

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF RICHARD)	CASES NO. 92-220
WILLIAMS, D/B/A B.T.U. PIPELINE,)	95-029
INC. AND M5-A1, INC.)	95-103
)	95-513
)	95-377
)	96-087

ORDER TO SHOW CAUSE

BTU Pipeline, Inc., a/k/a BTU Gas Company, Inc., and BTU, Inc. ("BTU") is a gas distribution utility providing natural gas service in and around Salyersville and Magoffin County, Kentucky. BTU is subject to Commission jurisdiction pursuant to KRS 278.010(3)(b). The Commission has presently pending before it several matters related to the status, operation and maintenance of BTU that require further investigation pursuant to KRS 278.040.

Jurisdictional Status

Case No. 92-220

This case began as an investigation of the status of the operations of Richard Williams and BTU Pipeline, Inc. because of the filing on April 15, 1992 of a petition for a farm tap system. Also filed on that date was a proposed tariff. A hearing was held on June 3, 1994 to investigate the jurisdictional status of BTU. At that hearing BTU accepted the staff report describing BTU's operations as that of a gas distribution utility. The Commission's comprehensive Order of September 21, 1994 found that BTU was,

in fact, a gas distribution utility.¹ That Order incorporated the Commission's prior Order of April 27, 1994 which conclusively established BTU's operations, pipeline, gas sources and customer service as of March 22, 1994.² The Order of April 27, 1994 had also rejected the proposed tariff as filed by BTU and ordered BTU to file a revised tariff as a gas distribution utility.

The Commissions' Order of September 21, 1994 also contained several requirements for filings to be completed by BTU from 30 to 90 days of the date of the Order.³

On October 20, 1994, BTU filed a request for an extension of time in which to file the required documents and information. On November 29, 1994, the Commission denied BTU's request and ordered immediate compliance with the order of September 21, 1994. On January 17, 1995, BTU responded to the Order of September 21, 1994 by filing several documents and information. However, it did not file its Operations and Maintenance Plan, Emergency Notification Plan; Damage Reporting Plan and Drug Plan noting that it "will be submitted at a later date."⁴

On September 19, 1995, a letter was filed by *BTU Gas Company, Inc.*, which stated said letter was in response to the Order of August 18, 1995. Attached to the letter

¹ Case No. 92-220, An Investigation of Richard Williams, d/b/a BTU Pipeline, Inc. [Exhibit A]

² Id. Order of April 27, 1994 contains as an Appendix the Staff Report and Map of BTU's lines and facilities as of March 22, 1994. [Exhibit B]

³ Id., pages 6-8. [Exhibit A]

⁴ Id. See Undated Letter from Pam Williams to PSC. [Exhibit C]

were "BTU's Operating and Maintenance Plan and Emergency Plan."⁵ Both documents were styled "BTU Gas Company, Inc." The Commission, by an Order dated August 14, 1995, acknowledged the January 17, 1995 filing of BTU.

Case No. 95-513

The Commission established Case No. 95-513 to address the failure of BTU to file a financial and statistical report as required by KRS 278.230(3). By an Order dated November 20, 1995, BTU was ordered to file the required report by December 15, 1995 and to show cause why it should not be assessed a penalty as set out in KRS 278.990.⁶ No such report appears in the record for BTU. The absence of this report from the Commission records constitutes prima facie evidence that BTU has willfully failed to comply with KRS 278.230(3) and with the Commission's Order of November 20, 1995.

Tariff Status

Case No. 95-103

Case No. 95-103 was designated as a tariff filing of BTU Pipeline, Inc. and the tariff, as filed previously, was suspended pending further Orders of the Commission. On June 6, 1995, the Commission entered an Order requiring BTU to file certain information about its tariff with the Commission.⁷

⁵ Id. See September 15, 1995 Letter from Pam Williams to PSC. [Exhibit D]

⁶ Case No. 95-513, Matter of BTU Pipeline, Inc., Failure to Comply With KRS 278.230(3). [Exhibit E]

⁷ Case No. 95-103, The Tariff Filing Of BTU Pipeline, Inc. To Establish Rates and Conditions For Service. [Exhibit F]

On July 25, 1995, BTU filed its response.⁸ On August 18, 1995, the Commission ordered BTU to supply certain other information in conformity with the Uniform System of Accounts. On October 25, 1995, BTU Gas Company, Inc. filed a response and a tariff in this case, which was in response to a Commission Order directed to BTU Pipeline, Inc. On July 19, 1996, the Commission entered an Order approving the revised tariff filed October 25, 1995 and ordered BTU to file a tariff to conform with certain recommended exceptions and modifications.⁹ A tariff was filed in the case by BTU Gas Company, Inc. The revised tariff has not been approved.

At no time in any of these proceedings did BTU notify the Commission that BTU had changed its name or had sold, transferred, or in any way conveyed any of BTU's assets or operations to another entity.

The first problem the Commission must address is the recent practice of BTU Pipeline, Inc. to file reports and responses in the name of BTU Gas Company, Inc., a different corporate entity. BTU Pipeline, Inc. has yet to file with the Commission a copy of its articles of incorporation as required by 807 KAR 5:001, Section 8(1) and (3).

Second, BTU Pipeline, Inc. has failed to file with the Commission its tariff as required by KRS 278.030 and 807 KAR 5:011. The Commission is aware that an entity styled "BTU Gas Company, Inc." has filed tariffs with the Commission. However, BTU Pipeline, Inc. has not filed a tariff as required by Order dated July 19, 1996.¹⁰ Again,

⁸ Id. See July 19, 1995 Letter from Pamela Williams to PSC. [Exhibit G]

⁹ Id. [Exhibit H]

¹⁰ Id. [Exhibit H]

there apparently was a filing by BTU Gas Company, Inc. of a tariff on August 20, 1996, but none for BTU Pipeline, Inc. The failure of BTU Pipeline, Inc. to file a tariff is a violation of KRS 278.160 and 807 KAR 5:011.

Third, there have been filings in response to Orders directed toward BTU Pipeline, Inc., as well as tariff filings by BTU Gas Company, Inc., an alleged corporate entity unknown to the Commission, which suggest that a BTU Gas Company, Inc. may also be a gas distribution utility.

Gas Safety and Other Regulatory Matters

During a comprehensive inspection of BTU Pipeline, Inc., conducted September 11 and 18, 1995, eleven violations of the Commission's gas safety and other regulations were cited. Commission Staff conducted a follow-up inspection on December 11, 1996 and found that a violation for which BTU had previously been cited had not been corrected. The 1996 investigation also resulted in findings of additional violations.

Specifically, in 1995, BTU had been cited for failure to meter all gas sold, a violation of 807 KAR 5:022, Section 8(2)(a). On September 22, 1995, BTU and its Operations Manager, Richard Williams, were formally apprised of this violation, among others, and sent a copy of the inspector's report.¹¹ BTU was asked to respond to the report by October 10, 1995, outlining a correction schedule of the cited deficiencies.¹² When BTU did not respond, it was sent a reminder letter dated October 18, 1995, that

¹¹ See September 22, 1995 Letter to Mr. Richard Williams, Operations Manager for BTU from E. Scott Smith, Manager, Gas Pipeline Safety Branch. [Exhibit I]

¹² Id.

extended the response deadline to November 1, 1995.¹³ On November 1, 1995, BTU filed its response, stating all violations would be corrected.¹⁴

On February 11-12 and 20, 1997, the BTU system was inspected again.¹⁵ During this inspection, Commission Staff noted the following additional violations:

1. No procedures for investigation of failures as required by 807 KAR 5:022, Section 13(10).
2. No annual maintenance on main line valves as required by 807 KAR 5:022 Section 14(25).
3. No continuing education program as required by 807 KAR 5:022, Section 13(9)(d).

The following repeat violations were found:

1. No patrolling records as required by 807 KAR 5:022, Section 13(2)(b) and Section 14(12).
2. No leak survey records as required by 807 KAR 5:022, Section 14(13)(c).
3. No meters on gas sold to certain customers as required by 807 KAR 5:022, Section 8(2)(a).¹⁶

On August 18, 1997, BTU was sent a packet of four pipeline safety reports to which a response had not been received, one was the inspection report of February 11-

¹³ See October 18, 1995 Letter to Mr. Richard Williams from Scott Smith. [Exhibit J]

¹⁴ See October 27, 1995 Letter from BTU to Scott Smith. [Exhibit K]

¹⁵ Comprehensive Safety Inspection, February 20, 1997. [Exhibit L]

¹⁶ Id., page 2-3. [Exhibit L]

12 and 20, 1997.¹⁷ BTU filed a response on September 3, 1997, stating it had not received the report. BTU then responded to the deficiencies cited therein.¹⁸ On September 22, 1997, BTU was again inspected and was formally notified by letter of several deficiencies with attachment of a copy of the inspector's report.¹⁹ Specifically, BTU had 10 consumers who were receiving unmetered gas in violation of 807 KAR 5:022, Section 8(2)(a). BTU had no records that a leakage survey had been conducted as required by 807 KAR 5:022, Section 14(13). There were no records of any annual key valve inspection having been performed as required by 807 KAR 5:022, Section 14(25), and no records of weekly odorization tests by instrument as required by 807 KAR 5:022, Section 13(17)(g). BTU has not published an annual notice to the public regarding a damage prevention program as required by 807 KAR 5:022, Section 13(8)(b).

Case No. 95-029

On June 22, 1995, the Commission granted BTU Pipeline, Inc. an 18-month deviation from 807 KAR 5:022, Section 2(4)(a), that required BTU to replace a 2-mile off-grade pipeline by installing a standard pipeline manufactured for natural gas distribution service.²⁰ This replacement was to be accomplished no later than January 15, 1997.

¹⁷ See August 18, 1997 Letter to Mr. Richard Williams from Scott Smith. [Exhibit M]

¹⁸ See August 28, 1997 Letter from BTU Gas Company, Inc. to PSC. [Exhibit N]

¹⁹ See September 22, 1997 Letter to Mr. Richard Williams from Scott Smith. [Exhibit O]

²⁰ Case No. 95-029, The Application Of BTU Pipeline, Inc. For Commission Approval To Deviate From 807 KAR 5:022, Section 2(4)(A). [Exhibit P]

On June 10, 1997, the Commission entered an Order extending the time to August 31, 1997 as setout in its prior Order, in which BTU Pipeline, Inc. was to have constructed the new pipe and disconnected the existing off-grade pipe.²¹ BTU was also to have filed with the Commission a schedule of construction of the new line no later than June 30, 1997.

A follow-up inspection was conducted on September 8-9, 1997 by Commission Staff, and it was discovered that the off-grade pipe had not been replaced or disconnected.²² This is a repeat violation of 807 KAR 5:022, Section 2(4)(a), and of the Commission's Orders of June 22, 1995 and June 10, 1997.

The Commission is now in possession of a letter from Richard Williams, operations manager, which informs the Commission that, instead of complying with the Commission's Orders, BTU and (R&D Drilling and Completion, Inc.) Richard Williams are selling the line, and that the Commission will be notified when the sale is completed.²³ Any sale or transfer of the assets of a regulated utility such as BTU Pipeline, Inc. is subject to KRS 278.020, which mandates a filing of an application for approval of any transfer by the Commission.

Case No. 96-087

On August 21, 1996, the Commission entered an Order assessing a penalty of \$9,500 against BTU for allowing hydrogen sulfide into its system, a potentially life-

²¹ Id. [Exhibit Q]

²² See Letter from E. Scott Smith, Inspection Report dated September 22, 1997 to Richard Williams. [Exhibit R]

²³ See September 9, 1997 from B.T.U. Gas Company, Inc. to PSC. [Exhibit S]

threatening pipeline safety violation.²⁴ The Commission suspended the civil penalty for one year on the condition that BTU not commit any further violation of KRS Chapter 278, Commission Orders, or regulations. If the Commission finds in this docket that BTU has, during the period of suspension, violated KRS Chapter 278, or Commission Orders or regulations, that penalty becomes immediately due and payable pursuant to the express terms of the August 21, 1996 Order, in addition to any penalties assessed for the violations alleged herein. Also, in the Order of August 21, 1996, BTU was ordered to file monthly the test results of hydrogen sulfide.²⁵ There have been no such filings since the filing of August 8, 1997 that reported the July 1997 results. The same Order also directed BTU to hire an engineer to assist in the safe operation and design of BTU's gas system.²⁶ No such endeavor has been undertaken.

Findings

After reviewing the record in these proceedings and the responses filed by BTU, it appears that BTU and Richard Williams have acted knowingly, willfully, intentionally, and in flagrant disregard of the Orders of this Commission and the safety and interest of the customers of BTU Pipeline, Inc. In addition, the Commission finds from the facts alleged, that a prima facie showing has been made that BTU and Richard Williams, in his individual capacity as operator or operations manager of BTU, have violated the following regulations: 807 KAR 5:022, Section 8(2)(a), by failing to individually meter

²⁴ Case No. 96-087, In the Matter of BTU Pipeline, Inc., Alleged Failure to Comply With Commission Regulations, Order dated August 21, 1996. [Exhibit T]

²⁵ Id. [Exhibit T] at page 7(4).

²⁶ Id. [Exhibit T] at page 7(3).

service; 807 KAR 5:022, Section 14(13), by having no records that a leakage survey had been conducted; 807 KAR 5:022, Section 14(25), by having no records of any annual key valve inspection having been performed ; 807 KAR 5:022, Section 13(17)(g), by not conducting weekly odorization tests by instrument ; 807 KAR 5:022, Section 13(8)(b), by not publishing an annual notice to the public regarding a damage prevention program; 807 KAR 5:022, Section 9(4)(d), by failing to properly vent a service regulator; and 807 KAR 5:022, Section 9(7)(a), by failing to use service line valves approved for use with natural gas.

Accordingly, the Commission finds that BTU should appear before the Commission to show cause why it should not be penalized for its failure to comply with the statutes, regulations, and the Commission's prior Orders. Likewise, the Commission finds that Richard Williams should also appear and show cause why he should not be penalized, in his individual capacity, for his failure to comply with the statutes, regulations, and the Commission's Orders. See KRS 278.990; KRS 278.992.

IT IS THEREFORE ORDERED that:

1. BTU Pipeline, Inc., BTU Gas Company, Inc., and R&D Drilling and Completion, Inc. shall file with Commission within 10 days of the date of this Order, a copy of their Articles of Incorporation and Certificate of Existence as filed with the Kentucky Secretary of State.

2. BTU Pipeline, Inc., by and through its president, Pam Williams, and Richard Williams, BTU operations manager, shall both appear before the Commission on January 22, 1998, at 9:30 a.m., Eastern Standard Time, in Hearing Room 1 of the

Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of presenting evidence concerning the status of BTU Pipeline, Inc., the operations of BTU Pipeline, Inc., and the connection, if any, between BTU Pipeline, Inc., BTU Gas Company, Inc., and R&D Drilling and Completion, Inc. BTU, Pam Williams or Richard Williams shall provide a map showing wells, main pipeline and laterals along with a service list of consumers.

3. BTU Pipeline, Inc., by and through its president, Pam Williams, shall appear before the Commission on January 22, 1998, at 9:30 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of showing cause why it should not be subject to the penalties of KRS 278.990 and KRS 278.992; for its failure to comply with KRS 278.140 and KRS 278.230(3) and Commission's regulations and Orders.

4. Richard Williams, individually, and BTU shall appear before the Commission on January 22, 1998, at 9:30 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, to show cause why civil fines pursuant to KRS 278.992(1) should not be assessed against Richard Williams or BTU, or both, for the pipeline safety violations noted herein: 807 KAR 5:022, Section 8(2)(a); 807 KAR 5:022, Section 14(13); 807 KAR 5:022, Section 14(25); 807 KAR 5:022, Section 13(17)(g); 807 KAR 5:022, Section 13(8); 807 KAR 5:022, Section 9(4)(d); and 807 KAR 5:022, Section 9(7)(a).

5. BTU shall file, within 10 days of the date of this Order, documents indicating to the Commission the status of the prior bankruptcy proceedings concerning the payment of a \$14,000 penalty assessed in Case No. 95-377.

6. BTU shall appear before the Commission on January 22, 1998, at 9:30 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, to show cause why the civil penalty of \$9,500 as assessed in Case No. 96-087 should not now be immediately due and payable and why civil penalties up to \$500,000 should not be assessed pursuant to KRS 278.992(1) for failure to file hydrogen sulfide monthly reports.

7. BTU Pipeline, Inc., by and through its president, Pam Williams, and Richard Williams, individually and as BTU operations manager, shall appear before the Commission on January 22, 1998, at 9:30 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, to show cause why civil penalties up to \$500,000 should not be assessed for failure to comply with the Commission's Order of June 10, 1997 to replace the pipeline.

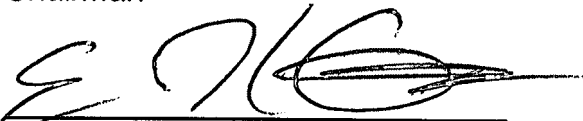
8. BTU shall file with the Commission within 20 days of the date of this Order, a schedule of construction for the replacement of the pipeline as set out in the Order dated June 10, 1997.

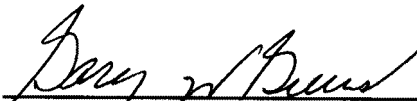
9. BTU shall file with the Commission, within 10 days of the date of this Order, copies of any memoranda, contract, agreement or any other document which pertains to the sale or transfer of the pipeline referred to in its letter dated September 9, 1997.

Done at Frankfort, Kentucky, this 19th day of November, 1997.

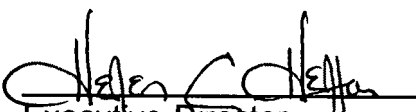
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ATTEST:


Executive Director