



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Main Fax  
www.postschell.com

Michael W. Hassell

mhasell@postschell.com  
717-612-6029 Direct  
717-731-1985 Direct Fax  
File #: 2270/151133

June 28, 2012

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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**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:

**Response of UGI Penn Natural Gas, Inc. to Letter of the Bureau of Investigation and Enforcement in Opposition to Consideration by the Pennsylvania Public Utility Commission of the Joint Stipulation in Settlement Between Leatherstocking Gas Company, LLC and UGI Penn Natural Gas, Inc.**

By letter dated June 27, 2012, the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") advised the Commission of its opposition to the Commission's direct consideration of the Joint Stipulation in Settlement ("Settlement") between Leatherstocking Gas Company, LLC ("Leatherstocking") and UGI Penn Natural Gas, Inc. ("PNG"). The Settlement was filed with the Commission on June 21, 2012, and a corrected Settlement was filed on June 26, 2012.

ALLENTOWN HARRISBURG LANCASTER PHILADELPHIA PITTSBURGH PRINCETON WASHINGTON, D.C.

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I&E contends that the submission of the Settlement directly to the Commission by the signatories<sup>1</sup> to the Settlement is procedurally improper. I&E's contention is incorrect, and fails to take into account the procedural posture of the two application proceedings.

Currently pending with the Commission are two application proceedings seeking to serve the same territory in Susquehanna County, one by Leatherstocking and one by PNG. PNG filed a Protest to Leatherstocking's Application and Leatherstocking filed a Protest to PNG's Application. Leatherstocking filed preliminary objections challenging the standing of PNG to protest Leatherstocking's Application. By Secretarial Letter dated March 20, 2012, Administrative Law Judge David A. Salapa (the "ALJ") issued an Initial Decision ("I.D."), which ruled that PNG did not have standing to protest Leatherstocking's Application.<sup>2</sup>

Prior to and continuing after the issuance of the I.D., Leatherstocking and PNG have been engaged in negotiations to amicably resolve their respective differences, in accordance with the Commission's policy encouraging settlement. 52 Pa. Code § 5.231. Without opposition by other parties, PNG and Leatherstocking requested and were granted extensions of time for the filing of Exceptions and Reply Exceptions, with the express purpose of fully resolving both Application proceedings. Ultimately, PNG and Leatherstocking reached an agreement, the purpose of which was to allow Leatherstocking to move forward expeditiously with its proposal to provide service in the applied-for territory, while at the same time allowing PNG to withdraw its current Application, with the right to refile to seek to serve all or a portion of the service area without objection by Leatherstocking, provided that PNG would not seek authority to serve Leatherstocking's customers. The Settlement further provided for a Right of First Refusal for PNG to purchase Leatherstocking's facilities constructed in the applied-for territory, in the event Leatherstocking decided to divest itself of ownership.<sup>3</sup>

Because the ALJ no longer had jurisdiction to proceed on the Leatherstocking Application while the I.D. remained before the Commission, and because leave to withdraw a pleading in a contested proceeding may be filed directly with the Commission, 52 Pa. Code § 5.94(a), Leatherstocking and PNG submitted the Settlement to the Commission in lieu of Exceptions. This is an accepted process for consideration of a Settlement reached subsequent to ALJ action on a Matter. *See Application of UGI Utilities, Inc., UGI 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) (wherein the

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<sup>1</sup> I&E continually refers to the submission of the Settlement as being made by PNG. However, this Settlement was submitted jointly by the two applicants (and cross-protestants) Leatherstocking and PNG to the above-referenced application proceedings, and it was the intent of the parties, in the original submittal of the Settlement by Leatherstocking's counsel on June 21, 2012, that the Settlement be presented directly to the Commission for procedural reasons set forth herein.

<sup>2</sup> The only determination in the ALJ's I.D. concerns PNG standing to participate in the Leatherstocking Application proceeding.

<sup>3</sup> Naturally, any sale of facilities by Leatherstocking would require the filing of an application for Commission approval.

Commission took jurisdiction, through interlocutory review, of a settlement rejected by an ALJ in an Interim Order that was not reviewable through exceptions).

For the foregoing reasons, the filing of the Settlement by PNG and Leatherstocking is not inappropriate, but rather is the proper procedural vehicle, at this stage of the proceedings and while the I.D. remains outstanding, for the two parties to present their Settlement for consideration by the Commission.

I&E has presented separately, in a Motion to Strike the Settlement, several arguments in opposition to the Settlement. PNG will respond to those arguments in greater detail in a separate filing. PNG and Leatherstocking request that the Commission consider I&E's arguments, and PNG's and Leatherstocking's responses, as part of its review of the Settlement.

At this time, PNG presents the following summary of its responses to the major points raised by I&E:

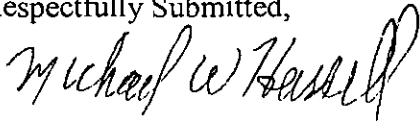
1. The Settlement is not invalid simply because the ALJ ruled that PNG did not have standing to participate in the Leatherstocking case. The I.D. does not represent a final Commission ruling on PNG's standing, which PNG disagrees with, and approval of the Settlement would avoid the need for a ruling on the standing issue, as well as possible further delays in the Leatherstocking case if PNG were to appeal an adverse ruling on standing. Furthermore, the Settlement resolves issues related to PNG's pending application to serve the same territory by providing for PNG's withdrawal of its application. Certainly, I&E cannot contend that PNG does not have standing to participate in, and settle, its own application proceeding.
2. There is no reason why Leatherstocking's proposal to amend its application requires a new application or notice. Leatherstocking is not changing the area which it seeks to serve. Therefore, there is no issue related to the territory being expanded. Amendments and conditions to applications are adopted as a matter of course in settlements, and no new application or notice has been required.
3. A ruling on standing is not necessary to act on the Settlement. The Settlement would remove PNG's protest to Leatherstocking's amended application and terminate PNG's application proceeding, thereby rendering moot any issue related to standing.
4. Potential issues related to overlapping service territories are not ripe for consideration at this time, as no approval of overlapping territories is sought in the Settlement. The law in Pennsylvania is that a Certificate of Public Convenience does not necessarily grant an exclusive right to serve a particular geographic area. *Lukes Steel Company v. Pa. P.U.C.*, 1985 Pa. Commw. LEXIS 1350 at \*3, n. 1 (1985). The extent to which competition between utilities will be allowed is within the discretion of the Commission. *Peoples Natural Gas Co. v. Pa. P.U.C.*, 554 A.2d 585, 592 (Pa. Commw. 1992). Applicants are permitted to apply for areas certificated by others. However, no actual overlapping application is being made at this time. The Settlement specifically reserves the rights of other parties, not signatures to the Settlement, to

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participate and raise any issues in a future application, if any, filed by PNG for any portion of this territory. At that time, I&E would be free to raise issues related to concerns about gas safety or gas on gas competition.<sup>4</sup> Therefore, I&E's concerns are premature, and I&E is free to examine, based on specific facts and circumstances, whether it has specific objections to a future proposed expansion of PNG's service territory into the area sought to be certificated by Leatherstocking.

For the reasons explained above, the Commission should consider and grant the Settlement between Leatherstocking and PNG.

Respectfully Submitted,



Michael W. Hassell

Counsel for UGI Penn Natural Gas, Inc.

MWH/skr

cc: Certificate of Service

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<sup>4</sup> It is noted that under the Settlement, PNG agrees not to seek a certificate to serve Leatherstocking's customers.

**CERTIFICATE OF SERVICE**  
**(Docket Nos. A-2011-2275595 and A-2012-2284831)**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

**VIA E-MAIL AND FIRST CLASS MAIL**

Honorable David A. Salapa  
Administrative Law Judge  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

Thomas J. Sniscak  
Todd S. Stewart  
Janet L. Miller  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
PO Box 1778  
Harrisburg, PA 17105

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

Charles Daniel Shields  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

Alan M. Seltzer  
Buchanan Ingersoll & Rooney PC  
17 North Second Street, 15th Floor  
Harrisburg, PA 17101

Myron B. DeWitt Esquire  
1220 Main Street  
P.O. Box 244  
Susquehanna, PA 18847

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