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Historic District, Inc.*

**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 THE MOTION OF UGI UTILITIES, INC TO VACATE
THE OCTOBER 5, 2017 INTERIM ORDER SUSPENDING LITIGATION**

TO THE HONORABLE MARY D. LONG:

Centre Park Historic District, Inc. and the City of Reading (collectively, the “City Parties”) hereby respond to the Motion of UGI Utilities, Inc. (“UGI”) to Vacate the October 5, 2017 Interim Order Suspending Litigation as follows:

1. Nearly two months after filing, UGI now seeks to withdraw its exceptions to the ALJ’s decision on the parties’ cross-motions for summary judgment (the “Exceptions”).

2. UGI's attempt to effect this withdrawal comes *after* both the delay and the expenditure of resources on this issue has taken place. To add insult to injury, UGI is also asking the PUC to not only permit the withdrawal of the Exceptions, but to create special rules for UGI to permit them to reserve their right to make the arguments therein at a later date. The PUC's rules simply do not allow such action.

3. Additionally, UGI's proposed litigation schedule is grossly unreasonable and unworkable. The proposed schedule would require the City Parties to expend significant time and public resources to prepare written testimony on issues which may ultimately be rendered moot by the PUC's ruling on the Exceptions. Such a result is wasteful and antithetical to the judicial economy that UGI claims to promote.

4. By way of background, by Order dated September 7, 2017, Administrative Law Judge Mary D. Long issued an Initial Decision denying UGI's Motion for Summary Judgment (filed July 6, 2017) in part.

5. On September 27, 2017, UGI filed Exceptions to the Initial Decision.

6. By Interim Order dated October 5, 2017, Administrative Law Judge Long suspended the litigation schedule in this matter, pending disposition of UGI's Exceptions.

7. City Parties filed their reply to UGI's Exceptions on October 6, 2017.

8. On October 31, 2017, UGI filed the within Motion to Vacate the Interim Order and for permission to withdraw the Exceptions.

9. In its Motion to Vacate, UGI argues that the PUC should vacate the October 5, 2017 Order due to UGI's proposed withdrawal of its Exceptions.

10. UGI further requests the right to raise the issues and arguments advanced in its Exceptions in an “Initial Decision issued after the conclusion of the evidentiary hearings.” UGI may withdraw its Exceptions pursuant to 52 Pa.Code § 5.539, “at any time.”

11. However, upon withdraw of its Exceptions, the Initial Decision “becomes final and effective”, 52 Pa.Code § 5.539(b), as if no exceptions had been filed.

12. Accordingly, UGI is seeking relief which no other utility or party is entitled to receive under the Code – in effect a special rule – to allow UGI the benefit of withdrawing its Exceptions with no procedural consequence.

13. The PUC should not permit UGI to withdraw its Exceptions *and* retain the ability to raise the arguments raised therein at a later date. Such practice would be in direct conflict with 52 Pa.Code. § 5.539(b) and UGI has identified no authority to support its request for special treatment of its request in contravention of the Commission’s rules.

14. While UGI asserts that withdrawing their Exceptions serves the public interest of judicial economy such argument is misplaced. City Parties already incurred legal fees (necessitating the expenditure of public funds) when they filed their required Reply to the Exceptions. At this point, public interest is served by moving forward with disposition of the Exceptions.

15. Simultaneous with the filing of this Reply, City Parties are filing a letter in opposition to UGI’s October 31, 2017, letter to the PUC requesting that the Commission grant them special authorization to preserve their Exceptions, even if withdrawn.

16. To the extent that UGI has predicated the instant Motion to Vacate the October 5, 2017, Order suspending the litigation schedule in this matter on affirmative action by the Commission relating to its October 31, 2017, request to preserve its Exceptions, it is unclear that

UGI's proposed Motion is timely or appropriate. UGI only appears willing to withdraw its Exceptions if the Commission grants UGI approval to operate outside the Code and Rules governing the effect of such a withdrawal.

17. Additionally, should the Administrative Law Judge grant the Motion to Vacate, UGI's proposed litigation schedule is unreasonable.

18. City Parties should not be required to expend additional public funds to prepare direct testimony and arguments to address legal issues that the PUC may resolve by disposition of the Exceptions.

19. And even assuming the Administrative Law Judge disposes of UGI's Motion to Vacate immediately, UGI proposes submission of direct testimony in just over a month, in the middle of the holiday season, which is also the City's budget season. This schedule is not remotely reasonable.

20. To the extent the Administrative Law Judge grants the Motion to Vacate, City Parties propose the following litigation schedule:

Direct Testimony and Exhibits:	February 28, 2018
Hearings:	week of March 26, 2018
Main Briefs:	within 30 days of last hearing
Reply Briefs:	within 30 days of Main Briefs

WHEREFORE, City Parties respectfully request that the Administrative Law Judge DENY UGI's Motion to Vacate, or in the alternative, enter an Order adopting the litigation schedule proposed herein.

Respectfully submitted,

EASTBURN & GRAY, PC

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Dated: November 10, 2017

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