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April 7, 2011

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**RE: Application of UGI Penn Natural Gas, Inc. for Approval of the Transfer by Sale of  
9.0 Mile Natural Gas Pipeline Appurtenant Facilities and Right of Way, Located in  
Mehoopany, PA  
Docket No. A-2010-2213893**

**Affiliated Interest Filing of UGI Penn Natural Gas, Inc.  
Docket No. G-2010-2213894**

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Dear Secretary Chiavetta:

Enclosed please find the Reply Brief of UGI Penn Natural Gas, Inc. in the above-referenced proceeding.

As indicated on the certificate of service, copies have been provided to the parties in the manner indicated.

Respectfully Submitted,

David B. MacGregor

DBM/skr

Enclosure

cc: Certificate of Service  
Honorable Dennis J. Buckley

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

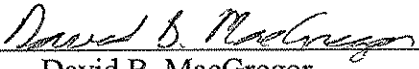
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David B. MacGregor

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of UGI Penn Natural Gas, Inc. for Approval of the Transfer by Sale of 9.0 Mile Natural Gas Pipeline, Appurtenant Facilities and Right of Way, Located in Mehoopany, PA	:	:	Docket No. A-2010-2213893
Affiliated Interest Filing of UGI Penn Natural Gas, Inc.	:	:	Docket No. G-2010-2213894

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**REPLY BRIEF OF  
UGI PENN NATURAL GAS, INC.**

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## **I. INTRODUCTION**

On March 30, 2011, pursuant to the schedule established by Administrative Law Judge Dennis J. Buckley, UGI Penn Natural Gas, Inc. (“PNG”) and the Office of Small Business Advocate (“OSBA”) filed Main Briefs in this proceeding.<sup>1</sup> In its Main Brief, PNG explained its positions on the issues pending before the Pennsylvania Public Utility Commission (“Commission”) in this proceeding. PNG also responded to the issues identified by the ALJ at the evidentiary hearing. In so doing, PNG anticipated and, as a practical matter, responded to the arguments raised by OSBA in its Main Brief. Nevertheless, it is appropriate for PNG to respond to certain contentions advanced by OSBA in its Main Brief.

In this proceeding, PNG is requesting a certificate of public convenience authorizing the transfer by sale of a nine-mile natural gas pipeline located in Auburn, Meshoppen, and Washington, Pennsylvania (the “Auburn Line”), together with its appurtenant facilities and property rights, to PNG’s affiliate UGI Energy Services, Inc. (“UGIES”). To carry out the contemplated transaction, PNG also filed an affiliated interest agreement requesting Commission approval of the “Pipeline Interconnection, Operating and Emergency Services Agreement between UGI Energy Services, Inc. and UGI Penn Natural Gas, Inc.” (the “PNG-UGIES Interconnection Agreement”).

The proposal before the Commission is more than just a straight asset sale because it allows PNG to keep the current economic value of the line through the retention of ownership of

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<sup>1</sup> The Office of Trial Staff (“OTS”) of the Pennsylvania Public Utility Commission and the Office of Consumer Advocate, also parties to this proceeding, did not file Main Briefs. The OTS, OCA, and PNG reached an agreement that resulted in the resolution of all issues raised by OTS, OCA, and PNG prior to the evidentiary hearing. The agreement by and between OTS, OCA, and PNG is embodied in a Joint Stipulation filed on March 23, 2011. On March 30, 2011, statements in support of the Joint Stipulation were separately filed OTS, OCA, and PNG.

the distribution taps serving Procter & Gamble Paper Products Company (“P&G”) and the farm tap customers. Moreover, the transaction is part of a broader arrangement involving P&G and Citrus Energy Corporation (“Citrus”), a local producer. PNG Statement No. 1-R, p. 12.

A review of the un rebutted record evidence demonstrates that PNG’s proposed transfer of the Auburn Line to its affiliate UGIES, as modified by the Joint Stipulation, provides substantial public benefits to PNG, its customers, and the Commonwealth and therefore should be approved. Under the transaction as proposed, customers are assured of continued safe and reliable distribution service from the Auburn Line at reduced distribution rates. PNG has retained the economic value of distribution service from this facility, including the present value associated with the 20-year Rate XD Agreement with P&G, which will reduce and/or defer the need for future PNG base rate increases. Importantly, this retained value exceeds even the OSBA’s maximum hypothetical market value of the line. At the same time, customers will not be required to pay for the substantial costs of converting the line to gathering service and are insulated from the very significant investment risk of loss associated with this conversion. Moreover, this project will provide broad, long-term benefits to PNG customers and the Commonwealth by promoting the development of Marcellus Shale gas resources.

The OTS, OCA, and PNG reached an agreement that resulted in the resolution of all issues raised by OTS, OCA, and PNG. The agreement is embodied in a Joint Stipulation filed on March 23, 2011. Importantly, all interested parties agree that the proposed transaction, as modified by the Joint Stipulation, provides substantial public benefits. OTS and OCA affirmatively support approval of the transaction, as evidenced by their respective Statements in Support of the Joint Stipulation, and the principal customer affected by the transaction, P&G, has affirmatively expressed its support of the transaction. Even OSBA, who has continued to litigate



this proceeding, agrees that the transaction as originally filed provides public benefits. *See* PNG Main Brief, Sections IV.B, IV.D.1.

In its Main Brief, OSBA opposes the transaction because the Auburn Line will be transferred to an affiliate at depreciated original cost. In OSBA's view, the sale price should reflect the market value of the asset, and ratepayers should be entitled to share in some unspecified portion of "gain" from OSBA's proposed transaction. OSBA focuses *exclusively* on the value of the Auburn Line and ignores all of the unrefuted, substantial public benefits of the proposed transaction. OSBA's argument should be rejected for the reasons explained below, as well as the many reasons explained in PNG's Main Brief.

For the reasons that follow, as well as those more fully explained in PNG's Main Brief, the ALJ and Commission should: (1) reject OSBA's contentions and objections to the proposed transaction; (2) approve the issuance of certificates of public convenience, pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing the Commission's approval of the proposed transaction subject to the terms and conditions of the Joint Stipulation; (3) approve the PNG-UGIES Interconnection Agreement as an affiliated interest agreement pursuant to Section 2102 of the Public Utility Code, 66 Pa.C.S. § 2102; and (4) expeditiously review and approve the proposed transaction on or before June 1, 2011, in order to accommodate the construction and production schedule and avoid the very real threat that the Auburn Line will be bypassed and, thereby, lose the important substantial benefits of the proposed transaction.

## **II. SUMMARY OF ARGUMENT**

The uncontroverted record evidence establishes that the proposed transaction, as modified by the Joint Stipulation, will provide important public benefits to PNG, its customers, and the Commonwealth. Indeed, OSBA concedes that the transaction, as proposed, has merit

and provides public interest benefits. Under controlling case law, PNG therefore has met its burden of proof, and the transaction should be approved by the ALJ and the Commission without further conditions.

The OSBA contends that the transaction cannot be lawfully approved unless and until the fair market value of the Auburn Line is determined. The OSBA has provided no legal support for this position, and it is clearly contrary to well-established precedent. The Pennsylvania Supreme Court, in two landmark decisions, has held that an applicant is not required to quantify the benefits of a transaction in order to obtain Commission approval. Further, the Pennsylvania Commonwealth Court has held, as a general matter, that the risks and benefits of alternative business transactions are for the utility to consider in the first instance and ultimately determine which transaction to present to the Commission approval. The Commonwealth Court also has specifically held that there is no need for a determination of the price in order to decide whether the acquisition was in the public interest. Further, the Commission has repeatedly approved the sale of utility assets to an affiliate at depreciated original cost.<sup>2</sup>

Moreover, even if OSBA's unprecedented legal theory was correct, and it is not, it is undisputed that the proposed transaction retains value for customers that exceeds OSBA's hypothetical maximum possible market value of the Auburn Line. OSBA hypothesizes that the range of market value for the Auburn Line is \$240,000 to \$10.5 million. However, PNG's continued service to customers and related demand from the Auburn Line will provide more than \$800,000 of annual base rate revenue (more than \$16 million over the life of the contract) that will reduce the rates paid by other customers. As PNG has explained in unrebutted testimony and in its Main Brief, this retained distribution value exceeds the replacement cost of the Auburn

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<sup>2</sup> See PNG Main Brief, Section IV.D.2.

Line, which OSBA agrees is the maximum possible market value. Further, OSBA has not taken into account that under the terms of the Joint Stipulation PNG has conceded a benefit of over \$200,000 (more than \$20 million over the life of the contract).

OSBA further contends that this distribution value should be retained in a sale to an independent third party which might provide additional value. OSBA provides no evidence to support this conjecture, but even if it were true, any such additional value would come from the operation of the Auburn Line as a gathering line. It is undisputed that PNG customers are not being asked to pay for the cost to convert the line to gathering service (\$15 million) and are not assuming any risk of loss if the investment were to fail. On these facts, there is no factual or legal basis upon which customers would be entitled to share any possible future gain from gathering operations and, therefore, there is no need to determine this hypothetical additional value in order to approve this transaction.

### **III. ARGUMENT**

#### **A. OSBA HAS FAILED TO PROVIDE ANY SUPPORT FOR ITS POSITION THAT ASSETS MUST BE TRANSFERRED AT MARKET VALUE TO BE IN THE PUBLIC INTEREST**

OSBA recommends that the Commission reject PNG's proposal to transfer the Auburn Line at depreciated original cost. OSBA has proposed that the Auburn Line and related facilities be transferred at some hypothetical market value. OSBA also proposes that ratepayers are entitled to a reasonable share of the economic value associated with the facilities. *See* OSBA Main Brief, Section III.C. However, OSBA has failed to refute or otherwise contest the substantial public benefits of the transaction as proposed by PNG. Indeed, all Parties to this proceeding, including OSBA, agree that the proposed transaction will provide public benefits. *See* PNG Main Brief, Section IV.D.1. Because OSBA has failed to refute or even contest these

substantial public benefits from the transaction proposed by PNG, the Commission need not consider OSBA's alternative proposal.

Importantly, OSBA's proposal is not the proposal presented in PNG's application and, therefore, OSBA bears the burden of proof with respect to its new proposal that was not included in PNG's application. *See Pennsylvania Public Utility Commission v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007). OSBA introduced no evidence to support its position and provided no specific information as to the market value of the Auburn Line. *See PNG Main Brief Section IV.D.3.* Moreover, OSBA has failed to provide any legal basis in its Main Brief to support its contentions that transferring the Auburn Line at market value is required to satisfy the public benefits standard under Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, or that ratepayers are entitled to some hypothetical gain from the transfer of the Auburn Line.

When parties have been ordered to file briefs and fail to include all the issues they wish to have reviewed, the issues not briefed have been waived. *Pennsylvania Public Utility Commission v. Metropolitan Edison Company*, Docket Nos. R-00061366 *et al.*, 2006 Pa. PUC LEXIS 116 (October 31, 2006) (citing *Jackson v. Kassab*, 812 A.2d 1233 (Pa. Super. 2002), *appeal denied*, 573 Pa. 698, 825 A.2d 1261 (2003); *Brown v. Pennsylvania Department of Transportation*, 843 A.2d 429 (Pa. Cmwlth. 2004), *appeal denied*, 581 Pa. 681, 863 A.2d 1149 (2004)).<sup>3</sup> Here, OSBA presented no arguments or legal analysis in its Main Brief relative to whether Section 1102 requires utility assets to be transferred at market value or whether

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<sup>3</sup> *See also Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania*, Docket Nos. R-00049783, 2005 Pa. PUC LEXIS 14 at \*165-66; 245 P.U.R.4th 1 (November 4, 2005) (concluding as reasonable the ALJ's recommendation that when parties have been directed to file briefs and fail to include an issue in their briefs, the un-briefed issues may properly be viewed as having been waived) (citing *Jackson v. Kassab*).

ratepayers are entitled to share some hypothetical gain from such a transfer. These arguments therefore are waived.

**B. OSBA’S APPLICATION OF THE PUBLIC BENEFIT STANDARD IS CONTRARY TO LAW, WELL-ESTABLISHED PRECEDENT, AND THE UNDISPUTED RECORD EVIDENCE**

OSBA raises essentially one issue. OSBA recommends that the Commission reject PNG’s proposal to transfer the Auburn Line at the depreciated original cost, unless and until PNG makes an effort to assess the market value of the transfer in an arms-length transaction. According to OSBA, customers are entitled to share in the value of the line, if any, in excess of the depreciated original cost. OSBA focuses exclusively on the value of the Auburn Line to the exclusion of the many, undisputed substantial benefits of the proposed transaction as modified by the Joint Stipulation. OSBA’s position is contrary to law and disregards the uncontroverted record evidence of the public benefits of the proposed transaction.

In order to approve the proposed transaction, as modified by the Joint Stipulation, the Commission must find that the transaction would “promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The determination of whether a transaction provides substantial public benefits under *City of York* is not dependent upon a single factor but, rather, is a balancing of all factors. *Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. 583, 612, 937 A.2d 1040, 1057-58 (2007). Importantly, as explained below and in PNG’s Main Brief, the Commission need not find legally binding commitments or *quantifiable benefits* before approving a transaction pursuant to Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102.

For example, Verizon Communications, Inc. (“Verizon”) and MCI, Inc. (“MCI”) filed a joint application with the Commission seeking approval of a merger. *Joint Application of*

*Verizon Communications, Inc. and MCI, Inc. For Approval of Agreement and Plan of Merger*, Docket Nos. A-310580F0009, *et seq.*, 2006 Pa. PUC LEXIS 22 (January 11, 2006) (“*Verizon I*”). The Commission approved the merger finding that the applicants had established that it was in the public interest. In terms of the broader assessment of public benefits, the Commission in *Verizon I* reiterated the complementary strengths brought by the joint applicants to the merger; noted the companies’ limited presence in each others’ markets; and accepted the litany of resultant advantages found by the ALJ. The OCA filed a petition for review and the Commonwealth Court reversed, finding that the record failed to demonstrate quantifiable affirmative public benefits. *Popowsky v. Pennsylvania Public Utility Commission*, 917 A.2d 380, 394-95 (Pa. Cmwlth. 2007) (“*Verizon II*”).

On appeal, the Pennsylvania Supreme Court held the “substantial public interest” standard articulated in *City of York* as satisfied by a simple preponderance of the evidence of benefits, and that “the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the [Commission] properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.” *Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. 583, 609-10, 937 A.2d 1040, 1055-57 (2007) (“*Verizon III*”). In addition, the Supreme Court recognized that the substantial public benefit test under the Public Utility Code and *City of York* does not require that every customer receive a benefit from the proposed transaction. *Id.* at 617-618, 937 A.2d at 1061.

In this matter presently pending before the Commission, OSBA contends that the public benefits of the transaction cannot be determined until the market value of the Auburn Line is

known. See OSBA Main Brief, Section III.C; OSBA Statement No. 1, p. 12. However, the Commonwealth Court previously has considered and specifically rejected this argument, holding that “there was no need for a determination of the price in order to decide whether the acquisition was in the public interest.” *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984); see also PNG Main Brief, Section IV.B.2. Accordingly, the market value of the transferred Auburn Line is not necessary to the determination of whether the proposed transaction provides public benefits.

OSBA also contends that PNG failed to satisfy the statutory standards because PNG did not introduce any evidence that UGIES is the only entity interested in, or capable of implementing the proposed reversal of the flow of the Auburn Line; that the project will be feasible only if the Auburn Line is sold to UGIES; or that the reversal of the flow of the Auburn Line is the only economic alternative for transporting gas from Citrus. See OSBA Main Brief, Section III.C. However, OSBA has failed to even attempt to explain or provide any legal basis in its Main Brief to support its contention that these items are required by law to gain Commission approval under Section 1102 of the Public Utility Code. Further, OSBA disregards the many, uncontroverted public benefits from the proposed transaction, as modified by the Joint Stipulation.

The proposed transaction, as modified by the Joint Stipulation, is a unique opportunity that will provide important benefits to PNG, its customers, and the Commonwealth. Under the transaction as proposed, customers are assured of continued safe and reliable distribution service from the Auburn Line at reduced distribution rates. PNG has retained the economic value of distribution service from this facility and, at the same time, customers are insulated from the very significant investment risk of converting the line to gathering service. Moreover, this project

will provide broad, long-term benefits to PNG, its customers, and the Commonwealth by promoting the development of Marcellus Shale gas resources. *See* PNG Main Brief, Section IV.

B. There is nothing of record to refute or otherwise deny these important substantial public benefits. Indeed, OSBA concedes that the transaction, as proposed, has merit and provides public interest benefits. *See* PNG Main Brief Section IV.D; *see also* OSBA Statement No. 1, p. 11.

As explained above, PNG need not demonstrate that a proposed transaction will provide the absolute maximum public benefits that may or may not be possible but, rather, that the proposed transaction has some public benefits. Further, the determination of whether a transaction provides substantial public benefits under *City of York* is not dependent upon a single factor but, rather, is a balancing of all factors. *See, generally, Verizon III, supra.* As discussed above, and more fully in PNG's Main Brief, the public benefits presented herein are already quite substantial. All Parties to this proceeding, including OSBA, agree that the proposed transaction is in the public interest because it will provide public benefits.

Finally, it must be noted that the transaction proposed by PNG for Commission approval is to transfer the Auburn Line to its affiliate, UGIES, at the depreciated original cost. PNG has not proposed to transfer the Line to an unregulated, independent third party at some hypothetical market value. Importantly, PNG considered and rejected transferring the Auburn Line to an unaffiliated entity for good and valid reasons. *See* PNG Main Brief, Section IV.A.2. Stated otherwise, OSBA's proposal is not acceptable to PNG.

The Auburn Line is the property of PNG, and it has the right to either sell it with Commission approval or to not sell it. The Commission has no jurisdiction to compel PNG to sell this Line to any particular entity and does not have the jurisdiction to require PNG to sell it



at any particular price.<sup>4</sup> Rather, the Commission's jurisdiction in this matter is limited to reviewing the proposal presented for Commission approval and determine if it is in the public interest, *i.e.*, provides some substantial public benefit. There is no legal requirement that PNG sell it to an independent third party, and there is no legal requirement that it be sold at the maximum possible market value. PNG is required to show that there are substantial public benefits from the transaction and it has done so.

If there are public benefits, the Commission should approve the proposed transaction. If there are not public benefits, the Commission should reject the proposed transaction or give PNG a list of conditions that the Commission believes would make the transaction in the public interest. At that point, PNG can determine whether to sell the Auburn Line subject to those conditions or not.

Based on the foregoing, OSBA's overly narrow and restrictive contention that the public benefits of the transaction cannot be determined until the market value of the Auburn Line is known is contrary to law, ignores the many undisputed public benefits, and fails to properly balance all the factors in considering whether the proposed transaction, as modified by the Joint Stipulation, is in the public interest. For these reasons, OSBA's objection to the proposed transaction, as modified by the Joint Stipulation, must be rejected.

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<sup>4</sup> The risks and benefits of alternative business transactions are for the utility to consider in the first instance and ultimately determine which transaction to present to the Commission for approval. *See Metropolitan Edison Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 76 (Pa. Cmwlth. 1981) (the Commission's authority to interfere in the internal management of a utility company is limited and it is not empowered to act as a super board of directors for the public utility companies of the state).

**C. EVEN IF OSBA'S LEGAL THEORY IS CORRECT, AND IT IS NOT, PNG, UNDER THE PROPOSED TRANSACTION, IS RETAINING THE DISTRIBUTION VALUE OF THE AUBURN LINE FOR THE BENEFIT OF ITS CUSTOMER, WHICH VALUE SUBSTANTIALLY EXCEEDS EVEN THE OSBA'S HYPOTHETICAL MAXIMUM POSSIBLE MARKET VALUE OF THE LINE**

Even assuming, *arguendo*, that OSBA is correct that the Auburn Line must be transferred at market value and any gain realized must be shared with ratepayers, which PNG denies for the reasons explained above and in its Main Brief, OSBA's opposition to the proposed transaction, as modified by the Joint Stipulation, is without merit and contrary to the unrefuted record evidence in this proceeding.

Even if ratepayers were entitled to share in any gain realized upon the sale of the Auburn Line, which PNG denies, it should be assigned solely to P&G, and not to any other core market customers.<sup>5</sup> See PNG Main Brief, Section IV.D.7; see also *Barasch, et al. v. Pennsylvania Public Utility Commission*, 515 A.2d 651, 653 (Pa. Cmwlth. 1986) ("A gain on an investment, however, should benefit those who have provided the funding."). OSBA concedes that the entire costs of the Auburn Line have been directly and solely allocated to P&G in filed cost allocation studies, and that P&G has contributed revenues in excess of these allocated costs since at least 1996. OSBA Statement No. 1, p. 7. However, under the unique circumstances of this transaction, P&G fully supports the transaction and Commission approval of it. See PNG Exhibit RFB-3. Accordingly, the issue of treatment of any gain on the sale of the Auburn Line

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<sup>5</sup> See *Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. 583, 617-18, 937 A.2d 1040, 1061 (2007) ("we agree ... that requiring that all types of customers receive unique, affirmative, and direct benefits from a transaction, would, in effect, prohibit transactions among companies which target their businesses to particular customer classes, even where other classes suffer no harm.").

has been essentially settled since the only customer even arguably entitled to any material share of the gain has already agreed to PNG's proposal. PNG Statement No. 1-R, p. 6.

Moreover, there is no evidence to suggest that the depreciated original cost is not the market value of the Auburn Line under the specific terms and conditions of the proposed transaction. The proposal that the Auburn Line be transferred at market value is OSBA's proposal. OSBA's proposal is not the proposal presented in PNG's application and, therefore, OSBA bears the burden of proof with respect to its new proposal that was not included in PNG's application. *See Pennsylvania Public Utility Commission v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007). OSBA introduced no evidence to support its position.<sup>6</sup>

The Auburn Line has value as a distribution line and as a potential gathering line. As to the distribution value of the Line, it is being retained for PNG customers. It is not being transferred. As to the potential value of the Auburn Line as a gathering line, ratepayers are not being asked to make the conversion investment and are not taking the risk of conversion, *i.e.*, they are not paying for the line as a gathering line, and under case law are not entitled to the gain if any from gathering service because they did not pay for it. *See* PNG Main Brief, Section IV.D.7; *see also Barasch, et al. v. Pennsylvania Public Utility Commission*, 515 A.2d 651, 653 (Pa. Cmwlth. 1986) ("A gain on an investment, however, should benefit those who have provided the funding.").

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<sup>6</sup> To the extent that the OSBA believes that the Auburn Line has value in excess of the depreciated original cost, it had the burden to introduce such evidence. They hired an economic expert, but he provided no appraisal or any other determination of that the fair market value of the Auburn Line exceeds its depreciated original cost. Instead, he presented an entirely hypothetical discussion of maximum possible theoretical market value, and no evidence that such value could be obtained. *See* PNG Main Brief Section IV.D.3

OSBA contends that the fair market value of the Auburn Line is somewhere between \$240,000 and \$10.5 million. *See* OSBA Main Brief, Section III.D.1. Even assuming that this range is correct, it is undisputed that PNG is retaining the distribution value of the Line. The Rate XD Agreement between PNG and P&G has allowed PNG to lock in the distribution value of the line for itself and its customers for a 20-year period. It is undisputed that PNG's continued service to P&G off of the Auburn Line will provide more than \$800,000 of annual base rate revenue (more than \$16 million over the life of the 20-year contract) that will reduce the rates paid by other customers. *See* PNG Main Brief, Section IV.D.5. Further, OSBA has not taken into account that under the terms of the Joint Stipulation PNG has conceded a benefit of over \$200,000 (more than \$20 million over the life of the contract). *See* Joint Stipulation ¶ 16. As PNG has explained in unrebutted testimony and in its Main Brief, it is clear and undisputed that the distribution value being retained by PNG (more than \$16 million) far exceeds the OSBA's range of market values of the Auburn Line. *See* PNG Main Brief, Section IV.D.5. OSBA's claim for further value clearly is based only on the possible additional market value of the line as a gathering line, which as explained above cannot legally be shared with customers because they are not paying for the cost of converting the line to gathering service.

OSBA ignores this retained value, and the associated benefit to ratepayers, and appears to take issue with the "implication" that the Rate XD Agreement is contingent on approval of the proposed transaction. *See* OSBA Main Brief, Section III.D.3. PNG acknowledges that the 20-year agreement between P&G and PNG is not expressly contingent upon the conversion of the Auburn Line to a gathering line. However, this does not eliminate the uncontroverted fact that the Rate XD Agreement locks in the distribution value of the Auburn Line, and that PNG will be retaining this value. *See* PNG Main Brief, Section IV.D.5. The long-term agreement with P&G

is an essential part of the value retained by PNG under the PNG-UGIES Interconnection Agreement and, therefore, is highly relevant to evaluating this transaction. As explained above and in PNG's Main Brief, it is undisputed the distribution value of the line exceeds even OSBA's hypothetical maximum market value. Therefore, even if OSBA's theory were correct, the ALJ and Commission need not reach this issue.

OSBA further contends that this distribution value could be retained even if the Auburn Line were sold to an independent third party. Even if this were true, and there is not evidence that it is true, this additional value would come solely from use of the line as a gathering line, and as explained above, ratepayers are not making the investment to convert the line to gathering service and are not assuming the risk of loss and there have no legal claim to any additional gain that might be obtained from operating the line as a gathering line.

Pursuant to its terms and conditions, the Rate XD Agreement will remain in effect regardless of whether the Commission approves the proposed transaction, as modified by the Joint Stipulation. Further, the Rate XD Agreement would remain in effect even under OSBA's proposal to transfer of the Auburn Line to an independent, unregulated third party. However, OSBA ignores the fact that PNG's retention of the current market value of the line obviously restricts the marketability of the Auburn Line to other potential purchasers. PNG Statement No. 1-RJ, p. 2. Clearly, the Rate XD Agreement, and the other obligations and limitations under the PNG-UGIES Interconnection Agreement, would be a huge impediment to the willingness of an independent third party that is in the gathering business to acquire and operate the Auburn Line. *See PNG Main Brief, Section IV.D.4.*

In summary, OSBA assumes that PNG could obtain the market value of the Auburn Line by transferring the line to an independent, third-party gas gathering entity under the same

conditions and limitations as those proposed in this transaction. However, OSBA presented no evidence that such a transaction could occur and its testimony is sheer speculation. *See* PNG Main Brief, Section IV.D.3. Further, OSBA's assumption that PNG could obtain market value of the Auburn Line from an independent third-party disregards various aspects of the proposed transaction. *See* PNG Main Brief, Section IV.D.4. Most importantly, OSBA ignores the retained distribution value of the line, which exceeds even OSBA's hypothetical maximum market value. *See* PNG Main Brief, Section IV.D.5. For these reasons, as well as those more fully explained in PNG's Main Brief, OSBA opposition to the proposed transaction, as modified by the Joint Stipulation, is without merit, contrary to the unrefuted record evidence, and must be rejected.

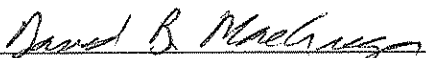
#### **IV. CONCLUSION**

As explained above, and more fully in PNG's Main Brief, the proposed transaction, as modified by the Joint Stipulation, will provide important benefits to PNG, its customers, and the Commonwealth, and all criteria necessary for approval of the proposed transaction pursuant to the Public Utility Code have been met. If approved, customers will continue to receive safe and reliable distribution service from the Auburn Line at reduced distribution rates. The value of the Auburn Line as a distribution line will be retained by PNG, while at the same time customers will be insulated from the significant investment risk of converting the line to gathering service. Further, if approved, the proposed transaction will provide long-term benefits to PNG customers and the Commonwealth through the development of Marcellus Shale gas resources. These are all important and substantial public benefits that may not be realized if the transaction is not approved as proposed and modified by the Joint Stipulation. Importantly, all the Parties to this proceeding agree that the transaction as proposed by PNG will provide important substantial public benefits.

WHEREFORE, UGI Penn Natural Gas, Inc. respectfully requests that Administrative Law Judge Dennis J. Buckley and the Pennsylvania Public Utility Commission: (1) issue certificates of public convenience, pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), approving of the transfer of the Auburn Line, together with its appurtenant facilities and right-of-way, to UGI Energy Services, Inc., subject to the terms and conditions of the Joint Stipulation; and (2) approve the Pipeline Interconnection, Operating and Emergency Services Agreement between UGI Energy Services, Inc. and UGI Penn Natural Gas, Inc. as an affiliated interest agreement, pursuant to Section 2102 of the Public Utility Code, 66 Pa.C.S. § 2102.

Respectfully submitted,

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