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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |
|  |  Public Meeting held April 23, 2014 |
| Commissioners Present:Robert F. Powelson, ChairmanJohn F. Coleman, Jr., Vice ChairmanJames H. CawleyPamela A. WitmerGladys M. Brown |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v. UGI Utilities, Inc. – Gas Division |  M-2013-2313375 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Settlement Agreement (Settlement) filed on June 28, 2013, by the Commission’s Bureau of Investigation and Enforcement (I&E) and UGI Utilities, Inc. – Gas Division (UGI or the Company) (collectively, the Parties). Each Party also filed a Statement in Support of the Settlement. For the reasons set forth herein, we will approve the Settlement as filed.

**History of the Proceeding**

This matter concerns an informal investigation initiated by I&E at the request of the I&E Gas Safety Division (GSD) as a result of a gas ignition incident that occurred in Hazleton, Pennsylvania on June 5, 2012, and involved a UGI inspector and crew members of UGI’s third party contractor (Contractor). The GSD’s initial investigation of the incident suggested that a further investigation was warranted to determine whether the actions of UGI or the Contractor violated state regulations, federal regulations, and/or the Company’s operating procedures.

By letters dated December 3, 2012, January 8, 2013, and January 30, 2013, I&E requested that UGI provide responses to various data requests relating to the June 5, 2012 incident. The Company provided timely and complete responses. Based on its investigation, I&E concluded that UGI, by its own employees or the employees of its Contractor, violated state and federal regulations and its own operating procedures.

The Parties entered into negotiations and agreed to resolve this matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. The Parties filed the instant Settlement on June 28, 2013.

By Order entered November 14, 2013, the Commission issued the proposed Settlement for public comment pursuant to 52 Pa. Code § 3.113(b)(3), and provided interested parties with twenty days from the entry date of the Order to file comments. No comments to the Settlement have been received. Accordingly, the Commission will issue this final Opinion and Order addressing the Settlement.

**Background**

 I&E’s investigation stemmed from an incident that occurred on June 5, 2012, when a four-man crew employed by Contractor was working on a bare steel/cast iron main replacement project on West Holly Street in Hazleton, Pennsylvania. Specifically, the crew was inserting a new four-inch plastic pipe into an existing six-inch low-pressure bare steel main that would become a casing pipe. Settlement at 3. The work site was about 400 feet long, beginning at North Wyoming Street (the “Push Excavation”) and extending toward Laurel Street (the “Destination Excavation”). Settlement at 3-4.

UGI’s operational procedures provide that insertion of the pipe required that the main be cut with a mechanical saw after the gas flow in the main was stopped. In this instance, the Contractor’s employees inserted a single stopper into the main on each end of the affected part of the gas main to stop the gas flow. The UGI inspector at the Destination Excavation observed this “stop off.”

The Contractor’s foreman was planning to cut the bare steel pipe with a four wheel cutter, but based on the restricted clearance caused by a sewer lateral adjacent to the pipe, he elected to use an electric reciprocating saw. The foreman was aware that some gas was bypassing through the stoppers, and he instructed one of the crew members to introduce air from an air knife under low flow to the area where the saw cut was being made.

The process of the crew members cutting the pipe with an electric saw and blowing air into that work area resulted in a spark that created an ignition of natural gas. The gas ignition caused a minor flash-burn injury to the face of the Contractor foreman. Another Contractor employee put out the flame with a fire extinguisher. The incident did not result in injury to any person other than the Contractor foreman[[1]](#footnote-1) or in any property damage.

The UGI inspector was about one city block away at the Destination Excavation when the incident occurred, and he arrived at the incident location in about one minute. *Id*. at 4. Within approximately twenty minutes of the incident, a clamp was installed over the partially cut section of the gas main to stop the gas from escaping.

The Commission was notified within an hour of the incident. UGI Operations and Safety and Compliance Staff arrived at the incident site shortly thereafter. UGI and the GSD personnel questioned the UGI inspector. UGI Management and the Contractor, in coordination with the GSD, conducted subsequent investigations. *Id*. at 5.

If this matter had been litigated, I&E would have alleged that UGI violated provisions in Part 192 of Title 49 of the Code of Federal Regulations, 49 C.F.R. § 192.605(a), and Sections 59.11 and 59.33 of the Commission’s Regulations, 52 Pa. Code §§ 59.11 and 59.33, as follows:

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, Procedure Number 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 the 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 the pipe to be cut.

e. UGI failed to comply with its Gas Operations Manual, Procedure Number 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, Procedure Number 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 [thirty] days of the occurrence.

Settlement at 7-8.

Had this matter been fully litigated, UGI would have denied or answered and defended against some or all of the above-stated allegations. *Id*. at 8.

**Terms of the Settlement Agreement**

The Parties entered into the Settlement to resolve this matter fully and completely without litigation in a formal proceeding. Settlement at 9. The Settlement provides that it resolves with prejudice all issues related to the informal investigation. *Id.* at 11.

The Parties have agreed to the following Settlement terms:

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.

*Id*. at 9.

 The corrective actions described above, and as set forth in Paragraph 21 of the Settlement, consist of the following:

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.

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.

*Id*. at 5-6.

In consideration of UGI’s agreement to pay a civil penalty and other non-monetary relief, as specified in the Settlement, I&E agrees to forebear from prosecuting any formal complaint that relates to the incident and the related conduct of the Company, its employees, and Contractor, as described in the Settlement. *Id*. at 9. 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 sanctions may be imposed by the Commission for any actions identified in the Settlement. *Id.* at 9-10. Additionally, none of the provisions of the Settlement or the statements in the Settlement shall be considered an admission of any fact or culpability. 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 11.

The Settlement is conditioned upon the Commission’s approval of its terms, without modification. The Parties reserve the right to withdraw from the Settlement if it is modified. *Id*. at 10.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must 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).

The Code sets forth the maximum civil penalty amounts that we may levy on public utilities for violations of a Commission Order, Regulation, or a statute. For cases involving gas pipeline safety violations, $2 million is the maximum civil penalty amount that we are authorized to impose under Section 3301(c) of the Code, 66 Pa. C.S. § 3301(c).[[2]](#footnote-2)

After a review of the terms of the Settlement, we find that the Settlement is in the public interest. 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 a 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 as filed.

The first factor 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*. Based on the information obtained during I&E’s investigation, we find that the actions of UGI and its Contractor constitute conduct of a serious nature. I&E avers that UGI failed to adhere to its operating procedures and violated various federal and state gas safety regulations. We agree with I&E that the act of pipeline replacement on an active gas main is inherently serious in nature. I&E Statement in Support at 5. We are particularly concerned that the Contractor decided to use an electric saw to make the necessary cut to the distribution main, while, at the same time, blowing air into the work area, and ultimately causing a natural gas ignition. Accordingly, we conclude that the actions of UGI and its Contractor in this case warrant a higher civil penalty.

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.* In this case, the gas ignition caused a minor flash-burn injury to the face of the Contractor foreman. Because public safety is a major concern when gas safety incidents occur, we consider the resulting consequences of the gas ignition incident, which included a minor personal injury, to be of a serious nature. We acknowledge, as the Parties point out, that there are some mitigating factors in this case, including that there were no additional personal injuries or property damage, and the small fire was quickly extinguished by nearby personnel. *See*, I&E Statement in Support at 6; UGI Statement in Support at 6.

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, UGI engaged in appropriate measures to correct the conduct at issue and to prevent similar future conduct. As described in Paragraph 21 of the Settlement, UGI has taken or will take corrective action and has implemented revisions to its operating procedures that will safeguard against a similar incident occurring in the future. UGI supervisors met with and briefed UGI’s Hazleton area employees and Contractor employees regarding the importance of strict compliance with the Company’s operating procedures, including procedures pertaining to the prevention of accidental ignition and tapping and stopping off low pressure mains. Additionally, UGI disciplined its inspector and worked with its Contractor’s management to improve the Contractor’s workplace actions. The Contractor terminated the foreman’s employment as a result of this incident. As a whole, we find that these actions support a lower civil penalty.

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). No customers were affected by this incident, which lasted for approximately twenty minutes. Under the circumstances, this factor supports a lower civil penalty.

We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). This is the tenth time in approximately five years in which a matter involving allegations of gas safety violations by UGI or its subsidiary companies has come before this Commission.[[3]](#footnote-3) It is clear that UGI’s recent compliance history relating to gas safety issues is poor. We do acknowledge, however, as I&E indicates, that this incident appears to stand on its own as an isolated incident and does not appear to be related to the other gas safety incidents involving UGI that have come before the Commission. *See*, I&E Statement in Support at 7. We also acknowledge that the employees who appeared to be primarily involved in the June 5, 2012 incident are no longer employed by UGI and/or the Contractor. We further acknowledge that UGI has undertaken a major organizational overhaul, which includes 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. UGI has also been focusing on its commitment to accelerate its replacement of cast iron and bare steel mains. UGI Statement in Support at 2-3. Based on the information before us, we believe that the $96,000 civil penalty set forth in the Settlement is appropriate, considering the compliance history of UGI.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). I&E represents that UGI has fully cooperated with this investigation. I&E indicates that UGI promptly responded to I&E’s requests for information and documentation and that UGI and I&E maintained ongoing communications throughout the investigation. Settlement at 8.

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). We find that, along with the overall measures that the Company has been 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 future occurrences. Based on the nature of the alleged violations, the resulting consequences of the alleged violations, and the remedial measures the Company has taken in this case, we conclude that our determination regarding this Settlement and the civil penalty amount is consistent with our prior decisions in similar situations.

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 approve the settlement of this matter so as to avoid the expense of litigation and the possibility of appeals. In addition, we believe that the Settlement is in the public interest because it promotes safety by deterring unsafe practices and improving implementation of UGI’s operational procedures.

For the reasons set forth above, after reviewing the terms of the Settlement Agreement, 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 Agreement and the Statements in Support thereof, 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 June 28, 2013, by the Commission’s Bureau of Investigation and Enforcement and UGI Utilities, Inc. – Gas Division 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 Utilities, Inc. – Gas Division shall pay a civil penalty in the amount of $96,000.  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, within seven (7) days after making the payment described in Ordering Paragraph No. 2, UGI Utilities, Inc. – Gas Division shall file a notice at this Docket Number that the civil penalty has been paid.

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

5. That the Secretary’s Bureau shall mark this proceeding closed upon receipt of the notice described in Ordering Paragraph No. 3.

 **BY THE COMMISSION,**

Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: April 23, 2014

ORDER ENTERED: April 23, 2014

1. The Incident Investigation Report prepared by the Contractor indicated that the foreman was treated at Hazleton Hospital, where he was given an ointment to apply to his facial burns and a prescription for pain medication. [↑](#footnote-ref-1)
2. Section 3301(c) provides the following:

**(c) Gas pipeline safety violations.--**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-2)
3. *See*, *Pa. PUC v. UGI Penn Natural Gas, Inc*., Docket No. M-2013-2338981 (Order entered September 26, 2013); *Pa. PUC v. UGI Utilities, Inc*., Docket No.
C-2012-2308997 (Order entered February 19, 2013); *Pa. PUC v. UGI Central Penn Gas, Inc*., Docket No. M-2011-2155312 (Order entered June 13, 2012); *Pa. PUC v. UGI Utilities, Inc*., Docket No. M-2012-2141712 (Order entered June 13, 2012); *Pa. PUC v. UGI Utilities, Inc*., Docket No. C-2009-2120601 (Order entered November 19, 2010); *Pa. PUC v. UGI Utilities, Inc*., Docket No. M-2010-2037411 (Order entered May 10, 2010); *Pa. PUC v. UGI Utilities, Inc*., Docket No. M-2009-2031571 (Order entered January 14, 2010); *Pa. PUC v. UGI Utilities, Inc*., Docket No. C-20066664 (Order entered February 6, 2009); *Pa. PUC v. UGI Utilities, Inc*., Docket No. M-2008-2036549 (Order entered November 6, 2008). [↑](#footnote-ref-3)