**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held August 30, 2012

Commissioners Present:

 Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman

 Wayne E. Gardner

 James H. Cawley

 Pamela A. Witmer

Application of Leatherstocking Gas Company, LLC, A-2011-2275595 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

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration are: (1) a Joint Stipulation in Settlement (Stipulation) filed on June 21, 2012, by Leatherstocking Gas Company, LLC (Leatherstocking) and UGI Penn Natural Gas, Inc. (UGI); (2) an Amended Stipulation in Settlement (Amended Stipulation) filed on June 26, 2012, by Leatherstocking and UGI; (3) a Motion to Strike the Stipulation/Amended Stipulation (Motion to Strike) filed on June 27, 2012, by the Bureau of Investigation and Enforcement (I&E); (4) a letter (June 28th Letter) filed on June 28, 2012, by Leatherstocking styled as an initial response to “a series of letters recently submitted” by I&E; (5) an Answer in Opposition to the Motion to Strike (Answer) filed by Leatherstocking on July 17, 2012; and (6) a Motion to Consolidate filed by UGI on February 10, 2012.[[1]](#footnote-1)

 For the reasons stated below, we conclude that the Stipulation[[2]](#footnote-2) between Leatherstocking and UGI should be rejected as a matter of law. Our conclusion is based on the fact that the proposed Stipulation is between Leatherstocking and a non-party to Leatherstocking’s application proceeding. Accordingly, we conclude that the proposed Stipulation is not properly before the Commission as a matter of law. We also shall deny the Motion to Consolidate this proceeding with UGI’s application proceeding at Docket No. A-2012-2284831.

**History of the Proceeding**

 On November 23, 2011, Leatherstocking filed the above-captioned Application for a certificate of public convenience to supply natural gas service to the public in portions of Susquehanna County. Leatherstocking is a New York limited liability company that has been authorized by the Pennsylvania Department of State to conduct business in Pennsylvania. No other entity provides, or has the right to provide, natural gas service in Leatherstocking’s proposed service territory.

 Notice of the filing of the Application was published in the *Pennsylvania Bulletin* on December 10, 2011, at 41 *Pa. B.* 6753. The notice specified a deadline of December 27, 2011, for filing protests to the Application.

 On December 27, 2011, UGI filed a timely Protest to the Application (Original Protest), asserting that it intended to file its own application to provide service in the proposed service territory in the near future. Also on December 27, 2011, the Office of Consumer Advocate (OCA) filed a notice of intervention and Williams Field Services Company, LLC (Williams) filed a Petition to Intervene.[[3]](#footnote-3) On January 11, 2012, I&E filed a notice of appearance.

 On January 17, 2012, Leatherstocking filed Preliminary Objections requesting that the Commission dismiss UGI’s Original Protest for lack of standing. On January 27, 2012, UGI filed an Answer to Leatherstocking’s Preliminary Objections, as well as an Amended Protest, alleging that UGI had filed its own application on January 18, 2012, to provide service in the proposed service territory.[[4]](#footnote-4) On February 10, 2012, UGI filed a Motion to Consolidate Leatherstocking’s Application proceeding with its application proceeding at Docket No. A-2012-2284831.

 At the prehearing conference on February 14, 2012, Leatherstocking indicated that it would be filing Preliminary Objections to UGI’s Amended Protest, and UGI indicated that it would file an Answer to Leatherstocking’s Preliminary Objections. The Parties agreed that the litigation of this matter should be stayed pending the resolution of Leatherstocking’s Preliminary Objections. Administrative Law Judge (ALJ) David A. Salapa determined that a ruling on UGI’s Motion to Consolidate should be held in abeyance pending the resolution of the Preliminary Objections. I.D. at 5.

 On February 16, 2012, Leatherstocking filed Preliminary Objections to UGI’s Amended Protest. On February 27, 2012, UGI filed an Answer to Leatherstocking’s Preliminary Objections. On March 20, 2012, ALJ Salapa issued an Initial Decision (I.D.) that granted Leatherstocking’s Preliminary Objections, dismissed UGI’s Original Protest for lack of standing, and dismissed UGI’s Amended Protest as late-filed.

 Following several extensions of time, the Commission issued a Secretarial Letter on July 20, 2012, that established a deadline of July 30, 2012,for the filing of Exceptions and August 6, 2012, for the filing of Reply Exceptions. The Secretarial Letter acknowledged the filing, *inter alia*, of the Stipulation on June 21, 2012, and the Motion to Strike on June 27, 2012. However, the Parties were instructed to confine their Exceptions and Reply Exceptions to the issues raised by the ALJ’s Initial Decision.

 UGI filed Exceptions to the ALJ’s Initial Decision on July 30, 2012, and Leatherstocking filed Reply Exceptions on August 6, 2012. I&E filed a Letter in Lieu of Reply Exceptions on August 6, 2012, and a Motion to Strike portions of Leatherstocking’s Reply Exceptions on August 15, 2012.

 By an Opinion and Order adopted contemporaneously with the instant Opinion and Order, we are denying UGI’s Exceptions and adopting the Initial Decision issued March 20, 2012. Accordingly, because we have concluded that UGI has no standing to protest Leatherstocking’s Application, UGI is not a party to this proceeding.

**Stipulation/Amended Stipulation**

 The Stipulation provides that, if approved by the Commission, Leatherstocking will amend its Application to provide that it is seeking a non-exclusive service territory, and UGI will withdraw its protest to the amended Leatherstocking Application. UGI will withdraw its competing application, with the right to file a similar application at any time in the future. In any such future application, UGI will “not seek to extend service to any customer served by Leatherstocking or to any entity which is under written contract with Leatherstocking to be provided service at the time the future application is filed.” Stipulation at 6. Leatherstocking will not protest any such future UGI application provided that UGI does not seek to serve any customer already served by Leatherstocking. The Stipulation is conditioned upon Commission approval of all of its terms and conditions without modification.

**I&E’s Motion to Strike**

The cover letter accompanying the Motion to Strike filed by I&E on June 27, 21012, states that I&E staunchly opposes the attempt by Leatherstocking and UGI to circumvent the Commission’s rules of practice and procedure by submitting the proposed Stipulation directly to the Commission in lieu of filing Exceptions and Reply Exceptions to the ALJ’s Initial Decision. The issue raised by I&E in its cover letter is moot as a result of the Commission’s decision to require the filing of proper Exceptions and Reply Exceptions to the ALJ’s Initial Decision.

 The Motion to Strike filed by I&E raises four objections to the proposed Stipulation. In relevant part, I&E argues that one of the signatories is not a recognized party to the Leatherstocking application proceeding by virtue of its lack of standing, as determined by the ALJ in his Initial Decision. I&E argues that, given UGI’s lack of standing, no documents signed or joined in by UGI can be recognized or ruled upon in the Leatherstocking proceeding. Motion to Strike at 2, n 2. I&E characterizes the proposed Stipulation as an end-run device employed by UGI to avoid the issue of its lack of standing, and suggests that Leatherstocking was induced into agreeing to a non-exclusive application simply to avoid protracted litigation. I&E submits that, if the Commission approves the proposed Stipulation and sanctions the circumvention of the issue of standing, legitimate efforts to expand the provision of natural gas distribution service in the Commonwealth would be discouraged. Id. at 7.

 I&E’s Motion also objects to the proposed Stipulation on substantive grounds, including I&E’s opposition to the grant of a *non-exclusive* certificate of public convenience to provide natural gas distribution service. The purpose of our Opinion and Order today is limited to addressing the legal issue of whether the proposed Stipulation is properly before the Commission, given the status of the signatories. The resolution of issues of law does not require an evidentiary hearing. *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 548 (Pa.Cmwlth.1989). Accordingly, we will not address I&E’s substantive arguments regarding the merits of the proposed Stipulation in this Opinion and Order.

Finally, I&E emphasizes that it does not oppose Leatherstocking’s Application, as filed, for an exclusive certificate of public convenience. *Id.* at 8-10. We will not address the merits of the Application, as filed, in this Order. However, given our conclusion that UGI does not have standing in this proceeding, Leatherstocking’s Application is now uncontested and shall be referred to the Commission’s Bureau of Technical Utility Services for consideration under modified procedure.

**Leatherstocking’s June 28th Letter**

In relevant part, Leatherstocking argues in its June 28th Letter that, since UGI would have had the right to file Exceptions to the ALJ’s Initial Decision and the proposed Stipulation was submitted in lieu of Exceptions, UGI therefore had the right to enter into and file the proposed Stipulation. June 28th Letter at 3. Leatherstocking submits that the Commission previously has considered settlements in lieu of exceptions, citing *Keebler v Verizon PA, Inc*., Docket No. F-2010-2215057 (Order entered January 27, 2012). Leatherstocking also responds to I&E’s arguments on substantive issues, which, as stated above, we are not addressing in this Opinion and Order.

**Leatherstocking’s Answer to Motion to Strike**

 In its Answer to I&E’s Motion to Strike, Leatherstocking argues that the proposed Stipulation is not inconsistent with the Initial Decision because both result in UGI’s exit from the Leatherstocking application proceeding. Leatherstocking also repeats the argument in its June 28th Letter that the Stipulation is a substitute for Exceptions to the ALJ’s Initial Decision, and therefore the Stipulation is properly before the Commission. Answer at 3-4.

**Discussion**

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

 Having determined that UGI does not have standing in this proceeding, the question here is whether the proposed Stipulation between UGI (a non-party) and Leatherstocking (a non-utility) is properly before the Commission. Here, because the Stipulation is between a non-party and a non-utility, the Commission does not, as a matter of law, have jurisdiction to review the Stipulation under Section 508 of the Code, 66 Pa. C.S. § 508 (power of the Commission to vary, reform and revise contracts between utilities and other persons). Notably, we are not making a determination that a Stipulation that includes a non-party signatory will never be considered by the Commission; however, under the facts and circumstances of this case, where we affirmatively have concluded that UGI lacks standing, and where Leatherstocking’s Application remains outstanding, we conclude that, as a matter of law, the Stipulation is not properly before the Commission. In addition, we further conclude that a non-party to an application proceeding cannot be permitted to circumvent a decision that it does not have standing through the filing of a proposed settlement with the applicant.

 Moreover, we are not persuaded by Leatherstocking’s argument that the proposed Stipulation is properly before the Commission because it was submitted in lieu of Exceptions. The Commission did not authorize the filing of something other than Exceptions to the ALJ’s Initial Decision, and this substitution is not a right that parties can confer upon themselves. In addition, our Secretarial Letter of July 20, 2012, established a deadline for Parties to file Exceptions to the ALJ’s Initial Decision, pursuant to which UGI filed Exceptions and Leatherstocking filed Reply Exceptions. Therefore, Leatherstocking’s argument that the proposed Stipulation is a substitute for Exceptions is not factually accurate.

There remains for our consideration UGI’s February 10, 2012 Motion to Consolidate this proceeding with UGI’s application proceeding, at Docket No.

A-2012-228483. Having concluded that UGI does not have standing to protest Leatherstocking’s Application, Leatherstocking’s Application is now uncontested and qualifies for consideration under the Commission’s modified procedure. Consolidating the two proceedings, on the other hand, would require that Leatherstocking’s Application be referred with UGI’s application to the Office of Administrative Law Judge for evidentiary hearings. This would result in substantial and unnecessary delay in the review of Leatherstocking’s Application. We therefore shall deny UGI’s Motion to Consolidate.

**Conclusion**

For the reasons stated above, we conclude that the proposed Stipulation is not properly before us at this time and should be rejected as a matter of law, and that UGI’s Motion to Consolidate should be denied. Finally, in light of our conclusion that UGI does not have standing in this proceeding, Leatherstocking’s Application is now uncontested and shall be referred to the Commission’s Bureau of Technical Utility Services for consideration under this modified procedure; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the Joint Stipulation in Settlement filed on June 21, 2012, by Leatherstocking Gas Company, LLC, and UGI Penn Natural Gas, Inc., as well as the Amended Stipulation filed on June 26, 2012, by the same Parties be rejected as a matter of law.

2. That the Motion to Strike the Stipulation and Amended Stipulation, filed on June 27, 2012, by the Bureau of Investigation and Enforcement, be granted in part and denied in part, consistent with this Opinion and Order.

 3. That the Motion to Consolidate, filed by UGI Penn Natural Gas, Inc., on February 10, 2012, be denied.

 4. That this case shall be referred to the Bureau of Technical Utility Services for consideration under modified procedure.

5. That the Secretary’s Bureau shall place a copy of this Opinion and Order in the public file at Docket No. A-2012-2284831



 **BY THE COMMISSION**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: August 30, 2012

ORDER ENTERED: August 30, 2012

1. Leatherstocking and UGI filed the proposed Stipulation and Amended Stipulation at the docket numbers for both the instant proceeding and a UGI application proceeding at Docket No. A-2012-2284831. I&E objects to the placement of both docket numbers on the pleadings because the two proceedings have not been consolidated. Motion to Strike at 2, n. 2. We agree that this was not appropriate. [↑](#footnote-ref-1)
2. The Amended Stipulation is identical to the Stipulation, with the exception of revisions that clarified that Leatherstocking and UGI intended to submit the Stipulation directly to the Commission in lieu of Exceptions and Reply Exceptions to Administrative Law Judge David A. Salapa’s March 20, 2012 Initial Decision. Since the two documents are identical in all other respects, we shall refer to both documents as the “Stipulation” in this Opinion and Order. [↑](#footnote-ref-2)
3. The ALJ granted Williams’ Petition to Intervene by Order dated February 15, 2012. [↑](#footnote-ref-3)
4. UGI’s Application was docketed at A-2012-2284831. [↑](#footnote-ref-4)