

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY FRONTIER GAS, LLC)	
FOR APPROVAL OF TRANSFER OF ASSETS OF THE)	Case No.
FORMER B.T.U. GAS COMPANY AND APPROVAL OF)	2012-00099
FINANCING OF ACQUISITION)	

O R D E R

Kentucky Frontier Gas, LLC ("Frontier") has applied for Commission approval of (1) the acquisition of the assets of the former B.T.U. Gas Company ("BTU") and (2) the financing in support of its acquisition of the former BTU assets. Finding that Frontier meets the requirements of both its acquisition request and its financing request, the Commission will approve those requests with this Order.

PROCEDURE

On March 16, 2012, Frontier tendered its application seeking authority to acquire the assets formerly owned by BTU and issue evidences of indebtedness to finance the proposed acquisition. On March 26, 2012, Frontier was notified that its application contained filing deficiencies pursuant to 897 KAR 5:001, Sections 11(1)(a) and 11(2)(c). Frontier supplied the information necessary to cure its filing deficiencies on April 4, 2012 except the deficiency regarding maps and plans of the BTU system. Frontier requested a deviation from that requirement, which was granted by our April 18, 2012 Order.

The Attorney General of the Commonwealth, by and through his Office of Rate Intervention ("AG") is the only intervenor in this proceeding. Frontier responded to one information request from Commission Staff ("Staff") and participated in an informal

conference ("IC") with the AG and Staff on May 14, 2012.¹ The record is now complete and the case stands submitted for a decision.

FINDINGS OF FACT

The Commission, based on the evidence of record and being otherwise sufficiently advised finds that:

1. Frontier is a limited liability company organized under the laws of Colorado and authorized to conduct business in Kentucky.

2. Frontier acquired East Kentucky Utilities (Floyd County Gas), Mike Little Gas Company, Belfry Gas, and Alert Gas Farm Tap System pursuant to the Commission's approval in Case No. 2008-00394.²

3. Frontier acquired the stock of Auxier Road Gas Company pursuant to the Commission's approval in Case No. 2009-00442.³

4. Frontier acquired the stock of Cow Creek Gas, Inc. (formerly Sigma Gas Company) ("Cow Creek") and Dema Gas Company, Inc. ("Dema") pursuant to the Commission's approval in Case No. 2010-00076.⁴

¹ At the IC, among other matters, Frontier clarified that it would file BTU's 2011 Annual Report with the Commission. It also clarified the amount of revenue for 2011, \$94,847, to which the Commission's 2012 assessment for BTU should be applied.

² Case No. 2008-00394, Application of Kentucky Frontier Gas, LLC for Approval of Financing and Transfer of Control (Ky. PSC Nov. 25, 2008).

³ Case No. 2009-00442, Application of Kentucky Frontier Gas Company, LLC for Approval of Transfer of Auxier Road Corporation Stock (Ky. PSC Feb. 22, 2010).

⁴ Case No. 2010-00076, Application of Kentucky Frontier Gas Company, LLC for Approval of Transfer of Stock of Cow Creek Gas, Inc., Dema Gas Company Inc., Purchase of Farm Tap and Royalty Gas Customers of Interstate Natural Gas Company and Transfer of a Portion of DLR Enterprises, Inc. Pipeline to Cow Creek Gas, Inc. (Ky. PSC May 7, 2010).

5. BTU is the subject of a Chapter 7 bankruptcy proceeding in the U.S. Bankruptcy Court, Eastern District of KY, Case No. 10-70767. The Bankruptcy Trustee is now in possession of the assets formerly owned by BTU.

6. Frontier was the successful bidder for the former BTU assets and a Notice of Sale was entered by the Bankruptcy Trustee on February 21, 2012.

7. The purchase price of the former BTU assets is \$255,000.

8. Frontier has secured a commercial loan commitment from Community Trust Bank of Pikeville, Kentucky, in an amount, \$237,000, that will enable it to pay for and complete its purchase of the former BTU assets.

9. Frontier proposed in its application that, upon closing on the transaction to purchase the former BTU assets, those assets would be transferred to Cow Creek for accounting and billing purposes. However, in response to Staff's information request, Frontier indicated that it had altered its original proposal and that the assets would be transferred to Dema.

10. Frontier submitted an Adoption Notice by Dema of the BTU rates which will apply only to the customers on the BTU system. Current Dema customers will continue to be billed based on the rates Dema is authorized to charge.

11. 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 jurisdiction of the commission . . . without prior approval of the commission."

12. Frontier is a “person” for purposes of KRS Chapter 278.⁵ As Frontier is a person and proposes to acquire ownership of the former assets of BTU, this statute is applicable and requires Commission approval of the proposed transfer.

13. 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.”

14. KRS 278.300(1) provides that “[n]o utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the Commission.”

15. Frontier has been operating the BTU system since it was appointed by the Bankruptcy Trustee as operator of the system on August 11, 2011.⁶

16. Frontier has the financial, technical, and managerial abilities to provide reasonable service to the customers on the BTU system.

17. The proposed acquisition is in accordance with the law, for a proper purpose and is consistent with the public interest.

18. Frontier’s intended use of the proceeds of the proposed loan from Community Trust Bank of Pikeville, Kentucky should be approved.

⁵ KRS 278.010(2).

⁶ United States Bankruptcy Court, Eastern District of Kentucky, *In re Richard Dow Williams and Pamela Jean Williams dba Circle J Farms*, Case No. 10-70767 (Order dated Aug. 11, 2011). See also Frontier’s complaint in Case No. 2012-00028, *Kentucky Frontier Gas, LLC, as Bankruptcy Operator of B.T.U. Gas Company vs. Harry Thompson, Thompson Energy, et al. and Other Unknown Entities*, filed Jan. 18, 2012.

19. Frontier will be responsible for filing BTU's 2011 annual report with the Commission and for paying the 2012 Commission's assessment of BTU.

IT IS THEREFORE ORDERED that:

1. Frontier's acquisition of the assets formerly owned by BTU is approved.
2. Within 20 days of the completion of the acquisition approved herein, Frontier shall notify the Commission in writing of the completion thereof.
3. Within 20 days of the completion of the acquisition approved herein, Frontier shall file a signed and dated Dema adoption notice in accordance with 807 KAR 5:011, Section 11.
4. Frontier is authorized to enter into the commercial loan with Community Trust Bank of Pikeville, Kentucky, and to use the proceeds to finance the acquisition of the assets formerly owned by BTU.
5. Frontier shall prepare and file BTU's 2011 Annual Report with the Commission and be responsible for paying the amount BTU is assessed in 2012 for the operation of the Commission.
6. Any document filed in the future pursuant to ordering paragraph 2 herein shall reference this case number and shall be retained in the utility's general correspondence file.

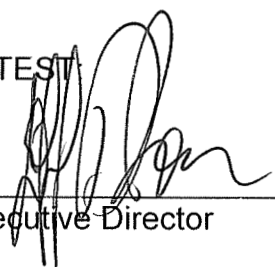
Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

By the Commission

Commissioner Breathitt is abstaining from this proceeding.

ENTERED *PA*
JUN 01 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST



Executive Director

Case No. 2012-00099

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