

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 10, 2012

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17105

Re: Kathleen Moran-Roberto, et al.  
v.  
UGI Penn Natural Gas, Inc.  
Docket No. C-2011-2251178, et al.

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Jennedy S. Johnson".

Jennedy S. Johnson  
Assistant Consumer Advocate  
PA Attorney I.D. #203098

Enclosure

cc: Honorable Ember S. Jandebour  
Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Kathleen Moran-Roberto	:	Docket Nos. C-2011-2251178
John Calafut	:	C-2011-2253878
Jerome Fuhr	:	C-2011-2254311
John Hennigan	:	C-2011-2262771
Dolores Alar	:	C-2011-2266076
Daniel L. Pope	:	C-2011-2258722
Charles E. Schulz	:	C-2011-2267370
Robert M. Rowlands	:	C-2011-2272802
Stephanie and Alfred Donnelly	:	C-2012-2281722
Joseph Michaels	:	Joint
Fred Linbuchler	:	Joint
Office of Consumer Advocate, Intervenor	:	
Bureau of Investigation & Enforcement, Intervenor	:	
v.	:	
UGI Penn Natural Gas, Inc.	:	

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MAIN BRIEF OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: May 10, 2012

TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. STATEMENT OF THE CASE ..... 4

III. STATEMENT OF QUESTIONS ..... 7

IV. PROPOSED FINDINGS OF FACT ..... 8

    A. Proposed Findings of Fact Based on the Formal Complainants ..... 8

*Kathleen Moran-Roberto* ..... 8

*Stephanie Donnelly* ..... 10

*John Hennigan* ..... 13

*Fred Lindbuchler* ..... 15

*Joseph Michaels* ..... 15

*Dolores Alar* ..... 16

*Jerome Fuhr* ..... 18

*Daniel Pope* ..... 19

*John Calafut* ..... 20

*Robert and Lorraine Rowlands* ..... 21

*Charles Schulz* ..... 23

    B. Proposed Findings of Fact Based upon Expert Testimony ..... 25

*Marilyn J. Kraus, Senior Regulatory Analyst, Pennsylvania OCA* ..... 25

*David Lahoff, Manager, Rates for UGI Utilities, Inc.* ..... 30

V. SUMMARY OF THE ARGUMENT ..... 32

VI. ARGUMENT ..... 33

    A. Burden of Proof ..... 33

    B. The Company Has Not Provided Reasonable Service to the Complainants as  
    Required by Section 1501 ..... 33

1. PNG’s Failure to Install Natural Gas Mains to the GBM Complainants is  
Violative of Section 1501 .....35

2. PNG Must Extend Natural Gas Mains to the Complainants without Requiring  
Them to Pay CIAC .....43

VII. PROPOSED CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS.....49

VIII. CONCLUSION .....52

Appendix A

Appendix B

## TABLE OF AUTHORITIES

### Cases

<u>Barone v. PaPUC</u> , 485 A.2d 519 (Pa. Commw. Ct. 1984).....	34
<u>Mill v. PaPUC</u> , 447 A.2d 1100 (Pa. Commw. Ct. 1982), 2 Pa.C.S. § 704.....	33
<u>Norfolk and Western Ry. v. PaPUC</u> , 413 A.2d 1037 (Pa. 1980) .....	33
<u>Samuel J. Lansberry, Inc., v. PaPUC</u> , 578 A.2d 600 (Pa. Commw. Ct. 1990), <i>alloc. den.</i> , 602 A.2d 863 (Pa. 1992).....	33
<u>Se-Ling Hosiery v. Margulies</u> , 70 A.2d 854 (Pa. 1950).....	33

### Administrative Decisions

<u>Investigation Order</u> , Docket No. D-2008-2063177 (Order January 8, 2009).....	2
<u>Morgan, et al. v. PG&amp;W</u> , Complaint No. 19852, I.D. 166 at 2 (Order December 4, 1973) .....	35
<u>Order Granting Petition or Motion to Consolidate, In Part, of UGI Penn Natural Gas, Inc.</u> at 2 (Order July 6, 2011).....	4
<u>PaPUC v. UGI Penn Natural Gas, Inc. 1307(f)</u> , Docket No. R-2011-2238943, (Order September 7, 2011) .....	4, 5
<u>PaPUC v. Pennsylvania Gas and Water Co.</u> , 74 PUR4th 238 (1986).....	34
<u>PaPUC v. UGI Utilities, Inc.</u> , Docket No. M-2010-2138591, (Order August 23, 2010).....	41
<u>Petition of the Office of Consumer Advocate for an Investigation and Order to Show Cause with Regard to the Outage at the Salem Nuclear Generating Station</u> , Docket No. P-830453, 70 P.U.R.4 <sup>th</sup> 568 (Order October 24, 1985).....	40
<u>Re Bermex, Inc.</u> , Docket No. M-00096081 (Order September 18, 1996).....	40
<u>Richard Adams v. UGI Utilities, Inc. – Gas Division</u> , Docket No. C-2010-2182016 (Order October 31, 2011) .....	45

Russell Kanowicz v. PPL Electric Util. Corp., Docket No. C-20034915, 2005 Pa. PUC LEXIS  
43 at \*7 (Order April 20, 2005) .....47

See Pa PUC v. Metropolitan Edison Company, Rate Investigation Docket No. 626, 28 P.U.R.4<sup>th</sup>  
555 (Order March 22, 1979) .....40

**Statutes**

66 Pa.C.S. § 332(a) .....33  
 66 Pa.C.S. § 332(h) .....46  
 66 Pa.C.S. § 701 .....34  
 66 Pa.C.S. § 704 .....33  
 66 Pa.C.S. § 1501 .....*passim*  
 66 Pa.C.S. § 1502 .....46, 49, 51  
 66 Pa.C.S. § 1505 .....34

**Regulations**

52 Pa. Code § 56.1 .....50  
 52 Pa.Code § 56.152(6) .....41  
 52 Pa.Code § 56.140-141 .....40  
 52 Pa.Code § 56.151(5) .....41  
 52 Pa.Code § 56.151-152 .....41

**Miscellaneous**

Purchase and Sale Agreement between Southern Union Company and UGI Corporation, dated  
January 26, 2006 .....36

## I. INTRODUCTION

The customers of UGI Penn Natural Gas, Inc. (PNG) and its corporate predecessors, PG Energy (PGE) and Pennsylvania Gas and Water Company – Gas Division (PG&W), in several areas of northeastern Pennsylvania, have been awaiting natural gas service for many years. While awaiting natural gas service, these customers were placed on a tariff known as the Gas Beyond the Mains (GBM) tariff. Pursuant to this program, these customers were provided propane service at natural gas prices until such time as the Company extended natural gas mains to their homes. Since as early as the 1960s, PG&W told its GBM customers that propane service at natural gas rates would be temporary, until the Company was able to install mains to serve them with natural gas. Forty years later, the propane tanks are still in the Complainants' backyards. Now these customers' gas commodity rates are being raised to the price of unregulated propane rather than the price of natural gas, and these customers will continue to pay the full level of PNG distribution rates, as if they had mains for natural gas service.

At the request of Kathleen Moran-Roberto, who was the first to file a Formal Complaint challenging the proposal to phase out the natural gas rate in the GBM tariff, the Office of Consumer Advocate (OCA) intervened in this consolidated Complaint proceeding. The OCA has assisted her and ten other Complainants by providing expert testimony and legal assistance to address their allegations of inadequate and unreasonable service by PNG with respect to the possible end of the GBM natural gas rate.

Simply put, the eleven Complainants are asking the Commission to consider the negative impact of recent changes in GBM policies and rates on affected customers. While prior cases sought to address the ongoing economic subsidies resulting from PNG's implementation of

the GBM program, these Complaint cases squarely present the question of what happens to these customers, who rightfully expected that they would receive natural gas service through mains at some point in time. As the rate may be phased out, the Commission must now address the proper outcome for these customers who will see a dramatic increase in the price of their utility service.<sup>1</sup> The increase in rates and the inability to receive natural gas service is even more pronounced as natural gas prices have declined substantially due, in part, to the development of Marcellus Shale gas in Pennsylvania. This consolidated Complaint proceeding, which is the first opportunity that the customers themselves have had to be heard on the proposal to eliminate the GBM program, is the Commission's opportunity to address how to fairly and equitably treat the customers of this program.

The OCA respectfully submits that the fair, reasonable and equitable outcome for these Complainants is for PNG to be required to install mains to serve them with natural gas, without requiring Contributions in Aid of Construction (CIAC) from them. The Complainants have been preparing for natural gas service by maintaining and replacing their gas appliances, at great expense, for many years. They have also paid distribution charges for natural gas mains for all of these years expecting that they, too, would receive natural gas service. PNG and its corporate predecessors have benefitted from this program both through the return provided in the distribution rates paid by these customers and the promotion of natural gas service. Therefore, the most equitable solution to this controversy is to require PNG to install the natural gas mains to serve these Complainants. The economic portion of the cost of the mains should be included

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<sup>1</sup> The Orders in both the most recent base rate case and in the 2011 PGC proceeding note that all of the terms of the prior orders in both cases having a bearing on the GBM tariff service could be changed by the outcome of a Commission investigation into the program, which has been pending since 2008. A report was to be submitted to the Commission on or before March 31, 2009, but the date of final Commission action on that report is not known at this time. See Investigation Order, Docket No. D-2008-2063177 (Order entered January 8, 2009) (attached in Appendix A).



in PNG's base rates while the uneconomic portion, if any, should be initially borne by PNG's shareholders. As new customers are added to those mains, additional economic portions of the investment would be added to rate base. Importantly, the OCA submits that under the circumstances of this case, the economic portion of the investment that would be included in rates should *not* be limited to the levels ordinarily considered by PNG in determining whether or not to demand Contributions in Aid of Construction from new, prospective customers. Rather, it is appropriate to consider the anticipated revenues that the Company would receive over the entire service lives of the mains that are added to serve the Complainants.

For all of the reasons set forth more fully below, the Commission should require PNG to provide the remaining GBM customers with adequate, safe, efficient and reasonable service and facilities by installing natural gas mains to serve them, in accordance with the recommendations of OCA witness Marilyn J. Kraus.<sup>2</sup>

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<sup>2</sup> Ms. Kraus is a Senior Regulatory Analyst with the Office of Consumer Advocate. She has a B.S. in Accounting and is a Certified Public Accountant. She has more than twenty-seven years of experience in the public utility area, including work as a consultant, and has provided expert testimony in accounting, rate design, line extensions, extended area service and other areas of utility matters, including public policy issues arising in PUC matters. Her full background and qualifications are attached as Appendix I to OCA St. 1.

## II. STATEMENT OF THE CASE

On or about June 9, 2011, Kathleen Moran-Roberto of Moosic, PA filed a Formal Complaint against UGI – Penn Natural Gas, Inc. (PNG or Company), concerning its proposal to terminate the Gas Beyond the Mains (GBM) tariff service and its proposal to increase the GBM customers' Purchased Gas Cost (PGC) rate to the unregulated propane rate in four steps. PNG moved to consolidate this Formal Complaint with its Section 1307(f) PGC proceeding at Docket No. R-2011-2238943. Ms. Moran-Roberto and the OCA opposed the consolidation, in part because of the time constraints inherent in the PGC proceeding. Order Granting Petition or Motion to Consolidate, In Part, of UGI Penn Natural Gas, Inc. at 2 (Order entered July 6, 2011) (Order of July 6, 2011).<sup>3</sup> PNG contended that the termination of the current GBM program as of August 27, 2014, had already been determined in a prior PNG base rate case (R-2008-2079660), but that it was unclear whether abandonment of the GBM customers had been specifically authorized. Id. at 4. Administrative Law Judge (ALJ) Kandace Melillo granted the Motion in part, consolidating the portion of the Complaint which challenged the GBM rate phase-out mechanism with the PNG 1307(f) proceeding, while the main extension and other service issues were to be decided in a separate docket. Order of July 6, 2011, at 7.

The 1307(f) case was ultimately settled, with a modified transition rate schedule for the GBM customers.<sup>4</sup> The ALJ noted that Ms. Moran-Roberto specifically reserved all other issues associated with the GBM tariff and service to the separate Complaint docket, including

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<sup>3</sup> For ease of reference, the Order deciding the Motion to Consolidate is attached to this Brief in Appendix B.

<sup>4</sup> Instead of the PNG proposal to “blend” the natural gas rate with the market propane rate in 25% increments, the settlement provides for a blending of 15% of the propane rate in the first year (which took effect on December 1, 2011), 40% the second year and 65% the third year, with the final year set at 100% of the market propane rate. PaPUC v. UGI Penn Natural Gas, Inc. 1307(f), Docket No. R-2011-2238943, R.D. at 23 (Order entered September 7, 2011) (1307(f) R.D.)

but not limited to, the due process issues regarding the lack of notice to the GBM customers in the 2008 base rate case, the legality of discontinuing the GBM program, service quality issues and main extension issues. The ALJ also noted that the proposed phase-in of the natural gas rate to the market propane rate remained subject to the Commission's informal investigation of GBM under the terms of the Settlement. 1307(f) R.D., at 23, referencing Stipulation at ¶43.

Ms. Moran-Roberto's Complaint was followed by the Formal Complaints of seven additional PNG customers expressing similar concerns about the gas rates and service. John Calafut of Carbondale, PA had first filed an Objection form on June 27, 2011 in response to the notice of the Section 1307(f) proceeding; however, on July 17, 2011, he also filed a Formal Complaint against the rate change and the termination of the GBM program at Docket No. C-2011-2253878. Mr. Jerome Fuhr of Tunkhannock, PA submitted an informal complaint to the Bureau of Consumer Services, followed by a Formal Complaint to the Commission dated July 16, 2011, Docket No. C-201102254311, on the same basis. On August 19, 2011, Mr. Daniel Pope, also of Tunkhannock, PA, filed a Formal Complaint challenging the termination of the GBM program, Docket No. C-2011-2258722. Mr. John Hennigan of Wyoming, PA, filed a Formal Complaint, Docket No. C-2011-2262771, on September 7, 2011, challenging the rate change and alleging that UGI had threatened termination in retaliation for his having filed a Complaint with the Commission. On September 28, 2011, Dolores Alar of Shavertown, PA submitted a Formal Complaint challenging the PNG proposal, followed by Mr. Charles Schulz, of Berwick, PA, Mr. Robert Rowlands, of Dallas, PA and Alfred and Stephanie Donnelly, of Wyoming, PA. Mr. Fred Lindbuchler and Mr. Joseph Michaels joined in the Donnelly Formal Complaint.

The OCA submitted a Notice of Intervention in each of the aforementioned *pro se* Complaints and moved to consolidate them pursuant to 52 Pa. Code Sections 5.81 and 5.103. PNG submitted Answers to each of the Formal Complaints, asserting that its actions with respect to the GBM tariff service customers were consistent with prior Commission Orders and its Tariff. The OCA, the Complainants, the Company and Commission's Bureau of Investigation and Enforcement (I&E) participated in a Prehearing Conference on November 28, 2012, before Administrative Law Judge Ember Jandebur in Scranton, PA. The parties proposed a procedural schedule that called for the submission of written expert testimony in advance of evidentiary hearings. Pursuant to the schedule later approved by the ALJ, the OCA served the written direct testimony of Marilyn J. Kraus, Senior Regulatory Analyst, on January 20, 2012. PNG served the written rebuttal testimony of David E. Lahoff on February 10, 2012. The OCA followed with the surrebuttal testimony of Ms. Kraus on February 17, 2012.

Evidentiary hearings were convened on April 5, 2012, during which the eleven Formal Complainants testified in support of their Complaints seeking natural gas service or a continuation of the GBM tariff rate. On April 6<sup>th</sup>, the expert witnesses, Ms. Kraus and Mr. Lahoff, were made available for cross-examination by the opposing parties. The OCA submits this Main Brief in accordance with the schedule approved by ALJ Jandebur.

### III. STATEMENT OF QUESTIONS

- A. Is PNG's proposal to phase out the GBM natural gas rate without adequately addressing the possible end of the program and other associated quality of service issues violative of Section 1501 of the Public Utility Code?

Suggested answer: Yes.

- B. Is PNG's application of Tariff Rule 5 to the GBM customers unreasonable, violative of the express language of the Tariff and violative of Section 1502 of the Public Utility Code?

Suggested answer: Yes.

- C. To resolve their Complaints, should the Commission order that UGI PNG extend mains to these Formal Complainants without requiring Contributions in Aid of Construction from them?

Suggested answer: Yes.

- D. Have PNG's actions related to customer billing, contacts and service violated Chapter 56 of the Commission's regulations and Section 1501 of the Public Utility Code?

Suggested answer: Yes.

#### IV. PROPOSED FINDINGS OF FACT

##### A. Proposed Findings of Fact Based on the Formal Complainants<sup>5</sup>

###### *Kathleen Moran-Roberto*

1. Kathleen Moran-Roberto is a current customer of PNG and lives at 17 Shady Lane, Moosic PA. She has been employed as the manager of the Museum Store at Steam Town National Historic Site in Scranton PA for seven and a half years. Tr. at 27-28.
2. Ms. Moran-Roberto has been a customer of PNG (or its corporate predecessors) for over 40 years. Tr. at 28. During that time, she has always been a GBM customer. Tr. at 34-35. She inherited the house in which she lives from her father in about 1980. Tr. 48.
3. Approximately forty years ago, representatives of the utility approached Ms. Moran-Roberto's parents to advise that if they would switch their heating system to natural gas, the utility would provide them propane at natural gas rates and that eventually the utility would bring gas lines to them, which they did in most of Moosic. The utility continued to provide propane at the natural gas rates. Ms. Moran-Roberto recalls paying \$300 toward the purchase and installation of the new furnace. Tr. at 34-35.
4. The propane tank, which was to be temporary until the utility installed natural gas lines, is an eyesore and brings down the value of her property. Tr. at 34; Moran-Roberto Exh. 1 at 7-8.
5. Although at one time in the 1970s, the utility sent a letter stating that it was no longer going to continue to supply propane at natural gas rates because of a gas shortage, the GBM customers fought it and the propane at natural gas rates continued; that was the last that Ms. Moran-Roberto heard from a utility about the rate being discontinued until receipt of the letter in 2011 from PNG. Tr. 35; Moran-Roberto Exh. 1 at 3. When Ms. Moran-Roberto received the notice from PNG that the Company was going to stop the GBM program, she was very upset and wrote a letter dated June 9, 2011, to the Office of Consumer Advocate. Tr. at 32; Moran-Roberto Exh. 1 at 1-2.
6. Prior to receiving the May 24, 2011 letter, Ms. Moran-Roberto knew nothing about the elimination of the GBM natural gas rate by August 27, 2014, that had been first considered in the 2008 base rate filing. Tr. at 35-36; Moran-Roberto Exh. 1 at 3.
7. Ms. Moran-Roberto went into a panic because she knew that propane costs a fortune and she called the gas company. The gas company said that it was the PUC that

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<sup>5</sup> All transcript references are to the record for the first day of hearings, April 5, 2012.

was pushing for the change, not the Company, because the Company was completely happy with the situation as it was. Tr. at 36.

8. Had Ms. Moran-Roberto known that the Rate GBM was going to be an issue in the 2008 rate proceeding, she would have filed a complaint as she did in the 2011 PGC proceeding. Tr. at 36.
9. Ms. Moran-Roberto now understands that she will be paying about four times more for her heating and hot water bills than what she has been paying, despite her best conservation efforts. She keeps the thermostat between 62 and 63 degrees, even though her husband has diabetes and cancer. Tr. at 36-37.
10. Ms. Moran-Roberto has elderly neighbors who are also GBM customers, who do not understand the changes that will occur and who are fearful of taking any action. Tr. at 38.
11. Ms. Moran-Roberto had high hopes that the lines would be extended at one time because there is a business approximately 600 feet from her home to which the utility installed gas lines. She believes that there would be 120 possible customers that could be connected from the line that would serve her and that all of the people on her street would be thrilled to have gas lines come through. Tr. at 39. One of her neighbors has oil heat and would like to have natural gas as a heating source. Tr. at 41.
12. Ms. Moran-Roberto does not understand why PNG is willing to spend millions of dollars to develop other areas, to expand its territory and to advertise on television and in local newspapers to get people to convert to natural gas, but is unwilling to install mains to GBM customers who have been paying their bills and waiting for mains for forty years. Tr. at 41-43; Moran-Roberto Exh. 1 at 6.
13. Ms. Moran-Roberto does not believe that the rest of the natural gas customers should have to pay the difference between the propane and natural gas rates and that if the propane at natural gas rates would be required to continue, the Company should have to foot the bill. Tr. at 46-47. Footing the bill for the difference would be an incentive to install the mains. Tr. at 46.
14. Ms. Moran-Roberto does not believe it would be fair to charge the GBM customers for the installation of gas mains, but she would be willing to install a service line. She believes that PNG should be required to absorb the cost of the natural gas mains. Tr. at 49.
15. Ms. Moran-Roberto has been holding off on replacing the furnace because of the uncertainty of the outcome of this case and of being able to continue as a PNG customer. Tr. at 52-53.

16. PNG is willing to provide Ms. Moran-Roberto natural gas through mains, only if she paid a "Contribution in Aid of Construction" in the amount of \$62,115. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Stephanie Donnelly*

17. Stephanie and Alfred Donnelly live at 535 Carverton Rd, Wyoming, Pennsylvania 18644. The Donnelly home is in the PNG service territory, and the Donnellys are Gas Beyond the Mains (GBM) customers. Tr. at 55-57.
18. The Donnellys constructed their house in 1966-1967. The Donnelly house was built as a "package" home designed for electric heat. During the construction of their home, the Donnellys bought electric baseboard heaters and an electric water heater to install in their house. Tr. at 56-57.
19. In 1966 or 1967, the Donnellys were approached by two men from PG&W regarding their heating source. The PG&W employees told the Donnellys about a program, now known as GBM, which would allow them to heat their home with natural gas and stated that the Donnelly home would be temporarily served with bottled gas until the natural gas mains were extended to their house. The PG&W employees assured the Donnellys that natural gas mains would be brought to their house in a timely manner. Tr. at 58-59.
20. The PG&W employees said that natural gas was inexpensive and a good value. The inexpensive nature of the natural gas appealed to the Donnellys. Tr. at 58-59.
21. The Donnellys modified their house once it was under roof to include a double-walled metal stovepipe chimney necessary for gas heating. The Donnellys received free gas service for six months and a gas lamp post as incentives to switch to natural gas. Tr. at 60-61.
22. In the winter of 1972-1973, PG&W sent a notice to the Donnellys that it was going to discontinue the program under which liquid propane was provided at natural gas rates as the program was too costly. Within a few months of receiving the initial notification in 1972-1973, the program was restored. Tr. at 63-64.
23. Mrs. Donnelly contacted PG&W several times to inquire about the Company extending natural gas mains to her property. Mrs. Donnelly contacted PG&W employee Frank Loch in 1975-1976 about the possibility of PG&W extending the natural gas main during the Carverton Road reconstruction. Mrs. Donnelly also contacted PG&W about



the possibility of PG&W extending the natural gas main during the same time that public sewers were being installed in her area. Tr. at 64.

24. The Donnellys received a letter dated May 24, 2011 notifying them of the termination of the GBM natural gas rate. In response to the letter, Mrs. Donnelly filed a Formal Complaint at the Commission and contacted Senator Lisa Baker and Representative Phyllis Mundy. The Donnellys received no notification that the GBM natural gas rate was to be terminated prior to the May 24, 2011 letter. Tr. at 66-68.
25. The Donnellys ran out of gas on several occasions throughout the years. Tr. at 68.
26. Mrs. Donnelly received letters in the late fall and early winter of 2010 from the new propane delivery company stating that it had to inspect her lines and appliances or it would not make deliveries. In response, Ms. Donnelly contacted PNG on November 10, 2010. During that call, Company representative Tammy stated that she received a complaint from a gentlemen regarding the new propane provider a few weeks prior to Mrs. Donnelly's call. Tammy said that she thought the new propane provider's name was "Modern." The provider was, in fact, AmeriGas. Tr. at 71-77, Donnelly Exh. 2, Donnelly Exh. 3, lines 1-81.
27. On the date of inspection, AmeriGas was supposed to arrive at the Donnelly home at noon, but did not actually arrive until 5:30 pm, after dark. AmeriGas representatives recorded the make, model and serial number of each gas appliance in the Donnelly home. AmeriGas informed Mrs. Donnelly that it was recording her appliance information "in case there's an insurance claim." Tr. at 77-90, Donnelly Exh. 2, Donnelly Exh. 3, lines 82-237.
28. Ms. Donnelly contacted PNG on November 17, 2010 to discuss the visit that AmeriGas made to her home. Mr. Donnelly again spoke with Tammy who stated that she informed PNG's C&M department supervisor of the situation and that Mrs. Donnelly "is not the only one that has complained." Tammy stated that since AmeriGas purchased the propane division of UGI, PNG does the billing, but any policies are those of AmeriGas. Tammy told Ms. Donnelly that there is nothing PNG can do regarding AmeriGas as they purchased UGI's propane division and that Mrs. Donnelly's only alternative is to go to a private supplier, which is much more expensive than PNG. Tr. at 84-86, Donnelly Exh. 2, Donnelly Exh. 3, lines 160-192.
29. Mrs. Donnelly received a call back from a PNG employee later in the day on November 17, 2010. On that call, Mrs. Donnelly was told that her contract with PG&W was honored when PNG purchased PG&W but was void when AmeriGas purchased

UGI's propane division. Based on these two calls, Mrs. Donnelly feels that PNG employees do not understand the GBM program and provide GBM customers with incorrect information. Tr. at 90-91, Donnelly Exh. 4.

30. During the January 2011 delivery, while the AmeriGas employee was retracting the hose after refilling the tank at the Donnelly house, the hose hit the downspout and ripped it off of the side of the Donnellys' home. Tr. at 99-101.
31. The Donnellys replaced several appliances in their home since 2002. In 2008, the Donnellys purchased a standby LP gas generator for \$5,900; if the Donnellys had known the GBM program was going to end, they would have kept their small gas-powered generator. In 2002, the Donnellys replaced the boiler in their home for \$2,359 and in April 2008, the Donnellys purchased a new gas clothes dryer and range for \$682 and \$1,849, respectively. The Donnellys would not have continued to purchase gas appliances had they known that the GBM program was going to end. Tr. at 101-103.
32. The Donnellys are enrolled in PNG's "ABC" automatic bill payment program. In January 2012, the Donnellys' ABC payment was not deducted, as scheduled, from their bank account. As a result, Mrs. Donnelly sent a certified letter to PNG. Mrs. Donnelly was not contacted by PNG prior to her January 24, 2011 due date regarding her payment or her status in the ABC program and never received notice from the Company that her monthly payments would no longer be automatically deducted from her checking account. Three weeks after sending her January 27, 2012 letter, Mrs. Donnelly received a call from Company representative Ms. Blake who told Mrs. Donnelly that she was still enrolled in ABC but that the Company would not take out her payments automatically. Mrs. Donnelly's understanding is that her ABC payments stopped as a result of her filing a Formal Complaint with the PUC. Tr. at 92, 108-111, Donnelly Exh. 5.
33. For five months, between November 2011 and March 2012, AmeriGas delivered 937 gallons of propane to the Donnelly residence. Mrs. Donnelly calculated that the 937 gallons charged at 100% propane rates would cost \$2,520. Mrs. Donnelly's costs for the entire 2011 year were \$1,313. Mrs. Donnelly is concerned about the increased cost and volatility of prices for propane. Tr. at 113-114.
34. The Donnellys consider the initial promise made by PG&W representatives and the 45-plus years of the program to be a contract. The Donnellys accepted PG&W's offer in good faith and want natural gas to be provided, as promised. Tr. at 114.
35. PNG would provide the Donnellys natural gas service through mains, only if they paid CIAC in the amount of \$48,600. That cost estimate assumes that a main has been

installed to Mr. Hennigan at a cost of \$269,000. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*John Hennigan*

36. John Hennigan lives at 527 Carverton Road in Wyoming, Pennsylvania, his residence for the last 30 years. Mr. Hennigan's house is in the PNG service territory and he is a Gas Beyond the Mains (GBM) customer. Tr. at 132-134.
37. Mr. Hennigan spoke with his home's previous owner, Mr. Cadot, about the heating system in the home prior to purchasing it. After purchasing the home, Mr. Hennigan called the gas company to have his gas service turned on. During that call, the gas company representative confirmed that Mr. Hennigan would receive a rate for bottled gas, as if the natural gas lines were installed. Tr. at 133-134.
38. Mr. Hennigan received a letter dated May 24, 2011 notifying him of the termination of the GBM natural gas rate. He received no notification that the GBM rate was to be terminated prior to the May 24, 2011 letter. Tr. at 143, Hennigan Exh. 1.
39. Mr. Hennigan is enrolled in PNG's "ABC" automatic bill payment program. While his August 2011 bill stated that the amount due would be deducted from his checking account on August 23, 2011, PNG did not make any debit from his account in August. The Company never contacted Mr. Hennigan to let him know that his August 2011 bill would not be automatically debited. Tr. at 135-141, Hennigan Exh. 2.
40. Mr. Hennigan received a 10-day shut-off notice dated August 31, 2011. The Company did not contact Mr. Hennigan prior to sending him a shut-off notice. Tr. at 136-137, Hennigan Exh. 2 and 3.
41. Mr. Hennigan called PNG customer service on September 6, 2011 to discuss the shut-off notice he received. On that call, PNG representative Jeff told Mr. Hennigan that PNG did not debit his August 23, 2011 payment because he filed a Complaint with the PUC. Jeff then told Mr. Hennigan that his Complaint with the PUC was resolved, so his payment would be automatically deducted in September. Tr. at 137-141, Hennigan Exh. 4, Hennigan Exh. 5, lines 1-85.
42. PNG did not automatically debit Mr. Hennigan's September bill, and the Company never contacted Mr. Hennigan to let him know that his September 2011 bill would not be automatically debited. Tr. at 138-140, Hennigan Exh. 4, Hennigan Exh. 5, lines 89-231.

43. Mr. Hennigan called PNG customer service on October 3, 2011 regarding the Company's failure to automatically debit his September 2011 payment. On that call, PNG representative Melody told Mr. Hennigan that the PUC was "holding his account." Melody said that the reason he was not told of the Company's policy not to automatically debit his account was because the hold came on Mr. Hennigan's account after the September 6, 2011 call and that no one from PNG spoke with him since then. She then told Mr. Hennigan that it is "within regulations" for PNG to send him a shut-off notice for any delinquent balance. Tr. at 137-141, Hennigan Exh. 4, Hennigan Exh. 5, lines 89-231.
44. PNG has never notified Mr. Hennigan prior to coming onto his property to service or inspect his tanks. Mr. Hennigan knows of no easement on his property for purposes of UGI service. Tr. 142-143.
45. Mr. Hennigan replaced several appliances in his home since 1997. In 1997, Mr. Hennigan replaced the gas boiler in his home for \$1,800; in 2002, he replaced the hot water heater in his home for \$350; in 2003, he replaced the gas cooktop in his home for \$551; and in 2010, he replaced the gas dryer in his home for \$505. Mr. Hennigan would not have continued to purchase gas appliances had he known that the GBM program was going to end. Tr. at 143.
46. Mr. Hennigan and Mr. Lindbuchler collected 25 signatures from residents of their neighborhood who said they would switch to gas service if the lines were installed. Tr. at 144-145, Hennigan Exh. 7.
47. Prior to the letter from PNG in 2011, Mr. Hennigan had no indication that the GBM program was ending. Tr. 143.
48. Prior to this case, Mr. Hennigan was not aware that the difference in the price of natural gas and propane was paid for by the other customers and he believes that, if mains cannot be extended, PNG should pay the difference, not the customers. Tr. 147-148.
49. PNG would provide Mr. Hennigan natural gas through mains only if he pays \$269,000 in CIAC. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Fred Lindbuchler*

50. Fred Lindbuchler has lived at 532 Beverly Drive, Wyoming Pa, 18644 since April 2002. He is a customer of PNG and is in the Gas Beyond the Mains (GBM) program. Tr. at 151-152.
51. PNG sent Mr. Lindbuchler a letter dated September 21, 2007 that states he is “currently being served with propane because PNG’s natural gas mains do not yet extend to your neighborhood.” Tr. at 153, Lindbuchler Exh. 1.
52. Mr. Lindbuchler’s propane tank ran out of gas in the winter of 2006-2007. He called the number on his tank for Modern gas whose representatives told Mr. Lindbuchler that he was not their customer. He then called PNG regarding his tank being out of gas. During the call, the PNG representative told Mr. Lindbuchler that he was not a PNG customer. Mr. Lindbuchler gave the PNG representative his account number and street addresses, but the representative was still unable to locate his account. The representative was only able to locate the account under the previous owner’s name. Tr. at 155-158.
53. Mr. Lindbuchler replaced several appliances in his home since 2008. In 2008, Mr. Lindbuchler replaced the gas hot water heater in his home for \$550 and, in 2009, he replaced the furnace in his home for \$4,800. Mr. Lindbuchler would not have continued to purchase gas appliances had he known that the GBM program was going to end. Tr. at 160-161.
54. Mr. Lindbuchler is upset because since PNG purchased PG Energy, it has connected 60,000 new customers, according to the UGI annual report, but PNG will not run lines to its existing customers. He believes that because PNG’s customers were paying for the GBM program, the Company never had any motivation to extend the lines. Tr. at 162-163.
55. PNG would provide Mr. Lindbuchler natural gas through mains only if he pays \$48,600 in CIAC. That amount assumes that a natural gas main has already been extended to serve Mr. Hennigan. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Joseph Michaels*

56. Joseph Michaels has lived at 539 Carverton Road, Wyoming, Pennsylvania 18644 since September 2007. He is a PNG Gas Beyond the Mains customer. Tr. at 167-168.

57. In July 2011, Mr. Michaels contacted PA One Call 811 prior to installing his pool and requested that the utilities come out and mark his lawn. He specifically requested that PNG come to mark his lawn because the propane tank and the underground lines to his house were located in the area that would be excavated to install the pool. Tr. at 170-171.
58. Mr. Michaels waited more than a week and then called PNG to ask about the One Call markings. The PNG representative told Mr. Michaels that his address did not have gas service and that the Company does not provide propane gas service and only provides natural gas service. Tr. at 170-171.
59. In 2007, Mr. Michaels replaced his gas range for \$650 and, as part of the home sales agreement, the water heater was replaced in July 2007 for \$550. Mr. Michaels would not have continued to purchase gas appliances had he known that the GBM program was going to end. Tr. at 171.
60. Mr. Michaels received no notification that the GBM natural gas rate was to be terminated prior to the May 24, 2011 letter. Tr. at 171.
61. Mr. Michaels believes that if mains cannot be installed, PNG should continue to provide the GBM customers propane at the natural gas rates at its expense. Tr. at 172, 174.
62. PNG would provide natural gas service to Mr. Michaels through mains, only if he paid \$48,600 in CIAC. PNG St. 1-R at 21-23, PNG Exh. DEL 2. That cost estimate is the incremental cost, assuming that a main has already been installed for Mr. Hennigan. PNG Exh. DEL 2.

*Dolores Alar*

63. Dolores Alar resides in PNG's service territory at 158 North Lehigh Street, Shavertown, PA. She quit high school in the tenth grade, but received her G.E.D. five years ago. She is now employed part-time as a hostess at a local restaurant. Tr. at 176.
64. Mrs. Alar is 72 years old and her husband passed away about 29 years ago. She has lived alone since then. Tr. at 185, 188.
65. She and her husband purchased the house in 1958. The heating source was coal when the house was purchased. Tr. at 177.

66. In 1967, PG&W was advertising to persuade residents within its service territory to switch to natural gas as a cleaner and more economical fuel than coal. Tr. at 177-178. She and her husband talked about the change, consulted with a plumber, Mr. Monk, and decided to go ahead with the conversion. Tr. at 178-179.
67. In December of 1967, Mr. and Mrs. Alar paid \$1280.00 to convert their home to natural gas for heating and cooking. They had a new furnace installed and put baseboard heating in. Tr. at 179-180; Alar Exh. 1, at 1.
68. The propane tank was installed as a temporary measure and was to remain there only until the natural gas line was put in. A year or two after the propane tank was put in, the natural gas line was installed about one-fourth of the way up North Lehigh Street, but not all the way to the Alar residence, the last house on the dead-end street. Tr. at 181-182, 188.
69. Until the natural gas line was installed, the Alars were to be charged for propane at the natural gas rate. Tr. at 182.
70. The first that Mrs. Alar learned that anything about her service and rates was going to change was when she received the May 2011 letter from PNG advising that the utility was going to take them off the Gas Beyond the Main rate by increasing the percentage each year for three years and “after that we’re on our own.” Tr. at 183.
71. After receiving the May 2011 letter, she called the PUC to complain about the change. She was told that her choice was to continue as a PNG customer or to discontinue service with PNG and switch to an independent energy supplier. Tr. 183; Alar Exh. 1 at 4.
72. Mrs. Alar never got notice of the utility eliminating the GBM natural gas rate until the letter in May 2011. Tr. at 184. Had she know that the program was going to change, she would have considered a different kind of heating. Tr. at 185.
73. In September of 2010, AmeriGas sent her a letter advising that they wanted to send a representative to inspect her house. Tr. at 186. She called them to set up an appointment when her son, Louis Alar, would be in town visiting. The representative did not come on the day the appointment was scheduled, so her son stayed an extra day to be there for the inspection. Tr. at 186.
74. The AmeriGas representative inspected the oven and “red-tagged” it because he said there was a small leak; the “red tag” meant that Mrs. Alar could no longer use the oven. Tr. at 186-187. Then, they inspected the stovetop and intended to red tag the stovetop as well. But her son intervened and, on further inspection, they confirmed that there was no leak and the representative did not red tag the stovetop. It was old, but she

could still use it. Tr. at 186-187. The representative told Mrs. Alar that she had to replace the appliances. Tr. at 191.

75. Following the inspection in 2010, Mrs. Alar replaced both the stovetop and the oven at a cost of about \$1100.00. After she did so, she called AmeriGas to tell the company that she had done this. Later, AmeriGas got in touch with her to tell her that they wanted to check the propane tank to make sure it was okay. They came to lift it up off the ground and put it on blocks. Tr. at 187; Alar Exh. 1 at 2.
76. The propane tank is about ten feet from the side wall of her house. Tr. at 188.
77. A month or so before the hearing, Mrs. Alar saw a truck pull up to her house and the driver got out and walked to the propane tank. Mrs. Alar had no advance notice of this and the driver did not ask permission to come on to her property. Tr. 188-189. When asked, he said that he was installing some kind of a computer onto the tank, so that they would know when it was running low and would come to fill it. Tr. 188-189.
78. Mrs. Alar has looked at her deed and there is no utility easement described. Tr. at 189.
79. Mrs. Alar fears that she will live to be 92 as her grandfather did, but won't be able to afford to heat her home. Tr. at 189-190.
80. Another natural gas line is nearer to the Alar residence on Harford Avenue and would require a right of way over a neighboring property (the Ratchfords). Connecting to the nearer line would bring the estimated cost to Mrs. Alar under the Company's calculation using its tariff rule governing main extensions to new customers to \$12,584, down from \$16,320. PNG would provide Mrs. Alar service only if she paid \$12,584 in CIAC. This assumes that PNG and the Ratchfords are able to reach an agreement for the required right-of-way across the neighboring property. PNG Exh. DEL 2; Lahoff Cross Exh. 1, Response to OCA I-3 (Revised).

*Jerome Fuhr*

81. Jerome Fuhr lives at 211 Windswept Road, Tunkhannock, Pennsylvania 18657. He has lived in his home since June 1, 1969. He is a PNG Gas Beyond the Mains customer. Tr. at 198-199.
82. Mr. Fuhr spoke with his home's previous owner, Mr. Hoggins, about the heating system in the home prior to purchasing it. Tr. at 200.
83. The three large propane tanks used to serve the Fuhr and Pope homes (as well as a third home) are located on the Fuhr property. The tanks are located near a turnaround



that is used by vehicles such as trucks, snowplows and school buses every week. Mr. Fuhr is concerned that the tanks are located in an area where a vehicle could hit them. Tr. at 204-205, Fuhr Exh. 1.

84. PNG does not have an easement on the Fuhr property for the propane tanks and service lines and does not maintain the propane tank site. Mr. Fuhr cuts the grass and trims around the three propane tanks to maintain the area. He does not have a maintenance agreement with PNG to compensate him for his efforts to maintain the area around the tanks. Tr. at 205.
85. Mr. Fuhr has replaced several gas appliances in his home in recent years. Two or three years ago, Mr. Fuhr replaced the gas hot water heater in his home for \$7,500, installed a gas generator in his home for \$7,700, and installed a gas fireplace at a cost of \$800 to \$900. Mr. Fuhr would not have continued to purchase gas appliances had he known that the GBM program was going to end. Tr. at 205-206.
86. Mr. Fuhr received no notification that the GBM natural gas rate was to be terminated prior to the May 24, 2011 letter. Tr. at 206-207.

*Daniel Pope*

87. Daniel Pope lives at 208 Windswept Road, Tunkhannock, PA 18657. He purchased his home in 1995 and has lived there since 1996. Mr. Pope is a customer of PNG's GBM program. Tr. at 215-216.
88. Mr. Pope was un-enrolled from PNG's automatic bill payment program after he filed his Formal Complaint with the PUC. Tr. at 217.
89. Mr. Pope is served by the three 1,000-gallon propane tanks located on the Fuhr property. He shares Mr. Fuhr's concern that a vehicle could hit the propane tanks due to the tanks' proximity to the turnaround. Tr. at 217-218.
90. In 2006, Mr. Pope had to replace the entire heating system in his house, including the air handlers and duct work, which cost \$38,000. Had Mr. Pope known that the program was going to end, he would have seriously considered alternate energy sources like geothermal. In 2006, Mr. Pope also replaced the boiler for \$8,900; in 2009, he installed a gas fireplace for \$3,000; and in 2010, replaced a gas range for \$1,550. Mr. Pope received no notification that the GBM program was to be terminated prior to the May 24, 2011 letter. Tr. at 216-219.

91. In a letter dated January 15, 1973, PG&W stated that it “made arrangements with some residents residing beyond our natural gas distribution system to furnish them with liquid propane gas (LP gas) until such time as we would be able to extend our natural gas distribution main to their home.” Mr. Pope believes that this letter is evidence of a contract between PG&W and the GBM customers. Tr. at 220-222, Pope Exh. 1.
92. PNG would provide Mr. Pope natural gas service through mains only if he paid \$628,388 in CIAC. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*John Calafut*

93. Mr. John Calafut resides at 68 Honesdale Road, Carbondale PA, 18407. His residence is in PNG service territory. He inherited the house from his parents in 1969. Mr. Calafut was born in the Honesdale Road house and has lived there for his entire lifetime. Tr. at 227-228.
94. Mr. Calafut is a high school graduate and is currently retired, but served as a psychiatric security/correctional officer for the state correctional institution at Waymart for thirty-two years. Tr. at 229.
95. Mr. Calafut was present when the PG&W representatives came to talk with his parents about converting to gas. The representatives stated that they were going to run natural gas lines up Honesdale Road, but would provide propane gas at natural gas rates until the lines were installed. Tr. at 228.
96. Mr. Calafut has been a customer of the gas utility since 1969, first PG&W – Gas Division, then PG Energy and PNG. He uses propane for heating and hot water. Tr. at 229-230.
97. The first time he had an indication that something about his propane gas service might change was in 1972 when PG&W threatened to discontinue the program. PG&W dropped the idea and continued providing propane gas at natural gas prices, the same terms that had been represented by PG&W initially. Tr. at 230.
98. He again had an indication that the propane gas at natural gas rates may change when he received the May 2011 letter from PNG. Following receipt of the letter, he called the PUC, then Mr. Crossin of PNG. Tr. at 231.
99. Following his conversations with Mr. Crossin and the PUC, he submitted an Objection to the proposed rate change on the form that the PUC provides. He did not get any results from this. He then submitted a Formal Complaint with the same information after Ms. Moran-Roberto contacted him about the situation. Tr. 231; Calafut Exh. 1.

100. Mr. Calafut has a gas boiler and a hot water heater that use propane gas. He had to replace the boiler in the mid-1970s, but he did not remember at what cost. He has had to replace the hot water tank once since he inherited the house. Tr. 232-233.
101. Mr. Calafut had not received any notice concerning a change in the GBM program prior to the 2011 letter; if he had, he would have probably filed some type of complaint against it. He would have "wanted to have something to say in that." Tr. 233-234.
102. Mr. Calafut's estimate of the size of his lot is 150 by 200 feet. Mr. Calafut counted 17 or 18 houses from the intersection where the gas lines end to his house. He knows of others at 71 and 73 Honesdale who heat their house with propane who would be happy to get natural gas. Tr. 234-235.
103. If Mr. Calafut cannot receive natural gas through mains, he would like to continue to get propane gas at natural gas prices. Tr. 235.
104. PNG would provide Mr. Calafut natural gas service through mains only if he paid CIAC in the amount of \$88,365. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Robert and Lorraine Rowlands*

105. Robert and Lorraine Rowlands live at 31 Peacock Lane, Dallas, PA 18612. Mr. Rowlands is a high school graduate who was employed for forty years with Nicholas Trucking Company on the U.S. Mail contracts. He has been retired for two years. Tr. at 238-239.
106. The Rowlands' residence is in PNG territory and was purchased in 1976. They have had propane as their heating source since they purchased the house, first from PG&W Gas Division and then from PNG when it purchased PG Energy in 2006. Tr. at 239.
107. The Rowlands received propane at natural gas rates up until December 2011. They use propane for heat, cooking and hot water, as the house was equipped with propane appliances when they purchased it. They have replaced the hot water tank twice at a cost of between \$200 and \$300. Tr. at 240.
108. The Rowlands have a service contract with UGI related to the furnace, which involved calling to schedule a visit and paying \$150.00 up front, outside of the regular bill. The Company sends a fellow to go over it, put in filters, and do whatever is needed. Tr. at 240-241.
109. In 2010, the Rowlands called to schedule the inspection (as part of the service contract) and no one ever came to perform it. So, when they called in 2011, the

Company asked them for \$150.00 and they said that no one had ever showed up the year before, so the Company did not charge them. Tr. at 241-242.

110. During the winter months, an AmeriGas representative came to the Rowlands' house and Mr. Rowlands saw him through the window running a measuring tape from the storage shed to the propane tank. Mr. Rowlands approached him to ask what was going on and the person said that he did not think that he was going to be able to put propane into the Rowlands' tank. Tr. at 242.
111. No one advised Mr. Rowlands in advance that an AmeriGas representative would be coming to the Rowlands' property, no one asked permission to come onto the property and, to Mr. Rowland's knowledge, there is no easement on his property for utility purposes. Tr. at 243.
112. When Mr. Rowlands asked what the problem was, the employee stated that the tank was ten feet from an occupied structure. Mr. Rowlands responded that the storage shed was not occupied. The employee stated that he could not put gas into the tank and that they were going to have to move the tank. Mr. Rowlands asked him how much propane was in the tank, and he said that it would hold them for a while. Mr. Rowlands had a few phone conversations with AmeriGas about the structure not being occupied as it was a storage shed, and later the Company came out to fill it. When he went out to thank him, the employee stated that there was still a question about the definition of the structure and that they may still have to move the tank in the spring. Tr. at 242-243.
113. On a second occasion, during the month of March, another AmeriGas representative came to the Rowlands' property without advance notice or permission. Mr. Rowlands learned that they wanted to put a "gizmo" on the tank so that the office monitors know how much fuel is left so they can send someone out to fill it. Tr. at 244-245.
114. Mr. Rowlands' knowledge about receipt of PNG propane at natural gas rates until the lines are extended stems from his conversations with the real estate agent and Mr. Stervinsky, the prior owner of the house. Tr. at 245.
115. Mr. Rowlands observed that AmeriGas is not a regulated utility and that PNG is a regulated utility. He stated that he believes that it would be very unfair for PNG to be able to simply walk away from their GBM customers and leave them with unregulated propane prices. Tr. at 250.
116. Following receipt of the May 2011 letter from PNG, Mrs. Rowlands called PNG to state that she wanted to file a complaint; the PNG Customer Service Representative advised her that she would need to contact the PUC and gave her the phone number. Rowlands Exh. 1 at 5.

117. In March 2012, Mr. Rowlands received a letter from a collection agency, NCC, about a \$97.28 bill from three years ago referencing PNG. He could only recall a dryer issue about three years ago that required a repair, but the letter did not explain what the bill was about. Tr. 247-248, Rowlands Exh. 1 at 1.
118. When Mrs. Rowlands called the collection agency, they told her to get in touch with PNG to find out why they turned the bill over to the agency. Part of the problem was that the wrong box number was on the bill, that is, the bill was addressed to the Rowlands at PO Box 424c, when the Rowlands address was 242c. Tr. 254; Rowlands Exh. 1 at 1.
119. The Company service representative told Mrs. Rowlands that the bill went back to 2009. PNG had not contacted her in any way in advance of turning the account over to the collections agency and she did not recall getting a bill in the amount shown on the collection notice. Tr. at 255.
120. When the Rowlands received the NCC letter regarding the PNG bill, they paid it even though they were not sure what it was for or whether they were paying it for the second time, because they did not want anything going against their credit rating. Tr. at 248, 256.
121. Both of the Rowlands reviewed the PNG customer service records and found nothing inaccurate, although the records did not reflect everything that had happened relating to AmeriGas. Tr. at 249-250, 257.
122. PNG would provide the Rowlands natural gas service through mains only on condition that they pay CIAC in the amount of \$27,000. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Charles Schulz*

123. Mr. Charles Schulz and his wife reside at 1114 Crystal Hill Road, Berwick PA, 18603. His residence is in the PNG service territory. They purchased the home in 2005 and have resided there permanently since August of 2011. He was been a customer of PNG since 2006, and the corporate predecessor for a short period prior to that. Tr. at 261-262.
124. Mr. Schulz was a military surgeon from 1967 to 1982. He received a medical school education at the University of Zurich, in Switzerland, had an internship and one year of residency at Stamford Hospital in Stamford Connecticut, and then an Ear, Nose and Throat residency at the University of Vermont Medical Center in Burlington, Vermont. Tr. at 262-263.

125. When he purchased his home, he inquired about the heat sources and was told that the liquid propane was provided at the natural gas rates. He considered this a good feature and it was a persuasive factor in deciding to purchase the house. His understanding was that the propane gas would be provided at the natural gas rates until the mains were installed. Tr. at 263.
126. When he bought the house, it was equipped with a Peerless gas furnace, a hot water heater and a gas range and oven. Mr. Schulz has not had to replace any of these appliances, however, he has had maintenance performed. Tr. at 264.
127. In the summer of 2011, an AmeriGas representative came to inspect the appliances and the lines. Based upon this inspection, a gas leak was found and Mr. Schulz had to hire a contractor to inspect the lines, repair the leak and to lubricate the valves. This was done at Mr. Schulz's expense and cost \$150.00. Tr. at 264.
128. In the summer of 2011, AmeriGas moved the propane tank because it was too close to a woodpile. Tr. at 265.
129. Mr. Schulz has reviewed the documents associated with the purchase of his property and has found no indication that there is a utility easement. Tr. at 265-266.
130. Mr. Schulz first learned that PNG planned to change his service and rates when he received the letter in 2011. He called Mr. Gene Crossin at PNG, whose name was at the bottom of the letter. Tr. at 266.
131. He called the PUC about the proposed rate change and was encouraged to file a formal Complaint against it. Tr. at 267; Schulz Exh. 1 at 7.
132. The letter of May 2011 from PNG was the first time he learned of the 2008 base rate case in which the GBM program was proposed to be eliminated. Mr. Schulz feels that the 2008 base rate case resulted in an invalid settlement, in view of the fact that the GBM customers were not able to participate in the hearing and file formal complaints because they were not notified. Tr. at 268; Schulz Exh. 1 at 8.
133. Mr. Schulz believes that, if the Company will not extend gas lines because it does not believe that they are economic, the Public Utility Commission should require the Company to continue to provide the remaining GBM customers with propane at natural gas rates. Tr. at 271-272. Mr. Schulz was not aware that other natural gas customers pay the difference between the propane and natural gas rates for GBM customers, but he feels that the Company that markets the program should be responsible for the costs – not the customers. Tr. at 272-273.
134. Mr. Schulz called PNG customer service to ask who was responsible for propane delivery at his address. He had received a phone call from American Petroleum, but had

no notice that American Petroleum had any concern with his propane delivery. Schulz Exh. 1 at 1.

135. After being on hold for 3.5 minutes, the UGI Representative told Mr. Schulz that AmeriGas was taking care of the propane tank refills and gave him the phone number. The UGI representative then told Mr. Schulz to call AmeriGas to ask about the situation. The customer service representative asked Mr. Schulz whether he had ever heard of “customer choice.” Schulz Exh. 1 at 2.

136. Mr. Schulz expressed suspicion at getting a telephone call “out of the blue” without having received any written notice that testing was to occur. He had never had a representative of the propane company ask to come into the house to check the appliances. Schulz Exh. 1 at 3-4. Mr. Schulz did not want anyone to pressurize the tank without a written authorization from PNG, because he did not want to be responsible for any damage. Schulz Exh. 1 at 5.

137. PNG would serve Mr. Schulz with natural gas service through mains only if he paid a CIAC of \$43,900. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

B. Proposed Findings of Fact Based upon Expert Testimony<sup>6</sup>

*Marilyn J. Kraus, Senior Regulatory Analyst, Pennsylvania OCA*

138. Ms. Kraus is a certified public accountant currently employed as a Senior Regulatory analyst for the Pa OCA and has had extensive experience in rate cases and regulatory policy issues for over 27 years. OCA St. 1 at 1, App. I.

139. As part of PNG’s most recent general base rate proceeding at Docket No. R-2008-2079660, the Commission approved a Settlement with a term allowing for a phase-out of the GBM tariff rate by August 27, 2014, i.e., five years after the entry date of the Order in that docket. As a result of the Section 1307(f) gas cost rate proceeding that followed, the Company implemented the first step of the rate phase-out, which is comprised of a blend of 15% of the market-based propane rate and 85% of the PNG purchased gas costs rate; this first step took effect on December 1, 2011. As a result, the GBM customers are now being charged a commodity rate of \$8.4620 per Mcf, as opposed to the commodity rate of \$5.6654 for the Class R customers. OCA St. 1 at 2.

140. The GBM program was implemented as a promotional tool in the mid-1960s, to secure gas customers in the face of competition from electric utilities and oil suppliers. OCA St. 1 at 3. As a result of a PUC investigation into GBM in 1973, the Commission ordered PG&W to extend mains to the GBM customers to the extent that they could be converted under a reasonable extension policy. The utility was to continue to absorb the

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<sup>6</sup> All transcript references are to the second day of hearings, April 6, 2012.

losses associated with providing propane at the equivalent natural gas rate until its next rate filing. OCA St. 1 at 4.

141. In the 1975 PG&W base rate case, the Commission permitted the utility to recover the losses from all customers, including the GBM customers, through base rates. Later, the purchased gas cost rate became a blended rate comprised of both the natural gas and propane purchases. In effect, the risk of the promotional program, which was designed to increase sales, was transferred from PNG's shareholders to its ratepayers and since that time, the customers have borne all of the costs of the GBM program. OCA St 1 at 4.
142. In the PNG base rate case in 2008 (Docket No. 2008-2079660), PNG did not notify its customers of any change in or elimination of the GBM program. The first mention of elimination of the program was in the Office of Trial Staff testimony by witness Michael J. Gruber. PNG rebutted this testimony by saying that the program should not be eliminated and suggested that any decision should await the completion of a pending Commission investigation into all GBM programs. PNG witness Szykman also noted that the GBM customers would experience "very significant rate increases" if the program were phased out. OCA St. 1 at 4-5.
143. The Settlement that was approved by the Commission required amendments to the PNG tariff that would (1) allow continued service to existing customers, (2) preclude the addition of any new GBM customers after January 1, 2010 and (3) provide that the GBM tariff service be eliminated no later than five years from the date of PUC acceptance of the settlement. However, PNG was to be permitted to continue GBM tariff service if the Commission were to issue an order upon investigation allowing PNG specifically, or natural gas distribution companies generally, to continue propane service programs. OCA St. 1 at 5.
144. The Settlement in the PNG Purchased Gas Cost proceeding in 2011 allows for a transition to propane market rates in four steps, with a higher percentage of the propane market rate blended with the natural gas rate in each step. OCA St. 1 at 5-6.
145. The PUC Investigation into the Gas Beyond the Mains programs statewide is not yet complete. OCA St. 1 at 6. While several PUC dockets have addressed facets of the GBM program and rates, the overall bill impact and ultimate treatment of this group of remaining GBM customers at the end of the rate phase-out has not been decided in any case before the Commission. OCA St. 1 at 7.
146. OCA witness Kraus recommends that the natural gas distribution mains be extended to the Complainants in this case without PNG charging them a "Contribution in Aid of Construction" or CIAC. OCA witness Kraus further recommends that only the "economic" portion of the investment as determined by UGI be included in rate base



initially, with additional amounts added to rate base for each customer who connects to the mains in the future. That is, the Company investment in the mains would be treated tantamount to a “refundable advance” for construction in developer situations. OCA St. 1 at 7-8.

147. The basis for this recommendation is that from the beginning the program allowed the utility to capture new customers before the distribution lines were installed; as a result, the Company realized increased natural gas sales and distribution revenues to the benefit of its shareholders for many years. The Complainants relied on the representation made by the utilities and have continued to make expenditures over many years in anticipation of continuous gas service. Examples of such expenditures are modifications to building plans by the Donnellys and conversion to gas appliances by the Alars. OCA St. 1 at 9.
148. All of PNG’s customers are regulated utility customers and, as such, PNG must continue to provide adequate, efficient, safe and reasonable service on a reasonably continuous basis. OCA St. 1 at 9-10. Although they have been charged a natural gas rate for propane, these GBM customers have always paid and continue to pay the full distribution rate of their respective class as well as all surcharges. In other words, the GBM customers have contributed to all of the system costs, including the distribution system from which they have received no benefit and they have never been differentiated from the natural gas customers in their class. The Company never performed a separate cost of service study for these customers and simply includes them with the other residential customers in the Rate R or Rate N classes for ratemaking purposes. OCA St. 1 at 10.
149. At the conclusion of the phase-out period, the GBM customers would be paying a commodity rate of \$24.3094 per Mcf, compared to the PGC rate for all other residential customers receiving service through lines of \$5.66554 per Mcf; at the same time, they would continue to pay all distribution rates and surcharges, which would have a substantial impact on the GBM customers ability to pay for their gas service. OCA St. 1 at 10.
150. As a specific example, the Moran-Roberto commodity bill would increase from \$590.90 to \$2,535.47 and the overall bill, including distribution and other charges, from \$1,284.00 to \$3,228.57. OCA St. 1 at 11.
151. Extensions of service to the Complainants’ areas would also generate public and societal benefits in that natural gas almost always displaces less efficient and less environmentally beneficial heating sources. Pennsylvania has become a significant natural gas producer and expanded natural gas distribution systems enable the increased

use of a locally produced energy source. OCA St. 1 at 11 (quoting PNG witness Shaun Hart in Docket No. R-2011-2238943).

152. The PNG Tariff Rule applies to applicants for UGI service and “applicant” is defined as “any person... that (i) desires natural gas or other service provided for in this Tariff at a specific location ... (iii) has filed and is awaiting Company approval of its application for service and (v) is not yet actually receiving from the Company any service provided for in this Tariff at the applicant’s location.” OCA St. 1 at 13, quoting PNG Gas – Pa. P.U.C. No. 8, Original Page 9.
153. All of the GBM customers are actually receiving service from the Company at their current locations and do not meet the criterion expressed in subsection (v) of the Company’s tariff. They are not “applicants for service” and the rule, by its own terms, does not apply to them. OCA St. 1 at 13.
154. When UGI Inc. acquired Southern Union, the agreement called for the acquiring company to “assume any unfulfilled service obligations,” therefore, the obligation to provide reasonably continuous, adequate, reasonable and efficient service to the GBM customers became PNG’s obligation post-merger. OCA St. 1 at 14.
155. The OCA recommends that only the “economic” portion of the mains investment to serve the remaining GBM customers be placed in rate base initially; the balance of the cost of the mains should be initially absorbed by the shareholders. The amount of the investment allowed in rate base could increase as additional customers are added to the mains. OCA St. 1 at 14, 16.
156. PG&W was allowed to recover the losses it incurred in providing propane at natural gas rates from the customers because of the restrictions placed on natural gas utilities by the Commission related to the 1970s gas shortage. OCA St. 1 at 15.
157. For all of the years since the PUC allowed the shifting of the costs of the promotional GBM program (the difference in the cost of propane and natural gas) from the shareholders to the ratepayers, ratepayers have borne the costs. The Company, its shareholders and its propane affiliate have realized incremental profits from the GBM customers for decades, while ratepayers have funded the costs. OCA St. 1 at 15.
158. The current situation for the natural gas industry is very different than it was in the 1970s, in that Pennsylvania has become a significant natural gas producer. With the GBM program being phased out, PNG’s ratepayers (including the current GBM customers) should not be required to bear the full initial cost of main extensions installed to provide these few customers with continued reasonable service. OCA St. 1 at 15.

159. In effect, with respect to the main extensions, the Company's shareholders would provide the CIAC that would otherwise be charged to an applicant for new service and would receive a "refund" of a portion of this CIAC for each future customer that connects. This is similar to the procedure used by water utilities with respect to refundable advances for construction paid by developers toward main extensions to new developments. OCA St. 1 at 16.
160. In addition to temporarily transferring a portion of the costs related to extending mains to the GBM customers back to the shareholders, this procedure would provide the Company an incentive to seek new customers along these main extensions. OCA St. 1 at 16.
161. The Company has not included the actual formula used to calculate the "economic Company investment" in its tariff, so OCA witness Kraus was unable to specifically quantify the amount to initially be included in rate base. OCA St. 1 at 16-17.
162. In 1973, the PUC investigated the GBM program in response to the Complaint of William D. Morgan, *et al.* against PG&W - Gas Division. OCA St. 1 at App. II. The Commission concluded that PG&W could not simply discontinue the GBM program and increase the rates to the customers to the market-based propane rates. PG&W was thus ordered to extend gas mains that could be constructed under a reasonable main extension policy and, for the GBM customers to who mains were not extended, PG&W was ordered to continue to provide propane at natural gas rates and absorb the losses at least until the next rate filing. OCA 1S at 2; OCA St. 1, App. II, Morgan Order at 5-6.
163. In this situation, the Company's use of 5.5 years as a period during which it must recoup its investment is not reasonable. The remaining GBM customers (or their predecessors in ownership interest in their current residence) have been waiting for over forty years to receive natural gas service, so it stands to reason that, if they receive the service they have been waiting for, they are not going to switch to another fuel in 5.5 years. It would be far more reasonable to use a longer period, for example the service lives of the mains themselves, to assess the economic portion of the main extension investment. OCA St. 1S at 7.
164. The 2008 Base Rate Case settlement and the 2011 PGC filing settlement do not finally resolve the GBM quality of service issues. The overall bill impact and ultimate treatment of the GBM customers at the end of the GBM rate phase-out has never been addressed or decided in any case before the Commission. The increase in the annual bill from \$1,284 to \$3,229 in the Moran-Roberto example is not indicative of reasonable and efficient service. OCA St. 1S at 8-9.
165. At the end of the phase-out period, PNG would continue to provide propane service to the remaining GBM customers at market-based propane rates in addition to the

full distribution rate, including all costs associated with a distribution system that provides them no service, as well as applicable surcharges. The effect of this is simply to eliminate the fuel cost subsidies by the non-GBM customers through the PGC rate and replace it with a rate base subsidy by the GBM customers, who would also be paying substantially increased commodity rates. OCA St. 1S at 9-10, Tr. at 27-28, 42.

166. To simply continue propane service to the remaining GBM customers at the conclusion of the phase-out period is not consistent with PNG's obligation to provide safe, adequate, efficient and reasonable service on a reasonably continuous basis and is not a reasonable resolution of the GBM issues. OCA St. 1S at 10.

*David Lahoff, Manager, Rates for UGI Utilities, Inc.*

167. UGI applies its Tariff Rule governing extensions of natural gas service to PNG Gas Beyond the Mains customers in order to determine whether a natural gas line is "economic" or "not economic." PNG St. No. 1-R at 3-4.
168. According to Mr. Lahoff, PNG seeks to recover its investment in mains in 5.5 years from each and every customer to whom it extends a main. That number of years does not appear in the Company tariff rule, but the Company uses it as a way of implementing the tariff rule for internal purposes. Tr. at 16-17.
169. According to Mr. Lahoff, PNG does not have discretion to invest more in a line extension than would be justified by 5.5 years' worth of distribution revenues. Also according to Mr. Lahoff, the line extension policies apply to all individuals, anyone applying for a line extension, whether they are current customers or not. Tr. at 18-19.
170. According to Mr. Lahoff, the Company applies this rule to any existing jurisdictional customer to determine what to charge them when they need a system upgrade. Tr. at 20.
171. PNG does not charge a residential customer for a replacement main, which is a completely different circumstance. Replacement mains do not fall under the line extension rule. Tr. at 20-21.
172. Mr. Lahoff considers Gas Beyond the Mains customers to be jurisdictional customers to whom PNG has an obligation to serve under the Public Utility Code. Tr. at 20-21.
173. The average service life of new gas main that goes into service today is in the vicinity of 40 years or more. Tr. at 21. The higher the number of years to determine an appropriate Company investment, the higher the amount of the Company investment; if the Company were to invest more, the GBM customers would be asked for less. Tr. at 21-22.

174. If the Commission were to require the Company to use a higher number of years to determine a reasonable investment in this special circumstance, UGI would be bound to follow such an order. Tr. at 22.
175. Under fundamental ratemaking principles, it is ordinarily the responsibility of the shareholders of the utility to provide capital to the Company to subsequently invest in infrastructure needed to serve customers. At the same time, it is generally the responsibility of the ratepayers to pay, through rates to the Company, a return of and on that capital provided by the shareholders. Tr. at 25-26.
176. PNG has been profiting from the GBM customers over the years, as the GBM customers are part of the residential class and the revenues received contribute to the overall financial return for the Company. Tr. at 26.
177. UGI Corporation's propane subsidiary, AmeriGas, has been the supplier for the GBM customers starting in about 2010. When AmeriGas sells propane to UGI to provide to the GBM customers, AmeriGas also presumably makes a profit on those propane sales. Tr. at 27.
178. The price of propane to PNG covers all of the costs of getting the propane to the customers, including the trucks, the cost of storing the propane, including the tanks, the cost of the pipes in the ground and the like. The price that AmeriGas or any propane supplier is charging is meant to cover their expenses and the rate of return. 100% of the cost of propane has been collected through the PNG purchased gas cost rate since 2006, when UGI purchased PG Energy. Tr. at 27-28.
179. In addition to paying 100% of the cost of GBM propane, the PNG customers, including the GBM customers, have been paying for the mains in the ground to provide them natural gas through their distribution rates. Tr. at 28-29.
180. GBM customers have been paying the distribution rate to PNG, but have not had the benefit of the underground infrastructure. Tr. at 28.
181. PNG has never performed a cost of service study specific to the GBM customers. Tr. at 28-29.

## V. SUMMARY OF THE ARGUMENT

This case is the first time that the Commission can address the fair and equitable treatment of PNG's GBM customers as the GBM rate is phased out and expected extension of the natural gas distribution mains—for which some customers have been waiting for over 40 years—has not occurred. The OCA respectfully submits that PNG's proposal to simply phase out the GBM rate without extending natural gas mains is not adequate or reasonable utility service as required by Section 1501 of the Public Utility Code. In addition, the evidentiary records shows that in many other ways, PNG has failed to provide these GBM customers safe, adequate, efficient and reasonable service consistent with the requirements of the Public Utility Code. To resolve these Complaints, the OCA seeks an order requiring PNG to extend mains to the GBM customers to meet its service obligations.

## VI. ARGUMENT

### A. Burden of Proof

As proponents of a rule or order, Complainants have the burden of proof in this proceeding. 66 Pa.C.S. § 332(a). Complainants must show, by the preponderance of the evidence, that Respondent PNG provided unreasonable service in contravention of Commission rules, regulations, orders or provisions of the Public Utility Code governing quality of service. Samuel J. Lansberry, Inc., v. PaPUC, 578 A.2d 600 (Pa. Commw. Ct. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). This means that the Complainants, assisted by the OCA, must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

In addition, any finding of fact necessary to support a Commission adjudication must be based upon substantial evidence. Mill v. PaPUC, 447 A.2d 1100 (Pa. Commw. Ct. 1982), 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. v. PaPUC, 413 A.2d 1037 (Pa. 1980). The Complainants have provided ample evidence in this proceeding and have met their burden of proving that PNG has failed to provide adequate, efficient, safe and reasonable service and facilities, as required by the Public Utility Code and various Commission regulations, thus justifying a Commission Order that PNG extend mains, without CIAC, to provide them such service and facilities consistent with the standards set forth in the Public Utility Code.

### B. The Company Has Not Provided Reasonable Service to the Complainants as Required by Section 1501

The Public Utility Commission has been empowered by the General Assembly to adjudicate complaints claiming that the service provided is in violation of any law the

Commission has jurisdiction to enforce. 66 Pa.C.S. § 701. In exchange for customers paying rates for service, a public utility is obligated to provide safe, adequate and reasonable service. See, PaPUC v. Pennsylvania Gas & Water Co., 74 PUR4th 238 at 244-245 (1986). This regulatory bargain has been codified in Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501. Section 1501 of the Public Utility Code requires every public utility to “furnish and maintain adequate, efficient, safe and reasonable service and facilities...for the accommodation, convenience and safety of its patrons.” 66 Pa.C.S. § 1501.

Pursuant to the above statutes, the Commission has the power to order improvements where utility service is determined to be inadequate. Barone v. PaPUC, 485 A.2d 519 (Pa. Commw. Ct. 1984). To complement this authority, the Public Utility Code also grants the Commission broad authority to devise a remedy for inadequate service. Section 1505 of the Code reads as follows:

Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation and convenience of the public.<sup>7</sup>

Inherent within this broad power to require construction of facilities is the power to order that utilities take whatever specific actions it deems necessary to effect upgrades in service.

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<sup>7</sup> 66 Pa.C.S. § 1505.



In the case of these GBM Complainants, the Company has violated Section 1501 mandates by failing to extend natural gas mains to the Complainants and, therefore, failing to furnish and maintain adequate and reasonable service and facilities.

1. PNG's Failure to Install Natural Gas Mains to the GBM Complainants is Violative of Section 1501

The GBM program was implemented in the mid-1960s by PNG's predecessor, PG&W, as a means of promoting its sales of natural gas. OCA St. 1 at 1. The Commission recognized this as the purpose of the bottled gas program in its investigation of PG&W in March 1973. Specifically, the Commission stated:

On March 12, 1973, we instituted our own investigation against PG&W predicated on the following averments of fact: that PG&W about ten years ago began rendering service to some new customers by supplying bottled gas at the customers' residence or other place of consumption, instead of natural gas in underground pipes; that such service was initiated as a temporary measure and was intended to be replaced by natural gas when distribution lines could be extended to such customers; that until these lines could be extended, the rate charged for this bottled gas was to be the prevailing rate charged for natural gas, such rate being substantially lower than the cost of supplying bottled gas.

Morgan, et al. v. PG&W, Complaint No. 19852, I.D. 166 at 2 (Order entered December 4, 1973).

The Commission further stated that "this bottled gas program was simply a device used by PG&W to promote its natural gas sales." Id. at 3. This program allowed PG&W to capture new customers before distribution lines were installed in their areas. OCA St. 1 at 3-5, 8-9. Once these lines were installed, the Company was to realize increased natural gas sales and revenues. Id.

For over forty years, these customers have been provided propane service in lieu of natural gas, at the natural gas rate, first by PG&W and PG Energy, then, upon acquisition

of the system, by PNG, with the expectation that the natural gas distribution system would be extended into their area. PG&W confirmed the agreement made with the GBM customers in its January 15, 1973 letter in which it stated:

Several years ago Pennsylvania Gas and Water Company made arrangements with some residents residing beyond our natural gas distribution system to furnish them with liquid propane gas (L.P. gas) *until such time as we would be able to extend our natural gas distribution mains to their homes.*

Pope Exh. 1 (emphasis added). Further, PNG itself made a statement similar to that of its predecessor in its letter sent to the GBM customers on September 21, 2007.<sup>8</sup> Lindbuchler Exh. 1.

That letter states:

As a valued UGI Penn Natural Gas, Inc. (PNG) customer you are currently being served with propane *because PNG's natural gas mains do not yet extend to your neighborhood.*

Lindbuchler Exh. 1 (emphasis added). It is clear that the Complainants in this proceeding relied on the representations that were made regarding the GBM program, both in the 1960s and today. For example, Alfred and Stephanie Donnelly changed their home's building plans mid-stream, constructing a chimney and installing a gas boiler. Tr. at 56-61. Similarly, Dolores Alar, whose home was originally outfitted with a coal heating system, converted her home by installing a new furnace and baseboard heaters. Tr. at 178-182. Ms. Moran-Roberto's parents also converted to gas approximately 40 years ago, and she contributed toward the purchase and installation of the new gas furnace. Tr. at 34-35.

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<sup>8</sup> Section 2.2 of the Purchase and Sale Agreement between Southern Union Company and UGI Corporation governs the assumed liabilities of UGI Corporation with respect to the purchase of PG Energy. In that section, the Company agreed to assume all liabilities and obligations, of every kind or nature, arising out of or relating to unperformed service obligations. See Purchase and Sale Agreement between Southern Union Company and UGI Corporation ("Agreement"), dated January 26, 2006 at 11.

Most of the Complainants purchased new gas appliances in recent years and some underwent whole-home heating system renovations in anticipation of gas mains being extended to their homes. In 2006, Mr. Pope replaced the entire heating system in his house at a cost of \$38,000 and, since then, has replaced other appliances at a cost of \$13,450. Tr. at 216-219. Since 2002, the Donnellys spent \$10,790 on new gas appliances. Tr. at 101-103. In recent years, Mr. Fuhr replaced his hot water heater and purchased a gas generator and fireplace a cost of \$16,000. Tr. at 205-206. Since 1997, Mr. Hennigan spent approximately \$3,200 on new appliances. Tr. at 143. Mr. Lindbuchler spent \$4,855 on a new hot water heater and furnace since 2008. Tr. at 160-161. Mr. Michaels spent \$650 on a gas range and a water heater was replaced at a cost of \$550 as part of the purchase of his home. Tr. at 171. The Rowlands replaced their hot water heater twice in recent years at a cost of \$400-\$600. Tr. at 240.

Some Complainants replaced appliances or made repairs after being “red tagged” by PNG’s affiliate AmeriGas during inspections in 2010. This is especially problematic given that the Complainants were unaware of the pending phase-out of the rate that was ordered, subject to the Commission’s informal investigation of GBM or an order upon investigation in another proceeding, as part of the Company’s most recent base rate proceeding. The Complainants did not actually become aware of the planned phase-out until they received the May 24, 2011 letter from the Company. Tr. at 35-36, 66-68, 142-143, 171, 185, 206-207, 216-219, 231, 266. As a result of the inspections, Mrs. Alar spent \$1,100 replacing a stovetop and an oven that had been red tagged. Tr. at 187, Alar Exh. 1 at 2. Mr. Schulz was forced to hire a contractor to inspect and fix his service line at a cost of \$150. Tr. at 264.

As was demonstrated above, the Complainants relied on the representation made by PG&W and affirmed by PNG and have continued to make expenditures over the years

in anticipation of gas mains being extended to their homes. The initial modifications to each property, as well as the more recent replacement of appliances and heating systems, were all made in anticipation of continuous gas service, first with propane at natural gas rates and then with natural gas upon the extension of the distribution mains.

The Complainants will now be subjected to significant increased cost for their utility service at the end of the GBM transition period. Complainant Kathleen Moran-Roberto provided a copy of her March 2011 PNG bill in her Complaint. The Company indicates on this bill, that her annual usage is 104.3 Mcf (i.e., 1043 ccf). OCA St. 1 at 11. Using Ms. Moran-Roberto's bill, OCA witness Kraus discussed the practical impacts of the transition to full market-based propane rates for these customers. She stated:

Under the PGC rate noted above, her annual commodity bill would be \$590.90 (104.3 x \$5.6654). However, under the market-based propane rate, her annual commodity bill would be \$2,535.47 (104.3 x \$24.3094.) On Ms. Moran-Roberto's bill, PNG indicated that her budget plan billing would be \$107.00 per month, or \$1,284.00 per year (i.e., annual base charges of \$1,284 - \$590.90, or \$693.10, based on the current PGC rate.) Thus, she would be paying an annual bill of \$3,228.57 (\$2,535.47 + 693.10), including costs related to the distribution system that would provide her little or no benefit, in addition to the full market-based propane rate.

OCA St. 1 at 11. Mrs. Donnelly also testified to the rates expected at the end of the phase-out. For five months, between November 2011 and March 2012, AmeriGas delivered 937 gallons of propane to the Donnelly residence. Tr. at 113-114. Mrs. Donnelly calculated that the 937 gallons charged at 100% propane rates would cost \$2,520. Tr. at 113-114. Mrs. Donnelly's costs for the entire 2011 year were \$1,313. Id. As OCA witness Kraus testified, this is not reasonable and efficient service for a PNG utility customer.

It is also important to note that the GBM program was a means for PG&W to increase its sales and thereby benefit its shareholders. As Ms. Kraus explained:

PG&W was allowed to recover the losses it incurred in providing propane at natural gas rates from customers because of the restrictions placed on natural gas utilities by the Commission related to the 1970s natural gas shortage. Upon acquisition of the system, PNG continued to recover from the ratepayers the difference between the propane it provides to the GBM customers and the cost of natural gas.

The natural gas shortage of the 1970s was the situation that resulted in the Commission's restrictions of new natural gas customers. It also resulted in the shifting of the costs of the promotional GBM program from the shareholders to the ratepayers. Since that time, the ratepayers have borne all of the costs of this promotional program. That is, for all these years, the Company has experienced no expenses or losses to support this promotional program. Indeed, the Company and its shareholders (and its propane affiliate) have realized incremental profits from GBM customers for decades, while at the same time, ratepayers have funded the additional costs of supplying propane to GBM customers. The current situation in the natural gas industry is very different. As referenced above, Pennsylvania has become a significant natural gas producer.

OCA St. 1 at 15.

Further, all of PNG's customers are regulated utility customers and, as such, the Company must continue to provide adequate, efficient, safe and reasonable service on a reasonably continuous basis. 66 Pa.C.S. § 1501. As OCA witness Kraus testified, these GBM customers contribute to the recovery of costs of the natural gas distribution system:

The GBM customers, while being charged a natural gas rate for propane service, have always paid, and continue to pay, the full distribution rate of their respective class as well as all surcharges. That is, for all these years, the GBM customers have contributed to all of the system costs, including the distribution system from which they receive no benefit. From the base rate perspective, the GBM customers have never been differentiated from the natural gas customers in their class.

OCA St. 1 at 9-10. This lack of differentiation is seen in the fact that the Company is unable to provide any information regarding the actual base cost of service of the GBM customers. In

response to OTS-RS-22-D provided in Docket No. R-2008-2079660, the Company stated that it had “not performed a separate Cost of Service Study for GBM customers.” OCA St. 1 at 10. The Company simply includes these customers with the other residential customers in the Rate R or Rate N classes for base ratemaking purposes.

Additionally, the proposed Findings of Fact (FF), set forth above, detail the many issues that the Customers have had with respect to their service. For example, three of the Complainants’ automatic debits were stopped as a result of filing a Complaint with the PUC. FF 32, 39-43, 88. The Company never provided them with notice of this change and even sent Mr. Hennigan a termination notice.<sup>9</sup> FF 32, 39-43, 88. There are numerous examples of the Company providing incorrect information regarding GBM service—leading to distress and confusion for the Complainants. FF 26, 28, 29, 41, 43, 52, 58, 74, 134-135. On several occasions the Complainants were told that there is nothing that PNG could do about the actions or policies of its contractor and affiliate AmeriGas, even though the record demonstrates that those actions do not comport with the mandates of Section 1501.<sup>10</sup> FF 27-30, 41, 43-44, 52, 58, 73-74, 77, 110-113, 134-136. Safety issues have also arisen as a result of the GBM Service. FF 24, 52, 57-58. For example, both Mr. Lindbuchler and Mr. Michaels were told by Company representatives that they were not customers of PNG when they called to report, respectively,

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<sup>9</sup> Chapter 56 provides that when a complaint is filed, termination is prohibited until the resolution of the dispute or complaint. 52 Pa.Code § 56.140-141.

<sup>10</sup> PNG, as the public utility, is responsible for ensuring reasonable service, including that provided by its employees and contractors and the Commission has long adhered to the principle that utilities are liable for the actions of contractors performing work on their behalf, so any statements made by PNG representatives that PNG has no responsibility for the actions and policies of its contractor and affiliate AmeriGas are incorrect. See Pa PUC v. Metropolitan Edison Company, Rate Investigation Docket No. 626, 28 P.U.R.4<sup>th</sup> 555 (Order Entered March 22, 1979); see also Re Bermex, Inc., Docket No. M-00096081 (Order entered September 18, 1996) (stating that Peoples is responsible for the acts of an employees under contract to provide meter reading services); Petition of the Office of Consumer Advocate for an Investigation and Order to Show Cause with Regard to the Outage at the Salem Nuclear Generating Station, Docket No. P-830453, 70 P.U.R.4<sup>th</sup> 568 (Order entered October 24, 1985).

that the propane tank had run dry and that no Pa One Call markings were done.<sup>11</sup> FF 24, 52, 57-58. Further, despite telling PNG's customer service representatives that they felt harassed and retaliated against, were distressed or that their issue was not resolved, the Complainants were not advised of their ability to file a Complaint with the Commission regarding these issues.<sup>12</sup>

The record demonstrates that the Company has been unable to address the unique needs of this small group of customers and to provide them with service that comports with the mandates of the Public Utility Code and Chapter 56 of the Commission's Regulations. PNG has also had difficulties ensuring that the actions of its contractor (and affiliate) AmeriGas do not violate Section 1501. This inability to provide safe and adequate service that complies with Section 1501 and Chapter 56 is yet another reason why the Company should be ordered to extend mains to these customers and bring their service into accord with that of PNG's other regulated residential customers.

Finally, general public benefits support the extension of the natural gas distribution mains to the Complainants. Natural gas is considered a more efficient and environmentally-safe form of energy than the alternatives. As Ms. Kraus explained, in PNG's June 2011 PGC proceeding, Company witness Shaun Hart described these benefits stating:

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<sup>11</sup> In PaPUC v. UGI Utilities, Inc., the Farmington Way subdivision experienced an outage in 2009 when the propane tanks that service the subdivision contained insufficient propane. Docket No. M-2010-2138591 (Order entered August 23, 2010). Although that case was resolved by Settlement, the Settlement specifically notes that the Commission's Gas Safety Prosecutory Staff contended that UGI violated Section 1501 when it failed to monitor the propane gas supplies and failed to furnish and maintain adequate, efficient, safe and reasonable service. Id. The OCA would note that the Commission approved the Settlement through which the customers were "held harmless from the cost of conversion," meaning that they did not pay CIAC. Id. at 5.

<sup>12</sup> Chapter 56 details the utility requirements for handling disputes with its customers, both for billing issues and non-billing issues. 52 Pa.Code § 56.151-152. When a customer complains about the service (or lack thereof) that they have received, the Company must issue a report to that customer within 30 days. 52 Pa.Code § 56.151(5). In that report, the customer must be provided with a full and complete explanation of the procedures for filing an informal complaint with the Commission. Id. at § 56.152(6).

There are also societal benefits in that natural gas almost always displaces less-efficient and less environmentally-beneficial heating energy sources such as oil or electricity. Important economic benefits also result as Pennsylvania has become a significant natural gas producer, and expanded natural gas distribution systems enable the increased use of a locally-produced energy source. (Docket No. R-2011-2238943, PNG Statement No. 3, page 6.)

OCA St. 1 at 11-12. In response to OCA-I-8(a), PNG indicated that there are currently 116 residential and 5 commercial customers in the GBM class. Id. Additionally, in response to OCA-I-4, the Company indicated that there are 28 proximate GBM customers and 141 potential new customers that could be served from lines extended to the Complainants alone. Id. Indeed, several Complainants testified about neighbors that they knew were interested in receiving natural gas service. Mr. Hennigan and Mr. Lindbuchler collected 25 signatures from residents of their neighborhood who said they would switch to gas service if the lines were installed. Tr. at 144-145, Hennigan Exh. 7. Ms. Moran-Roberto testified that there would be 120 possible customers who could be connected to the line that would serve her. Tr. at 39, 41. Mr. Calafut counted 17 or 18 houses from the intersection where the gas lines currently end to his property that could be connected to the line. Tr. at 234-235. Additionally, the residents of 71 and 73 Honesdale Road heat their homes with propane and would be happy to get natural gas. Id. Thus, PNG would have a reasonable opportunity to increase the number of natural gas customers in the areas of their current GBM service.

Given all of the above, now is the time to address the proper treatment of the remaining GBM customers. The OCA submits that in order to provide reasonable service, PNG must extend natural gas distribution mains to the Complainants without requiring a Contribution in Aid of Construction from them. This remedy will be discussed in detail below.



2. PNG Must Extend Natural Gas Mains to the Complainants without Requiring Them to Pay CIAC

The OCA submits that in order for the Company to comport with the requirements of Section 1501 to provide adequate and reasonable service, natural gas distribution mains must be extended to the Complainants. To fund the cost of extending the natural gas mains, the OCA puts forth the following plan. From a ratemaking standpoint, the “economic” portion of the main extension project should be included in rate base. OCA St. 1 at 7-8. The amount determined to be the “uneconomic” portion of the project should initially be borne by the Company, i.e., the shareholders. Additional amounts should be added to rate base for customers who connect to these mains in the future. *Id.* That is, the Company investment in the mains would be treated tantamount to a “refundable advance” for construction. Importantly, the Complainants should not be charged a contribution in aid of construction (CIAC) for these extensions.

Under the OCA’s proposal, only the “economic” portion of the main extension project would be included in rate base in the first case following the main installation. OCA St. 1 at 14-15. The balance of the cost of the mains should initially be absorbed by the shareholders, but the amount allowed in rate base would increase as additional customers are added. As discussed above, the GBM program was implemented as a promotional tool by PG&W. Ms. Kraus discussed the importance of this fact:

[T]he Commission recognized that the GBM program was a means for PG&W to increase its sales, i.e., benefit its shareholders. PG&W was allowed to recover the losses it incurred in providing propane at natural gas rates from customers because of the restrictions placed on natural gas utilities by the Commission related to the 1970s natural gas shortage. Upon acquisition of the system, PNG continued to recover from the ratepayers the difference between the propane it provides to the GBM customers and the cost of natural gas.

The natural gas shortage of the 1970s was the situation that resulted in the Commission's restrictions of new natural gas customers. It also resulted in the shifting of the costs of the promotional GBM program from the shareholders to the ratepayers. Since that time, the ratepayers have borne all of the costs of this promotional program.

Id. Therefore, for all these years, the Company has absorbed no expenses or losses to support this promotional program. Indeed, the Company and its shareholders (and its propane affiliate) have realized incremental profits from GBM customers for decades while, at the same time, ratepayers have funded the additional costs of supplying propane to GBM customers. Id.

Now that the GBM program is being phased out, PNG's ratepayers should not bear the full cost of the main extensions that would be installed to provide the GBM customers with continued reasonable service. This is why the OCA submits that the economic portion of the cost of the main extension, based on the number of customers who connect to the main, should be included in rate base for ratemaking purposes. The uneconomic portion, if any, should be initially borne by shareholders. OCA St. 1 at 16-17. In effect, with respect to these main extensions, the Company's shareholders would initially provide the CIAC that would otherwise be charged to an applicant for new service and be given a "refund" of a portion of this CIAC for future customers who connect. Id. This is similar to the procedure used by water utilities with respect to refundable advances for construction paid by developers toward main extensions to new developments. Id. In addition to transferring a portion of the costs related to the GBM program with respect to the remaining GBM customers back to the shareholders who have benefitted from this program, this procedure would provide the Company an incentive to seek new customers along these main extensions. Id.

The OCA would note, however, that when determining what constitutes the “economic” portion of the main extension, the Company is not bound to use the formula it has applied to determine the need for CIAC under PNG Gas – Pa.P.U.C. No. 8, Section 5 (Tariff Rule 5). According to the Company, Tariff Rule 5 uses 5.5 years of base annual revenues to calculate what is “economic”. PNG St. 1-R at 24-27. It is important to note that this formula is not actually included in PNG’s tariff. OCA St. 1-S at 7, Tariff Rule 5. Ms. Kraus explained why using 5.5 years to calculate the economic portion of the mains is not necessarily appropriate in this circumstance. Ms. Kraus testified:

Clearly, in this situation, many of these customers have been waiting for over forty years for natural gas service. It stands to reason that, if these customers finally get the natural gas service they (or their predecessors in interest in the residence) have been waiting for, they are not going to switch to another fuel in 5.5 years. It would be far more reasonable to use a longer period, for example, the service lives of the mains themselves, to assess the economic portion of the main extension investments.

OCA St 1S at 7. Indeed, if a longer period, such as the service lives of the mains—which UGI witness Lahoff states is 40 years or more—is used, a better representation of the economic portion of the main investment would be obtained. Tr. (Day 2) at 21. This would increase the amount of investment that the Company could put in rate base at the outset and reduce the uneconomic balance that would be borne by shareholders (pending the addition of more customers along the line).

Finally, the OCA submits that requiring the Complainants themselves to provide CIAC as suggested by PNG in order to extend natural gas mains is unjust, unreasonable and inconsistent with PNG’s own tariff.<sup>13</sup> In order to extend mains to the Complainants, PNG would

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<sup>13</sup> PNG has stated that it is relying upon the Commission Order in Richard Adams v. UGI Utilities, Inc. – Gas Division, Docket No. C-2010-2182016 (Order entered October 31, 2011), as a basis for

years. OCA St. 1 at 12, OCA St. 1S at 5-6. Extension of the distribution facilities to their homes has always been their expectation as customers of PG&W (and PG Energy) and, later, of PNG. They have continued and will continue to pay a share of all base costs and surcharges.

In his Rebuttal Testimony, PNG witness Lahoff attempts to support the use of Tariff Rule 5 by arguing that because the word “applicant” is not capitalized in the Company’s main extension tariff, that it is simply referring to any individual who applies for a main extension. PNG St. 1-R at 21. He states, therefore, that the GBM customers need to apply for a main extension because they are not physically connected to the system. *Id.* The OCA disagrees. The language of the tariff itself illustrates clearly why Tariff Rule 5 does not apply. The definition of “applicant” on the tariff states, in pertinent part:

Any person...that (i) desires from the company natural gas or any other service provided for in this Tariff at a specific location...(iii) has filed and is awaiting Company approval of its application for service and (v) *is not yet actually receiving from the Company any service provided for in this Tariff at such location.*

PNG Gas – Pa. P.U.C. No. 8, Original Page 9 (emphasis added). As the GBM customers are actually receiving service from the Company at their current locations, they cannot meet the criterion expressed in Subsection (v), and, thus, are not applicants for service. *Id.*; *see* OCA St. 1 13, OCA St. 1S at 5-6. Moreover, GBM customers, as existing PNG customers, do not need to “apply” for main extensions. Further, to the extent that the language could be considered ambiguous, any ambiguity in a tariff is interpreted against the drafter, PNG. Russell Kanowicz v. PPL Electric Util. Corp., Docket No. C-20034915, 2005 Pa. PUC LEXIS 43 at \*7 (Order entered April 20, 2005). Therefore, the Company’s requirement of CIAC is wholly unreasonable.

require that each pay CIAC. PNG St. 1-R at 20-22. The contributions range from \$12,584 to \$628,388. PNG states that requiring CIAC from the GBM customers is consistent with its main extension tariff. *Id.*, Tariff Rule 5. The OCA submits that applying Tariff Rule 5 to the existing GBM customers is contrary to the plain language of the tariff. Tariff Rule 5 applies only to applicants for service, not to existing customers.<sup>14</sup>

As was explained above, the GBM customers, including several of the Complainants in this proceeding, have been utility customers of PNG and its predecessor for over forty years and have been paying for distribution service in their monthly bills all these

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applying its main extension tariff to the GBM customers. Tr. 195. In that matter, ALJ Jandebour had dismissed Mr. Adams' *pro se* complaint after a brief hearing for failure to make a *prima facie* case. No exceptions were filed, but the Commission reviewed the decision pursuant to Section 332(h) of the Public Utility Code. In the Order reviewing the ALJ's decision, the Commission directed UGI to treat the "Complainant's service request, which was made through his Formal Complaint, as a written application for a line extension under Rule 5." While Mr. Adams' Complaint was similar to those under consideration herein, he was a *pro se* Formal Complainant and did not have the benefit of legal counsel. The OCA respectfully submits that the directive to consider a Formal Complaint as an application for new service was in error and should not govern the outcome of the instant case. The OCA urges the ALJ and the Commission to reconsider the issue of the application of the main extension tariff to this group of jurisdictional PNG customers based upon this fully developed evidentiary record and the arguments made herein.

<sup>14</sup> The OCA submits that requiring the Complainants themselves to provide CIAC, as suggested by PNG, in order to extend natural gas mains is also unjust and discriminatory in violation of Section 1502 of the Public Utility Code. Section 1502 prohibits unreasonable discrimination in service and states:

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

66 Pa.C.S. § 1502. The OCA submits that applying Tariff Rule 5 to the existing GBM customer is a violation of Section 1502 because Tariff Rule 5 applies only to new applicants for service. These GBM customers are not asking for new or special service. Instead, they are asking the Company to provide them with standard natural gas service as they are already PNG customers and have paid for the distribution system for many years.

As was demonstrated above, by not extending natural gas mains to these Complainants, the Company is in violation of Section 1501 and is not furnishing and maintaining adequate and reasonable service and facilities to its customers. To remedy this unreasonable service, the OCA has detailed a method by which the Commission can order that mains be extended to the Complainants in a fair and equitable manner. Utilizing the OCA's proposed approach will ensure that the Complainants are provided statutorily compliant service while appropriately allocating the cost of the extensions.

## VII. PROPOSED CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

1. The Commission has jurisdiction over the parties and the subject matter of this consolidated Complaint proceeding.
2. PNG has failed to provide adequate and reasonable service to the Complainants in violation of the requirements of 66 Pa.C.S. Section 1501 of the Public Utility Code by failing to extend natural gas mains to the Complainants under the circumstances of this case.
3. PNG has violated the explicit language of its Tariff Rule 5 and violated Section 1502 of the Public Utility Code, 66 Pa.C.S. Section 1502 by treating the GBM customers as “applicants for service” and requiring the payment of Contributions in Aid of Construction in order to receive natural gas service. Specifically:
  - (a) PNG would require Complainant Kathleen Moran-Roberto, an existing jurisdictional customer, to pay \$62,115 in order to continue to receive safe, adequate, reasonable and efficient utility service.
  - (b) PNG would require John Calafut, an existing jurisdictional customer, to pay \$88,365 in order to continue to receive safe, adequate, reasonable and efficient utility service.
  - (c) PNG would require Charles Schulz, an existing jurisdictional customer, to pay \$43,900 in order to continue to receive safe, adequate, reasonable and efficient utility service.
  - (d) PNG would require Jerome Fuhr and Daniel Pope, existing jurisdictional customers, to pay \$628,388 in order to continue to receive safe, adequate, reasonable and efficient utility service.
  - (e) PNG would require Dolores Alar, an existing jurisdictional customer, to pay \$12,584 in order to continue to receive safe, adequate, reasonable and efficient utility service.
  - (f) PNG would require John Hennigan, an existing jurisdictional customer, to pay \$269,000 in order to continue to receive safe, adequate, reasonable and efficient utility service.
  - (g) PNG would require Stephanie Donnelly, Joseph Michaels and Fred Lindbuchler, existing jurisdictional customers, to pay \$48,600 in order to continue to receive safe, adequate, reasonable and efficient utility service.

- (h) PNG would require Robert Rowlands, an existing jurisdictional customer, to pay \$27,000 in order to continue to receive safe, adequate, reasonable and efficient utility service.
  - (i) PNG would require Dolores Alar, an existing jurisdictional customer, to pay \$12,584 in order to continue to receive safe, adequate, reasonable and efficient natural gas service.
4. PNG has violated Section 1501 of the Public Utility Code, 66 Pa.C.S. Section 1501, by failing to provide safe, adequate, reasonable and efficient service by the following actions:
- (a) Discontinuing automatic bill payments without providing advance notice;
  - (b) Sending a termination notice to a customer who filed a Formal Complaint with the Commission;
  - (c) Providing incorrect information to customers regarding their service;
  - (d) Failing to advise customers about the Commission's Formal Complaint process if they are dissatisfied with their service;
  - (e) Telling current customers that they do not have service with the Company;
  - (f) Letting customer propane tanks run dry;
  - (g) Failing to properly maintain propane tanks and tank sites;
  - (h) Serving multiple customers from one customer's property without an easement or compensation;
  - (i) Allowing an affiliated propane supplier to engage in practices contrary to the Public Utility Code and Regulations, including threatening termination of service, recording all appliance information, coming onto property without notice, damaging property, and failing to keep scheduled appointments; and
  - (j) Failing to advise the GBM customers at the earliest opportunity that PNG had agreed to phase-out the GBM program, unless the Commission orders otherwise.
5. With respect to all of the Code violations specified above, PNG has also violated 52 Pa. Code Section 56.1, by not meeting its service obligation of good faith, honesty and fair dealing towards the Complainants.



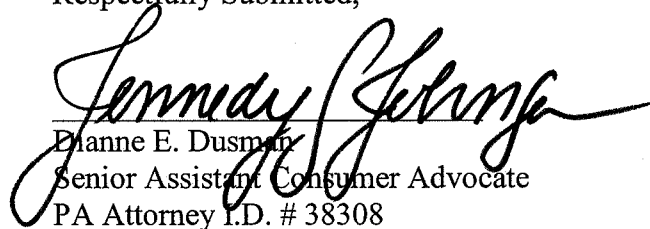
IT IS ORDERED:

1. That PNG is required to install mains to provide natural gas service to the GBM customers and to, thereafter, charge these customers the same distribution and commodity rates as all other residential jurisdictional natural gas customers.
2. That PNG extend such mains without requiring a Contribution in Aid of Construction from the Complainants.
3. That PNG include the economic portion of the cost of the main extension in its first base rate base following the installation of the mains.
4. That PNG refrain from any further violations of its tariff, Sections 1501 and 1502 of the Public Utility Code and Chapter 56.

VIII. CONCLUSION

For all of the foregoing reasons, the Complainants have, with the assistance of the OCA, sustained their burden of proving that their Complaints have merit. The Commission should direct PNG to provide these customers with safe, adequate reasonable and efficient service by installing gas mains to serve them at the earliest possible time.

Respectfully Submitted,



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Dated: May 10, 2012  
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## Appendix A

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA**

Public Meeting held October 9, 2008

Commissioners Present:

James H. Cawley, Chairman  
Tyrone J. Christy, Vice Chairman  
Robert F. Powelson  
Kim Pizzingrilli, Statement Attached  
Wayne E. Gardner

UGI Utilities, Inc. and  
UGI Penn Natural Gas, Inc.  
Management Efficiency Investigation

Docket No. D-2008-2063177

Gas Beyond the Mains Investigation

Docket No. M-2008-2072850

**INVESTIGATION ORDER**

Before the Commission for consideration is the Management Efficiency Investigation (“MEI”) of UGI Utilities, Inc. (“UGI”) and UGI Penn Natural Gas, Inc. (“UGI-Penn”) (hereinafter referred to jointly as “the Companies”) conducted by the Bureau of Audits (“Audits”). One area of concern that Audits extensively investigated as part of the MEI was UGI’s Gas Beyond the Mains (“GBM”) program, which provides propane service to customers located away from existing gas mains at regulated natural gas rates, and not the unregulated market price of propane. The Commission believes that there are many unanswered questions related to propane service in general and tariffed GBM programs in particular that we should review.

## Background

As stated above, Audits conducted a MEI on the Companies. The MEI examined UGI's progress in implementing 20 of the 23 original recommendations from a February 2005 Focused Management and Operations Audit of UGI, the Companies' compliance with the Order approving the acquisition of PG Energy (now UGI-Penn) and their emergency preparedness.

As stated, one issue that Audits has extensively investigated in the context of these audits has been UGI's GBM program. In the 2005 Focused Management Audit, Audits made the following recommendations:

- Develop a policy to procure periodically competitive bids for the propane used for the GBM Program.
- Develop a policy and procedure governing GBM market analysis, retain the documents for future regulatory review and implement appropriate program changes.
- Provide justification to the Commission for GBM systems served with propane for longer than five years and absent sufficient justification absorb the incremental cost differential between propane and natural gas for these long-term GBM customers.
- Establish procedures to consistently maintain O&M records in accordance with 49 CFR Part 192 for all existing and future GBM systems.

In the context of this MEI, Audits reviewed and evaluated the effectiveness of UGI's efforts to implement the above GBM recommendations and noted the following improvements achieved by UGI:

- Documented and retained market analyses for each new GBM system.
- Modified its tariff to provide justification to the Commission for any GBM systems that have been served with propane for more than five years.

- Began to maintain Operations and Maintenance records in accordance with 49 CFR Part 192 for all GBM systems.

However, Audits had several concerns related to UGI's GBM program and identified these further improvement opportunities:

- Initiate steps to remove long-term individual (stand-alone) customers from the GBM program.
- Provide detailed support as part of the annual PGC filing in order for the Commission to assess the prudence of the propane purchases for the GBM program as it relates to UGI's least cost fuel procurement policy.

## **Discussion**

According to Audits, the GBM program was primarily designed to use propane to extend service to new developments in areas not presently served by natural gas only until natural gas distribution lines could be extended to serve these customers. Audits found that UGI's GBM program includes 24 individual residential customers and 42 individual commercial customers served via individual propane tanks on the customers' premises. Audits states that some of these residential customers have been on the GBM program since the 1960's whereas most of the commercial customers were added in the 1980's and 1990's. On the other hand, Audits also found that some customers who received propane gas service under the GBM program were served via distribution systems fed by centrally located propane tanks. The jurisdictional status of such systems is unclear.

Audits is also concerned that through its GBM program, UGI is serving individual (stand-alone) customers with propane gas at natural gas rates, thereby normally increasing natural gas costs to customers. We are aware that such issues are not limited to UGI. Our review of current natural gas tariffs shows that UGI Penn and Columbia Gas of

Pennsylvania also include propane service rate schedules in their tariffs. See also *Application of PPL Gas Utilities Corporation*, Docket No. A-122050F2003, Public Meeting of January 26, 2006 (approving abandonment of gas beyond the main service to 13 commercial customers). Accordingly, the Commission believes that there are many unanswered questions, which should be reviewed concerning propane service in general and tariffed GBM programs in particular.

The Commission desires to review its jurisdiction over propane distribution systems and whether we are appropriately regulating GBM programs of our jurisdictional utilities. Therefore, we are instituting, at a separate docket, a non-prosecutory staff investigation of all the issues related to our jurisdiction over GBM programs and other propane distribution systems. The issues to be investigated include, but are not limited to, the following:

1. Whether GBM programs are in the public interest?
2. Whether the Commission's oversight of GBM programs through individual utility rate proceedings is sufficient?
3. If GBM programs are not in the public interest, what alternatives should the Commission consider to encourage the expansion of natural gas distribution infrastructure?
4. Whether the Commission possesses legal authority to regulate propane distribution systems? And, if yes, how should the Commission exercise such authority over existing systems?

## **Conclusion**

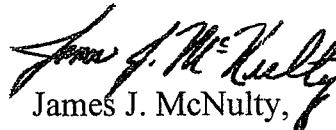
The Commission is concerned about the GBM programs of our jurisdictional gas utilities and our jurisdiction over other propane distribution systems. The investigation directed by this order should review the jurisdictional status of such systems and any other

relevant issues. Accordingly, we shall institute a non-prosecutory staff investigation at a separate docket to address these issues; **THEREFORE,**

**IT IS ORDERED:**

1. That a non-prosecutory staff investigation is hereby instituted at Docket No. M-2008-2072850 to investigate gas beyond the mains programs and propane distribution systems.
2. That the investigation is assigned to the Law Bureau which, in conjunction with the Bureaus of Fixed Utility Services, Audits and Transportation and Safety, shall initiate and conduct the investigation and submit a report to the Commission on or before March 31, 2009.
3. That this Order be served upon all jurisdictional natural gas distribution companies, the Energy Association of Pennsylvania and the Pennsylvania Propane Association.
4. That this Order shall be published in the *Pennsylvania Bulletin*.
5. That the proceeding at Docket No. D-2008-2063177 (Audits Report at D-07MEI005) be marked closed.

BY THE COMMISSION,

  
James J. McNulty,  
Secretary

(SEAL)

ORDER ADOPTED: October 9, 2008

ORDER ENTERED: JAN 08 2009



## Appendix B

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2011-2238943
Office of Consumer Advocate	:	C-2011-2243199
Office of Small Business Advocate	:	C-2011-2248229

v.

UGI Penn Natural Gas, Inc. 1307(f)

Pennsylvania Public Utility Commission	:	R-2011-2238949
Office of Consumer Advocate	:	C-2011-2243177
Office of Small Business Advocate	:	C-2011-2248231

v.

UGI Central Penn Gas, Inc. 1307(f)

Pennsylvania Public Utility Commission	:	R-2011-2238953
Office of Consumer Advocate	:	C-2011-2243186
Office of Small Business Advocate	:	C-2011-2248211

v.

UGI Utilities, Inc. – Gas Division 1307(f)

**ORDER GRANTING PETITION OR MOTION TO CONSOLIDATE,  
IN PART, OF UGI PENN NATURAL GAS, INC.**

I. BACKGROUND

On June 30, 2011, UGI Penn Natural Gas, Inc. (PNG or the Company) filed a Petition or Motion<sup>1</sup> to Consolidate in the above-captioned PNG 1307(f) proceeding concerning a

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<sup>1</sup> While PNG captioned the pleading as a “Petition,” it also referenced the pleading as a “Motion to Consolidate” in the opening paragraph, and I have referred to it also as a “Motion” herein, pursuant to 52 Pa. Code §§5.81 and 5.103.

Formal Complaint filed by PNG Gas Beyond the Mains (GBM) customer Kathleen Moran-Roberto (Ms. Moran-Roberto or Complainant) with the Pennsylvania Public Utility Commission (Commission), at Docket No. C-2011-2248372.

In support of its Motion to Consolidate, PNG indicated that on June 24, 2011, it had received notice from the Commission that a Formal Complaint had been filed by Ms. Moran-Roberto against PNG. As relief, Complainant had requested that PNG “install [a] gas line or continue to supply propane at natural gas rates.” PNG contended that the Formal Complaint clearly related to the Rate GBM transition rate mechanism which had been proposed in the pending 1307(f) case. It requested that the Formal Complaint of Ms. Moran-Roberto be consolidated with the above-captioned PNG 1307(f) proceeding.

After receiving the Motion to Consolidate and, in view of the time constraints inherent in 1307(f) proceedings, I immediately inquired of the parties via electronic mail (e-mail) as to whether there were any objections to consolidation of the Moran-Roberto Complaint with the PNG 1307(f) proceeding.

On June 30, 2011, I received an objection from the Office of Consumer Advocate (OCA) indicating that OCA intended to file a formal answer in opposition to the Motion to Consolidate. In the e-mail, OCA summarized its opposition to consolidation as follows: (1) there is insufficient time in a 1307(f) case to litigate the issues; (2) Ms. Moran-Roberto’s Formal Complaint is not within the scope of this proceeding as it concerns the GBM program and not the recovery of gas costs; (3) Ms. Moran-Roberto and other GBM customers are tariffed customers whose service is proposed to be abandoned, and this is appropriately handled in an Application for Abandonment proceeding, not a 1307(f) proceeding; (4) it is unnecessary to expedite this matter as the GBM phase out approved in a prior PNG base rate case does not end until August 2014; and (5) Ms. Moran-Roberto must be provided due process, including the 20-day time period to respond to motions to consolidate.

On July 1, 2011, I received an e-mail from the Office of Small Business Advocate (OSBA), indicating that it agreed with the OCA that consolidation was not appropriate.

On July 1, 2011, I also received an e-mail from the Office of Trial Staff (OTS) which indicated agreement with many of the concerns expressed by the OCA and which concurred in OSBA's position.

On June 30-July 1, 2011, I received e-mails from the remainder of the parties, which indicated that they either had no objection or no position as to the Motion to Consolidate.

Due to opposition to the Motion to Consolidate and again mindful of the time constraints, I requested that PNG provide a call-in number for a telephonic conference to be held on Tuesday, July 5, 2011, at 11:00 a.m., to allow the presentation of argument for or against the proposed consolidation. This same procedure was used in UGI's 2010 1307(f) proceeding wherein three formal customer complaints had been filed against UGI's GBM program changes and there was opposition to a consolidation request.

Accordingly, on July 5, 2011, at 11 a.m., the telephonic conference convened with the following parties in attendance: UGI (represented by Mark Morrow, Esquire); OSBA (represented by Steven C. Gray, Esquire); OCA (represented by Jennedy Johnson, Esquire and Dianne Dusman, Esquire); OTS (represented by Charles Daniel Shields, Esquire); CenterPoint Energy Services, Inc. (CenterPoint), Shipley Energy Company and Shipley Choice LLC (Shipley), and Jerome H. Rhoads, Inc. d/b/a Rhoads Energy Company (Rhoads) (all represented by Jane Story, Esquire); and Complainant Kathleen Moran-Roberto *pro se* (assisted by the OCA). The other three parties in these consolidated proceedings, which are the UGI Industrial Intervenor (UGIII), Central Penn Gas Large Users Group (CPGLUG), and Procter & Gamble Paper Products Company (Procter & Gamble), had previously indicated that, given their positions, they would not be on the call.

The following is a general summary of positions expressed at various times during the telephonic conference. All relevant arguments were considered in the consolidation ruling and the failure to specifically mention an argument should not be interpreted as an oversight. I note that some issues did not need to be addressed to resolve the Motion to Consolidate.

Ms. Moran-Roberto, the Complainant whose Formal Complaint was sought to be consolidated, clarified that when she had requested the continuation of propane service by PNG at natural gas rates, she was challenging PNG's proposal in the 1307(f) proceeding to transition GBM customers to market-based propane rates. She indicated opposition to consolidation primarily due to the time limitations in a 1307(f) proceeding and to provide additional opportunity for the mostly elderly GBM customers to be fully informed of the Company's GBM rate proposal and to take appropriate action. She sought the names and contact information of other GBM customers (122 in all) so that she could further advise them of the implications of the PNG proposal.

PNG contended that the termination of the current GBM program as of August 27, 2014 had already been determined in a prior PNG base rate case (R-2008-2079660) but that it was unclear whether abandonment of the GBM customers had been specifically authorized. In lieu of clear guidance as to program termination, PNG had proposed, in the instant proceeding, to transition GBM customers to market-based propane rates over a period of time; thereby mitigating customer impact and avoiding the confusion of an abandonment proceeding. The Company indicated that due process would be provided to the Complainant under consolidation and that the litigation schedule may not be much different than that which would have been established in a separate complaint proceeding.

PNG indicated that the proposed GBM transition rate mechanism does involve purchased gas costs (PGC) and that the mechanism also provides an offset to PGC rates as GBM customers are transitioned to market-based propane rates. This addressed the cross-subsidization concerns previously raised in 1307(f) proceedings by the OTS, according to PNG. Also, a similar phase-in of market-based propane rates, but over a longer time period, was approved as part of a settlement in UGI's 2009 1307(f) proceeding (R-2009-2105911). As in that 2009 proceeding, a

post transition propane service would continue to be provided under a tariffed rate with no abandonment of customers, according to PNG.

In addition, PNG asserted that it could be prejudiced if required to litigate the same matters in two separate proceedings, with the possibility of different results. That would occur if the two proceedings were not consolidated, as the GBM transition rate mechanism, an issue in the Moran-Roberto Complaint, was already an issue in the PNG 1307(f) proceeding.

In response to my question about litigating both the Moran-Roberto main extension request and rate issues in a 1307(f) proceeding, PNG indicated that for efficiency purposes, it made sense to litigate both matters in the instant proceeding. While it was not advocating two separate proceedings, PNG asserted that if more time was needed for the service extension issue, that matter could be severed from the instant case and litigated separately.

OCA reminded PNG of the ongoing Commission informal GBM investigation at Docket No. M-2008-2072850, and that the termination of the current GBM program, as approved in the prior PNG base rate case, was expressly subject to the outcome of that informal Commission investigation. If the Commission eventually decided that GBM programs could continue, then PNG would continue its GBM program, under the parameters set forth by the Commission. OCA also argued that, in its view, the Company's GBM proposal constituted a de facto abandonment which should be resolved in an application proceeding. It cited to a PPL Gas Utilities Corporation case at Docket No. A-122050F2003<sup>2</sup> wherein a GBM program discontinuance was resolved in an abandonment application proceeding.

In addition, OCA asserted that due process required an adequate opportunity to address all issues and that this opportunity would not be provided in the short time frame of a 1307(f) proceeding. It noted that the Formal Complaint requested two types of relief and that the

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<sup>2</sup> See, Application of PPL Gas Utilities Corporation (PPL Gas), Docket No. A-122050F2003, Order entered January 26, 2007.

main extension request, in particular, involved complex considerations of costs and benefits that would take time to develop. OCA indicated that the impact of the GBM proposal on the PGC rate was minimal and that the entire Complaint should be resolved in a separate proceeding for efficiency purposes. It contended that there was no need to expedite litigation of the GBM program issue as the termination date was still three years in the future. OCA also questioned whether adequate notice had been provided to GBM customers as to the loss of their PGC rate.

OTS clarified its position that, after hearing the arguments, it was opposed to consolidation. It characterized PNG's response to my question about the litigation of a service issue in the instant case as an acknowledgement that a mains extension is not a standard 1307(f) issue. OTS also noted the time limitations in 1307(f) proceedings as not being conducive to expansion of issues. It expressed concern that additional GBM complaints could be filed and this would strain an already tight litigation schedule.

OSBA emphasized the public interest considerations which must be weighed in determining whether consolidation is appropriate. It contended that the burden on parties to litigate new issues late in a case outweighed the Company's interest in seeking efficiency and avoiding conflicting rulings. It also referenced the possibility of additional GBM complaints that would burden the 1307(f) litigation process.

In rebuttal, PNG, in response to concerns about notice, indicated that a separate written notice, dated May 24, 2011, had been provided to all GBM customers to explain the Company's GBM proposal in the 1307(f) proceeding and to provide information as to the rate impact. This letter, which was attached to the Moran-Roberto Complaint, also provided notice that GBM customers could challenge the Company's GBM transition rate proposal by filing a formal complaint with the Commission.<sup>3</sup> PNG expressed confidentiality concerns regarding the provision of GBM customer information to the Complainant. The Company also indicated, as it had in response to my prior inquiry, that it was unaware of any additional GBM complaints. It

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<sup>3</sup> This letter was also to have been included, but was not included, as Exhibit SMH-PNG-2 to the direct testimony of Shaun Hart (PNG Statement No. 3) in the PNG 1307(f) proceeding. I requested that PNG immediately correct this oversight.

emphasized the burden and unfairness of litigating the same issues in two separate proceedings and that the 1307(f) timing issues could be managed successfully.

After considering the parties' arguments, particularly the concerns of the Complainant and OCA, I determined that the rates and service issues in the Moran-Roberto Complaint should be severed and separately litigated. The portion of the Complaint which challenged the GBM rate mechanism was consolidated with the underlying PNG 1307(f) proceeding, while the main extension issue was reserved for separate litigation.<sup>4</sup> This Order confirms that ruling.

While the OCA and other parties had indicated intentions to file written responses to the Motion to Consolidate, the parties instead provided their positions as to consolidation during the telephonic conference. Further delay was determined to be unnecessary and a prompt resolution was required under the circumstances. The telephonic conference format also provided more leeway in responding to various arguments than would have been possible with responsive pleadings. I therefore concluded that the parties had been provided a full and fair opportunity to address their concerns prior to the ruling, without the necessity of time-consuming responsive pleadings.

The parties were given until Friday, July 8, 2011, at 10:00 a.m. to provide an acceptable schedule for litigation of the Moran-Roberto rates complaint.

## II. DISCUSSION

The standards for granting consolidation of proceedings are set forth at 52 Pa. Code §5.81(a). As stated therein, a presiding officer or the Commission may order proceedings to be

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<sup>4</sup> It is my understanding that the rates issue will remain at Docket No. C-2011-2248372, and the service issue involving a request for mains extension will be set forth in a separate complaint, to be separately docketed and served on the Company for an answer. Mediation has been offered as an option for resolving the service complaint.



consolidated if they involve a common question of law or fact. Consideration should be given to avoiding unnecessary costs and delay.

In the pending consolidation request, the Complainant has acknowledged that her Complaint does challenge the Company's proposal in the PNG 1307(f) proceeding that GBM customers be transitioned to market-based propane rates over a period of years. This PNG proposal was described in the prepared testimony of PNG witnesses William J. McAllister and Shaun Hart, provided on June 1, 2011. In addition, the GBM tariff changes to effectuate the transition proposal were provided in that same June 1, 2011 filing at Tariff Addendum No. 8. Thus, I conclude that the rates portion of the Moran-Roberto Complaint and the pending PNG 1307(f) proceeding involve common questions of law or fact and are appropriately consolidated.

I also agree with the Company that the GBM transition rate issue involves purchased gas costs. According to Mr. McAllister, the proposed GBM rate is a composite of the PGC rate (75%) and a propane market rate (25%). All Rate GBM propane supply costs, which are currently included in PGC rates, have initially been included in developing projected costs. However, under the PNG proposal, the additional PGC revenues collected from Rate GBM customers as a result of the increased charges for 25% of their volumes will offset the propane cost which would otherwise be recovered from PGC customers. The proposal clearly impacts PGC rates and is appropriately addressed in a 1307(f) proceeding.

In addition, consolidation of the Moran-Roberto rates issue avoids the possibility of conflicting results if this matter is addressed in two separate proceedings. This provides certainty to the parties and also serves to avoid the unnecessary costs or delay associated with duplicative litigation. See, 52 Pa. Code §5.81(a).

OCA has argued that the transition of GBM customers to propane-based rates should be addressed in an abandonment application. During the telephonic conference, I noted that this issue was reserved and was not required to be addressed for consolidation purposes. The parties should note, however, that I required UGI to address this very question in a legal

memorandum to assist me in deciding whether to recommend approval of the 2009 UGI 1307(f) settlement involving a similar GBM transition proposal. Specifically, UGI was required to address whether an abandonment application was or was not required under its proposal. It was UGI's position that an abandonment application was not required. Based upon UGI's legal position, which was not responded to by any party, I concluded that an abandonment application would not be required. I determined that the GBM customers would continue to receive tariffed service, even after transitioning to market-based propane rates, and would therefore continue to have available regulatory protections. See, Recommended Decision at R-2009-2105911, pp. 25-26. The Commission approved the UGI settlement but ruled that the question of whether GBM propane service is jurisdictional should be reserved, pending the conclusion of the informal investigation at Docket No. M-2008-2072850. See, Pa. P.U.C. v. UGI, Docket No. R-2009-2105911, Opinion and Order entered December 23, 2009.

The parties opposing consolidation raised timing constraints in a 1307(f) proceeding as a reason for rejecting consolidation. However, as I indicated during the telephonic conference, the GBM transition rate opposed by Ms. Moran-Roberto is already an issue in this 1307(f) proceeding and the parties have had notice of the issue since at least June 1, 2011. This proceeding will not therefore be expanded by consolidation of the rates component of the Moran-Roberto Complaint with the pending PNG 1307(f) proceeding. The timing constraints observed by the parties are an intrinsic part of every 1307(f) proceeding and the presiding officer and all parties must accommodate these deadlines.

Consolidation of any additional GBM complaints will be considered on a case-by-case basis. PNG has indicated that it has provided notice to GBM customers, by letter dated May 24, 2011, of the GBM transition rate proposal in this 1307(f) proceeding.

The above-stated reasons supporting consolidation of the rates component of the Moran-Roberto Complaint with the pending PNG 1307(f) proceeding do not apply to the mains extension portion of the Complaint. In contrast to consolidation of the rates component, the addition of the service component would clearly constitute an expansion of issues in an already

time-constrained proceeding. This is not acceptable. In addition, the service extension does not relate to purchased gas costs and therefore, as indicated by the opposing parties, is not appropriate for consideration in a 1307(f) case. While the Company did not advocate severing the two components of the Complaint, it acknowledged that such separation could be accomplished and would not result in a duplication of litigation. A separate proceeding would also allow sufficient time for review of the complex cost/benefit analysis issues in main extensions requests, which was an important consideration of the OCA.

Accordingly, my ruling at the telephonic conference of July 5, 2011 is confirmed. The rates and service components of the Moran-Roberto are severed for separate litigation. Ms. Moran-Roberto will be provided an opportunity to litigate her rates issue which is consolidated with the underlying PNG 1307(f) proceeding, under a litigation schedule to be agreed to and provided to me by the parties. The service component will be addressed in a separate proceeding.

### III. ORDERING PARAGRAPHS

THEREFORE,

IT IS ORDERED:

1. That the Petition or Motion filed by UGI Penn Natural Gas, Inc. to consolidate the Formal Complaint of Kathleen Moran-Roberto against UGI Penn Natural Gas, Inc. at Docket No. C-2011-2248372 with the UGI Penn Natural Gas, Inc. 1307(f) proceeding at Docket No. R-2011-2238943 is granted with respect to the portion of the Formal Complaint which relates to the proposed Gas Beyond the Mains (GBM) transition rate proposal, and is otherwise denied, consistent with the discussion herein.

2. That the portion of the Formal Complaint of Kathleen Moran-Roberto which relates to a natural gas mains extension is hereby severed from the Formal Complaint at Docket No. C-2011-2248372 and is reserved for separate litigation at a separate docket.

3. That the caption of the proceeding at R-2011-2238943 is modified to include the Formal Complaint and docket number of Kathleen Moran-Roberto.

4. That the procedural schedule with respect to Docket No. R-2011-2238943 will be modified to provide for litigation of the GBM rate component of the Kathleen Moran-Roberto Formal Complaint, pursuant to the schedule to be later determined.

5. That Kathleen Moran-Roberto be added to the parties list at Docket No. R-2011-2238943.

Date: July 6, 2011

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Kandace F. Melillo  
Administrative Law Judge

CERTIFICATE OF SERVICE

Kathleen Moran-Roberto	:	Docket Nos. C-2011-2251178
John Calafut	:	C-2011-2253878
Jerome Fuhr	:	C-2011-2254311
John Hennigan	:	C-2011-2262771
Dolores Alar	:	C-2011-2266076
Daniel L. Pope	:	C-2011-2258722
Charles E. Schulz	:	C-2011-2267370
Robert M. Rowlands	:	C-2011-2272802
Stephanie and Alfred Donnelly	:	C-2012-2281722
Joseph Michaels	:	Joint
Fred Linbuchler	:	Joint
Office of Consumer Advocate, Intervenor	:	
Bur. of Investigation & Enforcement, Intervenor	:	
v.	:	
	:	
UGI Penn Natural Gas, Inc.	:	

I hereby certify that I have this day served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 10th day of May 2012.

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SERVICE BY FIRST CLASS MAIL, POSTAGE  
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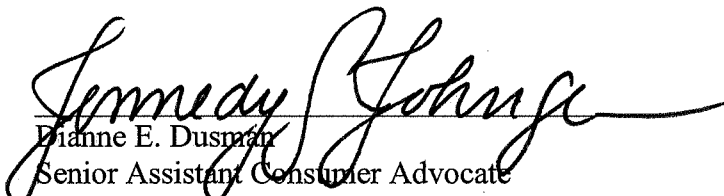
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