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District, Inc. and City of Reading*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CITY OF READING, :
 :
v. : Docket No. C-2016-2530475
 :
UGI UTILITIES, INC. :

**COMPLAINANTS', CENTRE PARK HISTORIC DISTRICT, INC.
AND CITY OF READING, RESPONSE TO UGI UTILITIES, INC.'S
MOTION FOR SUMMARY JUDGMENT**

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

AND NOW, come Complainants, Centre Park Historic District, Inc. ("CPHD") and City of Reading (referred to collectively as the "City Parties") by and through their attorneys, Eastburn and Gray, P.C. and Michael J. Savona, Esquire, Michael E. Peters, Esquire, and Michael T.

Pidgeon, Esquire, and reply to the Motion for Summary Judgment of UGI Utilities, Inc. (“UGI”) as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

1. Denied. The allegations of paragraph 1 are based on the Formal Complaint filed by CPHD, which is a writing that speaks for itself. UGI’s characterizations of the contents of the writing are denied.

2. Admitted.

3. Admitted.

4. Denied. The allegations of paragraph 4 are based on CPHD’s Formal Complaint and UGI’s answer thereto, which are writings that speak for itself. UGI’s characterizations of the contents of the writing are denied.

5. Admitted.

6. Denied. The allegations of paragraph 6 are based on the City’s Formal Complaint and UGI’s answer thereto, which are writings that speak for itself. UGI’s characterizations of the contents of the writing are denied.

7. Denied. The allegations of paragraph 7 are based on UGI’s Preliminary Objections and the March 29, 2016 Interim Order denying those preliminary objections which are writings that speak for itself. UGI’s characterizations of the contents of the writings are denied.

8. Admitted.

9. Admitted in part, denied in part. Sentence 1 of paragraph 9 is admitted. Sentences 2 and 3 of paragraph 9 are based on the Third Prehearing Order referenced therein, which is a writing that speaks for itself. UGI’s characterizations of the contents of the writing are denied.

10. Admitted.

11. Denied. The allegations of paragraph 11 are based on the Petition and Joint Motion referenced therein, which are writings that speak for themselves. UGI's characterizations of the contents of the writings are denied.

12. Denied. The allegations of paragraph 12 are based on the Fourth Prehearing Order, which is a writing that speaks for itself. UGI's characterizations of the contents of the writing are denied.

13. Denied. The allegations of paragraph 13 are based on the February 9, 2017 Order, which is a writing that speaks for itself. UGI's characterizations of the contents of the writing are denied.

14. Admitted.

15. Denied. The allegations of paragraph 15 are based on the Sixth Prehearing Order, which is a writing that speaks for itself. UGI's characterizations of the contents of the writing are denied.

16. Denied. The allegations of paragraph 16 are based on the Seventh Prehearing Order, which is a writing that speaks for itself. UGI's characterizations of the contents of the writing are denied.

17. Denied. The allegations of paragraph 17 are based on the Eighth Prehearing Order, which is a writing that speaks for itself. UGI's characterizations of the contents of the writing are denied.

18. Denied. The allegations of paragraph 18 are based on the spreadsheets referenced therein, which are writings that speak for themselves. UGI's characterizations of the contents of the spreadsheets are denied.

19. Denied. The allegations of paragraph 19 are based on the spreadsheets referenced therein, which are writings that speaks for themselves. UGI's characterizations of the contents of the spreadsheets are denied.

20. Denied. The allegations of paragraph 20 are based on the spreadsheets referenced therein, which are writings that speaks for themselves. UGI's characterizations of the contents of the spreadsheets are denied.

21. Admitted.

22. Admitted in part, denied in part. Sentence 1 of paragraph 22 is admitted. The allegations of sentence 2 of paragraph 22 are based on the notes of transcript from the June 15, 2017 prehearing conference which is a writing that speaks for itself. UGI's characterizations of the contents of the writing are denied.

23. Denied. The allegations of paragraph 23 are based on the Interim Order dated June 15, 2017, which is a writing that speaks for itself. UGI's characterizations of the contents of the writing are denied.

24. Denied. The allegations of paragraph 24 are based on UGI's Motion for Summary Judgment, which is a writing that speaks for itself. UGI's characterizations of the contents of the writing are denied.

II. STANDARD FOR SUMMARY JUDGMENT

25. Denied. Denied as a conclusion of law to which no further response is required. To the extent paragraph 25 contains factual allegations, the factual allegations of paragraph 25 are based on the language of Section 5.102 of the Commission's regulations which speaks for itself. UGI's characterizations of the language are denied.

26. Denied. Denied as a conclusion of law to which no further response is required. To the extent paragraph 26 contains factual allegations, the factual allegations of paragraph 26 are based on the language of Section 1035.2 of the Pennsylvania Rules of Civil Procedure, which speaks for itself. UGI's characterizations of the language are denied.

27. Denied. Denied as a conclusion of law to which no further response is required. By way of further response, where disputed questions of fact remain, those facts are identified in City Parties' Brief in Opposition, filed contemporaneously herewith.

III. SUMMARY OF ARGUMENT

A. UGI Is Entitled To Judgment As A Matter of Law With Respect To A Significant Number of Meters Identified By the Complainants

28-32. Paragraphs 28 through 32 are denied, for the reasons set forth in City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated.

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

33-37. Paragraphs 33 through 37 are denied, for the reasons set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated.

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. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated.

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. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated.

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. City Parties incorporate their responses to paragraphs 1 through 39, *supra*, as if fully set forth.

41-53. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.A.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment.

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. City Parties incorporate their responses to paragraphs 1 through 53, *supra*, as if fully set forth.

55-65. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.B.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment.

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. City Parties incorporate their responses to paragraphs 1 through 65, *supra*, as if fully set forth.

67-77. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.C.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment.

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. The City Parties incorporates their responses to paragraphs 1 through 77, *supra*, as if fully set forth.

79-93. Although City Parties deny the allegations set forth in paragraphs 79 through 93 as stated, City Parties withdraw their challenges (with respect to the 163 meters identified by UGI on Appendix "E" and Appendix "F" only) on the basis that certain meters have been installed in contact with soil or other corrosive material, as set forth in the City's Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.D.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment, on the basis that the Motion is mooted by City Parties withdraw of its claims related to the installation of meters in soil or other corrosive material for the 163 meters identified by UGI on Appendix "E" and Appendix "F".

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. The City Parties incorporate their responses to paragraphs 1 through 93, *supra*, as if fully set forth.

95-106. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, and specifically Section VII.E. By way of further response, the City withdraws its challenge pursuant to Section 59.18(a)(8)(iii) with respect to the properties located at 601 North Third Street and 506 West Douglass Street.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment.

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. The City Parties incorporate their responses to paragraphs 1 through 106, *supra*, as if fully set forth.

106-114. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.F.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment.

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

115. The City Parties incorporate their responses to paragraphs 1 through 114, *supra*, as if fully set forth.

116-118. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.G.

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

119. The City Parties incorporate its responses to paragraph 1 through 118, *supra*, as if fully set forth.

120-128. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.G.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment.

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

129. The City Parties incorporate their responses to paragraph 1 through 128, *supra*, as if fully set forth.

130. Denied. City Parties' Formal Complaints do not challenge UGI's meter relocation program on the basis that UGI has failed to obtain any given permit. While the City reserves the right to challenge UGI's meter relocation on this basis, in any current or future proceeding, the issue is not before the Administrative Law Judge in this proceeding. UGI's Motion for Summary Judgment on this basis is improper and should be dismissed.

131. Denied as a conclusion of law to which no further response is required. By way of further response, the City Parties incorporate their response to paragraph 130, *supra*.

132. Denied. Denied as a conclusion of law to which no further response is required. To the extent it is determined that paragraph 132 contains factual allegations, the factual

allegations of paragraph 132 are based on the City's Formal Complaints, which are writings that speak for themselves. UGI's characterizations of the contents of the Formal Complaints are denied.

133. Denied as a conclusion of law to which no further response is required. By way of further response, the City Parties incorporate their response to paragraph 130, *supra*.

134. Denied as a conclusion of law to which no further response is required. By way of further response, the City Parties incorporate their response to paragraph 130, *supra*.

135. Denied as a conclusion of law to which no further response is required. By way of further response, the City Parties incorporate their response to paragraph 130, *supra*.

136. Denied as a conclusion of law to which no further response is required. By way of further response, the City Parties incorporate their response to paragraph 130, *supra*.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment.

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

137. The City Parties incorporate their responses to paragraphs 1 through 136, *supra*, as if fully set forth.

138-145. Denied, as set forth in the City Parties' Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.G.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI's Motion for Summary Judgment.

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

146. The City Parties incorporate their responses to paragraph 1 through 145, *supra*, as if fully set forth.

147-154. Denied, as set forth in the City Parties’ Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.H.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI’s Motion for Summary Judgment.

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. The City Parties hereby incorporate their responses to paragraphs 1 through 154, *supra*, as if fully set forth.

156-165. Denied, as set forth in the City Parties’ Brief in Opposition filed contemporaneously herewith, which is hereby incorporated, including specifically Section VII.I.

WHEREFORE, the City Parties respectfully request that the Commission deny UGI’s Motion for Summary Judgment.

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

166-175. Denied, for the reasons set forth more fully above and in the City Parties’ Brief in Opposition filed contemporaneously herewith.

VI. CONCLUSION

WHEREFORE, for the reasons set forth more fully above and in the City Parties' Brief in Opposition filed contemporaneously herewith, and the Appendices thereto, which are incorporated herein as if set forth in full, the City Parties respectfully request that the Honorable Administrative Law Judge Mary D. Long deny UGI's Motion for Summary Judgment.

EASTBURN AND GRAY, P.C.

/s/ Michael E. Peters

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Dated: July 25, 2017

VERIFICATION

I, John Slifko, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: July 25, 2017

John Slifko
John Slifko