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July 9, 2018

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**

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SECRETARY'S BUREAU
FRONT DESK

Dear Secretary Chiavetta:

Enclosed for filing is the Motion of UGI Utilities, Inc. to Strike Certain Portions of the Complainants' Direct Testimony and Exhibits in the above-referenced proceeding.

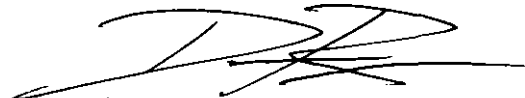
As stated in the enclosed Motion, the Company requests an expedited response period of five (5) days to facilitate a ruling on the Motion in sufficient time before its rebuttal testimony is due on July 27, 2018.

Further, the Company notes that the discovery documents referenced in Appendices B, C and E are quite large. Accordingly, these documents are being provided on DVDs and can be downloaded by the parties using the link provided by counsel in a separate e-mail.

Copies will be provided as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary
July 9, 2018
Page 2

Respectfully submitted,



Devin Ryan

DTR/jl
Enclosures

cc: Honorable Mary D. Long
Certificate of Service

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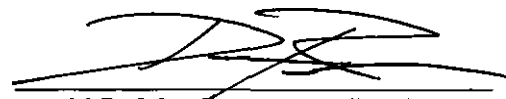
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Centre Park Historic District : Docket Nos. C-2015-2516051
City of Reading : C-2016-2530475
:
:
v. :
:
UGI Utilities, Inc. :

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS GENERALLY ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. **IN THE INSTANT MOTION, THE COMPANY REQUESTS AN EXPEDITED RESPONSE PERIOD OF FIVE (5) DAYS TO FACILITATE A RULING ON THE MOTION IN SUFFICIENT TIME BEFORE UGI UTILITIES, INC.'S REBUTTAL TESTIMONY IS DUE ON JULY 27, 2018.** YOUR ANSWERS 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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Dated: July 9, 2018

Attorneys for UGI Utilities, Inc.

RECEIVED

JUL - 9 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Centre Park Historic District	:	Docket Nos. C-2015-2516051
City of Reading	:	C-2016-2530475
	:	
v.	:	
	:	
UGI Utilities, Inc.	:	

**MOTION OF UGI UTILITIES, INC. TO
STRIKE CERTAIN PORTIONS OF
THE COMPLAINANTS' DIRECT TESTIMONY AND EXHIBITS**

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 pursuant to the Pennsylvania Public Utility Commission's ("Commission") regulations at 52 Pa. Code § 5.103, this Motion to Strike certain portions of the City of Reading's ("City") and Centre Park Historic District's ("CPHD") (collectively, "Complainants") direct testimony and exhibits.

Further, the Company respectfully requests that Administrative Law Judge Mary D. Long (the "ALJ") order that any responsive pleadings to the Motion to Strike be due within five (5) days to facilitate a ruling on the Motion in sufficient time before UGI's rebuttal testimony and exhibits is due on July 27, 2018.

As explained herein, UGI respectfully submits that the ALJ should enter the proposed Order attached hereto as **Appendix F** and:

- (1) Strike any testimony and exhibits about meter locations that were not personally surveyed by the Complainants' witnesses;

(2) Strike the Complainants' testimony and exhibits about any meter locations that were not previously identified as being disputed;

(3) Strike any exhibits that the Complainants did not produce in discovery as well as any testimony based on those exhibits;

(4) Strike the testimony and exhibits of Peggy Harter, Reading Statement No. 3, and any testimony or exhibits referring to her testimony and exhibits, because she was never identified as potential witness in discovery or the Complainants' prehearing memoranda;

(5) Strike the Complainants' testimony and exhibits about new alleged tripping incidents that were never disclosed in discovery;

(6) Strike the portions of the Complainants' testimony and exhibits about potential vandalism, meter freeze-ups, and other issues outside the scope of the Formal Complaints;

(7) Strike the Complainants' testimony about meters marked as being under windows but not under openings that could be used as fire exits, because those issues were summarily dismissed; and

(8) Strike the many hearsay statements in the Complainants' testimony and exhibits.

In support thereof, UGI states as follows:

I. BACKGROUND

1. This matter was initiated on November 25, 2015 (*i.e.*, over 31 months ago), and has a long and convoluted procedural history. The following background and procedural history is relevant to this Motion to Strike.

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 schedule 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 Eighth 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 they were disputing, 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, 2017 prehearing conference, the ALJ also established due dates for dispositive motions and replies thereto of July 6, 2017, and July 26, 2017, respectively.

24. On June 15, 2017, the ALJ issued the Interim Order Setting Deadlines for Settlement Conference, Dispositive Motions, and Other Matters, which memorialized the deadlines established at the June 15, 2017 prehearing conference. The Interim Order further declared that following disposition of dispositive motions, a further conference would be scheduled to set deadlines for written direct testimony and evidentiary hearings on any remaining claims.

25. On July 6, 2017, UGI filed a Motion for Summary Judgment, and the Complainants filed a Motion for Partial Summary Judgment.

26. On July 26, 2017, UGI filed an Answer to the Complainants' Motion for Partial Summary Judgment, and the Complainants filed an Answer to UGI's Motion for Summary Judgment.

27. On September 7, 2017, the ALJ issued an Interim Order denying the Complainants' Motion for Partial Summary Judgment. Further, an Initial Decision was issued granting in part and denying in part UGI's Motion for Summary Judgment.

28. On September 27, 2017, UGI filed Exceptions to the September 7, 2017 Initial Decision.

29. On October 5, 2017, the ALJ issued an Interim Order suspending the litigation schedule pending the Commission's ruling on UGI's Exceptions. The Interim Order further directed the parties to submit, within 10 days of the Commission's ruling, a proposed schedule for concurrent service of written direct testimony and evidentiary hearings in Harrisburg.

30. On October 6, 2017, the Complainants filed Replies to UGI's Exceptions.

31. On October 18, 2017, the ALJ issued an Interim Order on Request for Further Proceedings, which directed UGI to, among other things, file a motion to vacate the October 5, 2017 Interim Order that include: (1) a thorough proposal on how to move the case faster toward final disposition; and (2) a proposal procedural schedule. The Complainants and I&E would then have 10 days to file a responsive pleading.

32. On October 31, 2017, UGI filed (1) a Motion to Vacate the October 5, 2017 Interim Order Suspending Litigation and (2) a letter requesting to withdraw its Exceptions, both of which sought to reserve the Company's right to raise in briefing the issues and arguments set forth in its Exceptions.

33. On November 13, 2017, the Complainants filed an Answer to UGI's Motion to Vacate.

34. On November 14, 2017, I&E filed a letter stating that it would not be filing an Answer to UGI's Motion to Vacate.

35. On November 20, 2017, the Complainants filed a letter opposing UGI's October 31, 2017 request to withdraw its Exceptions.

36. On December 21, 2017, the Commission issued an Opinion and Order denying UGI's Exceptions. Also, the ALJ issued an Interim Order Setting Litigation Schedule, which directed the parties to exchange written direct testimony and exhibits by February 23, 2018, with evidentiary hearings to be held on March 27 through March 29, 2018.

37. On January 2, 2018, a Hearing Notice was issued scheduling evidentiary hearings for March 27 through March 29, 2018, before the ALJ in Harrisburg.

38. On January 12, 2018, the City filed a Withdrawal of Appearance for its counsel from Eastburn & Gray, P.C. and a Notice of Appearance for the City's Solicitor's Office and Jan D. Krafczek as counsel on behalf of the City.

39. On February 1, 2018, the City's new counsel filed a Motion for 60-Day Stay of Proceedings and Extension of Deadlines.

40. On February 2, 2018, UGI filed a Withdrawal of Appearance of Christopher T. Wright, Esquire, as counsel on behalf of the Company. Further, I&E filed a Withdrawal of Appearance.

41. On February 15, 2018, UGI filed an Answer to the City's Motion for 60-Day Stay of Proceedings and Extension of Deadlines and indicated that it did not oppose the request.

42. Also on February 15, 2018, the ALJ issued a Second Interim Order Granting Continuance, which directed the parties to exchange written direct testimony and exhibits by April 23, 2018, with evidentiary hearings to be held on May 15 through May 17, 2018.

43. On April 4, 2018, the City filed a Notice of Appearance for Charles E. Thomas, Jr., Esquire, and Charles E. Thomas, III, Esquire, as the City's latest counsel.

44. On April 17, 2018, the City filed a Motion for Continuance and Scheduling of Status Conference, which proposed UGI's and the City's agreed-upon dates for settlement discussions, written testimony, and evidentiary hearings.

45. On April 18, 2018, a Notice was issued scheduling a telephonic status conference for April 23, 2018.

46. On April 24, 2018, the ALJ issued an Interim Order Granting a Further Continuance, which ordered, among other things, the Complainants to serve their written direct testimony and an updated Joint Stipulation on or before June 29, 2018, and UGI to serve its

written rebuttal testimony on or before July 27, 2018. Also, a Notice was issued scheduling evidentiary hearings for August 21 through August 24, 2018, before the ALJ in Harrisburg.

47. On May 16, 2018, CPHD filed an Entry of Appearance for Scott Hoh, Esquire, as new counsel.

48. On May 29, 2018, the City filed a Status Report on the parties' settlement efforts.

49. On June 4, 2018, CPHD filed an Entry of Appearance for Rich Raiders, Esquire, as additional counsel.

50. On July 3, 2018, the Complainants served their written direct testimony and exhibits.

II. MOTION TO STRIKE

A. ANY TESTIMONY AND EXHIBITS ABOUT METER LOCATIONS THAT WERE NOT PERSONALLY SURVEYED BY THE COMPLAINANTS' WITNESSES SHOULD BE STRICKEN

50. The Complainants' testimony and exhibits about meter locations that were not personally surveyed by their witnesses should be stricken because without those other surveyors appearing as witnesses: (1) their factual representations about the meter locations cannot be authenticated; (2) their allegations about the meter locations amount to inadmissible hearsay; and (3) UGI would be denied the ability to cross-examine them about their allegations.

51. In this proceeding, the Complainants were directed by the ALJ to produce a complete and exhaustive list of all meter locations that they were disputing. *See* Sixth Prehearing Order, Ordering Paragraphs 1-2.

52. Ultimately, the Complainants filed the Joint Stipulation, which contained two spreadsheets, one for historic districts and one for non-historic districts, listing all of the meter locations that the Complainants were challenging.

53. Both of those spreadsheets contained a column identifying the person who surveyed each meter location, performed the measurements of the meter to the curb, and analyzed and alleged whether a meter was placed in a prohibited location. (Joint Stipulation, Historic Matrix, Column 19 and Non-Historic Matrix, Column 18)

54. Although John Slifko surveyed all of the non-historic meter locations, the Complainants enlisted the following individuals to survey the historic meter locations:

- i. John Slifko (City of Reading Councilmember, District 6);
- ii. Beth Ireland (Advertising Art & Design Technology Instructor at Berks Career & Technology Center);
- iii. Maria L. Ballas (Retired);
- iv. Anita Donatelli (Unemployed);
- v. Nadine Smet-Weiss (Director of Policy and Program Development); and
- vi. Melvyn Jacobson (Project Manager, Architect, Consultant).

A true and correct copy of the Complainants' discovery response identifying these individuals and providing their employer and job title is attached hereto as **Appendix A (UGI to City&CPHD-II-6, supplemental)**.

55. Therefore, with the exception of Mr. Slifko, the Complainants have not called as witnesses the individuals that actually completed by the meter-by-meter surveys, the results of which were presented by the Complainants in the historic and non-historic matrices.

56. Accordingly, the Complainants cannot introduce and authenticate these surveys because the preparers have not been presented as witnesses to sponsor their factual representations about the meter locations.

57. In addition, because they are not being presented as witnesses, these surveyors' factual allegations about the meters constitute inadmissible hearsay. The Complainants are

trying to submit the surveyors' uncorroborated out-of-court statements about the meters' locations for the truth of the matter asserted.¹

58. Indeed, the factual allegations about these meters are not self-evident from the pictures taken. All of them require either specific in-person measurements or a degree of interpretation, such as: (1) the distance from the meter to the curb; (2) whether the meter is “[u]nder a fire escape”; (3) whether the meter is “[u]nder a window”; (4) whether the meter is “[u]nder an exterior staircase”; (5) whether the meter is “[u]nder an opening that could be” used as “a fire exit”; (6) whether the meter is “[n]ear a building air intake”; (7) whether the meter is “[i]n an area where water/snow/ice accumulates”; (8) whether the meter or regulator is “in contact with soil/corrosive materials”; and (9) whether there “[i]s an Alternative unobtrusive location.” (Joint Stipulation, Historic Matrix, Columns 5-12, 14)

59. Consequently, these allegations cannot simply be sponsored by Mr. Slifko or any of the Complainants' other witnesses, because they did not personally survey these locations and make these factual determinations.

60. Furthermore, by not presenting these other surveyors as witnesses, the Complainants have denied UGI the ability to cross-examine them about their surveys, their

¹ Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Pa.R.E. 801; *Bonegre v. Workers' Compensation Appeal Board (Bertolini's)*, 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Ordinarily, hearsay evidence is inadmissible unless some exception applies. Pa.R.E. 802. The hearsay rule is somewhat relaxed in proceedings before administrative agencies. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002). The Commonwealth Court established what is commonly called the “Walker Rule” to apply to the use of hearsay evidence during administrative proceedings:

(1) Hearsay evidence, properly objected to, is not competent evidence to support a finding;

(2) Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.

Walker v. Unemployment Comp. Bd. of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The “Walker Rule” has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002).

specific determinations about the meters, and their lack of qualifications and training to perform the surveys. UGI has an unquestionable statutory right to cross-examine these individuals. *See* 66 Pa. C.S. § 332(c).

61. Finally, for over a year, the Complainants have known about the issue of not presenting the surveyors as witnesses. UGI previously noted this glaring omission from their witness list in its June 14, 2017 prehearing memo. *See* UGI Prehearing Memo, p. 15 (June 14, 2017). At the prehearing conference on June 15, 2017, the ALJ and counsel for the Complainants exchanged the following when addressing the Complainants' witness list:

Judge Long: . . . All right. Folks, reviewing your prehearing memoranda, it's clear to me that neither party is really prepared to go to hearing. There doesn't even seem to be a meeting of the minds of exactly what the issues are here.

Frankly, complainants, you have the burden of proof. These complaints were filed over a year ago, and you really ought to know by now at least the names of the witnesses that you are calling to support your case-in-chief.

Mr. Savona: Your Honor, if I can just speak to that?

Judge Long: Sure.

Mr. Savona: We had intended to try to streamline testimony as much as possible - -

Judge Long: Right.

Mr. Savona: - - by having representatives from the city, particularly Councilman Slifko, who has been sort of leading and coordinating all of the meter surveying that was done to produce the data that is in the spreadsheet.

Our thought was if UGI was willing to agree that Mr. Slifko could testify to the means by which the information was collected generally and the information in the spreadsheet represented those field surveys, then we could sort of cut to the chase and not have to produce testimony from either each individual property owner who is identified on the spreadsheet or

the individual surveyors, some of who frankly were volunteers or interns that were paid by the city for this task.

It was an incredibly complicated effort to gather the information, take the photographs, and to produce the information in the spreadsheet. But if we can't find an efficient way to establish that, then - - again, I'm not necessarily clear on that when we saw UGI's memorandum today. Then we may be forced to go through a much more cumbersome process which would involve identifying additional witnesses that we were hoping to avoid.

(Tr. 101-03) (emphasis added).

62. To be clear, UGI never agreed that Mr. Slifko could sponsor the other surveyors' factual representations about the meters or their collection of the information.

63. Therefore, the Complainants should not be excused for failing to present direct testimony from these surveyors. They also should not be given the opportunity to present direct testimony from these individuals, considering they have known about the issue for over a year.

64. For these reasons, any testimony and exhibits about meter locations that were not personally surveyed by the Complainants' witnesses should be stricken.

B. THE COMPLAINANTS' TESTIMONY AND EXHIBITS ABOUT METER LOCATIONS THAT WERE NOT PREVIOUSLY IDENTIFIED AS BEING DISPUTED SHOULD BE STRICKEN

65. The Complainants' testimony and exhibits about meter locations that were not previously identified as being challenged should be stricken.

66. As mentioned previously, the Complainants were directed by the ALJ to produce a complete and exhaustive list of all meter locations that they were disputing. *See* Sixth Prehearing Order, Ordering Paragraphs 1-2.

67. Ultimately, the Complainants filed the Joint Stipulation, which contained two spreadsheets, one for historic districts and one for non-historic districts, listing all of the meter locations that the Complainants were challenging.

68. The Joint Stipulation has never been updated, as noted in the Complainants' direct testimony. (Reading Statement No. 2, p. 34, line 15)

69. Furthermore, UGI propounded discovery on the Complainants asking them to provide the meter locations they were disputing and the specific reasons why they believed the meters' locations violated the regulations. In response, the Complainants relied upon the historic and non-historic spreadsheets (CityCPHD_02259 through CityCPHD_05691, later updated as CityCPHD_07700 through CityCPHD_07763), which became the Historic and Non-Historic Matrices attached to the Joint Stipulation. True and correct copies of the Complainants' discovery responses are attached hereto as **Appendix B (UGI to City&CPHD-I-5, supplemental; UGI to City&CPHD-II-9 through UGI to City&CPHD-II-12)**.

70. Discovery closed on May 30, 2017, and the Complainants never supplemented these responses.

71. Nevertheless, the Complainants try to dispute new meter locations in their direct testimony and introduce evidence in support of their claims.

72. For example, Mr. Slifko presents, for the first time, a new "Drive-by Survey of All City Blocks" that appears to have been recently conducted. (See Reading Exhibit JS-24)

73. In that survey, Mr. Slifko admits that this survey includes additional locations that are not a part of the Non-Historic Matrix. (See Reading Exhibit JS-24)

74. There are **only three streets** listed in the Non-Historic Matrix:

- i. Cotton Street;
- ii. North 10th Street; and
- iii. South 4th Street.

75. Now, however, Mr. Slifko wants to contest meter placements on an **additional 47 non-historic streets**:

- i. North Front Street;

- ii. North 2nd Street;
- iii. North 3rd Street;
- iv. North 4th Street;
- v. Church Street;
- vi. North 6th Street;
- vii. Nicolls Street;
- viii. Poplar Street;
- ix. North 8th Street;
- x. Cedar Street;
- xi. North 9th Street;
- xii. Moss Street;
- xiii. Mulberry Street;
- xiv. Locust Street;
- xv. North 12th Street;
- xvi. North 13th Street;
- xvii. Union Street;
- xviii. Pike Street;
- xix. Perry Street;
- xx. Robeson Street;
- xxi. Spring Street;
- xxii. Windsor Street;
- xxiii. Douglass Street;
- xxiv. Oley Street;
- xxv. Greenwich Street;
- xxvi. Green Street;
- xxvii. Buttonwood Street;
- xxviii. Elm Street;
- xxix. Walnut Street;
- xxx. Washington Street;
- xxxi. South 3rd Street;
- xxxii. South 9th Street;
- xxxiii. South 10th Street;
- xxxiv. South 11th Street;
- xxxv. South 12th Street;
- xxxvi. South 13th Street;
- xxxvii. South 15th Street;
- xxxviii. South 16th Street;
- xxxix. South 17th Street;
- xl. Hoskins Place;
- xli. South 17th ½ Street;
- xlii. South 18th Street;
- xliii. South 19th Street;
- xliv. Perkiomen Street;
- xlv. Haak Street;
- xlvi. Spruce Street; and
- xlvii. Muhlenberg Street.

(See Reading Exhibit JS-24, pp. 1-3)

76. Mr. Slifko also includes some photographs that were taken as a part of this “drive-by survey” in Reading Exhibit JS-25. (See Reading Exhibit JS-25) However, there are not photographs of each installation, nor are there pagination and references to clarify where each photograph was taken. (See Reading Exhibit JS-25)

77. Moreover, the Complainants attempt to present all these new allegations in a different format than has been established in this proceeding. (See Joint Stipulation)

78. The Joint Stipulation details the exact address of each meter location, the violations alleged by the Complainants for each address, the photograph that correlates to each address, and other important information.

79. None of these critical details are provided in the “drive-by survey.”

80. Not only are these new allegations woefully unsupported by evidence, but discovery closed over a year ago on May 30, 2017.

81. As a result, UGI is unable to propound discovery about the “drive-by survey,” the ways in which the Complainants believe each meter location violates the Commission’s regulations, how and when the survey was conducted, etc.

82. The Complainants cannot now, over a year and a half after the Joint Stipulation was filed, contest new meter locations, especially when UGI only has a few weeks to prepare its case in rebuttal.

83. For these reasons, any portions of the Complainants’ testimony and exhibits that relate to any meter locations that are not identified in the Joint Stipulation should be stricken.

C. THE COMPLAINANTS' EXHIBITS THAT WERE NOT PRODUCED IN DISCOVERY, AND ANY TESTIMONY BASED ON THOSE EXHIBITS, SHOULD BE STRICKEN

84. The Complainants attempt to present in their direct testimony several exhibits that were not produced in discovery, as well as testimony based upon those exhibits. All such exhibits and testimony should be stricken.

85. UGI specifically asked the Complainants in discovery to produce "copies of all exhibits" the Complainants "intend to present at the evidentiary hearings as part of [their] direct case in this proceeding." The Complainants produced many pages of documents and reserved the right to "supplement this response" because "discovery is ongoing." A true and correct copy of this discovery response is attached hereto as **Appendix C (UGI to City&CPHD-I-4)**.

86. Discovery closed on May 30, 2017, and, therefore, has not been "ongoing" for a very long time.

87. The Complainants' discovery response was never supplemented.

88. Now, as part of their direct testimony, the Complainants try to introduce exhibits that were never produced in discovery, either in response to UGI to City&CPHD-I-4 or any other interrogatory.

89. The Complainants' actions have prejudiced the Company and warrant the exclusion of any such exhibits that were not produced in discovery, as well as testimony based on those new exhibits. *See Keystone Cab Serv. v. Pa. PUC*, 170 A.3d 1287, 1291 (Pa. Cmwlth. 2017) (finding that the Commission "did not err or abuse its discretion in upholding the ALJ's decision to exclude the exhibits" that were not provided in discovery); *M.C. Capenos*, 119 A.3d 1092, 1097 (Pa. Cmwlth. 2015) (noting that the trial court sustained the objection to the admission of certain evidence "because it was not identified in discovery").

90. Based on the Company's review, all or portions of the following 27 exhibits, at the very least, appear not to have been produced in discovery:

- i. Reading Exhibit JS-3, p. 2 – Map of Queen Anne Historic District from “Living Places” website;
- ii. Reading Exhibit JS-6 – Memo prepared by Amy Johnson dated June 29, 2018, about potentially eligible historic districts;
- iii. Reading Exhibit JS-8 – Online print-out of Street Excavation Form dated June 28, 2018;
- iv. Reading Exhibit JS-13 – Notes taken by Mr. Slifko at meetings on 8/30/2017, 8/18/2017, 6/8/2017, and 6/9/2017;
- v. Reading Exhibit JS-15 – New summary of gas meter survey with new information and allegations, including vehicle strikes/near misses, tripping incidents, gas meter freeze-up, unrepaired pavements, and rusting of meters;
- vi. Reading Exhibit JS-18 – Fire department's report for the 1243 Oley Street incident;
- vii. Reading Exhibit JS-19 – Fire department's report for the 847 Nicolls Street incident;
- viii. Reading Exhibit JS-20 – Handwritten meter survey of Pear Street with additional comments not provided in the Joint Stipulation;
- ix. Reading Exhibit JS-21 – Newspaper article published in the *Reading Eagle* on May 21, 2018;
- x. Reading Exhibit JS-23 – New summary of survey of N. 10th Street, Cotton Street, and S. 4th Street with new information and allegations, including how meters block front doors if there is an explosion, snow build-up on the meters, shoveling/plowing snow on the meters, rusting of the meters, accidents, reported by residents, tripping incidents, and unrepaired pavement;
- xi. Reading Exhibit JS-24 – Summary of new “drive-by survey” that appears to have been recently conducted and includes addresses not previously identified as being disputed by the Complainants;
- xii. Reading Exhibit JS-25 – Several of the last photographs appear to have been taken during the “drive-by survey” and not produced in discovery;
- xiii. Reading Exhibit JS-26 – Picture of a meter by a bus stop taken by Peggy Harter;

- xiv. Reading Exhibit PH-1 – Pictures taken by Peggy Harter of 800 Schuylkill Avenue;
- xv. Reading Exhibit PH-2 – Additional pictures taken by Peggy Harter;
- xvi. Reading Exhibit PH-3 – July 28, 2016 newspaper article published in the *Reading Eagle* about car crashing into a tree during a police chase; and
- xvii. Reading Exhibit PH-4 – Additional pictures taken by Peggy Harter.

91. However, the vast majority of the Complainants' exhibits do not include the Bates numbering from their discovery responses. (See Reading Exhibits JS-1 through JS-28; Reading Exhibits PH-1 through PH-4; Reading Exhibits ML-1 through ML-3). Therefore, the list above was compiled based on the Company's best efforts in comparing the Complainants' exhibits to the over 7,000 pages of documents produced in discovery.

92. Given the Complainants' clear introduction of exhibits that were not produced in discovery, the Complainants should be forced, in response to this Motion, to provide the Bates numbering for all of their exhibits.

93. To the extent the Complainants cannot provide the Bates numbering because the exhibits were not produced in discovery, those exhibits and any corresponding testimony should be stricken.

94. Based on the foregoing, any exhibits that were not produced in discovery, as well as any testimony based upon those exhibits, should be stricken.

D. THE TESTIMONY AND EXHIBITS OF PEGGY HARTER SHOULD BE STRICKEN BECAUSE SHE WAS NEVER IDENTIFIED AS A POTENTIAL WITNESS AND SHE RAISES NEW ISSUES AND ALLEGATIONS

95. Reading Statement No. 3, the direct testimony and exhibits of Peggy Harter, , as well as any testimony referring to her testimony and exhibits, should be stricken because Ms. Harter was never identified as a potential witness and she raises new issues and allegations.

96. UGI propounded discovery on the Complainants, asking that they produce a list of their potential witnesses.

97. In their response dated August 17, 2016, the Complainants identified the following individuals as their intended witnesses: (1) John Slifko, Esquire (City of Reading Councilmember, District 6); (2) Jeffrey S. Waltman, Sr. (City of Reading Council President); (3) Ralph Johnson (City of Reading Public Works Director); (4) Adrian Koerner (Chief Building Officer); (5) Amy Johnson (City of Reading Historic Preservation Specialist); and (6) Michael Lauter (Executive Director, Centre Park Historic District). A true and correct copy of the discovery response is attached hereto as **Appendix D (UGI to City&CPHD-I-3)**.

98. Ms. Peggy Harter was not identified as a potential witness in the Complainants' discovery response, and this discovery response was never supplemented.

99. In Pennsylvania, four factors have been considered when "determining whether or not a witness should be precluded for failure to comply with discovery rules": (1) "the prejudice or surprise in fact of the party against whom the excluded witnesses would have testified"; (2) "the ability of that party to cure the prejudice"; (3) "the extent to which waiver of the rule against calling unlisted witnesses would disrupt the orderly and efficient trial of the case or of cases in the court"; and (4) "bad faith of [sic] willfulness in failing to comply with the court's order." *Linker v. Churnetski Transp., Inc.*, 520 A.2d 502, 504 (Pa. Super. 1987).

100. "In the absence of bad faith or willful disobedience of the rules, the most significant considerations are the importance of the witness' testimony and the prejudice, if any, to the party against whom the witness will testify." *Id.* (citation omitted).

101. Here, these factors weigh in UGI's favor of excluding the testimony and exhibits of Ms. Harter.

102. First, the Company had no notice of Ms. Harter being a potential witness, and the submission of her testimony at this late stage of the proceeding prejudices UGI.

103. As mentioned previously, UGI specifically asked the Complainants in discovery to identify all of their potential witnesses. Their response did not identify Ms. Harter and was never supplemented either before or after discovery closed on May 30, 2017.

104. The Complainants also submitted several prehearing memos in this proceeding, in which they identified their intended witnesses. In the prehearing memos dated July 12, 2016, and March 13, 2017, the Complainants identified John Slifko, Ralph Johnson, and Michael Lauter as their intended witnesses. *See* City of Reading and CPHD Prehearing Memo, p. 5 (July 12, 2016); City of Reading and CPHD Prehearing Memo, p. 9 (Mar. 13, 2017).

105. Subsequently, on June 15, 2017, the Complainants filed a prehearing memo that identified additional individuals, specifically Kim Brautigan, Debra Condrath, the owner of the property located at 312 N 5th Street, the owner of the property located at 351 W Windsor Street, and “such other and further property owners to be identified by the City in supplemental discovery responses prior to trial.” City of Reading and CPHD Prehearing Memo, p. 4 (June 14, 2017).

106. At the prehearing conference held on June 15, 2017, the ALJ admonished the Complainants for trying to change their witness list and not knowing, after about a year and a half of litigation, who would be their witnesses. (Tr. 101-03)

107. Now, for the first time in their direct testimony, the Complainants offer Ms. Harter as a witness.

108. Ms. Harter’s testimony contains several new issues and allegations, including but not limited to: (1) the traffic patterns on Schuylkill Avenue; (2) when meters were moved to the

exterior of buildings on that street; (3) pictures she took of meters on her street; (4) vehicular accidents that have occurred in her area; (5) potential tripping hazard of the meter at 774 Schuylkill Avenue; (6) concerns about tampering with meters on her street; and (7) the safety of residents shoveling snow on the meters and regulators. (Reading Statement No. 3, p. 1, line 14 to p. 5, line 22; Reading Exhibits PH-1 through PH-4)

109. As a result of their actions, the Complainants have denied UGI an opportunity to propound discovery about Ms. Harter's new issues and allegations.

110. Second, the Complainants are unable to cure the prejudice.

111. Discovery was closed on May 30, 2017, and, therefore, UGI cannot propound discovery about Ms. Harter's testimony and exhibits, particularly the new issues and allegations she raises.

112. To the extent that the Complainants believe they can cure this prejudice by asking to reopen discovery, it would disrupt the order and efficiency of this proceeding.

113. UGI has been prepared to litigate this case fully since the Commission remanded the case back to the ALJ in December 2017.

114. Several continuances have been granted to the Complainants due to their multiple changes in legal counsel since that time and their alleged willingness to reach a reasonable settlement of this proceeding.

115. This case, which was initiated in November 2015, should not be delayed any further by reopening discovery.

116. Finally, the Complainants' actions demonstrate bad faith.

117. Before submitting her testimony, the Complainants never (1) provided notice to the Company that they would be calling Ms. Harter as a witness and submitting her written

testimony and exhibits; or (2) supplemented their discovery response to identify Ms. Harter as a potential witness.

118. For these reasons, Reading Statement No. 3, the direct testimony and exhibits of Peggy Harter, as well as any testimony referring to her testimony and exhibits, should be stricken.

E. THE COMPLAINANTS' TESTIMONY AND EXHIBITS ABOUT NEW ALLEGED TRIPPING INCIDENTS SHOULD BE STRICKEN

119. The Complainants' testimony and exhibit about new alleged tripping incidents should be stricken.

120. In discovery, UGI specifically asked whether the Complainants had any knowledge about pedestrians being injured by outside meters that "allegedly have been placed 'in close proximity to City streets and on narrow sidewalks.'" In response, the Complainants stated that "[a]s of the date of this response," which was March 12, 2017, "no person has reported an injury to the City or CPHD." A true and correct copy of this discovery response is attached hereto as **Appendix E (UGI to City&CPHD-I-18, supplemental)**.

121. Discovery closed on May 30, 2017, and this response was never further supplemented.

122. In their direct testimony, however, the Complainants allege for the first time that pedestrians have been injured by tripping over outside meters. Specifically, Mr. Slifko states that "[o]n the 1200 and 1300 blocks of Cotton Street, I had two separate individuals tell me when I was conducting the survey, that they had tripped over a gas meter and had required hospital treatment." (Reading Statement No. 2, p. 30, lines 16-18; *see* Reading Exhibit JS-15)

123. Moreover, in Reading Exhibit JS-15, Mr. Slifko states the following:

The proximity of outside meters to City streets and the narrowness of residential sidewalks was a concern – not only from vehicular

damage – but also from children, adults, and bicycles tripping into and colliding against the meters. 2 separate individuals on the 1200 and 1300 blocks of Cotton St reported tripping over meters and requiring hospital treatment. Similar accidents were reported at 774 Schuylkill Ave.

(Reading Exhibit JS-15, p. 4) (emphasis in original)

124. Likewise, in Reading Exhibit JS-23, Mr. Slifko alleges that “2 separate individuals on the 1200 and 1300 blocks of Cotton St reported tripping over meters and requiring hospital treatment.” (Reading Exhibit JS-23, p. 3)

125. The survey Mr. Slifko references in his testimony and in Reading Exhibits JS-15 and JS-23 are the survey of the three streets in historic districts that took place during August 19, 2016, through August 31, 2016. (Reading Exhibit JS-15, p. 1; Reading Exhibit JS-23, p. 2)

126. Therefore, Mr. Slifko was supplied this alleged information in August 2016, *i.e.*, several months before the Complainants supplemented their response to UGI to City&CPHD-I-18 on March 12, 2017. *See* Appendix E (UGI to City&CPHD-I-18, supplemental).

127. Thus, not only are the Complainants presenting this information for the first time in their direct testimony, but they withheld this information from disclosure in discovery.

128. The Complainants’ actions should not be permitted to stand.

129. For these reasons, the Complainants’ testimony and exhibit about new alleged tripping incidents should be stricken.

F. THE COMPLAINANTS’ TESTIMONY AND EXHIBITS ABOUT POTENTIAL VANDALISM, METER FREEZE-UPS, AND OTHER ISSUES OUTSIDE THE SCOPE OF THE COMPLAINTS SHOULD BE STRICKEN

130. The Complainants attempt to introduce testimony and exhibits about potential vandalism, meter freeze-ups, and other issues that are outside the scope of the Formal Complaints that should be stricken.

131. The Formal Complaints only identified the following compliance issues: (1) whether UGI failed to “consider” inside meter locations for historic buildings and for buildings in historic districts in violation of 52 Pa. Code 59.18(d)(1)(ii); and (2) when selecting outside meter locations, whether the Company failed to “consider potential damage by outside forces,” locate gas meters in “protected location[s] adjacent to the building served,” and protect those meters from “vehicular damage that may be anticipated” in violation of 52 Pa. Code § 59.18(a)(5),(b)(1) and 49 C.F.R. § 192.353 (adopted by the Commission in 52 Pa. Code § 59.33(b)). (CPHD Complaint ¶¶ 4-5; City Complaint ¶¶ 11-52, 54-64)

132. The Formal Complaints were never amended to add any additional claims.

133. Here, the Complainants seek to introduce testimony and exhibits on issues outside the scope of those allegations.

134. First, the Complainants seek to raise issues about potential vandalism of outside meters and meter freeze-ups and aver that inside meter locations should have been considered in those instances. (See Reading Statement No. 1, p. 6, line 15 to p. 7, line 14; Reading Statement No. 2, p. 30, line 22 to p. 31, line 8; p. 34, lines 1-4; Reading Statement No. 3, p. 5, lines 2-8; Reading Exhibit JS-15, p. 4; Reading Exhibit JS-23, pp. 1-2); 52 Pa. Code § 59.18(d)(1)(iii), (4).

135. As seen in their Formal Complaints, the Complainants never raised issues regarding Section 59.18(d)(1)(iii) or 59.18(d)(4).

136. Moreover, when the Complainants identified in discovery how each meter placement allegedly violates a Commission statute, regulation, or order, the Complainants never listed these alleged violations. See Appendix B (UGI to City&CPHD-I-5, supplemental).

137. Second, the Complainants allege that the Company has committed a regulatory violation by placing meters in “area[s] where water/snow/ice accumulates.” (Joint Stipulation, Historic Matrix, Column 11; Joint Stipulation, Non-Historic Matrix, Column 11)

138. No such regulatory requirement exists under the Commission’s regulations.

139. Rather, as shown by the “Executive Summary” accompanying their Historic and Non-historic Matrices, the Complainants allege that this is a violation of Section 35.10.10 of UGI’s Gas Operations Manual, which provides that as a Company policy, personnel should avoid “locat[ing] [meters] directly under any known water run off locations, or in areas where accumulation of snow or ice is likely to fall on the meter.” (Complainants’ Executive Summary, p. 5)

140. The Complainants did not raise issues regarding the Company’s compliance with its Gas Operations Manual in their Formal Complaints.

141. Third, the Complainants allege that UGI has failed to repair sidewalks at some of the meter locations and that meters have been reported as rusting because they are outside. (See Reading Exhibit JS-15, p. 4; Reading Exhibit JS-23, pp. 2-3)

142. The Complainants never raised these issues in their Formal Complaints.

143. Based on the foregoing, the Complainants’ testimony and exhibits on these issues are outside the scope of the Formal Complaints and, therefore, should be stricken.

G. THE COMPLAINANTS’ TESTIMONY ABOUT METERS MARKED AS BEING UNDER WINDOWS BUT NOT UNDER OPENINGS THAT COULD BE USED AS A FIRE EXIT SHOULD BE STRICKEN

144. The Complainants’ testimony also seeks to revive their claim that a meter marked as being under a window but not under an opening that could be used as a fire exit still violates 52 Pa. Code § 59.18(a)(8)(i).

145. Specifically, Mr. Slifko alleges that if a surveyor determined a meter was placed under a window that could be used as a fire exit, then he or she only indicated that a meter was placed under a window in column 7 but not that a meter was placed under an opening that could be used as a fire exit in column 9. (Reading Statement No. 2, p. 13, line 13 to p. 14, line 9)

146. This testimony seeks to introduce issues decided against the Complainants in the ALJ's Initial Decision granting in part and denying in part UGI's Motion for Summary Judgment.

147. In the Company's Motion for Summary Judgment, UGI explained that Section 59.18(a)(8)(i) only prohibits the placement of a meter under a window if it can be used as a fire exit. UGI Motion for Summary Judgment, pp. 17-19 (July 6, 2017).

148. The ALJ agreed with the Company and summarily dismissed any alleged violations of Section 59.18(a)(8)(i) where the Complainants indicated for 337 locations that a meter or meter infrastructure was placed under a window in column 7 but not under an opening that could be used as a fire exit in column 9. *City of Reading v. UGI Utilities, Inc.*, Docket Nos. C-2015-2516051, *et al.*, pp. 14-16 (Aug. 28, 2017) (Initial Decision).

149. Importantly, the Complainants never filed Exceptions to the Initial Decision, which was adopted by the Commission. *City of Reading v. UGI Utilities, Inc.*, Docket Nos. C-2015-2516051, *et al.*, pp. 28-29 (Order entered Dec. 21, 2017).

150. Now, the Complainants are attempting to revive these claims that were summarily dismissed.

151. The Complainants' actions are improper and should not be permitted.

152. For these reasons, the ALJ should strike the Complainants' testimony relating to meters being under windows but not under openings that could be used as fire exits.

H. THE HEARSAY STATEMENTS IN THE COMPLAINANTS' TESTIMONY AND EXHIBITS SHOULD BE STRICKEN

153. The Complainants' testimony and exhibits include several hearsay statements that should be stricken.

154. For example, the Complainants' testimony and exhibits include the following hearsay statements:

- i. Reading Exhibit JS-6 – Memo prepared by Amy Johnson dated June 29, 2018, about potentially eligible historic districts;
- ii. Reading Exhibit JS-13, pp. 1-2 – Statements by Mike Reed and Maryann Ciarlone about conversations they had with UGI personnel;
- iii. Reading Exhibit JS-15, p. 3 – Statement that “[r]esidents are concerned, not only about vehicles striking outside gas meters, but also about the effectiveness of any automatic shut-off should that occur. For instance, gas continued to leak after a vehicular accident at 616 Pear. The same is recorded in the Fire Department report for 847 Nicolls.”;
- iv. Reading Exhibit JS-18 – Report prepared by the fire department about the 1243 Oley Street incident;
- v. Reading Exhibit JS-19 – Report prepared by the fire department about the 847 Nicolls Street incident;
- vi. Reading Exhibit JS-20 – Additional comments by Anita Donatelli (one of the surveyors) about the meter installations on Pear Street, which also contain a statement by an unnamed property owner about an alleged vehicle strike of a meter on Pear Street;
- vii. Reading Exhibit JS-21 – Newspaper article published in the *Reading Eagle* on May 21, 2018;
- viii. Reading Exhibit JS-23, pp. 2-3 – Statements by residents about vehicular accidents involving meters and tripping over meters;
- ix. Reading Exhibit JS-27 – A newspaper article published in *Allentown Morning Call* on February 9, 2011, and another newspaper article published in the *Philadelphia Inquirer* on September 3, 2012;
- x. Reading Exhibit PH-3 – July 28, 2016 newspaper article published in the *Reading Eagle* about car crashing into a tree during a police chase;

- x. Reading Statement No. 2, p. 10, line 22 to p. 11, line 7 – Testimony relating to Reading Exhibit JS-6, a hearsay memo prepared by Amy Johnson about potentially eligible historic districts;
- xii. Reading Statement No. 2, p. 13, line 12 to p. 14, line 5 – Testimony about what he and the other surveyors, who are not testifying, did or could not do during their surveys or what they meant by certain notations on the spreadsheets;
- xiii. Reading Statement No. 2, p. 16, lines 17-23 – Testimony relating to Reading Exhibit JS-13, pp. 1-2, hearsay statements by Mike Reed and Maryann Ciarlone about conversations they had with UGI personnel;
- xiv. Reading Statement No. 2, p. 18, lines 5-20 – Testimony about what he and the other surveyors, who are not testifying, did or could not do during their surveys;
- xv. Reading Statement No. 2, p. 21, lines 9-11 – Statement that “[s]omeone has said that we should now replace our beautiful ‘Doors of Reading’ and ‘Stained Glass of Reading’ posters, with a new one entitled ‘The Gas Meters of Reading’”;
- xvi. Reading Statement No. 2, p. 25, lines 1-10 – Testimony based on Reading Exhibits JS-18 and JS-19, hearsay reports prepared by the fire department;
- xvii. Reading Statement No. 2, p. 25, lines 11-16 – Testimony based on hearsay (and hearsay within hearsay) statements in Reading Exhibit JS-20 about the alleged vehicle strike on Pear Street;
- xviii. Reading Statement No. 2, p. 25, lines 17-20 – Testimony based on Reading Exhibit JS-21, a hearsay newspaper article about a May 20, 2018 car accident;
- xix. Reading Statement No. 2, p. 25, line 22 to p. 26, line 9 – Statements by residents about “three instances where vehicles had skidded off City streets and struck a gas meter,” which allegedly occurred at “1621 Cotton Street,” “[i]n the vicinity of 1261 N. 10th Street,” and “[i]n the vicinity of 11th and Spring Streets.”²;
- xx. Reading Statement No. 2, p. 27, lines 4-15 – Testimony about what he and the other surveyors, who are not testifying, found during their surveys;

² The Company notes that in several of the Complainants’ testimony and exhibits, they include these three alleged incidents and the one alleged incident on Pear Street in their list of the six times vehicles struck gas meters in the City. (See, e.g., Reading Exhibit JS-15, p. 3; Reading Statement No. 2, p. 25, line 11 to p. 26, line 9) As the Complainants readily admit in their testimony, they “attempted to find verification of these [three] accidents from the City Fire records,” but were unable to do so. (Reading Statement No. 2, p. 26, lines 5-9) Moreover, the alleged vehicle strike on Pear Street is wholly based on the hearsay statement of an unnamed property owner. (See Reading Exhibit JS-20) Such uncorroborated hearsay about these alleged vehicle strikes should be struck from all their testimony and exhibits.

- xxi. Reading Statement No. 2, p. 29, lines 9-10 – Statement that “according to the owner of 616 Pear Street, gas escaped there after that meter was struck by a vehicle”;
- xxii. Reading Statement No. 2, p. 30, lines 16-18 – Statements by residents about allegedly tripping over meters;
- xxiii. Reading Statement No. 2, p. 33, lines 20-23 – Testimony based on hearsay newspaper articles submitted as Reading Exhibit JS-27;
- xxiv. Reading Statement No. 3, p. 5, lines 2-3 – Statement that “since the meters are so exposed, we are always concerned that someone will tamper with them”;
- xxv. Reading Statement No. 3, p. 5, lines 6-7 – Statement that “there is very little space for us to pile snow when it is shoveled”;
- xxvi. Reading Statement No. 4, p. 3, lines 21-22 – Statement that “[p]eople began to see that this was a City-wide problem, and that something needed to be done”;
- xxvii. Reading Statement No. 4, p. 5, lines 13-17 – Statement about Matt Stauffer’s conversations with UGI personnel; and
- xxviii. Reading Statement No. 4, lines 14-15 – Statement that “[t]his is the area that initially got people so upset in 2015.”

155. All of these averments are out-of-court statements that are being offered to prove the truth of the matter asserted.³

156. None of the actual declarants of these statements are being presented as witnesses in this proceeding.

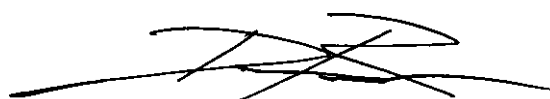
157. Based on the foregoing, these inadmissible hearsay statements should be stricken from the Complainants’ testimony and exhibits.

³ See note 1, *supra*.

III. CONCLUSION

WHEREFORE, UGI Utilities, Inc. respectfully requests that Administrative Law Judge Mary D. Long enter the proposed Order attached hereto as **Appendix F** and strike the portions of the direct testimony and exhibits submitted by the City of Reading and Centre Park Historic District, as described above and in the proposed Order.

Respectfully submitted,



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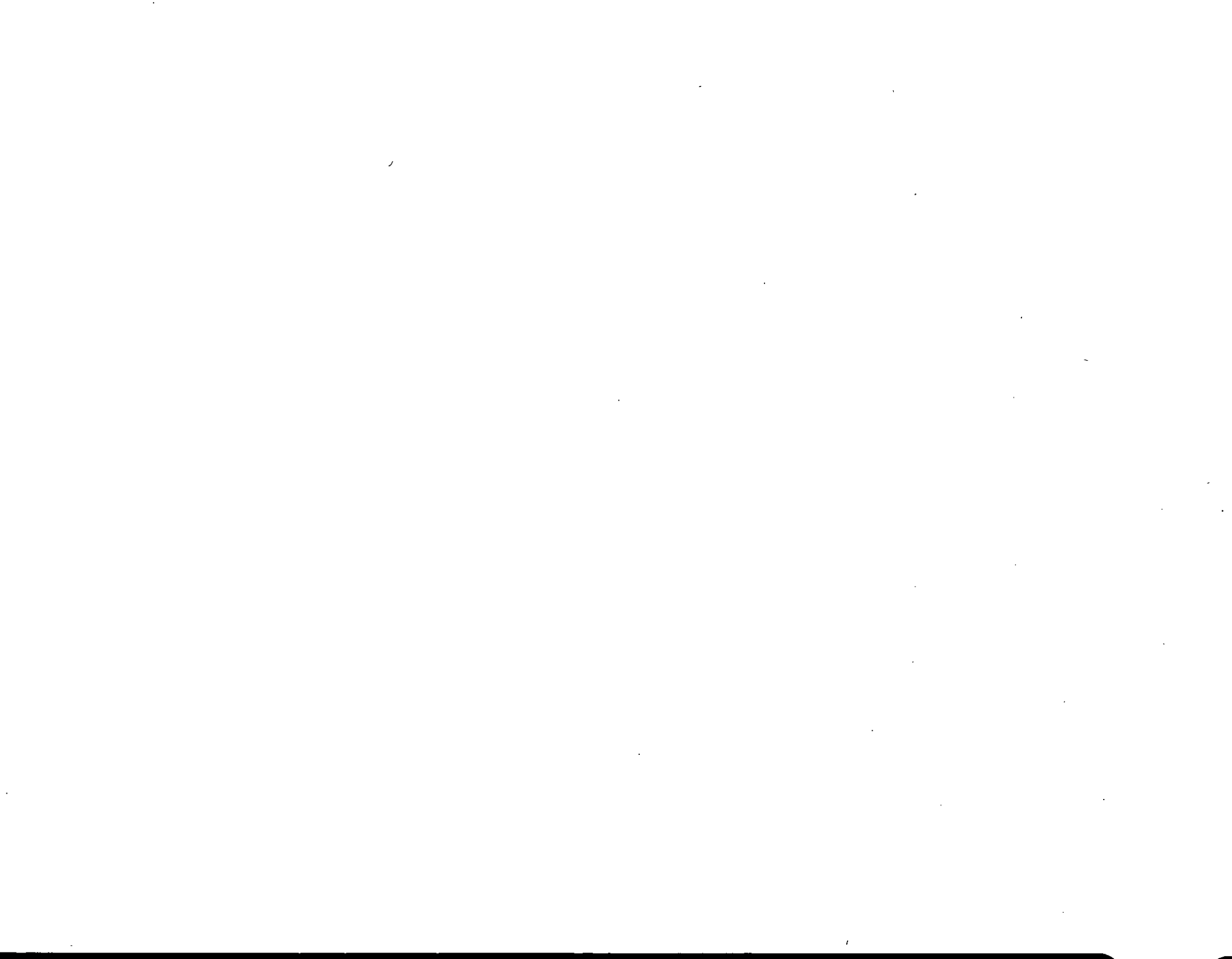
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Dated: July 9, 2018

Attorneys for UGI Utilities, Inc.

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SECRETARY'S BUREAU



APPENDIX "A"

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

UGI to City&CPHD-II-6

Please reference the supplemental Answer to UGI to City&CPHD-I-5. Please provide the full name, address, job title, and employer of each person who performed the meter-by-meter surveys found on CityCPHD_02259 through CityCPHD_02298 and CityCPHD_04933 through CityCPHD_04959.

Answer:

John Slifko
919 North 3rd Street
City of Reading, PA 19601
City Councilman of the City of Reading, District 6
Retired, sole proprietor John Slifko Carpentry

Beth Ireland
454 Douglass Street
Reading, PA 19601
Advertising Art & Design Technology Instructor
Berks Career & Technology Center

Maria L. Ballas
404 Douglass Street
Reading, PA 19601
Retired

Anita Donatelli
940 North Fourth Street
Reading, PA 19601
Unemployed

Nadine Smet-Weiss
833 Centre Avenue, Apt. #2
Reading, PA 19601
Director of Policy and Program Development
Co-County Wellness Services

Melvyn Jacobson
600 North Fifth Street
Reading, PA 19601
Project Manager, Architect, Consultant

[Prepared by, or under the supervision of, John D. Slifko, City Councilman and Thomas Coleman, Esquire with the City's Department of Law.]

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX “B”

UGI to City & CPHD-1-5

Please identify each meter placement that the Complainants are contesting in this proceeding. For each meter placement, provide the following:

- (a) The address of the meter's building;**
- (b) Whether the meter's building is listed as historic in the National Register of Historic Places or has been designated as historic under the Pennsylvania Historic District Act, the Pennsylvania Municipalities Planning Code, or a municipal home rule charter, and, if so, under which authorities the building has been listed or designated;**
- (c) Whether the building is eligible to be listed in the National**

Register of Historic Places or designated as historic under the Pennsylvania Historic District Act, the Pennsylvania Municipalities Planning Code, or a municipal home rule charter, and, if so, under which authorities the building would be eligible to be listed or designated;

- (d) Whether the meter's building is located in a historic district listed or eligible to be listed in the National Register of Historic Places and, if so, identify the district and explain whether it is listed or eligible to be listed;**
- (e) Whether the meter's building is located in a locally designated historic district and, if so, which district;**
- (f) Whether the meter's building is eligible to be listed as being located in a locally designated historic district and, if so, which district;**
- (g) The statute(s), Commission regulation(s), or Commission order(s) that the Complainants believe the meter placement violates;**
- (h) A detailed explanation of how the meter placement violates each statute, regulation, or order identified in subparagraph (g), including all facts relied upon by the Complainants in reaching that determination;**
- (i) A statement as to whether the Complainants believe that the meter placement violates UGI's revised meter placement policy that was provided to counsel on April 24, 2016;**
- (j) If the answer to subparagraph (i) is in the affirmative, a detailed explanation of how the meter placement violates UGI's revised meter placement policy, including all facts relied upon by the Complainants in reaching that determination; and**

- (k) Copies of any photographs taken by the Complainants of the exterior meter placement, as well as the name, occupation, and employer of the person who took the photograph and the date on which the photograph was taken.**

The City is presently performing a meter-by-meter survey of relocated gas meters throughout the City. The City will provide the results of that survey upon completion. While the City reserves the right to supplement this response with the results of the survey, or with additional materials as discovery continues, please see CityCPHD_0087 through CityCPHD_00924; CityCPHD_01608 through CityCPHD_01796.

SUPPLEMENTAL RESPONSE: Please see CityCPHD_02259 through CityCPHD_05691, the meter-by-meter survey referenced above.

UGI to City&CPHD-II-9

Please identify, by address, each exterior meter installation that the City and CPHD are challenging on the grounds that UGI did not consider inside meter locations in historic districts and historic buildings when selecting the meter location.

Answer: Please see CityCPHD_07700 through CityCPHD_07741.

The City and CPHD reserve the right to supplement this response should additional meters be identified.

[Prepared by, or under the supervision of, John D. Slifko, City Councilman and Thomas Coleman, Esquire with the City's Department of Law.]

UGI to City&CPHD-II-10

Please identify, by address, each exterior meter installation that the City and CPHD are challenging on the grounds that UGI did not consider potential damage by outside forces when selecting the meter location.

Answer: Please see CityCPHD_07700 through CityCPHD_07763.

\ The City and CPHD reserve the right to supplement this response should additional meters be identified.

[Prepared by, or under the supervision of, John D. Slifko, City Councilman and Thomas Coleman, Esquire with the City's Department of Law.]

UGI to City&CPHD-II-11

Please identify, by address, each exterior meter installation that the City and CPHD are challenging on the grounds that it is not in a protected location adjacent to the building served.

Answer: Please see CityCPHD_07700 through CityCPHD_07763.

The City and CPHD reserve the right to supplement this response should additional meters be identified.

[Prepared by, or under the supervision of, John D. Slifko, City Councilman and Thomas Coleman, Esquire with the City's Department of Law.]

UGI to City&CPHD-II-12

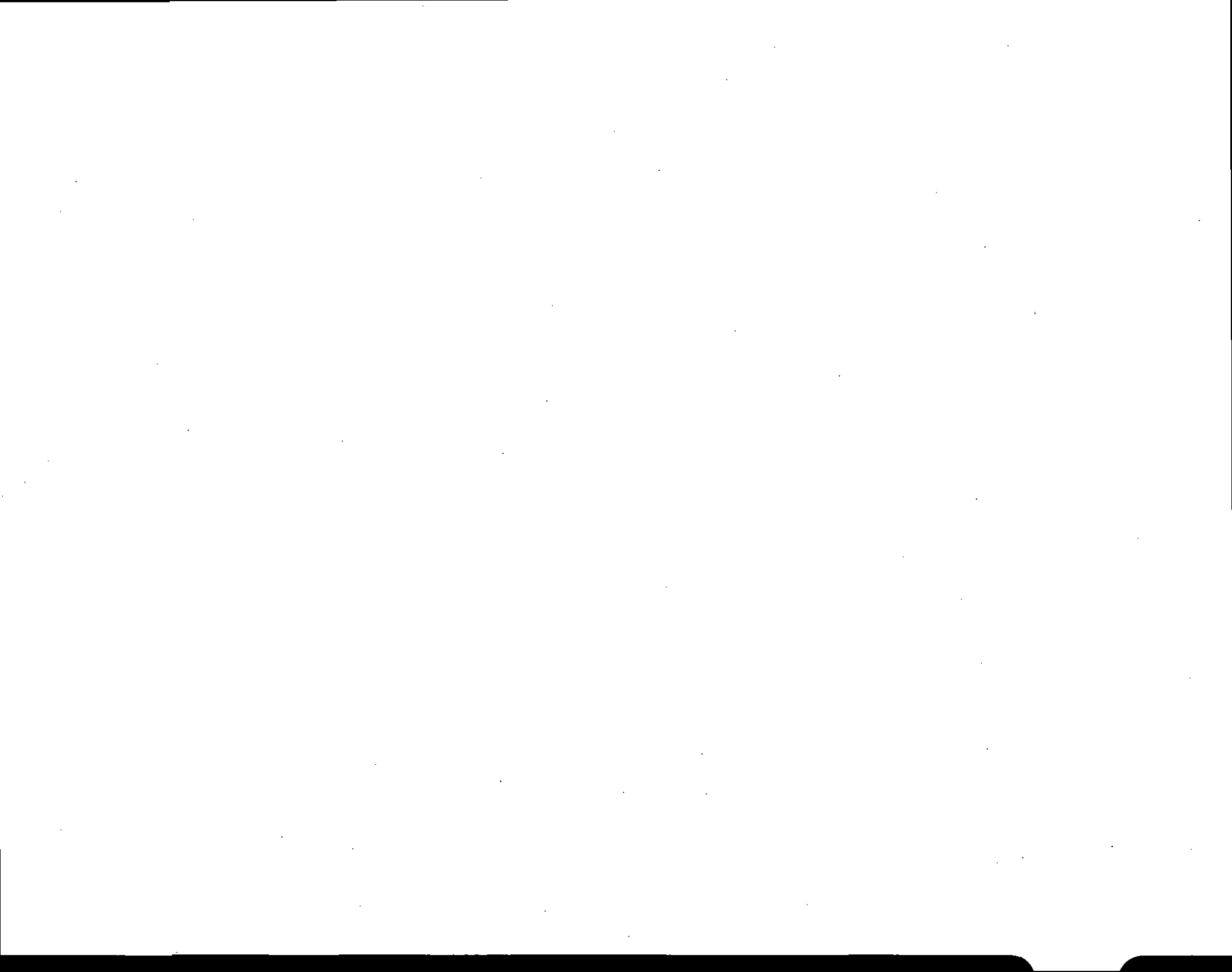
Please identify, by address, each exterior meter installation that the City and CPHD are challenging on the grounds that it is not protected from vehicular damage that may be anticipated.

Answer: Please see CityCPHD_07700 through CityCPHD_07763.

The City and CPHD reserve the right to supplement this response should additional meters be identified.

[Prepared by, or under the supervision of, John D. Slifko, City Councilman and Thomas Coleman, Esquire with the City's Department of Law.]

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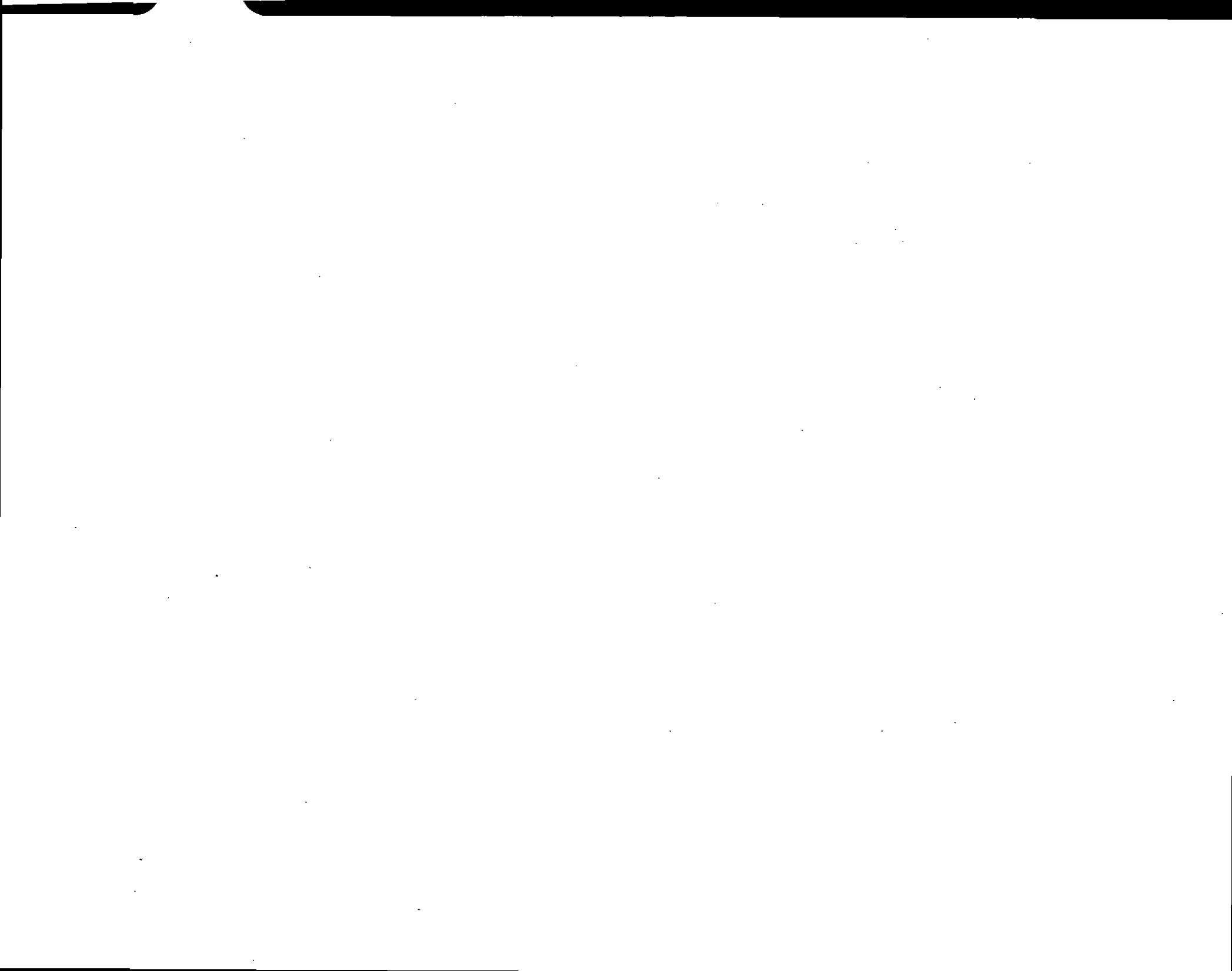
APPENDIX “C”

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UGI to City & CPHD-I-4

Please provide copies of all exhibits you intend to present at the evidentiary hearings as part of your direct case in this proceeding. For each exhibit, please identify the witness who will be sponsoring the exhibit.

Please see CityCPHD_00001 through 02143, to be offered through the witnesses identified in the response to request no. 3. As discovery is ongoing, the City and CPHD reserve the right to supplement this response. To the extent required, the City and CPHD will provide pre-marked exhibits prior to the hearing in this matter, and requests that UGI do the same.



APPENDIX “D”

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UGI to City & CPHD-I-3

Please identify each person whom the City and CPHD plans to call as a witness in this proceeding and explain in detail the subject matter(s) on which the witness is expected to testify.

John Slifko, Esquire
City of Reading Councilmember, District 6
919 N. 3rd Street
Reading, PA 19601

Mr. Slifko will testify, in general terms, regarding UGI's relocation efforts in the City, including UGI's communications with the City regarding same. Mr. Slifko will testify with respect to the effect of UGI's gas meter relocation activities on the City's historic districts. Mr. Slifko will also testify regarding his observations of dangerous meter locations throughout the City.

Jeffrey S. Waltman, Sr.
City of Reading Council President
723 N. 4th Street
Reading, PA 19601

Mr. Waltman will supplement Mr. Slifko's testimony, as needed, as the current City Council President.

Ralph Johnson
City of Reading Public Works Director
815 Washington Street
Reading, PA 19601

Mr. Johnson will testify regarding the receipt of permit applications and issuance of permits in connection with meter relocations, and specifically with respect to street opening permits. Mr. Johnson will also testify regarding his observations of UGI's meter relocation program.

**Adrian Koerner
Chief Building Officer
815 Washington Street
Reading, PA 19601**

Mr. Koerner will testify regarding the receipt of Building and Trade permit applications in connection with UGI's meter relocation program.

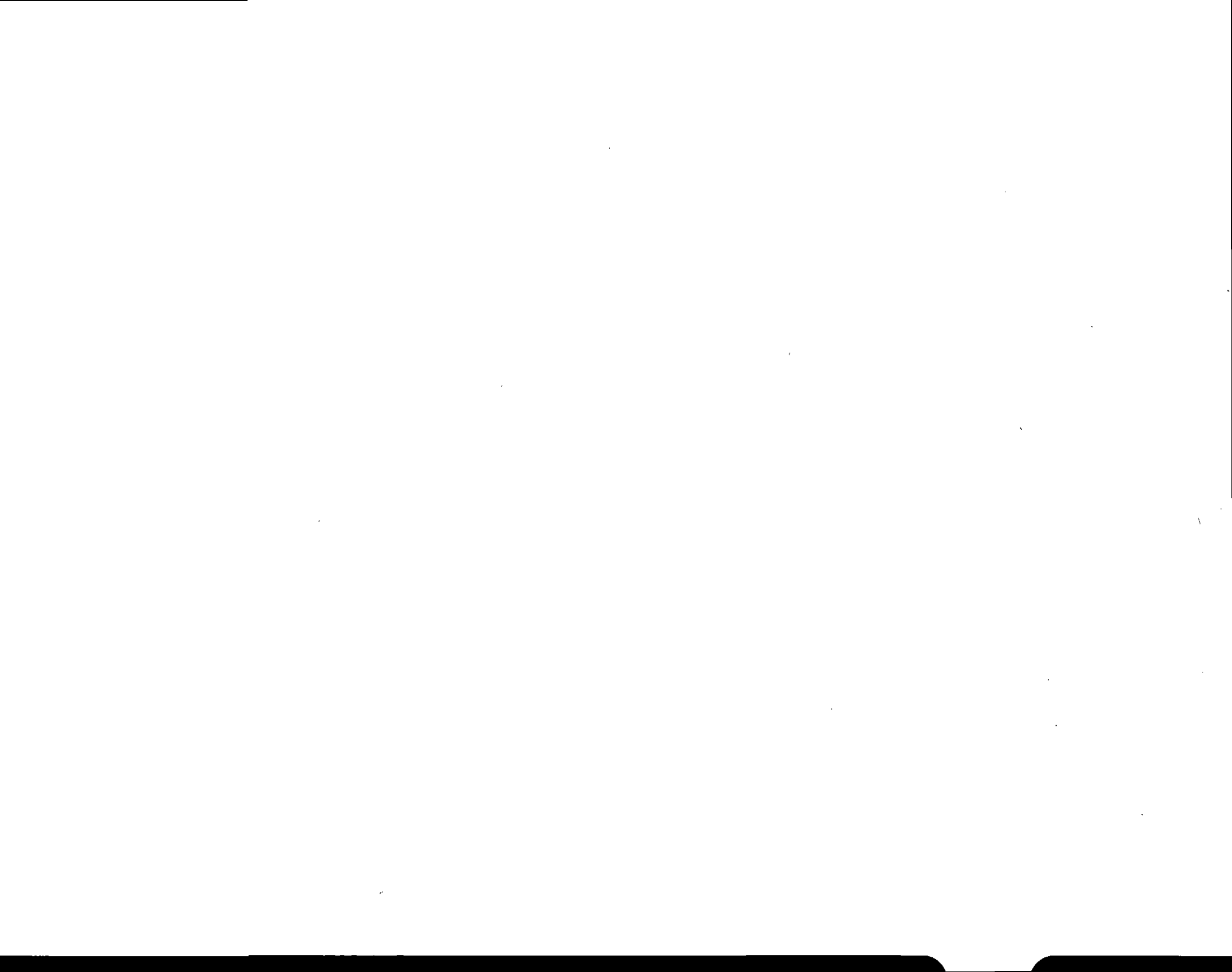
**Amy Johnson
City of Reading Historic Preservation Specialist
815 Washington Street
Reading, PA 19601**

Ms. Johnson will testify regarding the effect of UGI's meter relocation program on the City's historic districts, including her observations of UGI's meter relocation program.

**Michael Lauter
Executive Director, Centre Park Historic District
705-707 North 5th Street
Reading, PA 19601**

Mr. Lauter will testify regarding the effect of UGI's meter relocation program on the City's historic districts, and on the Centre Park Historic District specifically, including on-the-ground observations of UGI's meter relocation program.

As discovery is ongoing, the City and CPHD reserve the right to supplement this list of witnesses, including in response to UGI's discovery responses.



APPENDIX “E”

UGI to City & CPHD-I-18

Please reference Paragraphs 61 and 62 of the City's Complaint. To your knowledge, have any pedestrians been injured by the "exterior gas meters" that allegedly have been placed "in close proximity to City streets and on narrow sidewalks"? If so, please provide copies of all documents, correspondence, and communications relied upon by you in your response.

The City and CPHD are presently unaware of any injuries suffered by pedestrians as a result of exterior gas meters. The City maintains that the gas meters are being located in such a manner as to cause the risk of harm to person and property. By way of example, please see CityCPHD_00287. The City reserves the right to supplement this response, as discovery is ongoing.

SUPPLEMENTAL RESPONSE: As of the date of this response, no person has reported an injury to the City or CPHD. The location of exterior gas meters to City streets and on narrow sidewalks is addressed in the meter-by-meter survey performed by the City and CPHD, provided at CityCPHD_02144 through CityCPHD_05692.

APPENDIX "F"

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PROPOSED ORDER GRANTING MOTION TO STRIKE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Centre Park Historic District : Docket Nos. C-2015-2516051
City of Reading : C-2016-2530475
 :
v. :
 :
UGI Utilities, Inc. :

ORDER GRANTING MOTION TO STRIKE

Upon consideration of the Motion of UGI Utilities, Inc. (“UGI”) to Strike Certain Portions of the City of Reading’s and Centre Park Historic District’s (collectively, “Complainants”) direct testimony and exhibits:

IT IS ORDERED THAT:

1. The Motion is hereby GRANTED.
2. That the portions of the Complainants’ testimony and exhibits, including the Joint Stipulation, about meter locations that were not personally surveyed by the Complainants’ witnesses are hereby stricken.
3. That the portions of the Complainants’ testimony and exhibits about meter locations that were not identified as being disputed in the Joint Stipulation or in Appendix B of UGI’s Motion are hereby stricken.
4. That the Complainants’ testimony and exhibits, therefore, shall be limited to the meter locations personally surveyed by John Slifko, as identified in the Joint Stipulation.
5. That the Complainants shall file an updated Joint Stipulation only containing the meter locations personally surveyed by John Slifko, as identified in the Joint Stipulation, within five (5) days of this Order.

6. That any exhibits the Complainants failed to produce in discovery, as well as testimony based on those exhibits, are hereby stricken, including the following exhibits and any exhibits for which the Complainants have been unable to provide Bates numbers proving that they were served in discovery:

- a. Reading Exhibit JS-3, p. 2 – Map of Queen Anne Historic District from “Living Places” website;
- b. Reading Exhibit JS-6 – Memo prepared by Amy Johnson dated June 29, 2018, about potentially eligible historic districts;
- c. Reading Exhibit JS-8 – Online print-out of Street Excavation Form dated June 28, 2018;
- d. Reading Exhibit JS-13 – Notes taken by Mr. Slifko at meetings on 8/30/2017, 8/18/2017, 6/8/2017, and 6/9/2017;
- e. Reading Exhibit JS-15 – New summary of gas meter survey with new information and allegations, including vehicle strikes/near misses, tripping incidents, gas meter freeze-up, unrepaired pavements, and rusting of meters;
- f. Reading Exhibit JS-18 – Fire department’s report for the 1243 Oley Street incident;
- g. Reading Exhibit JS-19 – Fire department’s report for the 847 Nicolls Street incident;
- h. Reading Exhibit JS-20 – Handwritten meter survey of Pear Street with additional comments not provided in the Joint Stipulation;
- i. Reading Exhibit JS-21 – Newspaper article published in the *Reading Eagle* on May 21, 2018;
- j. Reading Exhibit JS-23 – New summary of survey of N. 10th Street, Cotton Street, and S. 4th Street with new information and allegations, including how meters block front doors if there is an explosion, snow build-up on the meters, shoveling/plowing snow on the meters, rusting of the meters, accidents, reported by residents, tripping incidents, and unrepaired pavement;
- k. Reading Exhibit JS-24 – Summary of new “drive-by survey” that appears to have been recently conducted and includes addresses not previously identified as being disputed by the Complainants;
- l. Reading Exhibit JS-25 – Several of the last photographs appear to have been taken during the “drive-by survey” and not produced in discovery;

- m. Reading Exhibit JS-26 – Picture of a meter by a bus stop taken by Peggy Harter;
- n. Reading Exhibit PH-1 – Pictures taken by Peggy Harter of 800 Schuylkill Avenue;
- o. Reading Exhibit PH-2 – Additional pictures taken by Peggy Harter;
- p. Reading Exhibit PH-3 – July 28, 2016 newspaper article published in the *Reading Eagle* about car crashing into a tree during a police chase; and
- q. Reading Exhibit PH-4 – Additional pictures taken by Peggy Harter.

7. That the direct testimony and exhibits of Peggy Harter (Reading Statement No. 3 and Reading Exhibits PH-1 through PH-4) are hereby stricken.

8. That the portions of the Complainants' direct testimony and exhibits containing information new alleged tripping incidents are hereby stricken: Reading Statement No. 2, p. 30, lines 16-18, Reading Exhibit JS-15, p. 4, and Reading Exhibit JS-23, p. 3.

9. That the portions of the Complainants' direct testimony and exhibits about potential vandalism, meter freeze-ups, UGI allegedly placing meters in "area[s] where water/snow/ice accumulates," UGI allegedly failing to repair sidewalks at some locations, and some meters allegedly rusting are outside the scope of the Formal Complaints and are hereby stricken: Reading Statement No. 1, p. 6, line 15 to p. 7, line 14; Reading Statement No. 2, p. 30, line 22 to p. 31, line 8; p. 34, lines 1-4; Reading Statement No. 3, p. 5, lines 2-8; Reading Exhibit JS-15, p. 4; Reading Exhibit JS-23, pp. 1-2; Joint Stipulation, Historic Matrix, Column 11; Joint Stipulation, Non-Historic Matrix, Column 11; Reading Exhibit JS-15, p. 4; Reading Exhibit JS-23, pp. 2-3.

10. That the portions of the Complainants' direct testimony about meters marked as being under windows but not under openings that could be used as a fire exit are hereby stricken: Reading Statement No. 2, p. 13, line 13 to p. 14, line 9.

11. That the following portions of the Complainants' direct testimony and exhibits containing inadmissible hearsay statements are hereby stricken:

- a. Reading Exhibit JS-6 – Memo prepared by Amy Johnson dated June 29, 2018, about potentially eligible historic districts;
- b. Reading Exhibit JS-13, pp. 1-2 – Statements by Mike Reed and Maryann Ciarlone about conversations they had with UGI personnel;
- c. Reading Exhibit JS-15, p. 3 – Statement that “[r]esidents are concerned, not only about vehicles striking outside gas meters, but also about the effectiveness of any automatic shut-off should that occur. For instance, gas continued to leak after a vehicular accident at 616 Pear. The same is recorded in the Fire Department report for 847 Nicolls.”;
- d. Reading Exhibit JS-18 – Report prepared by the fire department about the 1243 Oley Street incident;
- e. Reading Exhibit JS-19 – Report prepared by the fire department about the 847 Nicolls Street incident;
- f. Reading Exhibit JS-20 – Additional comments by Anita Donatelli (one of the surveyors) about the meter installations on Pear Street, which also contain a statement by an unnamed property owner about an alleged vehicle strike of a meter on Pear Street;
- g. Reading Exhibit JS-21 – Newspaper article published in the *Reading Eagle* on May 21, 2018;
- h. Reading Exhibit JS-23, pp. 2-3 – Statements by residents about vehicular accidents involving meters and tripping over meters;
- i. Reading Exhibit JS-27 – A newspaper article published in *Allentown Morning Call* on February 9, 2011, and another newspaper article published in the *Philadelphia Inquirer* on September 3, 2012;
- j. Reading Exhibit PH-3 – July 28, 2016 newspaper article published in the *Reading Eagle* about car crashing into a tree during a police chase;
- k. Reading Statement No. 2, p. 10, line 22 to p. 11, line 7 – Testimony relating to Reading Exhibit JS-6, a hearsay memo prepared by Amy Johnson about potentially eligible historic districts;
- l. Reading Statement No. 2, p. 13, line 12 to p. 14, line 5 – Testimony about what he and the other surveyors, who are not testifying, did or could not do during their surveys or what they meant by certain notations on the spreadsheets;

- m. Reading Statement No. 2, p. 16, lines 17-23 – Testimony relating to Reading Exhibit JS-13, pp. 1-2, hearsay statements by Mike Reed and Maryann Ciarlone about conversations they had with UGI personnel;
- n. Reading Statement No. 2, p. 18, lines 5-20 – Testimony about what he and the other surveyors, who are not testifying, did or could not do during their surveys;
- o. Reading Statement No. 2, p. 21, lines 9-11 – Statement that “[s]omeone has said that we should now replace our beautiful ‘Doors of Reading’ and ‘Stained Glass of Reading’ posters, with a new one entitled ‘The Gas Meters of Reading’”;
- p. Reading Statement No. 2, p. 25, lines 1-10 – Testimony based on Reading Exhibits JS-18 and JS-19, hearsay reports prepared by the fire department;
- q. Reading Statement No. 2, p. 25, lines 11-16 – Testimony based on hearsay (and hearsay within hearsay) statements in Reading Exhibit JS-20 about the alleged vehicle strike on Pear Street;
- r. Reading Statement No. 2, p. 25, lines 17-20 – Testimony based on Reading Exhibit JS-21, a hearsay newspaper article about a May 20, 2018 car accident;
- s. Reading Statement No. 2, p. 25, line 22 to p. 26, line 9 – Statements by residents about “three instances where vehicles had skidded off City streets and struck a gas meter,” which allegedly occurred at “1621 Cotton Street,” “[i]n the vicinity of 1261 N. 10th Street,” and “[i]n the vicinity of 11th and Spring Streets.”;
- t. Reading Statement No. 2, p. 27, lines 4-15 – Testimony about what he and the other surveyors, who are not testifying, found during their surveys;
- u. Reading Statement No. 2, p. 29, lines 9-10 – Statement that “according to the owner of 616 Pear Street, gas escaped there after that meter was struck by a vehicle”;
- v. Reading Statement No. 2, p. 30, lines 16-18 – Statements by residents about allegedly tripping over meters;
- w. Reading Statement No. 2, p. 33, lines 20-23 – Testimony based on hearsay newspaper articles submitted as Reading Exhibit JS-27;
- x. Reading Statement No. 3, p. 5, lines 2-3 – Statement that “since the meters are so exposed, we are always concerned that someone will tamper with them”;
- y. Reading Statement No. 3, p. 5, lines 6-7 – Statement that “there is very little space for us to pile snow when it is shoveled”;

- z. Reading Statement No. 4, p. 3, lines 21-22 – Statement that “[p]eople began to see that this was a City-wide problem, and that something needed to be done”;
- aa. Reading Statement No. 4, p. 5, lines 13-17 – Statement about Matt Stauffer’s conversations with UGI personnel; and
- bb. Reading Statement No. 4, lines 14-15 – Statement that “[t]his is the area that initially got people so upset in 2015.”

Dated: _____

Honorable Mary D. Long
Administrative Law Judge

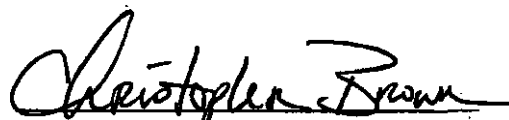
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Centre Park Historic District	:	Docket Nos. C-2015-2516051
City of Reading	:	C-2016-2530475
	:	
v.	:	
	:	
UGI Utilities, Inc.	:	

VERIFICATION

I, Christopher Brown, being Senior Director – Operations South Region for UGI Utilities, Inc., hereby state that the information set forth above is true and correct to the best of my knowledge, information and belief, and that if asked orally at a hearing in this matter, my answers would be as set forth therein. 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: 7/9/18


Christopher Brown

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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 AND OVERNIGHT DELIVERY

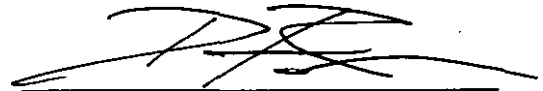
Jan D. Krafczek, Esquire
City Hall, Room 2-54
815 Washington Street
Reading, PA 19601

Charles E. Thomas III, Esquire
Charles E. Thomas, Jr.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101

Rich Raiders, Esquire
321 East Main Street
Annville, PA 17003

Scott Hoh, Esquire
Resolution Law Group
606 North 5th Street
Reading, PA 19601

Date: July 9, 2018



Devin T. Ryan

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