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September 27, 2017

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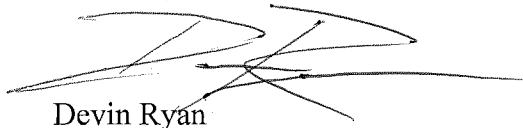
**Re: Centre Park Historic District v. UGI Utilities, Inc.
Docket No. C-2015-2516051**

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

Dear Secretary Chiavetta:

Enclosed please find the corrected version of the Exceptions of UGI Utilities, Inc. to the Initial Decision Granting In Part and Denying In Part UGI Utilities, Inc.'s Motion for Summary Judgment for filing in the above-referenced proceeding. This version corrects the format of the cover page. No other changes were made. 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).

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Date: September 27, 2017


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.	:	

**EXCEPTIONS OF UGI UTILITIES, INC. TO THE
INITIAL DECISION GRANTING IN PART AND DENYING IN PART
UGI UTILITIES, INC.'S MOTION FOR SUMMARY JUDGMENT**

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Dated: September 27, 2017

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I. BACKGROUND

This matter was initiated on November 25, 2015 (*i.e.*, approximately 22 months ago), and has a long and convoluted procedural history. The following background and procedural history is relevant to these Exceptions to the Initial Decision (“ID”) of Administrative Law Judge Mary D. Long (the “ALJ”), which granted in part and denied in part UGI Utilities, Inc.’s (“UGI” or the Company”) Motion for Summary Judgment.

On November 25, 2015, Centre Park Historic District (“CPHD”) filed a Formal Complaint at Docket No. C-2015-2516051 alleging UGI’s meter location practices in the historic districts of Reading, PA violated amended Section 59.18 and Section 59.33 of the Commission’s regulations. (*See* CPHD Complaint ¶ 4) On February 23, 2016, UGI received e-service of the Complaint filed by the City of Reading (“City”). In its Complaint, the City alleged UGI violated amended Section 59.18 and Section 59.33 of the Commission’s regulations. (*See* City Complaint, Counts I and II) UGI timely filed Answers to both Complaints.

On March 21, 2017, the ALJ issued the Sixth Prehearing Order, which, among other things, directed the Complainants to prepare and produce detailed meter spreadsheets that: (1) identified the meter installations that Complainants are contesting in historic and non-historic districts; (2) the date a permit was issued, if one was issued, for each meter installation; and (3) the date the each meter was relocated. The Sixth Prehearing Order also provided UGI with the opportunity to stipulate or object to the information set forth in the Complainants’ spreadsheets, and the Complainants were provided with an opportunity to stipulate or object to any information provided by UGI. The dates and scope of information to be provided by the parties were modified by the Seventh and Eight Prehearing Orders issued on April 18 and 19, 2017, respectively.

Pursuant to the Sixth-Eighth Prehearing Orders, the updated meter spreadsheets were submitted on May 22, 2017, which included the stipulations and objections of both the Complainants and UGI. In total, the Complainants identified 2,029 meters as being at issue in this matter. Pursuant to the Sixth Prehearing order, discovery closed on May 30, 2017.

On July 6, 2017, UGI filed its Motion for Summary Judgment (“Motion”), which relied on, among other things, the updated meter spreadsheets and supporting materials submitted on May 22, 2017.¹ In the Motion, the Company argued that the Complaints should be summarily dismissed, in whole or in part, for the following reasons:

- (A) Certain meters in historic districts identified by Complainants were relocated before amended Section 59.18(d)(1) became effective and, therefore, UGI did not have to “consider” inside meter locations for those meters;
- (B) Certain meters alleged by Complainants to violate the safety requirements of amended Section 59.18 were relocated before the amended regulation became effective;
- (C) Certain meters do not violate amended Section 59.18(a)(8)(i) because Complainants have conceded that those meters are not beneath or in front of an opening that can be used as a fire exit;
- (D) Complainants have failed to establish that certain meters are in contact with soil or other corrosive material in violation of amended Section 59.18(a)(8)(vi);
- (E) Complainants have failed to establish that any meters are located under exterior staircases in violation of amended Section 59.18(a)(8)(iii);
- (F) Certain locations identified by Complainants do not, in fact, have a meter and, therefore, cannot be in violation of amended Section 59.18 or Section 59.33, as alleged by Complainants;
- (G) Complainants have raised issues and claims that are clearly beyond the Commission’s jurisdiction;
- (H) The Commission’s meter placement regulation does not, as a matter of law, require NGDCs to comply with local ordinances; and

¹ Also on July 6, 2017, the Complainants filed a Motion for Partial Summary Judgment, and UGI filed an Answer to the Complainants’ Motion. On September 7, 2017, the ALJ issued an Interim Order denying the Complainants’ Motion in its entirety.

(I) The Complaints should be dismissed as a matter of law because the requested relief would impose new, additional regulatory requirements and, therefore, cannot be granted in a complaint proceeding initiated under 66 Pa. C.S. § 701.

On July 26, 2017, the Complainants filed an Answer to UGI's Motion, in which they: (1) withdrew their claim that the 163 meters identified in UGI's Motion were in contact with soil or other corrosive material in violation of Section 59.18(a)(8)(vi); (2) withdrew their claim that two of the seven meters were located under exterior stairways in violation of Section 59.18(a)(8)(iii); and (3) disputed all other arguments raised in UGI's Motion.

On September 7, 2017, the ALJ issued the ID granting in part and denying in part UGI's Motion for Summary Judgment. Pertinent to these Exceptions, the ID found that although there is no dispute that certain locations do not have a meter or active gas service, this is not a sufficient basis to grant summary judgment on whether these meter locations are in violation of amended Section 59.18 or Section 59.33. (ID, pp. 17-18) The ID also found that the Commission lacks authority and jurisdiction to enforce local regulations or permit requirements (ID, pp. 19-20), but a violation of Section 59.18 could be established by evidence that a gas utility failed to consider or comply with local historic district regulations and permit requirements. (ID, p. 22) Also pertinent to these Exceptions, the ID did not address UGI's argument that the relief requested by the Complainants cannot be granted in a complaint proceeding. (ID, pp. 18-22)

UGI herein takes limited exceptions to the ID. First, UGI respectfully submits that the ID erred in denying UGI's Motion with respect to the locations where there are no meters installed. These meters have not been installed or relocated and, therefore, cannot be in violation of the Commission's meter relocation regulations. Second, although the ID found that the Commission lacked subject matter jurisdiction over local regulations and permits, the ID erred in implying

that amended Section 59.18 requires gas utilities to consider or comply with local historic district regulations and permit requirements. Third, the ID erred by failing to address UGI's argument that the Commission cannot grant the Complainants' requested relief in a complaint proceeding. (ID, pp. 18-22)

For these reasons, as more fully explained below and in UGI's Motion for Summary Judgment, which is incorporated herein, the Company takes the following limited exceptions to the ID and requests that the Commission enter an order consistent with these Exceptions.

II. EXCEPTIONS

A. Exception No. 1: The ID Erred in Denying UGI's Motion with Respect to the Locations Where There Are No Meters Installed

The ID erred in denying UGI's Motion with respect to the locations where there are no meters installed. (ID, pp. 17-18) The Complainants are challenging UGI's exterior meter installations and relocations within the City of Reading and its historic districts. Specifically, the Complainants allege that UGI: (1) failed to consider inside meter locations under Section 59.18(d)(1)(ii); and (2) installed meters in locations prohibited by Section 59.18(a)(5), Section 59.18(a)(8)(i), (iii), (v), and (vi), and Section 59.33. (See City Complaint, Counts I and II; CPHD Complaint ¶ 4)

The simple, undisputed fact, however, is that 118 of these locations contested by the Complainants do not have meters. (See UGI Motion, p. 25) As the ID correctly found, "there is no dispute that certain locations do not have a meter or active gas service." (ID, p. 18) Rather, the Complainants' allegations regarding these locations are solely predicated on the presence of "meter infrastructure" as indicating where a meter ultimately may be installed at some unknown time in the future. (See Complainants' Answer to UGI Motion, p. 19) Essentially, the Complainants are asking the Commission to find that UGI has violated the meter location

regulations before the meters are even installed at these properties. The fundamental legal flaw with the Complainants' claim is that it seeks to hold UGI accountable for conduct that has not occurred.

The Commission's regulations govern the actual installation and location of meters, not the speculated potential future location of the meter. *See* 52 Pa. Code §§ 59.18, 59.33. UGI has not installed or relocated any meters at these 118 properties, and it cannot be held for certain where these meters will be installed if and when they are ever installed. Therefore, unless and until the meter is installed, UGI cannot, as a matter of law, have committed any violation for installing the meter in a location prohibited by the Commission's regulations.

Based on the foregoing, UGI respectfully submits the ID erred in failing to dismiss the Complainants' claims that UGI violated the Commission's meter location regulations for locations where no meters are installed. Accordingly, the Commission should grant this Exception and dismiss any claims with respect to the 118 meter locations identified in UGI's Motion for Summary Judgment.

B. Exception No. 2: The ID Erred in Implying that Section 59.18 Requires Gas Utilities to Consider or Comply with Local Historic District Regulations and Permit Requirements

In its Motion for Summary Judgment, UGI argued that the Complainants have attempted to raise numerous issues and claims that are beyond the Commission's jurisdiction.² The ID correctly concluded that the Commission lacks authority or jurisdiction to enforce local regulations or permit requirements. (ID, p. 19) The ID also concluded that nothing in 52 Pa. Code § 59.18 vests the Commission with the power to determine whether a local historic district

² In its Motion, UGI argued that the Commission lacked subject matter jurisdiction over the following claims and issues raised by the Complainants: (1) whether UGI complied with the City's local historic district regulations; (2) whether UGI failed to obtain local permits from the City for the meter installation and relocation projects, and (3) whether the City's historic district regulations are appropriate under state and federal law, including the Environmental Rights Amendment of the Pennsylvania Constitution. (*See* UGI Motion, pp. 26-35)

regulation is appropriate under state law, federal law, or the Pennsylvania Constitution.³ (ID, p.

20) Notwithstanding these findings, the ID then went on to hold as follows:

Therefore, a failure to secure the proper permits ... or lack of a meaningful attempt to be aware of or comply with existing historic district regulations that may restrict exterior alternations, may be considered as evidence of a failure to adequately “consider” indoor placement of the meter....

(ID, p. 22)

UGI does not contest that parties can attempt to introduce information related local permits and ordinances as evidence to support their claim that a building is located in a historic district, thereby allowing a gas utility to “consider” an inside meter location under Section 59.18. However, the ID potentially goes much farther. The above-quoted language suggests that violation of Section 59.18 can be established if a gas utility fails to: (1) secure the proper local permits; (2) make an attempt to be aware of existing historic district regulations; and (3) comply with existing historic district regulations. UGI respectfully submits that the ID’s interpretation improperly adds new requirements to Section 59.18 that were not incorporated by the Commission.

Nothing in the Public Utility Code grants the Commission authority to enforce compliance with local ordinances, regulations, or permits, and the Commission cannot grant itself authority, through a regulation or order, that was not conferred upon it by the General Assembly.⁴ Further, Section 59.18(d)(1)(ii) expressly states that gas utilities need only

³ As noted in UGI’s Motion for Summary Judgment, whether the City’s local historic district regulations are lawful is already being litigated before the Commonwealth Court. (*See* UGI Motion, pp. 31-32) Indeed, Judge Long noted in footnote 38 of the ID that her discussion of the City’s ordinance was not meant to intrude on the Commonwealth Court’s current consideration of this matter.

⁴ The Commission is a “creature of statute” and “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.” *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958)). The Commission cannot grant itself by regulation or order authority that was not conferred upon it by the Legislature. *See W. Pa. Water Co. v. Pa. Pub. Util. Comm’n*, 370 A.2d 337, 339-40 (Pa.

“consider” inside meter locations for buildings that are historic, eligible to be historic, located in historic districts, or located in areas that are eligible to be historic districts. 52 Pa. Code § 59.18(d)(1)(ii). Nothing in the Commission’s regulations requires a gas utility to consider or comply with local historic district regulations or to obtain local permits when installing or relocating a gas meter. At best, Section 59.18 obligates the gas utility to determine if the building is in a historic district and, if so, to consider whether the meter should be located inside.

Additionally, the Commission previously contemplated and rejected a requirement for gas utilities to comply with local historic district regulations as part of the rulemaking process in amending Section 59.18. See *Rulemaking RE Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155, p. 30 (Order Entered May 23, 2014) (“*Final Rulemaking Order*”). Even though commenters recommended that “the regulations should develop requirements for relocating meters and regulators outside in locally designated historic districts and provide alternatives for typical historic building types,” the Commission rejected this approach and noted that the amended Section 59.18 already provides “a number of guidelines for relocating meters outside which would apply to outside meters in locally designated historic districts.” *Id.* at pp. 30-31. The only “guidelines” referenced by the Commission were described in the previous paragraph of the *Final Rulemaking Order* as the following:

Subsection (a) lists general requirements for meter and regulator location. Specifically, for location guidance under paragraph (3) (paragraph 5 in the Final rulemaking), the utility shall consider potential damage by outside forces; under paragraph (4) (paragraph 6 in the Final rulemaking), the utility must consider a number of factors for accommodating access; and under paragraph (6) (paragraph 8 in the Final rulemaking), a list of prohibited locations is provided. Finally, under subsection (b), the regulation lists the locations where outside meter or service regulator locations can be located.

1977) (citations omitted); *Fairview Water Co. v. Pa. Pub. Util. Comm’n*, 502 A.2d 162, 165-66 (Pa. 1985) (citations omitted); *Fed. Deposit Ins. Corp. v. Bd. of Fin. & Revenue*, 84 A.2d 495, 499 (Pa. 1951) (citations omitted).

Id. at p. 30. In addition to those limitations, the utility “has an obligation to know whether gas line improvements and meter location projects are located in historic areas.” *Id.* at p. 31. None of these provisions require a gas utility to consider or comply with local regulations, ordinances, or permit requirements.

Further, the *Final Rulemaking Order* emphasized that gas utilities retained the discretion on where to ultimately install their facilities.⁵ *Final Rulemaking Order*, pp. 12-13, 45-46. The Commission could have required inside meter locations for historic districts and buildings or clarified whether utilities must comply with local historic district regulations, as recommended during the rulemaking proceeding. *See id.* at 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.”); City of Lancaster Comments, Docket No. L-2009-2107155, pp. 1-2 (July 6, 2012); City of Lancaster HARB Comments, Docket No. L-2009-2107155, p. 2 (July 9, 2012); City of Lancaster Historical Commission Comments, Docket No. L-2009-2107155, p. 1 (July 10, 2012). However, the Commission rejected these approaches and stated in the *Final Rulemaking Order* that utilities should retain discretion over where to place a meter in compliance with the regulation. *See id.* at pp. 12-13, 30-31, 45-46.

The above-quoted language from the ID suggests that gas utilities should comply with local regulations, ordinances, and permit requirements or be at risk of violating the Commission’s regulations. As a result, if the ID’s finding were adopted, the Commission would open the door for municipalities to pass local historic district regulations that restrict where a

⁵ *See* UGI Tariff Rule 4.2, Gas – Pa. P.U.C. No. 6, Original Page 20 (“The location of the Company’s facilities shall in all cases be determined by the Company,” and “[t]he owner of a premises receiving or capable of receiving natural gas service from Company shall be deemed to consent to the location of Company facilities on the premises”).

meter can be located outside or that force a utility to keep the meter inside in certain circumstances. At that point, the utilities' discretion is effectively taken away, and the decision-making authority rests with the local municipalities. This outcome is contrary to the Commission's clear intent in amending Section 59.18.⁶

For these reasons, UGI respectfully submits that the ID erred in implying that Section 59.18 requires gas utilities to consider or comply with local historic district regulations and permit requirements.

C. Exception No. 3: The ID Erred in Failing to Address UGI's Argument that the Commission Cannot Grant the Complainants' Requested Relief in a Complaint Proceeding

In its Motion for Summary Judgement, UGI argued that Complaints should be dismissed as a matter of law because the relief they request cannot be granted in a formal complaint proceeding against a single gas utility. (*See* UGI Motion, pp. 35-40) As explained therein, the Complainants' requested relief cannot be granted in this Section 701 complaint proceeding because it would impose regulatory requirements regarding meter locations that conflict with the Commission's regulations or that do not currently exist in the Commission's regulations. Although the ID acknowledged UGI's argument that "the complaints should be dismissed because the relief requested by the Complainants cannot be granted," the ID did not fully address the argument. (*See* ID, p. 18) UGI submits that prompt and definitive resolution of this legal issue will avoid wasting the parties' and Commission's time and resources.⁷

⁶ The Commission should not lose sight of its principal reason for requiring outside meters, as a general rule, under the amended Section 59.18 – safety issues with inside meters. *Id.* at pp. 5-6. In light of these safety issues, gas utilities should continue to have the ultimate discretion to locate their meters pursuant to Section 59.18, without concern that any failure to comply with local historic district regulations and ordinances could be used to substantiate a violation of Section 59.18.

⁷ Further, to the extent that the Commission determines that the Complaints should not be dismissed in their entirety for requesting this relief, clarifying the relief that can be granted will facilitate the parties in the

In this Section 701 complaint proceeding, the only determinations to be made are whether UGI violated a provision of the Public Utility Code, a Commission order, or a Commission regulation and, if so, whether the Company should be subject to a civil penalty for any violation. See 66 Pa. C.S. §§ 701, 3301. In their Formal Complaints, the Complainants request the following relief:

(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. 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.

development and litigation of complete record on the issues that are properly before the Commission for adjudication in this complaint proceeding.

- 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)) Such relief cannot be granted in a Section 701 complaint proceeding involving a single gas utility. *See Aronson v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00981378, pp. 2, 8, 10-11 (May 28, 1998) (Initial Decision) (dismissing the formal complaint because, among other things, it requested that the Commission adopt additional regulatory requirements not currently found in 52 Pa. Code § 64.14 and apply them to Bell Atlantic, which is relief that cannot be granted in a complaint proceeding), *adopted by Commission* (Order Entered July 14, 1998).

First, the Complainants' requested relief explicitly conflicts with Section 59.18 of the Commission's regulations. (*See* UGI Motion, pp. 38-39) Section 59.18 states that unless an exception applies, meters shall be placed outside and aboveground. 52 Pa. Code § 59.18(a)(1). Further, in historic districts, a gas utility only needs to "consider" an inside meter location; nothing prohibits the utility from installing or relocating a meter outside in historic districts. *See id.* § 59.18(d)(1). However, the Complainants' requested relief, if granted, would require UGI to do the exact opposite and place all meters in designated historic districts inside buildings, "except where the utility establishes a greater safety risk than in similarly situated historic properties." In other words, instead of 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. No such requirement currently exists under the Public Utility Code or the Commission's regulations, and the Commission already considered and rejected very similar proposals in the rulemaking proceeding. *See Final Rulemaking Order*, pp. 26, 45 (noting that "[t]he Mayor [of Allentown] also argue[d] 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" and that Society Hill Civic Association proposed that inside meter locations be required for historic buildings and for buildings in historic districts).

Second, the Complainants' requested relief seeks to impose new, additional regulatory requirements that only would apply to UGI. (UGI Motion, p. 39) For example, 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)) Further, even though the Commission rejected adopting "subjective requirements that would avoid or minimize the impact to an historic resource" in its *Final Rulemaking Order*,⁸ the City requests that UGI be required to "ensure" that any exterior meter installations "are unobtrusive and screened from view through the use of landscaping, fencing, and/or architectural building features." (City Complaint ¶ 53(f)) Moreover, the Complainants seek to specify the exact number of feet that an exterior meter can be located from a City street or sidewalk. CPHD requests that UGI "be prohibited from installing any outside meter within 10' of a City walk unless placed in a buried vault," and the City proposes that UGI shall install or relocate gas meters to inside the buildings "where a building façade is within 15 feet or less of a City street and no parking lane separates the lane of

⁸ *See Final Rulemaking Order*, p. 30.

travel from the sidewalk.” (CPHD Complaint ¶ 5; City Complaint ¶ 65(a)-(b)) None of these proposed standards and requirements currently exist in the Commission’s regulations.

Clearly, the Complainants are attempting to impose new regulatory requirements that are either in addition to or conflict with the Commission’s regulations. The relief requested by the Complainants is nothing more than a collateral attack on the Commission’s lengthy formal rulemaking proceeding at Docket No. L-2009-2107155, when all interested parties were provided an opportunity to comment on the Commission’s amendments to 52 Pa. Code § 59.18. Notably, the Complainants elected not to participate or submit any comments during any portion of the formal rulemaking process. Although the Complainants may be unhappy with the Commission’s decision to make outside meters the general rule and only require gas utilities to “consider” inside meter locations in historic districts and buildings, a formal complaint proceeding is not the proper mechanism for the Complainants to seek to essentially re-write the formally adopted and approved regulation. Further, if these new, additional regulatory requirements sought by the Complainants are imposed through this Section 701 complaint proceeding, UGI would be subject to different regulatory requirements than all other gas utilities operating in Pennsylvania.

To the extent that the Complainants are unhappy or disagree with Commission’s meter relocation regulations and want to impose new and additional regulatory requirements for when UGI is installing or relocating meters, they have a more than adequate remedy available. Indeed, the Complainants should file a petition pursuant to 52 Pa. Code § 5.43 to amend or modify the Commission’s regulations. That process would ensure that all affected parties are afforded due process and that these issues are not litigated in a piecemeal fashion by each municipality through the Commonwealth. *See Aronson v. Bell Atlantic-Pennsylvania, Inc.*, p. 10. (“The

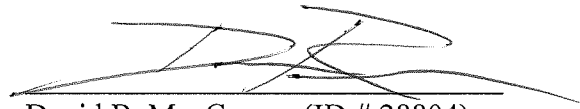
proper procedural vehicle for such an undertaking is a rulemaking proceeding, not a complaint proceeding.”) (footnote omitted).

Based on the foregoing, the ID erred in failing to address UGI’s argument that the Complaints should be dismissed as a matter of law because they request relief that cannot be granted in a complaint proceeding. Accordingly, the Commission should grant this Exception and dismiss the Complaints without prejudice to seek the requested relief through an appropriate petition pursuant to 52 Pa. Code § 5.43.

III. CONCLUSION

For the foregoing reasons, the Pennsylvania Public Utility Commission should adopt UGI Utilities, Inc.'s Exceptions to the Initial Decision and enter a Final Order consistent with these Exceptions that dismisses, in whole or in part, the Complaints of Centre Park Historic District and the City of Reading.

Respectfully submitted,



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