



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

IN REPLY PLEASE  
REFER TO OUR FILE

Bp8# 2246921

October 17, 2012

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
2<sup>nd</sup> Floor, 400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission, Law Bureau Prosecutory  
Staff v. Kelly Fink, Claude Joseph Fink, Jr., Claude J. Fink and  
Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company;  
Docket No. C-2011-2246921

Dear Secretary Chiavetta:

Enclosed please find the original Settlement Agreement in the above-captioned proceeding. As evidence by the enclosed certificate of service, all parties have been served as indicated.

If you have any further questions regarding this matter, please contact me at 717-787-5262.

Sincerely,

Terrence J. Buda  
Assistant Counsel  
Law Bureau Prosecutory Staff

Enclosure

cc: As per Certificate of Service  
Heidi Wushinske, Assistant Counsel  
Whitney Snyder, Legal Intern

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**PENNSYLVANIA PUBLIC UTILITY COMMISSION,**  
**LAW BUREAU PROSECUTORY STAFF**

**v.**

**KELLY FINK, CLAUDE JOSEPH FINK, JR., CLAUDE J. FINK, AND**  
**LOIS A. FINK, INDIVIDUALLY AND JOINTLY, t/d/b/a FINK GAS COMPANY**

**DOCKET NO. C-2011-2246921**

**SETTLEMENT AGREEMENT**

**I. Introduction**

1. The Parties to this Settlement Agreement (Agreement) are the Pennsylvania Public Utility Commission's (Commission) Law Bureau Prosecutory Staff (Prosecutory Staff), P.O. Box 3265, Harrisburg, PA 17105-3265, and Kelly Fink,<sup>1</sup> Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company (Respondents), 153 Camp Road, Cowansville, PA 16218. Kelly Fink and Claude Joseph Fink, Jr. provide natural gas service to 22 residential customers in the village of Cowansville, Township of Sugarcreek, Armstrong County, Pennsylvania.

2. This matter concerns a formal Complaint proceeding regarding Respondents providing jurisdictional natural gas service to the public for compensation. As a result of negotiations, the Parties have agreed to resolve this matter as encouraged by the Commission's policy to promote settlements. See 52 Pa. Code § 5.231. The duly authorized Parties executing this Agreement agree to the settlement terms set forth herein, and urge the Administrative Law Judge and the Commission to approve them as being in the public interest.

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<sup>1</sup> Kelly Fink has changed her name to Kelly Ballock but shall be referred to as Kelly Fink for purposes of this Settlement Agreement.

## II. Prosecutory Staff Complaint Proceeding

3. On June 15, 2011, Prosecutory Staff filed a formal complaint (Complaint) alleging *inter alia*, that Respondents are owning and/or operating, in this Commonwealth, equipment or facilities located in Armstrong County providing public utility service as a retail natural gas supplier to the public for compensation. The Complaint further alleged that Respondents, Kelly Fink and Claude Joseph Fink, Jr., are currently the proprietors of Fink Gas Company, an unincorporated retail and wholesale natural gas business, from a principal place of business located at 153 Camp Road, Cowansville, PA 16218, and have been engaged in providing natural gas service to the public in Armstrong County for compensation. Moreover, the Complaint alleged that, Respondents, Claude J. Fink and Lois A. Fink previously owned and operated Fink Gas Company, providing natural gas service to the public for compensation but never received authorization from the Commission to transfer Fink Gas Company, without which the transfer of authority is inoperative. In the Complaint, Prosecutory Staff requested, *inter alia*, that the Commission order Respondents to file an application for certificate of public convenience to lawfully provide the natural gas service identified herein.

4. The parties participated in numerous settlement negotiations, but could not reach a settlement of the issues raised in the Complaint. Therefore, a prehearing conference was held on April 12, 2012, in which Claude J. Fink, Lois A. Fink, and Kelly Fink participated. Subsequently, initial hearings took place on June 26 and 27, 2012, in Pittsburgh, Pennsylvania. The transcript covered 284 pages, testimony was taken from ten witnesses, and four exhibits were received into evidence. At the conclusion of the

hearings, Prosecutory Staff and Respondents explored the possibility of resolving this Complaint proceeding. Prosecutory Staff and Respondents, including Claude J. Fink, Jr., conducted further settlement negotiations concerning the proceeding, and these negotiations culminated in this Agreement.

### **III. Settlement Terms**

5. Prosecutory Staff and Respondents desire to settle fully and completely and without further litigation all matters related to the proceeding at Docket No. C-2011-2246921.

6. Nothing contained herein may be taken as, or construed to be, an admission or confession of any violation of law, or any other matter of fact or law.

7. Prosecutory Staff and Respondents recognize the benefits of amicably resolving these differences. In recognition of the cost of further litigation, the time and expense of holding additional hearing, and the merits of the Parties' respective positions, the Parties have entered into negotiations and have agreed to settle the proceeding according to the terms and conditions set forth herein.

8. Prosecutory Staff and Respondents, intending to be legally bound and for consideration given, desire to conclude this Complaint proceeding and agree to stipulate as to the following terms:

a) The Parties agree that Fink Gas Company is a public utility providing jurisdictional natural gas service to the public for compensation consistent with the definition of public utility in Section 102 of the Public Utility Code, 66 Pa. C.S.

§ 102, that Kelly Fink and Claude Joseph Fink, Jr. file an application for a certificate of public convenience within thirty (30) days of filing the Agreement, and that the name Fink Gas not be used as the name of the applicant.

b) The Parties agree that Kelly Fink and Claude Joseph Fink, Jr. would continue to provide the natural gas service identified in the Complaint and Respondents are prohibited from abandoning any customer without prior Commission approval.

c) The Parties agree that Kelly Fink and Claude Joseph Fink, Jr. continue to furnish and maintain adequate, efficient, safe, and reasonable natural gas service and facilities, and that Kelly Fink and Claude Joseph Fink, Jr. correct violations and complete a list of improvements and upgrades set forth as follows:

1. Fix the leaks located at 392 Fosters Mill Road and the driveway of Alvin Fiscus at 397 Fosters Mill Road. **(49 CFR Part 192.703(b))**.
2. Replace all the above ground plastic with approved gas pipe and bury it to the proper depth listed in **(49 CFR Part 192.321 (a), (e), (g))**.
3. Replace all the hose clamps in the system with approved mechanical fittings. **(49 CFR Part 192.273)**.
4. Identify the types of plastic pipe in the system and if they are not the approved pipe replace them. **(49 CFR Part 192.59(a))**.
5. Install a tracer wire or other means of locating all plastic pipe. **(49 CFR Part 192.321(e))**.
6. Join Pennsylvania One Call and start marking pipelines when a One Call is received. **(49 CFR Part 192.614)**.
7. *Install line Markers with the required information at all road crossings.* **(49 CFR Part 192.707)**.
8. Identify the valves that need to be used in case of an emergency in the system and start inspecting them. **(49 CFR Part 192.747)**.
9. Perform a leak survey of the system. **(49 CFR PART 192.723)**.

10. Perform odor level testing with an instrument on the system. **(49 CFR Part 192.625(a), (c), and (f)).**
11. Purchase the equipment to perform leak surveys, odor level testing, and pipeline locating.
12. Complete an atmospheric corrosion inspection. **(49 CFR Part 192.481).**
13. Remediate any atmospheric corrosion that could affect the safe operation of the pipeline before the next scheduled inspection or is more severe than a light surface oxide. **(49 CFR Part 192.479).**
14. Create a map of the system. **(52 Pa. Code 59.37).**
15. Create an Operations and Maintenance Manual. **(49 CFR Part 192.605).**
16. Create an Emergency Plan. **(49 CFR Part 192.615).**
17. Create a Damage Prevention Plan. **(49 CFR Part 192.614).**
18. Create an Operator Qualification Plan and qualify all employees. **(49 CFR Part 192 Subpart N).**
19. Create a Drug and Alcohol plan and a testing program. **(49 CFR Part 199 and Part 40)**
20. Create a Distribution Integrity Management Plan. **(49 CFR Part T 192 Subpart P).**

The Parties further agree that Nos. 1, 2, and 3 will be completed within thirty (30) days of filing the Agreement and Nos. 4-20 will be completed within six (6) months of filing the Agreement.

d) The Parties agree that Kelly Fink and Claude Joseph Fink, Jr. will not sell or transfer any assets used to provide public utility gas service without prior Commission approval.

e) Respondents agree to pay a civil penalty in the amount of \$500.00 to the Commonwealth pursuant to Section 3301 of the Public Utility Code, to resolve, through this Agreement, the allegations raised by Prosecutory Staff's Complaint proceeding. Respondents shall remit the entire amount within 30 days from the date that

the Commission approves this Agreement. The check shall be made payable to the "Commonwealth of Pennsylvania" and addressed to "Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265."

f) The Parties agree that Claude Fink, Sr. and Lois A. Fink would be dismissed from the Complaint proceeding.

9. The Parties agree that any party may withdraw from this Settlement if the Administrative Law Judge or Commission substantively modifies the terms of this Settlement. In that event, any Party may give notice to the other parties that it is withdrawing from this Settlement. Such notice must be in writing and must be given within ten (10) business days of the issuance of any Initial or Recommended Decision or any Commission Order which adopts this Settlement with substantive modifications of its terms. *The consequence of any party withdrawing from this Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the Parties and all obligations of the Parties as set forth above to each other are terminated and of no force and effect.*

10. None of the provisions of this Agreement shall be considered an admission or finding of any fact or culpability in this or any subsequent proceeding. This Agreement is proposed by the Parties without any admission against, or prejudice to, any position that either Party may adopt during any subsequent proceeding of whatever nature.

#### IV. Statement in Support of Settlement

11. Pursuant to the Commission's Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements that are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004).

12. The Commission has determined that all alleged violations of the Public Utility Code and Commission regulations shall be subject to review under the standards enunciated in *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000); *Pa. P.U.C. v. NCIC Operator Services*, M-00001440 (December 21, 2000). Prosecutory Staff and Respondents submit that this Settlement Agreement complies with the requirements set forth in *Rosi* and that the terms of this Agreement are in the public interest.

13. The Parties further assert that approval of this Settlement is consistent with the Commission's Policy Statement regarding factors and standards for evaluating litigated and settled proceedings at 52 Pa. Code § 69.1201.<sup>2</sup> Under this Policy Statement, while many of the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized that in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b). The ten factors of the Policy Statement, as applied to this case are addressed herein.

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<sup>2</sup> This policy statement became effective upon publication in the Pennsylvania Bulletin on December 22, 2007, at 37 Pa. Bull. 6755.



14. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). The violations alleged here were of a serious nature as the Respondents willfully failed to obtain certificates of public convenience. However, although the request was not timely, Respondent did request on June 3, 2011 an opinion of counsel letter regarding their jurisdictional status.

15. The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). This alleged violation should not be deemed serious as the actions discussed in this proceeding do not involve personal injury or property damage.

16. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Since this matter is being resolved by settlement of the parties, this standard is not relevant here.

17. The fourth factor to be considered under the Policy Statement is whether the Respondents have made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Kelly Fink and Claude Joseph Fink, Jr. have agreed to file an application for a certificate of public convenience to lawfully provide public utility natural gas service.

18. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company’s actions and the duration of its

violations. 52 Pa. Code § 69.1201(c)(5). Although the public is adversely affected by a failure to comply with the Public Utility Code and Commission regulations, gas service to individual customers was not affected.

19. The sixth factor to be considered under the Policy Statement relates to the Respondents' compliance history. 52 Pa. Code § 69.1201(c)(6). Respondents do not have a compliance history with the Public Utility Code and the Commission's regulations but have agreed to comply with the Public Utility Code by filing an application for a certificate of public convenience.

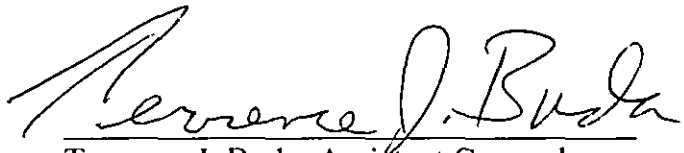
20. The seventh and eighth factors to be considered under the Policy Statement relate to whether the Respondents' cooperated with the Commission's investigation or proceeding and the appropriate settlement amount. 52 Pa. Code § 69.1201(c)(7), (8). Respondents fully cooperated with the Commission's Staff in this Complaint proceeding and during settlement discussions. Furthermore, consistent settlement amounts are a reliable method for assuring that public utilities are compliant with the Public Utility Code and Commission regulations. Prosecutory Staff submits that Respondent's payment of the agreed \$500.00 constitutes a reasonable and appropriate resolution of the dispute in this proceeding given the merits of the positions of the Parties in this proceeding.

21. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. This Agreement is consistent with prior decisions based upon the circumstances of this case with respect to violations of Commission regulations.

22. This Agreement represents the entire agreement between the Prosecutory Staff and Respondents with respect to the matters addressed herein. The Agreement addresses and attempts to remedy all allegations raised in this matter. The Law Bureau Prosecutory Staff and Respondents request that the Administrative Law Judge and Commission adopt an order approving the terms of this Agreement as being in the public interest.

IN WITNESS WHERE OF, the Prosecutory Staff and Respondents by their authorized representatives have hereunto set their hands and seals, intending to be legally bound hereby.

\_\_\_\_\_  
Kelly (Fink) Bullock



\_\_\_\_\_  
Terrence J. Buda, Assistant Counsel  
Law Bureau Prosecutory Staff  
Pennsylvania Public Utility Commission

Date: \_\_\_\_\_

Date: October 17, 2012

\_\_\_\_\_  
Claude Joseph Fink, Jr.

Date: \_\_\_\_\_

\_\_\_\_\_  
Claude J. Fink

\_\_\_\_\_  
Lois A. Fink

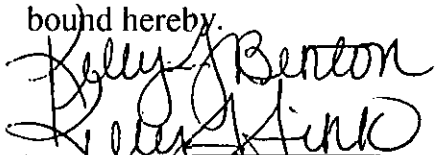
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\_\_\_\_\_  
Kelly J. Benton, fka Kelly J. Fink

\_\_\_\_\_  
Terrence J. Buda, Assistant Counsel  
Law Bureau Prosecutory Staff  
Pennsylvania Public Utility Commission

Date: October 4, 2012 

Date: \_\_\_\_\_

\_\_\_\_\_  
Claude Joseph Fink, Jr.

Date: \_\_\_\_\_

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Claude J. Fink

Date: \_\_\_\_\_

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Lois A. Fink

Date: \_\_\_\_\_

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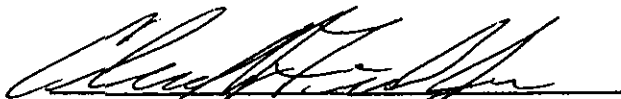
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\_\_\_\_\_  
Kelly (Fink) Bullock

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Terrence J. Buda, Assistant Counsel  
Law Bureau Prosecutory Staff  
Pennsylvania Public Utility Commission

Date: \_\_\_\_\_

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Claude Joseph Fink, Jr.

Date: 10-12-12

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\_\_\_\_\_  
Claude J. Fink

\_\_\_\_\_  
Lois A. Fink

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Kelly (Fink) Bullock

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Terrence J. Buda, Assistant Counsel  
Law Bureau Prosecutory Staff  
Pennsylvania Public Utility Commission


Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Claude Joseph Fink, Jr.

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Claude J. Fink

  
\_\_\_\_\_  
Lois A. Fink

Date: Oct. 1, 2012

Date: Oct. 1, 2012

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

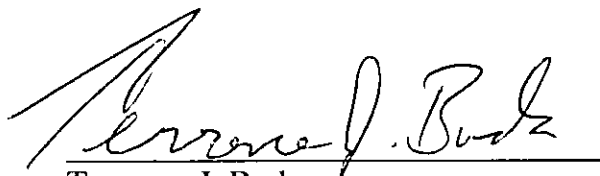
### Notification by first class mail addressed as follows:

HONORABLE KATRINA L. DUNDERDALE  
ADMINISTRATIVE LAW JUDGE  
PA PUBLIC UTILITY COMMISSION  
PIATT PLACE, SUITE 220  
301 FIFTH AVENUE  
PITTSBURGH, PA 15222  
[kdunderdal@pa.gov](mailto:kdunderdal@pa.gov)

ROGER T. MECHLING, ESQUIRE  
MECHLING & HELLER LLP  
216 NORTH JEFFERSON STREET  
KITTANNING, PA 16201  
**724.543.1120**  
*(REPRESENTING CLAUDE J. FINK  
AND LOIS A. FINK)*  
[rtmechling@mechlingheller.com](mailto:rtmechling@mechlingheller.com)

LINDA L. ZIEMBICKI, ESQUIRE  
LAW OFFICE OF LINDA L. ZIEMBICKI  
PO BOX 535  
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RURAL VALLEY, PA 16249  
**724.783.7088**  
*(REPRESENTING KELLY FINK)*  
[lziembicki@windstream.net](mailto:lziembicki@windstream.net)

CLAUDE JOSEPH FINK, JR.  
247 STATE ROUTE 4017  
COWANSVILLE, PA 16218



Terrence J. Buda  
Attorney ID # 33477  
Law Bureau Prosecutory Staff  
Pennsylvania Public Utility Commission

P.O. Box 3265  
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Dated: October 17, 2012

enclosure

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