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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
|  | Public Meeting held September 26, 2013 |
| Commissioners Present:Robert F. Powelson, ChairmanJohn F. Coleman, Jr., Vice ChairmanWayne E. GardnerJames H. CawleyPamela A. Witmer |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v. UGI Penn Natural Gas, Inc. | M-2013-2338981 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Settlement Agreement (Settlement) filed by the Commission’s Bureau of Investigation and Enforcement (I&E) and UGI-Penn Natural Gas, Inc. (UGI-PNG) (collectively, Parties) on August 16, 2013. Both Parties filed Statements in Support of the Settlement. Also before the Commission are the Comments filed by UGI-PNG on September 18, 2013, and the Comments filed by Robert T. Hughes and Ann Marie Hughes on September 19, 2013. For the reasons set forth herein, we shall approve the Settlement.

**History of the Proceeding**

On April 4 and 5, 2012, gas leaks were detected in a UGI-PNG main located along 460 Wilkes-Barre Township Boulevard, also known as Pennsylvania Business Route 309 (Route 309), in Wilkes-Barre, Pennsylvania. UGI-PNG initially performed a temporary repair and completed a permanent repair on May 30, 2012.

As a result of this incident, the Gas Safety Division (GSD) of I&E conducted an informal investigation of UGI-PNG’s leak classification, surveys, and compliance with state and federal regulations, as well as UGI-PNG’s compliance with pipeline repair practices. Based on its investigation, I&E concluded that UGI-PNG was not compliant with state and federal regulations.

On August 16, 2013, the Parties filed the instant Settlement. By Opinion and Order entered on August 29, 2013 (*August 2013 Order*), the Commission provided an opportunity for interested parties to file comments to the Settlement within twenty days from the entry date of the *August 2013 Order*.

As previously indicated, UGI-PNG filed Comments on September 18, 2013, and Robert T. Hughes and Ann Marie Hughes (the Hughes) filed Comments on September 19, 2013.

**Background**

 On April 4, 2012, a 911 dispatcher called UGI-PNG to report a natural gas odor in the vicinity of Route 309. UGI-PNG dispatched a first responder who performed a leak investigation at the site and graded the leak as an “A” leak.[[1]](#footnote-1) Settlement at ¶ 10. In grading the leak as an “A,” the responder did not provide the other information that is requested on UGI-PNG’s leak form, such as the pressure of the main, the time of the leak investigation, or other tracking information. *Id.* at ¶ 11.

 On May 12, 2012, an employee of a convenience store/gas station located at 464 Wilkes-Barre Township Boulevard called UGI-PNG to report a natural gas odor. A UGI-PNG responder arrived at the location, performed an investigation, and determined it to be a “C” leak.[[2]](#footnote-2) The leak record indicated the presence of elevated concentrations of gas in several bar holes along the road and in a sanitary sewer manhole located approximately twenty feet west of the convenience store/gas station parking lot. *Id.* at ¶ 12. The leaking pipeline was a ten-inch, unprotected, coated steel, high pressure distribution main operating at 320 pounds per square inch (PSI) that was originally installed in 1961. *Id.* at ¶ 13.

 Later, on May 12, 2012, in an attempt to manage the leak, UGI-PNG installed three ten-inch diameter, Mueller full seal style 500 clamps side-by-side along the leaking pipe to allow for the welding of a Dresser 220 full encapsulation clamp. This repair option was abandoned because the encapsulation clamp was insufficiently sized to allow for welding onto the pipe. Leak monitoring bar test holes were drilled in the road and UGI-PNG determined that the Mueller clamps would be left in place until a permanent solution was implemented. UGI-PNG backfilled the excavation and configured two valve boxes at the site to allow for the venting of any gas that might escape through the Mueller band clamps, which are pressure rated at 100 PSI, and not considered suitable for a permanent repair on a pipe operating at 320 PSI. UGI-PNG did not reduce the pressure on this pipe prior to performing this temporary repair, and the matter was referred to UGI-PNG Engineering to evaluate replacement options or to provide an alternative repair solution. *Id.* at ¶ 14.

 On May 13, 2012, a UGI-PNG supervisor visited the leak site and resurveyed the bar holes. He determined that no hazardous conditions existed. The supervisor’s actions in monitoring the leak were not documented. *Id.* at ¶ 16.

 From May 14, 2012, until 9:00 a.m. on May 16, 2012, no monitoring activity occurred at the leak site. *Id.* at ¶¶ 17-18.

 At 9:00 a.m. on May 16, 2012, UGI-PNG’s leak survey contractor rechecked the site and found elevated concentrations of gas in the bar holes. Based on these findings, a UGI-PNG crew was dispatched to the site. The crew drilled additional bar holes and discovered gas migrating underneath the concrete island at the convenience store/gas station parking lot apron and into the grass curb line. The contractor submitted a “C” leak report. *Id.* at ¶ 20.

 From 10:00 a.m. until 1:00 p.m. on May 16, 2012, the utility reduced pressure in the line from approximately 300 PSI to 200 PSI. UGI-PNG re-excavated the original dig site and tightened one of the three clamps. After purging gas from the soil, lesser concentrations of gas were detected by UGI-PNG’s crew. A few hours later, the site was rechecked by the UGI-PNG leak survey contractor and, based on the excavation and tightening of the leak clamp above, the contractor submitted a “B” leak[[3]](#footnote-3) report. The utility continued purging residual gas throughout this period. *Id.* at ¶ 21.

 Between May 17 and 20, 2012, UGI-PNG monitored the leak site. Whenever the levels became elevated, the UGI-PNG crews purged the soil until the readings were lowered to zero. UGI-PNG personnel remained on site continuously from this point forward until the main section of the line with the leak clamps was taken out of service. *Id.* at ¶ 22.

 On May 20, 2012, the GSD received an email from a Pipeline and Hazardous Materials Safety Administration (PHMSA) representative regarding a National Response Center (NRC) report #1011999, dated May 19, 2012. The NRC report stated that a person describing himself as a UGI-PNG employee alleged that a leak on a high pressure gas distribution line was discovered and subsequently repaired by UGI-PNG using improper clamps on Saturday, May 12, 2012, that “the clamps used for the repair blew out on Tuesday, May 15,” and that “the gas company may be trying to cover up the release.” The GSD began an investigation. *Id.* at ¶ 23.

 During the period from May 22 through May 25, 2012, UGI-PNG’s contractor repaired the line. UGI-PNG monitored the site and continued to purge the leak site until the repair was completed. On May 30, 2012, UGI-PNG completed the repair and reactivated the line. Leak checks at that time showed zero levels of gas. *Id.* at ¶ 26.

 At the GSD’s request, the retired pipe section was removed on May 29, 2012. Examination of the pipe revealed corrosion pits on approximately five feet of the pipe. The depth and pattern of the pits were indicative of corrosion caused by electrical interference. Thereafter, field testing concluded that a source of the interference current on the high pressure main was the rectifier used for cathodically protecting equipment at a nearby gasoline filling station located east of the leak site. *Id.* at ¶ 27.

 The pipe in question is part of a two-mile unprotected steel line that, prior to April 4, 2012, experienced twelve leaks since 1986. Three of those leaks occurred during the six-year period after UGI-PNG acquired the gas system in October 2006. *Id.*at ¶ 28. UGI-PNG determined that the segment of pipeline at issue was leak surveyed routinely through mobile and walking surveys. *Id.* at ¶ 29.

 As a result of the Route 309 incident, the GSD conducted an expanded investigation of UGI-PNG’s leak classification, surveys, and management systems and compliance with state and federal regulations. *Id.* at ¶ 30. I&E concluded that UGI-PNG was not compliant with state and federal regulations in that UGI-PNG: (1) inadequately monitored and repaired leaks; (2) incorrectly classified leaks; (3) inadequately documented and maintained documentation of leak survey and dispatch data; and (4) improperly used and documented its use of the Emergency One Call System. *Id.* at ¶ 32.

If these matters had been litigated, I&E would have contended that UGI-PNG committed the following acts or omissions in relation to the Route 309 incident:

* + - 1. UGI-PNG violated its operating procedure GOM 60.50.30 in that on April 4, 2012, UGI-PNG failed to ascertain sufficient information to properly grade the leak, including uncovering the potential hazard, proceeding to the street and checking manholes. There is no indication on the leak form that this action was performed.
			2. UGI-PNG exceeded the main’s [maximum allowable operating pressure (MAOP)] in that on May 12, 2012, UGI-PNG installed clamps rated for 100PSI on the main which was operating at 320PSI. There was no pressure reduction prior to attempting this repair.

* + - 1. UGI-PNG failed to properly repair the main on May 12, 2012 in that it back-filled the soil and departed from the scene after installing incorrectly rated band clamps and vents.
			2. UGI-PNG failed to adequately monitor a hazardous condition after backfilling the excavation on May 12, 2012 in that it departed the scene after leaving improperly rated clamps on a hazardous leak. Exceeding MAOP constitutes an emergency condition that warrants monitoring. UGI-PNG failed to perform reasonable safety measures such as continuously monitoring by leaving a technician on-scene.
			3. UGI-PNG violated its procedures in that it failed to document the supervisor’s actions when he checked readings from the leak on May 13, 2012. UGI-PNG’s procedures state that “All leak survey information shall be recorded, tabulated, and maintained in accordance with Company policy to enable the completion of the Department of Transportation Leak Report (DOT F-7100.1-1[)] and various other reports for inter-company use.” *See* UGI-PNG Procedures and Methods 5-1 section B, regarding “Documentation.”
			4. UGI-PNG failed to cathodically protect the high pressure distribution line at 460 Wilkes Barre [Township] Boulevard. This line required cathodic protection in that it was part of a pre-1971, unprotected steel segment that experienced significant leak history due to corrosion. After September 15, 2003, thirteen (13) leaks were found on this section of the main, which indicate active corrosion as defined by 49 CFR § 192.3. Bare or coated distribution lines installed prior to August 1, 1971, must be cathodically protected when active corrosion exists.
			5. UGI-PNG failed to reevaluate and document the reevaluation of unprotected pipelines every three years, which must be monitored to detect areas of active corrosion.
			6. The leak was determined to be caused by interference current from a gas station rectifier. UGI-PNG failed to employ a program to minimize the effects of interference.
			7. UGI-PNG failed to cathodically protect 24 of the service lines in the unprotected segment. These lines were installed after July 1971.
			8. UGI-PNG returned to service a new segment of pipeline or a segment of pipeline that was relocated or replaced before substantiating the MAOP of that pipeline in that UGI-PNG has records revealing 24 pressure tests at 100PSI or below. The main operated at 320PSI and the service lines would need to be pressure tested to at least 480PSI to meet the pressure testing requirements for the MAOP of the main.
			9. UGI-PNG failed to document the condition of the main, which was exposed after installation of each of the 24 service lines. UGI-PNG cannot produce inspection records that indicate that the main was examined for evidence of external corrosion.

* + - 1. UGI-PNG could not produce any documentation to substantiate the established MAOP of the main.

*Id.* at ¶ 33. I&E noted that, if proven, the alleged UGI-PNG acts and omissions, above, would constitute violations of Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501, and the following state and federal regulations: 52 Pa. Code § 59.33(a); 49 C.F.R. §§ 192.13, 192.455, 192.457, 192.459, 192.465, 192.473, 192.503, 192.603, 192.605, 192.615, and 192.619. Settlement at ¶ 34.

Had this matter been fully litigated, UGI-PNG would have denied or answered and defended against many, if not all, of the above stated allegations. *Id*. at
¶ 35.

**Terms of the Settlement Agreement**

The Parties state that the purpose of the Settlement is to terminate the investigation in this proceeding and to resolve this matter without litigation. Settlement at ¶ 36. The Settlement provides that it resolves, with prejudice, all issues related to the informal investigation. *Id.* at ¶ 41. The Settlement notes that, throughout the entire investigatory process, UGI-PNG was cooperative and proactive with I&E’s recommendations and has already undertaken steps to complete some of the remedies set forth in the Settlement. *Id.* at ¶ 37.

 The Parties have agreed that, pursuant to the Settlement terms set forth below, UGI-PNG will perform the following:

* 1. Pay a civil penalty in the amount of one million dollars ($1,000,000.00), pursuant to 66 Pa. C.S. § 3301(c). Payment shall be made by certified check made payable to the “Commonwealth of Pennsylvania” and forwarded to the Commission through the prosecuting attorney within thirty (30) days of the date of entry of the Commission’s Order. UGI-PNG shall not include any portion of this civil penalty in any future rate proceeding, nor shall it be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).
	2. Within ninety (90) days after the date on which a final order approving this Settlement without modification is entered, or by March 31, 2014, whichever date occurs later, UGI-PNG shall implement an automated, computer-based system of recording and tracking the results of leak surveys that will be utilized both by UGI-PNG’s employees and outside contractors performing leak surveys, mapping, investigations and repairs. Until such automated system is implemented, outside contractors shall be required by UGI-PNG to maintain records of leak surveys conducted by the contractor for UGI-PNG for a period of no less than two (2) years.
	3. Within ninety (90) days after the date on which a final order approving this Settlement without modification is entered, UGI-PNG shall provide to I&E the results of the 3rd party audit UGI commissioned to evaluate “B” leak classification and repair. The audit encompassed all active recorded PNG “B” leaks as of December 31, 2012 and “C” leaks repaired from October 1 through December 31, 2012. The written report shall address the accuracy of characterization of all “B” leaks, and the quality of repair for all “C” leaks included in the audit. Within one hundred twenty (120) days after the date on which a final order approving this Settlement without modification is entered, UGI-PNG shall provide to I&E the results of the audit or recheck that encompassed all active recorded “A” leaks in Wilkes-Barre Township and Borough, and Scranton discovered in 2012.
	4. By no later than the end of the ninth (9th) full calendar month after the date on which a final order of the Commission approving this Settlement without modification is entered, UGI-PNG shall provide I&E with a completed audit report of UGI-PNG’s gas operations by an outside consultant hired by UGI-PNG. The report shall include the auditor’s findings and recommendations, UGI-PNG’s position on the auditor’s findings and recommendations, and UGI-PNG’s implementation plan. The operational audit shall review all material practices and procedures related to the items identified in the attached document entitled “Scope and Controls for the UGI-PNG Management Audit M-2013-2338981” attached [to the Settlement] as Appendix C.
	5. Commencing within ninety (90) days after the date on which a final order approving this Settlement without modification is entered, UGI-PNG shall implement a modified leak survey program of its entire inventory of unprotected steel distribution mains and cast iron pipe, which will require two additional leak survey cycles per year, during non-winter months. For a period of two years, the survey results will be submitted to I&E on a quarterly basis within thirty (30) days of completion and will include leak reports/classification sheets. After this two year period, UGI-PNG will assess the value of continuing this program in connection with the annual Distribution Integrity Management Plan review following the end of the two-year period.

* 1. Within twelve (12) months following the date on which a final order approving this Settlement without modification is entered, UGI-PNG shall submit to the GSD the following information regarding any high pressure distribution pipeline currently operating at 100PSI or greater within the UGI-PNG service territory:

1. Identify by location and length for each pipeline, the physical characteristics broken down into individual segments defined by pipe material, joining procedure, diameter, wall thickness, grade, protected, unprotected, coasting and year installed.

2. Provide the actual operating pressures listed annually, both low and high, for each segment since calendar year 2000 and the corresponding calculated SMYS for each segment according to 49 CFR § 192.107(b).

3. Provide the MAOP of each high pressure distribution pipeline. Provide all supporting documents.

4. Provide the leak history for each pipeline in tabular form and include the documentation in the form of pipe inspection reports.

5. A plan to establish operating parameters for any distribution main segments for which UGI-PNG cannot adequately confirm the MAOP. Factors to be considered in developing the plan shall include, at a minimum, operating history, location, potential consequences, and estimated cost of confirming MAOP, and any federal initiatives related to the topic. The Commission shall determine the appropriate process for reviewing the reasonableness of UGI-PNG’s proposed plan.

* 1. Provide a list of all UGI-PNG unprotected pipeline, including its location, to the GSD within thirty (30) days of the approval of this Settlement Agreement.
	2. For a period of one year after the date on which a final order of the Commission approving this Settlement without modification is entered, UGI-PNG shall not be subject to further sanction or non-compliance finding that could be imposed by the Commission or the GSD regarding any or all subject matter covered by this Settlement, except in matters involving an “incident,” as defined in 49 C.F.R. § 191.3, or a “safety related condition report,” as defined by 49 C.F.R. § 191.23(a).

Settlement at ¶ 37.

In consideration of UGI-PNG’s agreement to pay a $1,000,000.00 civil penalty and implementation of other measures, as specified herein, I&E agrees to forebear from prosecuting any formal complaint that relates to UGI-PNG’s conduct as described in the Settlement. The Parties state that nothing contained in the Settlement 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 civil penalties may be imposed by the Commission for any actions identified in the Settlement. *Id.* at ¶ 38. Additionally, none of the provisions of the Settlement or the statements in the Settlement shall be considered an admission of any fact or culpability. *Id.* at ¶ 40. As the Settlement does not make any findings of fact or conclusions of law, the Parties intend that the Settlement shall not be admitted as evidence in any potential civil proceeding involving this matter. *Id.* at ¶ 41.

The Settlement is conditioned upon the Commission’s approval of its terms, without modification. *Id*. at ¶ 43. The Parties reserve the right to withdraw from the Settlement Agreement if it is modified. *Id*. at ¶ 44.

**Discussion**

Initially, we note that any issue or argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**Comments in Response to the *August 2013 Order***

 In its Comments, UGI-PNG requests that the Commission approve the Settlement without modification so that it may expeditiously implement the operational and other measures agreed to between UGI-PNG and I&E. UGI-PNG Comments at 1. UGI-PNG states that it has engaged in several gas safety enhancements to date, including overhauling its gas operations at the highest and intermediate levels of the organization. UGI-PNG explains that approximately twenty positions have been affected, from vice-presidents to directors to managers, and that specific functional areas, including engineering and technical services, construction and maintenance, corrosion, and leak management have been enhanced with new management and technical support from within and outside of the UGI family of companies.[[4]](#footnote-4) *Id*. at 2. UGI-PNG avers that it has completed or is in the latter stage of several maintenance and capital projects designed to enhance the safety of its system in and around the location of the leak that gave rise to this investigation. *Id*. at 2-3. UGI-PNG also reiterates several benefits of the remedial measures it will engage in as part of the Settlement. *Id*. at 3-4. UGI-PNG believes that the safety enhancement measures it has already undertaken, coupled with those agreed upon in the Settlement, represent significant and measurable progress toward safety enhancements on the UGI-PNG system. *Id*. at 5.

 In their Comments, the Hughes provide information regarding a gas explosion that occurred on their property on July 14, 2011, and resulted in damage to their home. While we appreciate their Comments, we cannot consider them in the context of this proceeding because the subject matter does not pertain to the matters in this proceeding or the matters addressed in the Settlement. If the Hughes wish to pursue the matter set forth in their Comments before the Commission, they may file a Complaint with the Commission.

**Analysis of the Settlement under the Policy Statement**

 Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

The Commission has promulgated a Policy Statement at 52 Pa. Code

§ 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty 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. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement.

The first factor under the Policy Statement that we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “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.” *Id*. In this case, we find that UGI-PNG’s actions constitute conduct of a serious nature. Based on the GSD’s investigation and I&E’s allegations, UGI-PNG’s conduct includes the following:
(1) failing to ascertain sufficient information to properly grade the leak that was discovered on April 4, 2012; (2) exceeding the maximum allowable operating pressure (MAOP) of the main by installing clamps rated for 100PSI on the main which was operating at 320PSI; (3) improperly repairing the main by back-filling the soil and departing from the site after installing incorrectly-rated band clamps and vents; (4) failing to adequately monitor a hazardous condition by departing the site after leaving improperly rated clamps on the pipe; (5) violating its procedures when a supervisor failed to document the readings he checked from the leak on May 13, 2012; (6) failing to cathodically protect the high pressure distribution line at 460 Wilkes Barre Township Boulevard; (7) failing to evaluate and document the evaluation of unprotected pipelines every three years; (8) failing to employ a program to minimize the effects of interference; (9) failing to cathodically protect twenty-four of the service lines in the unprotected segment of the pipeline; (10) failing to substantiate the MAOP of the pipeline before returning to service a new segment of pipeline or a segment of pipeline that was relocated or replaced; (11) failing to document the condition of the main, which was exposed after installation of each of the twenty-four service lines; and (12) failing to produce documentation to substantiate the established MAOP of the main. Settlement at ¶ 33; I&E Statement in Support at 7-8.

We are concerned that UGI-PNG did not monitor the hazardous condition at the site after leaving improperly rated clamps on the pipeline. We are also concerned that UGI-PNG failed to cathodically protect the high pressure distribution line that has had thirteen leaks since September 15, 2003, which is indicative of active corrosion. Because the conduct described above constitutes actions that placed the public safety at great risk, a higher civil penalty is warranted in this case.

The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* Fortunately, there were not any personal injuries or property damage as a result of UGI-PNG’s improper leak repair in this case. Nevertheless, the potential for serious consequences due to UGI-PNG’s actions in this case was significant.

The third factor pertains to litigated cases only. 52 Pa. Code
§ 69.1201(c)(3). Because this proceeding was settled prior to the filing of a Complaint and an evidentiary hearing was not held, this factor is not applicable to this Settlement.

The fourth factor we may consider is 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. 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. 52 Pa. Code § 69.1201(c)(4). In this case, there is information to indicate that UGI-PNG is engaging in appropriate measures to correct the conduct at issue and prevent similar future conduct. UGI-PNG states that, since the leak repair at issue in this proceeding occurred in May of 2012, UGI-PNG has undertaken a comprehensive organizational overhaul for the purpose of enhancing the safety and effectiveness of its gas operations and technical and field resources. UGI-PNG also states that it hired several highly qualified professionals from outside of UGI to lead its engineering, technical, safety and training, and gas distribution and transmission field operations and that it moved several management personnel out of operations functions. UGI-PNG Statement in Support at 3. UGI-PNG explains that, as part of this organizational change, UGI plans to hire a substantial number of new employees within the next three years with a priority toward increasing the numbers of construction inspectors, regulatory compliance specialists, training personnel, and additional workers trained in corrosion prevention and other distribution integrity management functions. *Id*. at 3-4. UGI-PNG avers that UGI’s workforce realignment has already benefitted the Scranton/Wilkes-Barre area. UGI-PNG submits that, since May of 2012, UGI-PNG has rotated operations managers and supervisors working in the area into new positions and replaced them with new managers and supervisors with deep gas operations experience; has hired several engineers to replace several former UGI-PNG engineers who left the company; and has hired experienced corrosion protection and leak survey and repair personnel to help manage these activities in the Scranton/Wilkes-Barre area. *Id*. at 4. UGI-PNG additionally notes that UGI has commenced several other major projects on the high pressure pipelines serving the Scranton/Wilkes-Barre area, which are estimated to cost UGI-PNG more than $15 million in capital investments in 2013. *Id*. at 4-5.

As part of this Settlement, among other things, UGI-PNG will perform the following remedial actions: implement a new computer-based system to record and track leak survey results; provide I&E with a completed audit report regarding operational areas within the scope of I&E’s investigation and develop a plan to implement recommendations from that report; implement a modified leak survey program of its entire inventory of unprotected steel distribution mains and cast iron pipe and submit the survey results to I&E; and provide I&E with information regarding all high pressure distribution pipelines operating in its service territory, including the physical characteristics and operating pressures of individual segments of the pipe and the MAOP and leak history of each pipeline. Settlement at ¶ 37.

Additionally, as part of the settlement provisions approved in *Pa. PUC, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.*, Docket No.
C-2012-2308997 (Order entered February 19, 2013) (*UGI 2013)*, all three UGI Companies are required to retire or replace all in-service cast iron mains over a fourteen-year period and continue the replacement of bare steel mains over a thirty-year period.

 We acknowledge that UGI-PNG has already undertaken safety enhancement measures and has agreed to undertake additional safety enhancement measures as part of the instant Settlement. We have considered these safety enhancement measures in our analysis of the Settlement. We find that these actions, as a whole, demonstrate that UGI-PNG is taking appropriate action to enhance the safety of its distribution system, improve the reliability of its gas operations, and prevent similar occurrences in the future.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). In this case, service to the convenience store/gas station on Route 309 was shut-off for approximately three to seven hours while the service line to the store was being replaced. I&E Statement in Support at 9. We are not aware of other customers being affected. Considered by itself, this factor does not support a high civil penalty amount.

We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). We have reviewed our records regarding the compliance history of UGI-PNG and the UGI Companies. Aside from the instant case, UGI-PNG does not have a history of recent violations involving gas leaks or other similar matters. Nevertheless, as a whole, the UGI Companies have a poor compliance history relating to gas safety issues. This is the ninth time in approximately five years in which a matter containing allegations of gas safety violations by a UGI-owned gas distribution utility has come before this Commission. Most recently, in *UGI 2013*, *supra*, a natural gas explosion occurred in Allentown on February 9, 2011, and resulted in the deaths of five individuals in two residences, an injury to another individual, and destruction and significant damage to six other residences. The explosion was caused by a circumferential crack in a twelve-inch cast iron main. Based on I&E’s investigation in that case, the allegations regarding UGI Utilities, Inc.’s conduct included the following: (1) failure to timely replace cast iron piping systems in the Allentown area; (2) failure to maintain an odorant sampling program to demonstrate that adequate odorant concentrations are consistently present throughout its distribution system; (3) failure to properly perform post-incident odorant testing; (4) failure to monitor and react to forces that may have detrimentally affected the integrity of the cast iron main; (5) failure to promptly close the curb valves to the residences that were located in the same row as the homes destroyed by the explosion; and (6) failure to promptly and effectively respond to the explosion in that it took five hours to diminish the flow of gas. The settlement proposed a $386,000 civil penalty and provided, among other remedial measures, that UGI would retire or replace all in-service cast iron mains over a fourteen-year period and bare steel mains over a thirty-year period. The Commission approved the settlement with modifications, including the following: the civil penalty amount was increased to $500,000 and UGI was directed to conduct a pilot program in which it would explore and use enhanced leak detection measures in Allentown.

Similarly, in *Pa. PUC v. UGI Utilities, Inc*., Docket No. M-2009-2031571 (Order entered January 14, 2010), a 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 settlement called for remedial measures such as changes to the company’s procedures, training, and operator qualifications regarding meter replacement. 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.

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 the UGI Companies include: *Pa. PUC v. UGI Central Penn Gas, Inc.*, Docket No. M-2011-2155312 (Order entered June 13, 2012) (rejected settlement amount due to the nature of the safety violations and number of recurring allegations); *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).

We believe that the information before us supports the $1,000,000 civil penalty set forth in the Settlement. We acknowledge that UGI has already made key management and personnel changes and changes to policies and procedures that should enhance the safety of its distribution system and improve the reliability of its gas operations. Nevertheless, UGI’s compliance history is indicative of a pattern of allegations regarding gas safety violations, as well as a failure on the part of UGI’s management to adequately focus on gas safety issues. Accordingly, a high civil penalty is warranted in this case.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E, UGI-PNG cooperated with Commission staff throughout the investigation and Settlement process. I&E believes that such cooperation demonstrates a commitment to the Commission’s public safety goals and objectives. I&E Statement in Support at 9.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). In this case, the Parties have agreed that UGI-PNG will pay a civil penalty of $1,000,000. We note that this is the first case before us that involves allegations of gas safety violations that occurred after the amendment to Section 3301(c) of the Code, 66 Pa. C.S. § 3301(c), which increased the maximum civil penalty the Commission is authorized to levy to $2,000,000.[[5]](#footnote-5) Given the serious nature of UGI-PNG’s conduct at issue and the compliance history of the UGI Companies, we find that $1,000,000 is an appropriate civil penalty in this case. We also believe that, along with the remedial measures that UGI-PNG is engaging in to enhance the safety of its distribution system, the civil penalty amount here, which may not be recovered through rates regulated by the Commission, will be a sufficient deterrent to prevent similar occurrences in the future.

The tenth factor we may consider is other relevant factors. 52 Pa. Code

§ 69.1201(c)(10). We believe that it is in the public interest to settle this matter so as to avoid the expense of litigation. In addition, we believe that the Settlement is in the public interest because it will result in public benefits that will promote gas safety in UGI-PNG’s service territory.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement, the Joint Statements in Support of the Settlement, and UGI-PNG’s Comments, we find that the proposed Settlement is in the public interest and merits approval; **THEREFORE**,

**IT IS ORDERED:**

1.         That the Settlement Agreement filed on August 16, 2013, by the Commission’s Bureau of Investigation and Enforcement and UGI-Penn Natural Gas, Inc. is approved.

2.         That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of receipt of the Commission’s final Opinion and Order, UGI-Penn Natural Gas, Inc. shall pay a civil penalty in the amount of $1,000,000.  Said check or money order shall be made payable to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA  17105-3265

  3.         That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That the Secretary’s Bureau shall mark this proceeding closed upon payment of the civil penalty.

 **BY THE COMMISSION,**

Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: September 26, 2013

ORDER ENTERED: September 26, 2013

1. UGI-PNG procedures define an “A” leak as a leak that is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous. [↑](#footnote-ref-1)
2. UGI-PNG procedures define a “C” leak as a leak that is an existing or possible hazard to persons or property that requires immediate repair or continuous action until the conditions are no longer hazardous. [↑](#footnote-ref-2)
3. UGI-PNG procedures define a “B” leak as a non-hazardous leak at the time of detection, but which justifies scheduled repair based on probable future hazard. [↑](#footnote-ref-3)
4. UGI includes UGI Utilities, Inc.; UGI-PNG; and UGI Central Penn Gas, Inc. The three companies will be collectively referred to herein as UGI or the UGI Companies. [↑](#footnote-ref-4)
5. Prior to its amendment, Section 3301(c) of the Code authorized the Commission to levy a maximum civil penalty of $500,000 for violations of the gas pipeline safety provisions of the Code. Section 3301(c), as amended by Act 11 of 2012, provides as follows:

Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed $200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.

 [↑](#footnote-ref-5)