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December 12, 2012

Rosemary Chiavetta
Secretary
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**

Dear Secretary Chiavetta:

Enclosed please find the Answer of UGI Utilities, Inc. – Gas Division to the Petition to Remand of Manuel E. Cruz, as Administrator of the Estates of Katherine Cruz and Ofelia A. Ben, and Manuel E. Cruz, Individually for the above-referenced proceeding. Copies will be provided as indicated.

Respectfully Submitted,

David B. MacGregor

DBM/skr

Enclosures

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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Harrisburg, PA 17105-3265

Date: December 12, 2012



David B. MacGregor

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF
UGI UTILITIES, INC. – GAS DIVISION
IN OPPOSITION TO THE PETITION TO REMAND OF
MANUEL E. CRUZ, AS ADMINISTRATOR OF THE ESTATES OF
KATHERINE CRUZ AND OFELIA A. BEN, AND MANUEL E. CRUZ, INDIVIDUALLY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

UGI Utilities, Inc. – Gas Division (“UGI”) hereby submits this Answer in Opposition to the Petition for Remand of Manuel E. Cruz, as Administrator of the Estates of Katherine Cruz and Ofelia A. Ben, and Manuel E. Cruz, Individually (hereinafter, collectively “Intervenor”), pursuant to 52 Pa. Code § 5.61. UGI continues to extend its heart-felt sympathies to Mr. Cruz and his family for the loss of their family members on February 9, 2011. For the reasons discussed below and in UGI’s Reply Exceptions filed November 28, 2012, Intervenor’s Petition for Remand should be denied.

1. Admitted. It is admitted that Administrative Law Judge David A. Salapa (“ALJ”) granted Intervenor’s Petition to Intervene in an Initial Decision dated October 22, 2012. By way of further response, despite being aware of the Complaint filed by the Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) on June 11,

2012, counsel for Intervenor waited until September 21, 2012, to file the Petition to Intervene. On October 3, 2012, UGI and I&E filed a Joint Settlement Petition (“Settlement”) that fully resolves all issues related to the I&E complaint. As a late intervenor, Intervenor is required to accept the record and proceeding as he finds it. *See* Initial Decision, p. 12. The Settlement currently is pending before the Commission for disposition. Intervenor has taken advantage of the opportunity to raise all of his objections to the ALJ’s Initial Decision by filing Exceptions, which are currently pending before the Commission. Intervenor’s request for remand is inappropriate and inconsistent with established Commission practice in dealing with contested settlements.

2. Denied as stated. After a reasonable investigation, it appears that the likely source of the gas that led to the explosion and fire was a circumferential fracture on a 12-inch cast iron main discovered on West Allen Street.

3. Admitted.

4. Admitted. It is admitted that on September 21, 2012, Intervenor filed a Petition to Intervene. By way of further response, Intervenor had knowledge of the fact that I&E filed a Complaint with the Commission against UGI on June 11, 2012. *See* Petition to Intervene, ¶ 14. Intervenor also had knowledge of the fact that UGI filed an Answer to the I&E Complaint on July 2, 2012. *See* Petition to Intervene, ¶ 15. Notwithstanding, Intervenor waited to file the petition to intervene until the second business day prior to the scheduled Prehearing Conference and failed to inform the ALJ, I&E, or UGI of that status until after the Prehearing Conference. Intervenor elected to sit on his rights and postponed requesting intervenor status. Any harm alleged in the Petition is due to when Intervenor chose to intervene and comment, which is attributable solely to the actions of Intervenor’s counsel.

5. Denied as stated. Counsel for Intervenor actually attended the Prehearing Conference on September 25, 2012, but did not sign the appearance sheet and failed to respond to the ALJ's question regarding whether any interventions had been filed, despite the fact that Intervenor's counsel had in fact filed a Petition to Intervene four days earlier on September 21, 2012. Counsel for Intervenor clearly had the opportunity to advise the ALJ of the Petition to Intervene and to fully participate in the Prehearing Conference, but declined to do so. Any procedural harm alleged in the Petition is attributable solely to the actions of Intervenor's counsel.

6. Admitted.

7. Admitted.

8. Admitted. By way of further response, on October 3, 2012, I&E and the UGI Companies (UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.) filed a Settlement that fully resolves all issues related to the I&E Complaint. 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 far broader geographic and demographic scope, the UGI Companies have made an extraordinary commitment consistent with the Commission's public safety goals and objectives. Further proceedings in this matter will only delay the implementation of these many benefits and

should be rejected, particularly where Intervenor is pursuing his legal rights and seeking civil remedies in an appropriate forum.

9. Denied as stated. As explained above, Counsel for Intervenor elected not to file a petition to intervene until shortly before the September 25, 2012 Prehearing Conference. Moreover, as explained above, Counsel for Intervenor did not enter an appearance at the Prehearing Conference or otherwise inform the parties of his client's alleged interest in the proceeding, despite being present. As recognized in the Initial Decision, 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. *See* Initial Decision, p. 12. The settlement was negotiated, finalized, and filed with the Commission on October 3, 2012. The Intervenor was served with a copy of the Settlement and had the opportunity to comment on the Settlement prior to the issuance of the Initial Decision, but elected not to do so. Any harm alleged in the Petition is attributable solely to the actions of Intervenor's counsel.

10. Admitted in part and denied in part. It is admitted that Intervenor objects to the 14-year cast iron main replacement provision of the Settlement. However, the 14-year replacement period agreed to in the Settlement reflects a very substantial acceleration in main replacement. As discussed in UGI's Statement in Support, the 14-year program substantially shortens the approximate historic replacement trend for UGI cast iron by 36 years, or by approximately 72 percent. As compared to UGI's more recent 20-year pace of cast iron replacement, the 14-year program will even more materially accelerate the replacement of aging cast iron mains. It also reflects a substantially faster replacement schedule than other similarly situated gas utilities.

By way of further response, Intervenor has identified no genuine dispute of any material fact that would warrant a remand of this proceeding. The Settlement is fully supported by the Statements in Support submitted by I&E and UGI. The Settlement resolves all issues related to the I&E Complaint. Further, and more importantly, the Settlement provides significant public benefits to all customers and communities within the service territories of the three UGI Companies, including significant acceleration of the UGI Companies' pipeline replacement programs, enhanced odorant testing programs, and the installation of fixed odorant level monitoring equipment and fixed odorizers, as well as a 24-month stay-out period under the Distribution System Improvement Charge rate mechanism. Finally, the terms and conditions of the Settlement satisfy the ten factors set forth in the Commission's Policy Statement, 52 Pa. Code § 69.1201(c).

11. Denied. It is denied that UGI ignored warnings issued by a federal government agency and the history of incidents on UGI's cast iron mains. As explained in UGI's Statement in Support of the Settlement, UGI has made substantial efforts to significantly reduce the risk associated with its cast iron inventory. UGI's history can be divided into two separate periods, the period prior to 1996, when it committed to the National Transportation Safety Board ("NTSB") to remove certain smaller diameter cast-iron pipeline from its system, and the period thereafter. In the earlier period, UGI averaged 1.2 reportable incidents per year involving its cast iron system, as measured over the 20-year period ending 1991. In the 16-year period since it made its NTSB commitment to remove certain smaller diameter cast-iron pipeline, it has experienced two such incidents, for a rate of approximately 0.125 per year. During the same 16-year time-frame, UGI also accelerated the replacement of its cast iron distribution systems, with over 50 percent of its inventory of cast iron pipeline replaced to date.

The record demonstrates that UGI has made substantial strides towards significantly reducing the risk associated with its cast iron inventory. Its commitment to further accelerate that program in the Settlement evidences a resolve to eliminate that risk within a reasonably accelerated period of time, with a substantial related investment of capital and human resources. Continued compliance with this program and the cooperation of, and coordination with, all affected stakeholders will be essential to achieving that end. The Settlement further evidences UGI's good faith efforts to enhance the safety and reliability of its gas system, consistent with the purposes of the Code and the Commission's regulations.

12. Denied. Intervenor 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, the Intervenor 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.

Further, Intervenor has filed Exceptions to the Initial Decision, which currently are pending before the Commission. Intervenor's position on the 14-year replacement period for cast iron has been set forth in his Exceptions and will be fully considered by the Commission along with the Settlement and the ALJ's Initial Decision. The exceptions process is available to a late intervenor and Intervenor has fully availed himself of that process in this matter. A Petition for Remand, however, is inappropriate here and inconsistent with long-standing Commission precedent relating to the resolution of contested settlements.

13. Denied. As a late intervenor, Intervenor must accept the record as it exists at the time of the order granting his Petition to Intervene. Any alleged harm to Intervenor's ability to engage in the Commission's investigation of the incident is attributable solely to Intervenor's

delay in filing the Petition to Intervene. In further response, the matter pending before the Commission is an investigation and enforcement complaint. The sole issues raised by I&E's Complaint are whether UGI committed violations of the Public Utility Code, the Federal Pipeline Safety Standards, Commission regulations, and UGI's Gas Operations Manual and whether UGI should pay civil penalties, modify its odorant testing procedures, and accelerate its pipeline replacement program. I&E's Complaint is based upon its own independent investigation of the facts related to the February 9, 2011 incident. It also is denied that Intervenor has not had the opportunity to review the documents in support of the Settlement. Both I&E and UGI submitted Statements in Support of the Settlement, which provide the reasons that the Settlement is in the public interest and should be approved. These Statements in Support were served on Intervenor. Intervenor clearly has had the opportunity to review the documents in support of the Settlement and has filed Exceptions to the Initial Decision that fail to genuinely controvert any of the factual statements set forth in the Settlement or the Supporting Statements, or the reasonableness of the settlement package as a whole.

Finally, Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at *6 (August 31, 2012). Here, the Commission should not overturn an Initial Decision approving a Settlement that would provide substantial benefits to the general public where the lone challenge to the Settlement is based on

the request of a late Intervenor who had the opportunity but did not participate at the Prehearing Conference, who had the opportunity to submit comments but did not, who in fact filed Exceptions, and who has raised no genuine challenge to the lawfulness or reasonableness of any aspect to the Settlement.


14. Denied. The averments of Paragraph 14 are a conclusion of law to which no responsive pleading is required. To the extent a response is deemed necessary, UGI denies the same.

By way of further response, Intervenor 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, the Intervenor should not be permitted to attack the 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. Further, Intervenor has filed Exceptions to the Initial Decision, which currently are pending before the Commission. Intervenor's position on the 14-year replacement period for cast iron has been set forth in his Exceptions and will be fully considered by the Commission along with the Settlement and the ALJ's Initial Decision.

WHEREFORE, UGI Utilities, Inc. – Gas Division respectfully requests that the Pennsylvania Public Utility Commission (1) deny the Petition for Remand of Manuel E. Cruz, as Administrator of the Estates of Katherine Cruz and Ofelia A. Ben, and Manuel E. Cruz, Individually, (2) deny Intervenor’s Exceptions, (3) adopt the Initial Decision of Administrative Law Judge David A. Salapa, and (4) approve the terms of the Settlement without modification.

Respectfully submitted,

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Date: December 12, 2012

Attorneys for UGI Utilities, Inc.