

March 28, 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 is the City of Reading's Reply to UGI Utility Inc.'s Exception in the above-referenced proceeding. Copies of the City's Reply are being served in accordance with the Certificate of Service attached to the Reply.

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

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By


Charles E. Thomas, Jr.

Enclosure

cc: 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. :

**THE CITY OF READING'S
REPLY TO THE EXCEPTION OF UGI UTILITIES, INC.**

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DATED: March 28, 2019

Pursuant to 52 Pa. Code § 5.335, the City of Reading (“City” or “Reading”) files the following Reply to UGI Utilities, Inc.’s (“UGI”) Exception 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

The I.D. sustains in part and denies in part the Formal Complaints of the City and Centre Park Historic District (“CPHD”), which concern the placement of gas meters in historic districts and other locations within Reading. Pertinent to UGI’s Exception, the I.D. concludes that the City and CPHD “met their burden of proving that UGI’s policy failed to conform to the amendments to 52 Pa. Code § 59.18, from 2014 to 2016.”¹ UGI takes exception to Conclusion of Law No. 6, arguing that the I.D. erred in finding that its meter installation and relocation policy during this time period failed to conform to Section 59.18, as amended.

Although the City disagrees with the I.D.’s other findings and conclusions, as detailed in its own Exceptions,² the I.D.’s findings and conclusions concerning UGI’s meter relocation practices and policies between 2014 and 2016 are well reasoned and supported by the substantial evidence of record. As Judge Long correctly stated:

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).³

¹ I.D. at 37 (Conclusion of Law No. 6).

² See Reading Exceptions (filed Mar. 18, 2019).

³ I.D. at 36.

Accordingly, for the reasons set forth herein and in the City’s previously filed briefs,⁴ the Commission should deny UGI’s Exception and adopt the I.D.’s Conclusion of Law No. 6 without modification.

II. REPLY TO EXCEPTION OF UGI

A. The I.D. Did Not Err 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)

UGI first asserts that the I.D. has misread 52 Pa. Code § 52.18 and based thereon has failed to conform to the regulations as revised.⁵ To the contrary, it is UGI which is misreading the revised regulation. The regulations provide parameters similar to other areas of regulation under the Pennsylvania Public Utility Code, such as Section 1301, which requires rates to be just and reasonable. The absence of detailed parameters is quite common in utility regulation and does not translate to a lack of sufficient guidance. In the instant case, the regulations themselves provide the parameters.

The I.D. did not make the “critical error”⁶ of reading a requirement into the Commission’s revised regulation that did not exist as UGI contends. The regulation speaks for itself and clearly mandates that a utility must consider inside placements for meters located in historic districts. The fact of the matter is that UGI failed to follow Section 59.18’s requirements and by its own admission did so deliberately.⁷ Indeed, UGI should be assessed civil penalties for

⁴ The City extensively addressed UGI’s meter practices and policies, including during the 2014-2016 period, in its Main and Reply Briefs and, therefore, incorporates by reference the discussions contained therein in further reply to UGI’s Exception.

⁵ See UGI Exception at 1-4.

⁶ UGI Exception at 2.

⁷ I.D. at 33 and UGI Exception at 3 (acknowledging UGI’s “deliberate” decision not to amend its meter placement procedures consistent with the amendments to Section 59.18).

its deliberate, intentional violations of the revised regulations.⁸ Revisions of the Gas Operations Manual (“GOM”) and permitting customers to seek reconsideration do not absolve UGI of its intentional misdeeds, nor do contentions that UGI was acting in good faith. Good faith violations are still violations, and intentional violations should be penalized.

UGI also references the I.D.’s conclusion that utilities have an obligation to apply a “sensitivity for historic resources” rule in evaluating meter placements in historic districts and directs the reader to Judge Long’s September 7, 2017 Initial Decision in connection with UGI’s July 6, 2017 Motion for Summary Judgment.⁹ The City has revisited Judge Long’s observation and believes it merits repeating here:

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.¹⁰

A detailed statement of parameters should not be required. What is required, however, are consideration and proper customer notice, and, as the I.D. properly finds, the clear evidence

⁸ Reading Exceptions at 11.

⁹ UGI Exception at 2.

¹⁰ Initial Decision Denying in Part and Granting in Part UGI’s Motion for Summary Judgment (issued Sept. 7, 2017) at 20-22 (footnotes omitted).

of record conclusively demonstrates that UGI neither considered inside meter placements in Reading's historic districts between 2014 and 2016, nor provided sufficient customer notice. Instead, UGI chose to adopt and enforce an absolute "company policy" of moving all meters outside without any consideration whatsoever and without requesting supplemental information that UGI did not have, especially concerning each building's historic status.¹¹

B. UGI'S Discretion Is Governed by the Language of the Regulation which Provides Sufficient Guidance

UGI next asserts that under both the prior federal and state standards, including the prior regulation at 52 Pa. Code § 59.18, the utility had full discretion to place meters in either inside or outside locations. In support, UGI quotes a passage from the *Final Rulemaking Order*¹² which resulted in the current Commission regulations.¹³ Utilities, however, do not have the same discretion today under Section 59.18 that they did prior to the revisions in 2014.

The matter of UGI's discretion with respect to the location of meters was thoroughly addressed throughout the City's Exceptions and Main Brief¹⁴ and need not be repeated here. For the record, UGI and other NGDCs do not have complete, unfettered discretion with respect to historic district meter placements. The regulations – particularly Section 59.18 – determine the

¹¹ See Reading Exh. JS-10 (September 24, 2015 letter advising that "if the meter and regulator are inside, [UGI] will need to move them outside, due to company policy"); JS-11 (November 23, 2015 letter stating that "[i]f your natural gas meter set is located inside the building where you live, it will be moved to a position outside the dwelling" (emphasis in original); JS-12 (January 30, 2017 letter stating that "[i]f your natural gas meter set is located inside the building where you live, it will be moved to a position outside the dwelling" (emphasis in original) and January 17, 2017 letter advising that "if the meter and regulator are inside, [UGI] will need to move them outside, due to company policy"). None of these letters requested information or made any mention about the premise's possible historic status, as required by Section 59.18(a)(3). See also Reading Main Brief at 30-32; Reading Reply Brief at 7.

¹² *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Final Rulemaking Order entered May 23, 2014) ("*Final Rulemaking Order*").

¹³ See UGI Exception at 4-5.

¹⁴ See, e.g., Reading Exceptions at 10; Reading Main Brief at 33-34.

parameters, and the basis for the decision on meter and regulator location is safety. The City reiterates that what was safe one day is not necessarily unsafe the next, even though the governing regulations may have changed.

A utility's discretion notwithstanding, UGI and other NGDCs must follow the requirements of amended Section 59.18 in connection with meter placements and relocations. This includes considering the placement of meters inside when the meter is located in an historic district, a requirement with which UGI failed to comply *at a minimum* between 2014 and 2016,¹⁵ as the I.D. correctly concludes.

C. The Language of the Regulation Controls, Not Speculative Assertions of Commission Authorizations

Based on carefully chosen excerpts from the *Final Rulemaking Order*, UGI subsequently asserts that:

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.¹⁶

UGI's assertions are mere speculation. Indeed, the *Final Rulemaking Order* recognized that the Commission's existing regulations and the tariff provisions of NGDCs varied significantly and were ambiguous and that it therefore was "critically important" to ensure the regulations provide "clear direction on meter location issues to ensure safe and reliable

¹⁵ Refer to the City's Exceptions for a discussion regarding UGI's failure to comply with Section 59.18 for a much longer period of time from the date amended Section 59.18 became effective (September 13, 2014) up to at least October 2017.

¹⁶ UGI Exception at 5 (emphasis in original).

service.”¹⁷ Contrary to UGI’s assertion, the Commission, in promulgating its amendments to Section 59.18, did, in fact, endorse a “separate standard” designed to provide “clear direction” when dealing with historic districts and buildings, even if it did not expressly say so. The regulation speaks for itself and subsection (d)(1) unequivocally requires different treatment for historic districts.

The City submits that the long passage quoted from the *Final Rulemaking Order* on pages 5-7 of UGI’s Exception is not at odds with the City’s position in this proceeding. In particular, the City agrees that:

- Property owners, as well as utility customers, should be notified of neighborhood projects.
- The regulation sufficiently defines the restrictions under which inside meters shall be considered.
- The general rule, related requirements, and exceptions provide guidance and direction for meter and regulator location.
- The regulation sufficiently defines the restrictions under which inside meters shall be considered. If these circumstances do not exist, then the general rule under Section 59.18(a)(1) applies and the meter and regulator shall be located outside and above ground.

Ultimately, 52 Pa. Code § 59.18 provides clear and unambiguous guidance on meter placements and requires that if an outside meter is not going to become available because of certain restrictions, then an inside meter location *must be considered*. UGI’s Exception is nothing more than attempt to complicate and confuse a straightforward issue and divert attention away from the substantial record evidence establishing that UGI failed to comply with the mandates of Section 59.18 between 2014 and 2016. UGI’s “discretion” under the regulation does not excuse its failure to conform to the regulation’s requirements. Section 59.18 must be

¹⁷ Final Rulemaking Order at 3.

read as a whole and subsection (d)(1) expressly requires, with respect to historic districts, that their status be considered. Just as safety trumps aesthetics, Section 59.18 trumps UGI's discretion.

D. The Language of the Regulation Governs and With Respect To Historic Districts Requires That Their Status Be Considered

In addition to extensively quoting and citing the *Final Rulemaking Order*, UGI also discusses the Commonwealth Court's decision in *UGI Utilities, Inc. v. City of Reading*, 179 A.3d 624 (Pa.Cmwlt. 2017) and asserts that the I.D. is at odds with the Commonwealth Court's ruling.¹⁸ While interesting, UGI's discussion again diverts the focus from the language of the regulation, which has not changed and is the standard by which UGI's actions must be judged.

UGI may have ultimately incorporated the requirements of the regulation into its policies, but, most importantly, it failed to follow them. Moreover, it took nearly two years after the amendments to Section 59.18 became effective and well after the City and CPHD had filed their complaints for UGI to incorporate the requirements into its GOM¹⁹ and even longer to update its customer notices and practices.²⁰ Actions speak louder than words, and UGI's actions in this proceeding demonstrate, without a doubt, that it failed to follow the requirement of Section 59.18 in connection with its meter installation and relocations in the City's historic districts. The I.D. correctly concluded that the City met its burden in this regard.

¹⁸ UGI Exception at 7.

¹⁹ See Reading Reply Brief at 6; see also Reading Exceptions at 8-9.

²⁰ See Reading Reply Br. at 7 and 14-15.

E. The Language of the Regulation Became Effective September 13, 2014 and Did Not Change in 2016

Finally, UGI attempts to rehabilitate its old notification practices.²¹ Its problem is that the regulations did not change in 2016, and UGI did not provide requisite notice at least 30 days prior to the relocation to inform the customer of the planned new location and how to contact the utility with other information such as the building's historic status. These requirements remained the same since 2014, as did the requirements for historic districts, and although UGI's practices may have "evolved," they remained non-compliant with the regulations after they became effective. Self-initiated changes in UGI's GOM did not change the non-conformance of UGI's practices to 52 Pa. Code § 59.18(a)(2)-(3). Contrary to UGI's assertions, UGI did not comply with the 30-day advance notice provisions, nor did its notice contain all of the information required under Section 59.18(a)(3). As the City explained in its Main and Reply Briefs,²² the relocation decision had already been made by UGI per "company policy" prior to its notice and the relocation information required by the regulation would have provided no meaningful ability to keep meters inside.

UGI characterizes the supplemental information specified in Section 59.18(a)(3) as an example of "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 installing or relocating its facilities."²³ The City respectfully submits that a lot more is required than something that "might be relevant" and that UGI's decision to enforce for more than two years an absolute "company policy" to move meters outside renders the provision of such information as moot in any event.

²¹ UGI Exception at 8-10.

²² See Reading Main Brief at 30-32; Reading Reply Brief at 7; Reading Exhs. JS-I0, JS-I1 and JS-I2. See also Section II.A., *infra* (discussing the customer notice letters).

²³ UGI Exception at 8.

Moreover, contrary to UGI's assertion at the top of page 9 of its Exception, there are separate considerations for historic districts. UGI's actions between 2014 and 2016 totally ignored § 59.18(d)(1) which requires that inside meter locations shall be considered when a meter is located in an historic district. Section 59.18(a)(2) and (a)(3) cannot be read in isolation from Section 59.18(d)(1).

Likewise, as discussed in Section II.A. above, UGI's initial notice letter did not provide all of the relevant information required under 52 Pa. Code § 59.18(a)(2)-(3), despite UGI's assertions to the contrary. The original letters also served as an after-the-fact ex post facto notice and did not provide enough information for an historic district customer to make an informed decision or even alert the customer that they had a decision to make or some ability to challenge the meter placement.

UGI's explanation as to why it did not initially adopt and why it rejected separate meter standards for historic districts is unconvincing.²⁴ The Commission's revised meter location regulations became effective on September 13, 2014 and allow no wiggle room with respect to compliance:

(g) *Application of regulation.*

(1) Beginning September 13, 2014, utilities shall comply with this section for new meter, regulator and service line installations in new locations.

(2) Beginning September 13, 2014, utilities shall comply with this section when replacing existing meters, regulators and service line facilities.

(3) By September 13, 2034, utilities shall complete replacement of existing facilities in compliance with this section or incorporate the requirements of this section in a distribution integrity management plan, whichever occurs first.²⁵

²⁴ UGI Exception at 9.

²⁵ 52 Pa. Code § 59.18(g)(1)-(3).

Perhaps it would have been deemed to be in compliance with the new regulation if it had read Section 59.18(a)(2)-(3) in conjunction with Section 59.18(d). By its own admission, UGI chose not to comply,²⁶ instead opting to make the deliberate and intentional decision to ignore the mandates of the regulation and adopt and enforce a “company policy” to move meters outside without reservation. The Commission should penalize UGI’s actions in this regard as discussed in the City’s Exceptions.

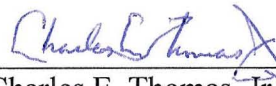
Ultimately, UGI’s practices, policies, and customer notices failed to conform to Section 59.18, as amended, from 2014 to at least 2016. The I.D.’s findings and conclusions in this regard were correct and supported by the substantial evidence of record.

²⁶ UGI Exception at 9.

III. CONCLUSION

The substantial evidence of record demonstrates that the I.D. did not err in concluding that UGI's meter relocation practices and policies between 2014 and 2016 failed to conform with the amendments to 52 Pa. Code § 59.18 which require the consideration of inside meter placements for meters located in Reading's historic districts. Accordingly, for the reasons set forth herein and in its Main and Reply Briefs, the City respectfully requests that the Commission deny UGI's Exception and adopt the I.D.'s Conclusion of Law No. 6 without modification. The City also respectfully requests that the Commission grant the City's Exceptions, including the relief sought, and modify and reverse the I.D. consistent therewith.

Respectfully submitted,



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DATED: March 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th 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:

Via Email and First Class Mail

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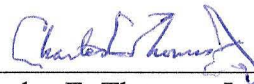
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