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District, Inc. and City of Reading*

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CENTRE PARK HISTORIC DISTRICT, INC. :  
vs. : Docket No. C-2015-2516051  
UGI UTILITIES, INC. :

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

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**PREHEARING MEMORANDUM OF  
CENTRE PARK HISTORIC DISTRICT, INC. AND CITY OF READING**

**BEFORE ADMINISTRATIVE LAW JUDGE MARY D. LONG:**

Centre Park Historic District, Inc. (“CPHD”) and the City of Reading (“City”), by and through their attorneys, Eastburn and Gray, P.C. and Michael J. Savona, Esquire, Michael E. Peters, Esquire, and Zachary A. Sivertsen, Esquire, hereby submit the following Prehearing Memorandum in connection with the Prehearing Conference scheduled in this matter for March 30, 2016.

I. **BACKGROUND**

A. **Procedural Posture**

The above-captioned matters have been scheduled for a consolidated prehearing conference, pursuant to the Public Utility Commission's ("Commission") February 16, 2016 First Prehearing Order, issued after a prehearing telephone conference on February 11, 2016 in the CPHD matter. During the conference, counsel for CPHD, also serving as counsel for the City, informed the Commission and counsel for UGI Utilities, Inc. ("UGI") that the City would be filing a Formal Complaint, subsuming the issues raised in CPHD's Formal Complaint. The City filed its Formal Complaint on February 17, 2016, raising the issues set forth in sections I.A and I.B, *infra*.

Because the CPHD Formal Complaint and the City's Formal Complaint involve common questions of law and fact, the City and CPHD request that the Commission consolidate the matters.

On March 14, 2016, UGI filed an Answer and Preliminary Objections to the City's Formal Complaint. In its Preliminary Objections, UGI alleged that the issues raised in the City's Formal Complaint must be addressed through the Commission's regulatory amendment procedure. The City filed its Answer to UGI's Preliminary Objections on March 24, 2016.

B. **UGI's relocation of gas meters/regulators in the City's historic districts.**

In September 2014, the Commission adopted a Final Rulemaking Order amending § 59.18 of the Public Utility Code to provide regulatory requirements for the placement of meters, regulators, and service lines. Although, as a general rule, § 59.18 requires relocated meters and

regulators be placed outside and aboveground, the amendments included an exception for historic districts, where inside meter location must be considered. Specifically:

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

...

(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.

52 Pa. Code § 59.18(d) (emphasis added).

In enacting the § 59.18 amendments, the Commission received and responded to comments from historical commissions and boards, private citizens, preservation groups, civic associations, and government entities and officials. In responding, the Commission stated that:

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.

Commission's Final Rulemaking Order, p. 27 (emphasis added). The Commission continued to state:

We do believe...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.

*Id.* at p. 18.

The City contains six (6) designated historic districts, as well as other areas eligible for national registration.

In August 2015, the City adopted Ordinance No. 45-2015 relating to the installation of exterior gas meters visible from public rights-of-way within the City's historic districts.

The City also amended its Street Excavation Application Form, requiring applicants to identify whether they were installing an exterior gas meter in a historic district, whether interior placement had been considered, why an exterior placement was ultimately chosen, and whether Commission notice requirements had been followed.

As UGI has implemented its gas meter relocation program in the City, it has routinely placed gas meters in the front yards, on the fronts of buildings, and along building façades visible from the public rights-of-way in locally designated historic districts. The City has confirmed that of 398 permits issued to UGI for meter relocation in the City's historic districts, all meters have been relocated to the exterior. Where such meters have been installed, UGI has failed to give any meaningful consideration to inside placement, placements that could not be seen from

the public rights-of-way, or placements that maintain the historic nature and aesthetic value of the historic districts.

UGI has refused to properly identify whether proposed work is to be done in historic districts on the City's Street Excavation Application Form, and has never provided a justification for exterior placement on the form. In its Formal Complaint, the City cites examples of statements made by UGI officials indicating UGI's intent to place meters outside regardless of the City's ordinances or the § 59.18 regulations.

The exterior placement of gas meters has significantly disrupted the historic nature and aesthetic value of the City's historic districts, and had an immediate, direct and negative impact on the historical integrity of the City's historic neighborhoods.

In its Formal Complaint, the City requests that the Commission provide clarity to the parties regarding the proper application of § 59.18, and provide guidance to UGI and the City concerning the scope of § 59.18 and the responsibilities of UGI to comply with established historic district requirements in light of § 59.18.

**C. UGI's placement of exterior meters in dangerous locations**

§ 59.18 also provides general requirements for the placement of gas meters and regulators. Subsection (a)(5), in pertinent part, states:

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

...

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

52 Pa. Code § 59.18(a)(5). Subsection (b)(1) of § 59.18 states that:

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

- (1) When feasible and practical to do so, above ground in a protected location adjacent to the building served.

52 Pa. Code § 59.18(b)(1). Finally, subsection (a) of 49 CFR § 192.353, adopted and enforced by the Commission, states that:

- 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.

49 CFR § 192.353(a).

Since May 2014, UGI has installed numerous exterior gas meters throughout the City, both within and outside of designated historic districts, in close proximity to busy City streets where they are unprotected from vehicular damage and other outside forces. In fact, UGI has installed gas meters as close as four (4) feet from busy City streets. UGI's installation of gas meters in these locations constitutes a violation of 52 Pa. Code § 59.18(a)(5) and (b)(1), as well as 49 CFR § 192.353.

## **II. PRESENTLY IDENTIFIED ISSUES**

### 1. Procedural issues:

- a. CPHD and the City respectfully request that the CPHD Formal Complaint and City Formal Complaint be consolidated as the matters involve common questions of law and fact.

### 2. Scheduling issues:

- a. If briefing/oral argument on the preliminary objections is required, CPHD and the City are prepared to discuss a briefing/argument schedule during

the conference. CPHD and the City request that the Commission issue an order setting forth the schedule.

- b. Following adjudication of the preliminary objections, and assuming that the matter will move forward, CPHD and the City request that the Commission issue an order, with input from the parties, setting forth a discovery schedule, briefing schedule, and hearing date/procedures. The parties have consulted and are prepared to discuss scheduling at the prehearing conference.

3. Substantive issues:

- a. UGI's preliminary objections should be overruled. The City does not seek a regulatory amendment in its Formal Complaint. To the contrary, the City seeks, under the specific facts of the matter before the Commission, an adjudication regarding the proper application of § 59.18, and guidance concerning the scope of § 59.18 and the responsibilities of UGI to comply with established historic district requirements in light of § 59.18.
- b. UGI must recognize all historic districts in the City, including locally designated historic districts, for purposes of considering inside meter placement under § 59.18(d).
- c. UGI has failed to give appropriate consideration to the inside placement of meters in designated historic districts as required by § 59.18(d).
- d. UGI must comply with the City's historic district regulations, and must, *e.g.*, fully complete the City's Street Excavation Form and provide a

statement of justification for exterior meter placement visible from the public right-of-way.

- e. UGI must respect the City's historic districts and, where meters are placed in outside locations visible from the public right-of-way, locate meters so they are unobtrusive and screened from view.
- f. CPHD and the City respectfully request that the Commission provide clarity to the parties regarding the proper application of § 59.18, and provide guidance to UGI and the City concerning the scope of § 59.18 and the responsibilities of UGI to comply with established historic district requirements in light of § 59.18.
- g. In locating its exterior gas meters in close proximity to City streets and on narrow sidewalks where they create safety hazards for passing pedestrians, UGI has failed to "consider potential damage by outside forces," in violation of 52 Pa. Code § 59.18(a)(5).
- h. In locating exterior gas meters in close proximity to City streets and on narrow sidewalks where they create safety hazards for passing pedestrians, UGI has failed to locate gas meters in "protected location[s]" in violation of 52 Pa. Code § 59.18(b)(1).
- i. In locating exterior gas meters in close proximity to City streets, UGI has failed to consider "vehicular damage that may be anticipated" in violation of 49 CFR § 192.353(a).



### **III. WITNESSES**


CPHD and the City intend to call John Slifko, City of Reading City Councilmember to explain, in general terms, UGI's relocation efforts in the City, including UGI's communications with the City regarding same. Mr. Slifko will also testify to his observations with respect to the relocation of gas meters in the City. CPHD and the City intends to call Jeffrey S. Waltman, Sr., City of Reading City Council President, to supplement the testimony of Mr. Slifko, as needed.

CPHD and the City also intend to call Ralph Johnson, City of Reading Public Works Director, related to the City's issuance of permits for meter relocations as well as Mr. Johnson's on-the-ground observations of UGI's meter relocation program.

CPHD and the City intend to call Michael Lauter, Centre Park Historic District president, to provide an overview of the City's historic districts, including the Centre Park Historic District, and to explain the impact of the exterior placement of meters on the historic character and aesthetic of the City historic districts.

CPHD and the City reserve the right to call such additional witnesses as may be necessary to respond to issues raised by the respondent.

**EASTBURN AND GRAY, P.C.**



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Dated: 29 MARCH 2016

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**CERTIFICATE OF SERVICE**

It is hereby certified that on March 29, 2016, Michael E. Peters, Esquire served, by electronic mail a true and correct copy of the foregoing prehearing memorandum on the following:

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