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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of :
Power Energy Distribution, Inc. to :
Establish Rates, Classifications, Rules : Case No. **97-746-GA-ATA**
and Regulations Governing Gas Service. :

In the Matter of the Investigation of :
Power Energy Distribution Inc. and :
Power Resources Operating Company, :
Inc. Relative to Their Compliance with : Case No. **98-1045-GA-GPS**
the Natural Gas Pipeline Safety Stan- :
dards and Related Matters. :

**RESPONSE TO APPLICATION FOR EXTENSION
AND EXPANSION OF OBLIGATION TO DISPOSE OF UTILITY
OPERATIONS AND FACILITIES
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

On January 8, 1999, Power Energy Distribution, Inc. (PED), Power Resources Operating Company, Inc. (PR), the East Ohio Gas Company, and the Staff of the Public Utilities Commission of Ohio (Staff) executed a Stipulation and Recommendation (Stipulation) intended to address all issues raised in the above-captioned cases.¹ Included among the terms contained in the parties' settlement was a requirement that PED and PR pay a civil forfeiture of \$70,000 on May 1, 1999 if PED and PR had not "disposed" of their interests in the utility and natural gas pipeline system by that date. PED and PR under the terms of the Stipulation could effect such a disposition through

¹ This agreement was adopted by the Commission rehearing entry issued January 14, 1999.

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Technician Gene M. Wain Date Processed May 7, 1999

either a sale to or total relinquishment of operating control to a Commission-regulated natural gas company or any governmental entity authorized by law to acquire and operate a gas utility. PR was even allowed to reserve a financial interest in the pipeline system to facilitate a sale.

Nearly four months have passed since the execution of the aforementioned Stipulation wherein the Companies expressly committed to securing a knowledgeable purchaser for their utility and pipeline operations. PED/PR have failed to "dispose" of the utility and pipeline system as agreed upon in the Stipulation. Their failure to comply has prompted this "eleventh hour" application which now seeks to change the terms of the Stipulation. This is yet another example of the dilatory tactics that have become so characteristic of PED and PR in these cases. Time and again the Companies have expressed unequivocally their desire and intent to dispose of their interests in the utility and the pipeline system, but Staff remains unconvinced that the Companies have actively, let alone "enthusiastically," taken actions to achieve *their stated* goal. Indeed, the Staff has neither seen nor heard anything that would suggest that PED/PR has actively marketed its utility/pipeline system interests in any way.² Throughout this time period, the Staff has repeatedly offered its assistance to discuss GPS and related matters regarding PR's pipeline system with any prospective purchaser. Staff remains ready to provide assistance to PR in this regard.

Staff disagrees with the Companies' assertion that the Stipulation creates too limited a class of eligible purchasers. To ensure that the safety and management prob-

² Based upon its knowledge and belief, Staff rejects the allegations by PED/PR in its application, that suggest that the Companies have *actively sought* purchasers for their interests. Staff would also point out the inappropriateness of the Companies' arguments regarding the civil forfeiture ordered by the Commission. The forfeiture was part of the bargain agreed upon by all parties, including PED and PR, in a voluntarily-negotiated settlement. PED/PR should not now be heard to complain of the agreement that they negotiated.

lems that have plagued the Companies in the past are not repeated, Staff believes that it is important that any purchaser and operator possess more than "extensive industrial and business skills" as touted by the Companies. Natural gas system operational expertise and background is essential. Staff remains confident that one of the several entities with such experience that has, to date, expressed interest will step forward if the Companies diligently follow-up on their inquiries, answer such inquiries fully and accurately, and are willing to offer reasonable purchase terms as PED and PR have represented they are willing to do. Only then can serious negotiations occur that will facilitate the very goal PED/PR seek to achieve - divestiture of their entire interest in the utility (PED) and the natural gas pipeline system (PR).

Be that as it may, there is a recent development that may create some pause for encouragement. The Staff has been informed that an offer to purchase or lease PED/PR's interests was made on or about May 2, 1999, the terms of which are presently being reviewed by PED/PR management. Staff further understands that the offeror is a natural gas company presently regulated by the Commission. Staff has also been informed by another prospective purchaser (also knowledgeable in the natural gas business) of its interest in discussing acquisition with PED/PR. Given these recent developments, Staff believes that it is appropriate to grant additional time to enable negotiations to proceed in earnest toward an acceptable "disposition" of the respective interests of PED and PR as required under the January 8, 1999 Stipulation. Accordingly, Staff recommends the following for the Commission's consideration:

- (1) extending the effectiveness of PED's tariffs to June 30, 1999 to provide for temporary operating authority thereunder to prevent any interruption in the lawful provision of natural gas service to the Companies' existing customers;
- (2) to order the Companies to provide Staff, on a "real time basis," copies of all promotional materials and correspondence used in solicitation of prospective buyers, as well as copies of any offers made by prospective buyers for the Companies' utility and gas pipeline system interests;
- (3) to order PR, in the event that the Companies have failed to "dispose" of their interests as required under the Stipulation by June 30, 1999, to file tariffs and any other necessary paperwork to commence operation as a regulated natural gas company under R.C. 4905.03;
- (4) suspending collection of the full \$70,000 civil forfeiture, that became payable on May 1, 1999 under the terms of the Stipulation, to permit the Companies to, in good faith, pursue acquisition prospects through June 30, 1999. Staff recommends that the Companies be directed to pay \$20,000 concurrent with issuance of the Commission's order addressing the Companies' pending application. In the event that PED/PR have not sold their interests in the utility

and pipeline system in a manner consistent with the Stipulation by June 30, 1999, Staff recommends that the Commission order that the balance of the civil forfeiture, that is \$50,000, become payable within seven business days thereafter.³

³ The Staff believes that the civil forfeiture provision, including the abeyance provision, represented an important part of the parties' January 8, 1999 settlement, both in terms of securing the Staff's signature on the Stipulation and in terms of creating incentives and ample time for the Companies to dispose of their respective interests.

CONCLUSION

It is with no small degree of disappointment that the Staff recommends that the earlier settlement be modified to provide PED/PR with a final chance to seriously pursue disposition of their interests. Staff recommends that the January 8, 1999 Stipulation be amended only to the extent discussed herein, and that the Commission strictly enforce the terms outlined herein and in the Stipulation should the Companies fail to fulfill their end of the bargain.

Respectfully submitted,

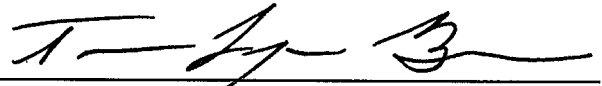
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Response to Application for Extension and Expansion of Obligation to Dispose of Utility Operations and Facilities** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 6th day of May, 1999.



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