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July 17, 2012

**Via Hand Delivery**

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

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2012 JUL 17 PM 12:41  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
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

**ANSWER OF LEATHERSTOCKING GAS COMPANY, LLC IN  
OPPOSITION TO THE MOTION TO STRIKE FILED BY THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION'S BUREAU OF  
INVESTIGATION AND ENFORCEMENT**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are an original and three (3) copies of the Answer of Leatherstocking Gas Company, LLC in Opposition to the Motion to Strike filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-referenced matters. Copies of this document have been served upon the parties of record as indicated on the certificate of service.

Secretary Chiavetta

Application of Leatherstocking Gas Company, LLC (Docket No. A-2011-2275595)

Application of UGI Penn Natural Gas, Inc. (Docket No. A-2012-2284831)

July 17, 2012

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Should you have any questions or require anything further, please do not hesitate to contact me at 717.236.1300.

Very truly yours,



Thomas J. Sniscak

Janet L. Miller

*Counsel for Leatherstocking Gas Company, LLC*

TJS/WEL/das

Enclosures

cc: Per Certificate of Service  
Honorable David A. Salapa, Administrative Law Judge

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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**ANSWER OF  
LEATHERSTOCKING GAS COMPANY, LLC  
IN OPPOSITION TO THE MOTION TO STRIKE FILED BY  
THE BUREAU OF INVESTIGATION AND ENFORCEMENT**

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I&E BUREAU  
SECRETARY'S OFFICE

Now comes Leatherstocking Gas Company, LLC ("Leatherstocking"), by its attorneys in this matter, Hawke McKeon & Sniscak LLP, and files its Answer in Opposition to the Motion to Strike filed by the Bureau of Investigation and Enforcement ("I&E") in the above-captioned proceeding. In support thereof, Leatherstocking responds as follows:

**INTRODUCTION AND GENERAL ANSWER**

1. On or about June 21, 2012, a Joint Stipulation in Settlement ("Settlement") between Leatherstocking and UGI Penn Natural Gas, Inc. ("PNG") was filed with the Pennsylvania Public Utility Commission ("Commission"). A corrected settlement was filed on June 26, 2012. On or about June 27, 2012, I&E filed a Motion to Strike the Settlement

contending that the submission of the Settlement directly to the Commission by Leatherstocking and PNG as joint signatories is procedurally and substantively improper.

I&E is incorrect and has raised no reason in support of further unnecessary process or hearings. That process will only cause delay, which is not in the public interest. Leatherstocking respectfully submits that 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 towns and boroughs Leatherstocking proposes to serve. Moreover, the Settlement is not inconsistent with the Initial Decision, as both result in PNG's exit from the Leatherstocking application: the former provides for PNG's *withdrawal of its protest and its application* and the latter determined that PNG should no longer participate in the case.

#### ANSWER

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

2. I&E contends that the Settlement should be stricken because the ALJ's Initial Decision concluded that PNG lacks standing to protest Leatherstocking's application. While Leatherstocking agrees with the ALJ's well-reasoned decision, I&E's contention about consideration of the settlement by the Commission is incorrect:

- First, the ALJ's decision is subject to Commission review under 66 Pa.C.S. §335(b)(right to review via Exceptions).
- Second, following I&E's argument, any time a protestant is determined not to have standing the 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. 66 Pa.C.S. §335(b). It stands to reason that the Commission can consider a settlement in lieu of Exceptions particularly where, as here, the Settlement is essentially a vehicle for PNG to *withdraw its protest and application*. Thus, there is no conflict with the ALJ's decision, the settlement, or any action by the Commission approving the settlement as all of them result in PNG exiting Leatherstocking's application proceeding.

- Third, as stated below, the Commission has considered and acted upon settlements in lieu of the filing of Exceptions before 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 Application of PNG Utilities, Inc., PNG Utilities Newco Inc. and Southern Union Company*, 2006 Pa. PUC LEXIS 62 (2006); *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).

3. 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, exceptions become moot as PNG will have withdrawn its protest to Leatherstocking's Application in addition to its Application to serve the same franchise.

4. Leatherstocking believes that the ALJ, in a 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, and 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.

**B. Response to I&E's argument that amending the Application to state Leatherstocking is not seeking a non-exclusive franchise requires filing a new application and republication.**

5. I&E collaterally attacks the Settlement claiming the Settlement proposes to amend Leatherstocking's Application to include that Leatherstocking is seeking a non-exclusive franchise by its request for a certificate of public convenience. Settlement at ¶18(a). I&E contends that this amendment would require Leatherstocking to file an entirely new Application seeking non-exclusive territorial rights. I&E is incorrect.

6. First, I&E cites no precedent for the proposition that agreeing to accept an application as non-exclusive requires re-filing and republication. Second, such argument is at odds with how the Commission treats applications that are changed either voluntarily by the applicant or by the Commission during the consideration process.

7. Leatherstocking asked for its Application to be approved under the Pennsylvania Public Utility Code ("Code"). As stated below in detail in Section C of this Answer, the Code provisions regarding the granting of franchises have been interpreted to retain discretion by the Commission as to when or if competition is in the public interest and should be permitted. Thus,

by law, franchises are not exclusive but rather subject to the Commission's discretion. Moreover, the question of duplication of facilities, exclusivity or competition is not ripe here as PNG is withdrawing its Application. It is one for the Commission to consider *in the future* in determining what is appropriate or necessary to meet the requirements of the public *if and when* an entity seek rights to serve within Leatherstocking's franchise.

8. Simply because the Settlement references such a 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.

9. 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. *See e.g. Application of Valley Run Water Company, LLC, for a Certificate of Public Convenience to begin to offer, furnish or provide water service in a portion of Washington Township, Berks County, PA., Docket No. A-210121(Order Entered January 11, 2007)(Order approving revised application and settlement providing for Valley Run to reduce its applied-for area thereby eliminating, inter alia, areas in protestant Superior Water Company's franchise, and withdrawal of protest.).*

10. Having the Application resubmitted and republished under the circumstances here is contrary to the public interest and creates needless delay and expense. We all should agree we need to get this natural gas to Pennsylvanians, and I&E's argument collaterally attacking the settlement by proposing unnecessary refiling and republication should not be adopted.

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

11. 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). The extent to which competition between utilities will be allowed is within the discretion of the Commission. *Peoples Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 554 A.2d 585, 592 (Pa. Cmwlth. 1992). Consequently, the Settlement simply conforms to Pennsylvania law.

12. 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.

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

14. Indeed, the Settlement itself (at ¶20) makes it clear that the Settlement is not binding on any non-settling party – including I&E – and I&E and other intervenors 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 Lanesboro. 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.

**D. I&E's argument that overlapping territories can cause gas safety concerns or issues is not ripe.**

15. 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 application. 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.

## CONCLUSION

For the foregoing reasons, Leatherstocking Gas Company, LLC respectfully requests that the Bureau of Investigation and Enforcement's Motion to Strike be denied and the Settlement Agreement be considered by the Commission and approved in its entirety.

Respectfully submitted,



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*Counsel for Leatherstocking Gas Company, LLC*

DATED: July 17, 2012

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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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DATED: July 17, 2012