



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

IN REPLY PLEASE
REFER TO OUR FILE

December 12, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

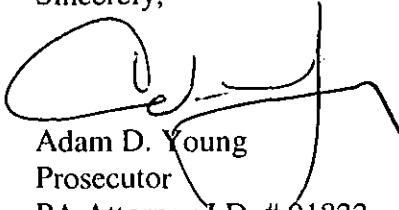
Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. UGI Utilities, Inc.
Docket No. C-2012-2308997

Dear Secretary Chiavetta:

Enclosed for filing is an original copy of the Bureau of Investigation and Enforcement's
Motion to Strike the Petition for Remand of Manuel E. Cruz in the above-captioned proceeding.

Copies have been served on the parties of record in accordance with the Certificate of
Service. If you have any questions, please contact me at (717) 772-8582.

Sincerely,



Adam D. Young
Prosecutor
PA Attorney I.D. #91822

Enclosure

cc: As per certificate of service

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**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	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §5.103, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) has filed a Motion to Strike the Petition for Remand of Manuel E. Cruz in the above-captioned matter. You are hereby notified to file a written response within twenty (20) days of the service of the Motion, consistent with Commission procedural regulations at 52 Pa. Code §5.61.

An original copy of your response must be filed with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Additionally, you must serve a copy on all parties who are listed on the Certificate of Service.



Adam D. Young
Prosecutor
PA Attorney I.D. 91822

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 772-8582

Dated: December 12, 2012

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

UGI Utilities, Inc.,
Respondent

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Docket No. C-2012-2308997

**MOTION TO STRIKE THE
PETITION FOR REMAND OF MANUEL E. CRUZ**

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In accordance with the Pennsylvania Public Utility Commission's (Commission or PUC) regulations at 52 Pa. Code §5.103, the Bureau of Investigation and Enforcement (I&E) files the following Motion to Strike the Petition for Remand of Manuel E. Cruz (Petition) in the above-captioned proceeding. In support of its motion, I&E submits as follows:

I. FACTUAL BACKGROUND

1. On June 11, 2012, I&E filed a complaint with the Commission against UGI Utilities, Inc. (UGI) concerning a natural gas explosion and fire that occurred on February 9, 2011, at 542 and 544 North 13th Street, Allentown, PA. The Gas Safety Division of I&E conducted an investigation and concluded that the source of gas that led to the explosion and fire was a circumferential fracture on a 12-inch cast iron main on West Allen Street, Allentown, PA. The 12-inch cast iron main was owned and operated by UGI Utilities, Inc. – Gas Division (UGI Gas).

2. In the complaint, I&E requested that the Commission direct UGI to pay a \$386,000 civil penalty, monitor the level of odorant throughout its distribution system, modify its procedures on odorant testing, conduct continuing surveillance on its mains, commence a pipeline replacement program for its cast iron mains to be completed within 10 years and commence a pipeline replacement program for its bare steel mains to be completed within 13 years.

3. On July 2, 2012, UGI filed an answer generally admitting that a natural gas explosion occurred on February 9, 2011, at 542 and 544 North 13th Street and that UGI supplied natural gas to those locations. UGI specifically denied I&E's allegations in the complaint.

4. By notice dated July 18, 2012, the Commission scheduled a prehearing conference on September 25, 2012. On July 19, 2012, the ALJ issued a prehearing conference order setting forth the matters to be addressed at the prehearing conference.

5. Cruz did not file a petition to intervene until September 21, 2012 – four days prior to the prehearing conference.¹ Despite being filed on September 21, 2012, no party was aware of the petition to intervene until after the prehearing conference concluded. In fact, during the prehearing conference, the ALJ asked those present in the hearing room if there were any petitions to intervene. Cruz's counsel or a representative from his attorney's law firm was in attendance at the prehearing conference, but did not respond to the ALJ's inquiry.

¹ Cruz waited nearly four months from the filing of I&E's complaint to petition to intervene. Counsel for Cruz was aware of I&E's complaint, as he obtained a copy of it from I&E prosecutors shortly after the complaint was filed. Further, before I&E's complaint was filed, counsel for Cruz filed a subpoena and Right-to-Know request on the Commission seeking its investigatory files on the Allentown incident. Thus, Cruz has been carefully observing this formal proceeding, even prior to its inception, and waited until the eleventh-hour to participate.

6. On October 9, 2012, I&E filed an answer opposing Cruz's petition to intervene, contending that Cruz lacked standing to intervene. I&E also argued that Cruz's petition to intervene was untimely filed, pursuant to 52 Pa. Code §5.74(b).

7. On October 3, 2012, UGI filed a joint settlement petition, including statements in support of the joint petition from I&E and UGI. In addition, the joint settlement petition included UGI Central Penn Gas, Inc. (UGI Central Penn) and UGI Penn Natural Gas, Inc. (UGI Penn Natural) as parties and signatories. Also on October 3, 2012, UGI Central Penn and UGI Penn Natural Gas filed a petition to intervene for the purposes of being parties to the joint settlement petition.

8. Notably, in the joint settlement petition, UGI agreed to pay the entire civil penalty that I&E sought – or \$386,000, and UGI Gas, UGI Central Penn and UGI Penn Natural Gas agreed to retire or replace all cast iron mains in its three regulated service territories over a period of 14 years.

9. On October 31, 2012, ALJ Salapa's Initial Decision was issued by Secretarial Letter. The Initial Decision granted the interventions of UGI Central Penn and UGI Penn Natural Gas for the purposes of being parties to the joint settlement, granted the intervention of Cruz and approved the joint settlement petition as being in the public interest.

10. Cruz filed Exceptions to the Initial Decision on November 20, 2012, complaining that he was not involved in the settlement negotiations, arguing that UGI should replace its cast iron pipeline in 10 years as opposed to 14 years, alleging the ALJ concluded that Cruz should be bound by the instant proceeding in the action that he filed in the Northampton County Court of Common Pleas, and asserting that he has the right to obtain discovery in this proceeding as a formal participant.

11. On November 30, 2012, I&E filed Reply Exceptions requesting that the Commission deny Cruz's Exceptions for numerous reasons that need not be restated here.

12. Cruz then files a Petition to remand this matter to the Office of Administrative Law Judge, stating the same reasons set forth in his Exceptions to the Initial Decision. Not only is the Petition for Remand superfluous, redundant, and duplicative, but it is also procedurally improper for the reasons set forth below.

II. CRUZ'S PETITION IS DUPLICATIVE, PROCEDURALLY INCORRECT AND SHOULD BE STRICKEN

13. In his Petition, Cruz complains that he was not involved or consulted during I&E's investigation of the explosion or in connection with any settlement negotiations that occurred between I&E and UGI. Cruz further conveys his dissatisfaction with the provision of the settlement that proposes to allow UGI to replace cast iron mains in 14 years. These concerns were raised in Cruz's Exceptions to the Initial Decision that were filed on November 20, 2012 and are currently under the Commission's consideration.

14. Cruz complains in his Exceptions, as well as in the instant Petition, that he was not afforded the opportunity to object to the settlement. This argument is without merit. Exceptions are the exclusive pleading where a party or intervenor is afforded the opportunity to raise arguments against an Administrative Law Judge's (ALJ) initial or recommended decision pursuant to the Commission's procedural regulations at 52 Pa. Code 5.533. Cruz took advantage of this opportunity by filing Exceptions. Accordingly, the instant filing, which raises almost identical arguments that were established in his Exceptions and was filed after the record was closed, is redundant, improper and should be stricken.

15. In addition, Cruz's Petition offers no new material facts that justify opening the record and permitting Cruz to present a case at this late hour. While Cruz expresses disagreement with some of the settlement terms, in particular the time frame in which UGI should replace its cast iron mains, Cruz offers no new concrete evidence that was not considered by the parties in reaching the settlement agreement. The settlement agreement, which was approved by the ALJ as being in the public interest, is now ripe for the Commission's consideration.

16. Cruz also raises in his Petition the issue that he was never "given the opportunity to engage in any step of the PUC's investigation of UGI's involvement in the February 9, 2011 deadly gas explosion." Petition at ¶ 13. This is because the investigation was being conducted by the Commission's Bureau of Investigation and Enforcement.

17. I&E is the entity established by statute to prosecute complaints against public utilities in order to protect the public interest pursuant to 66 Pa. C.S. §308(b). The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *See Implementation of Act 129 of 2008: Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

18. Cruz has no standing to investigate a public utility for possible violations of the public utility code, its regulations, or federal regulations. Cruz may conduct, and in fact has conducted, his own investigation into the February 9, 2011 gas explosion, insofar as it relates to his wrongful death claim. From a regulatory standpoint, however, that investigation is charged to I&E, which conducts the investigation without the aid of private parties.

19. Additionally, in his Petition, Cruz, once again, raises the issue that he never had an opportunity to engage in discovery and review the Commission's investigatory files. Cruz

has no right to see the Commission's investigatory files until such time as the Commission has made a final determination in this case. Under Section 335(d) of the Public Utility Code, 66 Pa. C.S. 335(d), the Commission must make a decision, enter into a settlement, or take any other official action before the records of the investigation can be released. And under no circumstances, except upon Order of the PUC, will UGI's accident report be released, and under no circumstances may it be used in a civil suit. *See* 66 Pa. C.S. 1508. Under the provisions of this section, the investigative report "shall not be open for public inspection, except by order of the Commission, and shall not be admitted in evidence for any purpose in any suit or action for damages growing out of any matter or thing mentioned in such report."

20. Moreover, the records created by gas safety inspectors who work in the PUC's Bureau of Investigation and Enforcement are not public records under the state's Right-To-Know Law because they involve "noncriminal investigations." *Pa. PUC v. Daniel Gilbert and the Wall Street Journal*, 40 A.3d 755 (2012).

21. Mr. Cruz has been advised of this fact several times, and this thinly-veiled attempt to intrude on the Commission's investigation and use the discovery process to obtain data he has routinely and rightly been denied access to several times before is outrageous. Mr. Cruz has been advised that upon the making of a final determination in this case by the Commission, all investigative files will be turned over within legal limits, and subject to certain redactions of proprietary information.

22. In sum, Cruz's allegations in his Petition are merely a recitation of the complaints raised in his Exceptions, and, therefore, the Petition for Remand should be stricken. In the alternative, if Cruz's Petition for Remand is not stricken, I&E requests that the Petition be held in abeyance until the Commission rules on Cruz's Exceptions.

III. CONCLUSION

For all of the foregoing reasons, I&E requests that the Petition for Remand of Manuel E. Cruz be stricken.

Respectfully submitted,



Adam D. Young
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PA Attorney I.D. No. 91822

Stephanie M. Wimer
Prosecutor
PA Attorney I.D. No. 207522

Pennsylvania Public Utility Commission
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(717) 787-5000

Dated: December 12, 2012

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion to Strike the Petition for Remand of Manuel E. Cruz, upon the persons listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

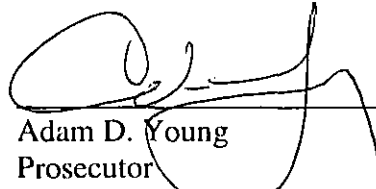
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