

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

City of Reading,	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2530475
	:	
UGI Utilities, Inc.	:	
Respondent.	:	

**ANSWER OF CITY OF READING TO
PRELIMINARY OBJECTIONS OF UGI UTILITIES, INC.**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Defendant, City of Reading, (the “City”) by and through its attorneys, Eastburn and Gray, P.C., Michael J. Savona, Esquire, Michael E. Peters, Esquire, and Zachary A. Sivertsen, Esquire, hereby files the within Answer to Preliminary Objections filed by UGI Utilities, Inc. (“UGI”) in the above-captioned matter.

The City of Reading filed the instant Complaint pursuant to Section 701 of the Public Utility Code in order to compel the PUC to address the havoc being wrought within the Historic Districts of the City by UGI through their flagrant disregard of the requirements of Section 59.18 of the Commission’s regulations. In so doing, the City is not seeking to amend current regulations, nor is it asking that the Commission promulgate new regulations. On the contrary, the City seeks only that the Commission, through the adjudication of this Complaint, provide clarity to the parties regarding the proper application of § 59.18, and provide guidance to UGI and the City concerning the scope of § 59.18 and the responsibilities of UGI to comply with established Historic District requirements in light of the Commission’s approval of § 59.18.

Because the interpretation of existing regulation § 59.18 and the review of UGI's conduct in carrying out its meter installation program within the City's Historic District pursuant to § 59.18 are both fairly within the scope of authority of the Commission in this proceeding, *See, e.g., Germantown Cab Co. v. PUC*, 97 A.3d 410 (Pa. Cmwlth. 2014), the City hereby submits the following in opposition to the Preliminary Objections of UGI:

I. BACKGROUND

1. Admitted.

2. Admitted in part, denied in part. It is admitted that UGI provides natural gas service in the Commonwealth of Pennsylvania. The City is without sufficient information to admit or deny the remaining allegations of paragraph 12, and therefore denies same.

3. The allegations of paragraph 3 constitute conclusions of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 3 are based on a written final rule making order, the terms of which speak for themselves. UGI's characterizations of the contents of the order are denied.

4. The allegations of paragraph 4 constitute conclusions of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 4 are based on a written regulation, the terms of which speak for themselves. UGI's characterizations of the contents of the regulation are denied.

5. The allegations of paragraph 5 constitute conclusions of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 5 are based on a written regulation, the terms of which speak for themselves. UGI's characterizations of the contents of the regulation are denied.

6. The allegations of paragraph 6 constitute conclusions of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 6 are based on a written regulation, the terms of which speak for themselves. UGI's characterizations of the contents of the regulation are denied.

7. It is admitted only that the City filed a Formal Complaint at Docket No. C-2016-2530475 on February 17, 2016. The remaining allegations of paragraph 7 are based on the Formal Complaint, which is a writing, the terms of which speak for themselves. UGI's characterizations of the contents of the Formal Complaint are denied.

8. The allegations of paragraph 8 constitute conclusions of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 8 are based on UGI's Preliminary Objections, which is a writing, the terms of which speak for themselves. UGI's characterizations of the contents of the Preliminary Objections are denied.

II. STANDARD OF REVIEW

9. The allegations of paragraph 9 constitute conclusions of law to which no further response is required. To the extent a response is deemed necessary, said allegations are denied.

10. The allegations of paragraph 10 constitute conclusions of law to which no further response is required. To the extent a response is deemed necessary, said allegations are denied.

11. The allegations of paragraph 11 constitute conclusions of law to which no further response is required. To the extent a response is deemed necessary, said allegations are denied.

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1 - THE CITY'S REQUESTED RELIEF FOR COUNT 1 CANNOT BE GRANTED IN A COMPLAINT PROCEEDING BECAUSE IT WOULD REWRITE THE COMMISSION'S METER LOCATION REGULATIONS

12. The City incorporates its responses to paragraph 1 through 11 *supra* as if fully set forth at length.

13. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 13 are based on the City's Formal Complaint, which is a writing, the terms of which speak for themselves. UGI's characterizations of the contents of the Formal Complaint are denied. By way of further response, the City denies UGI's characterization that the City's request for relief would impose new rules and standards concerning meter location that do not currently exist under the Pennsylvania Public Utility Commission's regulations. On the contrary, the City seeks interpretation and enforcement of 52 Pa. Code § 59.18(d)(1) by the Commission as relates to UGI's meter relocation efforts in the designated Historic Districts of the City of Reading.

14. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 14 are based on the City's Formal Complaint, which is a writing, the terms of which speak for themselves. UGI's characterizations of the contents of the Formal Complaint are denied. By way of further response, the City denies that it seeks to rewrite the Commission's regulations and impose new standards upon UGI. The requested relief seeks interpretation and enforcement of the terms of § 59.18(d)(1) by the Commission as it relates to the actions of UGI in the Historic Districts of the City. By way of further response, § 59.18 already requires utilities to give meaningful consideration to the inside placement of gas meters in designated historic districts and this

requirement has applied to UGI's meter replacement efforts from the date the regulation went into effect. UGI's absolute failure to give ANY consideration, much less any meaningful consideration to the inside placement of meters in City Historic Districts, is well within the jurisdiction of the Commission to review and remediate where appropriate, based on specific facts to be developed during the hearing related to this matter.

15. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 15 are based on the City's Formal Complaint, which is a writing, the terms of which speak for themselves. UGI's characterizations of the contents of the Formal Complaint are denied. By way of further response, the City denies that its requested relief contradicts and seeks to rewrite § 59.18(d)(1). In failing to provide any meaningful consideration to the interior placement of gas meters in historic districts, UGI has violated the existing and express terms of § 59.18(d)(1). The City seeks relief to ensure that UGI complies with the express terms of § 59.18(d)(1), and specifically seeks relief from the Commission to compel UGI to conduct meaningful consideration of interior placement; something § 59.18(d)(1) already requires. Contrary to UGI's assertions to the contrary, the instant Complaint seeks fact-specific review of the actions undertaken by UGI within the City to determine if UGI has violated the requirements of § 59.18, and seeks guidance regarding the interpretation of § 59.18 as applied to the facts of this case. The City Complaint does not seek rulemaking under § 5.43 of Commission regulations. The City seeks interpretation of existing regulations.

16. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 16 are based on the City's Formal Complaint, which is a writing, the terms of which speak for themselves. UGI's

characterizations of the contents of the Formal Complaint are denied. By way of further response, the City denies that it seeks to add new regulatory requirements to § 59.18(d)(1). UGI is already required to consider interior placement of gas meters in historic districts under § 59.18. The City's Historic District regulations, as with historic district regulations throughout the Commonwealth, apply to all contractors performing exterior work visible from a public right-of-way within a historic district. Under Historic District regulations, all contractors must provide an explanation of exterior work being performed. Under § 59.18, and the Final Rulemaking Order amending § 59.18, the City avers that UGI is required to comply with City Historic District regulations.

17. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 17 are based on the City's Formal Complaint, which is a writing, the terms of which speak for themselves. UGI's characterizations of the contents of the Formal Complaint are denied. By way of further response, the City denies that its request for relief seeks to impose new rules and standards that do not exist under the Commission's regulations. It is specifically denied that there are "no such requirements" within Commission regulations already requiring UGI to consider the effect of exterior meter relocation on historic districts. UGI's interpretation of § 59.18 would leave the amendments relating to historic districts mere surplusage.

18. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the City denies that it is seeking to create different standards or rules for UGI to follow in relocating meters. As UGI states, all NGDCs are subject to § 59.18(d)(1). UGI failed to abide by the express terms of § 59.18(d)(1) when it gave no meaningful consideration to the inside placement of meters in the City's historic districts. The

City asks that the Commission conduct a fact-specific review of UGI's conduct within the City and thereafter order appropriate relief to remedy UGI's blatant disregard for PUC regulation, the regulations of the City which are enforceable through § 59.18 and to provide an interpretation of § 59.18(d)(1) as it relates to the installation of gas meters by UGI within the City of Reading.

B. PRELIMINARY OBJECTION NO. 2 - THE CITY'S REQUESTED RELIEF FOR COUNT 2 CANNOT BE GRANTED IN A COMPLAINT PROCEEDING BECAUSE IT WOULD REWRITE THE COMMISSION'S METER LOCATION REGULATIONS

19. The City incorporates its responses to paragraph 1 through 18 *supra* as if fully set forth at length.

20. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 18 are based on the City's Formal Complaint, which is a writing, the terms of which speak for themselves. UGI's characterizations of the contents of the Formal Complaint are denied. By way of further response, the City denies that the relief it seeks would institute new rules and standards that do not currently exist under the Commission's regulations. The City only seeks relief to ensure UGI adheres to the requirements of § 59.18(d)(1).

21. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the allegations of paragraph 21 are based on the City's Formal Complaint, which is a writing, the terms of which speak for themselves. UGI's characterizations of the contents of the Formal Complaint are denied. By way of further response, the City denies that the relief it seeks would institute new rules and standards that do not currently exist under the Commission's regulations. On the contrary, the City seeks a review of the actions of UGI in conducting meter relocations within the City and a determination by the Commission that UGI has violated the requirements of existing Commission regulations. The

City only seeks relief to ensure UGI adheres to the express terms of §§ 59.18(a)(5), (b)(1) and such relief does not require rulemaking as contemplated under § 5.43.

22. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, UGI seeks to avoid scrutiny of any of its actions in relocating meters with City Historic Districts in violation of § 59.18 by couching the City's Complaint as an attempt to engage in regulation of all NGDCs in Pennsylvania. Notwithstanding, the City here seeks only the scope of review of UGI's actions in performing specific installations in the City by the Commission which is afforded to the City by § 701 of the Public Utility Code. The Commission's jurisdiction to interpret its regulations and to review the actions of a particular utility in conformity to those regulations is clear and free from doubt.

C. PRELIMINARY OBJECTION NO. 3 - THE CITY'S REQUESTED RELIEF IMPERMISSIBLY ATTEMPTS TO ESTABLISH LOCAL JURISDICTION OVER UGI'S FACILITIES WHICH ARE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE COMMISSION

23. The City incorporates its responses to paragraph 1 through 22 *supra* as if fully set forth at length.

24. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the City denies that it seeks to regulate UGI's facilities in such a way that is preempted by the Commission's regulations.

25. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the City denies that it seeks to regulate UGI's facilities in such a way that is preempted by the Commission's regulations.

26. Denied. Denied as a conclusion of law to which no further response is required. To the extent a response is deemed necessary, the City denies that it seeks to regulate UGI's facilities in such a way that is preempted by the Commission's regulations.

IV. CONCLUSION

WHEREFORE, the City of Reading respectfully requests that this Court OVERRULE the Preliminary Objections of Respondent UGI.

Respectfully submitted,

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