



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

IN REPLY PLEASE
REFER TO OUR FILE

M-2009-1505395

October 27, 2011

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

Re: Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff
And Gas Safety Division v. Equitable Gas Company, LLC
Docket No. M-2009-1505395

Dear Secretary Chiavetta:

Enclosed please find an original and five copies of the Revised Settlement Agreement, which also contains the Joint Statement in support thereof, to be filed in the above-captioned proceeding. Please file stamp and return two copies to the undersigned.

Very truly yours,

Louise Fink Smith
Assistant Counsel

Enclosures

cc: Paul Metro – w/o enc
David Gray, Esq. – w/o enc
Thomas Niesen, Esq. – w/o enc
Charles Thomas, Esq. – w/o enc
Elizabeth Lion Januzzi, Esq. – w/o enc

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LAW BUREAU PROSECUTORY
STAFF AND GAS SAFETY
DIVISION,**

Complainant

v.

EQUITABLE GAS COMPANY, LLC,

Respondent

**Docket No. M-2009-1505395
(Baldwin, Mahoning &
Lighthill)**

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SECRETARY'S BUREAU**

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RENEGOTIATED SETTLEMENT AGREEMENT

THIS RENEGOTIATED SETTLEMENT AGREEMENT (“Renegotiated Settlement Agreement”) is by the Pennsylvania Public Utility Commission’s (“Commission”) Law Bureau Prosecutory Staff and Gas Safety Division (“Prosecutory Staff”), through its counsel, and Equitable Gas Company, LLC¹ (“Equitable” or “Respondent”) in the above-captioned proceedings. In pursuance of this Renegotiated Settlement Agreement, Prosecutory Staff and Respondent (collectively “parties”) stipulate as follows:

I. Introduction

1. The Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate utilities within this Commonwealth pursuant to the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*

¹ Equitable Gas Company, LLC was formerly a division of Equitable Resources, Inc., prior to a reorganization approved by the Commission at Docket No. A-121100F0006. The incidents in question and the violations alleged herein took place prior to the reorganization.

2. Prosecutory Staff is the complainant in this proceeding and is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa. C.S. § 308(b). The Commission has delegated its authority to initiate proceedings that are prosecutory in nature against public utilities to Prosecutory Staff and other bureaus with enforcement responsibility. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, M-00940593 (Order entered September 2, 1994). This Settlement Agreement has been reached pursuant to that delegated authority.

3. Respondent is a jurisdictional public utility with its main office located at 225 North Shore Drive, Pittsburgh, PA 15212, and with other installations in the Commonwealth.

4. Respondent is a public utility as defined by 66 Pa. C.S. § 102(1)(i) and is engaged in providing public utility service as a gas distribution company to the public for compensation.

5. At all times relevant to this Settlement Agreement, Respondent was and is a public utility as defined by the Pennsylvania Public Utility Code, holding Utility Code No. 121100.

6. Section 501(a) of the Public Utility Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code, including 66 Pa. C.S. §§ 1101 and 3301.

7. Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for a violation of any law or regulation that the Commission has jurisdiction to administer.

8. The Commission by and through its Gas Safety Division has the authority to enforce federal gas pipeline safety regulations under Chapter 601 of Title 49 of the

United States Code, 49 U.S.C. §§ 60101, *et seq.* At all times relevant to this Renegotiated Settlement Agreement, Respondent was and is subject to the provisions of the federal gas pipeline safety regulations under Chapter 601 of Title 49 of the United States Code, 49 U.S.C. §§ 60101, *et seq.*

9. Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or any other person or corporation subject to the Commission's authority for violation(s) of the Public Utility Code and/or Commission regulations.

10. Respondent, in providing gas distribution service for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa. C.S. § 501(c), which requires a public utility to comply with Commission orders.

11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Respondent.

II. Baldwin Road

A. Background

12. Respondent operates its D-144 24-inch steel transmission line along Baldwin Road between Calera Street and Glass Run Road in the Pittsburgh area. The transmission line operates under 30% Specified Minimum Yield Strength (SMYS) and is located in a class three (3) location along Baldwin Road.

13. Pennsylvania American Water Company (PAWC) needed to have certain water services installed that would involve a number of crossings of Respondent's D-144 line in the vicinity of Baldwin Road. PAWC submitted a Pennsylvania One Call

Excavation request on June 19, 2007, (PA One Call Ticket Number 1705228) for Baldwin Road. Respondent received notice of this One Call request on June 19, 2007, and marked its D-144 line on June 21, 2007.

14. On June 29, 2007, Respondent had received another excavation ticket submitted by PAWC (Pa One Call Ticket Number 1806510) notifying Respondent that additional construction would occur on Baldwin Road. In response, Respondent marked its D-144 line on July 1, 2007.

15. In July 2007, PAWC had the service lines installed by a contractor (Casper Colosimo and Sons) at the locations covered by the two One Call requests.

16. On August 16, 2007, the Commission's Gas Safety Inspector, Mr. Ralph Graeser, inspected Respondent's records in Pittsburgh, Pennsylvania, looking for Respondent's Damage Prevention Program. As a result of his inspection, Mr. Graeser concluded that Respondent did not have an established written procedure for preventive and mitigative measures to prevent damages to transmission pipelines operating at less than 30% of SMYS in class 3 and class 4 areas. Mr. Graeser also discovered that a number of PAWC water services installations had been bored over Respondent's D-144 transmission line:

- a. Without Respondent having a written Damage Prevention Program,
- b. Without "spot" holes being excavated, and
- c. Without Respondent's personnel on site.

Mr. Graeser informed Respondent that the water services that crossed Respondent's D-144 line and which had not been "spot" holed were to be excavated and inspected for damage, immediately. Mr. Graeser and Respondent's personnel proceeded to the Baldwin crossing locations to observe the excavations.

17. On August 16, 2007, at one of the Baldwin crossing locations, Respondent and Mr. Graeser discovered, upon excavation, that one of the bored and installed water services had damaged the pipeline coating of Respondent's D-144 transmission line.

18. Respondent repaired the damage on August 16, 2007, prior to filling in the excavation.

B. Alleged Violations

19. Prosecutory Staff has reviewed this matter. Had this matter been litigated, Prosecutory Staff would have alleged that Equitable committed the following acts or omissions in relation to this incident:

a. From on or before June 21, 2007, up to and including August 16, 2007, the date of Mr. Graeser's last inspection, Respondent's integrity management program did not have a written procedure for preventive and mitigative measures to prevent damages to transmission pipelines operating at less than 30% of SMYS in class 3 and class 4 areas as required by the federal regulations, even though Respondent knew that such a procedure was required.

If proven, the above omission by Respondent would constitute a violation of 49 CFR § 192.907(a) implementation of integrity management plan and 52 Pa. Code § 59.33 Safety.

b. If proven, each day of non-compliance would constitute a separate violation pursuant to 66 Pa. C.S. § 3301(b) Civil Penalties, Continuing Violations.

III. Mahoning Road

A. Background

20. On May 29, 2007, Respondent utilized a 12-inch diameter Style 38 Dresser Coupler to form a tie-in on a new section of plastic natural gas pipe at 123 Mahoning Road, Templeton, Pennsylvania.

21. Respondent installed the Dresser Coupler, and the connected pipe (“coupling assembly”) was placed into service per Respondent’s written tie-in procedure. Respondent’s written tie-in procedures did not include a written procedure for blocking and anchoring coupling assemblies such as these prior to putting gas into the main.

22. Soon after the coupling assembly was installed, Respondent’s work crew became aware that the coupling assembly was leaking natural gas at the connection with the existing pipe.

23. A few minutes later, while Respondent’s crew attempted to stop the leak, the coupler came off the pipe allowing a release of natural gas to the atmosphere at a pressure of 34 psig.

24. After the coupler detached from the pipe connection, the natural gas ignited, and the resulting natural gas fire damaged the building and property at 123 Mahoning Road, Templeton. There were no injuries from this fire.

25. At no time before the coupler became dislodged did Respondent’s crew act to take pressure off the line in an effort to reduce the hazards associated with the incident.

26. The on-site situation was resolved by shutting off the flow of natural gas to the line.

27. Respondent investigated the cause of the incident and determined that the thrust force caused by the natural gas flow caused the coupling assembly to come apart.

28. The incident was reported to the Commission on May 29, 2007.

29. On July 20, 2007, Mr. Ralph Graeser, Gas Safety Inspector for the Commission, inspected Respondent's records and the site relative to this incident.

30. Mr. Graeser concluded that Respondent did not have sufficient and necessary anchors and support on the installed coupling assembly as required and that the lack of anchors and support caused the coupling assembly to fail. He further concluded that Respondent did not prevent undue strain on the coupling assembly and did not have enough supports or anchors to protect the exposed pipe joints from the maximum longitudinal forces caused by a bend or offset in the pipe.

B. Alleged Violations

31. Prosecutory Staff has reviewed this matter. Had this matter been litigated, Prosecutory Staff would have alleged that Respondent committed the following acts or omissions in relation to this incident:

- a. The coupling assembly that Respondent attempted to install failed to meet the requirement of withstanding operating pressures and other anticipated loadings without impairment.

If proven, the above omission by Respondent would constitute a violation of 49 CFR § 192.143 General Requirements and 52 Pa. Code § 59.33 Safety.

b. Respondent did not prevent undue strain on the coupling assembly and did not have enough supports or anchors to protect the exposed pipe joints from the maximum end force caused by internal pressure.

If proven, the above omission by Respondent would constitute a violation of 49 CFR § 192.161 Supports and Anchors and 52 Pa. Code § 59.33 Safety.

c. Respondent's main was not constructed in accordance with comprehensive written specifications or standards that are consistent with 49 CFR § 192.303 Compliance with Specifications or Standards.

If proven, the above omission by Respondent would constitute a violation of 49 CFR § 192.303 Compliance with Specifications or Standards and 52 Pa. Code § 59.33 Safety.

d. Respondent failed to reduce the pressure on the line in the face of the impending emergency in violation of 52 Pa. Code § 59.33 Safety.

If proven, the above omission by Respondent would constitute a violation of 52 Pa. Code § 59.33 Safety.

e. Respondent did not exercise reasonable care to reduce the hazards to which employees, customers, and others may be subjected by reason of its equipment and facilities in violation of 52 Pa. Code § 59.33 Safety.

If proven, the above omission by Respondent would constitute a violation of 52 Pa. Code § 59.33 Safety.

f. If proven, each day of non-compliance would constitute a separate violation pursuant to 66 Pa. C.S. § 3301(b) Civil Penalties, Continuing Violations.

IV. Lighthill Road

A. Background

32. On February 14, 2008, Independence Excavating was installing silt fence at the construction site for the new casino located along Lighthill Drive.

33. A request for line locating and marking was made by Independence Excavating through the Pennsylvania One Call system. The One Call serial number is 0435090.

34. Although Independence Excavating had requested line locating and marking, the four-inch service line located at the Lighthill site was not marked.

35. While Independence Excavating personnel were excavating at the Lighthill site, they struck and damaged Respondent's four-inch service line.

36. The damage caused an interruption in service to one customer.

37. Respondent was notified of the damage at 7:30 a.m. Respondent's personnel responded at 7:32 a.m. and arrived at the scene at 7:52 a.m. The incident was made safe at 9:27 a.m.

38. Respondent's personnel discovered that the four-inch service line had not been cut-off at the main when an existing building at the location had been razed.

B. Alleged Violations

39. Prosecutory Staff has reviewed this matter. Had this matter been litigated, Prosecutory Staff would have alleged that Respondent committed the following acts or omissions in relation to the Independence Excavating incident at the site on February 14, 2008:

- a. Respondent did not provide temporary markings of its buried pipeline and thus did not reduce the hazards to which the public was subjected.

If proven, this would have been a violation of 49 CFR § 192.614(a) Damage Prevention Program and 52 Pa. Code § 59.33 Safety.

- b. Respondent's personnel did not properly cut-off the four-inch service line at the main when an existing building at the location was razed and thus did not reduce the hazards to which the public was subjected.

If proven, this would be a continuing violation of 49 CFR § 192.614(a) Damage Prevention Program and 52 Pa. Code § 59.33.

- c. Respondent's maps of its distribution system were incomplete and inaccurate, as the maps did not reflect the existence of the four-inch service line.

If proven, this would be a continuing violation of 52 Pa. Code § 59.37 Maps, Plans and Records and 52 Pa. Code § 59.33.

- d. If proven, each day of non-compliance would constitute a separate violation pursuant to 66 Pa. C.S. § 3301(b) Civil Penalties, Continuing Violations.

V. Settlement Efforts and Terms

A. The Initial Settlement

40. Respondent reviewed both the Prosecutory Staff's recitation of the background for these incidents, as well as the alleged violations, and disputed and continues to dispute various parts of the background information as well as all of the alleged violations.

41. On May 11, 2009, Respondent and Prosecutory Staff filed a Settlement Agreement ("Initial Settlement") with the Commission. In lieu of litigation, Prosecutory Staff and Respondent agreed that, in the interest of compromise and cooperation, Respondent would do the following, without admission by Respondent that it committed any of the alleged violations but in recognition by Respondent and Prosecutory Staff that litigation in these matters would be costly and time consuming with uncertain results:

- a. Pay an amount into the Respondent's Hardship Repair Fund² equal to \$65,000 in lieu of a civil penalty. Respondent would not recover or attempt to recover this amount, or any portion thereof, from its ratepayers.
- b. Provide to the Gas Safety Division an acceptable and appropriate written procedure for preventative and mitigative measures to prevent damages to transmission pipelines operating at less than 30% of SMYS in class 3 and class 4 areas.

² The Hardship Repair Fund is used to help low income customers with house line, service line, and furnace repairs and replacement, as well as to help with installation of thermostats for the visually impaired. The Hardship Repair Fund is a fund of last resort and is particularly helpful when the Commonwealth's Crisis Program is closed. Recipients of assistance must qualify as low income (at or below 150% of the federal poverty level) but need not be in Respondent's customer assistance program.

- c. Provide an acceptable and appropriate written procedure for all other preventative and mitigative measures that need to be conducted on the Respondent's gas transmission system.
- d. Retrain all of Respondent's employees and contractors on the requirements of the new procedures for preventative and mitigative measures addressed in paragraphs 41.b. and c. above.
- e. Demonstrate to the Commission's Gas Safety Division that the requirements of paragraphs 41.b., c., and d. above have been completed before this matter is submitted to the Commission for approval.
- f. Provide to the Gas Safety Division and maintain in operations a written process to evaluate the thrust force at each tie where a coupling assembly with no pull out resistance is utilized.
- g. Provide a written procedure to the Gas Safety Division and maintain in operations for ensuring that all mains and lines are anchored for the proper thrust force for all coupling assemblies with no pull out resistance prior to pressure being introduced to the pipeline.
- h. Retrain all of Respondent's employees and contractors on the requirements of the new procedures for anchoring coupling assemblies consistent with paragraphs 41.f. and g. above.
- i. Demonstrate to the Commission's Gas Safety Division that the requirements of paragraphs 41.f., g., and h. above have been completed before this matter is submitted to the Commission for approval.

- j. Provide new procedures to ensure that all company-owned gas service lines are cut-off at the main at the time when a service line will no longer be utilized to provide service.
- k. Review comprehensively and update its distribution system maps and plans so as to ensure the accuracy of those maps and plans.
- l. Provide new procedures to ensure that all company-owned gas lines are marked whenever a request to do so is received through the Pennsylvania One Call system.
- m. Retrain all of Respondent's employees and contractors on the requirements of the new procedures for cut offs consistent with paragraph 41.j. above.
- n. Demonstrate to the Commission's Gas Safety Division that the requirements of paragraphs 41.j., k., l., and m. above have been completed before this matter is submitted to the Commission for approval.
- o. Refrain from committing violations of the natural gas safety regulations and/or practices in the future.

42. By Opinion and Order entered November 25, 2009, the Commission: (1) modified the Initial Settlement by imposing an additional \$65,000 as a civil penalty on Respondent pursuant to 66 Pa. C.S. § 3301; and (2) solicited comments from interested parties with respect to the modifications consistent with 52 Pa. Code § 3.113(b)(3). On December 15, 2009, Respondent filed Comments in support of the unmodified Initial Settlement.

43. By Opinion and Order entered May 10, 2010, the Commission adopted the Initial Settlement as modified by the Opinion and Order entered November 25, 2009, requiring Respondent to pay an additional \$65,000 civil penalty. The Commission noted in its Opinion and Order entered May 10, 2010, that either Respondent or Prosecutory Staff could withdraw from the Initial Settlement as a consequence of the Commission's decision to modify the Initial Settlement. By letter dated June 9, 2010, Respondent advised the Commission that it was withdrawing from the Initial Settlement.

44. By letter dated February 22, 2011, the Secretary of the Commission advised that, upon Respondent's withdrawal from the Initial Settlement, this proceeding reverted to its status as an Informal Investigation, that the conditions and any penalties mandated and assessed by the May 10, 2010 Opinion and Order were effectively nullified by Respondent's withdrawal from the Initial Settlement, and that the matter was returned to the Prosecutory Staff to examine the facts and issues raised in the Informal Investigation and take whatever further action may be warranted.

B. Renegotiated Settlement Agreement

45. As noted above, Respondent opted out of the Initial Settlement after it was modified by the Commission's Opinion and Order entered May 10, 2010 because Respondent disagreed (and continues to disagree) that an additional \$65,000 civil penalty beyond the original \$65,000 payment to the Hardship Repair Fund is appropriate. Respondent had filed comments in 2009 expressing its disagreement with the Commission's decision to double the Initial Settlement value by adding the \$65,000 penalty. Prosecutory Staff did not comment on the modification of the Initial Settlement.

46. After the Opinion and Order entered May 10, 2010 affirmed the modification to the Initial Settlement and Respondent opted out, the informal investigation was reassigned to Prosecutory Staff by Secretarial Letter in 2011.

Thereafter, Respondent and Prosecutory Staff reopened their settlement discussions to resolve the informal investigation following Respondent's withdrawal from the Initial Settlement.

47. Respondent and Prosecutory Staff have now reached a renegotiated agreement for a \$65,000 payment to the Hardship Repair Fund and a \$5,000 civil penalty ("65/5"). These payments, in conjunction with other efforts undertaken by Respondent, are a reasonable resolution of these matters. Respondent and Prosecutory Staff have independently decided and concur that the renegotiated settlement is a fair resolution of these matters and that it is in the public interest to settle these matters in this manner.

48. As with the Initial Settlement, while Respondent agrees with the Renegotiated Settlement Agreement terms, Respondent disputes and continues to dispute various parts of the background information as well as all of the alleged violations. Respondent expressly denies that it committed any of the alleged violations. Respondent, moreover, continues to disagree with the decision of the Commission to modify the Initial Settlement. At the same time, Respondent recognizes, as does Prosecutory Staff, that litigation in these matters would be costly and time consuming with uncertain results. In the interest of compromise and cooperation, the parties have agreed to this proposed Renegotiated Settlement Agreement.

49. The renegotiated 65/5 settlement is proper, reasonable, and in the public interest because, *inter alia*, Respondent has undertaken and completed to the satisfaction of the Gas Safety Division all of the procedural and training requirements which were agreed to in the Initial Settlement and affirmed by the Commission as appropriate in its 2009 and 2010 orders. This has been accomplished in a cooperative manner through Respondent's work with Prosecutory Staff and Gas Safety Division. This has resulted in improved internal procedures and practices since the incidents. The level and speed of cooperation that Respondent has shown and its overall safety track record are material on

all counts. In particular, Prosecutory Staff and Respondent confirm that Respondent has completed the following modifications to its gas safety procedures, which are the terms Respondent agreed to undertake as part of the Initial Settlement:

a. Provided to the Gas Safety Division an acceptable and appropriate written procedure for preventative and mitigative measures to prevent damages to transmission pipelines operating at less than 30% of SMYS in class 3 and class 4 areas.

b. Provided an acceptable and appropriate written procedure for all other preventative and mitigative measures that need to be conducted on the Respondent's gas transmission system.

c. Retrained all Respondent's employees and contractors in the requirements of the new procedures for preventative and mitigative measures addressed in paragraphs 49.a. and b. above.

d. Demonstrated to the Commission's Gas Safety Division that the requirements of paragraphs 49.a., b. and c. above have been completed.

e. Provided to the Gas Safety Division and maintained in operations a written process to evaluate the thrust force at each tie where a coupling assembly with no pull out resistance is utilized.

f. Provided a written procedure to the Gas Safety Division which is maintained in operations for ensuring that all mains and lines are anchored for the proper thrust force for all coupling assemblies with no pull out resistance prior to pressure being introduced to the pipeline.

g. Retrained all of Respondent's employees and contractors on the requirements of the new procedures for anchoring coupling assemblies consistent with paragraphs 49.e. and f. above.

h. Demonstrated to the Commission's Gas Safety Division that the requirements of paragraphs 49.e., f., and g. above have been completed.

i. Provided new procedures to ensure that all company-owned gas service lines are cut-off at the main at the time when a service line will no longer be utilized to provide service.

j. Reviewed comprehensively and updated its distribution system maps and plans so as to ensure the accuracy of those maps and plans.

k. Provided new procedures to ensure that all company-owned gas lines are marked whenever a request to do so is received through the Pennsylvania One Call system.

l. Retrained all of Respondent's employees and contractors on the requirements of the new procedures for cut offs consistent with paragraph 49.i. above.

m. Demonstrated to the Commission's Gas Safety Division that the requirements of paragraphs 49.i., j., k., and l. above have been completed.

50. Further, Respondent agrees that Respondent will refrain from committing violations of the natural gas safety regulations and/or practices in the future.

51. Prosecutory Staff's additional justification for the renegotiated 65/5 settlement is Respondent's cooperation and efforts in response to the Gas Safety Division's concerns relative to a number of natural gas service users that are not Respondent's customers, who faced potentially questionable supply in the 2011-2012 heating season. At the request of the Gas Safety Division, Respondent invested time and effort to assist the Gas Safety Division in its review of possible options for these users. The Gas Safety Division was able to gather sufficient information to independently address the situation to the satisfaction of the Gas Safety Division.

52. In light of the actions that Respondent has taken since the incidents in question and since the entry of the November 2009 and May 2010 Orders and the commitments that Respondent has made, Respondent and Prosecutory Staff submit that it is appropriate and in the public interest to resolve and close this informal investigation with Respondent's payment of \$65,000 to the Hardship Repair Fund and a civil penalty of \$5,000.

53. Respondent will not recover or attempt to recover these amounts, or any portion thereof, from its ratepayers.

VI. Joint Statement in Support of Settlement and Asserting Compliance with the Commission's Factors and Standards for Evaluating Litigated and Settled Proceedings involving Violations of the Public Utility Code and Commission Regulations—Statement of Policy

54. The parties assert that approval of this Renegotiated Settlement Agreement is consistent with the Commission's Statement of Policy – Factors and Standards for Evaluating Litigated and Settled Proceedings involving Violations of the Public Utility Code and Commission Regulations, 52 Pa. Code § 69.1201.

55. Under this Policy Statement, the Commission will consider specific factors when evaluating settlements of alleged violations of the Public Utility Code and the

Commission's Regulations. These factors are: (1) Whether the conduct at issue was of a serious nature; (2) Whether the resulting consequences of the conduct at issue were of a serious nature; (3) Whether the conduct at issue was deemed intentional or negligent (may only be considered when evaluating litigated cases); (4) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (5) The number of customers affected and the duration of the violation; (6) The compliance history of the regulated entity that committed the violation; (7) Whether the regulated entity cooperated with the Commission's investigation; (8) The amount of the civil penalty or fine necessary to deter future violations; (9) Past Commission decisions in similar situations; and (10) Other relevant factors. 52 Pa. Code § 69.1201(c). When applied to settled cases, the Commission will not apply the standards as strictly as it will in litigated cases. 52 Pa. Code § 69.1201(b).

56. In the process of negotiating this Renegotiated Settlement Agreement, the factors set forth in 52 Pa. Code § 69.1201 were considered. Specifically, the parties reviewed the nature and consequences of the alleged conduct, the number of customers affected, Respondent's compliance history and the corrective procedures Respondent has implemented, Respondent's cooperation with the Commission, and the amount necessary not only to deter future violations but to recognize possible violations in the past. This Renegotiated Settlement Agreement was negotiated over a long period of time and recognizes Respondent's good faith efforts to comply with the regulations.

57. The terms of the Renegotiated Settlement Agreement reaffirm that the original settlement payment of \$65,000 to the Hardship Repair Fund, coupled with a new civil penalty of \$5,000 would be in the public interest. Prosecutory Staff, Gas Safety Division, and Respondent recognize that the proposed civil penalty is less than the \$65,000 presented in the Commission's Opinion and Order entered May 10, 2010. Prosecutory Staff's willingness to accept a civil penalty of \$5,000 in lieu of the \$65,000

civil penalty presented in the 2009 and 2010 Orders, has taken into consideration the efforts of Respondent since the commencement of the informal investigation and following the Opinion and Order entered May 10, 2010 modifying the Initial Settlement Agreement. It is reflective of Respondent having already taken the necessary steps to modify internal procedures to prevent problems in the future, including, *inter alia*, the establishment of appropriate written procedures for preventive and mitigative measures and the retraining of employees and contractors in the requirements of such procedures. Respondent has also voluntarily reviewed and updated distribution system maps and plans and procedures for marking Company-owned lines. Further, Respondent cooperated with the Gas Safety Division and committed significant resources in connection with matters relating to a number of natural gas service customers who are not customers of Respondent. Although Respondent continues to disagree with the decision of the Commission to modify the Initial Settlement to provide for any contribution or civil penalty over and above the \$65,000 contribution to the Hardship Repair Fund, Respondent has fully cooperated with Prosecutory Staff and accepts the additional civil penalty obligation of \$5,000 in the interest of continued compromise and cooperation with Prosecutory Staff.

58. The renewed Hardship Repair Fund contribution of \$65,000 and the new added civil penalty of \$5,000 are the products of further extensive discussion and negotiation resulting in avoidance of formal litigation, which otherwise would entail hearings, filings of briefs, exceptions, replies to exceptions and appeals with uncertain results. The parties believe that their efforts have resulted in a fair, equitable and comprehensive resolution of these matters that is in the public interest. The Commission has consistently encouraged settlements to avoid the time and expense associated with litigation. The parties submit that the Renegotiated Settlement Agreement is in the public interest because it effectively addresses the issues in the Informal Investigation and avoids the time and expense of litigation as aforesaid. This resolution is consistent with

other settlements that resolve similar incidents. This Renegotiated Settlement Agreement, moreover, clearly meets the standards set forth in 52 Pa. Code § 69.1201.

59. This Renegotiated Settlement Agreement is conditioned upon the Commission's approval without modification. The parties agree that the Law Bureau Prosecutory Staff may prepare and submit a tentative order consistent with this Renegotiated Settlement Agreement for the Commission's consideration.

60. The parties agree to waive any exception period, thereby allowing the Renegotiated Settlement Agreement to be presented directly to the Commission for review pursuant to 52 Pa. Code § 5.232. The parties reserve the right to withdraw from this Renegotiated Settlement Agreement, if it is modified in any manner or if any adverse response is filed.

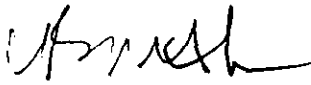
61. This Renegotiated Settlement Agreement is proposed to settle the instant matters and is made without any admission against or prejudice to any position that Respondent or Prosecutory Staff might adopt during subsequent litigation in any case, including further litigation in this case, if this Renegotiated Settlement Agreement is rejected by the Commission or a party withdraws as provided above.

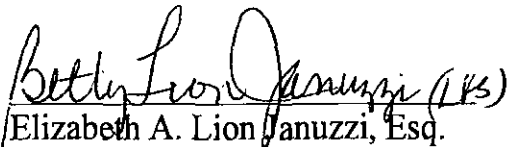
62. In consideration of the foregoing and in lieu of litigating these matters, Prosecutory Staff and Respondent submit that the Renegotiated Settlement Agreement is a comprehensive resolution of the Informal Investigation at M-2009-1505395, consistent with the public interest.

WHEREFORE, Law Bureau Prosecutory Staff, the Gas Safety Division, and Equitable Gas Company, LLC respectfully request that the Pennsylvania Public Utility Commission approve the terms of this Renegotiated Settlement Agreement as being in the public interest.

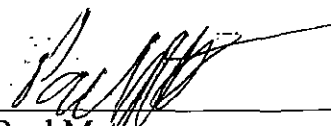
IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the _____ day of _____, 2011.

FOR THE LAW BUREAU PROSECUTORY STAFF:

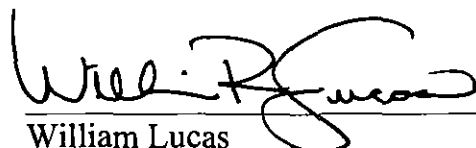
By:  Date: 10/27/2011
Louise Fink Smith, Esq.
Title: Assistant Counsel

And by:  Date: 10/27/2011
Elizabeth A. Lion Januzzi, Esq.
Title: Assistant Counsel

FOR THE GAS SAFETY DIVISION:

By:  Date: 10/29/11
Paul Metro
Title: Director, Gas Safety

FOR EQUITABLE GAS COMPANY, LLC:

By:  Date: 10/25/11
William Lucas
Title: Executive Vice President

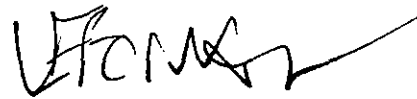
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CERTIFICATE OF SERVICE

I hereby certify that I am this day servicing the foregoing document, Revised Settlement Agreement, upon the persons listed and in the manner indicated below:

Via First-Class Mail:

David Gray, Esquire
225 North Shore Drive
Pittsburgh, PA 15212



Louise Fink Smith
Assistant Counsel
Attorney ID # 77373
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