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September 21, 2012

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

**RE: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v. UGI Utilities, Inc.
Docket No. C-2012-2308997**

Dear Secretary Chiavetta:

Enclosed please find the Prehearing Conference Memorandum of UGI Utilities, Inc. for the above-referenced proceeding. Copies will be provided as indicated.

Respectfully Submitted,

A handwritten signature in cursive script that reads 'David B. MacGregor'.

David B. MacGregor

DBM/skr

Enclosures

cc: Honorable David A. Salapa
Certificate of Service

CERTIFICATE OF SERVICE

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

VIA EMAIL AND FIRST CLASS MAIL

Adam D. Young
Stephanie Wimer
PA Public Utility Commission
Law Bureau
Commonwealth Keystone Building
400 North Street, 3rd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: September 21, 2012



David B. MacGregor

**THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	C-2012-2308997
	:	
v.	:	
	:	
UGI Utilities, Inc.	:	

**PREHEARING CONFERENCE MEMORANDUM OF
UGI UTILITIES, INC.**

TO ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

Pursuant to 52 Pa. Code § 5.224(c) and Administrative Law Judge David A. Salapa's Prehearing Conference Order dated July 19, 2012, UGI Utilities, Inc. – Gas Division (“UGI Gas”) hereby submits this Prehearing Conference Memorandum.

I. SERVICE OF DOCUMENTS

1. UGI Gas requests that all documents be served on:

Kent D. Murphy (ID # 44793)
Group Counsel –
Energy and Regulation
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Phone: 610-768-3631
E-mail: murphyke@ugi.com

UGI Gas agrees to receive service of documents electronically in this proceeding. Further, to the extent that materials are available electronically, it is requested that copies be served upon David B. MacGregor at dmacgregor@postschell.com and Christopher T. Wright at cwright@postschell.com.

II. PROCEDURAL HISTORY.

2. By Secretarial Letter dated June 11, 2012, UGI Gas was served with the Formal Complaint of the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”). The allegations in the Complaint arise from I&E’s investigation of an incident involving the failure of a cast iron main and fire that occurred on February 9, 2011, in Allentown, Pennsylvania. The Complaint alleges that, in connection with the incident, UGI committed several violations of the Public Utility Code, the Federal Pipeline Safety Standards, and UGI’s Gas Operations Manual. Based on these allegations, the Complaint requests, *inter alia*, that the Commission order UGI to pay specified civil penalties, modify its odorant testing procedures, and accelerate its pipeline replacement program.

3. On July 2, 2012, UGI Gas filed an Answer to the Formal Complaint, asserting that the allegations in the Formal Complaint fail to support a finding that UGI has violated the Public Utility Code, applicable federal and state regulations, or UGI’s Gas Operations Manual. While the Answer denied certain of the assertions contained in the Formal Complaint, it did not deny the seriousness of the incident or the desirability of taking action to enhance UGI Gas’ practices. The Answer further indicated that UGI Gas intended to meet and work with I&E, and other offices within the Commission to determine whether UGI Gas’ procedures, policies, and training can be further improved through reasonable and practical measures that will help enhance the safety and reliability of its service to customers.

III. BURDEN OF PROOF

4. Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. 10037853v1

Cmwlth. 1990); *see also In Re: Pa. PUC v. Jackson Sewer Corporation*, Docket Nos. R-00005997, et al., 2001 Pa. PUC LEXIS 53 at *9 (September 28, 2001) The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). However, the Commonwealth Court has explained that:

Once it is determined that the complainant has made out his *prima facie* case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with the complainant. The Commission must measure the weight and credibility of all the evidence, and simply because the ratepayer has presented a *prima facie* case does not obligate the Commission to credit this evidence or to give it any special weight. If the utility presents evidence found to be of co-equal (or greater) weight with that of the complainant, the complainant will not have met his burden of proof.

Milkie v. Pa. PUC, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). Thus, in the context of a formal complaint proceeding, the complainant bears the ultimate burden of persuasion, which must be satisfied by a preponderance of the evidence.

IV. ISSUES AND STATEMENT OF EVIDENCE

5. The Complaint's 179 individual counts are focused on four principal allegations: (1) UGI Gas failed to promptly and effectively respond to a gas leak or explosion; (2) UGI Gas had insufficient levels of natural gas odorant in its distribution system at the time of the incident; (3) UGI Gas' natural gas odorant testing program failed to comply with federal and state regulations; and (4) UGI Gas failed to adequately and timely respond to "warning signs" regarding the integrity of its cast iron mains. Each of these issues and the evidence that UGI Gas intends to introduce in response are summarized below. UGI Gas reserves the right to present additional evidence and raise additional issues as may be necessary to support its case and respond to the evidence presented by I&E.

A. RESPONSE TO A GAS LEAK OR EXPLOSION

6. The Formal Complaint alleges that UGI Gas failed to comply with its emergency procedures that require UGI Gas to make safe any actual or potential hazard to life or property. In support, the Formal Complaint asserts that UGI Gas did not attempt to close curb valves to the remaining residences, 530 to 540 North 13th Street, even though all but two of those residences were served with gas. The Formal Complaint contends that, if proven, the above omission would be a violation of 52 Pa. Code § 59.33(a); 66 Pa.C.S. § 1501; 49 CFR § 192.605(a); 49 CFR §§ 192.615(a)(3)(i) and (iii); and 49 CFR §§ 192.615(a)(6) and (7). *See* Formal Complaint, Count 178, ¶52.

7. UGI Gas intends to demonstrate that, at the time of the incident, it complied with its emergency procedures that require prompt and effective response to a notice of gas detected near a building and/or an explosion occurring near or directly involving a pipeline facility. UGI Gas will show that it immediately responded to the incident and began to take appropriate steps and measures to locate the source of the suspected gas, without jeopardizing the safety of the public, UGI employees, or emergency and fire personnel working in the area. UGI Gas also intends to demonstrate that its response activities were restricted due to several conditions that limited access to the incident site, including, but not limited to: the initial safety perimeter established by the fire personnel; the location of the emergency response equipment and vehicles battling the fire; heavy smoke and intense flames; water from firefighting activities and the resulting ice; the significant debris from the explosion that had to be cleared; the presence of downed power lines; the thick layer of frost in the ground; and the reinforced concrete underlying the asphalt. UGI Gas will further demonstrate that it devoted significant resources to monitoring gas leaks, locating the suspected source of the gas, and shutting off the gas flow as soon as reasonably and safely practicable.

8. The Formal Complaint also alleges that UGI Gas failed to comply with its emergency procedures that require prompt and effective response to a notice of gas detected near a building and/or an explosion occurring near or directly involving a pipeline facility. In support, the Formal Complaint asserts that UGI Gas did not diminish the flow of gas for approximately five hours after the explosion at 3:45 AM on February 10, 2011, because UGI Gas was unable to immediately isolate the suspected source of the gas due to the lack of valves in its low pressure distribution system. The Formal Complaint contends that, if proven, the above omission would be a violation of 52 Pa. Code § 59.33(a); 66 Pa.C.S. § 1501; 49 CFR § 192.605(a); 49 CFR §§ 192.615(a)(3)(i) and (iii); and 49 CFR §§ 192.615(a)(6) and (7). *See* Formal Complaint, Count 179, ¶ 53.

9. UGI Gas intends to demonstrate that, at the time of the incident, it complied with its emergency procedures that require making safe any actual or potential hazard. UGI Gas will show that the natural gas shutdown of all affected areas was completed by 3:45 a.m. . UGI Gas will demonstrate that the only structure fire at the incident site that appeared to be fueled by escaping natural gas was 544 N. 13th Street. Because the fires at 530-540 N. 13th Street did not appear to be fueled by escaping natural gas, UGI Gas' immediate focus was to shut off the curb valve at 544 N. 13th Street as soon as reasonably and safely practicable. UGI will show that it located and shut off the service valves for 530-540 N. 13th Street immediately after the natural gas shutdown was completed by 3:45 a.m. UGI Gas also will demonstrate that it worked with the fire department to clear debris to locate the curb valves, and that it was unable to access these curb valves earlier due to the conditions at the incident site, including the conditions described above in Paragraph 7.

B. LEVELS OF NATURAL GAS ODORANT

10. The Formal Complaint alleges that UGI Gas failed to maintain an odorant sampling program that adequately demonstrates concentrations of odorant throughout its distribution system. In support, the Formal Complaint asserts that UGI Gas conducts weekly sniff tests at only one location in Allentown where the gas enters its distribution system, but does not test throughout its distribution system. The Formal Complaint also suggests that odorant fade was an issue in this case. The Formal Complaint contends that, if proven, the above omission would be a violation of 52 Pa. Code § 59.33(a); 66 Pa.C.S. § 1501; and 49 CFR §§ 192.625(a) and (I) for each week that the violation continued for a period of three years. *See* Formal Complaint, Counts 1-156, ¶ 48.

11. UGI Gas intends to demonstrate that it maintained an odorant sampling program that appropriately monitors the concentration of odorant throughout its distribution system, consistent with the applicable federal and state regulations and UGI Gas' Gas Operations Manual. UGI Gas will show that it conducts weekly testing at numerous locations on its Lehigh system. The weekly tests verify that the odor consistently remains within the accepted range and enables UGI Gas to detect those instances, if any, when odor levels fall outside the required level.

12. UGI Gas also intends to demonstrate that its odor monitoring system is compliant with the applicable state and federal regulations and UGI's Gas Operations Manual. UGI Gas will show that the low pressure system serving the portion of Allentown at the time of the incident, odorant testing was conducted at the medium-to-low pressure regulator station at the Allentown Plant located at 2nd and Union Streets. This regulator station is the primary source of gas supplied to UGI Gas' low pressure system in Allentown. UGI Gas will demonstrate that the odorant readings taken at the medium-to-low pressure regulator station at

2nd and Union Streets have consistently indicated that the gas has been odorized within the limits required by the applicable federal and state regulations and UGI's Gas Operations Manual. UGI Gas also will show that there is nothing to suggest that the odorant at the source is any different than throughout the rest of the low-pressure distribution system.

13. UGI Gas intends to further demonstrate that odorant fade is not an issue in this case. UGI Gas will show that, given the odorant complaint calls received by UGI, both before and after the incident, and the results of UGI's odorant tests immediately following the incident, odorant fade was not a factor in this case. UGI Gas also will show that the consistency of appropriate odor levels at the Allentown Plant located at 2nd and Union Street and through the rest of its system confirms that the gas was odorized within the limits required by the applicable federal and state regulations and UGI's Gas Operations Manual.

C. ODORANT TESTING PROGRAM

14. The Formal Complaint alleges that UGI Gas did not follow the emergency procedures set forth in UGI's Gas Operations Manual, which states that "Odorant tests shall be made in the immediate affected area and at the closest delivery point." In support, the Formal Complaint asserts that UGI Gas' Meter & Regulator technicians performed odorant testing at 1202 Allen Street and 1430 Allen Street, which are two test points in the medium pressure system and not in the same low pressure district as the affected 12-inch main. The Formal Complaint contends that, if proven, the above omission would be a violation of 52 Pa. Code § 59.33(a); 66 Pa.C.S. § 1501; and 49 CFR § 192.605(a). *See* Formal Complaint, Counts 176, ¶ 50.

15. UGI Gas intends to demonstrate that it followed the emergency procedures set forth in its Gas Operations Manual when its technicians performed odorant testing at 1202 W. Allen Street and 1430 W. Allen Street. UGI Gas will show that odorant levels were checked at

the closest locations to the incident site at which readings could be accurately and safely taken. However, as explained above in Paragraph 7, there were limited locations near the incident site at which readings could be accurately and safely obtained.

16. UGI Gas also intends to demonstrate that the Meter and Regulator employees conducted odorant testing at 1202 W. Allen Street and 1430 W. Allen Street, which are approximately one block away from the incident site. UGI Gas will show that these readings indicated that the odorant levels were within the gas odor intensity range required by federal and state regulations and UGI's Gas Operations Manual. UGI Gas will show that these odorant readings were obtained in compliance with standards and practices set forth in UGI's Gas Operations Manual.

17. UGI Gas also will demonstrate that odorant testing was also conducted at the medium-to-low pressure regulator station at the Allentown Plant located at 2nd and Union Streets following the incident. This regulator station is the primary source of gas supplied to the portion of UGI's low pressure system in Allentown involved in the incident. UGI Gas will show that the odorant reading taken at the medium-to-low pressure regulator station at 2nd and Union Streets indicated that the odorant levels were within the gas odor intensity range required by federal and state regulations and UGI's Gas Operations Manual.

18. In addition, the fact that the odorant testing immediately following the incident was conducted on the medium pressure system rather than on the low pressure system is irrelevant. UGI Gas will show that the main pressure, *i.e.*, medium or low pressure, would not have any impact on the odorant levels of gas supplied by the same source.

D. INTEGRITY OF CAST IRON MAINS

19. The Formal Complaint alleges that UGI Gas failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities. In support, the Formal Complaint

asserts that UGI Gas did not adequately and timely respond to ample warning signs regarding the integrity of its cast iron mains in the Allentown area, including several catastrophic explosions resulting from corroded/graphitized mains, as well as a Class II Priority Action recommendation from the NTSB in 1992 following a fatal explosion, recommending replacing cast iron mains on which graphitization was found in a planned and timely manner. The Formal Complaint contends that, if proven, the above omission would be a violation of 52 Pa. Code § 59.33(a); 66 Pa.C.S. § 1501; and 49 CFR § 192.489 for each year since 1992 that UGI failed to timely act. *See Formal Complaint, Counts 157-175, ¶ 49.*

20. UGI Gas intends to demonstrate that it did not fail to furnish and maintain appropriate, efficient, safe, and reasonable service and facilities. UGI Gas will show that there was nothing to suggest that UGI Gas should have known that the 12-inch cast iron main at issue in this case would have a material failure. UGI Gas will demonstrate that the Complaint's reliance on two other explosion incidents occurring in 1976 and 1990, and the recommendation of the National Transportation Safety Board following the 1990 explosion is misplaced.

21. UGI Gas also intends to demonstrate that, at the time of the incident, the 12-inch cast iron main was not a candidate for immediate replacement under the risk criteria set forth in UGI Gas' Gas Operations Manual because it did not trigger any of the criteria considered for maintenance and replacement of cast iron pipelines.

22. The Formal Complaint also alleges that UGI Gas failed to continually survey its facilities. In support, the Formal Complaint asserts that UGI Gas failed to monitor and respond to the forces that detrimentally affected the 12-inch cast-iron main, including, but not limited to, the distressed pavement on Allen Street, the sinking curb, the excavation activity that took place near the pipe, the corrosion that was noted on the pipe, and the pipe's leakage history. The Formal Complaint contends that, if proven, the above omission would be a violation of 52 Pa.

Code § 59.33(a); 66 Pa.C.S. § 1501; 49 CFR § 192.613(a); and 49 CFR § 192.755(a). *See* Formal Complaint, Count 177, ¶ 51.

23. UGI Gas intends to demonstrate that it properly surveyed its facilities. UGI Gas will show that that the condition of the surface pavement and the curb on W. Allen Street did not have any effect on the support of the main. UGI Gas also intends to demonstrate that it had conducted special cold weather surveys over and above what is required in the area of the N. 13th and W. Allen Streets on February 7 and 8, 2011, and that neither of these surveys detected any gas leakage at or near the incident site. UGI Gas will further demonstrate that the excavation activity that occurred near the main at issue in this case did not have any effect on the support of the main.

V. WITNESSES.

24. UGI Gas presently intends to offer the following witnesses to testify in this proceeding on the following subject matters:

<u>Witness</u>	<u>Subject matter</u>
Robert P. Krieger Vice President, Operations UGI Utilities, Inc. 2525 N. 12th Street, Suite 360 Reading, Pennsylvania 19612	Response to a Gas Leak or Explosion Levels of natural gas odorant Odorant testing program Integrity of Cast Iron Mains
Eric S. Swartley Manager, Compliance and Damage Prevention UGI Utilities, Inc. 2525 N. 12th Street, Suite 360 Reading, Pennsylvania 19612	Response to a Gas Leak or Explosion Levels of natural gas odorant Odorant testing program Integrity of Cast Iron Mains
Christopher L. Clancy Damage Prevention and Claims Administrator UGI Utilities, Inc. 2525 N. 12th Street, Suite 360 Reading, Pennsylvania 19612	Response to a Gas Leak or Explosion Levels of natural gas odorant Odorant testing program

Witness
David E. Bull,
Viadata
410 Longview Dr.
Sugar Land, Texas 77478-3725.

Subject matter
Levels of natural gas odorant
Odorant testing program

25. UGI Gas also reserves the right to call and present additional witnesses and experts to respond to I&E's direct case and to address any issues that may arise during the course of the proceeding.

VI. DISCOVERY

26. UGI Gas does not believe that any change or modification in the standard timelines for discovery set forth in the Commission's regulations is necessary or appropriate. UGI Gas also encourages the use of informal discovery to expedite the discovery process.

27. Although UGI Gas is not aware of any need to enter any special order regarding discovery, it may become appropriate for a protective order to be entered in this proceeding. If and when necessary, UGI Gas will file a motion for a protective order consistent with the Commission's regulations.

28. Pursuant to 52 Pa. Code § 5.324(a)1), UGI Gas requests that any party that intends to present expert witnesses at the hearing be ordered to (i) identify the each person the party intends to call as an expert witness, (ii) provide a copy of any expert reports; (iii) provide a statement of the facts and opinions to which the expert is expected to testify, and (iv) a summary of the grounds for each opinion. Alternatively, UGI Gas requests that a party that intends to present expert witnesses at the hearing be ordered to serve written direct testimony. 52 Pa. Code § 5.324(a)(2).

VII. LITIGATION SCHEDULE.

29. UGI Gas has conferred with I&E regarding the proposed litigation schedule. The parties have been unable to reach an agreement on a proposed litigation schedule, including the issue of whether written testimony is appropriate for this proceeding.

30. UGI Gas is prepared to discuss a reasonable and appropriate litigation schedule at the Prehearing Conference.

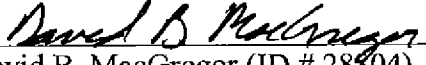
VIII. SETTLEMENT

31. UGI has undertaken an extensive investigation of the events related to the February 9, 2011 incident and has fully cooperated with and assisted I&E with its investigation of the events surrounding the incident.

32. UGI Gas submits that it remains open and available to continue to work with I&E, and other offices within the Commission, to fully resolve all of the issues related to I&E's complaint.

Respectfully submitted,

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Date: September 21, 2012

Attorneys for UGI Utilities, Inc.