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June 10, 2005

RECEIVED

Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky

JUN 13 2005

PUBLIC SERVICE
COMMISSION

Re: **Response to June 2, 2005 Letter of Mr. Stanley Howard**
Case No. 2005-00073

Dear Ms. O'Donnell:

This is in response to the letter filed on June 7, 2005 by Mr. Stanley Howard, Mayor of Salyersville (the "June 7 Letter"). In the June 7 letter, Mr. Howard, on behalf of the City of Salyersville, repeats previously filed objections to the transaction proposed in this proceeding.

The June 7 letter offers nothing in addition to the arguments offered in the first letter filed by Mr. Howard in this case. However, a response is necessary for three reasons: first, to point out that Mr. Howard offers no evidence that can be received by the Commission or used as a basis for decision. The June 7 Letter contains only unsworn opinion that is unsupported in any relevant particular by objective facts, that was filed by a non-party to this case and that was not even served upon the parties. Second, the June 7 Letter offers absolutely no legal basis upon which Joint Applicants' petition can be denied: the Commission's jurisdiction over this matter, and the findings upon which its decision may be based, are given in KRS 278.020(4) and (5). The record in this case supports approval under the statutory standards, not denial. The desire of the City of Salyersville to acquire Sigma is not the case before the Commission. Indeed, there is no assurance that the City would even be the winning bidder at any auction of Sigma's assets. The ability of Joint Applicants to run a gas utility and to ensure that its customers obtain adequate, reasonably-priced service *is* the case before the Commission. Third, the

June 7 Letter contains numerous errors and unsubstantiated innuendoes, at least some of which must be corrected on the record.

The June 7 Letter argues that Joint Applicants have “still” failed to identify a reliable source of gas. The claim is specious. Joint Applicants have identified numerous sources that would be available to Sigma if they were the owners; have demonstrated the ability to run large businesses and gas utilities on a sound financial and operational footing; have demonstrated the financial resources to enable Sigma to obtain gas; and, possibly of the most vital importance, have demonstrated that they are good citizens who are active in community affairs and who can be relied upon to take seriously their obligation to serve Sigma’s customers.

As Joint Applicants previously have explained, immediately upon approval of the transfer, Sigma’s customers would have access to the existing supply arrangements between Sigma and Auxier Road, as well as to supplies generated by Interstate Natural Gas, Joint Applicants’ large and growing natural gas production company. Moreover, the connections to the pipeline systems of Columbia and Kentucky West Virginia Gas Company through Auxier Road afford access to numerous suppliers. The City has alleged that it has obtained a gas supply contract with Jefferson Gas, though there is no actual evidence in the record that it has; but even more to the point, there is no reason to assume that Jefferson Gas would refuse to do business with Sigma if Joint Applicants rather than the city acquired it. Joint Applicants already do business with Jefferson Gas: their production company, Interstate, sells gas to Jefferson.

Ironically, the June 7 Letter even contains an attack upon Joint Applicants’ attempt to reassure the Commission with regard to gas supply by promising to retain existing arrangements until other means that are at least as reliable and cost-effective become available. The June 7 letter claims that Auxier Road is an “unsuitable” supplier because of its owner’s history with Sigma. This *ad hominem* attack is entirely meaningless in the context in which it is offered. In the first place, Auxier Road merely transports the gas; the primary gas transportation companies supplying the gas to Auxier are Columbia and Equitable. No rational person would presume that the gas deliveries of these companies will fail. Next, the June 7 Letter offers nothing to indicate that Auxier Road has ever failed to deliver gas to Sigma. Finally, Joint Applicants are astute and energetic businessmen who will not hesitate to obtain gas supplies from a different source should they find a better deal for Sigma and its customers. In short, the baseless accusations that Joint Applicants cannot be trusted to provide gas to Sigma’s customers are so much verbiage.

The June 7 Letter also points out, quite irrelevantly, that when PSC approval for a transfer is not obtained, the transfer is void. But the question before the Commission in this case is whether the transfer *should* take place. The legal status of the transaction in the absence of approval is not at issue. Furthermore, other than merely monitoring Sigma’s operations at the request of GOLD – after having taken care to seek, and to

obtain, a Commission Staff opinion letter approving the arrangement – Joint Applicants have had nothing to do with Sigma's management. Management remains in the hands of Auxier Road, pursuant to the latter's management agreement with GOLD, and under the auspices of the Bankruptcy Court. Joint Applicants have offered to manage Sigma free of charge – an arrangement that would result in savings for GOLD and for Sigma -- but they have asserted no "ownership" rights in this regard.

Other claims contained in the June 7 Letter, and brief responses thereto, are as follows:

- The June 7 Letter claims that Joint Applicants lack "the financial security" to operate Sigma. In light of evidence Joint Applicants have submitted to the Commission, including financial statements, evidence of a \$250,000 line of credit, and warm recommendations from numerous bank presidents, this charge is ludicrous.
- The June 7 Letter claims that Joint Applicants' business plan is still not sufficiently concrete, and that their desire to avoid further financial damage to Sigma somehow reflects "lack of concern for the welfare of Sigma gas customers" and for persons injured in an explosion. The first charge is illogical, for attempting to make Sigma solvent serves the welfare of Sigma's customers rather than otherwise. The charge of callousness to tort claimants is not only irrelevant to KRS 278.020(4) and (5); it is offensive and unfair. Joint Applicants are not attempting to commit an injustice, and Mr. Kanney has met with a tort claimant and her attorneys. Moreover, despite its finger-pointing, the City of Salyersville has not claimed to have made any injured persons an offer of compensation.
- The June 7 Letter states that Joint Applicants' "only" concern is using Sigma's pipeline to transport gas produced by Interstate National Gas. This statement is wholly unfounded. Joint Applicants have always represented that they plan to maximize Sigma's pipeline capacity. Indeed, the economic benefits of such maximization, as described in Joint Applicants' previous filings in this case, would be very much in the public interest, and should be welcomed by the City. But to conclude that Joint Applicants will not also be concerned for Sigma's customers is unwarranted. They recognize the responsibilities to customers that they will incur by buying a local distribution company, and have fulfilled those responsibilities to the customers served by their two existing gas utilities.
- The June 7 Letter characterizes Joint Applicants' failure to have sufficient meetings with local government as a "deficiency." There is, however, no requirement under KRS 278.020(4) or (5) that applicants to acquire utilities

must meet with local governments. Next, the June 7 Letter charges that Joint Applicants have failed to honor appointments made with Mr. Howard. In

response, Joint Applicants state that they have never intentionally done any such thing. Although press of business has made it difficult always to meet when originally planned, Joint Applicants' understanding was that the scheduled time was tentative and subject to confirmation. Moreover, Mr. Kanney has driven to Mr. Howard's home on three occasions hoping to talk to him, but failed each time to find Mr. Howard at home.

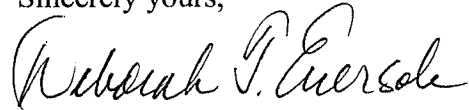
- The June 7 Letter attempts to draw a parallel between the Joint Applicants and the applicant in Case No. 8966,¹ in which the Commission issued a denial. There is no such parallel. Representatives of the applicant in that case, Jupiter Gas Company, Inc. ("Jupiter"), stated, among other things, that it had been "unable" to maintain a Commission-ordered escrow account (Jupiter Order at 3); that it was "unaware of the various safety and service requirements a gas utility must meet" (Jupiter Order at 4); and that it had failed to honor its purchased gas adjustment clause (Jupiter Order at 4). Its chairman of the Board even testified that he considered regulatory approval an "unnecessary process" (Jupiter Order at 4). In contrast, Joint Applicants here have demonstrated impressive financial resources; have demonstrated their understanding of safety and service requirements by running two other gas utilities and receiving inspection reports showing *no* deficiencies; and have complied willingly with the regulatory process.

As a final matter, Joint Applicants wish to clarify that they like and respect Mr. Howard. His conversations with Mr. Kanney with regard to this issue have been very cordial, just as Joint Applicants have previously reported to the Commission. The tone and content of the June 7 Letter are puzzling and disappointing in that they are at odds with the personal communications between Mr. Howard and Mr. Kanney.

¹ *In the Matter of a Joint Application of Danny Preston and Betty Preston, David Branch Road, Van Lear, Kentucky 41265 and Jupiter Gas Company, Inc., a Kentucky corporation with its Principal Place of Business at 865 Sparta Court, Lexington, Kentucky 40504 for the Sale and Purchase of All Issued and Outstanding Shares of Johnson County Gas Company, Inc., A Kentucky Corporation with Its Principal Place of Business Located in Van Lear, Johnson County, Kentucky 51265 (Final Order dated September 11, 1984) ("Jupiter Order").*

As always, we appreciate your attention to this matter. If you have any questions, or desire additional information, please call the undersigned.

Sincerely yours,



C. Kent Hatfield
Deborah T. Eversole

Cc: Gerald Wuetcher, Acting General Counsel
Kentucky Public Service Commission
(By Facsimile)

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