

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Centre Park Historic District	:	
	:	Docket No. C-2015-2516051
v.	:	
	:	
UGI Utilities, Inc.	:	
	:	
City of Reading	:	
	:	Docket No. C-2016-2530475
v.	:	
	:	
UGI Utilities, Inc.	:	

**RESPONSE TO MOTION TO COMPEL FILED BY UGI UTILITIES, INC.
SEEKING TO DISMISS THE MOTION TO COMPEL ON THE
BASES OF UNTIMELINESS AND MOOTNESS**

Pursuant to 52 Pa.Code §§ 5.342(g), 5.349(d), Centre Park Historic District (“CPHD”) and the City of Reading file this response to the Motion to Compel of UGI Utilities, Inc., (“UGI”) seeking to dismiss UGI’s Motion on the bases of untimeliness and mootness:

INTRODUCTION

1. This Motion to Compel is the second Motion to Compel filed by UGI to the same set of Objections to UGI’s discovery requests, filed by the City and CPHD on August 17, 2016, over six (6) months ago.

2. Aside from being extraordinarily untimely, UGI’s Motion to Compel is entirely unnecessary. Prior to the filing of the Motion to Compel, counsel for the City and CPHD had already agreed with counsel for UGI to provide supplemental discovery responses.

3. The City’s and CPHD’s supplemental production was served on March 12, 2017. With this supplement, the City and CPHD have produced over 7,000 pages of documents. UGI has produced just over 500 pages.

4. UGI's Motion to Compel should be dismissed as untimely and, given the supplemental responses, moot.

I. BACKGROUND

5. On July 22, 2016, UGI served Interrogatories and Requests for Production of Documents on the City and CPHD.

6. On August 8, 2016, Counsel for the City and CPHD contacted Counsel for UGI, updating Counsel for UGI on the status of the City's and CPHD's efforts to respond to UGI's discovery requests.

7. On August 16, 2016, Counsel for the City and CPHD again contacted Counsel for UGI, indicating that responses to discovery would be provided on August 17, 2016.

8. Notwithstanding, UGI filed its first Motion to Compel on August 16, 2016.

9. On August 17, 2016, as promised, the City and CPHD produced responses to UGI's discovery requests, including CityCPHD_00001 through CityCPHD_002143.

10. The City and CPHD reserved the right to supplement their discovery responses.

11. At the time the first set of responses was served, the City and CPHD were compiling a meter-by-meter survey of the over *one thousand* meters in the City that are at issue in this proceeding.

12. That survey was completed in late August 2016. On August 26, 2016, Counsel for the City and CPHD agreed to produce supplemental discovery responses to UGI's Request No.'s 5, 7, 8, 10, 11, 12, 13, 15, 16, 17, 18 and 20, including the meter-by-meter survey, on September 2, 2016.

13. On September 1, 2016, the day before the City and CPHD agreed to produce their supplemental responses, UGI filed a Petition for Interlocutory Review on the basis that the relief

requested in this matter is beyond the powers of the Administrative Law Judge. UGI's Preliminary Objections on that basis had already been dismissed by the Honorable Mary D. Long.

14. On September 2, 2016, the litigation schedule in this matter was suspended by the Honorable Mary D. Long, pending the Commission's ruling on UGI's Petition for Interlocutory Review. In its Motion to Compel, UGI omits both its filing of the Petition for Interlocutory Review and the suspension of the litigation schedule.

15. The Commission denied UGI's Petition for Interlocutory Review by Opinion and Order dated February 9, 2017.

16. Counsel for the City and CPHD and Counsel for UGI conferred on March 7, 2017, for purposes of discussing the litigation schedule and to attempt to resolve discovery disputes, as required by the Fifth Prehearing Order in this matter.

17. Counsel for the City and CPHD had the authority of the City and CPHD to act on behalf of the City and CPHD during the conference.

18. Counsel for UGI stated that he was without authority to agree to any schedule or discovery dispute resolution on behalf of his client.

19. At the request of counsel for UGI to proceed with the conference, notwithstanding his lack of authority, Counsel for the City and CPHD reviewed the litany of objections raised by UGI to the discovery requests of the City and CPHD.

20. During the call, Counsel for the City and CPHD informed Counsel for UGI that the City and CPHD would, notwithstanding their objections, supplement the responses to all requests identified in paragraph 12, *supra*, avoiding the need for resolution by the Administrative Law Judge. The City's and CPHD's position with respect to providing these supplemental

responses has not changed since August 2016, before the litigation schedule in this matter was stayed.

21. Counsel for the City and CPHD requested that Counsel for UGI, on his part, promptly speak with his superiors and/or the necessary representatives at UGI to either resolve UGI's objections or identify those objections requiring resolution by the Administrative Law Judge.

22. Counsel for the City and CPHD did not condition production of supplemental responses. In fact, the City's and CPHD's supplemental production was made on March 12, 2017.

23. Although counsel for UGI left counsel for the City and CPHD a message at the close of business on March 10, 2017, the parties have not had an opportunity to confer.

24. Instead, UGI filed this Motion to Compel.

II. RESPONSE TO MOTION TO COMPEL

25. Complainants incorporate paragraphs 1 through 24, *supra* as if fully set forth herein.

26. Any Motion to Compel needed to be filed within 10 days of the City and CPHD's Objections. 52 Pa.Code §§ 5.342(g) & 5.349(d).

27. The City's and CPHD Objections were filed and served over 6 months ago.

28. UGI's Motion to Compel is untimely and should be dismissed.

29. Moreover, the City and CPHD have supplemented their discovery responses, as agreed to. The City and CPHD will supplement their discovery responses as required pursuant to 52 Pa.Code § 5.332.

30. Given the supplemental responses, UGI's Motion to Compel is moot and should be dismissed

WHEREFORE, Complainants respectfully request that Administrative Law Judge Mary D. Long dismiss UGI's Motion to Compel as untimely and moot.

EASTBURN AND GRAY, P.C.

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Dated: March 13, 2017

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: UGI UTILITIES, INC. :

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

CERTIFICATE OF SERVICE

It is hereby certified that on March 13, 2017, Michael E. Peters, Esquire served, by electronic mail a true and correct copy of the foregoing reply to motion to compel on the following:

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