

COMMONWEALTH OF PENNSYLVANIA

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 In the matter of: :
 : Docket Nos.
Application of UGI Penn Natural Gas, Inc. : **A-2010-2213893**
 For expedited review and approval of the : G-2010-2213894
 transfer by sale of a 9.0 mile natural :
 gas pipeline, appurtenant facilities and :
 right of way, located in Mehoopany, PA, :
 and a related affiliated interest :
 agreement. :
 Initial Prehearing Conference. :
 ----- x

Pages 1 through 19 Hearing Room Three
 Pennsylvania Public Utility Commission
 Commonwealth Keystone Building
 400 North Street
 Harrisburg, Pennsylvania 17105

Friday, January 7, 2011

Met, pursuant to notice, at 10:39 a.m.

BEFORE:

DENNIS J. BUCKLEY, Administrative Law Judge

APPEARANCES:

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W I T N E S S I N D E X

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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(None.)

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E X H I B I T I N D E X

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NUMBERFOR IDENTIFICATION IN EVIDENCE

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Office of Trial Staff's

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(None.)

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Office of Small Business Advocate's

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(None.)

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Office of Consumer Advocate's

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(None.)

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UGI's

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(None.)

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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE BUCKLEY: Good
3 morning. This is the date and time and place for the
4 hearing, prehearing conference, in the matter of the
5 application of UGI Penn Natural Gas, Inc. for approval of
6 transfer by sale of a nine-mile natural gas pipeline,
7 appurtenant facilities and right of way, Located in
8 Mehoopany, Pennsylvania. That is at Docket Number A-2010-
9 2213893. And the related filing in -- affiliated interest
10 filing of UGI Penn Natural Gas, Inc. Docket Number G-2010-
11 2213894.

12 I am Administrative Law Judge Dennis J.
13 Buckley. And at this time I would just like to have
14 counsel identify themselves for the record. Why don't we
15 start at the end of the table, here, Mr. Wright?

16 MR. WRIGHT: Christopher T. Wright. I am
17 here on behalf of UGI Penn Natural Gas.

18 JUDGE BUCKLEY: Thank you.

19 MR. MURPHY: Kent Murphy, representing UGI
20 Penn Natural Gas.

21 MR. SHIELDS: Yes, good morning, Your Honor.
22 I use my full middle name; it's Charles Daniel Shields. My
23 title is senior prosecutor with the Commission's Office of
24 Trial Staff.

25 JUDGE BUCKLEY: Welcome.

1 MR. MULLINS: Good morning, Your Honor.
2 James A. Mullins on behalf of the Pennsylvania Office of
3 Consumer Advocate.

4 JUDGE BUCKLEY: Good morning.

5 MS. WEBB: Good morning, Your Honor. Sharon
6 E. Webb on behalf of the Office of Small Business Advocate.

7 JUDGE BUCKLEY: Well, good morning. Now, if
8 counsel would bear with me one moment, I just want to put a
9 brief procedural history, as I have it up to this time, on
10 the record. On December 1, 2010 UGI Penn Natural Gas, Inc.
11 filed an application with the Pennsylvania Public Utility
12 Commission seeking an expedited review and approval for the
13 transfer by sale of a nine-mile natural gas pipeline,
14 appurtenant facilities and the right of way located between
15 Auburn and Mehoopany, Pennsylvania between an affiliated
16 corporate entity of UGI and UGI Services, Inc.

17 Notice of the application was published in
18 the Pennsylvania Bulletin and newspapers in general
19 circulation. On December 20, 2010 the Commission's Office
20 of Trial Staff filed a protest in the application from
21 affiliated interests. On December 21, 2010 the Office of
22 Small Business Advocate filed a Notice of Intervention and
23 Protest. Meanwhile, January 3, 2011 the Office of Consumer
24 Advocate filed a Notice of Intervention and a public
25 statement. This case was assigned to me as a presiding

1 officer on December 29, 2010.

2 I, thereafter, initiated a prehearing order;
3 I believe that was January 4, 2011. In response to that
4 prehearing order, counsel filed a prehearing memoranda, and
5 I thank them for that. We have some procedural issues here
6 today, including the establishment of the procedural
7 schedule, the discussion with respect to the certification
8 of the record without decision.

9 I also note that there had been a number of
10 letters and comments filed in this matter, which OTS wishes
11 to address.

12 MR. SHIELDS: That's correct, Your Honor.

13 JUDGE BUCKLEY: And there is also the matter
14 of public input hearings, potentially, and any other
15 matters that the parties care to raise at this time. Let
16 me just ask first: Mr. Murphy, I understand that you have
17 been discussing the procedural schedule?

18 MR. MURPHY: Yes, Your Honor.

19 JUDGE BUCKLEY: All right. Do you want to
20 go ahead with that?

21 MR. MURPHY: Yes, Your Honor. Before I do
22 that, I did want to clarify for the record a statement that
23 was made on page four of my prehearing conference memo.
24 With regard to certifying the record to the Commission
25 without the issuance of a recommended decision. I had the

1 intention of contacting the parties yesterday for the
2 purpose of discussing that issue. Unfortunately due to the
3 press of other business, I was unable to do so. And I also
4 recognize a request to certify the record for the purpose
5 of having the Commission directly decide this issue without
6 the issuance of a recommended decision should be in the
7 form of a petition to the Commission.

8 As far as the schedule is concerned, the
9 parties have discussed and come to an agreement as to the
10 dates of testimony, as well as hearing; and obviously the
11 hearing would be dependant upon your schedule. PNG direct
12 testimony, we would stick to what is in our prehearing memo
13 at January 21, 2011. The next date would be other parties'
14 testimony, which would be February 18, 2011.

15 MR. SHIELDS: Kent, if I could interrupt?
16 Your Honor, we would typically style that as OTS direct
17 testimony so as to distinguish it from the OTS sir rebuttal
18 testimony to the extent any of us submit it.

19 MR. MURPHY: So that would be other parties'
20 direct testimony?

21 MR. SHIELDS: That would be my preference,
22 Judge. Thank you, Mr. Murphy.

23 MR. MURPHY: And that would be February
24 18th. All parties' rebuttal testimony would be due on
25 March 2, 2011. A round of sir rebuttal testimony would be

1 due March 11, 2011. Rejoinder in the form of an outline,
2 or if we are able to turn it around quickly, written
3 testimony, would be March 15th.

4 MR. SHIELDS: That would be by noon?

5 MR. MURPHY: By noon on March 15th.

6 Hearings, the parties contemplate the need for one day and
7 we would ask Your Honor for the day of March 16th. Main
8 briefs, I believe we agree to a two-week turnaround at
9 March 30, 2011. And reply brief on April 7, 2011. With
10 regard to discovery, the parties have agreed to a seven-day
11 turnaround time; and that would be seven calendar days.

12 We have not discussed the need for a public
13 input hearing. But based on our understanding of the lack
14 public opposition, other than the Office of Small Business
15 Advocate and the Office of Trial Staff, that there really
16 is no need for a public input hearing.

17 JUDGE BUCKLEY: All right. This is the
18 schedule that all parties have agreed upon?

19 MR. SHIELDS: This is Mr. Shields; that's
20 correct, Your Honor.

21 MR. MULLINS: Yes, Your Honor.

22 MS. WEBB: Yes, Your Honor.

23 JUDGE BUCKLEY: Thank you. All right. Very
24 well, that is what I will put out in the post-hearing
25 order. I have no problem with being here on March 16,

1 2011; that is the hearing date. With respect to the
2 request for certification of record without decision, we
3 did have some discussion with that off the record. At this
4 point we doubt that is something that is outside of my
5 purviews as an Administrative Law Judge and presiding
6 officer under 52 PA Code Section 545.31(a), as well as 66
7 PACS Section 335. The decision with respect to
8 certification without a decision of the presiding officer
9 is left to the Commission, as Mr. Murphy has pointed out.
10 What we will do, is we will go ahead with your procedural
11 schedule as it has been laid out here.

12 If a petition does go to the Commission and
13 I get a directive, then we will deal with that at the time.

14 MR. MURPHY: Thank you, Your Honor.

15 JUDGE BUCKLEY: Now, Mr. Shields, you had
16 some comments that you wished to make with respect to the
17 letters and the comments that have been filed with this
18 docket?

19 MR. SHIELDS: I do, Your Honor; but not
20 necessarily to belabor the point, but simply to indicate
21 our position on the record. Let me first say, as Your
22 Honor indicated, we provided electronically our prehearing
23 conference memo to Your Honor and the parties yesterday. I
24 have this morning provided the court reporter with an
25 original and one copy of that OTS prehearing conference

1 memorandum, and I have provided hard copies to Your Honor
2 and other counsel present here this morning.

3 On page five we have a section, exclusion
4 from record evidence. It's merely to note, Your Honor, and
5 it is not so much directed towards you, but to the -- but
6 to whatever use the Company may consider these letters that
7 were sent to the Secretary. The Secretary is not the one
8 to decide the case, the case is properly in front Your
9 Honor. Just to put the Company on record that to the
10 extent that they intend to use those letters, that that is
11 the OTS' position, unless they are formally offered into
12 the record and accepted into the record. But we would
13 merely want to have clarified for the record what our
14 position is vis-à-vis what weight, if any, those letters
15 should receive within the confines of this formal
16 proceeding. That's all I have on the subject, Your Honor.

17 JUDGE BUCKLEY: Mr. Murphy, do you want to--

18 MR. MURPHY: Your Honor, I would only add
19 that I believe it is premature to address the issue. If
20 the Company does rely upon it, then Your Honor would be
21 able to make a determination at that point if OTS continues
22 its objection. I would just note that the Commission did
23 have a public notice and comment period; I believe those
24 letters were submitted consistent with that purpose. As in
25 many rate cases, applications, where you get hundreds of

1 letters from customers or interested stake holders, those
2 documents typically remain as part of the public record,
3 maybe not part of the evidentiary record in a proceeding.

4 MR. SHIELDS: Your Honor, may I respond?

5 JUDGE BUCKLEY: Yes, please.

6 MR. SHIELDS: I don't know that the
7 nomenclature, public record, would be appropriate; I think
8 it is more appropriate to say that they are in the file.
9 My concern is not so much that the documents would be mis-
10 used within the confines of this proceeding before Your
11 Honor, but rather the fact that they would be available to
12 anyone else during the course of whomever in the Commission
13 reviews the -- those submissions. Which my reading of
14 those letters contain unverified factual representations.
15 Again, not to beat it to death, that's all I have on the
16 matter.

17 JUDGE BUCKLEY: Mr. Mullins, do you have a
18 position on this?

19 MR. MULLINS: Your Honor, as the letters in
20 questioned have not been proffered for the record at this
21 point, the OCA has no position at present.

22 JUDGE BUCKLEY: Ms. Webb?

23 MS. WEBB: I echo Mr. Mullins' sentiment at
24 this point. If the Company goes forward, we will -- we may
25 have a reaction.

1 JUDGE BUCKLEY: All right. I understand how
2 letters materialize; there was a publication. And I am
3 sensitive, though, to Mr. Shields and I am not going to
4 make a ruling right now. But let me just say, it would be
5 very difficult for me to put any kind of reliance on the
6 letters, themselves, the way that they are procedurally at
7 this time. So, that's what I am going to say and we can go
8 on from there.

9 Now, with respect to discovery, I understand
10 you established seven calendar days. Apparently there is
11 no need at this time for a public input hearing. If an
12 interest would be expressed, then I would hope that the
13 public advocates would let me know as soon as possible, so
14 that we could get going with that schedule.

15 MR. MULLINS: Yes, Your Honor.

16 MR. SHIELDS: Yes, Your Honor. Our office
17 would certainly do so, although at this time we have seen
18 no indication that a public input session is necessary.

19 JUDGE BUCKLEY: Correct me if I am wrong,
20 but is this -- this is in what county of Pennsylvania?

21 MR. MURPHY: That's a good question, Your
22 Honor. I believe it's part of Susquehanna; I believe that
23 Mehoopany is in Susquehanna. Auburn is in Susquehanna.
24 And whatever is south of Susquehanna, which I don't--

25 JUDGE BUCKLEY: I'm just trying to get a

1 bearing of where -- I know it is in northcentral
2 Pennsylvania.

3 MR. MURPHY: Wyoming County, Your Honor;
4 Wyoming and Susquehanna.

5 JUDGE BUCKLEY: All right. Okay, thank you;
6 I appreciate that. Now, with respect to the timing of
7 receipt of documents, usually what my preference is that
8 when a document is due, that we just go ahead and do e-
9 service with hard copy to follow as soon after is
10 practicable, with an in-hand time of 4:00 p.m. on the date
11 due; does anyone have a problem with that?

12 MR. SHIELDS: Your Honor, that's terrific;
13 that's the -- I certainly prefer that and I know my office
14 prefers that. If we could clarify it further to say a
15 follow-up copy by first class mail, that might save a ton
16 of money for all parties involved, if that's acceptable to
17 Your Honor?

18 JUDGE BUCKLEY: If that's acceptable to the
19 parties, it's certainly acceptable to me.

20 MR. MURPHY: That's acceptable here, Your
21 Honor.

22 MR. MULLINS: That's acceptable, Your Honor.

23 MS. WEBB: Yes, sir.

24 JUDGE BUCKLEY: All right. And if a filing
25 is due on a Saturday or a holiday, then in fact it is due

1 the next business day.

2 MR. SHIELDS: Understood, Your Honor.

3 MR. MURPHY: Yes, Your Honor.

4 JUDGE BUCKLEY: Okay. All right.

5 MS. WEBB: Your Honor?

6 JUDGE BUCKLEY: Yes?

7 MS. WEBB: I just want to make sure -- you
8 said that the rejoinder outlines was the acceptance of the
9 time, and that would be due at noon on the 15th; is that
10 what we are using?

11 JUDGE BUCKLEY: I believe you are right, Ms.
12 Webb.

13 MS. WEBB: Okay.

14 JUDGE BUCKLEY: All right. What I would
15 like to do is, if you will bear with me, let me just be
16 absolutely sure I have the schedule correct. So, we have
17 the company's direct testimony on January 21st, correct?

18 MR. MURPHY: That's correct, Your Honor.

19 JUDGE BUCKLEY: And then we have the direct
20 testimony of the other parties, will be due on the 18th of
21 February, correct?

22 MR. MURPHY: 18th of February, yes.

23 MR. SHIELDS: That's our understanding;
24 that's correct, Your Honor.

25 JUDGE BUCKLEY: Okay. Then any rebuttal

1 testimony will be due on March 2nd?

2 MR. MURPHY: Correct.

3 JUDGE BUCKLEY: Sir rebuttal, March 11th?

4 MR. MURPHY: Correct.

5 JUDGE BUCKLEY: The Company's rejoinder,
6 March 15th by noon.

7 MR. MURPHY: Correct.

8 MR. SHIELDS: And we'll accept an outline
9 for that, Your Honor.

10 JUDGE BUCKLEY: Okay. And then we will have
11 the hearing on March 16th. Now, that is a--

12 MS. WEBB: Wednesday.

13 JUDGE BUCKLEY: --Wednesday.

14 MR. MURPHY: All right.

15 JUDGE BUCKLEY: Would the parties -- I know
16 you said we would only need one day; would the parties
17 prefer having a two-day schedule, just in case?

18 MR. MURPHY: Well, Your Honor, I would be
19 open to that, Your Honor.

20 JUDGE BUCKLEY: Or do you think you can do
21 that in one day?

22 MR. MULLINS: I already have a conflict that
23 entire week, so the 16th is do-able. But if we have it on
24 two days, I am going to have to juggle a thing or two make
25 sure I am in attendance, if we go that long.

1 JUDGE BUCKLEY: The only reason I was
2 suggesting it was, sometimes I get a little bit concerned
3 with just one hearing day; if we go long or matter come up
4 that need to be fleshed out. Why don't we keep the 16th
5 and see how it goes and if necessary, we will schedule an
6 additional date later on?

7 MR. SHIELDS: That's fine with us, Your
8 Honor, thank you.

9 MR. MURPHY: Very good, Your Honor.

10 JUDGE BUCKLEY: Main briefs due March 30th,
11 reply briefs due April 7th. And I believe that that is all
12 that I have. Let me go around the room here and make sure
13 that all of our concerns have been addressed. Mr. Murphy,
14 do you have anything further today?

15 MR. MURPHY: Nothing further, Your Honor.

16 JUDGE BUCKLEY: Mr. Shields?

17 MR. SHIELDS: Your Honor, I think you might
18 have mentioned this in your prehearing order, but can I
19 presume that you would like the briefs in Microsoft Word
20 format?

21 JUDGE BUCKLEY: Yeah, thank you. I would
22 really prefer any document that you will send to me in
23 Microsoft Word. And as long as I am making clarifications,
24 I think everybody knows my e-mail address is not dbuckley,
25 it is debuckley@state.pa.us. Anything else, Mr. Shields?

1 MR. SHIELDS: Nothing further, Your Honor;
2 thank you.

3 JUDGE BUCKLEY: Okay. Ms. Mullins?

4 MR. MULLINS: Nothing, Your Honor; thank
5 you.

6 JUDGE BUCKLEY: And Ms. Webb?

7 MS. WEBB: Nothing; thank you, Your Honor.

8 JUDGE BUCKLEY: All right. Very well, then
9 I think that we have done all that we can do today. I wish
10 all of you a happy New Year and I look forward to seeing
11 you in this case.

12 MR. MURPHY: Thank you, Your Honor.

13 MR. SHIELDS: Thank you, Your Honor.

14 JUDGE BUCKLEY: Oh, wait, one more. I'm
15 sorry, let me go back. What date did the parties
16 contemplate a close of the record by?

17 MR. SHIELDS: That's an interesting
18 question, Judge. Every judge seems to have a different
19 opinion on the subject; I'm open to suggestions. Some
20 close it at the reply brief, some close it at the close of
21 the hearing, so -- do you have a preference, Judge? I have
22 no preference.

23 JUDGE BUCKLEY: I don't have a preference.
24 I -- my preference is to leave your fates in your hands as
25 much as possible. So, if you have a date that you would

1 like to suggest, then I certainly would be receptive to
2 that.

3 MR. SHIELDS: All right. Well, then, I will
4 propose April 7th, the date of the submission of the reply
5 briefs.

6 JUDGE BUCKLEY: Is that agreeable to
7 everybody?

8 MR. MULLINS: Yes, Your Honor.

9 MR. MURPHY: I believe so; yes, Your Honor.

10 JUDGE BUCKLEY: Okay. Very well. With
11 that, this hearing is adjourned and we are off the record.
12 Thank you.

13 (Whereupon, at 11:00 a.m., the hearing was
14 adjourned.)

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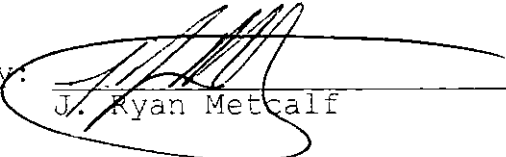
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