

the Eastern District of Kentucky (Bankruptcy Court).³ By Order entered July 20, 1992, the Commission granted the motion and held in abeyance a determination on the jurisdictional status of the R.C. Energy segment only.

While awaiting the Bankruptcy Court's decision, Commission Staff inspected BTU's remaining pipeline facilities, and Staff's April 8, 1994 inspection report was ordered filed into this case record by an Order dated April 27, 1994. The Order of April 27, 1994 also rejected the proposed tariff filed by BTU and ordered BTU to file a revised tariff as a gas distribution utility.

Pursuant to the Order of April 27, 1994, a hearing was held June 3, 1994 on the Staff Report and status of the BTU system. At that hearing BTU accepted Staff's report as factually accurate and agreed with Staff's conclusion that BTU was operating as a gas distribution utility.

In an Order dated September 21, 1994, the Commission declared BTU to be a gas distribution utility pursuant to KRS 278.010(3)(b). That Order also incorporated the Commission's prior Order of April 27, 1994, which conclusively established BTU's operations, pipeline system, gas sources, and customer service as of March 22, 1994.⁴ There was no request for a rehearing, nor any appeal of the Commission's Order of September 21, 1994. The Order also required BTU to provide certain additional information, and BTU filed that information on January 17, 1995. In that filing BTU

³ Salyersville Gas, after seeking Chapter 11 Bankruptcy protection, instituted an adversary action to quiet title to the R.C. Energy pipeline.

⁴ Id. Order of April 27, 1994 contains as Exhibit B the Staff Report and Map of BTU's lines and facilities as of March 22, 1994.

informed the Commission that the court had awarded ownership of the R.C. Energy pipeline to Sigma.

A separate case was opened and designated Case No. 95-103 as a tariff filing of BTU Pipeline, Inc., and the tariff, as filed previously in Case No. 92-220, was suspended pending further Orders of the Commission.

The filing of bankruptcy proceedings has complicated and drawn out this investigation, as has the utility operators' use of a different name for the operating utility. BTU claimed that it was an entity operating under an assumed name. Pam Williams, President of BTU, presented a copy of a document styled "Certificate of Business Under Assumed Name" which stated that BTU, Inc. was operating under the name of BTU Pipeline, Inc. in Magoffin County, Kentucky. While this document appeared to have been prepared by an attorney, there is no evidence that it was properly filed with the Magoffin County Clerk, or that it was ever filed with the Commission. The method of operation of BTU is revealed in the testimony of Richard Williams, its Operations Manager. When asked about the "transfer" of customers to BTU Gas Company, Inc., Mr. Williams said that when the case was held in abeyance [pending the bankruptcy proceedings], "we simply formed a new corporation and thought, 'Hey, we'll start over.'"⁵ While there is nothing wrong in starting over, such a procedure must be done in accordance with the law governing utilities. In this case BTU failed to follow the law and the regulations in its "starting-over" process. At no time in any of these proceedings did BTU notify the Commission that BTU had changed its name or that it had sold,

⁵ Transcript of Evidence ("T.E."), Hearing of January 22, 1998, at 139.

transferred, or in any way conveyed, any of BTU's assets or operations to another entity.

The Commission had determined the nature of BTU's plant and facilities in the Order of September 21, 1994. The Commission found -- and BTU agreed as a result of the hearing held on June 3, 1994 -- that BTU was a utility and that the Staff Report contained in the Order of April 27, 1994 established BTU's pipeline system, gas sources and customer service area. The Orders of April 27, 1994 and September 21, 1994 have not been set aside and are final. Yet, at the 1998 hearing Richard Williams stated that there was a transfer of the customer base to R&D Drilling which owned the distribution mains. According to Mr. Williams, BTU owns only the service lines from the tap on the mains to the riser.⁶ BTU claims that its gas mains, as established in the September 21, 1994 Order, have been transferred to R&D Drilling, and that BTU owns only a five-mile section.⁷ This contention by Mr. Williams is in direct opposition to the findings of the Commission in the Order of September 21, 1994. KRS 278.020 provides that approval for transfer of utility plant must be obtained from the Commission. Neither a utility, nor officer or agent thereof, may unilaterally transfer control of a utility or its plant without Commission approval. Any attempt to do so is "void and of no effect." KRS 278.020(5). Accordingly, any alleged transfer or "gift" of the distribution system of BTU is invalid and will not be recognized by the Commission.

⁶ T.E., Hearing of January 22, 1998, at 144.

⁷ T.E., Hearing of January 22, 1998, at 145-148.

Commission regulation 807 KAR 5:006, Section 22(1), requires each utility to have a map of its system. Therefore, BTU should file with the Commission a map that complies with the regulation:

Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

- (a) Operating districts.
- (b) Rate districts.
- (c) Communities served.
- (d) Location and size of transmission lines, distribution lines and service connections.
- (e) Location and layout of all principal items of plant.
- (f) Date of construction of all items of plant by year and month.

This case has lingered long enough on the Commission's docket and upon the filing of the necessary documents clarifying the status and ownership of the utility, as set out in this Order, this case will be closed and removed from the docket without further Order.

IT IS THEREFORE ORDERED that:

1. Within 20 days of the date of this Order, B.T. U. Gas Company, Inc., shall file with the Commission a copy of its articles of incorporation, a list of its corporate stockholders and corporate officers, and a certificate of good standing from the Kentucky Secretary of State.

2. B.T.U. Gas Company, Inc. shall file a tariff in that name together with an adoption notice adopting the tariff provisions of the B.T.U. Pipeline, Inc.

3. Within 60 days of the date of this Order, B.T.U. Gas Company, Inc. shall file a copy of a map or maps of suitable scale of the general territory it serves, or holds itself ready to serve, showing the following:

- (a) Operating districts.
- (b) Rate districts.
- (c) Communities served.
- (d) Location and size of transmission lines, distribution lines, and service connections.
- (e) Location and layout of all principal items of plant.
- (f) Date of construction of all items of plant by year and month.

4. Upon the filing of the documents and information specified in Ordering Paragraphs 1, 2, and 3, this case shall be closed and removed from the Commission's docket without further Orders herein.

Done at Frankfort, Kentucky, this 6th day of July, 2000.

By the Commission

ATTEST:


Executive Director