



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Main Fax  
www.postschell.com

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Devin Ryan

dryan@postschell.com  
717-612-6052 Direct  
717-731-1985 Direct Fax  
File #: 165082

September 12, 2016

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Centre Park Historic District v. UGI Utilities, Inc.  
Docket No. C-2015-2516051**

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

Dear Secretary Chiavetta:

Enclosed for filing please find UGI Utilities, Inc.'s Brief in Support of Petition for Interlocutory Review and Answer to Material Questions, in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl  
Enclosures

cc: Honorable Mary D. Long  
Certificate of Service

**CERTIFICATE OF SERVICE**  
**(Docket Nos. C-2015-2516051 and C-2016-2530475)**

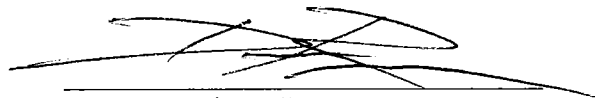
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL & FIRST CLASS MAIL**

Michael J. Savona, Esquire  
Michael E. Peters, Esquire  
Zachary A. Sivertsen, Esquire  
Eastburn and Gray, P.C.  
PO Box 1389  
Doylestown, PA 18901

Adam Young, Esquire  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

Date: September 12, 2016



Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Centre Park Historic District	:	
	:	
v.	:	Docket No. C-2015-2516051
	:	
UGI Utilities, Inc.	:	
	:	
City of Reading	:	
	:	
v.	:	Docket No. C-2016-2530475
	:	
UGI Utilities, Inc.	:	

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

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Mark C. Morrow (ID # 33590)  
Chief Regulatory Counsel  
Danielle Jouenne (ID # 306829)  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
Phone: 610-768-3628  
E-mail: [morrowm@ugicorp.com](mailto:morrowm@ugicorp.com)  
[jouenned@ugicorp.com](mailto:jouenned@ugicorp.com)

David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-587-1444  
E-mail: [dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)

Devin T. Ryan (ID # 316602)  
Post & Schell, P.C.  
17 North Second Street  
12th Floor  
Harrisburg PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: [dryan@postschell.com](mailto:dryan@postschell.com)

Dated: September 12, 2016

*Attorneys for UGI Utilities, Inc.*

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## I. INTRODUCTION

On September 1, 2016, UGI Utilities, Inc. (“UGI” or the “Company”) filed a Petition for Interlocutory Review and Answer to Material Questions, pursuant to 52 Pa. Code § 5.302. In its Petition, UGI requests that the Pennsylvania Public Utility Commission’s (“Commission”) answer two material questions: (1) whether the Centre Park Historic District’s (“CPHD”) and the City of Reading’s (“City”) (collectively, “Complainants”)<sup>1</sup> Complaints should be dismissed because the relief requested -- impose new rules and standards concerning meter locations that do not currently exist under the Commission’s regulations -- is beyond the scope of a formal complaint proceeding and should be addressed through a petition for amendment of the Commission’s regulations pursuant to 52 Pa. Code § 5.43; or (2) alternatively, whether the scope of the evidence and issues to be addressed in this proceeding should be limited to whether the locations of UGI’s meters violate the Public Utility Code or Commission regulations as currently enacted.

These issues were initially raised by the Complainants’ requests for relief in their Complaints against UGI. As explained below, the relief requested by the Complainants, if granted, would establish new and fundamentally different rules regarding meter locations that do not exist under the Commission’s regulations. UGI submits that such relief cannot and should not be granted in the context of a complaint proceeding against a single utility. Rather, to the extent that Complainants want the Commission to adopt new or clarify existing meter location requirements, their appropriate and available remedy is to file a petition for amendment of Commission regulations under 52 Pa. Code § 5.43, so that all interested parties have an opportunity to participate. Importantly, UGI raised this issue in its Preliminary Objections, but

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<sup>1</sup> The two Complaints have been consolidated. The City and CPHD are jointly represented by the same counsel in this consolidated proceeding and have acted in a unified and collective manner throughout this proceeding, *e.g.*, jointly serving and responding to discovery.

the Order denying UGI's Preliminary Objections summarily rejected them without addressing and resolving the fundamental question of whether the Complaint should be dismissed because the relief requested cannot be granted in the context of a complaint proceeding.

As explained below, UGI submits that this important issue, *i.e.*, the proper scope of this complaint proceeding, should be resolved in the first instance or the parties will be forced to incur the time, expense, and effort to complete discovery, prepare exhibits and testimony, litigate, and brief issues and relief that cannot be granted in the context of a complaint proceeding against a single utility. The resolution of these material questions clearly will prevent substantial prejudice to all parties and expedite the conduct of this complaint proceeding.

For these reasons, UGI respectfully requests that the Commission answer the first material question in the affirmative and dismiss the Complaints because the relief requested is beyond the scope of a formal complaint proceeding and should be addressed through a petition for amendment of the Commission's regulations. Alternatively, in the event the Commission declines to dismiss the Complaints, UGI respectfully requests that the Commission answer the second material question in the affirmative and properly limit the scope of this complaint proceeding to the issue of whether UGI's meter locations violate the Public Utility Code or Commission regulations as currently enacted.

## **II. BACKGROUND**

On May 23, 2014, the Commission entered its Final Rulemaking Order at Docket No. L-2009-2107155 (*"Final Rulemaking Order"*), which revised Section 59.18 of its regulations concerning meter, regulator, and service line locations. As amended, Section 59.18 generally states that all meters be placed outside in a protected location or placed in a buried vault or meter box and that "[i]nside meter locations shall be considered only" in specific situations, including

when the meter is in a historic building or historic district. 52 Pa. Code § 59.18(b), (d)(1)(ii). Neither the City nor CPHD submitted comments on the proposed revisions to Section 59.18 during the rulemaking process.

On November 25, 2015, CPHD filed a Complaint at Docket No. C-2015-2516051, alleging that UGI's meter location practices in the historic districts of Reading, Pennsylvania violated 52 Pa. Code § 59.18. In its request for relief, CPHD requested the following:

(1) The Centre Park Historic District, Inc. is requesting that UGI recognize all of Reading's Historic Districts – including those locally, as well as federally, designated – and agree that all properties in these Districts be given consideration as it pertains to the placement of inside gas meters, as the PUC Code clearly states.

(2) We request that UGI, as part of its mandated “consideration” of insider meter placement under Rule 59.18(d)(1)(ii), be required to follow the procedures under Reading's Historical and Architectural Review Board (HARB) Ordinance.

These procedures require anyone altering the publicly visible façade of any building in an historic district to first obtain a Certificate of Appropriateness (COA), which states that the alteration will not adversely affect the historical and architectural integrity of the building. If the COA is denied, the alteration may not proceed, and an alternative modification must be found.

(3) We further request, when determining meter locations, that UGI – as part of its mandated consideration of “potential damage by outside forces”, and as part of its requirement that meters be “protected from...vehicular damage that may be anticipated” – be prohibited from installing any outside meter within 10' of a City street, unless placed within a buried vault.

(CPHD Complaint ¶ 5) (emphasis added). A true and correct copy of CPHD's Complaint is attached as **Appendix A**. On December 15, 2015, UGI filed an Answer to CPHD's Complaint denying any violation of 52 Pa. Code § 59.18(d)(1).

On February 23, 2016, the City filed a Complaint at Docket No. C-2016-2530475, alleging that UGI violated 52 Pa. Code § 59.18(d)(1) by failing to “consider” inside meter locations for historic buildings and for buildings in historic districts in Reading, Pennsylvania,

and that UGI's exterior meter location practices have created unsafe conditions. In its request for relief, the City requested the following:

- a. That the Commission establish specific standards for UGI to follow in considering the relocation of gas meters that have already been replaced and located on the outside of buildings within designated historic districts, which same standards should be in compliance with Amended § 59.18(d)(1) and the Commission's Final Rulemaking Order. The City recommends that the Commission require UGI to relocate all meters in designated historic districts that have been placed on the outside of buildings to inside locations, except where the utility establishes a greater safety risk than in similarly situated historic properties.
- b. That UGI must recognize all of the City's historic districts, both locally and federally designated, and give meaningful consideration to inside meter locations in all buildings within these districts, in accordance with Commission standards and Amended § 59.18(d)(1).
- c. UGI must retroactively perform an adequacy review of all meter placements made from September 2014 to the present, on a building front, in a yard, or on a building façade that is visible from a public right-of-way in a historic district, in accordance with Commission standards and Amended § 59.18(d)(1), and state why an inside placement creates a greater safety risk than in all similarly situated historic properties.
- d. After performing these adequacy reviews UGI must relocate exterior meters currently on a building front, in a front yard, or on a building façade that are visible from public rights-of-way that warrant inside meter locations pursuant to Commission standards and in accordance with Amended § 59.18(d)(1).
- e. For all exterior meters UGI does not relocate to inside locations, it must provide a valid statement of justification that states why an inside placement creates a greater safety risk than in all similarly situated historic properties, which shall be subject to review by the Commission, as contemplated by Section 701 of the Public Utility Code, 66 Pa. C.S. § 701.
- f. Where exterior gas meters remain, UGI must ensure that such placements are unobtrusive and screened from view through the use of landscaping, fencing, and/or architectural building features.
- g. That UGI must provide a valid statement of justification to the City when it installs any gas meter on a building front, in a front yard, or on a building façade that is visible from a public right-of-way in a designated historic district, as required by the City's Street Excavation Application Form.
- h. Where inside meter locations are legitimately infeasible due to public safety concerns, UGI shall make every effort to locate exterior meters on building



façades that are not visible from public rights-of-way in the historic district, or work with the property owner/occupant to find an alternative placement that maintains the historic nature and aesthetic value of the district in accordance with the Commission's Final Rulemaking Order and Amended § 59.18(d)(1), if possible and feasible.

i. That the Commission establish specific standards for UGI to follow in considering the location of gas meters that will be replaced in buildings located within designated historic districts in the future, which same standards should be in compliance with Amended § 59.18(d)(1) and the Commission's Final Rulemaking Order. The City recommends that the Commission require all future meter replacements in designated historic districts be located on the inside of buildings, except where the utility establishes a greater safety risk than in similarly situated historic properties.

...

a. That where a building façade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk, UGI shall install gas meters on the inside of buildings and their associated exterior gas regulators in as protected a location as possible on the exterior of the building. Alternatively, UGI may install both meter and regulator outside of the building in a buried vault.

b. Where UGI has already located exterior gas meters within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk, those meters shall be relocated to the inside of the building or placed in a buried vault.

(City Complaint ¶¶ 53, 65) (emphasis added). A true and correct copy of the City's Complaint (without attachments) is attached as **Appendix B**. On March 14, 2016, UGI filed an Answer denying the material allegations in the City's Complaint and averring that its meter location practices have been consistent with 52 Pa. Code § 59.18.

Also on March 14, 2016, UGI filed Preliminary Objections requesting that the City's Complaint be dismissed because it seeks to revise 52 Pa. Code § 59.18 to impose fundamentally new rules and more stringent standards concerning meter locations that currently do not exist and cannot be granted in this complaint proceeding. A true and correct copy of UGI's Preliminary Objections (without attachment) is attached as **Appendix C**. UGI's Preliminary Objections were

denied on March 29, 2016. Importantly, the Interim Order denied UGI's Preliminary Objections without addressing and resolving the fundamental question of whether the Complaints should be dismissed because the relief requested cannot be granted in the context of a complaint proceeding. A true and correct copy of the Interim Order is attached as **Appendix D**.

During discovery, UGI served an interrogatory asking whether the City continues to seek the relief requested in Paragraphs 53 and 65 of its Complaint. On August 17, 2016, the Complainants jointly responded as follows: "The City and CPHD object to this request as seeking information not discoverable in this matter. Without waiving this objection, the City and CPHD respond by stating that the City's Complaint in this matter has not been amended." A true and correct copy of the City's discovery response is attached as **Appendix E**. Therefore, based on the Complainants' discovery response, both Complainants continue to seek to impose new regulations for meter locations that do not exist under the Commission's regulations.

On September 1, 2016, UGI filed the pending Petition for Interlocutory Review and Answer to Material Questions, pursuant to 52 Pa. Code § 5.302.<sup>2</sup> Given the Complainants' recent discovery response indicating that they continue to request that new regulatory requirements regarding meter locations be imposed in this complaint proceeding, UGI submits that the material questions raised in the Company's Petition are timely and ripe for disposition.

For the reasons explained below, it would be a waste of both the Commission's and the parties' resources to litigate issues and requests for relief that cannot be addressed in a formal

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<sup>2</sup> Also on September 1, 2016, UGI and the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Joint Motion requesting: the procedural schedule be extended; the parties be permitted to submit written testimony pursuant to 52 Pa. Code § 5.412 or, alternatively a bifurcated hearing process; and a new prehearing conference to address these procedural issues. On September 2, 2016, Administrative Law Judge Mary D. Long ("ALJ") advised the parties that the procedural schedule would be suspended until the final disposition of the Company's Petition for Interlocutory Review and Answer to Material Questions. No parties objected to the suspension. Because the ALJ has already suspended the procedural schedule while UGI seeks interlocutory review, the Company does not believe that an additional stay of the proceedings is necessary to protect the substantial rights of a party. *See* 52 Pa. Code § 5.302(b).

complaint proceeding. Therefore, the City's and CPHD's Complaints should be dismissed without prejudice to seek their requested relief through an appropriate petition pursuant to 52 Pa. Code § 5.43 or, alternatively, the scope of the proceeding should be limited to whether UGI's meter locations violate the Public Utility Code or Commission regulations as currently enacted.

### **III. ARGUMENT**

#### **A. THE COMPLAINTS SHOULD BE DISMISSED BECAUSE THE REQUESTED RELIEF CANNOT BE GRANTED IN A FORMAL COMPLAINT PROCEEDING**

In their requests for relief, the City and CPHD seek to impose new regulations regarding meter locations that do not currently exist in the Commission's regulations. The City's and CPHD's Complaints should be dismissed because the relief they request cannot be granted in a formal complaint proceeding against a single utility.

If granted, the Complainants' requested relief would essentially rewrite the Commission's existing regulations in several ways. First, the City wants to make inside meter locations the rule rather than the exception under 52 Pa. Code § 59.18. Section 59.18 requires gas meters and regulators to be placed outside of buildings and aboveground except in limited circumstances. *See* 52 Pa. Code § 59.18(a)(1). Relevant here, a gas utility shall only "consider" inside meter locations if the meter is located in a historic building or historic district. *Id.* § 59.18(d)(1)(ii).

Despite this clear language, the City requests that the Commission establish a new, different regulatory standard for UGI to follow when the Company is "considering" where to locate or relocate meters in historic districts and for the Company to retroactively apply to all previous installations – place all meters in designated historic districts inside buildings, "except where the utility establishes a greater safety risk than in similarly situated historic properties."

(City Complaint ¶ 53(a), (c)-(e), (i)) In other words, rather than having to “consider” inside meter locations for historic district buildings, the Company would be required to place meters inside those buildings, unless it could establish a greater gas safety risk than in similarly situated properties. This is not a matter of interpreting ambiguous language in 52 Pa. Code § 59.18(d)(1)(ii), as alleged by the Complainants in their Brief.<sup>3</sup> (*See* Brief in Opposition, pp. 11-12) The regulation says “consider” inside meter locations, and the Complainants want to require inside meter locations. No such requirement currently exists under the Public Utility Code or the Commission’s regulations, and the Complainants wholly fail to explain in their Brief how this requested relief does not conflict with Section 59.18. Moreover, the Commission already considered and rejected a very similar proposal in the rulemaking proceeding. *See Final Rulemaking Order*, p. 26 (“The Mayor [of Allentown] also argues that the inside meter locations in historic districts should be the rule unless the utility can justify [that] the placement should be varied for a particular location.”). Thus, the requested relief would rewrite the express language of Section 59.18 and impose a new regulatory requirement that was already rejected.

Second, the Complainants seek to impose new, additional regulatory requirements when a gas utility is “considering” inside meter locations that do not exist under the Commission’s regulations. For example, CPHD requests that the Commission require UGI to “follow the procedures under Reading’s Historical and Architectural Review Board (HARB) Ordinance”

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<sup>3</sup> Further, the *Carlock* case relied upon by the Complainants is readily distinguishable for multiple reasons. First, the Complainants omit that the ALJ on remand found that the requested relief seeking to impose a new regulatory requirement was without merit. *See Carlock v. The United Tele. Co. of Pa.*, 1994 Pa. PUC LEXIS 48, at \*21 (Jan. 26, 1994) (Initial Decision upon Remand), *became final without further action*, 1994 Pa. PUC LEXIS 47 (Order Entered Mar. 29, 1994). Second, the Commission originally overruled the Initial Decision granting the utility’s Motion for Summary Judgment because, although the Complainant did not file an Answer, he was *pro se*. *Carlock v. The United Tele. Co. of Pa.*, 1993 Pa. PUC LEXIS 199, at \*10-11 (Order Entered July 14, 1993). The Commission reasoned “that unrepresented plaintiffs often are not able to file an effective response to a pre-hearing motion” and can better “explain their dispute orally” than in written form. *Id.* “[T]o deny unrepresented complainants a meaningful opportunity to be heard in such cases, can be viewed as a gross abuse of our authority.” *Id.* at \*11. Here, the Complainants are sophisticated parties that are represented by experienced counsel and should not be treated similar to *pro se* litigants. Thus, the Complainants are not entitled to a hearing when they request relief that would impose new regulatory requirements and, therefore, cannot be granted in a complaint proceeding.

when considering inside meter locations. (CPHD Complaint ¶ 5) Further, when UGI installs an exterior gas meter in a historic district (or decides not to relocate an exterior meter to the inside of the building), the City requests that the Company be required to provide a statement of justification to the City. (City Complaint ¶ 53(e), (g)) Such standards and requirements do not currently exist in the Commission’s regulations. Further, the Commission already considered and declined to adopt additional standards for gas utilities to follow when considering inside meter locations. *See Final Rulemaking Order*, pp. 25-26, 30-31. Therefore, the requested relief seeks to impose new requirements above and beyond those set forth in 52 Pa. Code § 59.18.

Third, the City attempts to impose new regulatory restrictions on the exterior placement of gas meters related to the meters’ historical and aesthetic impact. (*See* City Complaint ¶ 53(f), (h)) The City requests that UGI be required to “ensure that such placements are unobtrusive and screened from view through the use of landscaping, fencing, and/or architectural building features.” (City Complaint ¶ 53(f)) The City also wants UGI to “make every effort to locate exterior meters on building façades that are not visible from public rights-of-way in the historic district, or work with the property owner/occupant to find an alternative placement that maintains the historic nature and aesthetic value of the district.” (City Complaint ¶ 53(h)) Neither of these requirements is in the Commission’s regulations. Moreover, the Commission already considered and “decline[d] to address visual impact alternatives that may avoid or minimize the impact of installing the meter and/or regulator outside.” *Final Rulemaking Order*, p. 30. Therefore, the City’s requested relief seeks amend 52 Pa. Code § 59.18 to add new regulatory requirements that were already considered and rejected by the Commission.

Fourth, the Complainants propose new restrictions on meter locations related to their safety concerns with exterior meters. (*See* City Complaint ¶ 65; CPHD Complaint ¶ 5) CPHD

requests that UGI “be prohibited from installing any outside meter within 10’ of a City walk unless placed in a buried vault.” (CPHD Complaint ¶ 5) Similarly, the City proposes that “where a building façade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk,” UGI shall install or relocate gas meters to inside the buildings. (City Complaint ¶ 65(a)-(b)) However, Section 59.18 already provides very specific requirements for meter location (see 52 Pa. Code § 59.18(a)(1), (5)-(8), (b), (e)) and details all of the situations when a natural gas distribution company shall “consider” inside meter locations (see 52 Pa. Code § 59.18(d)(1)) Further, Section 59.33 of the Commission’s regulations adopts the minimum safety standards for gas utilities as outlined in the federal regulations. *See* 52 Pa. Code § 59.33(b). Importantly, the restrictions on meter locations proposed by the Complainants are not included in any of these regulations. Indeed, nothing in the Commission’s regulations requires a gas utility to install or relocate meters inside buildings “where a building façade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk.” Therefore, the Complainants requested relief seeks to amend the Commission’s regulations to impose new, additional requirements.

As explained above, through their requests for relief, the Complainants clearly are seeking to amend the Commission’s regulations to impose new, additional regulatory requirements on gas utilities’ meter locations. UGI submits that it would be fundamentally unfair and an abuse of discretion to establish new regulatory standards and requirements through this complaint proceeding. If the Commission’s regulations need to be clarified or rewritten, such issues must be addressed, if at all, in a statewide proceeding where all interested entities have an opportunity to participate, not in a complaint proceeding. Otherwise, all other natural gas distribution companies would be denied due process. Alternatively, if the Complainants’

request for relief is granted in this complaint proceeding and the new standards are applied only to UGI, UGI would be subject to an entirely different and significantly more burdensome regulatory standard than all other natural gas distribution companies operating in the Commonwealth. Either result would be fundamentally unfair and an abuse of discretion. Therefore, the Complainants' requested relief cannot be granted in this complaint proceeding.

Finally, it should be noted that the Commission only recently completed an extensive and detailed formal rulemaking process that adopted the standards and requirements set out in 52 Pa. Code § 59.18. The Commission invited comments from all interested parties and carefully considered the merits and suggestions of each comment submitted in adopting the final meter location regulations in 52 Pa. Code § 59.18. Notably, neither the City nor CPHD submitted any comments or otherwise participated in the Commission's formal rulemaking process, and no appeal from the rulemaking was sought by any party. The Complainants should not now be permitted to collaterally attack the final regulations adopted by the Commission through a complaint proceeding against a single gas utility. Rather, to the extent that the City and/or CPHD reasonably believe that additional requirements and standards meter locations should be imposed (on any utility), their proper remedy is to file an appropriate petition under 52 Pa. Code § 5.43 to request that the Commission open a rulemaking process to consider amendments to the existing meter location regulations. Thus, the Complainants will not be prejudiced if the Commission answers the first material question in the affirmative and dismisses the Complaints on the basis that the requests for relief cannot be granted in a formal complaint proceeding.

Based on the foregoing, it would be a waste of both the Commission's and the parties' resources to litigate issues and requests for relief that cannot be addressed in a formal complaint proceeding. Therefore, UGI respectfully requests that Commission answer the first material

question presented in the Petition for Interlocutory Review in the affirmative and dismiss the City's and CPHD's Complaints without prejudice to seek their requested relief through an appropriate petition pursuant to 52 Pa. Code § 5.43.

**B. THE SCOPE OF THE PROCEEDING SHOULD BE LIMITED TO WHETHER UGI COMPLIED WITH THE PUBLIC UTILITY CODE AND COMMISSION'S REGULATIONS**

As explained above, the Complaints should be dismissed because the relief requested is beyond the scope of a formal complaint proceeding and should be addressed through a petition for amendment of the Commission's regulations pursuant to 52 Pa. Code § 5.43. Alternatively, if the Commission declines to dismiss the Complaints without prejudice, the Commission should limit the scope of the evidence and issues to be addressed in this complaint proceeding to whether the locations of UGI's meters violate the Public Utility Code or Commission regulations as currently enacted.

As explained previously, the Complainants have requested relief that, if granted, would impose several new regulatory requirements and standards regarding meter locations. However, the Complainants' requested relief cannot be granted in a complaint proceeding for all of the reasons outlined in Section II.B, *supra*. If the proceeding is not appropriately limited in scope, the parties would be required to devote a substantial amount of time and resources to undertake discovery, prepare for hearings, litigate, and brief issues related to the Complainants' requested relief, including whether such relief is reasonable, prudent, and should be granted in this Complaint proceeding.

Additionally, the Complainants have raised issues relating to UGI's compliance with local ordinances and historic district regulations. (*See* City Complaint ¶¶ 29-38, 46, 52; CPHD Complaint ¶ 5) For example, the City has raised issues pertaining UGI's compliance with City of Reading Ordinance No. 45-2015 and even requested that the Commission direct UGI to



“provide a valid statement of justification to the City” when installing an exterior gas meter in a historic district, “as required by the City’s Street Excavation Application Form.” (City Complaint ¶¶ 29-38, 46, 52, 53(g)) However, under Section 701 of the Public Utility Code, issues in the formal complaint must be limited to “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.

Here, the Commission does not have jurisdiction to administer these local ordinances and historic district regulations. Further, nothing in the Public Utility Code, the Commission’s regulations, or any Commission order, including the *Final Rulemaking Order*, directs gas utilities to comply with local ordinances and historic district regulations concerning meter locations.<sup>4</sup> Moreover, issues related to Ordinance No. 45-2015, including UGI’s argument that the ordinance is preempted by the Commission’s exclusive jurisdiction over the location, construction, and maintenance of all public utility facilities, are currently pending before the Commonwealth Court in a proceeding between UGI and the City. *See UGI Utilities, Inc. v. City of Reading, et al.*, No. 499 M.D. 2015. Therefore, any issues regarding UGI’s compliance with local ordinances and historic district regulations are outside the scope of this proceeding.

The City and CPHD have filed complaints against UGI challenging the Company’s meter locations in Reading, Pennsylvania. UGI submits that the scope of this proceeding should be

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<sup>4</sup> In their Brief, the Complainants mischaracterize the *Final Rulemaking Order* and contend that it requires utilities to obtain local permits before performing meter location projects in historic districts. (Brief in Opposition, p. 3) The quoted language addresses the burden placed on utilities to know if the projects are in historic areas and states that “[t]his is a burden that any property owner or contractor would probably have in undertaking exterior improvements, since the local municipality may require prior approval before a building permit is issued.” *Final Rulemaking Order*, p. 18. This is not a pronouncement that gas utilities have to obtain local approval before performing meter relocations or replacements. Rather, the Commission used the typical “property owner or contractor” as an example of a person who would have to know if the exterior project were in a historic district. Public utilities are not the typical property owner or contractor. In fact, as a general rule, public utilities are exempt from local zoning and land use regulations. *See, e.g., PPL Elec. Utils. Corp. v. City of Lancaster*, 125 A.3d 837 (Pa. Cmwlth. 2015); *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007); *Newtown Twp v. Philadelphia Elec. Co.*, 594 A.2d 834 (1991); *Duquesne Light Co. v. Upper St. Clair*, 105 A.2d 287 (Pa. 1954). If the Commission were making an exception to this rule, it would have been explicit in its order.

limited solely to whether UGI's actions violate the Public Utility Code, Commission regulations, or Commission orders—not whether UGI's meter locations should be required to comply with new, additional regulatory standards that do not currently exist or local ordinances and historic district regulations. It would be a significant waste of the Commission's and parties' time and resources to litigate whether UGI's meter locations should comply with regulations that do not exist as well as the City's local ordinances and historic district regulations.

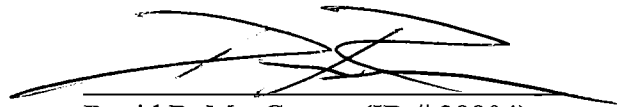
By addressing the second material question, the Commission will expedite the proceeding, ensure an orderly and complete record on the issues to be addressed, and ultimately facilitate the Commission's review of the issues to address in this proceeding. Indeed, the resolution of the second material question will define the proper scope of this proceeding, which will significantly reduce the time, effort, and expense incurred by the parties to engage in discovery and litigate the actual issues that can be addressed in this complaint proceeding. Notably, in their Brief, the Complainants state that they “seek determinations of whether UGI's meter placements violate Amended § 59.18.” (Brief in Opposition, p. 11) If that is the case, then the scope of this proceeding should be limited to those determinations. Again, even if the Commission limits the proper scope of this proceeding as discussed above, the Complainants will not be prejudiced because they will have the opportunity to file a petition to amend the Commission's meter location regulations.

For these reasons, UGI respectfully requests that, if the Complaints are not dismissed as explained above, the Commission should limit the scope of this proceeding to whether UGI complied with the Public Utility Code or Commission's regulations. Such a limit on the scope of this proceeding will preserve the parties' resources, reduce the burden on the parties and Commission, and produce a more focused and thorough record.

**IV. CONCLUSION**

WHEREFORE, UGI Utilities, Inc. respectfully requests that the Pennsylvania Public Utility Commission answer the material questions in the affirmative and: (1) direct that the Complaints of Centre Park Historic District and the City of Reading be dismissed because the relief requested is beyond the scope of this complaint proceeding; or (2) alternatively, limit the scope of this complaint proceeding to whether UGI's meter locations in the City violate the Public Utility Code or the Commission's regulations as currently enacted.

Respectfully submitted,



Mark C. Morrow (ID # 33590)  
Chief Regulatory Counsel  
Danielle Jouenne (ID # 306829)  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
Phone: 610-768-3628  
E-mail: [morrowm@ugicorp.com](mailto:morrowm@ugicorp.com)  
[jouened@ugicorp.com](mailto:jouened@ugicorp.com)

David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-587-1444  
E-mail: [dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)

Devin T. Ryan (ID # 316602)  
Post & Schell, P.C.  
17 North Second Street  
12th Floor  
Harrisburg PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: [dryan@postschell.com](mailto:dryan@postschell.com)

Dated: September 12, 2016

*Attorneys for UGI Utilities, Inc.*

## **Appendix “A”**

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

## Formal Complaint

*Filing this form begins a legal proceeding and you will be a party to the case.  
If you do not wish to be a party to the case, consider filing an informal complaint.*

To complete this form, please type or print legibly in ink.

### 1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name **Centre Park Historic District, Inc.**

Street/P.O. Box **705-707 North 5<sup>th</sup> Street**

City **Reading** State **PA** Zip **19601**

County **Berks**

Telephone Number(s) Where We Can Contact You During the Day:

**(610) 375-7860** (CPHD, Inc. office) **(484) 269-6718** Executive Director, Michael Lauter (mobile)

E-mail Address (optional): \_\_\_\_\_

Utility Account Number (from your bill) **# 708058521518 CPHD, Inc. office**

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

### 2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

**UGI**

---

RECEIVED

NOV 25 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- |   |   |
|---|---|
| <input type="checkbox"/> ELECTRIC       | <input type="checkbox"/> WASTEWATER/SEWER                                     |
| <input checked="" type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance)  |
| <input type="checkbox"/> WATER          | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT     |   |

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

The utility, by its actions and by its stated intent, has shown a pattern of disregard for PUC Rule 59.18 as to the placement of gas meters in the Historic Districts of Reading. Specifically:

(1) Representatives of UGI have consistently stated that they do not and will not show consideration of inside meter placement in Reading's locally designated historic districts, and will only show such consideration in federally designated districts. This is in clear contradiction to Rule 59.18 (d) (1) (ii) (B), (D).

(2) Representatives of UGI, by a pattern of actions and statements, have failed, in any meaningful way, to "consider" the inside placement of gas meters in all Historic Districts in Reading, whether federally or locally designated. UGI has stated that its "consideration" will consist of merely determining whether there is space for an outside placement, and only if there is not, will an inside placement be "considered".

This is contrary to the clear intent of Rule 59.18 (d) (1) (ii) (B), (D), as well as to the interpretation given by the PUC in its Comment to Rule 59.18, on p. 27.

(3) UGI, by its continued placement of outside meters in the Historic Districts, in very close proximity to City streets, has established a pattern of failing to consider potential damage from vehicular and other accidents.

This is in violation of PUC Rule 59.18 (a) (5) which requires utilities, in determining meter location, to "consider potential damage from outside forces", such as vehicular accidents.

It is also in violation of 49 CFR Section 192.353, which requires that each meter be "protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated."

When presented with pictorial evidence of meter placement at historic properties and its negative impact on the historical integrity of the neighborhoods and on the safety of its residents, UGI representatives maintained their position that consideration of inside meters would not be given to properties in Reading's Historic Districts, except in the very narrow and meaningless sense described above.

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

## 5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

(1) The Centre Park Historic District, Inc. is requesting that UGI recognize all of Reading's Historic Districts - including those locally, as well as federally, designated - and agree that all properties in these Districts be given consideration as it pertains to the placement of inside gas meters, as the PUC Code clearly states.

(2) We request that UGI, as part of its mandated "consideration" of inside meter placement under Rule 59.18 (d) (1) (ii), be required to follow the procedures under Reading's Historical and Architectural Review Board (HARB) Ordinance.

These procedures require anyone altering the publicly visible façade of any building in an historic district to first obtain a Certificate of Appropriateness (COA), which states that the alteration will not adversely affect the historical and architectural integrity of the building. If the COA is denied, the alteration may not proceed, and an alternative modification must be found.

(3) We further request, when determining meter locations, that UGI - as part of its mandated consideration of "potential damage by outside forces", and as part of its requirement that meters be "protected from...vehicular damage that may be anticipated" - be prohibited from installing any outside meter within 10' of a City street, unless placed within a buried vault.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.



6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

**Note:** You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

**Note:** If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

**Note:** You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

**Note:** Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (if known) \_\_\_\_\_

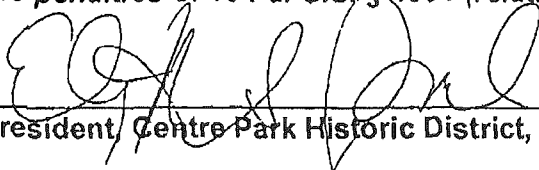
**Note:** Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

**You must sign your complaint.** Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

Verification:

I Elizabeth Ireland, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
President, Centre Park Historic District, Inc.      (Date) 10/25/15

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. Two Ways to File Your Formal Complaint

**Electronically.** You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

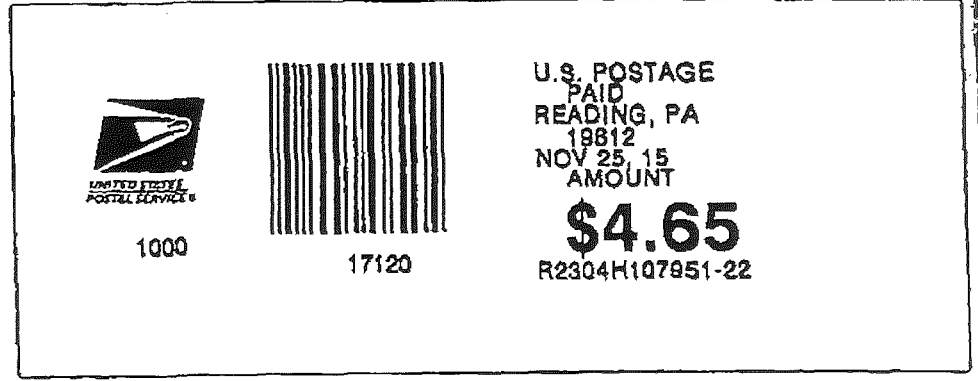
**Mail.** Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.



From - Centre Park Historic District  
705-707 North 5th Street  
Reading, PA 19601-2209

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To -  
SECRETARY  
PA PUBLIC UTILITY COMMISSION  
400 NORTH ST  
HARRISBURG, PA 17120

## **Appendix “B”**



Eastburn and Gray, PC

Attorneys at Law

Zachary A. Sivertsen, Esquire  
60 East Court Street  
P.O. Box 1389  
Doylestown, PA 18901  
p (215) 345-7000  
f (215) 345-9142  
e zsivertsen@eastburngray.com

February 17, 2016

**VIA FEDERAL EXPRESS**

PUC Secretary's Bureau  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: **Formal Complaint by the City of Reading, PA against UGI Utilities, Inc.**

To Whom it May Concern:

Enclosed for filing please find a Formal Complaint being filed on behalf of the City of Reading, Pennsylvania. I am enclosing an extra copy of the Formal Complaint. Please time stamp the extra copy and send same back to me. A self-addressed stamped envelope is included.

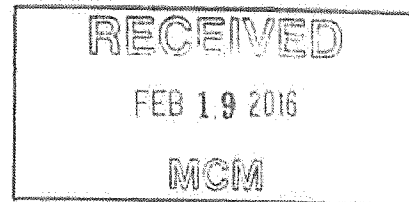
Please contact me directly with questions or concerns. Thank you.

Very truly yours,

Zachary A. Sivertsen

Enclosure

cc: Judge Mary Long (w/enclosure)  
Mark C. Morrow, Esquire (w/enclosure) ✓



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

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

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**FORMAL COMPLAINT**

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NOW COMES the City of Reading, by its counsel, pursuant to Section 701 of the Public Utilities Code, 66 Pa.C.S. § 701, and files this Formal Complaint against UGI Utilities, Inc., alleging violations of the Public Utilities Code. In support of its Formal Complaint, the City of Reading respectfully represents the following:

**PARTIES AND JURISDICTION:**

1. The Pennsylvania Utility Commission (the "Commission"), having offices at 400 North Street, Keystone Building, Harrisburg, PA 17120, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities with the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*
2. Complainant is the City of Reading (the "City"), a Third Class City of the Commonwealth, having a place of business at 815 Washington Street, Reading, PA 19601. The City's contact information is as follows:

The City of Reading Department of Law  
City Hall, 815 Washington Street, Room 2-54  
Reading, PA 19601-3690

T: 610.655.6208  
F: 610.655.6427  
[solicitor@readingpa.org](mailto:solicitor@readingpa.org)

3. The City's counsel are as follows:

Michael J. Savona  
Pa. Attorney ID No. 78076  
[msavona@eastburngray.com](mailto:msavona@eastburngray.com)

Michael E. Peters  
Pa. Attorney ID No. 314266  
[mpeters@eastburngray.com](mailto:mpeters@eastburngray.com)

Zachary A. Sivertsen  
Pa. Attorney ID No. 320626  
[zsivertsen@eastburngray.com](mailto:zsivertsen@eastburngray.com)

Eastburn and Gray, P.C.  
P.O. Box 1389  
Doylestown, PA 18901  
T: 215.345.7000  
F: 215.345.9142

4. Respondent is UGI Utilities, Inc. ("UGI"), a gas distribution company with offices located at 2525 N. 12<sup>th</sup> Street, Suite 360, P.O. Box 12677, Reading, PA 19612-2677.
5. Respondent is a "public utility" as that term is defined in the Public Utility Code at 66 Pa. C.S. § 102(1)(i), as it provides utility services as a natural gas distribution company to the public for compensation.
6. Section 501(a) of the Public Utilities Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.
7. Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, authorizes the Commission, inter alia, to hear and determine complaints against public utilities for a violation of any law or regulation that the Commission has jurisdiction to administer.



8. Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission's authority, for violation(s) of the Public Utility Code and/or Commission regulations. Section 3301 further allows for the imposition of a separate fine for each day's continuance of such violation(s).
9. Respondent, in providing natural gas distribution services for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66Pa. C.S. § 501(c), which requires any persons or corporations subject to the provisions of that part to comply with Commission orders.
10. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

#### COUNT I

#### UGI RELOCATION OF OUTSIDE METERS IN HISTORIC DISTRICTS IN VIOLATION OF 52 PA. CODE § 59.18(d)(1).

##### A. BACKGROUND

11. In May 2014 the Commission enacted 52 Pa. Code § 59.18, which directed all Pennsylvania natural gas distribution companies to relocate all gas meters and regulators within the state, currently located inside buildings, to outside locations over a twenty-year period, with certain exceptions.
12. 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.

13. In September 2014, the Commission adopted a final rulemaking order ("Final Rulemaking Order") amending § 59.18 to provide regulatory requirements for the placement of meters, regulators, and service lines ("Amended § 59.18"). A copy of the Commission's Final Rulemaking Order is attached hereto as Exhibit "A," and a copy of Amended § 59.18 is attached hereto as Exhibit "B."
14. Amended § 59.18 provided, as a general rule, that relocated meters and regulators must be placed outside and aboveground, but also identified situations where inside meter locations must be considered by the utility.
15. Amended § 59.18(d) specifically stated that:

(1) Inside meter locations *shall* be considered only when:

...

(ii) A meter is located in a building that meets one of the following criteria:

(A) A building is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the building is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.

(B) A building is located within a historic district that is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the historic district is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.

(C) A building has been designated as historic under the act of June 13, 1961 (P. L. 282, No. 167) (53 P. S. §§ 8001--8006), known as the Pennsylvania Historic District Act, the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101--11202) or a municipal home rule charter.

(D) A building is located within a locally designated historic district or is eligible for the listing, or a building is individually designated under a local ordinance as a historic landmark or is eligible for the listing.

52 Pa. Code § 59.18(d) (emphasis added); Exhibit B, p. 2-3.

16. Prior to issuing the Final Rulemaking Order for Amended § 59.18, the Commission issued a proposed rulemaking order for public comment.
17. In the Final Rulemaking Order the Commission summarized the comments it received and discussed if, and how, it had revised the final regulation to reflect the concerns and issues raised.
18. The Commission specifically stated in the Final Rulemaking Order that this part of 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 Exhibit A, p. 5.
19. The Commission received a number of comments 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. See Exhibit A, p. 7.
20. The Commission summarized these comments as generally stating that:

[M]eters and regulators should remain in the basements of properties within historic districts to preserve beauty and uniqueness of these areas. Also, moving meters outside will risk damage to the units caused by vehicles hitting meters and tampering, among other occurrences. Moreover, with the development of remote meter reading devices, some of these parties believe there is not a need to make meters visible in front of historic homes.

These parties also argue against limiting historic districts to those that are federally recognized. In other words, the definition of "Historic District" should specifically include local historic districts designated by municipalities, as well as others locally significant. These parties are also looking for a process for utilities to notify property owners about projects and allow the property owners to participate and make informed decisions about where the meter will be located. It was also recommended to the Commission to develop design guidelines for the appropriate location of meters and regulators. The Pennsylvania Historical and Museum Commission (PHMC) also disagreed with a statement in

the Order, asserting that it was unable to identify any locally adopted historic property regulations that stipulate the location of gas meters.

Exhibit A, p. 7.

21. Responding to these comments, the Commission stated that:

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.

Exhibit A, p. 27 (emphasis added).

22. 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 and that exterior placement in the prescribed types of historic districts should only be done where "public safety obligations" require it. See Exhibit A, p. 27.
23. Specifically, addressing concerns raised by the Pennsylvania Historical and Museum Commission ("PHMC") that "the final rule does not provide any direction or guidance to the utilities for identifying and/or negotiating appropriate alternatives when the utility deems it necessary, practical, or less expensive to relocate a meter on the outside of a designated historic property," see Exhibit A, p. 15, the Commission stated that it does "have a number of guidelines for relocating meters outside which would apply to outside meters in locally designated historic districts," see Exhibit A, p. 18.
24. In response to concerns about whether a utility must determine if a particular building is part of a historic district, the Commission stated that:

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.

See Exhibit A, p. 18.

25. The City of Reading contains six (6) designated historic districts in which the inside placement of gas meters must be considered pursuant to § 59.18(d)(1)(ii), including:
  - a. the Queen Anne Historic District (listed on the National Register of Historic Places);
  - b. the Centre Park Historic District (locally designated historic district);
  - c. the Callowhill Historic District (locally designated historic district);
  - d. the Prince Historic District (locally designated historic district);
  - e. Penn's Common Historic District (locally designated historic district); and
  - f. the Heights Conservation District (locally designated historic district).
26. 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 national registration.
27. A map of the City of Reading's designated historic districts and districts eligible for historic designation is publically available on the City's website. A copy of the publically available map is attached hereto as Exhibit "C."
28. Maps of the historic districts, the associated certification letters from the PHMC and Department of the Interior, and a spreadsheet containing the names and addresses of every property within a designated historic district were provided to UGI in July 2015,

prior to meetings between the City and UGI. Copies of the materials sent to UGI are attached hereto as Exhibit "D."

29. In August 2015, the City adopted an ordinance related to the installation of gas meters within its designated historic districts meant to implement the Commission's regulation set forth in Amended § 59.18(d). A copy of City of Reading Ordinance No. 45-2015 is attached hereto as Exhibit "E."
30. This ordinance prohibited the placement of gas meters "in front yards, front of buildings or along their façades that can be seen from a public right-of-way within any historic district designated by City ordinance or listed in the National Register of Historic Places." Exhibit E, p. 3.
31. Exterior gas meters could be "installed in front yards, front of buildings, or along their facades that can be seen from a public right-of-way within historic districts only if no other means of gas service [could] be provided," and such placements were required to be "unobtrusive and shall be screened from view through the use of landscaping, fencing, and/or architectural building features." Exhibit E, p. 3
32. Entities seeking to install exterior gas meters in historic districts were also required to "apply to the Preservation Officer for a certificate of appropriateness prior to obtaining the required building permits." See Exhibit E, p. 1-2.
33. This requirement applied to "[a]ll persons or entities desiring to undertake an exterior alteration or modification, requiring a building permit..., to any building, structure, sign or premises ... within any designated historic district." See Exhibit E, p. 1.
34. At this time, the City also amended its Street Excavation Application Form to require applicants to identify whether they were installing an exterior gas meter in a historic

district, whether they had considered an interior placement, why they had chosen an exterior placement, and whether Commission notice requirements had been followed. A copy of the amended Street Excavation Application Form is attached hereto as Exhibit "F."

35. Notwithstanding the foregoing, and 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 locally designated historic districts.
36. 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 district.
37. When completing the City's Street Excavation Application Form, UGI has refused to properly identify whether proposed work is to be done in historic districts. Copies of some examples these improperly or falsely completed permit applications are attached hereto as Exhibit "G."
38. UGI has never provided a justification for placing any meter installation projects on the exterior of buildings in historic districts, as required by the Street Excavation Application Form.
39. UGI officials and representatives have stated in written and oral communications to City officials and residents that it has no intention of considering the inside placement of meters in *any* historic districts.

- a. On September 24, 2015, UGI sent a letter to City residents stating its company policy regarding meter replacements in the City. A copy of the September 24, 2015 letter from UGI is attached hereto as Exhibit "H." The letter stated that UGI's position was that: "...if the meter and regulator are inside, we will need to move them outside, due to company policy." See Exhibit H, p. 1.
  - b. At a meeting between UGI representatives and City officials on October 23, 2015, Hans Bell, the Vice President of Operations for UGI, stated that UGI would "aggressively pursue" the outside placement of meters in the City's historic districts.
  - c. On November 23, 2015, UGI sent a letter notifying affected properties of an upcoming infrastructure upgrade involving 211 properties in the Queen Anne Historic District, a federally designated historic district. A copy of the November 23, 2015 letter is attached hereto as Exhibit "I." In this letter UGI stated that: "[i]f your natural gas meter set is located inside the building, it will be moved to a position outside the dwelling." See Exhibit I, p. 1.
  - d. Finally, on January 15, 2016 UGI officials gave City personnel a tour of the upcoming infrastructure project in the Queen Anne Historic District. During that tour UGI officials stated that for all 211 properties the new meters would be located on the outside of the structures, even where already narrow sidewalks would make such a placement a safety hazard for passing pedestrians.
40. The exterior placement of these meters has significantly disrupted the historic nature and aesthetic value of the districts, and had an immediate, direct, and negative impact on the historical integrity of the neighborhoods.



41. In failing to consider interior placements, placements hidden from public rights-of-way, or placements that maintain the historic nature and aesthetic value of the district, UGI has violated Amended § 59.18(d) and directly subverted the purpose for which the Commission enacted it according to the Final Rulemaking Order.
42. UGI representatives have stated that part of the reason they will only consider the interior placement of meters in federally designated historic districts is because they were unable, or unwilling, to identify areas qualifying as locally designated historic districts.
43. Maps of the designated historic districts are publically available on the City's website and were readily available to UGI at all times material hereto. Notwithstanding, as stated earlier, UGI has failed to even attempt to acknowledge instances where it has applied for a permit to relocate a meter in a designated historic district, in direct contravention to the Commission's Final Rulemaking Order.
44. The Commission's comments in the Final Rulemaking Order indicate that utilities have the burden of determining whether a structure is within either a nationally or locally designated historic district, just as any other property owner or contractor would be obligated to do.
45. UGI's refusal to meaningfully consider interior placement or placement hidden from public rights-of-way in locally designated historic districts goes against the Commission's regulation.
46. In failing to provide even basic justification for installing exterior meters in the City's historic districts through the Street Excavation Application UGI has failed to give meaningful consideration of the interior placement of meters as required by Amended § 59.18.

**B. SPECIFIC VIOLATIONS**

47. The City has issued 423 building/trades permits to UGI from September 2014 to January 2016 to permit work in federally or locally designated historic districts.
48. Of the 423 permits issued, the City has confirmed that 398 involved the replacement of gas meters. Of these 398 applications, 100% relocated the meter to the outside of the building. Pictures of gas meters that have been relocated to the exterior of buildings in designated historic districts are attached hereto as Exhibit "J."
49. This statistic alone demonstrates that UGI has not given any consideration to the inside placement of meters in designated historic districts, in clear violation of Amended § 59.18(d). To the contrary, UGI's conduct evidences a clear and unambiguous intent to only place meters on the exterior of properties in designated historic districts, in blatant disregard for the consideration of interior placements required under § 59.18.
50. UGI has failed to provide any public safety reason for the exterior placement of these meters in designated historic districts.
51. UGI has also failed to recognize locally designated historic districts in the City in blatant violation of the unambiguous language of Amended § 59.18(d)(1)(ii)(D).
52. In its attempt to subvert Amended § 59.18(d), UGI has made efforts to conceal the work it performs in designated historic districts by improperly completing the City's Street Excavation Application Form. In some instances the portion of the form dealing with historic impact is left blank, is completed falsely, or is completed in such a way that officials cannot determine whether work is occurring in historic districts.

**C. RELIEF REQUESTED**

53. Based on the foregoing allegations, the City of Reading hereby requests the following relief:
- a. That the Commission establish specific standards for UGI to follow in considering the relocation of gas meters that have already been replaced and located on the outside of buildings within designated historic districts, which same standards should be in compliance with Amended § 59.18(d)(1) and the Commission's Final Rulemaking Order. The City recommends that the Commission require UGI to relocate all meters in designated historic districts that have been placed on the outside of buildings to inside locations, except where the utility establishes a greater safety risk than in similarly situated historic properties.
  - b. That UGI must recognize all of the City's historic districts, both locally and federally designated, and give meaningful consideration to inside meter locations in all buildings within these historic districts, in accordance with Commission standards and Amended § 59.18(d)(1).
  - c. UGI must retroactively perform an adequacy review of all meter placements made from September 2014 to the present, on a building front, in a front yard, or on a building façade that is visible from a public right-of-way in a historic district, in accordance with Commission standards and Amended § 59.18(d)(1), and state why an inside placement creates a greater safety risk than in all similarly situated historic properties.
  - d. After performing these adequacy reviews UGI must relocate exterior meters currently on a building front, in a front yard, or on a building façade that are

visible from public rights-of-way that warrant inside meter locations pursuant to Commission standards and in accordance with Amended § 59.18(d)(1).

- e. For all exterior meters UGI does not relocate to inside locations, it must provide a valid statement of justification that states why an *inside* placement creates a greater safety risk than in all similarly situated historic properties, which shall be subject to review by the Commission, as contemplated by Section 701 of the Public Utility Code, 66 Pa. C.S. § 701.
- f. Where exterior gas meters remain, UGI must ensure that such placements are unobtrusive and screened from view through the use of landscaping, fencing, and/or architectural building features.
- g. That UGI must provide a valid statement of justification to the City when it installs any gas meter on a building front, in a front yard, or on a building façade that is visible from a public right-of-way in a designated historic district, as required by the City's Street Excavation Application Form.
- h. Where inside meter locations are legitimately infeasible due to public safety concerns, UGI shall make every effort to locate exterior meters on building façades that are not visible from public rights-of-way in the historic district, or work with the property owner/occupant to find an alternative placement that maintains the historic nature and aesthetic value of the district in accordance with the Commission's Final Rulemaking Order and Amended § 59.18(d)(1), if possible and feasible.
- i. That the Commission establish specific standards for UGI to follow in considering the location of gas meters that will be replaced in buildings located

within designated historic districts in the future, which same standards should be in compliance with Amended § 59.18(d)(1) and the Commission's Final Rulemaking Order. The City recommends that the Commission require all future meter replacements in designated historic districts be located on the inside of buildings, except where the utility establishes a greater safety risk than in similarly situated historic properties.

## COUNT II

### **UGI LOCATION OF EXTERIOR METERS DANGEROUSLY CLOSE TO CITY STREETS, BOTH WITHIN AND OUTSIDE OF HISTORIC DISTRICTS, IN VIOLATION OF 52 PA. CODE § 59.18 AND 49 C.F.R. § 192.353**

#### **A. BACKGROUND**

54. Amended § 59.18 also provides general requirements for the placement of gas meters and regulators. Subsection (a)(5), in pertinent part, states:

*(a) General requirements for meter and regulator location.*

...

*(5) When selecting a meter or service regulator location, a utility shall consider potential damage by outside forces.*

52 Pa. Code § 59.18(a)(5).

55. Subsection (b)(1) of Amended § 59.18 states that:

*(b) Outside meter or service regulator locations. Outside meter or service regulators shall be installed in one of the following locations:*

*(1) When feasible and practical to do so, above ground in a protected location adjacent to the building served.*

52 Pa. Code § 59.18(b)(1).

56. Additionally, subsection (a) of 49 CFR § 192.353, adopted and enforced by the Commission, states that:

- a. Each meter and service regulator, whether inside or outside a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated.

49 CFR § 192.353(a). A true and correct copy of 49 CFR § 192.353 is attached hereto as Exhibit "K."

57. Since May 2014, UGI has installed numerous exterior gas meters throughout the City, both within and outside of designated historic districts, in close proximity to busy City streets where they are unprotected from vehicular damage and other outside forces, in violation of 52 Pa. Code § 59.18(a)(5) and (b)(1), as well as 49 CFR § 192.353.
58. Certain gas meters have been placed as close as four (4) feet from busy City streets, such as Cotton Street, Schuylkill Avenue, South 4<sup>th</sup> Street, North 5<sup>th</sup> Street, and North 10<sup>th</sup> Street, or on narrow half streets, such as Rose, Thorn, Eisenbrown, Cedar, and Nicolls Streets. Photographs of gas meters placed dangerously close to City streets are attached hereto as Exhibit "L."
59. Other gas meters have been placed in such a way that they interfere with handicapped parking spaces. Photographs of gas meters placed in the way of handicapped parking spaces are attached hereto as Exhibit "M."
60. On March 18, 2014 a vehicle struck an exterior gas meter at 1043 Oley Street that was located thirteen (13) feet from the curb. The vehicle impact severed the gas line, causing a plume of natural gas to escape, and prompting the Reading Fire Department to evacuate nearby residences. A copy of the March 18, 2014 Incident Report is attached hereto as Exhibit "N."

On April 20, 2015 a vehicle similarly struck an exterior gas meter at 847 Nicolls Street that was located six (6) feet from the street. Again, the impact of the crash severed the

gas line, causing a high pressure gas plume to escape, and leading the Reading Fire Department to evacuate nearby residences. A copy of the April 20, 2015 Incident Report is attached hereto as Exhibit "O."

**B. SPECIFIC VIOLATIONS**

61. In locating its exterior gas meters in close proximity to City streets and on narrow sidewalks where they create safety hazards for passing pedestrians, UGI has failed to "consider potential damage by outside forces," in violation of 52 Pa. Code § 59.18(a)(5).
62. In locating exterior gas meters in close proximity to City streets and on narrow sidewalks where they create safety hazards for passing pedestrians, UGI has failed to locate gas meters in "protected location[s]" in violation of 52 Pa. Code § 59.18(b)(1).
63. In locating exterior gas meters in close proximity to City streets, UGI has failed to consider "vehicular damage that may be anticipated" in violation of 49 CFR § 192.353(a).
64. UGI's meter placement practices constitute an actual and demonstrated threat to public safety, a risk of property damage, and an inordinate threat to the health and welfare of the people of the City.

**C. RELIEF REQUESTED**

65. Based on the foregoing allegations, the City of Reading hereby requests the following relief:
  - a. That where a building façade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk, UGI shall install gas meters on the inside of buildings and their associated exterior gas regulators in as

- protected a location as possible on the exterior of the building. Alternatively, UGI may install both meter and regulator outside of the building in a buried vault.
- b. Where UGI has already located exterior gas meters within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk, those meters shall be relocated to the inside of the building or placed in a buried vault.

WHEREFORE, for all the foregoing reasons, the City of Reading respectfully requests that, after consideration of the record, the Commission find UGI in violation of each and every count as set forth herein and grant the relief specified above.

Respectfully submitted,



Michael J. Savona, Esquire  
Pa. Attorney ID No. 78076

Michael E. Peters, Esquire  
Pa. Attorney ID No. 314266

Zachary A. Sivertsen, Esquire  
Pa. Attorney ID No. 320626



**VERIFICATION**

I, CHARLES D. YOUNGER, verify that the facts set forth in the foregoing Formal Complaint are true and correct to the best of my knowledge, information, and belief.

I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

A handwritten signature in black ink, appearing to read "Charles D. Younger", is written over a horizontal line.

Date: FEB. 9, 2016

## **Appendix “C”**



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Main Fax  
www.postschell.com

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Devin Ryan

dryan@postschell.com  
717-612-6052 Direct  
717-731-1985 Direct Fax  
File #: 165082

March 14, 2016

***VIA ELECTRONIC FILING***

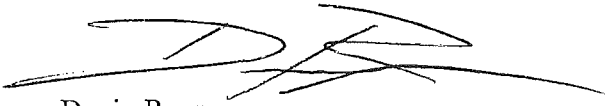
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Preliminary Objections of UGI Utilities, Inc. to the Complaint of the City of Reading in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl  
Enclosures

cc: Honorable Mary D. Long  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### VIA E-MAIL & FIRST CLASS MAIL

Michael J. Savona, Esquire  
Michael E. Peters, Esquire  
Zachary A. Sivertsen, Esquire  
Eastburn and Gray, P.C.  
PO Box 1389  
Doylestown, PA 18901  
[masavona@eastburngray.com](mailto:masavona@eastburngray.com)  
[mpeters@eastburngray.com](mailto:mpeters@eastburngray.com)  
[zsivertsen@eastburngray.com](mailto:zsivertsen@eastburngray.com)

Date: March 14, 2016



Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

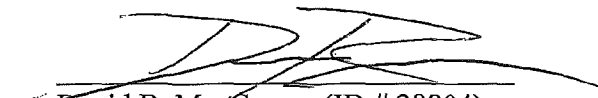
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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR UGI UTILITIES, INC.

Mark C. Morrow (ID # 33590)  
Chief Regulatory Counsel  
Danielle Jouenne (ID # 306829)  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
Phone: 610-768-3628  
E-mail: [morrowm@ugicorp.com](mailto:morrowm@ugicorp.com)  
[jouenned@ugicorp.com](mailto:jouenned@ugicorp.com)

  
David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-587-1444  
E-mail: [dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)

Devin T. Ryan (ID # 316602)  
17 North Second Street  
12th Floor  
Harrisburg PA 17101-1601  
Phone: 717-731-1970  
Fax 717-731-1985  
E-mail: [dryan@postschell.com](mailto:dryan@postschell.com)

Date: March 14, 2016

Attorneys for UGI Utilities, Inc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

AND NOW, comes UGI Utilities, Inc. (“UGI” or the “Company”) and hereby files Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Complaint filed by the City of Reading (“City”) in its entirety and with prejudice. The City’s Complaint should be dismissed because it requests relief that cannot be granted in a complaint proceeding. The City requests the Commission to impose new rules and standards concerning meter location that do not currently exist under the Commission’s regulations. Effectively, this requested relief would rewrite the Commission’s meter location regulations to include these additional rules and standards. There is an established process for parties to petition the Commission for the issuance or amendment of regulations. *See* 52 Pa. Code § 5.43. The issues raised by the City concerning the application of the Commission’s meter location regulations are ones of statewide importance. Accordingly,

they should be addressed, if at all, in a statewide proceeding enabling all interested parties to participate. If the City had properly filed a petition pursuant to 52 Pa. Code § 5.43, that would have been the case. Instead, the City has filed the instant Complaint against UGI requesting that new meter location rules and standards be applied to UGI. The City's requested relief cannot be granted in a complaint proceeding. Further, the City attempts to establish jurisdiction over UGI's facilities. The City requests that the Commission require UGI to provide justification to the City for its meter location decisions. This requested relief is preempted by the Commission's broad and exclusive jurisdiction over public utilities' facilities, including their installation and location. For these reasons, the Complaint should be dismissed.

In support thereof, UGI states as follows:

**I. BACKGROUND**

1. UGI is a "public utility" and a "natural gas distribution company" ("NGDC") as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2202, subject to the regulatory jurisdiction of the Commission.

2. UGI provides natural gas service to approximately 380,000 customers in and around Eastern and Central Pennsylvania, pursuant to certificates of public convenience granted by the Commission.

3. By way of background, the Commission entered a final rulemaking order on May 23, 2014, that amended Section 59.18 of its regulations. *See Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Order Entered May 23, 2014) ("*Final Rulemaking Order*"); 52 Pa. Code § 59.18. The purpose of the rulemaking proceeding was to update the Commission's regulations on "meter placement and location" as well as "general requirements for new service lines." *Final Rulemaking Order*, p. 9. The Commission observed that it was "concerned about the number of reportable incidents resulting, at least

partially, from locating meters and regulators inside structures.” *Id.* at p. 5. Indeed, the Commission noted that NGDCs reported more than 4,000 leaks from inside meter sets over five years. *Id.* In addition, inside meter sets often prevented utility access. *Id.* at p. 6. This made it difficult for NGDCs to comply with “[s]tate and federal gas safety regulations” that “require[d] gas utilities to perform leak surveys over service lines periodically.” *Id.* Ultimately, the Commission adopted amendments to Section 59.18 to address these concerns, and those amendments became effective on September 13, 2014. *See* 44 Pa. B. 5835; 52 Pa. Code § 59.18(g)(1)-(2).

4. As amended by the *Final Rulemaking Order*, Section 59.18 of the Commission’s regulations mandates that all “meters and regulators must be located outside and aboveground,” except that meters may be placed inside buildings in certain situations. 52 Pa. Code § 59.18(a)(1), (d)(1), (e). Specifically, the regulation states that “[i]nside meter locations shall be considered only” in the following circumstances:

- (i) The service line pressure is less than 10 psig.
- (ii) A meter is located in a building that meets one of the following criteria:
  - (A) A building is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the building is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.
  - (B) A building is located within a historic district that is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the historic district is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.
  - (C) A building has been designated as historic under the act of June 13, 1961 (P. L. 282, No. 167) (53 P. S. § § 8001—8006), known as the Pennsylvania Historic District Act, the Pennsylvania Municipalities Planning Code (53 P. S. § § 10101—11202) or a municipal home rule charter.



- (D) A building is located within a locally designated historic district or is eligible for the listing, or a building is individually designated under a local ordinance as a historic landmark or is eligible for the listing.
- (iii) Protection from ambient temperatures is necessary to avoid meter freeze-ups.
- (iv) A utility determines that a meter is subject to a high risk of vandalism based on the utility's prior experience.
- (v) A utility determines that an outside meter location is neither feasible nor practical.

*Id.* § 59.18(d)(1) (emphasis added).

5. In addition, Section 59.18 governs the locations of gas meters outside of buildings. *See id.* § 59.18(b). First, “[w]hen feasible and practical to do so,” meters can be placed “aboveground in a protected location adjacent to the building served, or as close as possible to the point where a production or transmission line is tapped.” *Id.* § 59.18(b)(1). Second, meters can be placed “[i]n a buried vault or meter box,” subject to other restrictions. *Id.* § 59.18(b)(2). Third, Section 59.18(a) provides general requirements for where meters and regulators may be installed. *Id.* § 59.18(a).

6. By September 13, 2034, utilities must finish replacing existing facilities in accordance with Section 59.18 or incorporate the regulation's requirements into a distribution integrity management plan (“DIMP”), whichever occurs first. *Id.* § 59.18(g)(3).

7. On February 17, 2016, City, through counsel, filed a Formal Complaint at Docket No. C-2016-2530475 (“Complaint”) against UGI regarding the location of the Company's meters. In Count 1 of its Complaint, the City objects to the Company's practice of placing gas meters on the outside of historic buildings and outside of buildings in historic districts. In Count 2 of its Complaint, the City challenges the location of gas meters throughout Reading, PA, on the grounds that they are too close to the City's streets. A true and correct copy of the Complaint (excluding the exhibits) is attached hereto as **Attachment A**.

8. UGI herein files these Preliminary Objections to the Complaint.<sup>1</sup> For the reasons explained below, UGI respectfully requests that the Complaint be dismissed in its entirety as legally insufficient because: (1) the relief requested cannot be granted in a complaint proceeding involving a single utility; and (2) the relief requested would unlawfully permit the City to regulate UGI as to matters that are within the exclusive jurisdiction of the Commission.

## II. STANDARD OF REVIEW

9. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

10. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or

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<sup>1</sup> Concurrent with the filing of these Preliminary Objections, the Company is filing its Answer to the Complaint.

expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

11. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. See *Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. See *Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

### 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. UGI incorporates by reference Paragraphs 1 through 11 as if fully set forth herein.

13. In Count 1, the City requests relief that would impose new rules and standards concerning meter location that do not currently exist under the Commission’s regulations. Specifically, the City’s requested relief for Count 1 is as follows:

53. Based on the foregoing allegations, the City of Reading hereby requests the following relief:

- a. That the Commission establish specific standards for UGI to follow in considering the relocation of gas meters that have already been replaced and located on the outside of buildings within designated historic districts, which same standards should be in compliance with Amended § 59.18(d)(1) and the Commission’s Final Rulemaking Order. The City recommends that the Commission require UGI to relocate all meters in designated historic districts that have been placed on the outside of buildings to inside locations, except where the utility establishes a greater safety risk than in similarly situated historic properties.
- b. That UGI must recognize all of the City’s historic districts, both locally and federally designated, and give meaningful consideration to inside meter locations in all buildings

within these districts, in accordance with Commission standards and Amended § 59.18(d)(1).

- c. UGI must retroactively perform an adequacy review of all meter placements made from September 2014 to the present, on a building front, in a yard, or on a building façade that is visible from a public right-of-way in a historic district, in accordance with Commission standards and Amended § 59.18(d)(1), and state why an inside placement creates a greater safety risk than in all similarly situated historic properties.
- d. After performing these adequacy reviews UGI must relocate exterior meters currently on a building front, in a front yard, or on a building façade that are visible from public rights-of-way that warrant inside meter locations pursuant to Commission standards and in accordance with Amended § 59.18(d)(1).
- e. For all exterior meters UGI does not relocate to inside locations, it must provide a valid statement of justification that states why an inside placement creates a greater safety risk than in all similarly situated historic properties, which shall be subject to review by the Commission, as contemplated by Section 701 of the Public Utility Code, 66 Pa. C.S. § 701.
- f. Where exterior gas meters remain, UGI must ensure that such placements are unobtrusive and screened from view through the use of landscaping, fencing, and/or architectural building features.
- g. That UGI must provide a valid statement of justification to the City when it installs any gas meter on a building front, in a front yard, or on a building façade that is visible from a public right-of-way in a designated historic district, as required by the City's Street Excavation Application Form.
- h. Where inside meter locations are legitimately infeasible due to public safety concerns, UGI shall make every effort to locate exterior meters on building façades that are not visible from public rights-of-way in the historic district, or work with the property owner/occupant to find an alternative placement that maintains the historic nature and aesthetic value of the district in accordance with the Commission's Final Rulemaking Order and Amended § 59.18(d)(1), if possible and feasible.

- i. That the Commission establish specific standards for UGI to follow in considering the location of gas meters that will be replaced in buildings located within designated historic districts in the future, which same standards should be in compliance with Amended § 59.18(d)(1) and the Commission’s Final Rulemaking Order. The City recommends that the Commission require all future meter replacements in designated historic districts be located on the inside of buildings, except where the utility establishes a greater safety risk than in similarly situated historic properties.

(Complaint ¶ 53) (emphasis added).

14. The City’s requests for relief seek to rewrite the Commission’s regulations in several ways. First, the City asks the Commission to further define the process that UGI must follow to “consider” inside meter locations under Section 59.18(d)(1). In the Complaint, the City requests the Commission to “establish specific standards for UGI to follow” when the Company is relocating gas meters that are outside historic district buildings and when UGI is determining the location of gas meters being replaced in historic district buildings. (Complaint ¶ 53(a), (i)). After those standards are established, the City wants UGI to retroactively review all of its previous meter placements in historic districts and then relocate the meters or provide a statement justifying the decision not to relocate them. (Complaint ¶ 53(c)-(e)). In effect, the City is requesting that new standards be established clarifying the process by which an NGDC “considers” inside meter locations for buildings in historic districts under Section 59.18(d)(1). The Commission has already declined to adopt such standards. *See Final Rulemaking Order*, pp. 25-26, 30-31. Moreover, the City wants UGI to have to comply retroactively with those newly established standards.<sup>2</sup> Whether those standards are applied to all NGDCs or only to UGI, the

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<sup>2</sup> In addition, a regulation can only be applied retroactively where it “unequivocally appears” that the administrative agency intended to grant it that effect. *Jenkins v. Unemp’t Comp. Bd.*, 56 A.2d 686, 687 (Pa. Super. 1948) (citing *Miller v. U.S.*, 294 U.S. 435 (1935)). Further, administrative agencies cannot adopt retroactive regulations if they “destroy vested rights, impair contractual obligations or violate the principles of due process of

City's proposal cannot be adopted in this complaint proceeding. The City wants the Commission to establish new regulatory standards. Accordingly, the City should have made its proposals in a petition under Section 5.43 of the Commission's regulations, not in a complaint.

15. Second, the City wants to make inside meter locations into the rule rather than the exception. The Commission mandates that NGDCs place meters and regulators outside of buildings and aboveground except in certain circumstances. See 52 Pa. Code § 59.18(a)(1). Relevant here, the Commission's regulations state that "[i]nside meter locations shall be considered only when . . . [a] meter is located in a building" that, generally speaking, is historic or located in a historic district. 52 Pa. Code § 59.18(d)(1)(ii) (emphasis added). However, the City recommends that meters in "designated historic districts" be placed inside buildings, "except where the utility establishes a greater safety risk than in similarly situated historic properties." (Complaint ¶¶ 53(a), (c), (e), (i)). Stated otherwise, UGI could no longer "consider" inside meter locations for historic district buildings. Rather, the Company would be required to place meters inside those buildings, unless it could establish a greater gas safety risk than in similarly situated properties. No such requirement currently exists under the Pennsylvania Public Utility Code or the Commission's regulations. In fact, the Commission did not adopt a similar recommendation made by the Mayor of Allentown in the *Final Rulemaking Order* proceeding. See *Final Rulemaking Order*, p. 26 ("The Mayor also argues that the inside meter locations in historic districts should be the rule unless the utility can justify [that] the placement should be varied for a particular location."). As a result, the City's requested relief contradicts and seeks to rewrite the express language of the Commission's regulations.

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law and ex post facto laws." *R & P Servs., Inc. v. Dep't of Revenue*, 541 A.2d 432, 434 (Pa. Cmwlth. 1988) (citing *Ashbourne Sch. v. Dep't of Educ.*, 403 A.2d 161 (Pa. Cmwlth. 1979)).

16. Third, the City requests that UGI be required to provide a statement of justification to the City “when it installs any gas meter on a building front, in a front yard, or on a building façade that is visible from a public right-of-way in a designated historic district.” (Complaint ¶ 53(g)). Further, if UGI is ordered to retroactively review its previous meter placement decisions, the City wants to receive a statement of justification for any meter that the Company decides not to relocate. (Complaint ¶ 53(e)). However, the express language of Section 59.18(d)(1) only requires NGDCs to “consider” inside meter locations. Nothing in the Commission’s regulations require NGDCs to justify their meter placement decisions to local municipal authorities. Therefore, the City is seeking to add a new regulatory requirement to Section 59.18 through this complaint proceeding.

17. Fourth, the City attempts to impose requirements aimed to reduce the exterior meters’ visibility and impact on the historic and aesthetic qualities of the historic districts. (*See* Complaint ¶ 53(f), (h)). Specifically, for existing gas meters, the City requests that UGI be required to “ensure that such placements are unobtrusive and screened from view through the use of landscaping, fencing, and/or architectural building features.” (Complaint ¶ 53(f)). Likewise, UGI would have to “make every effort to locate exterior meters on building façades that are not visible from public rights-of-way in the historic district, or work with the property owner/occupant to find an alternative placement that maintains the historic nature and aesthetic value of the district.” (Complaint ¶ 53(h)). Although the Company has given consideration to meters’ visibility from public rights-of-way and their impact on the historic and aesthetic nature of the historic districts, no such requirements in the Commission’s regulations exist. Moreover, the Commission “decline[d] to address visual impact alternatives that may avoid or minimize the impact of installing the meter and/or regulator outside” in its *Final Rulemaking Order* for

Section 59.18. *Final Rulemaking Order*, p. 30. Even though the Commission expects an NGDC to provide reasonable and adequate service, the Commission did “not attempt to set what may be subjective requirements that would avoid or minimize the impact to an historic resource.” *Id.* Therefore, not only are these requirements absent from the Commission’s regulations, the Commission has declined to address them in the past. Based on the foregoing, the City’s requests for relief seek to impose new rules and standards that do not exist under the Commission’s regulations.

18. Furthermore, it would be fundamentally unfair and an abuse of discretion to establish specific standards or rules for UGI to follow when considering whether to relocate meters through this complaint proceeding. All NGDCs in Pennsylvania are subject to 52 Pa. Code § 59.18. Accordingly, there should not be differing standards or rules for UGI that would be *inapplicable to the other NGDCs in Pennsylvania*. If Section 59.18 needs to be clarified or rewritten, such issues must be addressed, if at all, in a statewide proceeding where all interested entities have an opportunity to participate, not in a complaint proceeding.

WHEREFORE, UGI respectfully requests that the allegations and requests for relief presented in the above-captioned Complaint be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

**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. UGI incorporates by reference Paragraphs 1 through 18 as if fully set forth herein.

20. In Count 2, the City again requests relief that would institute new rules and standards concerning meter location that do not currently exist under the Commission’s regulations. Indeed, the City requests the following relief for Count 2 of its Complaint:



65. Based on the foregoing allegations, the City of Reading hereby requests the following relief:
- a. That were a building façade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk, UGI shall install gas meters on the inside of buildings and their associated exterior gas regulators in as protected a location as possible on the exterior of the building. Alternatively, UGI may install both meter and regulator outside of the building in a buried vault.
  - b. Where UGI has already located exterior gas meters within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk, those meters shall be relocated to the inside of the building or placed in a buried vault.

(Complaint ¶ 65).

21. The City's requests for relief would rewrite the Commission's regulations. Section 59.18 already provides specific requirements for meter location (see 52 Pa. Code § 59.18(a)(1), (5)-(8), (b), (e)) and details all of the situations when an NGDC must "consider" inside meter locations (see 52 Pa. Code § 59.18(d)(1)).<sup>3</sup> None of these provisions require an NGDC to install or relocate meters inside buildings "where a building façade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk." Indeed, nothing in any of the Commission's regulations or the Pennsylvania Public Utility Code encompasses the City's strict rule concerning meter locations. As a result, granting the City's requested relief for Count 2 would create new regulatory requirements that currently do not exist. Therefore, the City should have proposed these new rules in a petition under Section 5.43 requesting that the Commission issue or amend a regulation.

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<sup>3</sup> See Paragraph 4, *supra*, for a full listing of the situations when an NGDC must "consider" inside meter locations.

22. In addition, it would be fundamentally unfair and an abuse of discretion to establish specific rules for UGI to follow when considering where to install meters through this complaint proceeding. All NGDCs in Pennsylvania are subject to 52 Pa. Code § 59.18. Therefore, UGI should not be subject to different rules or standards than the other NGDCs operating in Pennsylvania. In fact, if the City wants to rewrite the regulation or clarify the specific standards and rules under 52 Pa. Code § 59.18, such issues should be addressed, if at all, in a statewide proceeding where all interested entities have an opportunity to participate.

WHEREFORE, UGI respectfully requests that the allegations and requests for relief presented in the above-captioned Complaint be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

**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. UGI incorporates by reference Paragraphs 1 through 22 as if fully set forth herein.

24. The City requests relief that is legally insufficient because the City is preempted from regulating UGI’s facilities. Specifically, the City requests that the Commission require UGI to “provide a valid statement of justification to the City when it installs any gas meter on a building front, in a front yard, or on a building façade that is visible from a public right-of-way in a designated historic district, as required by the City’s Street Excavation Application Form.” (Complaint ¶ 53(g)) (emphasis added).

25. The City’s requested relief conflicts with the Commission’s broad jurisdiction under the Pennsylvania Public Utility Code. The Commission’s jurisdiction encompasses several “matters including rates, service, rules of service, hazards to public safety due to the use of utility facilities, installation of utility facilities, and location of utility facilities.” *PECO*

*Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996, 1001 (Pa. Cmwlth. 2007) (emphasis added). Indeed, “the Legislature has vested in the Public Utility Commission exclusive authority over the complex and technical service and engineering questions arising in the location, construction, and maintenance of all public utilities facilities.” *Cnty. of Chester v. Phila. Elec. Co.*, 218 A.2d 331, 333 (Pa. 1966) (emphasis added) (citations omitted). When entrusting the Commission with the regulation of all public utilities, the Legislature excluded local authorities from regulating the same areas as the Commission. *See Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287, 292 (Pa. 1954).

26. Here, the City is attempting to assert authority over determining whether an outside meter location is appropriate under Section 59.18 of the Commission’s regulations. The City’s requested relief would require UGI to “justify” outside meter placements in the City’s Street Excavation Application Forms, even though Section 59.18 only requires NGDCs to “consider” inside meter locations in certain situations. Effectively, the City would be asserting jurisdiction over the installation and location of UGI’s facilities and determining whether UGI has complied with Section 59.18 any time it proposes “to install any gas meter on a building front, in a front yard, or on a building façade that is visible from a public right-of-way in a designated historic district.” (*See* Complaint ¶ 53(g)). However, the Commission has exclusive jurisdiction over the installation and location of public utilities’ facilities. Therefore, the City is preempted from establishing jurisdiction over UGI’s facilities. Thus, the City’s request for relief is legally insufficient and should be summarily dismissed.

WHEREFORE, UGI respectfully requests that the allegations and requests for relief presented in the above-captioned Complaint be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

**IV. CONCLUSION**

WHEREFORE, UGI Utilities, Inc. respectfully requests that the above-captioned Formal Complaint filed by the City of Reading against UGI Utilities, Inc. at Docket No. C-2016-2530475 be dismissed in its entirety pursuant 52 Pa. Code §§ 5.101(a)(4).

Respectfully submitted,



Mark C. Morrow (ID # 33590)  
Chief Regulatory Counsel  
Danielle Jouenne (ID # 306829)  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
Phone: 610-768-3628  
E-mail: [morrowm@ugicorp.com](mailto:morrowm@ugicorp.com)  
[jouenned@ugicorp.com](mailto:jouenned@ugicorp.com)

David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-587-1444  
E-mail: [dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)

Devin T. Ryan (ID # 316602)  
17 North Second Street  
12th Floor  
Harrisburg PA 17101-1601  
Phone: 717-731-1970  
Fax 717-731-1985  
E-mail: [dryan@postschell.com](mailto:dryan@postschell.com)

Date: March 14, 2016

Attorneys for UGI Utilities, Inc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**VERIFICATION**

I, Hans G. Bell, being Vice President – Engineering & Operations Support for UGI Utilities, Inc., hereby state that the information set forth above is true and correct to the best of my knowledge, information and belief, and that if asked orally at a hearing in this matter, my answers would be as set forth therein. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: March 14, 2016

Hans G. Bell  
Hans G. Bell

## **Appendix “D”**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

City of Reading	:	
	:	
v.	:	C-2016-2530475
	:	
UGI Utilities, Inc.	:	

**INTERIM ORDER  
DISMISSING PRELIMINARY OBJECTIONS**

On February 17, 2016, the City of Reading filed a formal complaint against UGI Utilities, Inc. (UGI), challenging UGI's placement of meters in historic districts<sup>1</sup> as well as the outside placement of meters in unsafe locations in other districts of the city. On March 14, 2016, UGI filed an answer denying the material allegations of the complaint and also preliminary objections seeking dismissal of the complaint. The City of Reading filed an answer to the preliminary objections on March 24, 2016.

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.<sup>2</sup> A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.<sup>3</sup> The moving party may not rely on its own factual assertions, but must accept for the purpose of disposition of the motion, all well-pleaded material facts of the other party, as well as every

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<sup>1</sup> A similar complaint was filed by the Centre Park Historic District at Docket C-2015-2516051. UGI filed an answer denying the material allegations in the complaint, but did not file preliminary objections. A prehearing conference was held on that complaint on February 11, 2016. At that conference counsel for the City of Reading and the Centre Park Historic District notified me that the City would be filing its own complaint which would effectively "subsume" the complaint made by the Centre Park Historic District. A further prehearing conference on both complaints is scheduled for Wednesday, March 30, 2016.

<sup>2</sup> *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>3</sup> *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC*, PUC Docket No. A-2008-2020353 (Initial Decision dated April 25, 2008).

inference fairly deducible from those facts.<sup>4</sup> Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the complaint are true.<sup>5</sup>

UGI seeks dismissal of the complaint of the City of Reading because the complaint is legally insufficient and should be dismissed pursuant to Section 5.101(a)(4) of the Commission's regulations.<sup>6</sup> Specifically, UGI contends that the relief requested by the City of Reading would effectively require the Commission to rewrite its regulation regarding the location of meters by imposing guidelines and standards on UGI. According to UGI, Section 59.18 of the Commission's regulations provides UGI with the discretion to consider the inside placement of gas meters, but does not mandate it.

The City of Reading disagrees with UGI's characterization of the allegations raised in its complaint. In the City's view, the complaint seeks review of UGI's actions in the placement of meters in the City and whether UGI properly interpreted Section 59.18.

Preliminary objections should only be granted in cases that are free and clear of doubt.<sup>7</sup> The City of Reading's complaint challenges UGI's application of a Commission regulation and whether UGI's actions complied with the regulations.<sup>8</sup> Such a determination is necessarily fact-intensive and does not lend itself to resolution based only on the pleadings. Therefore, UGI's preliminary objections are dismissed.

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<sup>4</sup> *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985).

<sup>5</sup> *Id.*

<sup>6</sup> 52 Pa.Code § 5.101(a)(4).

<sup>7</sup> *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC*, PUC Docket No. A-2008-2020353 (Initial Decision dated April 25, 2008).

<sup>8</sup> *See* 66 Pa.C.S. §§ 701 and 1501.



THEREFORE,

IT IS ORDERED:

That the preliminary objections of UGI Utilities, Inc. to the formal complaint of the City of Reading are dismissed.

Date: March 29, 2016

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Mary D. Long  
Administrative Law Judge

C-2016-2530475 CITY OF READING v. UGI UTILITIES, INC.

MICHAEL J SAVONA ESQUIRE  
\*MICHAEL E PETERS ESQUIRE  
ZACHARY A SIVERTSEN ESQUIRE  
EASTBURN AND GRAY PC  
60 EAST COURT STREET  
PO BOX 1389  
DOYLESTOWN PA 18901  
**215.345.7000**

*\*Accepts E-service  
Representing City of Reading*

MARK C MORROW ESQUIRE  
DANIELLE JOUENNE ESQUIRE  
UGI UTILITIES INC  
460 NORTH GULPH ROAD  
KING OF PRUSSIA PA 19406-2807  
**610.768.3628**  
**610.992.3203**

*Accepts E-service  
Representing UGI Utilities, Inc. – Gas Division*

DAVID B. MACGREGOR ESQUIRE  
POST & SCHELL, P.C.  
FOUR PENN CENTER  
1600 JOHN F KENNEDY BOULEVARD  
PHILADELPHIA PA 19103  
**215.587.1197**

*Does Not Accept E-service  
Representing UGI Utilities, Inc.*

DEVIN T. RYAN ESQUIRE  
POST & SCHELL, P.C.  
17 NORTH SECOND STREET 12<sup>TH</sup> FLOOR  
HARRISBURG PA 17101  
**717.731.1970**

*Accepts E-service  
Representing UGI Utilities, Inc.*

## **Appendix “E”**

**UGI to City & CPHD-I-21**

**Please reference Paragraph 53 of the City's Complaint. Please confirm whether it remains the City's position that all of the standards and requirements proposed in Paragraph 53 be imposed on UGI, including that the Commission require: (1) UGI to relocate all exterior meters in designated historic districts to the inside of buildings, except where the utility establishes a greater safety risk than in similarly situated historic properties; and (2) all future meter replacements in designated historic districts to be located on the inside of buildings, except where the utility establishes a greater safety risk than in similarly situated historic properties. If the answer is anything but an unqualified "Yes," please explain your response in detail.**

The City and CPHD object to this request as seeking information not discoverable in this matter. Without waiving this objection, the City and CPHD respond by stating that the City's Complaint in this matter has not been amended.

UGI to City & CPHD-I-22

**Please reference Paragraph 65 of the City's Complaint. Please confirm whether it remains the City's position that all of the standards and requirements proposed in Paragraph 65 be imposed on UGI, including that the Commission require: (1) UGI to install gas meters on the inside of buildings where a building facade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk; and (2) UGI to relocate exterior meters that have been located within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk. If the answer is anything but an unqualified "Yes," please explain your response in detail.**

The City and CPHD object to this request as seeking information not discoverable in this matter. Without waiving this objection, the City and CPHD respond by stating that the City's Complaint in this matter has not been amended.

EASTBURN & GRAY, PC

BY: /s/ Michael E. Peters

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

Doylestown, PA 18901

215-345-7000

[msavona@eastburngray.com](mailto:msavona@eastburngray.com)

[mpeters@eastburngray.com](mailto:mpeters@eastburngray.com)

[zsivertsen@eastburngray.com](mailto:zsivertsen@eastburngray.com)

*Attorneys for Complainants*

Dated: August 17, 2016

**Verification**

I, Michael E. Peters, Esquire, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at the hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

/s/ Michael E. Peters

\_\_\_\_\_  
Michael E. Peters, Esquire