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March 18, 2019

VIA ELECTRONIC FILING

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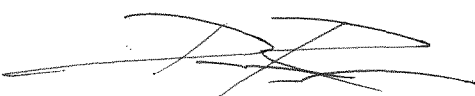
**Re: Centre Park Historic District v. UGI Utilities, Inc.
Docket No. C-2015-2516051**

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

Dear Secretary Chiavetta:

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

Respectfully submitted,



Devin Ryan

DTR/jl
Enclosures

cc: Honorable Mary D. Long
Certificate of Service

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

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

VIA E-MAIL AND FIRST CLASS MAIL

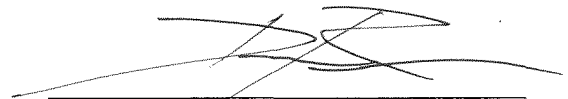
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Date: March 18, 2019



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

EXCEPTION OF UGI UTILITIES, INC.

UGI Utilities, Inc. (“UGI”), in accordance with the provisions of 52 Pa. Code § 5.533, hereby excepts to certain portions of the Initial Decision (“ID”) of Administrative Law Judge Mary D. Long (“ALJ”), which was served in the above-captioned matter by Secretarial Letter dated February 26, 2019. Although UGI agrees with the ID that the City of Reading (“City”) and Centre Park Historic District (“CPHD”) (collectively, “Complainants”) failed to meet their burden of proof that UGI’s meter installation and relocation policy since 2016 violated Section 59.18 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, UGI disagrees with the ID’s finding that UGI’s policy from 2014 to 2016 failed to conform to that regulation’s requirements. Therefore, UGI files this limited Exception to the ID to overturn that incorrect finding.

In support of this Exception, UGI avers the following:

I. EXCEPTION NO. 1 – THE ID ERRED IN CONCLUDING THAT UGI’S METER INSTALLATION AND RELOCATION POLICY FROM 2014 TO 2016 FAILED TO CONFORM TO 52 PA. CODE § 59.18 (CONCLUSION OF LAW NO. 6)

The Commission should reverse the ID’s finding that the Company’s policy failed to conform to the amendments to 52 Pa. Code § 59.18 from 2014 until 2016. This finding is entirely based on a patently incorrect reading of Section 59.18. Specifically, the ID concludes

that utilities have an obligation to apply an undefined “sensitivity for historic resources” rule in evaluating meter placement in historic districts. ID at 21-22 (quoting the ALJ’s September 7, 2017 Initial Decision Granting in Part and Denying in Part UGI’s Motion for Summary Judgment). However, as the ID properly recognizes, there are no stated parameters for such a rule in the regulation. Indeed, the ID observes that “Section 59.18 does not set forth specific guidance” and that “the Commission’s statements in the rulemaking order may not provide sufficient guidance to either utilities or customers.” ID at 19, 27.

Having made the critical error of reading a requirement into the Commission’s regulation that, as explained below, does not exist, the ID then applies rules of statutory construction to further conclude that Section 59.18 requires “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” and that the provisions of Section 59.18(a)(3) require UGI to “inform customers that they could provide supplemental information, such as the building’s historic status and seek reconsideration of outside meter placement.” ID at 20, 24.

Applying these conclusions to the record evidence, the ID concludes that UGI initially was in violation of Section 59.18 because it did not adopt differing standards for historic districts. ID at 23-24. However, the ID further concludes that the Company corrected this error when it: (1) incorporated separate standards for outdoor placement of meters in historic districts into its Gas Operations Manual (“GOM”) in 2016; and (2) revised its Section 59.18(a)(3) notice to inform customers they could seek reconsideration of meter placement decisions. ID at 24-25.

The ID then finds that UGI should not be assessed civil penalties for its alleged violation under the standards set forth at 52 Pa. Code § 69.1201 (*i.e.*, the *Rosi*¹ standards) because: (1) “UGI revised its policy in 2016 which created procedures to accommodate meter relocations in

¹ *Rosi v. Bell Atlantic – Pa., Inc.* Docket No. C-00992409 (Order entered Mar. 16, 2000).

historic districts”; (2) “[w]hile 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”; (3) “[t]he Complainants offered no evidence that UGI ignored any information regarding any restrictions to exterior improvement connected to the building’s historic status or any other relevant information”; (4) “while UGI made an initial deliberate decision to not amend its meter placement procedures, its decision was a good faith determination that it had authority to do so”; and (5) “the meetings between field representatives and customers provided customers with an opportunity to present UGI with relevant information about their properties.” ID at 32-33.

As noted above, the critical error made by the ID (and the ALJ’s 2017 ruling on UGI’s motion for summary judgment) is its conclusion that the Commission’s 2014 revisions to its regulation at 52 Pa. Code § 59.18 required natural gas distribution companies (“NGDCs”) to establish separate meter placement rules for historic districts. In actuality, in its *Final Rulemaking Order*,² the Commission explicitly rejected recommendations by the Independent Regulatory Review Commission, the Pennsylvania Historical and Museum Commission, and several other advocates for historical resources that the Commission establish such a requirement and implement more specific standards. *See Final Rulemaking Order* at 30; (UGI Statement No. 1, pp. 16-17.) Thus, although the ID noted the lack of specific standards in 52 Pa. Code § 59.18 for placement of meters in historic districts, that fact does not reflect a dereliction of duty by the Commission. Rather, it demonstrates the Commission’s firm determination not to mandate such standards and, instead, to adhere to its central public policy determination that the risks

² *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Order entered May 23, 2014) (“*Final Rulemaking Order*”).

associated with outside meters create a clear need to have almost all meters and regulator moved to outside locations. *See Final Rulemaking Order* at 5-6.

Nevertheless, the ID points to the provisions of 52 Pa. Code § 59.18(d)(1), which states that “[i]nside meter locations shall be considered” in certain specified circumstances including buildings in or eligible to be in certain historic districts, and concludes that this exception would not have been included unless there was some unspecified separate meter installation standard which the Commission intended NGDCs to apply. However, there is another much simpler reason this provision was included.

Under the federal standards adopted under the provisions of 52 Pa. Code § 59.33, as well as the Commission’s prior regulation at 52 Pa. Code § 59.18, NGDCs had full discretion to place meters in either inside or outside locations. (UGI Statement No. 1, p. 12.) As part of its investigation into meter placement:

The Commission’s Gas Safety Division, in conjunction with the Law Bureau, implemented an investigation regarding meter set (meter and regulator) location. The Gas Safety Division issued ten data requests to the ten largest gas utilities under PUC jurisdiction. The data requests included questions related to the number of inside/outside meter sets, inside regulators, tariff language, inside meter set leak calls, reportable incidents associated with inside meter sets, meter relocation charges, inside leak surveys, and local ordinances requiring certain meter locations. All ten gas utilities responded. The data revealed that the Pennsylvania natural gas industry has approximately 27% of all meter sets located inside of residential dwellings. This average has been consistent over the last five years.

All the tariffs for the solicited utilities have tariff rules governing the location of meter sets. Each tariff states that the utility will make the ultimate siting determination. The basis for the utility decision for meter and regulator location is safety. The majority of the tariffs include language that allows for exceptions to outside siting. Allowance for inside meter and regulator sets are based upon historic area prohibitions and areas that have high amounts of vandalism.

Finally, several utilities provide service in historic districts where municipal laws may require the meter set to be located inside structures.⁵ In some instances, the utilities may be able to locate the regulator outside; however, it was represented that there are instances when the utility must locate the entire meter set inside due to zoning ordinances. In addition, some utilities may locate meter sets inside due to vandalism concerns.

⁵ Such municipal laws may not be enforceable against public utilities due to the Commission's exclusive jurisdiction of utilities under the Public Utility Code. *See Duquesne Light Co. v. Monroeville Borough*, 449 Pa. 573, 581, 298 A.2d 252, 257 (1972).

Final Rulemaking Order at 5, 8 (emphasis added) (footnote omitted).

The Commission's authorization of NGDCs to "consider" inside meter placements under Section 59.18(d)(1) in historic districts simply reflects the Commission's decision to permit the existing tariff provisions of certain NGDCs identified by its staff's investigation to remain in effect, given the Commission's apparent uncertainty as the enforceability of local zoning or historic standards. It does not reflect the Commission's endorsement of separate standards for historic districts and buildings or any requirement for NGDCs not having separate standards, such as UGI, to adopt them. If the Commission intended such a result, it would have said so. Instead, the Commission firmly and explicitly rejected several commenters' recommendations for the Commission to establish separate mandatory standards for evaluating meter placements in historic districts, stating:

We shall also decline to address visual impact alternatives that may avoid or minimize the impact of installing the meter and/or regulator outside. Although we would expect a gas utility or any utility to provide reasonable and adequate service when installing its equipment outside, we shall not attempt to set what may be subjective requirements that would avoid or minimize the impact to an historic resource. However, we do agree that property

owners, as well as utility customers, should be notified of neighborhood projects, which we believe is covered under compliance with the notice requirement of paragraph (a)(2).

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

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

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

The general rule of the regulation under paragraph (a)(1) is that meters and regulators shall be located outside unless otherwise allowed or required in the regulation. This subsection and paragraph identifies situations where an inside meter will be considered. We agree that the regulation does contain provisions that delegate discretion to the utility in making a determination with respect to locating an outside meter. Although we believe that it is necessary that, due to its public safety obligations, the utility be allowed to make the final decision, this decision to locate a meter inside is not without direction. The regulation does provide, in effect, guidelines that must be followed. If an outside meter is not going to become available because of certain restrictions, then an inside meter location must be considered, and that does not appear to us to be ambiguous.

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

In addition, although the Commission expressed uncertainty in its *Final Rulemaking Order* as to the applicability of local zoning restrictions on meter placements in historic districts, any such ambiguity was subsequently resolved by the Commonwealth Court in *UGI Utilities, Inc. v. City of Reading*, 179 A.3d 624 (Pa. Cmwlth. 2017). In that decision, the Commonwealth Court found that local regulation of meter placement is preempted by the Commission's exclusive jurisdiction. *Id.* at 629-32. The Commonwealth Court further concluded that UGI was not required to install inside meters in historic districts under the Commission's revised regulation at 52 Pa. Code § 59.18 and that the Commission fully fulfilled its obligations under the Pennsylvania Constitution in promulgating its regulation. *Id.* at 630-32. Therefore, the ID clearly is at odds with the Commonwealth Court's ruling.

The ID also incorrectly relies on the 30-day notice provisions of 52 Pa. Code § 59.18(a) as supporting its conclusion that the Commission requires NGDCs to establish separate meter installation standards for historic districts. *See* ID at 21. The pertinent provisions provide:

(2) Except in the case of an emergency, a utility shall provide notice to a utility customer by first class mail or by personal delivery at least 30 days prior to relocating and subsequently installing a meter or regulator outside the customer's building....

(3) The written notice must inform the customer and building owner of the equipment that the utility proposes to relocate, the planned new location and how to contact the utility to provide supplemental information that the utility may not have, such as the building's historical status. The written notice must include contact information for the Commission's Bureau of Consumer Services.

52 Pa. Code § 59.18(a)(2)-(3) (emphasis added).

The ID found that UGI's initial 30-day notice letter³ violated this section of the Commission's regulation because it did not include language indicating that customers could ask for reconsideration based on historic status. *See* ID at 14, 21, 24. Section 59.18(a)(3) also was cited as evidence of the Commission's intent to require NGDCs to establish separate meter placement standards for historic districts. *See* ID at 21.

However, it is clear from the plain wording of Section 59.18(a)(2)-(3) that the NGDCs' notice is not required to include a listing of potential reconsideration under separate meter installation standards applicable to historic districts, nor are NGDCs required to establish any such standards. Instead, it simply cites, as an example, the type of information that a customer might provide to a utility because, in certain instances, such information might be relevant to a utility when it is installing or relocating its facilities.

Here, the record shows that prior to the adoption of the Commission's revised meter placement regulation in 2014, UGI incorporated meter location standards into its GOM in 2011,

³ *See* Reading Exhibits JS-10 and JS-12.

which generally required that meters and regulators be installed in outside locations and that management approval be obtained for inside locations. (See UGI Exhibit 4, Section 5.0.) No separate rules were adopted for historic districts, but, as the ID correctly noted, UGI field personnel still gave individualized consideration of each customer's circumstances. See ID at 14-15, 32-33. Moreover, although the Company subsequently amended its 30-day notice letter, its initial notice letter still provided all of the information required under 52 Pa. Code § 59.18(a)(2)-(3), including the required contact information for the Commission's Bureau of Consumer Services and for the Company's personnel involved in the project. (See Reading Exhibits JS-10 and JS-12.)

After the Commission's revised regulation became effective on September 13, 2014, UGI initially did not adopt separate meter installation standards for historic districts, nor was there anything in this regulation that required it to do so. Further, in developing its initial implementation strategy, UGI initially excluded local historic areas from consideration of inside meter placement because there was no central registry defining where such districts were located. (UGI Statement No. 1, p. 20.) In contrast, UGI was able to locate a resource which listed the boundaries of federal historic districts. (UGI Statement No. 1, p. 20.) Thus, UGI initially exercised its discretion by considering and rejecting inside meter placements in non-federal historic districts and adopted standards for making meter placement in federal historic districts that did not differ from non-historic districts. (UGI Statement No. 1, p. 20.)

However, as the ID correctly concluded, UGI still gave individualized consideration in its meter placement decisions. See ID at 32-33. The only difference was that the Company did not apply a differing standard between historic and non-historic locations. Subsequently, UGI developed a separate standard for making meter placement decisions in historic districts, which it

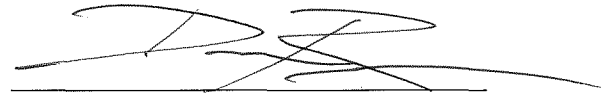
incorporated into its GOM in 2016, and UGI applied that standard to local, state, and federal historic districts alike. (See UGI Statement No. 1, pp. 33-34.) The Company also voluntarily modified its 30-day notice to state specifically that customers can request reconsideration of meter placement decisions based on historic status through, amongst other ways, a new web-based portal for lodging such requests. (Tr. 344-35; UGI Exhibit CB-16.)

For these reasons, UGI's policies and customer notices, both before and after its voluntary implementation of separate standards for considering meter placements in historic districts, fully complied with the Commission's requirements in 52 Pa. Code § 59.18. Thus, the ID's sixth conclusion of law should be reversed.

II. CONCLUSION

WHEREFORE, the Pennsylvania Public Utility Commission should grant UGI Utilities, Inc.'s Exception to the Initial Decision and enter a Final Order consistent with this Exception that adopts the Initial Decision, as modified.

Respectfully submitted,



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Dated: March 18, 2019

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