrongfully physically bypassed Delta Natural Gas Company, Inc.'s facilities by providing gas service to Mid-South Electric Company, Inc.<sup>4</sup> One family, the Weavers, owned both Mid-South and Annville Gas, and claimed that they were, in effect, supplying gas to themselves, and therefore had not needed to obtain a certificate of public convenience and necessity to build

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<sup>3</sup> *In the Matter of: An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers*, Admin. Case No. 297, Order at 63 (May 29, 1987) (emphasis added).

<sup>4</sup> *In the Matter of: Delta Natural Gas Co., Inc. v. Tranex Corp.*, Case No. 10419, Order (July 16, 1990).

facilities to supply Mid-South.<sup>5</sup> The Commission, citing KRS 278.020, 807 KAR 5:001 §9, and its final order in Administrative Case No. 297, ordered Annville Gas to cease supplying Mid-South within twenty days.<sup>6</sup> Cow Creek submits that a similar injunction is an appropriate remedy against B.T.U. in this proceeding.

B.T.U.'s willful statutory violations continue to have a detrimental financial impact on Cow Creek. According to Sigma's evidence in the record of this proceeding, the annual financial impact to Sigma of B.T.U.'s flouting of the law and the Commission's regulations was \$26,557.71. Cow Creek, as Sigma's successor in interest, believes that such willful violations and continuing financial impact to Cow Creek make the timely disposition of this proceeding far from moot. Therefore, the Commission should give effect to KRS 278.020, and to its own regulations and orders, by expeditiously issuing an order in this proceeding enjoining B.T.U. from continuing to provide gas (1) to Sigma's former customers and (2) to all other customers to whom B.T.U. has extended service without first applying for the required certificates of public convenience and necessity.

**WHEREFORE**, Cow Creek Gas, Inc., by counsel, hereby respectfully moves the Commission to issue an order granting Cow Creek full intervenor status as Plaintiff Sigma Gas Corp.'s successor in interest. Cow Creek further respectfully moves the Commission to end B.T.U. Gas Co.'s continuing harm to Cow Creek, and to end B.T.U.'s continuing violation of relevant statutes, regulations, and Commission orders, by expeditiously issuing a final order in this proceeding enjoining B.T.U. from continuing to provide gas (1) to Sigma's former customers and (2) to all other customers to whom B.T.U. has extended service without first applying for the required certificates of public convenience and necessity.

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<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 5-6.

Dated: April 15, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Kent Hatfield", written over a horizontal line.

C. Kent Hatfield  
W. Duncan Crosby III  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2828  
Telephone: (502) 333-6000

Counsel for Cow Creek Gas, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for to Intervene and for the Commission to Issue a Final Order in this Proceeding was sent to the following attorneys of record by U.S. mail, postage prepaid, on this 15th day of April, 2008.

Honorable Karen Chrisman  
Attorney at Law  
McBrayer, McGinnis, Leslie & Kirkland  
PLLC  
305 Ann Street  
Suite 308  
Frankfort, KY 40601

Honorable John N Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, KY 40601

  
Counsel for Cow Creek Gas, Inc.