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July 6, 2017

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Centre Park Historic District v. UGI Utilities, Inc.
Docket No. C-2015-2516051**

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

Dear Secretary Chiavetta:

Enclosed for filing is the Motion of UGI Utilities, Inc. for Summary Judgment ("Motion") in the above-referenced proceedings. A DVD containing a copy of the Motion and all appendices is also enclosed. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl
Enclosures

cc: Honorable Mary D. Long
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION


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

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.102(b), YOU MAY ANSWER THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Date: July 6, 2017

Attorneys for UGI Utilities, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**MOTION OF UGI UTILITIES, INC.
FOR SUMMARY JUDGMENT**

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

AND NOW, comes UGI Utilities, Inc. ("UGI" or the "Company"), by and through its attorneys, Post & Schell, P.C., and files this Motion for Summary Judgment pursuant to Sections 5.102 and 5.103 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code §§ 5.102-5.103, and Rules 1035.1 through 1035.5 of the Pennsylvania Rules of Civil Procedure, Pa. R.C.P. Nos. 1035.1-1035.5, and respectfully requests that the above-captioned Complaints be summarily dismissed, in whole or in part, and with prejudice.

As explained herein, with respect to a significant number of meters, there is no genuine issue of fact and the City of Reading ("City") and Centre Park Historic District ("CPHD") (collectively, "Complainants") have failed to establish elements that are essential to their claim. Therefore, UGI is entitled to judgment as a matter of law with respect to these meters, and the scope of this proceeding should be limited only to the remaining meters. Further, UGI is entitled to judgment as a matter of law with respect to claims and issues that are beyond the Pennsylvania

Public Utility Commission's subject matter jurisdiction. Finally, UGI is entitled to judgment as a matter of law because the Complainants requested relief cannot be granted in a complaint proceeding initiated under 66 Pa. C.S. § 701.

For these reasons, and as explained in more detail below, UGI respectfully requests that Administrative Law Judge Mary D. Long (the "ALJ") grant this Motion for Summary Judgment and summarily dismiss the instant Complaints, in whole or in part, and with prejudice. In support thereof, UGI states as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

1. This matter was initiated on November 25, 2015 (*i.e.*, approximately 20 months ago), and has a long and convoluted procedural history. The following background and procedural history is relevant to this Motion for Summary Judgment.

2. UGI is a "public utility" and a "natural gas distribution company" ("NGDC") as those terms are defined under the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2202, subject to the regulatory jurisdiction of the Commission.

3. The amended Section 59.18 of the Commission's regulations became effective on September 13, 2014. *See* 52 Pa. Code § 59.18.

4. On November 25, 2015, CPHD filed a Formal Complaint at Docket No. C-2015-2516051 alleging UGI's meter location practices in the historic districts of Reading, PA violated the amended Section 59.18 and Section 59.33 of the Commission's regulations. (*See* CPHD Complaint, ¶ 5) On December 15, 2015, UGI filed an Answer to CPHD's Complaint denying any regulatory violation.

5. At the February 11, 2016 prehearing conference, counsel for CPHD indicated that he would also be filing a complaint on behalf of the City regarding UGI's meter location

practices in the City and requested that CPHD's Complaint be consolidated with the City's forthcoming Complaint.

6. On February 23, 2016, UGI received e-service of the City's Complaint. In its Complaint, the City alleged UGI violated the amended Section 59.18 and Section 59.33 of the Commission's regulations. (See City Complaint, Counts I and II) On March 14, 2016, UGI filed an Answer denying the material allegations in the City's Complaint and averring that its meter location practices are and have been consistent with the Commission's regulations.

7. The Company also filed Preliminary Objections on March 14, 2016, which argued that the City's Complaint should be dismissed in its entirety due to the legal insufficiency of the City's requested relief. By Interim Order issued March 29, 2016, the ALJ denied UGI's Preliminary Objections.

8. On March 30, 2016, a further prehearing conference was held, during which the parties agreed to attempt to settle the Complaints and hold a further prehearing conference in 60 days.

9. At a further prehearing conference held on July 14, 2016, the parties provided the ALJ with an update on settlement discussions. The ALJ also established a litigation schedule, with discovery concluding September 9, 2016, and evidentiary hearings taking place on November 15-16, 2016. This litigation scheduled was memorialized in the ALJ's Third Prehearing Order issued on July 15, 2016.

10. On August 10, 2016, I&E filed a Notice of Appearance.

11. On September 1, 2016, UGI filed a Petition with the Commission seeking interlocutory review and answers to material questions. UGI and I&E also filed a Joint Motion

that requested the ALJ to extend the procedural schedule, hold a further prehearing conference, and modify the hearing format in this proceeding.

12. On September 2, 2016, the ALJ issued the Fourth Prehearing Order, which suspended the litigation schedule pending the Commission's ruling on UGI's Petition for Interlocutory Review and Answer to Material Questions.

13. Following briefing by the parties, the Commission entered an Order on February 9, 2017, declining to answer the material questions and remanding the case to the ALJ.

14. A further prehearing conference was held before the ALJ on March 16, 2017, during which the parties addressed outstanding discovery issues, the protection of confidential information, and the litigation schedule.

15. On March 21, 2017, the ALJ issued the Sixth Prehearing Order, which directed the Complainants to prepare and submit detailed spreadsheets by April 20, 2017, that: (1) identified the meter installations that Complainants are contesting in historic and non-historic districts; (2) provide the date a permit was issued, if one was issued, for each meter installation; and (3) the date the each meter was relocated. The Sixth Prehearing Order also directed UGI to stipulate or object to this information by May 4, 2017. Lastly, the Sixth Prehearing Order stated that all discovery must be completed by May 30, 2017.

16. On April 18, 2017, the ALJ issued the Seventh Prehearing Order, which granted one-week extensions for the Complainants and UGI to provide the information required under the Sixth Prehearing Order. Accordingly, the Complainants' spreadsheets were due by April 27, 2017, and UGI's stipulations and objections were due by May 11, 2017.

17. On April 19, 2017, the ALJ issued the Eighth Prehearing Order, which excused the Complainants from providing the date that each meter was relocated or installed. Instead, the

Eight Prehearing Order directed UGI to provide, in addition to the information required under the Sixth Prehearing Order, the service line installation date for each meter installation. Finally, the Complainants were instructed to stipulate or object to UGI's service line installation data by May 22, 2017.

18. On April 27, 2017, the Complainants provided their spreadsheets listing the contested meters in historic and non-historic districts, along with photographs of the meter installations.

19. On May 11, 2017, UGI provided its updates to the Complainants' spreadsheets, which included stipulations or objections to the information provided by the Complainants as well as the service line installation data required by the Eighth Prehearing Order.

20. On May 22, 2017, the Complainants provided their updates to the spreadsheets, which stipulated or objected to UGI's permit information.

21. Discovery closed on May 30, 2017.

22. A further prehearing conference was held on June 15, 2017. At the prehearing conference, the Complainants stipulated to UGI's service line installation data. (Tr. 101)

23. During the June 15, 2016 prehearing conference, the ALJ also established due dates for dispositive motions and replies thereto of July 6, 2017, and July 26, 2017, respectively. These deadlines were memorialized in the Interim Order issued on June 15, 2017.

24. UGI herein files this Motion for Summary Judgment and respectfully requests that certain claims and allegation in the CPHD's and City's Complaints be dismissed, in whole or in part, and with prejudice. As explained below, certain claims and allegations by the Complaints should be summarily dismissed, in whole or in part, because:

- (A) Certain meters in historic districts identified by Complainants were relocated before amended Section 59.18(d)(1) became effective and, therefore, UGI did not have to “consider” inside meter locations for those meters;
- (B) Certain meters alleged by Complainants to violate the safety requirements of amended Section 59.18 were relocated before the amended regulation became effective;
- (C) Certain meters do not violate amended Section 59.18(a)(8)(i) because Complainants have conceded that those meters are not beneath or in front of an opening that can be used as a fire exit;
- (D) Complainants have failed to establish that certain meters are in contact with soil or other corrosive material in violation of amended Section 59.18(a)(8)(vi);
- (E) Complainants have failed to establish that any meters are located under exterior staircases in violation of amended Section 59.18(a)(8)(iii);
- (F) Certain locations identified by Complainants do not, in fact, have a meter and, therefore, cannot be in violation of amended Section 59.18 or Section 59.33, as alleged by Complainants;
- (G) Complainants have raised issues and claims that are clearly beyond the Commission’s jurisdiction;
- (H) The Commission’s meter placement regulation does not, as a matter of law, require NGDCs to comply with local ordinances; and
- (I) The Complaints should be dismissed as a matter of law because the requested relief would impose new, additional regulatory requirements and, therefore, cannot be granted in a complaint proceeding initiated under 66 Pa. C.S. § 701.

II. STANDARD FOR SUMMARY JUDGMENT

25. Section 5.102 of the Commission’s regulations provides the Commission’s standard of review for a request for summary judgment:

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1)-(2).

26. Similarly, Rule 1035.2 of the Pennsylvania Rules of Civil Procedure sets forth the following:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R.C.P. No. 1035.2.

27. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

III. SUMMARY OF ARGUMENT

A. UGI Is Entitled To Judgement As A Matter Of Law With Respect To A Significant Number Of Meters Identified Meters By The Complainants

28. As explained Sections IV.A-B below, there is no genuine issue of material fact that a total of 1,147 meters in both the historic and non-historic districts that Complainants claim to be in violation of the amended Section 59.18 of the Commission's regulations were relocated prior to the regulation's effective date. Because there is no dispute that these meters were relocated prior to the regulation's effective date, the Complainants' claim that these meters were relocated in violation of the amended Section 59.18 cannot be sustained as a matter of law.

29. As explained Section IV.C below, there is no genuine issue of material fact that a total of 337 meters in both the historic and non-historic districts are not located beneath or in front of an opening that can be used as a fire exit. Because there is no dispute that these meters are not located under a fire exit, the Complainants' claim that these meters violate 52 Pa. Code § 59.18(a)(8)(i) cannot be sustained as a matter of law.

30. As explained Section IV.D below, the pictures provided by the Complainants with their historic and non-historic spreadsheets demonstrate that 163 meters in both the historic and non-historic districts are not in contact with soil or other corrosive material, as alleged by the Complainants. Therefore, UGI is entitled to judgment as a matter of law because the Complainants failed to produce evidence of facts essential to establish their claim that these certain meters are in violation of 52 Pa. Code § 59.18(a)(8)(vi).

31. As explained Section IV.E below, the pictures provided by the Complainants with their historic and non-historic spreadsheets demonstrate that none of the meters in historic districts are located under exterior staircases. Therefore, UGI is entitled to judgment as a matter

of law because the Complainants failed to produce evidence of facts essential to establish their claim that these certain meters are in violation of 52 Pa. Code § 59.18(a)(8)(iii).

32. As explained Section IV.F below, there is no genuine issue of material fact that 118 locations identified by the Complainants in both the historic and non-historic districts do not, in fact, have a meter. Because there are no meters at the locations identified by the Complaints, the Complainants' claim that these locations violate amended Section 59.18 or Section 59.33 cannot be sustained as a matter of law.

B. UGI Is Entitled To Judgment As A Matter Of Law With Respect To Claims And Issues That Are Beyond The Commission's Subject Matter Jurisdiction

33. As explained Section IV.G below, through their Complaints, prehearing memoranda, and the data and executive summary provided with their historic and non-historic spreadsheets, the Complainants have attempted raised issues and claims that are beyond the Commission's jurisdiction.

34. The Complainants' issues and claims regarding UGI's compliance with the City's historic district regulations are beyond the scope of the Commission's subject matter jurisdiction.

35. The Complainants' issues and claims regarding the City's local street cut permits and building & trade permits, and whether UGI has obtained such permits are beyond the scope of the Commission's subject matter jurisdiction.

36. Issues and claims related to the legality of the City's historic district regulations are beyond the scope of the Commission's subject matter jurisdiction.

37. Because these claims and issues are beyond the Commission's subject matter jurisdiction, the Commission cannot grant the relief requested; therefore, UGI is entitled to judgment matter of law.

C. UGI Is Entitled To Judgment As A Matter Of Law With Respect To The Complainants' Argument That The Amended Section 59.18 Requires The Company To Comply With Local Ordinances

38. As explained in Section IV.H below, the amended Section 59.18 does not, as a matter of law, require UGI to comply with the City's local historic district regulations. Therefore, any claims to the contrary by the Complainants should be summarily dismissed.

D. UGI Is Entitled To Judgment As A Matter Of Law Because The Complainants Have Requested Relief That Cannot Be Granted In A Section 701 Complaint Proceeding

39. As explained in Section IV.I below, the Complainants' requested relief cannot be granted in this Section 701 complaint proceeding because it would re-write the Commission's regulations and impose regulatory requirements regarding meter locations that conflict with the Commission's regulations or that do not currently exist in the Commission's regulations. Therefore, the City's and CPHD's Complaints should be summarily dismissed without prejudice to seek their requested relief through an appropriate petition pursuant to 52 Pa. Code § 5.43.

IV. ARGUMENT

A. Certain Meters In Historic Districts Identified By Complainants Were Relocated Before Amended Section 59.18(d)(1) Became Effective And, Therefore, UGI Did Not Have To "Consider" Inside Meter Locations For Those Meters

40. UGI incorporates by reference Paragraphs 1 through 39 as if fully set forth herein.

41. In their Formal Complaints, the Complainants have alleged that UGI violated amended 52 Pa. Code § 59.18(d)(1) by relocating meters to the exterior of buildings in historic districts without considering inside meter locations. (See City Complaint, Count I; CPHD Complaint ¶¶ 4(1)-(2))

42. Pertinent to the Complainants' allegations regarding historic districts, amended Section 59.18 provides as follows:

(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.

* * *

(d) *Inside meter locations.*

(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 §§ 51.18(a), (d).¹

43. It cannot be disputed that the amended Section 59.18 only became effective on September 13, 2014. *See* 52 Pa. Code § 59.18(g)(1)-(2).

44. Any exterior meter in a historic district that was relocated prior to the September 13, 2014 effective date cannot, as a matter of law, be in violation of the amended Section 59.18 as alleged by the Complainants.

45. In this proceeding, the Complainants must establish that a contested meter was installed or relocated in a historic district after September 13, 2014, for there to be any claim that the meter violates the amended Section 59.18. Thus, the date that a meter was installed or relocated is a critical element required for the Complaints to establish a violation of the amended Section 59.18.

46. In the data provided with the historic district spreadsheet required to be produced by the ALJ, the Complainants claim a total of 1,313 meters have been relocated in violation of amended 52 Pa. Code § 59.18(d)(1). (*See* City and CPHD Executive Summary, p. 2)

¹ The Complainants have not alleged that UGI violated the pre-September 13, 2014 version of 52 Pa. Code § 59.18. Moreover, even if they had, nothing in the pre-September 13, 2014 version required NGDCs to “consider” inside meter locations in historic districts before the amended Section 59.18 became effective. Indeed, the pre-September 13, 2014 version stated as follows:

Meters shall be installed in either of the following locations:

- (1) Inside the building, preferably in a dry, well-ventilated place not subject to excessive heat, and as near as possible to the point of entrance of the pipe supplying service to the building.
- (2) Outside the building at a location selected by the utility. A meter cover or housing is required if, in the judgment of the utility, conditions require the physical protection for the meter installation.

52 Pa. Code § 59.18 (2013). Accordingly, the pre-September 13, 2014 version of Section 59.18 provided enormous discretion to NGDCs when determining where to install a meter. Thus, UGI did not have to consider inside meter locations for any meters that were installed or relocated before September 13, 2014.

47. Pursuant to the Eighth Prehearing Order issued on April 19, 2017, the Complainants were expressly required to stipulate or object to the service line installation data provided by UGI.

48. At the June 15, 2017 prehearing conference, the Complainants stipulated on-the-record to the service line installation data provided by UGI as the date of the meter relocation:

JUDGE LONG: Mr. Savona, the May 24, 2017 spreadsheet does not include a stipulation regarding the installation of the date of the service lines for the meter placements. Do the complainants intend to stipulate to those dates?

MR. SAVONA: Your Honor, we don't have any independent information. So, at this point, I have no issue with stipulating because the city simply does not maintain that information and there is no way I can contest it. So, in the interest of just moving it along, **we will stipulate to the dates supplied by UGI.**

(Tr. 100-101 (emphasis added))

49. Based on the Complainants' on-the-record stipulation, there is no genuine issue of material fact or dispute concerning when the meters were installed or relocated in the historic districts.

50. Based on the stipulated data, a substantial number of meters were installed or relocated in historic districts before the amended Section 59.18 became effective on September 13, 2014.

51. Specifically, 631 of the 1,313 meters in historic districts have service line installation dates that pre-date September 13, 2014.

52. Attached hereto as **Appendix A** is a copy of the City's historic meter list with the 631 meters that pre-date September 13, 2014 identified in gray (applicable row has been grayed out).

53. There is no genuine issue of material fact that these 631 meters were installed or relocated in historic districts prior to the effective of the amended Section 59.18. Accordingly, as a matter of law, the Complainants' claim that these meters were relocated in violation of the amended Section 59.18 cannot be sustained.²

WHEREFORE, UGI respectfully requests that the Complainants' claim that these 631 meters identified in **Appendix A** were relocated within historic districts in violation of the amended Section 59.18 be summarily dismissed and with prejudice.

B. Certain Meters Alleged By Complainants To Violate The Safety Requirements Of Amended Section 59.18 Were Relocated Before The Amended Regulation Became Effective

54. UGI incorporates by reference Paragraphs 1 through 53 as if fully set forth herein.

55. In their Formal Complaints, the Complaints alleged that UGI violated the safety requirements of amended 52 Pa. Code § 59.18 when it installed or relocated meters to the exterior of buildings in both historic and non-historic districts. (*See City Complaint, Count II; CPHD Complaint ¶ 4(3)*)

56. Pertinent to the Complainants' allegations regarding the safety requirements, amended Section 59.18 provides as follows:

(a) General requirements for meter and regulator location.

² Furthermore, UGI submits that issue of whether the remaining 682 meters were installed or relocated in violation of the amended Section 59.18(d)(1) can be determined without the need to develop a lengthy record. It is undisputed that these 682 meters were installed or relocated within in historic districts. Whether UGI "considered" the historic districts when it relocated these meters as required by Section 59.18(d)(1) can be determined simply by reviewing the Company's gas meter relocation polices in effect at the time of the relocation. UGI has had two policies in effect since the amended Section 59.18 became effective. The first version of UGI's Gas Operations Manual, Section 35.10.10 (Meter and Regulator Location and Installation) was in effect from September 13, 2014, through July 30, 2016, and the second version has been in effect from July 31, 2016, through the present. UGI's gas meter relocation policies either considered the historic districts or they did not.

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

* * *

(8) Meters and service regulators may not be installed in the following locations:

(i) Beneath or in front of windows or other building openings that may directly obstruct emergency fire exits.

(ii) Under interior stairways.

(iii) Under exterior stairways, unless an alternate means of egress exists and the meter and service regulator are installed in a well-vented location under stairs constructed of noncombustible material.

(iv) A crawl space.

(v) Near building air intakes under local or State building codes.

(vi) In contact with soil or other potentially corrosive materials.

* * *

(c) General requirements for vaults or meter boxes.

(1) A utility shall consider proper design and location criteria for a meter box, including:

(i) Ventilation.

(ii) Vehicular traffic.

(iii) Soil accumulation.

(iv) Surface water runoff.

(v) High water table.

(vi) Proximity to building air intakes or openings.

(vii) Proximity to an excessive heat source as defined in 49 CFR 192.353(c) (relating to customer meters and regulators: location).

52 Pa. Code § 59.18(a)(1), (a)(8), (c)(1).

57. As explained above, it cannot be disputed that the amended Section 59.18 only became effective on September 13, 2014. See 52 Pa. Code § 59.18(g)(1)-(2).

58. Any exterior meter that was relocated prior to the September 13, 2014 effective date cannot, as a matter of law, be in violation of the safety requirements set forth in amended Section 59.18 as alleged by the Complainants.

59. In the data provided with the historic and non-historic district spreadsheets required to be produced by the ALJ, the Complainants claim that 2,029 meters have at least one violation of the safety requirements set forth in amended 52 Pa. Code § 59.18. (See City and CPHD Executive Summary, p. 2)

60. In this proceeding, the Complainants must establish that a contested meter was installed or relocated after September 13, 2014, for there to be any claim that the meter violates the safety requirements set forth in amended Section 59.18. Thus, the date that a meter was installed or relocated is a critical element required for the Complaints to establish a violation of the safety requirements set forth in amended Section 59.18.

61. As explained above, based on the Complainants' on-the-record stipulation, there is no genuine issue of material fact or dispute concerning when the meters were installed or relocated in the historic and non-historic districts.

62. Based on the stipulated data, a substantial number of meters were installed or relocated in historic and non-historic districts before the amended Section 59.18 became effective on September 13, 2014.

63. Specifically, 631 meters in historic districts have service line installation dates that pre-date September 13, 2014, and 516 meters in non-historic districts have service line

installation dates that pre-date September 13, 2014. In total, there are 1,147 meters identified by the Complainants in historic and non-historic districts that were installed or relocated prior to the September 13, 2014 effective date of the safety requirements set forth in amended Section 59.18.

64. Attached hereto as **Appendix A** is a copy of the City's historic meter list with the 631 meters that pre-date September 13, 2014 identified in gray (applicable row has been grayed out). Attached as **Appendix B** is a copy of the City's non-historic meter list with the 516 meters that pre-date September 13, 2014 identified in gray (applicable row has been grayed out).

65. There is no genuine issue of material fact that these 1,147 meters were installed or relocated in historic and non-historic districts prior to the effective of the amended Section 59.18. Accordingly, as a matter of law, the Complainants' claim that these meters were relocated in violation of the safety requirements set forth in amended Section 59.18 cannot be sustained.

WHEREFORE, UGI respectfully requests that the Complainants' claim that these 1,147 meters identified in **Appendices A and B** were relocated in violation of the safety requirements set forth in amended Section 59.18 be summarily dismissed and with prejudice.

C. Certain Meters Do Not Violate Amended Section 59.18(a)(8)(i) Because Complainants Have Conceded That Those Meters Are Not Beneath Or In Front Of An Opening That Can Be Used As A Fire Exit

66. UGI incorporates by reference Paragraphs 1 through 65 as if fully set forth herein.

67. The Complainants have alleged that a total of 357 meters and 24 meter infrastructures are located under windows in historic and non-historic districts. (City and CPHD Executive Summary, pp. 4, 8-9) The Complainants claim that these 357 meters and 24 meter infrastructures are in violation of UGI's Gas Operations Manual.

68. UGI's Gas Operations Manual was adopted pursuant to and incorporate the meter location provisions set forth in amended Section 59.18

69. Pertinent to the Complainants' allegations regarding meters located under windows, amended Section 59.18 provides that meters may not be installed "[b]eneath or in front of windows or other building openings that may directly obstruct emergency fire exits." 52 Pa. Code § 59.18(a)(8)(i).

70. As the Complainants concede, Section 10 of UGI's Gas Operations Manual similarly provides "[d]o not locate the meter, regulator or regulatory vent under windows or other building openings that may be used as an emergency fire exit." (City and CPHD Executive Summary, p. 4)

71. To establish that UGI violated amended Section 59.18(a)(8)(i) or UGI's Gas Operations Manual, the Complainant's must produce evidence that (i) the meter is located under a window and (ii) that the windows "may be used as an emergency fire exit."

72. As required by the ALJ, the Complainants prepared and submitted detailed spreadsheets that identified the meter installations that Complainants are contesting in historic and non-historic districts.

73. In the historic district spreadsheet, the Complainants identified 167 meters and 9 meter infrastructures (total of 176) that allegedly are located under windows. However, in the historic district spreadsheet, the Complainants concede that 132 of these meters and meter infrastructures are not "under an opening that could be a fire exit."

74. Attached hereto as **Appendix C** is a copy of the City's historic meter list with the 132 meters and meter infrastructures located under windows that cannot be used as a fire exit identified in gray (applicable row has been grayed out).

75. In the non- historic district spreadsheet, the Complainants identified a total of 190 meters and 15 meter infrastructures (total of 205) that allegedly are located under windows. However, in the non-historic district spreadsheet, the Complainants concede that all of these meters located under windows are NOT “under an opening that could be a fire exit.”

76. Attached as **Appendix D** is a copy of the City’s non-historic meter list with the 190 meters and 15 meter infrastructures located under windows that cannot be used as a fire exit identified in gray (applicable row has been grayed out).

77. Based on the foregoing, there is no genuine issue of material fact that these 337 meters and meter infrastructures are not located beneath or in front of openings that can be used as a fire exit. Accordingly, as a matter of law, the Complainants’ claim that these meters violate amended Section 59.18(a)(8)(i) or Section 10 of UGI’s Gas Operations Manual cannot be sustained.

WHEREFORE, UGI respectfully requests that the Complainants’ claim that these 337 meters and meter infrastructures identified in **Appendices C and D** violate amended Section 59.18(a)(8)(i) or Section 10 of UGI’s Gas Operations Manual be summarily dismissed and with prejudice.

D. Complainants Have Failed To Establish That Certain Meters Are In Contact With Soil Or Other Corrosive Material In Violation Of Amended Section 59.18(a)(8)(vi)

78. UGI incorporates by reference Paragraphs 1 through 77 as if fully set forth herein.

79. The Complainants have alleged that a total of 266 meters are located in contact with the soil or other corrosive materials in historic and non-historic districts. (City and CPHD Executive Summary, pp. 5, 8-9). The Complainants claim that these 266 meters are in violation of UGI’s Gas Operations Manual.

80. UGI's Gas Operations Manual was adopted pursuant to and incorporate the meter location provisions set forth in amended Section 59.18

81. Pertinent to the Complainants' allegations regarding meters located under windows, amended Section 59.18 provides that meters may not be installed "[i]n contact with soil or other potentially corrosive materials." 52 Pa. Code § 59.18(a)(8)(vi).

82. As the Complainants concede, Section 10 of UGI's Gas Operations Manual similarly provides "[d]o not install meters or regulators in contact with the soil or other corrosive materials." (City and CPHD Executive Summary, p. 5)

83. In order to establish a violation of amended Section 59.18(a)(8)(vi) or UGI's Gas Operations Manual, the Complainant's must establish that the meter is located in contact with the soil or other corrosive material.

84. As required by the ALJ, the Complainants prepared and submitted detailed spreadsheets that identified the meter installations that Complainants are contesting in both historic and non-historic districts. Together with the historic and non-historic spreadsheets, the Complainants provided a "bates-stamped" photograph of each meter location that Complainants are contesting.

85. Notably, discovery in this proceeding closed on May 30, 2017.

86. The photographs produced by the Complainants in discovery are the only supporting evidence of the Complainants' claim that 266 meters are located in contact with the soil or other corrosive materials in violation of Section 59.18(a)(8)(vi) or UGI's Gas Operations Manual.

87. Based on the photographs produced by Complainants, a substantial number of meters are not in contact with the soil or other corrosive materials as alleged by Complainants.

88. Specifically, the photographs demonstrate that 163 of the 266 meters identified by the Complainants are not in contact with the soil or other corrosive materials.³

89. Attached as **Appendix E** is a list of each of the 163 meters that are not in contact with the soil or other corrosive materials, which includes a reference to and copy of the applicable “bates-stamped” photographs provided by Complainants. All of these meters are located in historic districts.

90. Whether these 163 meters are in contact with the soil or other corrosive materials can be determined without the need for a hearing. Indeed, whether these 163 meters are in contact with the soil or other corrosive materials can be determined simply by reviewing the photographs provided by the Complainants and reproduced in **Appendix E**.

91. The photographs demonstrate that these meters are elevated off of the ground, and many of them are even located above concrete and brick, not soil.

92. Based on the photographs provided by the Complainants and reproduced in **Appendix G**, the Complainants have failed to establish that these 163 meters are in contact with soil or other corrosive material in violation of amended Section 59.18(a)(8)(vi) or Section 10 of UGI’s Gas Operations Manual. *See* Pa. R.C.P. No. 1035.2(2) (stating that a party may move for summary judgment “if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.”).

³ UGI does not concede that the remaining 103 meters are in contact with the soil or other corrosive materials.

93. Attached hereto as **Appendix F** is a copy of the City's historic meter list with the 163 meters identified in gray (applicable row has been grayed out).

WHEREFORE, UGI respectfully requests that the Complainants' claim that the 163 meters identified in **Appendices E and F** are in contact with soil or other corrosive material in violation of amended Section 59.18(a)(8)(vi) or Section 10 of UGI's Gas Operations Manual be summarily dismissed and with prejudice.

E. Complainants Have Failed To Establish That Any Meters Are Located Under Exterior Staircases In Violation Of Amended Section 59.18(a)(8)(iii)

94. UGI incorporates by reference Paragraphs 1 through 93 as if fully set forth herein.

95. The Complainants have alleged that 6 meters are located under an exterior staircase in historic districts.⁴ (City and CPHD Executive Summary, pp. 5, 8-9). The Complainants claim that these 6 meters are in violation of UGI's Gas Operations Manual.

96. UGI's Gas Operations Manual was adopted pursuant to and incorporated the meter location provisions set forth in amended Section 59.18

97. Pertinent to the Complainants' allegations regarding meters located under exterior staircases, amended Section 59.18 provides that meters may not be installed "[u]nder exterior stairways, unless an alternate means of egress exists and the meter and service regulator are installed in a well-vented location under stairs constructed of noncombustible material." 52 Pa. Code § 59.18(a)(8)(iii).

98. As the Complainants concede, Section 10 of UGI's Gas Operations Manual similarly provides "[d]o not install under exterior stairways, unless an alternate means of egress

⁴ The Complainants do not allege that any meters within non-historic districts are located under an exterior staircase. (City and CPHD Executive Summary, p. 9)

exists and the meter and service regulator are installed in a well-vented location under stairs constructed of noncombustible material.” (City and CPHD Executive Summary, p. 4)

99. As required by the ALJ, the Complainants prepared and submitted detailed spreadsheets that identified the meter installations that Complainants are contesting in both historic and non-historic districts. Together with the historic and non-historic spreadsheets, the Complainants provided a “bates-stamped” photograph of each meter location that Complainants are contesting.

100. Notably, discovery in this proceeding closed on May 30, 2017.

101. The photographs produced by the Complainants in discovery are the only supporting evidence of the Complainants’ claim that 6 meters are located under an exterior staircase in violation of Section 59.18(a)(8)(iii) or UGI’s Gas Operations Manual.

102. Based on the photographs produced by Complainants, all of the meters are not located under an exterior staircase.

103. Attached as **Appendix G** is a list of the 6 meters that are not located under an exterior staircase, which includes a reference to and copy of the applicable “bates-stamped” photographs provided by Complainants.

104. Whether these 6 meters are located under an exterior staircase can be determined without the need for a hearing. Indeed, whether these 6 meters are located under an exterior staircase can be determined simply by reviewing the photographs provided by the Complainants and reproduced in **Appendix G**.

105. Based on the photographs provided by the Complainants and reproduced in **Appendix G**, the Complainants have failed to establish that these 6 meters are located under an exterior staircase in violation of amended Section 59.18(a)(8)(iii) or Section 10 of UGI’s Gas

Operations Manual. See Pa. R.C.P. No. 1035.2(2) (stating that a party may move for summary judgment “if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.”).

106. Attached hereto as **Appendix H** is a copy of the City’s historic meter list with the 6 meters identified in gray (applicable row has been grayed out).

WHEREFORE, UGI respectfully requests that the Complainants’ claim that the 6 meters identified in **Appendices G and H** are located under a window in violation of amended section 59.18(a)(8)(iii) or Section 10 of UGI’s Gas Operations Manual be summarily dismissed and with prejudice.

F. Certain Locations Identified By Complainants Do Not, In Fact, Have A Meter And, Therefore, Cannot Be In Violation Of Amended Section 59.18 Or Section 59.33, As Alleged By Complainants

107. UGI incorporates by reference Paragraphs 1 through 106 as if fully set forth herein.

108. As required by the ALJ, the Complainants prepared and submitted detailed spreadsheets that identified the meter installations that Complainants are contesting in historic and non-historic districts.

109. The Complainants stated in their Executive Summary that it identified locations have “the infrastructure (e.g. piping) necessary to install an exterior gas meter but had not, at the time the survey was performed, yet installed the meter.” (City and CPHD Executive Summary, p. 4)

110. In the historic district spreadsheet, the Complainants identified a total of 43 locations as having meter infrastructure only. Likewise, in the non-historic district spreadsheet, the Complainants identified a total of 51 locations as having meter infrastructure only.

111. Furthermore, UGI's service line installation data, to which the Complainants stipulated, indicates 42 historic locations and 30 non-historic locations where gas service is *inactive* and, consequently, do not have a meter installed.

112. Some of the locations identified by UGI as *inactive* overlap with the properties identified by the Complainants as having only meter infrastructure installed. In total, the parties have collectively identified 58 historic locations and 60 non-historic locations that do not have a meter (*i.e.*, identified as having meter infrastructure and/or having inactive gas service).

113. Attached hereto as **Appendix I** is a copy of the City's historic meter list with the 58 infrastructure and inactive service locations identified in gray (applicable row has been grayed out). Attached hereto as **Appendix J** is a copy of the City's non-historic meter list with the 60 infrastructure and inactive service locations identified in gray (applicable row has been grayed out).

114. Based on the foregoing, there is no genuine issue of material fact that these 118 locations do not have meters. Accordingly, as a matter of law, the Complainants' claim that these meters violate amended Section 59.18, Section 59.33, or Section 10 of UGI's Gas Operations Manual cannot be sustained.

WHEREFORE, UGI respectfully requests that the Complainants' claims regarding the 118 infrastructure and inactive service locations identified in **Appendices I and J** be summarily dismissed and with prejudice.

G. Complainants Have Raised Issues And Claims That Are Beyond The Commission's Jurisdiction.

115. UGI incorporates by reference Paragraphs 1 through 114 as if fully set forth herein.

116. In their Formal Complaints, the Complainants only alleged that: (1) UGI violated 52 Pa. Code § 59.18(d)(1) by relocating inside meters to outside locations in historic districts within the City of Reading (see City Complaint, Count I; CPHD Complaint ¶ 4(1)-(2)); and (2) UGI violated 52 Pa. Code § 59.18(a)(5),(b)(1) and 49 C.F.R. § 192.353 (adopted by 52 Pa. Code § 59.33) by installing exterior meters within the City of Reading that are unprotected from vehicular damage and other outside forces (see City Complaint, Count II; CPHD Complaint ¶ 4(3)).

117. Through discovery and prehearing memoranda submitted in this case, the Complainants have attempted to raise numerous issues and claims that are beyond the Commission's jurisdiction, including: (1) whether UGI complied with the City's local historic district regulations; (2) whether UGI failed to obtain local permits from the City for the meter installation and relocation projects, and (3) whether the City's historic district regulations are appropriate under state and federal law, including the Environmental Rights Amendment of the Pennsylvania Constitution. (*See, e.g.*, City and CPHD Prehearing Memo, Section II, ¶¶ 4, 6, 7, 8, 12 (June 15, 2017); City and CPHD Executive Summary, pp. 2-9 (Apr. 27, 2017))

118. As further explained below, these issues are beyond the Commission's subject matter jurisdiction; therefore, the Commission cannot as a matter of law grant the relief requested.

1. Issues Regarding UGI's Compliance with the City's Historic District Regulations Are Beyond the Commission's Jurisdiction

119. UGI incorporates by reference Paragraphs 1 through 118 as if fully set forth herein.

120. The Complainants have attempted to raise issues regarding UGI's compliance with the City's historic district regulations in this complaint proceeding.

121. Among other things, the Complainants have argued that UGI has failed to comply with the City's historic district regulations (*i.e.*, Reading Ordinance No. 45-2015) and must complete the City's Street Excavation Form and provide a statement of justification for exterior meter placement. (*See City and CPHD Prehearing Memo, p. 3 (June 15, 2017)*)

122. To the extent the Complainants are attempting to have the Commission enforce compliance with the City's historic district regulations, this is a matter outside the scope of the Commission's jurisdiction.

123. The Formal Complaints filed by the City and CPHD were filed pursuant to 66 Pa. C.S. § 701. Section 701 provides, in pertinent part, "The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth 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." 66 Pa. C.S. § 701.

124. Pursuant to Section 701, the sole issue to be decided in this case is simple and straightforward -- whether UGI violated "any law which the [C]ommission has jurisdiction to administer" or violated "any regulation or order of the [C]ommission." *Id.*

125. As the Pennsylvania Supreme Court observed, “the PUC is a creature of statute” and, accordingly, “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.” *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958)).

126. Nothing in the Public Utility Code grants the Commission authority or jurisdiction to enforce local or state historic district regulations or ordinances. As such, issues of compliance with any local or state historic district regulations or ordinances are beyond the Commission’s subject matter jurisdiction.

127. Because it lacks subject matter jurisdiction, the Commission is without authority to adjudicate or enforce local or state historic district regulations or ordinances.

128. Based on the foregoing, UGI is entitled to judgment as a matter of law on the Complainants’ claim that UGI must comply with the City’s historic district regulations because the Commission lacks subject matter jurisdiction over the claim and, therefore, cannot grant the relief requested.

WHEREFORE, UGI respectfully requests that the Complainants’ claims and issues regarding UGI’s compliance with the City’s historic district regulations be summarily dismissed and with prejudice.

2. Issues Regarding the City’s Local Permits Are Beyond the Commission’s Jurisdiction

129. UGI incorporates by reference Paragraphs 1 through 128 as if fully set forth herein.

130. Among other things, the Complainants have argued that that UGI failed to obtain: (1) street cut permits for 601 historic properties and 571 non-historic properties; and (2) building & trade permits for 594 historic properties and 512 non-historic properties. (City and CPHD Executive Summary, pp. 2-3)

131. Issues concerning the City's permit requirements are outside the scope of the Commission's jurisdiction.⁵

132. Further, as explained above, the sole issue to be decided in this complaint proceeding is simple and straightforward -- whether UGI violated "any law which the [C]ommission has jurisdiction to administer" or violated "any regulation or order of the [C]ommission." 66 Pa. C.S. § 701.

133. Nothing in the Public Utility Code grants the Commission authority or jurisdiction over the City's permit requirements. As such, the City's permit requirements are beyond the Commission's subject matter jurisdiction.

134. Because it lacks subject matter jurisdiction, the Commission is without authority to adjudicate or enforce the City's permit requirements.

135. Whether UGI must obtain and/or failed to obtain permits required by the City when it relocated the meters is a matter for the state courts to determine. *See, e.g., UGI Utils. Inc. v. City of Lancaster*, 125 A.3d 585 (Pa. Cmwlth. 2015) (addressing in the court's original jurisdiction whether a gas utility had to comply with local permitting requirements); *Pa. Power*

⁵ The Company maintains that it has obtained all necessary approvals for its meter installations and relocations, including permits issued (if any) by the City. Moreover, the issue of whether UGI failed to obtain any said permits was not raised in either Formal Complaint filed by the City or CPHD. Rather, this claim was raised for the first time in Complainants' Executive Summary provided on April 27, 2017, with the historic and non-historic meter data required by the ALJ. Clearly, this newly raised allegation is beyond the scope of the claims asserted in the Formal Complaints.

Co. v. Twp. of Pine, 926 A.2d 1241 (Pa. Cmwlth. 2007) (in appeal from court of common pleas, addressing scope of township permitting authority with respect to electric utility).

136. Based on the foregoing, UGI is entitled to judgment as a matter of law on the Complainants' claim that UGI failed to obtain street cut permits and building & trade permits because the Commission lacks subject matter jurisdiction over the claim and, therefore, cannot grant the relief requested.

WHEREFORE, UGI respectfully requests that the Complainants' claims and issues regarding UGI's compliance with the City's local permit requirements be summarily dismissed and with prejudice.

3. Issues Regarding the Legality of the City's Historic District Regulations Are Beyond the Commission's Jurisdiction

137. UGI incorporates by reference Paragraphs 1 through 136 as if fully set forth herein.

138. In their June 15, 2017 prehearing memo, the Complainants claimed that the following is at issue in this proceeding: "The City's historic district regulations are appropriate pursuant to state and federal law, including Article I, Section 27 of the Pennsylvania Constitution." (City and CPHD Prehearing Memo, p. 3 (June 15, 2017))

139. Even though this proceeding began approximately 20 months ago in November 2015, the Complainants now, for the first time, seek a ruling from the Commission that its historic district regulations are appropriate under state and federal law, including the Environmental Rights Amendment of the Pennsylvania Constitution.

140. Issues concerning the legality of the City's historic district regulations are outside the scope of the Commission's jurisdiction.⁶

141. Further, as explained above, the sole issue to be decided in this complaint proceeding is simple and straightforward -- whether UGI violated "any law which the [C]ommission has jurisdiction to administer" or violated "any regulation or order of the [C]ommission." 66 Pa. C.S. § 701.

142. As explained previously, nothing in the Public Utility Code grants the Commission jurisdiction over local historic district regulations. Likewise, nothing in the Public Utility Code gives the Commission the power to determine whether a local historic district regulation is appropriate under state law, federal law, or the Pennsylvania Constitution.

143. Because it lacks subject matter jurisdiction, the Commission is without authority to adjudicate the legality of City's historic district regulations.

144. Whether the City's historic district regulations are lawful is a matter for the state courts to determine. Indeed, the issue of whether the City's historic district regulations are appropriate under state and federal law, including the Environmental Rights Amendment of the Pennsylvania Constitution, is currently pending before the Commonwealth Court. *UGI Utilities, Inc. v. City of Reading, et al.*, No. 499 M.D. 2015. In fact, in opposition to UGI's claim in the Commonwealth Court that the City's historic district regulations are preempted, the City argued before the Commonwealth Court that (i) its historic district regulations are permissible under state and federal law and (ii) the Environmental Rights Amendment of the Pennsylvania

⁶ The issue of the historic district regulations' legality was not raised in either Formal Complaint filed by the City or CPD. Rather, this claim was raised for the first time in Complainants' June 15, 2017 Prehearing Memorandum. Clearly, this newly raised allegation is beyond the scope of the claims asserted in the Formal Complaints, and it would be prejudicial to allow the late-raised claim to proceed after discovery closed on May 30, 2017.

Constitution provides support for its historic district regulations. (See City of Reading's Brief in Opposition to UGI Utilities, Inc.'s Application for Partial Summary Relief, Docket No. 499 M.D. 2015, pp. 31-34 (June 8, 2017), the relevant pages of which are attached as **Appendix K**).

145. Based on the foregoing, UGI is entitled to judgment as a matter of law on the legality of the City's historic district regulations because the Commission lacks subject matter jurisdiction over the claim and, therefore, cannot grant the relief requested.

WHEREFORE, UGI respectfully requests that the Complainants' claims and issues regarding the legality of the City's historic district regulations be summarily dismissed and with prejudice.

H. The Commission's Meter Regulations Do Not, As A Matter Of Law, Require Compliance With Local Ordinances

146. UGI incorporates by reference Paragraphs 1 through 145 as if fully set forth herein.

147. As explained above, amended Section 59.18(d)(1) requires UGI to "consider" inside meter locations in historic districts. 52 Pa. Code § 59.18(d)(1).

148. The Complainants previously have argued in this proceeding that the Commission's *Final Rulemaking Order*⁷ and amended Section 59.18 require UGI to comply with the City's historic district regulations. (See City's Answer to Preliminary Objections of UGI, Docket No. C-2016-2530475 ¶ 16 (Mar. 23, 2016) ("Under § 59.18, and the Final Rulemaking Order amending § 59.18, the City avers that UGI is required to comply with the City Historic District regulations."); see also City and CPHD Brief in Opposition to UGI's Petition for

⁷ See *Rulemaking RE Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Order Entered May 23, 2014) ("*Final Rulemaking Order*").

Interlocutory Review and Answer to Material Questions, pp. 2-4 (Sept. 9, 2016)). This argument should be summarily rejected for several reasons.

149. First, the unambiguous plain language of amended Section 59.18(d)(1) clearly states that UGI must “consider” inside meter locations in historic districts.⁸ There is nothing in the plain language that states NGDCs must comply with local historic regulations.⁹

150. Second, nothing in the Public Utility Code grants the Commission authority to enforce compliance with local ordinances or regulations. The Commission cannot grant itself by regulation or order authority that was not conferred upon it by the Legislature. *See W. Pa. Water Co. v. Pa. Pub. Util. Comm’n*, 370 A.2d 337, 339-40 (Pa. 1977) (citations omitted); *Fairview Water Co. v. Pa. Pub. Util. Comm’n*, 502 A.2d 162, 165-66 (Pa. 1985) (citations omitted); *Fed. Deposit Ins. Corp. v. Bd. of Fin. & Revenue*, 84 A.2d 495, 499 (Pa. 1951) (citations omitted).

151. Third, the Commission previously considered and rejected adopting a requirement that NGDCs must comply with local ordinances or regulations when it adopted the amended Section 59.18 at Docket No. L-2009-2107155. Among the Comments submitted in the rulemaking proceeding, the City of Lancaster, the City of Lancaster’s Historical Architectural Review Board, and the City of Lancaster’s Historical Commission all argued that the amended

⁸ “Statutory construction rules apply equally to the interpretation of administrative regulations.” *Wheeling-Pittsburgh Steel Corp. v. Dep’t of Env. Prot.*, 979 A.2d 931, 937 (Pa. Cmwlth. 2009)). As in any statutory construction issue, the goal is to ascertain and effectuate the intention of the legislative body. 1 Pa.C.S. § 1921(a). Generally, the plain language provides the best indication of legislative intent. *UMCO Energy, Inc. v. Dep’t of Env. Prot.*, 938 A.2d 530, 535 (Pa. Cmwlth. 2007). “When the words of a statute [or administrative regulation] are clear and unambiguous, a court must not disregard them under the pretext of pursuing the spirit of the statute [or administrative regulation].” *Middletown Twp. v. Lands of Stone*, 595 Pa. 607, 616, 939 A.2d 331, 337 (2007) (citing 1 Pa.C.S. § 1921).

⁹ In essence, the Complainants ask Your Honor to do something that cannot be done -- read in an additional requirement in amended Section 59.18 that was not provided by the Commission. *See Melmark Home v. Workers’ Comp. Appeal Bd. (Rosenberg)*, 946 A.2d 159, 162 (Pa. Cmwlth. 2008) (citation omitted) (stating that courts have “no power to insert words into statutory provisions where the legislature has failed to supply them”); *Kmonk-Sullivan v. State Farm Mut. Automobile Ins. Co.*, 567 Pa. 514, 525, 788 A.2d 955, 962 (2001) (stating that although a court must “listen to what a statute says[;] one must listen attentively to what it does not say”).

Section 59.18 should clarify whether NGDCs must comply with local historic district regulations. (See City of Lancaster Comments, Docket No. L-2009-2107155, pp. 1-2 (July 6, 2012); City of Lancaster HARB Comments, Docket No. L-2009-2107155, p. 2 (July 9, 2012); (City of Lancaster Historical Commission Comments, Docket No. L-2009-2107155, p. 1 (July 10, 2012). Even a cursory review of amended Section 59.18 clearly demonstrates that the Commission declined to adopt a requirement that NGDCs comply with local historic district regulations.¹⁰

152. Fourth, as a general rule, public utilities are exempt from local zoning and land use regulations. See, e.g., *PPL Elec. Utils. Corp. v. City of Lancaster*, 125 A.3d 837 (Pa. Cmwlth. 2015); *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007); *Newtown Twp v. Philadelphia Elec. Co.*, 594 A.2d 834 (1991); *Duquesne Light Co. v. Upper St. Clair*, 105 A.2d 287 (Pa. 1954).

153. Fifth, in addition to only requiring NGDCs to “consider” inside meter locations, the Commission did not delegate, authorize, or otherwise grant local municipalities with authority to require compliance with local ordinances. See *Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location*, Docket No. L-2009-2107155, Attachment One, p. 43 (Order Entered Sept. 13, 2013) (“*Advance Notice of Final Rulemaking Order*”) (“[W]e agree with EAP’s general premise that utilities are not subject to local ordinances in the installation of their facilities, and that the PUC has exclusive jurisdiction in this area.”).

¹⁰ In fact, the Commission even declined to adopt standards addressing the visual impacts of meter placements in historic districts. See *Final Rulemaking Order*, p. 30 (“We shall also decline to address visual impact alternatives that may avoid or minimize the impact of installing the meter and/or regulator outside. Although we would expect a gas utility or any utility to provide reasonable and adequate service when installing its equipment outside, we shall not attempt to set what may be subjective requirements that would avoid or minimize the impact to an historic resource.”) (footnote omitted).

154. Based on the foregoing, UGI is entitled to judgment as a matter of law that 52 Pa. Code § 59.18 does not require the Company to comply with the City's local historic district regulation.

WHEREFORE, UGI respectfully requests that any claims that 52 Pa. Code § 59.18 requires compliance with the City's historic district regulations be summarily dismissed and with prejudice.

I. The Complaints Should Be Dismissed As A Matter Of Law Because They Request Relief That Cannot Be Granted In A Complaint Proceeding Initiated Under 66 Pa. C.S. § 701

155. UGI incorporates by reference Paragraphs 1 through 154 as if fully set forth herein.

156. The Complaints should be dismissed as a matter of law because the relief they request cannot be granted in a formal complaint proceeding against a single gas utility.

157. The Complainants initiated this proceeding by filing Formal Complaints pursuant to 66 Pa. C.S. § 701.

158. Accordingly, the only determinations to be made in this proceeding are whether UGI violated a provision of the Public Utility Code, a Commission order, or a Commission regulation and, if so, whether the Company should be subject to a civil penalty for any violation. See 66 Pa. C.S. §§ 701, 3301.

159. In their Formal Complaints, the Complainants requested the following as 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 meter placement under Rule 59.18(d)(1)(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 façade 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.

(CPHD Complaint ¶ 5) (emphasis added).

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 façade 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 façade 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 façade 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 façades 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.

...

a. 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 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 ¶¶ 53, 65) (emphasis added).

160. The Complainants' requested relief cannot be granted in this Section 701 complaint proceeding because it would impose regulatory requirements regarding meter locations that conflict with the Commission's regulations or that do not currently exist in the Commission's regulations.

161. First, the Complainants' requested relief directly conflicts with 52 Pa. Code § 59.18. Section 59.18 prescribes that unless an exception applies, meters shall be placed outside and aboveground. 52 Pa. Code § 59.18(a)(1). Further, an NGDC need only "consider" an inside meter location in historic districts. *Id.* § 59.18(d)(1). Nothing prohibits the installation of exterior meters in historic districts.

162. Nevertheless, the Complainants request that UGI be required to place all meters in designated historic districts inside buildings, "except where the utility establishes a greater safety risk than in similarly situated historic properties." (City Complaint ¶ 53(a), (c)-(e), (i)) Therefore, rather than having to "consider" inside meter locations for historic district buildings, the Company would be required to place meters inside those buildings, unless it could establish a greater gas safety risk than in similarly situated properties. No such requirement currently exists under the Public Utility Code or the Commission's regulations, and the Commission already considered and rejected a very similar proposal in the rulemaking proceeding. *See Final*

Rulemaking Order, Docket No. L-2009-2107155, p. 26 (“The Mayor [of Allentown] also argues that the inside meter locations in historic districts should be the rule unless the utility can justify [that] the placement should be varied for a particular location.”).

163. Second, the Complainants’ requested relief seeks to impose new, additional regulatory requirements that only would apply to UGI. For example, when UGI installs an exterior gas meter in a historic district (or decides not to relocate an exterior meter to the inside of the building), the City requests that the Company be required to provide a statement of justification to the City. (City Complaint ¶ 53(e), (g)) Moreover, the City requests that UGI be required to “ensure that such placements are unobtrusive and screened from view through the use of landscaping, fencing, and/or architectural building features.” (City Complaint ¶ 53(f)) Furthermore, CPHD requests that UGI “be prohibited from installing any outside meter within 10’ of a City walk unless placed in a buried vault,” and the City similarly proposes that UGI shall install or relocate gas meters to inside the 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.” (CPHD Complaint ¶ 5; City Complaint ¶ 65(a)-(b)) All of these proposed standards and requirements do not currently exist in the Commission’s regulations.

164. As mentioned previously, the Commission recently completed an extensive and detailed formal rulemaking process that adopted the standards and requirements set out in 52 Pa. Code § 59.18, and explicitly declined, as noted above, to establish standards governing the visual impact of meter placements in historic districts. Notably, although the Commission received nearly 60 Comments from interested parties when developing and adopting the amendments to Section 59.18, neither the City nor CPHD submitted any Comments or otherwise participated in the Commission’s formal rulemaking process.

165. To the extent that the Complainants seek additional or more detailed regulatory requirements for NGDCs when installing or relocating meters, they should file a petition pursuant to 52 Pa. Code § 5.43 to amend or modify the Commission's regulations. That process would ensure that all affected parties are afforded due process. If these new, additional regulatory requirements sought by the Complainants are imposed through this Section 701 complaint proceeding, the Company would be subject to different regulatory requirements than all other NGDCs operating in Pennsylvania.

WHEREFORE, UGI respectfully requests that the City's and CPHD's Complaints be summarily dismissed without prejudice to seek their requested relief through an appropriate petition pursuant to 52 Pa. Code § 5.43.

V. SUMMARY OF CLAIMS AND ISSUES THAT SHOULD BE SUMMARILY DISMISSED

166. As explained in Section IV.I above, the City's and CPHD's Complaints should be summarily dismissed because they request relief that cannot be granted in a complaint proceeding initiated pursuant to 66 Pa. C.S. § 701.

167. Notwithstanding, to the extent that the Complaints are not dismissed in their entirety, a substantial number of claims and issues raised by the Complainants should be summarily dismissed.

168. As explained in Sections IV.A-B above, a total of 1,147 meters that Complainants claim to be in violation of amended Section 59.18 were relocated prior to the effective date of these regulations and, therefore, should be summarily dismissed.

169. As explained in Section IV.C above, a total of 337 meters that Complainants allege to be in violation of amended 52 Pa. Code § 59.18(a)(8)(i) are not located under a fire exit and, therefore, should be summarily dismissed.

170. As explained in Section IV.D above, a total of 163 meters that Complainants claim to be in violation of 52 Pa. Code § 59.18(a)(8)(vi) are not in contact with soil or corrosive material and, therefore, should be summarily dismissed.

171. As explained in Section IV.E above, a total of 6 meters that Complainants claim to be in violation of Section 59.18(a)(8)(iii) are not located under an exterior staircase and, therefore, should be summarily dismissed.

172. As explained in Section IV.F above, a total of 118 meters that Complainants claim to be in violation of amended Section 59.18 and Section 59.33 do not have meters and, therefore, should be summarily dismissed.

173. Attached hereto as **Appendices L and M** are copies of the Complainants' historic and non-historic meter matrices identifying all of the meter allegations and claims that should be summarily dismissed as explained in Sections IV.A-F of the instant Motion. For each meter that was relocated prior to the effective date of amended Section 59.18 and/or does not have a meter, the entire row has been grayed out. For any meter locations that remain, the individual cells have been grayed out for each individual claim that should be dismissed (*e.g.*, single cell grayed out for a meter that was relocated after the effective date of the regulation but is not located under an exit that could be used as a fire escape).

174. As explained in Section IV.G, the following issues raised by the Complainants are beyond the scope of the Commission's jurisdiction and should be summarily dismissed: (1) whether UGI complied with the City's local historic district regulations; (2) whether UGI failed

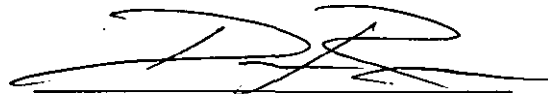
to obtain local permits from the City for the meter installation and relocation projects, and (3) whether the City's historic district regulations are appropriate under state and federal law, including the Environmental Rights Amendment of the Pennsylvania Constitution.

175. Finally, as explained in Section IV.H, the Commission's meter placement regulations do not, as a matter of law, require compliance with local ordinances.

VI. CONCLUSION

WHEREFORE, UGI Utilities, Inc. respectfully requests that the Honorable Administrative Law Mary D. Long enter the proposed Order attached as **Appendix N** granting the Motion for Summary Judgment and (1) enter judgment in favor of UGI Utilities, Inc. with respect to the meter locations identified in **Appendices A through M**, (2) enter judgment in favor of UGI Utilities, Inc. with respect to the claims and issues raised that are beyond the Pennsylvania Public Utility Commission's subject matter jurisdiction, (3) enter judgment in favor of UGI Utilities, Inc. with respect to the legal issue of whether the Commission's meter placement regulations require compliance with local ordinances, and (4) enter judgment in favor of UGI Utilities, Inc. on the grounds that the Complainants have requested relief that cannot be granted in a complaint proceeding initiated under 66 Pa. C.S. § 701, as explained above.

Respectfully submitted,



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Date: July 6, 2017

CERTIFICATE OF SERVICE
(Docket Nos. C-2015-2516051 and C-2016-2530475)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

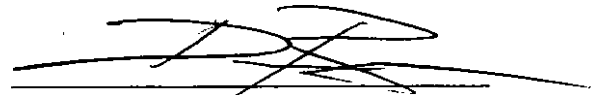
VIA E-MAIL & FIRST CLASS MAIL

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