



March 15, 2019

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120

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

Dear Secretary Chiavetta,

Please find the attached Exceptions of Centre Park Historic District attached to this filing. Judge Mary Long and opposing counsel have received this brief as indicated on the Certificate of Service attached.

The District respectfully requests oral argument before the Commission concerning the attached Exceptions.

Thank you.

Sincerely,

/s/ Rich Raiders

Rich Raiders, Esq.

cc: S. Hoh
Centre Park Historic District
Counsel (see Certificate of Service)

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF CENTRE PARK HISTORIC DISTRICT TO THE FEBRUARY 26, 2019 INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE MARY D. LONG

AND NOW, comes Centre Park Historic District (“District”), by and through its below-signed attorneys, and files pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations, these Exceptions to the February 26, 2019 Initial Decision of Administrative Law Judge Mary D. Long in this matter. The District incorporates by reference any contemporaneous exceptions filed by the City of Reading (“City”) as if fully recited therein.

I. **THE COMMISSION CANNOT IGNORE THE CONSTITUTIONAL DUTY OF EVERY INSTRUMENTALITY OF THE COMMONWEALTH IN COMPLYING WITH THE ENVIRONMENTAL RIGHTS AMENDMENT.**

The District takes exception to the argument on Pages 25 through 28 of the Initial Order, Findings of Fact # 47, 51, 52, 53 and Conclusions of Law # 4, 6, 7 and 9. Specifically, the Initial Order misreads *Penn Env'tl. Def. Found. v. Commw.* (“*PEDF II*”), 161 A.3d 911 (Pa. 2017) and its application in the instant matter. *PEDF II* places a new burden upon every instrumentality, including but not limited to the Commission, the City, the District and any other part or creation of the Commonwealth to protect, as trustee, the environmental, natural and historical resources of the Commonwealth in every decision made by any part of the government. See, Penn. Const. art. 1 sec. 27 (“ERA” or “Environmental Rights Amendment”). The Initial Order, which describes but does not implement *PEDF II*, improperly claims that the District wants to add conditions to § 59.18. However, our Commonwealth’s Supreme Court already added those

additional conditions pointed out by the District, and the Commission, in its rulemaking implementing section 59.18, voiced its opinion that meters can remain inside and regulators can be placed outside. *See*, Centre Park Brief at *14, Amendment to 52 Pa. Code § 59.18 Meter Location, Doc. No. L-2009-2107155, 44 Pa. Bull. 5835 (Sep. 13, 2014). It is now to the Commission, in its role as preemptive regulator of public utilities, to frame the metes and bounds of how the Commission implements *PEDF II* with regards to Section 59.18. This Initial Order fails to meet the Commission's burden.

Specifically, every instrumentality of the Commonwealth must act as trustee to protect the Commonwealth's historical resources. *PEDF II*, 168 A.3d at 939 (For example, the General Assembly is a trustee of the Commonwealth's historical resources under the ERA). The Commission is an instrumentality of the Commonwealth. *See*, 66 Pa. C.S. § 301. The City, a Home Rule Charter municipality, is an instrumentality of the Commonwealth. *See*, 53 Pa. C.S. § 2961. The District was formed under authority of the Commonwealth. *See*, 53 P.S. § 8001 et. seq. The Commission has preemptive authority over this issue in its role as regulator of public utilities. *UGI Util., Inc. v. City of Reading*, 179 A.3d 624 (Pa. Commw. 2017). The City and the District have no independent means to meet their trusteeship duties without the Commission's oversight. Thus, the Commission must determine how the City and the District fulfill their role to implement *PEDF II*.

The core of the Honorable Mary Long's February 2019 Initial Order is to take a narrow reading of § 59.18. Her Honor concludes that UGI initially violated this regulation in gas meter relocation actions. UGI subsequently added a notice letter to property owners, which, according to Judge Long, cured any defect in UGI's administration of §59.18. Judge Long

opines, “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. . . . However, it is not appropriate to add words or meaning to a regulation that are simply not there.” Initial Decision at * 27-28. Judge Long invites CPHD to file a rulemaking proceeding and is requesting greater direction from the PUC, the Commonwealth Court, the Supreme Court and the Pennsylvania Legislature to further define the contours of § 59.18(d)(ii). The District is considering filing such a petition.

The Initial Order failed to address this constitutional mandate. The utility must “consider” if to leave a meter inside. Initial Decision at *29. However, that consideration does not, in Judge Long’s words, “require UGI to become architectural experts.” However, *PEDF II* does require that UGI consult with the sovereign architectural experts, here represented by the District and the City, to obtain the necessary input to weigh these decisions. Under *PEDF II*, UGI does not have the discretion to cut these stakeholders out of the process. Nor does UGI need to become architectural experts to comply with Section 59.18. However, UGI’s allegedly corrective letter is fully inadequate and fails to comply with the law. UGI must allow the other stakeholders with a constitutional role in protecting historic resources, namely the City and the District, a seat at the table and the chance to be heard. Which UGI has not done. UGI has the burden to not only modify its letter in the manner Judge Long required, but it must also consult with the City and the District, as well as include, in its letter, that the property owner should consult with the City and any District which may have a historical preservation duty. The modified letter given by UGI to property owners does not at all accurately guide homeowners who may own historical property that sovereign historical guidance is available.

The City Historical Preservation Ordinance and the District both exist to attempt to fill the gap that Judge Long noted on Page 29. The District's request is that the instrumentalities of the sovereign designated with this role and expertise have the opportunity to participate in these discussions before any final decisions are made. And that UGI, in implementing these decisions, give proper consideration to the interests of the City and the District before moving meters, as well as provide notice to the property owners that, after consultation, that the property is or is not in a historic district and that the City and the District, where applicable, may have an opinion on meter placement.

The District does not assume that it can overcome the Commission's preemptive authority or the utility's safety mandates. Such an opinion would simply bely long standing authority. Senior Judge Colins ruled that the PUC's regulatory framework preempts local City of Reading and CPHD historic regulations. *UGI*, 179 A.3d at 624. This is, indeed, correct. However, it is also an error of law to conclude that preemption and preclusion have the same meaning. Judge Long's opinion is that, because the PUC's regulation controls the placement of gas meters, any further consideration of local historic regulation requirements is at an end and can be ignored. For the reasons previously set forth, and within the minimum requirements of the Pennsylvania Constitution as further articulated in *PEDF II*, the Pennsylvania Constitution is superior to acts of the Pennsylvania Legislature and regulations promulgated by the Commission. This decision implicitly concludes that "preemption" and "preclusion" have the same meaning – they do not. Honorable Judge Long's initial opinion is an error of law because it is silent and contains no discussion of how the City of Reading and CPHD are to fulfill Constitutional duties within the framework of § 59.18. In ignoring any analysis of this central

question, Judge Long's opinion is an error of law because it is contrary to the Pennsylvania Constitution and *PEDF II*.

WHEREFORE, Centre Park Historic District respectfully requests that the Commission remand the Initial Decision back to Judge Long for further consideration of the Commission's historical trust duties under the Environmental Rights Amendment, as well as due consideration of the Commission's duties under the Amendment of how the City of Reading and the Centre Park Historic District can fulfill their separate historical trusteeship duties within the framework of the Commission's preemptive authority concerning UGI's meter placement program. Specifically, the District requests that the Commission remand specifically to require that UGI must confer with the City and the District before implementing any meter relocation programs and provide notice to land owners potentially impacted by a relocation program in a known and documented historical district of their rights to consult with the sovereign entities entrusted with historic preservation before agreeing to any relocation.

Respectfully Submitted,

Date: March 15, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically served the foregoing upon the following:

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Respectfully Submitted,

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