

Michael J. Savona, Esquire
Attorney I.D. # 78076
Michael E. Peters, Esquire
Attorney I.D. # 314266
Michael T. Pidgeon, Esquire
Attorney I.D. # 315147
EASTBURN AND GRAY, P.C.
60 East Court Street, P.O. Box 1389
Doylestown, PA 18901
215-345-1342
215-345-3528 – fax

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

**PREHEARING MEMORANDUM OF
CENTRE PARK HISTORIC DISTRICT, INC. AND CITY OF READING**

BEFORE ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Centre Park Historic District, Inc. (“CPHD”) and the City of Reading (“City”), by and through their attorneys, Eastburn and Gray, P.C. and Michael J. Savona, Esquire, Michael E. Peters, Esquire, and Michael T. Pidgeon, Esquire, hereby submit the following Prehearing

Memorandum in connection with the Prehearing Conference scheduled in this matter for March 14, 2017.

I. BACKGROUND

A. Procedural Posture

The above-captioned matters have been consolidated, and are scheduled for a prehearing conference on March 14, 2017. The pleadings in this matter were closed when the Honorable Mary D. Long dismissed the Preliminary Objections filed by UGI to the City's Formal Complaint, which objections alleged that the issues raised in the City's Formal Complaint must be addressed through the PUC's regulatory amendment procedure.

Prehearing conferences occurred on February 11, 2016, March 30, 2016, and July 14, 2016. Following the July 14, 2016 conference, the Honorable Mady D. Long issued the Third Prehearing Order, establishing the following litigation schedule:

1. Discovery to be completed no later than September 9, 2016.
2. Dispositive motions to be filed on or before September 30, 2016.
3. Responses to dispositive motions to be filed on or before October 14, 2016.
4. Joint stipulation of facts to be served on November 11, 2016.
5. Evidentiary hearings to be held in Harrisburg on November 15-16, 2016.

Following the July 14, 2016 conference, the parties served discovery requests and responses and were working through discovery disputes. The City and CPHD were prepared to make a supplemental production to its discovery responses on September 2, 2016.

UGI filed a Petition for Interlocutory Review on September 1, 2016. As in its Preliminary Objections, UGI alleged that the issues raised in the City's Formal Complaint must be addressed through the PUC's regulatory amendment procedure. In the alternative, UGI

requested that the PUC limit the matters to be considered by the Administrative Law Judge. The City and CPHD opposed the Petition for Interlocutory Review, by Brief filed September 9, 2016. The essence of the opposition was that (1) the issues were within the powers of the Administrative Law Judge and (2) the Administrative Law Judge was capable of appropriately limiting the issues before her, without direction from the PUC.

Pending disposition of UGI's Petition for Interlocutory Review, the Honorable Mary D. Long suspended the litigation schedule, by Fourth Prehearing Order dated September 2, 2016.

On December 29, 2016, concerned by the lack of decision by the PUC, the City and CPHD filed a Motion for Special Relief, requesting that the PUC act promptly on UGI's Petition. The basis for the Motion was the City and CPHD's concern that all parties would be prejudiced by further delay of ultimate adjudication of this matter. More specifically, the Motion expressed the City's and CPHD's concern that, while this matter is delayed, UGI would continue to relocate meters in historic districts from interior locations to exterior locations, and/or would continue to relocate meters to dangerous exterior locations. Should the Administrative Law Judge determine that the meters were relocated in violation of section 59.18, both parties would be prejudiced—the City and CPHD by the relocation of additional meters in violation of section 59.18, and UGI should it be required to bring the meters into compliance with section 59.18 by, *e.g.*, relocating them.

On February 9, 2017, the PUC denied UGI's Petition for Interlocutory Review.

On February 22, 2017, the Honorable Mary D. Long issued the Fifth Prehearing Order, setting this conference for March 14, 2017. In the Fifth Prehearing Order, Judge Long explained that the parties were expected to confer in advance of the prehearing conference to discuss outstanding discovery disputes and a proposed litigation schedule.

On March 7, 2017, counsel for the City and CPHD and counsel for UGI held a telephone conference in order to discuss the litigation schedule in this matter and to attempt to resolve discovery disputes. The City and CPHD agreed to provide supplemental discovery responses. Counsel for UGI did not have authority to agree on behalf of UGI. The City and CPHD did agree to withdraw some discovery requests, in the interest of moving this matter forward.

On March 9, 2017, counsel for the City and CPHD, UGI, and the Bureau of Investigation and Enforcement conferred regarding the proposed litigation schedule. The parties reached an agreement regarding the following litigation schedule:

1. Discovery to be completed no later than May 15, 2017.
2. Dispositive motions to be filed before on or before June 30, 2017.
3. Evidentiary hearings to begin on or about August 28, 2017, pending the Administrative Law Judge's schedule.

On March 10, 2017, at the close of business, counsel for UGI left a message for counsel for the City and CPHD, regarding UGI's current position with respect to its discovery objections and additional production. The parties have not had an opportunity to confer, although there will remain discovery disputes to be resolved by the Administrative Law Judge.

B. Factual Basis of Claims.

The City and CPHD incorporate by reference their prior prehearing memorandum. In brief summary, UGI is in the process of relocating gas meters throughout the City of Reading, including the City's six (6) historic districts. The City respectfully requests an adjudication and determination of whether these relocation efforts comply with section 59.18 of the Public Utility Commission's regulations specifically the exception to outdoor meter placement in the case of

historic districts. Where meters have been installed in historic districts to date, no meaningful consideration has been given to inside placement, notwithstanding the exception contained in section 59.18.

In addition to the PUC's regulations, the City has its own ordinances and rules that apply to its historic districts.

Furthermore, the City has identified meter placements, as part of UGI's relocation program, in dangerous locations; further violation of section 59.18.

The City performed a meter-by-meter survey, identifying over 1,000 meters believed to be in violation of section 59.18—either because of their location in historic districts or placement in dangerous locations.

III. STATUS OF DISCOVERY TO DATE

As noted above, the parties conferred regarding outstanding discovery disputes on March 7, 2017. The City and CPHD have supplemented their discovery responses. In addition to written responses, with the supplemental production, the City and CPHD have produced over 7,000 pages of documentary discovery: CityCPHD_00001 through City CPHD_07030. Included in the supplemental production is the meter-by-meter survey.

Prior to the supplemental production, but following the conference between the parties in which counsel for the City and CPHD agreed to provide a supplemental production, UGI filed a Motion to Compel. The City and CPHD are filing a Motion to Dismiss that Motion to Compel contemporaneously herewith. Given the supplemental production, the Motion to Compel is moot. Furthermore, the Motion to Compel is untimely, having been filed over 6 months after the City and CPHD served their objections.

On its part, UGI has produced just over 500 pages of discovery. UGI objected to many of the City's and CPHD's discovery requests. On the March 7, 2017 conference call, the City and CPHD agreed to withdraw certain requests, in an effort to resolve the discovery disputes in this matter and permit this matter to proceed. Although it appears that UGI will be providing supplemental responses, as noted above the parties have not had an opportunity to re-confer after the March 7, 2017, conference call, at which time counsel for UGI did not have authority to reach any agreement with counsel for the City and CPHD.

At the very least, the following discovery disputes must be resolved by the Administrative Law Judge. UGI refuses to respond to:

1. Requests related to City of Reading Ordinance No. 45-2015, part of the City's historic district regulations.
2. Requests seeking drafts of UGI's Meter and Regulator Replacement Guidelines.

Furthermore, UGI has asserted privilege over many documents in its possession, although it has not identified the documents. The City and CPHD have therefore requested a Privilege Log.

UGI has also filed a Petition for Protective Order. The City and CPHD are filing a Response to that Petition contemporaneously herewith. The City and CPHD have no specific objection to the Petition, provided their rights to share protected documents with their witnesses and to challenge the proprietary or confidential nature of documents identified as such by UGI, are preserved.

IV. PROPOSED LITIGATION SCHEDULE

As noted above, the parties have agreed to the following proposed litigation schedule:

1. Discovery to be completed no later than May 15, 2017.
2. Dispositive motions to be filed before on or before June 30, 2017.
3. Evidentiary hearings to begin on or about August 28, 2017, pending the Administrative Law Judge's schedule.

V. PRESENTLY IDENTIFIED ISSUES

1. UGI must recognize all historic districts in the City, including locally designated historic districts, for purposes of considering inside meter placement under § 59.18(d).
2. UGI has failed to give appropriate consideration to the inside placement of meters in designated historic districts as required by § 59.18(d).
3. UGI must comply with the City's historic district regulations, and must, *e.g.*, fully complete the City's Street Excavation Form and provide a statement of justification for exterior meter placement visible from the public right-of-way.
4. UGI must respect the City's historic districts and, where meters are placed in outside locations visible from the public right-of-way, locate meters so they are unobtrusive and screened from view.
5. CPHD and the City respectfully request that the Commission provide clarity to the parties regarding the proper application of § 59.18, and provide guidance to UGI and the City concerning the scope of § 59.18 and the responsibilities of UGI to comply with established historic district requirements in light of § 59.18.

6. 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).
7. 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).
8. 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).

III. WITNESSES

The City intends to call the witnesses identified in their previous prehearing memoranda: John Slifko, City Councilmember; Ralph Johnson, Public Works Director; and Michael Lauter, Centre Park Historic District President.

The City and CPHD are considering calling expert witnesses regarding the impact of UGI’s meter relocation programs on the City’s historic districts, and reserve the right to identify expert witnesses.

CPHD and the City reserve the right to call such additional witnesses as may be necessary to respond to issues raised by the respondent.

EASTBURN AND GRAY, P.C.

/s/ Michael J. Savona

Michael J. Savona, Esquire
Attorney I.D. # 78076
Michael E. Peters, Esquire
Attorney I.D. # 314266
Michael T. Pidgeon, Esquire
Attorney I.D. # 315147
60 E. Court Street, P.O. Box 1389
Doylestown, PA 18901
215-345-7000
215-345-3528—fax
msavona@eastburngray.com
mpeters@eastburngray.com
mpidgeon@eastburngray.com

Dated: 13 March 2017

David B. MacGregor, Esquire
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-280
dmacgregor@postschell.com
Devin T. Ryan, Esquire
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
dryan@postschell.com

Adam D. Young, Esquire
Senior Prosecutor
PA Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105
adyoung@pa.gov

EASTBURN AND GRAY, P.C.

/s/ Michael E. Peters

By: _____
Michael E. Peters, Esquire