

City of Salyersville

SALYERSVILLE, KENTUCKY 41465-0640
606/349-2409
FAX 606/349-2449



June 7, 2005

Public Service Commission
221 Sower Blvd.
Frankfort KY. 40601

RECEIVED

JUN 07 2005

PUBLIC SERVICE
COMMISSION

RE: Request for a Rehearing
Case No. 2005-00073

The City of Salyersville strongly feels Joint Applicants' petition for reconsideration or a rehearing should be denied. Below you will find the reasons why Joint Applicants should not be granted a rehearing.

The City of Salyersville alleges Joint Applicants (Jerome Kanney and Dennis Rohrer) failed to obtain prior approval of the PSC to purchase the stock of Sigma Gas Corporation pursuant to the requirements of KRS 278.020 (5) (6).

The City alleges that Joint Applicants paid Ruth Conley Clemons and Barkley Sturgill \$20,000 each and Mr. Branham \$15,000 for their shares of stock. Joint Applicants knowing that they had to receive prior approval from the Commission, paid cash in hand to each share holder without a stock purchase agreement of any kind. This is a clear violation of KRS 278.020 (5) (6).

Joint Applicants are very familiar with KRS 278.020 (5) (6), as they demonstrated this when they purchased both Cowcreek and Dema Gas Company. Upon purchasing Dema Gas Company (Case No. 99-232), Kanney and Rohrer asked for approval of the transfer of stock under an oral agreement. No cash was transferred until permission was granted by the PSC. Upon purchasing Cow Creek Gas Company (Case No. 94-321) Kanney and Rohrer asked for approval of the transfer of stock under a Receipt and Agreement.

In a similar case (Case No. 90-189) the Commission found the transfer of all outstanding stock of *Cardinal Utilities, Inc* to *Steve Pope* to be declared null and void. It was alleged that Lorraine Kimbrell transferred all outstanding shares of Cardinal stock to Steve Pope without obtaining Commission approval in violation

Response to Reliable Source of Gas Deficiency:

The Joint Applicants still have failed to identify a reliable source of gas. They state that they will continue to purchase gas delivered by Columbia through Estill Branham, owner and operator of Auxier Road Gas, pursuant to the current arrangements. Mr. Branham's history of operating and bankrupting Sigma Gas, and the fact that he neglected to carry liability insurance, would make Auxier Road an unsuitable gas supplier. There also have been no written arrangement or contract presented to the Commission by the Joint Applicants for a long term gas supply. This is the second time the Joint Applicants have tried to address this question and both times they have been vague with their response. Any owner and operator of Sigma Gas must show a long term gas supply; the Joint Applicants have not shown this and therefore the request for a rehearing must be denied.

Response to Meeting with Local Officials Deficiency:

Joint Applicants did not attempt to meet with local officials until prompted to do so by the Commission. Joint Applicants scheduled two appointments with the Mayor of Salyersville; neither appointment was kept or canceled by the Joint Applicants. Joint Applicant, however, did have a conversation with the Mayor via telephone on May 19, 2005. This conversation consisted of the Joint Applicant reviewing the City's concerns with the Mayor. This conversation did not present any additional reassurance of their capabilities of operating Sigma Gas. The Joint Applicants also met with the Salyersville Mayor on June 1, 2005. Again that conversation did not produce any additional reassurance of their capabilities. During the June 1, 2005, meeting the Mayor asked Mr. Kanney what his main interest in Sigma Gas. Mr. Kanney replied by saying his main interest was in the lines to pump gas out of the area, as he stated in his "Petition for Reconsideration" dated May 23, 2005. This proves that Joint Applicants are only interested in the transportation of gas and not the customers of Sigma. They are in the well drilling and transportation of gas business, not in the utility business. Joint Applicants have questioned the City of Salyersville's ability to operate the Sigma Gas system. The City is interested in bidding on the Sigma Gas solely for the benefit of Sigma Gas customers, both in the city and out. The gas supply has been a major problem and worry for the citizens for the past 15 years. The City owns and operates two major utilities; Salyersville Water Works, which has an average of 1,050 customers, and Salyersville Sewer, which has an average of 950 current customers, with an additional 350 customers coming on line within the next few months. We also furnish the Magoffin Co. Water District water to supply 3,500 customers. We have in place a computerized billing system, billing personal, field personnel, and any other needed personnel. We have contracts in place for long term gas supply (20 + years). We also have contracts in place for any consulting and training. All contracts have been reviewed

of KRS 278.020 (4) (5). Joint Applicants' blatant disregard of Kentucky's statutes and regulations is unacceptable and therefore should be denied a rehearing.

If however, the Commission feels Joint Applicants did not violate KRS 278.020 (5) (6) the City of Salyersville, pursuant to the requirements of KRS 278.020 (6), further intends to show that the transfer of corporate stock of Sigma Gas to Kanney and Rohrer would not be in the best interest of the public.

Response to Financial Security Deficiency:

In the Joint Applicants' petition for a rehearing they state that they have secured a \$250,000 Commercial Loan Commitment from Community Trust Bank, Inc. only to be used for Sigma **after** it emerges from bankruptcy. In the Joint Applicants' "Response to Commission Staff's Interrogatories and Requests For Production of Documents to Joint Applicants' Case No. 2005-00073" dated April 12, 2005, they state that they are "strongly considering" taking Sigma Gas from Chapter 7 to Chapter 11 bankruptcy. If Joint Applicants intend to leave Sigma in a form of bankruptcy then the \$250,000 will not be readily available and therefore they lack the financial security to operate Sigma Gas and their request for a rehearing must be denied.

Response to Business Plan Deficiency:

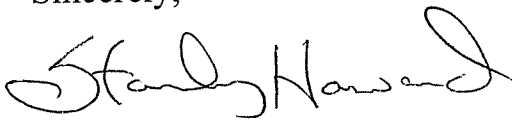
The City of Salyersville shows great concern of the Joint Applicants' refusal of presenting an appropriate business plan. Attempts to discuss their business plan are not sufficiently concrete. Many items that would be included in a business plan have still not been resolved. It appears that Joint Applicants are relying totally on the bankruptcy court for direction. They point out that they will not develop a specific business plan for fear of the claimants against the bankruptcy estate would rely on some portions of the plan to maximize their claims. This would lead you to believe that they indeed have a plan but are not willing to reveal the plan because it would affect their case. This not only demonstrates lack of concern for the welfare of Sigma Gas customers, but also shows lack of concern for the individuals that were seriously injured in the explosion. The Joint Applicants also state that they have talked with GOLD concerning the repayment of the 1.5 + million dollars owed by Sigma. According to GOLD no claims have been settled. The failure of the Joint Applicants to develop a business plan demonstrates that they lack the managerial ability to provide reasonable service, and therefore their request for a rehearing must be denied.

and accepted by GOLD (Governors Office of Local Development) . The issue is not whether the City can operate a gas company; it is that the Joint Applicants cannot. Therefore, the Joint Applicants request for a rehearing must be denied.

Before closing, the City would like the Commission to reference the attached case (Case No. 8966). This case is very similar to the current Sigma case. The Commission denied the transfer of stock due to the Jupiter Gas Company not having the financial or managerial ability to operate a gas company.

We as a local government have one of the same objectives as the PSC; that a utilities service is adequate, efficient and reasonable. We feel Joint Applicants cannot provide adequate, efficient, and reasonable services because they lack the managerial, technical, and financial ability to own and operate Sigma Gas. Their petition for a rehearing must be denied.

Sincerely,

A handwritten signature in cursive script that reads "Stanley Howard".

Stanley Howard , mayor city of Seelyville

Cc: Andy Barr, GOLD
Gail Russell, Goldberg and Simpson
Grayson Smith, Liaison to the Governor

Attachment

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A JOINT APPLICATION OF DANNY)
 PRESTON AND BETTY PRESTON, DAVIS)
 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 OUT-)
 STANDING SHARES OF JOHNSON COUNTY)
 GAS COMPANY, INC., A KENTUCKY)
 CORPORATION WITH ITS PRINCIPAL)
 PLACE OF BUSINESS LOCATED IN)
 VAN LEAR, JOHNSON COUNTY,)
 KENTUCKY 41265)

CASE NO. 8966

ORDER ON REHEARING

On June 19, 1984, the Commission denied the application of Jupiter Gas Company, Inc., ("Jupiter") to purchase the stock of Johnson County Gas Company, Inc. ("Johnson County"). Jupiter's motion for rehearing on this Order was granted and the rehearing was held before the Commission on August 22, 1984. Columbia Gas of Kentucky ("Columbia"), the Department of Local Government ("DLG"), Kentucky-West Virginia Gas Company, and the Attorney General of Kentucky, intervenors in this case, appeared and participated in this rehearing.

In its Order of June 19, 1984, the Commission indicated that Jupiter had failed to prove that it had the financial and managerial capability to operate Johnson County in compliance

with PSC regulations and policies. The Commission also expressed its concern that Jupiter had presented no acceptable plan to pay off the large indebtedness to Columbia and the DLG. Thus, the primary purpose of the August 22, 1984, rehearing was to give Jupiter an additional chance to address these crucial issues.

The Commission will begin its analysis of the evidence presented on rehearing with the issue of gas supply. Johnson County's contract with Columbia Gas Transmission ("CGT") for the delivery of gas to Johnson County's system expired on July 3, 1984. Currently there is still enough gas in Johnson County's system to supply its customers until early December, 1984, assuming a normal winter. (T.E. 169.)¹ However, without a new transportation agreement with CGT, Johnson County's 800 customers may well be without gas in the middle of the winter heating season. It is for this reason that the Commission stated at the rehearing that Jupiter's efforts to obtain a reliable gas supply represents the "heart of the matter before the Commission." (T.E. 174.) Nevertheless, Jupiter's president testified that they had no agreement with CGT (or any other transporter) for delivery of gas to the Van Lear area. (T.E. 34, 106.) This lack of an agreement was confirmed by a letter from CGT dated August 21, 1984. (T.E. 112.)

¹ This refers to the official transcript of the rehearing before the Commission on August 22, 1984.

The Commission will next review the evidence concerning Jupiter's repayment to Columbia and DLG. The amount owed to Columbia is \$380,287. (T.E. 93.) Jupiter's president testified that since the last hearing before the PSC he had endeavored to meet with Columbia's management to discuss payment of this arrearage but that conflicting schedules had so far prevented such a meeting. (T.E. 92.) As of the date of the rehearing, Jupiter had no agreement with Columbia regarding the repayment. (T.E. 101.) Jupiter had also made no effort to make even a partial payment to Columbia. (T.E. 33.) As to the DLG loan, the evidence was the same: despite repeated invitations by DLG, Jupiter (as of the date of the rehearing) had failed to submit any plan for paying off the \$1.3 million indebtedness to DLG. (T.E. 48-49, 106.)

When questioned about the status of the Commission-ordered escrow account, Jupiter acknowledged its obligation to maintain this account but stated that it was simply unable to do so. (T.E. 115.) Instead, Jupiter testified that it has used this \$70,000 that may be owed to the customers of Johnson County for day to day operation of the company. (T.E. 45.)²

The Commission is understandably disturbed by Jupiter's inability to obtain a long term gas transportation agreement, its

² The Commission will make a determination as to the final disposition of the escrow funds upon completion of its investigation in Case No. 8235.

failure to present any proposal to Columbia or DLG for liquidating those large arrearages, and its failure to maintain the escrow account in accordance with Commission Orders. Equally disturbing was Jupiter's general lack of understanding of what operating a public utility within the confines of state law really entails. For example, Jupiter's president testified that he was unaware of the various safety and service requirements a gas utility must meet. (T.E. 165.) Jupiter's president also admitted that its cost of gas from Kentucky-West Virginia Gas Company had recently been reduced by \$.82 per Mcf, yet Jupiter's management had made no effort to pass this \$6,350 savings on to Johnson County's customers as the utility's Purchased Gas Adjustment clause requires. (T.E. 134.) Finally, Jupiter's Chairman of the Board, Mr. Jack K. Daniel, Sr., testified that having to obtain PSC approval for the operation of the Johnson County system was an "unnecessary process," and that he would never have bought the utility if he knew he would have to obtain such regulatory approval. (T.E. 219.)

The evidence compiled in this case clearly convinces the Commission that Jupiter lacks the financial and managerial capability of operating Johnson County Gas Company in a way that will insure reliable service to the 800 customers dependent on this utility for their gas supply. The Commission, therefore, finds that Jupiter is not ready, willing and able to operate Johnson County Gas Company and the application for approval of this transfer should, accordingly, be denied.

IT IS THEREFORE ORDERED that the joint application for approval of the sale and transfer of the stock of Johnson County Gas Company, Inc., to Jupiter Gas Company, Inc., be and it hereby is denied.

IT IS FURTHER ORDERED that the lawful operators of Johnson County Gas Company, Inc., remain Danny and Betty Preston or their successors in interest pursuant to any order of the federal bankruptcy court in Case Number 83-00002, In Re Johnson County Gas Company, Eastern District of Kentucky. As president and secretary of Johnson County Gas Company respectively, Danny and Betty Preston (or their successors in interest) are responsible to this Commission for all actions of the Johnson County Gas Company, Inc.

IT IS FURTHER ORDERED that, as of the date of this order, Danny and Betty Preston (or their successors in interest) shall commence operating Johnson County in accordance with the provisions of 807 KAR 5:021, 807 KAR 5:026, 807 KAR 5:027, and all other pertinent regulations of the Commission and laws of the Commonwealth of Kentucky.

IT IS FURTHER ORDERED that Jupiter shall cooperate fully in the transition and shall make no cash disbursements or other disposition of Johnson County assets as of the date of this Order and shall provide Danny and Betty Preston (or their successors in interest) with all accounting, service, and other records in its possession relative to the operations of Johnson County.

IT IS FURTHER ORDERED that upon resumption of management of Johnson County, Danny and Betty Preston shall file weekly reports

to the Commission of all receipts and disbursements of Johnson
County.

Done at Frankfort, Kentucky, this 11th day of September,
1984.

PUBLIC SERVICE COMMISSION

Richard D. Herman
Chairman

Paul H. ...
Vice Chairman

[Signature]
Commissioner

ATTEST:

Secretary

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A JOINT APPLICATION OF DANNY)
PRESTON AND BETTY PRESTON, DAVIS)
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 OUT-)
STANDING SHARES OF JOHNSON COUNTY)
GAS COMPANY, INC., A KENTUCKY)
CORPORATION WITH ITS PRINCIPAL)
PLACE OF BUSINESS LOCATED IN)
VAN LEAR, JOHNSON COUNTY,)
KENTUCKY 41265)

CASE NO. 8966

ORDER ON REHEARING

On June 19, 1984, the Commission denied the application of Jupiter Gas Company, Inc., ("Jupiter") to purchase the stock of Johnson County Gas Company, Inc. ("Johnson County"). Jupiter's motion for rehearing on this Order was granted and the rehearing was held before the Commission on August 22, 1984. Columbia Gas of Kentucky ("Columbia"), the Department of Local Government ("DLG"), Kentucky-West Virginia Gas Company, and the Attorney General of Kentucky, intervenors in this case, appeared and participated in this rehearing.

In its Order of June 19, 1984, the Commission indicated that Jupiter had failed to prove that it had the financial and managerial capability to operate Johnson County in compliance

with PSC regulations and policies. The Commission also expressed its concern that Jupiter had presented no acceptable plan to pay off the large indebtedness to Columbia and the DLG. Thus, the primary purpose of the August 22, 1984, rehearing was to give Jupiter an additional chance to address these crucial issues.

The Commission will begin its analysis of the evidence presented on rehearing with the issue of gas supply. Johnson County's contract with Columbia Gas Transmission ("CGT") for the delivery of gas to Johnson County's system expired on July 3, 1984. Currently there is still enough gas in Johnson County's system to supply its customers until early December, 1984, assuming a normal winter. (T.E. 169.)¹ However, without a new transportation agreement with CGT, Johnson County's 800 customers may well be without gas in the middle of the winter heating season. It is for this reason that the Commission stated at the rehearing that Jupiter's efforts to obtain a reliable gas supply represents the "heart of the matter before the Commission." (T.E. 174.) Nevertheless, Jupiter's president testified that they had no agreement with CGT (or any other transporter) for delivery of gas to the Van Lear area. (T.E. 34, 106.) This lack of an agreement was confirmed by a letter from CGT dated August 21, 1984. (T.E. 112.)

¹ This refers to the official transcript of the rehearing before the Commission on August 22, 1984.

The Commission will next review the evidence concerning Jupiter's repayment to Columbia and DLG. The amount owed to Columbia is \$380,287. (T.E. 93.) Jupiter's president testified that since the last hearing before the PSC he had endeavored to meet with Columbia's management to discuss payment of this arrearage but that conflicting schedules had so far prevented such a meeting. (T.E. 92.) As of the date of the rehearing, Jupiter had no agreement with Columbia regarding the repayment. (T.E. 101.) Jupiter had also made no effort to make even a partial payment to Columbia. (T.E. 33.) As to the DLG loan, the evidence was the same: despite repeated invitations by DLG, Jupiter (as of the date of the rehearing) had failed to submit any plan for paying off the \$1.3 million indebtedness to DLG. (T.E. 48-49, 106.)

When questioned about the status of the Commission-ordered escrow account, Jupiter acknowledged its obligation to maintain this account but stated that it was simply unable to do so. (T.E. 115.) Instead, Jupiter testified that it has used this \$70,000 that may be owed to the customers of Johnson County for day to day operation of the company. (T.E. 45.)²

The Commission is understandably disturbed by Jupiter's inability to obtain a long term gas transportation agreement, its

² The Commission will make a determination as to the final disposition of the escrow funds upon completion of its investigation in Case No. 8235.

failure to present any proposal to Columbia or DLG for liquidating those large arrearages, and its failure to maintain the escrow account in accordance with Commission Orders. Equally disturbing was Jupiter's general lack of understanding of what operating a public utility within the confines of state law really entails. For example, Jupiter's president testified that he was unaware of the various safety and service requirements a gas utility must meet. (T.E. 165.) Jupiter's president also admitted that its cost of gas from Kentucky-West Virginia Gas Company had recently been reduced by \$.82 per Mcf, yet Jupiter's management had made no effort to pass this \$6,350 savings on to Johnson County's customers as the utility's Purchased Gas Adjustment clause requires. (T.E. 134.) Finally, Jupiter's Chairman of the Board, Mr. Jack K. Daniel, Sr., testified that having to obtain PSC approval for the operation of the Johnson County system was an "unnecessary process," and that he would never have bought the utility if he knew he would have to obtain such regulatory approval. (T.E. 219.)

The evidence compiled in this case clearly convinces the Commission that Jupiter lacks the financial and managerial capability of operating Johnson County Gas Company in a way that will insure reliable service to the 800 customers dependent on this utility for their gas supply. The Commission, therefore, finds that Jupiter is not ready, willing and able to operate Johnson County Gas Company and the application for approval of this transfer should, accordingly, be denied.

IT IS THEREFORE ORDERED that the joint application for approval of the sale and transfer of the stock of Johnson County Gas Company, Inc., to Jupiter Gas Company, Inc., be and it hereby is denied.

IT IS FURTHER ORDERED that the lawful operators of Johnson County Gas Company, Inc., remain Danny and Betty Preston or their successors in interest pursuant to any order of the federal bankruptcy court in Case Number 93-00002, In Re Johnson County Gas Company, Eastern District of Kentucky. As president and secretary of Johnson County Gas Company respectively, Danny and Betty Preston (or their successors in interest) are responsible to this Commission for all actions of the Johnson County Gas Company, Inc.

IT IS FURTHER ORDERED that, as of the date of this order, Danny and Betty Preston (or their successors in interest) shall commence operating Johnson County in accordance with the provisions of 807 KAR 5:021, 807 KAR 5:026, 807 KAR 5:027, and all other pertinent regulations of the Commission and laws of the Commonwealth of Kentucky.

IT IS FURTHER ORDERED that Jupiter shall cooperate fully in the transition and shall make no cash disbursements or other disposition of Johnson County assets as of the date of this Order and shall provide Danny and Betty Preston (or their successors in interest) with all accounting, service, and other records in its possession relative to the operations of Johnson County.

IT IS FURTHER ORDERED that upon resumption of management of Johnson County, Danny and Betty Preston shall file weekly reports

to the Commission of all receipts and disbursements of Johnson
County.

Done at Frankfort, Kentucky, this 11th day of September,
1984.

PUBLIC SERVICE COMMISSION

Richard D. Herman
Chairman

R. D. Spill
Vice Chairman

Sam Stucky
Commissioner

ATTEST:

Secretary