**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held October 24, 2019 |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman  Andrew G. Place  John F. Coleman, Jr. |  |
| Centre Park Historic District, Inc.  v.  UGI Utilities, Inc.  City of Reading  v.  UGI Utilities, Inc. | C-2015-2516051  C-2016-2530475 |
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**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following: the Exceptions of Centre Park Historic District (CPHD),[[1]](#footnote-1) filed on March 15, 2019; the Exceptions of the City of Reading (the City), filed on March 18, 2019; and the Exceptions of UGI Utilities, Inc. (UGI, Company, or Respondent), filed on March 18, 2019, to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge Mary D. Long, served on February 26, 2019. The City and UGI filed Replies to Exceptions on March 28, 2019.[[2]](#footnote-2) Based on our review of the record, the Parties’ filings, and the applicable law, we shall: (1) grant, in part, and deny, in part the City’s Exceptions; (2) deny UGI’s Exceptions; (3) grant, in part, and deny, in part, CPHD’s Exceptions; (4) modify the Initial Decision, as set forth in this Opinion and Order and the Ordering Paragraphs below; and (5) direct UGI to comply with the remedy detailed herein.

**I. History of the Proceeding**

On November 25, 2015, CPHD filed a Formal Complaint, alleging that UGI violated Section 59.18 of the Commission’s Regulations, 52 Pa. Code § 59.18, by failing to consider inside meter placement in all designated historic districts in Reading, Pennsylvania. On December 15, 2015, UGI filed an Answer denying the material allegations in the Complaint and averring that Section 59.18 grants the Company discretion in the placement of meters in historic areas.

On February 17, 2016, the City filed a Formal Complaint against UGI, challenging UGI’s placement of meters in historic districts, in violation of Section 59.18, as well as the outside placement of meters in unsafe locations in historic districts and other districts of the city, in violation of Section 59.18 and 49 C.F.R. § 192.353. On March 14, 2016, UGI filed an Answer denying the material allegations of the Complaint, as well as Preliminary Objections seeking dismissal of the Complaint.

In its Preliminary Objections, UGI argued that the City’s Complaint should be dismissed because it requested relief that could not be granted in a complaint proceeding by asking the Commission to impose new rules and standards concerning meter location that do not currently exist under the Commission’s Regulations. By Interim Order dated March 29, 2016, ALJ Long denied UGI’s Preliminary Objections, finding that the City’s Complaint challenges UGI’s application of a Commission Regulation and whether UGI’s actions in the placement of meters in the City complied with the Regulation.

By Prehearing Order dated March 30, 2016, the ALJ consolidated the Complaints of CPHD and the City (collectively, the City Parties or the Complainants).

By Prehearing Order dated March 21, 2017, the ALJ directed the City Parties to produce spreadsheets containing a list of disputed meters that included the date the City issued a permit and the date each meter was relocated or installed (Stipulated Spreadsheets). By Prehearing Order dated April 19, 2017, the ALJ clarified that UGI was directed to provide the dates of service line installation for the contested meters and the City Parties could stipulate or object to UGI’s service line installation data.

On July 6, 2017, UGI filed a Motion for Summary Judgment (Motion), requesting that the above-captioned Complaints be dismissed, in whole or in part. In an Initial Decision, served September 7, 2017 (September 2017 Initial Decision), the ALJ granted the Motion, in part. The ALJ dismissed the City Parties’ claim that 337 meters and meter infrastructures violated Section 59.18(a)(8)(i), which prohibits the placement of meters “[b]eneath or in front of windows or other building openings that may directly obstruct emergency fire exits.” The Parties subsequently filed Exceptions and Replies to Exceptions. By Order entered December 21, 2017, the Commission denied the Exceptions and adopted the September 2017 Initial Decision.

Evidentiary hearings were held on August 22 and 23, 2018. The hearings and prehearing conferences generated a transcript of 440 pages. The record consists of the various testimony and accompanying exhibits of the Parties.

CPHD and the City filed Main Briefs on October 18, 2018. UGI filed a Reply Brief on November 16, 2018. CPHD filed a Reply Brief on December 6, 2018, and the City filed a Reply Brief on December 7, 2018. The record was closed by interim order dated December 11, 2018.

In the Initial Decision served on February 26, 2019, ALJ Long granted, in part, and dismissed, in part, the Complaints of the City and CPHD. The Parties filed Exceptions and Replies to Exceptions as previously noted.

**II. Discussion**

**A. Legal Standards**

**1. General Legal Standards**

As the proponent of a rule or order, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainants must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainants’ evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*,489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The Complainants now have to provide some additional evidence to rebut that of the Respondent. [*Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d) While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the

Commission. *Milkie v. Pa. PUC*,768 A.2d 1217 (Pa. Cmwlth. 2001).[[3]](#footnote-3)

In the Initial Decision, ALJ Long made fifty-eight Findings of Fact, I.D. at 8-16, and reached ten Conclusions of Law, I.D. at 36-37. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**2. The Commission’s Meter Location Requirements**

The Commission amended its meter location Regulations, effective September 13, 2014, to address meter placement and location and general requirements for new service lines and to coincide with the federal standards that the Commission has adopted.[[4]](#footnote-4) *See Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location: Final Rulemaking Order (Final Rulemaking Order*)*,* Docket No. L-2009-2107155 (Order entered May 23, 2014). In this proceeding, we are addressing some issues of first impression based on the new regulatory language in 52 Pa. Code § 59.18. There are two main issues before us: (1) whether UGI considered inside locations for meters in historic districts as required by Section 59.18(d)(1)(ii) of our Regulations, 52 Pa. Code

§ 59.18(d)(1)(ii); and (2) whether UGI’s outside location of meters complied with the safety standards in Section 59.18(a)(5) and (b)(1) of our Regulations, 52 Pa. Code

§ 59.18(a)(5),(b)(1), and 49 C.F.R. § 192.353(a).[[5]](#footnote-5) These provisions, and other relevant provisions in this proceeding, provide the following, in pertinent part:

**§ 59.18. Meter, regulator and service line location.**

(a) *General requirements for meter and regulator location*.

(1) Unless otherwise allowed or required in this section, meters and regulators must be located outside and aboveground.

(2) Except in the case of an emergency, a utility shall provide written 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 historic status. The written notice must include contact information for the Commission’s Bureau of Consumer Services.

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(5) When selecting a meter or service regulator location, a utility shall consider potential damage by outside forces.

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(b) *Outside meter or service regulator locations*. Outside meters or service regulators shall be installed in one of the following locations:

(1) When feasible and practical to do so, aboveground in a protected location adjacent to the building served, or as close as possible to the point where a production or transmission line is tapped.

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(d)  *Inside meter locations.*

(1)  Inside meter locations shall be considered only when:

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      (ii) A meter is located in a building that meets one of the following criteria:

        (A)  A building is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the building is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.

(B)  A building is located within a historic district that is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the historic district is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.

        (C)  A building has been designated as historic under the act of June 13, 1961 (P. L. 282, No. 167) (53 P. S. §§ 8001-8006), known as the Pennsylvania Historic District Act, the Pennsylvania Municipalities Planning Code (53 P.S. §§ 10101-11202) or a municipal home rule charter.

        (D)  A building is located within a locally designated historic district or is eligible for the listing, or a building is individually designated under a local ordinance as a historic landmark or is eligible for the listing.

Additionally, under the relevant Code of Federal Regulations provisions, 49 C.F.R. § 192.353(a) provides the following:

**Customer meters and regulators: Location.**

(a) Each meter and service regulator, whether inside or outside a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated. However, the upstream regulator in a series may be buried.

**B. The Placement of Meters in Historic Districts**

**1. Positions of the Parties**

The City argued that the record does not support UGI’s assertion that meters located outside are safer than meters located inside, or UGI’s related assertion that Section 59.18 requires meters and regulators to be located outside and aboveground. City M.B. at 21-27. The City averred that the record demonstrates that UGI failed to consider inside meter placements in historic districts despite the plain language in Section 59.18 requiring the Company to do so. *Id*. at 28. The City asserted that UGI makes the determination that a meter located inside in a historic district must be relocated outside at the time the Company sends its thirty day notice to customers and, therefore, makes the determination before engaging in any “consideration” of inside meter locations. *Id*. at 30-32. The City also cited to testimony indicating that meters were placed inside in only about 2.5% (35 out of 1377) of the properties in historic districts. *Id*. at 32 (citing City St. 1 at 19).

UGI’s position has been that the Company has the discretion to require outside meter locations in all service locations, including historic districts, because gas safety concerns are more important than aesthetic concerns. UGI R.B. at 20-21. UGI noted that it took steps to address the Complainants’ and customers’ concerns, including, among other things, modifications to its Gas Operations Manual (GOM), effective July 31, 2016, to include more specific requirements regarding meter protection, the Americans with Disabilities Act sidewalk width compliance and additional guidance and consideration for meters located in historic districts. *Id*. at 22. UGI also noted that Company personnel have met with homeowners and interested parties to discuss meter placements in advance of meter relocations and that UGI has developed a website for customers requesting reconsideration of inside meter placement. *Id*. at 23. UGI argued that the City did not meet its burden of proving that the Company violated Section 59.18 and noted that its witness, Christopher Brown, a UGI Senior Director of Operations, testified that UGI has considered inside meter locations by analyzing the potential meter locations on the outside of buildings, whether the meter would block a distinguishing exterior feature, the ways in which customers can mitigate the aesthetic impact of the meter, and the relative safety of an outside versus inside meter placement. *Id*. at 31-32 (citing Tr. at 410-412; UGI St. 1 at 30, 34; UGI Exh. CB-5).

**2. Initial Decision**

Based on the record in this case, the ALJ sustained the Complaints to the extent that UGI’s meter placement policy from 2014 until 2016 failed to conform to the requirements of Section 59.18(d)(1)(ii). I.D. at 28. The ALJ initially stated that the pivotal question is what factors a utility must evaluate in order to appropriately “consider” indoor meter placement. The ALJ also stated that because Section 59.18 does not contain specific guidance, it is appropriate to engage in statutory construction to ascertain the Commission’s intent regarding the type and amount of consideration a utility must give to the indoor placement of meters located in historic districts. I.D. at 19-20 (citing 1 Pa. C.S. §§ 1921(c), 1922(1)). The ALJ continued that it was proper to first consider the plain language of the Regulation and then determined that when reading the Regulation as a whole, it was clear that the Commission intended a utility to evaluate, on a case-by-case basis, whether a meter associated with a building in a historic district should be left inside. I.D. at 20.

The ALJ explained that while Section 59.18 sets forth the general requirement that all “meters and regulators must be located outside and aboveground,” the Regulation also recognizes that there are situations where the placement of a meter outside and aboveground is not appropriate and provides for exceptions to the general rule. *Id*. (citing 52 Pa. Code § 59.18(a)(1)). For example, Section 59.18(d) allows meters in historic districts to be placed in an inside location. The ALJ thus concluded that a determination of an alternate meter placement necessarily must be made on an individual basis. I.D. at 20. The ALJ also explained that the notice requirements for customers affected by meter relocations support a regulatory interpretation that a utility is required to consider the exception to outdoor meter placement in historic districts on an individual basis. I.D. at 21. The ALJ stated that since Section 59.18(a)(3) requires that a utility must provide written notice which informs the customer “how to contact the utility to provide supplemental information that the utility may not have*,* such as the building’s historic status,” it would be unnecessary for a customer to provide a utility with supplemental information if a utility could establish a policy that all meters must be placed outside regardless of their location. *Id*. (citing 52 Pa. Code § 59.18(a)(3)). The ALJ further explained that support for this interpretation is found in the regulatory history set forth in the Commission’s Section 59.18 implementation orders. The ALJ stated that the Commission clearly expected a utility, once aware of a building’s historic status, to be aware of and to consider restrictions that may be in place to protect the historic features of a building. I.D. at 21 (citing *Final Rulemaking Order* at 30-31).

In evaluating the record in this case, the ALJ found that UGI’s initial approach to the implementation of Section 59.18, from 2014 through 2016, ignored the mandate to consider inside meter placement as set forth in subsection (d) and did not make any provision for a case-by case consideration of inside meter placement. I.D. at 23. The ALJ cited to Mr. Brown’s testimony as evidence that, in initially creating a policy to implement Section 59.18, UGI did not establish any explicit procedures to consider the protection of historic resources or the indoor placement of meters in historic districts in any meaningful way. The ALJ noted that Mr. Brown explained that UGI’s initial policy to implement Section 59.18 was to require outside meter locations in all service locations, including historic districts, and that UGI believed that the indoor placement of meters would elevate aesthetic concerns over safety issues. I.D. at 22 (citing UGI St. 1 at 20). The ALJ also noted that UGI continued to rely on its GOM, which had been in place since 2011 and which reflected the Company’s policy that as meters are replaced if a meter is located inside, it will be relocated outside. I.D. at 22-23 (citing UGI Exh. CB-4, Section 35.10.10).

The ALJ determined that UGI’s policy, which created a general rule but did not account for the exceptions that may apply to individual meters, was not a reasonable interpretation of the Regulation which contains a general rule as well as exceptions to the general rule. The ALJ reasoned that UGI’s policy that all meters must be relocated outside, without any consideration of whether the meter is located in a historic district, ignores the Regulation’s meaning. The ALJ also reasoned that “considering the indoor placement of meters in historic districts is not simply a matter of ‘aesthetics.’” I.D. at 23. Rather, the ALJ found that a careful reading of the Commission’s rulemaking orders shows that the Commission recognized that historic areas have special needs and while the Commission did not want to force a utility to comply with historic district restrictions in instances where safety was an issue, the Commission did not intend for a utility to ignore the historic status of a building. *Id*. at 23-24. The ALJ stated that, otherwise, the Commission would not have allowed for an inside location exception for meters in historic buildings. *Id*. at 24.

The ALJ additionally found that the notice letters UGI sent to customers were not consistent with the Commission’s mandate in Section 59.18. The ALJ stated that Section 59.18(a)(3) requires that the thirty-day notice letters include “how to contact the utility to provide supplemental information that the utility may not have, such as the building’s historic status*.*” The ALJ concluded that UGI’s customer notices provided a telephone number for UGI’s call center, but did not inform customers that they could provide supplemental information, such as the building’s historic status, and seek reconsideration of outside meter placement. I.D. at 24.

Otherwise, the ALJ found that the Complainants have failed to sustain their burden of proving that UGI violated Section 59.18(d)(1)(ii). I.D. at 28. The ALJ stated that UGI’s implementation of Section 59.18 has evolved, as UGI revised its GOM in July 2016 to include special provisions for meter relocations in historic districts that permit consideration of indoor meter placement for meters as well as meter relocations if a building is subsequently reclassified as a historic building. I.D. at 24 (citing UGI Exh. CB-5, Sections 5.0 and 7.0). The ALJ also noted Mr. Brown’s testimony that UGI revised its thirty-day notice letter to provide more information for property owners in historic districts, as follows:

As part of this project, **UGI intends to move natural gas meter sets located inside of residences to a position outside the dwelling, but if your property is located in a federal, state or local historic area you may request that UGI reconsider the decision to relocate your meter.** Your request can be made online by visiting **www.ugi.com**, and clicking on the “Community” tab at the top of the page … Once the form is submitted, you will receive a confirmation of submission of your reconsideration request.

I.D. at 25 (citing UGI Exh. CB-16 (emphasis in original); Tr. at 344-45). The ALJ observed that there is no language in the Regulation that mandates at which point in the relocation timeline a utility must consider an indoor meter placement for a historic property. The ALJ also observed that the Regulation requires utilities to include a prompt for customers to provide the utility with information regarding the historic status of their property. The ALJ found that from a logistic and resource management standpoint, relying on the customer to provide the relevant information is a sensible approach, as the customer is in the best position to provide information regarding the historic nature of the property and any restrictions on exterior improvements that may apply. The ALJ concluded that when the Regulation is read as a whole, this interpretation of the timing of the utility’s consideration is consistent with other provisions of the Regulation. I.D. at 25.

**3. Exceptions and Replies**

**a. UGI’s Exception No. 1, the City’s Replies, and Disposition**

**1. UGI’s Exception**

UGI argues that the ALJ erred in concluding in Conclusion of Law No. 6 that the Company’s meter installation and relocation policy from 2014 to 2016 failed to comply with Section 59.18. Conclusion of Law No. 6 provides the following: “The Complainants met their burden of proving that UGI’s policy failed to conform to the amendments to 52 Pa. Code § 59.18, from 2014 until 2016.” UGI avers that the ALJ incorrectly concluded that the Commission’s revisions to 52 Pa. Code § 59.18 required natural gas distribution companies (NGDCs) to establish separate meter placement rules for historic districts. UGI Exc. at 1. UGI states that in the *Final Rulemaking Order,* the Commission 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. *Id*. at 3 (citing *Final Rulemaking Order* at 30; UGI St. 1 at 16-17.) UGI believes that the language in the *Final Rulemaking Order* demonstrates the Commission’s clear determination not to mandate such standards and, instead, to adhere to its public policy determination that the risks associated with inside meters create a need to have most meters and regulators moved to outside locations. UGI Exc. at 3-4 (citing *Final Rulemaking Order* at 5-6). UGI asserts that the Commission’s authorization of NGDCs to “consider” inside meter placements under Section 59.18(d)(1) in historic districts is simply a reflection of the Commission’s decision to permit the existing tariff provisions of certain NGDCs to remain effective. UGI Exc. at 5. UGI points to the Commission’s investigation into meter placement, which revealed that the majority of NGDCs’ tariffs include language that contains exceptions to outside siting and allows for inside meter and regulator sets based on historic area prohibitions and areas with high amounts of vandalism. *Id*. at 4 (citing *Final Rulemaking Order* at 5, 8).

UGI continues that the *Final Rulemaking Order* does not reflect the Commission’s endorsement of separate standards for historic districts and buildings or any requirement that NGDCs, such as UGI, that do not have separate standards must adopt them. UGI Exc. at 5. UGI states that, instead, the Commission firmly and expressly rejected several commenters’ recommendations that the Commission establish separate mandatory standards for evaluating meter placements in historic districts. UGI Exc. at 7 (citing *Final Rulemaking Order* at 30-31, 43, 45-46). Thus, UGI contends that the *Final Rulemaking Order* clearly states that the general rule requiring outside meter placement applies to both historic and non-historic districts, unless outside meter placement is otherwise prohibited or not feasible under the Commission’s Regulations. UGI Exc. at 7.

Additionally, UGI avers that the ALJ’s decision is inconsistent with the Commonwealth Court’s holding in *UGI Utilities, Inc. v. City of Reading* (*City of Reading*)*,* 179 A.3d 624 (Pa. Cmwlth. 2017). UGI states that while the Commission expressed uncertainty in the *Final Rulemaking Order* regarding the applicability of local zoning restrictions on meter placements in historic districts, any such ambiguity has since been resolved in *City of Reading*. UGI submitted that the Commonwealth Court found that local regulation of meter placement is preempted by the Commission’s exclusive jurisdiction; that UGI was not required to install meters inside in historic districts under the Commission’s revised Section 59.18; and that the Commission fulfilled its obligations under the Pennsylvania Constitution in promulgating its Regulation. UGI Exc. at 7.

Further, UGI argues that the ALJ incorrectly relied on the thirty-day notice provisions of 52 Pa. Code § 59.18(a) to support the conclusion that the Commission requires NGDCs to establish separate meter installation standards for historic districts. UGI Exc. at 8 (citing 52 Pa. Code § 59.18(a)(2),(3)). UGI avers that based on the plain wording of Section 59.18(a)(2) and (3), the NGDCs’ notice is not required to include a listing of potential reconsideration standards applicable to meter installation in historic districts. UGI submits that the Regulation 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. UGI Exc. at 8.

UGI states that the record shows that prior to the adoption of the revised Section 59.18 in 2014, UGI incorporated meter location standards into its GOM in 2011, which generally required that meters and regulators be installed in outside locations and that management approval be obtained for inside locations. *Id*. at 8-9 (citingUGI Exh. 4, Section 5.0). UGI also states that while it did not adopt separate rules for historic districts, as the ALJ correctly noted, its field personnel still gave individualized consideration to each customer’s circumstances. UGI Exc. at 9 (citing I.D. at 14-15, 32-33). The Company further stated that although it subsequently amended its thirty-day notice letter, its initial notice letter nevertheless provided all of the information required by 52 Pa. Code § 59.18(a)(2) and (3), including the required contact information for the Commission’s Bureau of Consumer Services and for the Company’s personnel involved in the project. UGI Exc. at 9 (citingCity Exhs. JS-10 and JS-12.).

UGI continues that after the Commission’s revised Regulation became effective on September 13, 2014, UGI initially did not adopt separate meter installation standards for historic districts, averring that Section 59.18 did not require it to do so. UGI Exc. at 9. UGI states that in developing its initial implementation strategy, it excluded local historic areas from consideration of inside meter placement because there was no central registry defining where such districts were located. UGI also states that because it was unable to locate a resource that listed the boundaries of federal historic districts, the Company 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. *Id*. (citing UGI St. 1 at 20.). UGI acknowledges that it subsequently developed a separate standard for making meter placement decisions in historic districts, which it incorporated into its GOM in 2016, and the Company applied that standard to local, state, and federal historic districts. *Id*. at 9-10. (citing UGI St. 1 at 33-34.). The Company submits that it also voluntarily modified its thirty-day notice to state that customers can request reconsideration of meter placement decisions based on historic status through, among other ways, a new web-based portal. UGI Exc. at 10 (citing Tr. at 344-35; UGI Exh. CB-16.). UGI argues that its policies and customer notices, both before and after its voluntary implementation of separate standards for considering inside meter placements in historic districts, fully complied with the requirements in 52 Pa. Code § 59.18.

**2. The City’s Replies**

In its Replies to Exceptions, the City avers that the ALJ’s findings and conclusions regarding UGI’s meter installation and relocation policy from 2014 to 2016 are well-reasoned and supported by substantial evidence. City R. Exc. at 1, 2. The City states that the express language of Section 59.18 mandates that a utility must consider inside placements for meters located in historic districts, and UGI, by its own admission, deliberately failed to follow the Regulation’s requirements. *Id*. at 2 (citing I.D. at 33, UGI Exc. at 3). The City asserts that UGI should be assessed civil penalties for its intentional violations and that UGI’s after-the-fact revisions to its GOM and permitting customers to seek reconsideration do not absolve the Company of its deliberate actions. City R. Exc. at 2-3. The City submits that the Regulation requires consideration and proper customer notice, and the record in this case demonstrates that UGI did not consider inside meter placements or provide sufficient customer notice in the City’s historic districts between 2014 and 2016. *Id*. at 4. The City argues that, instead, UGI chose to enforce an absolute company policy of moving meters outside without consideration and without supplemental information that UGI did not have regarding each building’s historic status. *Id*. (citing City Exhs. JS-10, JS-11, and JS-12).

The City states that UGI’s discretion is governed by the clear language of Section 59.18 and that UGI and other NGDCs do not have complete, unfettered discretion concerning meter placements in historic districts. City R. Exc. at 4. The City avers that the Regulation determines the parameters, and safety is the basis for the decision on meter and regulator location. The City observes that even though the governing Regulation has changed, what was safe previously under the Regulation - allowing inside or outside locations - is not necessarily unsafe under the new Regulation. *Id*. at 5.

Additionally, the City emphasizes that it is the language of the Regulation that controls and not UGI’s speculative assertions of Commission authorizations based on UGI’s carefully chosen excerpts from the *Final Rulemaking Order*. *Id*. The City argues that contrary to UGI’s assertion, the Commission, did endorse a “separate standard” in order to provide “clear direction” when dealing with historic districts and buildings. The City avers that Section 59.18 must be read as a whole, and the express language of the Regulation, specifically subsection (d)(1), unequivocally requires different treatment for historic districts. The City submits that 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. The City contends that UGI’s discretion under the Regulation does not excuse its failure to conform to the Regulation’s requirements. *Id*. at 6. The City asserts that the ALJ correctly concluded that the City met its burden of proof because UGI’s actions in this proceeding showed that the Company failed to follow the requirements in Section 59.18 concerning its meter installations and relocations in the City’s historic districts. According to the City, 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 Regulation’s requirements into its GOM and even longer for UGI to update its customer notices and practices. *Id*. at 7.

Further, the City states that while UGI may have modified its GOM in 2016, this does not change the fact that UGI did not comply with the thirty-day advance notice provisions in Section 59.18(a)(2) and (3), which became effective in September 2014. The City argues that UGI did not provide the requisite notice at least thirty days before 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. *Id*. at 8. The City avers that UGI’s actions between 2014 and 2016 completely ignored Section 59.18(d)(1), which requires that inside meter locations shall be considered in historic districts, and that Section 59.18(a)(2) and (a)(3) cannot be read in isolation from Section 59.18(d)(1). The City also avers that UGI’s initial notice letters did not provide all of the relevant information required by 52 Pa. Code § 59.18(a)(2) and (3) and served merely as an after-the-fact notice that did not provide enough information for a historic district customer to make an informed decision or to challenge the meter placement. City R. Exc. at 9.

**3. Disposition**

Based on our review of the record and the Parties’ positions, we find the ALJ’s conclusion that UGI’s meter placement practices from 2014 until 2016 failed to conform to the consideration requirements in Section 59.18(d)(1)(ii) is sound and well-reasoned. Consideration is a clear requirement under our Regulation, as the express language of Section 59.18 states that NGDCs **shall** consider inside meter locations in historic districts. 52 Pa. Code § 59.18(d)(1)(ii). In construing and interpreting administrative regulations, such as Section 59.18, the rules of statutory construction and interpretation apply. *Energy Conservation Council of Pennsylvania v. Pa. PUC*, 995 A.2d 465 (Pa. Cmwlth. 2010). When interpreting a statute or regulation, the Statutory Construction Act provides, “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. § 1921(b). Under a clear reading of the Commission Regulation, consideration is a mandate as well as an intentionally expressed exception to the general rule under Section 59.18(a)(1) that meters and regulators must be located outside. We also agree with the ALJ that, when the Regulation is viewed as a whole, consideration of inside meters must be given on an individual case-by-case basis. The language in Section 59.18(d)(1)(ii) refers to consideration of inside meters within an individual building located within a historic district, and the language in Section 59.18(a)(2) and (3) mandates that a utility provide notice of meter relocations to an individual customer or building owner and request information, such as information regarding the building’s historic status.

The term “consider” is not defined in our Regulation; however, in examining the plain language of a statute or regulation, we must construe regulatory undefined words and phrases according to the rules of grammar and according to their common and approved usage, and may use standard dictionary definitions to do so. 1 Pa. C.S. § 1903(a); *SugarHouse HSP Gaming, L.P. v*. *Pennsylvania Gaming Control Bd.*,640 Pa. 169, 162 A.3d 353, 376 (2017). The term “consider” ordinarily means “to think about carefully,” especially “with regard to taking some action,” or to “take into account.” *Merriam-Webster’s Collegiate Dictionary* at 265-66 (11th ed. 2007).

While the Regulation is clear that individual “consideration” is mandated, the Regulation does not provide guidance regarding the type and extent of actions an NGDC is required to engage in in order to constitute consideration of inside meter placement in historic districts. When the words of a statute are not explicit, we may consider other matters in ascertaining legislative intent, including, among other things, the occasion and necessity for the statute, the circumstances under which it was enacted, the object to be attained, the former law, including other statutes on the same or similar subjects, and legislative and administrative interpretations of the statute. 1 Pa. C.S. § 1921(c). Statutory language is considered ambiguous when a pertinent provision is susceptible to more than one reasonable interpretation or when the language is vague, uncertain, or indefinite. *Adams Outdoor Advertising, L.P. v. Zoning Hearing Bd. of Smithfield Twp.*, 909 A.2d 469, 483 (Pa. Cmwlth. 2006); *Barash v. Pa. PUC*, 516 Pa. 142, 532 A.2d 325, 332 (1987). Here, the type and amount of consideration that is required under Section 59.18(d)(1)(ii) is uncertain, and the Parties’ positions are on opposite ends of the spectrum regarding the meaning of consideration within the Regulation. UGI argues that it has the discretion to determine the location of meters, and the general rule under the Regulation requiring outside meter placement applies to both historic and non-historic districts, unless outside meter placement is otherwise prohibited or not feasible under the Commission’s Regulations. On the other hand, the City argues that UGI should be required to relocate all meters in historic districts that have been placed outside to inside locations, except where UGI establishes a greater safety risk than in similarly situated historic properties.

Accordingly, we find it appropriate to refer to the discussion of Section 59.18 in our implementation orders regarding our intention in promulgating the Regulation. In promulgating Section 59.18, the Commission confirmed that a utility shall consider inside meter placement in historic districts with regard to individual properties (through notification to the customers or property owners), and that this consideration is an exception to the general rule that meters be located outside. We stated the following:

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 45-46; s*ee also Final Rulemaking Order* at 30. While the Commission has been clear that, due to a utility’s public safety obligations, utilities retain the discretion to make the final decision regarding meter location, such discretion is not unfettered for meters located within historic districts.

The Commission has also acknowledged a utility’s responsibility to ensure that it is providing reasonable and adequate service in making that decision. In crafting the amendment to Section 59.18, we stated:

[W]e further clarify that our jurisdiction over service and facilities is not confined to the distribution of energy but can include any and all acts related to that function. *West Penn Power v. Pennsylvania Public Utility Commission*, 578 A.2d 75 (Pa. Cmwlth. 1990). Therefore, we might very well find that meters located outside in a historic district are not in the public interest for a number of reasons.

*Advance Notice of* *Final Rulemaking Order: Rulemaking Re Amendment to*

*52 Pa. Code § 59.18 Meter Location*, Attachment 1 at 43, Docket No. L-2009-2107155 (Order entered September 13, 2013); *see also Final Rulemaking Order* at 30.

We declined to develop requirements for relocating meters outside that applied specifically in historic districts, but we stated that NGDCs would be responsible for determining if gas line improvements and meter location projects are located in historic areas. We stated as follows:

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 relocating meters outside which would apply to outside meters in locally designated historic districts. We do believe, however, that the utility, in applying the regulation, has an obligation to know whether gas line improvements and meter location projects are located in historic areas. This is a burden that any property owner or contractor would probably have in undertaking exterior improvements in an historic district, since the local municipality may require prior approval before a building permit is issued.

*Final Rulemaking Order* at 31.

In applying these consideration requirements to the facts in this case, we conclude that the City Parties met their burden of proving that UGI did not give proper consideration to inside meter placements in historic districts, as required by Section 59.18(d)(ii), from 2014 until 2016. The City established a *prima facie* case to demonstrate that UGI failed to provide the consideration the Commission intended in promulgating Section 59.18. The City’s witness, Mr. Slifko, formerly Vice President of Reading City Council, testified that out of the 1377 properties the City surveyed, only about thirty-five meters were placed inside, and in several of those instances, there was no space outside for meter placement. Reading St. 1 at 18-19. The City also presented evidence of the standard thirty-day notification letters that UGI sent to customers residing in historic districts within the City, including customers in CPHD, before beginning a project. One letter dated September 24, 2015, explained that UGI would be performing maintenance work on the natural gas facilities near the customer’s property and informed the customer that “if the meter and regulator are inside, we will need to move them outside due to company policy.” City Exh. JS-10. A second letter dated January 30, 2017, explained that UGI would be performing work on the natural gas facilities serving the customer’s residence and that if the customer’s “natural gas meter set is located inside the building where you live, it will be moved to a position outside the dwelling.” City Exh. JS-12. The City provided sufficient evidence to show that UGI was making a determination to move meters outside in historic districts without first carefully thinking about placing meters in inside locations in historic districts and without first discussing the inside location of meters with property owners or customers in historic districts.

UGI did not provide sufficient evidence to rebut the City’s evidence and, in fact, admitted that the Company did not initially give consideration to locating meters inside in historic districts and did not treat meter location in historic districts any differently than meter location in other areas. UGI’s witness Mr. Brown stated that the Company “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.” Mr. Brown explained that this approach was reflected in the Company’s initial GOM rules and communications. UGI St. 1 at 20. UGI also provided evidence of the two versions of its GOM, one version that was effective from July 5, 2011, to July 30, 2016, and a revised, current version that has been effective since July 31, 2016. UGI Exhs. CB-4 and CB-5. Mr. Brown stated that the prior version of the Company’s GOM included a preference for outside meter locations and an inside meter location would only be considered with approval from the Manager of Engineering. UGI St. 1 at 34. The language in that GOM specifically provided as follows: “Inside meter sets locations should only be considered when an acceptable outside location is not available, suitable or when protection from ambient temperatures is necessary to avoid meter freezing. Inside meter locations require prior approval of the Manager of Engineering.” UGI Exh. CB-4, Section 5.1.

Under the circumstances, UGI did not comply with the mandate in our Regulation that NGDCs **shall** consider inside meter locations in historic districts. 52 Pa. Code § 59.18(d)(1)(ii). Although the Regulation expressly states that all utilities must comply with the Regulation beginning on September 13, 2014, UGI continued to follow its prior GOM, which did not include any mention of consideration of inside meter locations in historic districts, until July 31, 2016. The Company was candid about applying the same meter location standards to all properties, whether they were located in historic or non-historic districts. UGI presented some testimony indicating that it had met with customers to discuss the meter location projects, often through the Company’s construction foreman and construction supervisors, prior to the start of a project; however, the Company did not provide specific information regarding the time frames of these discussions, how many customers it had discussions with, or whether the historic status of the properties was a part of these discussions. *See* UGI St. 1 at 30-31; Tr. at 249-250, 285-286, 342. Under the circumstances, we cannot conclude that UGI provided individual consideration to properties within historic districts, and we shall deny UGI’s Exception on this issue. In reaching our conclusion, we emphasize that it is based on the evidence before us that each Party has presented, and we are not establishing herein any new standards not already contained in the Regulation.

**b. The City’s Exceptions Nos. 3, 8, 10, and 17, UGI’s Replies, and Disposition**

**1. The City’s Exceptions**

In its Exception Number 3, the City objects to Findings of Fact Nos. 45 and 46 on the basis that they are inconsistent and must be corrected to clarify which facts currently apply and which facts are historical. These Findings of Fact state the following:

45. The letter also provided the customer with an option to request reconsideration of his or her meter location by contacting UGI by phone or completing a meter reconsideration request form on UGI’s website. (UGI St. 1 at 26).

46. The Company’s current customer notification letters state, in pertinent part, “As part of this project, **UGI intends to move natural gas meter sets located inside of residences to a position outside the dwelling, but if your property is located in a federal, state or local historic area you may request that UGI reconsider the decision to relocate your meter.**  Your request could be made online at UGI.com and clicking on the community tab at the top of the page.” (UGI Exh. CB-16) (emphasis in original).

The City states that Finding of Fact No. 45, which refers to the thirty-day notice letters UGI sent to customers in the City’s historic districts after the revision of Section 59.18 in September of 2014, did not provide UGI’s customers with an option to request reconsideration of their meter location. City Exc. at 4. Rather, the City avers that such language was omitted from the various thirty-day notice letters UGI sent to customers in the City’s historic district for more than three years after the amended Section 59.18 became effective and was not used until UGI revised its customer notification letter in October 2017. *Id*. (citing City Exhs. JS-10, JS-11, and JS-12). The City observes that as ALJ Long stated in her discussion of the notice letters, the initial customer notice letters (those used between September 2014 and October 2017) provided a telephone number for UGI’s call center, but did not inform customers that they could provide supplemental information, such as the building’s historic status, and seek reconsideration of outside meter placement. City Exc. at 4-5 (citing I.D. at 24). Accordingly, the City requests that Finding of Fact No. 45 be modified to state the following:

45. The letter **failed to provide** the customer with an option to request reconsideration of his or her meter location by contacting UGI by phone or completing a meter reconsideration request form on UGI’s website.

The City also requested that Finding of Fact No. 46 be modified to clarify the October 2017 date that the Company’s current customer notification letter went into effect. City Exc. at 5.

In its Exception Number 8, the City contests the ALJ’s finding that utilities should be required to make a case-by-case decision regarding whether to locate a meter outside or inside. The City believes that the starting point should be that inside meter placement is more appropriate in the historic district as a whole. *Id*. at 7. The City states that inside meter placement was considered safe under the previous Section 59.18 before it was amended and, as UGI witness Mr. Brown admitted, the change in the Regulation did not mean a placement was safe one day and not the next. *Id*. at 7-8 (citing Tr. at 373).

In the City’s Exception Number 10, it disagrees with the ALJ’s conclusion that the City Parties have failed to satisfy their burden of proving that UGI violated Section 59.18(d)(1)(ii) after 2016. The City avers that even assuming UGI’s approach to meter placements in the City’s historic districts evolved, UGI was nevertheless in violation of Section 59.18 until at least October 2017. City Exc. at 8. The City contends that UGI’s “after-the-fact” revisions to its GOM, which became effective on July 31, 2016, failed to cure UGI’s violations because Section 59.18 and other pertinent Regulations take precedence over the GOM regardless of the version in use. *Id*. at 8-9. The City states that a careful reading of UGI’s revised policy shows that the Company’s consideration of inside meter placements is merely an afterthought, only permitted if there are “no practical alternatives” available to place a meter outdoors and the property owner makes a written request. *Id*. at 9 (citing UGI Exh. CB-5 at 2-3). The City posits that a written request is difficult to make when UGI has already determined the location of the meter and the customer receives a notice letter that fails to provide information about how to challenge the Company’s determination or request inside meter placement. City Exc. at 9 (citing City Exhs. JS-10, JS-11, and JS-12). The City further asserts that the City Parties offered evidence during the hearing of instances where UGI placed a meter in error by failing to consider an exterior restriction or other historic feature and by failing to consider the preservation of specific historic assets. City Exc. at 9 (citing City Exh. JS-16; City M.B. at 33-34).

In its Exception Number 17, the City objects to Conclusion of Law No. 7 regarding the date by which UGI’s practices conformed to the Section 59.18 amendments. Conclusion of Law No. 7 provides the following: “The Complainants failed to meet their burden of proving that UGI’s policy after 2016 failed to conform to the amendments to 52 Pa. Code § 59.18.” The City avers that even with the two Complaints in this proceeding filed against it, UGI did not change its practices concerning the thirty-day notice letter until October 2017. The City asserts that the 2016 date in Conclusion of Law No. 7 is incorrect and, at a minimum, should be October 2017.

**2. UGI’s Replies**

In response, UGI states that 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. UGI avers that its revised GOM included substantial changes, including additional guidance and consideration for meters located within historic districts. UGI indicates that it has followed this policy when installing or relocating meters, and this policy includes consideration of inside meter locations in historic districts and for historic buildings. UGI also indicates that 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 R. Exc. at 4. UGI notes, however, that because the Company places a priority on gas safety, the Company has mainly installed or relocated meters outside. *Id*. at 4-5 (citing UGI St. 1 at 18). UGI states that there is more risk involved when placing a meter inside a building; however, the Company still considers inside meter locations when determining where to install or relocate a meter, consistent with the Commission’s Regulations. UGI R. Exc. at 5.

UGI also argues that 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). UGI avers that it has worked with individual customers to find less obtrusive locations for the meter in order to mitigate aesthetic concerns and in some situations where there were 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. *Id*.

UGI agrees with the ALJ’s conclusion that NGDCs are not required to conduct a case-by-case analysis of whether to install the meter outside or inside of the building before contacting the customer. UGI also believes that the timing of the consideration, whether it is before or after the customer is initially contacted, is insignificant, as the important aspect is whether the NGDC considers the inside meter location before installing the meter. UGI avers that it properly considered inside meter locations as required by the Commission’s Regulations. *Id*. UGI submits that it has followed its revised GOM that provides additional guidance and consideration for meters located within historic districts, and it 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. *Id*. at 5-6.

Additionally, UGI contends that the City failed to establish that UGI placed any meters in front of distinguishing exterior features in derogation of the Company’s revised GOM. UGI states that 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 the City’s Exhibit JS-16. UGI avers that the City failed to examine which version of the GOM was in effect at that time, as 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 continues that none of the meters shown in the City’s Exhibit JS-16 were installed or relocated after the revised GOM became effective. *Id*. at 6.

Further, UGI asserts that the City’s argument that UGI’s thirty-day notice letter failed to comply with the Commission’s Regulations since October 1, 2017, lacks merit. *Id*. The Company states that while it revised its thirty-day notice letter effective October 1, 2017, its prior letter also complied with the Commission’s Regulations because it contained 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. *Id*. at 7 (citing City Exhs. JS-10 and JS-12).

**3.** **Disposition**

Based on our review of the record and the Parties’ positions, we agree with the ALJ’s conclusion that the City Parties have failed to satisfy their burden of proving that UGI violated Section 59.18(d)(1)(ii) after 2016. One piece of evidence the City Parties produced to demonstrate that UGI was in violation of the Regulation after 2016 was UGI’s January 30, 2017 thirty-day notification letter, discussed above. City Exh. JS-12. In this instance, UGI presented sufficient evidence to rebut that of the City. UGI presented evidence that it revised its GOM, effective July 31, 2016, to include additional guidance and consideration for meters located in historic districts. The revised GOM provides that in historic districts, the Company should “attempt to locate meters in unobtrusive locations to avoid placing meters in front of distinguishing exterior features of historic properties.” When such unobtrusive locations are not available, the Company may install an indoor meter in a building within a historic district. UGI St. 1 at 34; UGI Exh. CB-5. UGI also revised its thirty day customer notification letters, effective October 2017. Tr. at 344. The current version of the letter provides the following:

As part of this project, **UGI intends to move natural gas meter sets located inside of residences to a position outside the dwelling, but if your property is located in a federal, state or local historic area you may request that UGI reconsider the decision to relocate your meter.**

UGI Exh. CB-16 (emphasis in original). Consistent with the revised thirty-day notification letter, UGI developed a website which is referenced in the letter as a means for customers seeking reconsideration of meter placement to communicate this preference to the Company. *Id*.; UGI St. 1 at 36.

Based on the Company’s revised procedures and the content of the revised thirty-day notification letter, we cannot conclude that the Company is not currently accounting for the inside placement of meters in historic districts prior to relocating the customers’ meters. We also cannot impute requirements within the context of this complaint proceeding that are not contained in the Regulation or the Commission’s rulemaking orders, such as the specific timing of the consideration or when customer contact should occur.

In response to UGI’s evidence regarding its revised policy to avoid placing meters in front of distinguishing exterior features of historic properties, the City argues that it presented evidence in the form of pictures to show that the Company did not follow this policy and did place meters in front of distinguishing exterior features of historic properties, such as ornamental iron works and a historical plaque. Tr. at 395-398; City Exh. JS-16. Upon review, we find that the City did not present evidence to establish that the exterior features in question were, in fact, historical assets or that UGI was not following its policies in place at the time. Tr. at 425. The City did not otherwise establish that UGI violated the Code or any Commission Regulation or Order by its actions after 2016. We find that based on the record as a whole, particularly the July 2016 effective date of UGI’s revised GOM, the City has not met its burden of proving that UGI violated Section 59.18(d)(1)(ii) after 2016. Accordingly, we shall deny the City’s Exceptions Nos. 8, 10, and 17.

We will, however, grant the City’s Exception No. 3 for record clarification purposes. In Finding of Fact No. 45, it appears that the ALJ is referring to the thirty-day notification letters UGI sent to customers in the City’s historic districts after the revision of Section 59.18 in September of 2014 and before October 2017. These initial thirty-day letters did not provide UGI’s customers with an option to request reconsideration of their meter location. Accordingly, we shall modify Finding of Fact No. 45 to read as follows:

45. The letter did not provide the customer with an option to request reconsideration of his or her meter location by contacting UGI by phone or completing a meter reconsideration request form on UGI’s website. City Exhs. JS-10 and JS-12.

We will additionally modify Finding of Fact No. 46 to reflect that the Company’s current thirty-day notification letter was revised in October 2017. *See* Tr. at 344. Finding of Fact No. 46 will read as follows:

46. The Company’s current customer notification letters, revised in October 2017, state, in pertinent part, “As part of this project, **UGI intends to move natural gas meter sets located inside of residences to a position outside the dwelling, but if your property is located in a federal, state or local historic area you may request that UGI reconsider the decision to relocate your meter.** Your request can be made online by visiting **www.ugi.com**, and clicking on the “Community” tab at the top of the page.” (UGI Exh. CB-16 (emphasis in original)

**c.** **The City’s Exceptions Nos. 1 and 9, UGI’s Replies, and Disposition**

**1. The City’s Exceptions**

In its Exception No. 1, the City objects to Finding of Fact No. 20, which states that “[i]n UGI’s view, it is not appropriate to ‘elevate aesthetic concerns over public safety considerations.’” The City explains that its position is that safety is more important than aesthetics, and it stated this more than a half dozen times in its Reply Brief. City Exc. at 3 (citing City R.B. at 3, 4, 6, 9, 14, 17, and 23). The City argues, however, that there is no record evidence that outside meters are safer than inside meters. The City also argues that the further a meter is from the street, the safer its location, and the increased use of bollards would also enhance safety for meters located on sidewalks close to City streets. City Exc. at 3.

In its Exception No. 9, the City contends 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 Exc. at 8 (citing I.D. at 28). The City asserts that outside meters are not safer, and therefore, inside meters do not necessarily increase UGI’s liability and enforcement risk. *Id.*

**2.** **UGI’s Replies**

In response to the City’s Exception No. 1, UGI states that the City is elevating aesthetic concerns over safety because 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. UGI R. Exc. at 20. UGI states that if the City valued safety over aesthetics, it would defer to the decisions of the entities, UGI and the Commission, which Mr. Slifko admitted are more qualified to balance safety and aesthetic concerns. *Id*. (citing Tr. at 172-73.).

In reply to the City’s Exception No. 9, UGI argues that, contrary to the City’s assertions, it has advanced the Commission’s most important goal, public safety, by placing meters and regulators in outside locations, thus minimizing the chances of releasing gas in confined indoor spaces. Given its public safety obligations under Section 1501 of the Code, UGI maintains that it is unquestionable that UGI would face liability and enforcement risk due to its decisions on where to install the meters. UGI R. Exc. at 12 (citing to 66 Pa. C.S. § 1501). UGI avers that both the Commission and the Commonwealth Court credited an NGDC’s public safety obligations as the reason why meter location determinations are within an NGDC’s discretion. UGI R. Exc. at 12 (citing *Final Rulemaking Order* at 45-46; *City of Reading*, 179 A.3d at 630). UGI, therefore, explains that it would presumably carry the risk of potential liability in the event it exercised its discretion to permit an inside meter location and a catastrophe were to occur.

**3.** **Disposition**

Upon review, we shall grant the City’s Exception No. 1 and deny the City’s Exception No. 9. While the ALJ’s description of UGI’s viewpoint in Finding of Fact No. 20 is an accurate representation of UGI’s position, we do not find it appropriate to include this statement as a Finding of Fact under the circumstances, because this statement is not fully consistent with the City’s position and/or with the intent of Section 59.18. The City has acknowledged throughout the proceeding that aesthetic concerns do not transcend safety concerns, while also averring that the Regulation permits the indoor location of meters in historic districts for more than just aesthetic-based reasons.

Certainly, both our Regulation and 49 C.F.R. § 192.353 permit the inside location of meters, but safety is a significant concern in determining where to locate a meter, whether it be inside or outside. In making outside meters the general rule when promulgating Section 59.18, we noted the data showing that Pennsylvania has experienced sixty-five reportable incidents[[6]](#footnote-6) associated with inside meter sets and inside regulators over the last forty years. *Final Rulemaking Order* at 5, 8. Our Regulation and the federal regulation also encompass safety concerns with outside meter locations, such as potential damage by outside forces and vehicular damage. We do not find it necessary in the context of this proceeding to make any determinations regarding whether inside or outside meter locations are safer, as there are safety concerns associated with both inside and outside meter locations. We do, however, conclude that the ALJ’s statement that “leaving a meter inside a historic home creates a liability and enforcement risk to UGI should an accident occur” is legally sound. Like all regulated NGDCs, UGI is responsible for providing safe and reasonable service under Section 1501 of the Code and for complying with our gas safety regulations and the federal gas safety regulations. This Commission has the authority to, among other things, conduct investigations and bring enforcement proceedings, which may result in the imposition of penalties, against NGDCs that we find are not in compliance with the Code, applicable regulations, and Commission Orders. While UGI’s liability and enforcement risks are not limited to accidents that occur with respect to inside meters, these types of potential accidents fall within the realm of accidents for which an NGDC would be subject to liability and enforcement risks.

While we were clear in promulgating Section 59.18 that utilities retain the discretion to make the final decision regarding meter location due to their public safety obligations, we were also clear that such discretion is not unfettered. We acknowledged a utility’s responsibility to ensure that it is providing reasonable and adequate service in making that decision. Our intent was to go beyond any aesthetic concerns that may be present in historic districts and, in fact, we declined to establish any solely aesthetic standards within the Regulation. *See* *Final Rulemaking Order* at 30-31. Additionally, as we will discuss in greater detail herein, based on recent Commonwealth Court decisions in *Pa. Environmental Defense Foundation v. Commonwealth* (*PEDF II*), 640 Pa. 55, 161 A.3d 911 (2017) and *City of Reading*, consideration of the inside location of meters within historic districts is consistent with our responsibility to protect historic resources under Article 1, Section 27 of the Pennsylvania Constitution. For these reasons, we shall grant the City’s Exception No. 1 and remove Finding of Fact No. 20 from the Initial Decision. We shall also deny the City’s Exception No. 9.

**d.** **The City’s Exception No. 2, UGI’s Reply, and Disposition**

**1. The City’s Exception**

The City excepts to Findings of Fact Nos. 31 and 32 on the basis that they contain third party out-of-court statements “being offered to prove the truth of the matter asserted” and should therefore be stricken as inadmissible hearsay. City Exc. at 3 (citing Pa. R.E. 801). Findings of Fact Nos. 31 and 32 provide the following:

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

The City avers that even if admissible, it is well established that hearsay evidence may only support a finding of fact if it is corroborated by competent evidence of record and that findings based solely on hearsay are not controlling. City Exc. at 3-4 (citing *Frompovich v. PECO Energy Co*. (*Frompovich*), Docket No. C-2015-2474602 (Order entered May 3, 2018); *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976).The City submits that the ALJ cites to hearsay statements in Findings of Fact Numbers 31 and 32 without any competent corroborating evidence. For instance, the City states that there is no record evidence regarding the opinions of the Commission’s Gas Safety Division and the Commission’s Bureau of Investigation and Enforcement (I&E) because I&E withdrew from participation in this proceeding before UGI made its assertion. City Exc. at 4.

**2.** **UGI’s Reply**

In reply, UGI argues that because the City Parties did not object to this testimony (Tr. at 432-33), even if the testimony is hearsay, it can support a finding of fact if it is corroborated by any competent evidence in the record. UGI R. Exc. at 21 (citing *Walker* at 370). UGI states that the Commission’s Gas Safety Division’s statements are corroborated by the undisputed facts that the Gas Safety Division inspectors did walking tours with the City and UGI (Finding of Fact No. 27), UGI involved Gas Safety Division inspectors in reviewing certain meter placement decisions (Finding of Fact No. 28), and it was UGI’s understanding based on those reviews that the Gas Safety Division supported UGI’s implementation policies and meter placement considerations and that no remedial action was required. UGI R. Exc. at 21 (citing Findings of Fact Nos. 27, 28, and 29). UGI also states that City witness Mr. Slifko testified that he did not know of any informal or formal complaints the Commission filed against UGI for the Company’s meter location practices in the City or in CPHD. UGI R. Exc. at 21 (citing Tr. at 173.) UGI continues that Hans Bell’s statements at the meeting in 2015 were merely reflecting the Company’s intent and were not hearsay. UGI R. Exc. at 22 (citing Pa. R.E. 803(3)). UGI avers that the City fails to mention that the City’s own written testimony states that Mr. Bell was present at the meeting and expressed the Company’s intent to relocate meters outside in the City’s historic districts. UGI R. Exc. at 22 (citingReading St. 2 at 15; Reading St. 4 at 5).

**3.** **Disposition**

Based on our review of the record, we will remove Finding of Fact No. 31 from the Initial Decision because it is based on hearsay. The record portions the ALJ relied on in reaching this Finding of Fact involve purported statements Gas Safety Division representatives made during a meeting that was organized by Pennsylvania State Senator Judy Schwank in 2015 and attended by representatives from the Gas Safety Division, the City, and CPHD. UGI St. 1 at 22. Under the *Walker/Chapman* rule, simple hearsay evidence may support an agency’s finding of fact so long as the hearsay is admitted into the record without objection and is corroborated by competent evidence in the record. *See Walker* at 370; *Frompovich* at 17-18. In this case, there is no evidence in the record to corroborate that Gas Safety Division representatives confirmed they believed that UGI’s policies were consistent with the Commission’s Regulations. As the City noted, the Commission’s I&E withdrew from this proceeding on February 2, 2018, prior to the hearing and the admission of testimony in this matter, and, therefore, did not present testimony on this issue. The evidence that UGI cites as corroboration, such as the fact that Gas Safety Division representatives and City officials did walking tours in the City to observe UGI’s actions, is insufficient to corroborate that Commission Gas Safety Division representatives made statements expressing that the Company’s policies were consistent with the intent of the Commission’s Regulations.

We will permit Finding of Fact No. 32 to remain in the Initial Decision. The statement by Mr. Bell may not be considered hearsay under Pa. R.E. 803(3) to the extent that it addresses the Company’s intent to pursue moving meters outside in historic districts. Mr. Bell’s statement is also corroborated by Mr. Slifko’s testimony and Mr. Lauter’s testimony confirming that Mr. Bell stated UGI would continue to pursue outside meter placements. Reading St. 2 at 15; Reading St. 4 at 5. For these reasons, we shall grant, in part, the City’s Exception.

**C. Fiduciary Duties to the Public Trust**

**1. Positions of the Parties**

CPHD argued that following the decision of the Pennsylvania Supreme Court in *PEDF II*, all instrumentalities of the Commonwealth have a public trust duty to protect the environmental, natural and historic resources of the Commonwealth. CPHD M.B. *passim*. CPHD averred that it, as well as the City, are instrumentalities of the Commonwealth and are therefore trustees, like the Commission, and are therefore burdened with the duties of providence, loyalty, and impartiality to the corpus of the trust. CPHD M.B. at 12. CPHD explained that the duties imposed by the Environmental Rights Amendment (ERA), consistent with *PEDF II,* require all instrumentalities of the Commonwealth to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property, to manage the corpus of the trust to accomplish the trust’s purpose for the benefit of the trust’s beneficiaries, and to manage the trust so as to give all of the beneficiaries due regard for their respective interests in light of the purposes of the trust. *Id.*

However, CPHD recognized that the Commission has preempted the field of public utility regulation. Additionally, while CPHD did not contend that 52 Pa. Code § 59.18 is unconstitutional, CPHD contended that the “consideration” that UGI currently engages in is superficial at best, and the Commission needs to provide clarification or change the Regulation to allow instrumentalities of the Commonwealth to satisfy their duties under the ERA, Pa. Const. Art. 1 § 27. CPHD M.B. at 15. Since the Commission preempts any action in the field of public utility regulation, CPHD argued that the Commission has a duty to ensure that municipalities have the ability to satisfy their obligation to the Public Trust and that the Commission’s failure to do so is a dereliction of its duty. *Id*. at 15-17.

UGI’s position was that CPHD’s argument is critically flawed as CPHD does not contend that 52 Pa. Code § 59.18 is unconstitutional. UGI R.B. at 41. UGI stated that since Section 59.18 is not unconstitutional, the Commission has complied with its duties as a public trustee under the ERA. *Id.* at 41-42. UGI contended that CPHD’s narrow reading of the Court’s decision in *City of Reading* - that Section 59.18 only preempts local regulation of meter locations - was erroneous because the Commission’s fiduciary duties under the ERA have been resolved based on the finding in *City of Reading* that Section 59.18 is constitutional. *Id*. at 43.

In CPHD’s Reply Brief, CPHD argued that UGI misinterpreted its argument and that since historical preservation is now an actual obligation for instrumentalities of the Commonwealth, the Commission’s method of regulating UGI remained untested under *PEDF II*. CPHD R.B. at 4. CPHD further averred that in light of *PEDF II* and other cases, all instrumentalities have new duties and the Commission must clarify the implementation of Section 59.18 and communicate the level of “consideration” that NGDCs must engage in.

**2. Initial Decision**

In considering the Parties’ arguments, the ALJ noted that CPHD’s argument that Section 59.18 may not provide sufficient guidance to utilities or customers is not without merit, but it would be improper to interpret a regulation in a certain manner when there is no evidence to support that interpretation. I.D. at 27-28. The ALJ observed that the relief CPHD is seeking would be found through the Commission’s rulemaking function and not in its judicial capacity. To address CPHD’s constitutional argument, the ALJ determined that the Commonwealth Court already decided in *City of Reading* that Section 59.18 is constitutional, and the ALJ did not address the fiduciary duty argument CPHD raised. I.D. at 27.

**3. Exceptions, Replies, and Disposition**

**a. CPHD’s Exception No. 1**

In its only Exception, CPHD objects to Findings of Fact Nos. 47, 51, 52, and 53, and Conclusions of Law Nos. 4, 6, 7, and 9 on the basis that the ALJ improperly applied the standards articulated by the Pennsylvania Supreme Court in *PEDF II*. These Findings of Fact state the following:

47. Company personnel have met on several occasions with homeowners and interested parties to discuss the outside meter placement locations in advance of the Company’s work. (Brown, UGI St. 1 at 36)

\* \* \*

51. As needed, UGI will relocate the gas service line from the front of the building at its cost to ensure the service line is installed perpendicular to the main and to avoid distinguishing features of the home. (Brown, UGI St. 1 at 36)

52. UGI does not consult any historical preservation rules, regulations, guidelines or other materials when deciding whether there is a distinguishing exterior feature on a historic property. (N.T. 396-97)

53. Rather, UGI relies on the customer to provide its personnel with information regarding the historic features of the property. (N.T 397)

The Conclusions of Law state the following:

4. Under 52 Pa. Code § 59.18, consideration must be given to inside meter locations in historic districts and other locations when there is potential damage from outside forces.

\* \* \*

6. The Complainants met their burden of proving that UGI’s policy failed to conform to the amendments to 52 Pa. Code § 59.18, from 2014 until 2016.

7. The Complainants failed to meet their burden of proving that UGI’s policy after 2016 failed to conform to the amendments to 52 Pa. Code § 59.18.

\* \* \*

9. The Complainants failed to meet their burden of proving that UGI violated 52 Pa. Code § 59.18(a)(5).

CPHD’s position is that the Commonwealth Court’s decision in *PEDF II* places an affirmative duty on *every* instrumentality of the Commonwealth to protect, as a trustee, the environmental, natural, and historical resources of the Commonwealth. CPHD Exc. at 1 (citing Penn Const. art. 1 sec. 27; *PEDF II*) (emphasis added). CPHD submits that as the preemptive regulator of public utilities, it is the Commission’s duty to determine how the City and CPHD fulfill their independent role in implementing *PEDF II*. CPHD Exc. at 2.

Furthermore, CPHD contends that the ALJ’s Initial Decision was in error due to a narrow interpretation of 52 Pa. Code § 59.18. CPHD argues that the correct interpretation of the word “consider” requires more than the changes that UGI made to its customer notification process and, in fact, requires that both the City and CPHD be included in the process and UGI be required to notify customers who may live in historical districts of the sovereign historical guidance available. CPHD Exc. at 2-3. Lastly, CPHD states that while the Commission’s regulatory framework preempts local historic ordinances, the local bodies, namely the City and CPHD, should not be precluded from participation in the decisions regarding meter locations. *Id.* at 4. CPHD asserts that the ALJ’s decision was contrary to the Pennsylvania Constitution and *PEDF II* because it did not contain a discussion regarding how the City and CPHD are to fulfill their constitutional duties within the framework of Section 59.18. *Id*. at 4-5.

**b. UGI’s Reply**

In reply, UGI argues that since CPHD failed to assert that 52 Pa. Code § 59.18 is unconstitutional, there is no additional requirement for the Commission to take further action to protect historic resources, including allowing the City and CPHD to provide input on the Company’s meter placement decisions. UGI R. Exc. at 23. Moreover, UGI argues that CPHD would have no grounds for making such a claim as the Commonwealth Court in *City of Reading* has already decided that 52 Pa. Code § 59.18 is in compliance with the ERA. *Id*. at 24. UGI reasoned that *City of Reading* has settled the question by determining that the Commission’s Regulation that requires NGDCs to “consider” inside meter locations in historic districts, but ultimately gives NGDCs the final decision on where to install meters, satisfies the Commission’s public trustee duties. *Id*. Lastly, UGI contends that the Commission has no responsibility for enabling the City and CPHD to meet their perceived obligations under the ERA, because the Commission is only tasked with fulfilling its duties as a public trustee and not with guiding municipal entities that are outside of its jurisdiction. *Id.* at 24-25.

**c. Disposition**

Based on our review of the record and the Parties’ positions, we find that the ERA does impose obligations on each instrumentality of the Commonwealth, including CPHD and the City, but, because the Commission preempts the field of public utility regulation, the constitutional duties that CPHD raises do not surpass all other legal concerns, namely the safety of the public. CPHD’s argument relies primarily upon two interpretations of the jurisprudence before us: first, that in promulgating 52 Pa. Code§ 59.18, the Commission satisfied its constitutional duty under the ERA, but has failed to provide proper guidance to utilities and instrumentalities of the Commonwealth; and second, that the Commission has a responsibility, as the preemptive authority of public utility regulation, to determine the role of instrumentalities of the Commonwealth in satisfying their duties under *PEDF II*.

The Commonwealth Court determined in *PEDF II* that the ERA was not merely an aspirational goal for the Commonwealth to aspire to, but instead a responsibility of every instrumentality of the Commonwealth to “conserve and maintain” the public natural resources of the Commonwealth. *PEDF II*,161 A.3d at 932. The ERA is also clear that the public natural resources of the Commonwealth include the historical values of the environment. Pa. Const. Art. 1 § 27. Taken together, this leads to the conclusion that the instrumentalities of the Commonwealth have a duty to everyone in the Commonwealth, present and future, to protect the environment with prudence, loyalty, and impartiality. The duty of prudence requires all instrumentalities of the Commonwealth to exercise ordinary skill, prudence, and caution in managing the corpus of the trust. *Robinson Twp., Washington Cty. v. Com*. (*Robinson Twp.*), 623 Pa. 564, 655 (2013) (citing *Lang v. Com., Dep’t of Pub. Welfare*, 515 Pa. 428, 440 (1987)). The duty of loyalty requires all instrumentalities of the Commonwealth to administer the trust solely for the beneficiary’s interest and not their own. *Robinson Twp.*, 623 Pa. at 655 (citing *In re Hamill’s Estate*, 487 Pa. 592, 598 (1980)). The duty of impartiality requires all instrumentalities of the Commonwealth to treat all equitably, considering the purposes of the trust. *Id*. at 659.

While these duties are undisputedly required of the Commission, the Parties dispute whether the Commission sufficiently satisfied its duties to the public trust by implementing 52 Pa. Code § 59.18, and whether the City and CPHD have the same duties. In addressing the first issue, we find that we have satisfied our obligations under the ERA in promulgating Section 59.18. Our decision is supported by *City of Reading*, in which the Commonwealth Court ruled that: (1) the Code vests the Commission with exclusive authority over the regulation of public utilities, and local ordinances that conflict with Commission Regulations or Orders are preempted; and (2) Section 59.18 is constitutional because it “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 628, 631-632. We have provided guidance in our Regulation and rulemaking orders regarding consideration of inside meter placement in historic districts, and we are cognizant of our duties under the ERA to preserve the historical aspects of the environment.

With respect to the second issue, CPHD contends that the ALJ erred in her decision on the basis that preemption is not the same as preclusion and that because of their duties to the public trust, the City and CPHD deserve a “seat at the table” in UGI’s “consideration” of inside meter placement. On this point, we can only partially agree with CPHD. The Courts have been clear that all instrumentalities of the Commonwealth have an affirmative duty to protect the public trust with prudence, loyalty, and impartiality. *See*, *PEDF II*, 161 A.3d at 932 n.23. Therefore, CPHD is correct that it, the City, and the Commission have an affirmative duty to protect all facets of the environment under the ERA, including the historical values of an area.

However, we must depart from CPHD’s interpretation of the law at this point. The Commonwealth Court in *Delaware Riverkeeper* stated that even though the Township had a constitutional duty to protect public natural resources, an intent to protect public natural resources does not exceed all other legal concerns raised by a party. *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 695-696 (Pa. Cmwlth. 2018). Additionally, the ERA does not stand for the proposition that the landscape of the Commonwealth must remain stagnant, as the Pennsylvania Supreme Court has consistently held that decisions made by the Commonwealth must only, on balance, reasonably account for the environmental features of the affected locale. *Robinson Twp.* (citing John C. Dernbach, *Taking the Pennsylvania Constitution Seriously When It Protects the Environment: Part II—Environmental Rights and Public Trust*, 104 Dickinson L. Rev. 97, 17–20 (1999)).

As the preemptive regulator in the field of public utilities, we have a duty to ensure public safety as well as to protect the public historical resources. Within these duties, we find it proper to permit NGDCs to evaluate safety concerns in locating meters and to contact their customers regarding the historical status of properties when they are conducting projects involving the relocation of meters, because the NGDCs are in the best position to do so. Nevertheless, we maintain our regulatory responsibility of ensuring that the NGDCs are properly carrying out their duties by providing adequate, safe, and reasonable service under the Code and by considering the inside placement of meters in historic districts. We do not view the law as requiring us to direct municipalities that are outside of our regulatory jurisdiction on how to execute their responsibilities under the ERA. Therefore, in the instances where UGI gave proper consideration to inside meter placement in conformance with Section 59.18, we cannot find that a violation of the ERA has occurred. For these reasons, we shall grant CPHD’s Exception, in part, to the extent that CPHD and the City have affirmative duties under the ERA, but we shall deny the remainder of its Exception.

**D. The Proximity of Meter Placements to City Streets**

**1. Positions of the Parties**

In their briefs, the City, CPHD and UGI all recognized the importance of safety and regarded it as the primary concern when selecting meter locations. City M.B. at 21; City R.B. at 3; CPHD M.B. at 3-4, 30; CPHD R.B. at 3; and UGI R.B. at 12. However, as previously indicated, the primary disagreement between the City Parties and the Company was triggered by their diverging interpretations of the Commission’s requirements under 52 Pa. Code § 59.18. In addition to the City Parties’ contention that UGI has not given appropriate consideration to the inside placement of meters in designated historic districts, in violation of 52 Pa. Code § 59.18(d)(1), the City Parties also challenged UGI’s meter relocations on the basis that the exterior meters are dangerously close to city streets, both within and outside of historic districts, in violation of 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a). Under these Regulations, when placing a meter outside, the Company must “consider potential damage by outside forces,” place the meter “[w]hen feasible and practical to do so aboveground in a protected location,” and protect the meter “from corrosion and other damage,” including “vehicular damage that may be anticipated.”

In general, the City alleged that UGI has placed meters too close to street curbs. City M.B. at 36-38. From the City’s perspective, the City of Reading “is a densely built up city with properties consisting mainly of row houses and semi-detached homes, mostly with tiny front yards, and located very close to the street.” City M.B. at 36. Thus, according to the City, “inside meters are safer than outside meters, especially in the environment of Reading, Pennsylvania,” and the Commission’s policy direction should reflect that conclusion. City M.B. at 42-43.

Pertaining to their safety concerns regarding exterior meter locations, the City Parties requested the following in their requests for relief:

(3) We further request, when determining meter locations, that UGI – as part of its mandated consideration of “potential damage by outside forces”, and as part of its requirement that meters be “protected from ... vehicular damage that may be

anticipated” – be prohibited from installing any outside meter within 10' of a City street, unless placed within a buried vault.

CPHD Complaint at ¶ 5.

a. That where a building facade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk, UGI shall install gas meters on the inside of buildings and their associated exterior gas regulators

in as protected a location as possible on the exterior of the building. Alternatively, UGI may install both meter and regulator outside of the building in a buried vault.

b. Where UGI has already located exterior gas meters within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk, those meters shall be relocated to the inside of the building or placed in a buried vault.

City Complaint at ¶ 65.

CPHD requested that UGI “be prohibited from installing any outside meter within 10’ of a City street unless placed in a buried vault.” CPHD Complaint at ¶ 5. Similarly, the City proposed that “where a building façade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk,” UGI shall install or relocate gas meters to the inside of buildings. City Complaint at ¶ 65. Therefore, per the City’s request, going forward UGI would be required 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. City M.B. at 38. Additionally, UGI would have to relocate any outside meters that were installed since September 13, 2014, the date amended Section 59.18 became effective, and are within 15 feet of the street curb to the inside of the building or in a buried vault. City M.B. at 38; City M.B., Appendix C.

As set forth in its prepared testimony and Reply Brief, UGI indicated that, to the extent that any relief is granted in this proceeding, it should be limited to the additional commitments UGI proposed in Mr. Brown’s prepared testimony, offered in response to the City Parties’ concerns about outside meter placements. UGI St. 1 at 66-67; UGI R.B. at 54-56. Maintaining that its actions have been in full compliance with the Commission’s Regulations, UGI indicated its willingness to adopt the following additional commitments, so long as the Commission specifically declared the new standard as being safe and reasonable:

1. UGI would be willing to convene a stakeholder panel consisting of members selected by the City to represent neighborhood interests to perform pre-construction project walkthroughs during the planning phase of UGI infrastructure and betterment work planned for historic districts. The stakeholder panel would provide input on meter location decisions on a nonbinding advisory basis.
2. At meter locations identified by the City as presenting a safety risk, UGI would undertake an additional follow-up review, and if it determines, in its sole discretion, that a meter relocation is necessary and appropriate to mitigate a safety risk, UGI will relocate the meter at its expense.

3. In historic districts, UGI will continue to follow its existing written standards that permit the location of certain meters in inside locations with the regulator placed outside where the only practical outside location would cover a distinguishing architectural feature. In addition, on a forward going basis, UGI would apply a new standard for historic districts that would call for inside meter locations with an outside regulator where, unless the customer requests an outside meter placement and the Company, in its sole discretion, agrees to that request:

a) The outermost building wall is immediately appurtenant to the sidewalk (typically as is the case of rowhomes);

b) The distance between the street facing edge of the curb or edge of pavement is less than 10 feet from the building wall;

c) There is not a location on the side of the building to place the meter; and

d) There is not an outside location affording meter protection, such as a corner at a wall or stair.

UGI St. 1 at 66-67.

The City did not view these additional commitments as sufficient to address its concerns. City M.B. at 43. The City’s rejection of the Company’s proposal is based on the following concerns: (1) the nonbinding nature of the “input” from the stakeholder’s panel in Paragraph 1; (2) sole discretion to determine whether a relocation were necessary for Paragraph 2’s safety risks would lie with UGI; and (3) the situations and locations listed for Paragraph 3’s new standards for historic districts are too limited. City M.B. at 42-43.

**2. Initial Decision**

After reviewing the applicable law and the positions of the Parties, the ALJ found that the City Parties failed to sustain their burden of proving that UGI placed meters in locations where damage by vehicles could reasonably be anticipated or that UGI otherwise violated the applicable Commission or Federal Regulations. I.D. at 35, 36. The ALJ concluded that the Complainants’ argument that meters placed less than 15 feet from the street were inherently unsafe was based on an arbitrary distance Mr. Slifko calculated after reviewing newspaper reports of incidents where cars struck gas meters. *Id*. at 34-35. The ALJ reasoned that Mr. Slifko was not an engineer and the City did not present any expert testimony to support is claim or reference any industry standard regarding the safe distance of a meter from the street. *Id*. at 35.

The ALJ concluded that the City’s position was based on Mr. Slifko’s personal opinions and assertions, and, therefore, the City’s evidence did not rise to the level of substantial evidence to demonstrate that UGI placed meters in dangerous locations. *Id*. (citing *Commonwealth, Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987) (*City of Pittsburgh*). The ALJ also reasoned that “[a]necdotal evidence that vehicles are involved in accidents where the vehicle drives up onto a sidewalk and hits or nearly hits a meter is not sufficient to sustain the Complainants’ burden of proof.” I.D. at 36.

**3. Exceptions, Replies, and Disposition**

**a. The City’s Exceptions Nos. 4, 5, 6, 7, 12, 13, 14, 16, and 18**

In its fourth, fifth, sixth, and seventh Exceptions, the City claims that the Initial Decision contains multiple Findings of Fact that are either not supported by the record evidence, are misleading, or are under-inclusive in not setting forth findings that the City believes would weigh in the City Parties’ favor. The City specifically challenges Findings of Fact Nos. 54, 55, 56, 57, and 58. City Exc. at 5-7. The pertinent Findings of Fact are set forth below:

54. UGI has been selective in the placement of meters and avoids locations where vehicular damage may be reasonably anticipated. (Brown, UGI St. 1 at 37)

55. By doing so, UGI avoids the need for the installation of bollards or other forms of supplemental meter protection that could be viewed as more obtrusive and taking away from distinguishing historical building features. (Brown, UGI St. 1 at 37)

56. The last “incident” report to the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the United States Department of Transportation (DOT) related to vehicular damage to outdoor meter sets occurred in 1981. (Brown, UGI St. 1 at 48)

57. The City’s proposal that meters should be placed 15 feet or more from the street is based solely on Mr. Slifko’s analysis of news reports of accidents where a car has struck a meter. (N.T. 207-208)

58. Mr. Slifko is not an engineer. (N.T. 169)

I.D. at 15-16.

The City’s argument is not merely based on the evidence the ALJ relied on but is also based on the conclusions that the ALJ reached upon reviewing the evidence, which the City also challenges, as set forth in its Exceptions Nos. 12, 13, 14, 16, and 18.

In its eighteenth Exception, the City argues that Conclusion of Law No. 9, finding that the City Parties have failed to meet their burden of proving that UGI violated 52 Pa. Code § 59.18(a)(5), is unsupported by the record. City Exc. at 19-20. The City also addresses Conclusion of Law No. 9 in its Exceptions Nos. 12, 13, 14 and 16. City Exc. at 14-19. Similarly, the City’s sixteenth Exception, in which the City challenges the ALJ’s conclusion that the City Parties failed to prove that UGI has installed meters in outside locations that are not protected from reasonably anticipated damage, is related to the City’s challenges to the ALJ’s Initial Decision contained in the City’s Exceptions Nos. 12, 13 and 14, as well as the City’s objections to the Findings of Fact contained in the City’s Exceptions Nos. 4, 5, 6, and 7.

In its Exceptions Nos. 12, 13, 14, 16, and 18, the City challenges the ALJ’s conclusion that the City Parties have failed to prove that UGI has installed meters in outside locations that are not protected from reasonably anticipated damage. City Exc. at 14-20. Specifically, the City contends that: (1) UGI has not sustained its burden of showing it complied with Commission Regulation 52 Pa. Code § 59.18(a)(5) or federal regulation 49 C.F.R § 192.353(a);[[7]](#footnote-7) (2) the ALJ’s finding that “[t]he Complainants offered no credible evidence to support their claim that UGI placed meters where ‘vehicular damage may be anticipated’” ignores “significant pictorial evidence” introduced by the City; and (3) the ALJ’s rejection of the City’s proposal to have meters located at least 15 feet from the curb marginalizes Mr. Slifko’s testimony and ignores pictorial evidence and UGI’s “ten foot rule” proposed in Mr. Brown’s prepared direct testimony. City Exc. at 14 (citing City Exhs. JS-16, JS-22, JS-25, ML-1, and ML-3), City Exc. at 15-17 (citing UGI St. 1 at 66-67).

The City argues that Mr. Slifko’s testimony about the safety of inside versus outside meters should be given more weight than the testimony of UGI’s witness, Mr. Brown, because Mr. Slifko was Vice President of City Council and a long-time Reading resident with significant knowledge about the streets of the City. The City states that in addition to his law degree, Mr. Slifko also worked as a home remodeling contractor for more than thirty years, focusing primarily on historic restoration in the City. City Exc. at 15. The City also argues that UGI’s evidence regarding the number of safety incidents prior to 2018 is misleading because the meters were placed under the “old rules” where inside meter placement was standard and do not support UGI’s safety claims with respect to the outside placement of meter sets. City Exc. at 6, 19. The City further argues that its 15-foot proposal is based on substantial pictorial evidence and common sense rooted in safety, not just on Mr. Slifko’s analysis of news reports. City Exc. at 7.

**b. UGI’s Replies**

In its Replies to Exceptions, citing to Section 332(a) of the Code, 66 Pa. C.S. § 332(a), UGI asserts that the Company does not have the burden to demonstrate compliance in this case, but the City Parties have the burden of proving that UGI failed to comply with the Commission’s Regulations. UGI R. Exc. at 22-23. Therefore, UGI maintains that the City Parties’ evidence is 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). UGI R. Exc. at 8. UGI’s Replies to Exceptions on this matter are structured to respond to four main allegations put forth by the City: (1) that any meters 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) that the City’s 15-foot rule should be utilized because it is supported by pictures of outside meter sets, analysis of news reports, and “common sense;” (3) that UGI witness Brown’s testimony about the safety of gas meters should be given less weight than City witness Slifko’s testimony; and (4) UGI’s evidence about the number of safety incidents involving inside meter sets should be disregarded because it predates 2018. UGI R. Exc. at 8.

UGI first reiterates its contention that a violation of the Commission’s Regulations cannot be established based on a non-existent standard, noting that nothing in the Commission’s Regulations or Federal Regulations requires a gas utility to install or relocate meters inside buildings where a building façade is within 15 feet or less of a City street and no parking lane separates the lane of travel from the sidewalk. UGI R. Exc. at 8-9 (citing UGI R.B. at 38). UGI further argues that the City’s attempt to rely on UGI’s proposed additional commitments, which incorporated a distance of 10 feet, as support for the City’s 15-foot rule should be rejected. UGI R. Exc. at 9 (citing City Exc. at 16-17). UGI explains that under its proposed alternative standard, which UGI was only willing to adopt if the Commission specifically declared it safe and reasonable, the distance of 10 feet between the meter and the curb would not be solely determinative of whether the meter would be placed inside. UGI R. Exc. at 9 (citing UGI R.B. at 55-56).

Second, UGI refutes the City’s position that an opinion, such as meters within 15 feet of the curb are unsafe, can be substantiated by pictures of outside meter sets, analysis of news reports, and common sense, agreeing with the ALJ’s determination that the City’s requested relief on this matter is merely supported by bald assertions, unsubstantiated lay opinion and speculation, and is akin to the testimony offered in the *City of Pittsburgh*, where the Pennsylvania Supreme Court found that such opinions and speculation do not constitute substantial evidence. UGI R. Exc. at 9 (citing I.D. at 34‑35).

Third, UGI indicates that the City’s Exceptions do not demonstrate that the ALJ was incorrect in her weighing of the testimony. UGI R. Exc. at 10. UGI explains that although Mr. Slifko may have been a Reading resident, his testimony offered no expert evidence that from a safety management perspective, cars driving recklessly up onto a sidewalk should be anticipated. UGI avers that Mr. Slifko did not have an engineering degree, never worked for a utility, and had no work experience or education related to the safety of natural gas pipelines, regulators, or meters. Additionally, according to UGI, Mr. Slifko stated at the hearing that he “do[es] not have safety knowledge.” UGI R. Exc. at 10 (citing Tr. at 169, 175). In contrast, UGI submits that its witness, Mr. Brown, in addition to overseeing and enforcing UGI’s safety standards for Company employees and those communities served by the Company in his role as Senior Director – Operations South Region, has a Bachelor’s of Science Degree in Civil Engineering and has been working in the natural gas and propane industries for the past twenty-two years. UGI R. Exc. at 10 (citing Tr. at 303-304; UGI St. 1 at 2).

Fourth, UGI argues that the City’s contention that the Company’s DOT data is misleading lacks evidentiary support. UGI. R. Exc. at 10-11. UGI avers that the undisputed record evidence, demonstrating the relative safety between inside and outside meter sets, should not be overlooked. UGI explains that, based on Company records, the last reported DOT incident related to outdoor meter sets caused by vehicular damage occurred in 1981, and within that same time period, UGI has had eleven DOT reportable incidents related to inside meters. Of those eleven incidents, seven resulted in an explosion and one resulted in the loss of life. UGI R. Exc. at 11 (citing UGI R.B. at 26).

UGI also cites to portions of the Commission’s *Final Rulemaking Order* in support of purported safety concerns with inside meters:

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.

UGI R. Exc. at 11 (citing *Final Rulemaking Order* at 5-6 (footnote omitted)).

**c. Disposition**

Based on our review of the positions of the Parties, the evidentiary record, and the applicable law, we shall deny the City’s Exceptions Nos. 4, 5, 6, 7, 12, 13, 14, 16, and 18, consistent with the following discussion. Regarding the City’s Exceptions Nos. 4, 5, 6, and 7, we find that it is within the province of the ALJ to elicit testimony, to assess the facts, and to adopt those which support a fair and reasoned resolution of the controversy. *See* 52 Pa. Code § 5.483. The Findings of Fact the ALJ relied on are supported by substantial evidence in the record, as discussed below.

We agree with the ALJ that the City did not satisfy its burden of proving, based on the evidence that the Parties presented in this proceeding, that UGI placed meters in locations where damage by vehicles could reasonably be anticipated or that UGI otherwise violated the applicable Commission or Federal Regulations, the Code, or a Commission Order. There is not a specific requirement in the Commission’s Regulations or the Federal Regulations that exterior meter sets cannot be located less than 15 feet from City streets, and with respect to 49 C.F.R. § 192.353(a), the NGDC has some

discretion regarding vehicular damage that may be anticipated.[[8]](#footnote-8)

In this case, we find that the City did not present a *prima facie* case to show that UGI improperly located its outside meters and, even if it could be argued that the City did present a *prima facie* case, UGI presented sufficient evidence to rebut that of the City. In support of its claims, the City relied on meter surveys performed in August 2016 and April 2017, consisting of: (1) a complete survey of all six historic districts within the City; (2) a sample survey of three streets not in historic districts; and (3) a cursory “drive by” survey of all other streets in the “core” of Reading. City St. 2 at 27-28. Specifically, Mr. Slifko’s prepared testimony provides the following:

I think the very high number and high percentage of outside gas meters located close to City streets shows that this is a real safety problem. According to our survey of all 6 historic districts, out of the total of 1487 outside meter or infrastructure placements, 645 were 15’ or less from the curb. That means that about 43% of all placements in all the historic districts were very close to a City street. See Summary Survey Notes, already attached as Exhibit JS 15.

Besides completely surveying the historic districts, we took a sample survey of three streets in non-historic districts, where there was a particularly high number of outside meters located close to the curb. For this survey, we chose Cotton Street, N. 10th Street, and S. 4th Street. On these 3 streets alone, we found 674 outside gas meters that were 15’or less from the curb. The average distance from meter to curb for these 674 properties was nine feet. See Gas Meter Survey for three City Streets (Non-Historic), attached as Exhibit JS 23.

In addition to the complete survey of the historic districts, and the sample survey of three streets not in historic districts, we also did a cursory, “drive by” survey of all other streets in the “core” of Reading (all of Reading, except the more “suburban areas” of the 18th and 19th Wards, an Hessian Camp in the 16th Ward). In this “drive-by” survey, we found 144 blocks where there were at least 2 meters 15’ or less from the curb. See Drive-by Survey of All City Blocks, attached as Exhibit JS 24.

In this “drive-by” survey, we also noted the most egregious example of meters being close to City streets. This was in the 1000 block of Moss Street, where there were 37 outside meters, with an average meter to curb distance of 3’. The closest meter was 2’ 8” from the curb. See Drive-by Survey, attached above as Exhibit JS 24.

What all this survey data shows is (1) a very high number of outside meters close to City streets (645 in historic districts, plus 674 on three select non-historic streets, plus 144 blocks besides these with two or more outside meters per block), and (2) the pervasiveness throughout the City of outside meters close to the curb (in all six historic districts, plus three more select streets, plus 144 other blocks with two or more meters 15 feet or less from the curb). Surely, this number of outside meters all within 15 feet of the street, and their pervasiveness throughout the City, must indicate a likelihood that sometime, somewhere in the City, there will be a vehicular accident with severe consequences to the residents.

City St. 2 at 27-28.

In response, explaining that Section 59.33 of the Commission’s Regulations adopts the minimum safety standards for gas utilities as outlined in the Federal Regulations, UGI stated that the restrictions on meter locations proposed by the City Parties, such as the City’s arbitrary 15-foot rule, are not included in any of these Regulations. UGI St. 1 at 46. UGI also noted its compliance with 52 Pa. Code

§ 59.19(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) by explaining that its primary concern when selecting meter locations is safety, highlighting the installments of EFVs during UGI’s betterment projects. UGI explained that EFVs provide an additional level of protection from line strikes on the service lateral (e.g., excavation damage) as well as from damage to the meter or pressure regulator (e.g., impact from a vehicle). UGI St. 1 at 45. Noting the Federal Regulation’s requirement of meter protection for “vehicular damage that may be anticipated,” UGI explained that its policy requires meter protection in parking lots, driveways, and roadways; that is, locations where UGI believes vehicular damage may be reasonably anticipated. *Id*.

Additionally, the City based its case on alleged instances where vehicles have struck meters or had “near misses” with meters in the City. City St. 2 at 24-26. Mr. Slifko references seven alleged incidents in the City involving vehicles striking outside gas meters and two “near misses,” where vehicles jumped the curb and came close to striking meters. City St. 2 at 24-26.

UGI responded that the alleged meter strikes and “near misses” are not evidence of outside meters being safety concerns, but to the contrary, demonstrate that outside meters are generally safer than inside meter sets, as releases of natural gas at outdoor locations lead to the dispersal of the gas into the atmosphere as opposed to the potential increase in natural gas concentrations to potentially dangerous levels in confined indoor locations. UGI St. 1 at 47, 13-14, 32.

Further, the City’s witness Mr. Slifko provided prepared testimony detailing recent incidents in the City, and UGI witness, Mr. Brown, responded to each alleged meter strike and near miss location identified by Mr. Slifko, in turn. UGI St. 1 at 48-50.

Mr. Slifko first referred to an alleged vehicle strike at “1043 Oley Street.” City St. 2 at 25. However, as shown by the Incident Report marked as Exhibit JS-18, this incident occurred at 1243 Oley Street on March 18, 2014. In response, Mr. Brown testified that since the Company moved the meter outside at 1243 Oley Street in 2011, both the meter installation and the vehicle strike predate the effective date of the amended Section 59.18. Mr. Brown stated that, as seen in the picture of the meter installation attached as UGI Exhibit CB-7, the meter was placed in a location where vehicular damage could not reasonably be anticipated. UGI St. 1 at 48.

Second, Mr. Slifko pointed to a vehicle striking a meter at 847 Nicolls Street on April 20, 2015, which he stated “was located six (6) feet from the street.” City St. 2 at 25. In response, Mr. Brown clarified that UGI records indicate 850 Nicolls Street was the actual address. Mr. Brown referenced UGI Exhibit CB-8, indicating that the meter is located in a parking lot and the Company installed crash protection around the meter at 847 Nicolls Street after the incident. Mr. Brown further explained that the service line to 850 Nicolls Street was installed in 1995 and did not have an EFV installed at the time. After the line was struck, UGI installed a new service line protected by an EFV. UGI St. 1 at 48-49.

Third, at 616 Pear Street, Mr. Slifko testified that “the meter was struck by a vehicle causing the gas to escape,” after which “[t]he gas company was called, and the meter was eventually moved to the front of the house.” City St. 2 at 25. Mr. Slifko admitted that the City Parties “have no written record of this incident, other than the notes of one of their surveyors, Anita Donatelli, who wrote down the statement of the 616 Pear Street property owner.” *Id*. Mr. Brown responded by averring that the City’s claims and the allegations of its unnamed property owner are completely unsubstantiated, based on UGI having no record of this alleged incident. UGI St. 1 at 49.

Fourth, Mr. Slifko pointed to an incident that occurred on May 20, 2018, contending that a runaway car demolished two front porches and damaged two outside gas meters at 1350 and 1352 Perkiomen Avenue. City St. 2 at 25. In response, Mr. Brown stated that these meter strikes demonstrate that outside meters are safer generally than inside meter sets, since they were properly protected by EFVs, because they activated as designed when the meters were struck, thereby further reducing the risk of a potential ignition of natural gas at an outdoor location. UGI St. 1 at 47.[[9]](#footnote-9)

Fifth, Mr. Slifko stated that unnamed residents related to him that there were at least three instances where vehicles had skidded off City streets and struck a gas meter. These accidents occurred at 1621 Cotton Street, and in the vicinity of 1261 N. 10th Street and 11th and Spring Streets. City St. 2 at 25-26. Mr. Slifko conceded that he “attempted to find verification of these accidents from the City Fire records,” but he “was unable to do so.” City St. 2 at 26. Mr. Brown’s response consisted of his testimony that UGI has no records of these alleged incidents, and, therefore, the allegations of the City’s unnamed residents are unfounded. UGI St. 1 at 49.

Finally, Mr. Slifko made reference to two “near misses,” one at 306 N. 5th Street and 834 Schuylkill Avenue. City St. 2 at 26. Both incidents referenced by Mr. Slifko were the result of high-speed accidents where the vehicles involved “jumped the curb.”[[10]](#footnote-10) Mr. Brown responded that UGI has no records of these alleged near misses. UGI St. 1 at 50. In evaluating all of the evidence, we conclude that the City failed to satisfy its burden of proof on this issue.

Additionally, recognizing that Mr. Slifko’s lay opinions were based on his personal experience as a resident of the City, pictorial evidence of the existence of outside meters within the City, and reports of reckless driving, resulting in these meters occasionally being involved in accidents, we agree with the ALJ’s decision not to qualify Mr. Slifko as an expert in safety management, capable of proffering expert testimony in support of the City’s claim or any industry standard regarding the safe distance of a meter from the street. *See Frompovich* at 33. Pursuant to Pa. R.E. 701, as a lay witness, Mr. Slifko’s testimony is limited to opinion not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.[[11]](#footnote-11) We also concur with the ALJ’s statement that “the Complainants offered no expert evidence that, from a safety management perspective, cars driving recklessly up onto a sidewalk should be ‘anticipated.’ The mere fact that these types of accidents may occur from time-to-time does not mean that UGI’s placement of these meters is inherently dangerous.” I.D. at 35.

In response to Mr. Slifko’s testimony, UGI’s witness, Mr. Brown, provided credible testimony regarding the City Parties’ safety concerns on the placement of outside meter sets and the Company’s compliance with the relevant Regulations. For example, Mr. Brown testified that an outside meter location may allow service to be shut off more quickly in an emergency situation, particularly where access cannot be obtained to a home. Mr. Brown stated that it also permits more timely completion of the leakage surveys that NGDCs are required to conduct under the Commission’s Regulations at 52 Pa. Code § 59.34. UGI St. 1 at 31-32. Based on the record, we conclude that the City did not present evidence to satisfy its burden of proving that UGI’s placement of exterior meter sets violated Section 59.18(a)(5) and (b)(1) of our Regulations or 49 C.F.R.

§ 192.353(a). For these reasons, we shall deny the City’s Exceptions Nos. 4, 5, 6, 7, 12, 13, 14, 16, and 18.

**E. Civil Penalty/Other Relief**

**1. Positions of the Parties**

As relief in its Formal Complaint, the City asks the Commission to establish specific standards, consistent with Section 59.18(d)(1), for UGI to follow in considering the relocation of gas meters that have already been located on the outside of buildings in historic districts. The City recommends that the Commission require UGI to relocate all meters in historic districts that have been placed outside to inside locations, except where UGI establishes a greater safety risk than in similarly situated historic properties. The City also requests that UGI give meaningful consideration to inside meter locations in buildings within historic districts and that UGI retroactively perform an adequacy review of all outside meter placements made from September 2014 to the present and explain why an inside placement creates a greater safety risk. City Complaint at ¶ 53. *See also* City M.B. at 34-35; City St. 2 at 21-23. The City further requested that where a building façade is within fifteen feet or less from a City street and no parking lane separates the lane of travel from the sidewalk, UGI shall install gas meters on the inside of buildings and their associated gas regulators in a protected location on the exterior of the building or, alternatively, that UGI install both the meter and regulator outside in a buried vault. City Complaint at ¶ 65. *See also* City M.B. at 38; City St. 2 at 31.

As relief in its Formal Complaint, CPHD requested that UGI give proper consideration to inside meter placement in historic districts and that UGI be prohibited from installing any outside meter within ten feet of a City street unless the meter is placed within a buried vault. CPHD Complaint at ¶ 5.

As set forth in more detail below, UGI objected to the City Parties’ requested relief on the grounds that the City Parties improperly raise new requests for relief for the first time in their Main Briefs; request to impose new regulatory standards in a complaint proceeding; and request to impose new regulatory standards retroactively. City R.B. at 46-54. UGI also cited to additional actions the Company has taken in response to the City Parties’ concerns about outside meter placements. *Id*. at 54-56.

**2. The Initial Decision**

While the ALJ found that UGI’s initial implementation of the amended Section 59.18 violated the requirement that utilities consider inside placement of meters in historic districts, the ALJ determined that it was not appropriate to assess a civil

penalty in this case.[[12]](#footnote-12) In reaching this decision, the ALJ evaluated the facts in this case under the Commission’s Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors the Commission may consider in evaluating whether, and to what extent, a civil penalty for violating a Commission order, regulation or statute is appropriate. I.D. at 30. The ALJ noted that the imposition of a civil penalty is discretionary, and the Commission is not required to assess a civil penalty. *Id*. (citing *McCloskey v. Hidden Valley Utility Services, L.P.*¸ Docket No. C-2014-2447138 (Order entered May 3, 2018)).

The ALJ stated that while there is a retributive aspect to assessing a penalty, the Commission often imposes penalties to deter future violations of the Commission’s Regulations, rather than simply to punish. I.D. at 32 (citing 52 Pa. Code

§ 69.1201(c)(8)). The ALJ concluded that UGI had already remedied its original failure to implement the amendments to Section 59.18. I.D. at 32 (citing 52 Pa. Code

§ 69.1201(c)(4)). The ALJ observed that UGI revised its policy in 2016 to create procedures to accommodate meter relocations in historic districts, revised its customer notification letters to include language required by Section 59.18(a)(3), and provided its customers in historic districts with a way to provide the Company with relevant information concerning their properties. The ALJ also stated that it appeared that in practice, customers were provided with an opportunity to discuss the placement of their meters before a final location decision was made, even before the Company’s 2016 GOM revision. I.D. at 32 (citing 52 Pa. Code § 69.1201(c)(5),(10)). The ALJ observed that while UGI’s policy approach and initial thirty-day notification letter were not compliant with Section 59.18, there is no evidence that customers did not receive case-by-case consideration of the meter placements. I.D. at 32. The ALJ cited to Mr. Brown’s testimony that UGI personnel routinely met with customers before a meter was relocated. *Id*. (citing UGI St. 1 at 30-31; Tr. at 249-250, 285-286, and 342). Mr. Brown also stated that although UGI’s policy provided that a reconsideration request regarding a meter placement must be in writing, the Company would also meet with customers who contacted the Company by phone or objected to UGI field personnel regarding the meter relocation. I.D. at 32-33 (citing Tr. at 296-297). The ALJ continued that both Mr. Brown and Mr. Slifko stated that customers met with UGI employees who attempted to reach a consensus with the customers regarding meter placements, and the Company agreed to leave some meters inside buildings. I.D. at 33 (citing Tr. at 262-263, 386; City St. 2 at 17).

The ALJ further found that while UGI made an initial deliberate decision not to amend its meter placement procedures, its decision was a good faith determination that it had the authority to do so. I.D. at 33 (citing 52 Pa. Code § 69.1201(c)(1),(3)). The ALJ averred that UGI believed that the Company had the discretion to determine that it was safer to place all meters outside. I.D. at 33. The ALJ concluded that declining to exercise the Commission’s enforcement discretion under the circumstances in this case would incentivize utilities to remedy violations before the Commission orders them to do so. *Id*. (citing 52 Pa. Code § 69.1201(c)(10)).

**3. Exceptions, Replies, and Disposition**

**a. The City’s Exceptions Nos. 11 and 15**

In its Exceptions, the City contests the ALJ’s decision not to impose a civil penalty or grant any substantive relief to the City Parties. City Exc. at 10. The City disagrees with the ALJ’s analysis of the Commission’s Policy Statement at 52 Pa. Code

§ 69.1201 and avers that a review of the factors and standards in the Policy Statement demonstrate that a civil penalty is appropriate for UGI’s violations of Section 59.18. *Id*. at 11. The City states that the record shows that UGI’s actions in failing to amend its meter placement procedures after Section 59.18 was amended were willful, deliberate, and serious, and the resulting consequences of UGI’s actions diminishes the value of the historic assets in the City and, in some instances, may damage those assets. *Id*. (citing 52 Pa. Code § 69.1201(c)(1),(2),(3)). The City also states that although UGI eventually modified its internal practices and procedures concerning consideration of inside meter placements, it took UGI nearly two years to modify its GOM procedures and more than three years to change its customer notification letters. City Exc. at 11 (citing 52 Pa. Code § 69.1201(c)(4)).

The City continues that as ALJ Exhibit 1 demonstrates, there are nearly 900 historic district locations with meters that the City surveyed and that UGI’s actions impacted. City Exc. at 11-12 (citing 52 Pa. Code § 69.1201(c)(5)). The City disagrees with the ALJ’s conclusion that a civil penalty is not necessary to deter future violations because UGI remediated its original failure to implement the Section 59.18 amendments. The City argues that when closely examined, many of these remedies are cosmetic, and most, if not all, are after the fact. City Exc. at 12 (citing 52 Pa. Code § 69.1201(c)(8)).

The City believes that penalties provide the best incentive for NGDCs to comply with the Commission’s Regulations and notes that the remedy can be both monetary and non-monetary (further relocation, bollards, etc.). The City avers that employing the use of bollards or other forms of supplemental meter protection may provide a less expensive alternative to meter relocation. City Exc. at 12 (citing 52 Pa. Code § 69.1201(c)(10)). The City asserts that the Commission should impose a civil penalty here based on UGI’s “deliberate decision to not amend its meter placement procedure” as well as additional substantive relief. The City requests that, at a minimum, UGI be ordered to reconsider every meter that was relocated in historic districts between September 13, 2014 and October 1, 2017, by meeting with the homeowner and, if necessary, relocating the meter (or installing bollards or other protection) at UGI’s sole cost where the relocated meter placement is not justified. City Exc. at 13. *See also* City Exc. at 17-18.

**b.** **UGI’s Replies**

In reply, UGI avers that the ALJ properly determined that the City Parties were not entitled to their requested relief and that civil penalties were not warranted for several reasons. First, UGI states that the requested relief would impose new regulatory standards on UGI by making inside meters the rule, not the exception. UGI R. Exc. at 13. UGI contends that if the City Parties’ relief were granted, the Company would be forced to install most, if not all, meters inside historic buildings and relocate the vast majority of outside meters for historic buildings to the interior of those buildings. UGI believes that such relief explicitly contradicts Section 59.18(d)(1)(ii).

Second, UGI disagrees with the City’s request that the Commission adopt a fifteen-foot rule governing the allowable distances between meters and street curbs and apply it to UGI. *Id*. at 14. UGI contends that there are no Commission or Federal Regulations containing such a fifteen-foot rule and, therefore, UGI would be subject to a more restrictive standard on meter location than any other NGDC operating in Pennsylvania. *Id*. at 14-15.

Third, UGI is concerned that applying these standards retroactively would force the Company to divert labor and resources from its betterment projects and other initiatives aimed at improving the safety and integrity of its natural gas distribution system based on system risks identified in the Company’s Distribution Integrity Management Plan. UGI R. Exc. at 15. Fourth, the Company contends that the City is improperly attempting to impose Commission regulatory standards only on UGI through this Complaint proceeding, rather than through a statewide rulemaking proceeding in which all NGDCs are able to participate. *Id*. at 15-16 (citing *PPL Elec. Utils. Corp. v. City of Lancaster,* 125 A.3d 837, 853 (Pa. Cmwlth. 2015)). The Company also contends that if, on the other hand, the Commission decides to prospectively adopt new regulatory standards here for all NGDCs, both UGI’s and all of the other NGDCs’ due process rights would be violated because they have not been provided with notice and an opportunity to be heard. UGI R. Exc. at 16 (citing *Hess v. Pa. PUC* (*Hess*)*,* 107 A.3d 246, 266 (Pa. Cmwlth. 2014)).

Fifth, UGI avers that the ALJ correctly found that the Commission’s Policy Statement does not support imposing civil penalties on the Company. UGI states that its conduct was not of a serious nature, and the consequences of its conduct were not of a serious nature, as the City Parties failed to prove that the outside meter placements were unsafe or caused any actual injury or damage. UGI R. Exc. at 17-18 (citing 52 Pa. Code

§69.1201(c)(1),(2). UGI also states that to the extent it is found to have violated the Regulations, the Company’s actions were not intentional because it has at all times strived to comply with the Commission’s Regulations. UGI R. Exc. at 18 (citing 52 Pa. Code § 69.1201(c)(3)).

Additionally, UGI indicates that it modified its internal practices and procedures to address the conduct at issue and to prevent similar conduct in the future. *Id*. (citing 52 Pa. Code § 69.1201(c)(4)). UGI states that the record reflects several steps the Company took in order to address the City Parties’ concerns. UGI notes the following:

(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 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 R. Exc. at 18. UGI avers that there is no need to deter any alleged future violations, because the ALJ properly found that the Company’s current policy is consistent with the Commission’s Regulations. UGI R. Exc. at 18-19 (citing 52 Pa. Code § 69.1201(c)(9)).

Sixth, UGI states that it is important to quantify the actual penalties and expenses for which the City believes UGI should be responsible. UGI R. Exc. at 19. UGI submits that of the 894 historic meter locations that remain in dispute, approximately 675 meters were relocated between September 13, 2014, and October 1, 2017. *Id*. (citing ALJ Exh. 1.)[[13]](#footnote-13) UGI avers that because the City requests that UGI be penalized $1,000 for “each instance” where UGI sent those customers the previous version of the customer notification letter, the City is asking the Commission to impose a civil penalty of approximately $675,000.UGI also avers that since relocating an individual meter from outside back to the inside of a single property costs around $400, 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 argues that such large penalties and relief are not warranted in this case based on the Company’s efforts to address the City Parties’ 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. UGI R. Exc. at 19. Further, UGI contends that 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 UGI’s due process rights. *Id*. at 19-20 (citing *Hess,* 107 A.3d at 266).

**c. Disposition**

As we have found UGI to be in violation of Section 59.18(d)(1)(ii) from September 13, 2014 through July 30, 2016, for failure to consider inside meter locations within historic districts, our remedy will be limited to this particular violation during this particular time period. While we agree with the ALJ that a civil penalty is not the most appropriate remedy in this case, we find that a non-monetary remedy, as detailed below, is appropriate under the circumstances. In reaching this conclusion, we engaged in an analysis of our Policy Statement at 52 Pa. Code § 69.1201 and relevant prior Commission decisions.

Our Policy Statement sets forth the following factors and standards for consideration:

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.
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).

In evaluating these factors, we find that UGI’s initial conduct in proceeding to install meters outside in historic districts without providing proper consideration under Section 59.18 was serious in nature. 52 Pa. Code § 69.1201(c)(1). In response to the comments of historical commissions and boards, private citizens, preservation groups, civic associations, and government entities and officials regarding the impact that outside meter placements in historic districts would have on the preservation and protection of historically significant properties, we made a deliberate decision to mandate consideration of inside meter placements in historic districts given the unique nature of the properties involved. Additionally, as we stated previously, we have an affirmative duty to protect all facets of the environment under the ERA, including the historical values of an area. *See PEDF II*, 640 Pa. at 91 (the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of public natural resources). Accordingly, we consider a violation of the regulatory mandate in Section 59.18, which requires consideration of inside meters in historic districts, to be serious in nature and, thus, to weigh in favor of imposing a higher penalty.

In this case, there is no record evidence that the resulting consequences of UGI’s conduct were serious, as there is no of evidence of damage to properties in the historic district or diminished property values based on the outdoor location of meters. 52 Pa. Code § 69.1201(c)(2). It also does not appear that UGI was purposefully or blatantly disregarding Section 59.18 or not cooperating with the Commission’s Gas Safety Division. 52 Pa. Code § 69.1201(c)(3). Gas Safety Division representatives and City officials did walking tours in the City to observe UGI’s actions, and UGI involved Gas Safety Division inspectors in reviewing certain meter placement decisions. UGI St. 1 at 21. Moreover, as this is a case of first impression, there is no indication that UGI has an unsatisfactory compliance history regarding the requirements in Section 59.18(d)(1)(ii) or that UGI has an otherwise unsatisfactory compliance history. 52 Pa. Code § 69.1201(c)(6). Therefore, these factors weigh in favor of imposing a lower penalty.

Since the Complaints in this proceeding were filed, UGI has taken steps to modify its internal practices and procedures to address the conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). For instance, UGI modified its GOM effective, July 31, 2016, to include guidance and consideration for meters located within historic districts and modified its thirty-day customer notification letter, effective October 2017, to permit property owners and customers in historic districts to request reconsideration of outside meter placement. Consistent with these revisions, UGI developed a website for customers requesting reconsideration of meter placement as a means for easily communicating this preference and, as part of its revisions to the GOM, permitted customers to take steps to lessen the aesthetic impact of the outside meter, such as painting the meters to blend in with the surroundings. The Company also indicated that it agreed to work with the City to have constituent complaints submitted to the City routed to UGI officials for response and that it has met with homeowners and interested parties to discuss the outside meter placement prior to the Company’s work and has found mutually agreed-upon locations to place an outside meter. UGI St. 1 at 34, 36. Under the circumstances, we find that this factor weighs in favor of a lower penalty.

Here, UGI’s actions affected a significant number of customers and property owners over a nearly two-year period. Based on the record, UGI relocated approximately 600 meters in historic districts between September 13, 2014, and July 30, 2016. ALJ Exh. 1. We find that this information weighs in favor of a higher penalty.

The eighth factor is the amount of the civil penalty necessary to deter future violations. The ninth factor is past commission decisions in similar situations. The tenth factor allows us to consider any other relevant factors. 52 Pa. Code

§ 69.1201(c)(8),(9),(10). In evaluating these factors based on the record in this case and in exercising our discretion not to impose a monetary civil penalty, we have concluded that a non-monetary remedy would provide the most appropriate remedy under the circumstances. We have in many instances granted non-monetary remedies in the form of remedial and enforcement measures to ensure that public utilities are complying with the Code and our Regulations and Orders and to correct prior non-compliance. *See, e.g.*, *Application of Pennsylvania-American Water Company under Sections 507, 1102, and 1329 of the Public Utility Code*, Docket No. A-2018-3004933 (Order entered October 3, 2019)(approving settlement requiring that a second notice of settlement be sent to customers when the first notice did not contain accurate and adequate information to provide the customers with the requisite notice and opportunity to be heard on the proposed settlement); *Pa. PUC v. Shea’s Trucking Enterprise, Inc*., Docket No. C-2018-2641984 (Order entered August 23, 2018) (directing a public utility to pay outstanding Commission assessment balances that were not timely paid); *Jerome v. PECO Energy Company*, Docket No. F-2010-2196584 (Order entered July 19, 2012) (directing PECO to provide a refund to the customer complainant to reflect the difference between the residential rates that the customer should have been charged and the commercial rates that the customer paid); *Pa. PUC v. UGI Utilities, Inc*., Docket No. C-2012-2308997 (Order entered February 19, 2013) (requiring the utility to explore enhanced leak detection measures and file a pilot program to use one or more of those enhanced leak detection measures as one remedy in response to a gas explosion).

In this case, we shall direct UGI to send a letter to each of the customers/property owners in historic districts whose meters were located outside between September 13, 2014, and July 30, 2016, using the addresses listed in ALJ Exh.

1.[[14]](#footnote-14) The letter should be similar to the revised thirty-day notification letter UGI has been using since October 2017 in that it should provide the customers/property owners with an opportunity to contact the Company by phone or on the Company’s website to discuss or to request reconsideration of the Company’s decision to relocate their meter because their property is located in a historic district. Because the Company has the discretion under our Regulation to make meter placement decisions due to public safety concerns, we are not directing the Company to move meters inside. Rather, the purpose of our remedy is that the Company give consideration to the inside placement of meters within these historic district locations and provide notice to the customers/property owners that they may discuss their meter location with the Company. In response to contact from customers/property owners, the Company may follow the procedures it testified that it is currently engaging in, such as moving meters inside in certain instances, working with individual customers to find less obtrusive locations for outside meters, or working with customers to lessen the aesthetic impact of the outside meter by, for instance, permitting customers to paint their meters.

We find that having the Company dedicate some resources to this effort, along with the remedial efforts the Company is currently engaging in, is a reasonable remedy in this case as it reflects a balancing of the interests and positions of the Parties in this proceeding. This remedy is also consistent with our regulatory duties under Section 59.18 and our constitutional duties under the ERA to ensure that proper consideration of inside meter locations is provided to the approximately 600 historic district customers and property owners who did not previously receive proper consideration in this case.

In complying with this remedy, UGI shall, within sixty (60) days of the entry date of this Opinion and Order, send the above-described letter to the addresses of each customer/property owner in historic districts, as listed in ALJ Exh. 1, whose meters were relocated between September 13, 2014, and July 30, 2016. Additionally, UGI shall, within ninety (90) days of the entry date of this Opinion and Order, provide a copy of the letter that it sent to these customers/property owners to the Commission and all Parties to this proceeding, along with an affidavit attesting that the letter was sent to the customers/property owners at the addresses listed in ALJ Exh. 1.

**Conclusion**

Based on our review of the record, the Parties’ filings, and the applicable law, we shall: (1) grant, in part, and deny, in part the City’s Exceptions; (2) deny UGI’s Exceptions; (3) grant, in part, and deny, in part, CPHD’s Exceptions; (4) modify the Initial Decision, as set forth in this Opinion and Order and the Ordering Paragraphs below; and (5) direct UGI to comply with the remedy detailed herein; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of Centre Park Historic District, filed on March 15, 2019, are granted, in part, and denied, in part.

2. That the Exceptions of the City of Reading, filed on March 18, 2019, are granted, in part, and denied, in part.

3. That the Exceptions of UGI Utilities, Inc., filed on March 18, 2019, are denied.

4. That the Initial Decision of Administrative Law Judge Mary D. Long, served on February 26, 2019, is modified, consistent with this Opinion and Order.

5. That Findings of Fact Nos. 45 and 46 in the Initial Decision of Administrative Law Judge Mary D. Long, served on February 26, 2019, are modified as follows:

45. The letter did not provide the customer with an option to request reconsideration of his or her meter location by contacting UGI by phone or completing a meter reconsideration request form on UGI’s website. City Exhs. JS-10 and JS-12.

46. The Company’s current customer notification letters, revised in October 2017, state, in pertinent part, “As part of this project, **UGI intends to move natural gas meter sets located inside of residences to a position outside the dwelling, but if your property is located in a federal, state or local historic area you may request that UGI reconsider the decision to relocate your meter.** Your request can be made online by visiting **www.ugi.com**, and clicking on the “Community” tab at the top of the page.” (UGI Exh. CB-16) (emphasis in original)

6. That Findings of Fact Nos. 20 and 31 in the Initial Decision of Administrative Law Judge Mary D. Long, served on February 26, 2019, are removed from the Initial Decision.

7. That UGI Utilities, Inc. shall, within sixty (60) days of the entry date of this Opinion and Order, send the above-described letter to the addresses of each customer/property owner in historic districts, as listed in ALJ Exh. 1, whose meters were relocated between September 13, 2014, and July 30, 2016.

8. That UGI Utilities, Inc. shall, within ninety (90) days of the entry date of this Opinion and Order, provide a copy of the letter that it sent pursuant to Ordering Paragraph No. 7, above, to the Commission and all Parties to this proceeding, along with an affidavit attesting that the letter was sent to the customers/property owners at the addresses listed in ALJ Exh. 1.

9. That this proceeding at Docket Nos. C-2015-2516051 and C-2016-2530475 shall be marked closed.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 24, 2019

ORDER ENTERED: October 24, 2019

1. In its Exceptions, CPHD incorporates by reference the Exceptions of the City as if fully recited therein. [↑](#footnote-ref-1)
2. The Commission’s files reflect that CPHD did not file Replies to Exceptions with the Commission’s Secretary’s Bureau. [↑](#footnote-ref-2)
3. In this case, the City and CPHD have the burden of proving that UGI failed to comply with Section 59.18 or other Commission or Federal Regulations, the Code, or a Commission Order. In its Exceptions Nos. 3 and 12, the City appears to argue that UGI has the burden of showing it was complying with the requirements in Section 59.18. City Exc. at 5, 14. In its Replies, UGI avers that the City is incorrect and the City Parties have the burden to prove that UGI failed to comply with the Commission’s Regulations. UGI R. Exc. at 22-23. Consistent with our burden of proof discussion in this Opinion and Order, the City’s arguments that UGI has the burden of proof in this proceeding are denied. [↑](#footnote-ref-3)
4. Pursuant to 52 Pa. Code § 59.33(b), the Commission adopted as its “minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth … the pipeline safety laws as found in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, including all subsequent amendments thereto.” [↑](#footnote-ref-4)
5. UGI was making meter and regulator relocations as part of its betterment projects within the City. UGI explained that it has been replacing non-contemporary facilities in the City on an ongoing basis for many years and has increased the pace at which it has been replacing non-contemporary pipelines to meet the commitments in its Commission-approved long-term infrastructure improvement plan. UGI St. 1 at 27. As part of these projects, UGI sends notification letters to customers informing them of the projects at least thirty days in advance of the project start date. *Id*. at 25. These thirty-day notification letters are described in more detail herein. [↑](#footnote-ref-5)
6. A reportable incident exists where there was a release of gas and (1) greater than $50,000 in damages; (2) death or injury; or (3) a significant event in the determination of the distribution utility. *Final Rulemaking Order* at 5, n.3. [↑](#footnote-ref-6)
7. The City also excepts to the ALJ’s failure to include UGI’s requirement to comply with 49 C.F.R. § 192.353(a) as part of the Conclusions of Law contained in her Initial Decision. City Exc. at 14. [↑](#footnote-ref-7)
8. 49 C.F.R. § 192.353 was amended, effective October 15, 2003. In amending the Regulation, the Office of Pipeline Safety (OPS) added a specific reference to vehicular damage in order to protect outside meters and regulators from reasonably anticipated vehicular damage. In implementing this amendment, OPS indicated the following:

   [The final rule] requires protection from vehicular damage but does not specify the type or degree of protection. In this situation, operators have discretion to provide whatever type and degree of protection is reasonable under the circumstances. The final rule does not change this discretion. It merely highlights the risk of vehicular damage.

   *Pipeline Safety: Further Regulatory Review; Gas Pipeline Safety Standards*, 60 Fed. Reg. 53895 (Sept. 15, 2003). [↑](#footnote-ref-8)
9. UGI indicated that the service lines involved in the other instances cited by Mr. Slifko were low pressure lines, not equipped with EFVs, that when damaged released a small amount of gas that dissipated into the outside air. UGI St. 1 at 47. Federal Regulations do not require EFVs for low pressure service lines because much smaller amounts of gas are released from those lines when they are damaged. UGI St. 1 at 47. [↑](#footnote-ref-9)
10. In addressing any level of protection that parking lanes may provide an outside meter from being struck by a vehicle, Mr. Slifko stated that “in many cases there are not always cars parked in the parking lane. More importantly, when there is a high speed accident, a parked car can and does get thrown up onto the sidewalk and sometimes into the front porch.” City St. 2 at 29-30. In the seven accidents that were noted by UGI where a gas meter was struck by a vehicle, four occurred where there was a parking lane (1043 Oley, 847 Nicolls, near 1261 N. 10th, near 11th and Spring). Of the two “near misses,” one of those meters was protected by a parking lane (306 N. 5th Street). *Id*. [↑](#footnote-ref-10)
11. Rule 701 provides as follows:

    If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness’s perception; (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue: and (c) not based on a scientific, technical, or other specialized knowledge within the scope of Rule 702. [↑](#footnote-ref-11)
12. The ALJ cited to other Commission decisions in which the Commission declined to assess a civil penalty. *See* *Rounce v. PECO Energy Company,* Docket No. C-2015-2506941 (Order entered December 9, 2016); *Veverka v. Verizon Pennsylvania, LLC,* Docket No. 2016-2553290 (Final Order entered May 31, 2017); *Orr v. Peoples Natural Gas Company, LLC*, Docket No. C-2017­2583759 (Order entered December 20, 2018). [↑](#footnote-ref-12)
13. ALJ Exhibit 1 is the Parties’ updated Stipulated Spreadsheets. [↑](#footnote-ref-13)
14. This relief is consistent with enforcing our Regulation at 52 Pa. Code

    § 59.18(a)(3) and (d)(1)(ii), and is a form of relief that is reasonably contemplated within the context of this proceeding and within the relief the Complainants’ requested. [↑](#footnote-ref-14)