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File #: 2270/151134

November 28, 2012

Secretary Rosemary Chiavetta  
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**

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Secretary Chiavetta:

This letter responds to the Exceptions filed in the form of a letter on November 20, 2012, by Intervenor Manuel E. Cruz, as Administrator of the Estates of Katherine Cruz and Ofelia A. Ben, and Manuel E. Cruz, Individually (hereinafter, collectively “Mr. Cruz” or “Intervenor”), in the above-captioned proceeding. UGI Utilities, Inc. again expresses its condolences to Mr. Cruz for the loss of three family members in the February 9, 2011 incident in Allentown. However, for the reasons set forth below, these Exceptions should be denied, and the Initial Decision of Administrative Law Judge David A. Salapa (“ALJ”) approving the settlement agreement between UGI Utilities, Inc. – Gas Division (“UGI Gas”), UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (collectively, the “UGI Companies”) and the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) should be approved.

### **Summary**

The UGI Companies request that the Commission deny the Intervenor’s Exceptions. Intervenor’s Exceptions generally focus on limiting any effect that this proceeding might have on the civil action he has filed against UGI Gas. As discussed below, plain language in the settlement already accomplishes this goal. UGI acknowledges Intervenor’s right to seek redress for his losses in civil court but disagrees with Intervenor that approval of the settlement will affect that right. If the Commission approves the settlement without modification, the outcome of this proceeding will have no effect on Intervenor’s ability to pursue his legal interests in the civil action. The UGI Companies also disagree with Intervenor’s efforts to prolong this

proceeding with additional discovery and process. It is long-standing practice before this Commission that a late intervenor to a Commission proceeding is required to accept the record and proceeding as he finds it. As discussed below, Intervenor failed to intervene until more than three months after the I&E complaint was filed and 19 months after the incident in Allentown took place. During this period, I&E conducted discovery and negotiated a settlement with the UGI Companies. Those efforts should not be upset by a late intervenor who otherwise has an appropriate forum to pursue civil remedies in a civil court and, in fact, is pursuing those remedies. Finally, UGI disagrees with Intervenor's effort to undermine the settlement by opposing the agreed upon 14-year cast iron main replacement program. This effort effectively disregards all of the other concessions made by the UGI Companies in this proceeding that benefit their customers and the general public. These include benefits related to odorant monitoring and injection stations, DSIC ratemaking recovery, and a 72 percent shortening of UGI's cast iron replacement program. The settlement is fair and reasonable and should be approved by the Commission.

### **Specific Replies**

Intervenor first notes that he was not involved in any aspect of the settlement in this proceeding. This is correct and appropriate as Counsel for Intervenor did not elect to file a petition to intervene until shortly before the September 25, 2012 prehearing conference. Moreover, his counsel did not enter an appearance at the prehearing conference to inform the parties of his interest in the proceeding, despite being fully aware of it. Counsel for Intervenor had knowledge of the fact that I&E filed a complaint with the Commission on June 11, 2012. (*See Cruz Petition to Intervene*, ¶ 14.) Further, Counsel for Intervenor had knowledge of the fact that UGI Gas filed an answer to the I&E complaint on July 2, 2012. (*See Cruz Petition to Intervene*, ¶ 15.) Notwithstanding, Counsel for Intervenor waited until September 21, 2012, to file a petition to intervene in this matter.

A late intervenor must accept the status of a proceeding as it stands and cannot use late intervention as a tool to disrupt or delay Commission action. The settlement was negotiated, finalized, and filed with the Commission before Mr. Cruz became a party to this proceeding. Intervenor also had the opportunity to comment on the settlement while it was pending before the ALJ, but elected not to do so. As a late intervenor, Mr. Cruz should not be permitted to attack a settlement at this late stage of the proceeding when he has been silent on the document to date. Any right to comment on the settlement therefore has been waived.

Intervenor's primary substantive concern appears to be that Commission action approving the settlement will adversely affect his rights in the ongoing civil litigation against UGI Gas, its parent company and various affiliates. (Page 2, fifth and sixth paragraphs). As found by ALJ Salapa on page 10 of the Initial Decision, this is not the case. Approval of the settlement by the Commission will not affect Mr. Cruz' interests or rights, or otherwise impact the civil matter pending before the Court of Common Pleas. Paragraph 42 of the settlement provides as follows:

42. The parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this matter. It is the intent of the parties that this Joint Settlement Petition not be admitted as evidence in any potential civil proceeding involving this matter. It is further understood that, by entering into this Joint Settlement Petition, the UGI Companies have made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in this Joint Settlement Petition.

Disregarding the plain language of Paragraph 42, the Exceptions attempt to draw support from an excerpt of the Initial Decision that is taken out of context. Specifically, this exception relies on ALJ Salapa's statement "that Cruz may be bound by the Commission's determinations regarding UGI's violation of the Public Utility Code, Commission regulations and federal regulations." As explained above, the Commission, if it approves the settlement without modification, will not make any findings regarding whether or not UGI violated the Public Utility Code, Commission regulations or federal regulations, and thus the settlement will have no impact on Intervenor's civil complaint. Moreover, even if the Commission did make factual or legal findings in this proceeding, they would have no effect on the civil action, which seeks monetary damages for claims of negligence based on a different legal standard.

Intervenor also asserts that he has not had the opportunity for discovery in this proceeding. This is not accurate. Discovery in this matter was conducted for approximately 19 months. As discussed above, a late intervenor must accept the proceeding as he finds it. And, in any event, Intervenor has not been harmed by a lack of discovery in this proceeding because he has already undertaken extensive discovery in the civil proceeding. To date, in the civil proceeding against UGI Gas, UGI Gas has provided Intervenor well over 1,000 pages of material responding to approximately 300 Interrogatories, 100 Requests for Production of Documents, and 50 Requests for Admission, in addition to making witnesses available for deposition. Furthermore, discovery in the civil proceeding remains open, so Intervenor is free to pursue further discovery in connection with that proceeding.

At page 2 of his Exceptions, Intervenor presents his sole attack on the substantive terms of the settlement itself. Despite indicating that he is pleased to learn that UGI Gas has agreed to a 14-year replacement period for cast iron, Intervenor proposes what he believes to be a more appropriate period of 10 years. The issue of the timing of main replacements is a complex issue involving significant and important policy considerations. Other than a statement of preference, Intervenor has offered no support for a 10-year replacement schedule. Furthermore, his position on this issue has been set forth in his Exceptions and can be considered by the Commission along with the settlement and the ALJ's Initial Decision.

The 14-year replacement period agreed to in the settlement reflects a very substantial acceleration in main replacement. As discussed in the UGI Companies' Statement in Support, the 14-year program shortens the approximate historic replacement trend for UGI Gas cast iron by 36 years, or by approximately 72 percent. As compared to the UGI Companies' historic and recently announced 20-year pace of cast iron replacement, the 14-year program will materially accelerate the replacement of aging cast iron mains. It also reflects a substantially faster replacement schedule than other similarly situated gas utilities.

In addition, the time frames for cast iron main replacement set forth in the settlement should be considered in the context of the current infrastructure construction environment. As explained in UGI Companies' Statement in Support, given the existing heightened demand for qualified resources, both the UGI Companies and the construction community must have sufficient time to bring on additional resources necessary to execute the accelerated main replacement with high quality and consistency. These additional resources must be operator qualified, trained in the UGI Companies' construction practices and methods, and pass rigorous contractor qualification criteria before they may be allowed to begin work, as required by the UGI Companies' practices, USDOT regulations, and the DSIC legislation. Moreover, UGI's construction projects must be well coordinated with the affected municipalities to avoid undue traffic congestion and interference with municipal services. Thus, it is important that proper consideration be given to the infrastructure construction environment in assessing the reasonableness of the time frames for main replacement set forth in the settlement. The UGI Companies believe that the accelerated, well-considered time frames set forth in the settlement are appropriate to enable the UGI Companies and necessary contractors to obtain and properly train and coordinate the resources required to replace the infrastructure in a safe and efficient manner.

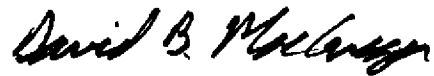
Finally, allowing Intervenor to delay these proceeding is not in the public interest. I&E has conducted an extensive investigation of this matter, and the parties have negotiated a detailed settlement that offers many benefits to UGI Gas customers and the general public. If approved, the settlement will provide substantial and important benefits to the customers and communities served by the UGI Companies, including substantial acceleration of the UGI Companies' pipeline replacement programs, enhancement of the odorant testing programs, and the installation of fixed odorant level monitoring equipment and fixed odorizers. Further, by volunteering to include UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. in the settlement, and thereby expanding the benefits of replacing pipelines made of non-contemporary materials to a broader geographic and demographic scope, the UGI Companies have demonstrated a commitment consistent with the Commission's public safety goals and objectives and broadly expanded the scope of the general public that will benefit from the commitments made in the settlement. Further proceedings in this matter will only delay the implementation of these many benefits and should be rejected, particularly where Mr. Cruz is pursuing his legal rights and seeking civil remedies in an appropriate forum.

A fair and reasonable compromise has been achieved in this case. The settlement, if approved, provides significant public benefits to all customers and communities within the service territories of the three UGI Companies. Both I&E and the UGI Companies fully support the

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settlement and the important public benefits it will provide. For the reasons explained above, the UGI Companies respectfully request that the Commission deny the Exceptions and approve the settlement in its entirety, without modification.

Respectfully Submitted,

A handwritten signature in black ink that reads "David B. MacGregor". The signature is written in a cursive, slightly slanted style.

David B. MacGregor

DBM/skr

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

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Date: November 28, 2012

  
David B. MacGregor