

October 21, 2009

VIA ELECTRONIC FILING (E-FILING)

Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pa. PUC v. UGI Utilities, Inc.
Docket No. M-2009-2031571

Dear Secretary McNulty:

Enclosed for filing in the above-captioned proceeding, please find the comments of the Pennsylvania Utility Law Project. These comments are submitted pursuant to the Commission Opinion and Order in this proceeding entered October 1, 2009.

If you have any questions, please do not hesitate to contact me directly.

Very truly yours,

/s/ Julie George

Julie George
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Enclosures
cc: Cert. of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania PUC v.
UGI Utilities, Inc.**

Docket No. M-2009-2031571

CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the foregoing Comments upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: October 21, 2009

**BEFORE THE
PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

**Pa. Public Utility Commission, Law
Bureau Prosecutory Staff v. UGI
Utilities, Inc.**

Docket No. M-2009-2031571

**COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT**

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Dated: October 21, 2009

I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”) respectfully submits these comments in the above-captioned proceeding regarding the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Settlement Agreement between UGI Utilities, Inc. (“UGI”) and the Law Bureau Prosecutory Staff (“Law Bureau”).¹ PULP respectfully submits these comments pursuant to the Opinion and Order entered on October 1, 2009.² PULP, part of the Pennsylvania Legal Aid Network, a nonprofit network of legal service providers representing the interests of low income Pennsylvanians, is the specialized project providing statewide representation, advice, and support in energy and utility matters related to low income, residential utility consumers. PULP thanks the Commission for this opportunity to be heard on this issue.

PULP’s comments focus on both the inadequacy of the contribution amount as well as the appropriateness of the Commission’s provision of the Settlement Agreement to direct the payment of settlement proceeds into UGI’s Operation Share. Any settlement that resolves allegedly unlawful conduct by a company must act as a true deterrent for the company and the entire industry, and the application of settlement proceeds should clearly benefit the customers and not the company. Operation Share provides emergency financial aid to pay electric bills for families with financial hardships. This financial aid payment provides a benefit to UGI by decreasing its arrearages and uncollectibles. We strongly encourage the Commission to consider the direct public interest benefits to be achieved by directing funds to LIURP, rather than to Operation Share. PULP supports the Commission in promoting and approving settlement

¹ Ordering paragraph number 4 of the Commission’s Opinion and Order entered October 1, 2009 states, “That, subsequent to the Commission’s review of the comments filed in this proceeding, a final Opinion and Order will be issued.”

² *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2009-2031571, (Order entered October 1, 2009).

agreements which provide that settlement proceeds are paid into LIURP. Utility company contributions to LIURP will act most effectively to advance the public welfare.

II. BACKGROUND

This proceeding involves an explosion and fire that occurred at 789 Mohawk Street in Allentown, PA on December 9, 2006. The explosion destroyed the structure and three adjacent row homes. There was one minor injury. The explosion occurred during the course of implementation of UGI's automated meter reading project (AMR). The Law Bureau Prosecutory Staff initiated an informal investigation of UGI's actions and business practices in relation to the incident. The Prosecutory Staff alleged UGI may have violated 49 CFR 192.751(a), 49 CFR §192.805 (b) & (c), 49 CFR §199.105(a) 49 CFR §199.245(b) and 52 Pa. Code §59.33(a).³ These charges include a lack of field training in its qualification courses, lack of proper written procedures for removing inactive meters, and allowing subcontractors without a Department of Transportation compliant drug and alcohol program to work on its gas pipeline.

Commission Staff and counsel for UGI conducted settlement negotiations that resulted in the Agreement filed on July 28, 2009.⁴ The Settlement requires UGI to pay an \$80,000 civil penalty. UGI shall not seek recovery of any of these monies in any future rate proceeding. In a Joint Motion, Chairman Cawley and Commissioner Gardner objected to the inadequate amount of the penalty given the nature of the alleged offenses and the threat to public welfare. The Joint Motion stated that the Commission would have the discretion to impose a penalty of \$370,000,

³ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2009-2031571, (Order entered October 1, 2009) at 4.

⁴ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2009-2031571, (Settlement Agreement filed July 28, 2009).

but instead chose to recommend a payment of \$160,000, with \$80,000 as a civil penalty and \$80,000 directed to Operation Share.⁵

III. COMMENTS

PULP endorses the Commission's ongoing practice of approving settlement agreements in which, in lieu of a civil penalty, public utility companies agree to contribute to Universal Service programs, where the payment is above and beyond the Commission approved annual budget and where the payment is not recovered from ratepayers but is paid by shareholders. However, we object to the inadequacy of the settlement contribution proceed amounts. Particularly in this case, the required contribution amounts are neither sufficient to punish UGI for this incident nor act as a true deterrent for the company and for the entire industry.

PULP would further aver that settlement agreements that most act in the public interest include heavier sanctions which serve as a strong deterrent and direct the payment of these sanctions towards the Universal Service programs that benefit the neediest customers the most and utility companies the least. PULP's Comments are based on the fact that settlement payments to LIURP are in the public interest, solidly grounded on both legal and public policy foundations, and that the amount of those payments must be large enough to be punitive and act to deter further unlawful activities by both the company and the industry.

A. Legal Basis for Commission Action

The Commission has clear, legal authority grounded in statute, case law, and regulation to direct settlement amounts towards LIURP and away from the Commonwealth's General Fund.

⁵ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2009-2031571, (Joint Motion filed September 10, 2009).

The general powers granted in Title 66, Chapter 5 and the specific charge contained in Title 66, Chapter 15 to ensure public utilities provide safe and reasonable service combine to provide authority to the Commission to review and approve settlement agreements, both formally and informally.⁶ These general powers are made explicit in Title 52, Chapters 3 and 5 of the Pennsylvania Code, wherein the Commission expressly reserves the right to review settlement agreements.⁷

The Commission historically has exercised its authority to create precedent in which the Commission modifies settlement agreements and directs payment of settlement amounts into specific Universal Service programs and away from the Commonwealth's General Fund. In 2005, following allegedly improper terminations by Penelec, the Commission modified a settlement agreement between Penelec and the Law Bureau, changing the \$250,000 civil penalty that was to be paid into the Commonwealth's General Fund into a \$250,000 contribution to Penelec's Customer Assistance Program ("CAP").⁸ After a comment period, the PUC went on to recognize the difference between civil penalties and contributions to Universal Service programs and subsequently modified the settlement to direct \$250,000 to the Dollar Energy Fund and \$100,000 to Penelec's CAP. The basis for this modification was the Commission's determination that the "Settlement Agreement would better serve the public interest if the proposed \$250,000 civil penalty to be imposed on Penelec would be instead contributed to the Dollar Energy Fund and, if an additional \$100,000 were contributed to Penelec's CAP."⁹ The Commission similarly modified a settlement agreement with National Fuel Gas Distribution

⁶ 66 Pa.C.S. §§ 501, 504-506, and 1501.

⁷ 52 Pa. Code §§ 3.113 and 5.232.

⁸ *Law Bureau Prosecutory Staff Informal Investigation of the Pennsylvania Electric Company Service Terminations in Hastings and Erie, Pennsylvania*, Docket No. M-00051906, (Order entered November 2, 2005) at 14.

⁹ *Law Bureau Prosecutory Staff Informal Investigation of the Pennsylvania Electric Company Service Terminations in Hastings and Erie, Pennsylvania*, Docket No. M-00051906, (Order entered December 21, 2005) at 17.

Corporation (“NFG”) in 2008, following an explosion in Clearfield County, Pennsylvania. The original agreement reached between the Commission’s Prosecutory Staff and NFG required NFG to pay a \$50,000 civil penalty and to fund an additional \$30,000 of safety-related activities.¹⁰ The Commission modified that original agreement by increasing the penalty to \$100,000 and the safety fund to \$50,000, while additionally specifying that the \$100,000 be directed to NFG’s Neighbor for Neighbor Heat Fund instead of to the General Fund.¹¹ UGI Utilities was investigated by the Commission following a 2008 gas explosion in Lancaster County, Pennsylvania. The original settlement agreement between staff and the company included a \$40,000 civil penalty that was later modified by the Commission to direct the money into UGI’s Operation Share Hardship Fund.¹² Finally, and most recently, in July 2009, following an explosion in Allegheny County, the Commission modified a settlement agreement with Equitable Gas Company, calling for a \$5,000 civil penalty and a \$45,000 civil settlement, to an Order directing \$25,000 to Equitable’s Hardship Fund and \$25,000 to Equitable’s Hardship Repair Fund.¹³

Lastly, Commission regulations also support the actions in this proceeding. The Commission has made it a longstanding policy to encourage settlement agreements between parties on grounds of administrative efficiency.¹⁴ The Commission recently adopted a Policy Statement which established standards for determining whether a fine for a violation is appropriate, as well as if a proposed settlement is in the public interest.¹⁵ This Policy Statement

¹⁰ *Pa. PUC v. National Fuel Gas Distribution Corp.*, Docket No. M-2008-2013013, (Order entered March 14, 2008).

¹¹ *Pa. PUC v. National Fuel Gas Distribution Corp.*, Docket No. M-2008-201301, (Order entered May 21, 2008).

¹² *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2008-2036549, (Order entered November 6, 2008).

¹³ *Pa. PUC v. Equitable Gas Company*, Docket No. C-20065790, (Order entered September 2, 2009).

¹⁴ 52 Pa. Code § 5.231(a).

¹⁵ The *Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* became final on December 22, 2007, upon publication in the Pennsylvania Bulletin. See 37 Pa.B. 6755 (December 22, 2007).

provides flexibility to the Commission and parties in crafting settlement agreements, a flexibility which supports the Commission's ability and authority to modify settlement agreements so they are in the public interest, including directing settlement proceeds into public utility company Universal Service programs. However, we must remember that settlement for settlement's sake is not necessarily in the public interest.

B. Public Interest Basis for Commission Action and Recommendations To Direct The Proceeds To LIURP

Prior to approving a settlement agreement, the Commission must review it to ensure it is in the public interest.¹⁶ The public interest is best served, not only by allowing the public to benefit from the proceeds of settlement, but to ensure settlements act as a deterrent to future bad acts that put public welfare in jeopardy.

Sanctions should exclusively or at least disproportionately favor the customers. While PULP supports Operation Share, we suggest that since funds directed toward this organization are a benefit to the utility as well as to the customer, other beneficiaries which will not redirect funds to the sanctioned company should also be considered by the Commission. In another settlement involving UGI, Chairman Cawley favored the direction of funds to LIURP as opposed to Operation Share.

Allocating the funds to the Operational Share Hardship Fund will very likely reduce the company's uncollectible expense in the immediate period, resulting in greater profits for the utility this winter... Alternatively, allocation of funds to a LIURP program will put more of these funds into the hands of UGI's customers and provide them with the tools to mitigate current *and future* energy costs.¹⁷

¹⁶ *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768, (Order entered January 7, 2004).

¹⁷ *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2008-2036549, (Dissenting Statement of Chairman Cawley entered October 23, 2008).

A settlement agreement directing the payment of funds into LIURP is in the public interest because: (1) LIURP cost effectively reduces energy consumption among low income families; (2) LIURP reduces the overall cost of service for residential ratepayers now and into the future; (3) LIURP has a beneficial economic effect in the Commonwealth; (4) LIURP can improve the health and well-being of low income families; and (5) LIURP provides a more long-term benefit to the customer without rewarding the utility. The Commission serves the public interest most by directing settlement payments into this Universal Service program.

Additionally, the Commission should continue its recent practice of eliminating civil penalties that go the General Commonwealth Fund in favor of diverting that amount, or an increased amount, toward universal service. In lieu of civil penalties, directing settlement proceeds to LIURP is a better use of funds.

1. *LIURP cost effectively reduces energy consumption.* LIURP has been shown in numerous reports and studies to cost effectively reduce energy consumption among low income households. A recent long-term study by the Consumer Services Information Project of Penn State University stated, “LIURP is successful in both reducing energy consumption and heating energy arrearages in treated homes.”¹⁸ Penn State’s report showed that Pennsylvania gas heating customers receiving LIURP treatment achieved an average 21.4% reduction in energy consumption.¹⁹ The report noted that LIURP achieves these savings in a cost effective manner.²⁰ The Commission’s own analysis supports the Penn State study’s conclusion that LIURP treatment can result in significant reductions in energy consumption.²¹ Moreover, LIURP

¹⁸ John Shingler, *Long Term Study of Pennsylvania’s Low Income Usage Reduction Program: Results of Analyses and Discussion*, Consumer Services information Project of Penn State University, January 2009, at p. 47.

¹⁹ *Id.* at p. 28.

²⁰ *Id.* at 47.

²¹ See on the Commission’s website the annual *Reports on Universal Service Programs and Collections Performance* by the Bureau of Consumer Services documenting consistent household energy savings as a result of

reduces energy consumption in a cost effective manner, meaning that the money spent on the program is a smart investment, not just a means to reduce energy consumption.²²

This cost effective reduction of energy consumption is in accord with Federal and state policy directives. The Federal government recognizes the importance of and has passed legislation supporting energy conservation. The Department of Energy's Weatherization Assistance Program²³ and the Department of Health and Human Services' Low Income Home Energy Assistance Program²⁴ are both excellent examples of the Federal government's commitment to energy conservation, as both of these programs, year after year, weatherize low income households in much the same way that LIURP does. Additionally, the American Recovery and Reinvestment Act of 2009 includes sizeable appropriations for weatherization and conservation activities as a means of spurring economic activity and reducing energy consumption.²⁵

Pennsylvania recognizes the value of energy conservation and reducing the cost of energy for Pennsylvanians and has recently enacted sweeping pieces of legislation designed to foster alternative energy and energy conservation: the Alternative Energy Portfolio Standards Act of 2004,²⁶ the Alternative Energy Investment Act of 2008,²⁷ and Act 129 of 2008.²⁸

Because the LIURP program cost effectively reduces energy consumption among low income families, the program is directly in support of Federal and state policy. Directing funds to this program as part of a settlement agreement is in the public interest.

LIURP treatment. Found at www.puc.state.pa.us/general/publications_reports/publications_reports_yearly.aspx.

²² Shingler, at p. 47.

²³ See, 42 U.S.C. §6861 et seq.; 42 U.S.C. §7101 et seq.; 10 C.F.R. §440.1 et seq.

²⁴ See, 46 U.S.C. §2601 et seq.; 45 C.F.R. §96.80 et seq.

²⁵ See Section 407, Public Law 111-5 on 2/17/200. Retrieved from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf on 7/7/09.

²⁶ 73 P.S. §1648.1 et seq.

²⁷ Pa. H. Bill No. 1, Printer's No. 86 (enacted July 9, 2008).

²⁸ Pa. H. Bill No. 2200, Printer's No. 4526 (enacted Oct. 15, 2008).

2. *LIURP reduces energy costs for other residential ratepayers.* The energy usage reductions LIURP creates lead to direct savings in energy expenditures for LIURP participants. Each of the Commission's *Reports on Universal Service Programs and Collections Performance* issued this decade confirm that low income natural gas households accrue considerable energy savings that yield a significant monetary benefit to the LIURP participant. This average annual energy savings has ranged from 15.5 % to 20.4%.²⁹ This monetary savings makes sense – reduced energy consumption leads to lower bills.

The impact of these monetary savings is important because it goes beyond low income LIURP participants to benefit all Pennsylvania ratepayers. Other residential ratepayers benefit from the reduced energy consumption of low income households achieved through LIURP because other residential customers contribute to the funding of the Universal Service programs that serve low income families. Reducing energy consumption results in lower Universal Service costs. Additionally, LIURP participants tend to have lower arrearage levels after LIURP treatment,³⁰ which means that fewer uncollectible dollars must be accounted for in the rates of residential ratepayers. Overall, then, LIURP reduces the costs for both low income and non low income residential ratepayers.

These cost savings to other residential ratepayers are an important benefit and correlate with the public policy of the Commonwealth. In 2004, the General Assembly enacted Chapter 14. Among the purposes behind Chapter 14 was the goal of reducing costs of service for residential ratepayers while simultaneously ensuring service remained available to all customers on reasonable terms and conditions.³¹ Directing settlement agreement funds into LIURP meets

²⁹See www.puc.state.pa.us/general/publications_reports/publications_reports_yearly.aspx for copies of these reports.

³⁰ Over half of gas LIURP participants reduced their arrearage after LIURP treatment. See Shingler, at pp. 41-42.

³¹ 66 Pa.C.S. § 1402(3).

this goal because doing so will support programs that reduce costs for other residential ratepayers while also ensuring more affordable service for low income households.

Because LIURP reduces costs for other ratepayers, the program is in line with state policy directives. Directing funds to this program as part of a settlement agreement is therefore in the public interest.

3. *LIURP has a beneficial economic effect for Pennsylvania.* Weatherization programs, like LIURP, have been shown to produce substantial economic benefits in the communities in which they exist. Much of the economic impact from weatherization programs like LIURP is in the creation of good, stable jobs; these jobs have good wages, which circulate back into the local economy and further stimulate local economic activity and development.³² Some studies have found that “investments in low income energy efficiency would produce an impact that is more than 23 times the original investment.”³³ Pennsylvania’s own Department of Community and Economic Development (“DCED”) recognizes the power of weatherization funding to stimulate job creation and the local economy. In its recent plan submitted to the Department of Energy outlining its intention to use stimulus funds provided through the American Recovery and Reinvestment Act of 2009, DCED claims that it will put 940 Pennsylvanians to work through the investment of Federal funds into local weatherization activities.³⁴

³² Jerry Oppenheim and Theo MacGregor, *Energy Efficiency Equals Economic Development*, June 2008 Report for Entergy, at p. 33. Retrieved from <http://www.democracyandregulation.com/> on June 23, 2009.

³³ Oppenheim and MacGregor at p. 33.

³⁴ Dept. of Community and Economic Development, *Pennsylvania ARRA Weatherization State Plan for Program Years 2009-2012*, at p. 1. Retrieved from <http://www.newpa.com/strengthen-your-community/redeveloping-your-community/housing/weatherization/index.aspx> on June 23, 2009.

Because investments into weatherization programs like LIURP have positive economic benefits for ratepayers and local economies, benefits which are clearly in the public interest, the Commission should include LIURP in this settlement agreement and those in the future.

4. *LIURP can improve the health and welfare of low income families.* Households with extra money from LIURP treatment can use these funds to prevent termination of service or redirect them to other life-essential necessities, thereby improving the welfare of the entire household.

It is well substantiated that low income families often face a dilemma in determining where to spend their limited resources in the face of high energy bills.³⁵ Because of limited income and nonexistent savings, low income families must choose between paying for utility service and paying for other life essential necessities, such as food, medicine, and/or clothing. “Convergent evidence suggests that the periodic stress of home heating and cooling costs may adversely impact the health and nutritional status of children and other vulnerable populations.”³⁶ That is, because low income households often have insufficient money to pay for all their basic needs, they will cut back on food and medicine, thereby imperiling the safety of household members, often the very young and the very old, just so they can pay to keep the heat on.

As noted earlier in these comments, participation in LIURP can produce significant energy usage reductions for a household. LIURP households, because of the money saved from

³⁵ See Deborah A. Frank, Nicole B. Neault, Anne Skalicky, John T. Cook, Jacqueline D. Wilson, Suzette Levenson, Alan F. Meyers, Timothy Heeren, Diana B. Cutts, Patrick H. Casey, Maureen M. Black and Carol Berkowitz, *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, *Pediatrics* 2006; 118; 1293-1302. Retrieved on June 23, 2009 from <http://www.childrenshealthwatch.org/page/PublicationsTopic/#Site>. See also *Fuel for Our Future. Impacts of Energy Insecurity on Children's Health, Nutrition, and Learning*. Children's Sentinel Nutrition Assessment Program (C-SNAP) in collaboration with Citizens Energy Corporation, September 2007. Retrieved on April 4, 2008 from http://www.c-snap.org/upload/resource/fuel_for_our_future_9_18_07.pdf.

³⁶ See *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, at pp. 1294-1295.

energy usage reductions, have additional resources with which to purchase clothing, nutritious food, and medicine. As a result, household members may enjoy improved health and well-being.

LIURP can help improve the health and welfare of low income families by freeing up money from energy expenditures to be used to purchase other life essential necessities. This results in improved health for the family, a clear public policy benefit. Because LIURP can improve family health and well-being, directing funds to be paid into this program is in the public interest.

5. *LIURP provides a more long-term benefit to the customer without rewarding the utility.* When settlement funds are directed to Operation HELP or any hardship fund the benefit goes to both the customer and the utility, and only in the short term. LIURP, as an energy consumption reduction program, does not simply recycle the money back into the company. By directing the funds from a settlement agreement to LIURP, customers receive the full benefit of the utility's payment made in compensation for the alleged violation, without also benefitting the sanctioned company. By receiving LIURP funds, rather than a one-time hardship fund payment, customers are able, through weatherization, to decrease usage on a long-term basis.

6. *In lieu of civil penalties, directing settlement proceeds to LIURP is a better use of funds.* The Commission should continue its recent practice of eliminating civil penalties that go into the General Commonwealth Fund in favor of diverting that amount, or an increased amount, toward universal service. In a case similar to this, the Commission considered whether a settlement payment of \$250,000 should be treated as a financial contribution to Penelec's Customer Assistance Program (CAP) rather than a payment to the Commonwealth's General Fund as a civil penalty.³⁷ The Commission agreed with the Prosecutory Staff's position that

³⁷ Law Bureau Prosecutory Staff Informal Investigation of the Pennsylvania Electric Company Service

there was a real difference between a monetary settlement payment as a civil penalty and a contribution to a universal service program; that difference warrants a higher contribution amount. The Prosecutory Staff argued the same position in comments in *Pennsylvania Public Utility Commission Prosecutory Staff v. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power company d/b/a FirstEnergy*, M-2009-2112849, (September 9, 2009). PULP supports the Prosecutory Staff's position that any settlement that resolves this type of unlawful conduct must act as deterrent not only for PPL, but also for the entire industry. Payment of its penalty into a program that addresses its own energy assistance needs will not result in any actual loss to the utility. "The end result is simply that the Company is merely 'paying itself' the penalty amount...this type of settlement has no deterrent effect."³⁸

C. The Amount Of The Proposed Settlement Proceeds Is Inadequate To Punish the Company for its Unlawful Actions Or to Deter The Company Or Other Members Of The Industry From Future Unlawful Actions.

This Settlement requires UGI to pay an \$80,000 civil penalty and make an \$80,000 contribution to Operation Share. Taken within the context of UGI's alleged violations, these amounts are inadequate.

1. *Utility companies have negotiated multiple settlements during this period of increased safety violations.* A review of UGI's behavior in this case and behavior that was the subject of a previous settlement agreement³⁹ suggests that a significant financial corrective and other remedial measures are required in an order to send a clear message to UGI's management

Terminations in Hastings and Erie, Pennsylvania, Docket No. M-00051906, (Order entered November 2, 2005).

³⁸ *Pennsylvania Public Utility Commission Prosecutory Staff v. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power company d/b/a FirstEnergy*, M-2009-2112849, Comments of the Pennsylvania Public Utility Commission Prosecutory Staff (September 9, 2009) at 3.

³⁹ *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2008-2036549, (Order entered November 6, 2008).

and its shareholders so they will recognize the gravity of their unreasonable service and change that service going forward. UGI and the rest of the industry's disturbing behaviors suggests a low appreciation for the provision of reasonable service to consumers and suggests a higher civil penalty and additional corrective action are appropriate. In the last five settlement agreements between utilities and the Law Bureau involving alleged violations that resulted in fires or explosions, all within the last two years, the average penalty was \$62,200, with the highest penalty being \$150,000.⁴⁰ The Commission has acknowledged its ability to levy higher sanctions and should avail itself of that discretion.⁴¹

2. *The settlement should punish and deter.* To advance the public interest as required by the Commission's published standards for civil penalties in 52 Pa. Code § 69.1201 et seq. and to bring UGI's universal service programs up to performance levels consistent with what is expected in the policy statement of the Electric Choice Act,⁴² the settlement amount should be set at an amount (1) that will punish UGI for engaging in unreasonable service activity that placed the public at risk, (2) that will incentivize UGI and other public utilities to adopt more appropriate customer service measures, and (3) that will deter unreasonable service activity that places the public at risk now and in the near future when the electric industry removes rate caps. If the penalty associated with this settlement agreement is insufficient to achieve these goals, then the Commission should find the settlement agreement is not in the public interest and should not affirm it.

If it is apparent that prior settlements have not resulted in the correction of unlawful corporate behavior, then present and future settlements should not amount to, or be perceived as,

⁴⁰ *Pa. PUC v. National Fuel Gas Distribution Corp.*, Docket No. M-2008-201301, (Order entered May 21, 2008).

⁴¹ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2009-2031571, (Joint Motion filed September 10, 2009).

⁴² 66 Pa. C.S §§ 2802(9) and (10).

simply a slap on the wrist. PULP submits that an \$80,000 civil penalty and an \$80,000 contribution to Operation Share is not enough of a penalty to encourage UGI towards corrective and Commission-complaint behavior.

CONCLUSION

It is clear that the Commission has the legal authority to review, revise, and approve settlement agreements that are in the public interest. It is also clear that the Commission acts in the public interest when it approves settlement agreements in which, in lieu of a civil penalty, public utility companies agree to pay money into LIURP, where the payment is above and beyond the Commission approved annual budget and where the payment is not recovered from ratepayers but is paid by shareholders. PULP supports and endorses the Commission's ongoing practice of approving settlement agreements in which, in lieu of a civil penalty, public utility companies agree to contribute to LIURP or other universal services, where the payment is above and beyond the Commission approved annual budget and where the payment is not recovered from ratepayers but is paid by shareholders. PULP supports the Commission's ongoing practice of directing the payment of settlement proceeds into Universal Service programs. PULP, however, submits that the amount of the proceeds agreed upon in this proceeding to be directed towards universal service program activities is inadequate. The Commission should modify the settlement by designating an amount which will penalize the company for its actions which place residential customers at risk and which will deter future violations.

Thank you for this opportunity to submit these comments on this matter of importance to low income families throughout Pennsylvania.

Respectfully submitted,

/s/ Julie George

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