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March 18, 2019

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd 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 are the Exceptions of the City of Reading in the above-referenced proceeding. Copies of the Exceptions are being served in accordance with the attached Certificate of Service.

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

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By
Charles E. Thomas, Jr.

Enclosure
cc: Certificate of Service
Elizabeth Kraft, Esquire

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF THE CITY OF READING

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DATED: March 18, 2019

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EXCEPTIONS OF THE CITY OF READING

Pursuant to 52 Pa. Code § 5.333, the City of Reading ("City" or "Reading") files the following Exceptions to the Initial Decision ("I.D.") of Administrative Law Judge Mary D. Long dated February 5, 2019 and issued by Secretarial Letter dated February 26, 2019.

I. INTRODUCTION

This consolidated proceeding concerns separate formal complaints filed with the Pennsylvania Public Utility Commission ("Commission") by the City and Centre Park Historic District ("CPHD") (together with the City, the "Complainants") against UGI Utilities, Inc. ("UGI") concerning, *inter alia*, the placement of gas meters in historic districts and other locations within the City including the placement of meters on sidewalks in close proximity to City streets.

Consisting of fifty-eight Findings of Fact and ten Conclusions of Law, the I.D. sustains the Complainants' formal complaints to the extent UGI failed to properly implement the amendments to 52 Pa. Code § 59.18 requiring consideration of indoor meter placements if a meter was located in an historic district, but dismissed the complaints in all other respects. Judge Long summarized her decision as follows:

> The genesis of these proceedings is a dispute between the City … and UGI … 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 [Commission]. 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.[1]

[1] I.D. at 1.

Contrary to Judge Long's summary, the City respectfully submits that there is indeed substantial evidence showing that UGI's outside meters have been placed in dangerous locations and that UGI's amendment of its meter placement policy is not sufficient to conform to the requirements of 52 Pa. Code § 59.18. Moreover, despite concluding that the City sustained its burden of proof with respect to inside meter placements in historic districts between 2014 and 2016, Judge Long refused to grant any relief to the City and also found it inappropriate to penalize UGI for its clear violations of Section 59.18.

As set forth in the following Exceptions, the City submits that the I.D. erred in its analysis of both the facts and the law and in its evaluation of the evidence of record which conclusively demonstrates that Complainants have sustained their burden of proof. The I.D. further erred by failing to grant any substantive or meaningful relief to the City on the historic district issue. It is wholly appropriate and, indeed, imperative that UGI be adequately penalized and relief be granted to the Complainants, for UGI's failure to properly implement and comply in a timely fashion with the mandates of Section 59.18, as amended.

There is another fundamental matter which should be addressed before turning to specific exceptions. Throughout this proceeding, UGI continually raised the possibility of gas leaks in confined indoor locations. However, there has never been a finding that inside meter locations are unsafe per se. Meters have been located inside for decades. The adoption of new regulations, specifically the revision of Section 59.18, does not mean that meters located under the previously regulations are now suddenly unsafe.[2] It is time for common sense to prevail and sufficient consideration to be given to inside meter placements in Reading.

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[2] Tr. 373; Reading Reply Br. at 9.

II. EXCEPTIONS

For ease of reference, the City presents its Exceptions under the same headings used by Judge Long in the I.D.

A. EXCEPTIONS TO FINDINGS OF FACT

Reading Exception No. 1: The City Excepts to Finding of Fact 20 as Worded (I.D. at 11).

Finding of Fact 20 states that "[i]n 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). The City excepts to any implication that the City elevates aesthetics over public safety. It is the City's position that safety trumps aesthetics and the City stated this more than a half dozen times in its Reply Brief.[3] At the same time, there is no record evidence that outside meters are safer than inside meters. Obviously, with respect to meters on sidewalks, the further a meter is from the street, the safer its location. The increased use of bollards would also enhance safety for meters located on sidewalks close to City Streets.

Reading Exception No. 2: The City Excepts to Findings of Fact 31 and 32 (I.D. at 12).

Findings of Fact Nos. 31 and 32 contain third party out-of-court statements "being offered to prove the truth of the matter asserted" and should be stricken as inadmissible hearsay.[4] Even if admissible, it is well established that hearsay evidence may only support a finding of fact if it is corroborated by competent evidence of record and that findings based solely on hearsay

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[3] *See, e.g.*, Reading Reply Br. at 3, 4, 6, 9, 14, 17 and 23.

[4] Hearsay is an out-of-court statement made by a declarant and offered by a party to prove the truth of the matter asserted in the statement. *See* Pa.R.E. 801. Hearsay is generally inadmissible unless it falls into an exception recognized by the Pennsylvania Rules of Evidence, other rules prescribed by the Pennsylvania Supreme Court, or statute. Pa.R.E. 802; *see also* Pa.R.E. 803, 803.1, 804.

are not controlling.[5] The I.D., however, cites hearsay and anecdotal statements in Findings of Fact 31 and 32 without any competent corroborating evidence.[6] For example, there is no record evidence regarding support from the PUC Safety Division and the Commission's Bureau of Investigation & Enforcement withdrew from participation in this proceeding before UGI's assertion was made. Accordingly, the Commission should strike Findings of Fact 31 and 32 in their entirety.

Reading Exception No. 3: **The City Excepts to Findings of Fact 45 and 46 as Written and Cited (I.D. at 14).**

Findings of Fact 45 and 46 are inconsistent and must be corrected to clarify which facts have current application and which facts are simply historic. Finding of Fact 45 states that the 30-day notice letter sent to customers in Reading's historic districts after the revision of Section 59.18 in September 2014 "provided the customer with an option to request reconsideration of his or her meter location by contracting UGI by phone or completing a meter reconsideration request from on UGI's website." To the contrary, such language was specifically omitted from the various 30-day advance notice letters sent to customers in Reading's historic district for more than three years after amended Section 59.18 went into effect.[7] In fact, the reconsideration provision was not added or utilized by UGI until the customer notification letter was revised in October 2017.[8] As Judge Long correctly observed in her discussion of the notice letters, the initial customer notice letters (*i.e.*, those used between September 2014 and October 2017)

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[5] *Catherine J. Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018), slip op. at 17-18 (quoting *Walker v. Unemployment Comp. Bd. of Review*, 367 A. 2d 366, 370 (Pa. Cmwlth. 1976) ("Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of an agency if it is corroborated by any competent evidence in the record … a finding of fact based solely on hearsay will not stand.").

[6] *See, e.g.*, Reading Reply Br. at 9 and 14.

[7] *See* Reading Exhs. JS-10, JS-11 and JS-12.

[8] *See* Reading Reply Br. at 14-15 and n.45.

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 <u>seek reconsideration of outside meter placement</u>**." I.D. at 24 (emphasis added). Finding of Fact 45, thus, should be revised to state (revision in bold/underline):

> 45. The letter **<u>failed to provide</u>** 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.

The letter and language quoted in Finding of Fact 46 was not utilized by UGI until the October 2017 revision. Finding of Fact 46, therefore, should be modified to clarify the specific date the current customer notification letter went into effect. This distinction is important because UGI had the burden to show that it was abiding by Section 59.18, as amended, and its revised Gas Operations Manual ("GOM") (updated July 31, 2016) at all times, a burden it failed to meet. Consequently, the City submits it is wholly appropriate for the Commission to fine UGI for each instance where 30-day notice letters were sent to customers but failed to contain the information required by both Section 59.18(a)(3) and UGI's revised GOM procedures, a period of time running from September 13, 2014 to *at least* October 1, 2017.[9] The Commission should also order that UGI reconsider each and every meter that was relocated in historic districts during this time period, by meeting with the homeowner and, if necessary, relocating the meter at UGI's sole cost where the placement of the relocated meter is not justified.

<u>Reading Exception No. 4</u>: The City Excepts to Findings of Fact 54 and 55 (I.D. at 15).

The I.D. finds that "UGI has been selective in the placement of meters and avoids

[9] Indeed, the City had reason to believe that UGI was not utilizing the revised 30 day notice language, but was not permitted to reopen the record, as its December 28, 2018 Motion to Reopen was denied.

locations where vehicular damage may be reasonably anticipated"[10] and that, in doing so, UGI avoids the need to install bollards or other forms of supplemental meter protection.[11] The record evidence, especially the substantial pictorial evidence offered by the City,[12] proves otherwise, rebutting Finding of Fact 54 and showing that UGI has placed meters throughout Reading in locations where damage from outside forces may be reasonably anticipated or likely to occur. Moreover, contrary to Finding of Fact 55, the need for bollards remains in many locations, and to argue that bollards are "more obtrusive" and may take way from distinguishing historical building features elevates aesthetics over safety. The bollards protecting the Commission's own offices on North Street in Harrisburg show how bollards can be used.[13]

Reading Exception No. 5: The City Excepts to Finding of Fact 56 (I.D. at 15).

Finding of Fact 56 misses the point and is misleading since the number of incidents for years prior to 2018 reflect meter placements under the old rules where inside meter placement was standard. The absence of "incidents" involving meters placed under the old regulations does not support UGI's safety claims with respect to the outside placement of meter sets in historic districts.

Reading Exception No. 6: The City Excepts to Finding of Fact 57 (I.D. at 16).

Finding of Fact 57 states that Reading'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

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[10] I.D. at 15 (Finding of Fact 54).

[11] I.D. at 15 (Finding of Fact 55).

[12] *See* Reading Exhs. JS-16, JS-22, JS-25, ML-1, ML-3. It is untenable to argue that meters placed within several feet of a narrow street, including some as close as 3 feet to the curb, as the City's photographs demonstrate, "avoids locations where vehicular damage may be reasonably anticipated." *See* Exhibits 1 and 2 to ALJ Exh. 1 (confirming distances of meters).

[13] Tr. at 350.

car has struck a meter."[14] The City's 15 foot proposal, however, is based on more than City witness Slifko's analysis of news reports. It is based on substantial pictoral evidence and common sense.[15] More importantly, it is also rooted in safety.[16] The I.D. also overlooks UGI's own ten foot proposal,[17] which is considered in detail in Reading Exception 14.

Reading Exception No. 7: **The City Excepts to Finding of Fact 58 (I.D. at 16).**

The City excepts to Finding 58 and any implicit finding that testimony by an engineer was required. Mr. Slifko may not have been an engineer, but UGI's only witness was not a professional engineer either and never really worked in an engineering capacity with respect to meters.[18]

B. EXCEPTIONS TO DISCUSSION

1. The Placement of Meters in Historic Districts

Reading Exception No. 8: **The City Excepts to the I.D.'s Conclusion that Utilities Should Not Be Required to Make the Inside vs. Outside Decision on a Case-by-Case Basis (I.D. at 25).**

Given that historic districts are geographically located, the burden should not be placed on the customer. The starting point should be that inside placement is more appropriate and related to the historic district as a whole. Inside meter placement was considered safe under the previous rules in effect before Section 59.18 was amended in September 2014, and, as UGI witness Brown admitted, the change in regulations did not mean a placement was safe one day

[14] I.D. at 16.

[15] *See, e.g.*, Reading Exhs. JS-16, JS-22, JS-25, ML-1, and ML-3.

[16] Reading Main Br. at 43.

[17] UGI St. No. 1 at 66-67.

[18] *See* Tr. 221-25; Reading Reply Br. at 10-11. Indeed, UGI witness Brown testified under cross that all his experience was in other UGI operations, even admitting he does not "really do any engineering in [his] role." Tr. 303.

and then not the next.[19] Also, the case-by-case analysis should not have to be considered before contacting the customers. The Environmental Rights Amendment, which is being addressed by CPHD, is all the more reason that contacts should be made on an historic district basis.

<u>Reading Exception No. 9</u>: **The City Excepts to the I.D.'s Assertion That an Inside Meter Creates a Liability and Enforcement Risk to UGI (I.D. at 28).**

The I.D. asserts that "leaving a meter inside an historic home creates a liability and enforcement risk to UGI should an accident occur."[20] This assertion is without legal and evidentiary support and originated with UGI witness Brown, who is neither a professional engineer nor a lawyer. Outside meters are not safer, an assertion the evidence of record fails to establish, and UGI's enforcement risk is not made greater by inside meter placement. As noted in the prior exception, what was safe one day is not unsafe the next day simply because a regulation has been amended.

<u>Reading Exception No. 10</u>: **The City Excepts to the I.D.'s Conclusion that Complainants Have Failed to Sustain Their Burden of Proving that UGI Violated § 59.18(d)(ii) after 2016 (Conclusion of Law 7; I.D. at 28).**

Although the I.D. sustains the Complainants' formal complaints to the extent UGI's meter placement policy in historic districts from 2014 until 2016 failed to conform with Section 59.18(d)(ii),[21] the I.D. concludes that Complainants failed to sustain their burden proving that UGI violated Section 59.18 after 2016.[22] First and foremost, even assuming *arguendo* UGI's approach to meter placements in Reading's historic districts "evolved," UGI was still in violation of the requirements of Section 59.18 until at least October 2017. UGI's "after-the-fact" revisions

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[19] Tr. 373.

[20] I.D. at 28.

[21] I.D. at 37 (Conclusion of Law 6).

[22] I.D. at 28 and 37 (Conclusion of Law 7).

to its GOM which went into effect July 31, 2016 failed to cure UGI's violations because, at all times, Section 59.18 and other pertinent regulations trump the GOM regardless of the version in use. A close reading of the UGI's revised policy guidance 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.[23] 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.[24]

As the City explained in its Reply Brief,[25] even though UGI introduced a "new" customer notice letter in October 2017 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 record evidence clearly demonstrated that UGI was still sending out the initial customer notice letters long after its revised GOM policy guidance had taken effect, letters which lacked sufficient notice and detail to customers and, in some instances, was in violation of Section 59.18's customer notice requirements.

Furthermore, Complainants offered numerous examples where UGI placed a meter in error by failing to consider an exterior restriction or other historic feature.[26] In addition, and also contrary to the I.D.'s assertion, Complainants offered evidence to support a determination that

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[23] UGI Exh. CB-5 at 2-3.

[24] Regarding customer notice, the record evidence established that the initial customer letters used by UGI from September 2014 until October 2017 contained significantly different wording, which unequivocally stated that the customers' meters were being relocated to the outside due to UGI company policy. *See* Reading Exhs. JS-10, JS-11, JS-12.

[25] *See* Reading Reply Br. at 7 and 14-15.

[26] *See, e.g.*, Reading Exh. JS-16.

UGI's meter placement in Reading's historic districts was an abuse of discretion for failing to consider the preservation of specific historic assets. As the City explained in its Main Brief:[27]

> UGI contends that it considers inside meters in historic districts by pointing to its GOM. While it is true UGI's current GOM procedures provide that UGI should attempt to avoid placing meters in front of distinguishing exterior features of historical properties, the GOM fails to define what constitutes a "distinguishing exterior feature."[28] Mr. Brown further admitted he 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.[29] It is a pure judgment call made without any basis or support. This was made clear at hearing when several photographs were reviewed concerning UGI's meter placements in historic districts. In each and every case, meters were placed in front of or in very close proximity distinguishing exterior features, such as ornamental iron works and historical plaque.[30] When questioned whether the plaque was a distinguishing exterior feature, Mr. Brown acknowledged it very well could be.[31]

The City has demonstrated that each time UGI failed to consider an historic district location when directing the removal of inside meters, there was an abuse of discretion.

<u>Reading Exception No. 11</u>: The City Excepts to the I.D.'s Failure to Impose a Civil Penalty or Grant Substantive Relief to Complainants (I.D. at 30-34; Conclusion of Law 10).

Despite concluding that Complainants met their burden in establishing that UGI's initial implementation of the amendments to Section 59.18 violated the directive to consider inside meter placements, the I.D. classified these violations as technical and concluded it was inappropriate to assess a civil penalty against UGI or grant any substantive relief to

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[27] Reading Main Br. at 33-34 (citations in original).

[28] UGI St. No. 1 at 34; UGI Exh. CB-5; Tr. 397.

[29] Tr. 396-97.

[30] Tr. 395-98; *see also* Reading Exh. JS-16.

[31] Tr. 398.

Complainants.[32] The failure to levy any penalties or provide relief to the Complainants is erroneous and should be reversed.

The I.D. addressed the factors and standards the Commission has adopted for the imposition of civil penalties[33] when a utility's practices violate Commission regulations. Contrary to the I.D.'s analysis, a review of these factors and standards demands the imposition of a civil penalty for UGI's violations of Section 59.18.

- Contrary to the I.D.'s finding, the record in these proceedings establishes that UGI's actions were not "technical" but rather willful, deliberate and serious. 52 Pa. Code § 69.1201(c)(1).
- The resulting consequences of UGI's violations of Section 59.18 were also serious, as the relocation of inside meters to outside locations diminishes the value of historic assets within the City and, in some cases, may damage those assets. 52 Pa. Code § 69.1201(c)(2).
- As the I.D. correctly recognizes, UGI made an "initial deliberate decision to not amend its meter placement procedures" after the amendment of Section 59.18.[34] 52 Pa. Code § 69.1201(c)(3).
- As discussed above, although UGI eventually modified its internal practices and procedures regarding the consideration of inside meter placements, it took UGI nearly two years to modify its GOM procedures (and even then it was not sufficient) and more than three years to change its customer notice letters.[35] Indeed, it is significant that UGI continued its conduct after the Complaints were filed and after the new regulations became effective. UGI only sought to make changes to its meter placement policies *after* the filing of CPHD's and the City's Complaints had been pending for some time and two years after the new regulations became effective. 52 Pa. Code § 69.1201(c)(4).
- As Exhibit 1 to ALJ Exh. 1 illustrates, there are nearly 900 meter historic district locations which were surveyed by the City and impacted by UGI's violations, a number which could be substantially higher as UGI continued to undertake its

[32] I.D. at 33-34.

[33] 52 Pa. Code § 69.1201; *see also Rosi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000).

[34] I.D. at 33.

[35] *See* Exception No. 10, *supra*; Reading Reply Br. at 7 and 14-15.

meter location program in violation of Section 59.18 at other locations not captured by the survey. 52 Pa. Code § 69.1201(c)(5).

- Although there was no specific evidence concerning UGI's compliance history, the City submits this is certainly not an "isolated incident from an otherwise compliant utility," as the Commission's records will reflect. 52 Pa. Code § 69.1201(c)(6).

- The I.D. assets that a fine was not needed to deter future violations because UGI has already remediated its original failure to implement the amendments to Section 59.18 including the revision of its customer notification letter, procedures to accommodate meter locations in historic districts and an avenue for customers in historic districts to provide UGI with relevant information concerning their property. Unfortunately, when scrutinized, many of the remedies are cosmetic, and most, if not all, are after the fact. . Furthermore, as previously mentioned, it took UGI two years to modify its GOM and more than three years to revise its customer notification letter to include the requirements of Section 59.18(a)(3) and relevant information about concerning the property and seeking reconsideration. 52 Pa. Code § 69.1201(c)(8).

- The evidence does not support all of the I.D.'s conclusions in the bottom paragraph on page 32. Penalties provide a better remedy and can be both monetary and non-monetary (further relocation, bollards, etc.). Employing the use of bollards or other forms of supplemental meter protection may provide a less expensive alternative to relocation. 52 Pa. Code § 69.1201(c)(10).

For these reasons, a civil penalty is wholly appropriate and justified under the circumstances presented in these proceedings. What is most significant on this issue is UGI's admission that it made "an initial deliberate decision" to not amend its meter placement procedure believing on the basis of hearsay assertions that it had the support of the Commission's Gas Safety Division for its meter placement decisions.[36] UGI should be fined for these intentional acts on its part and required to revisit the placement of meters that have been moved to outside locations in Reading's historic districts. The I.D. asserts that declining to exercise the Commission's enforcement discretion in these circumstances incentivizes utilities to remedy violations before being ordered to do so and, therefore, it is not appropriate to access a

[36] I.D. at 33.

civil penalty in the circumstances presented here. The City strongly disagrees, especially when UGI's track record is considered, and respectfully excepts to the I.D.'s failure to impose civil penalties which provide a much better incentive to abide by the rules.

In addition to the imposition of a civil penalty, it is also proper to grant, as appropriate, the substantive relief requested by the City in Sections V.D.1.c. and V.D.2.b. of its Main Brief. At a minimum, UGI should be ordered to reconsider each and every meter that was relocated in historic districts between September 13, 2014 and October 1, 2017, by meeting with the homeowner and, if necessary, relocating the meter (or installing bollards or other protection) at UGI's sole cost where the placement of the relocated meter is not justified.[37] Otherwise, Complainants have no viable relief despite sustaining their burden of proof on the historical district locations and are instead punished for UGI's conduct. It is patently unfair and unjust for UGI to deliberately ignore the requirements of Section 59.18, as amended, for more than 3 years by installing meters in Reading's six historic districts without any meaningful consideration or proper customer notice and then excuse its conduct, without consequence, because it "evolved" its practices and policies.

Ultimately, the I.D.'s refusal to impose a civil penalty or grant any relief to Complainants was erroneous, unreasonable, and, importantly, does not comport with the substantial record evidence.

[37] 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.

2. **Placement of Meters on Sidewalks**

<u>Reading Exception No. 12</u>: **The City Excepts to UGI's Failure to Comply with Federal and State Regulations (I.D. at 34; Conclusion of Law 9).**

In addressing the placement of meters on sidewalks, the I.D. recognizes that:

> 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."[38]

As the regulated utility, it is UGI which has the burden to comply with these requirements of law, and UGI has not sustained its burden of having done so. The City also excepts to the I.D.'s failure to include these requirements as Conclusions of Law under which the regulated utility must comply.

<u>Reading Exception No. 13</u>: **The City Excepts to the I.D.'s Disregard of Significant Pictorial Evidence Introduced by the City (I.D. at 34; Conclusion of Law 9).**

The I.D. conclude that Complainants offered no credible evidence to support their claim that UGI placed meters where "vehicular damage may be anticipated."[39] The City excepts to this assertion which ignores the numerous pictures[40] which are evidence of record in this proceeding. It has been said many times that a picture is worth a thousand words. Apparently, when it comes to safety, vehicular damage is only an "after-the-fact consideration" for UGI. The Public Utility Code requires more when safety is in question. There is substantial "credible evidence" in this record supporting Complainant's claim and it should not be ignored because it is pictorial.

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[38] I.D. at 34 (footnotes omitted).

[39] I.D. at 34.

[40] *See*, *e.g.*, Reading Exhs. JS-16, JS-22, JS-25, ML-1, and ML-3. *See also* Reading Main Br. at 40-41.

<u>Reading Exception No. 14</u>: The City Excepts to the Rejection of Its Proposal to Have Meters Located at Least 15 Feet from the Curb (I.D. at 34-35; Conclusion of Law 9).

The City excepts to the I.D.'s rejection of City witness Slifko's proposal to have meters placed at least 15 feet from the curb.[41] It characterizes the proposal as arbitrary and not based on any industry standards.[42] It even criticizes Mr. Slifko[43] for not being an engineer and asserts that the City did not proffer any expert testimony that would support the City's claims. Once again, the I.D. ignores the substantial pictorial evidence of record. It also ignores Section 1501 of the Public Utility Code which expressly and unambiguously provides, in pertinent part:

> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.[44]

Just as importantly, it also ignores the witnesses themselves. As previously observed, UGI did not present any testimony by a professional engineer. Unlike the City's witness,[45] UGI witness Brown was not a Reading resident and although his resume indicates many positions at UGI and affiliated companies, none of these positions really dealt with meter placement and vehicular safety.[46]

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[41] I.D. at 34-35. *See generally* Reading St. No. 2.

[42] I.D. at 35.

[43] Prior to his unexpected death, Mr. Slifko was Vice President of City Council, a long time Reading resident with perhaps more knowledge than anyone regarding the streets and sidewalks of Reading. In addition to his law degree, Mr. Slifko also worked as a home remodeling contractor for more than 30 years, focusing primarily on historic restoration in Reading. UGI witness Brown did not have any comparable experience.

[44] 66 Pa.C.S. § 1501.

[45] *See, e.g.*, Reading St. No. 2 at 1-3 (concerning the qualifications of witness John Slifko).

[46] *See* Tr. 221-25, 303.

Also, the I.D. ignores that Mr. Brown himself essentially proposed a ten foot rule in his prepared direct testimony.

> Q. YOU MENTIONED PREVIOUSLY THAT THE COMPANY HAS REVISED ITS METER LOCATION POLICY AND MOVED CERTAIN METERS IN RESPONSE TO THE COMPLAINANTS' CONCERNS. IS THE COMPANY WILLING TO TAKE ANY ADDITIONAL STEPS?
>
> A. Yes. … after reviewing the Complainants' testimony and exhibits, UGI is willing, if the Commission explicitly decides in this case that in balancing gas safety concerns against aesthetic concerns it wishes for UGI to adopt the proposal set forth in Paragraph 3 below, to make the following additional commitments in response to their concerns about outside meter placements:
>
> * * *
>
> 2. At meter locations identified by the City as presenting a safety risk, UGI would undertake an additional follow-up review, and if it determines, in its sole discretion, that a meter relocation is necessary and appropriate to mitigate a safety risk, UGI will relocate the meter at its expense.
>
> 3. In historic districts, UGI will continue to follow its existing written standards that permit the location of certain meters in inside locations with the regular placed outside where the only practical outside location would cover a distinguishing architectural feature. In addition, on a forward going basis, UGI would apply a new standard for historic districts that would call for inside meter locations with an outside regular where, unless the customer requests an outside meter placement and the Company, in its sole discretion, agrees to the request:
>
>   a) The outermost building wall is immediately appurtenant to the sidewalk (typically as is the case of rowhomes);
>   b) **The distance between the street facing edge of the curb or edge of pavement is less than 10 feet from the building wall;**
>   c) There is not a location on the side of the building to place the meter; and
>   d) There is not an outside location affording meter protection, such as a corner at a wall or stair.[47]

[47] UGI St. No. 1 at 66-67 (emphasis added).

This is contrary to the I.D.'s assertions. Mr. Slifko's testimony that meters placed on sidewalks are inherently unsafe, is based on more than his opinion. At some point on the narrow streets of Reading, common sense needs to be recognized. Expert engineering testimony is not required.

As the pictorial evidence should demonstrate, at the very least bollards or other forms of supplemental meter protection should have been considered as a less expensive alternative to relocation. When asked about the use of bollards for safety around the Commission's office building and the state capital, Mr. Brown's response was as follows:

> Q. When you were approaching this office building this morning, did you notice all the bollards around?
>
> A. I did.
>
> Q. They were aesthetically pleasing, were they not, all nice and shiny?
>
> A. Aesthetics is sometimes in the eye of the beholder, but yeah, they're nicer than some others I've seen.[48]

3. Conclusion

In conclusion, the I.D. summarizes its recommendations and findings.[49] For the most part, these recommendations have already been addressed and do not require further exposition here.

<u>Reading Exception No. 15</u>: The City Excepts to the I.D.'s Failure to Penalize UGI (I.D. at 36).

Contrary to the I.D.'s recommendation, UGI should be penalized for violations of the regulations occurring after the filing of the Complaints and before the revision of UGI's practices to conform to the amended regulations and UGI's revised/corrected GOM. UGI knew that its

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[48] Tr. 350.

[49] I.D. at 36.

practices were being challenged, yet continued its violations. Also, UGI should be penalized on a going-forward basis every time it violates the regulations and its revised GOM. Indeed, the City finds it troubling that the GOM can be given the same weight and authority as a regulation.

Just as important from the standpoint of penalties, the City had reason to believe that UGI's revised 30 day notice letter was not being utilized in all cases and petitioned to have the record reopened. By Interim Order dated January 9, 2019, the City's petition was denied. If the Commission ever finds that UGI is not using the revised 30 day notice letter (Finding of Fact 46), it should be penalized to the fullest extent permitted by the Public Utility Code.

For further discussion on this matter, the City hereby refers the Commission to Exception No. 11, *supra.*

Reading Exception No. 16: **The City Excepts to the I.D.'s Final Conclusion with Respect to the Placement of Exterior Meters in Unsafe Locations (I.D. at 36; Conclusion of Law 9).**

The I.D. also concludes:

> 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.[50]

For the reasons previously stated,[51] the City excepts to this "final" conclusion. Pictures were admitted into the record and are indeed evidence. As the I.D. states in Finding of Fact 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."[52] Substantial evidence was presented and it is more than anecdotal. Reading is unique as Finding of Fact 2

[50] I.D. at 36.

[51] *See* Exception Nos. 12, 13, and 14, *supra.*

[52] I.D. at 9.

noted: "Reading ... has one of the greatest collections of historic architecture and historic neighborhoods in the country."[53] The I.D. also overlooks the fact that many of the meters were placed under the previous rules which must be given some credit for the safety records achieved.

In sum, the evidence presented, pictorial and otherwise, is sufficient to sustain the City's burden of proof.

C. EXCEPTIONS TO CONCLUSIONS OF LAW

Reading Exception No. 17: **The City Excepts to Conclusion of Law 7 with Respect to the Date by Which UGI's Practices Conformed to the Amendments to 52 Pa. Code § 59.18.**

The City addresses Conclusion of Law 7 in Exception No. 10, *supra*. The City reiterates, however, that even with the two Complaints having been filed, UGI did not change its practices with respect to the 30 day notice letter until October 2017, well after its effectuation.[54] The 2016 date in Conclusion of Law No. 7 is not correct and, **at a minimum**, should be October 2017. For the reasons previously covered, Complainants did indeed meet their burden of proving that UGI's policy failed to conform to the amendments to 52 Pa. Code § 59.18. UGI should be fined for its failure to do so, and the Commission should grant Complainants appropriate substantive relief for the meters that were moved between September 2014 and October 2017.

Reading Exception No. 18: **The City Excepts to Conclusion of Law 9 that Complainants Have Not Met Their Burden of Proving UGI Violated 52 Pa. Code § 59.18(a)(5).**

The City addresses Conclusion of Law 9 in Exception Nos, 12, 13, 14, and 16, *supra*. For the reasons previously stated, the Complainants have met their burden of proof under 52 Pa.

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[53] I.D. at 8.

[54] [need cites]

Code § 59.18(a)(5) and have presented substantial evidence establishing UGI's failure to meet its obligations under Section 59.18.

III. CONCLUSION

For the reasons set forth above and in its Main and Reply Briefs, the City respectfully submits that the I.D. erred in only granting the City's Complaint in part and for declining to impose a civil penalty or grant any substantive relief to Complainants. The Commission should grant the City's Exceptions as set forth above and modify and reverse the Initial Decision consistent therewith, and order the relief requested in the individual exceptions.

Respectfully submitted,

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DATED: March 18, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of March, 2019, 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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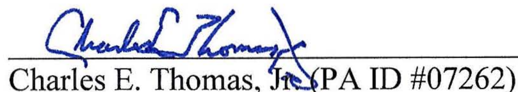

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