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March 28, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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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 Replies of UGI Utilities, Inc. to the Exceptions of the City of Reading and Centre Park Historic District 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
Office of Special Assistants (*via E-Mail*)

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).

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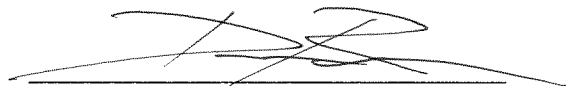
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLIES OF UGI UTILITIES, INC. TO THE
EXCEPTIONS OF THE CITY OF READING AND
CENTRE PARK HISTORIC DISTRICT**

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I. INTRODUCTION

UGI Utilities, Inc. – Gas Division (“UGI” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of the City of Reading (“City”) and Centre Park Historic District (“CPHD”) (collectively, “Complainants”). In the Initial Decision (“ID”), Administrative Law Judge Mary D. Long (the “ALJ”) sustained in part and dismissed in part the Complainants’ Formal Complaints challenging UGI’s meter installation and relocation practices within the City, including the City’s historic districts. Specifically, the ALJ held that UGI’s meter installation and relocation policy from 2014 to 2016, as set forth in the Company’s Gas Operations Manual (“GOM”), failed to conform to the Pennsylvania Public Utility Commission’s (“Commission”) requirements, but concluded that UGI had acted in good faith and that the imposition of civil penalties was not warranted. Moreover, the ALJ found that UGI’s policy since 2016 has complied with the Commission’s regulations. Further, the ALJ rejected the constitutional arguments raised by CPHD related to the Environmental Rights Amendment of the Pennsylvania Constitution.

CPHD and the City filed Exceptions to the ID on March 15 and 17, 2019, respectively.

UGI filed an Exception to the ID on March 17, 2019, which disputed the finding that the Company’s policy from 2014 to 2016 failed to conform to the Commission’s requirements.

As explained herein, the Complainants’ Exceptions are without merit and should be denied. Therefore, the Company respectfully requests that the Commission deny the Complainants’ Exceptions and adopt the ID, as modified per UGI’s Exception.

II. REPLIES TO EXCEPTIONS

In their Exceptions, the Complainants misconstrue both the facts and applicable law to try to achieve their ultimate goal—making inside gas meters the rule and not the exception, regardless of safety impacts. Their intended outcome is fundamentally at odds with UGI’s

obligation to ensure safe and reliable service to the Company's customers, and the Commission's well-reasoned decision for gas meters to generally be located outside for safety reasons. Indeed, after a lengthy, five-year long rulemaking proceeding during which the Commission received many comments and data about gas meters and regulators, the Commission amended Section 59.18 and generally directed natural gas distribution companies ("NGDCs") to install and relocate gas meters outside due to safety reasons. *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155, at 9-31 (Order entered May 23, 2014) ("*Final Rulemaking Order*"). As part of that rulemaking decision, the Commission rejected the recommendations of several commenters to require inside meters in historic districts, adopt specific aesthetic standards, or both. *Id.* at 30-31, 43, 45-46.

Instead, the Commission promulgated the amended Section 59.18(d)(1)(ii), under which NGDCs shall "consider" inside meter locations for historic districts. This does not mean that all meters must be placed inside, as both the Commission and the Commonwealth Court have ruled that NGDCs retain discretion in where to place a meter due to their public safety obligations. *See Final Rulemaking Order* at 45-46; *UGI Utilities, Inc. v. City of Reading*, 179 A.3d 624, 630 (Pa. Cmwlth. 2017) ("*City of Reading*"). Therefore, the amended Section 59.18 does not require UGI to place meters inside buildings in historic districts.

Here, the Complainants' position and requested relief, which would require UGI to relocate most, if not all, of the meters in historic districts back inside buildings, directly contradicts the Commission's findings in the *Final Rulemaking Order*. As the ALJ found, "more specific protection of historic resources must be found in the Commission's rulemaking function, not in its judicial capacity." (ID at 28.) Thus, the Complainants cannot circumvent the

Commission's rulemaking by requesting relief in this formal complaint proceeding that flatly conflicts with the amended regulation.

The Complainants have attempted to justify their position and requested relief by arguing that inside meters are safer than outside meters. (City Exceptions at 2-3.) However, the Complainants' subjective and speculative concerns cannot trump the Commission's clear policy decision and UGI's unrebutted evidence, expertise, and legal duty to provide safe, reliable, and reasonable gas service. Moreover, as the ALJ correctly held, the Complainants "offered no credible evidence" that the outside meter placements were placed in unsafe locations. (ID at 34-35.) In contrast, UGI's unrebutted evidence and the information set forth in the Commission's *Final Rulemaking Order* demonstrate that outside meters are safer than inside meters. (See UGI St. No. 1, p. 48, lines 3-4); *Final Rulemaking Order* at 5-6.

For these reasons, and as explained in more detail below, the Commission should deny the Complainants' Exceptions to the ID.

A. REPLIES TO CITY EXCEPTIONS NOS. 3, 8, 10, 11, 15, AND 17¹ – THE ALJ CORRECTLY FOUND THAT THE COMPLAINANTS FAILED TO PROVE THAT UGI'S METER INSTALLATION AND RELOCATION POLICY SINCE 2016 VIOLATED 52 PA. CODE § 59.18

The City argues that the ALJ failed to find that UGI's meter installation and relocation policy since 2016, when the Company amended the policy set forth in its GOM, violated Section 59.18 of the Commission's regulations. (City Exceptions at 4-5, 7-13, 17-19.) In particular, the City disputes the ALJ's findings that: (1) UGI "considered" inside meter locations in historic districts, as required by 52 Pa. Code § 59.18(d)(1)(ii), since 2016; and (2) NGDCs do not need to

¹ For ease of the Commission's review, UGI has tried to group the City's Exceptions based on the arguments and subject matter raised in any portion of the City's individual Exceptions. However, there were overlapping issues raised in many of the City's Exceptions. Therefore, UGI has had to list some of the same Exceptions in multiple sections in its Replies. For example, the City's Exception No. 3 is addressed in Sections II.A, II.C, and II.F of these Replies.

make an inside versus outside meter location decision on a case-by-case basis. (City Exceptions at 7-10.) As alleged support, the City claims that the Company's revised meter installation and relocation policy in the GOM, which became effective July 31, 2016, still does not comply with the Commission's regulations. (City Exceptions at 8-10.) The City also alleges that it provided examples where the Company placed meters in front of historic features of buildings. (City Exceptions at 9-10.) Further, the City avers that the Company's 30-day notice letter did not comply with the Commission's regulations from September 13, 2014, to October 1, 2017, not from 2014 to 2016 as found by the ALJ. (City Exceptions at 4-5, 19.) These Exceptions are without merit and should be denied.

The ALJ correctly held that UGI's meter installation and relocation policy in its revised GOM, which became effective July 31, 2016, complies with the Commission's regulations. (ID at 24-25, 28-30, 36-37.)² UGI made substantial changes to the policy set forth in its GOM effective July 31, 2016. These changes included, among other things, additional guidance and consideration for meters located within historic districts, such as not placing meters in front of distinguishing features of historic district properties. (UGI Responsive Brief at 33.)

Importantly, UGI has followed this policy when installing or relocating meters, which includes consideration of inside meter locations in historic districts and for historic buildings. (UGI Responsive Brief at 31.) Such consideration includes analyzing the potential locations on the outside of the building for the meter, whether the meter would block a distinguishing exterior feature, the ways in which the customer can mitigate the aesthetic impact of the meter, and the relative safety of an outside versus inside meter placement. (UGI Responsive Brief at 31-32.) However, because "[s]afety is a core value of UGI, and the Company places an overriding

² Although the Company voluntarily amended the policy set forth in its GOM, UGI's previous policy complied with the Commission's regulations, as described in the Company's Exception to the ID. See UGI Exception at 1-10.

priority on gas safety,” the Company has predominantly installed or relocated meters outside. (UGI St. No. 1, p. 18, lines 16-23.) In fact, there is an increase in risk when placing a meter inside a building versus outside. (UGI Responsive Brief at 32.) Nevertheless, in accordance with the Commission’s regulations, UGI still considers inside meter locations when determining where to install or relocate a meter. (UGI Responsive Brief at 32.)

In addition, as the ALJ recognized, the Company has worked with individual customers to find less obtrusive locations for the meter to mitigate any aesthetic concerns. (ID at 13-15, 32-33.) Moreover, in some situations when there have been no practical and feasible locations for the meters outside or when the meter would obstruct a distinguishing exterior feature, the Company has exercised its discretion to leave meters inside. (UGI Responsive Brief at 33.) Thus, the record demonstrates that UGI considered inside meter locations for historic buildings and buildings in historic districts as required by Section 59.18(d)(1)(ii).

Further, the ALJ properly rejected the City’s argument that NGDCs must perform their case-by-case analysis of whether to install the meter outside or inside the building before contacting the customer. (ID at 25.) As the ALJ stated, “There is no language in the regulation which mandates at what point in the relocation timeline a utility must consider an indoor meter for an historic property.” (ID at 25.) Additionally, the timing of the consideration, whether it is before or after the customer is initially contacted, is inconsequential. What matters is whether the NGDC considers the inside meter location before installing the meter. Here, as explained previously, UGI: (1) has followed its revised policy that provided additional guidance and consideration for meters located within historic districts; and (2) has worked with individual customers in trying to find mutually-acceptable locations for the meters both before and after its

voluntary revision of its GOM in 2016.³ Moreover, as the ALJ recognized, “relying on the customer to provide the utility with relevant information” about the “historic nature of their property” is a “sensible approach.” (ID at 25.) Indeed, it makes sense from a “logistic and resource management standpoint” because “an individual customer is in the best position to provide the utility with information regarding the historic nature of the property and any restrictions on exterior improvements that may apply.” (ID at 25.) Thus, UGI properly considered inside meter locations in accordance with the Commission’s regulations.

The City also did not establish that UGI placed any meters in front of any distinguishing exterior features in violation of the Company’s revised GOM. (City Exceptions at 9-10.) As explained in the Company’s Responsive Brief, the City alleged that UGI placed meters in front of “distinguishing exterior features” on buildings on the 300 block of North Fifth Street, as shown by the pictures in Reading Exhibit JS-16. (UGI Responsive Brief at 35.) However, the City failed to examine which version of the GOM was in effect at that time. (UGI Responsive Brief at 35.) Indeed, the provision instructing Company personnel not to install meters in front of “distinguishing exterior features” was only added as part of the GOM revisions effective on July 31, 2016. (UGI Responsive Brief at 35.) Here, none of the meters shown in Reading Exhibit JS-16 were installed or relocated after the revised GOM became effective on July 31, 2016. (UGI Responsive Brief at 35.) Thus, the City never established that UGI placed meters in front of any distinguishing exterior features in violation of its then-effective GOM.

Additionally, the City’s argument that UGI’s 30-day notice letter failed to comply with the Commission’s regulations since October 1, 2017, is without merit. (*See* City Exceptions at

³ As the ALJ noted, “[I]n practice, customers were afforded an opportunity to discuss the placement of their meters before a final location decision was made even before the 2016 GOM revision ... The Complainants offered no evidence that UGI ignored any information regarding any restrictions to exterior improvements connected to the building’s historic status or any other relevant information.” (ID at 32-33) (footnotes omitted).

19) Although the Company did revise its 30-day notice letter effective October 1, 2017, its prior letter still complied with the Commission's regulations for the reasons explained in UGI's Exception to the ID. (See UGI Exception at 8-10.) Indeed, the initial notice letter 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.)

Finally, the Commission should reject the City's unsupported allegation that it "had reason to believe" that UGI stopped using its revised 30-day notice letter at various points after October 1, 2017. (City Exceptions at 5 n.9, 17-18.) After the record closed, the City filed a motion to reopen the record to have certain letters sent by UGI admitted into the record. (City Motion to Reopen the Record ¶¶ 2-6.) The City alleged that these letters were inconsistent with the revised 30-day notice letter. (City Motion to Reopen the Record ¶¶ 2-3, 5.) However, UGI explained in its Answer that the City's Motion was entirely based on the City's confusion of the several letters UGI sends before a project. (UGI Answer to Motion to Reopen the Record ¶ 13.) The letters the City attached to its Motion were not the 30-day letters; they were follow-up letters sent to: (1) the customers who received the previous letters, to serve as an additional reminder of the upcoming project; and (2) non-customers, to notify them of the project and provide them with UGI's contact information if they want to switch to natural gas during the construction project. (UGI Answer to Motion to Reopen the Record ¶¶ 16-17.) UGI witness Brown explained the differences between the 30-day and follow-up letters at the evidentiary hearing. (Tr. 286.) Furthermore, UGI even attached to its Answer the 30-day notice letters actually sent to those addresses. (UGI Answer to Motion to Reopen the Record, Attachment A.) Now, after reviewing all of that information and having its Motion denied by the ALJ, the City continues to

believe that UGI stopped using its revised 30-day notice letter. The Commission should follow the ALJ's sound reasoning on this point and reject the City's baseless argument.

Thus, the City's Exceptions Nos. 3, 8, 10-11, 15, and 17 should be denied.

B. REPLIES TO CITY EXCEPTIONS NOS. 4, 5, 6, 7, 8, 9, 13, 14, 16, AND 18 – THE ALJ PROPERLY HELD THAT THE COMPLAINANTS FAILED TO PROVE THAT UGI HAS INSTALLED OUTSIDE METERS IN LOCATIONS THAT ARE NOT PROTECTED FROM REASONABLY ANTICIPATED DAMAGE

The City also challenges the ALJ's conclusion that the Complainants failed to prove that UGI has installed meters in outside locations that are not protected from reasonably anticipated damage. (City Exceptions at 5-8, 14-20.) Specifically, the City alleges that: (1) any meters located within 15 feet of a street curb are in violation of the Commission's regulations because they are not protected from vehicular damage that may be reasonably anticipated; (2) the Complainants' 15-foot rule should be utilized because it is supported by pictures of outside meter sets, analysis of news reports, and "common sense"; (3) UGI witness Brown's testimony about the safety of gas meters should be given less weight than City witness Slifko's testimony; (4) UGI's evidence about the number of safety incidents involving inside meter sets should be disregarded because it predates 2018; and (5) the ALJ's finding that "leaving a meter inside a historic home creates a liability and enforcement risk to UGI should an accident occur" is "without legal and evidentiary support." (City Exceptions at 5-8, 14-20 .) As explained below, the City's Exceptions are without merit for several reasons.

First, the Complainants' evidence is completely inadequate to establish that UGI has violated 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) (incorporated by 52 Pa. Code § 59.33). (UGI Responsive Brief at 37.) The Complainants argument is quite simple—any meter placed within 15 feet of the street curb is unsafe and should be relocated back indoors. (UGI Responsive Brief at 37.) However, absolutely no Commission or federal regulation

contains the Complainants' arbitrary 15-foot rule. (UGI Responsive Brief at 38.) The Complainants cannot establish a violation of the Commission's regulations based on a non-existent standard. (UGI Responsive Brief at 38.) Further, the Commission should reject the City's attempt to rely on UGI's proposed alternative proposed commitments, which incorporated a distance of 10 feet, as support for the City's 15-foot rule. (City Exceptions at 16-17.) UGI only was willing to adopt this standard if the Commission specifically declared it safe and reasonable. (UGI Responsive Brief at 55-56.) Also, in contrast to the City's 15-foot rule, the distance of 10 feet between the meter and the curb would not be solely determinative of whether the meter would be placed inside under this alternative standard. (UGI Responsive Brief at 55.)

Second, the ALJ correctly rejected the Complainants' evidence consisting of bald assertions and speculation that such meters are *per se* unsafe simply because they are located within 15 feet. (ID at 34-35.) The "arbitrary distance" of 15 feet was "calculated by Mr. Slifko based on his review of newspaper reports of incidents where cars struck gas meters." (ID at 34-35.) Further, Mr. Slifko was not an engineer, and "the City did not proffer any expert testimony which would support the City's claim, or point to any industry standard regarding the safe distance of a meter from the street." (ID at 35.) The ALJ noted that the City's evidence, consisting of unsubstantiated lay opinion and speculation, was akin to the testimony offered in *Commonwealth v. City of Pittsburgh*, where the Pennsylvania Supreme Court found that such opinions and speculation do not constitute substantial evidence. (ID at 35) (citing 532 A.2d 12, 14 (Pa. 1987)). Here, nothing the City has presented in this proceeding, including the City's pictures of outside meters and purported "common sense," can substantiate Mr. Slifko's lay opinion and speculation that meters within 15 feet of the curb are unsafe.⁴

⁴ For the first time in its Exceptions, the City claims that installing "bollards" would be "less expensive alternative to relocation" and that bollards are needed "in many locations." (City Exceptions at 6.) Nothing in the

Third, Mr. Slifko's testimony should not be given more weight than Mr. Brown's. Mr. Brown has a Bachelor's of Science Degree in Civil Engineering from Lehigh University and has been working in the natural gas and propane industries for the past 22 years. (UGI St. No. 1, p. 2.) As Senior Director – Operations South Region, he is responsible for field operations for UGI's South Region, which encompasses most of the UGI Operating Centers South of Interstate 80 within Pennsylvania, as well as a small distribution system in the Emmitsburg, Maryland area. (UGI St. No. 1, p. 2.) In this role, he oversees and enforces UGI's safety standards for Company employees and those communities served by the Company. (Tr. 303-04.) In contrast, Mr. Slifko did not have engineering degree, never worked for any utility, and had no work experience or education related to the safety of natural gas pipelines, regulators, or meters. (Tr. 169.) More importantly, the City omits that Mr. Slifko stated at the hearing that he "do[es] not have safety knowledge" (Tr. 175) and that he is not "better than the company" or the "PUC" at balancing safety and aesthetic concerns (Tr. 172-73). Therefore, Mr. Slifko's testimony about the safety of inside versus outside meters was properly rejected by the ALJ.

Fourth, UGI's evidence about its past incidents with inside versus outside meter sets is highly relevant and should not be overlooked. UGI explained in its Responsive Brief that it has a duty to report every "incident" to the Pipeline and Hazardous Materials Safety Administration ("PHMSA") within the United States Department of Transportation ("DOT"). (UGI Responsive Brief at 26.) An "incident" is defined as "[a]n event that involves," among other things, "a release of gas from a pipeline" and "that results in one or more the following": (1) "[a] death, or personal injury necessitating in-patient hospitalization"; (2) "[e]stimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas

record supports these claims. Moreover, the City never raised these arguments in its Briefs. Therefore, the arguments are waived. See, e.g., *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at *7 (Order entered Feb. 10, 1994).

lost”; or (3) “[u]nintentional estimated gas loss of three million cubic feet or more.” 49 C.F.R. § 191.3.

Here, based on the Company’s records, the last reported DOT incident related to outdoor meter sets caused by vehicular damage occurred in 1981. (UGI Responsive Brief at 26.) Within that same time period, UGI has had 11 DOT reportable incidents related to inside meters. Of those 11 incidents, 7 resulted in an explosion and 1 resulted in the loss of life. (UGI Responsive Brief at 26.) Similarly, the Commission noted the safety concerns with inside meters in its *Final Rulemaking Order*:

The Commission is also concerned about the number of reportable incidents resulting, at least partially, from locating meters and regulators inside structures. The gas distribution utilities reported more than 4,000 leaks occurring on inside meter sets over a five year period. The number of reportable incidents (65) over the past forty years, however, is more alarming. While it appears from the data that the inside meter and regulators were not always the primary factor for accidents, locating meters and regulators inside certainly contributed to these incidents through a release of natural gas. . . . By not having access to the meter sets, the NGDCs cannot comply with the state and federal regulations and cannot detect inside leaks.

The state has experienced several gas explosions related to steel service lines being struck and pulled up from their stable position and subsequently pulling the service line from the inside meter set. Plastic service lines with inside meter sets do not pull away since the excavation equipment usually severs the line immediately after being struck. The combination of steel service line and inside meter set is a high risk factor for natural gas incidents.

Final Rulemaking Order at 5-6 (emphasis added) (footnote omitted). Although the City now alleges (without evidentiary support) that the Company’s DOT data is misleading, the Complainants never disputed the Commission’s data or UGI’s records of reportable incidents. (UGI Responsive Brief at 26.) Thus, this evidence demonstrating the relative safety between inside and outside meter sets is completely un rebutted.

Finally, the City erroneously claims that the ALJ's finding that "leaving a meter inside a historic home creates a liability and enforcement risk to UGI should an accident occur" is "without legal and evidentiary support." (City Exceptions at 8.) As demonstrated above, un rebutted record evidence demonstrates that outside meters are safer than inside meters, and nothing the Complainants have presented through their unqualified witnesses can prove otherwise. (UGI Responsive Brief at 26-29.) Further, it is unquestionable that UGI would face liability and enforcement risk due to its decisions on where to install the meters. *See* 52 Pa. Code § 1501. Both the Commission and the Commonwealth Court noted the NGDCs' public safety obligations are why they retain discretion on where to locate their facilities. *See Final Rulemaking Order* at 45-46; *City of Reading v. UGI Utilities, Inc.*, 179 A.3d at 630. Moreover, the City fails to recognize its own witness, Mr. Slifko, who held a Juris Doctor from Vanderbilt Law School, conceded that UGI would face potential liability if an accident were to occur involving a meter. (Tr. 178, 194.)

For these reasons, the City's Exceptions Nos. 4-9, 13-14, 16, and 18 should be denied.

C. REPLIES TO CITY EXCEPTIONS NOS. 3, 6, 11, 14, AND 15 – THE ALJ CORRECTLY DENIED THE COMPLAINANTS THEIR REQUESTED RELIEF AND DID NOT IMPOSE CIVIL PENALTIES

The City contends that the ALJ erred in denying their requested relief, which would have forced UGI to relocate most, if not all, of the outside meters to the inside of buildings, and in declining to impose civil penalties on the Company for its alleged violation of Section 59.18 from 2014 to 2016. (City Exceptions at 4-7, 10-13, 15-18; UGI Responsive Brief at 30-31, 44-54.) According to the City, UGI should be fined "to the fullest extent permitted by the Public Utility Code" and 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."

(City Exceptions at 5) (emphasis in original). Moreover, the City avers that its requested relief, which would force UGI to relocate most, if not all, of the outside meters to the inside of buildings, should have been granted and that UGI should, at its sole expense, relocate the meters to comply with those standards. (City Exceptions at 13.) The City also avers that UGI should be assessed a civil penalty on a “going-forward basis” for any future violation of the Commission’s regulations or the Company’s GOM. (City Exceptions at 18.) The City’s arguments completely lack merit and should be denied.

The ALJ properly determined that the Complainants were not entitled to their requested relief and that civil penalties were not warranted here. As explained previously and in UGI’s Exception to the ID, the Complainants failed to sustain their burden of proof that UGI violated the Public Utility Code, the Commission’s regulations, or a Commission order. Therefore, the Commission should not grant the Complainants any of their requested relief or impose any civil penalties. *See* 66 Pa. C.S. §§ 701, 3301.

Notwithstanding, even assuming the Complainants have sustained their burden of proof, the Commission should deny their requested relief and civil penalties for several reasons.

First, the Complainants’ requested relief would impose new regulatory standards only on UGI in order to make inside meters the rule, not the exception. (UGI Responsive Brief at 47-52.) Specifically, the Complainants want UGI to place meters inside on a prospective and retroactive basis for historic locations unless UGI can establish “a greater safety risk from inside placement than in similarly situated historic properties.” (UGI Responsive Brief at 49.) The Complainants’ principal witness, Mr. Slifko, testified that “only in extraordinary circumstances will [the Company] be able to establish this greater safety risk.” (UGI Responsive Brief at 49.) He even admitted during cross-examination that the Complainants’ requested relief would result in the

vast majority of meters being placed inside. (UGI Responsive Brief at 50.) Therefore, if the Complainants' relief were granted, the Company would be forced to: (1) install most, if not all, meters inside historic buildings and buildings in historic districts; and (2) relocate the vast majority of outside meters for historic buildings and buildings in historic districts to the interior of those buildings. (UGI Responsive Brief at 50.)

This blanket requirement for UGI to place all meters inside buildings in historic districts explicitly contradicts Section 59.18(d)(1)(ii) of the Commission's regulations. Even Mr. Slifko testified that "consider" under Section 59.18 does not mean that all meters must be placed inside of buildings. (UGI Responsive Brief at 50.) He also testified that the regulation is not a "one-size-fits-all" approach because "there are many nuances, many different features that have to be considered when you make the determination of meter placement." (UGI Responsive Brief at 50.) However, that is precisely what the Complainants' requested relief would do. Thus, as admitted by the Complainants' own witness, their proposal directly contravenes the Commission's regulations. (UGI Responsive Brief at 50.)

Second, the Complainants request that the Commission adopt their proposed 15-foot rule concerning the allowable distances between meters and street curbs and apply it to UGI. (UGI Responsive Brief at 50.) Going forward, UGI would be forced to place a gas meter inside the building or in a buried vault any time the building's façade is within 15 feet of the street curb. (UGI Responsive Brief at 50.) Retroactively, UGI would have to relocate any outside meters that were installed since September 13, 2014, and are within 15 feet of the street curb to the inside of the building or in a buried vault. (UGI Responsive Brief at 50-51.)

No Commission or federal regulation contains the Complainants' arbitrary 15-foot rule. (UGI Responsive Brief at 51.) Indeed, Mr. Slifko stated that he is unaware of any other NGDC

in Pennsylvania that is subject to this proposed standard. (UGI Responsive Brief at 51.) Therefore, UGI would be subject to a more restrictive standard on meter location than any other NGDC operating in Pennsylvania. Moreover, this new standard is completely unsupported, given that nothing in this proceeding has established that all meters located within 15 feet of a street curb *per se* violate the Commission's safety regulations.

Third, the City fails to acknowledge that applying these standards retroactively would force UGI to divert labor and resources from its betterment projects and other initiatives aimed at improving the safety and integrity of the natural gas distribution system based on system risks identified in the Company's Distribution Integrity Management Plan ("DIMP"). (UGI Responsive Brief at 54.) The negative safety impacts of applying these standards retroactively and forcing UGI to divert its labor and resources, solely to accommodate the unsubstantiated and speculative concerns of the Complainants, must not be overlooked.

Fourth, the City's attempt to impose Commission regulatory standards through this Formal Complaint proceeding, rather than through a statewide rulemaking proceeding in which all NGDCs are able to participate, is improper. *See Aronson v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00981378, at 2, 8, 10-11 (May 28, 1998) (Initial Decision) ("The proper procedural vehicle" to impose new regulatory requirements on a utility "is a rulemaking proceeding, not a complaint proceeding"), *adopted by Commission* (Order Entered July 14, 1998). If the Commission were to adopt the Complainants' new proposed regulatory standards here and only apply them to UGI, the Company would unreasonably be the only NGDC subject to these new standards in Pennsylvania. Further, it would open the door for other municipal and historical entities across Pennsylvania to try to impose their own specific regulatory standards on NGDCs' meter placement decisions. However, "[a] century of case law has firmly established

that the General Assembly’s intent in enacting the Code and its predecessor statute was to provide for the uniform, statewide regulation of public utilities and public utility facilities.” *PPL Elec. Utils. Corp. v. City of Lancaster*, 125 A.3d 837, 853 (Pa. Cmwlth. 2015). On the other hand, if the Commission decides to prospectively adopt the new regulatory standards here for all NGDCs, all of the other NGDCs’ due process rights would be violated because they have had no notice and no opportunity to be heard. *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014). To the extent the Commission would attempt, as the Complainants wish, to retroactively apply new standards, both UGI’s and all other NGDCs’ due process rights would also be violated as they would not have had advance notice of the standards expected of them nor an opportunity to be heard. *See id.* Thus, it would be unreasonable to adopt the Complainants’ requested relief through the instant formal complaint proceeding.⁵

Fifth, as the ALJ correctly found, the *Rosi* factor analysis supports not imposing any civil penalties on UGI. *See* 52 Pa. Code § 69.1201(c) (setting forth the *Rosi* factors). These factors include the following:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

⁵ As noted in UGI’s Responsive Brief, the Complainants’ requested relief also does not give customers any opportunity to voice their opinion in the meter placement decision. (UGI Responsive Brief at 52.)

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

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

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

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

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

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201(c)(1)-(10) (emphasis added).

Here, the ALJ correctly held that no civil penalties should be imposed under this analysis. (ID at 32-34.) UGI's conduct was not of a "serious nature, such as willful fraud or misrepresentation." *Id.* § 69.1201(c)(1). The record demonstrates that the Company has been transparent about its meter installation and relocation decisions with the Commission's Safety Division ("PUC SD"), the City, and CPHD. (UGI Responsive Brief at 21-22, 32); *see also* 52 Pa. Code § 69.1201(c)(7). Moreover, the consequences of UGI's conduct were not of a "serious nature, such as personal injury or property damage." 52 Pa. Code § 69.1201(c)(2). Indeed, the Complainants failed to prove that the outside meter placements were unsafe or caused any actual

injury or damage. Further, to the extent that UGI is found to have violated the regulations, the Company's actions were not "intentional." 52 Pa. Code § 69.1201(c)(3). UGI has at all times striven to adhere to the Commission's regulations and even consulted with the PUC SD several times throughout the past few years to ensure that its meter placements in the City of Reading were appropriate. (UGI Responsive Brief at 21-22, 32.)

Additionally, UGI modified its internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). In fact, the record is replete with several steps that UGI took to try to address the Complainants' concerns. For example: (1) UGI agreed to voluntarily modify its GOM effective July 31, 2016, to include (a) more specific requirements regarding meter protection and Americans with Disabilities Act ("ADA") sidewalk width compliance and (b) additional guidance and consideration for meters located within historic districts; (2) the Company agreed to work with the City to have constituent complaints submitted to the City appropriately routed to UGI officials for response; (3) UGI personnel have met on several occasions with homeowners and interested parties to discuss the outside meter placement location in advance of the Company's work and, in the vast majority of cases, have found mutually agreed-upon locations to place an outside meter; (4) UGI developed a website for customers requesting reconsideration of inside meter placement as a means for easily communicating this preference; and (5) as part of its revisions to the GOM, customers can take steps to lessen the aesthetic impact of the outside meter, such as "paint[ing] their meters to blend in with the surroundings, provided they do not paint over meter dials, regulator vents or vent lines." (UGI Responsive Brief at 22-24.)

Moreover, there is no need to deter any alleged future violations, because the ALJ properly found that UGI's current policy is consistent with the Commission's regulations. *See*

52 Pa. Code § 69.1201(c)(9). UGI has maintained that its conduct has been in compliance with the Commission's regulations throughout this proceeding. Yet, the Company still has tried to make several changes to its policy and practices to mollify the Complainants' concerns. Thus, no civil penalty is warranted under the *Rosi* factors

Sixth, it is important to quantify the actual penalties and expenses that the City is advocating for UGI to bear. Of the 894 historic meter locations that remain in dispute,⁶ approximately 675 were relocated between September 13, 2014, and October 1, 2017. (ALJ Exh. 1.) Considering the City wants UGI to be penalized "to the fullest extent," *i.e.*, \$1,000, for "each instance" where those accounts were sent the previous version of the letter, the City effectively is asking the Commission to impose a civil penalty of approximately \$675,000. *See* 66 Pa. C.S. § 3301(a). Further, "[r]elocating an individual meter from outside back to inside at a single property roughly costs around \$400." (UGI Responsive Brief at 53.) Therefore, relocating all of the 1,563 historic and non-historic meters that remain in dispute would cost UGI approximately \$625,000 (*i.e.*, 400 x 1,563). (UGI Responsive Brief at 53.) Also, this figure does not account for the meter locations that are not identified in ALJ Exhibit 1 that the Company would have to relocate as well. (UGI Responsive Brief at 53.) Given UGI's repeated and substantial efforts to address the Complainants' concerns, including voluntarily revising its meter installation and relocation policy and working with individual customers to find less obtrusive locations for the outside meters, as well as the Company's good faith efforts and intent to comply with the Commission's regulations, such staggering penalties and relief cannot be warranted here.

Finally, the City's request that UGI be "penalized on a going-forward basis every time it violates the regulations and its revised GOM" is premature and improper and would violate

⁶ *See* ALJ Exh. 1.

UGI's due process rights. Unless there is a complaint filed and sustained against the Company for any such violations, the Commission has no authority to impose civil penalties. *See* 66 Pa. C.S. §§ 701, 3301. The City's request is vague and overly broad and would presumably enable the Commission to assess civil penalties on UGI without the Company having notice and an opportunity to be heard in defense of its actions. *See Hess*, 107 A.3d at 266. Thus, the City's request should be rejected because it is premature and improper and would violate the Company's due process rights.

For these reasons, the City's Exceptions Nos. 3, 6, 11, 14, and 15 should be denied.

D. REPLY TO CITY EXCEPTION NO. 1 – GIVEN THE EVIDENCE PRESENTED AND THE RELIEF REQUESTED BY THE CITY, IT CLEARLY IS ELEVATING AESTHETIC CONCERNS OVER SAFETY

The City disputes “any implication that the City elevates aesthetics over public safety.” (City Exceptions at 3.) However, as explained previously, the City's requested relief would require UGI to relocate most, if not all, of the outside meters to inside locations, regardless of the safety impacts and the un rebutted evidence demonstrating that outside meters are safer than inside meters. If the City truly valued safety over aesthetics, it would defer to the decisions of the entities, namely UGI and the PUC, who Mr. Slifko admitted are more qualified to balance safety and aesthetic concerns. (Tr. 172-73.) Thus, the City is elevating aesthetic concerns over safety. Accordingly, the City's Exception No. 1 should be denied.

E. REPLY TO CITY EXCEPTION NO. 2 – THE CITY INCORRECTLY CLAIMS THAT THE ALJ IMPROPERLY RELIED ON HEARSAY STATEMENTS

In Exception No. 2, the City claims that Findings of Fact 31 and 32 should be struck because they are allegedly based on hearsay statements of the PUC SD. (City Exceptions at 3-4.)

In full, these Findings of Fact state:

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

32. According to Mr. Brown, Hans Bell indicated that UGI would continue to apply its understanding of the Commission's meter placement policy subject to a modification for distinguishing architectural characteristics after PUC SD review. (Brown, UGI St. 1 at 22)

Under Pennsylvania's "Walker Rule," it is well-established that "[h]earsay evidence, properly objected to, is not competent evidence to support a finding." *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (citations omitted). Even if hearsay evidence is "admitted without objection," the ALJ must give the evidence "its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record." Neither of the Complainants objected to this testimony. (Tr. 432-33.) Therefore, even if the testimony is hearsay, it can support a finding of fact if it is corroborated by any competent evidence in the record.

Here, the PUC SD statements are corroborated by the undisputed facts that PUC SD safety inspectors did walking tours with the City and UGI (Finding of Fact 27), UGI involved PUC SD safety inspectors in reviewing certain meter placement decisions (Finding of Fact 28), and it was UGI's understanding based on those reviews that the PUC SD supported UGI's implementation policies and meter placement considerations and that no remedial action was required (Finding of Fact 29). (ID at 11-12.) Moreover, City witness Slifko testified that he knew of no informal or formal complaints being filed by the Commission against UGI for its meter location practices in the City or in CPHD. (Tr. 173.) These facts are consistent with and corroborate these statements.

As for the statements of Hans Bell at the meeting in 2015, he was merely stating the Company's intent, which is not hearsay. *See* Pa.R.E. 803(3). Moreover, the City fails to mention that the Complainants' own written testimony states how Mr. Bell was present at the meeting and expressed the Company's intent to relocate meters outside in the City's historic districts. (*See* Reading St. No. 2, p. 15; Reading St. No. 4, p. 5.)

Finally, representatives from the City, PUC SD, UGI, and CPHD all attended this meeting, including Mr. Slifko and Mr. Brown. (ID at 12.) Thus, if the Complainants wanted to object to this testimony or present contradicting testimony, they were more than capable to do so.

Based on the foregoing, the City's Exception No. 2 should be denied.

F. REPLIES TO CITY EXCEPTIONS NOS. 3 AND 12 – THE CITY REPEATEDLY AND INCORRECTLY ASSERTS THAT UGI HAD THE BURDEN TO PROVE IT COMPLIED WITH THE COMMISSION'S REGULATIONS

In multiple places in its Exceptions, the City claims that UGI had the burden to prove that it complied with the Commission's regulations. (City Exceptions at 5, 14.) Specifically, the City alleges that "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." (City Exceptions at 5.) Further, the City contends that "[a]s 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." (City Exceptions at 14.)

The City is patently incorrect as a matter of law and is improperly trying to shift the burden of proof to UGI. Under Section 332(a) of the Public Utility Code, the proponent of a Commission rule or order has the burden of proof. *See* 66 Pa. C.S. § 332(a). The City cites no legal justification for its claim that UGI somehow has the burden to demonstrate compliance in

this case. Thus, the Complainants have the burden to prove that UGI failed to comply with the Commission's regulations.

For these reasons, the City's Exceptions Nos. 3 and 12 should be denied.

G. REPLY TO CPHD EXCEPTION NO. 1 – THE ALJ PROPERLY REJECTED CPHD'S CONSTITUTIONAL ARGUMENTS

In its only Exception to the ID, CPHD avers that the ALJ incorrectly rejected its arguments concerning the Environmental Rights Amendment of the Pennsylvania Constitution⁷ and the Pennsylvania Supreme Court's decision in *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911 (Pa. 2017) ("*PEDF II*"). (CPHD Exception at 1-5.) CPHD recognizes that the Commonwealth Court found in *City of Reading* that Section 59.18 is constitutional under the Environmental Rights Amendment and *PEDF II*. (CPHD Exceptions at 2.) Further, it does not dispute that the Commission's jurisdiction preempts local regulation of meter placements. (CPHD Exception at 2.) Nonetheless, CPHD maintains that the Commission's role now is to engage CPHD and the City "to obtain the necessary input to weigh" in on meter location decisions, based on an unclear distinction CPHD draws between "preemption and preclusion." (CPHD Exceptions at 2-4.)

The fatal flaw with CPHD's constitutional arguments is that CPHD does not challenge the constitutionality of Section 59.18. So long as Section 59.18 is constitutional and, therefore, compliant with the Environmental Rights Amendment, the Pennsylvania Constitution does not require the Commission to take any further action to protect historic resources, including having CPHD and the City provide "input" and "weigh" in on the Company's meter placement decisions. In other words, the Commission would have complied with its duty as a public trustee under the Environmental Rights Amendment.

⁷ Pa. Const. art. 1, § 27.

Here, the Commonwealth Court has already declared that Section 59.18 does not violate the Environmental Rights Amendment:

The City does not claim that PUC Regulation 59.18 violates Article 1, Section 27 or is unconstitutional in any respect. Nor is there any basis on which a court could conclude that the PUC's safety regulation of gas meters violates Article 1, Section 27 of the Pennsylvania Constitution, as it in fact takes into account the interest in protection of historic resources by providing for consideration of indoor meter placement in historic districts.

City of Reading, 179 A.3d at 631-32 (emphasis added) (citing 52 Pa. Code § 59.18(d)(1)(ii)).

Importantly, the Court determined that Section 59.18 “does not require or direct that gas meters in historic districts must be installed indoors,” as it “provides only that ‘[i]nside meter locations shall be considered’ by the utility in such districts.” *Id.* at 630 (emphasis in original). The Court also noted that “the PUC in promulgating this regulation made clear that utilities are not required to install gas meters indoors in historic districts and that the decision whether to install a meter indoors involves an exercise of discretion by the utility, noting that ‘it is necessary that, due to its public safety obligations, the utility be allowed to make the final decision.’” *Id.* (citing *Final Rulemaking Order*). Thus, the Court found that the Commission’s requirement for NGDCs to only “consider” inside meter locations for historic districts and historic buildings, while still allowing NGDCs to make the final decision on where to install the meter due public safety obligations, complied with the Environmental Rights Amendment.

However, CPHD appears to believe that the Commission has a responsibility to “determine how the City and the District fulfill their role to implement *PEDF II*.” (CPHD Exception at 2.) That is not the Commission’s responsibility. The Commission only is tasked with fulfilling its duties as a public trustee, not with guiding municipal entities that are outside of its jurisdiction on how to meet their perceived obligations. By promulgating Section 59.18 and directing NGDCs to “consider” inside meter locations for historic buildings and buildings in

historic districts, the Commission complied with its duty under the Environmental Rights Amendment. Furthermore, the Court held in *City of Reading* that Section 59.18 preempts local restrictions on meter placements. *See* 179 A.3d at 629-32). Therefore, the City and CPHD are not entitled to any control over or participation in regulating the locations where UGI's meters can be installed and relocated.

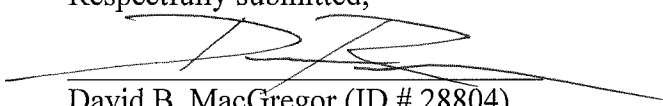
Thus, CPHD's Exception No. 1 should be denied.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Mary D. Long, UGI Utilities, Inc. – Gas Division respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by the City of Reading and Centre Park Historic District and adopt the Initial Decision, as modified in conformance with the Exception filed by the Company.

Respectfully submitted,

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