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June 28, 2012

Via Hand Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

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PA PUC
SECRETARY'S BUREAU

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

Application of UGI Penn Natural Gas, Inc. for approval to begin to offer, render, furnish or supply gas utility service to the public in the additional territories of Bridgewater, Forest Lake, Great Bend, Harmony, New Milford and Oakland Townships, and Great Bend, Hallstead, Lanesboro, Montrose, New Milford, Oakland and Susquehanna Depot Boroughs, Susquehanna County; Docket No. A-2012-2284831

Dear Secretary Chiavetta:

The purpose of this letter is to respond to the series of letters recently submitted by the Bureau of Investigation and Enforcement ("I&E") regarding the Settlement submitted by Leatherstocking Gas Company, LLC ("Leatherstocking") and UGI Penn Natural Gas, Inc. ("PNG") at the above-referenced dockets. While Leatherstocking will be filing a formal response to I&E's Motion to Strike the Stipulation for Settlement, because I&E has decided to present its arguments via letters to the Pennsylvania Public Utility Commission ("Commission"), Leatherstocking hereby responds initially by letter.

In sum, I&E has raised no legal reason in support of the further unnecessary process or hearings. That process will only cause delay, which is not in the public interest. While Leatherstocking appreciates and respects I&E's statutory obligation to protect what is best for all involved, Leatherstocking believes the Commission may entertain and rule upon the Settlement and I&E's opposition filings. Leatherstocking's Application should not be delayed for the reasons I&E raises, because I&E's concerns are unripe and may be raised and pursued and determined fully, and without prejudice, at such time in the future *when and if* PNG were to file an application for part or all of the territory Leatherstocking proposes to serve.

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1. Response to I&E's argument that hearings are necessary to determine if Leatherstocking's franchise should be exclusive or non-exclusive.

The Settlement provides for an amendment to Leatherstocking's Application, which states that it is requesting a franchise that is non-exclusive. That provision merely captures what Pennsylvania law already holds and provides; namely, that any certificate granted by the Commission is not an exclusive monopoly franchise but, rather, a license granted to a company by the State. The Commission and the appellate courts clearly recognized this. Indeed, citing a long line of cases, the Court in *Lukens Steel Company v. Pa. Pub. Util. Comm'n*, 499 A.2d 1134, 1136 (Pa. Cmwlth. 1995) concluded that "[a] Certificate of Public Convenience and Necessity does not necessarily grant an *exclusive* right to serve a particular geographic area." (Emphasis added).

Consequently, the Settlement simply conforms to Pennsylvania law.

Moreover, I&E's concern over exclusivity or non-exclusivity is one that is not ripe because the Settlement provides for the *withdrawal* of PNG's Application to serve the same territory. Thus, the Settlement does not give PNG any certificate rights, and should PNG or any other entity seek to serve Leatherstocking's franchise, they would have to file an Application for a Certificate of Public Convenience and, *at that time*, depending upon how and where they intend to serve, the Commission can consider, and I&E can participate and advocate, as to whether or not that Application creates duplication of facilities or other detriments that are contrary to the public interest.

There would be no point to a hearing now on comparative merits of Leatherstocking's Application versus what PNG or any other company *might* propose service-wise *at some future point in some future application*. Such hearing on a speculative subject would not be an efficient use of time and resources, and clearly contrary to the public interest by creating delay.

Indeed, the Settlement itself (at ¶20) makes it clear that the Settlement is not binding on any non-settling party – including I&E – and they remain free to advocate any position they may take regarding any future application filed by PNG:

20. The Stipulated Parties represent that this Stipulation is not opposed by OCA, Williams or Waynesboro. The Stipulating Parties agree that this Stipulation shall not have any effect on the respective rights of I&E, OCA, Williams, or any other parties that are permitted to intervene or otherwise participate in the Leatherstocking Application at Docket No. A-2011-2275595, or any future application filed by PNG. Any party to this proceeding may join this Stipulation by submitting a written letter.

2. Response to I&E's argument that amending the Application requires filing a new application thereof.

I&E is incorrect. First, it cites no precedent for the proposition that agreeing to accept an application as non-exclusive requires refiling and republication. Second, such argument is at odds with how the Commission treats applications that are changed in the consideration process.

Leatherstocking asked for its Application to be approved under the Pennsylvania Public Utility Code. As stated above, the Code has been interpreted to retain discretion by the Commission as to when or if competition is in the public interest and should be permitted. Moreover, the question of exclusivity or competition is one for the Commission to consider in the future in determining what is appropriate or necessary to meet the requirements of the public should an entity seek rights to serve within Leatherstocking's franchise.

Simply because the Settlement references such long-standing legal concept is no basis to require a refiling or republication of the Application. None of the other parties to these proceedings, the Office of Consumer Advocate; Williams Field Services Company, LLC, or the Borough of Lanesboro (party to the PNG Application), oppose the Settlement, and obviously would have opposed it if they felt refiling and republication were necessary.

Moreover the Commission routinely accepts amendments to Applications which are restrictive amendments or modifications to the authority originally sought without republication or the filing of a new Application. As in every application proceeding, Notice occurs initially and, as the case evolves, there often are changes as the case proceeds through the Commission based on positions of parties. Otherwise, there would be an endless cycle of re-filings if any term of an application were revised during the course of consideration.

Having the Application resubmitted and republished is contrary to the public interest and is creates delay. We all should agree we need to get this natural gas to Pennsylvanians.

3. Response to I&E's argument that Settlement should be denied because PNG was determined by the ALJ to lack standing.

I&E's is incorrect. As an example, following I&E's argument, any time a protestant is determined not to have standing as did the ALJ in his excellent decision, said protestant would not have the ability to file Exceptions because it is not a party. That is not the process that the Public Utility Code presents and, indeed, parties who are determined to lack standing have the right to file Exceptions. It stands to reason that the Commission can consider a settlement in lieu of Exceptions. As stated below, the Commission has done so before.

That is particularly apt here, where the Settlement essentially is a vehicle for the *withdrawal* of PNG's protest and its Application to serve essentially the same area served by Leatherstocking. The Commission has considered settlements in lieu of Exceptions and should do so here. *Keebler v. Verizon PA, Inc.* Docket No. F-2010-2215057 (Order Entered January 27, 2012) (Settlement in lieu of Exceptions reviewed and approved by Commission); *See*

Secretary Chiavetta

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Application of PNG Utilities, Inc., PNG Utilities Newco In. and Southern Union Company, 2006 Pa. PUC LEXIS 62 (2006); see also, Joint Application for Approval of the Transfer of Stock of Dominion Peoples, 2009 Pa. PUC LEXIS 1976 (2009) (review of a settlement rejected by an ALJ in an Interim Order that was not reviewable through exceptions).

The Commission can directly rule upon this Settlement which does not propose anything regarding the merits of approving Leatherstocking's Application. Rather, the Initial Decision involves only the disposition of PNG's protest. PNG – the only party adversely affected by the Initial Decision – certainly can and has deferred filing Exceptions pending a ruling by the Commission on the settlement. *Id.* Of course, should the Commission approve the settlement, the Exceptions become moot as PNG will have withdrawn its protest in addition to its Application.

Leatherstocking believes that the ALJ in well-reasoned and well-written Initial Decision has done all tasks necessary regarding this Application at the ALJ phase, and the Settlement which is in lieu of Exceptions, which resolves PNG's participation in this case, is properly before the Commission itself as should be Leatherstocking's application on a non-litigation track.

4. Response to I&E's argument that overlapping territories can cause gas safety concerns or issues.

Like I&E, Leatherstocking takes gas safety concerns or issues very seriously. However, I&E's alleged safety concerns it believes would exist if more than one entity becomes certificated for a given franchise is an issue that is not ripe regarding Leatherstocking's franchise. That is because, under the settlement, no other natural gas distribution company application would be pending if the Settlement is granted as PNG would be withdrawing its Application. Thus, I&E's issue is one that it may pursue and the Commission may consider sometime in the future *when* and *if* PNG or some other natural gas company would seek to serve Leatherstocking's franchise. Leatherstocking certainly supports gas safety and commends I&E for its efforts in that area.

Thank you for your time and consideration.

Very truly yours,



Thomas J. Sniscak

Counsel for Leatherstocking Gas Company, LLC

TJS/bes

Enclosures

cc: Per Certificate of Service

Honorable David A. Salapa, Administrative Law Judge

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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