



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

Devin Ryan

dryan@postschell.com
717-612-6052 Direct
717-731-1981 Direct Fax
File #: 165082

November 16, 2018

VIA ELECTRONIC FILING

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

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

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

Dear Secretary Chiavetta:

Enclosed for filing is the Responsive Brief of UGI Utilities, Inc. in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl
Enclosures

cc: Honorable Mary D. Long
Certificate of Service

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(Docket Nos. C-2015-2516051 and C-2016-2530475)

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

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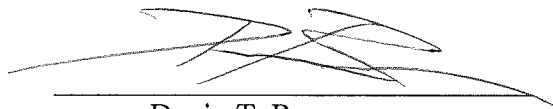
Jan D. Krafczek, Esquire
City Hall, Room 2-54
815 Washington Street
Reading, PA 19601

Charles E. Thomas III, Esquire
Charles E. Thomas, Jr.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101

Rich Raiders, Esquire
321 East Main Street
Annville, PA 17003

Scott Hoh, Esquire
Resolution Law Group
606 North 5th Street
Reading, PA 19601

Date: November 16, 2018


Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Centre Park Historic District	:	Docket Nos. C-2015-2516051
City of Reading	:	C-2016-2530475
	:	
v.	:	
	:	
UGI Utilities, Inc.	:	

**RESPONSIVE BRIEF OF
UGI UTILITIES, INC.**

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

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

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

Dated: November 16, 2018

Attorneys for UGI Utilities, Inc.

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I. INTRODUCTION

The instant case concerns Formal Complaints filed by the City of Reading (“City”) and the Centre Park Historic District (“CPHD”) (collectively, “Complainants”) against UGI Utilities, Inc. – Gas Division (“UGI” or the “Company”) before the Pennsylvania Public Utility Commission (“Commission”) concerning UGI’s meter installation and relocation practices within the City, including the City’s historic districts.

The Complainants have failed to sustain their burden of proof that UGI has violated any provision of the Public Utility Code, a Commission order, or a Commission regulation. Indeed, the record reflects that UGI has “considered” inside meter locations for historic districts and historic buildings in compliance with 52 Pa. Code § 59.18(d)(1)(ii). Further, the record demonstrates that UGI has not placed outside meters in unsafe locations, as prohibited by 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) (adopted by 52 Pa. Code § 59.33).

As explained herein, the Complaints should be denied with prejudice, and the Complainants’ requested relief seeking to impose new regulatory standards on the Company should be rejected.

II. STATEMENT OF THE CASE

A more comprehensive procedural history is set forth in Appendix A of this Responsive Brief.

On November 25, 2015, CPHD filed a Formal Complaint at Docket No. C-2015-2516051 alleging UGI’s meter location practices in the historic districts of Reading, PA violated the amended Section 59.18 and Section 59.33 of the Commission’s regulations. (*See* CPHD Complaint, ¶ 5) On December 15, 2015, UGI filed an Answer to CPHD’s Complaint denying any regulatory violation.

On February 23, 2016, UGI received e-service of the City's Complaint. In its Complaint, the City alleged UGI violated the amended Section 59.18 and Section 59.33 of the Commission's regulations. (*See* City Complaint, Counts I and II) On March 14, 2016, UGI filed an Answer denying the material allegations in the City's Complaint and averring that its meter location practices are and have been consistent with the Commission's regulations.

On August 22 and 23, 2018, evidentiary hearings were held as scheduled in this matter, during which the parties presented their testimony and exhibits and conducted cross-examination.

On August 27, 2018, the ALJ issued an Interim Order on Joint Stipulation and Briefing, which established the briefing schedule and requirements and directed the Complainants to submit an updated Joint Stipulation no later than August 28, 2018.

On August 28, 2018, the Complainants filed an updated Joint Stipulation, which was entered into the record as ALJ Exhibit 1.

On October 18, 2018, the City and CPHD separately filed their Main Briefs.

UGI hereby submits its Responsive Brief in compliance with the August 27, 2018 Interim Order.

III. QUESTIONS PRESENTED

1. Whether the Complainants have sustained their burden of proof that UGI failed to consider inside meter locations for historic buildings, buildings that are eligible to be historic, buildings in historic districts, or buildings in areas eligible to be historic districts in violation of 52 Pa. Code § 59.18(d)(1)(ii).

Suggested answer: *in the negative.*

2. Whether the Complainants have sustained their burden of proof that UGI, when installing and relocating meters, failed to “consider potential damage by outside forces,” to place the meters “[w]hen feasible and practical to do so aboveground in a protection location,” and to protect the meters “from corrosion and other damage,” including “vehicular damage that may be anticipated,” in violation of 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) (incorporated by 52 Pa. Code § 59.33).

Suggested answer: *in the negative.*

3. Whether the Commission should delegate all or a portion of its meter placement authority to local officials so that they can develop their own balkanized meter placement standards based on their interpretation of their responsibilities under the Environmental Rights Amendment, Pa. Const. art. 1, § 27.

Suggested answers: *in the negative.*

4. Whether the Commission should grant the Complainants’ requested relief, which seeks to impose new regulatory standards on UGI both prospectively and retroactively that would require the vast majority of the meters in the City’s historic districts and non-historic districts to be placed inside of buildings, regardless of the safety impacts.

Suggested answer: *in the negative.*

IV. LEGAL STANDARDS

A. BURDEN OF PROOF

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J.*

Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. See *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); see also *Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).

In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must

do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

Bald assertions, personal opinions, or perceptions do not constitute evidence. *Mid-Atlantic Power Supply Ass’n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)). Nor does the testimony consisting of guesses, conjecture or speculation – supposition without a premise of fact – prove a party’s claims. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Department of Highways*, 398 Pa. 518, 159 A.2d 206 (1960). Indeed, “[s]uspicion may have its place, but certainly it cannot be substituted for evidence.” *Pa. Labor Relations Bd. v. Kaufmann Dep’t Stores, Inc.*, 29 A.2d 90, 92 (Pa. 1942) (internal quotation marks omitted) (quoting *Union Trust Co. of Pittsburgh’s Petition*, 20 A.2d 779, 782 (Pa. 1941)).

B. APPLICABLE LEGAL STANDARDS

Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701. Therefore, a complainant must demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order. *See Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *16 (Order entered May 3, 2018) (citing 66 Pa. C.S. § 701).

Section 1501 of the Public Utility Code states, 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. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . . .

Id. § 1501. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

Section 59.18(a)(1) of the Commission’s regulations states that “[u]nless otherwise allowed or required in this section, meters and regulators must be located outside and aboveground.” 52 Pa. Code § 59.18(a)(1).

Under Section 59.18(d)(1) of the Commission’s regulations, “[i]nside 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.

(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).

Section 59.18(a)(5) of the Commission's regulations requires a natural gas utility "to consider potential damage by outside forces" when it is "selecting a meter or service regulator location." 52 Pa. Code § 59.18(a)(5).

"Outside meters or service regulators" must be installed in one of two locations: (1) "[w]hen feasible and practical to do so, aboveground in a protected location adjacent to the building served, or as close as possible to the point where a production or transmission line is tapped"; or (2) "[i]n a buried vault or meter box." 52 Pa. Code § 59.18(b).

Section 59.33(b) of the Commission's regulations establishes that the "minimum safety standards" for natural gas utilities "shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. § § 60101—60503 and as implemented at 49 CFR Parts 191—193, 195 and 199, including all subsequent amendments thereto." 52 Pa. Code § 59.33(b).

Under 49 C.F.R. § 192.353(a), “[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.”

The Environmental Rights Amendment of the Pennsylvania Constitution states: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” Pa. Const. art. I, § 27.

V. SUMMARY OF ARGUMENT

The Complaints should be denied in their entirety and with prejudice because the Complainants have failed to sustain their burden of proof that the Company’s meter location practices in the City of Reading have violated any provision of the Public Utility Code, a Commission order, or a Commission regulation. Moreover, even assuming *arguendo* that the Complainants have sustained their burden of proof, their requested relief is unreasonable and unlawful and should be rejected.

In *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Order entered May 23, 2014) (“*Final Rulemaking Order*”), the Commission, after an extensive multi-year information gathering, public comment, and regulatory review process, extensively amended 52 Pa. Code § 59.18 to establish new standards governing natural gas distribution companies’ (“NGDCs”) installation of meters, regulators, and service lines.

Generally, the amended regulation requires all existing and future meters and regulators to be located outside and aboveground, subject to certain exceptions. *See* 52 Pa. Code § 59.18(a)(1).

During this extensive rulemaking proceeding, many commenters disagreed with the Commission's decision and argued that: (1) meters should always or almost always be located indoors in historic districts; (2) specific guidelines for determining meter locations in historic districts should be adopted; and (3) the Commission should delegate its authority to municipal and historical entities to control local meter placement decisions. *See, e.g., Final Rulemaking Order* at 25-26, 43-45; *Advance Notice of Final Rulemaking Order*, Docket No. L-2009-2107155, Attachment One at 5-13 (Order entered Sept. 13, 2013) (“*ANOFRO*”). Others argued that outside meter locations presented increased levels of risk, due to, among other things, the potential for vehicle strikes or tripping hazards. *See, e.g., ANOFRO*, Attachment One at 4-5. Neither CPHD nor the City filed any comments. (UGI St. No. 1, p. 17, lines 15-16)

The Commission carefully considered and rejected those recommendations because it identified several risks regarding inside meters, including flowing gas in confined indoor locations. *See Final Rulemaking Order* at 5-6, 8-9. As opposed to outdoor locations where natural gas can dissipate into the atmosphere, indoor flows of gas can build up to levels presenting a risk of ignition and resulting catastrophes which can and have resulted in injury and the loss of life and property in the Commonwealth, including in cited instances on UGI's system. (UGI St. No. 1, p. 31, line 18 to p. 32, line 18; p. 47, line 17 to p. 48, line 5) There was no similar risk to life or property identified in the *Final Rulemaking Order* with respect to outside meter and regulator placements, whether in narrow city streets or otherwise.

Given the NGDCs' “public safety obligations,” the Commission declared that NGDCs must retain the discretion on where to install their natural gas facilities. *Final Rulemaking Order*

at 45-46. Further, although NGDCs shall “consider” inside meter locations for historic districts and buildings under the amended Section 59.18, the Commission did not adopt any parameters limiting NGDCs’ discretion beyond those adopted for non-historic districts. More importantly, the Commission explicitly declined to establish such standards, stating:

We shall also decline to address visual impact alternatives that may avoid or minimize the impact of installing the meter/regulator outside. Although we would expect a gas utility or any utility to provide reasonable and adequate service when installing its equipment, we shall not attempt to set what may be subjective requirements that would avoid or minimize the impact to an historic resource. However, we do agree that property owners, as well as utility customers, should be notified of neighborhood projects, which we believe is covered under compliance with the notice requirement of paragraph (a)(2).

We further believe that the regulation sufficiently defines the restrictions under which inside meters may be considered. If these circumstances do not exist, then the general rule of paragraph (1) of subsection (a) applies and the meter and regulator shall be located outside and above ground. Therefore we do not agree that the rule does not provide guidance and direction. Subsection (a) lists general requirements for meter and regulator location. Specifically, for location guidance under paragraph (3) (paragraph 5 in the Final rulemaking), the utility shall consider potential damage by outside forces; under paragraph (4) (paragraph 6 in the Final rulemaking), the utility must consider a number of factors for accommodating access; and under paragraph (6) (paragraph 8 in the Final rulemaking), a list of prohibited locations is provided. Finally, under subsection (b), the regulation lists the locations where outside meter or service regulator locations can be located.

The recommendation has been made that the regulations should develop requirements for relocating meters and regulators outside in locally designated historic districts and provide alternatives for typical historic building types. As we just indicated, we do have a number of guidelines for locating meters outside which would apply to outside meters in locally designated historic districts and provide alternatives for typical historic building types. As we just indicated, we do have a number of guidelines for relocating meters outside which would apply to outside meters in locally designated historic districts.

...

The OCA also is concerned that the structure of amended section 59.18(d)(1) may allow the gas utility to make the final decision regarding the location of a gas meter. Therefore, the OCA submits that the Commission should consider more refinements to assure that the impact on Pennsylvania's historical resources are minimized. According to the OCA, the Commission should clarify that the status of a property as a historic resource or part of a historic district, restricts the property from consideration for an outside meter. The OCA submits this clarification is needed to offset the ambiguity in the wording of amended section 59.18(d)(1) which allows the gas utility to simply consider the use of an inside meter, while the historic nature of a property, the risk of vandalism, and ambient temperature are labeled as restrictions that make the location of a meter "not available."

...

The general rule of the regulation under paragraph (a)(1) is that meters and regulators shall be located outside unless otherwise allowed or required in the regulation. This subsection and paragraph identifies situations where an inside meter will be considered. We agree that the regulation does contain provisions that delegate discretion to the utility in making a determination with respect to locating an outside meter. 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.

Final Rulemaking Order at 30-31, 43, 45-46. Thus, the Commission's *Final Rulemaking Order* clearly states that the general rule requiring outside meter placement applies to historic and non-historic districts alike, unless outside meter placement is otherwise prohibited or not feasible under the Commission's regulations.

As explained in this Responsive Brief, UGI has complied with the Commission's regulations in making its meter location decisions in both historic and non-historic districts. *See* Section VI.B., *infra*. Given the safety concerns expressed by the Commission with inside meters, as well as UGI's records of issues with inside meters, the Company has "considered"

inside meter locations and has “determined” that it will relocate most meters to outside locations. (UGI St. No. 1, p. 18, line 16 to p. 19, line 5; p. 47, line 17 to p. 48, line 5) Indeed, beyond the revisions the Company has made to its Gas Operations Manual (“GOM”) to try to address the Complainants’ concerns, UGI, after full consideration, has determined to place most meters outside because: (1) UGI agrees with the Commission’s conclusion that the most important goal is public safety and that goal is best advanced by minimizing the chances of releasing gas in confined indoor spaces by placing meters and regulators in outside locations; (2) UGI has a statutory obligation to provide safe and reliable service under Section 1501 of the Public Utility Code; and (3) UGI carries the full and significant risk of civil liability if it were to elevate aesthetic or historic preservation concerns above the gas safety concerns, and an incident were to occur causing loss of life, bodily injury, and/or property damage. *See Final Rulemaking Order at 2-9; 66 Pa. C.S. § 1501; (UGI St. No. 1, p. 18, line 16 to p. 19, line 5; p. 39, lines 4-7; p. 40, lines 7-19; p. 47, line 17 to p. 48, line 5).*

However, the Complainants contest the Company’s placement of meters outdoors. To voice their concerns, the Complainants participated in extensive meetings with UGI, the Commission’s Safety Division (“PUC SD”), and elected officials. (UGI Statement No. 1, p. 21, line 6 to p. 22, line 21; Reading Statement No. 4, p. 3, line 23 to p. 4, line 5) In the Complainants’ view, meters should be placed inside buildings in historic districts and on narrow streets. (*See Reading Statement No. 2, p. 21, line 17 to p. 23, line 15, p. 31, lines 13-22; City MB, Appx. C*) When it became clear that the PUC SD did not agree with the Complainants, they filed the instant Formal Complaints against UGI. (UGI Statement No. 1, p. 22, line 18 to p. 23, line 7; Reading Statement No. 4, p. 3, line 23 to p. 4, line 11)

These Complaints were problematic because while they vaguely alleged unsupported and widespread violations of the Commission's meter placement regulations, the Complainants' requests for relief clearly sought to impose new regulatory requirements as to where the Company can install meters, relief that the Commission explicitly rejected in its *Final Rulemaking Order*. (See Reading Statement No. 2, p. 21, line 17 to p. 23, line 15; p. 31, lines 13-22); *Final Rulemaking Order* at 30-31, 43, 45-46. In various pleadings, the Complainants insisted that they were alleging violations of the Commission's existing meter placement regulations and not seeking to amend the Commission's regulations. See Interim Order Dismissing Preliminary Objections, Docket Nos. C-2015-2516051, *et al.*, at 2 (Mar. 29, 2016); Order Denying Petition for Interlocutory Review, Docket Nos. C-2015-2516051, *et al.*, at 14-16 (Order entered Feb. 9, 2017). Extensive time and resources were thereafter expended by the parties and the ALJ to identify and investigate the thousands of meter locations and alleged violations. See, e.g., Sixth Prehearing Order (Mar. 21, 2017); Complainants' Executive Summary of Alleged Violations (Apr. 27, 2017); Joint Stipulation of the Complainants and UGI (Sept. 5, 2017).

Ultimately, on the first day of evidentiary hearings, the Complainants dropped the majority of their alleged violations of current regulations and claimed that they were only contesting outside meters in historic districts and outside meters within 15 feet of a street curb. (Tr. 202-04) In fact, the Complainants' principal witness, John Slifko, even testified that the other thousands of alleged violations "were not part of [the City's] complaint." (Tr. 204)

It is now plainly apparent from the Complainants' Main Briefs that their long-held assertion that the instant case is an actual formal complaint proceeding and not a petition to amend the Commission's regulations hangs on a slender thread. That thread is the implausible

argument that outside meter locations are not safer than inside meter locations. (City MB at 21-22) As relief, the Complainants request that UGI be forced to place all meters inside for historic buildings and districts and anytime the building's façade is within 15 feet of a street curb, on both a prospective basis and retroactive basis (for any meters installed since September 13, 2014) at the Company's expense. (City MB, Appx. C)

In UGI's view, the Complainants do not allege violations of the regulations that are in effect; rather, they allege violations of what they would like the regulations to be. Although the Complainants may disagree with the Commission's currently-effective regulations and the Commission's findings in the *Final Rulemaking Order*, they should have submitted comments during the rulemaking proceeding for the Commission's consideration. They chose not to do so. Thus, they cannot use this formal complaint proceeding to collaterally attack the Commission's *Final Rulemaking Order*, including the Commission's decision not to impose more specific requirements on where an NGDC can install meters.

Finally, CPHD's constitutional arguments are fatally flawed. CPHD clearly states that it is not arguing that Section 59.18 is unconstitutional under the Environmental Rights Amendment. (CPHD MB at 6) Indeed, the Commonwealth Court has expressly found that Section 59.18 complies with the Environmental Rights Amendment of the Pennsylvania Constitution. *See UGI Utils., Inc. v. City of Reading*, 179 A.3d 624, 630-32 (Pa. Cmwlth. 2017). Absent any determination that the Commission's regulation violates the Environmental Rights Amendment, the Commission has complied with its duties as a public trustee to protect the Commonwealth's historic resources. Therefore, it need not adopt more specific standards to protect such resources. Nevertheless, CPHD essentially argues that the Commission should delegate its clear authority over meter locations to local authorities when they believe an inside

meter location is necessary to protect historic buildings and districts. This is nothing more than a request for the Commission to reconsider its decision in the *Final Rulemaking Order* to decline delegating its authority to local municipalities or historic authorities.

For these reasons, and as further explained in detail below, the Commission should deny the Complaints with prejudice.

VI. ARGUMENT

A. BACKGROUND

Before addressing the Complainants' arguments in detail, it is critically important to understand the background of the Commission's amendment of 52 Pa. Code § 59.18, UGI's interactions with the Complainants and the Commission's Gas Safety Division ("PUC SD") after the amendment of Section 59.18, and the many steps the Company has taken to try to address the Complainants' concerns while still providing safe and reliable natural gas service to its customers.

1. Amendment Of Section 59.18

Prior to the September 13, 2014 effective date of the revisions to 52 Pa. Code § 59.18, the regulation granted substantial flexibility to NGDCs in determining whether to place a meter inside or outside of a building. Specifically, it stated:

Meters shall be installed in either of the following locations:

- (1) Inside the building, preferably in a dry, well-ventilated place not subject to excessive heat, and as near as possible to the point of entrance of the pipe supplying service to the building.
- (2) Outside the building at a location selected by the utility. A meter cover or housing is required if, in the judgment of the utility, conditions require the physical protection for the meter installation.

52 Pa. Code § 59.18 (2013).

On August 21, 2008, the Commission directed the PUC SD “to institute an investigation into the issue of gas meter placement and relocation.” *Final Rulemaking Order* at 2. After its review, the PUC SD “concluded that the Commission’s existing regulation [was] vague, inadequate, and out-of-date with respect to the federal standards which the [Commission] has adopted.” *Id.* at 2. The PUC SD and the Commission’s Law Bureau also investigated the prevalence of inside meters and regulators and the issues related to those installations, by propounding a set of data requests on the 10 largest NGDCs in Pennsylvania. *Id.* at 5. “The data requests included questions related to the number of inside/outside meter sets, inside regulators, tariff language, inside meter set leak calls, reportable incidents associated with inside meter sets, meter relocation charges, inside leak surveys, and local ordinances requiring certain meter locations.” *Id.*

In response to these data requests, the Company and its affiliated NGDCs, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc.,¹ reported that as of October 2013, they had approximately 207,000 inside meters serving approximately one third of their service locations. (UGI St. No. 1, p. 13, lines 2-6) Moreover, approximately 48,600 of these inside meter installations were connected to steel service lines and that their inside meter installations tended to be concentrated in older urban areas. (UGI St. No. 1, p. 13, lines 6-9)

Based on the information gathered from the NGDCs, the PUC SD made the following conclusions:

1. The Pennsylvania regulations at §59.18 are silent as to reimbursement costs related to relocation of meters.

¹ By Opinion and Order entered on September 20, 2018, at Docket Nos. A-2018-3000381, *et al.*, the Commission approved the merger of UGI Central Penn Gas, Inc. and UGI Penn Natural Gas, Inc. into UGI Utilities, Inc.

2. The Commission has adopted provisions of the Code of Federal Regulations, which address the safety issues related to meter set location and installation and thus are in conflict with the existing Pennsylvania regulations.

3. The collected data show that Pennsylvania has experienced 65 reportable incidents² associated with inside meter sets and inside regulators over the last 40 years.

4. The gas distribution utilities have had more than 4,000 leaks related to inside meter sets over the last five years.

5. Several of the gas distribution utilities assert they cannot comply with the state and federal regulations pertaining to leakage surveys because they cannot get access to inside meter sets.

6. Inside meter sets with inside regulators are a major concern due to the possibility of high pressure gas flowing into a structure if the inside meter or inside regulator is detached from the service line. Three gas distribution utilities have high numbers of inside meter sets with inside regulators that are at higher risk for failure because the inside meter and regulator are connected to a steel service line. Steel service lines are susceptible to pulling from excavation equipment. Pennsylvania has experienced several catastrophic explosions due to steel service lines pulling away from inside meter sets and inside regulators.

Final Rulemaking Order at 8-9 (emphasis added).

Based on the PUC SD's report, the Commission initiated a rulemaking proceeding at L-2009-210-7155 to amend Section 59.18 of its regulations to address these concerns. The Commission issued a Proposed Rulemaking Order at Docket L-2009-2107155 on July 28, 2011, soliciting comments, and a September 13, 2013 Advance Notice of Final Rulemaking Order seeking additional comments on a proposal to generally require all regulators and most meters to be located at outside locations. (UGI St. No. 1, p. 15, lines 4-7) Many entities across the Commonwealth submitted comments on the Commission's proposed revisions to Section 59.18,

² "A reportable incident exists where there was a release of gas and (1) greater than \$50,000 in damages; (2) death or injury; or (3) a significant event in the determination of the distribution utility." *ANOFRO* at 5 n.3.

including NGDCs, historical commissions, private citizens, preservation groups, and government entities. *Final Rulemaking Order* at 9-10; *ANOFRO*, Attachment One. Notably, neither of the Complainants submitted comments, although they were afforded multiple opportunities to do so by the Commission. (UGI St. No. 1, p. 17, lines 15-16) (emphasis added)

Like the City and CPHD, however, several local historical commissions and associations, homeowners, public officials, and the Pennsylvania Historical and Museum Commission objected to a strict requirement for outside meters. (UGI St. No. 1, p. 16, lines 8-10) In their comments, these parties argued that the Commission should exempt federal and local historic districts from this requirement, delegate meter placement decisions in historic districts to local officials, or develop specific standards for NGDCs to consider when they are making meter location decisions in historic districts, citing aesthetic, traffic safety, tripping hazards, and other concerns with outside meters. (UGI St. No. 1, p. 16, lines 10-20)³ The Independent Regulatory Review Commission also expressed concerns about meter placement in historic districts in its review of the regulation. *See Final Rulemaking Order* at 11, 14.

In the end, after reviewing all of the comments submitted by interested parties, the Commission issued its *Final Rulemaking Order* on May 23, 2014, and mandated that all NGDCs' meters must "be located outside and above ground," subject to certain limited exceptions. *Id.* at 30. The Commission rejected the comments of parties opposing this general requirement for outside meters, even in historic districts. *Id.* at 30-31. In fact, the Commission specifically "decline[d] to address visual impact alternatives that may avoid or minimize the

³ *See, e.g.*, Comments of Preservation Pennsylvania, Docket No. L-2009-2107155 (July 10, 2012); Comments of the Society Hill Civic Association, Docket No. L-2009-2107155 (July 6, 2012); Comments of the Pennsylvania Historical and Museum Commission, Docket No. L-2009-2107155 (July 2, 2012); *ANOFRO*, Attachment One at 4-13.

impact of installing the meter and/or regulator outside” and “to set what may be subjective requirements that would avoid or minimize the impact to an historic resource.” *Id.* at 30-31.

Although the Commission denied those commenters’ recommendations, Section 59.18 does contain provisions regarding meter locations for historic buildings and historic districts. *See* 52 Pa. Code § 59.18(d)(1)(ii)(A)-(D). Specifically, Section 59.18 states that “[i]nside meter shall be considered only” in certain situations, such as when the meter is located in a historic building or a building located in a historic district. *Id.* (emphasis added). However, the Commission made it clear that meter location was to be determined by NGDCs in their discretion and not by local governments. *See Final Rulemaking Order* at 45-46 (stating that “the regulation does contain provisions that delegate discretion to the utility in making a determination with respect to locating an outside meter” and “it is necessary that, due to its public safety obligations, the utility be allowed to make the final decision.”).

These new rules became effective on September 13, 2014, when installing new meters, regulators, and service lines or replacing existing ones. *See* 52 Pa. Code § 59.18(g)(1)-(2). For NGDCs’ existing inside meters and regulator installations, the NGDCs must replace them all by September 13, 2034, or incorporate the requirements of Section 59.18 into a Distribution Integrity management Plan (“DIMP”), whichever happens first. *See id.* § 59.18(g)(3).

2. Interactions With The PUC SD And The Complainants After The Amendment Of Section 59.18

Upon the effective date of the Commission’s new regulation, UGI began to apply the new standards in making service line, regulator, and meter placement decisions when installing facilities at new service locations or when undertaking betterment projects.⁴ (UGI St. No. 1, p.

⁴ “Betterment projects” are projects undertaken to address cast iron mains pursuant to Act 11 of 2012 and amended 52 Pa. Code § 59.18. (UGI St. No. 1, p. 4, lines 9-11) Typically, cast iron mains in urban areas are larger-

19, line 22 to p. 20, line 2) It was UGI's view at the time, and continues to be UGI's view, that the Commission's decision not to establish specific standards for inside meter placement in historic districts, its authorization of NGDCs to "consider" inside meter placements in such districts, its concerns expressed throughout its rulemaking about the dangers of inside meter and regulator installations, and its willingness to require NGDCs to replace such installations by a date certain at considerable cost, all suggested that UGI could exercise its Commission-granted discretion to require outside meter locations in all service locations, including historic districts. (UGI St. No. 1, p. 20, lines 2-9) Indeed, the Company's position has been that gas safety concerns should trump aesthetic concerns (UGI St. No. 1, p. 20, lines 9-11), and UGI would presumably carry the risk of potential liability in the event it exercised its discretion to permit an inside meter location in the absence of clear Commission-required standards, and a catastrophe were to occur. (UGI St. No. 1, p. 18, lines 9-12) UGI also was initially concerned that there was no definitive central repository for determining the boundaries of local historic districts or areas that might qualify for such designation. (UGI St. No. 1, p. 20, lines 12-14) In contrast, UGI was able to locate a resource which listed the boundaries of federal historic districts. (UGI St. No. 1, p. 20, lines 14-15) Thus, UGI initially exercised its discretion by considering and rejecting

diameter pipes that operate at low pressure. (UGI St. No. 1, p. 11, lines 8-9) Rather than incur the expense and disruption that would be associated with totally removing and replacing such pipes, UGI typically inserts smaller diameter plastic pipes into the cast iron mains. (UGI St. No. 1, p. 11, lines 9-11) Such smaller diameter pipes then operate at medium pressure to offset the reduction in pipe diameter. (UGI St. No. 1, p. 11, lines 11-12) In addition, the elevated pressure and resultant higher capacity improves system reliability and helps maintain adequate levels of service to customers. (UGI St. No. 1, p. 11, lines 12-14) Pursuant to recently-promulgated federal rules and consistent with long-standing UGI construction policy, UGI installs excess flow valves ("EFVs") on new medium pressure service lines near their intersection with the main. (UGI St. No. 1, p. 11, lines 14-16) These EFVs are designed to automatically step down gas pressure to safer low pressure levels in the event the service line is severed and will automatically restore pressure when the service line is fixed. (UGI St. No. 1, p. 11, lines 16-19) A switch to a medium pressure system also requires UGI, as part of such a betterment project, to install a new service line designed to handle the higher pressure. (UGI St. No. 1, p. 11, lines 19-20) Consistent with UGI's understanding of the Commission's 2014 revision of its regulation at 52 Pa. Code § 59.18, UGI also installs a pressure regulator outside and selects an inside or outside location for its meter(s) in accordance with the standards set forth in 52 Pa. Code § 59.18 and UGI's GOM. (UGI St. No. 1, p. 11, line 21 to p. 12, line 2)

inside meter placements in non-federal historic districts and adopted standards for making meter placement in federal historic districts that did not differ from non-historic districts. (UGI St. No. 1, p. 20, lines 15-18) This approach was reflected in its initial GOM rules and communications. (UGI St. No. 1, p. 20, lines 18-19)

When the Company was installing and relocating meters consistent with this policy, UGI received complaints from the City, CPHD, and others concerning its placement of meters in the City of Reading. (UGI St. No. 1, p. 21, lines 4-6) In response, UGI met several times with various City officials and other local interested parties to discuss meter placement issues. (UGI St. No. 1, p. 21, lines 6-7)

The City also asked the Commission to look into UGI's meter placement and maintenance decisions and to participate in meetings with interested parties. (UGI St. No. 1, p. 21, line 15 to p. 22, line 14) As a result, PUC SD representatives and City officials did walking tours in the City to observe UGI's actions. (UGI St. No. 1, p. 21, lines 17-18) UGI also involved PUC SD field safety inspectors in reviewing certain meter placement decisions where there was strong customer opposition. (UGI St. No. 1, p. 21, lines 18-19) It was UGI's clear understanding based on these reviews that the PUC SD supported UGI's implementation policies and meter placement considerations and that no remedial action was required. (UGI St. No. 1, p. 21, lines 19-22) Moreover, a meeting was organized by Pennsylvania State Senator Judy Schwank in 2015, which was attended by, among others, officials from the PUC SD, the City, and CPHD, Councilman John Silfko, who is a resident in CPHD, Hans Bell, who is the current Chief Operating Officer of UGI, and UGI witness Christopher Brown. (UGI St. No. 1, p. 22, lines 3-6) At this meeting, UGI explained its meter placement policy, and PUC SD representatives confirmed that they believed UGI's policies to be consistent with the intent of the

Commission's regulations. (UGI St. No. 1, p. 22, lines 6-8) Hans Bell indicated that based on the PUC SD's views, UGI would continue to apply its understanding of the Commission's meter placement policy subject to a modification for distinguishing architectural characteristics after PUC SD review. (UGI St. No. 1, p. 22, lines 9-11)

3. UGI Has Taken Several Steps To Try To Address The Complainants' Concerns

Although UGI maintains that its practices have been consistent with the Commission's regulations and the PUC SD's views, the Company has taken several steps to try to address the Complainants' and customers' concerns.

First, UGI agreed to voluntarily modify its GOM effective July 31, 2016, to include: (1) more specific requirements regarding meter protection and Americans with Disabilities Act ("ADA") sidewalk width compliance; and (2) additional guidance and consideration for meters located within historic districts. (UGI St. No. 1, p. 34, lines 10-14) More specifically, the revised GOM procedure continues to encourage outside locations in all locations but allows and provides detailed considerations for inside locations if less obtrusive locations are not available in historic districts. (UGI St. No. 1, p. 34, lines 14-17) The revised policy also addresses not placing meters in front of distinguishing exterior features of historic district properties. (UGI St. No. 1, p. 34, lines 17-18) Before these revisions were implemented, UGI submitted the proposed GOM modifications to the PUC SD for comment. (UGI St. No. 1, p. 22, lines 11-12) When no suggested revisions were communicated, the revised GOM was implemented on July 31, 2016. (UGI St. No. 1, p. 22, lines 13-14)

Second, UGI agreed to work with the City to have constituent complaints submitted to the City appropriately routed to UGI officials for response. (UGI St. No. 1, p. 21, lines 11-13)

Third, Company personnel have met on several occasions with homeowners and interested parties to discuss the outside meter placement location in advance of the Company's work. (UGI St. No. 1, p. 36, lines 4-7) In the vast majority of cases, the Company and the customer have found mutually agreed-upon locations to place an outside meter. (UGI St. No. 1, p. 36, lines 6-7) Although the City may disagree with the locations agreed to by UGI and the customer (City MB at 39), the City cannot deny that UGI has tried to work with customers in these situations.

Fourth, as needed, UGI will relocate the gas service line from the front of the building at its cost to ensure the service line is installed perpendicular to the main and to avoid distinguishing features of the home. (UGI St. No. 1, p. 36, lines 8-10)

Fifth, UGI has procured and installed custom or "stick" built meter sets where possible to limit the overall size and profile of meter sets. (UGI St. No. 1, p. 36, lines 11-12)

Sixth, UGI developed a website for customers requesting reconsideration of inside meter placement as a means for easily communicating this preference. (UGI St. No. 1, p. 36, lines 13-14) Information about this website is provided to customers on a letter that is sent at least 30 days in advance of the meter installation or relocation. (Tr. 344-45; UGI Exh. CB-16)

Seventh, in 2013 and 2014, UGI funded a Lehigh University program for designing a less obtrusive meter cover. (UGI St. No. 1, p. 36, lines 15-16)

Eighth, as meter technology continues to advance, UGI remains abreast of these advancements in the interest of its customers. (UGI St. No. 1, p. 36, lines 17-18) To this end, two manufacturers are currently developing smaller residential outside meters for potential future use. (UGI St. No. 1, p. 36, lines 18-19)

Ninth, as part of its revisions to the GOM, customers can take steps to lessen the aesthetic impact of the outside meter, such as “paint[ing] their meters to blend in with the surroundings, provided they do not paint over meter dials, regulator vents or vent lines.” (UGI Exh. CB-5, p. 9) As seen in pictures taken by the Complainants, customers have painted meters to blend in with their surroundings and mitigate the meters’ aesthetic impact. (UGI Cross-Examination Exhs. 1-3) Customers also are allowed to “use vegetation or install customer owned meter covers to aesthetically camouflage a meter,” so long as: (1) the vegetation or meter cover does “not interfere with meter reading, inspection, repairs, testing, changing and operation of the gas shut-off valve”; (2) the meter cover does “not obstruct the regulator vent” and “provide[s] adequate ventilation to accommodate relief valve operation”; and (3) the meter cover is “readily removable to allow for maintenance.” (UGI Exh. CB-5, pp. 9-10)

Finally, UGI has been selective in the placement of meters so that the Company complies with 49 C.F.R. § 192.353(a) and avoids locations where vehicular damage may be reasonably anticipated. (UGI St. No. 1, p. 37, lines 2-4) By doing so, UGI avoids the need for the installation of bollards or other forms of supplemental meter protection that could be viewed as more obtrusive and taking away from distinguishing historical building features. (UGI St. No. 1, p. 37, lines 4-6)

Despite these efforts, the Complainants remain unsatisfied with the Company’s attempts to address their concerns. (City MB at 39-40) Indeed, it is clear that nothing short of relocating most, if not all, of the outside meters back inside the buildings or allowing the Complainants to determine where almost every UGI meter in the City of Reading should or should not be located will satisfy the Complainants.

However, instead of filing a petition pursuant to Section 5.43 of the Commission's regulations to amend Section 59.18, the Complainants decided to file the instant Formal Complaints against UGI and allege various violations of the Commission's meter location regulations. As explained in the following sections, the Complainants have failed to sustain their burden of proof and are not entitled to the relief requested.

B. THE COMPLAINANTS HAVE FAILED TO SUSTAIN THEIR BURDEN OF PROOF

The City and CPHD have failed to sustain their burden of proof that UGI's meter location practices have violated any provision of the Public Utility Code, a Commission order, or a Commission regulation. *See* 66 Pa. C.S. §§ 332(a), 701.

At its core, this case is about whether UGI has properly balanced safety against aesthetics in its meter location decisions in the City of Reading. All parties claim to agree on four critical points: (1) UGI bears the sole responsibility for the safety of its natural gas service⁵; (2) safety is the "overriding concern"⁶ when deciding where to locate meters; (3) the Complainants are not better than UGI or the Commission at balancing safety and aesthetics⁷; and (4) customers in historic districts should be afforded the same level of safety as customers in non-historic districts.⁸

Nevertheless, the Complainants criticize the Company's exterior meter placements, alleging that: (1) UGI did not "meaningfully consider" inside meter locations for historic buildings and historic districts; and (2) the Company's exterior meters have been placed in unsafe locations because the meters are within 15 feet of street curbs. (City MB at 28-38) The

⁵ Reading Statement No. 1, p. 7, lines 13-14.

⁶ Reading Statement No. 1, p. 7, line 8.

⁷ Tr. 152, 173.

⁸ Tr. 152, 172.

City even contends that “[t]he evidence of record does not support UGI’s assertions that outside and above ground meters are safer than inside meters.” (City MB at 21) In fact, the City “fundamentally believes that inside meters are safer than outside meters, especially in the environment of Reading, Pennsylvania.” (City MB at 42) According to the Complainants, “[t]here is a safety justification for having outside regulators, but not for outside meters.” (Reading Statement No. 2, p. 32, lines 13-14)

The Complainants, however, completely overlook the undisputed record evidence demonstrating that outside meters are safer than inside meters. UGI has a duty to report every “incident” to the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) within the United States Department of Transportation (“DOT”). An “incident” is defined as “[a]n event that involves,” among other things, “a release of gas from a pipeline” and “that results in one or more the following”: (1) “[a] death, or personal injury necessitating in-patient hospitalization”; (2) “[e]stimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost”; or (3) “[u]nintentional estimated gas loss of three million cubic feet or more.” 49 C.F.R. § 191.3.

Here, based on the Company’s records, the last reported DOT incident related to outdoor meter sets caused by vehicular damage occurred in 1981. (UGI St. No. 1, p. 48, lines 1-2) Within that same time period, UGI has had 11 DOT reportable incidents related to inside meters. Of those 11 incidents, 7 resulted in an explosion and 1 resulted in the loss of life. (UGI St. No. 1, p. 48, lines 3-4) (emphasis added) Notably, the Complainants do not dispute UGI’s records of reportable incidents. (Tr. 176)

Further, the Complainants' position contradicts the Commission's findings in its *Final Rulemaking Order*, which led the Commission to change its policy and require, in most instances, that meters be placed outside. Specifically, the Commission observed the following:

The Commission is also concerned about the number of reportable incidents resulting, at least partially, from locating meters and regulators inside structures. The gas distribution utilities reported more than 4,000 leaks occurring on inside meter sets over a five year period. The number of reportable incidents (65) over the past forty years, however, is more alarming. While it appears from the data that the inside meter and regulators were not always the primary factor for accidents, locating meters and regulators inside certainly contributed to these incidents through a release of natural gas. State and federal gas safety regulations require gas utilities to perform leak surveys over service lines periodically; however, several of the utilities reported that they could not comply with the leak survey requirements when the meter and regulator are inside a building which prevents access. This is troubling because the state and federal regulations require leak surveys up to the meter. By not having access to the meter sets, the NGDCs cannot comply with the state and federal regulations and cannot detect inside leaks.

The state has experienced several gas explosions related to steel service lines being struck and pulled up from their stable position and subsequently pulling the service line from the inside meter set. Plastic service lines with inside meter sets do not pull away since the excavation equipment usually severs the line immediately after being struck. The combination of steel service line and inside meter set is a high risk factor for natural gas incidents.

Final Rulemaking Order at 5-6 (emphasis added) (footnote omitted).

The Complainants may believe that inside meters are less dangerous now that steel service lines are being replaced by plastic service lines. (Reading Statement No. 2, p. 33, lines 9-14; Tr. 176) However, Section 59.18's general requirement for outside meter placement is not dependent on the type of service line. The Commission explicitly declared, "[M]eter set relocation required by regulation is not dependent on the type of service line and we shall not make any exceptions." *Id.* at 29 (emphasis added).

Moreover, with regard to vehicle strikes of meters, the Commission had access to accident data, was very familiar with outside regulator and meter installations that were very common even before the Commission modified its regulation, and was informed of the type of risks raised by the Complainants here in the extensive comments filed to its rulemaking. (UGI St. No. 1, p. 32, line 21 to p. 33, line 2) Based on that information, the Commission concluded that outside regulator and meter installations were generally safe, except where there are special risks of vehicle strikes or vandalism. (UGI St. No. 1, p. 33, lines 2-4) Even in such instances, it appears the Commission's concerns were more focused on damage to utility facilities rather than the risk of igniting outside flows of low pressure gas from: (1) low pressure service lines; or (2) medium pressure service lines, where gas flows would be reduced to low pressure levels by EFVs in the event of a service line break. (UGI St. No. 1, p. 33, lines 4-8) Thus, based on the Company's evidence and the Commission's previous findings, outside meters are safer than inside meters.

In addition, the Complainants are entirely unqualified to make such a sweeping conclusion about the safety of inside meters versus outside meters. None of their witnesses are engineers, have ever worked in the natural gas industry, or have any education or work experience related to gas safety. (Tr. 142-43, 151, 169) As a result, the Complainants completely rely on speculation, the lay opinions of their inexperienced witnesses, the alleged distances between the meters and street curbs, alleged vehicle strikes and "near misses," and purported "common sense" to support their claim that inside meters are safer than outside meters. (City MB at 21-24, 35-38, 42-43; Reading Statement No. 1, p. 7, lines 12-25; Reading Statement No. 2, p. 23, line 18 to p. 31, line 8; p. 32, line 13 to p. 34, line 10) Such allegations

cannot support upending the Commission's and UGI's findings and potentially place customers at risk.

Yet, despite their obvious shortcomings, the Complainants ask the Commission to impose new regulatory standards on UGI and to force the Company to place most, if not all, of the meters relocated in historic districts since September 13, 2014, back inside the buildings, and to place any new meters inside buildings in historic districts going forward. (Tr. 196; City MB, Appx. C) Moreover, the Complainants request that UGI be forced to place meters inside a building or in a buried vault whenever the building façade is within 15 feet of a City street and to apply this standard retroactively to any meters installed since September 13, 2014. (City MB, Appx. C)

In other words, the parties who have no relevant work experience or education related to gas safety and who bear no responsibility for the safety of UGI's natural gas service want to control the Company's critical safety decision on where to install a gas meter. The Complainants' position is untenable and should be soundly rejected.

For these reasons, and as explained below, the Complainants have failed to sustain their burden of proof that UGI has violated any provision of the Public Utility Code, a Commission order, or a Commission regulation.

1. UGI Has Considered Inside Meter Locations For Historic Buildings And Districts In Compliance With Section 59.18(d)(1)(ii) Of The Commission's Regulations

The Complainants have failed to sustain their burden of proof that UGI did not consider inside meter locations for historic buildings, buildings that are eligible to be historic, buildings in historic districts, or buildings in areas eligible to be historic districts in violation of 52 Pa. Code § 59.18(d)(1)(ii).

According to the City, UGI has not “meaningfully consider[ed]” inside meter locations for the City’s historic buildings and districts. (City MB at 27-28, 30-34) As alleged support, the City cites the number of meters placed inside versus outside of buildings and claims that the Company should move most, if not all, of the meters back inside. (City MB at 32, 34-35, Appx. C) The City argues that Section 59.18’s use of the word “consider” is not to be treated as “empty verbiage” and is “meant to have a real impact.” (City MB at 32-33) Relatedly, CPHD argues in its Main Brief that consideration of inside meter locations should include local input from the City and other entities. (CPHD MB at 13-14) The City also alleges that the Company’s notification letters to customers demonstrate that UGI does not consider inside meter locations in historic districts. (City MB at 32) Further, the City claims that UGI has installed meters in front of “distinguishing exterior features” in violation of its revised GOM. (City MB at 33-34) The Complainants’ arguments are without merit for several reasons.

First, the Complainants’ position that most, if not all, of the meters should be placed inside the buildings contradicts the plain language of the regulation and Commission and Commonwealth Court precedent. The amended Section 59.18 requires the Company to place meters and regulators “outside and aboveground” except in certain circumstances allowed by that regulation. 52 Pa. Code § 59.18(a)(1). The Commission’s regulations are clear that NGDCs only need to “consider” inside meter locations. 52 Pa. Code § 59.18(d)(1). This does not mean that all meters must be placed inside. (UGI St. No. 1, p. 37, lines 18-19) In fact, the Commission and Commonwealth Court have declared that UGI and all other NGDCs retain the ultimate discretion under Section 59.18 to determine where to install or relocate their meters. *See Final Rulemaking Order* at 45-46; *UGI*, 179 A.3d 624, 630. As the Commonwealth Court held, “PUC Regulation 59.18 does not require or direct that gas meters in historic districts must

be installed indoors.” *UGI*, 179 A.3d at 630 (emphasis added). “Indeed, the PUC in promulgating this regulation made clear that utilities are not required to install gas meters indoors in historic districts and that the decision whether to install a meter indoors involves an exercise of discretion by the utility, noting that ‘it is necessary that, due to its public safety obligations, the utility be allowed to make the final decision.’” *Id.* (emphasis in original).

Despite the Commonwealth Court’s explicit finding, the Complainants believe that inside meters should be the rule, not the exception, for historic districts and buildings, as well as areas and buildings that are eligible to be historic. (*UGI St. No. 1*, p. 38, line 5 to p. 39, line 4) Indeed, City witness John Slifko admitted during cross-examination the Complainants’ requested relief⁹ would result in the vast majority of meters being placed inside. (Tr. 196) However, the Complainants fail to acknowledge that the regulation enables the Company to consider an inside meter location but ultimately determine that an exterior location is more appropriate for safety reasons. *See UGI*, 179 A.3d at 630. Thus, Complainants’ position directly contradicts the findings of the Commission and the Commonwealth Court.

Second, the record demonstrates that the Company has considered inside meter locations in compliance with Section 59.18(d)(1)(ii). *UGI* witness Christopher Brown specifically testified that “[t]he Company has adhered to Section 59.18 and followed its meter location policy when determining where to install or relocate a meter in the City, which includes consideration of inside meter locations in historic districts and for historic buildings.” (*UGI St. No. 1*, p. 37, line 21 to p. 38, line 1) Such consideration includes analyzing the potential locations on the outside of the building for the meter, whether the meter would block a distinguishing exterior feature, the ways in which the customer can mitigate the aesthetic impact of the meter, and the

⁹ *See* Section VI.D., *infra*, for further details on the Complainants’ requested relief.

relative safety of an outside versus inside meter placement. (Tr. 410-12; UGI St. No. 1, p. 30, lines 9-19; p. 34, lines 12-18; UGI Exh. CB-5) Because “[s]afety is a core value of UGI, and the Company places an overriding priority on gas safety,” the Company has predominantly installed or relocated meters outside. (UGI St. No. 1, p. 18, lines 16-23) In fact, UGI witness Brown testified that there is an increase in risk when placing a meter inside a building versus outside. (Tr. 421) Nevertheless, UGI still considers inside meter locations when determining where to install or relocate a meter. (UGI St. No. 1, p. 37, line 21 to p. 38, line 1) Moreover, as Mr. Brown clearly testified, UGI has frequently asked PUC SD officials to review specific meter placement decisions, and “the PUC SD supported an outside meter in every one of these visits and has never disagreed with UGI’s selected meter location.” (UGI St. No. 1, p. 31, lines 1-2) Thus, the record reflects that UGI has considered inside meter locations for historic buildings and buildings in historic districts.

The Complainants may disagree with many of the Company’s final decisions; however, their aesthetic concerns about the exterior meters should not be elevated over gas safety concerns. (UGI St. No. 1, p. 40, lines 6-19) Indeed, as proposed by many commenters, the Commission could have adopted a more restrictive standard governing outside meter placements for historic districts and historic buildings, such as the Commission: (1) conferring authority on local authorities to make meter placement decisions in historic districts; and (2) the Commission adopting proposed standards for meter placement in historic districts that would generally result in more meters being placed inside. (UGI St. No. 1, p. 40, lines 7-15) The Commission even could have, as proposed by the City here, prohibited all outside meter placements for historic districts and historic buildings. (City MB, Appx. C) Ultimately, however, the Commission recognized that NGDCs must have the discretion to decide whether a meter is placed inside or

outside of a building, knowing that they would bear the risk of defending such meter placement decisions in civil litigation if an accident were to occur. *Final Rulemaking Order* at 12-13, 30-31.

Third, UGI has not treated the “consideration” language as “empty verbiage,” as alleged by the City. (City MB at 32) Even though UGI retains the discretion to consider and reject an inside meter placement, the Company has tried to address the Complainants’ concerns about the aesthetic impact of the exterior meters for historic districts and historic buildings. As explained in Section VI.A.3., *supra*, the Company has taken several steps to try to address the Complainants’ and customers’ concerns. These steps included revising the Company’s GOM effective July 31, 2016, to include, among other things, additional guidance and consideration for meters located within historic districts, such as not placing meters in front of distinguishing features of historic district properties. (UGI St. No. 1, p. 34, lines 12-18) The Company also has worked with customers to find less obtrusive locations for the meter to mitigate any aesthetic concerns. (UGI St. No. 1, p. 30, lines 6-19) Further, in some situations when there have been no practical and feasible locations for the meters outside or when the meter would obstruct a distinguishing exterior feature, the Company has exercised its discretion to leave meters inside. (Tr. 411) In fact, the City even acknowledges in its Main Brief that meters have been left inside in select circumstances. (City MB at 32) Thus, contrary to the City’s claim, the amended Section 59.18’s requirement that UGI “consider” inside meter locations has affected the Company’s meter location decisions.

Fourth, the City mischaracterizes UGI’s customer notification letters and consideration process. In accordance with 52 Pa. Code § 59.18, UGI provides a letter notifying customers of the pending project at least 30 days in advance of a project beginning, with the exception of

emergency work. (UGI St. No. 1, p. 25, lines 21-23) This letter provides the customer contact information for UGI as well as the PUC's Bureau of Consumer Services ("BCS"). (UGI St. No. 1, p. 25, line 23 to p. 26, line 1) The letter also provides the customer an option to request reconsideration of his or her meter location by contacting UGI by phone or completing a meter reconsideration request form on UGI's website. (UGI St. No. 1, p. 26, lines 1-4)

The City attempts to critique the customer notification letters by incorrectly claiming that none of the letters "mention that, because [a customer] live[s] in a historic district, UGI will consider an inside meter placement for [the customer's] home." (City MB at 32) As clarified at the evidentiary hearing, UGI's current customer notification letters state:

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.** Your request could be made online at UGI.com and clicking on the community tab at the top of the page.

(UGI Exh. CB-16) (emphasis in original); (*see* Tr. 344-45) Therefore, contrary to the City's allegation, these letters are not declarations that meters will be moved outside, regardless of whether the building is historic or located in a historic district. (*See* City MB at 32)

Moreover, to the extent that the Complainants take issue with the use of the word "reconsideration," it is clear that the Company's final determination of where to install the meter, outside or inside, is subject to further deliberations by UGI and the customer. As stated in the letter, customers may call or visit UGI's website to request that the Company reconsider a meter location. (UGI St. No. 1, p. 30, lines 5-6; Tr. 344-45; UGI Exh. CB-16) UGI witness Brown testified that if a customer makes this request and has not already had a reconsideration request evaluated and responded to, the customer will be contacted to schedule a time to meet at his or her property with UGI representatives to discuss the pending construction work as well as

potential meter relocation. (UGI St. No. 1, p. 30, lines 6-9) At these meetings, UGI and the customer typically discuss the safety concerns regarding inside meter locations, the Commission's regulation preferring outside meters and regulators with limited exceptions, and potential less obtrusive locations for the meter that would make it completely or partially hidden from view. (UGI St. No. 1, p. 30, lines 9-19) In most cases, UGI and the customer have been able to determine a suitable outside location that is acceptable to UGI and customer. (UGI St. No. 1, p. 30, lines 9-19) However, if after these meetings, the customer is still not satisfied, UGI will remind the customer of his or her rights to file a complaint with Commission. (UGI St. No. 1, p. 30, lines 19-21) Thus, the customer has ways to provide input during the consideration process and even challenge the Company's final decision.

Fifth, the Company has complied with the procedures outlined in its GOM when installing or relocating meters. Although the City alleges that UGI placed meters in front of "distinguishing exterior features" on buildings on the 300 block of North Fifth Street, as shown by the pictures in Reading Exhibit JS-16, the City fails to examine which version of the GOM was in effect at that time. (City MB at 33-34) Indeed, the provision instructing Company personnel not to install meters in front of "distinguishing exterior features" was only added as part of the GOM revisions effective on July 31, 2016. (UGI St. No. 1, p. 41, lines 3-12. *Compare* UGI Exh. CB-4 at 2, *with* UGI Exh. CB-5 at 3) Here, none of the meters shown in Reading Exhibit JS-16 were installed or relocated after the revised GOM became effective on July 31, 2016. (Tr. 424-25) Thus, contrary to the City's allegations, UGI installed or relocated the meters shown in Reading Exhibit JS-16 consistent with the version of the GOM in effect at that time.

Finally, the Complainants' contention that the outside meters have had such a "negative impact on the historic integrity of the neighborhoods to the point of being confiscatory" is completely unfounded. (City MB at 33) (quoting Reading Statement No. 2, p. 21) There is no protected right to inside meter locations and hence there is nothing to "confiscate." Moreover, customers who are ultimately dissatisfied with a final meter location decision have energy options other than natural gas distribution service. (UGI St. No. 1, p. 42, lines 1-3) Also, as noted by UGI witness Brown, there are many commercial store fronts, boarded-up buildings, and dilapidated buildings in the City's historic districts. (UGI St. No. 1, p. 40, lines 20-23; UGI Exh. CB-6) It is difficult to see how the placement of exterior meters on these properties has any negative impact on their "historic" qualities. (UGI St. No. 1, p. 40, line 23 to p. 41, line 2) The Complainants' one witness, Mr. Slifko, tried to counter these examples by stating that "it is a rigorous process that folks have to go through" to make alterations to their property. (Tr. 211) He even claimed that "[s]atellite dishes are not permitted in the historic districts where they are visible from the public right-of-way." (Tr. 211) Yet, when presented with the photographs in UGI Exhibit CB-6, Mr. Slifko had to concede that there were satellite dishes on the front of some of the properties in historic districts. (Tr. 213-14) Moreover, Mr. Slifko admitted that small air-conditioning units are allowed to be visible from the public right-of-way. (Tr. 212) It is entirely unclear how the Company's meters can have such a "negative impact . . . to the point of being confiscatory" when the City has allowed other mechanical equipment to be visible from public rights-of-way in historic districts. In any event, as no property right is being taken when a meter is relocated outside in a historic district, the Complainants' argument that the meters are "confiscatory" is not credible.

Based on the foregoing, UGI has complied with 52 Pa. Code § 59.18(d)(1)(ii) and considered inside meter locations for historic buildings and districts identified in the Commission's regulation.

2. UGI Has Installed Exterior Meters In Locations That Are Protected From Damage That Is Reasonably Anticipated In Compliance With Section 59.18(a)(5) And (b)(1) And 49 C.F.R. § 192.353(a)

The Complainants also have failed to sustain their burden of proof that UGI, when installing and relocating meters, failed to “consider potential damage by outside forces,” to place the meters “[w]hen feasible and practical to do so aboveground in a protection location,” and to protect the meters “from corrosion and other damage,” including “vehicular damage that may be anticipated,” in violation of 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) (incorporated by 52 Pa. Code § 59.33).

In general, the Complainants allege that UGI has placed meters too close to street curbs. (City MB at 36-38) From the Complainants' perspective, the City of Reading “is a densely built-up city with properties consisting mainly of row houses and semi-detached homes, mostly with tiny front ‘yard,’ and located very close to the street.” (City MB at 36) To the Complainants, any gas meter that is located within 15 feet of a street curb is in a dangerous location. (City MB at 36) The Complainants base this conclusion on alleged instances of where vehicles have struck meters or had “near misses” with meters in the City. (City MB at 36-38) Thus, according to the Complainants, “inside meters are safer than outside meters, especially in the environment of Reading, Pennsylvania,” and the Commission's policy direction should reflect that conclusion. (City MB at 42-43) None of the Complainants' arguments have merit.

First, the Complainants' evidence is completely inadequate to establish that UGI has violated any of these regulatory provisions. The Complainants argument is quite simple—any meter placed within 15 feet of the street curb is unsafe and should be relocated back indoors.

However, absolutely no Commission or federal regulation contains the Complainants' arbitrary 15-foot rule. (UGI St. No. 1, p. 46, lines 2-3) The Complainants cannot establish a violation of the Commission's regulations based on a non-existent standard. Therefore, the Complainants' bald assertions and speculation that such meters are *per se* unsafe simply because they are located within 15 feet should be rejected.

Second, UGI has complied with 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a). As UGI witness Brown testified, "[s]afety is the primary concern of UGI when selecting meter locations, which is why the Company follows the Commission's general rule of moving meters outside." (UGI St. No. 1, p. 45, lines 14-15) One of the important safety enhancements installed during UGI's betterment projects are EFVs, which provide an additional level of protection from line strikes on the service lateral (*e.g.*, excavation damage) as well as from damage to the meter or pressure regulator (*e.g.*, impact from a vehicle). (UGI St. No. 1, p. 45, lines 16-19) Furthermore, the federal regulation specifically requires meter protection where "vehicular damage that may be anticipated." (UGI St. No. 1, p. 45, lines 19-20) Therefore, UGI's policy requires meter protection in parking lots, driveways, and roadways; that is, locations where vehicular damage may be reasonably anticipated. (UGI St. No. 1, p. 45, lines 21-22)

As for the alleged vehicle strikes and "near misses," they are not evidence of outside meters being safety concerns. (UGI St. No. 1, p. 47, lines 4-5) To the contrary, they demonstrate that outside meters are safer generally than inside meter sets, as releases of natural gas at outdoor locations leads to the dispersal of the gas into the atmosphere as opposed to the potential increase in natural gas concentrations to potentially dangerous levels in confined indoor locations. (UGI St. No. 1, p. 47, lines 5-6; p. 13, line 22 to p. 14, line 2; p. 32, lines 1-6) For

example, the meter strike at 1350 and 1352 Perkiomen Avenue was properly protected by EFVs, because they activated as designed when the meters were struck, thereby further reducing the risk of a potential ignition of natural gas at an outdoor location. (UGI St. No. 1, p. 47, lines 7-8; p. 13, line 22 to p. 14, line 2) In the other instances cited by the Complainants, the service lines were low pressure lines¹⁰ that when damaged, released a small amount of gas that dissipated into the outside air. (UGI St. No. 1, p. 47, lines 14-16) Additionally, UGI presented detailed testimony responding to each of the alleged vehicle strikes and “near misses,” some of which the Company could find no records substantiating the Complainants’ allegations. (UGI St. No. 1, p. 48, line 6 to p. 50, line 3)

Third, the Complainants’ 15-foot argument is inherently contradictory, considering they do not dispute the outside placement of regulators. (UGI St. No. 1, p. 46, lines 3-5) In fact, Mr. Slifko testified that “[t]he City has no problem with outside regulators, as they are a necessary and welcome safety improvement” and that “[t]he problem is not with the outside regulators, it is with the outside meters.” (Reading Statement No. 2, p. 32, lines 18-19; p. 33, lines 1-2) (emphasis in original) However, if the Complainants were successful in their plea to have meters moved back indoors, pressure regulators would still be outside (as required by the Commission’s regulation without exception) very near where the meters were located. (UGI St. No. 1, p. 46, lines 9-11) Therefore, the exterior regulators would be still exposed to the same anticipated vehicular traffic as the exterior meters. (UGI St. No. 1, p. 46, lines 12-13) Thus, it is completely contradictory for the Complainants to claim that the meter placed in that location is not

¹⁰ These low pressure lines were not equipped with EFVs. (UGI St. No. 1, p. 47, lines 11-12) Federal regulations do not require EFVs for low pressure service lines because much smaller amounts of gas are released from those lines when they are damaged. (UGI St. No. 1, p. 47, lines 12-14)

adequately protected from vehicular traffic but the regulator is. (UGI St. No. 1, p. 46, lines 13-15)

Fourth, the Complainants repeatedly portray the City of Reading as a unique urban environment that “does not fit neatly into the general rule” under Section 59.18 that meters should be installed or relocated outside of buildings. (See Reading Statement No. 2, p. 4, lines 1-2) In other words, the Complainants believe that the Commission’s adoption of a general rule to place meters outside and above ground should not apply because it is a dense, urban environment. However, nothing in the *Final Rulemaking Order* or the Commission’s regulations provides an exception for outside meter placements in urban areas. Indeed, during cross-examination, the Complainants’ witness, Mr. Slifko, admitted that “many Pennsylvania cities,” such as Pittsburgh, Philadelphia, and Harrisburg, “are old, compact, dense, [with] houses located close to busy city streets.” (Tr. 192) It is completely illogical that the Commission would adopt a general requirement for meters to be placed outside and above ground, while overlooking the potential impact it would have on the dense, urban, and heavily populated areas of the Commonwealth. As explained previously, the record evidence and the Commission’s previous findings establish that outside meters are safer than inside meters, even in the City of Reading.¹¹

For these reasons, the Complainants have failed to sustain their burden of proof that UGI has installed meters in violation of 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) (incorporated by 52 Pa. Code § 59.33).

¹¹ UGI also observes that the City mentions other alleged other safety concerns in its Main Brief, specifically “trip hazards, vandalism, and the accumulation of snow and ice which can cause meters to malfunction.” (City MB at 38) As addressed in detail in UGI’s testimony, none of these allegations have merit. (UGI St. No. 1, p. 42, line 9 to p. 43, line 16; p. 50, line 9 to p. 52, line 15)

C. CPHD'S CONSTITUTIONAL ARGUMENTS SHOULD BE REJECTED

In contrast to the Main Brief submitted by the City, CPHD focuses its Main Brief on the Environmental Rights Amendment of the Pennsylvania Constitution¹² and the effect the Pennsylvania Supreme Court's decision in *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911 (Pa. 2017) ("*PEDF II*") may have on the Commission's ruling in this case.

According to CPHD, the *PEDF II* decision establishes that the Commission and other state agencies must act as public trustees to protect the Commonwealth's historic resources under the Environmental Rights Amendment. (CPHD MB at 4-15) From CPHD's perspective, the "steps taken by UGI are inadequate to protect the Commonwealth's historic resources." (CPHD MB at 13) Consequently, CPHD avers that the Commission should adopt many new regulatory standards and requirements for UGI. For example, CPHD contends that consideration of inside meter locations "should include input from entities that are also entrusted with trusteeship duties to protect historic resources," such as the City and CPHD. (CPHD MB at 13-15) According to CPHD, "any Section 59.18 'consideration' without any enforceable provisions violates *PEDF II*'s duty for trustees to actually protect their trust corpus." (CPHD MB at 15)

The fatal flaw with CPHD's constitutional arguments is that CPHD explicitly states that it "in no way challenges the constitutionality of Section 59.18." (CPHD MB at 6) (emphasis added) So long as Section 59.18 is constitutional and, therefore, compliant with the Environmental Rights Amendment, the Pennsylvania Constitution does not require the Commission to take any further action to protect historic resources. In other words, the

¹² Pa. Const. art. 1, § 27.

Commission would have complied with its duty as a public trustee under the Environmental Rights Amendment.¹³

Here, the Commonwealth Court has already declared that Section 59.18 does not violate the Environmental Rights Amendment. *See UGI Utils., Inc. v. City of Reading*, 179 A.3d 624, 631-32 (Pa. Cmwlth. 2017). Specifically, the Court found:

The City does not claim that PUC Regulation 59.18 violates Article 1, Section 27 or is unconstitutional in any respect. Nor is there any basis on which a court could conclude that the PUC's safety regulation of gas meters violates Article 1, Section 27 of the Pennsylvania Constitution, as it in fact takes into account the interest in protection of historic resources by providing for consideration of indoor meter placement in historic districts.

Id. (emphasis added) (citing 52 Pa. Code § 59.18(d)(1)(ii)). Importantly, the Court determined that Section 59.18 “does not require or direct that gas meters in historic districts must be installed indoors,” as it “provides only that ‘[i]nside meter locations shall be considered’ by the utility in such districts.” *Id.* at 630 (emphasis in original). The Court also noted that “the PUC in promulgating this regulation made clear that utilities are not required to install gas meters indoors in historic districts and that the decision whether to install a meter indoors involves an exercise of discretion by the utility, noting that ‘it is necessary that, due to its public safety obligations, the utility be allowed to make the final decision.’” *Id.* (citing *Final Rulemaking*

¹³ CPHD also argues that Section 508 of the History Code, 37 P.S. § 508, requires the Commission to cooperate with the Pennsylvania Historic and Museum Commission in carrying out historic preservation efforts. (CPHD MB at 23) Moreover, CPHD cites the Commission’s decision in *Application of Pennsylvania Power & Light Co.*, 1991 Pa. PUC LEXIS 86 (Order entered Apr. 15, 1991) (“*PPL*”) as “precedent for the Commission and the PHMC to work cooperatively together so that each agency can carry out its duties.” (CPHD MB at 24) However, CPHD fails to recognize that the Commission already considered the comments of the PHMC in the Section 59.18 rulemaking proceeding. *See, e.g., ANOFRO*, Attachment One at 40-42. Furthermore, in *PPL*, the Commission recognized that the PHMC did not intervene in the proceeding, nor did it request the Commission’s help in ensuring that the electric utility would comply with its agreement to submit an archeological survey to the PHMC. *PPL*, 1991 Pa. PUC LEXIS at *20-22. Therefore, the Commission did not require the utility to file the survey with the Commission as a condition of approving the new transmission line. *Id.* at *22. Thus, *PPL* may be more properly characterized of an instance where the Commission showed deference to another agency’s duties, rather than working cooperatively together on historic preservation issues.

Order). In sum, the Court found that the Commission's requirement for NGDCs to only "consider" inside meter locations for historic districts and historic buildings, while still allowing NGDCs to make the final decision on where to install the meter due public safety obligations, complied with the Environmental Rights Amendment.

CPHD, however, incorrectly tries to frame the Court's decision as only determining that Section 59.18 preempts local regulation of meter locations. (CPHD MB at 3) Confusingly, CPHD believes that there is still a question as to the Commission's "fiduciary duty relative to the placement of gas meters in historic districts," even though it is not challenging the constitutionality of Section 59.18. (CPHD MB at 3) However, as explained previously, the issue of the Commission's fiduciary duty under the Environmental Rights Amendment with respect to meter placements has already been resolved. Section 59.18's requirement for NGDCs to consider inside meter locations meets this constitutional threshold. Thus, there is no need to adopt any of the additional regulatory requirements and standards proposed by CPHD in its Main Brief.¹⁴

Finally, the Company notes that CPHD improperly attempts to introduce and rely upon extra-record evidence in support of its arguments. Specifically, CPHD presents, for the first time in its Main Brief: (1) a document titled "Design Guidelines for Utility Meters" purportedly prepared by the D.C. Historic Preservation Board (attached to CPHD's Main Brief as Exhibit "B"); and (2) lists of "Technical Experts" on "Gas Pipeline Safety and Utility Regulations" and "Historical Preservation and Restoration" (attached to CPHD's Main Brief as Exhibit "D"). It is

¹⁴ Moreover, to the extent that CPHD argues that the Commission would violate its duty to protect historic resources by finding UGI's actions compliant with the Commission's regulations, the Company observes that it has taken several steps to try to address the aesthetic concerns raised by the Complainants and customers. See Section VI.A.3., *supra*. Further, as explained previously, aesthetic concerns should not be elevated above the gas safety concerns with inside gas meters. See Section VI.B., *supra*. Therefore, the Commission's dismissal of the instant Complaints would not violate the Environmental Rights Amendment.

well-established that parties cannot present new evidence at the briefing stage. *See, e.g., Pa. PUC v. Nat'l Fuel Gas Distrib. Corp.*, 1993 Pa. PUC LEXIS 95, at *7-10 (Order entered July 30, 1993); *Petition of the Borough of Cornwall for a Declaratory Order*, 2016 Pa. PUC LEXIS 3, at *24-26 (Jan. 6, 2016) (Recommended Decision), *adopted as modified*, Docket No. P-2015-2476211 (Order entered Aug. 11, 2016); *see also* 66 Pa. C.S. § 332(c). Accordingly, extra-record evidence in briefs is commonly stricken¹⁵ because including extra-record materials in a party's brief "brings up hearsay problems and problems associated with the right to respond to evidence." *Pa. PUC v. Pa. Power & Light Co.*, 1995 Pa. PUC LEXIS 190, at *232 (July 28, 1995) (Recommended Decision) ("PP&L").

Here, all of these facts and materials were introduced for the first time in CPHD's Main Brief. By waiting until the briefing stage to present these new facts and materials, CPHD denied UGI an opportunity to review and inspect that evidence, to cross-examine witnesses about that evidence, and to present evidence in rebuttal. Therefore, it would violate UGI's due process rights for any findings of fact to be based upon or influenced by CPHD's extra-record evidence. Furthermore, CPHD has failed to demonstrate any good cause for the admission of such evidence after the record closed, as required by 52 Pa. Code § 5.431, or any material changes in fact or law that would warrant reopening the record, as required by 52 Pa. Code § 5.571. Thus, although UGI has decided not to burden this court with the time and expense of ruling on a Motion to Strike the portions of CPHD's Main Brief, the ALJ and Commission should not rely

¹⁵ *See, e.g., Trucco v. PPL Elec. Utils. Corp.*, 2002 Pa. PUC LEXIS 21, at *5 (Order entered Mar. 29, 2002) (noting that ALJ Paist "struck those portions of the Complainants' Main Brief which referenced extra-record evidence, including those various exhibits attached to that Main Brief"); *Application of Kenneth Scott Cobb, t/a Kennys Transp. Serv.*, 2012 Pa. PUC LEXIS 1802, at *24 (Nov. 16, 2012) (Initial Decision) (granting motion to strike the applicant's brief "for attempting to introduce new facts and documents into evidence not previously offered or admitted into the record at the hearing of September 5, 2012"), *became final without further action*, Docket No. A-2011-2280175 (Order entered Jan. 7, 2013); *see also* 52 Pa. Code § 5.501(a)(2) (stating that briefs must contain "[r]eference to the pages of the record or exhibits where the evidence relied upon by the filing party appears").

on CPHD's extra-record materials to make any findings in this proceeding. *See PP&L*, 1995 Pa. PUC LEXIS at *232; *Petition of Pa. Power Co. for Approval of Interim POLR Supply Plan*, 2006 Pa. PUC LEXIS 56, at *3 (Order entered Apr. 28, 2006) (observing that "ALJ Gesoff ignored Reliant's Reply Brief, due to the extra-record evidence contained within").¹⁶

Based on the foregoing, the Commission should reject the Complainants' constitutional arguments because Section 59.18 is constitutional and complies with the Environmental Rights Amendment, as determined by the Commonwealth Court and as conceded by CPHD.

D. THE COMPLAINANTS' REQUESTED RELIEF IS UNREASONABLE AND SHOULD BE REJECTED

As explained in the preceding sections, the Complainants have failed to sustain their burden of proof that UGI has violated a provision of the Public Utility Code, a Commission order, or a Commission regulation. Absent proving such a violation, the Complainants cannot be granted their requested relief in this complaint proceeding. *See* 66 Pa. C.S. §§ 332(a), 701. Nevertheless, assuming *arguendo* that the Company is found to have committed any regulatory violations, the Complainants' requested relief is completely unreasonable and should be rejected.

The Complainants' requested relief reveals that they are not truly here to investigate any regulatory violations by UGI. Rather, they are here to have the Commission reconsider its rulemaking that amended Section 59.18 and impose more restrictive standards on UGI. Indeed, CPHD expressly requests in its Main Brief for the Commission "reevaluat[e]" Section 59.18. (CPHD MB at 29)

¹⁶ Moreover, even if the District of Columbia has adopted different or more restrictive requirements on the manner in which utilities can install meters outside of historic buildings and in historic districts, they are not controlling in this proceeding. Further, as explained previously, the Commission explicitly declined in its *Final Rulemaking Order* to adopt aesthetic standards such as those set forth in the District of Columbia document.

However, a formal complaint proceeding is not the proper vehicle to accomplish that goal. *See Aronson v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00981378, at 2, 8, 10-11 (May 28, 1998) (Initial Decision) (“*Aronson*”), *adopted by Commission* (Order Entered July 14, 1998). As recognized in *Aronson*, “[t]he proper procedural vehicle” to impose new regulatory requirements on a utility “is a rulemaking proceeding, not a complaint proceeding.” *Aronson* at 10. Therefore, the Complainants should file a petition under Section 5.43 of the Commission’s regulations to request that the Commission amend its regulations through a rulemaking proceeding. *See* 52 Pa. Code § 5.43. Such a process would enable all interested parties, including all of the affected NGDCs, an opportunity to be heard. In the absence of such a statewide rulemaking proceeding, it would be completely unreasonable to adopt more restrictive standards that only apply to UGI and not any other NGDCs.

For these reasons, and as explained in more detail below, the Commission should reject the Complainants’ requested relief.

1. The Complainants Improperly Propose New Requests For Relief For The First Time In Their Main Briefs

As a preliminary matter, the Complainants improperly propose new requests for relief in their Main Briefs that are different than those set forth in their Complaints and testimony. (*Compare* Reading Statement No. 2, p. 21, line 17 to p. 23, line 15 *and* Reading Statement No. 2, p. 31, lines 13-22, *with* City MB, Appx. C *and* CPHD MB at 17-18, 21, 25, 29, 34-35)

First, with respect to the alleged failure to consider inside meter locations, the Complainants requested in testimony that UGI be required to place meters inside on a prospective and retroactive basis for historic locations unless UGI can establish “a greater safety risk from inside placement than in similarly situated historic properties.” (Reading Statement No. 2, p. 22, line 2 to p. 23, line 9) However, in their proposed Ordering Paragraphs, the

Complainants go even further to require all outside meters that were installed in historic districts since September 13, 2014, to present be relocated inside those buildings, regardless of any such greater safety risk in similarly situated historic properties. (City MB, Appx. C)

Second, the proposed Ordering Paragraphs would require the Company to relocate all of those meters as well as any meters that were installed within 15 feet of a City street curb since September 13, 2014, within 18 months of the Order's date. (City MB, Appx. C) No such 18-month timeframe was ever mentioned by the Complainants in their Complaints or testimony.

Third, CPHD's Main Brief includes a series of requests for relief that were never raised before the record closed in this proceeding, including:

1. Requesting that the Commission "should either clarify historic preservation aims as applied to gas meter installation" or "delegate this fiduciary duty to the City, subject to final PUC approval." (CPHD MB at 17)
2. Requesting that the Commission accept the language from the City's Ordinance 45-2015 "as the City's proposal to manage its historical preservation duty, subject to review and adoption by the Commission. (CPHD MB at 18)
3. Inviting "the Commission's full consideration of this question and guidance if a rulemaking docket may be necessary to clarify how the Commission takes into account subsidiary trusteeship obligations in its rulemaking and complaint process." (CPHD MB at 21)
4. Prohibiting the removal of meters "from a historical building unless both the owner and the utility agree." (CPHD MB at 21)
5. Ordering that "municipalities and local historical districts have standing to raise concerns about ERA compliance by Commission-regulated public utility corporations in complaints before the Commission." (CPHD MB at 21)¹⁷

¹⁷ UGI also avers that CPHD lacks standing to request such sweeping relief on behalf of all municipalities and historic districts in Pennsylvania. See *Stilp v. Commonwealth*, 940 A.2d 1227, 1233 (Pa. 2007); *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009) (citing *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269,

6. Requesting that “the Commission respect the City’s and the District’s position and provide a method to allow these entities to weigh in on such utility projects.” (CPHD MB at 25)

7. Asking the Commission to consider alternative technologies “in reevaluating” Section 59.18 “and seek input from industry leaders and policy experts.” (CPHD MB at 29)

8. Requesting that “UGI be required to implement a real system to stay moving a meter outdoors during the pendency of any request to not relocate a meter outside.” (CPHD MB at 34)

9. Requesting that the Commission affirm an alleged previous finding by the Commission¹⁸ that “indoor meter placement and outdoor regulator placement is an appropriate solution to the dilemma we face in this docket.” (CPHD MB at 34-35)

10. Requesting that “the Commission further clarify that meters that block historical window grate features, feature stone or brick work, or similar architectural features should not be placed in such locations.” (CPHD MB at 35)

11. Asking that UGI be required “to identify and use the least obtrusive location for placing piping, equipment, meters or regulators, even if such a location is not necessarily in front of a home.” (CPHD MB at 35)

12. Requesting that the Commission require minimum clearances from sidewalk obstructions, front porches, stairwells, stoops and other features which could disrupt pedestrian traffic flow.” (CPHD MB at 35)

“The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness.” *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). “Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.” *Id.*

280-81 (Pa. 1975)); *Del-Aware Unlimited. v. Commonwealth*, 551 A.2d 1117, 1121 (Pa. Cmwlth. 1988) (citation omitted); *1000 Grandview Ass'n v. Mt. Washington Assocs.*, 434 A.2d 796, 797 (Pa. Super. 1981) (citation omitted); *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003); *City of Phila. v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003).

¹⁸ No citation is given by CPHD as to where the Commission made any such finding.

(citations omitted). Indeed, Section 332(c) of the Public Utility Code entitles every party to, among other things, “submit rebuttal evidence” and “conduct such cross-examination as may be required for a full and true disclosure of the facts.” 66 Pa. C.S. § 332(c). Accordingly, parties cannot present new proposals or arguments for the first time in their briefs.¹⁹

Here, by presenting these requests for relief for the first time in their Main Briefs, the Complainants have denied the Company due process. The record in this proceeding is now closed, and UGI cannot now present evidence on these new requests for relief. Accordingly, the ALJ and the Commission should completely disregard them.

2. The Complainants’ Requests To Impose New Regulatory Standards Should Be Denied

The Complainants’ requests for relief also should be rejected because they would impose new regulatory standards on the Company that conflict with the Commission’s regulations, are inapplicable to any other NGDC in Pennsylvania, or both. (*See* City MB at 34-35, 38; CPHD MB at 18 (adopting City’s Main Brief))

First, for historic districts and buildings, the Complainants want inside meters to be the rule, not the exception. (UGI St. No. 1, p. 38, lines 5-7; *see* City MB at 34-35) Specifically, the Complainants want UGI to place meters inside on a prospective and retroactive basis for historic locations unless UGI can establish “a greater safety risk from inside placement than in similarly situated historic properties.” (Reading Statement No. 2, p. 22, line 2 to p. 23, line 9) The Complainants’ principal witness, Mr. Slifko, testified that “only in extraordinary circumstances will [the Company] be able to establish this greater safety risk.” (Reading Statement No. 2, p.

¹⁹ *See, e.g., Enron Capital & Trade Resources Corp. v. Peoples Natural Gas Co.*, 1998 Pa. PUC LEXIS 199, at *46 (Order entered Aug. 24, 1998); *Pa. PUC v. Phila. Elec. Co. – Gas Division*, 1984 Pa. PUC LEXIS 50, at *119 (Order entered Apr. 27, 1984); *Pa. PUC v. Phila. Elec. Co.*, 1986 Pa. PUC LEXIS 99, at *97-98 (Order entered June 27, 1986); *Norbeck v. PECO Energy Co.*, 2010 Pa. PUC LEXIS 101, at *50-51 (Apr. 1, 2010), *adopted*, 2010 Pa. PUC LEXIS 1754 (Order entered Aug. 23, 2010); *Allegheny Ctr. Assoc. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990).

22, lines 8-9) He even admitted during cross-examination that the Complainants' requested relief would result in the vast majority of meters being placed inside. (Tr. 196) Moreover, in their proposed Ordering Paragraphs, the Complainants go even further to require that all outside meters in historic districts that were installed since September 13, 2014, as well as any new meters in historic districts, be placed inside of those buildings. (City MB, Appx. C) Therefore, if the Complainants' relief were granted, the Company would be forced to: (1) install all meters inside historic buildings and buildings in historic districts; and (2) relocate the vast majority of outside meters for historic buildings and buildings in historic districts to the interior of those buildings. (UGI St. No. 1, p. 38, lines 21-23)

This blanket requirement for UGI to place all meters inside buildings in historic districts explicitly contradicts Section 59.18(d)(1)(ii) of the Commission's regulations. Even Mr. Slifko testified that "consider" under Section 59.18 does not mean that all meters must be placed inside of buildings. (Tr. 192-93) He also testified that the regulation is not a "one-size-fits-all" approach because "there are many nuances, many different features that have to be considered when you make the determination of meter placement." (Tr. 172) However, that is precisely what the Complainants' requested relief would do. Thus, as admitted by the Complainants' own witness, their proposal directly contravenes the Commission's regulations. (UGI St. No. 1, p. 38, line 23 to p. 39, line 1)

Second, the Complainants request that the Commission adopt their proposed 15-foot rule concerning the allowable distances between meters and street curbs and apply it to UGI. (City MB at 38) Specifically, going forward, UGI would be forced to place a gas meter inside the building or in a buried vault any time the building's façade is within 15 feet of the street curb. (City MB at 38) Retroactively, UGI would have to relocate any outside meters that were

installed since September 13, 2014, and are within 15 feet of the street curb to the inside of the building or in a buried vault. (City MB at 38; City MB, Appx. C)

No Commission or federal regulation contains the Complainants' arbitrary 15-foot rule. (UGI St. No. 1, p. 46, lines 2-3) Indeed, Mr. Slifko stated that he is unaware of any other NGDC in Pennsylvania that is subject to this proposed standard. (Tr. 198) Therefore, UGI would be subject to a more restrictive standard on meter location than any other NGDC operating in Pennsylvania. Moreover, this new standard is completely unsupported, given that nothing in this proceeding has established that all meters located within 15 feet of a street curb *per se* violate the Commission's safety regulations.

Third, to the extent that the Commission wants to adopt new regulatory standards, it must do so through a statewide rulemaking proceeding in which all NGDCs are able to participate. If the Commission were to adopt the Complainants' new proposed regulatory standards here and only apply them to UGI, the Company would unreasonably be the only NGDC subject to these new standards in Pennsylvania. Moreover, it would open the door for other municipal and historical entities across Pennsylvania to try to impose their own specific regulatory standards on NGDCs' meter placement decisions. However, "[a] century of case law has firmly established that the General Assembly's intent in enacting the Code and its predecessor statute was to provide for the uniform, statewide regulation of public utilities and public utility facilities." *PPL Elec. Utils. Corp. v. City of Lancaster*, 125 A.3d 837, 853 (Pa. Cmwlth. 2015). On the other hand, if the Commission decides to adopt the new regulatory standards here for all NGDCs, all of the other NGDCs' due process rights would be violated because they have had no notice and no opportunity to be heard. *Hess*, 107 A.3d at 266. Thus, in either situation, it would be

unreasonable to adopt the Complainants' requested relief through the instant formal complaint proceeding.

Fourth, these proposed regulatory standards do not give customers any opportunity to voice their opinion as to where the meter should be located. (*See* City MB, Appx. C; Tr. 196) However, UGI "has received several requests from customers for their gas meters to be relocated to the outside." (UGI St. No. 1, p. 31, lines 6-7) In most cases, the customer no longer wants UGI to enter his or her home to conduct periodic safety inspections, which normally occur on a one to three-year cycle, on the meter and Company-owned piping. (UGI St. No. 1, p. 31, lines 10-12) In other cases, customers are aware of or have heard through media reports or otherwise that if a gas meter were to leak, it is safer for that to occur outside in a well-ventilated area, rather than in an enclosed basement space with little or no ventilation. (UGI St. No. 1, p. 31, lines 12-15) Furthermore, although the Company retains discretion on where to locate its meter, UGI works with customers to try to find a mutually-agreeable location for the meter. (UGI St. No. 1, p. 30, lines 6-19; UGI St. No. 1, p. 36, lines 4-7) The Complainants' requested relief would foreclose any such customer input in determining where to locate the meter.

Fifth, CPHD proposes, for the first time, several other new standards and asks that UGI be subject to them as well. (*See* CPHD MB at 17-18, 21, 25, 29, 34-35) These new standards have absolutely no support in the record, nor are they contemplated or encompassed by Section 59.18 or Section 59.33 of the Commission's regulations.

Thus, the Complainants' requests to impose new and additional regulatory standards through this complaint proceeding should be rejected.

3. The Complainants' Request To Impose The New Regulatory Standards Retroactively Is Unreasonable

Even if the Complainants' requests to impose new regulatory standards were warranted, it would be completely unreasonable to apply those standards retroactively to meters installed since September 13, 2014, for several reasons.

First, the record reflects that UGI has been trying to implement the amended Section 59.18 and Section 59.33 in good faith. *See* Section VI.A-B., *supra*. Therefore, it would be unreasonable to force the Company to relocate thousands of meters at its expense, as requested by the Complainants.

Second, “[r]elocating an individual meter from outside back to inside at a single property roughly costs around \$400.” (UGI St. No. 1, p. 39, lines 11-12) In the Updated Joint Stipulation, the Complainants have identified a total of 1,563 meter locations (894 historic and 669 non-historic) that remain in dispute. (ALJ Exh. 1) Moreover, the figures do not account for the meter locations that are not identified in the Updated Joint Stipulation that the Company would have to relocate as well. (*See* UGI St. No. 1, p. 39, lines 15-17) Notably, the Complainants presented no evidence on the projected cost of their requested relief and the potential impact to the Company’s ratepayers. Thus, it is undisputed that relocating all of the affected meters would cost at least hundreds of thousands dollars. (*See* UGI St. No. 1, p. 39, lines 12-15)

Third, relocating all of those meters would greatly inconvenience UGI’s customers. (UGI St. No. 1, p. 39, lines 17-18) Gas service to each property would need to be interrupted while the meters would be relocated, and then service would need to be re-established including relighting and inspecting all gas appliances as part of that process. (UGI St. No. 1, p. 39, lines 18-20)

Fourth, UGI would have to divert labor and resources from its betterment projects and other initiatives aimed at improving the safety and integrity of the natural gas distribution system based on system risks identified in the Company's DIMP. (UGI St. No. 1, p. 39, lines 21-23) This is especially concerning given that the City has requested, for the first time in its Main Brief, that UGI complete all such meter relocations within 18 months of the final order's date. It has been over four years since amended Section 59.18 became effective on September 13, 2014, and the Company has been relocating meters pursuant to that amended regulation since that time. (UGI St. No. 1, p. 19, line 22 to p. 20, line 2) Without notice of this proposed 18-month timeframe, the parties have been unable to analyze fully whether relocating thousands of meters within 18 months is feasible and prudent and will not negatively affect the Company's other initiatives to improve the safety and integrity of its natural gas distribution system.²⁰

Accordingly, to the extent that the Complainants are entitled to any relief, it should apply prospectively only.

4. To The Extent Any Relief Should Be Granted, UGI Should Be Directed To Implement Its Alternative Proposed Commitments To Address The City's And CPHD's Concerns

As set forth in this Responsive Brief, UGI maintains that its actions have fully complied with the Commission's regulations and, therefore, the Complainants are not entitled to any relief. Notwithstanding, UGI is willing, if the Commission explicitly decides in this case that in balancing gas safety concerns against aesthetic concerns it wishes for UGI to adopt the proposal

²⁰ UGI also notes that Section 1926 of the Statutory Construction Act of 1972 prohibits the retroactive application of statute "unless clearly and manifestly so intended by the General Assembly." 1 Pa. C.S. § 1926. This provision has been held to apply to administrative agencies' regulations as well. See *R&P Servs., Inc. v. Commonwealth*, 541 A.2d 432, 434 (Pa. Cmwlth. 1988) (citing *Jenkins v. Unemployment Comp. Bd. of Review*, 56 A.2d 686 (Pa. Super. 1948)). Although "administrative agencies may adopt retroactive regulations," such regulations cannot "destroy vested rights, impair contractual obligations or violate the principles of due process of law and ex post facto laws." *R&P*, 541 A.2d at 434 (citation omitted).

set forth in Paragraph 3 below, to make the following additional commitments in response to their concerns about outside meter placements:

1. UGI would be willing to convene 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 stakeholder panel would provide input on meter location decisions on a non-binding advisory basis.

2. At meter locations identified by the City as presenting a safety risk, UGI would undertake an additional follow-up review, and if it determines, in its sole discretion, that a meter relocation is necessary and appropriate to mitigate a safety risk, UGI will relocate the meter at its expense.

3. In historic districts, UGI will continue to follow its existing written standards that permit the location of certain meters in inside locations with the regulator placed outside where the only practical outside location would cover a distinguishing architectural feature. In addition, on a forward going basis, UGI would apply a new standard for historic districts that would call for inside meter locations with an outside regulator where, unless the customer requests an outside meter placement and the Company, in its sole discretion, agrees to that request:

a) The outermost building wall is immediately appurtenant to the sidewalk (typically as is the case of rowhomes);

b) The distance between the street facing edge of the curb or edge of pavement is less than 10 feet from the building wall;

c) There is not a location on the side of the building to place the meter; and

d) There is not an outside location affording meter protection, such as a corner at a wall or stair.

(UGI St. No. 1, p. 66, line 15 to p. 67, line 16)

As mentioned previously, if an incident were to occur at a service location where aesthetic concerns were given a higher priority by UGI than gas safety risks, the absence of clear policy direction from the Commission could result in UGI having to justify its decision in civil

proceedings brought by any injured persons or their representatives. (UGI St. No. 1, p. 67, lines 18-22) Therefore, the Company is willing to adopt these additional commitments so long as the Commission specifically declares the new standard as being safe and reasonable. (UGI St. No. 1, p. 67, lines 22-24)

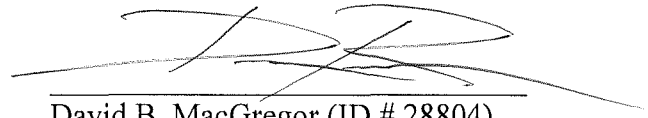
UGI recognizes that the Complainants do not view these additional commitments as sufficient to address their concerns. (City MB at 43; Tr. 199) However, the Complainants cannot deny that no other NGDC in Pennsylvania is subject to these alternative commitments. (Tr. 200) Thus, at the very least, the Company's willingness to adopt these alternative commitments, subject to the terms outlined above, reinforces that UGI has tried to go above and beyond the Commission's current requirements in an effort to address the City's and CPHD's concerns.

For these reasons, to the extent that any relief is granted in this proceeding, it should be limited to the alternative commitments proposed by UGI, subject to the terms and Commission approvals outlined above.

VII. CONCLUSION

WHEREFORE, UGI Utilities, Inc. respectfully requests that Administrative Law Judge Mary D. Long recommend and the Pennsylvania Public Utility Commission deny the Formal Complaints of the City of Reading and the Centre Park Historic District with prejudice.

Respectfully submitted,



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

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

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

Dated: November 16, 2018

Attorneys for UGI Utilities, Inc.

Appendix A

Appendix A – Procedural History

On November 25, 2015, Centre Park Historic District (“CPHD”) filed a Formal Complaint at Docket No. C-2015-2516051 alleging UGI’s meter location practices in the historic districts of Reading, PA violated the amended Section 59.18 and Section 59.33 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations. (See CPHD Complaint, ¶ 5) On December 15, 2015, UGI filed an Answer to CPHD’s Complaint denying any regulatory violation.

At the February 11, 2016 prehearing conference, counsel for CPHD indicated that he would also be filing a complaint on behalf of the City of Reading (“City”) regarding UGI Utilities, Inc.’s (“UGI”) meter location practices in the City and requested that CPHD’s Complaint be consolidated with the City’s forthcoming Complaint.

On February 23, 2016, UGI received e-service of the City’s Complaint. In its Complaint, the City alleged UGI violated the amended Section 59.18 and Section 59.33 of the Commission’s regulations. (See City Complaint, Counts I and II) On March 14, 2016, UGI filed an Answer denying the material allegations in the City’s Complaint and averring that its meter location practices are and have been consistent with the Commission’s regulations.

The Company also filed Preliminary Objections on March 14, 2016, which argued that the City’s Complaint should be dismissed in its entirety due to the legal insufficiency of the City’s requested relief. By Interim Order issued March 29, 2016, Administrative Law Judge Mary D. Long (the “ALJ”) denied UGI’s Preliminary Objections.

On March 30, 2016, a further prehearing conference was held, during which the parties agreed to attempt to settle the Complaints and hold a further prehearing conference in 60 days.

At a further prehearing conference held on July 14, 2016, the parties provided the ALJ with an update on settlement discussions. The ALJ also established a litigation schedule, with discovery concluding September 9, 2016, and evidentiary hearings taking place on November 15-16, 2016. This litigation schedule was memorialized in the ALJ's Third Prehearing Order issued on July 15, 2016.

On August 10, 2016, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance.

On September 1, 2016, UGI filed a Petition with the Commission seeking interlocutory review and answers to material questions. UGI and I&E also filed a Joint Motion that requested the ALJ to extend the procedural schedule, hold a further prehearing conference, and modify the hearing format in this proceeding.

On September 2, 2016, the ALJ issued the Fourth Prehearing Order, which suspended the litigation schedule pending the Commission's ruling on UGI's Petition for Interlocutory Review and Answer to Material Questions.

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 the ALJ.

A further prehearing conference was held before the ALJ on March 16, 2017, during which the parties addressed outstanding discovery issues, the protection of confidential information, and the litigation schedule.

On March 21, 2017, the ALJ issued the Sixth Prehearing Order, which directed the City and CPHD (collectively, "Complainants") to prepare and submit detailed spreadsheets by April 20, 2017, that: (1) identified the meter installations that Complainants are contesting in historic and non-historic districts; (2) provide the date a permit was issued, if one was issued, for each

meter installation; and (3) the date the each meter was relocated. The Sixth Prehearing Order also directed UGI to stipulate or object to this information by May 4, 2017. Lastly, the Sixth Prehearing Order stated that all discovery must be completed by May 30, 2017.

On April 18, 2017, the ALJ issued the Seventh Prehearing Order, which granted one-week extensions for the Complainants and UGI to provide the information required under the Sixth Prehearing Order. Accordingly, the Complainants' spreadsheets were due by April 27, 2017, and UGI's stipulations and objections were due by May 11, 2017.

On April 19, 2017, the ALJ issued the Eighth Prehearing Order, which excused the Complainants from providing the date that each meter was relocated or installed. Instead, the Eight Prehearing Order directed UGI to provide, in addition to the information required under the Sixth Prehearing Order, the service line installation date for each meter installation. Finally, the Complainants were instructed to stipulate or object to UGI's service line installation data by May 22, 2017.

On April 27, 2017, the Complainants provided their spreadsheets listing the contested meters in historic and non-historic districts they were disputing, along with photographs of the meter installations.

On May 11, 2017, UGI provided its updates to the Complainants' spreadsheets, which included stipulations or objections to the information provided by the Complainants as well as the service line installation data required by the Eighth Prehearing Order.

On May 22, 2017, the Complainants provided their updates to the spreadsheets, which stipulated or objected to UGI's permit information.

Discovery closed on May 30, 2017.

A further prehearing conference was held on June 15, 2017, during which the ALJ established due dates for dispositive motions and replies thereto of July 6, 2017, and July 26, 2017, respectively.

On June 15, 2017, the ALJ issued the Interim Order Setting Deadlines for Settlement Conference, Dispositive Motions, and Other Matters, which memorialized the deadlines established at the June 15, 2017 prehearing conference. The Interim Order further declared that following disposition of dispositive motions, a further conference would be scheduled to set deadlines for written direct testimony and evidentiary hearings on any remaining claims.

On July 6, 2017, UGI filed a Motion for Summary Judgment, and the Complainants filed a Motion for Partial Summary Judgment.

On July 26, 2017, UGI filed an Answer to the Complainants' Motion for Partial Summary Judgment, and the Complainants filed an Answer to UGI's Motion for Summary Judgment.

On September 7, 2017, the ALJ issued an Interim Order denying the Complainants' Motion for Partial Summary Judgment. Further, an Initial Decision was issued granting in part and denying in part UGI's Motion for Summary Judgment.

On September 27, 2017, UGI filed Exceptions to the September 7, 2017 Initial Decision.

On October 5, 2017, the ALJ issued an Interim Order suspending the litigation schedule pending the Commission's ruling on UGI's Exceptions. The Interim Order further directed the parties to submit, within 10 days of the Commission's ruling, a proposed schedule for concurrent service of written direct testimony and evidentiary hearings in Harrisburg.

On October 6, 2017, the Complainants filed Replies to UGI's Exceptions.

On October 18, 2017, the ALJ issued an Interim Order on Request for Further Proceedings, which directed UGI to, among other things, file a motion to vacate the October 5, 2017 Interim Order that included: (1) a thorough proposal on how to move the case faster toward final disposition; and (2) a proposed procedural schedule. The Complainants and I&E would then have 10 days to file a responsive pleading.

On October 31, 2017, UGI filed (1) a Motion to Vacate the October 5, 2017 Interim Order Suspending Litigation and (2) a letter requesting to withdraw its Exceptions.

On November 13, 2017, the Complainants filed an Answer to UGI's Motion to Vacate.

On November 14, 2017, I&E filed a letter stating that it would not be filing an Answer to UGI's Motion to Vacate.

On November 20, 2017, the Complainants filed a letter opposing UGI's October 31, 2017 request to withdraw its Exceptions.

On December 21, 2017, the Commission issued an Opinion and Order denying UGI's Exceptions. Also, the ALJ issued an Interim Order Setting Litigation Schedule, which directed the parties to exchange written direct testimony and exhibits by February 23, 2018, with evidentiary hearings to be held on March 27 through March 29, 2018.

On January 2, 2018, a Hearing Notice was issued scheduling evidentiary hearings for March 27 through March 29, 2018, before the ALJ in Harrisburg.

On January 12, 2018, the City filed a Withdrawal of Appearance for its counsel from Eastburn & Gray, P.C. and a Notice of Appearance for the City's Solicitor's Office and Jan D. Krafczek as counsel on behalf of the City.

On February 1, 2018, the City's new counsel filed a Motion for 60-Day Stay of Proceedings and Extension of Deadlines.

On February 2, 2018, UGI filed a Withdrawal of Appearance of Christopher T. Wright, Esquire, as counsel on behalf of the Company. Further, I&E filed a Withdrawal of Appearance.

On February 15, 2018, UGI filed an Answer to the City's Motion for 60-Day Stay of Proceedings and Extension of Deadlines and indicated that it did not oppose the request.

Also on February 15, 2018, the ALJ issued a Second Interim Order Granting Continuance, which directed the parties to exchange written direct testimony and exhibits by April 23, 2018, with evidentiary hearings to be held on May 15 through May 17, 2018.

On April 4, 2018, the City filed a Notice of Appearance for Charles E. Thomas, Jr., Esquire, and Charles E. Thomas, III, Esquire, as the City's latest counsel.

On April 17, 2018, the City filed a Motion for Continuance and Scheduling of Status Conference, which proposed UGI's and the City's agreed-upon dates for settlement discussions, written testimony, and evidentiary hearings.

On April 18, 2018, a Notice was issued scheduling a telephonic status conference for April 23, 2018.

On April 24, 2018, the ALJ issued an Interim Order Granting a Further Continuance, which ordered, among other things, the Complainants to serve their written direct testimony and an updated Joint Stipulation on or before June 29, 2018, and UGI to serve its written rebuttal testimony on or before July 27, 2018. Also, a Notice was issued scheduling evidentiary hearings for August 21 through August 24, 2018, before the ALJ in Harrisburg.

On May 16, 2018, CPHD filed an Entry of Appearance for Scott Hoh, Esquire, as new counsel.

On May 29, 2018, the City filed a Status Report on the parties' settlement efforts.

On June 4, 2018, CPHD filed an Entry of Appearance for Rich Raiders, Esquire, as additional counsel.

On July 3, 2018, the Complainants served their written direct testimony and exhibits.

On July 9, 2018, UGI filed a Motion to Strike certain portions of the Complainants' direct testimony and exhibits.

On July 10, 2018, the ALJ issued an Interim Order setting the deadline for response to UGI's Motion to Strike as July 13, 2018.

On July 11, 2018, the ALJ issued an Interim Order extending the deadline for response to UGI's Motion to Strike to July 17, 2018.

On July 17, 2018, the Complainants filed Answers to UGI's Motion to Strike.

On July 19, 2018, the ALJ issued an Interim Order granting in part and denying in part UGI's Motion to Strike.

On July 27, 2018, UGI served its written responsive testimony and exhibits.

On August 22 and 23, 2018, evidentiary hearings were held as scheduled in this matter, during which the parties presented their testimony and exhibits and conducted cross-examination.

On August 27, 2018, the ALJ issued an Interim Order on Joint Stipulation and Briefing, which established the briefing schedule and requirements and directed the Complainants to submit an updated Joint Stipulation no later than August 28, 2018.

On August 28, 2018, the Complainants filed an updated Joint Stipulation, which was entered into the record as ALJ Exhibit 1.

On October 18, 2018, the City and CPHD separately filed their Main Briefs.

Appendix B

Appendix B – Proposed Findings of Fact

1. On August 21, 2008, the Pennsylvania Public Utility Commission (“Commission”) directed the Commission’s Safety Division (“PUC SD”) “to institute an investigation into the issue of gas meter placement and relocation.” *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155, at 2 (Order entered May 23, 2014) (“*Final Rulemaking Order*”)

2. After its review, the PUC SD “concluded that the Commission’s existing regulation [was] vague, inadequate, and out-of-date with respect to the federal standards which the [Commission] has adopted.” *Id.* at 2.

3. The PUC SD and the Commission’s Law Bureau also investigated the prevalence of inside meters and regulators and the issues related to those installations, by propounding a set of data requests on the 10 largest natural gas distribution companies (“NGDCs”) in Pennsylvania. *Id.* at 5.

4. “The data requests included questions related to the number of inside/outside meter sets, inside regulators, tariff language, inside meter set leak calls, reportable incidents associated with inside meter sets, meter relocation charges, inside leak surveys, and local ordinances requiring certain meter locations.” *Id.*

5. In response to these data requests, UGI Utilities, Inc. (“UGI” or the “Company”) and its affiliated NGDCs, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc., reported that as of October 2013, they had approximately 207,000 inside meters serving approximately one third of their service locations. (UGI St. No. 1, p. 13, lines 2-6)

6. Moreover, approximately 48,600 of these inside meter installations were connected to steel service lines and that their inside meter installations tended to be concentrated in older urban areas. (UGI St. No. 1, p. 13, lines 6-9)

7. Based on the information gathered from the NGDCs, the PUC SD made the following conclusions:

1. The Pennsylvania regulations at §59.18 are silent as to reimbursement costs related to relocation of meters.

2. The Commission has adopted provisions of the Code of Federal Regulations, which address the safety issues related to meter set location and installation and thus are in conflict with the existing Pennsylvania regulations.

3. The collected data show that Pennsylvania has experienced 65 reportable incidents associated with inside meter sets and inside regulators over the last 40 years.

4. The gas distribution utilities have had more than 4,000 leaks related to inside meter sets over the last five years.

5. Several of the gas distribution utilities assert they cannot comply with the state and federal regulations pertaining to leakage surveys because they cannot get access to inside meter sets.

6. Inside meter sets with inside regulators are a major concern due to the possibility of high pressure gas flowing into a structure if the inside meter or inside regulator is detached from the service line. Three gas distribution utilities have high numbers of inside meter sets with inside regulators that are at higher risk for failure because the inside meter and regulator are connected to a steel service line. Steel service lines are susceptible to pulling from excavation equipment. Pennsylvania has experienced several catastrophic explosions due to steel service lines pulling away from inside meter sets and inside regulators.

Final Rulemaking Order at 8-9 (emphasis added).

8. The Commission issued a Proposed Rulemaking Order at Docket L-2009-2107155 on July 28, 2011, soliciting comments, and a September 13, 2013 Advance Notice of

Final Rulemaking Order seeking additional comments on a proposal to generally require all regulators and most meters to be located at outside locations. (UGI St. No. 1, p. 15, lines 4-7)

9. Many entities across the Commonwealth submitted comments on the Commission's proposed revisions to Section 59.18, including NGDCs, historical commissions, private citizens, preservation groups, and government entities. *Final Rulemaking Order* at 9-10; *ANOFRO*, Attachment One.

10. Neither of the Complainants submitted comments, although they were afforded multiple opportunities to do so by the Commission. (UGI St. No. 1, p. 17, lines 15-16) (emphasis added)

11. Several local historical commissions and associations, homeowners, public officials, and the Pennsylvania Historical and Museum Commission objected to a strict requirement for outside meters. (UGI St. No. 1, p. 16, lines 8-10)

12. In their comments, these parties argued that the Commission should exempt federal and local historic districts from this requirement, delegate meter placement decisions in historic districts to local officials, or develop specific standards for NGDCs to consider when they are making meter location decisions in historic districts, citing aesthetic, traffic safety, tripping hazards, and other concerns with outside meters. (UGI St. No. 1, p. 16, lines 10-20)

13. The Commission rejected the comments of parties opposing this general requirement for outside meters, even in historic districts. *Id.* at 30-31.

14. The Commission specifically "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 avoid or minimize the impact to an historic resource." *Id.* at 30-31.

15. Upon the effective date of the Commission's new regulation, UGI began to apply the new standards in making service line, regulator, and meter placement decisions when installing facilities at new service locations or when undertaking betterment projects. (UGI St. No. 1, p. 19, line 22 to p. 20, line 2)

16. "Betterment projects" are projects undertaken to address cast iron mains pursuant to Act 11 of 2012 and amended 52 Pa. Code § 59.18. (UGI St. No. 1, p. 4, lines 9-11)

17. Typically, cast iron mains in urban areas are larger-diameter pipes that operate at low pressure. (UGI St. No. 1, p. 11, lines 8-9)

18. Rather than incur the expense and disruption that would be associated with totally removing and replacing such pipes, UGI typically inserts smaller diameter plastic pipes into the cast iron mains. (UGI St. No. 1, p. 11, lines 9-11)

19. Such smaller diameter pipes then operate at medium pressure to offset the reduction in pipe diameter. (UGI St. No. 1, p. 11, lines 11-12)

20. In addition, the elevated pressure and resultant higher capacity improves system reliability and helps maintain adequate levels of service to customers. (UGI St. No. 1, p. 11, lines 12-14)

21. Pursuant to recently-promulgated federal rules and consistent with long-standing UGI construction policy, UGI installs excess flow valves ("EFVs") on new medium pressure service lines near their intersection with the main. (UGI St. No. 1, p. 11, lines 14-16)

22. These EFVs are designed to automatically step down gas pressure to safer low pressure levels in the event the service line is severed and will automatically restore pressure when the service line is fixed. (UGI St. No. 1, p. 11, lines 16-19)

23. A switch to a medium pressure system also requires UGI, as part of such a betterment project, to install a new service line designed to handle the higher pressure. (UGI St. No. 1, p. 11, lines 19-20)

24. The Company's position has been that gas safety concerns should trump aesthetic concerns. (UGI St. No. 1, p. 20, lines 9-11)

25. UGI would presumably carry the risk of potential liability in the event it exercised its discretion to permit an inside meter location in the absence of clear Commission-required standards, and a catastrophe were to occur. (UGI St. No. 1, p. 18, lines 9-12)

26. UGI also was initially concerned that there was no definitive central repository for determining the boundaries of local historic districts or areas that might qualify for such designation. (UGI St. No. 1, p. 20, lines 12-14)

27. In contrast, UGI was able to locate a resource which listed the boundaries of federal historic districts. (UGI St. No. 1, p. 20, lines 14-15)

28. Thus, UGI initially exercised its discretion by considering and rejecting inside meter placements in non-federal historic districts and adopted standards for making meter placement in federal historic districts that did not differ from non-historic districts. (UGI St. No. 1, p. 20, lines 15-18)

29. This approach was reflected in its initial Gas Operations Manual ("GOM") rules and communications. (UGI St. No. 1, p. 20, lines 18-19)

30. When the Company was installing and relocating meters consistent with this policy, UGI received complaints from the City of Reading ("City") and Centre Park Historic District ("CPHD") (collectively, "Complainants") as well as others concerning its placement of meters in the City of Reading. (UGI St. No. 1, p. 21, lines 4-6)

31. In response, UGI met several times with various City officials and other local interested parties to discuss meter placement issues. (UGI St. No. 1, p. 21, lines 6-7)

32. The City also asked the Commission to look into UGI's meter placement and maintenance decisions and to participate in meetings with interested parties. (UGI St. No. 1, p. 21, line 15 to p. 22, line 14)

33. As a result, PUC SD representatives and City officials did walking tours in the City to observe UGI's actions. (UGI St. No. 1, p. 21, lines 17-18)

34. UGI also involved PUC SD field safety inspectors in reviewing certain meter placement decisions where there was strong customer opposition. (UGI St. No. 1, p. 21, lines 18-19)

35. It was UGI's understanding based on these reviews that the PUC SD supported UGI's implementation policies and meter placement considerations and that no remedial action was required. (UGI St. No. 1, p. 21, lines 19-22)

36. Moreover, a meeting was organized by Pennsylvania State Senator Judy Schwank in 2015, which was attended by, among others, officials from the PUC SD, the City, CPHD, Councilman John Silfko, who is a resident in CPHD, Hans Bell, who is the current Chief Operations Officer of UGI, and UGI witness Christopher Brown. (UGI St. No. 1, p. 22, lines 3-6)

37. At this meeting, UGI explained its meter placement policy, and PUC SD representatives confirmed that they believed UGI's policies to be consistent with the intent of the Commission's regulations. (UGI St. No. 1, p. 22, lines 6-8)

38. Hans Bell indicated that based on the PUC SD's views, UGI would continue to apply its understanding of the Commission's meter placement policy subject to a modification

for distinguishing architectural characteristics after PUC SD review. (UGI St. No. 1, p. 22, lines 9-11)

39. UGI agreed to voluntarily modify its GOM effective July 31, 2016, to include: (1) more specific requirements regarding meter protection and Americans with Disabilities Act (“ADA”) sidewalk width compliance; and (2) additional guidance and consideration for meters located within historic districts. (UGI St. No. 1, p. 34, lines 10-14)

40. More specifically, the revised GOM procedure continues to encourage outside locations in all locations but allows and provides detailed considerations for inside locations if less obtrusive locations are not available in historic districts. (UGI St. No. 1, p. 34, lines 14-17)

41. The revised policy also addresses not placing meters in front of distinguishing features of historic district properties. (UGI St. No. 1, p. 34, lines 17-18)

42. Before these revisions were implemented, UGI submitted the proposed GOM modifications to the PUC SD for comment. (UGI St. No. 1, p. 22, lines 11-12)

43. When no suggested revisions were communicated, the revised GOM was implemented on July 31, 2016. (UGI St. No. 1, p. 22, lines 13-14)

44. UGI agreed to work with the City to have constituent complaints submitted to the City appropriately routed to UGI officials for response. (UGI St. No. 1, p. 21, lines 11-13)

45. Company personnel have met on several occasions with homeowners and interested parties to discuss the outside meter placement location in advance of the Company’s work. (UGI St. No. 1, p. 36, lines 4-7)

46. In the vast majority of cases, the Company and the customer have found mutually agreed-upon locations to place an outside meter. (UGI St. No. 1, p. 36, lines 6-7)

47. As needed, UGI will relocate the gas service line from the front of the building at its cost to ensure the service line is installed perpendicular to the main and to avoid distinguishing features of the home. (UGI St. No. 1, p. 36, lines 8-10)

48. UGI has procured and installed custom or “stick” built meter sets where possible to limit the overall size and profile of meter sets. (UGI St. No. 1, p. 36, lines 11-12)

49. UGI developed a website for customers requesting reconsideration of inside meter placement as a means for easily communicating this preference. (UGI St. No. 1, p. 36, lines 13-14)

50. Information about this website is provided to customers on a letter that is sent at least 30 days in advance of the meter installation or relocation. (Tr. 344-45; UGI Exh. CB-16)

51. In 2013 and 2014, UGI funded a Lehigh University program for designing a less obtrusive meter cover. (UGI St. No. 1, p. 36, lines 15-16)

52. As meter technology continues to advance, UGI remains abreast of these advancements in the interest of its customers. (UGI St. No. 1, p. 36, lines 17-18)

53. To this end, two manufacturers are currently developing smaller residential outside meters for potential future use. (UGI St. No. 1, p. 36, lines 18-19)

54. As part of its revisions to the GOM, customers can take steps to lessen the aesthetic impact of the outside meter, such as “paint[ing] their meters to blend in with the surroundings, provided they do not paint over meter dials, regulator vents or vent lines.” (UGI Exh. CB-5, p. 9)

55. As seen in pictures taken by the Complainants, customers have painted meters to blend in with their surroundings and mitigate the meters’ aesthetic impact. (UGI Cross-Examination Exhs. 1-3)

56. Customers also are allowed to “use vegetation or install customer owned meter covers to aesthetically camouflage a meter,” so long as: (1) the vegetation or meter cover does “not interfere with meter reading, inspection, repairs, testing, changing and operation of the gas shut-off valve”; (2) the meter cover does “not obstruct the regulator vent” and “provide[s] adequate ventilation to accommodate relief valve operation”; and (3) the meter cover is “readily removable to allow for maintenance.” (UGI Exh. CB-5, pp. 9-10)

57. UGI has been selective in the placement of meters so that the Company complies with 49 C.F.R. § 192.353(a) and avoids locations where vehicular damage may be reasonably anticipated. (UGI St. No. 1, p. 37, lines 2-4)

58. By doing so, UGI avoids the need for the installation of bollards or other forms of supplemental meter protection that could be viewed as more obtrusive and taking away from distinguishing historical building features. (UGI St. No. 1, p. 37, lines 4-6)

59. UGI bears the sole responsibility for the safety of its natural gas service, not the City or CPHD. (Reading Statement No. 1, p. 7, lines 13-14)

60. Safety is the “overriding concern” when deciding where to locate meters. (Reading Statement No. 1, p. 7, line 8)

61. The Complainants are not better than UGI or the Commission at balancing safety and aesthetics. (Tr. 152, 173)

62. Customers in historic districts should be afforded the same level of safety as customers in non-historic districts. (Tr. 152, 172)

63. According to the Complainants, “[t]here is a safety justification for having outside regulators, but not for outside meters.” (Reading Statement No. 2, p. 32, lines 13-14)

64. Based on the Company's records, the last "incident" reported to the Pipeline and Hazardous Materials Safety Administration ("PHMSA") within the United States Department of Transportation ("DOT") that related to outdoor meter sets caused by vehicular damage occurred in 1981. (UGI St. No. 1, p. 48, lines 1-2)

65. Within that same time period, UGI has had 11 DOT reportable incidents related to inside meters. Of those 11 incidents, 7 resulted in an explosion and 1 resulted in the loss of life. (UGI St. No. 1, p. 48, lines 3-4)

66. The Complainants do not dispute UGI's records of reportable incidents. (Tr. 176)

67. With regard to vehicle strikes of meters, the Commission had access to accident data, was very familiar with outside regulator and meter installations that were very common even before the Commission modified its regulation, and was informed of the type of risks raised by the Complainants here in the extensive comments filed to its rulemaking. (UGI St. No. 1, p. 32, line 21 to p. 33, line 2)

68. Based on that information, the Commission concluded that outside regulator and meter installations were generally safe, except where there are special risks of vehicle strikes or vandalism. (UGI St. No. 1, p. 33, lines 2-4)

69. The Complainants ask the Commission to impose new regulatory standards on UGI and to force the Company to place most, if not all, of the meters relocated in historic districts since September 13, 2014, back inside the buildings. (Tr. 196; City MB at Appx. C)

70. The Complainants believe that inside meters should be the rule, not the exception, for historic districts and buildings, as well as areas and buildings that are eligible to be historic. (UGI St. No. 1, p. 38, line 5 to p. 39, line 4)

71. City witness John Slifko admitted during cross-examination the Complainants' requested relief would result in the vast majority of meters being placed inside. (Tr. 196)

72. None of the Complainants' witnesses are engineers, have ever worked in the natural gas industry, or have any education or work experience related to gas safety. (Tr. 142-43, 151, 169)

73. The Complainants rely on speculation, the lay opinions of their inexperienced witnesses, the alleged distances between the meters and street curbs, alleged vehicle strikes and "near misses," and purported "common sense" to support their claim that inside meters are safer than outside meters. (City MB at 21-24, 35-38, 42-43; Reading Statement No. 1, p. 7, lines 12-25; Reading Statement No. 2, p. 23, line 18 to p. 31, line 8; p. 32, line 13 to p. 34, line 10)

74. "The Company has adhered to Section 59.18 and followed its meter location policy when determining where to install or relocate a meter in the City, which includes consideration of inside meter locations in historic districts and for historic buildings." (UGI St. No. 1, p. 37, line 21 to p. 38, line 1)

75. Such consideration includes analyzing the potential locations on the outside of the building for the meter, whether the meter would block a distinguishing exterior feature, the ways in which the customer can mitigate the aesthetic impact of the meter, and the relative safety of an outside versus inside meter placement. (Tr. 410-12; UGI St. No. 1, p. 30, lines 9-19, p. 34, lines 12-18; UGI Exh. CB-5)

76. Because "[s]afety is a core value of UGI, and the Company places an overriding priority on gas safety," the Company has predominantly installed or relocated meters outside. (UGI St. No. 1, p. 18, lines 16-23)

77. UGI witness Brown testified that there is an increase in risk when placing a meter inside a building versus outside. (Tr. 421)

78. UGI has frequently asked PUC SD officials to review specific meter placement decisions, and “the PUC SD supported an outside meter in every one of these visits and has never disagreed with UGI’s selected meter location.” (UGI St. No. 1, p. 31, lines 1-2)

79. Aesthetic concerns about the exterior meters should not be elevated over gas safety concerns. (UGI St. No. 1, p. 40, lines 6-19)

80. In some situations when there have been no practical and feasible locations for the meters outside or when the meter would obstruct a distinguishing exterior feature, the Company has exercised its discretion to leave meters inside. (Tr. 411)

81. UGI provides a letter notifying customers of the pending project at least 30 days in advance of a project beginning, with the exception of emergency work. (UGI St. No. 1, p. 25, lines 21-23)

82. This letter provides the customer contact information for UGI as well as the PUC’s Bureau of Consumer Services (“BCS”). (UGI St. No. 1, p. 25, line 23 to p. 26, line 1)

83. The letter also provides the customer an option to request reconsideration of his or her meter location by contacting UGI by phone or completing a meter reconsideration request form on UGI’s website. (UGI St. No. 1, p. 26, lines 1-4)

84. The Company’s current customer notification letters state that, in pertinent part, **“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. Your request could be made on line at UGI.com and clicking on the community tab at the top of the page.” (UGI Exh. CB-16) (emphasis in original)

85. If a customer makes this request and has not already had a reconsideration request evaluated and responded to, the customer will be contacted to schedule a time to meet at his or her property with UGI representatives to discuss the pending construction work as well as potential meter relocation. (UGI St. No. 1, p. 30, lines 6-9)

86. At these meetings, UGI and the customer typically discuss the safety concerns regarding inside meter locations, the Commission’s regulation preferring outside meters and regulators with limited exceptions, and potential less obtrusive locations for the meter that would make it completely or partially hidden from view. (UGI St. No. 1, p. 30, lines 9-19)

87. In most cases, UGI and the customer have been able to determine a suitable outside location that is acceptable to UGI and customer. (UGI St. No. 1, p. 30, lines 9-19)

88. If after these meetings, the customer is still not satisfied, UGI will remind the customer of his or her rights to file a complaint with Commission. (UGI St. No. 1, p. 30, lines 19-21)

89. UGI “has received several requests from customers for their gas meters to be relocated to the outside.” (UGI St. No. 1, p. 31, lines 6-7)

90. In most cases, the customer no longer wants UGI to enter his or her home to conduct periodic safety inspections, which normally occur on a one to three-year cycle, on the meter and Company-owned piping. (UGI St. No. 1, p. 31, lines 10-12)

91. In other cases, customers are aware of or have heard through media reports or otherwise that if a gas meter were to leak, it is safer for that to occur outside in a well-ventilated

area, rather than in an enclosed basement space with little or no ventilation. (UGI St. No. 1, p. 31, lines 12-15)

92. The provision instructing Company personnel not to install meters in front of “distinguishing exterior features” was only added as part of the GOM revisions effective on July 31, 2016. (UGI St. No. 1, p. 41, lines 3-12)

93. “Safety is the primary concern of UGI when selecting meter locations, which is why the Company follows the Commission’s general rule of moving meters outside.” (UGI St. No. 1, p. 45, lines 14-15)

94. One of the important safety enhancements installed during UGI’s betterment projects are EFVs, which provide an additional level of protection from line strikes on the service lateral (*e.g.*, excavation damage) as well as from damage to the meter or pressure regulator (*e.g.*, impact from a vehicle). (UGI St. No. 1, p. 45, lines 16-19) F

95. UGI’s policy requires meter protection in parking lots, driveways, and roadways; that is, locations where vehicular damage may be reasonably anticipated. (UGI St. No. 1, p. 45, lines 21-22)

96. The Complainants’ alleged vehicle strikes and “near misses” are not evidence of outside meters presented safety concerns. (UGI St. No. 1, p. 47, lines 4-5)

97. To the contrary, they demonstrate that outside meters are safer generally than inside meter sets, as releases of natural gas at outdoor locations leads to the dispersal of the gas into the atmosphere as opposed to the potential increase in natural gas concentrations to potentially dangerous levels in confined indoor locations. (UGI St. No. 1, p. 47, lines 5-6; p. 13, line 22 to p. 14, line 2; p. 32, lines 1-6)

98. UGI presented detailed testimony responding to each of the alleged vehicle strikes and “near misses,” some of which the Company could find no records substantiating the Complainants’ allegations. (UGI St. No. 1, p. 48, line 6 to p. 50, line 3)

99. “Relocating an individual meter from outside back to inside at a single property roughly costs around \$400.” (UGI St. No. 1, p. 39, lines 11-12)

100. Relocating all of the meters pursuant to the Complainants’ requested relief would cost at least hundreds of thousands dollars. (See UGI St. No. 1, p. 39, lines 12-15)

101. Relocating all of those meters would greatly inconvenience UGI’s customers. (UGI St. No. 1, p. 39, lines 17-18)

102. Gas service to each property would need to be interrupted while the meters would be relocated, and then service would need to be re-established including relighting and inspecting all gas appliances as part of that process. (UGI St. No. 1, p. 39, lines 18-20)

103. UGI also would have to divert labor and resources from its betterment projects and other initiatives aimed at improving the safety and integrity of the natural gas distribution system based on system risks identified in the Company’s DIMP. (UGI St. No. 1, p. 39, lines 21-23)

Appendix C

Appendix C – Proposed Conclusions of Law

1. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

2. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact is more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008) (citation omitted).

3. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

4. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted).

5. Bald assertions, personal opinions, or perceptions do not constitute evidence. *Mid-Atlantic Power Supply Ass’n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

6. Nor does the testimony consisting of guesses, conjecture or speculation – supposition without a premise of fact – prove a party’s claims. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Department of Highways*, 398 Pa. 518, 159 A.2d 206 (1960).

7. Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701.

8. A complainant must demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order. *See Frompovich v. PEOC Energy Co.*, 2018 Pa. PUC LEXIS 160, at *16 (Order entered May 3, 2018) (citing 66 Pa. C.S. § 701).

9. Section 1501 of the Public Utility Code states, 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. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . . .

Id. § 1501.

10. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

11. Section 59.18(a)(1) of the Commission’s regulations states that “[u]nless otherwise allowed or required in this section, meters and regulators must be located outside and aboveground.” 52 Pa. Code § 59.18(a)(1).

12. Under Section 59.18(d)(1) of the Commission's regulations, "[i]nside 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.

(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 a. Code § 59.18(d)(1).

13. Section 59.18(a)(5) of the Commission's regulations requires a natural gas utility "to consider potential damage by outside forces" when it is "selecting a meter or service regulator location." 52 Pa. Code § 59.18(a)(5).

14. “Outside meters or service regulators” must be installed in one of two locations: (1) “[w]hen feasible and practical to do so, aboveground in a protected location adjacent to the building served, or as close as possible to the point where a production or transmission line is tapped”; or (2) “[i]n a buried vault or meter box.” 52 Pa. Code § 59.18(b).

15. Section 59.33(b) of the Commission’s regulations establishes that the “minimum safety standards” for natural gas utilities “shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. § § 60101—60503 and as implemented at 49 CFR Parts 191—193, 195 and 199, including all subsequent amendments thereto.” 52 Pa. Code § 59.33(b).

16. Under 49 C.F.R. § 192.353(a), “[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.”

17. The Environmental Rights Amendment of the Pennsylvania Constitution states: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” Pa. Const. art. I, § 27.

18. The Complainants have failed to sustain their burden of proof that UGI’s meter location practices have violated any provision of the Public Utility Code, a Commission order, or a Commission regulation. *See* 66 Pa. C.S. §§ 332(a), 701.

19. In its *Final Rulemaking Order*, the Commission, after an extensive multi-year information gathering, public comment, and regulatory review process, extensively amended 52

Pa. Code § 59.18 to establish new standards governing natural gas distribution companies' ("NGDCs") installation of meters, regulators, and service lines.

20. The Commission mandated that all NGDCs' meters must "be located outside and aboveground," subject to certain limited exceptions. 52 Pa. Code § 59.18(a)(1); *see Final Rulemaking Order* at 30.

21. These new rules became effective on September 13, 2014, when installing new meters, regulators, and service lines or replacing existing ones. *See* 52 Pa. Code § 59.18(g)(1)-(2).

22. For NGDCs' existing inside meters and regulator installations, the NGDCs must replace them all by September 13, 2034, or incorporate the requirements of Section 59.18 into a Distribution Integrity management Plan ("DIMP"), whichever happens first. *See id.* § 59.18(g)(3).

23. The Commission recognized that NGDCs must have the discretion to decide whether a meter is placed inside or outside of a building, knowing that they would bear the risk of defending such meter placement decisions in civil litigation if an accident were to occur. *Final Rulemaking Order* at 12-13, 30-31.

24. Given the NGDCs' "public safety obligations," the Commission declared that NGDCs must retain the discretion on where to install their natural gas facilities. *Id.* at 45-46.

25. The Commission and Commonwealth Court have declared that UGI and all other NGDCs retain the ultimate discretion under Section 59.18 to determine where to install or relocate their meters. *See Final Rulemaking Order* at 45-46; *UGI Utilities, Inc. v. City of Reading*, 179 A.3d 624, 630 (Pa. Cmwlth. 2017).

26. As the Commonwealth Court held, “PUC Regulation 59.18 does not require or direct that gas meters in historic districts must be installed indoors.” *UGI*, 179 A.3d at 630.

27. “Indeed, the PUC in promulgating this regulation made clear that utilities are not required to install gas meters indoors in historic districts and that the decision whether to install a meter indoors involves an exercise of discretion by the utility, noting that ‘it is necessary that, due to its public safety obligations, the utility be allowed to make the final decision.’” *Id.* (emphasis in original).

28. Although NGDCs shall “consider” inside meter locations for historic districts and buildings under the amended Section 59.18, the Commission did not adopt any parameters limiting NGDCs’ discretion beyond those adopted for non-historic districts. *See Final Rulemaking Order* at 30-31, 43, 45-46.

29. Further, “meter set relocation required by regulation is not dependent on the type of service line and [the Commission did] not make any exceptions.” *Id.* at 29.

30. The Complainants have failed to sustain their burden of proof that UGI did not consider inside meter locations for historic buildings, buildings that are eligible to be historic, buildings in historic districts, or buildings in areas eligible to be historic districts in violation of 52 Pa. Code § 59.18(d)(1)(ii).

31. The Complainants have failed to sustain their burden of proof that UGI did not consider inside meter locations for historic buildings, buildings that are eligible to be historic, buildings in historic districts, or buildings in areas eligible to be historic districts in violation of 52 Pa. Code § 59.18(d)(1)(ii).

32. The Complainants have failed to sustain their burden of proof that UGI, when installing and relocating meters, failed to “consider potential damage by outside forces,” to place

the meters “[w]hen feasible and practical to do so aboveground in a protection location,” and to protect the meters “from corrosion and other damage,” including “vehicular damage that may be anticipated,” in violation of 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) (incorporated by 52 Pa. Code § 59.33).

33. The Complainants’ requested relief seeks to impose new regulatory standards that are different from or conflict with the Commission’s meter location regulations. *See* 52 Pa. Code §§ 59.18, 59.33.

34. A blanket requirement for UGI to place all meters inside buildings in historic districts explicitly contradicts Section 59.18(d)(1)(ii) of the Commission’s regulations, which only requires NGDCs to “consider” inside meter locations in such areas. *See* 52 Pa. Code § 59.18(d)(1)(ii).

35. No Commission or federal regulation contains the Complainants’ proposed 15-foot rule concerning the allowable distances between meters and street curbs. *See, e.g.*, 52 Pa. Code §§ 59.18, 59.33; 49 C.F.R. 192.353.

36. The Commonwealth Court has already declared that Section 59.18 does not violate the Environmental Rights Amendment of the Pennsylvania Constitution. *See UGI Utils. v. City of Reading*, 179 A.3d 624, 631-32 (Pa. Cmwlth. 2017).

37. The Complainants’ requested relief, which seeks to impose new regulatory standards on UGI through a complaint proceeding, is unreasonable and unlawful. *See Aronson v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00981378, at 2, 8, 10-11 (May 28, 1998) (Initial Decision) (“*Aronson*”), *adopted by Commission* (Order Entered July 14, 1998).

38. “The proper procedural vehicle” to impose new regulatory requirements on a utility “is a rulemaking proceeding, not a complaint proceeding.” *See id.*

39. To the extent that the Complainants wish to impose new regulatory standards on UGI, they must file a petition pursuant to Section 5.43 of the Commission's regulations. *See id.*; 52 Pa. Code § 5.43.

40. UGI has a duty to report every "incident" to the Pipeline and Hazardous Materials Safety Administration ("PHMSA") within the United States Department of Transportation ("DOT"). An "incident" is defined as "[a]n event that involves," among other things, "a release of gas from a pipeline" and "that results in one or more the following": (1) "[a] death, or personal injury necessitating in-patient hospitalization"; (2) "[e]stimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost"; or (3) "[u]nintentional estimated gas loss of three million cubic feet or more." 49 C.F.R. § 191.3.

41. It is well-established that parties cannot present new evidence at the briefing stage. *See, e.g., Pa. PUC v. Nat'l Fuel Gas Distrib. Corp.*, 1993 Pa. PUC LEXIS 95, at *7-10 (Order entered July 30, 1993); *Petition of the Borough of Cornwall for a Declaratory Order*, 2016 Pa. PUC LEXIS 3, at *24-26 (Jan. 6, 2016) (Recommended Decision), *adopted as modified*, Docket No. P-2015-2476211 (Order entered Aug. 11, 2016); *see also* 66 Pa. C.S. § 332(c).

42. Extra-record evidence in briefs is commonly stricken. *See, e.g., Trucco v. PPL Elec. Utils. Corp.*, 2002 Pa. PUC LEXIS 21, at *5 (Order entered Mar. 29, 2002) (noting that ALJ Paist "struck those portions of the Complainants' Main Brief which referenced extra-record evidence, including those various exhibits attached to that Main Brief"); *Application of Kenneth Scott Cobb, t/a Kennys Transp. Serv.*, 2012 Pa. PUC LEXIS 1802, at *24 (Nov. 16, 2012) (Initial Decision) (granting motion to strike the applicant's brief "for attempting to introduce new facts

and documents into evidence not previously offered or admitted into the record at the hearing of September 5, 2012”), *became final without further action*, Docket No. A-2011-2280175 (Order entered Jan. 7, 2013); *see also* 52 Pa. Code § 5.501(a)(2) (stating that briefs must contain “[r]eference to the pages of the record or exhibits where the evidence relied upon by the filing party appears”).

43. Including extra-record materials in a party’s brief “brings up hearsay problems and problems associated with the right to respond to evidence.” *Pa. PUC v. Pa. Power & Light Co.*, 1995 Pa. PUC LEXIS 190, at *232 (July 28, 1995) (Recommended Decision) (“*PP&L*”).

44. “The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness.” *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted).

45. “Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.” *Id.* (citations omitted).

46. Indeed, Section 332(c) of the Public Utility Code entitles every party to, among other things, “submit rebuttal evidence” and “conduct such cross-examination as may be required for a full and true disclosure of the facts.” 66 Pa. C.S. § 332(c).

47. Parties cannot present new proposals or arguments for the first time in their briefs. *See, e.g., Enron Capital & Trade Resources Corp. v. Peoples Natural Gas Co.*, 1998 Pa. PUC LEXIS 199, at *46 (Order entered Aug. 24, 1998); *Pa. PUC v. Phila. Elec. Co. – Gas Division*, 1984 Pa. PUC LEXIS 50, at *119 (Order entered Apr. 27, 1984); *Pa. PUC v. Phila. Elec. Co.*, 1986 Pa. PUC LEXIS 99, at *97-98 (Order entered June 27, 1986); *Norbeck v. PECO Energy Co.*, 2010 Pa. PUC LEXIS 101, at *50-51 (Apr. 1, 2010), *adopted*, 2010 Pa. PUC LEXIS 1754

(Order entered Aug. 23, 2010); *Allegheny Ctr. Assoc. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990).

48. By presenting new requests for relief for the first time in their Main Briefs, the Complainants have denied the Company due process because the record in this proceeding is now closed, and UGI cannot now present evidence on these new requests for relief. *See Hess*, 107 A.3d at 266 (citations omitted).

Appendix D

Appendix D – Proposed Ordering Paragraphs

1. That the Formal Complaint filed by Centre Park Historic District against UGI Utilities, Inc. at Docket No. C-2015-2516051 is hereby dismissed in its entirety with prejudice.
2. That the Formal Complaint filed by the City of Reading against UGI Utilities, Inc. at Docket No. C-2016-2530475 is hereby dismissed in its entirety with prejudice.
3. That this matter is marked closed.