



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

IN REPLY PLEASE  
REFER TO OUR FILE

June 28, 2013

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. – Gas Division  
Docket No. M-2013-2313375**

Dear Secretary Chiavetta:

Enclosed for filing please find the original of the Settlement Agreement and accompanying Statements in Support of the Bureau of Investigation and Enforcement (Appendix A) and UGI Utilities, Inc. - Gas Division (Appendix B) relative to the above-captioned proceeding. Copies of this filing have been served in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael L. Swindler  
Prosecutor  
PA Attorney ID No. 43319

Enclosures

cc: As per Certificate of Service

RECEIVED  
2013 JUN 28 AM 9:42  
PA PUC  
SECRETARY'S BUREAU



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement</b>	:	
<b>v.</b>	:	
<b>UGI Utilities, Inc. – Gas Division</b>	:	<b>Docket No. M-2013-2313375</b>
	:	
	:	
	:	

**RECEIVED**  
**2013 JUN 28 AM 9:42**  
**PA PUC**  
**SECRETARY'S BUREAU**

**SETTLEMENT AGREEMENT**

**I. Introduction**

1. The parties to this Settlement Agreement (“Settlement Agreement”) are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”), P.O. Box 3265, Harrisburg, PA 17105-3265, and UGI Utilities, Inc. – Gas Division (“UGI” or “Company”), with corporate offices located at 400 North Gulph Road, King of Prussia, PA 19406.

2. The Pennsylvania Public Utility Commission (“Commission”) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate utilities within this Commonwealth pursuant to the Public Utility Code (“Code”), 66 Pa.C.S. §§ 101, *et seq.*

3. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.



4. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities.

*Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

5. UGI is a jurisdictional gas “public utility” as defined by 66 Pa.C.S. § 102 and is engaged in, *inter alia*, the provision of public utility service for compensation as a provider of natural gas distribution, and supplier of last resort services throughout its certificated service territory subject to the regulatory jurisdiction of the Commission.

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day’s continuance of such violation(s).

7. Pursuant to Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506 and Section 3.113 of the Commission’s Practice and Procedure (“Regulations”), 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission’s regulations.

8. This matter concerns an informal investigation initiated by I&E prosecutory staff at the request of the I&E Gas Safety Division (“GSD”). The GSD’s initial



investigation of the June 5, 2012, incident suggested that a further investigation be conducted to examine whether the action of UGI or UGI's contractor ("Contractor") violated state and/or federal gas safety regulations as well as the Company's own operating procedures.

9. As a result of negotiations between UGI and I&E (hereinafter referred to collectively as "Parties"), the Parties have agreed to resolve their differences as encouraged by the Commission's policy to promote settlements. (*See*, 52 Pa. Code § 5.231.) The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein ("Settlement") and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest. I&E and UGI submit statements in support of the Settlement which are attached hereto as Appendix A and Appendix B, respectively.

## **II. Background**

10. On June 5, 2012, a four-man crew employed by Contractor was working for UGI on a combination bare steel/cast iron main replacement project on West Holly Street in Hazleton, Pennsylvania. The portion of the project that is the subject of this Settlement Agreement involved insertion of a new 4-inch plastic pipe into an existing 6-inch low-pressure bare steel main which would become a casing pipe. Insertion of the pipe required that the main be cut with a mechanical saw after the gas flow in the main was stopped. The associated work site was approximately 400 feet long beginning at



North Wyoming Street (the “Push Excavation”) and extended toward Laurel Street (the “Destination Excavation”).

11. In this instance, Contractor’s employees inserted a single stopper into the main on each end of the affected portion of the gas main to stop the flow of gas. This “stop off” was observed by the UGI inspector at the Destination Excavation. The use of a single stopper at each end of the pipe was not sufficient to fully block the flow of gas.

12. The Contractor’s foreman was prepared to cut the bare steel pipe with a four wheel cutter. However, due to restricted clearance caused by an existing sewer lateral adjacent to the pipe, the Contractor’s foreman instead elected to use an electric reciprocating saw to make the cut.

13. The Contractor’s foreman, aware that some gas was still bypassing through the stoppers, instructed one of Contractor’s crew members to introduce air from an air knife under low flow to the position where the saw cut was being made in order to dilute the by-passing gas. It was during this process of cutting the pipe with the electric saw and the blowing of air that a spark was generated.

14. The spark created an ignition of natural gas resulting in a minor flash-burn injury to the face of the Contractor foreman. Another Contractor employee who was manning a fire extinguisher at the site extinguished the flame.

15. The UGI inspector was the distance of one city block away at the Destination Excavation when the gas ignition occurred. He arrived at the incident location within approximately one minute.



16. Within approximately twenty minutes of the incident, a clamp was installed over the partially cut section of gas main to eliminate the escaping gas.

17. The injured Contractor foreman was transported to Hazleton Hospital's emergency room by ambulance within minutes after the incident, where he was treated and released.<sup>1</sup> Upon his return to the incident location, the Contractor's foreman was questioned about the event by UGI and GSD personnel.

18. The Commission was notified within an hour of the incident. UGI Operations and Safety & Compliance Staff arrived at the site shortly thereafter. The UGI inspector was questioned by UGI and GSD personnel.

19. The incident did not result in any damage to private property or injury to any person other than Contractor foreman.

20. Subsequent investigations were conducted by UGI Management and by Contractor in coordination with the GSD.

21. UGI undertook the following actions subsequent to the incident:

- a. UGI supervisors met with and briefed UGI's Hazleton area employees and Contractor employees regarding the importance of following the Company's operational procedures and communicated that deviation from these procedures would not be tolerated. Topics covered include Prevention of Accidental Ignition 70.90.10, Tapping and Stopping off Low Pressure Mains Using Bags or Low Pressure Stoppers 60.100.40 and UGI's Job Plan.
- b. UGI administered appropriate disciplinary action regarding the UGI inspector, including a thirty (30) day suspension and reduction in grade. The employee subsequently retired.

---

<sup>1</sup> According to the Incident Investigation Report prepared by Contractor, at the hospital, the Contractor's foreman was given an ointment to apply to his facial burns and a prescription for pain medication.



- c. UGI met with the Contractor's management, discussed the facts of the matter, emphasized the importance of following the Company's operational procedures and communicated that deviation from these procedures would not be tolerated. The Contractor foreman was terminated from his employment with Contractor.

### **III. I&E's Investigation**

22. I&E initiated an informal investigation to determine whether the Company violated the Commission's regulations, the Public Utility Code, and/or the Company's own operational procedures.

23. By letters to UGI dated December 3, 2012, January 8, 2013, and January 30, 2013, I&E requested that UGI provide further responses to data requests related to the above-described incident, to which the Company provided timely and complete responses.

24. I&E determined that UGI, by its own employees or the employees of its Contractor, violated various state and federal gas safety regulations which resulted in the minor injury of a Contractor employee. The investigation determined that the UGI inspector knew or should have known that the procedures being employed by the Contractor's employees at both the Push Excavation and the Destination Excavation of the project were not consistent with the proper procedures as set forth in the Company's Gas Operations Manual ("GOM") and Manual of Standard Procedures ("MOSP"). In addition, it is I&E's position that UGI should have timely filed a written accident report, pursuant to 52 Pa. Code § 59.11(e).



#### **IV. Alleged Violations**

25. I&E has reviewed the actions of UGI and its Contractor with respect to this incident. If this matter had been litigated, I&E would have alleged that UGI violated Section 605(a) of the Code of Federal Regulations and Sections 59.11 and 59.33 of the Public Utility Code, 49 CFR § 192.605(a) and 52 Pa. Code §§ 59.11 and 59.33, in that:

- a. UGI failed to comply with its Gas Operations Manual, Procedure Number 70.90.10, Prevention of Accidental Ignition, in that UGI's Contractor, with a UGI inspector on site, used an electric saw to make the necessary cut to the distribution main in an environment that contained or could contain flammable gas.
- b. UGI failed to comply with its Gas Operations Manual, Procedure Number 60.100.40, Section 3.4, in that UGI's Contractor, with a UGI inspector on site, used a single stopper at each end of the main section being cut instead of two stoppers at each end.
- c. UGI failed to comply with its Gas Operations Manual 60.100.40, Section 7.12 and Manual of Standard Procedures, Sections 8.1.1 and 8.1.2 in that UGI's Contractor, with a UGI inspector on site, failed to purge gas from the main section of pipe to be cut.
- d. UGI failed to comply with its Manual of Standard Procedures, Section 8.1.2 in that UGI's Contractor, with a UGI inspector on site, failed to use safety vents to exhaust discharged gas from the main section of pipe to be cut.
- e. UGI failed to comply with its Gas Operations Manual 70.90.10, Section 4.0 in that UGI's Contractor, with a UGI inspector on site, failed to ground/bond the main section prior to cutting the pipe.
- f. UGI failed to comply with its Gas Operations Manual 60.100.40, Sections 3.3, 7.1, 7.8, 7.11 and UGI's Manual of Standard Procedures, Section 8.1.3 in that UGI's Contractor, with a UGI inspector on site, failed to install pressure gauges on each side of the stopper setup on the pipe to be cut.



- g. I&E would have further alleged that UGI should have classified the incident in question as a “reportable incident” as that term is defined at 52 Pa. Code § 59.11(b) and, as a result, UGI should have timely filed a written accident report, as required to be filed with the Commission within 30 days of the occurrence.

26. Had this matter been litigated, UGI would have denied or answered and defended against some or all of the above-stated allegations.

27. Throughout the entire investigatory process, UGI and I&E remained active in informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in this Settlement Agreement. During the process, UGI promptly responded to I&E’s requests for information and documentation. Throughout the investigation, UGI and I&E maintained ongoing communications.

28. I&E acknowledges that UGI has fully cooperated with this investigation.

29. Although UGI disputes some or all of the assertions and allegations above, UGI recognizes the seriousness of the allegations and acknowledges that the acts alleged, if proven, may constitute violations of certain legal requirements. Moreover, UGI recognizes the need to prevent violations of this Commission’s regulations and recognizes the benefits of amicably resolving these issues.

30. The Parties agree that the above-referenced contentions are made without the benefit of a formal hearing and that I&E’s allegations may or may not have been accepted by the Commission if the matter had been fully litigated.



## **V. Terms and Conditions of Settlement**

31. UGI and I&E desire to settle this matter fully and completely without resorting to litigation in a formal proceeding.

32. UGI and I&E, intending to be legally bound and for consideration given, desire to conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

- a. UGI will pay a civil penalty of ninety-six thousand dollars (\$96,000.00) to resolve the alleged violations identified by I&E in its informal investigation. Said payment shall be made by certified check payable to "Commonwealth of Pennsylvania" and forwarded to the Commission through the prosecuting attorney within thirty (30) days of the date of the Order approving this Settlement. UGI shall not recover any portion of this monetary settlement amount from its customers in any future ratemaking claim or any other manner whatsoever.
- b. UGI has taken or will take corrective action and has implemented revisions to its operating procedures which will act as safeguards against a similar incident occurring in the future. The pertinent actions taken by UGI and Contractor are set forth in Paragraph 21, above.

33. In consideration of the Company's payment of a civil penalty and other, non-monetary relief, as specified herein, I&E agrees to forgo the institution of any formal complaint that relates to the incident and the related conduct of the Company, its employees, and Contractor, as described in the Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with



respect to the incident, except that no further sanctions may be imposed by the Commission for any actions identified herein.

34. This Settlement Agreement is a full and final resolution of the Commission investigation, related in any way to UGI's alleged actions described in this Settlement Agreement.

35. UGI and I&E have agreed to this amicable settlement in the interest of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania. I&E agrees not to institute any formal complaint relating to UGI's alleged actions that are the subject of this Settlement.

36. UGI and I&E have entered into and seek the Commission's approval of the Settlement Agreement pursuant to 52 Pa. Code § 3.113. This Settlement Agreement is a compromise and subject to all applicable administrative and common law treatments of settlements, settlement offers, and/or negotiations. This Settlement Agreement is, therefore, a compromise and is conditioned upon the Commission's approval of any of the terms and conditions contained herein without modification or amendment.

37. If the Commission fails to approve this Settlement Agreement by tentative or final order, or any of the terms or conditions set forth herein, without modification, addition or deletion, then either Party may elect to withdraw from this Settlement Agreement by filing a response to the tentative or final order within twenty (20) days of the date the tentative or final order is entered. None of the provisions of this Settlement Agreement shall be considered binding upon the Parties if such a response is filed.



38. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

39. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. I&E acknowledges that this Settlement Agreement is entered into with the express and sole purpose of settling the asserted claims regarding the specific alleged violations of the Public Utility Code, Pennsylvania Code, and the regulations promulgated thereunder.

40. This Settlement Agreement resolves with prejudice all issues related to the informal investigation. This Settlement Agreement is entered into without admission against, or prejudice to, any factual or legal positions which any of the Parties may assert in subsequent litigation of this proceeding before the Commission in the event that the Commission does not issue a final, non-appealable Order approving this Settlement without modification. This Settlement Agreement is determinative and conclusive of all the issues addressed herein and constitutes a final settlement of the matters thereof as among the parties to the Settlement and the Commission. Provided, however, that this Settlement Agreement makes no findings of fact or conclusions of law, and therefore, it is the intent of the Parties that this document and the related Statements in Support not be admitted as evidence in any potential civil proceeding involving this matter. It is further




understood that by entering into this Settlement Agreement and agreeing to pay a civil penalty, UGI has made no admission of fact or law and disputes 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 the Settlement documents.



**WHEREFORE**, UGI Utilities, Inc. – Gas Division and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

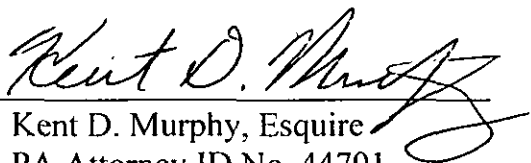
Respectfully submitted,

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

By:   
Michael L. Swindler  
PA Attorney ID No. 43319  
Prosecutor

PAPUC  
P.O. Box 3265  
Harrisburg, PA 17105  
717.783.6369  
[mswindler@pa.gov](mailto:mswindler@pa.gov)

UGI Utilities, Inc. – Gas Division

By:   
Kent D. Murphy, Esquire  
PA Attorney ID No. 44791  
Group Counsel, Energy &  
Regulation  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
610.337.1000  
[murphyke@ugicorp.com](mailto:murphyke@ugicorp.com)

Date: 27 JUN 13

Date: June 27, 2013

RECEIVED  
2013 JUN 28 AM 9:42  
PA PUC  
SECRETARY'S BUREAU



# Appendix A

RECEIVED  
2013 JUN 28 AM 9:42  
PA PUC  
SECRETARY'S BUREAU



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED  
2013 JUN 28 AM 9:43  
PA PUC  
SECRETARY'S BUREAU

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

v. :

UGI Utilities, Inc. – Gas Division :

Docket No. M-2013-2313375

---

STATEMENT IN SUPPORT OF SETTLEMENT AGREEMENT  
OF BUREAU OF INVESTIGATION AND ENFORCEMENT

---

The Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") submits this Statement in Support of Settlement Agreement at the above docket. The specific terms of the Settlement Agreement, comprised of both monetary and non-monetary relief, are found at Paragraphs 31 through 40 of the Settlement Agreement. I&E submits that the settlement as memorialized by the Settlement Agreement was amicably reached by the Parties after extensive discussions, in-person meetings and review of multiple drafts of the settlement documents. The settlement fairly and equitably balances the duty of the Pennsylvania Public Utility Commission ("Commission") to protect the public interest, the Company's customers, and the Company. If approved without modification, the Settlement Agreement fully and completely resolves all issues related to the I&E investigation involving an incident



which occurred on June 5, 2012, on a combination bare steel/cast iron main replacement project on West Holly Street in Hazleton, Pennsylvania and resulted in a minor flash-burn injury to the face of Contractor employee.

The incident was investigated by the Commission's Gas Safety Division ("GSD"), among others. GSD subsequently requested that I&E review the matter. An informal investigation into the UGI incident was initiated by I&E. I&E's informal investigation concluded that sufficient data had been gathered to substantiate allegations of violations of the Public Utility Code and/or other applicable statutes and regulations in connection with the actions of UGI and/or Contractor employees with regard to this main replacement project and the resulting accidental ignition of gas which caused minor injury to a Contractor employee.

The settlement as memorialized in the Settlement Agreement is fair, just and reasonable and, therefore, should be approved. I&E respectfully requests that the Commission approve the Settlement Agreement in its entirety, without modification.

The Settlement Agreement sets forth the following terms, summarized as follows:

- a. UGI will pay a civil penalty of ninety-six thousand dollars (\$96,000.00) to resolve the alleged violations uncovered by this informal investigation. Said payment shall be made by certified check payable to "Commonwealth of Pennsylvania" and forwarded to the Commission through the prosecuting attorney within thirty (30) days of the date of the Order approving this Settlement. UGI shall not recover any portion of this monetary settlement amount from its customers in any future ratemaking claim or any other manner whatsoever.
- b. UGI has taken or will take corrective action and has implemented revisions to its operating procedures which will act as safeguards against a similar incident occurring in the future. The pertinent



actions taken by UGI and Contractor are set forth in Paragraph 21 of the Settlement Agreement, as follows:

- i. UGI supervisors met with and briefed UGI's Hazleton area employees and Contractor employees regarding the importance of following the Company's operational procedures and communicated that deviation from these procedures would not be tolerated. Topics covered include Prevention of Accidental Ignition 70.90.10, Tapping and Stopping off Low Pressure Mains Using Bags or Low Pressure Stoppers 60.100.40 and UGI's Job Plan.
- ii. UGI applied appropriate disciplinary action regarding the UGI inspector, including a thirty (30) day suspension and reduction in grade. The employee subsequently retired.
- iii. UGI met with the Contractor's management, discussed the facts of the matter, emphasized the importance of following the Company's operational procedures and communicated that deviation from these procedures would not be tolerated. The Contractor foreman was terminated from his employment with Contractor.

UGI has met with Company employees and Contractor employees to stress that deviation from the Company's operational procedures will not be tolerated. The Company and its Contractor have also taken disciplinary action regarding the personnel involved in this incident. Finally, UGI has agreed to pay a monetary settlement amount of \$96,000. The Parties are hopeful that swift resolution of this matter by entering into this Settlement Agreement will act to deter unsafe practices and improve implementation of the Company's operational procedures. Consequently, it is the position of I&E that the resulting Settlement Agreement achieves all of the goals that would have been sought to



be attained through the filing of a formal complaint, but in an administratively efficient and economically effective manner that is intended to result in palpable improvements to procedural compliance that will serve to benefit not only the employees of the Company and its contractors, but the public in general.

The Settlement Agreement, in its entirety, achieves all of the results sought to be obtained by I&E had it filed a formal complaint. The Settlement Agreement allows the Parties to avoid the time and expense of litigation, including but not limited to, discovery, preparation of witness testimony, incident, and reiterated as action items hearings, briefs, exceptions and appeals. Without the need for an evidentiary proceeding, the Company is now free to concentrate on the improved implementation of the Company's procedures and interactions with contractors. As a result of all of the above, the Settlement Agreement should be found by this Commission to be in the public interest.

In *Rosi v. Bell Atlantic Pennsylvania Inc., et al.*, 94 PA PUC 103, Docket No. C-00992409 (Order entered March 16, 2000), as set forth in *Pennsylvania Public Utility Commission v. NCIC Operator Services*, Docket No. M-00001440 (December 20, 2000), the Commission adopted and utilized standards for determining whether a particular enforcement outcome is in the public interest. The standards set forth in *Rosi* were reviewed by the Parties. The Parties submit that this Settlement Agreement does not violate the requirements for settlements found in *Rosi* and that the terms of the Settlement Agreement are in the public interest.

Approval of this Settlement Agreement is consistent with the Commission's Policy Statement, *Factors and standards for evaluating litigated and settled proceedings*



*involving violations of the Public Utility Code and Commission regulations – statement of policy*, at 52 Pa. Code § 69.1201 (“Policy Statement”). Under the Policy Statement, while many of the *Rosi* standards may still be applied, the Commission specifically recognized that in settled cases the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

The Commission’s Policy Statement provides for ten (10) factors and standards to be considered by the Commission. The first standard addresses whether the conduct at issue was of a serious nature. 52 Pa. Code § 69.1201(c)(1). The act of pipe replacement on an active gas main is, in and of itself, inherently serious in nature and was considered in arriving at whether to proceed with the filing of a formal complaint or, in the alternative, to seek an amicable settlement resolution, as well as in determining the penalty to be assessed. I&E’s investigation indicated that the implementation of and adherence to the Company’s existing operating procedures by the UGI inspector and Contractor foreman were not adequate. The terms and conditions of this Settlement Agreement acknowledge the seriousness of the incident and the breakdown in procedural compliance that occurred and are designed to enhance the Company’s procedure compliance and the overall safety and reliability of its service.

The second standard addresses whether the resulting consequence of the conduct in question was of a serious nature. 52 Pa. Code § 69.1201(c)(2). Here, a spark created an ignition of natural gas resulting in a minor flash-burn injury to the face of the Contractor foreman. It is I&E’s position, with public safety as a paramount concern, that



the resulting consequences of this incident, which included personal injury, albeit minor, is of a serious nature. Mitigating factors included that the resulting flash ignition of gas was swiftly extinguished, the injury to the face of the Contractor foreman was minor and did not impact any other Company or Contractor personnel, the entire incident was very brief, and there was no facility or property damage as a result of the incident.

The third standard addresses whether the conduct was intentional or unintentional. 52 Pa. Code § 69.1201(c)(3). Since this standard may apply to litigated proceedings and this matter has instead resulted in an amicable Settlement Agreement, it is not applicable here.

The fourth standard addresses whether the Company made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As set forth in the “Terms and Conditions of Settlement” section of the Settlement Agreement, UGI has implemented or is implementing a process of re-enforcing with its employees and contractor employees the importance of strict compliance with proper operating procedures, so as to preferably avoid, or at least minimize, a recurrence of this kind of event. This action is consistent with the Commission’s charge to ensure that natural gas facilities in Pennsylvania are fully capable of providing safe and reliable service to their customers. As such, I&E is satisfied that the Company is taking important steps to address I&E’s concerns and decrease the likelihood of similar incidents in the future.

In the process of negotiating this Settlement Agreement, the remaining factors in the Policy Statement were also considered. Specifically, the Parties reviewed the number



of customers affected, the compliance history of the Company, the Company's cooperation with the Commission, and the monetary penalty necessary not only to deter future violations, but to recognize alleged violations in the past. In reaching its agreed to monetary settlement amount, I&E was cognizant of UGI's "troubled" compliance history of late based on other matters that have come before the Commission. I&E is satisfied that the single, isolated incident that was the focus of this investigation is not an offshoot or clearly related to any other incidents that may have come before the Commission. This incident appears to stand on its own as a single, unfortunate incident and I&E has concluded that, with this Settlement Agreement, the Company has taken appropriate remedial measures, effectuated necessary disciplinary action and agreed to sufficient monetary remuneration. The Settlement Agreement was amicably negotiated and recognizes the Respondent's good faith efforts to comply with the Commission's regulations.

I&E submits that settlement of this proceeding avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement generally avoids the possibility of a greater fine or penalty or realizes other benefits related to avoiding a litigated proceeding. Both parties negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding, such as *Rosi*, are generally different from those that result from a settlement. This is the reason that *Rosi* listed whether penalties arise from a settlement or a litigated proceeding as one of its tests.



The instant Settlement Agreement is in the public interest because it effectively addresses the allegations identified by I&E's investigation, avoids the time and expense of litigation which entails discovery, hearings, filings of briefs, exceptions, reply exceptions, and possible appeals. The Company has also agreed to pay a fair and equitable monetary settlement amount and take measures to improve compliance with its operational procedures. Moreover, the Settlement Agreement clearly meets the standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201.

Commission Rules and Regulations encourage the settlement of proceedings. For this matter in particular, I&E emphasizes that, with the incident that was the subject of this investigation; it is in the public interest to allow UGI to pay a fair, monetary settlement and to move forward in the implementation of operational measures that will act to enhance the safety of the public as well as UGI employees and bolster its efforts to adhere to state and federal gas safety regulations. UGI and I&E convened several telephonic and in-person meetings and discussions during the course of this proceeding. These discussions ultimately resulted in the foregoing Settlement Agreement which is a full and final resolution of the Commission's investigation. The Parties have asserted that approval of this settlement is consistent with the Commission's Policy Statement at 52 Pa.Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations – statement of policy.*

In addition to the foregoing reasons, based upon I&E's analysis of these matters, acceptance of this proposed settlement is in the public interest because resolution of this



case by settlement rather than litigation will avoid the substantial time and expense involved in continuing to formally pursue all allegations in this proceeding. Moreover, acceptance of the Settlement Agreement at this time will ensure that the Company will immediately implement measures to strengthen compliance with the Company's operational procedures as enumerated in the Settlement Agreement.

**WHEREFORE**, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission represents that it supports the settlement of this matter as memorialized by the executed and filed Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the foregoing Settlement Agreement, including all terms and conditions contained therein, without modification.

Respectfully submitted,



Wayne T. Scott, First Deputy Chief Prosecutor  
Michael L. Swindler, Prosecutor  
Bureau of Investigation and Enforcement

Dated: June 27, 2013

RECEIVED  
2013 JUN 28 AM 9:43  
PA PUC  
SECRETARY'S BUREAU



# Appendix B

RECEIVED  
2013 JUN 28 AM 9:43  
PA PUC  
SECRETARY'S BUREAU



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility  
Commission, Bureau of Investigation  
and Enforcement

:  
:  
:  
:  
:  
:  
:

Docket No. M-2013-2312275

v.

UGI Utilities, Inc. – Gas Division

---

**STATEMENT IN SUPPORT OF  
UGI UTILITIES, INC. – GAS DIVISION**

---

**RECEIVED**  
**2013 JUN 28 AM 9:43**  
**PA PUC**  
**SECRETARY'S BUREAU**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

UGI Utilities, Inc. – Gas Division (“UGI”) hereby files this Statement in Support of the Settlement Agreement (“Settlement Agreement”) entered into by and between UGI and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) (hereinafter, collectively “Joint Petitioners”) in the above-captioned proceeding. The Settlement Agreement fully resolves all issues related to a work-site accident that occurred on June 5, 2012 in Hazleton, Pennsylvania in which the crew foreman of a contractor working for UGI experienced superficial facial burns from a small flame of natural gas caused by a spark from an electric saw he had been operating. UGI respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

**I. INTRODUCTION**

The factual background of this matter is set forth in Paragraphs 10-21 of the Settlement Agreement which are incorporated herein by reference. In the sections which follow, UGI will



explain why it believes the settlement reached with I&E in this matter is reasonable and how that settlement and the corrective actions UGI undertook immediately after the incident are consistent with the factors the Commission has indicated it will consider in its policy statement addressing factors and standards for evaluating litigated and settled proceedings at 52 Pa. Code § 69.1201.

UGI recognizes that it has experienced several gas safety incidents involving UGI or one of its subsidiary companies over the last several years in which I&E alleged that UGI had violated certain gas safety standards. A few instances involved third party excavators damaging UGI's lines in violation of the PA One Call Act. Others involved allegations of UGI employees engaged in unsafe workplace and construction practice, failing in their emergency response, and not receiving adequate operator training. However, in all instances, UGI cooperated with Commission gas safety and prosecutorial staff and resolved the matters through settlements approved by the Commission. UGI implemented remedial measures, including training, modified practices and procedures, and the allocation of incremental resources in a variety of areas. While these matters have settled, UGI understands that these incidents create an unfavorable impression of the Company's current gas operations with the Commission and the general public.

The safe and reliable delivery of energy to customers and to the communities served by UGI is of paramount importance. The Commission, in fulfilling its gas safety responsibilities, should expect natural gas distribution companies such as UGI to operate safely and to take responsibility for their actions. Since the incident in Hazleton took place in June 2012, UGI has undertaken an organizational overhaul for the purpose of enhancing the safety and effectiveness of its gas operations, technical and field resources, and the general overall commitment of the Company towards gas safety. This has involved the hiring of several highly qualified



professionals from outside of UGI to lead our engineering, technical, safety and training, and gas distribution and transmission field operations. Also included in the organizational overhaul was movement of several management personnel out of operations functions. These new individuals, along with UGI's existing experts, should provide UGI with the technical leadership and field management bench strength needed to limit the potential for future safety incidents such as the one in Hazleton and others previously noted by the Commission.

As part of this plan, UGI plans to hire a significant number of new employees over the next three years, in part to replace retiring experienced employees, but also to increase the numbers of field employees. High on the list of priorities are increased numbers of construction inspectors, regulatory compliance specialists, training personnel, and additional workers trained in corrosion prevention and other distribution integrity management functions. UGI has been working closely with Commission's gas safety personnel improve its track record related to regulatory compliance and safety in the field. UGI is deeply committed to this goal, as reflected in its commitment to accelerate its cast iron/bare steel main replacement program, more thoughtfully and aggressively implementing its distribution integrity management and transmission integrity management programs, and to improving its culture related to natural gas pipeline infrastructure, practices and procedures. UGI is acting aggressively to ensure that its work-force is properly qualified, and devoted to the goal of ensuring public safety and regulatory compliance.

## **II. COMMISSION POLICY FAVORS SETTLEMENT**

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 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 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).

The Commission has promulgated a Policy Statement that sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201. These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission's investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) other relevant factors. 52 Pa. Code § 69.1201(c). The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

For the reasons explained below, the Settlement is in the public interest and should be approved.



### **III. THE SETTLEMENT**

UGI has been cooperative and proactive with I&E and Commission gas safety personnel in identifying practices and procedures, policies, and training that can further improve gas safety. Under the terms of the Settlement, UGI and I&E have agreed that UGI will pay a civil penalty in the amount of \$96,000 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.

#### **A. PUBLIC BENEFITS**

UGI believes the \$96,000 civil penalty, combined with other remedial measures UGI has already begun to undertake, will ensure that events such as occurred in Hazleton will not recur. Unlike other more complex matters, this matter involves a relatively simple set of facts involving a contractor employee and a UGI employee whom I&E alleges to have violated UGI's standard practices and procedures, resulting in the ignition of gas that superficially burned the contractor's employee. As a result of the behavior of these two individuals, the contractor employee was terminated by the contractor and UGI suspended and reduced the job grade of its employee, who subsequently retired after 40 years of service. Moreover, both UGI and its contractor held mandatory training sessions with the affected workforces on the specific job tasks associated with the event. Thus, the Company and its contractor acted quickly to their employee performance issues and to send a clear message that certain types of work behavior would not be tolerated within its workforce.

Finally, as a result of this event and others known by the Commission, comprehensive discussions with the I&E Gas Safety Division and I&E leadership, and UGI's own self-evaluation, UGI has begun to implement a wholesale upgrade of its technical resources and



operational approach, as noted in Section I above. This upgrade should result in improved effectiveness in its gas safety record immediately and over time.

## **B. FACTORS UNDER COMMISSION'S POLICY STATEMENT**

Set forth below are the standards set forth in 52 Pa. Code § 69.1201(c), and UGI's view as to how the Settlement terms should be considered under each standard:

*(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.*

The events which occurred at Hazleton on June 5, 2012 arguably demonstrated an unacceptable lack of professionalism on the part of the individuals involved. However, UGI does not believe that the incident ever presented a serious threat to the public with the potential for significant property damage or personal injury. Indeed, none occurred. Even so, the actions leading to the incident should not have occurred. Thus, UGI believes that the first factor, on balance, would suggest the potential for a penalty, if litigated, in line with the penalty agreed upon between I&E and UGI.

*(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.*

UGI does not believe that the actual consequences or the potential consequences of the actions, while significant, were of a nature that warrant a higher penalty than the one agreed upon. The minor burn suffered by the contractor employee was quickly treated and has been described as similar to "bad sunburn." Personnel located nearby quickly extinguished the small fire with a hand held extinguisher. There was no other serious threat to person or property.



*(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.*

The actions of the contractor and Company employees reflected a degree of complacency that UGI acted quickly to address. UGI's management and written policies, practices and procedures prohibit the behavior in question. UGI's management acted quickly to deal with its employee and address the incident with its contractor to ensure that the behavior is not repeated. Thus, UGI believes this factor would suggest a lower 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.*

UGI responded to the Hazleton incident by disciplining its employee, working with its contractor to improve its workplace behavior, and making other changes to enhance the effectiveness of its gas operations. These changes affect all aspects of the business, including regulatory compliance, construction practices, routine maintenance and other areas that ensure the Company safely delivers energy to its customers and to the communities it serves.

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

No customers were affected by this incident. In addition, the incident lasted less than twenty minutes.

*(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.*

UGI has been involved in several settled proceedings alleging violation of gas safety rules. UGI would also note that it has agreed to a substantial civil penalty in this proceeding and has undertaken several actions to enhance its gas operations.



*(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.*

UGI fully cooperated with the investigation of this incident.

*(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.*

Given the nature of the alleged violations by UGI, and UGI's commitment to enhance the overall performance of its gas operations and its full cooperation with Commission staff, there is no reason to believe that a larger civil penalty is necessary to ensure future cooperation and compliance.

*(9) Past Commission decisions in similar situations.*

Given the nature of the alleged violations, UGI believes that a civil penalty of \$96,000 is roughly comparable to fines in other similar cases.

*(10) Other relevant factors.*

None.

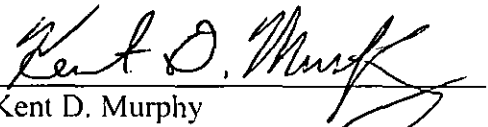
#### **IV. CONCLUSION**

UGI knows that it is the Company's responsibility to safely and reliably deliver natural gas to its customers and to the communities it serves. UGI takes this responsibility seriously, is moving aggressively to enhance its operational performance, and is working cooperatively with the Commission to constructively address gas safety issues. Through these efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all issues in this proceeding in a fair and equitable manner. This Settlement resolves all issues related to the I&E investigation into the Hazleton incident. The other substantial measures that UGI has undertaken will, in both the short- and long-term, provide significant public benefits to all customers served by UGI, the communities it serves, and UGI's employees.



A fair and reasonable compromise has been achieved in this case. UGI fully supports the Settlement and respectfully requests that it be approved by the Commission in its entirety, without modification.

Respectfully submitted,

  
Kent D. Murphy  
PA Attorney ID No. 44791  
Group Counsel, Energy & Regulation  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
610.337.1000  
[murphyke@ugicorp.com](mailto:murphyke@ugicorp.com)

Counsel for UGI Utilities, Inc. –  
Gas Division

Dated: June 27, 2013

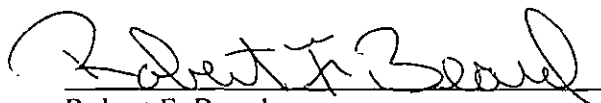
RECEIVED  
2013 JUN 28 AM 9:43  
PA PUC  
SECRETARY'S BUREAU



## VERIFICATION

I, Robert F. Beard, Jr., being the President & Chief Executive Officer of UGI Utilities, Inc., hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that UGI Utilities, Inc. – Gas Division to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: June 26, 2013



Robert F. Beard  
President & Chief Executive Officer  
UGI Utilities, Inc.

RECEIVED  
2013 JUN 28 AM 9:43  
PA PUC  
SECRETARY'S BUREAU



## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons listed and in the manner indicated below:

**Notification by first class mail addressed as follows:**

Kent D. Murphy, Esquire  
Group Counsel, Energy & Regulation  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406



Michael L. Swindler  
Prosecutor  
PA Attorney ID No. 43319  
(Counsel for Pennsylvania Public Utility  
Commission, Bureau of Investigation and  
Enforcement)

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 783-6369

Dated: June 28, 2013

RECEIVED  
2013 JUN 28 AM 9:43  
PA PUC  
SECRETARY'S BUREAU