



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

IN REPLY PLEASE
REFER TO OUR FILE

October 9, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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 Ms. Chiavetta:

Enclosed for filing is the original copy of the Answer in Opposition to Petition to Intervene Filed by Manuel E. Cruz on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Adam D. Young
Prosecuting Attorney
Attorney ID No. 91822

Counsel for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau Of Investigation and Enforcement	:	
	:	
	:	
Complainant	:	
	:	
v.	:	Docket No: C-2012-2308997
	:	
UGI Utilities, Inc.	:	
	:	
	:	
Respondent	:	

**BUREAU OF INVESTIGATION AND ENFORCEMENT’S ANSWER IN
OPPOSITION TO PETITION TO INTERVENE FILED BY MANUEL E. CRUZ**

AND NOW comes the Bureau of Investigation and Enforcement (“I&E”), by its counsel, Adam D. Young, and files this Answer in Opposition to Petition to Intervene in the above-captioned case pursuant to 52 Pa. Code § 5.66, and in support thereof states as follows:

1. On June 11, 2012, I&E filed a Formal Complaint against UGI Utilities, Inc. (“UGI”) following an investigation into the February 9, 2011 fatal gas explosion in Allentown, PA.
2. On July 2, 2012, UGI filed its Answer to the Formal Complaint denying all allegations.

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3. On July 19, 2012, a Prehearing Conference Order was issued scheduling this case for an initial Prehearing Conference on September 25, 2012.

4. On September 21, 2012, three days before the initial prehearing conference, Petitioner Manuel E. Cruz, as administrator of the estates of Katherine Cruz and Ofelia A. Ben, as well as individually, by and through his counsel Christian M. Perrucci, filed a Petition to Intervene in this case.

5. Pursuant to 52 Pa. Code § 5.72, a petition to intervene may be filed by a person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one in which the person is directly affected by the proceeding, *but such right or interest is not adequately represented by the existing parties, and to which the petitioner may be bound by the action of the Commission in the proceeding.* Alternatively, petitioner can claim another interest of such a nature that participation of the petitioner may be in the public interest.

6. Further, in order to confer standing in a proceeding, the interest must be substantial, immediate **and** direct. *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269 (1975).

7. A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest.

An "immediate" interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the statute or the constitutional guarantee in question. *George v. Pa. Publ. Util. Comm'n*, 735 A.2d 1282 (Pa. Cmwlth. Ct. 1999).

8. Petitioner is not able to show that he has a substantial interest in the outcome of this litigation that surpasses the common interest of all citizens. Petitioner has no prospect of obtaining relief, even if the Commission reaches a decision in Petitioner's favor. The Commission cannot authorize monetary damages to Petitioner. Rather, the Commission can award civil penalties, which must be paid to the General Fund, and order the implementation of measures to enhance gas safety for the benefit of all citizens.

9. Simply put, the Commission cannot provide relief to Petitioner that is more substantial or specific than what may be realized to benefit the common interest of all citizens.

10. Arguably for this very reason, Petitioner has filed a civil suit against UGI for wrongful death stemming from the same February 9, 2011 incident in the Northampton Court of Common Pleas at Docket No. C-48-CV-2012-0454.

11. At Paragraph 13 of its Petition to Intervene, Petitioner states the position that "the gas company has the duty to take proper care of the gas mains and pipes which are under its control, that the gas company breached its duty, and that the gas company is liable for all

injuries that resulted from the February 9, 2011 natural gas explosion due to the neglect of this duty.”

12. The proceeding currently before the Commission involves alleged violations of the Public Utility Code and the Code of Federal Regulations. Pursuant to 66 Pa.C.S. § 308.2(a)(11), I&E is the entity tasked with protecting the interests of the public by investigating, and if necessary, prosecuting such violations. The public interest, however, is not protected or better served in any way by allowing Petitioner to intervene in this matter in order to raise issues related to his private civil claim. The Commission cannot provide the remedy that the Petitioner seeks.

13. I&E nor the Commission has the statutory ability to adequately represent Petitioner’s pecuniary interests in a wrongful death case, nor is the Commission the proper venue to redress such issues. The Commission does not apply a negligence standard, as advanced at Paragraph 13 of the Petition to Intervene, nor can the Commission award civil damages for loss of life or damage to property, as advanced at Paragraphs 6-8 of the Petition to Intervene. Petitioner’s interests in this matter are adequately protected in the Court of Common Pleas by way of his civil claim, and such interests are not affected by the outcome of this case.

14. Petitioner has raised no specific grounds for granting intervention, but does make a vague reference to Petitioner’s “interest in the public safety,” which, contrary to Petitioner’s assertion, is adequately represented both by I&E, and the Commission at large.

Petitioner has not stated how his intervention will serve the public interest. To the contrary, the Petition to Intervene only discusses Petitioner's interest in his civil claims, not the in the general safety of the public.

15. Similar to a criminal proceeding in which a district attorney represents the government in the prosecution of criminal offenses, I&E represents the Commission and the public interest in the prosecution of regulatory violations and violations of the Public Utility Code. As in a criminal proceeding, the victim of the criminal offense does not intervene. The same holds true in Commission proceedings – I&E represents the safety of the public at large and individuals who have been injured or harmed by a public utility seek relief in civil proceedings.

16. In Paragraph 20, Petitioner also vaguely claims that he might be “bound in the pending civil action by the action of the Commission in [this] proceeding,” but does not state how this is true. In fact, the outcome of this proceeding has absolutely no effect on Petitioner, and in no way is Petitioner or his civil action bound by any decision of the Commission in this case. The sole purpose of this case is to resolve alleged state and federal regulatory violations by UGI, and will not address negligence, negligence *per se*, strict liability, wrongful death, or any other related civil cause of action. Petitioner has a forum in which to resolve his civil claims, and that forum is not the Commission. While a finding of statutory violations by the Commission may aid Petitioner in his civil claims for negligence *per se*, that is not a basis for allowing Petitioner to intervene in this matter.

17. Additionally, the Petition to intervene is untimely. As relevant to this proceeding, 52 Pa. Code § 5.74 states that petitions to intervene may be filed following the filing of a complaint seeking Commission action, and shall be filed: (1) no later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings, but not less than the protest period established under §§ 5.14 and 5.53, absent good cause shown; (2) no later than the date fixed for filing protests as published in the Pennsylvania Bulletin except for good cause shown; and (3) in accordance with § 5.53 if no deadline is set in an order or notice with respect to the proceedings.

18. Giving Petitioner the benefit of the doubt and taking the longest of these deadlines, the Petition to Intervene should have been filed no later than sixty (60) days from the date the Answer was due (Monday, July 2, 2012), pursuant to 52 Pa. Code § 5.53. Thus the Petition to intervene should have been filed no later than August 31, 2012, absent good cause shown.

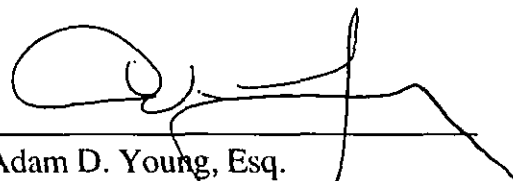
19. Even going one step further and giving Petitioner sixty (60) days from the date of the Prehearing Conference Order, the Petition to Intervene should have been filed no later than Tuesday, September 18, 2012, absent good cause shown. But Petitioner filed his intervention on September 21, 2012 without providing adequate grounds for intervention and without providing good cause for its untimeliness.

20. Petitioner has not, and in fact, cannot show good cause for filing the Petition to Intervene at such a late time. The Complaint was filed on June 11, 2012, and Petitioner, by

and through his counsel, was aware of the Complaint prior to its filing, and obtained a copy of the Complaint shortly after it was filed. Petitioner, by and through his counsel, was awaiting UGI's response to the Complaint and immediately obtained a copy of the Answer after it was filed. Since before the Complaint was filed, Petitioner, by and through his counsel, has been in constant communication with the Commission's Communications Office, I&E Prosecutory Staff, and others. Petitioner has even filed a Subpoena / Right to Know request on the Commission seeking its investigatory files for the Allentown incident. This is not a situation where Petitioner was unaware of the proceedings; Petitioner has had nearly four (4) months to make an informed decision on the appropriateness of intervention in this matter, yet Petitioner failed to do so in a timely manner.

WHEREFORE, for the foregoing reasons, the I&E respectfully requests that an Order be entered DENYING the Petition to Intervene.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adam D. Young', is written over a horizontal line. The signature is stylized and somewhat cursive.

Adam D. Young, Esq.
Prosecutor
Bureau of Investigation and Enforcement

Dated: October 9, 2012

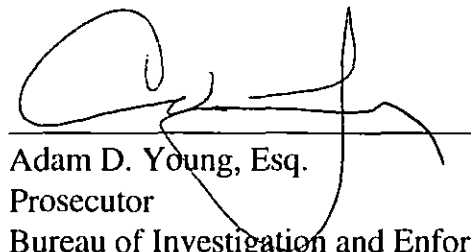
CERTIFICATE OF SERVICE

I hereby certify that I am this 1st day of October, 2012, serving the foregoing documents upon the persons listed below in the manner prescribed:

First Class Mail:

Honorable David A. Salapa

Administrative Law Judge Pa. Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Christopher Wright, Esq. Post & Schell, P.C. Four Penn Center 1600 John F. Kennedy Blvd Philadelphia, PA 19103-2808
Kent D. Murphy, Esq. UGI Corporation 460 North Gulph Road King of Prussia, PA 19406	David B. MacGregor, Esq Four Penn Center Post & Schell, P.C. 1600 John F. Kennedy Blvd Philadelphia, PA 19103-2808
Christian M. Perrucci, Esq. Florio, Perrucci, Steinhardt & Fader 60 West Broad Street Suite 102 Bethlehem, PA 18018	


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