# BEFORE THE

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2013-2361763

Office of Consumer Advocate : C-2013-2364423

Office of Small Business Advocate : C-2013-2367950

 :

 v. :

 :

UGI Penn Natural Gas, Inc. :

**RECOMMENDED DECISION**

Before

Elizabeth H. Barnes

Administrative Law Judge

HISTORY OF THE PROCEEDINGS

 This decision recommends approval of the Stipulation In Settlement Of Section 1307(f) Rate Investigation (Stipulation or Settlement), filed in this matter on August 12, 2013, by UGI Penn Natural Gas, Inc. (PNG or the Company), the Bureau of Investigation and Enforcement (I&E), the Office of Small Business Advocate (OSBA), and the Office of Consumer Advocate (OCA).

 On May 1, 2013, PNG submitted its annual purchased gas cost (PGC) pre-filing information, pursuant to 52 Pa. Code §§53.64 and 53.65. On May 31, 2013, PNG filed its definitive 2013 PGC filing, with proposed modifications to PNG’s Tariff Gas - Pa. P.U.C. No. 8, to become effective December 1, 2013, and supportive written direct testimony. The Company proposes a PGC rate of $5.9749/Mcf for the residential class (Rate R), which is a $0.4299/Mcf increase from its current PGC rate.

I&E filed a Notice of Appearance on May 21, 2013. On May 21, 2013, OCA filed a formal complaint at Docket No. C-2013-2364423. On June 7, 2013, OSBA filed a complaint at Docket No. C-2013-2367950.

On June 19, 2013, a consolidated Prehearing Conference was held in the UGI Penn Natural Gas, Inc. (“PNG”) PGC proceeding at Docket No. R-2013-2361763, UGI Central Penn Gas, Inc. (“CPG”) PGC proceeding at Docket No. R-2013-2361764 and the UGI Utilities, Inc. – Gas Division PGC proceeding at Docket No. R-2013-2361771.[[1]](#footnote-1) PNG’s 2013 PGC pre-filing, dated May 1, 2013 and the definitive filing dated May 31, 2013, was identified for the record as UGI Penn Natural Gas, Inc., (PNG) Exhibit No. 1. Tr. 9. The parties agreed to a procedural schedule which required in-hand service of the prepared written direct testimony of other parties, and rebuttal and surrebuttal testimony on July 10, 2013, July 19, 2013, and July 25, 2013, respectively, evidentiary hearings on July 30-31, 2013, and a modified discovery response time.

I issued a Procedural Order on June 20, 2013, which set forth the procedural schedule and the other matters discussed at the Prehearing Conference. The Procedural Order granted UGI, CPG and PNG’s Joint Petition for Protective Order and a Protective Order was also issued on June 20, 2013.

 In accordance with the Procedural Order, OCA, I&E and OSBA provided direct testimony on July 10, 2013, and PNG filed rebuttal testimonies on July 19, 2013. On July 25, 2013, I was notified by PNG that a settlement in principle had been reached regarding all issues among all of the parties in the instant proceeding. Therefore, the hearing scheduled for July 30-31, 2013 was shortened to a hearing convening on July 31, 2013, for the purpose of entering into the record the written testimonies and exhibits of the parties. An Order Suspending Procedural Schedule was issued on July 31, 2013, which suspended the requirement that briefs be filed and instead directed that a settlement petition(s) be filed with statements in support or non-opposition attached thereto on or before August 12, 2013.

 At the July 31, 2013, hearing, PNG Exhibit No. 1 (5/1/13 pre-filing information (Book 1), 5/31/13 filing and direct testimony (Book 2)) was admitted into the record. Tr. 24. Additionally, PNG Statements 1-R (McAllister – rebuttal), and 3-R (Hart – rebuttal) were admitted into the record. OCA Statement No. 1, (Mierzwa – direct) was admitted. OSBA Statement No. 1 (Knecht – direct) was admitted. I&E Statement No. 1 (Sears – direct) and 2 (Cline – direct) and I&E Exhibit No. 1 (Sears) was also admitted. Tr. 25-28.

On August 12, 2013, PNG, I&E, OSBA and OCA filed the Stipulation previously referenced herein. There is no other party in opposition to the Stipulation.

On August 13, 2013, the PNG 1307(f) record was closed for decision writing. The record consists of the above-mentioned statements and exhibits and thirty-nine (39) transcript pages. This matter is ready for a Recommended Decision on whether the parties’ proposed resolution of the issues in this proceeding should be approved by the Commission.

STATUTORY CRITERIA

 Section 1307(f)(5) of the Public Utility Code (Code), 66 Pa. C.S. §1307(f)(5), requires that the Commission determine the portion of PNG’s historic period actual gas costs which meet the least cost fuel procurement standards set forth in Section 1318 of the Code, 66

Pa. C.S. §1318. In addition, Section 1318 findings must be made with respect to new PGC rates to be established in this proceeding. Since PNG purchases gas from affiliates (UGI Utilities, CPG; and UGI Energy Services, Inc.) it is also necessary for the Commission to make findings under Section 1318(b) of the Code, 66 Pa. C.S. §1318(b). See, PNG Exhibit No. 1 (Book 1), Section 13. Section 1317 of the Code, 66 Pa. C.S. §1317, requires the submission of certain information to enable the Commission to make a least cost fuel procurement policy evaluation.

 In determining whether PNG is pursuing a least cost fuel procurement policy under Section 1318 of the Code, the specific findings in §1318(a)(1) through (4) must be made as follows: (1) that the utility has fully and vigorously represented its ratepayers’ interests before the Federal Energy Regulatory Commission (FERC); (2) that the utility has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to ratepayer interests; (3) that the utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies; and, (4) that the utility has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.

 With respect to purchases from affiliates, the Commission is required to make the following specific findings pursuant to §1318(b)(1) through (b)(3): (1) that the utility has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests; (2) that each contract for the purchase of gas from an affiliated interest is consistent with a least cost fuel procurement policy; and, (3) that neither the utility nor its affiliated interest has withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.

DESCRIPTION OF THE SETTLEMENT

 The Stipulation consists of an eleven (11) page document, with attached Appendices A through D. The body of the document provides the terms and conditions of the Settlement, which are:

1. The Parties agree the rates for the recovery of the purchased gas costs of PNG should be revised effective December 1, 2013, subject to updates, to reflect the rates set forth in its May 31, 2013 PGC filing.
2. In its 2014 annual PGC filing (currently anticipated to be filed on May 30, 2014), PNG will propose to modify the current C-Factor methodology in a manner which eliminates current discretion to utilize either remaining life or annual sales in the calculation of the quarterly rate change on a case-by-case basis, and shall propose to establish the specific calculation methodology the company intends to use for each quarterly filing for the PGC rate period of December, 2014 to November, 2015.
3. PNG hereby confirms that it will fully credit the PGC for all capacity release revenues associated with its capacity releases to CPG.

1. PNG shall submit with its 2014 annual PGC filing (currently anticipated to be filed on May 30, 2014) a written study of the effects of (1) company use, (2) gas heat content, (3) temperature and pressure adjustments, (4) third-party line breaks, (5) theft of gas, (6) blow-downs and (7) other optional UFG contributing factors selected by PNG for inclusion, on PNG’s Unaccounted-For Gas (“UFG”) levels. The analysis of each specified contributing factor on PNG UFG levels shall be comparable to that found in the UFG study performed by PECO Energy (“PECO”) and attached to PECO’s comments in the Commission’s UFG rulemaking proceeding at Docket No. L-2012-2294746.
2. All other provisions of PNG’s 1307(f) proceeding are approved as set forth in PNG’s May 1, 2013 filing, PNG’s May 31, 2013 filing and the testimony, schedules and exhibits filed in support thereof.

 Appendices A, B, C, and D contain Statements in Support of the Stipulation, prepared by PNG, I&E, OCA, and OSBA respectively. The Stipulation requests that certain findings be made, as required for gas costs incurred during the historic period, and as required for approval of proposed rates and affiliate purchases. Specifically, with respect to the historic period, which is the twelve months ended March 31, 2013, the Stipulation requests that the Commission find that PNG has met the Section 1318 standards as to all historic period purchased gas costs. The Stipulation references portions of the evidentiary record where specific support for the required statutory findings can be found. This evidentiary support relates to: (1) FERC participation; (2) supplier negotiations/renegotiations; (3) efforts to obtain lower cost gas supplies; (4) withheld supplies; (5) affiliated transactions; (6) least cost fuel procurement policy; (7) PGC calculation; and (8) reliability.

 With respect to the twelve-month period beginning December 1, 2013, and ending November 30, 2014, which is the period of time during which proposed rates approved in this proceeding would be in effect, the Stipulation requests Section 1318 findings, based upon the evidence of record in this proceeding concerning PNG’s purchasing practices. Nevertheless, the Parties acknowledge that these findings are made solely for the purpose of setting prospective rates and that, except as agreed to in the Settlement, these findings do not bar subsequent review of and challenge to these gas purchases and practices.

 With respect to the interim period, which is April 1, 2013, through November 30, 2013, the Stipulation provides that a subsequent review of and challenge to these gas purchases and practices are also not precluded, except as agreed to in the Settlement.

 The Stipulation is conditioned upon the Commission’s approval of terms and conditions contained therein without modification, addition, or deletion. If the Commission modifies the Settlement or fails to approve it by December 1, 2013, then any Party may elect to withdraw from this Stipulation and may proceed with litigation. In that event, the Settlement would be void and of no effect.

 The Stipulation is proposed by the Parties to settle certain issues in the instant proceeding and is made without any admission against, or prejudice to, any position which a Party to the Stipulation may adopt during any subsequent litigation of this proceeding, or to positions that a Party may advance in the future on the merits of the issues. It is understood and agreed among the Parties that the Stipulation is the result of compromise and does not necessarily represent the position that would be advanced by any Party in the event the proceeding was to be fully litigated.

FINDINGS OF FACT

 1. PNG is a natural gas distribution company with gross intrastate annual operating revenues in excess of $40 million, and furnishes natural gas distribution service to customers within the Commonwealth of Pennsylvania. Stipulation at 2.

 2. On May 31, 2013, at Docket No. R-2013-2361763, PNG filed its definitive annual PGC filing for 2013, with proposed modifications to PNG’s Tariff Gas - Pa. P.U.C. No. 8, to become effective for service rendered on and after December 1, 2013. Stipulation at 3, PNG Exhibit 1 (Book 2).

 3. The Parties agree the rates for the recovery of the purchased gas costs of PNG should be revised effective December 1, 2013, subject to updates, to reflect the rates set forth in its May 31, 2013 PGC filing. Stipulation at 3.

 4. As a result of the Stipulation, the Formal Complaints of the OCA and the OSBA, and any other concerns of the parties have been satisfactorily addressed. *See,* Statements in Support at Appendices A - D.

 5. PNG has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory Commission. PNG Exhibit 1 (Book 1), Section 3; 66 Pa. C.S. §§1317(a)(1); 1318(a)(l).

 6. PNG has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve itself from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of its ratepayers. PNG Exhibit 1 (Book 1), Sections 2 and 5; 66 Pa. C.S. §§1317(a)(2); 1318(a)(2).

 7. PNG has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies. PNG Exhibit 1 (Book 1) Sections 1, 2 and 5; 66 Pa. C.S. §§1317(a)(3); 1318(a)(3).

 8. PNG has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy. PNG Exhibit 1 (Book 1), Section 5; 66 Pa. C.S. §§1317(a)(4); 1318(a)(4).

 9. PNG has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests. PNG Exhibit 1 (Book 1), Section 13; 66 Pa. C.S. §§1317(b)(1); 1318(b)(l).

 10. Each contract for the purchase of gas by PNG from an affiliated interest is consistent with a least cost fuel procurement policy. PNG Exhibit 1 (Book 1), Section 13; 66 Pa. C.S. §§1317(b)(2); 1318(b)(2).

 11. Neither PNG nor its affiliated interests have withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy. PNG Exhibit 1 (Book 1), Section 13; 66 Pa. C.S. §§1317(b)(3); 1318(b)(3).

DISCUSSION

 The Commission has expressed a policy of encouraging settlements and has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§5.231, 69.401.

 The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order entered April 1, 1996; Pa. P.U.C. v. CS Water and Sewer Associates, 74 PA PUC 767 (1991).

OCA Position

 OCA filed a Complaint in this matter on May 21, 2013. In OCA’s Statement in Support, OCA states its concerns have been satisfied by the terms of settlement. In addition, the Commission issued an Order in another PGC proceeding concerning National Fuel Gas Distribution Corporation which was entered on July 22, 2013 at Docket No. R-2013-2341534. The Order resolved a ratemaking issue for OCA’s witness, Mr. Mierzwa.

OSBA Position

 The OSBA Statement in Support indicated that it had retained Robert D. Knecht as its expert, and with his assistance, reviewed all the filings, testimony, and interrogatory responses, focusing on issues in which small business customers could potentially be treated unfairly. Based upon this review, the OSBA had issues regarding unaccounted for gas (UFG). The Settlement addresses these concerns as follows.

PNG shall submit with its 2014 annual PGC filing (currently anticipated to be filed on May 30, 2014) a written study of the effects of (1) company use, (2) gas heat content, (3) temperature and pressure adjustments, (4) third-party line breaks, (5) theft of gas, (6) blow-downs and (7) other optional potential UFG contributing factors selected by PNG for inclusion, on PNG’s Unaccounted-For-Gas (UFG) levels. The analysis of each specified contributing factor on PNG UFG levels shall be comparable to that found in the UFG study performed by PECO Energy (PECO) and attached to PECO’s comments in the Commission’s UFG rulemaking proceeding at Docket No. L-2012-2294746.

Stipulation at Par. 18.

OSBA asserts that requiring the Company to perform such a detailed study examining the status of PNG’s UFG is a reasonable resolution to this issue. The Stipulation allows for the recommendation of Mr. Knecht, although delayed until next year, which will presumably reveal the reasons for the UFG problems on the Companies’ systems.

I&E Position

 I&E, which was a signatory to the Settlement, provided a detailed analysis of how the public interest is served by the Settlement. Specifically, I&E stated that the public is served because PNG has agreed to modify its current C-factor methodology it uses in a way that eliminates its current discretion to switch between annual and remaining life volumes whenever it chooses.

 For the Gas Cost Rate (GCR) period from December, 2014 to November, 2015, PNG will establish the specific calculation methodology it intends to use for each quarterly filing. This provides the parties with a road map to show in which quarters PNG will be using which methodology. Thus, there is more predictability and less risk for the public. I&E concluded that it fully supports the Settlement as it believes that all concerns have been satisfactorily resolved through discovery and discussions with the Company and are incorporated into the Settlement.

Disposition

 I am persuaded to recommend adoption of the Settlement because PNG has agreed to modify its current discretion to switch between annual and remaining life volumes whenever it chooses. For the GCR period from December, 2014 to November, 2015, PNG will establish the specific calculation methodology it intends to use for each quarterly filing. This provides the parties with a road map to show in which quarters PNG will be using which methodology. Thus, there is more predictability and less risk for the public.

 The Settlement addresses and satisfies OCA’s concerns and it will allow for OSBA’s witness Mr. Knecht’s recommendation regarding a detailed study examining the causes of PNG’s unaccounted for gas loss, which may reveal reasons for gas loss problems on the systems. This is in the public’s interest.

 Finally, as stated by the Company in its respective Statement in Support, a resolution of this case by settlement will avoid the time and expense associated with continuing the litigation. The Stipulation reflects a reasonable resolution of all concerns and is unopposed by any party.

 For all the foregoing reasons, I find that the Stipulation is in the public interest and consistent with the requirements of Section 1318 of the Code, 66 Pa. C.S. §1318. Accordingly, I recommend that the Stipulation be approved and that the compliance filing, consistent therewith, be permitted to become effective for service rendered on and after December 1, 2013.

CONCLUSIONS OF LAW

 1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S. §§501, 1301, 1307(f), 1317, 1318.

 2. There is sufficient evidence of record to make the findings required by Section 1318 of the Public Utility Code, 66 Pa. C.S. §1318.

 3. With respect to gas purchases and gas purchasing practices during the twelve-month historic reconciliation period ended March 31, 2013, PNG has met the standards set forth in Section 1318 of the Public Utility Code, 66 Pa. C.S. §1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa. C.S. §1307(f)(5).

 4. During the twelve-month period ended March 31, 2013, PNG has met the requirements of Section 1318 of the Public Utility Code by pursuing a least cost fuel procurement policy, consistent with its obligation to provide safe, adequate and reliable service to its customers.

 5. With respect to the twelve-month period beginning December 1, 2013, PNG has satisfied each of the standards for a least cost fuel procurement policy set forth in Section 1318 of the Public Utility Code, based upon the evidence of record concerning its purchasing practices, subject to further review in an appropriate future proceeding.

 6. The Stipulation In Settlement Of Section 1307(f) Rate Investigation submitted by PNG, I&E, OCA, and OSBA at this docket on August 12, 2013, which has not been opposed by any other party, should be approved as it is in the public interest.

 7. A compliance filing consistent with the Stipulation In Settlement Of Section 1307(f) Rate Investigation filed on August 12, 2013, should be permitted to become effective for service rendered by PNG on and after December 1, 2013.

ORDER

 THEREFORE,

 IT IS RECOMMENDED:

 1. That the Stipulation In Settlement Of Section 1307(f) Rate Investigation submitted by UGI Penn Natural Gas, Inc., the Bureau of Investigation and Enforcement, the Office of Small Business Advocate, and the Office of Consumer Advocate at Docket No. R-2013-2361763, on August 12, 2013, and which has not been opposed by any other party, is hereby approved.

 2. That UGI Penn Natural Gas, Inc. may file a tariff supplement, on one day’s notice to the Commission, containing changes in rates to provide for the recovery of its costs of purchased gas, consistent with the terms and conditions of the Stipulation In Settlement Of Section 1307(f) Rate Investigation.

 3. That UGI Penn Natural Gas, Inc., the Bureau of Investigation and Enforcement, the Office of Small Business Advocate, and the Office of Consumer Advocate shall comply with the terms and conditions of the Stipulation In Settlement Of Section 1307(f) Rate Investigation submitted in this proceeding, to the extent applicable, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

 4. That upon the filing of a tariff supplement by UGI Penn Natural Gas, Inc., acceptable to the Commission as conforming with this Order and the Stipulation In Settlement Of Section 1307(f) Rate Investigation, and the Commission’s approval thereof, the purchased gas rates established therein shall become effective for service rendered on and after December 1, 2013.

 5. That upon acceptance and approval by the Commission of the tariff supplement and supporting data filed by UGI Penn Natural Gas, Inc. as being consistent with this Order and the Stipulation In Settlement Of Section 1307(f) Rate Investigation, the inquiry and investigation at Docket No. R-2013-2361763 shall be terminated and marked closed and the Formal Complaints of the Office of Consumer Advocate and the Office of Small Business Advocate at Docket Nos. C-2013-2364423 and C-2013-2367950, respectively, shall be considered satisfied and marked closed.

Date: September 17, 2013 \_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Elizabeth H. Barnes

 Administrative Law Judge

1. At the Prehearing Conference, the PNG, CPG, and UGI PGC proceedings were consolidated by the ALJ for the limited purpose of an evidentiary hearing in the interest of judicial efficiency because the cases involved the same parties and witnesses. [↑](#footnote-ref-1)