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May 31, 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 of UGI Penn Natural Gas, Inc. to Exceptions of the Office of Small Business Advocate 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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Date: May 31, 2011



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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 OF UGI PENN NATURAL GAS, INC.  
TO EXCEPTIONS OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**I. INTRODUCTION**

UGI Penn Natural Gas, Inc. (“PNG” or the “Company”) files this Reply to the Exceptions of the Office of Small Business Advocate (“OCA”) pursuant to 52 Pa. Code § 5.535 and the Secretarial Letter dated May 12, 2011. The Recommended Decision (“R.D.”) of Administrative Law Judge Dennis J. Buckley (“ALJ”) was issued by Secretarial Letter dated May 12, 2011. The ALJ recommended that the Pennsylvania Public Utility Commission (“Commission”) approve: (1) the Joint Petition for Settlement at Docket Nos. A-2010-2213893 and Docket No. G-2010-2213894 submitted by PNG, the Office of Trial Staff (“OTS”), and the Office of Consumer Advocate (“OCA”); (2) the Application of PNG for approval of the transfer by sale of a nine-mile natural gas pipeline, together with appurtenant facilities and right-of-way, located in Mehoopany, Pennsylvania at Docket No. A-2010-2213893; and (3) the Affiliated Interest Filing of PNG at Docket No. G-2010-2213894. On May 23, 2011, Exceptions were filed by the Office of Small Business Advocate (“OSBA”). PNG, OTS, and OCA did not file Exceptions to the R.D.

On December 1, 2010, PNG filed the above-captioned Application requesting a certificate of public convenience from the Commission 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 right-of-way, to PNG’s affiliate UGI Energy Services, Inc. (“UGIES”). 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”).

Protests, Notices of Intervention, and Notices of Appearance were filed by OTS, OCA, and OSBA. Settlement discussions were held which resulted in the resolution of all issues raised

by OTS, OCA, and PNG prior to the evidentiary hearing date scheduled for March 16, 2011. The agreement by and between OTS, OCA, and PNG is embodied in a Joint Stipulation filed on March 23, 2011. OSBA did not join in the Joint Stipulation and reserved one issue for litigation. On March 30, 2011, PNG, OTS, and OCA filed their Statements in Support of the Joint Stipulation.

An evidentiary hearing was held on March 16, 2011, at which the parties moved their respective testimonies and exhibits into the record without objection. PNG and OSBA submitted Main and Reply Briefs in support of their respective positions pursuant to the litigation schedule established by the ALJ.

The R.D. was issued by Secretarial Letter dated May 12, 2011. The R.D. found, after carefully balancing the evidence of record, that the proposed transfer and the PNG-UGIES Interconnection Agreement, as modified by the terms and conditions of the Joint Stipulation, will provide substantial public benefits. The R.D. rejected OSBA's opposition to the proposed transfer, concluding that OSBA incorrectly focused exclusively on the theoretical market value of the Auburn Line and either ignored or unduly minimized the other potential benefits related to this transaction.

The OSBA takes exception to the recommendation that the Commission approve the proposed transfer and PNG-UGIES Interconnection Agreement, as modified by the terms and conditions of the Joint Stipulation. Specifically, OSBA opposes the transaction because the Auburn Line will be transferred to an affiliate at its depreciated original cost. In OSBA's view, the transfer of a utility asset to an affiliate at a value less than the fair market value is prohibited by Section 2102(b) of the Public Utility Code, 66 Pa.C.S. § 2102(b). As explained below, Section 2102(b) contains no such prohibition and has never been interpreted in the manner



proposed by OSBA. In fact, the appellate courts have specifically held that fair market value need not be determined in the transfer of public utility facilities, and the Commission has repeatedly approved the transfer of utility assets to an affiliate at depreciated original cost as part of the settlement of larger transactions. OSBA's Exceptions should be rejected for the reasons explained below, as well as the many reasons explained in PNG's Main and Reply Briefs and the well-reasoned R.D.

## **II. OVERVIEW OF THE PROPOSED TRANSACTION**

The Auburn Line is currently owned and operated by PNG for use in providing natural gas distribution service.<sup>1</sup> The Auburn Line is a gas pipeline, approximately nine miles in length, which extends from PNG's Auburn city gate station interconnection with Tennessee Gas Pipeline Company's ("Tennessee") mainline facilities located in Auburn Township, Susquehanna County ("Auburn Station I") to the Procter & Gamble Paper Products Company ("P&G") facility located near Mehoopany, Pennsylvania in Washington Township, Wyoming County, Pennsylvania. The Auburn Line is essentially a dedicated line designed and installed to serve a single customer, P&G. As currently configured, natural gas flows through the Auburn Line in a southerly direction from Tennessee to P&G's plant.<sup>2</sup> P&G owns and operates a paper products plant and is PNG's largest customer. *See* PNG Main Brief, pp. 9-10.

P&G has substantial real estate holdings in the area. Marcellus Shale gas exploration on P&G's property has provided P&G with a new source of competitively priced, locally produced

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<sup>1</sup> The Auburn Line and the proposed transaction is more fully explained in PNG's Main Brief. *See* PNG Main Brief Section IV.A.

<sup>2</sup> Along the way to the P&G plant, PNG also provides natural gas distribution service to fourteen other small customers: thirteen residential customers and one commercial customer, through taps off of the Auburn Line. In rural areas, these tap lines which serve small customers off of a dedicated industrial line are referred to as "farm taps." The distribution rates of the 14 farm tap customers are not based on the local cost of the Auburn Line; they are based on the average cost of service for their respective rate classes. *See* PNG Main Brief, pp. 10-11.

natural gas. Citrus Energy Corporation (“Citrus”), a local producer, currently produces natural gas for the account of P&G delivered into the Auburn Line. Citrus’ gas supply is comprised of Marcellus Shale gas produced on and around P&G’s property. Under current configurations, no gas can be delivered into Tennessee from the Auburn Line. *See PNG Main Brief, p. 11.*

Given the unique circumstances of the Auburn Line and P&G’s facilities, it is possible to convert the Line to gathering service, reverse the direction of the flow, and thereby provide access for P&G and its gas producer, Citrus, to get Marcellus Shale gas to market, while at the same time maintaining PNG’s connection to P&G and the other distribution taps off of the Auburn Line. P&G expressed an interest in this arrangement and approached PNG to discuss how such a transaction might be accomplished. Given the unique and ongoing interaction between PNG, its customers, and the proposed operation of the Auburn Line as a gathering line, PNG determined that it was appropriate to transfer the line to an affiliate as opposed to a totally independent third party. *See PNG Main Brief, pp. 12-13.*

PNG has proposed to transfer, by sale and assignment sale, the nine-mile Auburn Line, together with its appurtenant facilities and right-of-way, to PNG’s affiliate, UGIES. As consideration for this transfer, UGIES will pay PNG an amount equal to the depreciated original cost of the Auburn Line. In addition, PNG and UGIES will enter into the PNG-UGIES Interconnection Agreement. The PNG UGIES Interconnection Agreement imposes significant conditions and obligations on UGIES. The PNG-UGIES Interconnection Agreement also provides PNG with the option to re-acquire portions of the Auburn Line as PNG may require to assure the continuity of its retail distribution service. *See PNG Main Brief, pp. 14-15.*

After the transfer, UGIES plans to reverse the flow of the Auburn Line and substantially expand its capacity.<sup>3</sup> The produced gas will be delivered: (1) to the inlet side of PNG valves connected to the Auburn Line so that PNG can provide natural gas distribution service to both present and future customers located along the Auburn Line, including P&G;<sup>4</sup> and (2) into Tennessee through compressor facilities to be constructed by UGIES for further transportation and delivery into the interstate natural gas market. This change in operations will require an estimated \$15 million in capital investment by UGIES for compression and related facilities required to move the produced gas into Tennessee. *See* PNG Main Brief, pp. 14-16.

The proposed transaction will ensure continued safe operation of the Auburn Line. Under the PNG-UGIES Interconnection Agreement, UGIES is obligated to operate and maintain the Auburn Line in accordance with applicable federal and state laws and regulations designed to ensure the safety, integrity and continuous operation of the Line. Further, under the Joint Stipulation, the Commission may continue to conduct safety inspections of the Auburn Line after the transfer of ownership to UGIES. *See* PNG Main Brief, pp. 19-20; Joint Stipulation ¶ 16(d).

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<sup>3</sup> After the transfer of the Auburn Line to UGIES, the Line will be converted to and classified as a gathering line. PNG will retain ownership of the service lines needed to provide distribution services to P&G and the fourteen farm tap customers. The Auburn Line will not be a distribution line post transfer; rather, it will be operated and maintained as a gathering line. The issue of the Commission's jurisdiction over gathering lines is currently pending before the Commission. *See Application of Laser Northeast Gathering Company, LLC for Approval to Begin to Offer, Render, Furnish or Supply Natural Gas Gathering and Transporting or Conveying Service by Pipeline to the Public in Certain Townships of Susquehanna County, Pennsylvania*, Docket No. A-2010-2153371 ("Laser"). In the Motion remanding *Laser* for further hearings, Commissioner Gardner held that gathering is a public utility function but that not all gathering facilities are public utilities because they do not hold themselves out to the public. *See Motion of Commissioner Gardner*, Docket No. A-2010-2153371 (May 19, 2011). As explained in PNG's Application, PNG Exhibit RFB-1, UGIES is not a public utility and does not intend at this time to hold the line out to or for the public as evidenced by the purely private arrangement between Citrus described in the Application. As such, under the current state of the law, post transfer the Commission would not have jurisdiction over the Auburn Line as currently contemplated.

<sup>4</sup> PNG will continue to provide Commission-regulated distribution services to P&G, the fourteen farm tap customers, and any new customers that from time to time seek to take such distribution service from the Auburn Line. After the proposed transfer, the farm tap customers on the Auburn Line will continue to have the ability to shop for an alternative supplier. *See* PNG Main Brief, pp. 16-17. The related interconnect agreement with PNG will not render the Auburn Line subject to the jurisdiction of the Commission. *See* R.D. at 8. Again, here, UGIES agreement is a private contract of consenting parties and not the result of UGIES holding itself out to the public to provide interconnection service.

### III. PNG'S REPLY TO EXCEPTIONS

#### A. REPLY TO OSBA EXCEPTION NO. 1: The ALJ Correctly Concluded That The Transaction Presented For Commission Approval Will Provide Important Benefits To PNG, Its Customers, And The Commonwealth.

In its Exception No. 1, OSBA contends the ALJ erred in concluding that the alleged “unjust enrichment” of UGIES is not relevant to the proposed transaction. OSBA argues that the sale of a utility asset to an affiliate interest at less than the fair market value is not permitted under Section 2102(b) of the Public Utility Code, 66 Pa.C.S. § 2102(b). In support, OSBA asserts that the Auburn Line must be transferred at fair market value because the ratepayers financed the Auburn Line, and that any gain realized by PNG should be allocated to all ratepayers. The OSBA therefore concludes that the Commission must reject the proposed sale of the Auburn Line from PNG to UGIES at depreciated original cost under Section 2102(b). For the reasons explained below, OSBA’s exception is without merit and should be rejected.

#### 1. **OSBA’s Application Of The Public Interest Standard Is Contrary To Law And The Undisputed Record Evidence**

Each of OSBA’s exceptions is based on its unsupported view that the public interest standard in Section 2102(b) requires that any sale of a utility asset to an affiliated interest must be at fair market value. While OSBA makes this assertion repeatedly,<sup>5</sup> it provides no statutory or case law support for its novel and unduly narrow interpretation of Section 2102(b).

Under Section 2102 of the Public Utility Code, Commission approval is required before any affiliated interest contract for the sale or exchange of property between a public utility and any affiliated interest can become effective. Section 2102(b) provides that the Commission shall approve an affiliated interest agreement “if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest.” 66 Pa.C.S. § 2102(b).

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<sup>5</sup> See, e.g., OSBA Exceptions, pp. 10-11, 16-17, 19, and 20.

Under OSBA's theory, all that the utility would need to demonstrate is that the asset is being transferred to an affiliate interest at the fair market value and, if so, the Commission would be required to approve the transfer under Section 2102(b) regardless of any other benefits or detriments to the public interest. This clearly is an unreasonable standard and contrary to the sound principles of statutory construction. See *Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1037 (Pa. Cmwlth. 2011) (citing 1 Pa. C.S. § 1922(1) for the proposition that it is presumed the "General Assembly does not intend a result that is absurd, impossible of execution or unreasonable").

Nowhere does the language of Section 2102(b) suggest that the Commission must focus solely on the market value of the assets transferred to affiliates, to the exclusion of any and all other potential benefits, in order to find that a transfer of a utility asset to an affiliate interest is in the public interest. In essence, OSBA asks the Commission to do something it cannot, read into Section 2102(b) an additional requirement that does not appear in the statute -- that the sale of a utility asset to an affiliate interest must be reasonable, consistent with the public interest, and transferred at the fair market value.<sup>6</sup>

The OSBA's interpretation also is inconsistent with all relevant precedent. The Commonwealth Court previously has considered and specifically rejected OSBA's 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 Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984); see also PNG Main Brief, pp. 30-31. Accordingly, the market value of the transferred Auburn Line is not necessary to the determination of whether the proposed transaction is consistent with the public interest.

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<sup>6</sup> See *Melmark Home v. WCAB (Rosenberg)*, 946 A.2d 159, 162 (Pa. Cmwlth. 2008) (citation omitted) (courts and agencies have no power to insert words into statutory provisions where the legislature has failed to supply them).

Despite OSBA's unsupported assertion to the contrary, there is simply no precedent to suggest that the Commission's approval of a transfer to an affiliate interest is dependent solely on the value of the transferred asset. Rather, the Commission must determine that the proposed transfer is reasonable and in the public interest. This determination is consistent with the public interest standard articulated in *City of York v. Pa. P.U.C.*, 449 Pa. 136, 295 A.2d 825 (1972) required for Commission approval to transfer property used or useful in the public service under Section 1102(a)(3), 66 Pa.C.S. § 1102(a)(3).<sup>7</sup> As explained by the ALJ, the determination of whether a transaction is in the public interest is not dependent upon a single factor but, rather, requires a balancing of all factors. R.D. at 20; *see also Popowsky v. Pa. P.U.C.*, 594 Pa. 583, 612, 937 A.2d 1040, 1057-58 (2007). Indeed, the Pennsylvania Supreme Court has explained that the public interest standard is satisfied by a simple preponderance of the evidence of benefits,<sup>8</sup> and that "the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible." *Popowsky*, at 609-10, 937 A.2d at 1055-57. Further, the Commission has repeatedly approved the sale of utility assets to affiliates at depreciated original cost.<sup>9</sup>

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<sup>7</sup> Indeed, in its Main Brief, OSBA acknowledges that the public interest standards under Sections 1102 and 2102 are similar, stating that the same evidence, if introduced into the record, would satisfy the requirements for approval under both Sections 1102 and 2102. *See* OSBA Main Brief, pp. 6-7.

<sup>8</sup> The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Cmwlth.*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

<sup>9</sup> *See, e.g., Application of PECO Energy Co.*, Docket Nos. R-00973953, *et al.*, 1997 Pa. PUC LEXIS 51; 181 P.U.R.4th 517 (December 23, 1997) (approving the transfer of generation assets to affiliates at the depreciated original cost); *Application of Pennsylvania Power & Light Co.*, Docket No. R-00973954 1998 Pa. PUC LEXIS 131 (June 15, 1998) (same); *Pa. P.U.C. v. T. W. Phillips Gas & Oil Co.*, Docket Nos. R-00051178 (August 22, 2006) (adopting the Recommended Decision approving a joint petition for settlement that provided for, among other things, approval of T. W. Phillips' transfer of production plant assets to its unregulated subsidiary, and removal from T. W. Phillips' books of account the original cost of the transferred assets and the amount of depreciation reserve applicable to the original cost as of the transfer date); *Pa. P.U.C. v. UGI Utilities, Inc. - Gas Division*, Docket No. R-00994786 (June 29, 2000) (approving the transfer of UGI's peaking facilities to an affiliate at the depreciated original cost).

The transaction proposed by PNG is to transfer the Auburn Line and the related facilities to UGIES for an amount equal to the depreciated original cost of the Auburn Line and the related facilities at the time of transfer. Through the Joint Stipulation, OTS, OCA, and PNG have resolved this issue and agreed that PNG should be permitted to transfer ownership of the Line and related facilities to UGIES at depreciated original cost, and agreed that the transaction is in the public interest and should be approved. Joint Stipulation ¶¶ 16(a), 17.

The ALJ carefully reviewed the record and concluded that the proposed transaction, as modified by the terms and conditions of the Joint Stipulation, is just, reasonable, and in the public interest. Specifically, the ALJ found the following benefits of the transaction to be in the public interest:

First, the PNG-UGIES Interconnection Agreement has been revised to remove the \$60,000 annual fee, payable by PNG to UGIES, that was proposed in the original Application for Transfer by Sale. Joint Stipulation in Settlement at 3; ¶ 16(c).

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Second, the Joint Stipulation in Settlement sets forth the Parties' agreement that the Commission may continue to conduct safety inspections of the Auburn Line after the transfer of ownership to UGIES, and UGIES will reimburse PNG for any inspection costs. Joint Stipulation in Settlement at 3; ¶ 16(d).

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Third, on the day after the Auburn Line is transferred from PNG to UGIES, PNG's base rates will be reduced by \$154,000 to reflect the removal of the Auburn Line from rate base and the removal of all associated expenses, including depreciation and operating and maintenance costs. Joint Stipulation in Settlement at 3; ¶ 16(e).

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Fourth, the PNG-UGIES Interconnection Agreement will be revised to provide for the reversion of ownership of the subject pipeline to PNG in the event that UGIES for any reason ceases to operate the line in a manner that allows PNG to continue to provide distribution service to its customers. PNG Main Brief at 24-25; Joint Stipulation in Settlement at 3; ¶ 16(f).

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Fifth, the Parties agree that the acceptance of the Joint Stipulation in Settlement will negate the need for any exceptions on their part, though they reserve the right to file reply exceptions to any exceptions that may be filed. The avoidance of any further expense by settlement of this proceeding serves the interest of PNG and its customers.

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[T]he proposed transaction insulates customers from risk attendant to converting the Auburn Line from a distribution line to a gathering line. The project will also promote the development of Marcellus Shale natural gas resources with related benefits to the local economy. PNG Main Brief at 19, 21; PNG Statement No. 1-R at 3. PNG will continue to have the ability to draw gas from the Auburn Line on a firm, first priority basis. PNG Main Brief at 19; PNG Statement No. 1 at 5-6. The proposed transaction will also provide an additional point of delivery which will help prevent interruption of service in the event of a curtailment on the Tennessee Line. PNG Main Brief at 19, N.T. at 56-57.

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(1) P&G's plant will benefit from a lower cost source of supply, thus making the plant more competitive; (2) a more competitive P&G plant will benefit P&G employees and local businesses that supply the plant and the plant's employees; (3) local landowners leasing their land for natural gas production will benefit from royalty revenue for gas produced on their land; and (4) Citrus' production and related gathering services will be a source of income for production and gathering field workers that otherwise would not be employed in the area. Further, the proposed transaction provides an important environmental benefit because use of the existing Auburn line as a gathering line will avoid the environmental impact of building a second pipeline to bypass the Auburn Line.

R.D. at 20-23.

Further, OSBA ignores that its own witness conceded that the transaction, as proposed, has merit and provides important public interest benefits, stating, in relevant part, as follows:

I note that a market-based transaction related to the sale of the Auburn Line would have the *same public benefits as the affiliated transaction proposed by PNG in this proceeding.*

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*A sale of the Auburn Line to a gas gathering entity would appear to offer potential public interest benefits, by providing a lower-cost option for getting local Marcellus Shale gas to market than could be achieved through the development of new gathering systems. Moreover, some features of the proposed transaction, notably those in which PNG retains the rights and obligations to serve customers attached to the Auburn Line as distribution customers, have merit.*

OSBA Statement No. 1, p. 11 (emphasis added).

Based on the foregoing, OSBA incorrectly focuses exclusively on the value of the Auburn Line and ignores all of the other unrefuted, substantial public benefits. The ALJ properly balanced all the factors and concluded that the proposed transaction, as modified by the Joint Stipulation, is just, reasonable, and in the public interest. The ALJ's conclusion is



supported by the record evidence and is consistent with the requirements of Section 1102(a)(3) and 2102(b) that the proposed transfer be reasonable and consistent with the public interest.

**2. The Treatment Of Gain On The Sale Of A Utility Asset Is Not Properly At Issue In This Proceeding.**

The transaction proposed by PNG for Commission approval is to transfer the Auburn Line to its affiliate, UGIES, at 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, pp. 12-13.

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>10</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.*, that it 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 particular price. PNG is only required to show that the proposed transaction is reasonable and consistent with the public interest, and it has done so.

If the overall transaction is in the public interest, the Commission should approve the proposed transaction. If there are not public benefits, the Commission should reject the proposed

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<sup>10</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. Pa. P.U.C.*, 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). Indeed, the Commission is without authority to require a utility to sell or transfer its assets. *See, e.g., Lewistown Specialty Yarns, Inc. v. Pennsylvania Electric Co.*, Docket No. C-00924069, 1995 Pa. PUC LEXIS 164 (December 18, 1995).

transaction or provide 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.

The Auburn Line is essentially a dedicated line that was designed and installed to serve a single customer, P&G. *See* PNG Main Brief, p. 10. Therefore, even if 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 in its Main Brief, it should be assigned solely to P&G, and not to any other core market customers.<sup>11</sup> *See* PNG Main Brief, pp. 37-38; *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.<sup>12</sup> 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 essentially has been settled since the only customer even arguably entitled to any material share of the gain has already agreed to PNG’s proposal. *See*

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<sup>11</sup> *See Popowsky v. Pa. P.U.C.*, 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.”).

<sup>12</sup> In its Exceptions, OSBA simply ignores this concession and argues that any gain should be allocated to all ratepayers because the Joint Stipulation provides that PNG customers will receive a credit to base rates reflecting the revenue requirement associated with the depreciated original cost of the Auburn Line and associated operating expenses. *See* Joint Stipulation ¶ 16(e). OSBA contends that any gain realized on the transfer of the Auburn should be allocated to all customers because the base rate credit is being provided to all customers. However, OSBA has provided no legal support for this conclusion. The terms of the Joint Stipulation, which are entirely unrelated to the treatment of any gain realized from the sale of a utility asset, do not somehow supplant well settled law on this issue. Further, as acknowledged by the R.D., the base rate credit set forth in the Joint Stipulation reflects a compromise of conflicting positions and the resolution of one of the more controversial aspects of the original proposal. R.D. at 20.

PNG Main Brief, p. 38. Therefore, even if OSBA's theory were correct, which it is not, the Commission need not reach this issue.

**3. OSBA Disregards Important Aspects Of The Proposed Transaction That Would Not Likely Be Attractive To An Independent Third Party.**

In support of its theory that the Commission cannot approve the transfer of the Auburn Line from PNG to UGIES at the depreciated original costs, OSBA argues that PNG failed to prove that UGIES is the only entity that is interested in undertaking the project or that another entity would not pay more for the Line. OSBA Exceptions, p. 9. OSBA ignores that the transaction before the Commission imposes significant conditions and limitations that are not likely to be attractive to an independent third party. Further, OSBA also ignores that there are substantial risks that the investment will fail or be less profitable than anticipated.

PNG explained that there are various aspects of the transaction that likely would not be attractive to an independent, unregulated producer or midstream operator, including: The limited capacity of the line; the larger amount of investment necessary for compression due to the operating pressure limitations of the pipeline. *See* PNG Main Brief, pp. 12-15, 34. Further, the PNG-UGIES Interconnection Agreement imposes significant conditions and obligations, including: the obligation to provide capacity to PNG to serve its existing customers at no cost; its obligation to PNG to connect and service new PNG customers; sell, exchange, or transport natural gas for PNG in the event of an emergency; and PNG's option to re-acquire portions of the line at net book value should the Agreement be terminated. *See* PNG Main Brief, pp. 12-15, 34. There also are substantial encumbrances on the investment that would further reduce the value of the line to an independent third-party. This encumbered value is further amplified by the obligations imposed on UGIES by the PNG-UGIES Interconnection Agreement. *See* PNG Main Brief, pp. 14-15, 35. Further, the proposed transfer allows PNG to keep the current

economic value of the line through the retention of ownership of the distribution taps serving P&G and the farm tap customers. *See* PNG Main Brief, pp. 20-21. An independent third party would have little interest in agreeing to accept these conditions and constraints when other options are available without these conditions and constraints.

OSBA also ignores that the proposed transaction will require an estimated \$15 million in capital investment by UGIES for compression and related facilities required to move the production gas into Tennessee. *See* PNG Main Brief, pp. 14-16. Further, OSBA ignores the fact that there are substantial risks that the investment could fail or be less profitable than anticipated. *See* PNG Main Brief, p. 12. Importantly, PNG customers will see no disruption in service, will not pay for any of the substantial capital investment needed to convert the line to gathering operations, and will bear none of the risks should the project fail or not be less profitable than anticipated. *See* PNG Main Brief, pp 18-19.

PNG has presented an overall transaction that is acceptable to PNG, UGIES, P&G, and Citrus, and is beneficial to PNG's customers for the many reasons accepted by the ALJ. There simply is no assurance that a similarly acceptable agreement could be achieved through a sale to an independent producer or midstream operator, that the many benefits to customers from this transaction would be retained, or that Citrus would not begin the construction of bypass facilities if the transaction is not approved. *See* PNG Main Brief, pp. 34-35. OSBA presented no evidence to refute the testimony presented by PNG that the transaction before the Commission imposes significant conditions and limitations that are not likely to be attractive to an independent third party.

**B. REPLY TO OSBA EXCEPTION NO. 2: The ALJ Correctly Applied The Burden Of Proof.**

**1. OSBA Bears The Burden Of Proof With Respect To Its Proposal That Was Not Included In PNG's Application.**

The ALJ concluded that that the OSBA failed to present any probative evidence that the market value of the Auburn Line exceeds its depreciated original cost, and that 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. In its Exception No. 2, OSBA asserts that the ALJ erred in concluding that OSBA had the burden to prove the fair market value of the Line. Instead, OSBA claims that PNG had the burden to demonstrate that the proposed transaction is reasonable and consistent with the public interest. OSBA's contentions regarding the parties' respective burdens of proof are flawed for several reasons.

Although PNG, as the applicant, bears the burden to prove that the proposed transaction is in the public interest, a party that proposes an issue that is not included in a public utility's proposal bears the burden of proof. For example, in *Pa. P.U.C. v. Metropolitan Edison Co.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007), a party offered proposals that were not included in the public utilities' filings. The ALJ held that, as the proponent of a Commission order with respect to the newly offered proposals, the party bears the burden of proof as to proposals that are not included in the companies' filings. The Commission agreed and adopted the ALJ's conclusion that the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its filing and which, frequently, the utility would oppose. *Id.* at \*184-87.<sup>13</sup>

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<sup>13</sup> See also *Joint Default Service Plan for Citizens' Electric Co. of Lewisburg, PA and Wellsboro Electric Co.*, Docket Nos. P-2009-2110798, *et al.*, 2010 WL 1259684 at \*2, 19-20 (February 25, 2010) (the companies had the burden of proof as to the proposed plan, but other parties that had submitted their own proposals bore the burden of proof with respect to their proposals).

The transaction proposed by PNG for Commission approval is to transfer the Auburn Line to its affiliate, UGIES, at its depreciated original cost. The parties to the Joint Stipulation carefully analyzed the proposed transaction and agreed that, as modified by the terms and conditions of the Joint Stipulation, Commission approval of the transaction is in the public interest. Joint Stipulation ¶ 17; *see also* Statements in Support of OTS, OCA, and PNG. Furthermore, as explained above, OSBA conceded that the transaction, as proposed, has merit and provides public interest benefits. The ALJ properly balanced all the factors and concluded that the proposed transaction, as modified by the Joint Stipulation, is just, reasonable, and in the public interest. Therefore, under controlling case law, PNG has met its burden.

OSBA disagrees and asserts that PNG failed to meet its burden under Section 2102(b) to demonstrate that the proposed transaction is reasonable and consistent with the public interest. Specifically, OSBA asserts that PNG failed to satisfy this burden because it presented no record evidence of the following: (1) that the project will be feasible only if the Auburn Line is sold at less than fair market value; (2) UGIES is the only entity interested in or capable of making the modifications necessary to convert the Auburn Line to a gathering line; and (3) that reversing the direction of the flow of gas on the Auburn Line is the only economic alternative. OSBA Exceptions, pp. 15-16. However, OSBA has failed to even attempt to explain or provide any legal basis in its Briefs or Exceptions to support its contention that these items are required by law to gain Commission approval under Sections 1102 or 2102 of the Public Utility Code.

OSBA's assertion that PNG had the burden of proof with respect to the fair market value of the Auburn Line is based upon its interpretation of Section 2102(b) that the sale of a utility asset to an affiliated interest at less than fair market value is not in the public interest. As

explained above, OSBA's narrow interpretation of the public interest standard is contrary to well-established law.

Importantly, it is the OSBA that has proposed that the Auburn Line and related facilities be transferred at some hypothetical, unstated market value. This is not the proposal presented in PNG's application for Commission approval. Consequently, OSBA bears the burden of proof with respect to its proposal that was not included in PNG's application.<sup>14</sup> See PNG Main Brief, pp. 8-9.

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, pp. 32-33. Moreover, OSBA has failed to provide any legal basis in its Briefs or Exceptions to support its contentions that transferring the Auburn Line at market value is required to satisfy the public interest standard under Sections 1102 and 2102 of the Public Utility Code, 66 Pa.C.S. §§ 1102, 2102, or that ratepayers are entitled to some hypothetical gain from the transfer of the Auburn Line.<sup>15</sup>

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<sup>14</sup> OSBA did not refute or otherwise contest that a party that offers a proposal not included in a utility's filings bears the burden of proof. See OSBA Reply Brief, pp. 11-12.

<sup>15</sup> 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. *Pa. P.U.C. v. Metropolitan Edison Co.*, 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. Pa. Dep't of Trans.*, 843 A.2d 429 (Pa. Cmwlth. 2004), *appeal denied*, 581 Pa. 681, 863 A.2d 1149 (2004)). See also *Pa. P.U.C. 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*).

**2. Even If OSBA's Fair Market Value Theory Were Correct, And Even If OSBA Had Presented Enough Evidence Regarding Fair Market Value To Shift The Burden Back To PNG, It Is Undisputed The Distribution Value Of The Line Retained By PNG And Its Customers Exceeds Even OSBA's Hypothetical Maximum Market Value**

OSBA now asserts that it introduced enough evidence to shift the burden back to PNG. Specifically, OSBA contends that the burden shifted back to PNG because OSBA explained how the fair market value of the Auburn Line could be determined, and asserted that the fair market value of the Auburn Line is somewhere between \$240,000 and \$10.5 million.<sup>16</sup> Even assuming that this range is correct, OSBA disregards that PNG is retaining the distribution value of the Line, and that this distribution value exceeds OSBA's hypothetical market value estimates.

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, pp. 35-36. 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 \$4 million over the life of the contract).<sup>17</sup> As PNG has explained in un rebutted testimony and in its Main Brief, it is clear and undisputed that the distribution value being retained by PNG (more than \$20 million) far exceeds the OSBA's range of market values

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<sup>16</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 without any evidence that such value could be obtained, while ignoring the impact to this value caused by the significant burdens placed on UGIES as contemplated under the PNG-UGIES Interconnection Agreement.

<sup>17</sup> Under the terms of the Joint Stipulation, the PNG-UGIES Interconnection Agreement will be revised to remove the \$60,000 annual fee originally proposed in the Application to be paid by PNG to UGIES. *See* Joint Stipulation ¶ 16(b). The Joint Stipulation further provides that PNG customers will receive a credit to base rates reflecting the revenue requirement associated with the depreciated original cost of the Auburn Line and associated operating expenses. *See* Joint Stipulation ¶ 16(e).



of the Auburn Line and that these retained revenues benefits other ratepayers. *See* PNG Main Brief, pp. 35-36.

OSBA indicated that if the net value of the Rate XD Agreement between PNG and P&G exceeds the value of the Auburn Line based on replacement costs, then OSBA's concerns would be resolved. OSBA Statement No. 2, p. 3.<sup>18</sup> This is precisely the testimony presented by PNG. PNG witness Mr. Beard explained that the "current market value of the Auburn Line is likely not greater than the cost of building a gathering line that would enable Citrus to deliver gas into Tennessee independent of the Auburn Line. Our estimate of the current cost of building such a line is considerably less than the present value to customers of retaining the right to serve Procter & Gamble and other customers on the Line." PNG Statement No. 1, pp. 15-16.

Based on the foregoing, even if OSBA's theory were correct, and OSBA had presented enough evidence regarding fair market value to shift the burden back to PNG, it is undisputed the distribution value of the line exceeds even OSBA's hypothetical maximum market value and that this distribution value is not being transferred to UGIES, but instead is being retained by PNG and its customers. Accordingly, even if OSBA's theory were correct, PNG satisfied its burden under Sections 1102 and 2102 to demonstrate that the overall proposed transaction is reasonable and consistent with the public interest.

**C. REPLY TO OSBA EXCEPTION NO. 3: The ALJ Correctly Concluded That The Proposed Transaction Will Facilitate The Development Of And Access To Marcellus Shale Natural Gas.**

In Exception No. 3, the OSBA asserts that the ALJ erred in concluding that the transfer of the Auburn Line to UGIES will facilitate the development of and access to Marcellus Shale

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<sup>18</sup> At the time OSBA served its Rebuttal Testimony, the Rate XD Agreement between PNG and P&G had not been provided to OSBA. According to OSBA, without that information, it was unable to make an assessment of the value of the Agreement. OSBA was provided with a copy of the Agreement prior to the filing date for main briefs, and had the opportunity to assess the Agreement. *See* Exhibit PNG/OSBA-1 [**HIGHLY CONFIDENTIAL**].

natural gas. According to OSBA, the ALJ incorrectly assumed that Citrus would not be able to develop Marcellus Shale gas wells if the proposed transaction is not approved by the Commission. OSBA's exception is without merit and should be rejected.

Preliminarily, it must be noted that, although it is an important public benefit, the development of and access to Marcellus Shale natural gas is not the sole benefit of the proposed transaction. As explained above, and as acknowledged by OSBA, the ALJ found numerous other benefits from the proposed transaction that would be in the public interest. OSBA has failed to refute these substantial public benefits. Indeed, all Parties to this proceeding, including OSBA, agree that the proposed transaction will provide public benefits. *See* PNG Main Brief, p. 29. Because OSBA failed to refute or even contest these substantial public benefits, the Commission need not consider OSBA's alternative proposal.

Further, it is undisputed that the proposed transaction will help facilitate the development of the Marcellus Shale gas market in the area, produce many related benefits to the local economy and environment, and will otherwise help constrain the wholesale market price for gas to the ultimate benefit of consumers. As explained above, under current configurations, no gas can be delivered into Tennessee from the Auburn Line. The proposed transaction provides a cost effective means to transport additional Marcellus Shale gas to market, which provides an immediate positive benefit to all gas customers. *See* PNG Main Brief, pp. 21-22. Indeed, OSBA conceded that the "sale of the Auburn Line to a gas gathering entity would appear to offer potential public interest benefits, by providing a lower-cost option for getting local Marcellus Shale gas to market than could be achieved through the development of new gathering systems." OSBA Statement No. 1, p. 11.

Despite its concession, OSBA contends that the ALJ erred in concluding that the proposed transaction will facilitate the development of and access to Marcellus Shale natural gas. OSBA contends that approval of the proposed transaction is not absolutely necessary to the development of Citrus' Marcellus Shale natural gas wells and, therefore, the transfer of the Auburn Line to UGIES at the depreciated original costs should not be approved. Although there may be other alternatives to the development of Citrus' Marcellus Shale natural gas wells, which could be more costly than converting and using the existing line, OSBA disregards the fact that there presently is an overall transaction that is acceptable to PNG, UGIES, P&G, and Citrus, and is beneficial to PNG's customers as explained above. Indeed, both P&G and Citrus filed comments or letters with the Commission indicating their support for proposed transaction. Unlike the siting of high voltage transmission lines where the utility is required by Commission regulations to consider and present all reasonably available alternatives, *see* 52 Pa. Code §§ 57.71-77, a utility seeking Commission approval under Sections 1102 and 2102 of the Public Utility Code is not required to consider all available alternatives. Imputing such a requirement to complex, and often times multi-partied, business transactions would effectively preclude any such transaction from being completed because, unlike the siting of a transmission line between two points, there are endless possible different ways to structure a business transaction. The risks and benefits of alternative business transactions are for the parties to the transaction to consider in the first instance and ultimately determine which transaction to present to the Commission for approval.<sup>19</sup>

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<sup>19</sup> *See Metropolitan Edison Co. v. Pa. P.U.C.*, 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).

OSBA also argues that approval of the proposed transaction is not necessary to forestall bypass of PNG's distribution system because the 20-year agreement between P&G and PNG is not contingent on the conversion of the Auburn Line to a gathering line. OSBA appears to take issue with the "implication" that the Rate XD Agreement is contingent on approval of the proposed transaction. 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. The Rate XD Agreement locks in the distribution value of the Auburn Line, which far exceeds the OSBA's range of market values of the Auburn Line as explained above. *See* PNG Main Brief, pp. 35-36. However, this existing long-term distribution agreement does not prevent the very real threat that P&G and Citrus will seek alternative means to transport Marcellus Shale gas to market if the proposed transaction is not approved.

Citrus is presently without means to get the Marcellus Shale gas produced from P&G property to market. As explained above, both P&G and Citrus have carefully analyzed and fully support the proposed transaction. In the event that the transaction is not approved, Citrus and P&G could bypass PNG to transport Marcellus Shale gas to market. *See* PNG Main Brief, p. 11. If the Auburn Line is bypassed, the numerous substantial public benefits from the proposed transaction will be lost, including the important environmental benefit of avoiding the environmental impact of building a second pipeline to bypass the Auburn Line.<sup>20</sup> *See* PNG Main Brief, pp. 21-22.

Finally, OSBA contends that an independent, third party might be willing to pay significantly more for the Auburn Line than the depreciated original cost. The proposal before

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<sup>20</sup> Further, the bypass and construction of a second will undoubtedly result in a more costly alternative impacting the potential development of additional Marcellus supplies, which will impact royalty revenues to landowners such as P&G and PNG ratepayers through potentially higher gas costs.

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 the distribution taps serving P&G and the farm tap customers. Given the unique and ongoing interaction between PNG and the proposed operation of the Auburn Line as a gathering Line, PNG determined that it was more comfortable dealing with an affiliate as opposed to a totally independent third party. Importantly, PNG considered and rejected transferring the Auburn Line to an unaffiliated entity for good and valid reasons. *See* PNG Main Brief, pp. 12-13.

**D. REPLY TO OSBA EXCEPTION NO. 4: OSBA's Concerns Regarding The Precedential Value Of This Case Are Misplaced.**

In its Exception No. 4, OSBA argues that the ALJ erred in concluding that approval of the proposed transaction will not be precedential for another utility to transfer a ratepayer funded asset to an affiliated interest at less than fair market value. The OSBA contends that the ALJ erred in relying on Paragraph 16 of the Joint Stipulation, which provides that the Joint Stipulation shall not be precedential.<sup>21</sup> OSBA's concerns regarding the precedential value of the proposed transaction, if approved, are misplaced.

First, OSBA's concern that approval of the proposed transaction will be precedential for another utility to transfer utility assets to an affiliate interest at less than market value is based upon its erroneous interpretation of Section 2102(b) of the Public Utility Code, as explained above. OSBA's concern focuses solely on the value of the asset to the exclusion of the many other potential public interest benefits that could arise from a transaction. Therefore, the Commission need not reach OSBA's issue regarding the precedential value of the proposed transfer.

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<sup>21</sup> The OSBA also asserts that the ALJ erred in relying on a statement in PNG's Main Brief that the Settlement is not intended to be precedential regarding the Commission's jurisdiction over gathering systems. *See* Footnote 3, *supra*.

Second, in the event that another utility seeks to transfer assets to an affiliate interest, the utility will have the burden to demonstrate that the transaction is in the public interest, regardless of the transfer price. The fact that another utility previously obtained Commission approval to transfer an asset at a less than market value does not somehow relieve the utility of the public interest burden. The determination of whether a transaction is in the public interest is not dependent upon a single factor but, rather, is a balancing of all factors. *Popowsky v. Pa. P.U.C.*, 594 Pa. 583, 612, 937 A.2d 1040, 1057-58 (2007).

Third, the OTS, OCA, and PNG agreed that the Joint Stipulation is not precedential. Joint Stipulation ¶ 16(g). As a result, if the proposed transaction, as modified by the Joint Stipulation, is approved by the Commission, any precedential value of the transfer will be limited. Further, it is well-established that the Commission is not bound by the strict principles of stare decisis. *Pa. P.U.C. v. UGI Utilities, Inc. (Electric Division)*, Docket No. R-00932862, 1994 Pa. PUC LEXIS 136 (September 23, 1994). Finally, OSBA's concern is immaterial because the Commission has repeatedly approved the sale of utility assets to affiliates at depreciated original costs.<sup>22</sup>

For these reasons, OSBA's concerns regarding the potential precedential value of the proposed transaction, if approved by the Commission, are misplaced and need not be reached by the Commission.

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<sup>22</sup> See Footnote 8, *supra*.

**IV. CONCLUSION**

WHEREFORE, for the reasons explained above, as well as those set forth in the Recommended Decision, the Commission should: (1) Deny the Exceptions filed by the Office of Small Business Advocate; (2) Adopt the recommendations set forth in the Recommended Decision; (3) Approve the Joint Stipulation by and between the Office of Trial Staff, the Office of Consumer Advocate, and UGI Penn Natural Gas, Inc.; (4) 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 (5) 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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