**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

: v. : C-2012-2308997

:

UGI Utilities, Inc. :

**Initial decision APPROVING JOINT SETTLEMENT PETITION**

Before

David A. Salapa

Administrative Law Judge

INTRODUCTION

This complaint against the utility concerns a natural gas explosion that occurred on February 9, 2011, in Allentown, resulting in five fatalities, one injury and extensive property damage. The parties to the proceeding have agreed to settle the matter. The terms of the settlement are set forth in a joint settlement petition. This initial decision approves the joint settlement petition.

HISTORY OF THE PROCEEDING

On June 11, 2012, the Pennsylvania Public Utility Commission’s (Commission’s) Bureau of Investigation and Enforcement (I&E) filed a complaint with the Commission against UGI Utilities, Inc. (UGI). The complaint concerns a natural gas explosion that occurred on February 9, 2011, at 542 and 544 North 13th Street, Allentown. The complaint alleges that UGI supplied natural gas service to 542 and 544 North 13th Street.

According to the complaint, the natural gas explosion occurred at approximately 10:48 p.m. and killed all five occupants of the residences at 542 and 544 North 13th Street. The explosion also injured the patron of a car wash located nearby on Allen Street. The fire resulting from the explosion destroyed or damaged six other residences. The complaint sets forth a detailed chronology of the events before and after the explosion occurred.

The complaint asserts that the cause of the explosion was a twelve inch cast iron gas main with a circumferential crack located under Allen Street. The complaint states that the twelve inch cast iron main was installed in 1928.

The complaint alleges that UGI violated the Public Utility Code, Commission regulations and federal regulations multiple times as follows:

1. UGI failed to maintain an odorant sampling program, violating 52 Pa. Code §59.33(a); 66 Pa. C.S. §1501 and 49 CFR §§19.625(a) and (f).

2. UGI failed to furnish and maintain adequate, safe and reasonable service by failing to respond to warning signs regarding the integrity of its cast iron mains in the Allentown area and failing to replace cast iron mains in a timely fashion, violating 52 Pa. Code §59.33(a); 66 Pa. C.S. §1501 and 49 CFR §192.489.

3. UGI failed to follow its emergency procedures by failing to perform odorant tests in the immediate affected area and at the closest delivery point, violating 52 Pa. Code §59.33(a); 66 Pa. C.S. §1501 and 49 CFR §192.605(a).

4. UGI failed to continually survey its facilities located in the area of the explosion and respond to indications that the structural integrity of the twelve inch main was being compromised, violating 52 Pa. Code §59.33(a); 66 Pa. C.S. §1501 and 49 CFR §192.605(a); 49 CFR §192.615(a)(3)(i) and (iii) and 49 CFR §192.615(a)(6) and (7).

5. UGI failed to comply with emergency procedures that require it to make safe any hazard to life or property by failing to close curb valves for residences at 530-540 North 13th Street, violating 52 Pa. Code §59.33(a); 66 Pa. C.S. §1501 and 49 CFR §192.605(a); 49 CFR §192.615(a)(3)(i) and (iii) and 49 CFR §192.615(a)(6) and (7).

6. UGI failed to comply with its emergency procedures that require prompt and effective response to a notice of gas detected or explosion occurring by failing to diminish the flow of gas for approximately five hours after the explosion, violating 52 Pa. Code §59.33(a); 66 Pa. C.S. §1501 and 49 CFR §192.605(a); 49 CFR §192.615(a)(3)(i) and (iii) and 49 CFR §192.615(a)(6) and (7).

The complaint requests that the Commission impose a civil penalty on UGI and direct UGI to take remedial actions as follows:

1. Direct UGI to pay a civil penalty of $386,000.00.

2. Direct UGI to monitor the level of odorant throughout its distribution system.

3. Direct UGI to modify its procedures on odorant testing.

4. Direct UGI to conduct continuing surveillance on its mains.

5. Direct UGI to commence a pipeline replacement program for all its cast iron mains to be completed within ten years.

6. Direct UGI to commence a pipeline replacement program for all its bare steel mains within thirteen years.

UGI filed an answer on July 2, 2012. The answer generally admits that a natural gas explosion occurred on February 9, 2011 at 542 and 544 North 13th Street and that UGI supplied natural gas service to 542 and 544 North 13th Street. The answer admits that the explosion caused the deaths, injuries and property damage set forth in the complaint. The answer takes issue with some of the events set forth in the chronology of events stated in the complaint.

The answer specifically denies the assertions stated in the complaint as follows:

1. Denies that UGI failed to maintain an odorant sampling program.

2. Denies that UGI failed to furnish and maintain adequate safe and reasonable service by failing to respond to warning signs regarding the integrity of its cast iron mains in the Allentown area.

3. Denies that UGI failed to follow its emergency procedures by failing to perform odorant tests in the immediate affected area and at the closest delivery point.

4. Denies that UGI failed to continually survey its facilities located in the area of the explosion and respond to indications that the structural integrity of the twelve inch main was being compromised.

5. Denies that UGI failed to comply with emergency procedures that require it to make safe any hazard to life or property by failing to close curb valves for residences at 530-540 North 13th Street.

6. Denies that UGI failed to comply with its emergency procedures that require prompt and effective response to a notice of gas detected or explosion occurring by failing to diminish the flow of gas for approximately five hours after the explosion.

The answer requests that the Commission deny the complaint.

By notice dated July 18, 2012, the Commission scheduled a prehearing conference for this matter on September 25, 2012 at 10:00 a.m. in Hearing Room 5, Commonwealth Keystone Building in Harrisburg and assigned the matter to me. I issued a prehearing conference order on July 19, 2012, setting forth the procedural matters to be addressed at the prehearing conference.

I conducted a prehearing conference in this case as scheduled on September 25, 2012 at 10:00 a.m. in Harrisburg. Present were counsel for I&E and UGI. At the time the prehearing conference took place, I had not been served with any petitions to intervene. The Commission’s records indicated that no petitions to intervene had been filed at the time of the prehearing conference. N.T. 4. Neither I&E nor UGI were aware of any petitions to intervene at the time of the prehearing conference. N.T. 4. I received a copy of the petition to intervene described below on the afternoon of September 25.

On September 21, 2012, Manuel E. Cruz (Cruz) filed a petition to intervene in this proceeding. The petition alleged that Cruz was the owner of the home located at 542 North 13th Street. According to the petition, Cruz has been appointed administrator of the estates of Katherine Cruz and Ofelia Ben, both of whom resided at 542 North 13th Street. Both Katherine Cruz and Ofelia Ben perished in the February 9, 2011 natural gas explosion. The petition asserted that Cruz has filed an action on his own behalf and as administrator of the estates of Katherine Cruz and Ofelia Ben against UGI in the Court of Common Pleas of Northampton County.

The petition stated that Cruz had a right to intervene in this proceeding and an interest in the proceeding such that intervention was necessary and appropriate. According to the petition, Cruz’s interest may be directly affected and is not adequately represented by the existing parties. The petition argued that Cruz might be bound in his civil action against UGI by the action of the Commission in this proceeding. The petition also contended that Cruz’s interest in public safety is an interest of such a nature that his participation is in the public interest. The petition requested that the Commission grant Cruz leave to intervene in this proceeding.

On October 9, 2012, I&E filed an answer opposing Cruz’s petition to intervene. I&E’s answer contends that Cruz does not have a substantial interest in the outcome of the litigation because the Commission cannot determine whether UGI was negligent and the Commission cannot award damages. I&E also argues that Cruz’s petition to intervene is untimely.

As of the date of this decision, UGI has not filed an answer to Cruz’s petition to intervene. Since UGI, pursuant to 52 Pa. Code §5.66, had twenty days from the date of service of Cruz’s petition, September 25, 2012, to file its answer, its answer to Cruz’s petition was due October 15, 2012. Cruz’s petition to intervene is ready for decision. For the reasons set forth below, I will grant Cruz’s petition to intervene.

On October 3, 2012, UGI filed a joint settlement petition and attachments. Included in the attachments to the joint petition are statements in support of the joint petition by I&E and UGI. In addition to I&E and UGI, the joint settlement petition includes UGI Central Penn Gas, Inc. (UGI Central Penn) and UGI Penn Natural Gas, Inc. (UGI Penn Natural) as parties and signatories. UGI served a copy of the joint settlement petition on I&E and Cruz. As of the date of this decision, Cruz has not filed any comments to the joint settlement petition.

Also on October 3, 2012, UGI Central Penn and UGI Penn Natural filed a petition to intervene in this proceeding. The petition to intervene explained that both UGI Central Penn and UGI Penn Natural are natural gas utilities affiliated with UGI.

The petition to intervene stated that I&E, UGI, UGI Central Penn and UGI Penn Natural have filed the joint petition for settlement and that portions of the joint petition for settlement would affect UGI Central Penn’s and UGI Penn Natural’s facilities, operations, practices and procedures. The petition to intervene asserted that the outcome of the I&E complaint against UGI may affect the interests of UGI Central Penn and UGI Penn Natural which are not adequately represented by any existing parties.

The petition to intervene represented that UGI Central Penn and UGI Penn Natural have conferred with I&E and that I&E did not oppose their intervention and that I&E waived the twenty day objection period. The petition to intervene requested that the Commission grant the petition and allow UGI Central Penn and UGI Penn Natural to participate in the proceeding for the sole purposes of being parties to the joint settlement petition.

By order dated October 9, 2012, I granted UGI Central Penn’s and UGI Penn Natural’s petition to intervene in this proceeding for the purposes of being parties to the joint settlement petition.

For the reasons set forth below, I recommend that the Commission approve and adopt the joint settlement petition.

CRUZ’S PETITION TO INTERVENE

Before addressing the joint settlement petition I will address Cruz’s petition to intervene. The Commission’s Rules of Practice and Procedure permit petitions to intervene. 52 Pa. Code §§5.71-5.76. The provision at 52 Pa. Code §5.72 governs what entities are eligible to intervene in a proceeding and states as follows:

#### § 5.72. Eligibility to intervene.

(a)  *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such 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 of the following:

    (1)  A right conferred by statute of the United States or of the Commonwealth.

    (2)  An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

    (3)  Another interest of such nature that participation of the petitioner may be in the public interest.

  (b)  *Commonwealth.* The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to paragraphs (1)—(3).

  (c)  *Supersession.* Subsections (a) and (b) are identical to 1 Pa. Code §  35.28 (relating to eligibility to intervene).

Allowance of intervention is a matter within the discretion of the Commission. City of Pittsburgh v. Pennsylvania Pub. Util. Comm’n, 33 A.2d 641(Pa. Super. 1943); N.A.A.C.P., Inc. v. Pennsylvania Pub. Util. Comm’n, 290 A.2d 704(Pa. Cmwlth. 1972)

Cruz’s petition claims that he is eligible to intervene in this proceeding, pursuant to 52 Pa. Code §§5.72(a)(2) and (a)(3) since, pursuant to 52 Pa. Code §5.72(a)(2) he has an interest that may be directly affected and that interest is not adequately represented by the existing participants and his interest may be bound in his pending civil litigation by the action of the Commission in this proceeding. Cruz also argues that, pursuant to 52 Pa. Code §5.72(a)(3), his interest in public safety is an interest that his participation in this proceeding may be in the public interest.

Cruz’s eligibility to intervene in this proceeding is governed by 52 Pa. Code §5.72(a)(2) since he is not a Commonwealth agency pursuant to 52 Pa. Code §5.72(b) and a statute of either the United States or the Commonwealth does not confer on him a right to intervene pursuant to 52 Pa. Code §5.72(a)(1). Cruz’s interest in this proceeding must be of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.

The Commission has defined the language in 52 Pa. Code §§5.72(a)(2), requiring that an person filing a petition to intervene have an interest which may be directly affected, as equivalent to an interest that is substantial, immediate and direct. Re Equitable Gas Co., 76 Pa. P.U.C. 23 (1992). This is the same requirement that an entity must meet in order to have standing to initiate a proceeding.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co., 75 Pa. P.U.C. 598, 603 (1991). As stated above, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. Joint Application of Pennsylvania‑American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co., A‑212285F0046/47 and A‑210870F01 (July 9, 1998); William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975); Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. P.U.C. 342 (1993); Manufacturers’ Association of Erie v. City of Erie - Bureau of Water, 50 Pa. P.U.C. 43 (1976); Waddington v. Pennsylvania Public Utility Commission, 670 A.2d 199 (Pa. Cmwlth. 1995), alloc. denied, 678 A.2d 368 (Pa. 1996). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corp., 73 Pa. P.U.C. 552 (1990).

Here, Cruz’s interest in the subject matter of the proceeding is direct if his interest is adversely affected by the actions challenged in the complaint, is immediate if there is a close causal nexus between his asserted injury and the actions challenged in the complaint, and is substantial if he has a discernible interest other than the general interest of all citizens in seeking compliance with the law. Ken R. ex rel. C.R. v. Arthur Z., 682 A.2d 1267 (Pa. 1996); In re El Rancho Grande, Inc., 437 A.2d 1150 (Pa. 1981); William Penn Parking Garage, Inc.; Empire Coal Mining & Development, Inc. v. Department of Environmental Resources, 623 A.2d 897 (Pa. Cmwlth. 1993); Landlord Service Bureau, Inc. Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. Official Court Reporters of the Court of Common Pleas of Philadelphia County v. Pennsylvania Labor Relations Board, 467 A.2d 311 (Pa. 1983).

The entire focus of I&E’s complaint is that UGI has failed to comply with the Commission’s regulations. Cruz’s interest is direct since he is adversely affected by the Respondent’s alleged failure to comply with the Commission’s regulations. Cruz’s interests are immediate because he has suffered injury as a result of the Respondent’s alleged failure to comply with the Commission’s regulations. His interests are substantial because he has a discernible interest other than the general interest of all citizens in seeking compliance with the law. Cruz has standing to intervene in this proceeding.

First, Cruz’s interest in this proceeding is direct. An entity’s interest in the subject matter of a proceeding is direct if its interest is adversely affected by the actions challenged in the complaint. Since Cruz is the owner of property that received service from UGI, he is adversely affected by UGI’s alleged failure to comply with Commission regulations.

Cruz has an immediate interest in the proceeding because he can demonstrate a close causal nexus between the UGI’s alleged failure to comply with the Commission’s regulations set forth in the complaint and the injuries he suffered. UGI’s alleged failure to comply with the Commission’s regulations caused damage to the property he owns and therefore caused him injury.

Finally, Cruz’s interest is substantial since he has a discernible interest, other than the concern that the Respondent comply with the Commission’s regulations. Cruz can demonstrate a causal connection between UGI’s alleged failure to comply with the Commission’s regulations and the damages he has suffered.

Next, I must determine whether Cruz’s interest is not adequately represented by an existing party. In this proceeding, the Commission delegated its authority with regard to enforcement of gas safety laws and regulations to I&E. Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011). However, in the context of this proceeding, I&E’s authority to enforce gas safety laws and regulations do not coincide with Cruz’s interest as a property owner whose property has been damaged by a natural gas explosion.

I&E’s authority to enforce the gas safety laws on behalf of the general public takes into account the broad public interest in providing safe natural gas service. I&E’s role in this proceeding is not to act as private counsel to an individual customer. In addition, I&E would have limited familiarity with the extent of damages suffered by Cruz. I&E ‘s representation of the broad public interest may conflict with Cruz’s individual’s interest in seeking compensation for damage to his property. I conclude that Cruz’s interest in this proceeding is not adequately represented by an existing party.

Finally, I must determine whether Cruz may be bound by the actions of the Commission in this proceeding. I agree with I&E that Cruz will not be bound by the actions of the Commission in this proceeding to the extent that the Commission will not determine whether UGI was negligent with regard to the February 9, 2011 explosion. However, it will be difficult for Cruz to argue in his civil action against UGI in the Court of Common Pleas of Northampton County that UGI violated its duty of care by violating the Public Utility Code, Commission regulations and federal regulations if the Commission has concluded otherwise. I conclude that Cruz may be bound by the Commission’s determinations regarding UGI’s violation of the Public Utility Code, Commission regulations and federal regulations.

Finally, I will address the timeliness of Cruz’s petition to intervene. I disagree with I&E that Cruz’s petition to intervene is untimely. The regulation at 52 Pa. Code §5.74, governing the filing of petitions to intervene states as follows:

#### § 5.74. Filing of petitions to intervene.

(a)  Petitions to intervene may be filed following the filing of an application, petition, complaint or other document seeking Commission action.

  (b)  Petitions to intervene 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 notice and protest period established under § §  5.14 and 5.53 (relating to applications requiring notice; and time of filing) 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.

(3)  In accordance with §  5.53 if no deadline is set in an order or notice with respect to the proceedings.

(4)  A statutory advocate may exercise a right of participation or file a notice of intervention consistent with law at any time in a proceeding. A statutory advocate exercising a right of participation or filing a notice of intervention following expiration of any protest or intervention period shall take the record as developed unless determined otherwise in exceptional circumstances for good cause shown.

(c)  Except with regard to statutory advocates under subsection (b)(4), intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

(d)  The Commission or presiding officer may, when the circumstances warrant, permit the waiver of the requirements of §  5.409 (relating to copies and form of documentary evidence) with respect to copies of exhibits for the intervenor.

(e)  Subsections (a)—(d) supersede 1 Pa. Code §  35.30 (relating to filing of petitions to intervene).

I&E argues that Cruz’s petition to intervene is untimely, pursuant to 52 Pa. Code §5.74(b), contending that, at most, Cruz had to file his petition to intervene no later than 60 days from the date an answer to the complaint was due or July 2, 2012. I disagree.

The Commission addressed the timeliness of petitions to intervene, pursuant to 52 Pa. Code §5.74, in its final rulemaking order at Final Rulemaking for the Revision of Chapters 1, 3 and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission, Docket No. L-00020156 (Order entered January 4, 2006) (Final Rulemaking Order). The Final Rulemaking Order was also published in the Pennsylvania Bulletin on April 29, 2012 at 36 Pa.B. 2097.

In the Final Rulemaking Order at page 55, the Commission addresses the time limits set forth in 52 Pa. Code §5.74. The Final Rulemaking Order states that the right of the statutory advocates to intervene at any time, pursuant to 52 Pa. Code §5.74(b)(4), extends to private litigants with that right limited by 52 Pa. Code §5.74(c), prohibiting intervention after the conclusion of an evidentiary hearing. The Final Rulemaking Order also notes that any party intervening after the expiration of an established protest period takes the record as it exists.

In this case, Cruz’s petition to intervene is not untimely since an evidentiary hearing has not been held. However, Cruz takes the record as it exists at the time of the order granting his petition to intervene. As noted above, UGI served a copy of the joint settlement petition on Cruz and Cruz has not filed any comments to the joint settlement petition. Since Cruz has not filed any comments opposing the joint settlement petition, I will presume that Cruz does not object to the terms of the joint settlement petition.

In conclusion, Cruz has demonstrated that he has standing to intervene in this proceeding by demonstrating that he has a direct, immediate and substantial interest in the subject matter of the complaint, is not adequately represented by any of the existing parties and may be bound by the actions of the Commission in this proceeding. I will grant the petition to intervene.

DISCUSSION

Having addressed Cruz’s petition to intervene, I will now address the joint settlement petition. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa. C.S. §501(a). The Commission delegated its authority with regard to enforcement of gas safety laws and regulations to I&E. Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).

As set forth above, I&E initiated this complaint against UGI for allegedly violating the Public Utility Code, Commission regulations and federal regulations regarding the safety of UGI’s natural gas distribution operations. UGI denies that it has violated the Public Utility Code, Commission regulations and federal regulations. After extensive discovery and prior to any evidentiary hearings, I&E and UGI have reached a settlement regarding the allegations set forth in I&E’s complaint.

Commission policy promotes settlements. 52 Pa. Code §5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §69.401.

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. Pennsylvania Pub. Util. Comm’n v. York Water Co., Docket No. R-00049165, (Order entered October 4, 2004); Pennsylvania Pub. Util. Comm’n v. C S Water and Sewer Assoc., 74 Pa. PUC 767 (1991). For the following reasons, I find that the joint petition for settlement, which is unopposed by any party, is in the public interest.

BACKGROUND

This complaint concerns the natural gas explosion that occurred on February 9, 2011 at 542 and 544 North 13th Street, Allentown. The explosion occurred at approximately 10:48 p.m. and killed all five occupants of the residences at 542 and 544 North 13th Street. The explosion also injured the patron of a car wash located on Allen Street. The fire resulting from the explosion destroyed or damaged six other residences. The cause of the explosion was a twelve inch cast iron gas main installed in 1928 under Allen Street that developed a circumferential crack.

UGI is a public utility subject to the Commission’s jurisdiction. UGI provides natural gas service to the Allentown area as well as other areas of the Commonwealth. I&E contends in its complaint that UGI violated the Public Utility Code, Commission regulations and federal regulations in failing to take steps to prevent the explosion from occurring. I&E also argues that UGI violated the Public Utility Code, Commission regulations and federal regulations in failing to adequately respond to the explosion.

UGI asserts that it complied with the Public Utility Code, Commission regulations and federal regulations and that in spite of its compliance, the explosion occurred. UGI asserts that once the explosion occurred, it complied with the Public Utility Code, Commission regulations and federal regulations in responding to the explosion.

I&E and UGI engaged in extensive discovery regarding the issues raised in the complaint. As a result of this discovery, and the efforts of I&E and UGI, those parties reached a settlement shortly after the September 25, 2012 prehearing conference. I&E and UGI are in full agreement that the settlement is in the best interests of I&E, UGI, UGI’s customers and the general public.

TERMS OF THE SETTLEMENT

Having stated the issues raised in the complaint, I will now address the terms of the proposed settlement. The joint settlement petition includes UGI, UGI Central Penn and UGI Penn Natural (UGI Companies). The joint settlement petition sets forth the terms of the settlement as follows:

A. The UGI Companies shall retire or replace all in-service cast iron mains in its

three regulated service territories over the period of 14 years in each case

commencing with the beginning of the month following the month in which

the Commission enters a final order approving this Joint Settlement Petition,

and such period shall not be altered absent a material change in circumstances

affecting public safety on the UGI Companies' gas systems or through

issuance by the Commission of a final order that generically requires all

natural gas distribution companies to replace or retire all in-service cast iron

pipeline over a shorter period of time.

B. The UGI Companies will be permitted to continue the pace of their current

30-year bare steel main replacement programs in each of their three regulated

service territories, and such period shall not be altered absent a material

change in circumstances affecting public safety on the UGI Companies' gas

systems or through issuance by the Commission of a final order that

generically requires all natural gas distribution companies to replace or retire

all in-service bare steel pipeline over a shorter period of time.

C. The UGI Companies will commit to enhance their odorant testing program by

additional testing at the extremities of their systems and at random testing

locations, and shall record and maintain records of such testing. The UGI

Companies shall fully implement the procedures in compliance with this

requirement no later than the end of the 6th full calendar month after the date

of a final order approving the Joint Settlement Petition.

D. The UGI Companies will commit to install fixed odorant level monitoring

equipment at all third party points of delivery into UGI pipeline systems and

shall record and maintain records of the results of such monitoring. The UGI

Companies shall phase in the installation of this equipment over the course of

the 24 months following the date of the final order approving the Joint

Settlement Petition.

E. The UGI Companies will commit to install fixed odorizers at gate stations

serving Allentown, Lancaster, Reading, Harrisburg, and other major

population centers, as identified in Attachment 1. The UGI Companies shall

phase in the installation of these stations over the course of the 24 months

following the date of the final order approving the Joint Settlement Petition.

F. UGI Gas will commit to pay a civil penalty in the amount of $386,000, which

it will agree not to seek to recover through rates regulated by the Commission.

UGI shall pay this amount no later than the end of the first full calendar month

after the date of a final order approving this Joint Settlement Petition.

G. The UGI Companies will be prohibited from seeking recovery of any costs

that would otherwise be eligible for recovery through a distribution system

improvement charge (DSIC), for a period of 24 months following the month

in which the Commission enters a final order approving this Joint Settlement

Petition. Following this 24-month restriction, should the UGI Companies

seek recovery of any costs through a DSIC, the UGI Companies agree to

comply with Act 11 of 2012, 66 Pa. C.S. §1350 et seq.

In consideration of the actions by UGI set forth above, I&E agrees to forbear from further prosecuting any formal complaint relating to UGI’s conduct as described in the joint settlement petition or in this formal complaint. Nothing in the joint settlement petition shall affect the Commission’s authority to receive and resolve any formal or informal complaint filed by any party with respect to the February 9, 2011, incident, except that no further civil penalties shall be imposed by the Commission for any of the actions described in the joint settlement petition or this formal complaint.

PUBLIC INTEREST

Having set forth the terms of the joint settlement petition, I will now address why approving and adopting the joint settlement petition is in the public interest. Initially, the joint settlement petition includes all three of the UGI Companies. By including all three of the UGI Companies, the joint settlement petition increases the number of customers and members of the general public who will be affected by its terms than would be the case if the matter were simply litigated between I&E and UGI. The increase in the number of people affected by the terms of the joint settlement petition means that more people will benefit from its terms. This increase in the number of people who benefit from the joint settlement petition serves the public interest.

Second, the joint settlement petition will provide substantial benefit to the UGI Companies’ customers and the general public by accelerating the UGI Companies’ pipe replacement programs. As the UGI Companies point out in their statement of support, under the terms of the joint settlement petition, the UGI Companies agree to replace all in service cast iron mains within 14 years. This commitment shortens the approximate 50 year replacement trend for the UGI Companies that existed prior to the February 9, 2011 incident by 36 years or approximately 72%. Furthermore, the UGI Companies will continue their current 30 year bare steel replacement program. This represents a shortening of the 58 year replacement program that existed prior to the February 9, 2011 incident. This represents an approximately 50% acceleration of the replacement time frame.

The acceleration of the cast iron and bare steel replacement will allow the UGI Companies to eliminate the risks associated with its remaining bare steel and cast iron pipeline over a shorter period of time. The accelerated replacement of cast iron and bare steel mains will improve the UGI Companies’ ability to provide safe and reliable service. The UGI Companies’ customers will benefit from safer and more reliable service. The general public will benefit from safer service. These benefits serve the public interest.

Third, the UGI Companies have agreed to enhance their odorant testing program by increasing the number of odorant testing points and installing fixed odorant level monitoring equipment at all third party points of delivery. The UGI Companies have also agreed to install odorizer equipment at more than 30 city gate and regulator stations that serve major population centers. These facilities complement existing odorizer facilities on the UGI Companies’ distribution systems and on interstate pipelines that deliver to the UGI Companies.

These improvements will provide additional assurance that gas throughout the UGI Companies’ systems will be odorized as required by state and federal regulations. These measures will help the UGI Companies to provide safe and reliable service. The UGI Companies’ customers will benefit from safer and more reliable service. The general public will benefit from safer service. These benefits serve the public interest.

Fourth, the UGI Companies have agreed not to recover the costs of pipeline replacement and odorant facilities through a DSIC for a 24 month period. The UGI Companies estimate that the cost to install the odorant facilities will be approximately $2-4 million. In addition, the UGI Companies estimate that it will require an increased capital investment of $18 million annually to implement the accelerated pipeline replacement program for a total of $55 million spent on replacement projects annually.

The UGI Companies have agreed to waive their right to recover any of the costs of the odorant facilities and pipeline replacement through a DSIC mechanism for a 24 month period. The UGI Companies estimate that this represents approximately $8.25 million in the first year and $16.5 million in the second year.

Since the UGI Companies will not seek recovery of these costs for a two year period, those costs will not be passed on to customers, leading to lower rates than would be the case if the UGI Companies were able to recover these costs. The UGI Companies’ customers will benefit from lower rates than would otherwise be the case. This benefit serves the public interest.

Finally, approving and adopting the joint settlement petition is also in the public interest because accepting the settlement will avoid the substantial time and expense involved in litigating the proceeding. Accepting the settlement will negate the need to examine or cross-examine witnesses, prepare main briefs, reply briefs, exceptions and reply exceptions and possibly file appeals. Avoiding these expenses serves the interests of I&E, the UGI, and the UGI Companies’ customers and therefore is in the public interest.

CIVIL PENALTY

Having explained why approving and adopting the joint settlement petition is in the public interest, I will now address whether the civil penalty that UGI has agreed to pay is appropriate, reasonable and in the public interest. I conclude that the civil penalty is appropriate, reasonable and in the public interest.

The joint settlement petition requires that UGI pay a civil penalty of $386,000.00 which it has agreed not to recover through rates regulated by the Commission. The Commission, at 52 Pa. Code §69.1201, has adopted a policy statement setting forth the standards it will consider in evaluating litigated and settled proceedings before the Commission. The policy statement is set forth below:

**69.1201. Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy.**

(a)  The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa. C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.

(b)  Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. The parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how and why the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party.

(c)  The factors and standards that will be considered by the Commission include the following:

(1)  Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2)  Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3)  Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4)  Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5)  The number of customers affected and the duration of the violation.

(6)  The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7)  Whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8)  The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9)  Past Commission decisions in similar situations.

(10)  Other relevant factors.

The Commission uses factors set forth in the policy statement to evaluate whether a settlement is reasonable and whether approval of the settlement is in the public interest. 52 Pa. Code §69.1201(a). In evaluating settlements, the Commission will not apply the factors in as strict a fashion as in a litigated proceeding. 52 Pa. Code §69.1201(b). In settled cases, the Commission will afford flexibility to parties so that the parties may reach an amicable resolution to a complaint or other matter as long as the settlement is in the public interest. 52 Pa. Code §69.1201(b).

I&E and UGI have addressed the factors set forth in 52 Pa. Code §69.1201 in their respective statements in support of the joint settlement petition. I will address each of the factors in turn.

The first factor addresses whether the conduct at issue was of a serious nature. There is no indication that willful fraud or misrepresentation was involved in the February 9, 2011 incident. It is also apparent that more was involved than simply an administrative filing or technical error. As UGI notes, gas safety is a significant issue that it takes seriously. Given the significance of gas safety, I conclude that UGI’s conduct warrants a higher penalty.

The second factor addresses the consequences of the conduct at issue. In this case, the natural gas explosion killed five individuals and injured one individual. The explosion and resulting fire destroyed or damaged at least eight homes. It is hard to imagine more serious consequences. UGI does not deny the seriousness of the incident. I conclude that the seriousness of the consequences resulting from the February 9, 2011 incident warrant a higher penalty.

The third factor addresses whether the conduct was negligent or intentional. Both UGI and I&E contend that this factor does not apply to this proceeding since it is the subject of a joint settlement proceeding. I agree and will not consider this factor.

The fourth factor addresses whether remedial actions were taken by the utility to modify internal practices and procedures in order to prevent similar conduct in the future. Both I&E and UGI outline the modifications that UGI has made to its procedures since the February 9, 2011 incident. UGI has increased its leak survey activity, increased its coordination and data sharing with municipalities in its service territory, prioritized pipeline replacement projects, reviewed its odorant testing program, improved its response to emergency calls, enhanced its construction oversight and accelerated replacement of its cast iron pipelines. These actions are in addition to the actions outlined above that UGI has agreed to undertake pursuant to the joint settlement petition. I conclude that the remedial actions undertaken by UGI should result in a lesser penalty.

The fifth factor addresses the number of customers affected and the duration of the violation. As set forth above, the natural gas explosion killed five individuals and injured one individual. The explosion and resulting fire destroyed or damaged at least eight homes. Other customers sustained property damage and service interruptions. I conclude that the number of customers affected by the February 9, 2011, incident warrants a higher penalty.

The sixth factor looks at the compliance history of the regulated entity. As a general proposition, neither the Public Utility Code nor the Commission’s regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. §1501 requires public utilities to provide reasonable and adequate, not perfect service. Since the Public Utility Code does not require perfect service, it seems logical that it cannot require perfect compliance.

I&E indicates that, regarding UGI’s cast iron pipeline risk management program, prior to 1996, when it committed to the National Transportation Safety Board (NTSB) to remove high risk 8 inch or smaller diameter pipeline, UGI averaged 1.2 reportable incidents per year for the twenty year period ending 1991. In the 16 year period since 1996, it has experienced two such incidents or a rate of 0.125 per year.

I&E also points out that regarding UGI’s compliance with state and federal regulations governing odorization, its compliance has not been subject to challenge over the several decades the program has been in place. I conclude that UGI’s compliance history should result in a lesser penalty.

The seventh factor asks whether the regulated entity cooperated with the Commission. According to I&E, UGI has cooperated with the Commission’s staff throughout its investigation as well as the complaint and settlement process. In addition, UGI has volunteered to include UGI Central Penn and UGI Penn Natural in the joint settlement petition in order to extend the benefits of the joint settlement petition to more customers. I conclude that UGI’s cooperation with the Commission in this matter should result in a lesser penalty.

The eighth factor requires that the amount of the civil penalty be enough to deter future violations. I&E states that the civil penalty in the amount of $386,000.00, the full amount demanded in the complaint, together with the costs of the terms of the settlement set forth above, is sufficient to deter UGI from committing any violations in the future. Given the circumstances of this proceeding, I conclude that a civil penalty larger than that requested by I&E is not necessary to deter future violations.

The ninth factor looks at past Commission decisions in similar situations. I&E states that there are no past Commission decisions involving a similar situation. I&E contends that this case should be viewed on its own merits. I am unaware of any past Commission decisions in similar circumstances. In the absence of any information regarding past Commission decisions, I will not consider this factor in evaluating the settlement.

The tenth factor looks at other relevant factors. Both I&E and UGI state that the fact that the parties have agreed to a settlement is of pivotal importance. A settlement of this matter allows the parties to move forward to focus on the agreed upon remedial actions rather than continuing to litigate the matter.

UGI also asserts that including UGI Central Penn and UGI Penn Natural in the joint settlement petition is another relevant factor for the Commission to consider. According to UGI, including UGI Central Penn and UGI Penn Natural in the joint settlement petition demonstrates UGI’s commitment to the Commission’s public safety goals and objectives. I conclude that these additional factors should result in a lesser penalty.

Based on a review of the factors set forth above, I conclude that a civil penalty in the amount of $386,000.00 is appropriate in this matter.

CONDITIONS OF THE SETTLEMENT

Having reviewed the terms of the settlement, the public interest in approving and adopting the joint settlement petition and the reasonableness of the civil penalty, I will summarize the conditions of the settlement set forth in the joint settlement petition. The settlement is conditioned upon the Commission's approval of the terms and conditions contained in the joint settlement petition without modification. If the Commission modifies the joint settlement petition, any party may elect to withdraw from the settlement and may proceed with litigation and, in such event, the joint settlement petition shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within five (5)business days after the entry of an order modifying the settlement.

In the event that the presiding Administrative Law Judge issues an initial decision

or recommended decision approving the joint settlement petition without modification, the joint

petitioners agree to waive the exception period, thereby allowing this joint settlement petition to

be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e)*.*

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 the joint settlement petition not be

admitted as evidence in any potential civil proceeding involving this matter. It is further

understood that, by entering into the 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.

The joint petitioners acknowledge that the joint settlement petition reflects a

compromise of competing positions and does not necessarily reflect any party's position with

respect to any issues raised in this proceeding. The joint settlement petition may not be cited as

precedent in any future proceeding, except to the extent required to implement its provisions.

The joint settlement petition is being presented only in the context of this

proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The

joint settlement petition is presented without prejudice to any position that any of the parties

may have advanced and without prejudice to the position any of the parties may advance in the

future on the merits of the issues in future proceedings, except to the extent necessary to

effectuate the terms and conditions of the joint settlement petition. The joint settlement

petition does not preclude the parties from taking other positions in any other proceeding.

The parties arrived at the settlement after conducting discovery and engaging in

discussions over several months. The terms and conditions of the joint settlement petition

constitute a carefully crafted package representing reasonable negotiated compromises on the

issues addressed therein. The settlement is consistent with the Commission's rules and

practices encouraging negotiated settlements set forth in 52Pa. Code §§69.391, 69.401.

CONCLUSION

For the reasons set forth above, I find that the proposed settlement is in the public interest and consistent with the Public Utility Code and Commission regulations. Accordingly, I recommend that the Commission approve the joint settlement petition.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding.

2. The Commission has the power and the duty to enforce the requirements of the Public Utility Code. 66 Pa. C.S. §501(a).

3. The Commission delegated its authority with regard to enforcement of gas safety laws and regulations to I&E. Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).

4. Commission policy promotes settlements. 52 Pa. Code §5.231.

5. The joint settlement petition submitted by I&E and UGI is reasonable and in the public interest and should be approved by the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the petition to intervene filed on September 21, 2012, by Manuel E. Cruz at C-2012-2308997 is granted.

2. That Manuel E. Cruz is admitted as an intervenor at C-2012-2308997.

3. That admission of Manuel E. Cruz as an intervenor, will not be construed as recognition by the Pennsylvania Public Utility Commission that he has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding.

4. That Manuel E. Cruz be added as an intervenor to the service list at C-2012-2308997.

5. That the formal complaint filed on June 11, 2012, by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement against UGI Utilities, Inc. at C-2012-2308997 is sustained.

6. That the joint settlement petition filed on October 3, 2012, between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and UGI Utilities, Inc., UGI Central Penn Gas, Inc. and UGI Penn Natural Gas, Inc. at C-2012-2308997 is hereby approved and adopted.

7. That UGI Utilities, Inc. shall pay a civil penalty of $386,000.00 as provided for in the Public Utility Code, 66 Pa. Code §3301, by certified check or money order, within twenty (20) days after the service of the Pennsylvania Public Utility Commission’s order to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, Pa. 17105-3265

8. That UGI Utilities, Inc., UGI Central Penn Gas, Inc. and UGI Penn Natural Gas, Inc., shall all comply with all directives, conclusions and recommendations in the joint settlement petition as approved and adopted in this Initial Decision that are not the subject of individual ordering paragraphs as fully as if they were the subject of specific ordering paragraphs.

9. That UGI Utilities, Inc. cease and desist from violations of the Public Utility Code and the Pennsylvania Public Utility Commission’s regulations.

Date: October 22, 2012

David A. Salapa

Administrative Law Judge