



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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September 13, 2010

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Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission Prosecutory Staff v.
UGI Utilities, Inc. (Farmington Way)
Docket Number M-2010-2138591

Dear Secretary Chiavetta:

Enclosed for filing, pursuant to the Commission's Order entered August 23, 2010, in the above-docketed matter, are Comments of the Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff to the Opinion and Order entered August 23, 2010.

Should you have any questions, please feel free to contact me.

Sincerely,

Michael L. Swindler
Assistant Counsel

Enclosures

cc: Per Certificate of Service

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg Pennsylvania 17105-3265

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**PENNSYLVANIA PUBLIC UTILITY
COMMISSION, LAW BUREAU
PROSECUTORY STAFF**

DOCKET NO. M-2010-2138591

v.

UGI UTILITIES, INC.

**COMMENTS OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
LAW BUREAU PROSECUTORY STAFF
TO THE OPINION AND ORDER ENTERED AUGUST 23, 2010**

On September 6, 2009, the Farmington Way subdivision, located in Lititz, Lancaster County, Pennsylvania, experienced a gas service outage when the propane tanks serving the subdivision and owned by UGI Utilities, Inc., contained insufficient propane supplies to pressurize the system. On July 7, 2010, following an investigation by the Commission's Law Bureau Prosecutory Staff (Prosecutory Staff), a Settlement Agreement (Settlement) was filed with the Commission by UGI Utilities, Inc. (UGI or Company) and Prosecutory Staff.

By Opinion and Order entered August 23, 2010, the Commission refrained from issuing a decision on the merits of the proposed Settlement Agreement and, consistent with Section 3.113(b)(3) of the Commission's regulations, 52 Pa. Code § 3.113(b)(3), ordered that the Opinion and Order, together with the attached Settlement Agreement, be entered for comments. The August 23 Order with the attached Settlement Agreement was served on the Office of Consumer Advocate, the Office of Small Business Advocate

and the Office of Trial Staff. Comments were to be filed within twenty (20) days of the date of entry of the August 23 Order, or by September 13, 2010.

The Settlement, among other things, provides for a civil penalty of \$17,500 to be assessed against the Company. In a separate Statement of Vice Chairman Tyrone J. Christy, the Vice Chairman requests that “interested parties who submit comments on this Settlement address the appropriateness of directing \$17,500 to the Company’s Operation Share program in lieu of imposing a \$17,500 civil penalty” to provide additional funding for low-income customers in UGI’s service territory, rather than to the Commonwealth. Statement of Vice Chairman Tyrone J. Christy at 1-2. In response to the Vice Chairman’s request, Prosecutory Staff submits these comments.

In the instant matter, the Commission’s Gas Safety Division, pursuant to its authority to enforce federal gas pipeline safety regulations, uncovered what it contended to be certain violations of state and federal gas safety regulations. In matters involving a gas outage, it is imperative that the utility take all reasonable steps to ensure that similar incidents do not occur. The peril of gas safety violations can result in serious property damage or destruction, or worse – the loss of life. In order for the regulator’s remedial efforts to have the proper effect in its effort to eliminate or at least minimize such dangers, it is Prosecutory Staff’s position that such remedies must, to some extent, penalize the offending company. This is clearly accomplished by the payment of a fine or civil penalty to the Commonwealth since such a payment results in a loss of revenue to the company that would otherwise be distributed to its shareholders. This loss to its bottom line is intended to encourage the offending company to conduct its operations in a more prudent manner.

Prosecutory Staff respectfully submits that, by comparison, the payment of a contribution directly into a company's community assistance program such as UGI's Operation Share program frustrates this curative effort because such a payment will not result in any actual loss of revenue to the company. Instead, a company's mere bookkeeping entry transferring funds into its own community assistance program will likely result in a reduction of the company's otherwise uncollectible accounts, with the result that the company will merely be "paying itself" the penalty amount. In so doing, 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. Moreover, with the right spin, a punitive action can be erroneously transformed into a magnanimous exercise.

While directing contributions to customer programs may appear to be a "noble cause", practically, such actions provide neither the curative nor punitive effect that matters of gas safety critically deserve. Prosecutory submits that it is critical to the public interest to ensuring that companies and their shareholders pay very close attention to gas safety. Taking money from dividends accomplish this. Having a company contribute to itself does not.

For the reasons set forth above, Prosecutory Staff respectfully requests that this Commission continue its recent trend of adopting settlements that include payments of fines or civil penalties and not direct that such payments be paid instead as fund contributions.

Respectfully Submitted,

10 SEP 10

Date



Michael L. Swindler
Prosecuting Attorney
Law Bureau Prosecutory Staff



Wayne T. Scott

Pennsylvania Public Utility Commission
First Deputy Chief Counsel

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents, Comments of the Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff to the Opinion and Order entered August 23, 2010, upon the persons listed and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Notification by first class mail addressed as follows:

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Dated: September 13, 2010

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