**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

: v. : C-2012-2295974

:

UGI Utilities, Inc. :

**Initial decision**

**APPROVING JOINT SETTLEMENT PETITION**

**RESOLVING ALL ISSUES AMONG ALL PARTIES**

Before

Kandace F. Melillo

Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On March 30, 2012, the Pennsylvania Public Utility Commission’s (Commission’s) Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint with the Commission against UGI Utilities, Inc. (UGI). The Complaint concerns a natural gas explosion that occurred on October 31, 2011, in Millersville, PA, and caused property damage but no injuries or fatalities. The Complaint alleged that UGI supplied natural gas service to the area involved in the explosion.

According to the Complaint, the natural gas explosion occurred at approximately 1:30 p.m. and damaged a two-story brick house beyond repair. The front wall of the house was blown off leaving the inside rooms visible. A neighboring business at 10A Manor Avenue also sustained some damage but was still standing. Total property damage was estimated at $425,000, with an additional $30,000 in associated damages. The Complaint set forth a detailed chronology of events before and after the explosion occurred.

The Complaint asserted that the precipitating cause of the explosion was that a third-party contractor ruptured an eight-inch UGI plastic gas main operating at 42 (psig) at the intersection of Manor Avenue and Shertzer Lane in Millersville, PA. However, according to the Complaint, UGI failed to properly mark its underground facilities and to have procedures in place to locate lines, to have appropriate measures in place to address damage prevention, to timely inspect a shut-off valve, and to shut down the gas line in a timely manner, all of which either contributed to or caused the resultant explosion.

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

1. Count One - UGI did not follow its own Gas Operation Manual (GOM) procedures at GOM 60.40.30 “Response to One Call Requests,” which states that “Locate requests for excavation activities should be done by either physical marking of facilities within 18 inches, by exposing facilities, or by making direct contact with the excavator to ensure a UGI employee is on site at the time of excavation” in that UGI mismarked the damaged eight inch plastic main by approximately forty (40) inches, violating 49 C.F.R §§192.605(a) and 52 Pa. Code §59.33.

2. Count Two - UGI’s procedures are inadequate in that there are no procedures for locating lines when there are no facility maps or records; there is equipment/material failure; facility records/maps are incorrect; there is a loss of signal or inability to locate a facility; and/or there is a conflict between locate signal and mapping records; and UGI’s Operator Qualification plan does not identify these situations as abnormal operating conditions, violating 49 C.F.R. §§192.605(a) and 52 Pa. Code §59.33.

3. Count Three - UGI’s current Substructure Damage Plan does not adequately address damage prevention and response to damage in that UGI’s Substructure Damage Plan is not prescriptive on the actions to take when, as in this case, horizontal directional drilling, which is a high threat to gas mains and needs to be treated as such, was being used for drilling at approximately the same depth as UGI’s gas main, violating 49 C.F.R. §§192.614(c)(6)(i) and 52 Pa. Code §59.33.

4. Counts Four – Twenty - UGI failed to comply with its own “Manual Service Procedures” (section 6.2.3), in that the Company failed to inspect Valve 300816 on an annual basis and had not inspected this valve since May 2, 1994 even though this valve is an emergency valve. Valve 300816, was closed during the emergency and was not inspected since May 2, 1994. According to UGI MSP 6.2.3 (Manual of Service Procedures), it is an emergency valve based on size and pressure. However, it was not on any inspection cycle and should have been inspected at least once each calendar year. Each separate failure to annually inspect, from January 1, 1995 to October 31, 2011, constitutes a separate count and a violation of 49 C.F.R. §192.747(a) and 52 Pa. Code §59.33.

5. Counts Twenty One – Twenty Four - UGI failed to follow their procedures of GOM 60.50.30 section 4.10.6 which states, “The flow of gas to the leak area shall be stopped when necessary. When necessary, appropriate in-line valves shall be identified by using mapping and valve reports and be physically located for prompt shutdown,” in that UGI did not complete its shut off of two separate valves for over three hours after it was notified of the leak. The failure to shut off each valve constitutes a separate count in violation of 49 C.F.R. §192.605(a) and 52 Pa. Code §59.33.

6. Count Twenty Five - UGI violated its procedure GOM 60.40.40 section 5.6, which states, “Additional inspection should be considered for one-way feeds, extraordinary excavation, cast iron exposure, and directional drilling activities. When visiting a job site, ensure that gas facilities are being spotted during directional drilling activities near company facilities,” in that UGI failed to adequately inspect the job site, relied on the contractor to follow proper protocols to protect its facilities, and did not ensure the contractor had “spotted” its facility according to UGI procedures, violating 49 C.F.R. §192.605(a) and 52 Pa. Code §59.33.

7. Count Twenty Six - UGI did not have emergency valves spaced close enough to reduce the time to facilitate an emergency shutdown in that the valves that were close enough to shut off were not emergency valves and there was not another valve in the immediate area that would isolate the damaged section, violating 49 C.F.R. §192.181(a) and 52 Pa. Code §59.33.

The Complaint requested 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 at least $260,000.00.

2. Direct UGI to modify its procedures to include procedures for the locator to follow in situations where there is/are: (a) no facility maps or records; (b) equipment/material failure; (c) incorrect facility records/maps; (d) loss of signal or not being able to locate a facility; (e) conflict between locate signal and mapping records; and, (f) other situations the operator deems important.

3. Direct UGI to immediately retrain all personnel who are qualified to locate across all UGI locations on the new procedure.

4. Direct UGI to modify its damage prevention program to prescribe additional precautionary measures to take when there is a high likelihood of damage to its facilities such as from horizontal directional drilling. These measures shall include but not be limited to the following:

(a) Taking precautionary steps to identify shut off valves whenever horizontal directional drilling is performed near its facilities. Furthermore, UGI shall identify valves prior to third parties horizontal directional drilling near its facilities. UGI shall be on site and ensure their main is exposed when a third party is horizontal directional drilling near its facilities if UGI does not have valves to isolate a potential damage or if the use of valves would create too large a customer outage.

(b) Inspecting and maintaining documentation to show that all contractors directional drilling beneath their facilities were inspected for potholing before drilling occurred.

5. Direct UGI to modify it[s] procedures to minimize the risk posed to its workers monitoring for leaks near buildings with gas at or above the lower explosive limit, and to develop procedures to recognize and react to uncontrollable leak situations to protect people first then property.

6. Direct UGI to modify its emergency plans to include guidelines for its engineers and front line supervisors to decide when valves, squeeze offs or a combination of these is the most preferred method to effectively shut down or isolate a section of pipeline.

7. Direct UGI to institute a backup form of communication for cell phones.

8. Direct UGI to meet with PPL representatives quarterly to ensure that the emergency contact information for PPL is correct.

9. Grant such further relief as is just and reasonable.

UGI filed an Answer on or about April 23, 2012. The Answer admitted or did not deny that a natural gas explosion occurred at 1:30 p.m. on October 31, 2011, at 10 Manor Avenue, in Millersville, PA, that a two-story brick house was damaged beyond repair, and that an adjacent building at 10A Manor Avenue was damaged. In addition, the Answer averred that the actions of a third party, Walker Directional Drilling (Walker), caused the explosion in that Walker, a subcontractor to Focus Fiber Solutions (FFS), operating without UGI’s knowledge and in gross violation of applicable one-call statutory requirements and appropriate safety standards, struck UGI’s facilities while directionally boring for installation of telecommunications facilities.

The Answer addressed the above-mentioned counts of I&E’s Complaint, but asserted that none of the actions alleged to constitute violations and none of the suggested improvements sought by I&E in the prayer for relief would have prevented the explosion. It averred that the Company had cooperated fully with Commission personnel and other authorities in investigating this incident, and that it was unfair for I&E to seek large civil penalties for inadvertent, unrelated violations of gas safety standards discovered in the course of an investigation of a gas explosion caused by others. It asserted that new safety standards should be adopted on an industry-wide basis rather than in litigation involving only one natural gas distribution company (NGDC).

The Answer specifically addressed the counts in I&E’s Complaint as follows:

1. As to Count One, UGI admitted that it had responded to FFS’s earlier one-call locate requests by marking its facilities and that these markings were twenty-two inches beyond the tolerance zone established for valid one-call locates, but denied that these markings violated the provisions of the PA ONE CALL ACT or UGI’s GOM procedures at 60.40.30. It further denied that a proper one-call request had been issued for the excavation performed by Walker on the day in question, thereby triggering UGI’s responsibility to make one-call markings under 73 P.S. §177 and to comply with the related GOM obligations. It denied that UGI’s markings had any effect on Walker’s actions or contributed to the explosion. It denied that its actions in any way violated 49 C.F.R. §192.605(a).

2. As to Count Two, UGI admitted that its current Substructure Damage Plan does not address certain contingencies and that its Operator Qualification plan does not identify these situations as abnormal operating conditions. However, UGI denied that there is any federal or state requirement for such contingencies to be addressed in these documents, or that the Commission had previously requested that such language be added. In addition, the Company denied that the absence of such language violated 49 C.F.R. §192.605(a).

3. As to Count Three, UGI denied that its Substructure Damage Plan was deficient because it does not address specific prescriptive actions to be taken in advance of certain hazardous activities, such as directional drilling, or that such language would have been relevant to the situation since UGI was unaware of the directional drilling. UGI further denied that the absence of such language in any way violated 49 C.F.R. §192.614(c)(6)(i).

4. As to Counts Four – Twenty, UGI admitted that it inadvertently failed to return deadhead valve #300816 to its five-year inspection list when it was reconnected to UGI’s distribution system, but only missed one five-year inspection cycle in 2003, which played no role in the explosion. It denied that there was any annual inspection requirement with respect to this valve, or that each valve on UGI’s distribution system was required for safe operations.

5. As to Counts Twenty One – Twenty Four, UGI denied that its field supervisor’s decision to isolate the flow of gas from the south by squeezing off the distribution line violated UGI GOM 60.50.30, section 4.10.6, or that it was otherwise required to only isolate gas leaks by turning valves. The Company further denied that it acted unreasonably in shutting off the flow of gas within three hours, or that the explosion would have been prevented by electing to restrict the gas flow by turning valves. It denied that its actions in any way violated 49 C.F.R. §192.605(a).

6. As to Count Twenty Five, UGI denied that it violated GOM 60.40.40, section 5.6, addressing the spotting of facilities when inspecting job sites, since UGI had no advance notice of and was unaware of Walker’s directional drilling activities, and hence could not have performed inspections or verified the spotting of utility facilities. UGI further denied that it in any way violated 49 C.F.R. §192.605(a).

7. As to Count Twenty Six, UGI denied that it improperly spaced the valves on its system, that it was required to have “emergency” valves nearby in lieu of other operable valves to shut off the flow of gas, or that it was required to isolate the leak area only by using valves. UGI further denied that the placement of its valves violated 49 C.F.R. §192.181(a).

By Notice dated January 4, 2013, the Commission scheduled an Initial Prehearing Conference for this matter on Thursday, February 21, 2013, at 10:00 a.m. in Hearing Room 3, Commonwealth Keystone Building in Harrisburg and assigned the matter to me. I issued a Prehearing Conference Order on January 4, 2013, setting forth the procedural matters to be addressed at the Prehearing Conference.

The Prehearing Conference convened as scheduled on Thursday, February 21, 2013. Present were counsel for I&E and UGI. During the Prehearing Conference, I inquired as to whether any party was aware of any petitions to intervene as I had received no such petitions and did not find any in Commission records. No party was aware of any petitions to intervene, and I therefore concluded that no petitions had been filed. Tr. 4-5.

The parties also confirmed at the Prehearing Conference that a settlement had been achieved as to all issues. Upon inquiry, it was agreed that the settlement documents could be filed and provided to me no later than close of business on Wednesday, February 27, 2013. Accordingly, I issued an Order Providing For Settlement Procedures, dated February 22, 2013, which required the filing and serving of the settlement documents by that date.

On February 26, 2013, UGI filed a Joint Settlement Petition Resolving All Issues Among All Parties (Joint Petition or Settlement), with attachments, which was joined in by UGI and I&E. I had some questions about the Joint Petition and emailed these questions to the parties on February 28, 2013. On March 1, 2013, I received a response from UGI. The record closed on March 5, 2013, for decision writing.

For the reasons set forth below, I recommend that the Commission approve the Settlement as being in the public interest and consistent with the Commission’s Statement of Policy for evaluating civil penalties in settled proceedings involving violations of the Public Utility Code (Code) at 52 Pa. Code §69.1201.

FINDINGS OF FACT

In the Joint Petition, the parties agreed to the following findings of fact as background information for the Settlement. While Paragraph 41 of the Settlement reserves UGI’s right to dispute all issues of fact, UGI clarified in response to my inquiry that this reservation was with respect to a waiver of rights in other unrelated civil or administrative proceedings. I note that an identical Settlement provision to Paragraph 41 was approved in Pa. P.U.C., I&E v. UGI Utilities, Inc., Docket No. C-2012-2308997, Order entered February 19, 2013. In that case, the Commission noted that, because there was not an evidentiary hearing, neither the ALJ therein, nor the Commission, made any findings or conclusions regarding whether UGI violated the Code or Commission regulations or Orders. Similarly, in the instant case, there was no evidentiary hearing, and the factual findings below, agreed to by the parties, simply provide background information in lieu of an evidentiary record, and do not make findings or conclusions as to whether UGI committed violations.

1. At approximately 11:53 AM on October 31, 2011, Walker, a subcontractor of FFS, struck a UGI eight-inch plastic gas main operating at 42 (psig) at the intersection of Manor Avenue and Shertzer Lane in Millersville, Pennsylvania while performing directional drilling for an area fiber optic installation project (Millersville Project).

2. UGI used standard locating techniques to mark its lines, but a signal jump resulted in its marking of two telecommunications conduits twenty-two inches outside of the tolerance zone for its gas line. UGI also checked property records which seemed to confirm the location of its marks because a curb had been relocated.

3. Leaking gas from Walker’s strike migrated through the ground and a storm drain allowing dangerous levels of gas to enter several nearby structures.

4. Walker called 911 to report the strike, and the Blue Rock Fire Department arrived on the scene and commenced the evacuation of approximately 20 buildings around noon.

5. At 12:08 p.m. UGI’s gas control center noticed a drop in gas pressure in Millersville, and at approximately 12:24 UGI’s first employee arrived at the scene.

6. At approximately 1:00 p.m. UGI’s Construction Supervisor and a crew [from] a UGI contractor arrived at the scene.

7. Since gas had already migrated and evacuations were under way, UGI asked the fire chief to contact the local electric distribution company to have the power cut to reduce the risks of ignition; initially this request was refused, but after several calls power was eventually cut at approximately 1:38 p.m.

8. An explosion at 10 Manor Avenue occurred at approximately 1:30 p.m. damaging a two-story brick house beyond repair and [causing] less damage to an adjacent building at 10A Manor Avenue; no injuries or loss of life resulted from this explosion.

9. The damaged eight inch plastic main was part of a multiple feed distribution system.

10. To shut-off the flow of gas from the east UGI dispatched a crew that turned a six inch valve (“Valve #300816”) at approximately 1:18 p.m.

11. To shut-off the remaining flow of gas, UGI decided to excavate and squeeze-off the flow of gas through the main; excavation started shortly after UGI’s construction supervisor and contractor crew arrived at the scene around 1:00 p.m., the excavation was in progress at the time of the explosion at approximately 1:30 p.m. and the flow of gas was stemmed at approximately 3:08 p.m.

12. As a result of the decision to squeeze-off the main, the location of two valves that could have been turned to isolate the remaining flow of gas was not requested, and shortly after the explosion and the cut in power, cell phone service in the area was lost, preventing the easy communication of these valve locations.

13. Valve #300816 had been properly removed from UGI’s five-year inspection cycle (specified under Section 6.2.3 of UGI’s Manual of Service Procedures) in 1994 when the distribution system segment it was connected to was no longer serving customers (a so-called “deadhead valve”).

14. In 1998, the valve was reconnected to an active distribution system segment, but was not added back in to the list of valves subject to the five-year inspection cycle because of an administrative oversight.

15. In 1998 and 2007, however, UGI did turn and grease the valve when it reconnected the valve and while repairing a gas leak.

DISCUSSION

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 Formal Complaint against UGI for allegedly violating the Public Utility Code and Commission and federal regulations regarding the safety of UGI’s natural gas distribution operations. UGI denied that it violated the Public Utility Code and Commission regulations and federal regulations.

After extensive investigation prior to any evidentiary hearings, I&E and UGI have reached a Settlement regarding the allegations set forth in I&E’s Complaint. In brief, the Settlement, *inter alia*, provides for the payment by UGI of a $200,000 civil penalty; modifications to UGI’s GOM standard regarding One Call response procedures (shown in **APPENDIX A** to the Settlement) and additional training; Damage Prevention Plan revisions; One Call screening additions; deadhead valve reclassification audit and reminders; revisions to GOM involving notification to engineering staff about responding with valve location information (shown in **APPENDIX B** to the Settlement); additional training for first responders about flowing gas safety; meetings with PPL regarding communications; and modifications to GOM regarding risk reduction for emergency responders (shown in **APPENDIX C** to the Settlement).

The policy of the Commission is clearly to encourage settlements and the Commission has stated that the results achieved from settlements are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that would otherwise have been involved in litigating the proceeding, and can provide benefits and improvements which may not have been possible due to the uncertainty of litigation.

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

Settlement Terms

The specific terms of the Settlement, reflected in Paragraph 31 of the document, are as follows:

1. UGI shall pay a civil penalty in the amount of $200,000 no later than the end of the first full calendar month after the date of a final order approving this Joint Settlement Petition, and shall not to seek to recover this amount through rates regulated by the Commission.
2. UGI will conduct refresher training of its one call locators within ninety (90) days of a final order approving this Joint Settlement Petition.
3. Within sixty (60) days of the date of a final order approving this Joint Settlement Petition, UGI will modify its Gas Operations Manual (“GOM”) 60.40.40 standard as shown in **Appendix A** to improve its one-call response procedures, and will train its locators in these new standards.
4. UGI will revise its Damage Prevention Plan, to add language concerning preplanning activities UGI will conduct when it is aware directional drilling will occur, within sixty (60) days of the date of a final order approving this Joint Settlement Petition.
5. UGI has added programming to its internal One Call Tickets screening system to be able to identify Tickets received where the “Type Construction Box” is designated as Directional Drilling, Drilling, Boring or Trenchless Technology. Within ninety (90) days of the date of a final order approving this Joint Settlement Petition, UGI will modify its screening system to generate an e-mail to a local office who in turn will make a “documented” contact to the entity making the one call request reminding it of its responsibilities under the Pennsylvania Underground Utility Line Protection Law of 2006, 73 P.S. §§176-182.4 (“PA ONE CALL ACT”) and inquiring as to its intent to spot the

gas facilities prior to crossing them. If a non-satisfactory response is received UGI will take additional action up to and including a field visit to stop the operation.

1. Within ninety (90) days of a final order approving this Joint Settlement Petition, UGI will distribute a safety advisory reminding employees to reclassify deadhead valves when formerly disconnected segments of the distribution system are reconnected.
2. Within ninety (90) days of a final order approving this Joint Settlement Petition, UGI will perform a system audit to identify deadhead valves and make sure they are properly classified.

H. Within sixty (60) days of a final order approving this Joint Settlement Petition, UGI will modify its GOM 60.50.110, as shown in **Appendix B,** to require its dispatchers to notify engineering personnel in events where the Manager Area Engineering is required to be contacted due to damage resulting in the escape of natural gas so that the engineering staff can provide field personnel responding to the situation with more timely and readily usable information about the location of valves*.*

I. As part of its annual emergency response training, UGI shall incorporate and provide additional training for its first responders about situational awareness when approaching a potential flowing gas site.

J. UGI shall meet with PPL representatives to establish appropriate communications protocols, and shall communicate quarterly to ensure that emergency contact information is correct.

K. Within sixty (60) days of a final order approving this Joint Settlement Petition, UGI will modify its GOM 60.50.20 as shown in **Appendix C** to reduce risks associated with the location and travel of employees responding to emergencies.

In addition, in Paragraph 32 of the Settlement, I&E agreed to forbear from further prosecuting any formal complaint relating to UGI’s conduct as described in the Settlement or in the I&E Complaint, in consideration of the payment by UGI of the civil penalty and other Settlement terms. Nothing in the Joint Petition is to affect the Commission’s authority to receive and resolve any formal or informal complaint filed by any party with respect to the October 31, 2011, incident, except that no further civil penalties are to be imposed by the Commission for any of the actions described in the Settlement or the I&E Complaint.

In response to my inquiry about the impact of Paragraph 32 on other persons affected by the explosion who are not parties to this case, UGI agreed with my interpretation that the Settlement language, which limits the Commission’s remedies, must be strictly construed. It is only to apply to the actions identified in the Settlement, and cannot apply, and therefore limit the Commission’s remedies, with respect to actions allegedly taken by UGI with respect to the incident that are not identified in the Settlement.

Public Interest

Having set forth the terms of the Joint Petition, I will now address why approving and adopting the Settlement is in the public interest.

Initially, I note that the Settlement provides for the payment of a substantial civil penalty by UGI of $200,000, which will not be recoverable in rates. UGI noted in its Statement in Support (**Appendix E** to the Settlement) that $160,000 of the original penalty amount ($260,000) sought by I&E was based upon a failure to conduct sixteen (16) annual inspections on an eight-inch valve. Subsequently, it was confirmed and undisputed that the valve in question was a six-inch valve on a five-year inspection cycle since 1998, and that the valve had been turned and greased in 1998 and 2007 (see Findings of Fact 10, 13-15, *supra*). Therefore, the $200,000 civil penalty is likely higher than would have been sought by I&E initially. Further discussion as to reasonableness of the penalty amount will be set forth in a subsequent section of this Initial Decision.

Second, as noted by UGI in its Statement in Support, the Settlement will provide substantial and important safety benefits by requiring operating procedure changes, personnel training, and communications enhancements, as well as other measures, to provide further backstops and safeguards for the public and UGI personnel in these situations. The inclusion of this substantial list of remedial measures indicates that UGI has been cooperative and has worked with Commission safety personnel to learn lessons from this incident and to develop and

implement pro-active measures to enhance safety and reduce future risks. As a further showing of good faith, UGI indicated in its Statement in Support that it has not waited for final approval of the Settlement to begin implementation of some of these measures.

Third, approving and adopting the Settlement is also in the public interest because, as pointed out by I&E in its Statement in Support (**Appendix D** to the Settlement), acceptance of the Settlement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the parties.

Fourth, and perhaps most importantly, the Settlement avoids the time and uncertainty of litigation, and therefore provides for a timelier implementation of remedial measures that have been agreed upon to support and promote the safety of the public and Company personnel. Given the seriousness of the issue, the benefits of prompt implementation of these measures, some of which have already been started, cannot be overestimated.

Civil Penalty

Having explained why approving and adopting the Joint 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 Settlement requires that UGI pay a civil penalty of $200,000 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. See also, Joseph A. Rosi v. Bell Atlantic-Pennsylvania, Inc., Docket No. C-00992409, Order entered March 16, 2000. 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 Settlement. 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 October 31, 2011 incident. It is also apparent that more was involved than simply an administrative filing or technical error. The statements in support of the two parties reflect their respective views of the incident, with UGI focusing on the actions of third parties, and I&E focusing on the alleged actions of UGI, as alleged in the I&E Complaint. Neither of these views was agreed to by the other party. But, suffice it to say, both parties agree that the result was serious. As UGI noted,

gas safety is a significant issue that it takes seriously. Given the significance of gas safety, I conclude that UGI’s alleged conduct is of a serious nature and the gravity of the incident was reflected in arriving at the $200,000 civil penalty.

The second factor addresses the consequences of the alleged conduct at issue. In this case, the natural gas explosion damaged one residence beyond repair, and caused additional damage to an adjacent property. UGI does not deny the seriousness of the incident, but does question whether its alleged errors caused the explosion; therefore, it concluded that this factor would suggest a smaller penalty. I&E asserted that the seriousness of the incident is reflected in the penalty amount. I agree with I&E that the consequences of the alleged conduct were serious and that the seriousness of this matter was reflected in the penalty amount.

The third factor addresses whether the conduct was negligent or intentional. This factor does not apply because the proceeding was settled. Accordingly, I 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 refer to the modifications that the Company has made or has agreed to make in response to the October 31, 2011 incident. UGI highlighted the listed changes in procedure, training and coordination activities set forth in the Joint Petition. I&E specifically mentioned that UGI had performed the following:

UGI has added programming to its internal One Call Tickets screening system to be able to identify Tickets received where the “Type Construction Box” is designated as Directional Drilling, Drilling, Boring or Trenchless Technology. Within ninety (90) days of the date of a final order approving this Joint Settlement Petition, UGI will modify its screening system to generate an e-mail to a local office who in turn will make a “documented” contact to the entity making the one call request reminding it of its responsibilities under the Pennsylvania Underground Utility Line Protection Law of 2006, 73 P.S. §§176-182.4 (“PA ONE CALL ACT”) and inquiring as to its intent to spot the gas facilities prior

to crossing them. If a non-satisfactory response is received UGI will take additional action up to and including a field visit to stop the operation.

I conclude that the remedial actions undertaken by UGI, as noted by the parties, should result in a lesser penalty.

The fifth factor addresses the number of customers affected and the duration of the violation. UGI indicated in its Statement in Support that citizens were evacuated from twenty (20) buildings as a precaution resulting from the incident. I&E noted that one building was damaged beyond repair and an adjacent building was damaged. No party contended that this factor warranted a higher penalty and I conclude as well that the suggested penalty adequately reflects this factor.

The sixth factor looks at the compliance history of the regulated entity. UGI indicated its awareness that in other cases, the Commission has stated that UGI has been involved in too many proceedings involving violations of gas safety rules. UGI did not list these proceedings in its Statement in Support.

In contrast to UGI, I&E listed a number of these proceedings in its Statement in Support as follows:

UGI has recently entered into settlements with the Commission’s I&E, or prosecutory staff, regarding gas safety violations in which they agreed to pay civil penalties. In Pa. PUC v. UGI Utilities, Inc., Docket No. M-2009-2031571, Order entered January 14, 2010, the settlement arose from a natural gas explosion in Allentown that occurred on December 9, 2006, and resulted in a minor injury and destroyed one residence and three adjacent row homes. The explosion occurred when a contractor attempted to remove a gas meter. The allegations of gas safety violations involved inadequate training and improper documentation of procedures regarding removal of inactive gas meters. The Commission approved the settlement’s $80,000 civil penalty and modified the settlement to add an $80,000 payment to the

Low-Income Usage Reduction Program. The settlement also called for remedial measures such as changes to the company’s procedures, training, and operator qualifications regarding meter replacement.

In Pa. PUC v. UGI Utilities, Inc., Docket No. M-2008-2036549, Order entered November 6, 2008, the Commission directed that a $40,000 settlement amount be applied to the Company’s Operation Share Hardship Fund. In that case, a natural gas explosion, resulting from a leak in the gas line, destroyed a residence. The allegations included the following gas safety violations: that UGI’s emergency response procedures did not include steps for bar holing to check the ground for gas; that UGI took more than five hours to perform bar holing after the incident; and that UGI failed to determine where the pipe failure occurred and turn off the gas supply before allowing utility workers, emergency responders, inspectors, and residents to access the incident site.

Other recent cases involving UGI include:Pa. PUC v. UGI Utilities. Inc., Docket No. M-2012-2141712, Order entered June 13, 2012 (rejected settlement due to serious nature of the incident and endangerment of lives of the company’s crew and the public); Pa. PUC v. UGI Utilities, Inc., Docket No. M-2010-2037411, Order entered May 10, 2010 (approving a settlement to resolve allegations concerning UGI’s failure to properly mark its pipelines); Pa. PUC v. UGI Utilities Inc., Docket No. C-2009-2120601, Order entered November 19, 2010 (approving a settlement to resolve various federal and state gas safety violations); and Pa. PUC v. UGI Utilities, Inc., Docket No. C‑20066664, February 6, 2009 (approving a settlement to resolve gas safety allegations, including a failure to classify a leak as an emergency and a failure to properly respond to an explosion once notified by 911).

In addition, at about the time the Joint Petition in this matter was filed, the Company agreed to pay a $500,000 civil penalty and perform other remedial and reporting measures inPa. PUC v. UGI Utilities, Inc., Docket No. C-2012-2308997, Order entered February 19, 2013. In that case, involving a natural gas explosion in Allentown, PA, five (5) people lost their lives.

Based on the forgoing, I conclude that a higher penalty for UGI is warranted than would otherwise be the case. However, I note, to UGI’s credit, that it has been pro-active and cooperative as to remedial actions taken and agreed to be taken, and it is primarily this fourth factor, discussed above, which mitigates what would otherwise be a higher civil penalty than set forth in the Settlement.

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. I&E concluded that this cooperation demonstrates a commitment consistent with the Commission’s public safety goals and objectives. I conclude that UGI’s cooperation with the Commission in this matter should result in a lesser penalty than would otherwise be the case.

The eighth factor requires that the amount of the civil penalty be enough to deter future violations. I&E stated that the civil penalty in the amount of $200,000, which may not be recovered through Commission-regulated rates, together with the modifications to UGI’s internal policies with additional training of personnel, represents a pecuniary concession that will deter similar actions in the future. Given the circumstances of this proceeding, I conclude that a civil penalty larger than that agreed to by the parties is unnecessary to deter future violations.

The ninth factor looks at past Commission decisions in similar situations. I&E stated that, in consideration of relevant factors comparable to other incidents, such as incident response, post-incident action, Commission cooperation, regulatory violations, and remedial actions taken, the Settlement is consistent with past Commission actions, and represents a fair and reasonable outcome. UGI stated that the amount of the civil penalty is well above comparable fines in other cases.

In my view, the most comparable case mentioned in the UGI compliance history provided by I&E appears to be the 2008 case wherein a natural gas explosion from a leak destroyed a residence. See, Pa. PUC v. UGI Utilities, Inc., Docket No. M-2008-2036549, Order entered November 6, 2008. In that case, the Commission directed that a $40,000 settlement amount be applied to the Company’s Operation Share Hardship Fund. The allegations involved failures in UGI’s safety procedures, similar to the instant case. Another similar but more serious case was the Allentown explosion in 2006. In that case, where four homes were damaged or destroyed and there was one minor injury, the settlement approved by the Commission provided for a total civil penalty of $160,000, and remedial measures. Pa. PUC v. UGI Utilities, Inc., Docket No. M-2009-2031571, Order entered January 14, 2010.

Given the above-cited Commission decisions, but in view of UGI’s compliance history since those cases, I agree with I&E that the Settlement amount of $200,000 represents a fair and reasonable outcome.

The tenth factor looks at other relevant factors. As to this factor, I&E emphasized the pivotal importance of a settlement to this case in that the prosecuting agency did not need to then prove the elements of each allegation. In return for the settlement, the opposing party, in the course of negotiations, agreed to a lesser fine or penalty, or other remedial action. UGI asserted that harshly penalizing NGDCs for largely technical or incidental alleged violations resulting from damages directly caused by third parties could send an improper signal that excavators will not bear the brunt of their responsibility. UGI also noted that conflicting administrative interpretations could result if the Commission indirectly attempted to enforce the PA ONE CALL ACT, now enforced by the Pa. Department of Labor and Industry, in the instant proceeding against UGI.

I conclude that these additional factors should result in a lesser penalty than would otherwise be the case based on UGI’s compliance history.

Based on a review of the factors set forth above, I conclude that a civil penalty in the amount of $200,000 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 Petition and the reasonableness of the civil penalty, I will summarize the conditions of the Settlement set forth in the Joint Petition. The Settlement is conditioned upon the Administrative Law Judge’s and Commission's approval of the terms and conditions contained in the Joint Petition without modification. If the Administrative Law Judge or Commission modifies the Joint Petition, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement 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 Petition without modification, the parties agree to waive the exception period and not to file exceptions*.*

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 Petition not be admitted as evidence in any potential civil proceeding involving this matter. It is further understood that, by entering into the Settlement, UGI has 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 Petition.

The parties acknowledge that the Joint 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 Petition may not be cited as precedent in any future proceeding, except to the extent required to implement its provisions.

The Joint 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 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 Petition. The Joint Petition does not preclude the parties from taking other positions in any other proceeding.

The parties arrived at the Settlement after engaging in discussions over several months. The terms and conditions of the Joint 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 conclude that the Joint Petition should be approved without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa. C.S. §§102, 501(b).

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 Settlement submitted by I&E and UGI in this matter is reasonable and in the public interest and should be approved by the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed on March 30, 2012, by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement against UGI Utilities, Inc. at Docket No. C-2012-2295974 is sustained.

2. That the Joint Settlement Petition Resolving All Issues Among All Parties, filed on February 26, 2013, between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and UGI Utilities, Inc. at Docket No. C-2012-2295974 is hereby approved and adopted.

3. That UGI Utilities, Inc. shall pay a civil penalty of $200,000 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 Final Order to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, Pa. 17105-3265

4. That UGI Utilities, Inc. shall comply with all directives, conclusions and recommendations in the Joint Settlement Petition Resolving All Issues Among All Parties, 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.

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

Date: March 29, 2013 /s/

Kandace F. Melillo

Administrative Law Judge