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December 7, 2018

*Via Electronic Filing*

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

Re: Centre Park Historic District v. UGI Utilities, Inc., Docket No. C-2015-2516051  
City of Reading v. UGI Utilities, Inc., Docket No. C-2016-2530475

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Reply Brief of the City of Reading in the above-referenced proceeding. Copies of the City's Reply Brief are being served in accordance with the attached Certificate of Service.

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

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Charles E. Thomas, Jr.

Enclosure

cc: Elizabeth Kraft, Esquire  
Certificate of Service

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Centre Park Historic District**

**v.**

**UGI Utilities, Inc.**

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**Docket No. C-2015-2516051**

**City of Reading**

**v.**

**UGI Utilities, Inc.**

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**Docket No. C-2016-2530475**

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**REPLY BRIEF OF  
THE CITY OF READING**

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DATED: December 7, 2018

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## I. INTRODUCTION

The City of Reading (“City” or “Reading”) submits this Reply Brief in further support of the arguments advanced in its Main Brief, filed on October 18, 2018,<sup>1</sup> and in response to matters raised in the Responsive Brief of UGI Utilities, Inc. (“UGI”) which warrant further discussion.

In its Responsive Brief, UGI argues that Complainants have failed to prove that UGI’s meter location practices in historic districts and other locations within the City have violated any provision of the Public Utility Code, a Pennsylvania Public Utility Commission (“Commission”) Order, or a Commission regulation. UGI claims that it complied with Section 59.18(d)(1)(ii) by considering inside meter locations for historic buildings and designated historic districts within the City. UGI also claims it complied with 52 Pa. Code §§ 59.18(a)(5) and (b)(1) and 49 CFR § 192.353(a) by installing exterior meters in locations in the City’s historic and non-historic districts which are protected from reasonably anticipated damage. UGI further contends that CPHD’s constitutional arguments should be rejected because Section 59.18 is constitutional and complies with the Environmental Rights Amendment of the Pennsylvania Constitution.<sup>2</sup> UGI concludes its brief by arguing Complainants’ requested relief should be rejected as unreasonable and improper.

Contrary to UGI’s arguments, the record evidence clearly demonstrates that UGI’s actions in effectuating its meter-replacement program across the City violated the requirements of 52 Pa. Code § 59.18 and 49 CFR § 192.353, as adopted by the Commission pursuant to 52 Pa.

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<sup>1</sup> Complaint Centre Park Historic District (“CPHD”) (together with the City, the “Complainants”) also filed a Main Brief on October 18, 2018, addressing constitutional matters related to this proceeding. By letter dated November 2, 2018, the City provided clarification with respect to the relief being sought and the proposed Ordering Paragraphs in Appendix C of its Main Brief.

<sup>2</sup> Pa. Const. Art. 1, § 27. The City does not address UGI’s response to CPHD’s constitutional arguments found in Section VI.C. of UGI’s Responsive Brief. CPHD’s Reply Brief will directly respond to UGI’s contentions on constitutional matters.

Code § 59.33(b). In particular, UGI failed to consider inside meter placements in historic districts within the City and also placed outside meters in unsafe locations throughout the City without adequate protection and without due consideration for potential damage from vehicles and other outside forces. Therefore, as set forth herein and in the City's Main Brief, the Commission should sustain the City's Complaint and grant, as appropriate, the relief specifically requested by the City in its Main Brief.<sup>3</sup>

## **II. REPLY TO UGI'S RESPONSIVE BRIEF**

The City will address UGI's assertions using, for the most part, headings similar to those used in UGI's Responsive Brief.<sup>4</sup> At the outset, it is important to observe UGI's acknowledgment in the opening section of its Responsive Brief<sup>5</sup> that it must consider inside meter placements in historic districts and that it cannot place outside meters in unsafe locations.<sup>6</sup> Despite this acknowledgment, the evidence of record shows that UGI, in Reading, has not truly considered the inside placement of meters and that outside meters have been placed in unsafe locations. If UGI would adhere to the regulations at 52 Pa. Code § 59.18, the issues in this proceeding could be resolved.

### **A. REPLY TO QUESTIONS PRESENTED (UGI R.B. at 2-3)**

UGI sets forth four questions to be addressed in Section III of its Responsive Brief. The third question concerns the Environmental Rights Amendment, Pa. Const. Art. 1, § 27. This matter will be addressed in CPHD's Reply Brief. As for the fourth question presented, Reading

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<sup>3</sup> See Reading M.B., Sections V.D.1.c. and V.D.2.b.

<sup>4</sup> The fact the City does not address or reply to each and every assertion advanced by UGI in its Responsive Brief should not be construed as an acceptance or concurrence with such assertions.

<sup>5</sup> UGI R.B. at 1.

<sup>6</sup> UGI R.B. at 1.

strongly denies that it “seeks to impose new regulatory standards on UGI both prospectively and retroactively”<sup>7</sup> regardless of the safety impact. As the City addresses throughout this Reply Brief, safety is the controlling consideration and UGI witness Brown agrees.<sup>8</sup>

**B. REPLY TO LEGAL STANDARDS (UGI R.B. at 3-8)**

The City is in general agreement with Section IV of UGI’s Responsive Brief covering Legal Standards, especially with UGI’s statement that “[b]ald assertions, personal opinions, or perceptions do not constitute evidence.”<sup>9</sup> The City agrees that § 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).

**C. REPLY TO SUMMARY OF ARGUMENT (UGI R.B. at 8-15)**

In Section V of its Responsive Brief, UGI summarizes its argument. Most of UGI’s assertions have been adequately addressed in the City’s Main Brief, but the more significant will be further addressed under the specific headings which follow in this Reply Brief. With respect to the Summary of Argument, suffice to say that it is the City’s position that the resolution it is proposing in this proceeding does not violate the Public Utility Code, Commission Orders, or regulations.

UGI continually raises the possibility of gas leaks in confined indoor locations. However, there has never been a finding that inside locations are unsafe per se. Meters have

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<sup>7</sup> UGI R.B. at 3.

<sup>8</sup> See, e.g., Tr. 225.

<sup>9</sup> UGI R.B. at 5.



been located inside for decades. The adoption of new regulations does not mean that meters located under the previous regulations are now unsafe.<sup>10</sup>

UGI asserts<sup>11</sup> that given NGDCs' "public safety obligations," the Commission declared that NGDCs must retain discretion on where to install their natural gas facilities. However, a utility must employ sound judgment when exercising this discretion. The evidence in this proceeding raises serious questions with respect to UGI's judgment. The absence of bollards and placement of meter clusters a few feet from street curbs are cases in point. UGI's customer notification letters were inadequate at best. What the City is proposing is not ambiguous. UGI's summary ignores that there must be judgment, especially with respect to the possibility of damage from outside forces.

UGI's summary also ignores that there are safety concerns with outside meters. UGI's assertion of issues with respect to inside meters is not supported. For instance, UGI asserts that it "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."<sup>12</sup> The record, however, does not support the assertion that the Commission has reached such a conclusion.

Reading is also not elevating aesthetic concerns above safety. Nor is the City proposing new regulatory requirements. It is attempting to resolve the issues. The City's 15-foot proposal, for example, is rooted in safety and was made to resolve issues just as UGI did in its testimony and brief.<sup>13</sup>

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<sup>10</sup> Tr. 373.

<sup>11</sup> UGI R.B. at 9

<sup>12</sup> *Id.* at 12.

<sup>13</sup> Indeed, UGI itself proposed only 10 feet.

Finally, UGI argues that “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” and that they want to use this complaint proceeding to collaterally attack the Commission’s *Final Rulemaking Order*.” Contrary to these arguments, the City’s Complaint is not a collateral attack on the *Final Rulemaking Order*,<sup>14</sup> but rather is an effort to ensure UGI adheres to and complies with Commission-mandated rules.

**D. REPLY TO ARGUMENT (UGI R.B. at 15-56)**

**1. Background**

**a. Amendment of Section 59.18 (UGI R.B. at 15-19)**

UGI first addresses the amendment of 52 Pa. Code § 59.18 and the period prior to the effective date of the amendment. The City simply asks, if inside meters were safe prior to September 13, 2014, why are they no longer safe?

The data from the Commission’s *Final Rulemaking Order* is interesting, but the decision applies to the entire Commonwealth. Without additional evidence, it has no application to this proceeding which concerns UGI’s actions in Reading. The fact that neither Complainant submitted comments in connection with the rulemaking – a point UGI repeatedly emphasizes – has no evidentiary weight in this proceeding and is meaningless to the resolution of the issues in this case. Similarly, UGI’s summary of various comments made during the rulemaking is not determinative of the issues in this proceeding. Moreover, Section 59.18(g)(3) gives utilities twenty years to complete the replacement of existing facilities in compliance the regulation. Although it is not happening now, meter technology may advance considerably by 2034.

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<sup>14</sup> *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Final Rulemaking Order entered May 23, 2014) (“*Final Rulemaking Order*”).

**b. Interactions with the Commission's Safety Division and Complainants after the Amendment of Section 59.18 (UGI R.B. at 19-22)**

The history provided under this heading in UGI's Responsive Brief is not determinative of the matters at issue in this complaint proceeding. The City agrees that gas safety concerns should trump aesthetic concerns and encourages the utilization of Excess Flow Valves.<sup>15</sup> What UGI may want us to believe with respect to the Commission's Safety Division ("PUC SD") is not determinative. UGI's assertions are also primarily hearsay. UGI had an opportunity to make Hans Bell, its current Chief Operating Officer,<sup>16</sup> a witness, but chose not to do so. The language of the regulation must control.

**c. UGI's Steps to Address Complainant's Concerns (UGI R.B. at 22 -25)**

The ten so-called "steps" that UGI took to address the City's concerns were addressed in the City's Main Brief.<sup>17</sup> *First*, regarding UGI's modified GOM which became effective July 31, 2016, the failure of the PUC SD to submit comments does not, in any way, indicate or represent implicit or explicit approval of the revised GOM procedures.<sup>18</sup> Moreover, the modification of the GOM occurred almost two years *after* amended Section 59.18 became effective. Under the prior version of the GOM, effective between July 5, 2011, to July 30, 2016, inside meter set locations were "only [to] be considered when an acceptable outside location is not available, suitable or when protection from ambient temperature is necessary to avoid meter freezing" and with the "prior approval of the Manager of Engineering."<sup>19</sup> This is *prima facie* evidence that UGI did not truly consider inside meter placements as required by amended Section 59.18(d) as

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<sup>15</sup> UGI R.B. at 21.

<sup>16</sup> *Id.* at 22.

<sup>17</sup> *See* Reading M.B. at 39-40.

<sup>18</sup> *See* UGI R.B. at 22 (discussing first step).

<sup>19</sup> UGI Exh. CB-4 at 2 (quoting Section 5.1); *see also* UGI St. No. 1 at 33-34.

of September 13, 2014, a practice it continued to employ until at least July 31, 2016. While the revised GOM procedure provides more detailed guidelines regarding meter placements in historic districts, a close reading reveals that consideration of inside meter placements is merely an afterthought, only permitted if and only if there are “no practical alternatives” available to place a meter outdoors **and** the property owner makes a written request.<sup>20</sup> A written request, however, is difficult to make when the location of the meter has already been predetermined by UGI when the customer receives a notice letter that fails to provide any information on how to challenge that determination or request inside meter placement and unequivocally states that meters must be moved outside.<sup>21</sup>

*Second*, the City denies that UGI has tried to work with customers. UGI’s notice letters are just another example of UGI’s failures in this regard.<sup>22</sup> It is unclear whether UGI is even using the revised notice letter it claimed at hearing it was sending to customers, which provides information, including a website, to seek reconsideration of inside meter placements.<sup>23</sup> Even so, that letter was only put into use in October 2017, which is more than three years after the effective date of amended Section 59.18 and long after the meters identified in the Joint Stipulation and primarily at issue in this case were moved outside.

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<sup>20</sup> UGI Exh. CB-5 at 2-3.

<sup>21</sup> See Reading Exh. JS-10 (September 24, 2015 letter advising that “if the meter and regulator are inside, [UGI] will need to move them outside, due to company policy”); JS-11 (November 23, 2015 letter stating that “[i]f your natural gas meter set is located inside the building where you live, it will be moved to a position outside the dwelling” (emphasis in original)); JS-12 (January 30, 2017 letter stating that “[i]f your natural gas meter set is located inside the building where you live, it will be moved to a position outside the dwelling” (emphasis in original) and January 17, 2017 letter advising that “if the meter and regulator are inside, [UGI] will need to move them outside, due to company policy”). While UGI introduced a “new” customer letter that was purportedly being sent to residents advising of a customer’s right to seek reconsideration of UGI’s decision (see UGI Exh. CB-16), the evidence clearly demonstrates that UGI was still sending out letters long after its modified GOM went into effect that lacked sufficient notice and detail to customers and, in some instances, was in violation of Section 59.18’s customer notice requirements.

<sup>22</sup> See Reading Exhs. JS-10, JS-11, JS-12.

<sup>23</sup> See UGI R.B. at 23 (discussing sixth step) and UGI Exh. CB-16.

*Third*, UGI asserts that there has been advances in technology.<sup>24</sup> However, as discussed in the City's Main Brief, UGI Witness Brown's answers on cross were to the contrary.<sup>25</sup> Indeed, Mr. Brown is not a professional engineer and has very little experience with gas meters.

*Fourth*, the ability of customers to paint meters and install vegetation to "aesthetically camouflage" a meter<sup>26</sup> provides very little confidence for customers, especially from the standpoint of safety which should trump "aesthetic camouflage."

*Fifth*, UGI's final "step" merely states that UGI will comply with 49 CFR § 192.353 and avoid locations where vehicular damage may be reasonably anticipated. This is something UGI is required to do already. Again, the City asks that the requirements of the regulations be followed.

## **2. The City Has Sustained Its Burden of Proof (UGI R.B. at 25-40)**

Contrary to UGI's assertions,<sup>27</sup> the core of this case is not about "whether UGI has properly balanced safety against aesthetics in its meter location decisions in the City of Reading." Rather, it is about weighing the record evidence against the specific mandates of Sections 59.18 and 59.33 (adopting, *inter alia*, the requirements of 49 CFR § 192.353) to determine whether UGI's actions in implementing its meter relocation program in Reading contravened applicable regulations. As City witness succinctly stated:

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

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<sup>24</sup> See UGI R.B. at 23 (discussing eighth step).

<sup>25</sup> See Reading M.B. at 39-40 and Tr. 229, 305-06.

<sup>26</sup> See UGI R.B. at 24 (discussing ninth step).

<sup>27</sup> UGI R.B. at 25.

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

\* \* \*

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

This whole case, then, concerns whether the exceptions and limitations, established by 59.18 and 49 CFR 192.353, were adhered to in any meaningful way in the City of Reading.<sup>28</sup>

Nevertheless, the City agrees with the four critical points identified by UGI:

(1) UGI bears the sole responsibility for the safety of its natural gas service; (2) safety is the “overriding concern” when deciding where to locate meters; (3) the Complainants are not better than UGI or the Commission at balancing safety and aesthetics; and (4) customers in historic districts should be afforded the same level of safety as customers in non-historic districts.<sup>29</sup>

UGI also asserts that “Complainants ... completely overlook the undisputed record evidence that outside meters are safer than inside meters.”<sup>30</sup> The City does not know on what basis UGI can make such an assertion. This is perhaps the most disputed issue in this proceeding. The record evidence is not that outside meters are always or per se safer than inside meters.

In summarizing Complainants criticisms of UGI’s meter placements, UGI confuses the purpose of the City’s 15-foot proposal. As discussed later, safety, not aesthetics, is the overriding and sole reason for this proposal.

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<sup>28</sup> Reading St. No. 2 at 3-5.

<sup>29</sup> UGI R.B. at 25 (footnotes omitted).

<sup>30</sup> *Id.* at 26.

It is UGI, not Complainants, which fails to understand the significance of the so-called “undisputed” evidence UGI addresses. There were a substantial number of incidents not meeting the formal “incident” definition. Safety is not based on when there is a reportable incident. It is somewhat like purchasing insurance which may never be used. Safe locations avoid reportable incidents.

UGI quotes to the Commission’s observations in its *Final Rulemaking Order* in support for the claim that outside meters are safer than inside meters.<sup>31</sup> The reported data on leaks to which the Commission refers are for the entire Commonwealth, not just UGI’s service territory or specifically Reading. Leak surveys ensure a safer meter location. Access to meter sets cannot be denied and does not excuse UGI from compliance with applicable regulations. Moreover, by eliminating steel service lines and installing plastic service lines instead, the risk for natural gas incidents will be minimized.

UGI additionally refers to the Commission’s conclusion that outside regulators and meter installations were generally safe, except where there are special risks of vehicle strikes or vandalism.<sup>32</sup> UGI, however, misconstrues this conclusion and equates “safe” with “safer.” They are not the same thing. The absence of vehicle strikes does not mean the location is risk-free. Indeed, it is incorrect for UGI to assert that based upon its conclusory evidence and the Commission’s findings, outside meters are safer than inside. This oft-repeated assertion cannot be supported.

UGI contends that “Complainants are entirely unqualified” regarding meter safety and none of their witnesses are engineers, have ever worked in the gas industry or have any

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<sup>31</sup> *Id.* at 27.

<sup>32</sup> UGI R.B. at 28.

education or work experience related to gas safety.<sup>33</sup> However, the fact of the matter is that each of the City's witnesses has more practical experience with respect to Reading gas meters than UGI's witness who resides in Lebanon and is not a professional engineer or gas engineer. Indeed, Mr. Brown testified under cross that all his experience was in other UGI operations,<sup>34</sup> even admitting he does not "really do any engineering in [his] role."<sup>35</sup> Mr. Brown's opinions were little more than lay opinions by a witness who, unlike Reading's witnesses, does not receive service from a gas meter in Reading.

Contrary to UGI's assertions, most of what the City is proposing is not new and does not seek to impose "new regulatory standards on UGI."<sup>36</sup> Also, the 15-foot proposal is a common-sense proposal for safety, not aesthetics. The City's witnesses, all of whom reside in the City, have in many respects more relevant work experience than UGI witness Brown. While not professional engineers, two of the City's witnesses are on City Council and have more experience with respect to Reading's historic districts and narrow streets than UGI witness Brown, experience that would be valuable with respect to the consideration of meter placements.

**a. UGI Did Not Meaningfully Consider Inside Meter Locations for Historic Buildings (UGI R.B. at 29-37)**

The City does not dispute that utilities retain discretion under Section 59.18 to determine where to install or relocate meters, but the exercise of that discretion **must** include consideration of inside meter locations involving historic buildings and districts under Section 59.18(d)(1)(ii). The regulation does not define "consider" or provide input on what the contours of "consideration" must look like. However, consideration in this context requires more than lip

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<sup>33</sup> *Id.*

<sup>34</sup> Tr. 221-25.

<sup>35</sup> Tr. 303.

<sup>36</sup> UGI R.B. at 29.



service or adoption of purported guidelines in an operations manual, and the word “consideration” must have some substantive meaning.

The basic rules of statutory construction provide all words of a statute or regulation are to have meaning and not be mere surplusage.<sup>37</sup> In examining the plain language of statute or regulation, a tribunal must:

construe words and phrases according to rules of grammar and according to their common and approved usage. 1 Pa. C.S. § 1903(a); *Whitmoyer [v. Workers’ Compensation Appeal Bd.]*, 186 A.3d [947,] 954 [(Pa. 2018)]. In determining the common and approved usage or meaning of undefined statutory terms, courts may turn to standard dictionary definitions. *SugarHouse HSP Gaming, L.P. v. Pennsylvania Gaming Control Board*, 640 Pa. 169, 162 A.3d 353, 376 (2017); *In re Beyer*, 631 Pa. 612, 115 A.3d 835, 839 (2015).<sup>38</sup>

According to common and approved usage, the term “consider” ordinarily means “to think about carefully” especially with respect to “taking some action,” or to “take into account” deliberately. *Merriam-Webster’s Collegiate Dictionary* at 265-66 (11th ed. 2007). Moreover, even though it did not define “consider,” the Commission in its *Final Rulemaking Order* provided useful guidance on the matter. The Commission summarized the comments submitted by the Energy Association of Pennsylvania (“EAP”), in pertinent part, as follows:

EAP suggests that **the meters should be placed inside, and associated risers and regulators, where feasible, should be located outside of the building.** EAP believes that this should strike an appropriate balance between safety and architectural concerns by helping to ensure, in the event a steel service line is hit or disrupted, that gas flows would likely flow outside of a building, while helping to preserve the architectural integrity of historic areas since outside risers and regulators are relatively small and unobtrusive.<sup>39</sup>

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<sup>37</sup> The rules of statutory construction and interpretation, which also apply to regulations, *Presock v. Dept. of Military & Veterans Affairs*, 855 A.2d 928, 931 (Pa. Cmwlth. 2004), state that the object of all interpretation is to ascertain and effectuate the intention of the General Assembly or, in this instance, the Commission. 1 Pa.C.S. § 1921(a). When the words of the regulation are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b); *Energy Conservation Council of Pa. v. Pa. P.U.C.*, 995 A.2d 465, 483 (Pa. Cmwlth. 2010).

<sup>38</sup> *Marcellus Shale Coalition v. Dep’t of Envtl. Prot.*, 193 A.3d 447, 472 (Pa. Cmwlth. 2018).

<sup>39</sup> *Final Rulemaking Order*, Attachment One, 44 Pa.B. 5835, 5865 (emphasis added).

In discussing the comments received by interested parties, the Commission declared:

*Discussion:* Generally, we agree that historic preservation consideration should be taken into account when considering where and how to install gas metering and regulating equipment. **We also agree with EAP's recommendations on placing the meter inside and regulators outside, when feasible**, and shall adopt the amendment with respect to the 'historic district' definition recommended by PHMC [Pennsylvania Historical and Museum Commission].<sup>40</sup>

Although the Commission did not embody this recommendation in the specific language of Section 59.18, it gave a clear indication in its discussion that, in the historic districts, utilities should consider placing meters inside and regulators outside, when feasible.

In this case, the record evidence demonstrates that UGI has failed to carefully think about inside meter placements in Reading's six historic districts since September 13, 2014. As the customer notification letters illustrate, UGI's "company policy" was to move meters outside and does not constitute meaningful consideration.<sup>41</sup> To the extent that any consideration was afforded by UGI, it was an *ex post facto* consideration at best and in response only to the filing of the instant Complaints.

It is also important to draw a distinction between discretion and consideration. UGI quotes from portions of the Commonwealth Court's decision in *UGI Utilities, Inc. v. City of Reading*, 179 A.3d 624 (Pa. Cmwlth. 2017), which stated that "the decision whether to install a meter indoors involves an exercise of discretion by the utility." *Id.* at 630. "Discretion" is not the same thing as "consideration" and it appears UGI has conflated these terms. Consideration must be undertaken by UGI irrespective of its discretion to decide where to place meters. Moreover, contrary to UGI's assertion, "mitigation" of the aesthetic impact of the meter is not a consideration, nor is it reflective of safety.

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<sup>40</sup> *Id.* (emphasis added).

<sup>41</sup> See Reading Exhs. JS-10, JS-11, JS-12.

Despite safety concerns over inside meters, UGI argues that it still considers inside placements when determining to install or relocate a meter and claims support from the PUC SD with respect to specific meter placement discussions.<sup>42</sup> There is no record evidence regarding “support” from the PUC SD, and the Commission’s Bureau of Investigation and Enforcement withdrew from participation in the proceeding before UGI’s assertion was made. Moreover, contrary to UGI’s speculations, the City is not seeking to have aesthetic concerns about exterior meters elevated over gas safety concerns.<sup>43</sup>

While UGI claims that it has not treated the consideration language as empty verbiage – pointing to the steps it has taken – for the reasons stated herein and in its Main Brief,<sup>44</sup> the City believes it has. The revisions to UGI’s GOM, in particular, do not constitute meaningful guidance and consideration. It also fails to justify UGI’s actions between September 13, 2014 and July 31, 2016 and essentially confirms that UGI undertook no consideration during this period, which coincides with the relocation of nearly all meters identified in the Joint Stipulation and at issue in this proceeding. Likewise, the avoidance of placing meters in less obtrusive locations should be a matter of common sense, and UGI’s actions in this regard exemplify placing aesthetics above safety.

On pages 33-35 of its Responsive Brief, UGI again discusses its customer notification letter and cites to the “current” letter. As discussed above in Section II.D.1.c., the record evidence establishes that the customer letters used from September 2014 until *at least* October

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<sup>42</sup> UGI M.B. at 32.

<sup>43</sup> *See* UGI M.B. at 32.

<sup>44</sup> Reading M.B. at 32.

2017 contained significantly different wording, which unequivocally stated that the customers' meters were being relocated to the outside due to UGI company policy.<sup>45</sup>

UGI quotes an excerpt from the notice letter purportedly being used today<sup>46</sup> in support of its "consideration" of inside meter locations for historic districts, but the claimed consideration is *ex post facto* just like the earlier notice letters because the decision to move the meter has already been made. It is a gross misstatement for UGI to assert that "these letters are not declarations that meters will be moved outside, regardless of whether the building is historic or built in an historic district."<sup>47</sup> In point of fact, the relocation decision has already been made thirty days in advance of the notice. Furthermore, the "reconsideration" contentions at the bottom of page 34 are all window dressing. UGI fails to explain why its earlier notice letters which were used for more than three years failed to advise customers of their right to seek "reconsideration" or how those earlier letters prove that UGI's final determination was "subject to further deliberations by UGI and the customer."<sup>48</sup> UGI cannot substantiate further deliberation because the decisions had been made and were final per "company policy."

UGI's solution for a customer unsatisfied with the meter decision is "to remind the customer of his or her rights to file a complaint with [the] Commission."<sup>49</sup> The filing of a

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<sup>45</sup> See Reading Exhs. JS-10, JS-11, JS-12.

<sup>46</sup> UGI Exh. CB-16. Although purportedly in use since October 2017, this letter was only produced for the first time on the final day of hearing on August 23, 2018 and without any advance notice to Complainants or their counsel. Complainants were not, *inter alia*, afforded time to confirm with their constituents that this was indeed the letter currently being sent to customers. UGI could have easily produced this letter with its rebuttal testimony a month prior to hearing but chose not to do so. The timing for the introduction of this new letter is curious, and the City questions whether it is truly being used. In fact, recent correspondences received by Reading customers from UGI suggest UGI has reverted to its pre-October 2017 notice letters and advise that if the meter is located inside the building, it will be moved to a location outside the dwelling. See Reading Exhs. JS-10, JS-11, JS-12.

<sup>47</sup> UGI R.B. at 34.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 35.

complaint, however, as UGI should know, is neither practical nor swift. The instant complaints regarding meter placement decisions, which UGI is contesting vigorously, were filed in 2015 and 2016 and most likely will not be decided until well into 2019.

UGI contends that it has complied with the procedures outlined in its GOM when installing or relocating meters and accuses the City of failing to examine which version of the GOM was in effect at the time. A point being overlooked by UGI is that the prior version of the GOM was in violation of the regulations. As previously discussed, the prior version of the GOM, effective between July 5, 2011, to July 30, 2016, only considered inside meter locations “when an acceptable outside location is not available, suitable or when protection from ambient temperature is necessary to avoid meter freezing” and with the “prior approval of the Manager of Engineering.”<sup>50</sup> This is *prima facie* evidence that UGI failed to consider inside meter placements as required by amended Section 59.18(d) as of September 13, 2014 and continuing until at least July 31, 2016. Moreover, the after-the-fact revision of the GOM does not cure UGI’s violations because, at all times, Section 59.18 and other pertinent regulations trump the GOM regardless of the version in use.

As a final contention, UGI argues that there is “no protected right to inside meter locations and hence there is nothing to ‘confiscate.’”<sup>51</sup> The City agrees that in simple terms, there may be no protected right per se to inside meter locations, but the matter is far more complex and layered than this. Accordingly, the City incorporates by reference the analyses and arguments in CPHD’s Main and Reply Briefs in reply to UGI’s argument on this point.

The City must address one last matter under this section. It is UGI’s final solution for a disgruntled customer to switch energy providers. Telling a customer to switch to electricity,

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<sup>50</sup> UGI Exh. CB-4 at 2 (quoting Section 5.1); *see also* UGI St. No. 1 at 33-34.

<sup>51</sup> UGI R.B. at 36.

propane, or oil is even more confiscatory and belittles Reading's historic districts. Reading is trying to find a solution and does not believe UGI's suggestion is very constructive.

**b. UGI's Installation of Exterior Meters (UGI R.B. at 37-40)**

In Section VI.B.2. of its Responsive Brief, UGI contends that its exterior meters are being installed in locations that are protected from damage that is reasonably anticipated in compliance with Sections 59.18(a)(5) and (b)(1) and 49 CFR § 192.353(a) and that the City has failed to sustain its burden proving otherwise. What UGI does not understand is the fact that crashes do not occur does not mean that a location is safe. The City's 15-foot proposal is based upon common sense. Safety is the controlling factor, not aesthetics. As the photographs on record demonstrate,<sup>52</sup> locating meters within 15 feet of a narrow street – including in some instances as close as 3 feet<sup>53</sup> – which is travelled by two- and three-ton vehicles is unsafe even if there is no record of incidents.

To better understand UGI's obligations to consider potential damage by outside forces and place meters in protected locations above ground when feasible and practical, it is helpful again to refer the *Final Rulemaking Order* for guidance. In discussing

In discussing what will become Regulation 59.18(a)(5), concerning "potential damage by outside forces", the Commission stated:

**Clearly, having a meter or regulator on the outside near the street will raise the safety issue of vehicles crashing into the utility's facilities.** ... Although this provision may appear to be vague, it is very specific that the utility has the obligation to consider potential damage when locating outside meter sets.<sup>54</sup>

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<sup>52</sup> See Reading Exhs. JS-16, JS-22, JS-25, ML-1, ML-3.

<sup>53</sup> See Exhibits 1 and 2 to ALJ Exh. 1.

<sup>54</sup> *Final Rulemaking Order*, Attachment One, 44 Pa.B. at 5860 (emphasis added).

In its discussion of 59.18(b)(1), regarding “a protected location,” the Commission further stated:

As for the phrase “protected location,” the definition of “protect” is to “cover or shield from exposure, injury, or destruction.” See Webster’s Ninth Collegiate Dictionary. We believe the use of this term and the definition give enough direction to the utility in locating the meter or regulator that we do not have to clarify the phrase further by attempting to give specific examples of a “protected location.” **For example, if the utility locates a meter or regulator out near the curb, in the open, and a vehicle accident causes damage, the location will probably be determined by the Commission to be not protected and in violation of the regulation.**<sup>55</sup>

These excerpts confirm the Commission clearly contemplated the possibility of outside meters being close to the curb and the danger this would pose from vehicular impact. In both instances, the Commission indicated that this was a safety risk and a likely violation of the Section 59.18. As the City explained in its Main Brief, the evidence of record in this case confirms that UGI’s actions in placing exterior meters routinely located meters out in the open near the curb and without protection.<sup>56</sup>

In its Responsive Brief, UGI also argues that vehicle strikes and near misses are somehow evidence of outside meters being safer generally than inside meter sites because when there is a strike, gas will be dispersed into the atmosphere as opposed to gas concentrations to potentially dangerous levels in confined, inside locations. What UGI overlooks is that inside meters would not have been struck in the first place. Stated differently, there would have been no leaks from strikes and near misses if the meters had been placed inside. The absence of strikes does not mean a location is safe. Also, records are not kept regarding near misses.

Despite UGI’s contention, Complainants’ 15-foot proposal is not “inherently contradictory.” Exposed exterior regulators do not create the same safety concerns as exposed

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<sup>55</sup> *Id.* at 5863.

<sup>56</sup> *See generally* Reading M.B. at 35-41.

meter sets. The outside placement of regulators was even contemplated by the Commission during its rulemaking, as UGI acknowledges.<sup>57</sup>

The City acknowledges that many Pennsylvania cities, such as Pittsburgh, Philadelphia and Harrisburg, “are old, compact, dense [with] houses located close to city streets,”<sup>58</sup> but Reading is unique in these respects. Outside meters are not safer in Reading for the reasons discussed throughout the City’s Main and Reply Briefs and its testimony of record. Moreover, contrary to UGI’s oft-repeated assertion, the record evidence and the Commission’s previous findings do not establish or expressly conclude that outside meters are safer than inside meters in Reading.

**3. CPHD’S Constitutional Arguments Have Merit (UGI R.B. at 41-45)**

In Section VI.C. of its brief, UGI argues that CPHD’s constitutional arguments should be rejected. Those arguments are fully addressed in CPHD’s Reply Brief and incorporated herein by reference.

**4. Complainants’ Requested Relief Is Reasonable and Should Be Granted (UGI R.B. at 45-56)**

In Section VI.D. of its Responsive Brief, UGI contends that the City’s requested relief is unreasonable and should be rejected. UGI, for some reason, fails to understand that the City is not seeking a reconsideration of the Commission’s *Final Rulemaking Order*. On the contrary, Reading, through this complaint proceeding, is seeking to ensure that UGI complies with the regulations at 52 Pa. Code § 59.18 and 49 CFR § 192.353(a). The City is not seeking to impose

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<sup>57</sup> See *Final Rulemaking Order*, Attachment One, 44 Pa.B. at 5865.

<sup>58</sup> R.B. at 40.



more restrictive standards, but rather to have UGI comply with its regulatory obligations. It is UGI which must reevaluate its actions and comply with the plain language of the regulations.

A new rulemaking is not even the “proper procedural vehicle” to impose new regulatory requirements as UGI asserts.<sup>59</sup> UGI ignores the fact that it is the City’s position that UGI’s actions are in violation of the regulations. The City is not trying to impose more restrictive standards.

**a. Complainants Are Not Improperly Proposing New Requests for Relief for the First Time in Their Main Briefs (UGI R.B. at 46-49)**

UGI first argues that Complainants improperly propose new requests for relief in briefing which differs from the relief sought in the Complaints and testimony. UGI’s argument is without merit. The need for retroactive relief falls squarely on UGI which continued to relocate meters after the filing of the Complaints. UGI’s own actions have created the need for retroactive relief. UGI should have waited for the Complaints to be resolved for clarification before moving forward and would not have been prejudiced in doing so since the company has until September 2034 to complete the replacement of existing facilities in compliance with the Section 59.18.

In further support of its argument, UGI lists twelve matters which UGI claims were never raised by CPHD before the close of the record. It is the City’s understanding that UGI’s contentions will be addressed by CPHD in its Reply Brief, and, therefore, there should be no need for the City to address UGI’s contentions here regarding CPHD. The City notes, however, that UGI overlooks the consolidation of the proceedings and that the relief requested includes not only relief specifically requested during the proceeding, but also additional relief deemed appropriate and consistent with the relief specifically requested.

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<sup>59</sup> UGI R.B. at 46.

UGI's due process claims ring hollow, as there have been no due process violations. UGI has been provided notice and an opportunity to be heard, as well as a full and fair opportunity to make due process contentions in its Responsive Brief. The City is not presenting new evidence or new proposals for the first time in its Main Brief. By asking the Commission to disregard the relief requested by Complainants, UGI is trying to avoid resolution.

**b. The City Is Not Requesting the Imposition of New Regulatory Standards (UGI R.B. at 49-52)**

UGI next argues that Complainants' requested relief should be rejected because it seeks to impose new regulatory standards on UGI. The City, however, is not seeking to impose new standards that conflict with the regulations. The City is only seeking to have the regulations enforced and, in doing so, determine whether UGI's actions in Reading constitute a violation of 52 Pa. Code § 59.18. As City witness Slifko succinctly stated:

As previously discussed, UGI is responsible for any retroactive relocations of meters after the filing of the Complaints. The accusations on page 50 of UGI's brief ignore safety which UGI wants to remove from the location decision equation. The City still believes that safety should control. The federal regulations permit meters to be placed inside and what was safe one day is not suddenly unsafe the next.<sup>60</sup>

In discussing the "15-foot rule,"<sup>61</sup> UGI ignores bollards altogether. The City is not asking that UGI be subject to more restrictive standards. The language of the regulations should govern and, thus, where there is risk of damage to the meters from outside forces, such as a vehicular strike, appropriate protective measures should be installed. Despite criticizing the

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<sup>60</sup> See 49 CFR § 192.353 (permitting both inside and outside meter locations).

<sup>61</sup> UGI R.B. at 51.

City's proposed 15-foot rule, UGI, somewhat paradoxically, proposes only a 10-foot rule to resolve safety concerns with respect to Reading's narrow streets.

UGI also argues that if the "Commission wants to adopt new regulatory standards, it must do so through a statewide rulemaking proceeding...."<sup>62</sup> For the reasons previously stated, UGI ignores that Reading is unique. The City is not asking that 15 feet apply elsewhere. Safety must control, and the record in this proceeding is sufficient for the adoption of 15 feet in Reading.

Lastly, UGI contends that Complainants' "requested relief would foreclose any ... customer impact in determining where to locate a meter."<sup>63</sup> As a possible resolution, the City asks whether UGI would allow customers to make the decision, provided safety concerns were satisfied?

**c. Under the Circumstances, Complainants' Request for Retroactive Relief Is Reasonable (UGI R.B. at 53-54)**

UGI also argues that Complainants' alleged request to impose new regulatory standards retroactively is unreasonable.<sup>64</sup> The City has already addressed this matter in the previous section. The City reiterates, however, that UGI should be responsible for retroactive relocations because it continued to relocate meters after the Complaints were filed, knowing full well that the meter locations were an issue and being called into question. UGI, therefore, bears the risk should the Commission issue a decision adverse to the position taken by UGI in this case. UGI should also be responsible for relocation costs since it created the need to relocate the meters. Under no circumstances should customers be held responsible for these costs.

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 52.

<sup>64</sup> *Id.* at 53.

With respect to UGI's concerns about the 18 month timeframe proposed by the City, that timeframe could be extended if necessary. However, UGI should be directed to halt further meter relocations in the interim.

**d. UGI's Alternative Proposed Commitments to Address the City's and CPHD's Concerns (UGI R.B. at 54-56)**

Finally, in the event relief is warranted (and the City submits it is), UGI offers "alternative proposed commitments" that should replace the relief being sought by Complainants. The City previously addressed these alternative commitments in its Main Brief.<sup>65</sup> Those arguments notwithstanding, the City submits that it is misleading to say that this proceeding is a matter of balancing gas safety concerns against aesthetic concerns. It is not really a case of balancing. Safety is the primary concern, but safety and aesthetics are not mutually exclusive, as a meter location could be both safe and aesthetic.

Contrary to UGI's assertion that it "has tried to go above and beyond the Commission's current requirements,"<sup>66</sup> any relief granted in this proceeding cannot be limited to the alternative commitment proposed by UGI. The first two alternative proposals for the "new standard" give too much discretion to UGI. This could be resolved by naming an independent participant to the panel such as someone from the Energy Association of Pennsylvania.

With respect to the historic districts proposal (alternative commitment #3), the City raises two concerns. First, it appears that an inside meter is only plausible if criteria (a), (b), (c), and (d) are present for each location. The City believes that only one criterion should need to be met to allow meters to be located inside. Second, the City would support the Commission in this

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<sup>65</sup> Reading M.B. at 42-43.

<sup>66</sup> UGI R.B. at 56.

proceeding specifically declaring the “new standard” as being safe and reasonable for each location so long as the location meets at least one of four outlines criteria.


Notwithstanding the foregoing, the City submits that should the Commission sustain the Complaints, any relief granted should be consistent with the relief sought by the City, not UGI’s alternative commitments.

### III. CONCLUSION

Contrary to UGI's assertions, the City has met its burden in this case. The City has amply demonstrated that UGI failed to give meaningful consideration to inside meter placements in Reading's historic districts since September 13, 2014.<sup>67</sup> The City also has clearly established that, during this same period, UGI placed outside meters in unsafe locations throughout Reading, without adequate protection and without due consideration for potential damage from vehicles and other outside forces.<sup>68</sup> Accordingly, UGI's actions constitute direct violations of 52 Pa. Code §§ 59.19(a)(5), (b)(1), (d)(1)(ii), and (d)(1)(v) and 49 CFR § 192.353(a).

For the reasons set forth above and in its Main Brief, the City respectfully requests that the Commission sustain the City's and CPHD's respective Complaints; grant, as appropriate, the relief specifically requested by the City in this Reply Brief and in Sections V.D.1.c. and V.D.2.b. of its Main Brief; and grant all other relief deemed appropriate and consistent with the foregoing, including the imposition of civil penalties pursuant to 66 Pa. C.S. § 3301.

Respectfully submitted,

  
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DATED: December 7, 2018

<sup>67</sup> See, e.g., Reading M.B. at 28-34; Reading St. No. 2 at 14-19.

<sup>68</sup> See, e.g., Reading M.B. at 35-38; Reading St. No. 2 at 23-30; Reading Exhs. JS-16, JS-22, JS-25, ML-1, ML-3.

CERTIFICATE OF SERVICE

I hereby certify that I have this 7<sup>th</sup> day of December, 2018, served a true and correct copy of the foregoing document, upon the upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54:

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