|  |  |
| --- | --- |
| **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |
|  | Public Meeting held October 21, 2010 |
| Commissioners Present:  James H. Cawley, Chairman, Dissenting in Part  Tyrone J. Christy, Vice Chairman, Statement Dissenting in Part  John F. Coleman, Jr.  Wayne E. Gardner  Robert F. Powelson | |
| Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff  v.  UGI Utilities, Inc. | M-2010-2138591 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Settlement Agreement filed on July 7, 2010, by the Commission’s Law Bureau Prosecutory Staff (Prosecutory Staff) and UGI Utilities, Inc. (UGI).

**Background and History of the Proceeding**

On September 6, 2009, the Farmington Way residential subdivision, located in Lititz, Lancaster County, Pennsylvania, experienced a gas service outage when the propane tanks serving the subdivision contained insufficient propane supplies to pressurize the system. UGI owned and operated the propane gas distribution system within its “Lancaster Division” that served the Farmington Way residential subdivision. The tanks were filled by UGI’s affiliate, AmeriGas Partners, L.P. (AmeriGas).

The propane gas distribution system was installed in 2002 as a temporary measure until such time as the subdivision would be connected to and served by UGI’s natural gas distribution system serving the surrounding area. The Farmington Way distribution system was supplied by three 1,000-gallon propane tanks enclosed in a fenced-in area that was kept locked. On the fence was a placard containing a telephone number to call in case of an emergency.

On September 11, 2009, a resident of the Farmington Way subdivision sent a letter to the individual Commissioners notifying them of the gas service outage. The letter complaint further stated that the tanks were believed to be too close to nearby residences which this customer deemed to be a “very dangerous condition that needs immediate attention.” The letter complaint was forwarded to the Commission’s Gas Safety Division.

An Inspector from the Gas Safety Division met on site with a UGI representative to inspect the propane gas tanks. UGI informed the Inspector that the procedure in the Company’s Lancaster Division during non-Winter months did not include checking propane levels at given intervals. The Inspector found a plastic fence surrounding the tanks, and the emergency telephone number provided on the fence placard was not a working number.

The inspection lead to the formation of an investigative team consisting of the Commission’s Law Bureau and the Gas Safety Division (Prosecutory Staff), on or about November 1, 2009. An informal investigation was initiated to determine whether UGI violated its tariff or the Public Utility Code (Code). The Prosecutory Staff concluded that UGI had violated provisions of the Code and the Code of Federal Regulations. Prosecutory Staff and UGI engaged in negotiations and a Settlement Agreement was executed. It was filed with the Commission on July 7, 2010.

If these matters had been litigated, Prosecutory Staff would have contended that UGI violated certain provisions of the Code and the Code of Federal Regulations in that:

A. The Company failed to monitor the propane gas supplies serving its customers in the Farmington Way residential subdivision. If proven, this would have violated 66 Pa. C.S. § 1501.

B. The Company failed to furnish and maintain adequate, efficient, safe and reasonable service in the provision of gas service to its customers in the Farmington Way residential subdivision. If proven, this would have violated 66 Pa. C.S. § 1501.

C. The Company failed to provide correct information on its emergency placard. UGI’s emergency placard listed an incorrect emergency telephone number. If proven, this would have violated 49 CFR 192.707 and § 1501.

The Prosecutory Staff’s allegations were formulated without the benefit of a hearing and certain averments are or may be disputed by UGI. Had this matter been fully litigated, UGI would have contended that its actions did not violate the Code or federal law nor, if a violation was determined, that it should be fined or penalized for any offense. Settlement Agreement ¶ 20.

By Opinion and Order entered August 23, 2010 (*August 2010 Order),* we informed the public that UGI and Prosecutory Staff had entered into the instant Settlement and further afforded interested parties twenty days in which to file comments to the proposed Settlement.

Comments were filed by The Dollar Energy Fund (Dollar Energy), on August 23, 2010; the Farmington Way Homeowners Association, Inc. (Farmington Way Association), on September 3, 2010; the Pennsylvania Utility Law Project (PULP), on September 13, 2010; and the Commission’s Prosecutory Staff, on September 13, 2010.

**Comments to the *August 2010* *Order***

As noted, various Parties submitted comments to our *August 2010 Order.* The comments were in response to a statement made by Vice Chairman Christy at the August 18, 2010 Public Meeting at which he requested interested parties to address the appropriateness of directing the $17, 500 civil penalty to the Dollar Energy Fund, or other appropriate programs, in lieu of imposing a civil penalty.

Dollar Energy commented that it believes that the $17,500 should be redirected to a hardship fund to assist low-income customers. The Farmington Way Association states that the $17,500 should be paid directly to them because they were the families that were put at risk and suffered undue hardship from UGI’s lack of proper oversight.

PULP is part of the Pennsylvania Legal Aid Network, a nonprofit network of legal service providers representing the interests of low income Pennsylvanians. It is a specialized project providing statewide representation, advice and support in energy and utility matters related to low income, residential utility consumers. PULP advocates directing the payment of settlement proceeds into UGI’s Operation Share. PULP endorses and supports Operation Share as a program providing an important public benefit. However, since the funds directed toward UGI’s Operation Share benefit the utility as well as the customer, PULP suggests that the money be directed to the Low Income Usage Reduction Program (LIURP). In this way, PULP submits that settlement payments will not be redirected to the sanctioned company. PULP further states that sanctions upon the company should not be structured in a manner that ultimately results in a “benefit” to the company, as this benefit undermines the effectiveness of the sanction. PULP Comments at 1 and 3.

Prosecutory Staff is of the opinion that the $17,500 should not be paid into the Company’s hardship fund because in these types of cases, a civil penalty emphasizes the importance of gas safety concerns and the need for a company to take all reasonable steps to ensure that similar incidents do not occur. Prosecutory Staff submits that the payment of a contribution directly into UGI’s hardship fund (through the Dollar Energy Fund) frustrates any attempts to penalize the Company because such a payment will not result in any actual loss of revenue to the Company. Rather, any payment to its own community assistance program would likely benefit the Company because it would result in a reduction of the Company’s otherwise uncollectible accounts which would have the same effect if the Company paid itself the penalty amount. Prosecutory Staff submits that in doing so, both the curative and punitive effects of the penalty payment are eliminated. Under such a scenario, there is absolutely no incentive for the company to improve regulatory compliance or for the company’s shareholders to insist that a better job be done. Prosecutory Staff further states that it is critical to the public interest to ensure that companies and their shareholders pay very close attention to gas safety. Prosecutory Staff avers that taking money from dividends accomplishes this, whereas having a company contribute to itself does not. Prosecutory Staff Comments at 2-3.

Upon our review of the comments, we are of the opinion that in this instance, it would not be prudent to direct UGI to redirect the $17,500 from a civil penalty to a hardship fund. In so doing, we will maintain the terms of the original Settlement Agreement and ensure that the civil penalty will act as a deterrent, rather than an incentive, to the Company in violating the Commission’s Regulations in the future.

We have also reviewed the comments of the Farmington Way Association and the suggestion that the civil penalty should be directed to the residents as compensation for risk and hardship caused by UGI’s lack of proper oversight. Farmington Way Association is actually proposing that the civil penalty should be converted to what amounts to a damage award against UGI and in favor of the residents. It is well established that this Commission lacks the authority to award damages. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977). For that reason, we will decline to adopt the Farmington Way Association’s suggestion.

**Terms of the Settlement Agreement**

The Settlement Agreement recognizes that Section 3301 of the Public Utility Code (Code), 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on a public utility for violations of the Code, the Commission’s Regulations, and/or any Commission Order. The Settlement Agreement further recognizes that each day’s continuance of a violation is a separate offense, for which the Commission may impose a separate civil penalty. 66 Pa. C.S. § 3301(b); Settlement Agreement ¶ 4.

Throughout the entire investigatory process, UGI had complied with Prosecutory Staff requests for information and documentation and maintained ongoing communications. UGI fully cooperated with the investigation. Settlement Agreement ¶¶ 21-22.

The Parties have agreed to the stipulated terms set forth as follows:

A. UGI will within thirty (30) days of the date of the Order approving this Settlement Agreement revise its internal operating procedure for its Lancaster Division with regard to the monitoring of propane levels in propane tanks serving its gas beyond the mains customers so as to be consistent to the procedure followed in its Harrisburg Division in an effort to avoid similar outages in the future.

B. UGI will within thirty (30) days of the date of the Order approving this Settlement Agreement verify that the emergency telephone number on the fence placard has been corrected to display a working telephone number for reaching the Company in the event of an emergency. UGI will also notify the Commission in the event that the fence and propane tanks are removed as a result of the recent conversion of the distribution system.

C. UGI has converted the supply of the Farmington Way subdivision from propane to natural gas as of June 30, 2010. This conversion included construction of a natural gas distribution main extension and appurtenant facilities by UGI, or a qualified contractor, and conversion of appliances in customer homes by a qualified HVAC company selected and under the supervision of UGI.[[1]](#footnote-1) The customers were held harmless from the cost of conversion. UGI advised its residential customers of the Farmington Way subdivision

of the intended conversion timeframe and worked with each customer to schedule individual home conversions.

D. UGI will pay a civil penalty pursuant to 66 Pa. C.S.A. § 3301(c) in the amount of seventeen thousand five hundred dollars ($17,500.00) to resolve the alleged violations uncovered by this informal investigation. Said payment shall be made by certified check to the Commonwealth of Pennsylvania and presented to the Commission within thirty (30) days of the date of the Order approving this Settlement Agreement. UGI agrees not to seek recovery of any portion of this payment in future ratemaking proceedings.

E. The Prosecutory Staff agrees not to institute any formal complaint relating to UGI’s gas service outage that is the subject of this Settlement Agreement.

F. The terms and conditions in this Settlement Agreement cannot be used in any future proceeding relating to this or any other matter as proof of unlawful behavior, or as an admission of unlawful behavior by UGI.

Settlement at ¶ 25.

In consideration of UGI’s agreement to pay a $17,500 civil penalty, as specified herein, the Prosecutory Staff agrees to forebear the institution of any formal complaint that relates to UGI’s conduct as described in the Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission’s authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incident, except that no further civil penalties may be imposed by the Commission for any actions identified herein. Settlement Agreement ¶ 26.

The Settlement Agreement is conditioned upon the Commission’s approval of the Settlement Agreement without modification. *Id*. at ¶ 39. The Parties reserve the right to withdraw from the Settlement Agreement if it is modified. *Id*. at ¶ 40.

**Disposition**

This Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 (*Policy Statement*) that sets forth ten factors that we may consider in evaluating a proposed settlement. As such, we will consider each of those factors in turn.

The first factor we consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id*. The Parties agreed that while the conduct at issue here did not amount to willful fraud or misrepresentation, the internal operating procedures for determining the adequacy of gas service to its customers, appear to have been inadequate. Settlement Agreement at ¶29.

The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* In the present case, while the consequences did not include personal injury or property damage, the unplanned outage of gas service is a serious consequence that could have been avoided with improved monitoring of the propane supply levels of the Farmington Way tanks. Settlement Agreement at ¶30.

The third factor pertains to litigated cases only and will not be considered here. 52 Pa. Code § 69.1201(c)(3).

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). UGI has revised its internal operating procedures so as to avoid a recurrence of this type of event. It appears that the Company has taken appropriate action to prevent future outages from occurring in a similar manner. Settlement Agreement at ¶32.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Twenty-five homes in the Farmington Way residential subdivision were affected for approximately twelve hours.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). The Company has fully cooperated with the investigation.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). Considering the proposed settlement as a whole, we find the $17,500 civil penalty is adequate.

The tenth factor permits us to consider other relevant factors. No other relevant factors are present in this case.

For the reasons set forth above, upon our review of the terms of the Settlement Agreement, we are of the opinion that its approval would be in the public interest and consistent with the terms of our *Policy Statement* relating to Settlements. As such, we shall approve the Settlement Agreement.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the instant Settlement Agreement. The Settlement Agreement effectively addresses the issues which arose during the course of the investigation and avoids the expense of litigation and the possibility of appeals. Accordingly, we find that the proposed Settlement entered into between the Prosecutory Staff and UGI is in the public interest and merits approval; **THEREFORE**,

**IT IS ORDERED:**

1. That the Settlement Agreement entered into between the Law Bureau Prosecutory Staff and UGI Utilities, Inc., filed on July 7, 2010, is approved.

2. That within twenty (20) days from the entry date of this Opinion and Order, UGI shall pay a civil penalty of $17,500 by check or money order made payable to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, Pa. 17120

3. That a copy of this Opinion and Order shall be served on the Office of Consumer Advocate, the Office of Small Business Advocate, and the Public Utility Commission’s Bureau of Administrative Services Fiscal Division.

4. That upon payment of the civil penalty, the Secretary of the Commission shall mark this proceeding closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 21, 2010

ORDER ENTERED: October 25, 2010

1. It should be noted that UGI had already included the conversion of the Farmington Way gas distribution system to natural gas supply as part of its 2010 construction budget. This budget was finalized before the Prosecutory Staff’s involvement in this matter. [↑](#footnote-ref-1)