

I.12-01-007, I.11-02-016, I.11-11-009.

PG&E'S REQUEST FOR OFFICIAL NOTICE

EXHIBIT 6

***Opinion and Order, Pa. Pub. Util. Comm'n, Bureau of Investigation & Enforcement v. UGI
Utils., Inc. (Jan. 24, 2013)***

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265**

Public Meeting held January 24, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner, Statement
James H. Cawley
Pamela A. Witmer

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

C-2012-2308997

v.

UGI Utilities, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Manuel Cruz (Intervenor), filed on November 20, 2012, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) David A. Salapa, issued October 31, 2012, in the above-captioned proceeding. UGI Utilities, Inc. – Gas Division (UGI), UGI Penn Natural Gas, Inc. (UGI Penn Natural), and UGI Central Penn Gas, Inc. (UGI Central Penn) (collectively, the UGI Companies) filed Replies to Exceptions on November 28, 2012. The Commission’s Bureau of Investigation and Enforcement (I&E) filed Replies to Exceptions on November 30, 2012.

Also before us is a Petition for Remand, filed by the Intervenor on December 7, 2012. On December 12, 2012, UGI filed an Answer in Opposition to the Petition for Remand, and I&E filed a Motion to Strike the Petition for Remand. Furthermore, on December 17, 2012, the Intervenor filed a Request for Oral Argument. I&E filed an Answer in Opposition to the Request for Oral Argument on December 20, 2012. UGI filed an Answer in Opposition to the Request for Oral Argument on December 27, 2012. We will separately address each filing herein.

I. History of the Proceeding

On June 11, 2012, I&E filed a Complaint with the Commission against UGI regarding a natural gas explosion that occurred on February 9, 2011, at 542 and 544 North 13th Street, Allentown, Pennsylvania. The Complaint alleged that UGI supplied natural gas service to 542 and 544 North 13th Street.

According to the Complaint, the natural gas explosion occurred at approximately 10:48 p.m. and killed all five occupants of the two residences. The explosion also injured the patron of a car wash located nearby on Allen Street. The fire resulting from the explosion destroyed or significantly damaged six other residences. Complaint at 3. The Complaint set forth a detailed chronology of the events before and after the explosion occurred. Complaint at 3-6.

The Complaint stated that the cause of the explosion was a twelve-inch cast iron gas main with a circumferential crack located under Allen Street. The Complaint stated that the twelve-inch cast iron main was installed in 1928. Complaint at 6.

The Complaint alleged that UGI violated the Public Utility Code (Code), Commission Regulations and Federal Regulations as follows:

1. UGI failed to maintain an odorant sampling program that adequately demonstrates concentrations of odorant throughout its distribution system in that UGI conducts weekly sniff tests at only one location in Allentown where the gas enters its distribution system, but does not test throughout its distribution system in the event there is odorant fade.

This is a violation of 52 Pa. Code § 59.33(a); 66 [Pa. C.S.] § 1501; and 49 CFR §§ 192.625(a) and (f) for each week that the violation continued for a period of three years.

2. UGI failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in that the company did not adequately and timely respond to ample warning signs regarding the integrity of its cast-iron mains in the Allentown area, including several catastrophic explosions resulting from corroded/graphitized mains, as well as a Class II Priority Action recommendation from the [National Transportation Safety Board (NTSB)] in 1992 following a fatal explosion, recommending replacing cast-iron mains on which graphitization was found in a planned and timely manner.

This constitutes an ongoing violation of 52 Pa. Code § 59.33(a); 66 Pa. C.S. § 1501; and 49 CFR § 192.489 for each year since 1992 that UGI failed to timely act.

3. UGI did not follow GOM 60.50.40 Section 3.1.5 of its emergency procedures, which states that “Odorant tests shall be made in the immediate affected area and at the closest delivery point” in that UGI’s [Meter & Regulator] technicians performed odorant testing at 1202 Allen Street and 1430 Allen Street, which are two test points in the medium pressure system and not in the same low pressure district as the affected 12-inch main.

This is a violation of 52 Pa. Code § 59.33(a); 66 [Pa. C.S.] § 1501; and 49 CFR § 192.605(a).

4. UGI failed to continually survey its facilities in that it failed to monitor and respond to the forces that detrimentally affected the 12-inch cast-iron main, including, but not limited to, the distressed pavement on Allen Street, the sinking curb, the excavation activity that took place near the pipe, the

corrosion that was noted on the pipe, and the pipe's leakage history.

This is a violation of 52 Pa. Code § 59.33(a); 66 Pa. C.S. § 1501; 49 CFR § 192.613(a); and 49 CFR § 192.755(a).

5. UGI failed to comply with its emergency procedures that require making safe any actual or potential hazard to life or property in that UGI did not attempt to close curb valves to the remaining residences, 530 to 540 [North 13th] Street, even though all but two of those residences were served with gas.

This is a violation of 52 Pa. Code § 59.33(a); 66 Pa. C.S. § 1501; 49 CFR § 192.605(a); 49 CFR §§ 192.615(a)(3)(i) and (iii); and 49 CFR §§ 192.615(a)(6) and (7).

6. UGI failed to comply with its emergency procedures that require prompt and effective response to a notice of gas detected near a building and/or an explosion occurring near or directly involving a pipeline facility in that UGI did not diminish the flow of gas for approximately five hours after the explosion at 3:45 a.m. on February 10, 2011 because UGI Gas was unable to immediately isolate the suspected source of the gas due to the lack of valves in their low pressure distribution system.

This is a violation of 52 Pa. Code § 59.33(a); 66 [Pa. C.S.] § 1501; 49 CFR § 192.605(a); 49 CFR §§ 192.615(a)(3)(i) and (iii); and 49 CFR §§ 192.615(a)(6) and (7).

Complaint at 10-12.

The Complaint requested that the Commission impose a civil penalty of \$386,000 on UGI and direct UGI to take the following remedial actions: (1) to monitor the level of odorant throughout its distribution system; (2) to modify its procedures on odorant testing and test the level of odorant on the same network of distribution piping; (3) to conduct continuing surveillance on its mains; (4) to commence a pipeline replacement program for all its cast iron mains to be completed within ten years; and (5)

to commence a pipeline replacement program for all its bare steel mains within thirteen years. Complaint at 12-13.

UGI filed an Answer on July 2, 2012. UGI generally admitted that a natural gas explosion occurred on February 9, 2011, at 542 and 544 North 13th Street and that UGI supplied natural gas service to 542 and 544 North 13th Street. The Answer admitted that the explosion caused the deaths, injuries, and property damage set forth in the Complaint. The Answer specifically denied the allegations in the Complaint regarding the violations of the Code, the Commission's Regulations, and the Federal Regulations, and requested that the Commission deny the Complaint. Answer at 4-5.

ALJ Salapa conducted a prehearing conference on September 25, 2012. Counsel for UGI and I&E were present. ALJ Salapa indicated that, at the time the prehearing conference took place, he had not been served with any petitions to intervene, and the Commission's records indicated that no petitions to intervene had been filed. Neither I&E nor UGI were aware of any petitions to intervene at the time of the prehearing conference. I.D. at 4; Tr. at 4.

ALJ Salapa indicated that, on September 25, 2012, he received a copy of the Petition to Intervene filed by counsel for Mr. Cruz. I.D. at 4. The Petition was filed with the Commission's Secretary on September 21, 2012.¹ Petition at 1, 2. On October 9, 2012, I&E filed an Answer in Opposition to the Petition to Intervene.

¹ The Petition to Intervene stated that Mr. Cruz was the owner of the home located at 542 North 13th Street. According to the Petition, Mr. Cruz has been appointed administrator of the estates of Katherine Cruz and Ofelia Ben, both of whom resided at 542 North 13th Street. The Petition indicated that Mr. Cruz has filed an action on his own behalf and as administrator of the estates of Katherine Cruz and Ofelia Ben against UGI in the Court of Common Pleas of Northampton County.

On October 3, 2012, UGI filed a Joint Settlement Petition (Settlement), along with Statements in Support of the Settlement expressing the views of I&E and the UGI Companies. The Parties to the Settlement are I&E and the UGI Companies (Settling Parties). UGI served a copy of the Settlement on I&E and counsel for Mr. Cruz.

Also on October 3, 2012, UGI Central Penn and UGI Penn Natural filed a Petition to Intervene, explaining that both UGI Central Penn and UGI Penn Natural are natural gas utilities affiliated with UGI, and that portions of the Settlement would affect their facilities, operations, practices, and procedures. The Petition to Intervene represented that I&E did not oppose the intervention and waived the twenty day objection period. By order dated October 9, 2012, ALJ Salapa granted UGI Central Penn's and UGI Penn Natural's Petition to Intervene for the purpose of being parties to the Settlement.

In the Initial Decision, issued on October 31, 2012, ALJ Salapa granted the Petition to Intervene filed by Mr. Cruz, sustained the Complaint filed by I&E, and approved the Settlement.

As previously indicated, Mr. Cruz filed Exceptions on November 20, 2012. The UGI Companies filed Replies to Exceptions on November 28, 2012, and I&E filed Replies to Exceptions on November 30, 2012. On December 21, 2012, Mr. Ed Pawlowski, Mayor of the City of Allentown, filed a letter to join Mr. Cruz's Exception regarding the Settlement's provision pertaining to the fourteen-year time period during which the UGI Companies agreed to replace their cast iron mains. On January 3, 2013, the UGI Companies filed a letter in response to the Mayor's letter.

On December 7, 2012, the Intervenor filed a Petition for Remand. On December 12, 2012, UGI filed an Answer in Opposition to the Petition for Remand, and I&E filed a Motion to Strike the Petition for Remand.

On December 17, 2012, the Intervenor filed a Request for Oral Argument. I&E filed an Answer in Opposition to the Request for Oral Argument on December 20, 2012. UGI filed an Answer in Opposition to the Request for Oral Argument on December 27, 2012.

II. Terms of the Settlement

The UGI Companies and I&E state that the purpose of the Settlement is to terminate the investigation and resolve this matter without further litigation. The UGI Companies and I&E have agreed that the following terms and conditions resolve this matter in a fair and equitable manner:

A. The UGI Companies shall retire or replace all in-service cast iron mains in its three regulated service territories over the period of 14 years in each case commencing with the beginning of the month following the month in which the Commission enters a final order approving this Joint Settlement Petition, and such period shall not be altered absent a material change in circumstances affecting public safety on the UGI Companies' gas systems or through issuance by the Commission of a final order that generically requires all natural gas distribution companies to replace or retire all in-service cast iron pipeline over a shorter period of time.²

B. The UGI Companies will be permitted to continue the pace of their current 30-year bare steel main replacement programs in each of their three regulated service territories, and such period shall not be altered absent a material change in circumstances affecting public safety on the UGI Companies' gas systems or through issuance by the Commission of a final order that generically requires all natural gas distribution companies to replace or retire

² According to the Settling Parties, the fourteen-year program shortens the approximate fifty-year replacement trend for UGI Gas cast iron that pre-existed the Settlement by thirty-six years.

all in-service bare steel pipeline over a shorter period of time.³

C. The UGI Companies will commit to enhance their odorant testing program by additional testing at the extremities of their systems and at random testing locations, and shall record and maintain records of such testing. The UGI Companies shall fully implement the procedures in compliance with this requirement no later than the end of the 6th full calendar month after the date of a final order approving the Joint Settlement Petition.

D. The UGI Companies will commit to install fixed odorant level monitoring equipment at all third party points of delivery into UGI pipeline systems and shall record and maintain records of the results of such monitoring. The UGI Companies shall phase in the installation of this equipment over the course of the 24 months following the date of the final order approving the Joint Settlement Petition.

E. The UGI Companies will commit to install fixed odorizers at gate stations serving Allentown, Lancaster, Reading, Harrisburg, and other major population centers, as identified in Attachment 1. The UGI Companies shall phase in the installation of these stations over the course of the 24 months following the date of the final order approving the Joint Settlement Petition.⁴

F. UGI Gas will commit to pay a civil penalty in the amount of \$386,000, which it will agree not to seek to recover through rates regulated by the Commission. UGI shall pay

³ The Settling Parties indicate that this time frame represents a “substantial shortening” of the UGI Gas Companies’ bare steel replacement programs that, prior to the Settlement, would have been completed in approximately fifty-eight years. The UGI Companies estimate that the annual capital expenditures for pipeline replacement, implementing the new time frames for both cast iron and bare steel mains, will increase by approximately 50%, or to \$55 million per year, over the annual capital expenditures for the period preceding the Settlement.

⁴ The UGI Companies estimate that the capital investment necessary to implement the requirements regarding the installation of the odorant level monitoring equipment and the fixed odorizers, and the associated monitoring, will be approximately \$2-4 million.

this amount no later than the end of the first full calendar month after the date of a final order approving this Joint Settlement Petition.

G. The UGI Companies will be prohibited from seeking recovery of any costs that would otherwise be eligible for recovery through a distribution system improvement charge (DSIC), for a period of 24 months following the month in which the Commission enters a final order approving this Joint Settlement Petition. Following this 24-month restriction, should the UGI Companies seek recovery of any costs through a DSIC, the UGI Companies agree to comply with Act 11 of 2012, 66 Pa. C.S. § 1350, *et seq.*

Settlement at 9-10. Based on the above-quoted terms of the Settlement, I&E agrees to forebear from further prosecuting any formal complaint relating to UGI's conduct as described in the Settlement and the Complaint in this proceeding. The Parties also agree that the Settlement does not affect the Commission's authority to receive and resolve any formal or informal complaints filed by any affected party with respect to the incident, except that no further civil penalties may be imposed by the Commission for any actions identified in the Settlement. *Id.* at 11.

The Settling Parties state that the Settlement is conditioned on the Commission's approval, without modification, of the terms and conditions of the Settlement. If the Commission modifies the Settlement, any party may elect to withdraw from the Settlement. *Id.* at 12. Additionally, the Settling Parties aver that the Settlement may not be admitted in evidence in any potential civil proceeding involving this matter and that, by entering into this Settlement, the UGI Companies have made no concession or admission of fact or law and may dispute all issues of fact or law in all proceedings, including any civil proceedings, that may arise as a result of the circumstances described in this Settlement. Furthermore, the Settling Parties state that the Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement its provisions. *Id.* at 13.

The Settling Parties state that the Settlement is in the public interest and is consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that we may consider in evaluating whether a fine for violating a Commission Order, Regulation, or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Settling Parties aver that the Settlement will provide substantial public benefits, including significant acceleration of the UGI Companies' pipeline replacement programs, enhanced odorant testing programs, and the installation of fixed odorant level monitoring equipment and fixed odorizers.

III. Discussion

The ALJ reached five Conclusions of Law. I.D. at 26-27. The Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

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

A. Intervenor's Request for Oral Argument

1. Positions of the Parties

Mr. Cruz requests an oral argument on both his Exceptions and his Petition for Remand in order to be heard on these filings. Request for Oral Argument at ¶ 5.

In its Answer in Opposition to the Request for Oral Argument (Answer in Opposition), UGI avers that the Intervenor has already stated his arguments against the fourteen-year replacement period for the cast iron mains and other terms and conditions of the Settlement in his Exceptions and in the Petition for Remand. UGI states that the Intervenor's positions will be fully considered by the Commission, along with the Settlement and the ALJ's Initial Decision. UGI Answer in Opposition at 2.

Additionally, UGI avers that Section 5.538(b) of the Commission's Regulations, 52 Pa. Code § 5.538(b), requires that, in cases in which Exceptions are filed, a request for oral argument must be filed in writing together with the Exceptions. *Id.* According to UGI, because the Intervenor did not file its request for oral argument at the same time that it filed its Exceptions, the Intervenor's request is untimely and procedurally improper and should be rejected for this reason alone. Further, UGI states that a request for oral argument must raise an issue that is unique or contains a general policy question of such importance that oral argument would be appropriate. *Id.* at 3 (citing *Petition of Metropolitan Edison Company*; *Barry G. Peck v. Metropolitan Edison Company*; *Petition of West Penn Power Company*, 1993 Pa. PUC Lexis 69). UGI submits that the Intervenor has failed to allege any reason why oral argument is appropriate. UGI avers that a request for oral argument is not a matter of right; rather, the decision to grant oral argument is a matter within the Commission's discretion. *Id.* at 3 (citing *Application of Pennsylvania Suburban Water Company and Eagle Rock Utility Corporation*, Docket No. A-210104F0023 (Order entered March 8, 2004)). UGI

additionally believes that an oral argument in this case will delay the substantial benefits in the Settlement. *Id.* at 4.

In its Answer in Opposition to the Request for Oral Argument (Answer in Opposition), I&E states that the Intervenor waived the opportunity to be granted an oral argument before the Commission due to his failure to make the request when he filed his Exceptions in accordance with Section 5.538(b) of the Commission's Regulations. I&E Answer in Opposition at 2.

2. Disposition

UGI and I&E correctly state that requests for oral argument before the Commission are governed by Section 5.538 of our Regulations, 52 Pa. Code § 5.538. Specifically, Section 5.538(b) provides “in a case where exceptions are filed . . . , a request for oral argument before the Commission shall be filed in writing together with exceptions to the tentative, recommended or initial decision.” 52 Pa. Code § 5.538(b). Decisions regarding whether to grant a request for oral argument are within the Commission's discretion. *Application of Pennsylvania Suburban Water Company and Eagle Rock Utility Corporation, supra* at 5. Additionally, oral argument is appropriate when the issues raised in the request for oral argument are unique or contain questions of general policy or importance. *Petition of Metropolitan Edison Company; Barry G. Peck v. Metropolitan Edison Company; Petition of West Penn Power Company, supra* at *31.

We note that the Request for Oral Argument pertains to Mr. Cruz's Petition for Remand as well as his Exceptions. Nevertheless, the request for oral argument in this case does not meet the above criteria, as it was not filed with the Exceptions or the Petition for Remand, and it does not raise any reasons in support of having an oral argument. In the request, counsel for the Intervenor simply asks for an oral argument on the Exceptions and the Petition for Remand, without providing any basis or reasons for

the request. Moreover, we have thoroughly considered the positions that the Intervenor has articulated in his Exceptions and Petition for Remand and we see no need for oral argument to elaborate on the arguments set forth in those documents. Accordingly, we shall deny the request for oral argument.

B. Intervenor's Petition for Remand

1. Positions of the Parties

In the Petition for Remand (Petition), Mr. Cruz states that he objects to the terms of the Settlement, specifically the fourteen-year replacement period for the UGI Companies' cast iron pipelines in Allentown. Mr. Cruz avers that the fourteen-year replacement period ignores long-standing warnings issued by a federal government agency that the cast iron pipes required replacement and an established history of fatal gas explosions in Allentown. Mr. Cruz states that, because the ALJ granted his Petition to Intervene contemporaneously with the approval of the Settlement in the Initial Decision, he was not given the opportunity to object to the Settlement and to be heard by the ALJ prior to the approval of the Settlement. Additionally, Mr. Cruz states that he was not provided with an opportunity to engage in any part of the Commission's investigation of UGI's involvement in the February 9, 2011, gas explosion. Petition at 2. Further, Mr. Cruz states that, because of the death of his family as a result of the explosion, he has an interest that is direct, immediate, and substantial in this matter which requires that he be heard by the ALJ regarding the Settlement. He requests that this matter be remanded for the purpose of permitting him to be heard regarding the Settlement. *Id.* at 3.

In its Answer in Opposition to the Petition for Remand (Answer), UGI states that the Petition should be denied. UGI avers that, despite being aware of the Complaint filed by I&E on June 11, 2012, counsel for the Intervenor waited until September 21, 2012, to file the Petition to Intervene. Answer at 1-2. UGI states that, as a

late intervenor, the Intervenor is required to accept the record and proceeding as he finds it. UGI believes that the Intervenor elected to sit on his rights and postponed requesting intervenor status, and, as such, any harm alleged in the Petition is due to when the Intervenor chose to intervene and comment, which is attributable solely to the actions of the Intervenor's counsel. *Id.* at 2. UGI specifically avers that counsel for the Intervenor attended the Prehearing Conference on September 25, 2012, but did not sign the appearance sheet and failed to respond to the ALJ's question regarding whether any interventions had been filed, despite the fact that the Intervenor's counsel had filed a Petition to Intervene four days earlier. *Id.* at 3.⁵ Additionally, UGI states that the Settlement is now before the Commission for disposition, and the Intervenor has taken advantage of the opportunity to raise all of his objections to the ALJ's Initial Decision by filing Exceptions, which are currently pending before the Commission. *Id.* at 2.

Moreover, UGI avers that the Intervenor has not identified any genuine dispute of material fact that would warrant a remand of this proceeding. UGI states that the Settlement is fully supported by the Statements in Support submitted by I&E and UGI, that the Settlement resolves all issues related to the I&E Complaint, and that the Settlement provides significant public benefits to all customers and communities within the service territories of the three UGI Companies. UGI also denies that it ignored warnings issued by a federal government agency and the history of incidents on UGI's cast iron mains. UGI states that, as explained in its Statement in Support of the Settlement, it has made substantial efforts to significantly reduce the risk associated with its cast iron inventory. *Id.* at 5. UGI asserts that the Commission should not overturn an Initial Decision approving a Settlement that would provide substantial benefits to the general public where the only challenge to the Settlement is based on the request of a late

⁵ The "Appearances" page of the transcript does not indicate that counsel for Mr. Cruz was present. Tr. at 2. In the Initial Decision, the ALJ also does not indicate that counsel for Mr. Cruz was present.

Intervenor who had the opportunity to submit comments to the Settlement, but did not, and has not raised any genuine issue regarding the lawfulness or reasonableness of the Settlement. *Id.* at 8.

In its Motion to Strike the Petition for Remand (Motion), I&E states that the Intervenor's Petition should be stricken because it is duplicative and procedurally incorrect. I&E avers that the issues Mr. Cruz raises in his Petition are concerns that were raised in his Exceptions and are currently under the Commission's consideration. I&E avers that Exceptions are the exclusive pleading in which a party is afforded the opportunity to raise arguments to an ALJ's decision, and Mr. Cruz has taken advantage of this opportunity by filing Exceptions. Motion at 5. In addition, I&E asserts that Mr. Cruz has not presented any new material facts that justify opening the record at this stage in the proceeding. *Id.* at 6.

2. Disposition

We will deny I&E's Motion to Strike the Petition for Remand and address the merits of Mr. Cruz's Motion. Initially, we note that Mr. Cruz's counsel is asking that the Intervenor be heard regarding his objections to the Settlement, specifically the fourteen-year time period over which the UGI Companies have agreed to replace their cast iron pipeline. We have thoroughly considered Mr. Cruz's positions in our review of his Exceptions and in our disposition of the Settlement herein. Mr. Cruz's counsel has not provided any additional matters or new material facts for us to consider if we were to remand the proceeding, such as any violations of the Code or the Commission's Regulations or Orders, that we have not already considered and which were not part of I&E's investigation and subsequent Complaint. Accordingly, we do not find it appropriate to remand the proceeding in this case. We are also concerned about a delay in the implementation of the Settlement provisions we approve herein, particularly the accelerated pipeline replacement and other remedial measures that the UGI Companies

have agreed to, which will benefit the public safety. Therefore, we deny Mr. Cruz's Petition for Remand.

C. Mr. Cruz's Participation in the Settlement Process

1. ALJ's Initial Decision

In the Initial Decision, the ALJ determined that Mr. Cruz had standing to intervene in this proceeding because he has a direct, immediate, and substantial interest in the subject matter of the Complaint; this interest is not adequately represented by any of the existing Parties; and he may be bound by the actions of the Commission in this proceeding. I.D. at 12-13. The ALJ also determined that Mr. Cruz was required to take the record as it existed at the time of the ALJ's decision granting his Petition to Intervene. I.D. at 12.

2. Exceptions and Replies

In his first Exception, Mr. Cruz states that he was not involved in any manner in the Settlement process, nor consulted in connection therewith. Exc. at 1. As such, Mr. Cruz excepts to the ALJ's finding that the Settlement was unopposed by any party. Exc. at 2; *see*, I.D. at 12.

In their Replies to Exceptions, the UGI Companies state that it was appropriate that counsel for the Intervenor was not involved in any aspect of the Settlement because counsel did not file a Petition to Intervene until September 21, 2012, shortly before the September 25, 2012 prehearing conference. The UGI Companies additionally state that counsel for the Intervenor did not enter an appearance at the prehearing conference to inform the Parties of his interest in the proceeding, even though he was fully aware of it. They aver that counsel for the Intervenor had knowledge of the

fact that I&E filed a Complaint in this proceeding on June 11, 2012, and that UGI filed an Answer to the Complaint on July 2, 2012. UGI Companies' R. Exc. at 2 (citing Mr. Cruz's Petition to Intervene at ¶¶ 14 and 15). The UGI Companies further aver that, as a late intervenor, Mr. Cruz must accept the status of the proceeding as it stands and cannot use late intervention as a tool to disrupt or delay Commission action. They opine that Mr. Cruz has waived his right to comment on the Settlement because the Settlement was negotiated and filed with the Commission before Mr. Cruz became a party to this proceeding, and Mr. Cruz did not comment on the Settlement while it was pending before the ALJ. *Id.*

In its Replies to Exceptions, I&E submits that it was not obligated to include Mr. Cruz in the Settlement discussions for two reasons. First, I&E believes that Mr. Cruz has no direct interest in this proceeding. I&E explains that, in filing the Complaint, it acted in its prosecutory function, a statutory duty that is designed to protect the public interest and deter public utilities from committing violations of the Code and Commission Regulations and Orders. I&E R. Exc. at 5. I&E further explains that, when considering litigated or settled enforcement actions, the Commission has the authority to grant the relief that is provided under the Code and Commission Regulations and Orders. According to I&E, this relief may include imposing civil penalties, pursuant to 66 Pa. C.S. § 3301, and directing public utilities to make alterations and improvements to their service and facilities that are necessary or proper for the accommodation, convenience and safety of the public, pursuant to 66 Pa. C.S. § 1501. I&E avers that, because the Commission can only grant relief that rests under its statutory authority, I&E's enforcement action was between I&E and the public utility, UGI. I&E states that the Commission is not authorized to award monetary damages to a private party, however, Mr. Cruz can pursue, and, in fact, has filed a civil cause of action. *Id.* at 6 (citing *Cruz v. UGI Corp.*, C-48-CV-2012-0454 (Northampton County Ct. Comm. Pl., January 17, 2012)). Second, I&E avers that, because Mr. Cruz did not file a Petition to Intervene

until September 21, 2012, Mr. Cruz jeopardized his ability to substantially participate in the case. *Id.* at 6-7.

3. Disposition

Based on our review of the record, the Initial Decision, the Parties' positions, and the applicable law, we find that the ALJ properly determined that Mr. Cruz take the record as it existed at the time of the ALJ's decision granting his Petition to Intervene. The ALJ's decision on this issue is consistent with our prior decisions. *See, Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of the Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket No. A-2009-2082652 (Order entered June 12, 2009); *Howard Shapiro v. ALLTEL Pennsylvania, Inc.*, 1997 Pa. PUC Lexis 35. The ALJ's decision is also consistent with Section 5.75 of our Regulations, which states that the presiding officer "will grant or deny the petition in whole or in part or may, if found to be appropriate, authorize limited participation." 52 Pa. Code § 5.75.

Moreover, by filing Exceptions to the Initial Decision, Mr. Cruz has properly exercised his right to be heard on the Settlement and other aspects of the Initial Decision. As part of our thorough review of Mr. Cruz's Exceptions, we have considered all of Mr. Cruz's objections to the Settlement, particularly the provision requiring the UGI Companies to retire or replace their cast iron mains over a fourteen-year time period, prior to making any final ruling on the Settlement. For these reasons, we shall deny the first Exception.

D. The Settlement Provision Requiring the UGI Companies to Retire or Replace all In-Service Cast Iron Mains Over a Fourteen-Year Time Period

1. ALJ's Initial Decision

The ALJ determined that the Settlement was in the public interest. With respect to the time period for the replacement of the UGI Companies' cast iron mains, the ALJ found that the Settlement will provide a substantial benefit to the UGI Companies' customers and the general public by accelerating the pipe replacement programs. The ALJ stated that the fourteen-year replacement commitment shortens the approximately fifty-year replacement trend for the UGI Companies that existed before the February 9, 2011 incident by thirty-six years, or approximately 72%. The ALJ also noted that the UGI Companies will continue their current thirty-year bare steel replacement program, which represents a shortening of the fifty-eight-year replacement program that existed before the February 9, 2011 incident. The ALJ further stated that this accelerated replacement will eliminate the risks associated with the UGI Companies' remaining bare steel and cast iron pipelines over a shorter time period and, thus, will improve the UGI Companies' abilities to provide safe and reliable service. I.D. at 18.

2. Exceptions and Replies

In his second Exception, Mr. Cruz objects to the Settlement provision that requires the UGI Companies to retire or replace all in-service cast iron mains in its three regulated service territories over a period of fourteen years. Mr. Cruz states that, while he is pleased that the UGI Companies have agreed to accelerate their replacement plan, he believes that, given the danger that cast iron pipelines pose to the safety and welfare of the citizens of Allentown, a ten-year time period would be a more appropriate replacement period. Exc. at 2.

In response, the UGI Companies state that, aside from a statement of preference, the Intervenor has offered no support for a ten-year replacement schedule. UGI Companies R. Exc. at 3. The UGI Companies submit that the fourteen-year replacement period is a substantial acceleration in main replacement. They state that, as discussed in their Statement in Support, the fourteen-year program shortens the approximate historic replacement trend for UGI Gas cast iron by thirty-six years, or approximately 72%. The UGI Companies continue that, in comparison to the UGI Companies' historic and recently announced twenty-year pace of cast iron main replacement, the fourteen-year program will materially accelerate the replacement of aging cast iron mains and is a substantially faster replacement schedule than the replacement schedules of other similarly situated gas utilities. *Id.* at 4.

Additionally, the UGI Companies explain that the time frames for cast iron main replacement should be considered in the context of the current infrastructure construction environment. As the UGI Companies also explained in their Statement in Support, given the existing heightened demand for qualified resources, both the UGI Companies and the construction community must have sufficient time to bring on additional resources necessary to execute the accelerated main replacement with high quality and consistency. According to the UGI Companies, these additional resources must be operator qualified, trained in the UGI Companies' construction practices and methods, and pass rigorous contractor qualification criteria before they are allowed to begin work, as required by the UGI Companies' practices, the U.S. Department of Transportation Regulations, and Act 11 of 2012. Further, the UGI Companies aver that their construction projects must be well-coordinated with the affected municipalities to avoid undue traffic congestion and interference with municipal services. They believe that the time frames in the Settlement are appropriate to enable the UGI Companies and necessary contractors to obtain and properly train and coordinate the resources needed to replace the infrastructure in a safe and efficient manner. *Id.*

In its Replies to Exceptions, I&E asserts that UGI's replacement of the cast iron mains over a fourteen-year time period is in the public interest and should not be disturbed. I&E avers that Mr. Cruz has not provided a legal or factual basis for his argument, other than his opinion that the cast iron mains in Allentown are unsafe. I&E additionally avers that a shorter time frame for replacement could amount to a potentially high additional cost to ratepayers.

Further, I&E notes that the current time frame for retirement or replacement of cast iron mains owned and operated by UGI is twenty years, and UGI agreed to accelerate this time period to fourteen years and to include two other service territories, those of UGI Central Penn and UGI Penn Natural. I&E states that the fourteen-year time period was a carefully negotiated term in the Settlement that reflects the necessary time that UGI needs to train its construction crews to become operator qualified and to coordinate infrastructure projects with municipalities. I&E observes that UGI estimates that it will spend approximately \$18 million per year to implement the accelerated pipeline replacement program. I&E avers that UGI is entitled to recover this cost from ratepayers, nevertheless, UGI waived any right to seek rate relief through a DSIC mechanism for twenty-four months. I&E R. Exc. at 7. I&E also avers that it is possible that the cast iron mains in Allentown will be retired or replaced at the beginning of the fourteen-year period, rather than at the end, but the classification of the cast iron mains in UGI's Distribution Integrity Management Program (DIMP)⁶ will determine how quickly

⁶ The U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration Regulations require that natural gas distribution companies have in place a written DIMP Plan. 49 C.F.R. § 192.1005. The Commission recognizes the confidential nature of these plans, including the possibility that some plans may contain confidential security information under the Public Utility Confidential Security Information Disclosure Act, 35 P.S. §§ 2141.1-2141.6. The Commission also recognizes that these plans are likely exempt from public disclosure pursuant to Section 708(b)(3) of the Right to Know Law. 65 P.S. § 67.708(b)(3). *See, Natural Gas Pipeline Replacement and Performance Plans*, Docket No. M-2011-2271982 (Secretarial Letter dated November 21, 2011).

the replacement occurs. *Id.* at 7-8.

3. Disposition

Based on our review of the record and the Parties' respective positions, we conclude that the fourteen-year time period for replacement of the UGI Companies' cast iron mains will benefit the public interest and safety by accelerating the UGI Companies' time frames for pipe replacement. We agree with the ALJ's statement that the UGI Companies' accelerated replacement will eliminate the risks associated with the UGI Companies' remaining bare steel and cast iron pipelines over a shorter time period and, thus, will improve the UGI Companies' abilities to provide safe and reliable service. I.D. at 18. Additionally, we are not aware of any current legal requirement in the Code, the Commission's Regulations or Orders, or the Federal Regulations that mandates a shorter pipeline replacement time frame than the fourteen-year period set forth in the Settlement.

The record before us contains information that the UGI Companies will accelerate their pipeline replacement rate in comparison to their current replacement rates. In their Replies to Exceptions and Statement in Support of the Settlement, the UGI Companies indicate that the fourteen-year replacement program shortens the approximate historic replacement trend for UGI cast iron by thirty-six years, or 72%. They also state that, compared to the UGI Companies' historic and recently announced twenty-year pace for cast iron replacement, the fourteen-year program will be a significant acceleration. UGI Companies' R. Exc. at 4; UGI Companies' Statement in Support at 9. The Settling Parties have indicated that a shorter replacement period could amount to greater costs for ratepayers and would not allow the UGI Companies the necessary time they need to train their construction crews to become operator qualified and to coordinate infrastructure projects with municipalities.

Based on the record before us, we find that the fourteen-year time period for replacement of the UGI Companies' cast iron mains is reasonable and will benefit the public interest and safety by accelerating the UGI Companies' time frames for pipe replacement. We also note that, because all three of the UGI Companies are included in the Settlement, the accelerated pipeline replacement timeframes will benefit a greater number of customers and individuals in the general public than if the Settlement were just between UGI and I&E. However, we emphasize that if, according to the UGI Companies' DIMP Plans, certain cast iron pipe is later determined to be at high risk of failure, then the pipe must be removed on an even more accelerated basis, and, subsequently, the UGI Companies are expected to comply with their applicable DIMP standards. For these reasons, we deny the second Exception.

E. The Impact of the Commission's Determination in this Proceeding on Mr. Cruz's Civil Proceeding

1. ALJ's Initial Decision

As part of his analysis in determining whether to grant Mr. Cruz's Petition to Intervene, one factor the ALJ examined was whether Mr. Cruz may be bound by the actions of the Commission in this proceeding. The ALJ stated the following:

I agree with I&E that Cruz will not be bound by the actions of the Commission in this proceeding to the extent that the Commission will not determine whether UGI was negligent with regard to the February 9, 2011 explosion. However, it will be difficult for Cruz to argue in his civil action against UGI in the Court of Common Pleas of Northampton County that UGI violated its duty of care by violating the Public Utility Code, Commission regulations and federal regulations if the Commission has concluded otherwise. I conclude that Cruz may be bound by the Commission's determinations regarding UGI's violation of the Public Utility Code, Commission regulations and federal regulations.

I.D. at 10-11. This was one of several factors the ALJ analyzed before concluding that Mr. Cruz had standing to intervene in this proceeding. As previously noted, the ALJ ultimately determined that Mr. Cruz had standing to intervene because he has a direct, immediate, and substantial interest in the subject matter of the Complaint, is not adequately represented by any of the existing Parties, and may be bound by the actions of the Commission in this proceeding. I.D. at 12-13.

2. Exceptions and Replies

In his third Exception, Mr. Cruz objects to most of the above-quoted statement of the ALJ. Mr. Cruz asserts that his civil case should not be bound by any findings of the Commission or the negotiated terms of the Settlement and that he should be provided with the right to present his own case regarding whether UGI violated the Code, the Commission's Regulations, or Federal Regulations. Mr. Cruz also states that the ALJ's above-quoted statements are contradictory to the language in paragraph forty-two of the Settlement, which states that the Settlement will not be admitted into evidence in any potential civil proceeding. Exc. at 2.

In their Replies to Exceptions, the UGI Companies aver that, as indicated by the ALJ on page ten of the Initial Decision, the Commission's approval of the Settlement will not affect Mr. Cruz's interests or rights or otherwise impact the civil matter pending before the Court of Common Pleas. UGI Companies R. Exc. at 2. They explain that Paragraph Forty-Two of the Settlement specifically provides the following:

The parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this matter. It is the intent of the parties that this Joint Settlement Petition not be admitted as evidence in any potential civil proceeding involving this matter. It is further understood that, by entering into this Joint Settlement

Petition, the UGI Companies have made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in this Joint Settlement Petition.

The UGI Companies assert that Mr. Cruz is relying on an excerpt of the Initial Decision that is taken out of context. They state that, as indicated in Paragraph Forty-Two of the Settlement, the Commission, if it approves the Settlement without modification, will not make any findings regarding whether or not UGI violated the Code, Commission Regulations or Federal Regulations, and, therefore, the Settlement will have no impact on the Intervenor's civil case. Further, they aver that, even if the Commission did make factual or legal findings in this proceeding, they would have no effect on the civil action that seeks monetary damages and is based on different legal standards. UGI Companies R. Exc. at 3.

In its Replies to Exceptions, I&E states that Mr. Cruz misinterprets the ALJ's statements on page ten of the Initial Decision. I&E explains that the ALJ did not state that the Commission's proceeding would have a binding effect on Mr. Cruz's civil action, but, rather stated that Mr. Cruz "will not be bound by the actions of the Commission in this proceeding to the extent that the Commission will not determine whether UGI was negligent with regard to the February 9, 2011 explosion." I&E R. Exc. at 8 (citing I.D. at 10). I&E avers that, in determining whether Mr. Cruz had standing to participate in the Commission's proceeding, the ALJ analyzed whether there was a possibility that the Commission's proceeding could impact his civil case. I&E notes that the ALJ decided this question in the affirmative, noting that it would "be difficult for Cruz to argue in his civil action against UGI in the Court of Common Pleas of Northampton County that UGI violated its duty of care by violating the Public Utility Code, Commission regulations and federal regulations if the Commission has concluded otherwise." *Id.* I&E emphasizes that the ALJ did not, however, make any findings or conclusions regarding whether UGI violated the Code, Commission

Regulations, or Federal Regulations. I&E points out that the ALJ adopted the entire Settlement, including the provisions in Paragraph Forty-Two that state that the Parties do not intend that the Settlement be admitted as evidence or construed as an admission of fact in any potential civil proceeding regarding this matter. *Id.* at 8-9.

3. Disposition

Based on our review of the Initial Decision and the Exceptions, we believe that Mr. Cruz's counsel misinterpreted the ALJ's statements on page ten of the Initial Decision. In reaching his determination that Mr. Cruz had standing to intervene in this proceeding, one of the factors that the ALJ analyzed was whether Mr. Cruz may be bound by the actions of the Commission in this proceeding. Section 5.72 of our Regulations provides the following in pertinent part:

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(2) An interest which may be directly affected and which is not adequately represented by existing participants, *and as to which the petitioner may be bound by the action of the Commission in the proceeding.*

52 Pa. Code § 5.72(a) (emphasis added). It appears that the ALJ was engaging in an analysis of Section 5.72 in stating that Mr. Cruz may be bound by the Commission's determination regarding UGI's violation of the Public Utility Code, Commission Regulations, and Federal Regulations.

For clarification purposes, it is not our intention that Mr. Cruz be bound by our determinations in this proceeding with regard to his civil case. We emphasize and

agree with Ordering Paragraph Number Three in the ALJ's Initial Decision, which states "[t]hat admission of Manuel E. Cruz as an intervenor, will not be construed as recognition by the Pennsylvania Public Utility Commission that he has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding." The ALJ also stated that Mr. Cruz would not be bound by the actions of the Commission to the extent that the Commission will not determine whether UGI was negligent regarding the February 9, 2011 explosion. Because there was not an evidentiary hearing in this case, neither the ALJ, nor the Commission, is making any findings or conclusions regarding whether UGI violated the Code or Commission Regulations and Orders. Further, we are not modifying the Settlement provision that expressly provides that the Settlement may not be admitted in evidence in any potential civil proceeding involving this matter and that, by entering into this Settlement, the UGI Companies have not made any concession or admission of fact or law. Accordingly, we shall deny the third Exception.

F. Mr. Cruz's Request to Engage in Discovery

1. Exceptions and Replies

In his final Exception, Mr. Cruz requests the right to obtain discovery in this case pursuant to 52 Pa. Code §§ 5.72 and 5.331. Exc. at 2-3. He indicates that he has not been afforded the opportunity to engage in meaningful discovery or to participate in any portion of the PUC's investigation. *Id.* at 3.

In reply, the UGI Companies state that discovery in this matter was conducted for approximately nineteen months, and because Mr. Cruz is a late intervenor in this proceeding, he must accept the proceeding as he finds it. Moreover, they state that Mr. Cruz has not been harmed by a lack of discovery in this proceeding because he has

already undertaken extensive discovery in the civil proceeding and is free to pursue further discovery in that proceeding. UGI Companies R. Exc. at 3.

In its Replies to Exceptions, I&E avers that the ALJ correctly determined that Mr. Cruz must accept the status of the proceeding as it stands. I&E states that Mr. Cruz should not be permitted to use late intervention as a tool to disrupt or delay Commission action by engaging in discovery at this point. I&E additionally avers that Mr. Cruz will not be harmed if the Commission denies his request for discovery because he still has the right to discovery in his civil case. I&E R. Exc. at 9. I&E submits that, pursuant to 66 Pa. C.S. § 335(d), any investigative materials in this case, such as the Commission's Gas Safety investigative records, cannot be made publicly available until after the Commission makes a decision, enters into a settlement with a public utility, or takes any other official action. I&E states that nothing that Mr. Cruz would discover could be used in the case before the Commission because the Commission cannot award monetary damages. I&E believes that the public interest would be harmed if there was a delay in this proceeding in order to allow additional discovery, because there would be a corresponding delay until the public could begin to realize the many benefits of the Settlement, including the acceleration of cast iron main replacement. *Id.* at 10.

2. Disposition

As we have determined that the ALJ properly found that Mr. Cruz will take the record as it stood at the time his Petition to Intervene was granted, we will not grant Mr. Cruz's request for discovery at this time. Section 5.331(b) of our Regulations, 52 Pa. Code § 5.331(b) provides the following: "A party shall initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier." In this case, the Parties were able to start conducting discovery when I&E initiated its investigation,

and the Parties indicate that they engaged in extensive discovery for a period of about nineteen months. Due to the timing of when counsel for the Intervenor filed the Petition to Intervene, the Petitioner was not involved in this discovery process. Under the circumstances, we do not believe it would be appropriate or an efficient use of resources to allow further discovery at this point. We also believe that permitting further discovery at this point would not be in the public interest, as it will delay the implementation of the Settlement provisions that promote public safety, including the accelerated time frames for the replacement of UGI's cast iron and bare steel pipe. For these reasons, we will deny the fourth Exception.

G. Analysis of the Settlement

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a fine for violating a Commission Order, Regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. In this case, application of these guidelines does not support approval of all of the terms of the Settlement Agreement as filed.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty." *Id.* In this case, we find that UGI's actions

constitute conduct of a serious nature. Based on I&E's investigation and allegations, UGI's conduct includes the following: (1) failure to timely replace cast iron piping systems in the Allentown area pursuant to the NTSB's 1992 recommendation; (2) failure to maintain an odorant sampling program to demonstrate that adequate odorant concentrations are consistently present throughout its distribution system; (3) UGI's post-incident odorant testing, because it was performed in a separate pressure district from the affected twelve-inch cast iron main, may not have produced accurate results; (4) failure to monitor and react to forces that may have detrimentally affected the integrity of the cast iron main; (5) failure to promptly close the curb valves to the residences that were located in the same row as the homes destroyed by the explosion; and (6) failure to promptly and effectively respond to the explosion in that it took UGI five hours to diminish the flow of gas. Complaint at 10-12; I&E Statement in Support at 7. Because this conduct involves actions that placed the public safety at risk, a higher civil penalty is warranted in this case.

The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). "When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty." *Id.* There is no question that the consequences in this matter are tragic and of a serious nature; the explosion and fire took the lives of five individuals and injured another individual. The explosion and fire also destroyed or significantly damaged eight homes. We find that the resulting consequences of the conduct are serious in this case and support a greater civil penalty than the amount proposed by the Parties.

The third factor, namely, whether the conduct was intentional or negligent, pertains to litigated cases only. 52 Pa. Code § 69.1201(c)(3). Because this proceeding was settled prior to an evidentiary hearing, this factor is not applicable to this Settlement.

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, there is information to indicate that UGI engaged in appropriate measures to correct the conduct at issue and prevent similar future conduct. UGI states that it believes “it promptly responded to the incident and took actions to locate and shut off the source of the suspected gas, without jeopardizing the safety of the public, UGI Gas employees, or emergency and fire personnel working in the area.” UGI Companies’ Statement in Support at 14. UGI also states that its response was restricted by conditions that limited access to the site, including those resulting from the fire and the safety perimeter set up by the fire personnel, but that it devoted significant resources to monitoring gas leaks, locating the source of the gas, and shutting off the gas flow. *Id.*

Additionally, the Settling Parties indicate that UGI has adopted several changes to its policies and practices to further enhance the safety and reliability of its service. Specifically, UGI states that the UGI Companies have done the following: (1) conducted additional leak surveys of its cast iron system; (2) reviewed and revised the model used to assess the risk of a given pipeline segment; (3) facilitated data sharing with municipalities on a software system that allows municipalities to list and track public works projects; and (4) enhanced oversight of construction activities, including a contractor evaluation program that ensures compliance with the UGI Companies’ operating procedures and applicable regulations. I&E Statement in Support at 8-9; UGI Companies’ Statement in Support at 16-17. Additionally, the UGI Companies have agreed in the Settlement to an acceleration of their pipeline replacement program, an enhanced odorant testing program, and installation of fixed odorant level monitoring equipment and fixed odorizers. Settlement at 9-10. This demonstrates that the UGI Companies are taking appropriate action to address infrastructure concerns and concerns

regarding their internal policies and procedures to avoid similar incidents in the future and to enhance public safety.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Based on the record before us, the natural gas explosion and subsequent fire in this case occurred on February 9, 2011, around 10:48 p.m., and the natural gas shutdown of all affected areas was completed by 3:45 a.m. Settlement at 3, 5. Many customers were significantly affected by the explosion and fire, which took the lives of five individuals, injured one individual, destroyed eight houses, and damaged property of other residences and businesses in the area. I&E Statement in Support at 9; UGI Companies' Statement in Support at 14-15.

We may also consider the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). The Settling Parties have submitted information regarding UGI's compliance history, and we have additionally conducted independent research regarding UGI's compliance history. I&E explains that, prior to 1996 when UGI committed to the NTSB to remove high risk eight-inch or smaller diameter pipeline from its system, UGI averaged 1.2 reportable incidents per year over the twenty-year period ending in 1991. I&E states that, in the sixteen-year period since it made its NTSB commitment, UGI has experienced two such incidents for a rate of about 0.125 per year. I&E states that, since 2001, UGI has experienced a total of twelve reportable incidents, two of which were corrosion-related incidents on cast iron mains. I&E notes that, during the same time frame, UGI has accelerated the replacement of its cast iron distribution systems, with over fifty percent of its historical inventory of cast iron pipeline having been replaced to date. I&E also submits that, prior to this matter, UGI's record of compliance with state and federal regulations governing odorization had not been subject to challenge over the several decades that its programs have been in place. I&E Statement in Support at 9-10.

In addition to this information, our records indicate that the UGI Companies have recently entered into settlements with the Commission's I&E, or prosecutory staff, regarding gas safety violations in which they agreed to pay civil penalties. In *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2009-2031571 (Order entered January 14, 2010), the settlement arose from a natural gas explosion in Allentown that occurred on December 9, 2006, and resulted in a minor injury and destroyed one residence and three adjacent row homes. The explosion occurred when a contractor attempted to remove a gas meter. The allegations of gas safety violations involved inadequate training and improper documentation of procedures regarding removal of inactive gas meters. The Commission approved the settlement's \$80,000 civil penalty and modified the settlement to add an \$80,000 payment to the Low-Income Usage Reduction Program. The settlement also called for remedial measures such as changes to the company's procedures, training, and operator qualifications regarding meter replacement.

In *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2008-2036549 (Order entered November 6, 2008), the Commission directed that a \$40,000 settlement amount be applied to the Company's Operation Share Hardship Fund. In that case, a natural gas explosion, resulting from a leak in the gas line, destroyed a residence. The allegations included the following gas safety violations: that UGI's emergency response procedures did not include steps for bar holing to check the ground for gas; that UGI took more than five hours to perform bar holing after the incident; and that UGI failed to determine where the pipe failure occurred and turn off the gas supply before allowing utility workers, emergency responders, inspectors, and residents to access the incident site.

Other recent cases involving the UGI Companies include: *Pa. PUC v. UGI Central Penn Gas, Inc.*, Docket No. M-2011-2155312 (Order entered June 13, 2012) (rejected settlement amount due to the nature of the safety violations and number of recurring allegations); *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2012-2141712

(Order entered June 13, 2012) (rejected settlement due to serious nature of the incident and endangerment of lives of the company's crew and the public); *Pa PUC v. UGI Utilities, Inc.*, Docket No. M-2010-2037411 (Order entered May 10, 2010) (approving a settlement to resolve allegations concerning UGI's failure to properly mark its pipelines); *Pa. PUC v. UGI Utilities Inc.*, Docket No. C-2009-2120601 (Order entered November 19, 2010) (approving a settlement to resolve various federal and state gas safety violations); and *Pa. PUC v. UGI Utilities, Inc.*, Docket No. C-20066664 (February 6, 2009) (approving a settlement to resolve gas safety allegations, including a failure to classify a leak as an emergency and a failure to properly respond to an explosion once notified by 911).

We believe that the information before us supports a greater civil penalty than that set forth in the Settlement because it is indicative of a pattern of allegations regarding gas safety violations.

Another factor we may consider is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that UGI has cooperated with Commission Staff throughout its investigation, as well as throughout the Complaint and Settlement process. I&E also states that UGI volunteered to include UGI Central Penn and UGI Penn Natural in the Settlement, thereby expanding the benefits of replacing pipelines to a broader geographic and demographic scope. I&E avers that this cooperation and the additional concessions show a commitment consistent with the Commission's public safety goals and objectives. I&E Statement in Support at 11.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). In the instant case, we find this factor weighs in favor of a higher civil penalty.

The tenth factor we may consider is other relevant factors. 52 Pa. Code § 69.1201(c)(10). We believe that it is in the public interest to settle this matter so as to avoid the expense of litigation. In addition, we believe the Settlement is in the public interest because it will result in public benefits that will promote gas safety in the service territories of all three of the UGI Companies, most significantly, accelerated replacement of cast iron and bare steel mains. The UGI Companies have also committed to an enhanced odorant testing program and installation of fixed odorant level monitoring equipment and fixed odorizers.

While we want to see the public interest benefits of the Settlement realized in an expeditious manner, we find that some modifications to the Settlement are necessary. As we are approving the Settlement subject to conditions, the Settling Parties may elect to withdraw from the Settlement. If any Settling Party wishes to withdraw from the Settlement, it shall file with the Secretary of the Commission, and serve on all Parties to this proceeding, an election to withdraw within five business days from the date that this Opinion and Order is entered. If such an election to withdraw is filed, the Initial Decision shall be reversed and the Settlement shall be disapproved, without further action by this Commission, and this matter shall be remanded to the Office of Administrative Law Judge for such further proceedings as may be necessary. If the Settling Parties do not elect to withdraw from the Settlement within five business days from the entry date of this Opinion and Order, then this Opinion and Order shall become final without further action by this Commission,⁷ and the Settlement, with the modifications discussed herein, will be approved without further action by this Commission.

The first modification is to the civil penalty amount. We find that the \$386,000 civil penalty agreed to in the Settlement is not sufficient given the catastrophic

⁷ In the event that no Settling Party withdraws from the Settlement, this Opinion and Order shall become final effective on the date that is six business days following the entry of this Opinion and Order.

losses caused by the explosion. While no amount of money could ever atone for the lives lost or property destroyed, UGI must pay the maximum \$500,000 civil penalty this Commission is authorized to levy under Section 3301(c) of the Public Utility Code, 66 Pa. C.S. § 3301(c).⁸ Just as with the civil penalty amount included in the Settlement, UGI shall not recover this increased civil penalty through Commission-regulated rates.

Second, while UGI has agreed to undertake extensive steps to improve the physical integrity of its distribution system, these measures should be supplemented by enhanced leak detection processes to further minimize the risk of another catastrophic event. To that end, UGI shall explore enhanced leak detection measures and file a pilot program to utilize one or more of those enhanced leak detection measures throughout the City of Allentown. This filing shall be made with the Commission's Secretary, with a copy served on the Commission's Pipeline Safety Division, within forty-five days of the date that this Opinion and Order becomes final. Notice of the pilot program filing shall be published in the *Pennsylvania Bulletin*, so that interested parties may provide comments to the pilot program. Comments shall be filed within twenty days from the date of publication in the *Pennsylvania Bulletin*. The Commission shall consider any comments and approve, modify, or reject the pilot program.

Third, the UGI Companies are directed to file an appropriate DIMP Plan to account for any replacement reprioritization that needs to occur as a result of the

⁸ When the February 9, 2011 explosion occurred, Section 3301(c) provided that a public utility that violated gas pipeline safety provisions of the Code "shall be subject to a civil penalty of not to exceed \$10,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$500,000 for any related series of violations, or subject to a penalty provided under federal pipeline safety laws, whichever is greater." We note that, through Act 11 of 2012, the Legislature recently amended Section 3301(c) to increase the maximum civil penalty the Commission is authorized to levy to \$2,000,000. However, the Commission is bound by the statute in place when the explosion occurred, which authorized a maximum civil penalty of \$500,000. *See, Costa v. Lair*, 363 A.2d 1313, 1315 (Pa. Super Ct. 1976).

accelerated pipeline replacement schedules set forth in the Settlement. This filing shall be made within thirty days from the date that this Opinion and Order becomes final and will be subject to an audit by the Commission's Pipeline Safety Division.

Fourth, we find that it is necessary and in the public interest to monitor the UGI Companies' compliance with the Settlement provisions through reporting requirements. Accordingly, the UGI Companies are directed to file a plan establishing an initial time schedule for meeting the main replacement requirements agreed to in the Settlement. This plan shall be filed with the Commission's Secretary and served on the Commission's Pipeline Safety Division within sixty days of the date that this Opinion and Order becomes final. Understanding that the UGI Companies need to retain some measure of flexibility, they shall be permitted to amend this schedule for good cause, but we caution them that they should employ a reasonably continuous and steady construction schedule to meet their obligations.

In addition to this initial report, the Companies shall file a status report with the Commission's Secretary and serve it on the Commission's Pipeline Safety Division no later than two years from the date that this Opinion and Order becomes final, and every two years thereafter for a fourteen-year time period, unless the Commission determines otherwise. The first status report shall include information regarding the following:

- The UGI Companies' progress toward replacing or retiring all of their in-service cast iron mains over a fourteen-year time period. This portion of the report may include information regarding the percentage of cast iron mains that have been replaced or retired and the percentage of cast iron mains that remain in the UGI Companies' service territories. It may also include other relevant information, such as information regarding leak surveys the UGI Companies have conducted on their cast iron system; information regarding corrosion control; information

regarding high risk pipelines; and information regarding any enhancements to relevant operating procedures.

- The UGI Companies' progress toward replacing their bare steel mains. This portion of the report may include information regarding the percentage of bare steel mains that have been replaced or retired and the percentage of bare steel mains that remain in the UGI Companies' service territories.
- The UGI Companies' enhancements to their odorant testing program, including additional testing that the UGI Companies have performed at the extremities of their systems and at random testing locations.
- The UGI Companies' installation of fixed odorant level monitoring equipment at all third party points of delivery into UGI pipeline systems.
- The UGI Companies' installation of fixed odorizers at gate stations serving Allentown, Lancaster, Reading, Harrisburg, and other major population centers that were identified in Attachment 1 to the Settlement.

Unless otherwise determined by the Commission, the subsequent biennial reports shall only pertain to information regarding the replacement of the cast iron and bare steel mains. The Settlement calls for the UGI Companies' to have complied with all other requirements regarding odorization within a two-year or shorter time frame.

For the reasons set forth above, after reviewing the terms of the Settlement Agreement, we find that approval of the Settlement, as modified by this Opinion and Order, is in the public interest and is consistent with the terms of our Policy Statement. We remind the UGI Companies that our approval of the Settlement, as modified, does not absolve the Companies from compliance with any independent state or Federal pipeline safety requirements, such as those contained in their DIMP Plans. Moreover, we

emphasize that the pipeline replacement schedules approved herein are the floor, not the ceiling.

IV. Conclusion

Based on our review and analysis of the record in this proceeding, including the Initial Decision, the Settlement, the Exceptions and Replies thereto, and the Parties' various other filings, we shall deny the Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order. Additionally, we shall approve the Settlement as modified by this Opinion and Order. Further, we shall deny the Petition for Remand and the Request for Oral Argument; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Manuel Cruz filed on November 20, 2012, are denied.
2. That the Initial Decision of Administrative Law Judge David A. Salapa, issued October 31, 2012, is modified consistent with this Opinion and Order, subject to the condition set forth in Ordering Paragraph No. 7.
3. That the Motion to Strike the Petition for Remand, filed by the Bureau of Investigation and Enforcement on December 12, 2012, is denied.
4. That the Petition for Remand filed by Manuel Cruz on December 7, 2012, is denied.
5. That the Request for Oral Argument filed by Manuel Cruz on December 17, 2012, is denied.

6. That the Joint Settlement Petition filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. on October 3, 2012, is approved, as modified by this Opinion and Order, subject to the condition set forth in Ordering Paragraph No. 7.

7. That, if any of the Settling Parties wishes to withdraw from the Joint Settlement Petition, that Settling Party shall file with the Secretary of the Commission and serve on all Parties to this proceeding an election to withdraw within five (5) business days from the date that this Opinion and Order is entered. If such an election to withdraw is filed, the Initial Decision shall be reversed and the Joint Settlement Petition shall be disapproved, without further action by this Commission, and this matter shall be remanded to the Office of Administrative Law Judge for such further proceedings as may be necessary.

8. That if no elections to withdraw are filed pursuant to Ordering Paragraph No. 7, this Opinion and Order shall become final without further Commission action, and it is further ordered:

a. That UGI Utilities, Inc. – Gas Division shall file a pilot program designed to test enhanced leak detection measures in the City of Allentown. This filing shall be made with the Commission's Secretary and served on the Commission's Pipeline Safety Division within forty-five days of the date that this Opinion and Order becomes final.

b. That notice of the pilot program filing shall be published in the *Pennsylvania Bulletin*, so that interested parties may provide comments to the pilot program. Such comments shall be filed within twenty days from the date of publication in the *Pennsylvania Bulletin*.

c. That the Commission shall consider any comments and approve, modify, or reject the pilot program.

d. That, within thirty days of the date that this Opinion and Order becomes final, UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. shall file updated Distribution Integrity Management Program Plans.

e. That UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas shall file a plan establishing an initial time schedule for meeting the main replacement requirements agreed to in the Joint Settlement Petition. The plan shall be filed with the Commission’s Secretary and served on the Commission’s Pipeline Safety Division within sixty days of the date that this Opinion and Order becomes final.

f. That UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. shall file a status report under this Docket no later than two years from the date that this Opinion and Order becomes final, and every two years thereafter for a fourteen-year time period, unless the Commission determines otherwise. The reports shall be filed with the Commission’s Secretary and served on the Commission’s Pipeline Safety Division. The reports shall include the information set forth in this Opinion and Order.

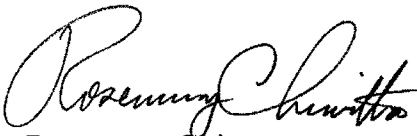
g. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of receipt of the Commission’s final Opinion and Order, UGI Utilities, Inc. – Gas Division shall pay a civil penalty in the amount of \$500,000. Said check or money order shall be made payable to “Commonwealth of Pennsylvania” and sent to :

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

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

i. That the Secretary's Bureau shall mark this proceeding closed upon payment of the penalty.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 24, 2013

ORDER ENTERED: February 19, 2013