**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held February 9, 2017 |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  John F. Coleman, Jr.  Robert F. Powelson  David W. Sweet |  |
| 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 is a Petition for Interlocutory Review and Answer to Material Question (Petition) filed on September 1, 2016, by UGI Utilities, Inc. (UGI) in the above-captioned proceedings. Centre Park Historic District, Inc. (CPHD) and the City of Reading (City) (collectively, City Parties) filed a Brief in Opposition to the Petition on September 9, 2016. UGI filed a Brief in Support of the Petition on September 12, 2016.

In its Petition for Interlocutory Review, UGI seeks interlocutory Commission review and answer to the following Material Questions:

(1) Whether the CPHD’s and the City’s Complaint should be dismissed because the relief requested – impose new rules and standards concerning meter locations that do not currently exist under the PUC’s regulations – is beyond the scope of a formal complaint proceeding and should be addressed through a petition for amendment of the PUC’s regulations pursuant to 52 Pa. Code § 5.43.

(2) Alternatively, whether the scope of the evidence and issues to be addressed in this proceeding should be limited to whether the locations of UGI’s meters violate the Public Utility Code or PUC regulations as currently enacted.

UGI requests that the Commission answer the Material Questions in the affirmative. Petition for Interlocutory Review at 2.

By Secretarial Letter issued September 13, 2016, the Commission waived the thirty-day consideration period set forth in Section 5.303 of its Regulations, 52 Pa. Code § 5.303, in order to provide adequate time for a thorough review of the Material Questions. *See*, 52 Pa. Code § 1.2(c); *see also, C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated,* Docket No. C-00924416 (Order entered June 4, 1993).

For the reasons more fully discussed below, we shall decline to answer the Material Questions.

**History of the Proceeding**

On November 25, 2015, the 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 the inside meter placement in all designated historic districts in Reading, Pennsylvania. One of the pertinent provisions at issue in this proceeding is Section 59.18(d), which provides the following, in part:

 (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.

On December 15, 2015, UGI filed an Answer denying the material allegations in the Complaint. UGI averred that Section 59.18 grants it 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 requesting that the Commission impose new rules and standards concerning meter location that do not currently exist under the Commission’s Regulations. UGI stated that the City should have petitioned the Commission for the issuance or amendment of Regulations, consistent with 52 Pa. Code § 5.43. The City filed an Answer to the Preliminary Objections on March 24, 2016. In its Answer, the City averred that it is not seeking to amend current Regulations or requesting that the Commission promulgate new Regulations, but, rather, it is seeking an adjudication of its Complaint to provide clarity to the Parties regarding the proper application of the existing Section 59.18.

By Interim Order dated March 29, 2016 (March 2016 Order), Administrative Law Judge (ALJ) Mary D. Long denied UGI’s Preliminary Objections. In doing so, the ALJ stated 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 Regulations. The ALJ found that such a determination is fact-intensive and does not lend itself to resolution based only on the pleadings.

By Prehearing Order dated March 30, 2016, the Complaints of CPHD and the City were consolidated.

Prehearing conferences were held on February 11, 2016, March 30, 2016, and July 14, 2016. At the July 14, 2016 prehearing conference, a litigation schedule was established which provided for a discovery deadline of September 9, 2016, a deadline for dispositive motions on September 30, 2016, and evidentiary hearings to begin on November 15, 2016. Prehearing Order dated July 15, 2016; Tr. at 57.

On August 10, 2016, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

On September 1, 2016, UGI filed the instant Petition. The City Parties filed a Brief in Opposition to the Petition on September 9, 2016. UGI filed a Brief in Support of the Petition on September 12, 2016.

Also on September 1, 2016, UGI and I&E filed a Joint Motion to, among other things, modify the deadlines established at the July 14, 2016 prehearing conference. The Joint Motion represented that the City Parties did not object to the request to modify the litigation schedule. By Prehearing Order dated September 2, 2016, ALJ Long suspended the previously established litigation schedule.

By Cancellation Notice issued September 14, 2016, the evidentiary hearings scheduled for November 15 and 16, 2016, were cancelled.

On December 30, 2016, the City Parties filed a Motion for Special Relief in Form of Disposition of the Petition (Motion). The City Parties request that the Commission act promptly on UGI’s Petition, averring that the City is adversely affected by UGI’s actions in continuing to relocate and install gas meters in the City, including the historic districts, while this matter is pending. The City Parties state that, as installation and relocation of gas meters will increase after the winter months, it is critical that this matter be permitted to proceed to adjudication.

On January 23, 2017, UGI filed an Answer to the City Parties’ Motion. UGI agrees that the Commission should rule on the pending Petition; however, UGI avers that the Commission should only rule on the Petition after careful and thorough consideration of the merits of the important issues and material questions raised. UGI states that the City Parties have raised issues of statewide importance concerning the scope of the Commission’s jurisdiction, the interpretation and application of the Commission’s meter location and safety Regulations, and the proper scope of Commission complaint proceedings. UGI also maintains that it has properly continued its planned meter relocations and installations in the City as required by 52 Pa. Code

§ 59.18.

**Discussion**

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is 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)

UGI filed its Petition pursuant to Section 5.302 of the Commission’s Regulations, 52 Pa. Code § 5.302. During the course of a proceeding and pursuant to the provisions of 52 Pa. Code § 5.302, a party may seek interlocutory review and answer to a material question which has arisen or is likely to arise. The standards for interlocutory review are well established. Section 5.302(a) of our Regulations, 52 Pa. Code § 5.302(a), requires that the petition “state . . . the com­pelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.” The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice – that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process. *Joint Application of Bell Atlantic Corp. and GTE Corp.,* Docket No. A-310200F0002, *et al.* (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.,* Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc*., 59 Pa. P.U.C. 538 (1985).

Pursuant to 52 Pa. Code § 5.303, the Commission may take one of the following courses of action on requests for interlocutory review and answer to a material question:

(1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.

(2) Determine that the petition was improper and return the matter to the presiding officer.

(3) Decline to answer the question.

(4) Answer the question.

Generally, Petitions for Interlocutory Review are not favored, as the preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009), at 3.

**Positions of the Parties**

UGI’s Petition relates to the ALJ’s March 2016 Order denying UGI’s Preliminary Objections. UGI avers that the City Parties request that the Commission impose new rules and standards concerning meter locations that do not exist under the Commission’s current Regulations and that the Commission declined to adopt in its Final Rulemaking Order: *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Order entered May 23, 2014) (*Final Rulemaking Order*). Petition at 1 (citing CPHD Complaint ¶ 5; City Complaint ¶¶ 53 and 65). UGI maintains that the Complaints should have been dismissed because the City Parties seek to revise Section 59.18 of the Commission’s Regulations, 52 Pa. Code § 59.18, and such relief cannot be granted in this Complaint proceeding. Petition at 1. UGI argues that interlocutory review of its Material Questions will prevent substantial prejudice and expedite the conduct of this proceeding. UGI states that, to the extent the City Parties seek to challenge the location of UGI’s meters, the only issue properly addressed in this proceeding is whether the location complies with the Code and the Commission’s Regulations as enacted. *Id*. at 2. UGI contends that resolving the Material Questions will significantly reduce the time, effort, and expense incurred by all parties to undertake discovery, prepare studies, exhibits, and testimony, and proceed to hearings on a matter that cannot be addressed in the context of a complaint proceeding. *Id*. at 2-3. UGI believes that resolving the Material Questions will define the proper scope of the issues to be addressed in this complaint proceeding and will, therefore, expedite the proceeding to ensure an orderly and complete record on the issues for the Commission’s review. UGI requests that the Commission answer the Material Questions in the affirmative and: (1) direct that the Complaints of CPHD and the City be dismissed as the relief requested is beyond the scope of this proceeding; or (2) alternatively, limit the scope of this proceeding to whether UGI’s meter locations in the City violate the Commission’s current Regulations. *Id*. at 3.

UGI explains its position in detail in its Brief in Support of the Petition (Brief in Support). First, UGI argues that the Complaints should be dismissed because the requested relief cannot be granted in a formal complaint proceeding. UGI cites to the following portions of CPHD’s Complaint pertaining to requests for relief:

(1) The Centre Park Historic District, Inc. is requesting that UGI recognize all of Reading’s Historic Districts – including those locally, as well as federally, designated – and agree that all properties in these Districts be given consideration as it pertains to the placement of inside gas meters, as the PUC Code clearly states.

(2) We request that UGI, as part of its mandated “consideration” of insider [sic] meter placement under Rule 59.18(d)(l)(ii), be required to follow the procedures

under Reading’s Historical and Architectural Review Board (HARB) Ordinance.

These procedures require anyone altering the publicly visible facade of any building in an historic district to first obtain a Certificate of Appropriateness (COA), which states that the alteration will not adversely affect the historical and

architectural integrity of the building. If the COA is denied, the alteration may not proceed, and an alternative modification must be found.

(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.

Brief in Support at 3 (citing CPHD Complaint at ¶ 5).

UGI also cites to Paragraph 53 of the City’s Complaint pertaining to requests for relief:

a. That the Commission establish specific standards for UGI to follow in considering the relocation of gas meters that have already been replaced and located on the outside of buildings within designated historic districts, which same standards should be in compliance with Amended

§ 59.18(d)(1) and the Commission’s Final Rulemaking Order. The City recommends that the Commission require UGI to relocate all meters in designated historic districts that have been placed on the outside of buildings to inside locations, except where the utility establishes a greater safety risk than in similarly situated historic properties.

b. That UGI must recognize all of the City’s historic districts, both locally and federally designated, and give meaningful consideration to inside meter locations in all buildings within these districts, in accordance with Commission standards and Amended § 59.18(d)(1).

c. UGI must retroactively perform an adequacy review of all meter placements made from September 2014 to the present, on a building front, in a yard, or on a building facade that is visible from a public right-of-way in a historic district, in accordance with Commission standards and Amended

§ 59.18(d)(1), and state why an inside placement creates a greater safety risk than in all similarly situated historic properties.

d. After performing these adequacy reviews UGI must relocate exterior meters currently on a building front, in a front yard, or on a building facade that are visible from public rights-of-way that warrant inside meter locations pursuant

to Commission standards and in accordance with Amended

§ 59.18(d)(1).

e. For all exterior meters UGI does not relocate to inside locations, it must provide a valid statement of justification that states why an inside placement creates a greater safety risk than in all similarly situated historic properties, which

shall be subject to review by the Commission, as contemplated by Section 701 of the Public Utility Code, 66 Pa. C.S. § 701.

f. Where exterior gas meters remain, UGI must ensure that such placements are unobtrusive and screened from view through the use of landscaping, fencing, and/or architectural building features.

g. That UGI must provide a valid statement of justification to the City when it installs any gas meter on a building front, in a front yard, or on a building facade that is visible from a public right-of-way in a designated historic district, as required by the City’s Street Excavation Application Form.

h. Where inside meter locations are legitimately infeasible due to public safety concerns, UGI shall make every effort to locate exterior meters on building facades that are not visible from public rights-of-way in the historic district, or work with the property owner/occupant to find an alternative placement that maintains the historic nature and aesthetic value of the district in accordance with the Commission’s Final Rulemaking Order and Amended

§ 59.18(d)(1), if possible and feasible.

i. That the Commission establish specific standards for UGI to follow in considering the location of gas meters that will be replaced in buildings located within designated historic districts in the future, which same standards should be in compliance with Amended § 59.18(d)(1) and the Commission’s Final Rulemaking Order. The City recommends that the Commission require all future

meter replacements in designated historic districts be located on the inside of buildings, except where the utility establishes a greater safety risk than in similarly situated historic properties.

Brief in Support at 4-5 (citing City Complaint at ¶ 53).

Finally, UGI cites to Paragraph 65 of the City’s Complaint pertaining to requests for relief:

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.

Brief in Support at 4-5 (citing City Complaint at ¶ 65).

UGI avers that the City Parties’ requested relief would re-write the Commission’s Regulations in various ways and impose new regulatory requirements that are not contained in the current Regulations. Brief in Support at 7. First, UGI contends that the City wants to make inside meter locations the rule, rather than the exception under Section 59.18(a)(1) of the Commission’s Regulations, 52 Pa. Code § 59.18(a)(1). UGI states that, under Section 59.18(d)(1)(ii), a gas utility shall only “consider” inside meter locations if the meter is located in a historic building or historic district. UGI argues that the City would require UGI to place meters inside historic district buildings, unless it could establish a greater gas safety risk than in similarly situated properties. Second, UGI contends that the City Parties seek to impose new regulatory requirements when a gas utility is “considering” inside meter locations, such as CPHD’s request that the Commission require UGI to follow the procedures under the HARB Ordinance. Brief in Support at 8. As another example, UGI points to the City’s request that UGI be required to provide a statement of justification to the City when UGI installs an exterior gas meter in a historic district. *Id*. at 9. Third, UGI contends that the City attempts to impose new regulatory requirements on the exterior placement of gas meters related to the meters’ historical and aesthetic impact. *Id*. (citing City Complaint at ¶ 53(f) and (h)). Fourth, UGI asserts that the City Parties propose new restrictions on meter locations related to their safety concerns about exterior meter locations, for instance, CPHD’s request that UGI be prohibited from installing any outside meter within 10’ of a City walk unless it is placed in a buried vault. Brief in Support at 9-10. UGI explains that Section 59.18 already provides specific requirements for meter location and all situations under which a natural gas distribution company shall consider inside meter locations, and Section 59.33(b) of the Commission’s Regulations, 52 Pa. Code § 59.33(b), adopts the minimum safety standards for gas utilities set forth in the federal regulations. Brief in Support at 10.

UGI argues that it would be fundamentally unfair and an abuse of discretion to establish new regulatory requirements through this Complaint proceeding. Rather, UGI avers that, if the Commission’s Regulations need to be clarified or amended, such issues must be addressed in a statewide proceeding where all interested parties have the opportunity to participate in order to ensure due process. *Id*. UGI also notes that neither the City nor CPHD submitted comments or participated in the Commission’s recent formal rulemaking process that adopted the standards and requirements set forth in Section 59.18. UGI submits that the City Parties should not now be permitted to attack the final Regulations adopted by the Commission through a complaint proceeding against one gas utility but should, rather, file an appropriate petition under 52 Pa. Code § 5.43 to request that the Commission open a rulemaking to consider amendments to the existing meter location Regulations. Brief in Support at 11. As such, UGI requests that the Commission answer the first Material Question in the affirmative and dismiss the Complaints without prejudice to allow the City Parties to seek their requested relief through an appropriate petition. *Id*. at 11-12.

In its second argument in its Brief in Support, UGI avers that, if the Commission declines to dismiss the Complaints without prejudice, the Commission should limit the scope of the evidence and issues to be addressed in this Complaint proceeding to whether the locations of UGI’s meters violate the Code, the Commission’s Regulations as currently enacted, or Commission Orders. UGI contends that, if the proceeding is not properly limited in scope, the Parties will be required to devote a substantial amount of time and resources to undertake discovery, prepare for hearings, litigate, and brief issues related to the City Parties’ requested relief. Brief in Support at 12. Additionally, UGI states that the City Parties have raised issues pertaining to UGI’s compliance with local ordinances and historic district regulations. *Id*. (citing City Complaint at ¶¶ 29-38, 46, and 52; CPHD Complaint at ¶ 5.) UGI explains that Section 701 of the Code, 66 Pa. C.S. § 701, provides that issues in a formal complaint must be limited to “any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” According to UGI, the Commission does not have jurisdiction to administer these local ordinances and historic district regulations and nothing in the Code, the Commission’s Regulations, or a Commission Order directs gas utilities to comply with local ordinances and historic district regulations concerning meter locations. Brief in Support at 13. UGI emphasizes that issues relating to the City’s Ordinance No. 45-2015 are currently pending before the Commonwealth Court in a proceeding between UGI and the City. *Id*. (citing *UGI Utilities, Inc. v. City of Reading*, No. 499 M.D. 2015). UGI asserts that, by addressing the second Material Question, the Commission will expedite the proceeding, ensure an orderly and complete record on the issues to be addressed, and facilitate the Commission’s review of the issues in this proceeding. Brief in Support at 14.

In their Brief in Opposition, the City Parties argue that there is no basis for interlocutory review in this matter. The City Parties aver that ALJ Long has already considered UGI’s argument that the City Parties are seeking relief outside of the Commission’s jurisdiction. Brief in Opposition at 7. The City Parties explain that the Parties are in the middle of discovery, and UGI and I&E have filed a Joint Motion seeking, *inter alia*, a prehearing conference with the ALJ, a modification of the litigation schedule to provide additional time for discovery, and a modification to the hearing format. The City Parties also explain that, based on the hundreds of meters identified by the City Parties as being at issue, UGI and I&E have requested written testimony or, alternatively, a bifurcated hearing. The City Parties state that this case involves a fact-intensive inquiry, requiring an interpretation of Section 59.18 and the review of UGI’s conduct in carrying out its meter installation program within the City pursuant to Section 59.18, an inquiry that is directly within the jurisdiction of the ALJ and the Commission in this Complaint proceeding. The City Parties contend that UGI is attempting to avoid this fact-intensive inquiry by requesting that the scope of the hearing be limited. The City Parties assert that the ALJ is capable of determining the scope of her authority in this matter as the proceeding continues and ruling and crafting any relief granted accordingly. The City Parties believe that UGI’s concerns about the scope of the ALJ’s authority can, and should, be addressed by UGI through the ALJ as this matter proceeds on the merits. *Id*. at 8. The City Parties submit that UGI does not face substantial prejudice justifying interlocutory review because UGI’s concerns can be addressed through the normal review process. Rather, the City Parties state that, if interlocutory review is granted, the City Parties will be precluded from a meaningful review of UGI’s meter relocation efforts within the City. The City Parties request that the Commission decline to grant interlocutory review so that this matter may move forward in the normal course, allowing the Parties to develop the record, brief the issues, and present argument. *Id*. at 9.

Additionally, the City Parties aver that the relief they are seeking is within the jurisdiction of the ALJ in this Complaint proceeding, as their Complaints were filed consistent with Section 701 of the Code, 66 Pa. C.S. § 701. The City Parties contend that UGI misconstrues the relief they are seeking. The City Parties submit that they are seeking the interpretation and enforcement of Section 59.18(d)(1) in relation to UGI’s meter relocation efforts in the City, specifically within the City’s historic districts. Brief in Opposition at 9. According to the City Parties, Section 59.18 requires utilities to provide meaningful consideration to the inside placement of gas meters in designated historic districts, and this requirement has applied to UGI’s meter replacement efforts since the Regulation became effective. Brief in Opposition at 10. The City Parties argue that the Regulation also requires, where applicable, that a utility must obtain approval before obtaining a permit to relocate a meter in a historic district. *Id*. (citing *Final Rulemaking Order* at 18). The City Parties state that they are seeking relief to ensure that UGI complies with the terms of Section 59.18(d) and to compel UGI to conduct meaningful consideration of interior placement of meters, something the City Parties believe is required by the Regulation. Brief in Opposition at 10-11. The City Parties also state that, regarding the alleged safety violations of 52 Pa. Code § 59.18 and 49 C.F.R.

§ 192.353, the ALJ may consider the alleged dangerous considerations posed by the relocated meters within the City and determine whether or not they violate established Regulations. Brief in Opposition at 11. The City Parties assert that they are not seeking any revisions to the Commission’s Regulations under 52 Pa. Code § 5.43, but, rather, are seeking a determination of whether UGI’s meter placements violate Section 59.18 based on the ALJ’s application and interpretation of the Regulation. Brief in Opposition at 11.

Further, the City Parties state that there is no basis for the Commission to limit the scope of this proceeding. The City Parties aver that the ALJ has the power and authority, should she deem it appropriate, to direct the City Parties to amend their Complaints under 52 Pa. Code § 5.93; to consider a motion for summary judgment under 52 Pa. Code § 5.102; to exclude irrelevant or immaterial evidence or limit discovery under 52 Pa. Code § 5.483; to hold a prehearing conference to focus the issues under 52 Pa. Code § 5.222; and to deny the relief sought by the City Parties in whole or in part. The City Parties argue that, given the existing procedures, it would be inappropriate for the Commission to “reach into this proceeding” and change the ALJ’s scope of review. Brief in Opposition at 13.

**Disposition**

We begin by addressing the Motion, which seeks an expeditious resolution of the Petition for Interlocutory Review. We have addressed the Petition as expeditiously as possible, while giving careful and through consideration to the issues and material questions raised in the Petitions. Based on the disposition of that Petition in this Opinion and Order, we find the Motion moot.

Based upon our review of the Parties’ positions and the applicable law, we conclude that UGI has not satisfied the standards for interlocutory review, as UGI has not established com­pelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of this proceeding. In its Petition, UGI contends that it will be substantially prejudiced by spending a significant amount of time and resources to undertake discovery, prepare exhibits and testimony, and proceed to hearings on a matter that UGI believes cannot be addressed in the context of a complaint proceeding. UGI argues that the City Parties’ requested relief cannot be granted in this proceeding, because the City Parties are seeking to re-write the Commission’s Regulations and impose new regulatory requirements that are not contained in the current Regulations. While UGI may disagree with the relief that the City Parties are seeking, we do not find that this is an instance where interlocutory review is warranted on the basis that the Complaints or aspects of the Complaints fall outside of the Commission’s jurisdiction. As the ALJ stated in the March 2016 Order, the City’s Complaint “challenges UGI’s application of a Commission regulation and whether UGI’s actions complied with the regulations.” March 2016 Order at 2 (citing 66 Pa. C.S. §§ 701 and 1501). We also find that it would not be appropriate to limit the scope of possible relief or to make a predetermination regarding relief at this stage in the proceeding. We have previously determined that it is within the ALJ’s discretion to determine what remedy to recommend in the event that the ALJ finds a violation of the Code, a Commission Order, or Regulation after a full evidentiary hearing. *See Susan Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order entered January 28, 2016).

There is no indication that, at this stage in the proceeding, any error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process, particularly since the ALJ still has the opportunity to make any specific decisions regarding the scope of the proceeding that she may deem necessary. The Parties are continuing to conduct discovery and no evidentiary hearings have been held. As the City Parties note, the ALJ has the discretion to exclude irrelevant or immaterial evidence and to limit discovery under 52 Pa. Code § 5.483; to hold a prehearing conference to focus the issues under 52 Pa. Code § 5.222; and to deny the relief sought by the City Parties in whole or in part. At this time, there is an outstanding Motion to Compel Discovery Responses that was filed by the City Parties on September 8, 2016. Additionally, UGI and I&E filed a Joint Motion on September 1, 2016, in which they requested an extension in the procedural schedule, the scheduling of a further prehearing conference, and modifications to the hearing format in order to accommodate the number of anticipated witnesses and to address the possibly large number of exhibits related to potentially thousands of meters that may be at issue in this case. In response, by Prehearing Order dated September 2, 2016, the ALJ suspended the litigation schedule and agreed to schedule a further prehearing conference after the Commission’s final action on UGI’s instant Petition.

Given the potential volume of the testimony and exhibits and the fact-intensive nature of this proceeding, the most efficient way to expedite the conduct of this proceeding would be to allow the ALJ to exercise her discretion in regulating the course of the proceeding, consistent with 52 Pa. Code § 5.483(a), and to proceed with the further prehearing conference in order to create a “more effective use of hearing time” and “to otherwise expedite the orderly conduct and disposition” of the hearings in this matter, consistent with 52 Pa. Code § 5.222(a). This approach will also provide all Parties with a full opportunity to develop the record and present arguments at each stage and will result in a complete record for the Commission’s review, which is particularly important since it does not appear that the interpretation and application of Section 59.18 has occurred within a litigated proceeding since the Regulation was amended.

**Conclusion**

Based on our review of the Motion, the Petition, and the associated Answers and Briefs, we shall find the Motion moot and we shall decline to answer the Material Questions presented by UGI, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Motion for Special Relief in Form of Disposition of the Petition, filed by the Centre Park Historic District and the City of Reading on December 30, 2016, is moot.
2. That, with regard to the Petition for Interlocutory Review and Answer to Material Question filed by UGI Utilities, Inc. on September 1, 2016, we decline to answer the following Material Questions:

(a) Whether the CPHD’s and the City’s Complaint should be dismissed because the relief requested – impose new rules and standards concerning meter locations that do not currently exist under the PUC’s regulations – is beyond the scope of a formal complaint proceeding and should be addressed through a petition for amendment of the PUC’s regulations pursuant to 52 Pa. Code § 5.43.

(b) Alternatively, whether the scope of the evidence and issues to be addressed in this proceeding should be limited to whether the locations of UGI’s meters violate the Public Utility Code or PUC regulations as currently enacted.

1. That this matter is returned to the Office of Administrative Law Judge.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

ORDER ADOPTED: February 9, 2017

ORDER ENTERED: February 9, 2017

(SEAL)