

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

The genesis of these proceedings is a dispute between the City of Reading (City or Reading) and UGI Utilities, Inc. – Gas Division (UGI or Company) regarding the relocation of meters from the inside of buildings to the outside of buildings. While UGI’s policy approach to the relocation of meters from inside to outside in historic districts did not initially account for the preservation of historic resources, in practice and with the amendment to its policy guidance, UGI’s approach is now consistent with the regulations of the Pennsylvania Public Utility Commission (Commission or PUC). The Complainants failed to prove that UGI’s meter placements otherwise violate the Commission’s regulations because there is no evidence that these outside meters have been placed in dangerous locations.

HISTORY OF THE PROCEEDINGS

On November 25, 2015, the Centre Park Historic District, Inc. (CPHD), an historic district within the City of Reading, filed a formal complaint at Docket No. C-2015-2516051 which alleged that UGI violated the Commission's regulation regarding the placement of meters in historic districts, 52 Pa.Code § 59.18. UGI filed an answer denying the material allegations of the complaint on December 15, 2015. In UGI's view, Section 59.18 grants it discretion in the placement of meters in historic areas and its actions have been appropriate as required by the Public Utility Code.

A prehearing conference was held on that complaint on February 11, 2016. At that conference, counsel for the City of Reading and Centre Park Historic District, Inc. notified me that the City would be filing its own complaint which would effectively "subsume" the complaint made by CPHD.

On February 17, 2016, the City of Reading filed a formal complaint at Docket No. C-2016-2530475 against UGI also challenging UGI's placement of meters in historic districts as well as the outside placement of meters in unsafe locations in other districts of the City. On March 14, 2016, UGI filed an answer denying the material allegations of the complaint and also preliminary objections seeking dismissal of the complaint. The City of Reading filed an answer to the preliminary objections on March 24, 2016. By interim order dated March 29, 2016, the preliminary objections were denied.

A further prehearing conference was held on March 30, 2016. Counsel for the City of Reading, CPHD and UGI appeared. The Complainants requested that their complaints be consolidated. UGI did not object. Following a discussion of the issues raised and implicated by the complaints, the parties agreed that discussion and consultation would be fruitful to narrow or resolve the issues. A further conference was scheduled to discuss the progress made by the parties in their discussion and what further proceedings may be appropriate to resolve the dispute.

A further prehearing conference was held on July 14, 2016. The parties had not made progress toward settlement of their dispute; therefore, a litigation schedule was set. The Commission's Bureau of Investigation and Enforcement (BIE) entered an appearance on August 10, 2016.

On September 1, 2016, UGI filed a petition for interlocutory review and answer to material questions with the Commission. In its Petition for Interlocutory Review, UGI sought interlocutory Commission review and answers to the following Material Questions:

(1) Whether the CPHD's and the City's Complaint should be dismissed because the relief requested – impose new rules and standards concerning meter locations that do not currently exist under the PUC's regulations – is beyond the scope of a formal complaint proceeding and should be addressed through a petition for amendment of the PUC's regulations pursuant to 52 Pa.Code § 5.43.

(2) Alternatively, whether the scope of the evidence and issues to be addressed in this proceeding should be limited to whether the locations of UGI's meters violate the Public Utility Code or PUC regulations as currently enacted.

BIE and UGI filed a joint motion to modify the litigation schedule. The request was granted and by interim order dated September 2, 2016, the litigation schedule was suspended pending action by the Commission on UGI's petition.

By Opinion and Order entered February 9, 2017, the Commission declined to answer the material questions and returned the matter to the Office of Administrative Law Judge for disposition. By prehearing order dated February 22, 2017, a further prehearing conference was scheduled for March 14, 2017. The parties were also directed to provide prehearing memoranda which detailed the status of discovery and proposed a procedural schedule which included dates for evidentiary hearings.

The parties filed their prehearing memoranda as directed. By agreement, the prehearing conference was rescheduled for Thursday, March 16, 2017. At my request, the

Complainants and UGI also filed supplemental prehearing memoranda on March 16, 2017, which addressed specific discovery issues. The prehearing conference convened on March 16, 2017. Counsel for the Complainants, UGI and BIE appeared. The bulk of the conference was devoted to the discussion of several outstanding discovery issues.¹

Following the conference, I issued a Sixth Prehearing Order which, among other things, directed the Complainants to produce spreadsheets setting forth a list of disputed meters which included the date a permit was issued by the City of Reading and the date the meter was relocated (Stipulated Spreadsheets). UGI was provided with an opportunity to respond by stipulating or objecting to facts related to each contested meter. Several extensions were granted and ultimately, the Complainants were directed to serve the final Stipulated Spreadsheets by May 24, 2017.

The Sixth Prehearing Order also directed the parties to complete all discovery by May 30, 2017, and scheduled a further prehearing conference for June 15, 2017.

A further prehearing conference was held on June 15, 2017. The Complainants and UGI each filed prehearing memoranda. Various matters relating to these proceedings were discussed. No party requested an extension of the May 30, 2017 deadline for discovery or expressed a desire to depose witnesses.

Following the conference, I issued an interim order on June 15, 2017, which set forth deadlines for the filing of dispositive motions and responses. The order also directed the parties to schedule a settlement conference and serve a status report.

On July 6, 2017, UGI filed a motion for summary judgment. That motion was supported by the Stipulated Spreadsheets and certain photographs which were produced by the Complainants in discovery and referenced on the Stipulated Spreadsheets. The motion did not include a legal memorandum. The Complainants filed a response to UGI's motion on July 26,

¹ Those matters were disposed of by interim order on March 21, 2017.

2017. Also, on July 6, 2017, the Complainants filed a motion for partial summary judgment. UGI filed a response to the motion on July 26, 2017.

The Complainants' motion for partial summary judgement was denied in its entirety by interim order dated September 7, 2017. UGI's motion was granted in part and denied in part. Because the motion was partially granted regarding the placement of 337 meters, Commission regulations required the decision to be served as an initial decision subject to exceptions.² That initial decision was issued on September 7, 2017.

UGI filed exceptions on September 27, 2017.³ On October 5, 2017, I issued an order suspending the litigation schedule, pending action by the Commission on UGI's exceptions. The Complainants filed replies to the exceptions on October 6, 2017.

On October 31, 2017, UGI filed a motion to vacate the October 5, 2017 interim order and filed a letter with the Commission requesting permission to conditionally withdraw its exceptions. The Complainants objected to UGI's motion and request to conditionally withdraw its exceptions on November 10, 2017.

By interim order dated November 16, 2017, UGI's motion to vacate the October 5, 2017 interim order was granted in part. In place of the suspension of the litigation schedule, the November 16, 2017 interim order set a litigation schedule which required the filing of written direct testimony within 60 days of the Commission's order disposing of UGI's exceptions or request to withdraw the exceptions.

On December 21, 2017, the Commission issued an opinion and order which denied UGI's request to conditionally withdraw its exceptions, denied the exceptions and adopted the September 7, 2017 Initial Decision and ordering paragraphs. Also, on December 21,

² 52 Pa.Code § 5.102(d).

³ UGI did not challenge the ruling on the placement of 337 meters, but on several of the remaining issues upon which summary judgment was denied. Normally, the denial of summary judgment is not subject to review by the Commission absent a request for interlocutory review.

2017, I issued an interim order which required the filing of written testimony by February 23, 2018, and hearings in Harrisburg in March 2018.

On January 12, 2018, counsel for the Complainants withdrew their appearance. Jan D. Krafczek, Esquire, entered his appearance on behalf of the City of Reading only. On February 12, 2018, I received an Unopposed Motion for 60 Day Stay of Proceedings and Extension of Deadlines filed on behalf of the City of Reading. By interim order dated February 15, 2018, the motion for a continuance was granted to permit the parties additional time to engage in settlement negotiations. That order extended the deadline for the filing of direct testimony to April 23, 2018, and scheduled evidentiary hearings for May 15-17, 2018.

BIE withdrew its appearance on February 2, 2018.

On April 4, 2018, Attorneys Charles E. Thomas, Jr. and Charles E. Thomas, III, entered their appearance on behalf of the City of Reading. On April 17, 2018, the City of Reading filed a request for further continuance in order to permit counsel an opportunity to familiarize themselves with the voluminous record in this case and to schedule further settlement discussions with UGI. UGI did not object. By interim order dated April 18, 2018, the deadline for filing written testimony was suspended and a status conference was scheduled to take place on April 23, 2018.

The status conference convened as scheduled. Counsel for the City of Reading and UGI appeared. The purpose of the status conference was to discuss the status of settlement discussions which had taken place since February 15, 2018, and to schedule further proceedings for the prompt resolution of the complaint of the City of Reading. City Attorney Jan D. Krafczek reported on the City's efforts to secure new counsel with specialized experience to negotiate and draft an appropriate settlement with UGI, for consideration by the City administration and City council. At least one meeting had been held with UGI since the continuance was granted in February 2018. Attorney Charles E. Thomas, Jr. also discussed progress which had been made in generating proposals for settlement and was confident in counsel's ability to work collaboratively. Counsel for UGI, Attorneys Devin Ryan and

Mark Morrow, agreed that UGI remained willing to discuss an amicable resolution of the complaint. UGI did not object to the procedural schedule proposed by the City of Reading in its April 17, 2018 Motion for Continuance. In view of the willingness of the parties to discuss resolution of the dispute and the Commission policy promoting settlement, the continuance was granted by interim order dated April 24, 2018. That order also set deadlines for the filing of written direct testimony, and scheduled hearings to take place in Harrisburg in August 2018.

On May 16, 2018, and June 4, 2018, Attorneys Scott Hoh and Rich Raiders, entered their appearance on behalf of the Centre Park Historic District, Inc.

The Complainants filed the written testimony of four witnesses along with voluminous exhibits on Friday, June 29, 2018. On July 9, 2018, UGI filed a motion to strike portions of the testimony and exhibits on a variety of grounds. The Complainants filed a timely response on July 17, 2018. By interim order dated July 19, 2018, the proposed testimony of Peggy Harter⁴ was stricken, but the motion was denied in all other respects.

UGI filed its written direct testimony of one witness on July 27, 2018.

Evidentiary hearings were held in Harrisburg on August 22 and August 23, 2018. The Complainants offered the written direct testimony of Jeff Waltman, Michael Lauter and John Slifko, along with the accompanying exhibits for admission into the record. Following the cross-examination and redirect examination of these witnesses, Reading Statements 1, 2 and 4, and the attached exhibits were admitted into the record. UGI Cross-Examination Exhibits 1-4, were also admitted. UGI offered the written direct testimony of Christopher Brown, along with accompanying exhibits for admission into the record. Following cross-examination and redirect examination, the written testimony of Mr. Brown was admitted as UGI Statement 1, along with exhibits CB-1-15. Exhibit CB-16 was also offered and admitted into the record. The hearings and prehearing conferences generated a transcript of 440 pages.

⁴ Reading St. 3.

On August 27, 2018, I issued an interim order which directed the parties to file an updated Joint Stipulation, including updated Stipulated Spreadsheets and set a schedule for the filing of briefs. This stipulation was timely filed and admitted into the record as ALJ Exhibit 1. The Complainants filed their main briefs on October 18, 2018. UGI filed its main brief on November 16, 2018. The Complainants filed reply briefs on December 7, 2018. By interim order dated December 11, 2018 the record was closed.

On December 28, 2018, the City of Reading filed a Motion to Reopen the Record in order to introduce copies of a notification letter from UGI which was sent to certain customers in December 2018. UGI filed a response in opposition to the motion on January 7, 2019. The motion was denied by interim order dated January 9, 2019.

This dispute is ready for decision.

FINDINGS OF FACT

1. Complainant, City of Reading, is a city of the third class governed under the Third Class City Code, 11 Pa.C.S. § 10101 *et seq.*, through a Home Rule Strong Mayor/Part-Time Council form of government. (Waltman, Reading St. 1 at 1)

2. Reading was founded in 1748 and has one of the greatest collections of historic architecture and historic neighborhoods in the country. (Slifko, Reading St. 2 at 4)

3. The City contains six historic districts: Queen Anne Historic District (listed on the National Register of Historic Places); Centre Park Historic District (locally designated historic district); Callowhill Historic District (locally designated historic district); Prince Historic District (locally designated historic district); Penn's Common Historic District (locally designated historic district); and Heights Conservation District (locally designated historic district). (Slifko, Reading St. 2 at 8-9; Reading Exs. JS-3 and JS-4)

4. The City also has several areas beyond the boundaries of the six historic districts which are eligible for national registration. (Slifko, Reading St. 2 at 9; Reading Exs. JS-5 and JS-6)

5. Located slightly northwest of Reading's downtown, CPHD comprises approximately 25 City blocks with two major arteries (Centre Avenue and N. 5th Street), a number of cross streets, and an equal number of tiny half-streets, and contains a varied mix of housing, consisting mostly of middle-class row houses and semi-detached homes. (Lauter, Reading St. 4 at 2)

6. Reading is a densely built-up city with properties consisting of mainly row houses and semi-detached homes in close proximity to the street and with significant traffic. (Slifko, Reading St. at 24)

7. UGI provides natural gas distribution service to approximately 386,000 customers throughout a service territory that includes all or portions of 16 counties in Pennsylvania. (Brown, UGI St. 1 at 3)

8. UGI has almost 20,000 customer accounts within the City. (Slifko, Reading St. 2 at 3)

9. "Betterment projects" are projects undertaken to address cast iron mains pursuant to Act 11 of 2012 and amended Section 52 Pa.Code § 59.18. (Brown, St. 1 at 4)

10. Typically, cast iron mains in urban areas are larger-diameter pipes that operate at low pressure. (Brown, UGI St. 1 at 11)

11. 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. (Brown, UGI St. 1 at 11)

12. Such smaller diameter pipes then operate at medium pressure to offset the reduction in pipe diameter. (Brown, UGI St. 1 at 11)

13. In addition, the elevated pressure and resultant higher capacity improves system reliability and helps maintain adequate levels of service to customers. (Brown, UGI St. 1 at 11)

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. (Brown, UGI St. 1 at 11)

15. 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. (Brown, UGI St. 1 at 11)

16. 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. (Brown, UGI St. 1 at 11)

17. UGI's Gas Operations Manual (GOM) contains written rules governing, *inter alia*, UGI's practices related to meter, regulator, and service line relocation and installations. (Brown, UGI St. 1 at 9; UGI Ex. CB-5)

18. Although Section 59.18 of the Commission's regulations became effective in 2014, UGI continued to rely on its Company policy which was set forth in the GOM, which had been in place since 2011. (Brown, UGI St. 1, Ex. CB-4)

19. UGI's initial policy to implement Section 59.18 was to require outside meter locations in all service locations, including historic districts. (Brown, UGI St. 1 at 20)

20. In UGI's view, it is not appropriate to "elevate aesthetic concerns over public safety considerations." (Brown, UGI St. 1 at 18, 40; see also UGI St. 1 at 20)

21. UGI was concerned if the Company permitted a meter to remain inside, it ran the risk of exposure to enforcement action by the Commission in the event that its decision was later determined to be unreasonable. (Brown, UGI St. 1 at 18)

22. UGI's initial policy was to reject inside meter placements in non-federal historic districts and to adopt standards for meter placement in federal historic districts that did not differ from non-historic districts. (Brown, UGI St. 1 at 20)

23. Pursuant to UGI's 2011 GOM, an inside meter location could be permitted if authorized by the Manager of Engineering. (Brown, UGI St. 1 at 34; UGI Ex. CB-4)

24. When the Company was installing and relocating meters consistent with this policy, UGI received complaints from the City and CPHD (collectively, Complainants) as well as others concerning its placement of meters in the City of Reading. (Brown, UGI St. 1 at 21)

25. In response, UGI met several times with various City officials and other local interested parties to discuss meter placement issues. (Brown, UGI St. 1 at 21)

26. The City also asked the Commission to look into UGI's meter placement and maintenance decisions and to participate in meetings with interested parties. (Brown, UGI St. 1 at 21-22)

27. As a result, PUC Gas Safety Division (PUC SD) representatives and City officials did walking tours in the City to observe UGI's actions. (Brown, UGI St. 1 at 21)

28. UGI also involved PUC SD field safety inspectors in reviewing certain meter placement decisions where there was strong customer opposition. (Brown, UGI St. 1 at 21)

29. It was UGI's understanding based on these reviews that the PUC SD supported⁵ UGI's implementation policies and meter placement considerations and that no remedial action was required. (Brown, UGI St. 1 at 21)

30. 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 Slifko, who is a resident in CPHD, Hans Bell, who is the current Chief Operations Officer of UGI, and UGI witness Christopher Brown. (Brown, UGI St. 1 at 22)

31. At this meeting, UGI explained its meter placement policy, and according to Mr. Brown, PUC SD representatives confirmed that they believed UGI's policies to be consistent with the intent of the Commission's regulations. (Brown, UGI St. 1 at 22)

32. According to Mr. Brown, Hans Bell indicated that 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. (Brown, UGI St. 1 at 22)

33. 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. (Brown, UGI St. 1 at 34)

34. 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. (Brown, UGI St. 1 at 34)

⁵ No witness from PUC SD was called to testify at the hearing.

35. Following the revision to the GOM, UGI revised its standards for meter placement in both federally designated historic districts and also locally designated historic districts. (Brown, UGI St. 1 at 20)

36. UGI developed an on-line process to create an additional channel for customers to ask for reconsideration of initial meter location decisions. (Brown, St. 1 at 21)

37. The revised policy discourages the placement of meters in front of distinguishing features of historic district properties. (Brown, UGI St. 1 at 34)

38. 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 Ex. CB-5, p. 9)

39. 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 Ex. CB-5, pp. 9-10)

40. When meeting with customers, UGI will analyze 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; Brown, UGI St. 1 at 30, 34; UGI Ex. CB-5)

41. UGI agreed to work with the City to have constituent complaints submitted to the City appropriately routed to UGI officials for response. (Brown, UGI St. 1 at 21)

42. 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. (Brown, UGI St. 1 at 25)

43. The 30-day notice letters sent to customers in Reading's historic districts after the revision of Section 59.18 in September 2014, stated that if the customer's meter was located inside, it would be moved outside, and failed to advise customers that UGI would consider an inside meter placement. (Reading Exs. JS-10 and JS-12)

44. This letter provided the customer contact information for UGI as well as the PUC's Bureau of Consumer Services (BCS). (Brown, UGI St. 1 at 25-26)

45. The letter also provided the customer with 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. (Brown, UGI St. 1 at 26)

46. The Company's current customer notification letters state, 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 Ex. CB-16) (emphasis in original)

47. Company personnel have met on several occasions with homeowners and interested parties to discuss the outside meter placement locations in advance of the Company's work. (Brown, UGI St. 1 at 36)

48. 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. (Brown, UGI St. 1 at 30)

49. At these meetings, UGI and the customer typically discuss the safety concerns regarding inside meter locations, the preference for outside meters and regulators with limited exceptions, and potentially less obtrusive locations for the meter that would make it completely or partially hidden from view. (Brown, UGI St. 1 at 30)

50. In most cases, UGI and the customer are able to determine a suitable outside location that is acceptable to UGI and the customer. (Brown, UGI St. 1 at 30-31; 36)

51. 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. (Brown, UGI St. 1 at 36)

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

53. Rather, UGI relies on the customer to provide its personnel with information regarding the historic features of the property. (N.T 397)

54. UGI has been selective in the placement of meters and avoids locations where vehicular damage may be reasonably anticipated. (Brown, UGI St. 1 at 37)

55. 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. (Brown, UGI St. 1 at 37)

56. The last "incident" reported to the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the United States Department of Transportation (DOT) that related to vehicular damage to outdoor meter sets occurred in 1981. (Brown, UGI St. 1 at 48)

57. The City's proposal that meters should be placed 15 feet or more from the street is based solely on Mr. Slifko's analysis of news reports of accidents where a car has struck a meter. (N.T. 207-208)

58. Mr. Slifko is not an engineer. (N.T. 169)

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.⁶ A person seeking affirmative relief from the Commission has the burden of proof.⁷

In analyzing the facts and arguments in this matter, it is important to keep in mind the procedural posture of the dispute. This matter is a formal complaint proceeding. It is not a Commission investigation. The Complainants are seeking affirmative relief from the Commission; therefore, they have the burden of proof. This means that they must establish a material fact by a preponderance of the evidence, and must show that the Company has violated the Public Utility Code or Commission orders and regulations.⁸ Unless the Complainants establish that UGI's actions violate the law, UGI has no burden to justify any particular meter placement.

At the hearing, the Complainants withdrew all of their claims, except for two. First, they claim that UGI has failed to properly implement Section 59.18(d) of the Commission's regulations because UGI has not adequately considered inside locations for

⁶ 66 Pa.C.S. § 701.

⁷ 66 Pa.C.S. § 332(a).

⁸ Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950); Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976).

meters located in historic districts as required by the regulation. The Complainants also contend that UGI has failed to appropriately place meters throughout the City of Reading because UGI failed “to consider potential damage by outside forces,”⁹ and has placed meters dangerously close to city streets.

As explained in more detail below, I find UGI’s policy approach to the relocation of meters from inside to outside in historic districts which required “consideration” of inside placement, did not initially account for the preservation of historic resources. However, in practice and with the amendment to its policy guidance, UGI’s approach has evolved and is now consistent with the Commission’s regulations. As to the second claim that meters have been placed “dangerously close” to city streets, the Complainants have failed to sustain their burden of proving that UGI violated the Commission’s regulations.

The Placement of Meters in Historic Districts

Section 59.18 of the Commission’s regulations regulates the placement of gas meters. The regulation was completely rewritten by the Commission in order to bring it into conformance with federal gas safety regulations. After two rounds of notice and comment, and consideration of input from a variety of entities, the final regulation became effective on September 13, 2014.

The general rule mandated by the regulation, is that gas meters must be located “outside and aboveground.”¹⁰ However, the regulations provide certain limited exceptions to this general rule. Section 59.18(d) of the Commission’s regulations requires a public utility to consider inside placement of meter in designated historic districts:

⁹ 52 Pa.Code § 59.18(a)(5).

¹⁰ 52 Pa.Code § 59.18(a)(1).

(d) *Inside meter locations.*

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

...

(ii) A meter is located in a building that meets one of the following criteria:

(A) A building is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the building is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.

(B) A building is located within a historic district that is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the historic district is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.

(C) A building has been designated as historic under the act of June 13, 1961 (P. L. 282, No. 167) (53 P. S. §§ 8001—8006), known as the Pennsylvania Historic District Act, the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—11202) or a municipal home rule charter.

(D) A building is located within a locally designated historic district or is eligible for the listing, or a building is individually designated under a local ordinance as a historic landmark or is eligible for the listing.^[11]

The Complainants point to several factors to support their claim that UGI has failed to consider indoor placement in any meaningful way. The Complainants argue that UGI makes the determination that a meter located inside a building in an historic district must be relocated outside at the time the 30-day notice is sent, rather than on an individual meter basis. Complainants further contend that letters sent to customers refer to “company policy” which mandates outdoor placement. According to the Complainants, this treatment of meter relocation is cursory at best and is non-compliant with the regulation. Complainants point to the fact that

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

very few meters have been left inside, but are overwhelmingly placed outside. In the Complainants' view, this is further evidence that UGI's meter relocation process fails to protect historic resources as intended by the Commission. CPHD specifically contends that the Commission cannot permit this cursory approach, because to do so would violate the Environmental Rights Amendment of the Pennsylvania Constitution, as that amendment was recently interpreted by the Supreme Court in *Pennsylvania Environmental Defense Foundation v. Commonwealth*.¹²

UGI counters that its meter relocation process is consistent with its interpretation of the Commission's view that outdoor placement of meters is generally safer than leaving meters indoors. UGI further observes that the Commission intended to place the ultimate discretion regarding meter placement in UGI's hands and that UGI has exercised that discretion in its meter placement decisions.

The pivotal question is what factors a utility must evaluate in order to appropriately "consider" indoor meter placement. Section 59.18 does not set forth specific guidance. Therefore, it is appropriate to take guidance from the rules of statutory construction to ascertain the intent of the Commission to determine the type and amount of consideration that a utility must devote to the indoor placement of meters which are located in historic districts.¹³ The Statutory Construction Act directs that the "object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly."¹⁴ In promulgating a regulation, the Commission is acting in its legislative capacity similar to the General Assembly when it enacts statutes. Therefore, the intention of the Commission may be properly ascertained from a variety of sources:

- (1) The occasion and necessity for the [regulation].

¹² 161 A.3d 911 (Pa. 2017).

¹³ The canons of statutory construction apply to the construction and interpretation of regulations. *Energy Conservation Council of Pennsylvania v. Pub. Util. Comm'n*, 995 A.2d 465, 483 (Pa.Cmwlth. 2010).

¹⁴ 1 Pa.C.S. § 1921(a).

- (2) The circumstances under which it was enacted.
- (3) The mischief to be remedied.
- (4) The object to be attained.
- (5) The former law, if any, including other statutes upon the same or similar subjects.
- (6) The consequences of a particular interpretation.
- (7) The contemporaneous legislative history.
- (8) Legislative and administrative interpretations of such statute.^[15]

In considering these factors, it is also presumed that the Commission does not intend a result that is absurd, impossible of execution or unreasonable.¹⁶

First, it is appropriate to consider the plain language of the regulation itself. By reading the regulation as a whole, it is clear that the Commission intended a utility to evaluate whether a meter associated with a building in an historic district should be left inside on a case-by-case basis.

Initially, Section 59.18 sets forth the general requirement that all “meters and regulators must be located outside and aboveground.”¹⁷ However, the regulation also recognizes that there are situations where the placement of a meter outside and above ground is not appropriate. A determination of an alternate meter placement necessarily must be made on an individual basis. A utility may decline to place a meter outside and above ground as “allowed or required” elsewhere in the regulation.¹⁸ For example, in an appropriate situation, subsection (b) permits a utility to place a meter in a buried vault or meter box instead of aboveground.¹⁹

¹⁵ 1 Pa.C.S. § 1921(c).

¹⁶ 1 Pa.C.S. § 1922(1).

¹⁷ 52 Pa.Code § 59.18(a)(1).

¹⁸ 52 Pa.Code § 59.18(a)(1).

¹⁹ 52 Pa.Code § 59.18(b)(2).

Subsection (d) sets forth the situations where it may be “allowed or required” to place a meter in an inside location. Among these exceptions are meters located in historic districts.²⁰

The notice requirements to customers affected by meter relocations also support an interpretation of the regulation to require a utility to consider the exception to outdoor placement of meters in historic districts on an individual basis. Section 59.18(a)(3) requires that written notice to customers of a pending meter relocation must inform the customer of “how to contact the utility to provide supplemental information that the utility may not have, *such as the building’s historic status.*”²¹ There would be no need for a customer to provide a utility with supplemental information if a utility could simply set a policy that all meters must be placed outside regardless of their location.

Further support is found in the regulatory history of the regulations as set forth in the Commission’s implementation orders. The Commission clearly expected a utility, once aware of a building’s historic status, to be aware of and to consider restrictions which may be in place to protect the historic features of the structure:

We do believe, however, that the utility, in applying the regulation, has an obligation to know whether gas line improvements and meter location projects are located in historic areas. This is a burden that any property owner or contractor would probably have in undertaking exterior improvements in an historic district, since the local municipality may require prior approval before a building permit is issued.^[22]

As I observed in my decision on UGI’s motion for summary judgment:

²⁰ The regulation details the types of historic districts to which the exception applies. There is no dispute in this case that the historic districts at issue in Reading qualify as historic districts as described by Section 59.18 (d)(1)(ii)(A)-(D).

²¹ 52 Pa.Code § 59.18(a)(3) (emphasis added).

²² *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155, p. 30-31, footnote omitted (Order entered May 23, 2014) (*Final Rulemaking Order*).

Although the thrust of the Commission’s development of Section 59.18 is public safety, the Commission clearly intended for utilities to have some sensitivity for historic resources ...

The Commission obviously did not intend to ignore historic districts. Unlike most non-historic areas, meters in historic districts can be placed inside in compliance with the regulation. However, the Commission did not want to set bright line restrictions, as recommended by some commenters, that might have significant safety implications in certain circumstances. Instead, the Commission entrusted discretion with the utilities to balance safety against preservation of the historic integrity of historic resources....

Therefore, a failure to secure the proper permits similar to those “any property owner or contractor would probably have in undertaking exterior improvements in an historic district” or lack of a meaningful attempt to be aware of or comply with existing historic district regulations that may restrict exterior alterations, may be considered evidence of a failure to adequately “consider” indoor placement of the meter or a failure to provide reasonable service.^[23]

The testimony of Christopher Brown establishes that, in initially creating a policy to implement Section 59.18, UGI did not establish any explicit procedures to consider the protection of historic resources or to consider the indoor placement of meters in historic districts in any meaningful way from a Company policy standpoint. Mr. Brown explained that UGI’s initial policy to implement Section 59.18 was to require outside meter locations in all service locations, including historic districts. In UGI’s view, the indoor placement of meters would elevate aesthetic concerns over safety issues.²⁴ Further, given the lack of specific policy guidance from the Commission, UGI was concerned if the Company permitted a meter to remain inside, it ran the risk of exposure to enforcement action by the Commission in the event that its decision was later determined to be unreasonable.²⁵ Accordingly, UGI continued to rely on its Company policy which was set forth in its Gas Operations Manual, referred to as its GOM,

²³ Initial Decision dated August 28, 2017 at pp. 20-22. *See also* Opinion and Order dated December 21, 2017 at 23-24.

²⁴ St. 1 at 20.

²⁵ St. 1 at 18.

which had been in place since 2011. The 2011 GOM reflected the Company's policy that as meters are replaced, if a meter is located inside, it will be relocated outside.²⁶

UGI argues that the Commission granted the Company discretion regarding whether to require the relocation of meters from inside to outside regardless of whether the meter was located within an historic district. The Complainants contend that deciding that all meters should be relocated outside does not adequately "consider" inside placement as mandated by Section 59.18(d).

I agree with the Complainants that the regulation does *not* permit a utility to exercise its discretion by declining to exercise *any* discretion. UGI's initial approach to the implementation of Section 59.18 clearly ignores the mandate of subsection (d), and does not make any provision for the consideration of inside placement on a case-by-case basis. The structure of the regulation containing a general rule and then exceptions to the general rule means that a policy which simply creates a general rule, but does not account for the exceptions that may apply to individual meters, is simply not a reasonable interpretation of the regulation. UGI's decision to simply maintain its Company policy that all meters must be relocated outside without any consideration of whether the meter is located in an historic district ignores the meaning of the regulation.

Considering the indoor placement of meters in historic districts is not simply a matter of "aesthetics." No doubt, there are many buildings in non-historic districts which may be aesthetically impacted if the gas meter is relocated from inside to outside. But the exception applies only to buildings in historic districts. A careful reading of the Commission's rulemaking orders shows that the Commission recognized that historic areas have special needs. Many historic districts have restrictions on what modifications a building owner can make to a structure. While the Commission did not want to force a utility to comply with such restrictions in derogation of other factors that might affect the safety of a meter location, the Commission

²⁶ UGI Ex. CB-4, Section 35.10.10. UGI was in the process of relocating meters before the implementation of Section 59.18 in 2014. See Final Rulemaking Order, Docket No. L-2009-2107155 (Order entered May 23, 2014) at pp. 18-19 (describing UGI's relocation policy before the amendment of Section 59.18.).

clearly did not intend for a utility to completely ignore the historic status of the building. If that were so, the Commission would not have provided for an exception related to the general rule that meters should be placed outside and aboveground for meters in historic buildings.²⁷

The notice letters sent to customers also did not reflect the Commission's mandate. As explained above, Section 59.18(a)(3), requires that the 30-day notice letters include "how to contact the utility to provide supplemental information that the utility may not have, *such as the buildings historic status.*" The notices sent to customers provided a telephone number for UGI's call center, but did not inform customers that they could provide supplemental information, such as the building's historic status and seek reconsideration of outside meter placement.

However, UGI's implementation of Section 59.18 has evolved. UGI revised its GOM in July 2016 to reflect a more nuanced approach to implementing Section 59.18. This revised policy explicitly provides special provisions for meter relocations in historic districts that permits consideration of an indoor placement for a meter.²⁸ The revised GOM also provides for relocation of a meter if a building is subsequently reclassified as an historic building.²⁹

The Complainants argue that UGI's revised policy still violates Section 59.18 because UGI makes its decision to relocate a meter outside at the time the initial 30-day notice is sent to customers. This policy approach has not changed with the 2016 revision to the GOM.

Mr. Brown explained that UGI relies on customers to provide it with the information regarding the architectural features of their property. Further, UGI revised its 30-day notice letter to provide more information for owners of properties in historic districts:

²⁷ See discussion of Article I, Section 27 of the Pennsylvania Constitution below.

²⁸ UGI Ex. CB-5 at Section 5.0.

²⁹ UGI Ex. CB-5 at Section 7.0.

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. . . . Once the form is submitted, you will receive a confirmation of submission of your reconsideration request.^{30]}

There is no language in the regulation which mandates at what point in the relocation timeline a utility must consider an indoor meter for an historic property. The Commission regulation requires utilities to include a prompt for customers to provide the utility with information regarding the historic nature of their property. From a logistic and resource management standpoint, relying on the customer to provide the utility with relevant information is a sensible approach. Certainly, an individual customer is in the best position to provide the utility with information regarding the historic nature of the property and any restrictions on exterior improvements that may apply. To require a utility to perform this case-by-case analysis before contacting the customer would be needlessly time-consuming and far afield from the core mission of the utility. Returning to a reading of the regulation as a whole, this interpretation of the timing of the consideration required by the regulation is not inconsistent with other provisions of the regulation.

Finally, CPHD contends that the Commission has a duty pursuant to the Pennsylvania Constitution, to protect historic resources. As support for this position, CPHD points to the Supreme Court's decision in *Pennsylvania Environmental Defense Foundation v. Commonwealth*.³¹

Article I, Section 27 of the Pennsylvania Constitution provides:

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

³⁰ UGI Ex. CB-16 (emphasis in original); see N.T. 344-45.

³¹ 161 A.3d 911 (Pa. 2017).

common property of all the people, including generations to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.^[32]

This provision is often referred to as the “Environmental Rights Amendment.” The Supreme Court explained the contours of this amendment and the obligations of the Commonwealth in regulating the resources protected by the amendment:

Specifically, Section 1 affirms, among other things, that all citizens “have certain inherent and inalienable rights.” *Id.* at 948 (quoting Pa. Const. art. I, § 1). As forcefully pronounced in Section 25, the rights contained in Article I are “excepted out of the general powers of government and shall forever remain inviolate.” *Id.* (quoting Pa. Const. art. I, § 25).

Among the “inherent and inalienable” rights in Article I of the Pennsylvania Constitution are the rights set forth in the Environmental Rights Amendment . . . This constitutional provision grants two separate rights to the people of this Commonwealth. The first right is contained in the first sentence, which is a prohibitory clause declaring the right of citizens to clean air and pure water, and to the preservation of natural, scenic, historic and esthetic values of the environment. *Robinson Twp. [v. Commonwealth]*, 83 A.3d [901] at 951 [(Pa. 2013)]. This clause places a limitation on the state's power to act contrary to this right, and while the subject of this right may be amenable to regulation, any laws that unreasonably impair the right are unconstitutional. *Id.*

The second right reserved by Section 27, set forth in its second sentence, is the common ownership by the people, including future generations, of Pennsylvania's public natural resources. *Id.* at 954. . . .

The third clause of Section 27 establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth²³ is the trustee, and the people are the named beneficiaries. *Robinson Twp.*, 83 A.3d at 955–56. The terms “trust” and “trustee” carry their legal implications under Pennsylvania law at the time the amendment was adopted. *See Appeal of Ryder*, 365 Pa. 149, 74 A.2d 123, 124 (1950) (providing that “words having a precise and well-settled legal meaning must be interpreted” accordingly); *see also Robinson Twp.*, 83 A.3d at 956 (citing Pa.C.S. § 1903). . . . As a trustee, the Commonwealth must deal “with its citizens as a fiduciary, measuring its successes by the benefits it bestows upon all its citizens in their utilization of natural resources under law.” *Id.* Under Section 27, the Commonwealth may not act as a mere

³² Pa. Const., art. I, § 27.

proprietor, pursuant to which it “deals at arms['] length with its citizens, measuring its gains by the balance sheet profits and appreciation it realizes from its resources operations.” *Id.*

...

Pennsylvania's environmental trust thus imposes two basic duties on the Commonwealth as the trustee. First, the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties. *Robinson Twp.*, 83 A.3d at 957. Second, the Commonwealth must act affirmatively via legislative action to protect the environment. *Id.* at 958 (citing *Geer v. Connecticut*, 161 U.S. 519, 534, 16 S.Ct. 600, 40 L.Ed. 793 (1896) (trusteeship for the benefit of state's people implies legislative duty “to enact such laws as will best preserve the subject of the trust, and secure its beneficial use in the future to the people of the state”)).^[33]

The Commonwealth Court held in its November 2017 decision regarding the preemption of certain City ordinances by the Public Utility Code, that Section 59.18 is not unconstitutional “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.”³⁴

CPHD contends that while Section 59.18 implements the Commission’s duty to protect historic resources, the consideration required by the regulation must include “real and tangible protections” for the historic trust. Mere “aspirational” consideration is not adequate. In CPHD’s view, more definitive guidance is required in order to effectuate the Commission’s fiduciary duty to protect historic resources.

I am not unsympathetic to CPHD’s argument that Section 59.18(d)(ii) and the Commission’s statements in the rulemaking order may not provide sufficient guidance to either utilities or customers. Mr. Brown articulated the dilemma that UGI finds itself in by attempting

³³ *Pa. Env'tl. Def. Found.*, 161 A.3d at 931-33.

³⁴ *UGI Utils. Inc. v. City of Reading*, 179 A.3d 624, 632 (Pa.Cmwlth. 2017).

to balance preservation of historic property with its duty to ensure the safety of its customers.³⁵ Indeed, leaving a meter inside an historic home creates a liability and enforcement risk to UGI should an accident occur. The regulation vests not only the discretion to UGI, but also the responsibility for customer safety. There is no provision for immunity for UGI if it decides to leave a meter placed inside an historic building.

However, it is not appropriate to add words or meaning to a regulation that are simply not there. As explained above, UGI's procedure providing for customer input before a final meter placement is made sets forth a framework for "consideration" of indoor placement as stated in the regulation. The relief sought by CPHD for more specific protection of historic resources must be found in the Commission's rulemaking function, not in its judicial capacity.³⁶

The formal complaints are therefore sustained to the extent that UGI's meter placement policy from 2014 until 2016, failed to conform to the requirements of Section 59.18(d)(ii).

Otherwise, the Complainants have failed to sustain their burden of proving that UGI violated Section 59.18(d)(ii). The Complainants did not offer any example of even one instance where UGI placed a meter in error by failing to consider an exterior restriction or other historic feature that should have been preserved. The whole purpose of generating the contested meter inventory in the Stipulated Spreadsheets³⁷ was to facilitate a case-by-case determination regarding UGI's meter placement decisions. Although the Complainants documented alleged violations of Section 59.18(a)(8), the Complainants offered no evidence to support a determination that a UGI meter placement in Reading's historic districts was an abuse of discretion for failing to consider the preservation of any specific historic asset presented by the

³⁵ *E.g.*, N.T. 375; UGI St. 1 at 18.

³⁶ *See Aronson v. Bell Atlantic-Pennsylvania, Inc.*, Docket C-00981378 (Order entered July 14, 1998).

³⁷ ALJ Ex. 1.

building.³⁸ There is no language in the regulation which states that all meters in an historic district must be placed inside.³⁹ Where a utility has the *option* to leave a meter inside, the utility may exercise its discretion as to the ultimate placement of the meter. The Complainants focused on UGI's policy and seek relief from the Commission that would require further amendment to the regulation. As explained above, this type of relief is found in the Commission's legislative function in promulgating regulations, not in its judicial function.

Mr. Slifko testified that it was his view that UGI was not considering indoor placement of meters because, so few meters were left indoors. But the Complainants did not offer any evidence that any particular meter relocation failed to respect the historic features of a building or that the meter was placed in a location where a building owner would not be permitted to make a similar exterior improvement due to historic regulations that may apply to an historic building. Although he testified that residents cannot alter the exterior of their home without approval of the historic review board in Reading,⁴⁰ Mr. Slifko could not say whether an owner of a particular property would be precluded from making certain alterations on the front of a property. Several properties in historic districts appeared to have exterior alterations that would not be impacted by the placement of a meter outside. For example, one property appears to be a commercial property with an advertising sign in the window. Mr. Slifko thought the owner might be permitted to install an air conditioning unit on the front of the property.⁴¹

³⁸ For example, Mr. Brown was questioned on cross-examination regarding the placement of a meter cluster in front of what appeared to be a decorative grate. The Complainants offered no evidence in rebuttal that the grate was an historical asset or that the placement would have violated any restriction on exterior improvements that would have been imposed on the building owner. N.T. 395-96 (discussing Complainants' Ex. JS-16, Bates number 320).

³⁹ *UGI Utils., Inc. v. City of Reading*, 179 A.3d 624, 630 (Pa.Cmwlth. 2017): PUC Regulation 59.18 does not require or direct that gas meters in historic districts must be installed indoors, but provides only that "[i]nside meter locations shall be considered" by the utility in such districts. 52 Pa.Code § 59.18(d)(1)(ii) (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." *Final Rulemaking Order*, 44 Pa.B. at 5848.

⁴⁰ N.T. 196.

⁴¹ N.T. 210-12, UGI Ex. CB-6

Several other properties located in historic districts had satellite dishes installed to the front of the building.⁴²

The location of a building in an historic district by itself does not mean that UGI abused its discretion by relocating an indoor meter outside. Moreover, the regulation does not require UGI to become architectural experts. While the Commission clearly expects a utility to be aware of the historic locations within its service territory, the regulation clearly contemplates that the customer will be aware of and provide the utility with information regarding the historic features of the property and exterior restrictions which UGI should consider when evaluating where to locate a particular meter.

Having concluded that UGI's initial implementation of the amendments to Section 59.18, violated the directive to utilities to consider inside placement of meters, it is appropriate to consider what consequence, if any, is appropriate. Where the Commission finds a violation of a regulation, it may assess a civil penalty.⁴³ However, the imposition of a penalty is discretionary, and the Commission is not required to assess a civil penalty.⁴⁴

The Commission has adopted certain standards that must be applied when imposing a civil penalty for violations of Commission directives and regulations.⁴⁵ Section 69.1201(a) of the Commission's regulations states:

The Commission will consider specific factors and standards in evaluating litigated ... cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if

⁴² N.T. 213-14; UGI Ex. CB-6.

⁴³ 66 Pa.C.S. § 3301.

⁴⁴ *E.g. McCloskey v. Hidden Valley Utility Services, L.P.*, Docket No. C-2014-2447138 (Opinion and Order entered May 3, 2018).

⁴⁵ *See* 52 Pa.Code § 69.1201; *see also, Rosi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000) (*Rosi*).

a fine for violating a Commission order, regulation or statute is appropriate....^[46]

These factors and standards to be considered are enumerated in subsection (c):

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing, or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty.

⁴⁶ 52 Pa.Code § 69.1201(a).

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.⁴⁷

In this case, I find it would not be appropriate to assess a civil penalty. While there is a retributive component of assessing a penalty, the Commission often imposes penalties more specifically to deter future violation of the Commission's regulations, rather than to simply punish.⁴⁸ Here, UGI has already remediated its original failure to implement the amendments to Section 59.18.⁴⁹ UGI revised its policy in 2016 which created procedures to accommodate meter relocations in historic districts. Importantly, UGI also revised its customer notification letter to include language required by Section 59.18(a)(3) and UGI has provided customers of properties in historic districts an avenue to provide the Company with relevant information concerning their property.

Second, it appears that in practice, customers were afforded an opportunity to discuss the placement of their meter before a final location decision was made even before the 2016 GOM revision.⁵⁰ While UGI's policy approach and initial 30-day notice letter were not compliant with Section 59.18, there is no evidence that customers did not receive case-by-case consideration of the placement of the meter. Mr. Brown testified that UGI personnel routinely met with customers before a meter was actually relocated.⁵¹ Although UGI's policy stated that a reconsideration request regarding a meter placement must be in writing, UGI would also meet with customers who contacted the Company by calling or objected to the meter relocation to

⁴⁷ 52 Pa.Code § 69.1201(c).

⁴⁸ 52 Pa.Code § 69.1201(c)(8).

⁴⁹ 52 Pa.Code § 69.1201(c)(4).

⁵⁰ 52 Pa.Code § 69.1201(c)(5); (c)(10).

⁵¹ UGI St. 1 at 30-31; N.T. 249-50; 285-86; 342.

UGI field personnel.⁵² Customers met with UGI employees who attempted to reach a consensus with the customer regarding the placement of the meter.⁵³ Mr. Brown and Mr. Slifko both noted that UGI agreed to leave some meters inside buildings.⁵⁴ The Complainants offered no evidence that UGI ignored any information regarding any restrictions to exterior improvements connected to the building's historic status or any other relevant information.⁵⁵

Finally, while UGI made an initial deliberate decision to not amend its meter placement procedures, its decision was a good faith determination that it had the authority to do so.⁵⁶ As explained above, in UGI's view, it had the discretion to determine that it was simply safer to place all meters outside. UGI also believed that it had the support of the Commission's Gas Safety Division for its meter placement decisions.

In sum, while UGI was technically in violation of Section 59.18(d), the meetings between field representatives and customers provided customers with an opportunity to present UGI with relevant information about their properties. UGI revised the GOM in 2016 and also revised its customer notice letters to come into compliance with requirements of Section 59.18(d). No evidence was presented that UGI abused its discretion in placing any specific meter in an historic district in Reading. Declining to exercise the Commission's enforcement discretion in these circumstances incentivizes utilities to remedy violations before being ordered

⁵² N.T. 296-97.

⁵³ N.T. 262-63.

⁵⁴ Slifko, Reading St. 2 at 17; N.T. 386.

⁵⁵ Although Complainants' witnesses John Slifko and Michael Lauter both testified that they own properties in historic districts, neither offered specifics regarding the location of the meters at the properties. Mr. Lauter testified that he met with UGI and wanted his meter placed in the rear of his property. However, UGI was not willing to pay the additional cost. Lauter, Reading St. 4 at 156-57.

⁵⁶ 52 Pa.Code § 69.1201(c)(1), (c)(3).

to do so by the Commission.⁵⁷ Therefore, it is not appropriate to assess a civil penalty in the circumstances presented here.⁵⁸

Placement of Meters on Sidewalks

The City also complains that UGI violated the Commission's regulations by placing meters too close to the street where, in the City's view, they are at risk because they could be struck by vehicles. In the City's view, these meters should be placed at least 15 feet from the street.

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."⁵⁹ 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." Section 59.18(a)(5) prohibits the placement of a meter where there is an undue risk of "potential damage by outside forces."⁶⁰

The Complainants offered no credible evidence to support their claim that UGI placed meters where "vehicular damage may be anticipated." In the Complainants' view, meters placed less than 15 feet from the street are inherently unsafe. This standard was an

⁵⁷ 52 Pa.Code § 69.1201(c)(10).

⁵⁸ See *Rounce v. PECO Energy Company*, Docket No. C-2015-2506941 (Opinion and Order entered December 9, 2016)(declining to assess a civil penalty where the utility made considerable effort to resolve a reliability problem); *Veverka v. Verizon Pennsylvania, LLC*, Docket No. 2016-2553290 (Final Order entered May 31, 2017)(following *Rounce*); see also *Orr v. Peoples Natural Gas Company, LLC*, Docket No. C-2017-2583759 (Opinion and Order entered December 20, 2018)(despite a technical violation of Section 59.18(a)(2), Commission declined to assess a civil penalty because complainant's representative had actual notice of meter relocation and consented to the relocation.); 52 Pa.Code § 69.1201(c)(9).

⁵⁹ 52 Pa.Code § 59.33(b).

⁶⁰ 52 Pa.Code § 59.18(a)(5).

arbitrary distance calculated by Mr. Slifko based on his review of newspaper reports of incidents where cars struck gas meters. He is not an engineer, and the City did not proffer any expert testimony which would support the City's claim, or point to any industry standard regarding the safe distance of a meter from the street. Therefore, the Complainants did not sustain their burden of proving that UGI failed to place any meter in a safe location as set forth in the regulations.

Mr. Slifko's opinions and fears are similar to testimony offered by opponents to a conditional use permit which was reviewed by the Pennsylvania Supreme Court in *Commonwealth, Bureau of Corrections v. City of Pittsburgh*.⁶¹ The Court found that the evidence presented by opponents to an application for the placement of a pre-release center for state prisoners in a Pittsburgh neighborhood was not substantial evidence to prove that the center posed a substantial threat to the community. The objectors made statements concerning "the high crime rate in the area, the number of bars in the area, and the existence of a house of prostitution in the area. There was concern voiced about the numerous elderly and female residents in the area. . . . Finally, concern over the effect on property values which would be caused by the center was expressed."⁶² The court noted that none of the opponents' opinions were substantiated by any facts, studies, police records, property valuations or any substantive facts upon which their fears were based. In the absence of facts, there was no substantial evidence in the record upon which to base a conclusion that the center would pose a detriment to the community. Like the opinions and assertions offered by the opponents in *City of Pittsburgh*, Mr. Slifko's testimony that meters placed on sidewalks by UGI are inherently unsafe is also based merely on his opinion and is not evidence that UGI placed meters in dangerous locations.

The Complainants offered no expert evidence that, from a safety management perspective, cars driving recklessly up onto a sidewalk should be "anticipated." The mere fact that these types of accidents may occur from time-to-time does not mean that UGI's placement of these meters is inherently dangerous.

⁶¹ 532 A.2d 12 (Pa. 1987).

⁶² 532 A.2d at 14.

Conclusion

To sum, the formal complaints of the City of Reading and the Centre Park Historic District, Inc. are sustained in part and dismissed in part. In reviewing the evidence, UGI initially failed to properly implement the amendments to Section 59.18 which required UGI to consider indoor placement if a meter was located in an historic district. UGI did not change its GOM which required that meters be placed outside and made no provision for historic districts. Further UGI did not change its 30-day notice to include all of the information required by Section 59.18(a)(3).

I do not find it appropriate to penalize UGI because UGI amended its policy in 2016 to provide procedures for meter placements in historic districts and revised its 30-day notice letter in 2018 to include the appropriate language. Further, in practice, customers were provided an opportunity to meet with UGI field employees before a final meter placement decision was made. There was no evidence presented by Complainants that the customers in historic districts did not have an opportunity to address the historic aspects of their properties or that UGI failed to address any restrictions these customers may have been subject to regarding exterior alteration of the property.

Finally, there was no evidence presented that meters placed on sidewalks by UGI were placed in locations where damage by vehicles could reasonably be anticipated. Anecdotal evidence that vehicles are involved in accidents where the vehicle drives up onto a sidewalk and hits or nearly hits a meter is not sufficient to sustain the Complainants' burden of proof.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.
2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).

3. To prevail, a complainant must demonstrate that an alleged offense of a utility is a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

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

5. A utility must provide reasonable and adequate service to customers. 66 Pa.C.S. § 1501.

6. The Complainants met their burden of proving that UGI's policy failed to conform to the amendments to 52 Pa.Code § 59.18, from 2014 until 2016.

7. The Complainants failed to meet their burden of proving that UGI's policy after 2016 failed to conform to the amendments to 52 Pa.Code § 59.18.

8. A natural gas utility is required to consider potential damage by outside forces when selecting a meter or service regulator location. 52 Pa.Code § 59.18(a)(5).

9. The Complainants failed to meet their burden of proving that UGI violated 52 Pa.Code § 59.18(a)(5).

10. The Commission has the authority to impose a civil penalty for a violation of the Public Utility Code, regulations or orders of the Commission, but is not required to do so.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaints of the Centre Park Historic District, Inc., Docket No. C-2015-2516051, and the City of Reading, Docket No. C-2016-2530475, are sustained to the extent UGI Utilities, Inc. policy failed to conform to the amendments to 52 Pa.Code § 59.18, from 2014 until 2016.

2. That the formal complaints of the Centre Park Historic District, Inc., Docket No. C-2015-2516051, and the City of Reading, Docket No. C-2016-2530475 are dismissed in all other respects.

3. That the Secretary shall mark these dockets closed.

Date: February 5, 2019

/s/
Mary D. Long
Administrative Law Judge