

Michael J. Savona, Esquire  
Attorney I.D. # 78076  
Michael E. Peters, Esquire  
Attorney I.D. # 314266  
Zachary A. Sivertsen, Esquire  
Attorney I.D. # 320626  
EASTBURN AND GRAY, P.C.  
60 East Court Street, P.O. Box 1389  
Doylestown, PA 18901  
215-345-1342  
215-345-3528 – fax

*Attorneys for Centre Park Historic  
District, Inc. and City of Reading*

---

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CENTRE PARK HISTORIC DISTRICT,  
INC.

vs.

UGI UTILITIES, INC.

:  
:  
:  
:  
:  
:  
:

Docket No. C-2015-2516051

---

CITY OF READING,

v.

UGI UTILITIES, INC.

:  
:  
:  
:  
:  
:  
:

Docket No. C-2016-2530475

---

**BRIEF IN OPPOSITION TO PETITION OF UGI UTILITIES, INC.  
FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTIONS**

Pursuant to 52 Pa. Code § 5.302(b), Centre Park Historic District, Inc. (“CPHD”) and the City of Reading (“City”) (collectively referred to as “City Parties”), by and through their attorneys, Eastburn and Gray, P.C. and Michael J. Savona, Esquire, Michael E. Peters, Esquire, and Zachary A. Sivertsen, Esquire, hereby file the following Brief in Opposition to the Petition of UGI Utilities, Inc. for Interlocutory Review and Answer to Material Questions (“UGI Petition”).

**I. CONCISE COUNTER-STATEMENT OF THE CASE**

In September 2014, the Public Utility Commission (“Commission”) adopted a final rulemaking order (“Final Rulemaking Order”) amending 52 Pa.Code § 59.18 providing regulatory requirements for the placement of meters, regulators, and service lines (“Amended § 59.18”). Amended § 59.18 provided, as a general rule, that meters and regulators being relocated pursuant to 52 Pa.Code § 59.18 be placed outside and aboveground, but also identified situations where inside meter locations must be considered by the utility. More specifically, Amended § 59.18(d) explicitly states that inside meter placement “shall be considered” where a meter either:

1. is in a building listed on the National Register of Historic Places or is eligible to be listed in the National Register (and eligibility can be readily confirmed by the utility);
2. is in a building located in a historic district listed in the National Register, or in a historic district eligible to be listed in the National Register (and eligibility can be readily confirmed by the utility);
3. is in a building designated as historic under the Pennsylvania Historic Districts Act, the Pennsylvania Municipalities Planning Code, or a municipal home rule charter; or
4. is in a building located within a locally designated historic district or eligible for listing, or a building individually designated under local ordinance as a historic landmark or eligible for listing.

52 Pa.Code § 59.18(d).

The Commission specifically stated in the Final Rulemaking Order that the revised regulation was motivated by situations where regulated “utilities provide service in historic districts where municipal laws may require the meter to be located inside structures.” *See* Final Rulemaking Order, p. 5. In responding to the myriad comments received from historical

commissions and boards, private citizens, preservation groups, civic associations, and government entities and officials related to the placement of meters in historic districts, the Commission stated:

Although we believe that it is necessary that, due to its public safety obligations, the utility be allowed to make the final decision, this decision to locate a meter inside is not without direction. The regulation does provide, in effect, guidelines that must be followed. If an outside meter is not going to become available because of certain restrictions, then an inside meter location must be considered, and that does not appear to us to be ambiguous.

Final Rulemaking Order, p. 27 (emphasis added). Furthermore, the Commission stated that utilities have an obligation to determine whether a building is located within a historic area, and, if it is, obtain the municipality's approval where required:

We do believe...that the utility, in applying the regulation, has an obligation to know whether gas line improvements and meter location projects are located in historic areas. This is a burden that any property owner or contractor would probably have in undertaking exterior improvements in an historic district, since the local municipality may require prior approval before a building permit is issued.

Final Rulemaking Order, p. 18 (emphasis added).

The Commission's response indicates that it enacted Amended § 59.18 with the express intent of providing "guidelines that must be followed" by utilities when installing gas meters in historic districts. These guidelines include the requirement that, where applicable, the utility obtain "prior approval before a building permit is issued." *Id.* The City of Reading contains six (6) designated historic districts in which the inside placement of gas meters must be considered pursuant to Amended § 59.18(d). There are also several areas beyond the boundaries of these districts where the inside placement of gas meters must be considered because they are eligible for historic designation.

UGI, which provides natural gas distribution service to more than 19,500 customer accounts in the City, undertook a substantial multi-year program to replace and relocate interior gas meters to the exterior of buildings in the City. Notwithstanding the requirements of Amended § 59.18, as UGI has implemented its gas meter relocation program in the City, it has routinely placed gas meters in the front yards, on the fronts of buildings, and along building façades visible from the public rights-of-way in designated historic districts. The City maintains that where such meters have been installed, UGI has failed to give any meaningful consideration to inside placement, placements that could not be seen from the public rights-of-way, or placements that maintain the historic nature and aesthetic value of the City's historic districts. UGI has refused to properly complete City forms or obtain necessary approvals, and has never provided justification for the installation of gas meters on the exterior of historic buildings. The City has compiled data for hundreds of relocated meters in historic districts, which will demonstrate that UGI has failed to give any meaningful consideration to 52 Pa.Code § 59.18 within the City's historic districts.

City Plaintiffs also challenge UGI's meter placements on the basis that they have been placed in dangerous locations, both within and outside of historic districts, in violation of 52 Pa.Code § 59.18 and 49 C.F.R. 192.353. By way of example, vehicles have been striking gas meters, resulting in escaped natural gas and requiring evacuation of nearby residences. Meters are being placed, unprotected, only a few feet from busy City streets. The City has compiled data for hundreds of meters, which will demonstrate the dangers posed by UGI's placement of gas meters throughout the City.

The essence of the matter before the Administrative Law Judge is, therefore, an interpretation and application of Amended § 59.18 (and other codes and regulations where

applicable) as it applies to UGI's meter relocation program within the City, and ultimately an adjudication of whether UGI has violated those regulations.

**II. COUNTER-STATEMENT OF THE MATERIAL QUESTIONS**

1. Whether UGI's Petition for Interlocutory Review should be denied on the basis that this matter is appropriately before the Administrative Law Judge in a Formal Complaint proceeding and should be permitted to proceed?

**Suggested Answer: Yes.**

2. Whether the Administrative Law Judge has jurisdiction to consider the matters raised in City Parties' Formal Complaints in the Formal Complaint proceeding?

**Suggested Answer: Yes.**

3. Whether the scope of the evidence and issues to be addressed in this proceeding should be left to the discretion and determination of the Administrative Law Judge?

**Suggested Answer: Yes.**

**III. SUMMARY OF ARGUMENT**

There is neither need nor basis for interlocutory review in this matter. The Administrative Law Judge has already considered UGI's position in its Preliminary Objections that the City Parties are seeking relief outside of her jurisdiction, and overruled those preliminary objections. As occurred in its preliminary objections, in its Petition for Interlocutory Review UGI again misconstrues the matter before the Administrative Law Judge.

The City Parties filed their Complaints (now consolidated) pursuant to Section 701 of the Public Utility Code in order to compel the Commission to address the havoc being wrought within the Historic Districts of the City by UGI, through its flagrant disregard of the

requirements of Amended § 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 Administrative Law Judge adjudicate this matter, on a City-wide, but meter-by-meter basis, and determine whether UGI's meter relocation efforts comply with Amended § 59.18. Through that adjudication, and by making meter-by-meter determinations, the Administrative Law Judge will provide clarity to the parties regarding the proper application of Amended § 59.18, and provide guidance to UGI and the City concerning the scope of Amended § 59.18 and the responsibilities of UGI to comply with established historic district requirements, and to safely install meters, in light of the Commission's regulations.

The interpretation of Amended § 59.18 and the review of UGI's conduct in carrying out its meter installation program within the City pursuant to Amended § 59.18 are both fairly within the scope of authority of the Administrative Law Judge in this proceeding. In fact, the City has performed an extensive meter-by-meter survey, identifying violations of Amended § 59.18 throughout the City—both in terms of historic districts and safety—and intends to introduce those violations to the Administrative Law Judge through the hearing process. The Administrative Law Judge is able, through established procedures, to determine the limits of her powers and to rule and adjudicate this matter consistent with her authority. There is no need for interlocutory review and, should the Commission grant interlocutory review, no merit to UGI's position with respect to the Material Questions posed.

#### IV. ARGUMENT

##### A. There is no basis for interlocutory review in this matter.

52 Pa.Code § 5.302(a) provides:

(a) During the course of a proceeding, a party may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition must be in writing with copies served on all parties and the presiding officer and state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

“The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice—that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process.” *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002 (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985). As the Commission has explained:

Moreover, as a general rule, petitions for interlocutory review are not favored. The preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission, a full opportunity to develop the record, brief issues, and present arguments at each stage.

*Petition of Commc'ns Workers of Am. for A Pub., on-the-Record Comm'n Investigation of the Safety, Adequacy, & Reasonableness of Serv. Provided by Verizon Pennsylvania LLC*, P-2015-2509336, 2016 WL 1689627, at \*8 (Apr. 21, 2016).

Administrative Law Judge Mary D. Long has already considered UGI’s assertion that the City is seeking relief beyond her powers, and overruled UGI’s Preliminary Objections. The

parties are in the middle of discovery in this matter, and UGI and the Commission's Bureau of Investigation and Enforcement ("I&E") have filed a Joint Motion seeking, *inter alia*, a prehearing conference with Judge Long, a modification of the litigation schedule in this matter (to provide additional time for discovery), and a modification to the hearing format in this matter. Specifically, given the hundreds of meters identified by City Plaintiffs as being at issue in this matter, UGI and I&E have requested written testimony or, in the alternative, a bifurcated hearing.<sup>1</sup>

UGI itself has acknowledged that this case involves an extensive meter-by-meter review of UGI's meter installations throughout the City. This will be a fact-intensive inquiry requiring the application of Amended § 59.18, an inquiry directly within the jurisdiction of the Administrative Law Judge in a Formal Complaint proceeding. So fact intensive, in fact, that UGI has requested the aforementioned modifications to the hearing format. UGI's Petition for Interlocutory Review is nothing more, and nothing less, than an attempt to avoid this fact intensive inquiry.

With respect to UGI's request that the Commission grant interlocutory review to limit the scope of the Administrative Law Judge's inquiry, the Administrative Law Judge is more than capable of determining the scope of her authority in this matter as this proceeding continues, and ruling and crafting any relief granted, accordingly. UGI's concerns regarding the scope of the Administrative Law Judge's authority can, and should, be addressed by UGI through the Administrative Law Judge as this matter proceeds on the merits.

---

<sup>1</sup> As proposed by UGI and I&E, at the bifurcated hearing the City would present its case in chief first. UGI and I&E would then have 30 days to prepare rebuttal testimony, and present their cases thereafter.



UGI does not face substantial prejudice justifying interlocutory review. To the contrary, any concerns harbored by UGI can be satisfactorily addressed through the normal review process. Should interlocutory review be granted, and if the Administrative Law Judge is prevented from performing a meter-by-meter analysis, City Plaintiffs will be precluded from meaningful review of UGI's meter relocation efforts within the City. City Plaintiffs should not be penalized merely because they have identified *too many* (hundreds) meter placement violations by UGI.

City Plaintiffs respectfully request that the Commission decline to grant interlocutory review and allow this matter to move forward in the normal course, allowing the parties and the Administrative Law Judge a full opportunity to develop the record, brief the issues, and present argument.

**B. The relief sought by City Plaintiffs is within the jurisdiction of the Administrative Law Judge in this Formal Complaint proceeding.**

City Plaintiffs filed their Formal Complaints under Section 701 of the Public Utility Code:

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.

66 Pa.C.S. § 701.

UGI misconstrues the relief sought by City Plaintiffs. City Plaintiffs seek interpretation and enforcement of 52 Pa. Code § 59.18(d)(1) by the Commission as relates to UGI's meter relocation efforts in the City of Reading, including specifically within the City's historic

districts. Amended § 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. The Commission's Final Rulemaking Order goes one step further by clarifying that a utility is not only required to educate itself on the location of historic districts, but, where applicable, to obtain approval before obtaining a permit to relocate a meter in a historic district. Final Rulemaking Order, p. 18.

City Plaintiffs aver that 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 Administrative Law Judge to review and remediate where appropriate, based on the specific facts to be developed during the hearing related to this matter.

City Plaintiffs have performed a meter-by-meter analysis throughout the City, and will be prepared to present evidence on hundreds of meters throughout the City and alleged violations of Amended § 59.18. The Administrative Law Judge is well within her authority to perform this meter-by-meter, fact intensive, analysis. While the ultimate question of interpretation is left to the Administrative Law Judge, City Plaintiffs maintain that, given the language set forth in Amended § 59.18 itself and the Final Rulemaking Order, which goes so far as to acknowledge that, where applicable, UGI must obtain approval before relocating a meter in a historic district, *no consideration* constitutes a violation of Amended § 59.18.

Dependent upon the Administrative Law Judge's interpretation of Section 59.18 as applied to UGI's meter relocation efforts in the City, the City seeks relief to ensure that UGI complies with the express terms of Amended § 59.18(d), and specifically seeks relief to compel

UGI to conduct meaningful consideration of interior placement; something Amended § 59.18(d) already requires.

With respect to the alleged safety violations pursuant to 52 Pa.Code § 59.18 and 49 C.F.R. § 192.353, City Plaintiffs have similarly engaged in a meter-by-meter analysis of dangerous conditions posed by relocated meters within the City. The Administrative Law Judge may consider these conditions and determine whether they do, or do not, violate established regulations.

Contrary to UGI's assertions, the instant Complaint seeks a fact-specific review of the actions undertaken by UGI within the City to determine whether UGI has violated the requirements of Amended § 59.18, and seeks guidance regarding the interpretation of Amended § 59.18 as applied to the facts of this case. City Plaintiffs do not seek any revisions to the Commission's rules and procedures pursuant to 52 Pa. Code § 5.43. *See, e.g., Petition of Level 3 Commc'ns, LLC to Amend the Pub. Util. Comm'n Regulations to Streamline Transfer of Control & Affiliate Filing Requirements for Competitive Carriers Rulemaking to Amend Chapter 63 Regulations So As to Streamline Procedures for Comm'n Review of Transfer of Control & Affiliate Filings for Telecommunications Carriers*, L-00070188, 2007 WL 7232896, at \*1 (Sept. 27, 2007) (where a utility petitioned under Section 5.43 to revise the Commission's rules and procedures). Rather, City Plaintiffs seek determinations of whether UGI's meter placements violate Amended § 59.18, which inherently involves the Administrative Law Judge applying and interpreting the regulation.

In *Carlock v. United Telephone Company of Pennsylvania*, F-00163617, 1994 WL 932277, at \*1 (Jan. 26, 1994) an Administrative Law Judge's dismissal of a formal complaint without a hearing based on a finding that it could have been brought under Section 5.43 rather

than Section 701 was reversed on appeal by the Commission. The formal complaint in *Carlock* asserted that United's suspension of Carlock's telephone service without notice constituted unreasonable service in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. §1501. In his formal complaint Carlock opined that where a customer fails to receive notice before having service suspended, they ought to be reconnected for a minimum of 24 hours.

United motioned for, and was granted, summary judgment by the Administrative Law Judge. One of the Administrative Law Judge's bases for dismissal was "that the complaint was not substantively directed against United's conduct but rather sought a change in the Commission's regulations." *Carlock* at \*1. On appeal, the Commission reversed and ordered the Administrative Law Judge to hold a hearing on the formal complaint. The Commission opined that rather than rely on pleadings, "the ALJ has an affirmative duty to ensure the development of a record that reasonably presents the underlying grievance." *Carlock* at \*2. The Commission specifically found that the Administrative Law Judge needed to consider the underlying factual dispute, interpret the regulation, and make a determination with respect to whether United did indeed engage in unreasonable service in violation of the Public Utility Code. *Id.*

*Carlock* demonstrates that where an underlying factual dispute exists, an Administrative Law Judge has a duty to fully develop a record that "reasonably presents the underlying grievance." It also clarifies an Administrative Law Judge's role in interpreting Commission Regulations—where ambiguity exists in a regulation, the Administrative Law Judge should interpret and apply the regulation to the underlying facts. This is precisely what City Parties request that the Administrative Law Judge do in this matter.

In summary, City Plaintiffs ask that the Administrative Law Judge conduct a fact-specific review of UGI's conduct within the City and order appropriate relief to remedy UGI's blatant

disregard for the Commission's regulations, and to interpret and apply Amended § 59.18 as it relates to the installation of gas meters by UGI within the City of Reading.

C. **There is no basis for the Commission to limit the scope of this proceeding.**

An interlocutory order limiting the scope of the Administrative Law Judge's review in this matter is without basis and unnecessary. The Administrative Law Judge has the power, should she deem it appropriate, to direct the City to amend its Complaint, 52 Pa.Code § 5.93; consider a motion for summary judgment, 52 Pa.Code § 5.102; exclude irrelevant or immaterial evidence or limit discovery, 52 Pa.Code § 5.483; hold a prehearing conference to focus the issues, 52 Pa.Code § 5.222; and of course, if warranted, deny the relief sought by City Plaintiffs—either outright or in part.

Given the existing procedures, it would be inappropriate for the Commission to reach into this proceeding and change the Administrative Law Judge's scope of review. City Plaintiffs respectfully request that the Commission allow this matter to continue to proceed to resolution before the Administrative Law Judge.

V. **CONCLUSION AND REQUESTED RELIEF**

For the foregoing reasons, City Plaintiffs respectfully request that interlocutory review in this matter be denied as unnecessary and inappropriate, and that, if the Commission reaches the merits of the Petition, that the Petition be denied.

**EASTBURN AND GRAY, P.C.**



---

Michael J. Savona, Esquire  
Attorney I.D. # 78076  
Michael E. Peters, Esquire  
Attorney I.D. # 314266  
Zachary A. Sivertsen, Esquire  
Attorney I.D. # 320626  
60 E. Court Street, P.O. Box 1389  
Doylestown, PA 18901  
215-345-7000  
215-345-3528—fax  
[msavona@eastburngray.com](mailto:msavona@eastburngray.com)  
[mpeters@eastburngray.com](mailto:mpeters@eastburngray.com)  
[zsivertsen@eastburngray.com](mailto:zsivertsen@eastburngray.com)

Dated: September 9, 2016

Michael J. Savona, Esquire  
Attorney I.D. # 78076  
Michael E. Peters, Esquire  
Attorney I.D. # 314266  
Zachary A. Sivertsen, Esquire  
Attorney I.D. # 320626  
EASTBURN AND GRAY, P.C.  
60 East Court Street, P.O. Box 1389  
Doylestown, PA 18901  
215-345-1342  
215-345-3528 – fax

*Attorneys for Centre Park  
Historic District, Inc.*

---

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CENTRE PARK HISTORIC DISTRICT, INC. :  
vs. : Docket No. C-2015-2516051  
UGI UTILITIES, INC. :

---

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

---

**CERTIFICATE OF SERVICE**

It is hereby certified that on September 9, 2016, Michael E. Peters, Esquire served, by first class mail, postage prepaid, a true and correct copy of the foregoing Brief in Opposition to Petition for Interlocutory Review on the following:

Mark C. Morrow, Esquire  
Danielle Jouenne, Esquire  
UGI Utilities, Inc.  
460 North Gulph Road  
King of Prussia, PA 19406

Mary D. Long  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

David B. MacGregor, Esquire

Adam D. Young, Esquire

Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-280

Devin T. Ryan, Esquire  
17 North Second Street, 12th Floor  
Harrisburg, PA 17101-1601

*Attorneys for UGI Utilities, Inc.*

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3205  
Harrisburg, PA 17105-3265

*Attorney for PUC Bur. of Inv. and Enforcement*

EASTBURN AND GRAY, P.C.

By:

  
Michael E. Peters, Esquire