



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

IN REPLY PLEASE
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June 27, 2012

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JUN 27 2012

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

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Re: Application of Leatherstocking Gas Company, LLC for Approval to Supply Natural Gas Service to the Public in Northern Susquehanna County, in the Townships of Bridgewater, Forest Lake, Great Bend, Harmony, New Milford and Oakland, and in the Boroughs of Great Bend, Hallstead, Lanesboro, Montrose, New Milford, Oakland and Susquehanna

Docket No. A-2011-2275595

**OPPOSITION OF THE BUREAU OF INVESTIGATION AND
ENFORCEMENT TO THE REQUEST TO CIRCUMVENT
ESTABLISHED PROCEDURES AND SEEK DIRECT COMMISSION
CONSIDERATION OF A SELF-STYLED "JOINT STIPULATION"**

Dear Secretary Chiavetta:

The Commission's Bureau of Investigation and Enforcement ("I&E") hereby respectfully provides notice of its staunch opposition to the submission of a self-styled "Joint Stipulation for Settlement" ("stipulation") directly to the Commission, as attempted in a June 26, 2012, letter to the Commission Secretary by UGI Penn Natural Gas, Inc., ("UGI Penn") at the above and another captioned proceeding. Of note, only UGI Penn and Applicant, Leatherstocking Gas Company, LLC ("Leatherstocking") are signatories to that stipulation.

I&E asserts that this such a submission to the Commission by UGI Penn represents an attempt to circumvent the Commission's Rules of Practice and Procedure and no compelling reasons are identified to justify any such action by the Commission. This proceeding has been assigned to the Office of Administrative Law Judge and should remain there until a final Decision is issued by the Administrative Law Judge ("ALJ").

Further, by Initial Decision issued March 20, 2012, the presiding ALJ denied UGI Penn standing to participate in this proceeding and UGI Penn have to date filed no Exceptions to that Initial Decision. The filing of such Exceptions is UGI Penn's only authorized course of action at this docket. *A copy of that Initial Decision is attached as Appendix A to this letter.*

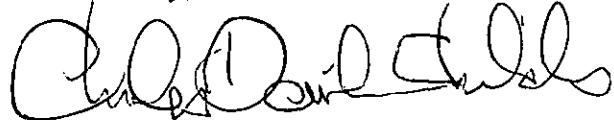
This present submission by UGI Penn to the Commission represents an inappropriate and unauthorized attempt to avoid the existence of their lack of standing to further participate in this proceeding and should not be condoned or permitted.

In contrast, I&E has today submitted a Motion to Strike the Stipulation to the presiding ALJ, *a copy of which is attached as Appendix B to this letter*. In addition to asserting UGI Penn's lack of standing, the I&E Motion also identifies a number of substantive issues raised by the stipulation that must be addressed with record evidence prior to any consideration of the stipulation. In particular, the stipulation provides for non-exclusive service by the Applicant, a provision that raises serious concerns regarding the potential adverse effect upon gas safety where overlapping gas distribution territories to be allowed in previously uncertificated areas.

I&E respectfully submits that the public interest is served by the Commission either denying or simply ignoring UGI Penn's request for direct Commission consideration of the stipulation. The I&E Motion is properly before the ALJ and his ruling will be forthcoming.

If you have any questions, please contact me at (717) 783-6151.

Sincerely,



Charles Daniel Shields
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 29363

CDS/edc

cc: Parties of Record
Counsel for UGI Penn Natural Gas, Inc.
ALJ Salapa

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Appendix A

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

IN REPLY PLEASE
REFER TO OUR FILE

March 20, 2012

A-2011-2275595

TO ALL PARTIES:

Application of Leatherstocking Gas Company, LLC

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. An original and nine (9) copies of your signed Exceptions to the decision, if any, **MUST BE FILED WITHIN TWENTY (20) DAYS OF THE ISSUANCE DATE OF THIS LETTER**, WITH THE SECRETARY OF THE COMMISSION, 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA; OR, MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265; OR DOCUMENTS MAY BE E-FILED ACCORDING TO THE E-FILE FILING PROCEDURES.

IN ADDITION, **BY THE SAME DATE AND TIME INDICATED ABOVE**, A COPY OF EXCEPTIONS MUST BE IN THE HANDS OF THE OFFICE OF SPECIAL ASSISTANTS, 3RD FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA; AND, A COPY IN THE HANDS OF EACH PARTY OF RECORD. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of Exceptions or Replies to Exceptions.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of the Exceptions or Replies to Exceptions on CD-ROM or DVD, in Microsoft Word 2007 format. If Word 2007 is not available, any Microsoft Office compatible format is acceptable including PDF.

Replies to Exceptions, if any, must be served on the Secretary of the Commission, Office of Special Assistants, and each party of record, in the manner described above, **WITHIN TEN (10) DAYS OF THE DATE THAT THE EXCEPTIONS ARE DUE**.

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

Rosemary Chiavetta
Secretary

Encls.
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SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Leatherstocking Gas Company, LLC, :
for approval to Supply Natural Gas Service to the :
Public in Northern Susquehanna County, in the :
Townships of Bridgewater, Forest Lake, Great Bend, : A-2011-2275595
Harmony, New Milford, and Oakland and in the :
Boroughs of Great Bend, Hallstead, Lanesboro, :
Montrose, New Milford, Oakland and Susquehanna :

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS
AND DISMISSING PROTEST**

Before
David A. Salapa
Administrative Law Judge

HISTORY OF THE PROCEEDING

On November 23, 2011, Leatherstocking Gas Company, LLC, (Leatherstocking) filed an application requesting that the Pennsylvania Public Utility Commission (Commission) approve its initiation of natural gas service to portions of Susquehanna County. Leatherstocking requests that its proposed service territory include the Townships of Bridgewater, Forest Lake, Great Bend, Harmony, New Milford, and Oakland and the Boroughs of Great Bend, Hallstead, Lanesboro, Montrose, New Milford, Oakland and Susquehanna. Attached to Leatherstocking's application is a map depicting and describing the proposed service territory.

According to the application, Leatherstocking is a New York limited liability company whose partners include Corning Natural Gas Corporation (Corning) and Mirabito Holdings, Inc. (Mirabito). The Pennsylvania Department of State has authorized Leatherstocking to conduct business in the Commonwealth as a foreign limited liability company. Corning and Mirabito both have experience providing public utility natural gas

service to utility customers. Leatherstocking has entered into franchise agreements or is negotiating franchise agreements with several municipal entities in New York that are ten to forty-five miles from the Pennsylvania municipalities to which it proposes to provide service. No other entity provides or has the right to provide service to the proposed service territory in Pennsylvania.

Leatherstocking alleges in its application that there is a need for natural gas service in the proposed service territory and that it is capable of providing service to the proposed service territory in accordance with Commission rules and regulations. The application contains plans and maps showing the facilities it will construct to provide the proposed service. Also attached to the application is a proposed tariff showing Leatherstocking's operating rules and proposed rates. Attached to the application is a letter of support from the Chairperson of the Susquehanna County Board of Commissioners. The application requests that the Commission approve the application and issue a certificate of public convenience authorizing Leatherstocking to offer, render, furnish and supply natural gas service to the proposed service territory.

Leatherstocking published notice of the application in The Scranton Times on December 5, 2011 and filed a proof of that publication with the Commission on December 13, 2011. Notice of the application was published in the Pennsylvania Bulletin on December 10, 2011 specifying a deadline of December 27, 2011, for filing protests to the application.

On December 27, 2011, UGI Penn Natural Gas, Inc. (UGI Penn) filed a protest to the application. UGI Penn's protest asserts that it has been engaged in substantial market development activities in the proposed service territory and intends in the near future to file its own application seeking Commission authority to provide natural gas service to the proposed service territory.

The protest also alleges that Leatherstocking's application fails to provide sufficient information to demonstrate need. In addition, the application fails to provide sufficient information to show that Leatherstocking is fit to provide the proposed service. Finally, UGI

Penn's protest contends that Leatherstocking's application fails to demonstrate any benefit to the public. The protest requests that the Commission grant UGI Penn protestant status and deny the application.

Also on December 27, 2011, the Office of Consumer Advocate (OCA) filed a notice of intervention and public statement. On that same date Williams Field Services Company, LLC (Williams) filed a petition to intervene. The Commission's Bureau of Investigation and Enforcement (I&E) filed a notice of appearance on January 11, 2012.

By notice dated January 12, 2012, the Commission scheduled a prehearing conference for this matter on February 14, 2012 at 10:00 a.m. in Hearing Room 3, Commonwealth Keystone Building in Harrisburg and assigned the case to me. I issued a prehearing conference order on January 13, 2012, setting forth the procedural matters to be addressed at the prehearing conference.

On January 17, 2012, Leatherstocking filed preliminary objections requesting that the Commission dismiss UGI Penn's protest for lack of standing. The preliminary objections allege UGI Penn lacked standing at the time it filed the protest because it lacked a certificate of public convenience to provide natural gas service in the proposed service territory.

In addition, the preliminary objections argue that UGI Penn's contention that it, rather than Leatherstocking, should be authorized to provide natural gas service in the proposed service territory is insufficient to support its protest. Finally, the preliminary objections state that the protest fails to state any claim to refute the fitness of Leatherstocking to provide natural gas service in the proposed service territory. The preliminary objections request that the Commission dismiss UGI Penn's protest.

On January 27, 2012, UGI Penn filed an answer to Leatherstocking's preliminary objections. UGI Penn's answer asserts that Leatherstocking's preliminary objections are not proper under the Commission's Rules of Practice and Procedure. UGI Penn's answer also asserts that it filed an application on January 18, 2012, to provide natural gas service in

Leatherstocking's proposed service territory that the Commission has docketed at A-2012-2284831.

UGI Penn further asserts that it has filed an amended protest pursuant to 52 Pa. Code §5.91(b), on January 27, 2012, in response to Leatherstocking's preliminary objections, alleging that it filed the application on January 18, 2012. UGI Penn points out that, pursuant to 52 Pa. Code §5.91(b), the filing of the amended pleading renders Leatherstocking's preliminary objections moot.

Also on January 27, 2012, UGI Penn filed an amended protest. UGI Penn's amended protest reiterates that the filing of the amended pleading renders Leatherstocking's preliminary objections moot. The amended protest alleges that UGI Penn filed an application on January 18, 2012, to provide natural gas service in Leatherstocking's proposed service territory that the Commission has docketed at A-2012-2284831. UGI Penn's application proposes to provide natural gas service in the additional territories of Bridgewater, Forest Lake, Great Bend, Harmony, New Milford and Oakland Townships as well as Great Bend, Halstead, Lanesboro, Montrose, New Milford, Oakland and Susquehanna Depot Boroughs, Susquehanna County.

UGI Penn's amended protest states that its application gives it a direct and substantial interest in Leatherstocking's application. The amended protest reiterates that Leatherstocking's application fails to provide sufficient information to demonstrate need; that *Leatherstocking's application fails to provide sufficient information to show that it is fit to provide the proposed service and that Leatherstocking's application fails to demonstrate any benefits approval of the application would provide.* The amended protest requests that the Commission grant UGI Penn protestant status and deny the application.

On February 10, 2012, UGI Penn filed a motion to consolidate this proceeding with its application filed on January 18, 2012, to provide natural gas service in the additional territories of Bridgewater, Forest Lake, Great Bend, Harmony, New Milford and Oakland Townships as well as Great Bend, Halstead, Lanesboro, Montrose, New Milford, Oakland and Susquehanna Depot Boroughs, Susquehanna County that the Commission has docketed at

A-2012-2284831. The motion asserts that the two proceedings raise common issues of law and fact. The motion requests that the Commission consolidate the proceedings for purposes of hearing and adjudication.

I conducted the prehearing conference as scheduled on February 14, 2012. At the prehearing conference, the parties discussed Leatherstocking's preliminary objections and UGI Penn's amended protest. Leatherstocking stated that it would be shortly filing preliminary objections to UGI Penn's amended protest. N.T. 6 UGI Penn indicated that it would file an answer to Leatherstocking's preliminary objections. N.T. 9

The parties agreed that until I ruled on the preliminary objections there was no need to establish a litigation schedule. N.T. 9-10 The parties agreed that I should stay this matter until I ruled on the preliminary objections. N.T. 10-11 I determined that a ruling on UGI Penn's motion to consolidate should be held in abeyance until after I ruled on the preliminary objections. Parties would have the opportunity to respond to the motion to consolidate after I disposed of the preliminary objections. N.T. 20

At the prehearing conference, none of the parties objected to or opposed Williams' petition to intervene. N.T. 14-15 By order dated February 15, 2012, I granted Williams' petition to intervene in this proceeding.

On February 16, 2012, Leatherstocking filed preliminary objections to UGI Penn's amended protest. The preliminary objections to UGI Penn's amended protest reiterate the arguments set forth in Leatherstocking's preliminary objections filed on January 17, 2012. In addition, Leatherstocking objects to UGI Penn's amended protest as an improper attempt to remedy the defects in its standing at the time UGI Penn filed its original protest.

On February 27, 2012, UGI Penn filed an answer to Leatherstocking's preliminary objection to the amended protest. The answer to Leatherstocking's preliminary objections reiterates the arguments set forth in UGI Penn's answer to Leatherstocking's preliminary objections filed on January 27, 2012. UGI Penn restates its argument that it has standing to file

the amended protest and requests that the Commission deny the preliminary objections filed by Leatherstocking.

The preliminary objections are ready for decision. For the reasons set forth below, I will grant the preliminary objections and dismiss UGI Penn's protest.

FINDINGS OF FACT

1. The applicant in this case is Leatherstocking Gas Company, LLC.
2. The protestant in this case is UGI Penn Natural Gas, Inc.
3. On November 23, 2011, Leatherstocking Gas Company, LLC, filed an application requesting that the Pennsylvania Public Utility Commission approve its initiation of natural gas service to portions of Susquehanna County.
4. On December 27, 2011, UGI Penn Natural Gas, Inc. filed a protest to the application.
5. On January 17, 2012, Leatherstocking filed preliminary objections requesting that the Commission dismiss UGI Penn's protest for lack of standing.
6. UGI Penn filed an application on January 18, 2012, to provide natural gas service in Leatherstocking's proposed service territory that the Commission has docketed at A-2012-2284831.
7. On January 27, 2012, UGI Penn filed an answer to Leatherstocking's preliminary objections.
8. On January 27, 2012 UGI Penn filed an amended protest.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa Code §5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

Here Leatherstocking's preliminary objections assert lack of standing by UGI Penn to protest the application. Prior to 2006, the Commission's Rules of Practice and Procedure at 52 Pa. Code §5.101(a)(3) provided that parties could file what was then called a preliminary motion to dismiss a pleading that failed to state on its face the standing of a party to participate in a proceeding. The amendments to the Commission's Rules of Practice and Procedure in 2006 deleted this provision to more closely model the Pennsylvania Rules of Civil Procedure. 36 Pa.B. 2097 (April 29, 2006)

The preliminary objection at 52 Pa. Code §5.101(a)(5) regarding lack of capacity to sue should not be confused with lack of standing. Lack of capacity to sue refers to some personal disability of a party to bring an action. Commonwealth ex rel. Sheppard v. Central Penn National Bank, 375 A.2d 874 (Pa. Cmwlth. 1977). Examples of lack of capacity to sue include being an unemancipated minor, an adjudicated incompetent, and those subject to a statutory bar.

Lack of standing is not now included among the Commission's limited bases for a preliminary objection but rather is now an affirmative defense, and as such is only properly raised in new matter. Jackson v. Garland, 622 A.2d 969 (Pa. Super. 1993); Wroblewski v. Pennsylvania Electric Company, Docket No. C-2008-2058385 (Order entered May 15, 2009) Pa. R.C.P. 1030, 52 Pa. Code § 5.62(b) Therefore, the Respondent's preliminary objection is not proper under the Commission's rules because it attempts to raise grounds not included in the provisions of 52 Pa. Code § 5.101(a).

The regulation at 52 Pa. Code §1.2(a) provides that the presiding officer or Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Here, I may disregard the Leatherstocking's error in procedure if it does not affect UGI Penn's substantive rights.

I will consider the issue of UGI Penn's lack of standing in order to secure a just, speedy and inexpensive *determination* of this proceeding pursuant to 52 Pa. Code §1.2(a). This will not adversely affect UGI Penn's rights since it had notice of the issue and has responded. Wroblewski v. Pennsylvania Electric Company, Docket No. C-2008-2058385 (Order entered May 15, 2009) Since UGI Penn's lack of standing is an affirmative defense, and Leatherstocking raised it in a timely fashion, I shall treat the Respondent's preliminary objection as a motion for summary judgment filed pursuant to 52 Pa. Code § 5.102.

Leatherstocking's preliminary objections/motion for summary judgment argues that the Commission should dismiss the protest because UGI Penn lacks standing. The Commission's regulation at 52 Pa. Code §5.102(a) permits any party to move for summary judgment after the pleadings are closed, but within such time as to not to delay a hearing. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code §5.102(c) The presiding officer will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code §5.102(d)(1)

The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa. Super.1983); Mertz v. Lakatos, 381 A.2d 497 (Pa. Cmwlt. 1976) All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Company v. Pike Coal Company, 412 A.2d 466 (Pa. 1979) Summary judgment will be granted only where the right is clear and free from doubt.

The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa. Super. 1983); Commonwealth v. Diamond Shamrock Chemical Co., 391 A.2d 1333 (Pa. Cmwlt. 1978); Stover v. The UGI PennTelephone Co. of Pennsylvania, Docket No.C-00923833 (Order entered July 21, 1992) The Commission has interpreted Section 5.102(c) of its regulations in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. South River Power Partners, L.P. v. West Penn Power Company, Docket No. C-00935287 (Order entered November 6, 1996) In civil practice, a non-moving party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists. Nicastro v. Cuyler, 467 A.2d 1218 (Pa. Cmwlt. 1983); Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc., 467 A.2d 330 (Pa. Super. 1983); Geriot v. Council of Borough of Darby, 457 A.2d 202 (Pa. Cmwlt. 1983).

The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 557 (Pa. Cmwlt. 1989); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 548 (Pa. Cmwlt. 1989); S.M.E. Bessemer Cement, Inc. v. Pennsylvania Pub. Util. Comm'n., 540 A.2d 1006 (Pa. Cmwlt. 1988); White Oak Borough Authority v. Pennsylvania Pub. Util. Comm'n., 103 A.2d 502 (Pa. Super.1954).

Leatherstocking's preliminary objections/motion for summary judgment contends UGI Penn's protest must be dismissed for failing to allege facts sufficient to establish UGI Penn's standing to protest the application. My review of Leatherstocking's preliminary objections/motion for summary judgment and UGI Penn's answer, together with the exhibits incorporated therein, shows that there is no issue of material fact for trial and that Leatherstocking is entitled to judgment as a matter of law on the issue of UGI Penn's standing to file the December 27, 2011 protest.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co., 75 Pa. P.U.C. 598, 603 (1991). Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co., A-212285F0046/47 and A-210870F01 (July 9, 1998); William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975); Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. P.U.C. 342 (1993); Re Equitable Gas Co., 76 Pa. P.U.C. 23 (1992); Manufacturers' Association of Erie v. City of Erie - Bureau of Water, 50 Pa. P.U.C. 43 (1976); Waddington v. Pennsylvania Public Utility Commission, 670 A.2d 199 (Pa. Cmwlth. 1995), alloc. denied, 678 A.2d 368 (Pa. 1996). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. See Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corp., 73-Pa. P.U.C. 552 (1990).

A protestant's interest in the subject matter of a proceeding is direct if the protestant's interest is adversely affected by the actions challenged in the protest, is immediate if there is a close causal nexus between the protestant's asserted injury and the actions challenged in the protest, and is substantial if the protestant has a discernible interest other than the general

interest of all citizens in seeking compliance with the law. Ken R. ex rel. C.R. v. Arthur Z., 682 A.2d 1267 (Pa. 1996); In re El Rancho Grande, Inc., 437 A.2d 1150 (Pa. 1981); William Penn Parking Garage, Inc.; Empire Coal Mining & Development, Inc. v. Department of Environmental Resources, 623 A.2d 897 (Pa. Cmwlth. 1993); Landlord Service Bureau, Inc. Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. Official Court Reporters of the Court of Common Pleas of Philadelphia County v. Pennsylvania Labor Relations Board, 467 A.2d 311 (Pa. 1983).

Admitting all the allegations in UGI Penn's protest and answer to the preliminary objections/motion for summary judgment as true for purposes of disposing of the preliminary objections/motion for summary judgment, Leatherstocking is correct that UGI Penn lacked standing to protest the application. A protestant must have some operating authority in actual, or potential, conflict with the authority sought by an applicant to have the requisite standing to protest an application. Application of Glen Alsace Water Co., 45 PA PUC 472 (1971); Application of Consumers Pennsylvania Water Company-Shenango Valley Division, Docket No. A-212750F0007 (Order entered January 11, 2011) At the time it filed its protest on December 27, 2011, UGI Penn did not have operating authority in conflict with the authority sought by Leatherstocking. Since UGI Penn did not have any operating authority at the time it filed its protest, it lacked standing. Its protest will be dismissed.

First, UGI Penn's interest in this proceeding is not direct. A protestant's interest in the subject matter of a proceeding is direct if the protestant's interest is adversely affected by the actions challenged in the protest. In its December 27, 2011 protest, UGI Penn asserted that it has Commission authority to provide natural gas service to customers in Lackawanna, Wayne and Wyoming Counties which are adjacent to Susquehanna County. In addition, UGI Penn alleged that it has Commission authority to provide natural gas service to Forest City Borough, Uniondale Borough, Clifford Township and Auburn Township, Susquehanna County. According to UGI Penn, it would be a natural extension of its existing facilities to serve additional territory within Susquehanna County, including Leatherstocking's proposed service territory.

In its December 27, 2011 protest, UGI Penn asserted that it planned to file an application to provide natural gas service in the proposed service territory. According to UGI Penn, it had already been engaged in substantial market development activities in the proposed service territory. It was investigating the best means of extending its service in Susquehanna County and was assessing the technical and logistical requirements necessary to build facilities to allow it to provide safe, reliable service to the proposed service territory. According to UGI Penn, it had standing to protest the application because approval of Leatherstocking's application would result in an adverse impact on the contemplated extension of its facilities.

In its preliminary objections/motion for summary judgment, Leatherstocking states that UGI Penn does not have a certificate of public convenience that authorizes it to provide natural gas service to the proposed service territory. Since UGI Penn does not have a certificate of public convenience authorizing it to provide service to the proposed service territory, Commission approval of Leatherstocking's application would have no impact on UGI Penn's existing operations. I agree.

Only a Commission-issued certificate of public convenience can authorize UGI Penn to provide service to the proposed service territory. Only a certificate of public convenience authorizes a public utility to serve a particular territory. 66 Pa. C.S. §1101; Lukens Steel Co. v. Pennsylvania Pub. Util. Comm'n, 499 A.2d 1134 (Pa. Cmwlth. 1985) The certificate of public convenience imposes the obligation on the public utility to provide service in that territory. Bland v. Tipton Water Co., 71 A. 101 (Pa. 1908) A public utility must have a certificate of public convenience before rendering service. The Public Utility Code has no provision allowing a public utility to charge for its services while an application for a certificate of public convenience is pending. Popowsky v. Pennsylvania Pub. Util. Comm'n, 647 A.2d 302 (Pa. Cmwlth. 1994) A public utility may not serve any territory beyond that stated in its certificate of public convenience. Western Pennsylvania Water Co. v. Pennsylvania Pub. Util. Comm'n, 311 A.2d 370 (Pa. Cmwlth. 1973)

At the time it filed its December 27, 2011 protest, UGI Penn did not have a certificate of public convenience authorizing it to serve the proposed service territory. UGI

Penn's operations would not have been affected if the Commission approved Leatherstocking's application at the time UGI Penn filed its protest. Had the Commission approved Leatherstocking's application at the time UGI Penn filed its protest, any adverse effect on UGI Penn's future plans would have been mere conjecture about future harm and did not constitute a direct interest.

The Commission's Rules of Practice and Procedure at 52 Pa. Code §5.52 require that a protestant set forth facts sufficient to establish the protestant's standing to protest. This includes establishing that the protestant has a direct interest in the proceeding. UGI Penn failed to do this.

While not applicable to this proceeding, 52 Pa. Code §3.381(c)(1), governing protests in motor carrier applications, is instructive. The regulation at 52 Pa. Code §3.381(c)(1) mandates that a protestant to an application for passenger or household goods in use authority provide in its protest a list of Commission docket numbers under which it operates and a copy of any portion of the protestant's authority upon which its protest is predicated. This requirement is a more specific method of requiring the protestant to set forth facts sufficient to establish a direct interest in the proceeding.

UGI Penn has not established that it had a certificate of public convenience authorizing it to provide service to the proposed service territory at the time it filed its protest on December 27, 2011. At the time that it filed the protest, UGI Penn had not even filed an application to obtain such a certificate. UGI Penn's application, filed on January 18, 2012, after the deadline for filing protests had passed, does not cure this defect. UGI Penn has therefore failed to establish that its interests were adversely affected by the actions challenged in the protest and failed to establish that it had a direct interest in this proceeding.

Because UGI Penn did not have a direct interest, it did not have an immediate interest in the proceeding because it could not demonstrate, at the time it filed the protest, a close causal nexus between the proposed actions outlined in the application and any injury it could have suffered. UGI Penn's service territory may have been in close proximity to the proposed

service territory. However, the mere fact that its service territory was in close proximity to Leatherstocking's proposed service territory did not establish that UGI Penn had an interest, at the time it filed the protest, that would be adversely affected by the Commission granting the application. Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co., Docket Nos.A-212285F0046/47 and A-210870F01 (Order entered July 9, 1998)

Finally, UGI Penn's interest was not substantial since it had no discernable interest, other than the concern that the application process comply with the law, at the time it filed the protest. UGI Penn raised concerns in its protest that Leatherstocking has not demonstrated a public need for its proposed service or demonstrated that it possesses the necessary fitness to provide the proposed service. Since, at the time it filed the protest, UGI Penn could not demonstrate a causal connection between approving the application and any injury it could suffer, UGI Penn raised these issues in order to assure that the Commission addressed these issues in rendering a decision.

The Commission has the statutory obligation and the statutory authority to ensure that Leatherstocking complies with all relevant statutory and regulatory requirements. The statute at 66 Pa. C.S. §1103 empowers the Commission to grant a certificate of public convenience only if it is necessary or proper for the service, accommodation and convenience or safety of the public. Leatherstocking must demonstrate that there is a need for the proposed service, the lack of existing service to meet the demonstrated need and its financial and technical fitness to provide the proposed service in a safe, reliable manner. Whether approving an application promotes the public interest is a central consideration in every case reviewed by the Commission. Whether or not an application is protested, the Commission reviews the application to ensure that it complies with the relevant statutory and regulatory provisions and determines whether approving the application is consistent with its policies.

UGI Penn has failed to demonstrate that it had standing to protest Leatherstocking's application by failing to demonstrate that it had a direct, immediate and

substantial interest in the application at the time it filed its protest. UGI Penn failed to submit any materials in its protest to establish that any genuine issue of material fact existed regarding its standing. Since no factual issue pertinent to the resolution of this case exists, a hearing on this issue is unnecessary. Granting Leatherstocking's preliminary objections/motion for summary judgment is appropriate in these circumstances.

UGI Penn argues in its answer to Leatherstocking's preliminary objections/motion for summary judgment that it filed an application for authority to provide natural gas service in Leatherstocking's proposed service territory on January 18, 2012. It further alleges that it has filed an amended protest, pursuant to 52 Pa. Code §5.91(b), on January 27, 2012 with its application providing it the standing to do so, in response to Leatherstocking's preliminary objections. UGI Penn points out that, pursuant to 52 Pa. Code §5.91(b), the filing of the amended pleading renders Leatherstocking's preliminary objections moot. I disagree.

Had Leatherstocking properly raised standing in a motion for summary judgment rather than through preliminary objections, UGI Penn would not have been able to file an amended protest pursuant to 52 Pa. Code §5.91(b). Leatherstocking's original objection to UGI Penn's protest would not have been rendered moot and the Commission would have to rule on Leatherstocking's original objection. Since I have decided to treat Leatherstocking's preliminary objection challenging UGI Penn's standing as a motion for summary judgment, it is not rendered moot by UGI Penn's subsequent amended protest.

In addition, I am not convinced that UGI Penn's reading of 52 Pa. Code §5.91(b) is correct. The provision at 52 Pa. Code §5.91(b) states as follows:

(b) Amendments in response to preliminary objections. A party may file an amended pleading as of course within 20 days after service of a copy of a preliminary objection filed under § 5.101 (referring to preliminary objections). If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

As noted above, 52 Pa. Code §5.101(a) sets forth the grounds for preliminary objections. Relevant for this discussion is 52 Pa. Code §5.101(e) which states as follows:

(e) *Preliminary objection regarding insufficient specificity.*

- (1) If a preliminary objection regarding insufficient specificity in a pleading is filed, an answer is not required until further directed by the presiding officer or the Commission.
- (2) When an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary motion will be deemed to be moot in accordance with § 5.91 (relating to amendment of pleadings generally).

If a party files a preliminary objection alleging insufficient specificity, the opposing party may file an amended pleading in response to that preliminary objection and the preliminary objection is deemed moot. The regulation at 52 Pa. Code §5.101 does not mention 52 Pa. Code §5.91 anywhere else. I conclude that the provision in 52 Pa. Code §5.91 refers only to 52 Pa. Code 5.101(e), not the entire regulation at 52 Pa. Code §5.101.

Here, Leatherstocking's preliminary objections do not allege insufficient specificity. Therefore, UGI Penn could not file an amended protest in response to it, pursuant to 52 Pa. Code §5.91(b), rendering Leatherstocking's preliminary objections moot.

In addition, by adopting UGI Penn's argument that it can file an amended protest in response to preliminary objections, the Commission would allow UGI Penn to circumvent the requirement set forth in 52 Pa. Code §5.53 that a protestant file its protest within the time specified in the published notice of the application. The notice of the application was published in the Pennsylvania Bulletin on December 10, 2011, specifying a deadline of December 27, 2011. UGI Penn filed its amended protest on January 27, 2012, well after the date specified in the published notice in violation of 52 Pa. Code §5.53. It filed the amended protest only after it filed its application on January 18, 2012, curing the defect in its standing that existed when it filed its original protest on December 27, 2011. UGI Penn filed its amended protest after

the time set forth in the Pennsylvania Bulletin and it is therefore untimely and late-filed. 52 Pa. Code §5.53.

The Commission should not accept UGI Penn's late-filed amended protest as a matter of course. The Commission may accept late-filed protests at its discretion.

The Commission in Application of Artesian Water Pennsylvania, Inc. for Approval to Begin to Offer, Render, Furnish or Supply Water Service to the Public in a portion of Franklin Township, Chester County, Docket No. A-210111F0003, (Order entered June 24, 2004) (Artesian Water) set forth the four standards it uses to determine whether to accept late-filed protests. Those standards are:

1. Does the petitioner have a reasonable excuse for missing the protest due date?
2. Was the proceeding contested at the time of the filing of the protest?
3. Will the receipt of the late-filed protest delay the orderly progress of the case?
4. Will the late-filed protest significantly broaden the issues or shift the burden of proof?

Joint Application of Pennsylvania-American Water Company and Thames Water Aqua Holdings GmbH, Docket Nos. A-212285F0096, A-230073F0004, (Order entered May 9, 2002); Re: S.T.S. Motor Freight, Inc., 54 Pa. P.U.C. 343 (1980) (S.T.S. Motor)

The Commission requires that a party requesting that the Commission accept its late-filed protest address all four of the standards recited above in order to allege good cause for the late filed protests as required by 52 Pa. Code §3.381(c)(1)(ii). S.T.S. Motor; Re: Milton Transportation, Inc., 56 Pa. P.U.C. 623 (1982) The Commission applies this requirement to fixed utility applications as well. Application of Douglasville Water Co., Docket No. A-210760, (Order entered August 24, 1990)

Here UGI Penn has failed to address any of these standards. It has failed to allege good cause for its late filed amended protest. The Commission should not accept UGI Penn's late-filed amended protest absent any allegations of good cause.

UGI Penn indicated at the prehearing conference that it would seek an immediate stay of any ruling granting Leatherstocking's preliminary objections and seek Commission review of my decision. N.T. 8 I will stay this proceeding pending a final opinion and order of the Commission and possible appellate review of that action. I will also hold in abeyance any ruling on UGI Penn's motion to consolidate pending further action of the Commission and possible appellate review of that action.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §1103(a); 52 Pa. Code §5.52(a).
2. UGI Penn failed to establish that it had standing to protest Leatherstocking's application at the time it filed its protest on December 27, 2011 by failing to allege facts demonstrating a direct, immediate and substantial interest in Leatherstocking's application proceeding at Docket No. A-2011-2275595. 52 Pa. Code §5.52(a).
3. No genuine issue of material fact exists for trial regarding UGI Penn's lack of standing. 52 Pa. Code §102(c).
4. UGI Penn's amended protest, filed on January 27, 2012 is late-filed.
5. UGI Penn has not alleged good cause for its late-filed amended protest.


ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections/motion for summary judgment of Leatherstocking Gas Company, LLC, at Docket No. A-2011-2275595 is hereby granted.
2. That the protest of UGI Penn Natural Gas, Inc., filed on December 27, 2011, at Docket No. A-2011-2275595 is hereby dismissed for lack of standing.
3. That the amended protest of UGI Penn Natural Gas, Inc., filed on January 27, 2012, at Docket No. A-2011-2275595 is hereby dismissed as late-filed.
4. That this matter is stayed until 30 days after the Pennsylvania Public Utility Commission enters a final opinion and order in this proceeding.
5. That in the event that a party appeals the final opinion and order issued by the Pennsylvania Public Utility Commission in this proceeding, any of the parties may seek a further stay of this matter.

Dated: March 2, 2012


David A. Salapa
Administrative Law Judge

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Appendix B



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

IN REPLY PLEASE
REFER TO OUR FILE

June 27, 2012

Hon. David A. Salapa
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of Leatherstocking Gas Company, LLC for Approval to Supply Natural Gas Service to the Public in Northern Susquehanna County, in the Townships of Bridgewater, Forest Lake, Great Bend, Harmony, New Milford and Oakland, and in the Boroughs of Great Bend, Hallstead, Lanesboro, Montrose, New Milford, Oakland and Susquehanna

Docket No. A-2011-2275595

Dear Judge Salapa:

Enclosed please find an original copy of the Bureau of Investigation and Enforcement's (I&E) **Motion to Strike** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 783-6151.

Sincerely,

Charles Daniel Shields
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 29363

Enclosure
CDS/edc

cc: Parties of Record

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Leatherstocking Gas Company, :
LLC for Approval to Supply Natural Gas :
Service to the Public in Northern Susquehanna :
County, in the Townships of Bridgewater, : Docket No. A-2011-2275595
Forest Lake, Great Bend, Harmony, New :
Milford and Oakland, and in the Boroughs of :
Great Bend, Hallstead, Lanesboro, Montrose, :
New Milford, Oakland and Susquehanna :

**MOTION TO STRIKE
OF THE BUREAU OF
INVESTIGATION AND ENFORCEMENT**

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TO ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

The Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") respectfully submits this motion pursuant to 52 Pa. Code § 5.103, entitled "Motions" seeking to have Your Honor strike the document styled as a "Joint Stipulation in Settlement between Leatherstocking Gas Company, LLC and UGI Penn Natural Gas, Inc." ("subject document") for the reasons stated herein. We note initially that the subject document was inextricably filed with the Commission Secretary rather than just properly submitted directly to Your Honor as the Administrative Law Judge presiding in this proceeding. Even more inextricable, a letter was sent by counsel for UGI Penn Natural Gas, Inc. ("UGI Penn") to the Commission Secretary dated June 26, 2012, at this docket, purporting to "correct" the subject document by changing its language and attempting to submit it directly to the Commission rather than to Your

Honor.¹ The individual and collective reasons for the granting of this motion are provided herein and demonstrate the sound reasons that the subject document should be declared null and void on its face and given no consideration whatsoever.

A. The Subject document Should Be Stricken Because One Of The Signatories Is Not A Recognized Party To This Proceeding.

One of the signatories to the subject document, UGI Penn Natural Gas, Inc. (again, “UGI Penn”) is not a recognized party to this proceeding by virtue of its lack of standing in this proceeding, as determined by Your Honor’s “Initial Decision Sustaining Preliminary Objections And Dismissing Protest” issued March 2, 2012.²

-
- 1 At the risk of even dignifying UGI Penn’s improper attempt to have the Commission directly review and rule upon the subject document, this same I&E Motion and its underlying rationale are hereby claimed to be applicable and directed towards that endeavor, and need be considered by the Commission in conjunction with any such direct review. Further, I&E cites a denial of its due process in UGI Penn’s attempt to circumvent proper conduct of the instant application proceeding, said conduct being the submission of the subject document to Your Honor, the presiding ALJ in this case.
 - 2 Without equivocation, I&E observes that UGI Penn’s total disregard for the Commission’s Rules of Practice and Procedure is simply unprecedented in light of Your Honor’s determination that they lack the requisite standing to be involved in his proceeding. Absent UGI Penn’s exercise of its sole remedy at this point, that being the filing of Exceptions (and perhaps Reply Exceptions) and a subsequent Commission ruling overturning the ALJ’s Initial Decision, no documents signed or joined in by UGI Penn can properly be recognized to even exist at this docket, let alone be ruled upon.

To begin the recitation of UGI Penn’s disregard of established procedure and rulings, we first note that even though they had no vested interest in the territory that is the subject of the Leatherstocking Application, UGI Penn filed a protest (that, as noted, was properly dismissed by Your Honor). Denied party status, UGI Penn chose to ignore that determination and has, without any legal ability to do so, attempted to join in the subject Joint Petition at this docket. Additionally, while Your Honor has stayed ruling on a motion to consolidate this proceeding with their UGI Penn’s subsequently filed application, UGI Penn again circumvented established procedure and joined with Leatherstocking in placing both docket numbers in the caption of the subject Joint Petition. And now, UGI Penn seeks to further circumvent the applicable procedural rules

While UGI Penn has sought and received several extensions of time for the filing of Exceptions and Reply Exceptions to Your Honor's Initial Decision from the Commission Secretary, those requests for extensions were unopposed by the parties to this proceeding. In contrast, a letter signed by Leatherstocking counsel to the Secretary dated June 21, 2012, that accompanied the subject document "for filing," sought an additional extension that is opposed by I&E, as evidenced by the I&E letter to the Commission Secretary dated June 22, 2012.³ Naturally, said I&E opposition extends to

by attempting to improperly bypass Your Honor and "submit" the Joint Petition directly to the Commission. The question arises as to whether the time has come for the Commission to direct UGI Penn to adhere to the established procedures. Said procedure would be to file Exceptions to the ALJ's denial of their standing and have the issue resolved once and for all. Instead, the proceeding is being subjected to the numerous machination experienced to date, all of which delay consideration of the Leatherstocking application to begin to provide gas service to customers in the identified territory.

Another question that arises is why Leatherstocking would join in such an ill-advised Joint Petition limiting their certification rights to non-exclusive, when their only advantage in doing so would be to eliminate the protracted proceeding that UGI Penn appears to be willing to undertake if they're denied access to the proceeding. As explained in this I&E Motion, such entities as UGI Penn here need to have their standing addressed and denied now. Otherwise, they or any other gas distribution company with no claim to an uncertificated service territory could continue to disrupt future application certification proceedings filed by an Applicant seeking to begin to provide such service. The net effect would be to discourage any potentially interested gas distribution company from even filing to provide service in an uncertificated area in the first place, since any other gas distribution company could interject all sorts of procedural delays into consideration of the application since the issue of standing was bypassed here, thus allowing for open season on any filed application.

- 3 By way of further background, the letter sent to the Commission Secretary signed by Leatherstocking's counsel on June 21, 2012, sought to be represented as a filing of the Joint Petition at this and UGI Penn's application docket and also disingenuously sought further extension of the date for UGI Penn to file Exceptions to Your Honor's Initial Decision denying UGI Penn standing to participate in the proceeding. By letter of June 22, 2012, counsel for UGI Penn sent a letter to the Secretary seeking to "join in" on the request for further extension of the date for the filing of Exception and Reply Exceptions,

the same day June 22, 2012, letter to the Secretary signed by UGI Penn counsel that sought to “join in “ the request for extension of time for the filing of Exceptions and Reply Exceptions.

As explained further in this Motion, the issue of UGI Penn’s standing must by absolute necessity be addressed first and be resolved in UGI Penn’s favor prior to any consideration of the subject document. And specifically, absent the Commission granting any of UGI Penn’s Exceptions and reversing Your Honor’s well-reasoned and legally sound determination that UGI Penn’s protest, and resultant party status, is dismissed for lack of standing [Initial Decision, Ordering Paragraph No. 2], UGI Penn cannot be a proper party to a misnamed “Joint Petition” and the Applicant, Leatherstocking is essentially attempting to settle with itself. Such a circumstance, which is the exact nature of things as they stand, is clearly absurd on its face and the subject document must be stricken as legally untenable, bogus and patently unauthorized.

For this reason and those presented herein, the Bureau of Investigation and Enforcement respectfully request that Your Honor grant this instant Motion to Strike the subject document, thus making clear that it is improperly submitted and deserves no

which incidentally, is the only procedural action that UGI Penn can legitimately take at this docket at this point in time. As noted in that UGI Penn letter, UGI had already received several similar extensions from the Commission Secretary in response to their previous letters dated March 28, 2012, April 27, 2012 and May 25, 2012. I&E notes that UGI Penn’s reference to the previously granted extensions serves only to demonstrate that enough extensions have already been granted and it is time to resolve the standing issue in a timely fashion and move this proceeding along to further consideration and resolution.

recognition or consideration whatsoever at this present Leatherstocking application docket.

B. The Subject Document Should Be Stricken Since The Determination Requested Is Legally Impermissible Here Because A Request For A Non-Exclusive Certificate Of Public Convenience Necessarily Requires The Filing of A Separate and Distinct Application And The Accompanying Publication Of Notice Of That New Application.

A review of the subject document discloses that Paragraph 18(a) provides:

The Leatherstocking Application at Docket No. A-2011-2275595 shall be amended by this Stipulation **to provide that Leatherstocking is seeking a non-exclusive franchise by its request for a certificate of public convenience**, authorizing it to begin to offer, render, furnish, or supply natural gas distribution services in certain townships and boroughs in rural parts of northern and central Susquehanna County

[Emphasis Added]

Such a proposed “amendment” to its present Application is not the simple proposition suggested by Leatherstocking as such a maneuver lacks legal and precedential support. Here, the instantly filed standard Application for a Certificate of Public Convenience by a gas distribution company is sought to have its normal review process before the ALJ substantially altered midstream to now allow the Applicant to seek non-exclusive rights to provide service in a previously uncertificated geographical area. Such a sought after “amendment” is in fact a fundamental and substantive change to the present Application that, to be pursued, requires the withdrawal of the instant Application and, if so elected by Leatherstocking, the filing of a new Application seeking such non-exclusive

territorial rights.⁴ A new Application filing is necessarily to ensure that the Applicant cite to the precedent for such a non-exclusive certificate being granted to a gas distribution company for a previously uncertificated service territory and to require that proper Notice of such a filing be published in the Pennsylvania Bulletin to alert any interested entity that a particular type of gas distribution service certification, i.e. non-exclusivity, was being sought.

For this reason, the Bureau of Investigation and Enforcement respectfully request that Your Honor grant this instant Motion to Strike the subject document, thus making clear that it is improper submitted and deserves no recognition or consideration whatsoever at this present Leatherstocking Application docket.

C. The Subject Document Should Be Stricken As It Attempts To Improperly Bypass The Crucial and Necessary Prerequisite Ruling on UGI Penn's Standing To Participate In the Instant Proceeding.

I&E submits that there is much more at stake here than is identified in the subject document. There is a distinct danger to the pace of development of gas distribution service in presently uncertificated territories in the Commonwealth were consideration of the subject document be undertaken without first resolving the underlying question of UGI Penn's standing to participate in this proceeding. To do otherwise would be too establish a precedent whereby any gas distribution company with absolutely no prior

⁴ I&E maintains that such a legal conclusion is correct even if Leatherstocking were to abandon its attempt to seek non-exclusive jurisdiction through the subject document and unilaterally attempt to "amend" its application to provide for such non-exclusive authority over the identified geographical territories.

claim to the uncertificated territory sought to be served by new Applicant could avoid demonstrating its standing by following the precise “end run” device employed here by UGI Penn. Under that scenario where the subject document is even dignified by being presently considered, the question arises as to what a potential gas distribution company contemplating filing for certification in virgin territory would make of such a development. What such gas distribution company would even contemplate filing an Application if they knew that their filing would be subject to collateral attack from any quarter that would similarly result in the already long and protracted litigation encountered here. Even if such a gas distribution company were to make a filing and seek to fend off other gas distribution companies’ protests, they would likely find themselves similarly induced into submitting some sort of “Joint Petition” for non-exclusive certification to simply allow them to get down to the business of providing gas distribution service where none had previously been available. And, who’s to say how many gas distribution companies would be discouraged from even filing an Application facing the distinct possibility of weathering a protracted proceeding. As such, the efforts of Leatherstocking and UGI Penn here seeking to circumvent the issue of UGI Penn’s standing, if allowed to prevail, would serve only to discourage legitimate efforts to develop presently uncertificated territory. I&E submits that the public interest is surely not served by such a situation that would run contrary to the Commission’s oft expressed interest in enhancing and expanding the provision of gas distribution service here in the Commonwealth.

D. The Subject Document Should Be Stricken As It Seeks To Improperly Expand This Proceeding's Normal Scope Of Review To Introduce a Much More Complex and Far Reaching Issue Regarding The Granting Of Non-Exclusive Gas Distribution Service Authority In Previously Uncertificated Territory.

The scope of review of the instant proceeding is the fitness of Applicant Leatherstocking to provide gas distribution service in the identified areas not presently served by a jurisdictional Pennsylvania public utility. If, for whatever reason, the subject document were even dignified by being considered, the application proceeding's normal process would be improperly expanded well beyond its scope.⁵

Any consideration of the subject document would require the ALJ and the Commission to address the issue of the granting of a non-exclusive certificate of public convenience for a gas distribution company in previously uncertificated territory, a proposition that I&E opposes for a number of valid and substantive reasons.

Among those substantive issues that would be necessarily inserted into the present proceeding and that would require the submission of evidence for proper disposition, and which underlie I&E's opposition to the granting of non-exclusive gas distribution territories are; (1) the likely adverse effect upon gas safety resulting from any Commission allowance of overlapping newly certified gas distribution service territories; (2) the likelihood of similar such convoluted proceedings whenever certification is sought

5 I&E contends that such a scenario could only occur if UGI Penn were to proceed with the proper procedural approach of filing Exceptions and the Commission were to overrule the ALJ and allow UGI Penn's participation. At that point, Leatherstocking and UGI Penn would at least each have party status to present the subject document. However, absent

for previously uncertified service territories⁶ or for territories where a gas distribution utility has already been granted such non-exclusive authority, thereby subjecting the exact same service territory to repeated and theoretically never-ending certification applications by other gas distribution companies; and (3) I&E's recognition of the Commission's previously expressed reservations about gas-on-gas distribution competition that would arise if Leatherstocking was granted non-exclusive, rather than exclusive rights to the identified service territory.

Thus, consistent with the previous subheading of this motion, the subject document would have the proceeding morphed into something quite different than its normal and definitive purpose. Under such circumstances, I&E would seek a determination from Your Honor that testimony, hearings and briefing are required here on the subject of non-exclusivity. The conduct of those formal proceedings would allow for a properly created record to satisfy all due process requirements, given the significance of such a determination for this and all similar future gas distribution company certification

such chain of events, UGI Penn has no standing to even be a signatory to the subject document.

- 6 This issue is addressed in further detail later in this I&E Motion, particularly as it relates to the need to have Your Honor's ruling on standing be considered by the Commission prior to any consideration of the "Joint Petition" by either Your Honor or the Commission; and as I&E contends, the need to have Your Honor's ruling upheld and UGI Penn's standing disallowed in order to eliminate the types of counterproductive and complicating maneuvering that UGI Penn has already introduced into this particular proceeding.

filings and the countless long and convoluted proceedings that would inevitably follow as a result.⁷

It is important to also emphasize at this juncture that I&E has not indicated to date any opposition to the granting of the exclusive territorial service rights sought by Leatherstocking at this docket and it was the attempted involvement of UGI Penn in this Leatherstocking's application proceeding, and the subsequent procedural wrangling that has ensued, that has delayed the granting of Leatherstocking's application and stalled the initiation of service to potential gas customers in the identified territories.

In point of fact, I&E supports qualified gas distribution companies efforts to promptly obtain the proper authority from the Commission to provide exclusive service to customers in territories where no such certified service currently exists. Given the opportunities now opening for the financial viability of such service as a result of the more readily availability Marcellus Shale gas, I&E recognizes that the expansion of such proper exclusive authority to provide gas distribution services is a development that benefits the public interest.

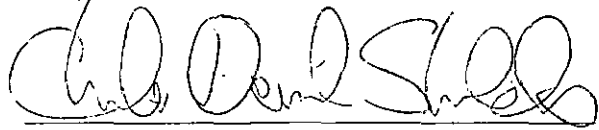
E. Conclusion

For the foregoing reasons, both individually and collectively, the Bureau of Investigation and Enforcement respectfully request that this instant Motion to Strike the subject document be granted, thus making clear that such a self-styled "Joint Petition" is

⁷ And again, there may be other gas distribution utilities that would wish to have the opportunity to be involved in such a proceeding to address their concerns and to present their position(s).

improper submitted and deserves no recognition or consideration whatsoever at this present Leatherstocking application docket.⁸ And, for the record, I&E respectfully asserts that only the presently authorized active parties to this proceeding are in a position to legally respond to this Motion, and as such, any responsive submission from UGI Penn cannot be either recognized or given any weight or credence.

Respectfully submitted,



Charles Daniel Shields
Senior Prosecutor
PA Attorney I.D. No. 29363

Richard A. Kanaskie
Deputy Chief Prosecutor
PA Attorney I.D. No. 80409

Johnnie E. Simms
Chief Prosecutor
PA Attorney I.D. No. 33911

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265
(717) 787-1976

Dated: June 27, 2012

⁸ Nor for that matter, at the UGI Penn Application docket at A-2012-2284831 that was improperly and impertinently included in the caption of the subject document.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Leatherstocking Gas :
Company, LLC to Supply Natural Gas :
Service to the Public in Certain : Docket No. A-2011-2275595
Townships and Boroughs in Northern :
Susquehanna County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Motion to Strike** dated June 27, 2012, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Thomas J. Sniscak, Esquire
Todd S. Stewart, Esquire
Janet L. Miller, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101

James A. Mullins, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Alan Michael Seltzer, Esquire
Lauren Lepkoski, Esquire
Buchanan Ingersoll & Rooney PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101

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Also provided to Counsel of UGI Penn Natural Gas:

Michael W. Hassell, Esquire
Christopher T. Wright, Esquire
Post & Schell, PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601



Charles Daniel Shields
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #29363

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Leatherstocking Gas :
Company, LLC to Supply Natural Gas :
Service to the Public in Certain : Docket No. A-2011-2275595
Townships and Boroughs in Northern :
Susquehanna County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Letter to the Commission Secretary** dated June 27, 2012, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Thomas J. Sniscak, Esquire
Todd S. Stewart, Esquire
Janet L. Miller, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101

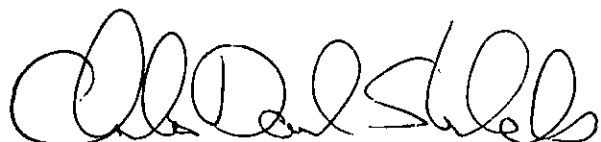
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Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #29363