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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. :

**APPLICATION FOR LEAVE TO FILE REPLY TO UGI'S ANSWER
TO THE MOTION FOR SUMMARY JUDGMENT OF CITY OF READING AND
CENTRE PARK HISTORIC DISTRICT, INC.**

BEFORE ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Centre Park Historic District, Inc. (“CPHD”) and the City of Reading (“City”), by and through their attorneys, Eastburn and Gray, P.C. and Michael J. Savona, Esquire, Michael E. Peters, Esquire, and Michael T. Pidgeon, Esquire, hereby submit the following Application for Leave to File a Reply to the Answer of UGI Utilities, Inc. (“UGI”):

1. On July 6, 2017, the City and CPHD (referred to collectively herein as (“City Parties”)) filed a Motion for Summary Judgment in this matter (“Motion”). City Parties’ Motion included the Affidavit of John Slifko, attaching several exhibits.

2. On July 26, 2017, UGI filed an Answer to the City Parties’ Motion identifying certain inconsistencies in City Parties’ Motion for Summary Judgment.

3. Certain technological errors occurred in the transfer of the Affidavit of John Slifko to the file-sharing program used by Counsel for the City of Reading, resulting in the exclusion of 20 pictures that were part of the Affidavit. City Parties shared this electronic version of the Affidavit with counsel for UGI via the file-sharing program, due to its size.

4. Those 20 pictures were, however, included in the hard-copy version of the Affidavit filed with the Commission and served on all parties and The Honorable Judge Mary D. Long. For ease of reference, the 20 pictures are included with the Proposed Reply attached hereto as Exhibit “A”.

5. Moreover, the proposed order filed with City Parties’ Motion for Summary Judgment correctly identified the meters challenged by City Parties.

6. In fact, in its Answer UGI responded individually to *all of the meters* challenged by City Parties in their Motion.¹

7. UGI was in no manner prejudiced by the technological error and inconsistencies identified in its answer.

¹ As clarified in the attached Reply, although two properties on Exhibit “1” were identified as 1649 North 10th Street, one of the properties is, technically, 1649 1/2 North Tenth Street.

8. The Proposed Reply attached hereto serves to clarify the meters challenged by City Parties and resolve the inconsistencies identified by UGI. The Proposed Reply also responds to certain misstatements made in UGI's Answer.

9. City Parties request an opportunity to file the Proposed Reply with the Commission to resolve the inconsistencies, and remedy any confusion caused by the technological error.

10. This request serves to clarify the issues before the Administrative Law Judge to the benefit of all parties.

WHEREFORE, the City and CPHD respectfully request that this Honorable Court permit filing of the Proposed Reply, attached hereto as Exhibit "A".

EASTBURN AND GRAY, P.C.

/s/ Michael E. Peters

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Dated: July 31, 2017

EXHIBIT “A”

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**REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT OF
THE CENTRE PARK HISTORIC DISTRICT, INC. AND CITY OF READING**

I. Introduction

The Centre Park Historic District (“CPHD”) and the City of Reading (the “City”), by and through their attorneys, Eastburn and Gray, P.C., and Michael J. Savona, Esquire, Michael E. Peters, Esquire, and Michael T. Pidgeon, Esquire, file this Reply in Support of their Motion for Partial Summary Judgment. The City and CPHD are referred to collectively herein as “City Parties”.

City Parties filed a Motion for Partial Summary Judgment, which is currently before the Commission, on July 6, 2017 (the “Motion”). UGI Utilities, Inc. (“UGI”) filed an Answer to that Motion on July 26, 2017.

In the Motion, City Parties contend that UGI violated 52 Pa. Code § 59.18 (“Section 59.18”) by installing gas meters: 1) under windows; 2) near building air intakes; and 3) in contact with soil or other corrosive material. City Parties request that the Commission grant summary judgment regarding the contested meters and applicable violations. The photographs included with the Affidavit of John Slifko filed with the Motion and the clear legal obligations set forth in Section 59.18, conclusively established these violations.

UGI makes several arguments in its Answer, which City Parties address below: 1) that City Parties did not include a handful of photographs and did not consistently state the number of meters at issue;¹ 2) that City Parties allegedly stipulated that most of the challenged meters were installed before the effective date of Section 59.18; 3) that City Parties allegedly admitted that many of the challenged meters in violation of Section 59.18(a)(8)(i), although located beneath or in front of a window, did not block a fire exit; and 4) that UGI has identified factual issues that the Commission must resolve.

None of these arguments should prevent the Commission from granting summary judgment against UGI as set forth in the Motion. In response to each of the above arguments: First, the City and CPHD filed and served hard copies of all of the pictures identified in their Motion and the Exhibits and proposed Order attached thereto. Due to a technological error, certain

¹ UGI also takes issue with the organization of the exhibits listing the properties referenced in the Motion. The City and CPHD sought to list the properties in the most logical way possible (alphabetically by street name and then numerically by street number), and was certainly not attempting to harass UGI or the Commission. UGI may disagree with the choices regarding organization, but there is no basis for them to allege ill motive or harassment.

pictures did not upload to the file-sharing program used by counsel for the City and CPHD. However, UGI received all pictures in hard copy, and was on notice of all relevant facts for each identified meter. The Commission also received a hard copy of all photographs. Furthermore, the list and proposed Order attached to the City's and CPHD's Motion was an accurate list of the properties at issue. If UGI harbored any confusion about which meters are at issue, this Reply Brief should clarify that misunderstanding.

Second, contrary to UGI's argument, the City did not stipulate that any meters were relocated/installed before the effective date of Section 59.18. As City Parties explained in their Brief in Opposition to UGI's Motion for Summary Judgment,² not only did no such stipulation take place, counsel for UGI, by e-mail dated April 18, 2017, acknowledged that UGI itself does not maintain data regarding meter relocation/installation.

Third, UGI misinterprets both the Matrix and Section 59.18 regarding whether meters installed beneath or in front of windows violate Section 59.18(a)(8)(i). The City and CPHD explained in their Brief in Opposition to UGI's Motion for Summary Judgment that (1) a meter violates Section 59.18(a)(8)(i) if it is located beneath or in front of a window, without further inquiry and (2) where surveyors observed a meter located under a window it was assumed that that meter also blocked a fire exit—the window itself.

Fourth, and finally, a review of the factual issues raised to UGI's Answer demonstrates that, although UGI attempts to manufacture factual disputes, the pictures speak for themselves and summary judgment in favor of the City and CPHD is manifestly appropriate.

For these reasons, the Commission should grant City Parties' Motion.

² Although UGI alleges that the City and CPHD inappropriately filed briefs, in the June 15, 2017 Interim Order of the Honorable Mary D. Long, Judge Long required both Motions and Responses be accompanied by briefs "setting forth the legal basis for any claims made".

II. Verification of the meters at issue.

In its Answer to City Parties' Motion, UGI points out some inconsistencies in the references to the number of properties contested by City Parties in their Motion. It is obvious that the inconsistencies were nothing more than typographical errors, which were reconciled entirely by the Proposed Order and exhibits filed with City Parties' Motion. Notwithstanding, in order to remedy any outstanding confusion regarding the meters at issue in City Parties' Motion for Summary Judgment, this Reply confirms that the meters identified in the Proposed Order attached to the Motion are those at issue in this matter, resulting in the following alleged violations:

1. For purposes of this motion, a total of 189 properties contain gas meters violation Section 59.18(a)(8)(i) because they are located "beneath or in front of windows or other building openings that may directly obstruct emergency fire exits."
2. For purposes of this motion, a total of 10 properties contain gas meters violating Section 59.18(a)(8)(v) because they are located "[n]ear building air intakes under local or State building codes."
3. For purposes of this motion, a total of 14 properties contain gas meters violating Section 59.18(a)(8)(vi) because they are located "[i]n contact with soil or other potentially corrosive materials."

With respect to UGI's specific comments regarding certain properties identified in City Parties' Motion and/or the pictures accompanying the Affidavit of John Slifko:

1. In response to footnote 5 of UGI's Answer, although City Parties do not concede anything regarding the violations present on 614 Eisenbrown Street, its inclusion in Exhibit A-1 was inadvertent.

2. In response to footnote 6 of UGI's Answer, Property No. 114 and Property No. 118 on Exhibit "1" were intended to refer separately to 1649 North 10th Street and 1649 1/2 North 10th Street.

Further, UGI has been able to attach Exhibits to its Answer for all three categories at issue listing its alleged factual dispute with each meter, including all 189 referenced with regard to 52 Pa. Code § 59.18(a)(8)(i) (under a window), all 10 with regard to Section 59.18(a)(8)(v) (air intakes), and all 14 with regard to Section 59.18(a)(8)(vi) (corrosive materials). (*See, e.g.* UGI Answer, Exhibits 1, 4, 7). Obviously, UGI was able to identify and analyze every meter at issue in City Parties' Motion. While UGI is technically correct regarding the foregoing inconsistencies, it was in no manner prejudiced, and the Commission should proceed on City Parties' Motion for all properties identified in the Proposed Order, as clarified herein.

III. City parties filed the correct set of pictures and served the correct set of pictures on UGI.

UGI further argues that City Parties failed to include certain pictures with their Motion, and specifically: pictures for 15 of the 189 properties identified as containing violations of Section 59.18(a)(8)(i) ("beneath or in front of windows") and for 5 of the 14 properties identified as containing violations of Section 59.18(a)(8)(vi) ("in contact with soil or other potentially corrosive materials"). City Parties acknowledge that, due to a technological error, pictures for the 20 identified properties were not included in the file uploaded to the file-sharing program utilized by counsel for City Parties. More specifically, although the file was compiled in a complete manner, the file had not completely uploaded to the server for City Parties' counsel, and therefore, when loaded from the server to the file-sharing program, was missing 20 pictures. For ease of reference, those 20 pictures are attached hereto as Exhibit "A".

However, the hard-copy version of the Affidavit of John Slifko filed with the Commission and served on the Honorable Mary D. Long and counsel for all parties, *did include* all pictures.

Although Counsel for UGI relied exclusively on the electronic version of the Affidavit, the hard-copy version used for service was complete.

Moreover, Counsel for UGI had access to all pictures; UGI had the Matrix which tracked the pictures by Bates-number. Apparently by relying on these pictures, UGI was able to fully and completely respond to all meters identified by City Parties in their Motion. UGI has in no manner been prejudiced by the technological error that resulted in the exclusion of pictures for 20 properties. To argue that a few missing pictures in the electronic version somehow precluded UGI from responding to them is simply not true: UGI responded fully to all meters.

V. Response to Arguments.

A. The City and CPHD did not stipulate that meters were relocated/installed before the effective date of Section 59.18

In response to UGI's argument that the City and CPHD stipulated that certain meters were relocated/installed before the effective date of Section 59.18, the City and CPHD incorporate Sections VII(A) and (B) of their Brief in Opposition to UGI's Motion for Summary Judgment as if fully set forth herein.

B. The City and CPHD Did Not Concede That Meters Located Beneath or in Front of Identified Below a Window Do Not Violate Section 59.18(a)(8)(i).

In response to UGI's argument that the City and CPHD conceded that meters located beneath or in front of a window did not violate Section 59.18(a)(8)(i) (by failing to also identify those meters as being located in front of a fire exit) the City and CPHD incorporate Section VII(C) of their Brief in Opposition to UGI's Motion for Summary Judgment as if fully set forth herein.

C. **No genuine issues of material fact remain, and the City and CPHD are entitled to judgment as a matter of law.**

The remaining arguments raised by UGI allege that certain questions of material fact remain with respect to the meters identified by City Parties in their Motion for Summary Judgment. The pictures, supported by the Affidavit of John Slifko, speak for themselves, and conclusively establish the violations alleged by City Parties. No questions of fact remain. City Parties therefore respectfully request that the Commission enter summary judgment in their favor.

VI. **Conclusion**

In consideration of the foregoing, the City and CPHD respectfully request summary judgment in their favor as set forth in the Motion for Partial Summary Judgment and proposed form of Order.

Respectfully submitted,

EASTBURN & GRAY, PC

/s/ Michael E. Peters

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Dated: July 31, 2017

EXHIBIT “A”

Historic District – Meter Under a Window

647 Bingaman St Reading

_07336 _07336

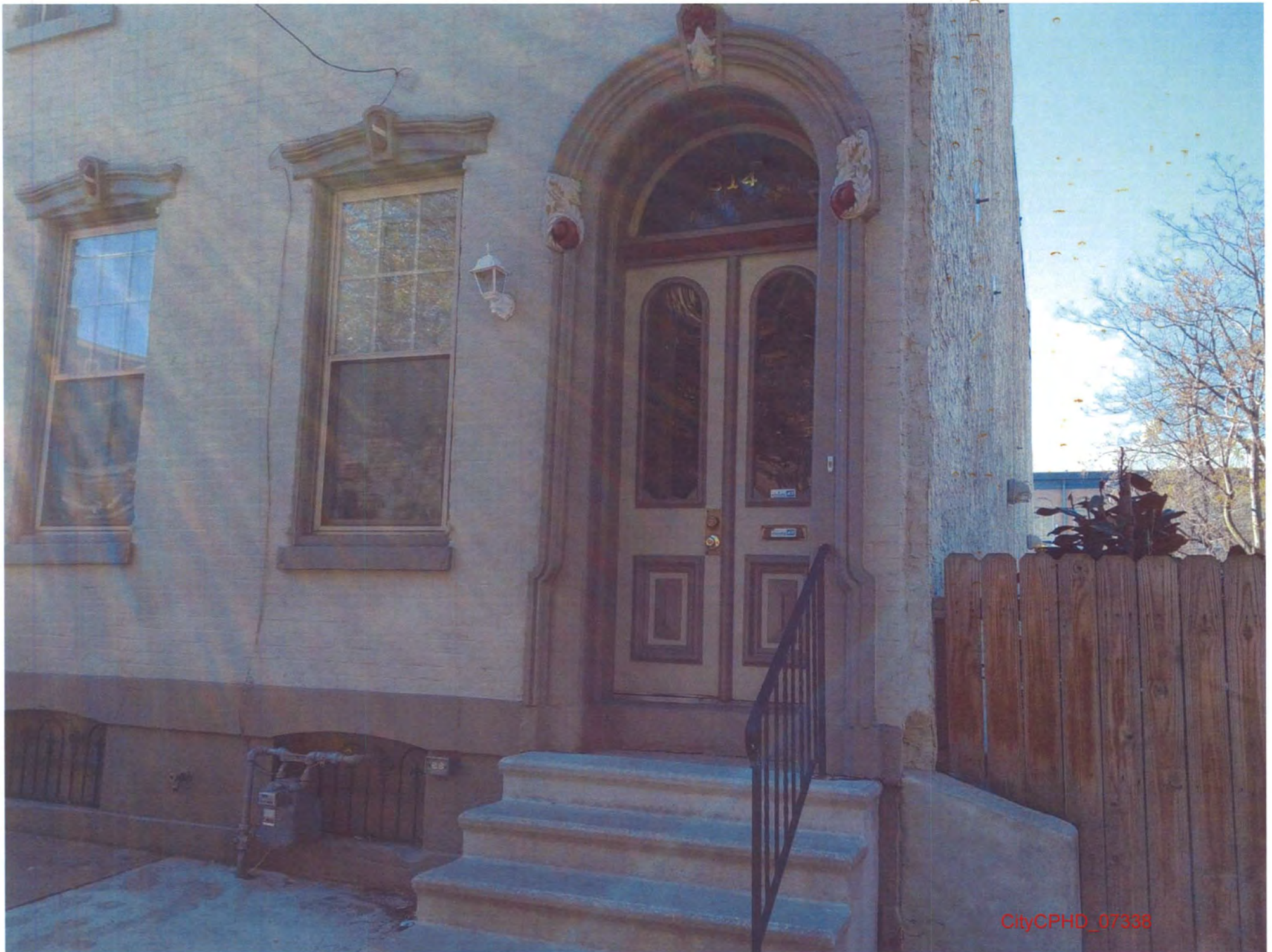


CityCPHD_07336

Historic District – Meter Under a Window

514 Chestnut St Reading

_07338 _07338



CityCPHD_07338

Historic District – Meter Under a Window

517 Laurel St Reading

_07344 _07344



CityCPHD_07344

Historic District – Meter Under a Window

527 Laurel St Reading

_07349 _07349



Historic District – Meter Under a Window

517 Minor St Reading

_07611 _07611



CityCPHD_07611

Historic District – Meter Under a Window

310 N 5th St Reading

_02503 _02504

OPEN

310

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Historic District – Meter Under a Window

319 N 5th St Reading

_07160 _07160



CityCPHD_07160

Historic District – Meter Under a Window

321 N 5th St Reading

_07161 _07161



CityCPHD_07161

Historic District – Meter Under a Window

323 N 5th St Reading

_07162 _07162



CityCPHD_07162

Historic District – Meter Under a Window

331 N 5th St Reading

_07165 _07165



Historic District – Meter Under a Window

336 N 5th St Reading

_02496 _02496



Historic District – Meter Under a Window

419 Oley St Reading

_02430 _02431





CityCPHD_02431

Historic District – Meter Under a Window

417 S 5th St Reading

_07173 _07173



CityGPHD_07173

Historic District – Meter Under a Window

614 S 7th St Reading

_07400 _07400



CityCPHD_07400

Historic District – Meter Under a Window

434 Spring St Reading

_02480 _02480



436

434

ENYOPHD_02480

Historic District – Meter in Contact with Soil/Corrosive Materials

454 Douglass St Reading

_02324 _02327



454







Historic District – Meter in Contact with Soil/Corrosive Materials

947 N 5th St Reading

_02333 _02333



Historic District – Meter in Contact with Soil/Corrosive Materials

1034 N 5th St Reading

_02344 _02344



1032

1034

Historic District – Meter in Contact with Soil/Corrosive Materials

1037 N 5th St Reading

_02338 _02338



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1037

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Historic District – Meter in Contact with Soil/Corrosive Materials

1041 N 5th St Reading

_02339 _02339



CityOPHD_02339