**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

City of Reading :

:

 v. :C-2016-2530475

 :

UGI Utilities, Inc. :

**INTERIM ORDER**

**DISMISSING PRELIMINARY OBJECTIONS**

 On February 17, 2016, the City of Reading filed a formal complaint against UGI Utilities, Inc. (UGI), challenging UGI’s placement of meters in historic districts[[1]](#footnote-1) as well as the outside placement of meters in unsafe locations in other districts of the city. On March 14, 2016, UGI filed an answer denying the material allegations of the complaint and also preliminary objections seeking dismissal of the complaint. The City of Reading filed an answer to the preliminary objections on March 24, 2016.

 Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.[[2]](#footnote-2) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[3]](#footnote-3) The moving party may not rely on its own factual assertions, but must accept for the purpose of disposition of the motion, all well-pleaded material facts of the other party, as well as every inference fairly deducible from those facts.[[4]](#footnote-4) Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the complaint are true.[[5]](#footnote-5)

 UGI seeks dismissal of the complaint of the City of Reading because the complaint is legally insufficient and should be dismissed pursuant to Section 5.101(a)(4) of the Commission’s regulations.[[6]](#footnote-6) Specifically, UGI contends that the relief requested by the City of Reading would effectively require the Commission to rewrite its regulation regarding the location of meters by imposing guidelines and standards on UGI. According to UGI, Section 59.18 of the Commission’s regulations provides UGI with the discretion to consider the inside placement of gas meters, but does not mandate it.

 The City of Reading disagrees with UGI’s characterization of the allegations raised in its complaint. In the City’s view, the complaint seeks review of UGI’s actions in the placement of meters in the City and whether UGI properly interpreted Section 59.18.

 Preliminary objections should only be granted in cases that are free and clear of doubt.[[7]](#footnote-7) The City of Reading’s complaint challenges UGI’s application of a Commission regulation and whether UGI’s actions complied with the regulations.[[8]](#footnote-8) Such a determination is necessarily fact-intensive and does not lend itself to resolution based only on the pleadings. Therefore, UGI’s preliminary objections are dismissed.

 THEREFORE,

 IT IS ORDERED:

 That the preliminary objections of UGI Utilities, Inc. to the formal complaint of the City of Reading are dismissed.

Date: March 29, 2016 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Mary D. Long

 Administrative Law Judge

**C-2016-2530475 CITY OF READING v. UGI UTILITIES, INC.**

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1. A similar complaint was filed by the Centre Park Historic District at Docket C-2015-2516051. UGI filed an answer denying the material allegations in the complaint, but did not file preliminary objections. A prehearing conference was held on that complaint on February 11, 2016. At that conference counsel for the City of Reading and the Centre Park Historic District notified me that the City would be filing its own complaint which would effectively “subsume” the complaint made by the Centre Park Historic District. A further prehearing conference on both complaints is scheduled for Wednesday, March 30, 2016. [↑](#footnote-ref-1)
2. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). [↑](#footnote-ref-2)
3. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC,* PUC Docket No. A-2008-2020353 (Initial Decision dated April 25, 2008). [↑](#footnote-ref-3)
4. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985). [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. 52 Pa.Code § 5.101(a)(4). [↑](#footnote-ref-6)
7. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC,* PUC Docket No. A-2008-2020353 (Initial Decision dated April 25, 2008). [↑](#footnote-ref-7)
8. *See* 66 Pa.C.S. §§ 701 and 1501. [↑](#footnote-ref-8)