**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Centre Park Historic District, Inc. :

:

v. :C-2015-2516051

:

UGI Utilities, Inc. – Gas Division :

City of Reading :

:

v. :C-2016-2530475

:

UGI Utilities, Inc. :

**INTERIM ORDER**

**DENYING COMPLAINANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

On November 25, 2015, the Centre Park Historic District, Inc. (CPHD) filed a formal complaint which alleged that UGI Utilities, Inc. – Gas Division (UGI), violated the Commission’s regulation regarding the placement of meters in historic districts of Reading, Pennsylvania. 52 Pa.Code § 59.18. UGI filed an answer denying the material allegations of the complaint on December 15, 2015. It is UGI’s position that Section 59.18 grants it discretion in the placement of meters in historic areas and that its actions have been appropriate as required by the Public Utility Code.

On February 17, 2016, the City of Reading filed a formal complaint against UGI Utilities, Inc. (UGI), challenging UGI’s placement of meters in historic districts as well as the outside placement of meters in unsafe locations in other districts of the city. On March 14, 2016, UGI filed an answer denying the material allegations of the complaint and also preliminary objections seeking dismissal of the complaint. The City of Reading filed an answer to the preliminary objections on March 24, 2016. By interim order dated March 29, 2016, the preliminary objections were denied. The complaints of CPHD and the City of Reading (Complainants) were consolidated by order entered March 30, 2016.

The Commission’s Bureau of Investigation and Enforcement (BIE) entered an appearance on August 10, 2016.

Several prehearing conferences have been held.[[1]](#footnote-1) A conference was held on March 16, 2017, which set forth a schedule for the proceedings. I issued a Sixth Prehearing Order on March 21, 2017 which, among other things, directed the Complainants to produce spreadsheets setting forth a list of disputed meters which included the date a permit was issued by the City of Reading and the date the meter was relocated. The initial spreadsheets were to be served by April 20, 2017. UGI was provided until May 4, 2017 to respond. Following requests to modify the deadlines for completing the spreadsheets and modifications, the final completed spreadsheet was filed on May 24, 2017.

The Sixth Prehearing Order also directed the parties to complete all discovery by May 30, 2017, and scheduled a further prehearing conference for June 15, 2017.

A further prehearing conference was held on June 15, 2017. The Complainants and UGI each filed prehearing memoranda. Various matters relating to these proceedings were discussed. Following the conference, an interim order was issued which directed the parties to schedule a settlement conference and also set forth deadlines for the filing of dispositive motions and responses. That order required the motions and responses to conform to the Commission’s regulations at 52 Pa.Code §§ 5.102-5.103, as well as Pa.R.C.P. Nos. 1035.1-1035.5. Motions and responses were to be accompanied by legal memoranda setting forth the legal basis for any claims made.

On July 6, 2017, the Complainants filed a motion for partial summary judgment.[[2]](#footnote-2) That motion was supported by the affidavit of John Slifko and photographs and included a legal memorandum. UGI filed a response to the motion on July 26, 2017. [[3]](#footnote-3)

On July 31, 2017, the Complainants filed a motion for leave to file a reply which included additional photographs which were omitted from the motion which was filed with the Secretary’s Bureau. UGI objected to the motion with a voluminous response filed on August 9, 2017. As set forth in the ordering paragraphs below, while UGI’s substantial efforts to organize the Complainants’ allegations are recognized and appreciated, it does not appear that UGI is prejudiced by granting the Complainants’ motion for leave to file a reply. The Complainants’ motion is granted.

Standard for Summary Judgment

The standard of review for a motion for summary judgment is well known. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law.[[4]](#footnote-4) The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences.[[5]](#footnote-5) All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.[[6]](#footnote-6) Judgment will be granted only where the right is clear and free from doubt.[[7]](#footnote-7)

Disposition of the Complainants’ Motion

The Complainants rely on the affidavit of John Slifko and numerous photographs included with his affidavit and identified as Exhibit A-1. As explained above, this exhibit was supplemented by photographs attached to the Complainants’ motion for leave to file a reply which were omitted from the motion which was filed with the Secretary’s Bureau and served on me. The Complainants’ motion includes Exhibits 1-3 which are a list of addresses which the Complainant’s claim violate the Public Utility Code. The motion also refers to highlighted matrices. No matrix was included with the copy of the motion that was served on me. It may be that the matrix referred to in the motion was included on a file-sharing program used by the Complainants. However, by email dated April 27, 2017, the Complainants were notified that I could not access the file sharing program. No leave was granted to file any exhibits by electronic version only. Complete hard copies were to be provided and mailed directly to me.[[8]](#footnote-8) Therefore, my ruling on the Complainants’ motion does not include consideration of a matrix highlighted by the Complainants. However, I have referred to the copy of the Stipulated Spreadsheets which were served by letter dated June 15, 2017.[[9]](#footnote-9)

Further, I have relied on the addresses set forth in Exhibits 1-3 and the proposed order for the number and location of the meters upon which the Complainants seek summary judgment, rather than the meter counts provided in their motion.

The Complainants contend that they are entitled to judgment in their favor because 189 meters violate Section 59.18(a)(8)(i), which provides:

(a) General requirements for meter and regulator location.

(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.

The Complainants list the properties in Appendix A to the affidavit of John Slifko and include photographs attached to the Slifko affidavit as Section A-1.[[10]](#footnote-10)

UGI opposed the Complainants’ motion as to 163 of the 189 meter locations because the Complainant’s have stipulated that these meters are not “under an opening that could be a fire exit.” UGI further contends that the photographs submitted in support of the motion show that the meter is located off to the side of any windows or in front of the properties’ porches. Moreover, UGI contends that the photographs do not demonstrate that the windows can be used as an emergency fire exit.[[11]](#footnote-11)

The Complainants have the burden of proving that there are no genuine issues of material fact that the meter placement at the addresses identified in their motion are in violation of Section 59.18(a)(8)(i). Where the Complainants have stipulated that the meters are not under an opening that could be used as a fire exit on the Stipulated Spreadsheet, they are not entitled to judgment in their favor unless the photographs demonstrate (1) that the meter is “in front of” the window and (2) that the meter may also “directly obstruct emergency fire exits.” While some of the meters appear to be in front of windows, none of the photographs supplied by the Complainants clearly demonstrate that any of the windows or openings are emergency fire exits. Therefore, the Complainants have not established that there is no genuine issue of material fact and that they are entitled to judgment in their favor.

The Complainants next contend that ten meters violate Section 59.18(a)(8)(v), because they are placed by UGI “[n]ear building air intakes under local or State building codes.” In response, UGI contends that the photographs do not demonstrate that the placement of the meters violate this section of the code.

The photographs do not definitively establish that the meter placement on these ten properties violate Section 59.18(a)(8)(v). Several of the photographs do not have any pictures of meters. Others include all manner of pipes or openings in addition to the meter. Mr. Slifko’s affidavit appears to identify approximately when the pictures were taken and by whom, but it includes no testimony identifying the facilities included in the photograph. Complainants’ motion avers that the photographs “speak for themselves.” While photographs can be considered to “speak for themselves” in some contexts, these photographs are not in that class. In order to establish that there is no issue of material fact, an explanation of what the picture purports to show is necessary. It is not obvious which of the pipes or other items in the photographs are “air intakes” and that any of these facilities that may be air intakes are “under local or State building codes.”

The Complainants’ motion fails to include any evidence which establishes the significance of what is shown in the photographs. Therefore the motion is denied as to the ten meters that the Complainants claim violate section 59.18(a)(8)(v).

Finally, the Complainants contend that 14 meters identified in Exhibit 3, are placed in violation of Section 59.18(a)(8)(vi) because they are “[i]n contact with soil or other potentially corrosive materials.” In response, UGI avers that the photographs do not prove that UGI installed the meters in contact with soil or other corrosive materials, nor is it clear from the photographs that all of the meters are necessarily in contact with either soil or potentially corrosive materials.

As explained above in the context of the other bases for summary judgment claimed by the Complainants, the photographs of the 14 meters do not definitively establish that UGI violated Section 59.18(a)(8)(vi). Nor does the affidavit of Mr. Slifko add the necessary testimony to support the claim. Therefore the motion is denied as to these meters as well.

THEREFORE,

IT IS ORDERED:

1. That the Application for Leave to File Reply to UGI’s Answer to the Motion for Summary Judgment served by the Complainants on July 31, 2017, is granted.

2. That the Motion for Partial Summary Judgment filed by the Centre Park Historic District, Inc. and the City of Reading in the above-captioned matter is denied.

Date: September 7, 2017 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mary D. Long

Administrative Law Judge

**C-2015-2516051 - CENTRE PARK HISTORIC DISTRICT INC v. UGI UTILITIES INC**

**C-2016-2530475 - CITY OF READING v. UGI UTILITIES, INC.**

*Revised 6/15/17*

MARK C MORROW ESQUIRE

DANIELLE JOUENNE ESQUIRE

UGI UTILITIES INC

460 NORTH GULPH ROAD

KING OF PRUSSIA PA 19406-2807

**610.768.3628**

**610.992.3203**

*Accepts E-service*

*Representing UGI Utilities, Inc. – Gas Division*

MICHAEL J SAVONA ESQUIRE

\*MICHAEL E PETERS ESQUIRE

ZACHARY A SIVERTSEN ESQUIRE

\*MICHAEL T PIDGEON ESQUIRE

EASTBURN AND GRAY PC

60 EAST COURT STREET

PO BOX 1389

DOYLESTOWN PA 18901

**215.345.7000**

\**Accepts E-service*

*Representing Centre Park Historic District, Inc.*

DAVID B MACGREGOR ESQUIRE

POST & SHELL PC

FOUR PENN CENTER

1600 JOHN F KENNEDY BOULEVARD

PHILADELPHIA PA 19103-2808

**215.587.1197**

*Representing UGI Utilities, Inc.*

DEVIN T RYAN ESQUIRE

CHRISTOPHER T WRIGHT ESQUIRE

POST & SHELL PC

17 NORTH SECOND STREET

12TH FLOOR

HARRISBURG PA 17101-1601

**717.731.1970**

*Accepts E-service*

*Representing UGI Utilities, Inc.*

MICHAEL L SWINDLER ESQUIRE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

BUREAU OF INVESTIGATION AND ENFORCEMENT

PO BOX 3265

HARRISBURG PA 17105-3265

**717-787-5000**

*Accepts E-service*

1. For a complete rendition of the procedural history of this matter, see the Initial Decision Denying in Part and Granting in Part UGI’s Motion for Summary Judgment, served on September 7, 2017. [↑](#footnote-ref-1)
2. UGI also filed a motion for summary judgment on July 6, 2017, to which the Complainants responded. That motion is decided separately. [↑](#footnote-ref-2)
3. In its answer to the Complainants’ motion, UGI submits that the Complainants’ brief in support of their motion is procedurally improper and should be stricken. Answer at note 1. Although not required by the Commission’s regulations, the parties were directed to file memoranda by Paragraph 7 of my June 15, 2017 interim order. Therefore, the Complainants brief was submitted in compliance with the June 15, 2017 order and is considered accordingly. [↑](#footnote-ref-3)
4. 52 Pa.Code § 5.102(d)(1). [↑](#footnote-ref-4)
5. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa.Super.1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa.Cmwlth. 1976). [↑](#footnote-ref-5)
6. *Thomson Coal Company v. Pike Coal Company*, 412 A.2d 466 (Pa. 1979). [↑](#footnote-ref-6)
7. *E.g., Marks v. Tasman,* 527 Pa. 132, 134–35, 589 A.2d 205, 206 (1991). [↑](#footnote-ref-7)
8. The Complainants served a hard copy of their motion and the affidavit addressed to me in Harrisburg, rather than to my office in Pittsburgh which delayed receipt by several days. [↑](#footnote-ref-8)
9. Paragraph 4 of the Sixth Prehearing Order dated March 21, 2017 required the spreadsheets to be served in both electronic and hard copy. [↑](#footnote-ref-9)
10. Updated with reply. The motion also indicates that the addresses are “highlighted in the matrices in green.” However, the copy of the Complainants’ motion that was served on me did not include a matrix. Nor does the inventory included in Appendix A or Section A-1 of the Slifko affidavit track the order of the addresses in the Stipulated Spreadsheets. [↑](#footnote-ref-10)
11. UGI also contends that the placement of these meters predates amended Section 59.18. This issue is also the subject of UGI’s motion for summary judgment and will be dealt with by separate order on that motion. [↑](#footnote-ref-11)