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*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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 electronic filing is the Main Brief of the City of Reading in the above-referenced matter. Copies of the Main Brief are being served in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Charles E. Thomas, Jr.

Enclosure

cc: Elizabeth Kraft, Esquire  
Certificate of Service

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**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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**MAIN BRIEF OF  
THE CITY OF READING**

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DATED: October 18, 2018

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## **I. INTRODUCTION AND STATEMENT OF CASE**

This consolidated proceeding concerns separate formal complaints filed with the Pennsylvania Public Utility Commission (“Commission”) by the City of Reading (“City,” “Reading”) and Centre Park Historic District (“CPHD”) (together with the City, the “Complainants”) against UGI Utilities, Inc. (“UGI”) concerning, *inter alia*, the placement of gas meters in historic districts and other locations within the City. Despite its protracted nature, this proceeding is not that complicated. It only appears so as a consequence of the length of time the proceeding has been pending, the number of pleadings and Interim Orders served, filed, and issued since its inception, and perhaps more than anything because of UGI’s insistence on a one-size-fits-all approach to the location of meters (*i.e.*, all meters must be outside and above ground).

### **A. The Parties**

#### **1. The City of Reading**

##### **a. Form of Government**

Reading is a city of the third class governed under the Third Class City Code, 11 Pa.C.S. § 10101 *et seq.* The City moved from the commission form of government to a Home Rule Strong Mayor/Part-Time Council on January 1, 1996.<sup>1</sup> City Council is the legislative branch of City government. Its duties include enacting all ordinances and resolutions of the City, providing general oversight and serving as a check on the executive branch, and providing constituent service to the degree possible.<sup>2</sup> City Council is comprised of seven members, six of whom are elected by districts of equal population where they reside and one member, the

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<sup>1</sup> Reading St. No. 1 at 1.

<sup>2</sup> Reading St. No. 2 at 2.

Council President is elected at large.<sup>3</sup> The President serves as the spokesperson for Council and chairs Council meetings, executes legislation approved at council meetings and attends to other tasks related to the organization and conduct of the meetings. City Council creates, reviews and approves legislation and adopts the annual budget along with related legislation. In addition, Council must authorize the administration to spend money over a defined amount. Council also conducts various types of hearings related to City business.<sup>4</sup>

**b. Unique Considerations**

The form of government, however, does not really capture the real Reading which presents unique considerations for Commonwealth-wide regulations concerning the location of individual gas meters. As Reading witness Slifko testified, the City of Reading is an old, dense, heavily built-up environment. It is a city of row houses - 60 to a block, with a width of only 14 feet, and a "front yard" from porch to street of only 5 to 15 feet in depth. This is the entire outside front area that these homes have, and even a small use of that space has a disproportionately large impact of their quality of life.<sup>5</sup> Reading is also a city of narrow streets, but because of the density of its population, these streets are heavily traveled, and many accidents occur.

At the same time, Reading is an historic city, founded in 1748, and over the years, it has amassed an extraordinary number of beautiful old buildings, most of which have not been torn down. As a result, Reading has one of the greatest collections of historic architecture and historic neighborhoods in the country.<sup>6</sup>

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<sup>3</sup> Reading St. No. 2 at 1; Reading St. 1 at 3.

<sup>4</sup> Reading St. No. 1 at 3.

<sup>5</sup> Reading St. No. 2 at 4.

<sup>6</sup> *Id.*



The City contains six historic districts which add to the City's uniqueness and to the applicability of the historic district provisions at the heart of Section 59.18:

1. Queen Anne Historic District (listed on the National Register of Historic Places);
2. Centre Park Historic District (locally designated Historic District);
3. Callowhill Historic District (locally designated Historic District);
4. Prince Historic District (locally designated Historic District);
5. Penn's Common Historic District (locally designated Historic District); and
6. Heights Conservation District (locally designated Historic District).<sup>7</sup>

In addition, there are several areas within the City beyond the boundaries of these districts which are eligible for national registration.<sup>8</sup>

In sum, Reading is not suburbia or rural Pennsylvania, with houses spread apart and deep setbacks from the road to screen outside gas meters and protect them from vehicles that skid off the streets. It is a dense, urban environment that poses peculiar challenges for the outside placement of gas meters, both aesthetically and as a matter of personal safety and helps explain why UGI's one-size-fits-all approach does not conform to the requirements of the Commission's regulations and Public Utility Code with respect to the location of gas meters in the City of Reading.

The City is the Complainant at Docket No. C-2016-2530475.

## **2. Centre Park Historic District**

CPHD is one of Reading's six historic districts. In 1982, a group of Centre Park residents got together and fulfilled all the state mandated requirements for establishing an historic district – setting district boundaries, getting signatures of agreement from a majority of the property owners, and all the other necessary requirements. CPHD was established as a locally designated

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<sup>7</sup> Reading St. No. 2 at 8-9; Reading Exhs. JS-3 and JS-4.

<sup>8</sup> Reading St. No. 2 at 9; Reading Exhs. JS-5 and JS-6.

historic district in that year, and has been active ever since.<sup>9</sup> CPHD's mission is two-fold: to preserve and protect the historical and architectural heritage of the district, and to foster a sense of community.<sup>10</sup>

CPHD comprises about 25 City blocks and is located just slightly northwest of Reading's downtown. It was originally developed along an old trolley line as the City's first suburb, and many gracious mansions were built along this line, which is now Centre Avenue. The housing mix, however, is varied, consisting mostly of middle class row houses and semi-detached homes. There are two major arteries (Centre Avenue and N. 5th Street), a number of cross streets, and an equal number of tiny half-streets.<sup>11</sup>

City witness Lauter testified that the CPHD architecture is stunning for a city the size of Reading. It is primarily Victorian in style, and features turn of the century European craftsmanship. Not only are the individual homes historically and architecturally significant, but the totality of the neighborhood is as well.<sup>12</sup>

CPHD is the Complainant at Docket No. C-2015-2516051.

### **3. UGI**

UGI, a Pennsylvania corporation and wholly-owned subsidiary of UGI Corporation, is a "public utility," "natural gas distribution company," and "supplier of last resort," as respectively set forth under Sections 102, 2202, and 2207 of the Public Utility Code, 66 Pa.C.S. §§ 102, 2202, and 2207.<sup>13</sup> UGI provides natural gas distribution service to approximately 386,000 customers

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<sup>9</sup> Reading St. No. 4 at 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> UGI St. No. 1 at 3.

throughout a service territory that includes all or portions of 16 counties in Pennsylvania.<sup>14</sup> Significantly, UGI has almost 20,000 customer accounts within the City.<sup>15</sup> UGI is the Respondent for the Complaints at Docket Nos. C-2015-2516051 and C-2016-2530475.

#### **4. Bureau of Investigation & Enforcement**

The Commission's Bureau of Investigation & Enforcement ("I&E") entered a Notice of Appearance on August 10, 2016. Although it addressed certain matters thereafter, I&E formally withdrew its appearance on February 2, 2018 and had not participated in this proceeding since that date.

#### **B. UGI's Meter Placements and the City's Complaint**

The genesis of this proceeding stems from actions undertaken by UGI during the implementation of its gas meter relocation in the City. In particular, since September 2014, UGI has almost exclusively placed gas meters in the front yards, on the fronts of buildings, and along building facades visible from the public rights-of-way in the City's six (6) designated historic districts. UGI has also 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.

Based on UGI's practices, the City filed a Formal Complaint in February 2016, averring UGI failed to give meaningful consideration to the requirements of amended Section 59.18 of the Commission's regulations, 52 Pa. Code § 59.18, and 49 CFR § 192.353, as adopted by the Commission pursuant to 52 Pa. Code § 59.33(b). The Complaint consists of two counts:

- Under **Count I**, the City contends that UGI has not given any consideration to the inside placement of meters in designated historic districts, in violation of 52 Pa. Code § 59.18(d)(1), as amended, and that UGI's conduct evidences a clear and

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<sup>14</sup> *Id.*

<sup>15</sup> Reading St. No. 2 at 3.

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.

- In **Count II**, the City contends that UGI's location of exterior meters is dangerously close to city streets, both within and outside of historic districts, violating 52 Pa. Code § 59.18 and 49 C.F.R. § 192.353 and cites numerous examples where UGI, in selecting outside meter locations, failed to (i) consider potential damage by outside forces (52 Pa. Code § 59.18(a)(5)), (ii) locate meters in protected locations (52 Pa. code § 59.18(b)(1)), and (iii) consider vehicular damage that may be anticipated (49 CFR § 192.353(a)).

In support of its claims, the City subsequently performed an extensive meter-by-meter survey in the City in August 2016 and April 2017, identifying over 1,000 meters believed to be in violation of 52 Pa. Code § 59.18 and/or 49 CFR § 192.353 – either because of their location in historic districts or placement in unsafe locations. While the number of disputed meters has been trimmed as this proceeding has progressed,<sup>16</sup> the City continues to challenge any meter installed or relocated on or after September 13, 2014 (*i.e.*, the date amended Section 59.18 became effective) which is either:

- Located in one of the City's six (6) designated historic districts or one of the several areas within the City beyond the boundaries of these districts which is eligible for national registration; *or*
- Located within the City, both in historic and non-historic districts, where the meter-to-curb distance is less than 15 feet.

The bulk of the meters still in dispute at this time are identified in the matrices found in Exhibits 1 and 2 to the Updated Joint Stipulation filed by the parties on August 28, 2018 and admitted into the record as ALJ Exh. 1.<sup>17</sup> To be clear, however, the meters listed in the Updated

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<sup>16</sup> For instance, the City is no longer contesting exterior meter locations in violation of Section 59.18(a)(8) (*e.g.*, under a fire exit, in contact with soil or other corrosive materials, in an area where snow/ice accumulates). *See* ALJ Exh. 1.

<sup>17</sup> The meters listed in the Updated Joint Stipulation (ALJ Exh. 1) do not represent an exhaustive list of all meters in dispute, as UGI continued to relocate meters after the completion of the survey in April 2017. Therefore, any meters that have been relocated since April 2017 and fall into one of these categories are still in dispute.

Joint Stipulation do not represent an exhaustive list of all meters in dispute, as UGI has continued to relocate meters since the completion of the survey in April 2017. Therefore, UGI retains the right to challenge any meters installed or relocated since April 2017 that fall into one of two categories above.

**C. 52 Pa. Code § 59.18 and Other Regulations**

The heart of this proceeding involves the proper interpretation and application of Section 59.18 of the Commission's regulations, 52 Pa. Code § 59.18 (and, to the extent applicable, other codes and regulations) and UGI's obligations thereunder with respect to its meter relocation program within the City. Section 59.18 was amended in May 2014 by Final Rulemaking Order at Docket No. L-2009-2107155<sup>18</sup> to provide regulatory requirements for the placement of meters, regulators and service lines and directed Pennsylvania natural gas distribution companies ("NGDCs"), unless otherwise allowed, 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. The new regulations became effective September 13, 2014 upon publication of the *Final Rulemaking Order* in the *Pennsylvania Bulletin*.<sup>19</sup>

While Section 59.18 provides, as a general rule, that relocated meters and regulators must be placed outside and aboveground, the regulation also identifies situations where inside meter locations must be considered by the utility. In particular, Section 59.18(d)(1) provides that inside meter locations **shall** be considered when, *inter alia*, a meter is located in a designated historic district or when a utility determines that an outside meter location is neither feasible nor

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<sup>18</sup> *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Final Rulemaking Order entered May 23, 2014) ("*Final Rulemaking Order*"). A copy of the *Final Rulemaking Order* is contained in Reading Exhibit JS-1. Unless otherwise noted, references herein to Section 59.18 will be to Section 59.18, as amended and effective September 13, 2014, since it is the amended form of the regulation which is at the heart of this proceeding.

<sup>19</sup> 44 Pa.B. 5835.

practical. 52 Pa. Code §§ 59.18(d)(1)(ii) and (v). Moreover, when selecting a meter location, a utility *must* consider potential damage by outside forces and locate meters in protected locations. 52 Pa. Code §§ 59.18(a)(5) and (b)(1).

In the *Final Rulemaking Order*, the Commission summarized comments it received and discussed if, and how, it had revised the final regulation to reflect the concerns and issues raised. With respect to meter placements in historical districts, the Commission specifically stated 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.”<sup>20</sup>

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.<sup>21</sup> 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 their 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,

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<sup>20</sup> *Final Rulemaking Order* at 9.

<sup>21</sup> Reading Ex. JS-1.

asserting that it was unable to identify any locally adopted historic property regulations that stipulate the location of gas meters.<sup>22</sup>

The City remains supportive of these comments and concerns.

In response to these comments, the Commission concluded 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.<sup>23</sup>

For these reasons, Section 59.18 appears to have been enacted 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.

In specifically addressing the concerns raised by the Pennsylvania Historic and Museum Commission, the Commission noted that it has a number of guidelines for relocating meters outside which would apply to outside meters in locally designated historic districts.<sup>24</sup> The Commission cautioned, however, 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.<sup>25</sup>

In addition to the Commission’s regulations at Section 59.18, UGI is also required to comply with the minimum safety standards issued under the pipeline safety laws found in 49

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<sup>22</sup> *Final Rulemaking Order* at 11.

<sup>23</sup> *Id.* at 46-47.

<sup>24</sup> *Id.* at 32.

<sup>25</sup> *Id.*

U.S.C. §§ 60101—60503 and as implemented at 49 CFR Parts 191–193, 195, and 199. *See* 52 Pa. Code § 59.33(b). The provisions of 49 CFR § 192.605 require UGI to maintain a manual of written procedures for conducting operations and maintenance activities and for emergency response. In the case of UGI, this manual is referred to as UGI’s Gas Operations Manual (GOM) and will be addressed later in the brief.

The provisions of 49 CFR § 192.353 permit both inside and outside meter locations<sup>26</sup> and prior to and after September 13, 2014 effective date of the revisions to the Commonwealth’s regulations at 52 Pa. Code § 59.18, inside meter locations were permitted.<sup>27</sup> Significantly, UGI witness Christopher Brown testified that as of October 2013, UGI and its affiliated NGDCs, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. had approximately 207,000 inside meters serving approximately one thousand of their service locations.<sup>28</sup>

The City does not dispute Mr. Brown’s assertion that a number of local historical commissions and associations, homeowners, public officials and the Pennsylvania Historical and Museum Commission objected to a strict requirement for outside meters and that the Independent Regulatory Review Commission also expressed concerns and that the Commission rejected these arguments and “decline[d] to address visual impact alternatives that may avoid or minimize the impact of installing the meter and/or regulator outside” and “to set what may be subjective requirements that would minimize their impact to an historic resource.”<sup>29</sup> Although the Commission denied these commenters’ recommendations, the regulations do contain

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<sup>26</sup> UGI St. 1 at 12.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 13.

<sup>29</sup> *Final Rulemaking Order* at 30-31.



provisions permitting inside meter locations in historic and non-historic districts and this is the significant point.

An in-depth consideration of the provisions of 52 Pa. Code § 59.18 is set forth in the Section V of this Brief. For now, suffice it to say that the language of 52 Pa. Code § 59.18 (as well as that of 49 CFR § 192.353) is clear and not ambiguous. It should control.

## **II. HISTORY OF THE PROCEEDING**

This proceeding has an extensive procedural history, none of which should be in dispute. On November 25, 2015, CPHD filed a Formal Complaint against UGI at Docket No. C-2015-2516051, alleging UGI's meter practices in the historic districts of Reading violated Sections 59.18 and 59.33 of the Commission's regulations. UGI filed an Answer to CPHD's Complaint on December 15, 2015, denying any regulatory violations.

On February 17, 2016, the City filed a separate Formal Complaint against UGI at Docket No. C-20162530475, alleging that UGI had violated Sections 59.18 and 59.33 and 49 CFR § 192.353(a), regarding meter placements both within and outside of historic districts in Reading. On March 14, 2016, UGI filed an Answer denying the material allegations in the City's Complaint and averring that its meter location practices were consistent with the Commission's regulations and also filed Preliminary Objections contending that the City's Complaint should be dismissed in its entirety due to the alleged legal insufficiency of the City's requested relief. By Interim Order dated March 29, 2016, the Preliminary Objections were denied.

On March 30, 2016, a further prehearing conference was held before presiding Administrative Law Judge Mary D. Long, during which the parties agreed to engage in discussions to narrow the issues or settle the complaints and reconvene for a further prehearing conference in 60 days. By Second Prehearing Order dated March 30, 2016, Judge Long confirmed the parties' commitments and consolidated the complaints.

On September 1, 2016, UGI filed a Petition seeking interlocutory review and answers to material questions, asking the Commission to dismiss the Complaints. UGI and I&E also filed a Joint Motion that sought to extend the procedural schedule, hold a further prehearing conference, and modify the hearing format in this proceeding. By Fourth Prehearing Order dated September

2, 2016, Judge Long suspended the litigation schedule pending a Commission ruling on UGI's Petition. Following briefing by the parties, the Commission entered an Order on February 9, 2017, declining to answer the material questions and remanding the case to Judge Long.

On March 16, 2017, a further prehearing conference was convened to address outstanding discovery issues, the treatment of confidential information, and the litigation schedule. On March 21, 2017, Judge Long issued a Sixth Prehearing Order, which instructed the City and CPHD to prepare and submit detailed spreadsheets by April 20, 2017, that identified: (i) the meter installations that Complainants are contesting in historic and non-historic districts; (ii) the date a permit was issued, if one were issued, for each meter installation; and (iii) the date the each meter was relocated. The Sixth Prehearing Order also directed UGI to stipulate or object to this information by May 4, 2017 and ordered all discovery to be completed by May 30, 2017. By Seventh Prehearing Order dated April 18, 2017, the parties were granted one-week extensions to provide their respective information.

On April 19, 2017, Judge Long issued an Eighth Prehearing Order, excusing the Complainants from providing the date that each meter was relocated or installed and, instead, directing UGI to provide the service line installation dates along with the other information required under the Sixth Prehearing Order. The Complainants were ordered to stipulate or object to UGI's service line installation data by May 22, 2017.

In accordance with the directives set forth in the Sixth, Seventh, and Eighth Prehearing Orders, Complainants, on April 27, 2017, provided spreadsheets listing the meters in the City's historic and non-historic districts which were being contested and photographs of the meter installations. On May 11, 2017, UGI subsequently provided service line installation data and stipulated or objected to the information set forth in Complainants' spreadsheets. Finally, on

May 22, 2017, the Complainants provided updates to the spreadsheets, stipulating or objecting to UGI's permit information.

On July 6, 2017, Complainants filed a Motion for Partial Summary Judgment, and UGI filed a Motion for Summary Judgment. Complainants and UGI subsequently filed Answers to each other's respective Motions. On September 7, 2017, Judge Long issued an Interim Order denying Complainants' Motion for Partial Summary Judgment and an Initial Decision granting in part and denying in part UGI's Motion for Summary Judgment. UGI filed Exceptions to the Initial Decision on September 27, 2017, and Complainants filed Replies on October 6, 2017.

On December 21, 2017, the Commission entered an Opinion and Order denying UGI's Exceptions, as well as UGI's October 31, 2017 letter request to withdraw its Exceptions, and returned the cases to the Office of Administrative Law Judge. On the same date, Judge Long issued an Interim Order setting a new litigation schedule.

Following the withdrawal of its counsel, the City on February 1, 2018 filed a Motion for 60-Day Stay of Proceedings and Extension of Deadlines. In an Answer filed on February 15, 2018, UGI stated it did not oppose the requested relief. On February 15, 2018, Judge Long issued a Second Interim Order granting the continuance and modifying the litigation schedule.

On April 4, 2018, the undersigned counsel entered their appearance on behalf of the City. On April 17, 2018, the City filed a Motion for Continuance and Scheduling of Status Conference, proposing new dates for settlement discussions, written testimony, and evidentiary hearings, as agreed to by the parties. A telephonic status conference was held on April 23, 2018, and by Interim Order Granting a Further Continuance issued April 24, 2018, Judge Long memorialized the matters discussed at the status conference, vacated the existing litigation schedule, and set new dates for testimony, hearings, and other actions to be taken by the parties.

On May 23, 2018, the City and UGI filed a Joint Status Report on the progress of the parties' settlement discussions. These discussions continued into June, but without success.

On June 29, 2018, Complainants served their written direct testimony and exhibits in accordance with Judge Long's April 24, 2018 Interim Order, which included:

<u>Reading Statement No.</u>	<u>Witness</u>	<u>Accompanying Exhibits</u>
1	Jeff Waltman	None
2	John Slifko	JS-1 through JS-28
3	Peggy Harter	PH-1 through PH-4
4	Mike Lauter	ML-1 through ML-3

On July 9, 2018, UGI filed a Motion to Strike certain portions of Complainants' direct testimony and exhibits. On July 17, 2018, the City and CPHD submitted separate Answers in opposition thereto. By Interim Order issued July 19, 2018, Judge Long granted in part and denied in part the Motion, which included striking Reading St. No. 3 and Exhibits PH-1 through PH-4.

On July 27, 2018, UGI served the prepared responsive testimony of Christopher Brown, its Senior Director-Operations South Region, and accompanying Exhibits CB-1 through CB-15.

Evidentiary hearings were held in Harrisburg on August 22 and 23, 2018, at which time the parties' testimony and exhibits were admitted into the record without objection and significant cross-examination was conducted. A transcript of 440 pages was created.

On August 27, 2018 Judge Long issued an Interim Order on Joint Stipulation and Briefing, setting forth dates for the submission of an updated Joint Stipulation and briefs. In compliance with the Interim Order, the Joint Stipulation, with historical and non-historical matrixes, was pre-marked as ALJ Exhibit 1 and filed on August 28, 2018 with the understanding that it would be admitted into the record in accordance with the Interim Order.

The City submits this Main Brief in accordance with the briefing parameters and schedule established by the August 27, 2018 Interim Order.

### III. STATEMENT OF QUESTIONS INVOLVED

1. Whether UGI, in effectuating its meter-replacement program in the City of Reading, violated 52 Pa. Code § 59.18(d)(1), by failing to consider the inside meter placement in all designated historic districts within the City?

*Suggested Answer: Yes.*

2. Whether UGI, in effectuating its meter-replacement program in the City of Reading, violated 52 Pa. Code § 59.18, and 49 C.F.R. § 192.353 (as adopted by 52 Pa. Code § 59.33(b)), by placing outside meters in unsafe locations in historic and non-historic districts of the City of Reading where such meters are unprotected from potential damage from vehicles and other outside forces?

*Suggested Answer: Yes.*

#### **IV. SUMMARY OF ARGUMENT**

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 facades visible from the public rights-of-way in the City's six (6) designated historic districts. In fact, but for a handful of exceptions, all meters UGI has installed or relocated since September 13, 2014 have been placed outside and aboveground. In doing so, UGI has failed to give any meaningful consideration to inside meter placement as required by 52 Pa. Code § 59.18(d)(1)(ii). The exterior placement of gas meters has not only violated the Commission's regulations, but also has significantly disrupted the historic nature and aesthetic value of the City's historic districts, and had an immediate, direct and negative impact on the historical integrity of the City's historic neighborhoods.

UGI has also installed numerous exterior gas meters since September 13, 2014 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 some cases, UGI has installed gas meters as close as 3 feet from the street. UGI's installation of gas meters in these locations constitutes a violation of 52 Pa. Code § 59.18(a)(5) and (b)(1), as well as 49 CFR § 192.353, which the Commission has adopted under 52 Pa. Code § 59.33(b).

## V. ARGUMENT AND DISCUSSION

### A. Burden of Proof

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the proponent of a rule or order has the burden of proof. As the proponent of a rule or order, the City and CPHD have the burden of proof in these consolidated proceedings and, therefore, the duty to establish facts by a preponderance of the evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa.Cmwlt. 1990). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa.C.S. § 704; *Mill v. Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlt. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlt. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. 1984).

The burden of proof consists of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (2000). The burden of production determines which party must come forward with evidence to support a particular proposition and pertains to the legal sufficiency of a party's claim or affirmative defense. *John J. Horwith, Jr. v. PPL Electric Utilities Corp.*, Docket No. C-2016-2528323 (Order entered Mar. 1, 2018), slip op. at 8 ("*Horwith*"). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, the burden of production shifts to the respondent to rebut the complainant's evidence. *Id.* If the respondent introduces evidence of co-equal value or weight, the complainant's burden



of proof has not been satisfied, and the burden of going forward with the evidence shifts back to the complainant to provide some additional evidence favorable to the complainant's claim. *Id.* (citing *Milkie v. Pa. P.U.C.*, 768 A.2d 1217 (Pa. Cmwlth. 2001)).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *Horwith* at 9. Whereas the burden of production may shift between parties during the course of a proceeding, the burden of persuasion never shifts, remaining on the complainant as the party seeking affirmative relief from the Commission. *Id.* (citing *Milkie, supra*). In determining whether a complainant has met the burden of persuasion, the presiding officer may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *Id.*

**B. Applicable Regulations and Standards for Meter Placements**

A history of the Commission's regulations with respect to the location of natural gas meters, regulators and service lines was provided in the testimony of UGI witness Christopher Brown,<sup>30</sup> and for the most part the City does not take issue with these portions of Mr. Brown's testimony and the Commission's role in establishing and enforcing gas pipeline safety standards in Pennsylvania.<sup>31</sup> For purposes of this proceeding, the Commission's primary requirements governing the placement of meters is contained in Section 59.18 of the Commission's regulations, 52 Pa. Code § 59.18. Beginning September 13, 2014, the general rule is that all new

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<sup>30</sup> See generally UGI St. No. 1 at 5-15.

<sup>31</sup> As Mr. Brown testified, the Commission has contracted with the Pipeline and Hazardous Materials Safety Administration ("PHMSA") within the United States Department of Transportation to enforce, at a minimum, the federal pipeline standards established by PHMSA and found at 49 C.F.R. Part 192. The Commission's regulation at 52 Pa. Code § 59.33 adopted by reference the pertinent federal regulations, and under Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501, public utilities including NGDCs are required to provide safe and reliable services. Mr. Brown further acknowledged that pursuant to this authority, the Commission has in certain instances established and enforced standards in excess of federal minimum standards. See UGI St. No. 1 at 8.

or replaced meters and regulators must be located outside and aboveground unless otherwise allowed or required. 52 Pa. Code §§ 59.18(a)(1), (g). That requirement is not absolute, however, and Section 59.18 identifies specific situations where inside meter locations must be considered by the utility. Specifically, inside meter locations *must* be considered 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.

\* \* \*

(v) A utility determines that an outside meter location is neither feasible nor practical.<sup>32</sup>

Section 59.18 also provides general requirements for the placement of gas meters and regulators. Subsection (a)(5) provides that “[w]hen selecting a meter or service regulator location, a utility *shall* consider potential damage by outside forces.” 52 Pa. Code § 59.18(a)(5) (emphasis added). With respect to outside meter locations, subsection (b)(1) requires meters to be installed, “[w]hen feasible and practical to do so, above ground in a protected location adjacent to the building served.” 52 Pa. Code § 59.18(b)(1).

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<sup>32</sup> 52 Pa. Code § 59.18(d)(1).

Additionally, subsection (a) of 49 CFR § 192.353, adopted and enforced by the Commission pursuant to 52 Pa. Code § 59.33(b), mandates that “[e]ach 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.”

**C. The Fundamental Flaws in UGI’s Argument**

Before addressing the City’s Complaint, it is first necessary to dispel the two fundamental flaws in the arguments raised by UGI in the proceeding. First, there is the assertion that outside and above ground meters are safer than inside meters, and second, there is the related assertion that Section 59.18 requires that meters and regulators must invariably be located outside and above ground. We first address safety, and then turn to the regulations. In both cases, the employment of common sense should not be overlooked as a guiding principle.

**1. Safety**

The evidence of record does not support UGI’s assertions that outside and above ground meters are safer than inside meters. At the same time, the City believes that Complainants and UGI all agree that safety should be the governing consideration.<sup>33</sup> As UGI witness Brown testified:

Q. Safety trumps everything?

A. In my opinion, yes.

Q. At the same time, you would agree, would you not, that two different locations could be equally safe?

A. Two different locations could be equally safe?

Q. Yes.

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<sup>33</sup> Tr. 225.

A. I suppose that could happen.<sup>34</sup>

With that being said, a guiding principle – good old common sense – instructs us that outside and above ground locations are not always safer as the evidence of record in this proceeding demonstrates.<sup>35</sup> Even UGI witness Brown, with some reluctance, admitted this under cross-examination on his second day on the stand.

Q. At the bottom of page 31 [of your testimony], you refer to the Commission's conclusion that outside meter locations are much safer than inside meter locations. It doesn't say that anywhere in the regulation, 52 Pa. Code Section 59.18, does it?

A. In the code itself, I do not see a reference that outside meters are more safe.

\* \* \*

Q. ... If you have the meter outside, that increases the likelihood of damage from outside forces; does it not?

A. In certain circumstances, it could.<sup>36</sup>

The language of UGI's testimony establishes that, on the safety issue, it is the circumstances of each location that should be determinative, and the wording of the regulations and common sense that should be followed.

In sum, it is clear that outside meters are not always safer than inside locations. In fact, there are numerous situations, as embodied in the exceptions and limitations to the regulation, where inside locations are as safe or safer and, as a result, are either permitted or mandated. Ultimately, on the questions of safety, the circumstances of each location should be determinative, and the language of the regulations and common sense should be followed.

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<sup>34</sup> Tr. 225.

<sup>35</sup> See, e.g., Tr. 323-24.

<sup>36</sup> Tr. 323-24.

## 2. The Governing Regulations

In addition to UGI's own testimony, one need only look at the Regulation itself to refute the assertion that outside meters are always safer than inside locations. Since § 59.18(d)(1)(ii) specifically permits inside meters in the historic districts, how can it be said that inside locations are always more dangerous? Are historic districts somehow less worthy of protection to the point where we should allow a meter location that exposes them to safety issues that we would not expose other properties to? Of course not.

Similarly, Section 59.18(d)(1)(iv) provides that inside meters are permitted whenever an outside location is neither feasible or practical. If UGI's assertion were correct that outside meters were always safer, why would the regulation permit inside locations in these situations of non-feasibility? Why would the regulation expose these properties to a danger that it would not expose other properties to?

There are clearly instances where outside meters are less safe than inside locations – *e.g.*, where they are susceptible to vehicular damage and other outside forces, or where they are exposed to freeze-ups, or vandalism. In all of these instances, since an outside location is neither feasible or practical, the regulation has provided the alternative of an inside placement under § 59.18(d)(1)(iv).

The plain language of the regulations should then dispel any legitimacy to UGI's contentions that the inside placement of meters is prohibited by the regulations. Indeed, the regulations expressly set forth circumstances where inside placement shall be considered, including inside placement in historic districts.

The City's Complaint is quite simple and essentially asks that the Commission's regulations at 52 Pa. Code § 59.18, setting forth the general requirements for meter and regulator

locations, be adhered to by UGI.<sup>37</sup> The City respectfully submits that the language of 52 Pa. Code § 59.18 is clear and unambiguous and does not require that meters and regulators be located outside and above ground in every case and in certain situations safety would require just the opposite.

City witness Slifko described the context of the matter in his testimony as follows:

What we are dealing with here is a Commonwealth-wide regulation concerning the location of individual gas meters. And the general rule articulated is that gas meters shall be located on the outside of buildings.

However, not all areas of the Commonwealth - not all local environments or individual situations - are the same. The authors of the regulation recognized this and, for that reason, created exceptions and limitations to the general rule. This is not unlike the creation of any legislation of wide applicability.<sup>38</sup>

\* \* \*

Recognizing the peculiar environment of Reading and other dense urban centers, the creators of 52 Pa. Code § 59.18 ... crafted a number of exceptions and limitations to the general rule to address these situations. To address and protect our historical heritage, they required that inside placement of gas meters “shall be considered” in the historic districts. To address the safety concerns from meters located close to city streets, they also enacted a number of limitations to ensure that meters are located to prevent “damage by outside forces.”

This whole case, then, concerns whether the exceptions and limitations, established by § 59.18 and 49 CFR 192.353, were adhered to in any meaningful way in the City of Reading.<sup>39</sup>

The City respectfully submits that the evidence shows they were not.

The City begins with the language of the regulations and § 59.18(a)(1):

*Unless Otherwise Allowed [§ 59.18(a)(1)]*

(1) **Unless otherwise allowed or required in this section**, meters and regulators must be located outside and above ground.<sup>40</sup>

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<sup>37</sup> A brief history of 52 Pa. Code § 59.18 and its relationship to 49 C.F.R. Part 192 were provided in Section I.C. of this Brief.

<sup>38</sup> Reading St. 2 at 3.

<sup>39</sup> Reading St. 2 at 4-5.

Reading respectfully submits that inside meters are indeed “otherwise allowed” and in fact required by the regulations, especially when required by safety considerations. If outside and above ground were required in every case, the regulation could be four words in length - outside and above ground.

Outside Forces [§ 59.18(a)(5)]

Subsection (5) of 52 Pa. Code § 59.18(a) expressly requires that:

(5) When selecting a meter or service regulator location, a utility shall consider potential damage by **outside forces**.<sup>41</sup>

Consideration of outside forces is a significant exception to outside and above ground and the “shall” be considered language would seem to be a mandatory requirement. Again, safety along with common sense should be the guide.

Outside Meter Locations [§ 59.18(b)]

In subsection (b) of the regulations, additional restrictions are set forth concerning the installation of outside meters and service regulator locations. The regulation requires that:

Outside meters 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 ....

(2) In a buried vault or meter box.<sup>42</sup>

These are the regulations expressly applicable to “outside meter or service regulator locations.” The need for protected locations or buried vaults would appear to be mandatory

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<sup>40</sup> 52 Pa. Code § 59.18(a)(1) (emphasis added).

<sup>41</sup> 52 Pa. Code § 59.18(a)(5) (emphasis added).

<sup>42</sup> 52 Pa. Code § 59.18(b) (emphasis added).

where feasible and practical.<sup>43</sup> However, UGI does not use vaults as the City's exhibits illustrate<sup>44</sup> and does not always use protected locations or install bollards or other safety precautions when locating meters outside.<sup>45</sup>

Inside Meter Locations [§ 59.18(d)(1)(i)-(v)]

Section 59.18(d)(1)(ii) (the historic district exception) requires the consideration of inside placement of meters for historic districts. Inside meter placements must also be considered in situations where necessary to avoid meter freeze-ups and vandalism and where an outside meter location is neither feasible nor practical. 52 Pa. Code §§ 59.18(d)(1)(iii)–(v). As in the case of the other portions of the regulation, the language of these subsections, which is quoted below, is equally clear and should not require interpretation.

(d) *Inside meter locations.*

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

(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.

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<sup>43</sup> 52 Pa. Code § 59.18(b).

<sup>44</sup> See, e.g., Reading Exhs. JS-16, JS-25, and ML-1 through ML-3.

<sup>45</sup> Tr. 270.



(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**.

52 Pa. Code § 59.18(d)(1) (emphasis added).

*Vehicular Damage [49 CFR § 192.353]*

In addition to the limitations and exceptions to meter location provided by Section 59.18, the requirements of 49 CFR 192.353 were adopted pursuant to 52 Pa. Code 59.33(b). Section 192.353(a) provides:

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.

This is yet another limitation to the general rule of outside meter placement, which should dispel any contention by UGI that outside meters are always safer.

*Application of Regulations to the City's Complaint*

Having addressed the fundamental flaws in UGI's argument, the City's case is straightforward: simply apply the Regulation, and its exceptions and limitations, to the facts of Reading, Pennsylvania to determine if violations have occurred. First, has UGI given

meaningful consideration to the placement of inside meters in the historic districts, as required by § 59.18(d)(1)(ii)? What constitutes, as a matter of statutory interpretation, “consideration”, and what is the scope of the utility’s discretion in considering inside placements, in order for the Regulation to have any meaning at all? Secondly, by its pattern of placing outside meters in such close proximity to City streets, has UGI adhered to all the safety limitations embodied in Section 59.18 and 49 CFR 192.353?

**D. The Record Evidence Demonstrates that UGI Failed to Comply with the Requirements Set Forth in the Regulations**

**1. UGI’s Failure to Consider Inside Placements in Historic Districts**

As a preliminary matter, the City notes that UGI has made much of the argument that, despite the plain language of Section 59.18, it has nevertheless been given, due to its public safety obligations, discretion in applying the regulation. By its actions as well as its words, it has contended that this discretion is essentially absolute. The City respectfully submit that if the discretion in applying the Commission’s regulation is completely unfettered and without guidelines, then the regulation itself ceases to have meaning, as it has been completely swallowed up by the body exercising the discretion. However, the regulation at issue does indeed have meaning. As the Commission confirmed in its *Final Rulemaking Order*, the discretion of the utility in determining inside meter placements is not absolute, and that discretion is tempered and must adhere to the guidelines set forth in the regulation, which were enacted to provide some measure of protection to the state’s historic resources.<sup>46</sup>

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<sup>46</sup> See *Final Rulemaking Order* at 11.

**a. UGI Witness Brown's Critical Admission that UGI Is Required to Consider the Inside Placement of Meters in Historic Districts**

Under cross, UGI witness Brown admitted several times (e.g., Tr. 265, 267, 268) that the regulation requires the utility to consider inside meter placements in historic districts. For example:

Q. The regulation requires you to consider inside placements when you're dealing with a historical property; does it not?

A. Yes.

Q. The language says, "You shall consider".

A. Yes.<sup>47</sup>

In fact, Mr. Brown testified that UGI had an obligation to consider inside placements for every property, not just property in historic districts.<sup>48</sup> A review of Mr. Brown's attempts to explain what is meant by consideration has helped us realize the confusion. The City believes that what UGI is overlooking is that it is consideration of inside meter placements that is mandatory, not the outside placement of meters. We believe UGI is confusing the two concepts. Consideration is mandatory. Outside placement is not.

Mr. Brown also testified that although inside meter location is to be considered for all Historic District meters in the City of Reading,<sup>49</sup> he personally does not participate in all of the meetings and the number of meetings has been declining.<sup>50</sup>

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<sup>47</sup> Tr. at 392.

<sup>48</sup> Tr. at 265.

<sup>49</sup> Tr. at 343.

<sup>50</sup> Tr. 343.

**b. Absence by UGI of Meaningful Consideration for Inside Meter Placements in Historic Districts**

Mr. Brown further testified that the 30 day notices required by UGI's GOM comes first and consideration later. The outside relocation decision has already been made before there is any "consideration." As a consequence, there is no meaningful consideration. Mr. Brown's answers on cross-examination were quite revealing, passages from which are quoted at length below:

Q. Is inside meter location considered for all historic district meters in the City of Reading?

A. Yes.

Q. Every single one?

A. Every single one, including meters outside historic districts.

Q. Now, the GOM requires that the customer be given 30 days advance notice; does it not?

A. In conjunction with the requirement in the regulation, yes.

Q. When the 30 days advance notice is provided, has UGI already completed its consideration?

A. No.

Q. So the notice comes first and then the consideration?

A. The notices are mailed in most cases before we've even set foot on the properties.

Q. So you're notifying customers that their meter is going to be relocated before you consider for 30 days the relocation itself, whether it would take place?

\* \* \*

A. ... And the language in the second paragraph of that letter states, "As part of this project, UGI intends to move natural gas meter sets located inside of residences to a position outside the dwelling. But if your property is located in a federal, state or local historic area, you may request that UGI reconsider the decision to relocate your meter.

\* \* \*

Q. What is interesting in that sentence, you use the word, “reconsider.” So it doesn’t suggest to you that the decision has already been made for the customer?

A. The letter is intended to give the customer ... what we intend and propose to move. We try to write these letters as clear as possible...

Q. “Reconsider” suggests the decision has already been made.

A. So to the city’s credit, the city had raised an issue with some of our previous versions of the letter, where I think it said something along the lines of, “UGI will move your meter due to company policy.”

\* \* \*

Q. And for an individual customer, when does that consideration occur?

A. Mr. Thomas, the consideration process, we notify customers through our letters. We try to be as clear as possible. So we want to set the expectation that we want the meter outside, based on safety and in compliance with the regulation.

The words on the letter, we updated to try to be more specific without providing too much information because we believe, when you’re communicating with mass groups of customers, in some cases too much information just makes it more confusing, but we want them to understand that they have the right to contact us to ask for reconsideration request.

Q. That suggests, does it not, that you’ve already made the consideration for that individual customer?

A. Our goal is to get meters outside wherever feasible and practical and in compliance with the regulation. The exceptions would be cases where we would need to leave meters inside.<sup>51</sup>

Over the course of pages 14 through 22 of his testimony, Reading witness Slifko also addressed UGI’s failure to meaningfully consider the inside placement of meters. He reviewed different letters sent by UGI (*see, e.g.*, JS-10 and JS-12) to homeowners in historic districts. These letters referred to “Company Policy” regarding meter placements and stated that if meters

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<sup>51</sup> Tr. 343-346.

and regulators were inside, UGI would move them outside. More recent letters no longer refer to Company Policy, but UGI's practice of moving meters outside continues.

In none of these letters, addressed to historic district homeowners, was there any mention that, because you live in a historic district, UGI will consider an inside meter placement for your home. It was simply a statement of UGI policy: your meter will be moved outside.

When it came time for UGI to actually install its gas meters, an appointment was always necessary between a UGI official and the homeowner to determine the exact location of the meter. On all three occasions addressed by Mr. Slifko in his testimony, the homeowner requested inside placement, and on all three occasions the request was denied. When asked for an explanation, the homeowner was told that, only if there was no physical space for the meter outside, only then would it be allowed inside. When asked specifically whether being in a historic district had any bearing on the matter, in all three cases, the homeowner was told that it did not. Only in about 2.5% of the properties (i.e., 35 vs. 1377) were meters placed inside and in several of these instances, there was absolutely no space for outside meter placement.<sup>52</sup>

In the City's survey, statistics further established that UGI had shown virtually no consideration of inside meter placement, as required by § 59.18(d)(1)(ii).

Consideration requires more than a cursory look. The language of § 59.18(d)(1)(ii) was put there for a reason, and that is, in some fashion, to protect and preserve the historic buildings and neighborhoods of Pennsylvania. It was meant to have a real impact on our cities and towns, and not to be empty verbiage.

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<sup>52</sup> Reading St. 1 at 19.

The basic rules of statutory construction provide all words of a statute or regulation are to have meaning and not be mere surplusage.<sup>53</sup> The legislature cannot be deemed to intend that language used in a statute (or regulation) shall be superfluous and without import. The word “consideration” must have some substantive meaning.

Mr. Slifko further testified that the requirement for “consideration,” might have a constitutional basis as well.

Recent Pennsylvania Supreme Court rulings have breathed new life into Article 1, Section 27 of the state constitution which states: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment.” At some level, that means that historical resource protections embodied in any regulation or law cannot be ignored.<sup>54</sup>

When asked what impact UGI’s lack of “consideration” has had on the historic neighborhoods of Reading, Mr. Slifko was blunt:

In my opinion, the exterior placement of these meters has significantly disrupted the historic nature and aesthetic value of the districts, and has had an immediate, direct, and negative impact on the historic integrity of the neighborhoods to the point of being confiscatory.<sup>55</sup>

UGI contends that it considers inside meters in historic districts by pointing to its GOM. While it is true UGI’s current GOM procedures provide that UGI should attempt to avoid placing meters in front of distinguishing exterior features of historical properties, the GOM fails to define what constitutes a “distinguishing exterior feature.”<sup>56</sup> Mr. Brown further admitted he does not consult any historical preservation rules, regulations, guidelines or other materials when

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<sup>53</sup> The rules of statutory construction and interpretation, which also apply to regulations, *Presock v. Dept. of Military & Veterans Affairs*, 855 A.2d 928, 931 (Pa.Cmwlth. 2004), state that the object of all interpretation is to ascertain and effectuate the intention of the General Assembly or, in this instance, the Commission. 1 Pa.C.S. § 1921(a). When the words of the regulation are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b); *Energy Conservation Council of Pa. v. Pa. P.U.C.*, 995 A.2d 465, 483 (Pa. Cmwlth. 2010).

<sup>54</sup> Reading St. No. 2 at 20.

<sup>55</sup> Reading St. No. 2 at 21.

<sup>56</sup> UGI St. No. 1 at 34; UGI Exh. CB-5; Tr. 397.

deciding whether there is a distinguishing exterior feature on a historic property.<sup>57</sup> It is a pure judgment call made without any basis or support. This was made clear at hearing when several photographs were reviewed concerning UGI's meter placements in historic districts. In each and every case, meters were placed in front of or in very close proximity distinguishing exterior features, such as ornamental iron works and historical plaque.<sup>58</sup> When questioned whether the plaque was a distinguishing exterior feature, Mr. Brown acknowledged it very well could be.<sup>59</sup>

**c. Relief Sought for the Historic Districts of Reading**

Mr. Slifko next addressed the relief being sought by the City, again stressing that consideration needed to be meaningful. To avoid any misunderstanding, the City quotes at some length directly from Mr. Slifko's testimony:

The Commission and UGI must recognize all of the City's present historic districts, both locally and federally designated, and give meaningful consideration to inside meter locations within those historic districts, in accordance with Commission standards and § 59.18(1)(d)(ii).

The City shall provide UGI and the Commission with a verified map of those areas of the City which are eligible for listing as historic districts. After a reasonable period of time for review, not to exceed six months, the Commission and UGI should recognize these areas, and grant them the protections provided under § 59.18(d)(1)(ii)(D).

Prospectively, the Commission must establish specific standards for UGI to follow in considering the location of gas meters that will be installed or replaced in buildings located within both designated districts and eligible areas in the future. These standards require that all future meter placements in these districts and areas shall be located on the inside of buildings, except where UGI establishes a greater safety risk from inside placement than in similarly situated historic properties.

... The burden of proof is essentially put on UGI: an inside meter location should be presumed in the historic districts and eligible areas, and only by a

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<sup>57</sup> Tr. 396-97.

<sup>58</sup> Tr. 395-98; *see also* Reading Exh. JS-16.

<sup>59</sup> Tr. 398.



showing of greater safety risk than in similarly situated historic properties, should the presumption be rebutted.

For all meters that UGI does not locate inside, it should 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 would be subject to review by the Pennsylvania Public Utility Commission, as contemplated, in my opinion, by the Public Utility Code.

Where inside meter locations are legitimately infeasible due to public safety concerns, UGI should make every effort to locate exterior meters on building facades that are not visible from public rights-of-way, 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 § 59.18(d)(1). UGI should embody all of the standards listed above in its Operations Manual, and delete any provisions of the Manual which are inconsistent therewith.

Retroactively, UGI should perform an adequacy review of all exterior meter placements made in the historic districts from September, 2014 to the present in accordance with Commission standards and § 59.18(d)(1)(ii), and explain why an inside placement creates a greater safety risk than in all similarly situated properties.

After performing these adequacy reviews, UGI should relocate to the inside all exterior meters that do not meet this burden of proof. All standards and burdens of proof, and all right to review by the Commission listed above for new meter placements should apply to these relocations as well.

In the event that the Commission finds this retroactive relief too burdensome for UGI to implement across all historic districts in the City, we would recommend that UGI prioritize its meter re-locations as follows: First, and at a minimum, relocate to the inside all those exterior meters that are 15' or less from the curb, as these present locations represent an additional safety hazard. Then, relocate to the inside the remaining exterior meters, starting with those which are most visible from the public right-of-way.<sup>60</sup>

## **2. Safety Concerns Applicable to All Meter Placements**

### **a. The Testimony of City Witness Slifko**

In addition to historic districts, Mr. Slifko also addressed other exceptions to § 59.18's general rule that meters and regulators be located outside and above ground. He explained that

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<sup>60</sup> Reading St. No. 2 at 21-23.

Section 59.18(a)(5) expressly provides that “when selecting a meter or service regulator location, a utility shall consider potential damage from outside forces.” This would prohibit the location of meters dangerously close to City streets, both within and outside of historic districts.

Similarly, subsection (a) of 49 CFR Section 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.

In all areas of Reading, not just the historic districts, vehicular damage to gas meters poses a particular problem. As previously discussed, Reading is a densely built-up city with properties consisting mainly of row houses and semi-detached homes, mostly with tiny front “yards,” and located very close to the street. Furthermore, since it is a densely populated city, there are many vehicles and a lot of traffic in a relatively small area.

The concern of vehicular damage to outside gas meters is not an academic one. Mr. Slifko provided several pages of prepared testimony detailing recent accidents in Reading involving vehicles either striking outside gas meters or coming perilously close to doing so.<sup>61</sup>

When asked whether he had any proof that outside gas meters in Reading pose a particular safety problem due to potential vehicular damage, Mr. Slifko testified as follows:

... I think the very high number and high percentage of outside gas meters located close to City streets shows that this is a real safety problem. According to our survey of all 6 historic districts, out of total of 1487 outside meter or infrastructure placements, 645 were 15’ or less from the curb. That means that about 43% of all placements in all the historic districts were very close to a City street. See Summary Survey Notes, already attached as Exhibit JS 15.

Besides completely surveying the historic districts, we took a sample survey of three streets in non-historic districts, where there was a particularly high

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<sup>61</sup> Reading St. 1 at 24-25, 26.

number of outside meters located close to the curb. For this survey, we chose Cotton Street, N. 10th Street, and S. 4th Street. On these 3 streets alone, we found 674 outside gas meters that were 15' or less from the curb. The average distance from meter to curb for these 674 properties was nine feet. See Gas Meter Survey for three City Streets (Non-Historic), attached as Exhibit JS 23.

In addition to the complete survey of the historic districts, and the sample survey of three streets not in historic districts, we also did a cursory, "drive by" survey of all other streets in the "core" of Reading (all of Reading, except the more "suburban areas of the 18th and 19th Wards, and Hessian Camp in the 16th Ward). In this "drive-by" survey, we found 144 blocks where there were at least 2 meters 15' or less from the curb. See Drive-by Survey of All City Blocks, attached as Exhibit JS 24.

In this "drive-by" survey, we also noted the most egregious example of meters being close to City streets. This was in the 1000 block of Moss Street, where there were 37 outside meters, with an average meter to curb distance of 3' 0". The closest meter was 2' 8" from the curb. See Drive-by Survey, attached above as Exhibit JS 24.

What all this survey data shows is (1) a very high number of outside meters close to City streets (645 in historic districts, plus 674 on three select non-historic streets, plus 144 blocks besides these with two or more outside meters per block), and (2) the pervasiveness throughout the City of outside meters close to the curb (In all six historic districts, plus three more select streets, plus 144 other blocks with two or more meters 15 feet or less from the curb). Surely, this number of outside meters all within 15 feet of the street, and their pervasiveness throughout the City, must indicate a likelihood that sometime, somewhere in the City, there will be a vehicular accident with severe consequences to the residents.<sup>62</sup>

In addition, Mr. Slifko also submitted pictures (Exh. JS 25) showing that meaningful consideration was not given to potential damage from outside forces and that protections were not put in place. He also noted that the Commission, in its Comment to § 59.18, clearly stated: "EFV's do not stop the gas flow completely in the event of a service line break." See Exhibit JS 1, p. 17.

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<sup>62</sup> Reading St. 2 at 27-28.

When asked whether a parking lane separating the driving lane from the sidewalk and the front of the house where the outside meter is located would protect the meter from being struck by a vehicle, Mr. Slifko testified:

Not always, and certainly not in a significant percentage of the cases. In the seven accidents that we noted where a gas meter was struck by a vehicle, four occurred where there was a parking lane. (1043 Oley, 847 Nicolls, near 1261 N. 10th, near 11th and Spring). Of the two “near misses”, one of those was “protected” by a parking lane (306 N. 5<sup>th</sup> Street.) See Summary Notes, Exhibit JS 15.

In many cases, there are not always cars parked in the parking lane. More importantly, when there is a high speed accident, a parked car can and does get thrown up onto the sidewalk and sometimes into the front porch.<sup>63</sup>

Mr. Slifko likewise addressed other safety concerns with outside meters, other than those from potential vehicular damage, including trip hazards, vandalism and the accumulation of snow and ice which can cause meters to malfunction. See Reading St. 2 at 30-31.

**b. Relief Sought for Other Exceptions to General Rule**

When asked what relief was being sought by the City for these safety concerns, and particularly for those regarding vehicular damage that may be anticipated, Mr. Slifko certified:

Prospectively, the City requests that where a building façade is within 15 feet or less of a City street, UGI shall install gas meters on the inside of the building, and their associated gas regulators in as protected a location as possible on the exterior of the building. This would hold true whether or not there is a parking lane separating the lane of travel from the sidewalk. Alternatively, UGI may install both meter and regulator outside of the building in a buried vault.

Retrospectively, where UGI has already located exterior gas meters within 15 feet or less of a City street, those meters shall be re-located to the inside of the building, or alternatively, placed outside in a buried vault. This would hold true whether or not a parking lane separates the lane of travel from the sidewalk.<sup>64</sup>

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<sup>63</sup> Reading St. 2 at 29-30.

<sup>64</sup> Reading St. 2 at 31.

**3. Miscellaneous UGI Assertions Lacking Substance**

**a. UGI's Eight Steps to Address Concerns about Safety and Historical Integrity**

On pages 36 and 37 of his Statement No. 1, UGI witness Brown lists eight steps UGI has supposedly taken because of “concerns about safety and maintaining the historic integrity of buildings.” Contrary to the assertions in Steps 1 and 2, the parties have not been able to reach a mutually agreed upon locations to place outside meters. The relocation of service lines is not the same as the relocation of a meter. Steps 3 and 6 involve supposed advances in meter technology which Mr. Brown downplayed under cross, especially with respect to Step 6. As the record reflects:

THE WITNESS: The residential meters that I'm aware of, the technology has not changed, and I'm not aware of any significant improvements over the past 20 years.

Q. ... Have meters gotten smaller?

A. Not to my knowledge. There are some smaller meters available UGI has in some cases purchased. Many of those smaller meters fail prematurely, and the accuracy and reliability of those meters are not to our liking, so we have stopped purchasing most of those meters.<sup>65</sup>

Mr. Brown further explained:

Q. How different is a gas meter today from when you started in the industry?

A. ... Mechanics of the meter, the size of the meters, it hasn't changed much since I've been in the industry...

We've tried some of the newer technologies. We've looked at smaller, cheaper, you know, different designs, what not, and we've had some bad experiences with some of those, in some cases actually started to buy the meters and we had to go back and remove them all because they were failing within months of installation.

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<sup>65</sup> Tr. 229.

So it's a challenge to get new meters in the industry, unfortunately. Just accuracy and reliability of the meter is usually the biggest issue.

\* \* \*

- Q. Is there any knowledge in your world if the meters are more safe or less safe than they were 20 years ago?
- A. Is there any knowledge in my world about the meters, the meters themselves?
- Q. Yes.
- A. No. I don't think the meters have changed. I mean, we've had leakage at meters. In some cases, it's corrosion in the meter or something, you know, happened to the meter. But if anything's changed along those lines, I can't think of anything.<sup>66</sup>

Step 4 involves a website for customers requesting inside meter placement but does not indicate UGI would be agreeable. Step 5 involves a Lehigh University study for the design of meter covers, and Step 7 involves permission to paint meters. These steps do not address concerns about safety or maintaining the historical integrity of buildings. They are not resolutions for the matters at issue here.

**b. Thoughtful Consideration**

Perhaps the most repeated of all of UGI's assertions is the introduction of a consideration not found in the regulations - "thoughtful outside meter location considerations"<sup>67</sup> or "thoughtful considerations" for short. Mr. Brown even went so far as to say that thoughtful consideration is

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<sup>66</sup> Tr. 305-06.

<sup>67</sup> UGI St. 1 at 37, 46; *see also* Tr. 331, 333, 355, 395, 398, 401, 404, 407-408 for other references to thoughtful consideration.

given to avoid the need for additional protections,<sup>68</sup> which is just what a customer in the City facing potential damage by outside forces such as a speeding car needs to hear.<sup>69</sup>

Thoughtful consideration is not a requirement or standard set forth in the regulation and cannot be used to mask UGI's failure to place meters in safe locations.<sup>70</sup> At hearing, the City established by way of numerous examples that UGI's meter placements were anything but "thoughtful" vis-à-vis the considerations required under the pertinent regulations.<sup>71</sup> Despite UGI's contentions to the contrary, the record evidence is compelling and shows that the meter placements in question are not protected from vehicular damage that may be anticipated or from other outside forces. Since one picture is worth a thousand words, the City refers the presiding officer and Commission to Reading Exhibits JS-16, JS-22, JS-25, ML-1, and ML-3 for some examples of UGI's "thoughtful" consideration.<sup>72</sup> The pictures presented in this proceeding speak for themselves, and the City trusts common sense will prevail.

**c. Meters Installed Before 9-13-14**

At pages 59-60 of his testimony, UGI witness Brown contends that UGI did not have to consider inside meter locations or comply with the safety requirements of § 59.18 for any meters installed before September 13, 2014. When this matter was raised on cross-examination, Mr. Brown answered as follows:

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<sup>68</sup> UGI St. 1 at 46.

<sup>69</sup> At Tr. 321, Mr. Brown testified that vehicular damage was the primary outside force. We are certain that "employment" of thoughtful consideration will provide little comfort to customers in Reading when it comes to protection for vehicular damage.

<sup>70</sup> See Tr. 261-264.

<sup>71</sup> Tr. 401-409.

<sup>72</sup> These pictures show, among other things, meter after meter along the 6 block stretch of Cotton Street, each separated by 10 feet or less; the same for N. 10th Street, with average meter to curb distance of 9 feet; banks of multiple meters on N. 5th Street, in the Callowhill Historic District; and rows of meters on Moss and Cherry Streets, with average meter to curb distance of only 3 feet.

Q. You aren't suggesting, are you, that there were no safety requirements before 9/13/2014?

A. I am not.

Q. Was any inside meter safe one day and then not the next?

A. No.<sup>73</sup>

Such a contention by UGI is irresponsible and ignores UGI's obligations and responsibilities under Section 1501 of the Public Utility Code, which requires in pertinent part that:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay....<sup>74</sup>

**E. UGI's Willingness to Take Additional Steps**

In his direct testimony on pages 66 and 67, Mr. Brown sets forth additional steps UGI is willing to take. The City very much appreciates UGI's willingness to take additional steps, but must respectfully decline to accept UGI's proposal as presented. It is not the City's position that safety concerns should be "balanced" against aesthetic concerns. As we have stated in this brief several times, safety should not be sacrificed for aesthetic reasons. The City does not believe that what it has proposed in this proceeding is unsafe and fundamentally believes that inside meters are safer than outside meters, especially in the environment of Reading, Pennsylvania.

With respect to UGI's Proposal 1 on page 66 of Mr. Brown's testimony, the City would be willing to participate on a Stakeholder Panel "consisting of members selected by the City to represent neighborhood interests to perform pre-construction project walk-throughs during the planning phase of UGI infrastructure and betterment work planned for historic districts. The

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<sup>73</sup> Tr. 373.

<sup>74</sup> 66 Pa.C.S. § 1501.



stakeholder panel would provide input on meter location decisions on a non-binding advisory basis.”<sup>75</sup>

However, the City is concerned that the panel’s “input” would be nonbinding or to state it differently, that the City’s participation would be merely aesthetic. What would be better would be a firm set of guidelines/standards to which all parties would have to adhere.

Similarly, the City is concerned that UGI would have the sole discretion to determine whether a relocation were necessary for Proposal 2’s Safety Risks. There needs to be a way for an independent body to make the decision when the City and UGI are unable to agree.

Proposal 3 is too restrictive and is limited to situations “where the only practical outside location would cover a distinguishing architectural feature.” Also, the four locations listed for Proposal 3’s new standards for historic districts are too limited. The City requests that the standard be to permit inside locations for historic districts and locations where the meter is within 15 feet of the curb. This is a safety matter.

Finally, the City is not contending that a service location with aesthetic concerns be given a higher priority by UGI than one with gas safety concerns. The clear policy direction from the Commission should be that inside locations are not less safe and indeed may be safer. The standard proposed by the City is safe and reasonable.

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<sup>75</sup> UGI St. 1 at 66.

## VI. CONCLUSION

The evidence of record conclusively demonstrates that UGI, in effectuating its meter-replacement program in the City of Reading, failed to meaningfully consider the inside meter placement of meters in designated historic districts within the City, in violation of Section 59.19(d)(1)(ii). The record evidence also establishes that UGI placed outside meters in unsafe locations in the City's Historic and non-historic districts alike, without adequate protection and without due consideration for potential damage from vehicles and other outside forces, in violation of §§ 59.18(a)(5), (b)(1), and (d)(1)(v) and 49 CFR § 192.353(a). To the extent consideration was given, that consideration was cursory, and anything but "thoughtful." The City's and CPHD's Complaints should be sustained and the relief requested by the City in Sections V.D.1.c. and V.D.2.b. should be granted.

WHEREFORE, for the foregoing reasons, the City of Reading respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Sustain CPHD's Complaint at Docket No. C-2015-2516051 and the City's Complaint at Docket No. C-2016-2530475
- (2) Grant, as appropriate, the relief specifically requested by the City in Sections V.D.1.c. and V.D.2.b. of this Brief; and
- (3) Grant any additional relief deemed appropriate and consistent with the foregoing, including the imposition of civil penalties pursuant to Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301.

Respectfully submitted,



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*Attorneys for City of Reading*

DATED: October 18, 2018

PROPOSED FINDINGS OF FACT

1. Reading is a city of the third class governed under the Third Class City Code, 11 Pa.C.S. § 10101 *et seq.*, through a Home Rule Strong Mayor/Part-Time Council form of government. Reading St. No. 1 at 1.

2. Reading was founded in 1748 and has one of the greatest collections of historic architecture and historic neighborhoods in the country. Reading St. No. 2 at 4.

3. The City contains six historic districts: Queen Anne Historic District (listed on the National Register of Historic Places); Centre Park Historic District (locally designated historic district); Callowhill Historic District (locally designated historic district); Prince Historic District (locally designated historic district); Penn's Common Historic District (locally designated historic district); and Heights Conservation District (locally designated historic district). Reading St. No. 2 at 8-9; Reading Exhs. JS-3 and JS-4.

4. The City also has several areas beyond the boundaries of the six historic districts which are eligible for national registration. Reading St. No. 2 at 9; Reading Exhs. JS-5 and JS-6.

5. Located slightly northwest of Readings' downtown, CPHD comprises approximately 25 City blocks with two major arteries (Centre Avenue and N. 5th Street), a number of cross streets, and an equal number of tiny half-streets, and contains a varied mix of housing, consisting mostly of middle class row houses and semi-detached homes. Reading St. No. 4 at 2.

6. UGI provides natural gas distribution service to approximately 386,000 customers throughout a service territory that includes all or portions of 16 counties in Pennsylvania. UGI St. No. 1 at 3.

7. UGI has almost 20,000 customer accounts within the City. Reading St. No. 2 at 3.

8. In effectuating its meter-replacement program in the City of Reading since 2014, UGI has required outside meter locations in all service locations, including historic districts. UGI St. No. 1 at 20; Reading St. No. 2 at 15-16; Reading Exhs. JS-10 through JS-12.

9. In August 2015, the City adopted Ordinance No. 45-2015 related to the installation of gas meters within its designated historic districts. Reading St. No. 2 at 11; Reading Exh. JS-7.

10. Since September 2014, UGI has almost exclusively placed gas meters in the front yards, on the fronts of buildings, and along building facades visible from the public rights-of-way in the City's six (6) designated historic districts. Reading St. No. 2 at 12.

11. UGI has also 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.

12. During August 2016 and April 2017, the City conducted surveys of UGI's meter relocation program within the City's six historic districts and selected non-historic area, compiling information about and taking pictures of the specific location of meters installed at each property. Reading St. No. 12-13; Reading Exh. JS-9.

13. In the six historic districts surveyed, 645 out of a total of 1487 outside meter placements (or approximately 43%) were 15 feet or less from the street curb. Reading St. No. 2 at 27; Reading Exh. JS-15.

14. On the three primary streets surveyed in the non-historic districts (Cotton Street, N. 10<sup>th</sup> Street, and S. 4<sup>th</sup> Street), 674 outside meter placements (or approximately 43%) were 15 feet or less from the street curb, with an average distance of 9 feet. Reading St. No. 2 at 27; Reading Exh. JS-23.

15. There are an additional 144 blocks in the City where at least 2 meters are 15 feet or less. Reading St. No. 27-28; Reading Exhs. JS-24 and JS-25.

16. Reading is a densely built-up city with properties consisting of mainly row houses and semi-detached homes in close proximity to the street and with significant traffic. Reading St. No. 2 at 24.

17. Vehicular damage to gas meters is a problem in Reading and there have been several incidents where vehicles struck outside gas meters or came close to striking a gas meter. Reading St. No. 2 at 24-26; Reading Exhs. JS-18 through JS-22.

18. Outside meters placements pose other safety concerns, such as a creating a trip hazards. Reading St. No. 2 at 30; Reading Exhs. JS-15 and JS-26.

19. An inside meter that is safe one day does not become unsafe the next due to a change in regulations. Tr. 373.

20. UGI's Gas Operations Manual (GOM) contains written rules governing, *inter alia*, UGI's practices related to meter, regulator, and service line relocation and installations. UGI St. No. 1 at 9; UGI Exh. CB-5.

21. In providing notice to customers of an impending meter installation or relocation, UGI's GOM issues a 30-day written notice to the customer advising of the outside relocation decision before any consideration is given to actual meter placement. Tr.343-46.

22. The 30-day notice letters sent to customers in Reading's historic districts stated that if the customer's meter was located inside, it would be moved outside, and failed advise customers that UGI would consider an inside meter placement. Reading Exhs. JS-10 and JS-12.

## APPENDIX A

23. UGI's current GOM procedure addresses not placing meters in front of distinguishing exterior features of historical properties, but does define what constitutes a "distinguishing exterior feature." UGI St. No. 1 at 34; UGI Exh. CB-5.

24. UGI does not consult any historical preservation rules, regulations, guidelines or other materials when deciding whether there is a distinguishing exterior feature on a historic property. Tr. 396-97.

25. The factual stipulations set forth in the parties' Updated Joint Stipulation dated August 28, 2018 are hereby incorporated herein by reference. ALJ Exh. 1.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Complaints. 66 Pa.C.S. § 701.
2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).
3. The burden of proof in this consolidated proceeding rests with the City and CPHD as the Complainants.
4. The burden of proof must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa.Cmwlth. 1990).
5. A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).
6. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa.C.S. § 704; *Mill v. Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993).
7. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).
8. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.
9. The rules of statutory construction and interpretation also apply to regulations. *Presock v. Dept. of Military & Veterans Affairs*, 855 A.2d 928, 931 (Pa.Cmwlth. 2004).
10. The rules of statutory construction state that the object of all interpretation is to ascertain and effectuate the intention of the General Assembly or, in this instance, the Commission. 1 Pa.C.S. § 1921(a). When the words of the regulation are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b); *Energy Conservation Council of Pa. v. Pa. P.U.C.*, 995 A.2d 465, 483 (Pa. Cmwlth. 2010).
11. The City and CPHD have met their burden of proof in this consolidated proceeding.
12. The placement of meters outside and aboveground under 52 Pa. Code § 59.18 is not mandatory in historic districts or where there is a safety risk.

## APPENDIX B

13. Under 52 Pa. Code § 59.18, consideration must be given to inside meter locations in historic districts and other locations when there is potential damage from outside forces.

14. For meter placements under 52 Pa. Code § 59.18, potential damage by outside forces is an exception to the general requirement that meters be located outside and aboveground.

15. For meter placements under 52 Pa. Code § 59.18, inside locations must be considered in situations where necessary to avoid meter freeze-ups and vandalism, or where an outside meter location is neither feasible nor practical.

16. The regulations at 52 Pa. Code § 59.18 are part of a utility's obligations to provide safe and reasonable service and facilities under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501.

17. UGI failed to meaningfully consider inside meter placements for its gas meters in all designated historic districts in Reading in violation of 52 Pa. Code § 59.18.

18. Meters placed outside and aboveground in historic and non-historic districts of Reading within 15 feet or less of a City Street are prone to damage by outside forces and, thus, unsafe.

19. By placing outside meters in unsafe locations in historic and non-historic districts of Reading, UGI violated 52 Pa. Code § 59.18, and 49 C.F.R. § 192.353.



PROPOSED ORDERING PARAGRAPHS

THEREFORE,  
IT IS ORDERED:

1. That the Complaints filed by CPHD and the City at Docket Nos. C-2015-2516051 and C-2016-2530475 are hereby sustained.

2. That UGI shall relocate, at its sole cost and expense, each meter that was placed outside and aboveground in a historic district within the City, between September 13, 2014 to the present, to an inside meter location within eighteen (18) months of the date of this Order. The regulators associated with these meters shall be placed outside and above ground in as protected a location as possible on the exterior of the building.

3. That UGI shall relocate, at its sole cost and expense, each meter that was placed outside and aboveground in historic and non-historic districts of the City within 15 feet or less of a City street between September 13, 2014 to the present, to an inside meter location within eighteen (18) months of the date of this Order. The regulators associated with these meters shall be placed outside and aboveground in as protected a location as possible on the exterior of the building.

4. That UGI, going forward, 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 52 Pa. Code § 59.18(d)(1).

5. That, going forward, where a building façade is within 15 feet or less of a City street, UGI shall install gas meters on the inside of buildings (or in a buried vault) and place their associated gas regulators in as protected a location as possible on the exterior of the building.

6. That the Secretary shall mark these dockets as closed.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18<sup>th</sup> day of October, 2018, served a true and correct copy of the foregoing document, upon the upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54:

**Via Email and First Class Mail**

Honorable Mary D. Long  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Piatt Place, Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222  
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