**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Law Bureau Prosecutory Staff :

:

v. : C-2011-2246921

:

Kelly Fink, Claude Joseph Fink, Jr., :

Claude J. Fink, and Lois A. Fink, :

individually and jointly, t/d/b/a :

Fink Gas Company :

**SIXTH INTERIM ORDER**

Scheduling Further Hearing

and

Requiring Parties to Submit Status

On June 15, 2011, the Law Bureau Prosecutory Staff (“Complainant” or “Law Bureau”) filed a complaint against Kelly Fink, Joe Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company, alleging the individuals operate an unincorporated gas utility business and engage in providing public utility service as a retail natural gas supplier to the public for compensation. On July 22, 2011, the Respondents responded separately to the complaint.

The presiding officer conducted a prehearing conference on April 12, 2012 and on April 13, 2012, the presiding officer issued the Second Prehearing Order which*, inter alia*, established various procedural provisions, outlined some discovery rules and scheduled the evidentiary hearings for June 26, 2012 and June 27, 2012.

Thereafter, on June 26, 2012 and June 27, 2012, the presiding officer conducted the initial hearings in this proceeding in Pittsburgh, Pennsylvania. Present during the hearings were attorneys representing the Law Bureau, Claude J. Fink and Lois A. Fink, and Kelly Fink. Claude Joseph Fink, Jr. was not present and was not represented by counsel.

Upon conclusion of taking testimony on the second day, the presiding officer presented the parties with an opportunity to engage in settlement negotiations which resolves the outstanding issues in a mutually-agreeable and amicable manner. The parties present accepted the opportunity.

On July 3, 2012, the presiding officer issued the Fourth Interim Order which ordered a status conference to be scheduled after August 6, 2012 and directed the parties to continue with settlement discussions. On July 27, 2012, the Office of Administrative Law Judge scheduled the status conference for Friday, August 17, 2012 at 10:00 a.m. with the parties to appear telephonically.

On Wednesday, August 15, 2012, the Law Bureau forwarded to the presiding officer a list of settlement terms to which three of the four named individual Respondents had agreed. The individuals who agreed to the terms were Claude J. Fink, Lois A. Fink, and Claude Joseph Fink, Jr.

On Friday, August 17, 2012, the presiding officer conducted a status conference to gauge the effectiveness of the parties’ negotiations, and determine if a subsequent hearing should be scheduled. At the status conference, all parties either were present and/or represented by counsel. The parties indicated on the record that negotiations resulted in a settlement of the issues between the Law Bureau and three of the four named individuals: Claude J. Fink, Lois A. Fink, and Claude Joseph Fink, Jr.

In addition, Claude Joseph Fink, Jr. indicated he faxed an Application for a Certificate of Public Convenience to the Law Bureau on August 14, 2012. The Application was sent to the Law Bureau in various transmissions and included maps and various documentation.

The counsel for Kelly Fink requested to have access to the Application filed by Claude Joseph Fink, Jr. before agreeing to the proposed settlement terms. The Law Bureau indicated it had a complete Application and would forward the same to counsel.

Because it appeared all parties were in agreement with the proposed settlement terms, the presiding officer issued the Fifth Interim Order which directed Law Bureau to send a copy of the Application for a Certificate of Public Convenience filed previously by Claude Joseph Fink, Jr., and required the parties to file a fully-executed settlement agreement on or before Friday, September 14, 2012. On September 25, 2012, Law Bureau provided an update on the status of the Settlement Agreement.

On October 10, 2012, the presiding officer advised the parties the hearing record would close on October 12, 2012 because no settlement agreement had been received. Again, Law Bureau provided an update on the status of the agreement and indicated all signatures had not been received yet. On October 15, 2012, Law Bureau advised the presiding officer that the last signature was being “overnighted.”

On October 17, 2012, Law Bureau filed the original Settlement Agreement with the Secretary’s Bureau. Paragraph No. 8 of the Settlement Agreement provided the bulk of the substantive agreement and, inter alia, indicated Respondents Kelly Fink and Claude Joseph Fink, Jr. would file an application for a certificate of public convenience within thirty days and would make a series of upgrades and improvements listed specifically in the Settlement Agreement.

On November 20, 2012, Law Bureau sent an e-mail to the presiding officer and all parties indicating that Paragraphs No. 8(a) and 8(c) of the Agreement were not completed by Respondents Kelly Fink and Claude Joseph Fink, Jr. within thirty days of the date of the Settlement Agreement. Law Bureau indicated it expected a resolution soon thereafter but if not resolved, Law Bureau intended to file a Request to Withdraw the Settlement Agreement.

To date, no further communication has been received from any party. It appears an essential provision of the Settlement Agreement and of the entire proceeding, namely, the requirement to file an application for a certificate of public convenience, has not been met. Without an application for a certificate of public convenience, this proceeding cannot be resolved.

THEREFORE,

IT IS ORDERED:

1. That the Office of Administrative Law Judge’s Scheduler shall schedule a Further Hearing in this matter for Wednesday, January 9, 2013 to be conducted at the Commission’s hearing room in Piatt Place, 301 Fifth Avenue, Pittsburgh, Pennsylvania at 10:00 a.m. for the sole purpose of taking in evidence on the issue of what is the appropriate remedy and actions to take because Respondents operated as a public utility without a certificate of public convenience, as discussed at the Initial Hearing on June 26, 2012 at Transcript pages 9 and 10.

2. That on or before 4:00 p.m. on Thursday, December 27, 2012, counsel for the Law Bureau Prosecutory Staff shall provide the presiding officer with a status concerning the parties’ discussions and the status of compliance with the proposed agreement between the parties.

Date: November 30, 2012

Katrina L. Dunderdale

Administrative Law Judge

**C-2011-2246921 - PA PUC 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**

***(REVISED 7/26/12)***

TERRENCE J BUDA ESQUIRE

HEIDI WUSHINSKE ESQUIRE

PA PUC LAW BUREAU

PO BOX 3265

HARRISBURG PA 17105-3265

**717.787.5000**

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)*

LINDA L ZIEMBICKI ESQUIRE

LAW OFFICE OF LINDA L ZIEMBICKI

PO BOX 535

900 EAST MAIN STREET

RURAL VALLEY PA 16249

**724.783.7088**

*(REPRESENTING KELLY FINK)*

CLAUDE JOSEPH FINK JR

274 STATE ROUTE 4017

COWANSVILLE PA 16218

**724.355.7719**