

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

B.T.U. GAS COMPANY, INC.)	
_____)	
ALLEGED VIOLATIONS OF ADMINISTRATIVE)	CASE NO.
REGULATION 807 KAR 5:006, 807 KAR 5:022,)	2007-00403
807 KAR 5:027 AND 49 CFR 191-192)	

O R D E R

This case involves an investigation into the operation of B.T.U. Gas Company, Inc.'s ("BTU") natural gas facility in eastern Kentucky. At issue is whether BTU failed to maintain and operate this facility in accordance with 807 KAR 5:006, Section 14(1)(b), 807 KAR 5:022, 807 KAR 5:027, 49 C.F.R. Part 191, 49 C.F.R. Part 192, and 49 C.F.R. Part 199. Finding in the affirmative, we assess BTU the sum of \$170,000, with \$10,000 due and payable within 30 days.

PROCEDURE

Finding prima facie evidence that BTU had failed to comply with 807 KAR 5:006, Section 14(1)(b); 807 KAR 5:022; 807 KAR 5:027; C.F.R. Part 191; 49 C.F.R. Part 192; and 49 C.F.R. Part 199, the Commission ordered BTU to show cause why it should not be penalized for these alleged violations by Order dated December 1, 2009.

On March 4, 2010, the Commission held an evidentiary hearing in this matter at our offices in Frankfort, Kentucky. Pamela Williams, president and sole owner of BTU, and Richard Williams, vice-president and operator of BTU, appeared with counsel. At this hearing, the Commission heard testimony from the following persons: Jason

Brangers, Manager, Gas Pipeline Safety Branch, Kentucky Public Service Commission; William Aitken, Utility Regulatory & Safety Investigator IV, Gas Pipeline Safety Branch, Kentucky Public Service Commission; Melissa Holbrook, Utility Regulatory & Safety Investigator III, Gas Pipeline Safety Branch, Kentucky Public Service Commission; Steven Samples, Utility Regulatory & Safety Investigator III, Gas Pipeline Safety Branch, Kentucky Public Service Commission; Roger Wingate, President of R.L. Wingate and Associates; and Pamela Williams, president and sole owner of BTU.

BACKGROUND

BTU is a Kentucky corporation created in June 1994 and is a private natural gas distribution system. As of December 31, 2007, it owned, operated and managed facilities used to distribute natural gas to approximately 401 residential and 12 commercial and industrial customers, including four schools, in Magoffin County, Kentucky.¹ It is a utility subject to Commission jurisdiction pursuant to KRS 278.010(3)(b); KRS 278.040; KRS 278.495(2)(b); KRS 278.992(1); 807 KAR 5:022; 49 C.F.R. Part 191; 49 C.F.R. Part 192; and 49 C.F.R. Part 199. BTU owns facilities that consist of approximately 86 miles of 4-inch-and-under plastic piping with a maximum allowable operating pressure of 70 pounds per square inch. This system has one

¹ Annual Report of BTU Gas Company, Inc. to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2007 at 11. This is the last annual report filed with the Commission by BTU.

compressor station and access to about 100 wells. As of July 14, 2009, only five wells were actively feeding the system.²

On July 10, 2007, Commission Staff ("Staff") conducted a periodic regulatory compliance inspection of BTU in which 16 violations were cited in Report No. BTU-051407 ("2007 Inspection Report"). Based on this inspection report, the Commission, on May 1, 2008, found prima facie evidence that BTU had failed to comply with certain administrative regulations of the Commission, as well as certain regulations promulgated by the U.S. Department of Transportation, regarding the operation of natural gas pipelines. The Commission ordered BTU to show cause why it should not be subject to penalties prescribed in KRS 278.992(1) for these alleged violations. On May 20, 2008, BTU filed its written response. On June 9, 2008, the Commission entered an Order that established a procedural schedule.³

On July 14, 2009, a follow-up periodic regulatory compliance inspection of BTU was conducted to ascertain the status of the utility as related to pipeline safety and to confirm that the 16 violations cited in the 2007 Inspection Report had been corrected. The July 14, 2009 inspection revealed in Report No. BTU-052907 that, of the 16 previously documented violations cited in the 2007 Inspection Report, only six had been

² See Transcript of Hearing ("TR") at 139-141, Staff Exhibit 9, Periodic Regulatory Compliance Inspection, DTR Number 13, which lists as a deficiency BTU's failure to file Department of Transportation Form RSPA F7100, 1-1 (July 14, 2009); and Staff Exhibit 10, copy of RSPA F7100. BTU has never filed this required form.

³ On June 25, 2008, BTU filed its response to Staff's first information request, followed by BTU's filing of its additional response on July 15, 2008. Staff held an Informal Conference with BTU on July 17, 2008, which was followed by a memorandum of the IC filed by Staff on July 25, 2008. BTU filed its first response to the IC memorandum on August 25, 2008; its second response was filed on November 3, 2008; and its third response was filed on November 13, 2008.

corrected while ten remained uncorrected. Seven additional violations were documented.

On August 14, 2009, Jason Brangers, P.E., Manager, Gas Branch, Division of Engineering, Public Service Commission, notified BTU of the results of the July 14, 2009 inspection and requested that BTU respond to and outline corrective action for each of the 17 cited violations by September 2, 2009.⁴

Having not received any substantive response or plan for corrective action as requested on August 14, 2009, the Commission, on December 1, 2009, entered an Order for BTU to appear before it on January 27, 2010 to show cause why it should not be subject to penalties prescribed in KRS 278.992(1) for its failure to correct the 17 deficiencies contained in Mr. Brangers' letter of August 14, 2009 or to respond to the letter in any meaningful manner. Also included with this Order was a procedural schedule and a copy of the 2009 Inspection Report.

On December 18, 2009, BTU filed a response to the Commission's December 1, 2009 Order, as well as a motion for a continuance of the scheduled hearing and a motion for an informal conference with Commission Staff. On January 19, 2010, the Commission granted BTU's motion for a continuance and denied its motion for an informal conference. The procedural Order was amended and the hearing was continued to March 4, 2010.

⁴ See Letter from Jason Brangers to Richard Williams, BTU (August 14, 2009). Although Mr. Brangers had requested that BTU respond by September 2, 2009, a letter from Pam Williams to Mr. Brangers requesting an extension of time to respond ("I will get it in just as soon as I have it completed") was received on September 8, 2009. A substantive response to Mr. Brangers' letter was never received.

Pursuant to KRS 278.495(2)(a), the Commission has the authority to regulate the safety of the natural gas facilities of BTU.⁵ The Commission exercises this authority in conjunction with its authority to enforce any minimum safety standards adopted by the U.S. Department of Transportation (“U.S. DOT”) pursuant to 49 U.S.C. § 60101 et seq. Additionally, the Commission may promulgate administrative regulations consistent with federal pipeline safety laws.⁶ Although the U.S. DOT has the ultimate responsibility for the regulation, enforcement, and compliance of gas pipeline safety, this authority has been delegated by the Secretary of the U.S. DOT to the Commission as the state agency that enforces pipeline safety regulations. It is through this delegation of authority, as well as that found in KRS Chapter 278 and 807 KAR Chapter 5, that the Commission regulates BTU’s operations and facilities, using federal pipeline safety standards as the minimum safety standards required. As part of the Commission’s certification, the U.S. DOT evaluates the Commission’s performance on a regular basis.⁷

The Commission conducts various types of inspections of gas utilities as part of its enforcement process of federal pipeline safety regulations. One such routine or

⁵ KRS 278.495 states in pertinent part:

(2) Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:

(a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail.

⁶ KRS 278.495(2)(a).

⁷ TR at 11-13. A review related to the federal grant received by the Commission to implement the pipeline safety program is conducted by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) at least once every three years. PHMSA also conducts an annual program evaluation. On all PHMSA evaluations since 2005, the Commission has received scores of 97 percent or higher.

standard inspection is called a “periodic regulatory compliance inspection,” which was the inspection conducted of BTU in both 2007 and 2009. This type of inspection is normally conducted on a three-year cycle but can be conducted on a more frequent basis if necessary.⁸ In conducting periodic regulatory compliance inspections, Staff uses a standard inspection checklist.⁹

At the time of the July 14, 2009 follow-up inspection, it was expected that BTU’s 16 violations cited in the 2007 Inspection Report would have been corrected. As stated earlier, this did not occur. With ten uncorrected violations from 2007 and seven additional violations from 2009, the total cited in the 2009 Inspection Report increased to 17.

SUMMARY OF VIOLATIONS

2009 INSPECTION REPORT

UNCORRECTED 2007 VIOLATIONS

- (1) 49 C.F.R. Part 192.616(b): Public Awareness. The operator’s program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator’s pipeline and facilities.

Deficiency: BTU’s public awareness plan did not follow the recommendations of API RP 1162 and BTU did not have records to indicate that its public awareness messages were given to customers

⁸ TR at 39. Other inspections conducted of gas utilities include farm tap installations, construction inspections, operator qualification inspections, integrity management inspections, jurisdictional inspections, and inspections to investigate incidents or complaints.

⁹ TR at 40-41; Form 2 Standard Inspection Report of a Gas Distribution Operator (Rev. 3/23/09 through Final Rule of 16 January 2009).

twice annually. BTU did not have documentation that this requirement had been met.¹⁰

- (2) 49 C.F.R. Part 192.805. Qualification Program. Each operator is required to have and follow a written operator qualification plan.

Deficiency: BTU did not have an Operator Qualification (“OQ”) plan that included a list of covered tasks, a list of individuals and the tasks each is qualified to perform, and identification of the intervals at which evaluation of the individual’s qualifications is needed.¹¹

- (3) 49 C.F.R. Part 605(b) (9). Procedural manual for operations, maintenance, and emergencies. Each operator must take adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and make emergency rescue equipment available when needed.

Deficiency: BTU’s Operations and Maintenance (“O&M”) manual in place at the time of the inspection did not address procedures for taking precautions in situations of unsafe accumulations of gas. BTU must have emergency equipment, including breathing apparatus and a harness, available. BTU did not have the emergency equipment.¹²

¹⁰ TR at 128-129; Commission Staff Exhibit No. 9, DTR No. 1; Commission Staff Exhibit 13.

¹¹ TR at 129. Commission Staff Exhibit No. 9, DTR No. 2; Commission Staff Exhibit 13.

¹² TR at 130; Commission Staff Exhibit No. 9, DTR No. 3; Commission Staff Exhibit No. 13.

(4) 49 C.F.R. Part 192.625(f). Odorization of gas. Each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in the air at which the odor becomes readily detectable.

Deficiency: BTU was not using an instrument capable of measuring the gas at one-fifth of the lower explosive limit. The only document produced by BTU indicated that only a "sniff test" was being used.¹³

(5) 49 C.F.R. Part 192.721. Patrolling. Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled.

Deficiency: BTU had not patrolled mains where anticipated physical movement or external loading could cause failure or leakage (i.e., river crossings, lines under stress) and had not documented these lines or the intervals at which they must be patrolled. At the time of the inspection, there were lines under stress, such as a line going across a creek and a bridge. BTU did not have any patrolling records or sites identified.¹⁴

(6) 49 C.F.R. Part 192.723(b) (1). Leakage survey. A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every five calendar years at intervals not exceeding 63 months. The leakage survey should include tests of the

¹³ TR at 130-131; Commission Staff Exhibit No. 9, DTR No. 4; Staff Exhibit No. 13.

¹⁴ TR at 132; Staff Exhibit No. 9, DTR No. 4; Staff Exhibit 13.

atmosphere in gas, electric, telephone, sewer, and water systems, including at manholes, cracks in pavement and sidewalks.

Deficiency: BTU has not conducted leakage surveys in non-business districts with leak detector equipment within those districts every five years. A leakage survey is required to determine if there are leaks on the system in order to prevent an incident such as a fire or explosion from occurring.¹⁵

(7) 40 C.F.R. Part 192.747. Valve Maintenance. Each valve must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year.

Deficiency: BTU did not have critical or system safety valves listed in its records and did not identify specifically when each valve was checked and serviced. The records available at the time of the inspection to show that this requirement had been met were totally inadequate. At a minimum, there must be a separate inspection sheet for each valve telling the measurement of the valve, where it is located, and the size of the nut on each valve. An inspection record is needed for each valve.¹⁶

(8) 49 C.F.R. Part 192.739. Pressure limiting and regulating stations: Inspection and testing. Each pressure limiting station, relief device, and pressure

¹⁵ TR at 73,131,132; Staff Exhibit No. 9, DTR No.7; Staff Exhibit No.13.

¹⁶ TR at 133; Staff Exhibit No. 9, DTR No. 8; Staff Exhibit No. 13.

regulating station . . . must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests. . . .

Deficiency: BTU did not have specific regulators and relief devices listed in its records and did not identify specifically that each had been inspected each year. There must be a record for any regulator or control device that is controlling the pressure in the BTU system, including the size orifices, the serial number, identification of the regulator, and inspection for each year, and it must be inspected by an operator-qualified person. None of these requirements had been met.¹⁷

(9) 49 C.F.R. Part 192.603(b). General provisions. Each operator shall keep records necessary to administer the procedures established under Section 192.605.

Deficiency: BTU did not have records to show that its O&M procedures were being implemented for odorant sampling, patrolling, leak surveys, regulator inspections, or valve inspections.¹⁸

(10) 49 C.F.R. Part 192.481. Atmospheric corrosion control: Monitoring. Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion. . . .

Deficiency: BTU was not inspecting its system for atmospheric corrosion on the above-ground piping. It is required that an inspection

¹⁷ TR at 134; Staff Exhibit No. 9, DTR No. 9; Staff Exhibit No. 13.

¹⁸ TR at 133-134; Staff Exhibit No. 9, DTR No. 11; Staff Exhibit No. 13.

be done on above-ground steel piping, all meters, the steel piping at the customers' meters where it comes out of the ground, and whatever other steel, like a bridge crossing, that exists in the system. An operator-qualified person must check each at least once every three years for atmospheric corrosion. BTU had no records that confirmed that these inspections had been conducted.¹⁹

2009 NEW VIOLATIONS

(11) 49 C.F.R. Part 192.723(b) (1). Distribution systems: Leakage surveys. A leakage survey with leak detector equipment must be conducted in business districts, including tests of atmosphere in gas, electric, telephone, sewer, and water systems and at manholes, cracks in pavement and sidewalks . . . on an annual basis.

Deficiency: BTU had not even identified business districts within its system or conducted leak surveys with leak detector equipment within those districts annually. During the inspection, it was discovered that there were several wells and regulators that were feeding four schools – South Magoffin, Salyer, Middle Fork and North Magoffin, all elementary schools. Schools and churches are considered part of the business district because they are high-risk areas, usually containing pipes under hard surfaces, such as parking lots. As with other areas

¹⁹ TR at 135; Staff Exhibit No. 9, DTR No. 10; Staff Exhibit No.13.

in a business district, the purpose is to find any leaks in order to prevent problems in high-risk, generally high-population areas.²⁰

(12) 49 C.F.R. Part 192.614. Damage prevention program. Each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. . . .

Deficiency: BTU was not a member of a qualified one-call center, known as Kentucky 811, as of March 4, 2010. This was confirmed by the testimony of Steven Samples, the inspector who conducted the 2009 inspection.²¹

(13) 49 C.F.R. Part 191.11(a). Except as provided in paragraph (b) of this section, each operator of a distribution pipeline system shall submit an annual report for that system on U.S. DOT Form RSPA F 7100-1-1.

Deficiency: BTU did not submit its annual report each year as required. This report is required by the PHMSA for all distribution gas companies, and the report must be turned in by March 15 of each year for the previous year. Gas distribution companies send these forms to the U.S. DOT, to PHMSA and generally send a copy to the Commission. This report shows how many miles of pipe are in the system and whether the pipe is plastic or steel. It also has the type of leaks the system had during the previous year, whether dig-ins, corrosion, or bad fusions occurred. This is to assist the operator in

²⁰ TR at 137; Staff Exhibit No. 9, DTR No. 6; Staff Exhibit No. 13.

²¹ TR at 138; Staff Exhibit No. 9, DTR No.12; Staff Exhibit No.13.

keeping track of the miles of pipe, including any pipes that have been deleted or added during the previous year.²²

(14) 49 C.F.R. Part 199.101(a). Anti-drug plan. Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures.

Deficiency: BTU did not have an anti-drug plan.²³

(15) 49 C.F.R. Part 199.202. Alcohol misuse plan. Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs.

Deficiency: BTU did not have a written alcohol misuse plan as required.²⁴

(16) 807 KAR 5:006, Section 14(b). For dangerous conditions. If a dangerous condition relating to the utility's service which could subject any person to imminent harm or result in substantial damage to the property of the utility or others, is found to exist on a customer's premises, the service shall be refused or terminated without advance notice.

Deficiency: BTU failed to turn service off when a BTU customer with above-ground plastic pipe designed for water, with hose clamps, was being used for the gas service line. This plastic pipe was above

²² TR at 140; Staff Exhibit No. 9, DTR No.13; Staff Exhibit No.10: Staff Exhibit No. 13.

²³ Staff Exhibit No. 9, DTR No. 14; Staff Exhibit No.13.

²⁴ Staff Exhibit No. 9, DTR No. 15; Staff Exhibit No. 13.

ground around the meter setting, and it was going through a culvert and then through the front yard. Above-ground plastic pipe is a safety hazard and must be buried per regulations.²⁵

(17) 49 C.F.R. Part 192.807. Recordkeeping. Each operator shall maintain records that demonstrate compliance with this subpart.

Deficiency: BTU was not maintaining records that demonstrate compliance with the OQ regulation.²⁶

DISCUSSION

Pamela Williams, president and sole owner of BTU since 1994, testified that only she and her husband, Richard Williams, work for BTU, but they contract services from P&J Resources, a company she also owns.²⁷ Ms. Williams stated that she did not have any disagreement with the 2009 inspection and that “I told them there were several things that I was not aware that I was supposed to be doing that they said I should be, but, as far as me having any concerns, no New things come into play, apparently, and, as a gas utility, you don’t have to be notified. You’re supposed to pick up on all this stuff. Things had changed from ’07 to ’09. . . . [I]f there’s something like the PSC would require, I would expect that they will send me a notification [I]f something changes with the light company or anybody else, they send you some kind of notification [T]hat’s the way I work.” She agreed that the 2007 and the 2009

²⁵ TR at 143-144; Staff Exhibit No. 9, DTR No. 16; Staff Exhibit No.11, Staff Exhibit No.13.

²⁶ Staff Exhibit No. 9, DTR No. 17; Staff Exhibit No. 13.

²⁷ TR at 167, 168.

Inspection Reports were “pretty specific notifications” that told her “what needed to be fixed.”

When asked again if there was any disagreement as to what problems had been identified and what she needed to do, Ms. Williams responded, “No, I had everything that I was supposed to have. It just didn’t meet the standards that it should have, which, from the time we started to that point, it had, apparently, but some things had changed. I needed to update. Let me put it that way.”²⁸

During the 2007 inspection, several documents were requested by the inspector, Melissa Holbrook, to be produced for her to review. Ms. Williams claimed that there were certain documents she could not find.²⁹ One of these documents was a map of the BTU system, which plays an integral part in this type of inspection. Because no map was made available to Ms Holbrook, her ability to conduct a thorough field inspection was greatly hindered. Because there was no map, it was not possible for her to locate and identify the layout of all the principal items of BTU’s plant, including its

²⁸ TR at 170-172.

²⁹ TR at 65, 66. Melissa Holbrook, Inspector IV, Gas Branch Division, Public Service Commission, contacted BTU by phone more than a month in advance to set up the date of the inspection with Pamela Williams, BTU’s president. On April 2, 2007, Ms. Holbrook sent an e-mail to Ms. Williams, with a list attached detailing the items she wanted to see during the inspection. On May 7, 2007, Ms. Holbrook sent Ms. Williams a second e-mail to remind her of the inspection on May 10, 2007. A copy of the first e-mail with the attached list was introduced at the hearing as Staff Exhibit No. 5. Ms. Williams did not ask for clarification of what she was expected to have available at the inspection at any time prior to the date of inspection.

pipeline, in order to have an accurate field review.³⁰ Instead, she was restricted to looking at areas around the BTU office that were brought to her attention by one of BTU's contractors.

At the hearing, when questioned about the missing documents from the 2007 inspection and specifically asked whether they had been located, Ms. Williams responded, "I probably have not even looked for them because we kept moving forward, trying to get stuff done that I knew I needed to do. So I don't know that I would even have it. That's what I told her. I don't know that I would even have it because the paperwork I have is not what they want anyway. So – but I have been doing this stuff."³¹ (Emphasis added.)

At the 2009 inspection, BTU did not have the required emergency rescue equipment for its employees, as required in its O&M Plan. When asked if BTU had purchased the equipment since the 2009 inspection, Ms. Williams testified, "I don't know

³⁰ TR at 70,71; 807 KAR 5:006, Section 22(1), states in pertinent part:
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.

³¹ TR at 172.

that I have it all like you all would want, but we're in the process – I just have got these done, so I'm in the process of getting everything done that needs to be done with this.”³²

Ms. Williams testified that she was not aware that BTU was required to file a federal annual report with the PHMSA. “Where does it come from? Do they mail something to – I don't have that. I've never, that I know of, have never filled one of those out.”³³

Roger Wingate, President of R.L. Wingate and Associates, testified that he had been hired by BTU to train personnel on 16 tasks that are listed in the Operator Qualification Manual that he had recently prepared for the company.³⁴ Mr. Wingate discussed all of the tasks on which he planned to train; three of them involved the use of different instruments which were required to be used to correctly accomplish each task.³⁵ These included the following: an instrument to monitor the odorization of natural gas in the system;³⁶ an instrument used to detect the existence of any natural gas, such

³² TR at 176.

³³ TR at 178.

³⁴ Mr. Wingate testified that he planned to include the following tasks in his training: joining plastic pipe with heat fusion; joining plastic pipe with mechanical couplings; installing meter and regulator set; installing service lines; tapping pipelines; purging pipelines; monitoring odorization with proper equipment; performing patrolling and leakage surveys on gas pipelines; locating and marking underground facilities; pressure testing pipelines; inspecting and testing pressure limiting stations; inspecting emergency valves; prevention of accidental ignition; making field repairs on gas pipelines; and, how to abandon and deactivate a gas pipeline system.

³⁵ TR at 111.

³⁶ TR at 102.

as methane, when “you walk the gas line with it” to conduct leakage surveys;³⁷ and equipment to check and monitor the pressure in new or replaced pipelines when they are installed.³⁸

Ms. Williams testified that BTU did not have any of the required equipment Mr. Wingate had discussed. She testified, “No. Today is the first day that Mr. Wingate, and I, and Richard have even met. So, no. He’s going to . . . tell us what we need. Today is the first day those three names [of instruments] that he mentioned had even been mentioned to me as far as equipment goes.”³⁹ (Emphasis added.)

BTU has operated as a private natural gas distribution system for 16 years, and yet it did not have the proper equipment needed to protect its employees/contractors; nor did it have the proper instruments needed to measure critical elements in its operations, such as gas leakage. Most alarming was the fact that its president was not even aware of the need to have appropriate equipment and instruments available. After 16 years as president and sole owner of BTU, she had apparently never heard of the equipment needed but was depending on Mr. Wingate to tell them what they needed and how to perform the most basic, significant tasks.

The issues discussed above, including the lack of required documents and a map of the BTU system, the lack of emergency rescue equipment for the safety of its employees/contractors, the lack of any knowledge by its president that there is an ongoing responsibility for BTU to file an annual report with the federal government, and

³⁷ TR at 108.

³⁸ TR at 111, 112.

³⁹ TR at 183.

the lack of any knowledge of the need for specific equipment to perform required tasks represent but a few examples of BTU's nonchalant attitude and behavior regarding operating a safe gas company.

The magnitude of the information presented to us in this case confirms that BTU has consistently been poorly managed and operated by individuals who have shown little interest in changing. BTU has failed to carry out its most basic obligations. Since its operations began in 1994, Ms. Williams has been the president and sole owner of the company and her husband, Richard Williams, has been the vice-president and operator. The attitude and actions exhibited by both of them throughout this entire proceeding, as well as Ms. Williams' testimony, evidence a general lack of awareness, knowledge, and skill needed to operate a private gas distribution system in a safe manner. BTU has been in operation for approximately 16 years, yet its president presents herself as totally uninformed and unfamiliar with what is required. From the initiation of this case, BTU has promised to correct the violations, yet action on these promises has been slow in some cases and nonexistent in others. Whether unable or unwilling to perform the rigorous oversight necessary to ensure safety of the entire gas operation, the parties' actions going forward must change immediately and dramatically.

For 10 of the 16 deficiencies cited in the 2007 Inspection Report to remain uncorrected after two years, along with the accumulation of seven additional deficiencies cited in the 2009 Inspection Report, is completely inexcusable. Ignorance of the basic requirements, as those cited in the 2007 and the 2009 Inspection Reports, does not excuse BTU's actions. BTU is expected to know the applicable requirements and is expected to comply with each and every one. The law imposes on gas

companies the very basic duty to know what is required, know how to achieve compliance, and take the actions needed to actually do so. Failure to fulfill this basic duty calls into serious question BTU's managerial and technical abilities to continue its operation as a gas utility.

The Commission finds that the 17 alleged violations cited in the 2009 Inspection Report, and as described above, have been factually established as true and that BTU is found to be at fault on each. The Commission further finds that certain consequences are appropriate. Pursuant to KRS 278.992(1), the Commission may assess a civil penalty not to exceed \$25,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed \$500,000 for any related series of violations. Since we have found BTU guilty of 17 violations, the Commission must now consider the amount of the penalty to be assessed. KRS 278.992(1) provides that any civil penalty may be compromised by the Commission. In determining the amount of the penalty or the compromised amount, the appropriateness of the penalty to the size of the business charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of the violation shall be considered.

As BTU has failed to file its Annual Report with the Commission as required by KRS 278.140 since 2007, the accurate size of the business is unknown and therefore cannot accurately be taken into consideration. The gravity of the 17 violations is significant. We will accept as true at this time, and only with serious reservations, that BTU genuinely intends to reach compliance going forward. We have taken into account as a mitigating factor BTU's employment of Roger Wingate to prepare three of its

required manuals and to train BTU personnel/contractors to perform the 16 operator tasks identified in his testimony.

In order to impress upon BTU the seriousness of its offenses and to provide BTU with an incentive to avoid future violations, the Commission finds that a penalty of \$10,000 should be assessed against BTU for each of the 17 violations, for a total penalty of \$170,000. Of this total penalty, \$10,000 shall be due within 30 days of the date of this Order, with the remaining \$160,000 suspended for two years from the date of this Order. Provided that BTU has corrected the 17 outstanding violations in accordance with this Order and conducts its future operations consistent with all state, federal and Commission laws, regulations and Orders, the remaining penalty will be vacated at the end of the two-year period. However, if BTU violates any of its obligations listed in the Compliance Timelines appended to this Order, BTU as a corporate entity, Pamela Williams and Richard Williams, individually, shall show cause why the remaining \$160,000 penalty that is suspended in this Order should not be due and payable immediately, in addition to any other penalties that may be assessed against BTU as a corporate entity, as well as against Pamela Williams and Richard Williams, individually, for the violations that triggered enforcement of the penalty assessed herein. BTU's compliance with the above requirements will be monitored through the use of the inspection process of the Commission. It should again be stressed that any future action brought by this Commission against BTU as a corporate entity shall also be brought against Pamela Williams and Richard Williams, individually, in accordance with KRS 278.992(1).

In addition to the above, we find that BTU's history of non-compliance demonstrates that it lacks appreciation for its accountability to the safety of its customers and to the public at large, both groups that would be subject to dire consequences should BTU's actions result in a fire, gas explosion, or other disaster. Therefore, the Commission intends to closely monitor BTU's compliance and hold BTU to a strict schedule of compliance timelines to ensure that it does not avoid its responsibilities in the future. A list of these compliance timelines is incorporated herein as an Appendix to this Order.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, HEREBY ORDERS that:

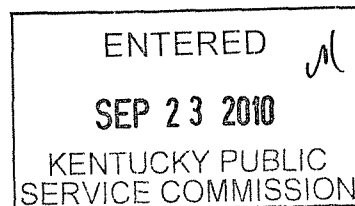
1. BTU shall take the necessary steps to fulfill all of the compliance timelines as stated in the Appendix.
2. BTU is assessed a civil penalty of \$170,000, with \$10,000 due within 30 days of the date of this Order. BTU shall pay \$10,000 in the form of a cashier's check made payable to "Treasurer, Commonwealth of Kentucky" and mailed or delivered to Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602. The remaining \$160,000 is suspended for two years from the date of this Order. Provided that BTU has corrected the 17 outstanding violations in accordance with this Order and Appendix and conducts its future operations consistent with all state, federal and Commission laws, regulations and orders, the remaining penalty will be vacated at the end of two years. Otherwise, the amount of \$160,000 shall be due and payable immediately to the Treasurer, Commonwealth of Kentucky, and shall be delivered in the same fashion as the initial

payment of \$10,000. BTU's compliance with the above requirements shall be monitored through the use of the inspection process of the Commission.

3. The \$170,000 penalty assessed against BTU is for its failure to comply with 49 C.F.R. Part 192.616(b); 49 C.F.R. Part 192.805; 49 C.F.R. Part 192.605(b)(9); 49 C.F.R. Part 192.625(f); 49 C.F.R. Part 192.721; 49 C.F.R. Part 192.723(b)(1); 49 C.F.R. Part 192.723(b)(2); 49 C.F.R. Part 192.747; 49 C.F.R. Part 192.739; 49 C.F.R. Part 192.481; 49 C.F.R. Part 192.603(b); 49 C.F.R. Part 192.614; 49 C.F.R. Part 191.11(a); 49 C.F.R. Part 199.101; 49 C.F.R. Part 199.202; 807 KAR 5:006, Section 14(b); and 49 C.F.R. Part 192.807.

4. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00403 DATED SEP 23 2010

COMPLIANCE TIMELINE

- The initial leakage survey of the entire BTU system shall be completed within 45 days of the date of this Order.
- All other outstanding deficiencies shall be addressed and corrected within 90 days of the date of this Order.
- All forms, reports, and documentation generated in an effort to cure an outstanding deficiency shall be submitted to the Commission within 10 days of its completion. Any such forms, reports, and documentation that have already been completed shall be submitted within 10 days of the date of this Order.
- BTU shall notify the Commission at least five days prior to the start of the initial leak survey and at least 15 days prior to the start of any subsequent surveys.
- Subsequent leak surveys shall be conducted at least once annually (not to exceed 15 months) on the entire BTU system, for the next five years (2011-2015). Pending review and evaluation of the leak survey report(s), the Commission may allow BTU to perform leakage surveys according to regulations (i.e., within business districts, outside business districts).
- The leak survey report shall include, at a minimum, the following information:
 - Location (address) of each leak discovered
 - Grade of each leak discovered (Grade 1, Grade 2, or Grade 3)
 - Repair schedule for each leak discovered (when each leak will be fixed)
- The leak survey report shall be submitted to the Commission within 10 days of survey completion.
- If any leaks are discovered on the BTU system, the following repair schedule shall be followed:
 - Grade 1 Leak – Requires prompt action to protect life and property, and continuous action until the conditions are no longer hazardous.
 - Grade 2 Leak – Repaired or cleared within six months of discovery.
 - Grade 3 Leak – Repaired or cleared within 12 months of discovery.

- BTU shall initially patrol its mains within 90 days of the date of this Order. Subsequent patrols shall be conducted at least once each quarter, but more frequently as necessary.
- BTU shall conduct, at a minimum, weekly hydrogen sulfide tests/checks and properly document these tests.
- BTU shall conduct, at a minimum, a weekly odorant test using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. These tests must also be properly documented.
- BTU shall use forms approved by the Commission.
- Beginning in 2011 and continuing through 2015, the following reports and documentation shall be submitted as indicated:
 - Operator Qualification Records – annually by June 30 of each year
 - Leakage survey report – within 10 days of completion
 - Valve Inspections – within 10 days of completion
 - Regulator Inspections – within 10 days of completion
 - Corrosion Records – within 10 days of completion
 - Weekly Odorant Tests – quarterly, within 15 days of the end of the quarter
 - Weekly H2S Tests – quarterly, within 15 days of the end of the quarter
- BTU shall be inspected for compliance with Pipeline Safety regulations at least once each calendar year for the period of 2011-2015.

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