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June 30, 2017

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Marotta Main Architects v. UGI Utilities, Inc.,
Docket No. C-2017-2597451**

Dear Secretary Chiavetta:

Enclosed for filing, please find the Answer of UGI Utilities, Inc. to the City of Lancaster's Petition to Intervene in the above-captioned proceeding. Copies of this document have been served upon the persons noted on the attached Certificate of Service.

Should you have any questions concerning this filing, please feel free to contact me.

Very truly yours,

Mark C. Morrow

Counsel for UGI Utilities, Inc.

cc: Service List

adequately represented by existing participants.” By way of further answer:

In order to have standing to pursue a formal complaint before the PUC under Section 701 of the Code, the complainant 'must have a *direct, immediate, and substantial* interest in the subject matter of the controversy.” *Waddington v. Pennsylvania Pub. Util. Comm’n*, 670 A.2d 199, 202 (Pa.Cmwlth.1995) (emphasis added), *appeal denied*, 544 Pa. 679, 678 A.2d 368 (1996). “The requirement that an interest be ‘direct’ simply means that the person claiming to be aggrieved must show causation of the harm to *his* interest by the matter of which he complains.” *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195, 346 A.2d 269, 282 (1975) (plurality) (emphasis added). The requirement that an interest be “immediate” and not a remote consequence of the matter concerns “the nature of the causal connection between the action complained of and the injury to the person challenging it.” *Id.* at 197, 346 A.2d at 283. The requirement of a “substantial” interest means that the interest must have substance—*i.e.*, there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law. *Id.* at 195, 346 A.2d at 282.

Municipal Authority of Westview v. Pa.PUC, 41 A.3d 929, 933 (Pa. Cmwlth. 2012).

6. It is denied that the Petitioner should be permitted to intervene in this complaint proceeding as it has not identified a direct, immediate and substantial interest in its petition.

Instead, the petition merely states:

The City expects that in this proceeding, the presiding Administrative Law Judge and the Commission may render an Initial Decision and Order, respectively, which may address the placement of gas meters on properties located in Historic Districts, Historic Conservation Districts or Historic Preservation Districts within the municipal boundaries of the City. Accordingly, the City may be directly affected by this proceeding’s outcome with respect to the placement of meters in properties located in Historic Districts, Historic Conservation Districts or Historic Preservation Districts within the City’s municipal boundaries.

As explained more fully below, this statement is expressing nothing more than an interest that UGI comply with meter placement rules over which the Commission has exclusive jurisdiction, and over which Petitioner has no jurisdiction or authority. Such generalized, indirect and abstract concerns about compliance with law cannot confer standing.

By way of further answer, it is well established law that the Public Utility Code vests exclusive authority over the regulation of public utility facilities in the Commission. *Duquesne Light Company v. St. Claire Township*, 105 A. 287, 292-293 (Pa. 1954); *County of Chester v. Philadelphia Electric Co.*, 218 A.2d 331, 332-33 (Pa. 1966); *PPL Electric Utilities Corp. v. City of Lancaster*, 125 A.3d 837, 844-51 (Pa. Cmwlth. 2015); *UGI Utilities, Inc. v. City of Lancaster*, 125 A.3d 858, 864-65 (Pa. Cmwlth. 2015); *Pennsylvania Power Co. v. Township of Pine*, 926 A.2d 1241, 1249-53 (Pa. Cmwlth. 2007); *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1005 (Pa. Cmwlth. 2007). The Commission recently revised its regulation of 52 Pa. Code §59.18 to specify rules concerning the placement of meters, including the location of meters in historic districts, and in the course of its rulemaking specifically declined to delegate any of its authority in this area to local municipalities or historical review boards although specifically requested to do so in comments filed in the rulemaking proceeding. *See Rulemaking Re Amendment to 52 Pa. Code §59.18 Meter Location*, Docket No. L-2009-2107155 (Final Rulemaking Order entered May 23, 2014) (“we agree with EAP’s general premise that utilities are not subject to local ordinances in the installation of their facilities, and that the PUC has exclusive jurisdiction in this area” Id. at Attachment 1, p. 43). Petitioner has not alleged in its petition that it has attempted to regulate, either directly or indirectly, the location of meters at the address which is the subject of the above-captioned formal complaint, but even if were to attempt

to do so, as noted in a recent Memorandum Opinion of the Commonwealth Court in *UGI Utilities, Inc. v. City of Reading*, 499 M.D. 2015 (2017), attached as Appendix A hereto:

Local regulation of the location of utility facilities is therefore preempted by the Public Utility Code and enforcement of such regulation, whether by ordinance or permit denial, is invalid, even if the local regulation does not conflict with PUC regulations. *County of Chester*, 218 A.2d at 332-33; *PPL Electric Utilities Corp.*, 125 A.3d at 844-51; *UGI Utilities, Inc.*, 125 A.3d at 864-65; *Township of Pine*, 926 A.2d at 1249-53. While there is a dispute between UGI and the City as to whether UGI's gas meter relocations comply with 52 Pa. Code §59.18, that is a question committed to the PUC to decide in the first instance, subject to appellate review, it is not a matter that the City can adjudicate or that this Court or any other court of this Commonwealth may decide in its original jurisdiction.

Id. at pp 8-9.

As Petitioner has no authority to regulate the placement of meters, and the meter installation at issue in this proceeding is not at a Petitioner service address, it has no direct interest in the outcome of this complaint proceeding, and cannot gain standing by merely expressing a concern that UGI must comply with Commission rules governing meter placement.

See e.g. *Joint Application of Aqua Pennsylvania, Inc. and Country Club Gardens Water Company*, Docket Nos. A-210104F0066 and A-210620F200 (Opinion and Order entered April 7, 2006), 2006 WL 1083288, (municipal authorities and municipal entities have no authority to intervene in water utility acquisition proceeding when they are not customers as “[t]he only concern expressed by the municipal authorities and the municipal entities is that the Joint Application process comply with the law and that is not the kind of substantial interest that would confer standing”).

Although Petitioner has not articulated a due process right to intervene, the Commonwealth Court has “noted that the right to procedural due process only attaches where there is an alleged deprivation of a protected property or liberty interest.” *Municipal Authority of Westview*, 41 A.3d at 936. Petitioner had the opportunity to submit comments in response to the Commission’s recent rulemaking proceeding establishing meter placement rules, including rules for the placement of meters in historic districts, but has no protected property or liberty interest that permits it to intervene and participate in every matter involving the interpretation or application of the Commission’s final regulations as it has no authority over the location of meters.

7. It is denied Petitioner has standing to intervene in this proceeding.

WHEREFORE, UGI respectfully requests that the petition to intervene of City of Lancaster be denied.

Respectfully submitted,



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Counsel for UGI Utilities, Inc.

Dated: June 30, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MAROTTA MAIN ARCHITECTS	:	
	:	
v.	:	
	:	Docket No. C-2017-2597451
UGI UTILITIES, INC.	:	
_____	:	

CERTIFICATE OF SERVICE

I hereby certify that I, on this 30th day of June, 2017, have served a true and correct copy of the foregoing document in the manner and upon the persons listed below in accordance with requirements of 52 Pa. Code §1.54 (relating to service by a participant):

VIA FIRST CLASS AND ELECTRONIC MAIL:

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