



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

IN REPLY PLEASE
REFER TO OUR FILE

October 10, 2014

RECEIVED

OCT 10 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rosemary Chiavetta
Pa. Public Utility Commission
2nd Floor, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission, Bureau of Investigation & Enforcement
v. Kelly Ballock, Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink,
individually and jointly t/d/b/a/ Fink Gas Company; Docket No. C-2014-

Dear Secretary Chiavetta:

Enclosed for filing is the Formal Complaint on behalf of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

If you have any questions on this matter, please call me at 717-214-9594.

Sincerely,

Heidi L. Wushinske
Prosecutor
Attorney ID No. 93792

Enclosures

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v. :

Docket No. C-2014

Kelly Ballock, Claude Joseph Fink, Jr., :
Claude J. Fink, and Lois A. Fink, :
individually and jointly t/d/b/a/ Fink :
Gas Company :


NOTICE TO PLEAD

Pursuant to 58 Pa. C.S. § 2307(b), the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission (Commission) has filed a Complaint in the above-referenced matter. You are hereby notified to file a written response, pursuant to 52 Pa. Code § 1.11, within twenty (20) days of the service of the Notice.

Your Answer must be verified and the original sent to:

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

A copy should also be served on the undersigned counsel.



Heidi L. Wushinske
Prosecutor
Attorney I.D. 93792

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 214-9594

Dated: October 10, 2014

RECEIVED
2014 OCT 10 PM 1:45
PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v. :

Docket No. C-2014-

Kelly Ballock, Claude Joseph Fink, Jr., :
Claude J. Fink, and Lois A. Fink :
individually and jointly t/d/b/a/ Fink :
Gas Company, :
Respondents :

COMPLAINT

RECEIVED
2014 OCT 10 PM 1:45
PA PUC
SECRETARY'S BUREAU

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, and files this Complaint against Kelly Ballock,¹ Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, as owners and/or operators of an unincorporated gas utility business t/d/b/a/ Fink Gas Company (“Fink,” “Respondents,” or “Company”) alleging violations of the Pennsylvania Code and/or Pennsylvania Public Utility Code. In support of its Formal Complaint, I&E respectfully represents the following:

¹ Kelly Ballock was previously known as Kelly Fink.

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission (“PUC” or “Commission”) with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*

2. Complainant is the Commission’s Bureau of Investigation and Enforcement and is the entity established to prosecute complaints against public utilities pursuant to 66 Pa. C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

3. Complainant’s prosecuting attorneys are as follows:

Heidi Wushinske
Prosecutor
hwushinske@pa.gov
717.214.9594

Stephanie M. Wimer
Prosecutor
swimer@pa.gov
717.772.8839

Wayne T. Scott
First Deputy Chief Prosecutor
wascott@pa.gov
717.783.6150

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

4. Respondents are Kelly Ballock, Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company, owning and/or operating in this Commonwealth equipment or facilities from a principal place of business located in Armstrong County with the address 153 Camp Road, Cowansville, PA 16218.

5. Fink Gas is a “public utility” as that term is defined at 66 Pa. C.S. § 102,² as it is engaged in providing public utility service as a natural gas distribution company to the public for compensation.

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

7. Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for violations of any law or regulation that the Commission has jurisdiction to administer or enforce.

8. Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or any other person or corporation subject to the Commission’s jurisdiction for violation(s) of the Public Utility

² At 66 Pa.C.S. § 102, “Public utility” is defined under that term at subsection (1)(i) as:
(1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:
(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

Code and/or Commission regulations. Section 3301 further allows for the imposition of a separate fine for each day's continuance of such violation(s).

9. Respondent, in providing gas distribution service for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa. C.S. § 501(c), which requires a public utility to comply with Commission orders.

11. Pursuant to the provisions of the applicable Commonwealth and federal statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondents related thereto.

II. Background

a. Providing Service Without a Certificate

12. According to Respondents, Fink Gas customers, and Commission Gas, Respondents, Kelly Ballock, Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink are and/or were the proprietors of Fink Gas Company, an unincorporated retail natural gas business, from a principal place of business located at 153 Camp Road, Cowansville, PA 16218, and have been engaged in providing natural gas service to the public in Armstrong County for compensation. (*See Pennsylvania Public Utility Commission v. Kelly Fink, Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly t/d/b/a/ Fink Gas Company, Initial Decision, Docket No. C-2011-2246921 (January 18, 2013) p. 5.*

13. According to Fink Gas customers and Gas Safety Inspector David Kline, Respondents are still providing natural gas service to the public for compensation and are, therefore subject to the jurisdiction and authority of the Commission.

14. According to current Fink Gas customers and Gas Safety Inspector David Kline, Respondents currently provide retail natural gas service to approximately 20 paying customers in Cowansville, Pennsylvania.

15. At all times relevant to this Complaint, Respondents were and are a public utility as defined by the Pennsylvania Public Utility Code, Commission regulations and Pennsylvania case law. *Warwick Waterworks v. Pennsylvania Public Utility Commission*, 699 A.2d 770 (Pa. Cmwlth. 1997). *See also Pennsylvania Public Utility Commission v. Kelly Fink, Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly t/d/b/a/ Fink Gas Company, Initial Decision*, Docket No. C-2011-2246921, p. 2.

b. Prior Complaint

16. On June 15, 2011, the Law Bureau Prosecutory Staff³ filed a complaint against Kelly Fink, Claude Joseph Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, t/d/b/a/ Fink Gas Company. This complaint is attached as Attachment A.

³ Due to the Commission's reorganization, the Bureau of Investigation and Enforcement is now handling this matter, which was formerly assigned to the Law Bureau Prosecutory Staff.

17. The Complaint, at Docket No. C-2011-2246921, alleged that the named individuals operated an unincorporated gas utility business and engaged in providing public utility service as a retail natural gas supplier to the public for compensation.

18. On June 22, 2011, the Respondents replied separately to the complaint and initial hearings were held by Administrative Law Judge (“ALJ”) Katrina L. Dunderdale on June 26, 2012, and June 27, 2012, at which Claude J. Fink, Lois A. Fink, and Kelly Ballock appeared and were represented by counsel. Claude Joseph Fink, Jr. was not present and was not represented by counsel.

19. Several customers testified under oath that they received gas service from the Company and that they were billed monthly for this service.

20. Upon the conclusion of testimony on June 27, 2012, ALJ Dunderdale found that the Law Bureau had presented sufficient convincing evidence to meet its burden of proving that Fink Gas Company is a public utility and that Respondents had provided public utility service as a retail natural gas supplier to the public for compensation, pursuant to 66 Pa. C.S. §§ 102, 1101, and 1102(a).

21. ALJ Dunderdale offered the parties an opportunity to engage in settlement negotiations to resolve the outstanding issues.

22. Pursuant to these negotiations, on October 17, 2012, Law Bureau Prosecutory Staff filed a Settlement Agreement with the ALJ.

23. In the Settlement Agreement, the parties agreed *inter alia* that Respondents Claude J. Fink and Lois A. Fink would be dismissed as respondents and that Kelly

Ballock and Claude Joseph Fink, Jr. would file an application for a certificate of public convenience within 30 days.

24. The parties further agreed that Kelly Ballock and Claude Joseph Fink, Jr. would make the following upgrades and improvements to the system:

- a. Fix the leaks located at 392 Fosters Mill Road and the driveway of Alvin Fiscus at 397 Fosters Mill Road. **(49 CFR Part 192.703(b))**.
- b. Replace all the above ground plastic with approved gas pipe and bury it to the proper depth listed in **(49 CFR Part 192.321 (a), (e), (g))**.
- c. Replace all the hose clamps in the system with approved mechanical fittings. **(49 CFR Part 192.273)**.
- d. Identify the types of plastic pipe in the system and if they are not the approved pipe replace them. **(49 CFR Part 192.59(a))**.
- e. Install a tracer wire or other means of locating all plastic pipe. **(49 CFR Part 192.321(e))**.
- f. Join Pennsylvania One Call and start marking pipelines when a One Call is received. **(49 CFR Part 192.614)**.
- g. Install line Markers with the required information at all road crossings. **(49 CFR Part 192.707)**.
- h. Identify the valves that need to be used in case of an emergency in the system and start inspecting them. **(49 CFR Part 192.747)**.
- i. Perform a leak survey of the system. **(49 CFR PART 192.723)**.
- j. Perform odor level testing with an instrument on the system. **(49 CFR Part 192.625(a), (c), and (f))**.
- k. Purchase the equipment to perform leak surveys, odor level testing, and pipeline locating.
- l. Complete an atmospheric corrosion inspection. **(49 CFR Part 192.481)**.
- m. Remediate any atmospheric corrosion that could affect the safe operation of the pipeline before the next scheduled inspection or is more severe than a light surface oxide. **(49 CFR Part 192.479)**.
- n. Create a map of the system. **(52 Pa. Code 59.37)**.
- o. Create an Operations and Maintenance Manual. **(49 CFR Part 192.605)**.
- p. Create an Emergency Plan. **(49 CFR Part 192.615)**.
- q. Create a Damage Prevention Plan. **(49 CFR Part 192.614)**.
- r. Create an Operator Qualification Plan and qualify all employees. **(49 CFR Part 192 Subpart N)**.

- s. Create a Drug and Alcohol plan and a testing program. **(49 CFR Part 199 and Part 40)**
- t. Create a Distribution Integrity Management Plan. **(49 CFR Part T 192 Subpart P).**

25. In addition, Kelly Ballock and Claude Joseph Fink, Jr. agreed to pay a civil penalty of \$500.00 within 30 days from the date that the Commission approved the Settlement Agreement.

26. ALJ Dunderdale issued an Initial Decision approving the Settlement Agreement on January 18, 2013. Attached as Attachment B.

27. On March 27, 2013, the Commission issued a Final Order approving the Settlement Agreement, dismissing the complaint as to Claude J. Fink and Lois A. Fink, and withdrawing and closing the complaint against Kelly Ballock and Claude Joseph Fink, Jr.

28. To date, neither Kelly Ballock nor Claude Joseph Fink, Jr. has completed the necessary paperwork to obtain a certificate of public convenience; nor have either paid the \$500.00 civil penalty.

29. According to the Commission's Gas Safety Inspector David Kline, as of June 23, 2014, none of items agreed upon in the Settlement Agreement were completed.

c. Current Customer Complaints

30. On August 28, 2014, Commission staff was contacted by a current customer of Fink Gas who was concerned about the possibility of the system being shut down.

31. This customer stated that she had not received a bill in over two

months.

32. This customer also stated that in 2014, Fink Gas refused service to a customer on Fosters Mill Road when that customer built a new house within Fink's territory.

d. Incident on Camp Road

33. On September 26, 2014, a Fink Gas customer on Camp Road reported a gas leak on her property. According to the customer, she was unable to reach anyone at Fink Gas for hours to report the leak.

34. Commission staff then attempted to contact Fink Gas regarding this leak, but also could not reach anyone.

35. On September 26, 2014, at approximately 4:30 p.m., Gas Safety Inspector Kline visited the site of the leak and found that a 2 inch bare steel main had been vented into the air.

36. Inspector Kline observed that someone had dug around the line and placed a carpet over it.

37. Because of the carpet, Inspector Kline could not see how or if the leak was repaired.

38. Inspector Kline heard gas blowing into the air.

III. Violations

COUNT 1-1095

39. All allegations in paragraphs 1-38 are incorporated as if fully set forth herein.

Respondents failed to comply with the Public Utility Code in that they did not obtain a certificate of public convenience from the Pennsylvania Public Utility Commission prior to beginning to offer, render, furnish, or supply natural gas service to the public for compensation since at least the 1970s.

This is a violation of 66 Pa. C.S. § 1101; each day of Respondents' noncompliance constitutes a separate violation, from the date Respondents began furnishing service until such time that Respondents file an application for a certificate of public convenience, up to and including the date this complaint is filed. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 1,096-1,688

40. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not fix the leak located at 397 Fosters Mill Road.

This is a violation of 49 CFR § 192.703(b) and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from February 18, 2013, 30 days past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to make the above repair within 30 days, until such time as Respondents fix the leak at 397 Fosters Mill Road. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 1,688-2,280

41. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the

Commission's regulations, in that they did not replace all the above ground plastic pipe with approved gas pipe and bury it to the proper depth.

This is a violation of 49 CFR § 192.321 (a),(e), and (g),and 66 Pa. C.S. § 59.33; each day of Respondent's noncompliance constitutes a separate violation from February 18, 2013, 30 days past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to make the above repair within 30 days, until such time as Respondents replace all the above ground plastic pipe with approved gas pipe and bury it to the proper depth. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 2,280-2,872

42. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not replace all the hose clamps in the system with approved mechanical fittings.

This is a violation of 49 CFR § 192.273 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from February 18, 2013, 30 days past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to make the above repair within 30 days, until such time as Respondents replace all hose clamps in the system with approved mechanical fittings. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 2,872-3,314

43. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not identify the types of plastic pipe in the system and replace any that are not approved.

This is a violation of 49 CFR § 192.59(a) and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to make the above

repair within 6 months, until such time as Respondents complete the above repair. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 3,314-3,756

44. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not install a tracer wire or other means of locating all plastic pipes.

This is a violation of 49 CFR § 192.321(e) and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to make the above installation within six months, until such time as Respondents complete the above installation. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 3,756-4,851

45. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not register with and participate in the PA One Call damage prevention program since the date since the date the system began operating.

This is a violation of 49 CFR § 192.614(b) and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from the date the system began operating until such time that Respondents register with and participate in the Pa One Call system. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 4,851-5,293

46. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not install line markers with the required information at all road crossings.

This is a violation of 49 CFR § 192.707 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to make the above installation within six months, until such time as Respondents complete the above installation. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 5,293-5,735

47. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not identify and start inspecting the valves that need to be used in case of an emergency in the system.

This is a violation of 49 CFR § 192.747 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to complete the above identifications and inspections within six months, until such time as Respondents complete the above identifications and inspections. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 5,735-6,177

48. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not perform a leak survey of the system.

This is a violation of 49 CFR § 192.723 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving

the Settlement Agreement in which Respondents agreed to perform the above survey within six months, until such time as Respondents perform the above survey. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 6,177-6,619

49. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not perform odor level testing with an instrument.

This is a violation of 49 CFR § 192.625(a),(c), and (f), and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to perform the above testing within six months, until such time as Respondents perform the above testing. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 6,616-7,061

50. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not complete an atmospheric corrosion inspection.

This is a violation of 49 CFR § 192.481 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to perform the above inspection within six months, until such time as Respondents perform the above inspection. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 7,061-7,503

51. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not remediate any atmospheric corrosion that is more severe than a light surface oxide, or that could affect the safe operation of the pipeline before the next scheduled operation.

This is a violation of 49 CFR § 192.479 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to make perform the above remediation within six months, until such time as Respondents perform the above remediation. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 7,503-7,945

52. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the Commission's regulations in that they did not create a map of the system.

This is a violation of 52 Pa. Code § 59.37; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to create the above map within six months, until such time as Respondents create the map. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 7,945-8,387

53. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not create an operations and maintenance manual.

This is a violation of 49 CFR § 192.605 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving

the Settlement Agreement in which Respondents agreed to create the above manual within six months, until such time as Respondents create the above manual. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 8,387-8,829

54. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not create an emergency plan.

This is a violation of 49 CFR § 192.615 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to create an emergency plan within six months, until such time as Respondents create an emergency plan. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 8,829-9,271

55. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not create a damage prevention plan.

This is a violation of 49 CFR § 192.614 and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to create a damage prevention plan within six months, until such time as Respondents create the above plan. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 9,271-9,713

56. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not create an operator qualification plan and qualify all employees.

This is a violation of 49 CFR Part 192 subpart N and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to create an operator qualification plan within six months, until such time as Respondents create the above plan. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 9,713-10,155

57. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not create a drug and alcohol plan and testing program.

This is a violation of 49 CFR Part 199 and Part 40, and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to create a drug and alcohol plan and testing program within six months, until such time as Respondents create the above plan and program. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 10,155-10,597

58. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Commission's Order approving the Settlement Agreement and the CFR, adopted by and through the Commission's regulations, in that they did not create a distribution integrity management plan.

This is a violation of 49 CFR Part T 192 Subpart P and 66 Pa. C.S. § 59.33; each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision

approving the Settlement Agreement in which Respondents agreed to create a distribution integrity management plan within six months, until such time as Respondents create the above plan. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 10,597-11,039

59. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Public Utility Code in that they failed, neglected, or refused to comply with an order made by the Commission. *See Final Order*; Docket No. C-2011-2246921 (Order entered March 27, 2013).

This is a violation of 66 Pa. C.S. § 3301(a); each day of Respondents' noncompliance constitutes a separate violation, from July 18, 2013, six months past the date of the ALJ's Initial Decision approving the Settlement Agreement in which Respondents agreed to comply within 6 months, until such time as Respondents comply. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNT 11,040

60. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Public Utility Code in that they refused to extend service to a customer within their service territory.

This is a violation of 66 Pa. C.S. § 1501.

COUNT 11,041

61. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the CFR, adopted by and through the Commission's regulations, in that they did not establish written procedures to minimize the hazard resulting from a pipeline emergency.

This is a violation of 49 CFR § 192.615 and 66 Pa. C.S. § 59.33.

COUNT 11,042

62. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the CFR, adopted by and through the Commission's regulations, in that they did not have marker warnings on the main listing the name of the operator and telephone number (including area code) where the operator can be reached at all times.

This is a violation of 49 CFR § 192.707 and 66 Pa. C.S. § 59.33.

COUNT 11,043

63. The allegations set forth in paragraphs 1-38 are incorporated herein as if fully set forth.

Respondents failed to comply with the Public Utility Code in that they did not use every reasonable effort to properly warn and protect the public from danger.

This is a violation of 66 Pa. C.S. § 59.33.

IV. Requested Relief

64. I&E proposes that Respondents pay a civil penalty of \$ 50.00 for each of the eleven thousand forty-three (11,043) counts set forth in this Complaint for a total civil penalty of five hundred fifty-two thousand one hundred fifty dollars (\$552,150.00).

65. I&E proposes that Respondents not be permitted to recover any portion of the civil penalty through rates regulated by the Commission.

66. I&E proposes that Respondents be ordered to cease and desist from committing any further violations of gas safety regulations.

67. I&E proposes that Respondents immediately file an application for abandonment with the Commission;

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Respondents to be in violation of the Public Utility Code, its regulations, and the Code of Federal Regulations for each of the 11,043 Counts set forth herein; (2) impose a cumulative civil penalty upon Respondents in the amount of five hundred fifty-two thousand one hundred fifty dollars (\$552,150.00); (3) direct Respondents to file an application for abandonment with the Commission; and (4) order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,



Heidi Wushinske
Prosecutor
PA Attorney ID No. 93792

Stephanie M. Wimer
Prosecutor

Wayne T. Scott
First Deputy Chief Prosecutor

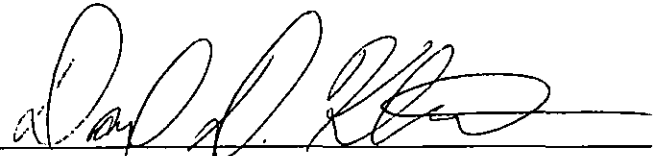
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: October 10, 2014

VERIFICATION

I, David D. Kline, Gas Safety Inspector of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E"), 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 I&E will be able to prove the same at any 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: October 9, 2014



David D. Kline
Gas Safety Inspector
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED

OCT 10 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RECEIVED

OCT 10 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ATTACHMENT A



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

IN REPLY PLEASE
REFER TO OUR FILE

Bp8#
2246921

June 15, 2011

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

**RE: Pennsylvania Public Utility Commission, Law Bureau Prosecutory
Staff v. Kelly Fink, Joe Fink, Jr., Claude J. Fink, and Lois A. Fink,
individually and jointly, t/d/b/a Fink Gas Company;
Docket No. C-2011-2246921**

Dear Ms. Chiavetta:

Enclosed for filing are the original and three copies of the Complaint in the above-captioned proceeding.

If you have any further questions regarding this matter, please contact me at 717-783-3459

Sincerely,

Terrence J. Buda
Assistant Counsel

Enclosures

cc: Robert Young, Deputy Chief Counsel
Paul Metro, Gas Safety Division Chief
David Kline, Gas Safety Inspector



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

IN REPLY PLEASE
REFER TO OUR FILE
Bp8# 2246921

Date of Service:

KELLY FINK
FINK GAS COMPANY
153 CAMP ROAD
COWANSVILLE PA 16218

CLAUDE J FINK & LOIS A FINK
JOE FINK JR
127 OAK STREET
SPRING CHURCH PA 15686

C-2011-2246921

**Pennsylvania Public Utility Commission,
Law Bureau Prosecutory Staff.**

v.


**Kelly Fink, Joe Fink, Jr., Claude J. Fink, and Lois A. Fink,
individually and jointly, t/d/b/a Fink Gas Company;**

Dear Sir/Madam:

The Pennsylvania Public Utility Commission has delegated its authority to initiate prosecutory proceedings to several bureaus in the Commission with enforcement responsibilities. Pursuant to this delegated authority and Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, **Law Bureau Prosecutory Staff has filed the attached Complaint against your company for failure to file, with the Commission, an application for a certificate of public convenience to provide natural gas service to the public for compensation or transfer tangible or intangible property used or useful in the public utility service.**

Please refer to the "Notice" attached to the front of the Complaint for detailed instructions on how to proceed. Any questions about filing an application may be directed to the Bureau of Fixed Utility Services at (717) 783-5242.

Very truly yours,


Rosemary Chiavetta
Secretary

cc: Terrence J. Buda, Assistant Counsel
Paul Metro, Gas Safety Division

N-O-T-I-C-E

A. You must file an Answer within 20 days of the date of service of this Complaint.

The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and Notice. *See* 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your Answer must be verified and the **original and three copies** sent to:

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

B. If you fail to answer this Complaint within 20 days, Law Bureau Prosecutory Staff will request that the Commission issue an order requesting the relief and imposing the penalty set forth in the Complaint.

C. You may elect not to contest this Complaint by filing the required application for a certificate of public convenience to provide natural gas service to the public for compensation or transfer tangible or intangible property used or useful in the public utility service. The application should be filed with the Secretary's Bureau at the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265.

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, Law Bureau Prosecutory Staff will request that the Commission issue an Order granting the relief requested and imposing the penalty set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. *See* 52 Pa. Code §§ 1.21-1.22.

G. Alternative formats of this material are available for persons with disabilities by contacting the Public Utility Commission at (717) 787-5620.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Law Bureau Prosecutory Staff	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011- 2246921
	:	
Kelly Fink, Joe Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company	:	
	:	
Respondents	:	

COMPLAINT

AND NOW, this 15th day of June 2011, comes the Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff (Prosecutory Staff), by its counsel, and files this Complaint alleging violations of the Pennsylvania Public Utility Code against Kelly Fink, Joe Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, as owners and/or operators of an unincorporated gas utility business t/d/b/a Fink Gas Company. In support of its Complaint,¹ Prosecutory Staff respectfully represents the following:

¹ All allegations of fact in this Prosecutory Staff Complaint are verified by the Verification of David Kline, Gas Safety Inspector, Gas Safety Division, Bureau of Transportation and Safety, Pennsylvania Public Utility Commission, attached to this Complaint as Attachment No. 2, and the Verification of Paul Metro, Chief, Gas Safety Division, Bureau of Transportation & Safety, Pennsylvania Public Utility Commission attached to this Complaint as Attachment No. 3. As indicated in said Verifications, these individuals can be available to present testimony and evidence to further support this Prosecutory Staff Complaint in any formal Commission proceeding.

Commission Jurisdiction and Authority

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

2. Prosecutory Staff is the complainant in this proceeding and is the entity established by statute to prosecute service complaints against public utilities. 66 Pa. C.S. § 308(b). The Commission has delegated its authority to initiate proceedings against public utilities which are prosecutory in nature to Prosecutory Staff and other bureaus with enforcement responsibility. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, M-00940593 (Order entered September 2, 1994). Pursuant to that delegated authority and Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, Law Bureau Prosecutory Staff is the Complainant in this proceeding. This Complaint is brought under the delegated authority of the Pennsylvania Public Utility Commission.

3. Respondents are Kelly Fink, Joe Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company, owning and/or operating in this Commonwealth equipment or facilities from a principal place of business located in Armstrong County with the address 153 Camp Road, Cowansville, PA 16218, and are engaged in providing public utility service as a retail natural gas supplier to the public for compensation.

4. Section 1101 of the Public Utility Code, 66 Pa. C.S. § 1101, requires application to the Commission and the approval of said application by the Commission

evidenced by its certificate of public convenience before it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth.

5. Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102, requires application to the Commission and the approval of said application by the Commission evidenced by its certification of public convenience before it shall be lawful for any such proposed public utility to transfer tangible or intangible property used or useful in the public service.

6. Section 102 of the Public Utility Code, 66 Pa. C.S.A. § 102, defines “Public Utility” as:

(1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(ii) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

7. Section 501(a) of the Public Utility Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to enforce, execute and carry out the provisions of the Public Utility Code, including Sections 1101 and 1102.

8. Section 701 of the Public Utility Code, 66 Pa. C.S.A. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities claiming a violation of any law or regulation that the Commission has jurisdiction to administer.

9. Section 1501 of the Public Utility Code, 66 Pa. C.S.A. § 1501, authorizes the Commission to ensure that public utilities furnish and maintain adequate, efficient,

safe, and reasonable service and facilities and that such service and facilities be in conformity with the regulations and orders of the Commission.

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

11. Attached to this Complaint as Attachment 1, is a certification attesting to the failure of the Respondents to file, with the Commission, an application for a certificate of public convenience to provide natural gas service to the public for compensation, or to transfer tangible or intangible property used or useful in the public utility service.

12. Respondents, in providing natural gas distribution service to the public, for compensation, are subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa. C.S. § 501(c), which requires a public utility to comply with Commission orders.

Identity of Respondents and Allegations of Fact

13. Based upon knowledge, information and belief, Respondents, Kelly Fink and Joseph Fink, Jr., are currently the proprietors of Fink Gas Company, an unincorporated retail natural gas business, from a principal place of business located at

153 Camp Road, Cowansville, PA 16218, and have been engaged in providing natural gas service to the public in Armstrong County for compensation.

14. Based upon knowledge, information and belief, Respondents, Claude J. Fink and Lois A. Fink also owned and operated Fink Gas Company, providing natural gas service to the public for compensation but never received authorization from the Commission to transfer Fink Gas Company, and without the required authorization the transfer of authority is inoperative. *Public Service Water Co. v. Pa. Public Utility Com'n*, 645 A.2d 423 (Pa. Cmwlth. 1994).

15. Based upon knowledge, information and belief, the Prosecutory Staff avers that the Respondents are still providing natural gas service to the public for compensation and are subject to the jurisdiction and authority of the Commission.

16. Based upon knowledge, information and belief, the Prosecutory Staff avers that the Respondents currently provide retail natural gas service to approximately 21 paying customers in the following Pennsylvania municipality: City of Cowansville. The Prosecutory Staff further avers that the following customers and residences are served by Fink Gas Company in Cowansville, PA:

Jason & Tracy Booher	2223 Ridge Road, Cowansville, PA 16218
Chad & Amanda Booher	2199 Ridge Road, Cowansville, PA 16218
Ron & Mary Jo Fiscus	2159 Ridge Road, Cowansville, PA 16218
Bill & Sandy Kriley	392 Fosters Mills Road, Cowansville, PA 16218
Bill & Kate Moore	401 Fosters Mills Road, Cowansville, PA 16218

Julia & Bob Seyler	430 Fosters Mills Road, Cowansville, PA 16218
Susan & Gary Foust	441 Fosters Mills Road, Cowansville, PA 16218
Steve & Tisha O'Donnell	464 Fosters Mills Road, Cowansville, PA 16218
Bill Foust	455 Fosters Mills Road, Cowansville, PA 16218
Ken & Carla Foust	2221 Ridge Road, Cowansville, PA 16218
Tony & Brenda Venesky	435 Fosters Mills Road, Cowansville, PA 16218
Jim & Kristin Stewart	Fosters Mills Road, Cowansville, PA 16218
Alvin & Sherry Fiscus	Fosters Mills Road, Cowansville, PA 16218
Dan Lingenfelter	2211 Ridge Road, Cowansville, PA 16218
Brian & Heidi McCollim	Fosters Mills Road, Cowansville, PA 16218
Eugene Hall	Fosters Mills Road, Cowansville, PA 16218
Jim Baker	Camp Road, Cowansville, PA 16218

17. At all times relevant to this Complaint, Respondents were and are a public utility as defined by the Pennsylvania Public Utility Code, Commission regulations and Pennsylvania case law. *Warwick Waterworks v. Pennsylvania Public Utility Commission*, 699 A.2d 770 (Pa. Cmwlth. 1997).

18. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of the Respondents.

19. Based upon knowledge, information and belief, Respondents did not timely utilize the options provided for in 52 Pa. Code § 69.1401, which could provide evidence

of a good faith effort to operate in accordance with the law by a utility service provider. Although on June 3, 2011, Respondents requested an opinion of counsel letter regarding *their jurisdictional status, this request was made well after Prosecutory staff and* Respondents entered into discussions regarding the violations detailed in this Complaint. Respondents were well aware that Prosecutory Staff had already determined that Respondents were providing natural gas service to the public for compensation and are subject to the jurisdiction and authority of the Commission. As such, Respondents' request does not represent a good faith effort to operate in accordance with the law.

Violations of the Public Utility Code

20. Paragraphs 1 through 18 are incorporated herein by reference and made a part hereof as if fully set forth herein.

21. Respondents, in failing to file an application for a certificate of public convenience and receive approval from the Commission as evidenced by its certificate of public convenience, prior to furnishing or supplying natural gas service within the Commonwealth and transferring Fink Gas Company, have violated Sections 1101 and 1102 of the Public Utility Code, 66 Pa. C.S. §§ 1101 and 1102, respectively.

Relief Requested

22. Based on the forgoing allegations, Prosecutory Staff requests relief from the Honorable Commission as set forth in the following paragraphs.

23. Prosecutory Staff requests that the Commission impose a civil penalty of \$1,000.00 for each violation alleged herein and demonstrated at trial, and for each day's continuance of such violations. Respondents did not timely utilize any of the options identified in the 52 Pa. Code § 69.1401 Policy Statement under subsections (f) and (g) that could provide "evidence of a good faith effort to operate in accordance with the law by the project developer of a utility service or utility service provider and may be considered as a mitigating factor in imposition of fines and penalties in future complaint proceedings alleging *de facto* public utility operations." 52 Pa. Code § 69.1401(g)(3). Because Respondents did not request an opinion of counsel letter regarding their jurisdictional status until June 3, 2011, after Prosecutory staff and Respondents entered into discussions regarding the violations detailed in this Complaint, Respondents' request does not represent a good faith effort to operate in accordance with the law and should not be viewed as a mitigating factor.

24. Prosecutory Staff requests that the Commission order Respondents to file an application for certificate of public convenience to lawfully provide the natural gas service identified herein.

25. Prosecutory Staff requests that the Commission order Respondents to continue to provide the natural gas service identified herein and prohibit Respondents from abandoning any customer without prior Commission approval.

26. Prosecutory Staff requests that the Commission order Respondents not to add any new customers to its natural gas supply system, or terminate any customers from its natural gas system.

27. Prosecutory Staff requests that the Commission order Respondents to furnish and maintain adequate, efficient, safe, and reasonable natural gas service and facilities.

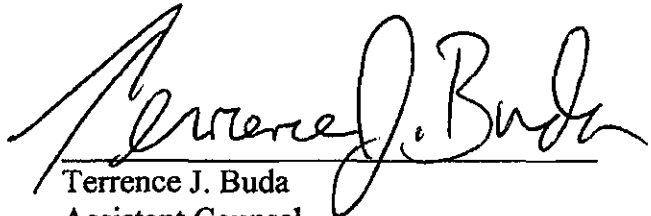
28. Prosecutory Staff requests that the Commission order Respondents not to sell or transfer any assets used to provide public utility gas service.

29. Prosecutory Staff requests that the Commission find that the rates charged to the customers of the Fink Gas Company by the Respondent, for natural gas utility service, provided without a certificate of public convenience, are unjust and unreasonable, and order refunds to the Respondent's customers, to the extent legally permissible.

30. Prosecutory Staff requests that the Commission grant such other further relief as it deems just and reasonable.

WHEREFORE, for all the foregoing reasons, Law Bureau Prosecutory Staff respectfully requests that the Honorable Commission issue an order which sustains the allegations raised herein and provides for the remedies as specifically identified in Paragraphs No. 22 through 30, above.

Respectfully submitted,



Terrence J. Buda
Assistant Counsel

Heidi Wushinske
Assistant Counsel

Robert F. Young
Deputy Chief Counsel

Pennsylvania Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: June 15, 2011

Attachments

Attachment No. 1

Certification of Rosemary Chiavetta, Secretary,
Pennsylvania Public Utility Commission

Attachment No. 2

Verification of David Kline, Gas Safety Inspector, Gas Safety Division,
Bureau of Transportation & Safety

Attachment No. 3

Verification of Paul Metro, Chief, Gas Safety Division,
Bureau of Transportation & Safety

RECEIVED

OCT 10 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ATTACHMENT NO 1

**Certification of Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission**

I hereby certify that I am the Secretary of the Pennsylvania Public Utility Commission.

I have searched and examined the records of the Commission to determine whether Kelly Fink, Joe Fink, Jr., Claude J. Fink, and Lois A. Fink, individually and jointly, t/d/b/a Fink Gas Company have filed an application to provide natural gas service in the Commonwealth of Pennsylvania, and an application to transfer tangible or intangible property used or useful in the public utility service.

I hereby attest, affirm, and certify that the Commission's record do not contain such an application.

Signed in Harrisburg, Pennsylvania, this 10th day of June, 2011

Signed:



Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission

RECEIVED

OCT 10 2014


PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ATTACHMENT NO 2

VERIFICATION

I, David Kline, hereby state that the facts set forth above are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at any 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: 6-8-2011

/s/ David Kline 
David Kline
Gas Safety Inspector
Gas Safety Division
Bureau of Transportation & Safety
Pennsylvania Public Utility Commission

RECEIVED

2011 JUN 10 AM 10:45

PA P.U.C.
LAW BUREAU

RECEIVED

OCT 10 2014

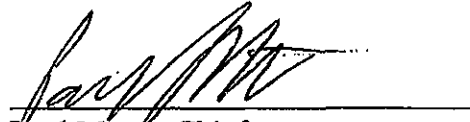
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ATTACHMENT NO 3

VERIFICATION

I, Paul Metro, hereby state that the facts set forth above are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at any 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: 10 JUN 11



Paul Metro, Chief
Gas Safety Division
Bureau of Transportation & Safety
Pennsylvania Public Utility Commission

RECEIVED

OCT 10 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ATTACHMENT B

The presiding officer conducted a prehearing conference on April 12, 2012 and on April 13, 2012, the presiding officer issued the Second Prehearing Order which, *inter alia*, established various procedural provisions, outlined some discovery rules and scheduled the evidentiary hearings for June 26, 2012 and June 27, 2012.

Thereafter, on June 26, 2012 and June 27, 2012, the presiding officer conducted the initial hearings in this proceeding in Pittsburgh, Pennsylvania. Present during the hearings were attorneys representing the Law Bureau, Claude J. Fink, Lois A. Fink, and Kelly Fink. Claude Joseph Fink, Jr. was not present and was not represented by counsel. The two issues to be resolved were: (1) is Fink Gas Company a public utility in which Respondents have provided public utility service as a retail natural gas supplier to the public for compensation, pursuant to 66 Pa. C.S.A. Sections 102, 1101 and 1102(a); and (2) if yes, then what actions need to be taken by Fink Gas Company to comply with the Commission's statutes and regulations.

Upon the conclusion of taking testimony on the second day concerning the first issue, the presiding officer advised the parties the Law Bureau had presented sufficient convincing evidence to meet its burden concerning the first issue. The parties were presented with an opportunity to engage in settlement negotiations to resolve the outstanding issue, concerning appropriate future actions, in a mutually-agreeable and amicable manner. The parties present accepted the opportunity.

On July 3, 2012, the presiding officer issued the Fourth Interim Order which ordered a status conference to be scheduled after August 6, 2012 and directed the parties to continue with settlement discussions. On July 27, 2012, the Office of Administrative Law Judge scheduled a status conference for Friday, August 17, 2012 at 10:00 a.m. with the parties to appear telephonically.

On Wednesday, August 15, 2012, the Law Bureau forwarded to the presiding officer a list of settlement terms to which three of the four named individual Respondents had agreed. The individuals who agreed to the terms were Claude J. Fink and Lois A. Fink, and Claude Joseph Fink, Jr.

On Friday, August 17, 2012, the presiding officer conducted a status conference to gauge the effectiveness of the parties' negotiations, or if a subsequent hearing should be scheduled. At the status conference, all parties either were present and/or represented by counsel. The parties indicated on the record that negotiations resulted in a settlement of the issues between the Law Bureau and three of the four named individuals: Claude J. Fink, Lois A. Fink, and Claude Joseph Fink, Jr.

In addition, Claude Joseph Fink, Jr. indicated he faxed an Application for a Certificate of Public Convenience to the Law Bureau on August 14, 2012. The Application was sent to the Law Bureau in various transmissions and included maps and various documentation.

The counsel for Kelly Fink requested to have access to the Application filed by Claude Joseph Fink, Jr. before agreeing to the proposed settlement terms. The Law Bureau indicated it had a complete Application and would forward the same to counsel.

Because it appeared all parties were in agreement with the proposed settlement terms, the presiding officer issued the Fifth Interim Order that required the parties to file a fully-executed settlement agreement on or before Friday, September 14, 2012. On September 25, 2012, the Law Bureau provided an update on the status of the Settlement Agreement.

On October 10, 2012, the presiding officer advised the parties the hearing record would close on October 12, 2012 unless a settlement agreement was received. Again, the Law Bureau provided an update on the status of the agreement and indicated all signatures had not been received yet. On October 15, 2012, the Law Bureau advised the presiding officer that the last signature was being "overnighted."

On October 17, 2012, the Law Bureau filed the original Settlement Agreement with the Secretary's Bureau. Paragraph No. 8 of the Settlement Agreement provided the bulk of the substantive agreement. The Agreement, *inter alia*, indicated Respondents Claude J. Fink and Lois A. Fink would be dismissed as respondents while Respondents Kelly Fink and

Claude Joseph Fink, Jr. would file an application for a certificate of public convenience within thirty days and make a series of upgrades and improvements listed specifically in the Settlement Agreement. No party elected to file or requested to file a Statement in Support, instead all parties relied upon an agreed-upon joint statement within the body of the Settlement Agreement which indicates why the Joint Petitioners believe the Settlement is in the public interest.

On November 20, 2012, the Law Bureau sent an e-mail to the presiding officer and all parties indicating that actions specified in Paragraph No. 8(a) and 8(c) of the Agreement were not completed by Respondents Kelly Fink and Claude Joseph Fink, Jr. within thirty days of the date of the Settlement Agreement. The Law Bureau indicated it expected a resolution soon thereafter but if not resolved, the Law Bureau intended to file a Request to Withdraw the Settlement Agreement.

On November 30, 2012, the presiding officer issued the Sixth Interim Order in which, *inter alia*, the presiding officer required the Office of Administrative Law Judge's Scheduler to schedule a Further Hearing for Wednesday, January 9, 2013 to be conducted for the sole purpose of taking in evidence concerning the appropriate remedy and actions to take because Respondents operated as a public utility without a certificate of public convenience, as discussed at the Initial Hearing on June 26, 2012 at Transcript pages 9 and 10.

On December 10, 2012, the Office of Administrative Law Judge scheduled a Further Hearing for Wednesday, January 9, 2013 at 10:00 a.m. with the parties to appear in person. The purpose for the third day of hearings was to provide the parties with a final opportunity to present evidence concerning the second issue, i.e., what actions did Fink Gas Company need to take in order to comply with the Commission's statutes and regulations.

On December 27, 2012, counsel for the Law Bureau provided the presiding officer with a status update concerning the parties' discussions and the status of compliance with the proposed agreement between the parties.

On December 28, 2012, counsel for Kelly Fink sent an electronic Motion for Continuance, requesting a continuance on the grounds counsel had a non-jury criminal trial scheduled for the same day and time in Allegheny County, Pennsylvania. The Motion was not filed with the Secretary's Bureau and no response to the Motion was received within ten days. Therefore, on January 7, 2013, the presiding officer notified the parties via electronic mail that the hearing would not be continued but would be moved to 1:00 p.m. on the same day. The parties were given the option to appear telephonically or in person.

On January 9, 2013, the presiding officer conducted the third day of hearings in this proceeding in Pittsburgh, Pennsylvania. Present telephonically during the hearings were attorneys representing the Law Bureau, Claude J. Fink and Lois A. Fink, and Kelly Fink. Claude Joseph Fink, Jr. was present and represented himself. The parties indicated on the record there was no evidence to be presented on the third day of hearings. All parties agreed a settlement of all issues had been reached and was in effect. The hearing record closed upon the conclusion of the hearing.

This matter is now ready for an Initial Decision on whether the Settlement should be approved.

DESCRIPTION OF THE SETTLEMENT

The Joint Petition consists of a ten (10) page document, with no attachments, however, Section IV is a joint Statement in Support. The essential terms of the Settlement, found in Section III on pages 3 through 6 and in numbered paragraph 8, are as follows:

8. Prosecutory Staff and Respondents, intending to be legally bound and for consideration given, desire to conclude this Complaint proceeding and agree to stipulate as to the following terms:

a) The Parties agree that Fink Gas Company is a public utility providing jurisdictional natural gas service to the public for compensation consistent with the definition of public utility in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, that Kelly Fink and Claude Joseph Fink, Jr. [will] file an application for a certificate of public convenience within thirty (30) days of filing

the Agreement, and that the name Fink Gas not be used as the name of the applicant.

b) The Parties agree that Kelly Fink and Claude Joseph Fink, Jr. would continue to provide the natural gas service identified in the Complaint and Respondents are prohibited from abandoning any customer without prior Commission approval.

c) The Parties agree that Kelly Fink and Claude Joseph Fink, Jr. continue to furnish and maintain adequate, efficient, safe, and reasonable natural gas service and facilities, and that Kelly Fink and Claude Joseph Fink, Jr. correct violations and complete a list of improvements and upgrades set forth as follows:

1. Fix the leaks located at 392 Fosters Mill Road and the driveway of Alvin Fiscus at 397 Fosters Mill Road. **(49 CFR Part 192.703(b)).**
2. Replace all the above ground plastic with approved gas pipe and bury it to the proper depth listed in **(49 CFR Part 192.321 (a), (e), (g)).**
3. Replace all the hose clamps in the system with approved mechanical fittings. **(49 CFR Part 192.273).**
4. Identify the types of plastic pipe in the system and if they are not the approved pipe replace them. **(49 CFR Part 192.59(a)).**
5. Install a tracer wire or other means of locating all plastic pipe. **(49 CFR Part 192.321(e)).**
6. Join Pennsylvania One Call and start marking pipelines when a One Call is received. **(49 CFR Part 192.614).**
7. Install line Markers with the required information at all road crossings. **(49 CFR Part 192.707).**
8. Identify the valves that need to be used in case of an emergency in the system and start inspecting them. **(49 CFR Part 192.747).**
9. Perform a leak survey of the system. **(49 CFR Part 192.723).**
10. Perform odor level testing with an instrument on the system. **(49 CFR Part 192.625(a), (c), and (f)).**

11. Purchase the equipment to perform leak surveys, odor level testing, and pipeline locating.
12. Complete an atmospheric corrosion inspection. **(49 CFR Part 192.481).**
13. Remediate any atmospheric corrosion that could affect the safe operation of the pipeline before the next scheduled inspection or is more severe than a light surface oxide. **(49 CFR Part 192.479).**
14. Create a map of the system. **(52 Pa. Code 59.37).**
15. Create an Operations and Maintenance Manual. **(49 CFR Part 192.605).**
16. Create an Emergency Plan. **(49 CFR Part 192.615).**
17. Create a Damage Prevention Plan. **(49 CFR Part 192.614).**
18. Create an Operator Qualification Plan and qualify all employees. **(49 CFR Part 192 Subpart N).**
19. Create a Drug and Alcohol plan and a testing program. **(49 CFR Part 199 and Part 40)**
20. Create a Distribution Integrity Management Plan. **(49 CFR Part T 192 Subpart P).**

The Parties further agree that Nos. 1, 2, and 3 will be completed within thirty (30) days of filing the Agreement and Nos. 4-20 will be completed within six (6) months of filing the Agreement.

d) The Parties agree that Kelly Fink and Claude Joseph Fink, Jr. will not sell or transfer any assets used to provide public utility gas service without prior Commission approval.

e) Respondents agree to pay a civil penalty in the amount of \$500.00 to the Commonwealth pursuant to Section 3301 of the Public Utility Code, to resolve, through this Agreement, the allegations raised by Prosecutory Staff's Complaint proceeding. Respondents shall remit the entire amount within 30 days from the date that the Commission approves this Agreement. The check shall be made payable to the "Commonwealth of Pennsylvania" and addressed to "Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265."

f) The Parties agree that Claude Fink, Sr. and Lois A. Fink would be dismissed from the Complaint proceeding.

Joint Statement in Support of the Settlement Agreement

In the Settlement Agreement, the parties specified and endorsed a joint statement which supports the settlement agreement and asks the Commission to approve the settlement. That statement, found in Section IV of the Settlement Agreement at pages 7 through 10, states, as follows:

IV. Statement in Support of Settlement

11. Pursuant to the Commission's Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements that are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004).

12. The Commission has determined that all alleged violations of the Public Utility Code and Commission regulations shall be subject to review under the standards enunciated in *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000); *Pa. P.U.C. v. NCIC Operator Services*, M-00001440 (December 21, 2000). Prosecutory Staff and Respondents submit that this Settlement Agreement complies with the requirements set forth in *Rosi* and that the terms of this Agreement are in the public interest.

13. The Parties further assert that approval of this Settlement is consistent with the Commission's Policy Statement regarding factors and standards for evaluating litigated and settled proceedings at 52 Pa. Code § 69.1201.² Under this Policy Statement, while many of the same factors and standards may still be considered in both litigated and settled cases, 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 ten factors of the Policy Statement, as applied to this case are addressed herein.

² This policy statement became effective upon publication in the *Pennsylvania Bulletin* on December 22, 2007, at 37 *Pa. Bull.* 6755.

14. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). The violations alleged here were of a serious nature as the Respondents willfully failed to obtain certificates of public convenience. However, although the request was not timely, Respondent did request on June 3, 2011 an opinion of counsel letter regarding their jurisdictional status.

15. The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). This alleged violation should not be deemed serious as the actions discussed in this proceeding do not involve personal injury or property damage.

16. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Since this matter is being resolved by settlement of the parties, this standard is not relevant here.

17. The fourth factor to be considered under the Policy Statement is whether the Respondents have made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Kelly Fink and Claude Joseph Fink, Jr. have agreed to file an application for a certificate of public convenience to lawfully provide public utility natural gas service.

18. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company’s actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). Although the public is adversely affected by a failure to comply with the Public Utility Code and Commission regulations, gas service to individual customers was not affected.

19. The sixth factor to be considered under the Policy Statement relates to the Respondents’ compliance history. 52 Pa. Code § 69.1201(c)(6). Respondents do not have a compliance history with the Public Utility Code and the Commission’s regulations but have agreed to comply with the Public Utility Code by filing an application for a certificate of public convenience.

20. The seventh and eighth factors to be considered under the Policy Statement relate to whether the Respondents cooperated with the Commission’s investigation or proceeding and the appropriate settlement amount. 52 Pa. Code § 69.1201(c)(7), (8). Respondents fully cooperated with the Commission’s Staff in this Complaint proceeding and during settlement discussions. Furthermore, consistent settlement amounts are a reliable method for assuring that public utilities are compliant with the Public Utility Code and Commission regulations. Prosecutory Staff submits that Respondent’s payment of the agreed \$500.00

constitutes a reasonable and appropriate resolution of the dispute in this proceeding given the merits of the positions of the Parties in this proceeding.

21. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. This Agreement is consistent with prior decisions based upon the circumstances of this case with respect to violations of Commission regulations.

22. This Agreement represents the entire agreement between the Prosecutory Staff and Respondents with respect to the matters addressed herein. The Agreement addresses and attempts to remedy all allegations raised in this matter. The Law Bureau Prosecutory Staff and Respondents request that the Administrative Law Judge and Commission adopt an order approving the terms of this Agreement as being in the public interest.

DISCUSSION

The Settlement provides a long list of requirements and/or tasks which Respondents agree to accomplish in order to comply with 66 Pa. C.S.A. §1101, §1102 and §1103, concerning public utilities, acts requiring a certificate, and the procedure by which to obtain a certificate of public convenience. On three action items, Respondents agreed to perform the task within thirty days from the date the agreement was filed, and for other action items the response time was six months.

Joint Petitioners asserted the Settlement is in the public interest. The parties point out the Commission has a policy of encouraging settlements and indicated that settlement results are often preferable to those results achieved at the conclusion of a fully litigated proceeding.³ The Commission's policy is to promote settlements that are in the public interest.⁴ The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. Alleged violations of the Public Utility Code and

³ 52 Pa. Code §5.231.

⁴ Pennsylvania Public Utility Commission v. Philadelphia Gas Works, M-00031768 (Order entered January 7, 2004). Also Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order entered April 1, 1996; Pa. Public Utility Commission v. CS Water and Sewer Associates, 74 PA PUC 767 (1991).

Commission regulations are subject to review under the standards enunciated in Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.,⁵ and Pa. Public Utility Commission v. NCIC Operator Services⁶. Prosecutory Staff and Respondents submit this Settlement Agreement complies with the requirements set forth in Rosi and that the terms of this Agreement are in the public interest for detailed reasons set out in Section IV of the Settlement Agreement.

In support of the \$500.00 civil penalty, the Joint Petitioners contend Respondents willfully failed to obtain a certificate of public convenience but did request an opinion of counsel letter from the Commission prior to the filing of this complaint. The consequences of these violations are not serious and did not involve injury to persons or property. Kelly Fink and Claude Joseph Fink, Jr. agreed to file an application to obtain a certificate of public convenience, which action has occurred since the filing of the Settlement Agreement. No customer of the de facto natural gas company was adversely affected by these violations. Respondents fully cooperated with the Commission during the pendency of this proceeding and the \$500.00 civil penalty is a reasonable and appropriate resolution to the dispute. In addition, the parties submit the specific actions required in the Settlement Agreement are consistent with prior Commission action in similar circumstances.

Furthermore, as stated in the Joint Petition, approval of the Settlement with respect to the Formal Complaint issues will permit the Commission and Joint Petitioners to avoid incurring the time, expense and uncertainty of further litigation.

Accordingly, based on the reasons set forth in the Settlement Agreement and the provisions of the Settlement Agreement itself, I conclude the proposed resolution of the Formal Complaint at Docket No. C-2011-2246921, as provided in the Settlement, is just, reasonable and in the public interest. In addition, based on the evidence provided and the reasons set forth by the parties in the Settlement, I adopt the parties' evaluation of the fine under 52 Pa. Code Section 69.1201. Respondents have provided natural gas service to its customers without injury,

⁵ Docket No. C-00992409 (March 16, 2000).

⁶ Docket No. M-00001440 (December 21, 2000).

damage or unreasonable service prior to the initiation of this proceeding, and have taken affirmative steps to correct the omissions and/or violations noted by the Law Bureau. Accordingly, the Settlement Agreement will be approved in the paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S.A. §§102, 501, 701, 1102(a)(2), 1103(a), and 1501.

2. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order entered April 1, 1996; Pa. Public Utility Commission v. CS Water and Sewer Associates, 74 PA PUC 767 (1991).

3. The Joint Petition for Settlement filed by the Law Bureau Prosecutory Staff, Claude J. Fink, Lois A. Fink, Claude Joseph Fink, Jr., and Kelly Fink at Docket No. C-2011-2246921 is just, reasonable and in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Settlement submitted by the Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff, Claude J. Fink, Lois A. Fink, Claude Joseph Fink, Jr., and Kelly Fink at Docket No. C-2011-2246921, and which is not opposed by any party, is hereby approved.

2. That the Formal Complaint of the Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff against Claude Joseph Fink, Jr. and Kelly Fink, at Docket No. C-2011-2246921 is withdrawn, and shall be marked as closed.

3. That the Formal Complaint of the Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff against Claude J. Fink and Lois A. Fink, at Docket No. C-2011-2246921 is dismissed.

4. That the proceeding of the Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. Claude J. Fink, Lois A. Fink, Claude Joseph Fink, Jr., and Kelly Fink, t/d/b/a Fink Gas Company shall be terminated and marked closed.

Date: January 18, 2013

Katrina L. Dunderdale
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

ROGER T. MECHLING, ESQUIRE
MECHLING & HELLER LLP
216 NORTH JEFFERSON STREET
KITTANNING, PA 16201
724.543.1120
(REPRESENTING CLAUDE J. FINK AND LOIS FINK)

CLAUDE JOSEPH FINK, JR.
324 HARRISON
KITTANNING, PA 16201

LINDA L. ZIEMBICKI, ESQUIRE
LAW OFFICE OF LINDA L. ZIEMBICKI
PO BOX 535
900 EAST MAIN STREET
RURAL VALLEY, PA 16249
724.783.7088
(REPRESENTING KELLY FINK)



Heidi L. Wushinske
Assistant Counsel
Attorney ID # 93792
(Counsel for Pa. Public Utility Commission)

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: October 10, 2014

RECEIVED
2014 OCT 10 PM 1:46
PA PUC
SECRETARY'S BUREAU