



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

IN REPLY PLEASE
REFER TO OUR FILE

August 15, 2012

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

Re: Application of Leatherstocking Gas Company, LLC for Approval to Supply Natural Gas Service to the Public in Northern Susquehanna County, in the Townships of Bridgewater, Forest Lake, Great Bend, Harmony, New Milford and Oakland, and in the Boroughs of Great Bend, Hallstead, Lanesboro, Montrose, New Milford, Oakland and Susquehanna

Docket No. A-2011-2275595

Dear Secretary Chiavetta:

Enclosed please find a signed original of the Bureau of Investigation and Enforcement's (I&E) **Motion to Strike Certain Prohibited Portions of Leatherstocking Gas Company, Inc. Replies to Exceptions** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 783-6151.

Sincerely,

Charles Daniel Shields
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 29363

CDS/edc

cc: Parties of Record
Counsel for UGI Penn Natural Gas, Inc.
ALJ Salapa
Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner, Commissioner
James H. Cawley, Commissioner
Pamela A. Witmer, Commissioner
Chief Counsel Pankiw, Law Bureau
Director Cheryl Walker Davis, OSA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Leatherstocking Gas Company, :
LLC for Approval to Supply Natural Gas :
Service to the Public in Northern Susquehanna :
County, in the Townships of Bridgewater, : Docket No. A-2011-2275595
Forest Lake, Great Bend, Harmony, New :
Milford and Oakland, and in the Boroughs of :
Great Bend, Hallstead, Lanesboro, Montrose, :
New Milford, Oakland and Susquehanna :

**MOTION TO STRIKE
CERTAIN PROHIBITED PORTIONS OF
LEATHERSTOCKING GAS COMPANY LLC
REPLIES TO EXCEPTIONS**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits this motion seeking to have stricken certain prohibited portions of the “Replies of Leatherstocking Gas Company, LLC to Exceptions of UGI Penn Natural Gas, Inc.” (“Leatherstocking Replies”) from any consideration by the Commission for the reasons stated herein.

1. The subject Leatherstocking Replies were filed with the Commission’s Secretary on August 8, 2012, in response to the Exceptions filed by UGI Penn Natural Gas, Inc., (“UGI Penn”) on July 30, 2012. The UGI Penn Exceptions were submitted in response to the Initial Decision of the presiding Administrative Law Judge (“ALJ”) issued on March 20, 2012.¹ The UGI Penn Exceptions were filed in response to the Initial

1 In its Replies to Exceptions, Leatherstocking states at page 15 that “I&E filed a Notice of

Decision's determination that UGI Penn lacked standing to participate in the instant application proceeding initiated by Leatherstocking.²

2. The timetable and express instructions for the filing of Exceptions and Replies to Exceptions were established by the Commission's Secretarial Letter dated July 20, 2012, that specifically and unequivocally states, "**[T]he Commission instructs the parties to confine their Exceptions and Replies to Exceptions to the issues raised by the ALJ's Initial Decision.**" We would note parenthetically that this Commission directive in that Secretarial Letter is entirely consistent with the I&E position that the issue of UGI Penn's standing must first be resolved prior to addressing any further issues in this proceeding.

3. A review of Leatherstocking's filed Replies to Exceptions discloses that under the guise of providing an "Introduction and Summary of Reply Exceptions" section, Leatherstocking addresses specific matters outside the scope of the Initial Decision.³ The language of that section is particularly egregious given that it includes a

Appearance but has not been insistent on hearings on the merits of the application." Leatherstocking Replies, p. 15. To clarify that characterization, I&E notes that the instant record to date will reflect that I&E has yet to make any representation on the issue of any need for evidentiary hearings and has been awaiting a determination on the UGI Penn standing issue before proceeding further.

2 Leatherstocking raised the issue of UGI Penn's standing in a procedural submission to the ALJ early in the proceeding.

3 In the I&E "Letter in Lieu of Replies to Exceptions" filed with the Commission Secretary on August 6, 2012, I&E raised this exact same objection to a similar attempt by UGI Penn in their filed Exceptions to improperly raise and discuss matters outside the scope of the standing issue addressed in the Initial Decision.

separate and distinct prayer for relief not addressed anywhere in the Initial Decision. The inclusion of such matters in Leatherstocking's Replies to Exceptions is in direct breach of the Commission's instructions and it is incumbent upon I&E to reference that fact. This instant Motion to Strike is the proper procedural vehicle to allow the Commission to address the referenced breaches to its instructions.

4. Specifically, the "Introduction and Summary of Reply Exceptions" section of Leatherstocking Replies to Exceptions, found at pages 2 through 5, consists of seven paragraphs, only two of which [Paragraphs 2 and 3] exclusively and appropriately summarize the Leatherstocking Replies to the UGI Penn Exceptions on the standing issue ruled upon in the Initial Decision. The remaining five paragraphs [Paragraphs 1, 4, 5, 6 & 7] either discuss prohibited matters exclusively within the paragraph or intertwine the otherwise appropriate request to affirm the Initial Decision and deny the UGI Exceptions on the standing issue with other matters that were clearly prohibited by the express Commission instructions.⁴ As such, under the section in the Replies to Exceptions at pages 2 through 5, entitled, "I. Introduction And Summary Of Reply Exceptions," **I&E moves to strike the following:**

First Paragraph [page 2], beginning, "At the onset ..."

- a. entire first sentence;
- b. entire second sentence.

Fourth Paragraph [page 3], beginning, "Alternatively, the Commission should ..."

⁴ Per the Commission's July 20, 2012 Secretarial Letter cited above in Paragraph No. 2.

- a. entire paragraph.

Fifth Paragraph [Page 4], beginning, “Leatherstocking notes that ...”

- a. first sentence, the phrase, “... either way ...”

Sixth Paragraph [Pages 4-5], beginning “For these reasons, ...”

- a. entire first sentence;
- b. portion of the last sentence that requests that “... the Leatherstocking Application be considered in the Commission’s non-litigated or modified procedure for decision.”⁵

Seventh Paragraph [Page 5], beginning “Finally, regarding competitive or safety ...”

- a. entire paragraph.

5. We are now confronted with the situation where UGI Penn in their Exceptions and now Leatherstocking in their Replies to Exceptions have not only deviated from established procedures, but have now blatantly and without justification both violated the Commission’s express instructions to confine the Exceptions and Replies to Exceptions to the issue addressed in the Initial Decision, i.e. standing – and only standing.⁶

5 The Initial Decision does not address that issue and it should again be noted that I&E has yet to take a position on that issue, i.e. the use of such an expedited procedure, in the ongoing formal proceeding still before the presiding ALJ.

6 *See also:* I&E Letter in Lieu of Replies to Exceptions filed August 6, 2012. As stated by I&E therein, “In previous submissions by I&E to the ALJ during this already convoluted and unduly long proceeding, I&E has enumerated various actions by UGI Penn at this docket that evidence a total disregard for the Commission’s Rules of Practice and Procedure. This instant breach by UGI Penn serves only to further evidence and confirm those I&E representations.”

6. Additionally, I&E would again advocate that the Commission's Order addressing the Initial Decision and UGI Penn's Exceptions should, at the very least, include a reiteration that compliance with Commission rules, directives and instructions is mandatory and that any and all demonstrated noncompliance is subject to remedial Commission action.

7. For the foregoing reasons, the Bureau of Investigation and Enforcement respectfully request that this instant Motion to Strike be granted, and that the prohibited language in the "Replies of Leatherstocking Gas Company, LLC to Exceptions of UGI Penn Natural Gas, Inc." as identified herein, be stricken and be given no consideration by the Commission.

Respectfully submitted,



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Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
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Harrisburg, Pennsylvania 17105-3265

Dated: August 15, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Leatherstocking Gas :
Company, LLC to Supply Natural Gas :
Service to the Public in Certain : Docket No. A-2011-2275595
Townships and Boroughs in Northern :
Susquehanna County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Motion to Strike** dated August 15, 2012, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

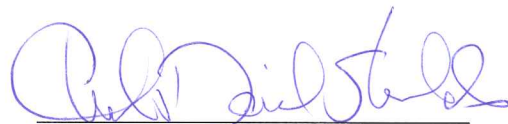
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