



July 17, 2018

Secretary's Bureau  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

*via PUC E-filing system*

RE: *Centre Park Historic District v. UGI Utilities, C-2015-2516051*  
*City of Reading v. UGI Utilities, C-2016-2530475*

Dear Secretary's Bureau,

Please find the attached Centre Park Historic District's Answer to UGI's Motion to Strike Certain Portions of the Complainant's Direct Testimony and Exhibits filed with the PUC docket today. Thank you.

Sincerely,

/s/

Rich Raiders, Esq.

ENC: Answer of Centre Park Historic District

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF CENTRE PARK HISTORIC DISTRICT TO 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 Centre Park Historic District (“District”), by and through its below-signed attorneys, and files pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code 5.103 and 5.61, this Answer to the Motion of UGI Utilities, Inc. (“UGI”) to Strike Certain Portions of the Complainant’s’ Direct Testimony and Exhibits. The District incorporates by reference any and all responses to this Motion filed by the City of Reading (“City”) as if fully recited herein.

While the City will reply to most of the Motion, the District specifically responds to specific allegations concerning the scope of the Commonwealth’s trusteeship of historic resources under Article 1, Section 27 of our Commonwealth’s Constitution. *See*, Penn. Const. art. I, sec. 27. In support thereof, the District states as follows:

**I. BACKGROUND**

1-50. The District incorporates by reference and adopts the City’s answer. Unless otherwise averred by the City, admitted as to the background of the instant matter.

**II. MOTION TO STRIKE**

51-94. The District incorporates by reference and adopts the City's answer in full. In the event that the City does not respond, denied.

**D. PEGGY HARTER**

95. Admitted in part and denied in part. Admitted in that Ms. Harter has offered testimony. Denied in that the issues raised are fully within the Commission's jurisdiction and should be adjudicated here. After discovery closed on this matter, several appellate cases reshaped the legal framework of this dispute that should now be considered here. *Penn. Env'tl. Def. Found v. Commw.*, 161 A.3d 911, 933 (Pa. 2017) ("*PEDF II*") held, on June 20, 2017, that all instrumentalities of the Commonwealth now serve as trustees of the Commonwealth's historic resources per Penn. Const. art. I, sec. 27. *UGI Utilities, Inc. v. City of Reading*, 179 A.3d 624, 631-32 (Pa Commw. 2017) held that the Commission has exclusive jurisdiction over the scope of Article 1, Section 27 regulation of public utilities. *Delaware Riverkeeper Network v. Sunoco Pipeline, L.P.*, 179 A.3d 670, 699 (Pa. Commw. Feb. 20, 2018) held that actors complaining about the intersection between local regulation and Commission regulation must raise these questions before the Commission. This Court also noted that the Environmental Rights Amendment does not directly regulate private actors not directly acting under governmental authority. *Id. MarkWest Liberty Midstream and Res., LLC v. Cecil Twp. Zoning Hearing Bd.*, 904 C.D. 2016 (Pa. Commw. Jan. 11, 2018) held that a petitioner must identify a specific regulatory gap in a specific application before the appropriate regulatory agency to request relief. *Clean Air Council v. Sunoco Pipeline L.P.*, \_\_\_ A.3d \_\_\_, 1112 C.D. 2017 (Pa. Commw. Apr. 30, 2018) held that the Commission, sitting in its original jurisdiction, is the appropriate body to adjudicate the metes and bounds of the environmental, natural resource and historic trust

concerning acts and regulations of public utility corporations regulated by the Commission. Discovery was completed before this line of *PEDF II* cases and the Commonwealth Court case directly on point concerning this matter were published. In what may be a case of first impression, the Commission is now asked to rule on the appropriate scope of its trusteeship duties as a trustee of the Commonwealth's historic resources. The Commission must also now rule on the interaction between its duties and the duties of the City per 52 Pa. Code § 59.18(d)(ii).

The only appellate decision the District found to help guide the commission was *O'Connor v. Pub. Util. Comm'n*, 582 A.2d 427 (Pa. Commw. 1990). In a pre-*PEDF II* opinion, The *O'Connor* court found that the Commission must balance its constitutional trusteeship duties with its public utility regulatory role. However, post-*PEDF II*, the Commission must now also consider the role that the City, attempting to exercise its own trusteeship duties, must also play in protecting the Commonwealth's identified historic resources. The District requests that the Court, in light of this fast-changing area of law, allow deference for the complainants to supplement the record to allow the Commission a full and fair hearing of all pertinent facts concerning the Commission's and the City's historical resource trusteeship duties. The offered evidence does provide the opportunity for the Commission to review a full and complete record, considering legal issues concerning the scope of the relative trusteeship duties that were not necessarily evident before *PEDF II*.

*MarkWest* requires a complainant find an administrative gap in the regulatory scheme before complaining that a trusteeship has failed. *MarkWest*, 909 C.D. 2016 at \*16. The District asserts that the Commonwealth Court created a gap when it held in *UGI* that the Commission, in the

first instance, must decide the scope and procedure, within the Commission's existing regulatory structure at 52 Pa. Code § 59.18(d)(ii) for the City to fulfill its trusteeship obligations. *UGI*, 179 A.3d at 631-32. Here, the Commission has the opportunity to fill that gap as Judge Colins held it must. In filling that gap, the District asserts that the Commission should consider all relevant evidence, including the evidence offered in this direct testimony and related exhibits.

96-98. The District adopts the City's answer in full. In the event that the City does not respond, denied.

99-118. Denied. *UGI* ignores that it would be prejudiced by not allowing the Commission a full and complete hearing concerning the Commission's and the City's trusteeship duties. This matter appears to be a case of first impression, where, seemingly for the first time, the Commission must now determine how it, in partnership with other instrumentalities of the Commonwealth, will address historic preservation trust duties. The evidence offered by Ms. Harter will provide the Commission significant insight to the various impacts of historic preservation not previously in the record. Now that the parties know, post-discovery, that the Commission is the body where these questions must be raised in the first instance, *UGI* would actually be prejudiced by excluding this evidence by having to re-hear this case in light of recent legal developments that require the Commission to hear this exact evidence in this hearing. The District believes that the Commission having to re-hear this matter to address issues that were not included in discovery before the parties knew that this proceeding would include this evidentiary scope prejudices all parties and the Commission. Therefore, the District requests

that this information be allowed into evidence, and, if necessary, UGI be given the normal discovery response opportunities allowed under our precedent.

**E. TRIPPING INCIDENTS.**

119-129. Denied. The District believes that UGI reads the trusteeship issue far too narrowly. *O'Connor* does not constrict the Commission from reviewing what may be natural and expected outcomes of historical preservation disputes. The Commonwealth Court directly told these parties that the Commission is the first instance reviewer of Article I, Section 27 claims about public utility facilities. *Clean Air Council* and *Delaware Riverkeeper* both direct the Commission to consider all trusteeship issues in its preemptive role as the regulator of Public Utility corporations. As described above, removing important parts of the evidentiary record due to changes in the law, and admittedly issues concerning several representation changes by the complainants, would prejudice all parties and the Commission. The District believes that tripping hazards due to historic preservation issues are part and parcel of this litigation, and should be heard here to allow the Commission to properly opine about how it intends to guide municipalities in interpreting and implementing 52 Pa. C.S. § 59.18(d)(ii). Absent guidance about intended or unintended consequences, the parties will not know how to proceed.

**F. Unintended Consequences.**

130-143. The District incorporates by reference its answer concerning paragraphs 95-129 above.

**G. Meters Under Windows.**

144-152. The District incorporates by reference its answer concerning paragraphs 95-129 above. Further, the District asserts that any Motion to Strike concerning this issue is

premature, given that UGI has not provided its direct testimony concerning how it interprets its 49 C.F.R. § 192 and 66 Pa. C.S. § 1501 obligations to provide safe and efficient service. UGI is required to maintain a full and complete operating manual to document all aspects of natural gas utility operation. The District asserts that meter location is part of the evidentiary record in this matter. *See generally*, 49 C.F.R. § 192.605(c)(1)(v). The District asserts that UGI is required to address hazards introduced by the utility relocating its equipment in places where it can cause or become a public hazard. *Id.* Upon reviewing the current UGI Part 192 Manual concerning public risks and safety, the Commission can determine the relevance of this evidence.

**H. Hearsay Statements.**

153-157. The District incorporates by reference its answer concerning paragraphs 95-129 above. Further, the District incorporates by reference any answer provided by the City. As further described above, given the rapidly changing legal landscape and the Commission's mandate to evaluate the metes and bounds of it's and the City's trusteeship obligations and roles, excluding the identified evidence would prejudice the Commission, the City, the District and UGI. Only now, long after discovery closed, do the parties understand the Commission's mandates in this action. The Commission should either reopen discovery, allow UGI to examine the evidence and any new witnesses before trial, or admit the evidence to avoid prejudice to itself and the other parties. Further, the District asserts that any Motion to Strike concerning this issue is premature, given that UGI has not provided its direct testimony concerning how it interprets its 49 CFR § 192 and 66 Pa. C.S. § 1501 obligations to provide safe and efficient

service. Upon reviewing the current UGI Part 192 Manual concerning public risks and safety, the Commission can determine the relevance of this evidence.

**WHEREFORE**, for the reasons described above, Centre Park Historic District respectfully requests that the Commission deny the Motion to Strike offered by UGI Utilities, Inc.

Respectfully Submitted,

Date: July 17, 2018

/s/  
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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically served the foregoing upon the following:

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Respectfully Submitted,

Date: July 17, 2018

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