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Attorney at Law

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December 22, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Stephen Morgan v. Columbia Gas of Pennsylvania, Inc.
Complaint Docket No. C-2020-3021730

Dear Ms. Chiavetta:

Enclosed is an electronically filed copy of Columbia Gas of Pennsylvania, Inc.'s Motion for Judgment on the Pleadings. A copy of the document has been served on the Complainant.

Sincerely,



Larry R. Crayne

enclosure

cc: Christopher C. Carfardi, Esq.
Dennis R. Very, Esq.
Carfardi Ferguson Wyrick Weis & Gabriel LLC
2605 Nicholson Road, Suite 2201
Sewickley, PA 15143

ccarfardi@cfwwg.com
dvery@cfwwg.com

The Hon. Emily I. DeVoe
edevoe@pa.gov

Via e-mail only due to Emergency Order at M-2020-3019262

Commonwealth of Pennsylvania

Before the Pennsylvania Public Utility Commission

In the Matter of:

Stephen Morgan,
Complainant,

Complaint Docket
No. C-2020-3021730

VS.

Columbia Gas of Pennsylvania, Inc.
Respondent.

Motion for Judgment on the Pleadings

AND NOW, Respondent, Columbia Gas of Pennsylvania, Inc. (Columbia), hereby moves for judgment in its favor and against Complainants Stephan Morgan and Brian P. Dolfi collectively "Complainants" as follows:

1. On August 6, 2020, Complainant Morgan filed a Formal Complaint with the Commission against Columbia regarding a 2018 landslide on Scenery Drive, Belle Vernon, Pa that alleged damage to his and a neighbor's properties.
2. On September 22, 2020, Columbia filed an Answer, New Matter and Preliminary Objections to Complainant Morgan's Formal Complaint. Columbia's Answer, New Matter and Preliminary Objections were assigned to Administrative Law Judge Emily DeVoe on October 19, 2020.
3. On October 26, 2020, Judge DeVoe issued an Interim Order Granting Preliminary Objection, Ordering Amended Complaint, and holding remaining Preliminary Objection in Abeyance.
4. The Interim order sustained Columbia's Preliminary Objections as to damages and ordered Complainant to file an Amended Complaint.
5. On or about November 24, 2020, Complainants filed an Amended Formal Complaint in accordance with the Interim Order. A true and correct copy of the Amended Complaint is attached hereto as **Exhibit "A"**.
6. On November 24, 2020, Columbia was served with the Amended Complaint.
7. On December 18, 2020, Columbia filed an Answer to the Amended Complaint. Accordingly, the pleadings for this matter are now closed.

8. Complainants' allegations in the Amended Complaint in effect argue that Columbia has violated Section 1501 of the Public Utility Code by failing to provide adequate, efficient, safe and reasonable service and facilities during a 2012 Gas Line Installation in Scenery Drive, Belle Vernon, Pa. See Paragraph 8, 9 and 35 of the Amended Complaint.

9. Complainants aver that a landslide (the "2018 Landslide") damaged adjacent properties of Complainants along Scenery Drive. See Paragraphs 9, 10 and 11 of the Amended Complaint. Complainants attribute the alleged damage from the 2018 Landslide to the 2012 Gas Line Installation.

10. *66 Pa. C.S.A., Section 3314* of the Public Utility Code provides in relevant part that: "... no prosecutions on account of any matter or thing mentioned in this part shall be maintained unless brought within three years from the date at which the liability therefor arose" This statute of limitations is non-waivable. The statute terminates the right to bring an action before the Commission as well as any remedy the Commission may order. *Tyrone Brown v Philadelphia Gas Works*, Initial Decision at F-2018-2641015, Final Order adopted May 17, 2018; *Mialynn Medina v Philadelphia Gas Works*, Initial Decision at C-2016-2568822, Final Order adopted March 16, 2017. While this section is often applied in matters involving billing, the limitation is applicable to other matters. *Rosemary Gilligan v West Penn Power Company*, Initial Decision at C-2010-2205041, Final Order adopted January 27, 2015. This section thus provides a general limitation of three years for any action under the *Public Utility Code*. *Suburban East Tires, Inc. v. Pa. Pub. Util. Comm'n*, 582 A.2d 727, (Pa. Cmwlth. 1990).

11. The 2012 Gas Line Installation in Scenery Drive was performed at least six years prior to the 2018 Landslide. Consequently, the Amended Complaint has been filed at least five years beyond the three-year statute of limitations for the filing of a formal complaint regarding the adequacy to provide adequate, efficient, safe and reasonable service and facilities. Complainants have lost their rights to pursue litigation before the Commission regarding the work that was performed in 2012 for the Gas Line Installation on Scenery Drive. As the Commission is without jurisdiction to decide matters falling outside the statute of limitations, Complainants' request for relief must be denied.

12. The Commission has jurisdiction for the determination of matters that require the particular expertise of the Commission regarding the providing of utility service. A determination of what caused the 2018 Landslide is neither a complex matter requiring the special expertise of the Commission regarding utility matters nor is there a need for uniformity and consistency in Commission policy and the legislative intent. The fact that a party may be a public utility does not automatically confer jurisdiction on the Commission. *DeFrancesco v. Western Pa. Water Company*, 499 Pa.374 (1982).

13. Therefore, the Commission is not the appropriate forum to determine the proximate cause of the 2018 Landslide or to decide the proximate cause of any possible damages to Complainants' properties. This matter more appropriately involves a possible claim for civil

damages and should be adjudicated in a civil court where a jury trial for the determination of the proximate cause of any damage to the Subject Properties is possible and where the court has the power to decide the parties' rights and responsibilities and award damages if appropriate.

WHEREFORE, Columbia respectfully requests that the Commission grant this Motion for Judgment on the Pleadings, enter judgment in its favor, and dismiss Complainants' Amended Formal Complaint with prejudice.

Notice to Plead

To: Stephen Morgan:

You are hereby notified to file a written response to the above Motion for Judgment on the Pleadings within twenty (20) days from service hereof or a judgment may be entered against you. The response must be mailed to the Secretary of the Public Utility Commission:

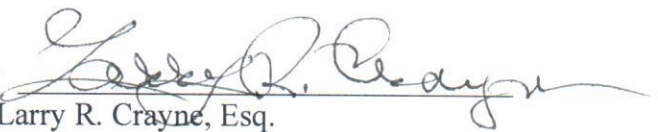
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

A copy of your response must also be mailed to the undersigned.

Dated: December 22, 2020

Respectfully Submitted,

Columbia Gas of Pennsylvania, Inc.

By: 
Larry R. Crayne, Esq.

Certificate of Service

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the participants, listed below, in accordance with the requirements of Sec. 1.54 (relating to service by a participant).

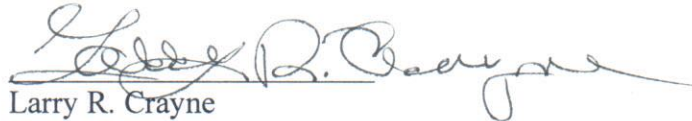
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ccarfardi@cfwwg.com
dvery@cfwwg.com

The Hon. Emily I. DeVoe
edevoe@pa.gov

Via e-mail only due to Emergency Order at M-2020-301926

Dated this 22nd day of Dec, 2020



Larry R. Crayne
238 Johnston Road
Pittsburgh, PA 15241

Counsel for
Columbia Gas of Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen Morgan,	:	
	:	
Complainant,	:	
	:	
v.	:	C-2020-3021730
	:	
Columbia Gas of Pennsylvania, Inc.	:	
	:	
Respondent.	:	

AMENDED FORMAL COMPLAINT

Complainants, Stephen Morgan and Brian Dolfi, by and through their undersigned counsel, Christopher A. Cafardi, Dennis R. Very and Cafardi Ferguson Wyrick Weis + Gabriel llc, file the within Amended Formal Complaint ("**Amended Complaint**"), stating as follows:

Parties

1. Complainant, Stephen Morgan ("**Morgan**") is an adult individual who resides at 15 Arentzen Blvd., Upper Suite, Charleroi, PA 15022, with the following phone number and email address, respectively: 724-872-6589 and info@morganexcavating.com.

2. Complainant, Brian Dolfi ("**Dolfi**") is an adult individual who resides at 623 Hamilton Avenue, Belle Vernon, PA 15012, and is a customer of Respondent, Columbia Gas of Pennsylvania, Inc. ("**Columbia Gas**"). Dolfi's phone number and email address are, respectively: 724-379-8718 and P.dolfi@comcast.net.

The Subject Properties and Factual Background

3. This Amended Complaint involves three adjacent properties that border Scenery Drive, Belle Vernon, PA ("**Scenery Drive**").

EXHIBIT A

4. Morgan owns two of the three adjacent properties that are the subject of this Amended Complaint and that border Scenery Drive.

5. The two adjacent properties that are owned by Morgan and subject to this Amended Complaint are both serviced by the address of 745 Fellsburg Road, Belle Vernon, PA (the **“Morgan Properties”**). The parcel numbers for the Morgan Properties are 56-09-01-0-072 and 56-09-01-0-070, respectively.

6. Dolfi owns the third adjacent property that borders Scenery Drive, and this property is also a subject property of this Amended Complaint.

7. The third adjacent property that is owned by Dolfi and subject to this Amended Complaint is located at 623 Hamilton Avenue, Belle Vernon, PA 15012 (individually, the **“Dolfi Property”**, collectively with the Morgan Properties, the **“Subject Properties”**).

8. Upon information and belief, sometime prior to September 2018, Columbia Gas installed a gas line (the **“Gas Line”**) in the vicinity of Scenery Drive along and/or within the property line of the Subject Properties (the **“Gas Line Installation”**).

9. In or about September 2018, a landslide occurred near and/or along the entire length where the Morgan Properties border Scenery Drive and near and or along a portion of where the Dolfi Property borders Scenery Drive (the **“2018 Landslide”**).

10. Upon information and belief, the 2018 Landslide was caused by Columbia Gas’s improper Gas Line Installation including, but not limited to the failure to use proper materials and to compact appropriately, as well as Columbia Gas’s failure to properly repair the trench after settlement occurred.

11. The Landslide damaged the Subject Properties as evidenced by slope failure of the soils and sliding of the entire length of the hillside near and bordering Scenery Drive.

12. The Landslide also damaged the Gas Line.
13. Upon information and belief, instead of repairing the damaged Gas Line and restoring the Subject Properties to their original condition, Columbia Gas installed a new gas Line under the middle of Scenery Drive and further away from the damaged areas of the Subject Properties (the "**2018 Installation**").
14. During the 2018 Installation, a Columbia Gas Representative informed Morgan that Columbia Gas would properly repair the damage done to the Subject Properties by the 2018 Landslide.
15. Columbia Gas never properly repaired the damage it caused to the Subject Properties.
16. On or about January 23, 2019, Morgan spoke with Columbia Gas Customer Service regarding the damage done by the 2018 Landslide and Columbia Gas's failure to restore the Subject Properties to their original condition.
17. Columbia Gas Customer Service informed Morgan that a restoration order was placed to have the 2018 Landslide addressed.
18. After Columbia Gas failed to contact Morgan regarding any progress on the restoration order, another phone call to Columbia Gas Customer Service was made on or about February 6, 2019. On that call, Columbia Gas indicated that another restoration order was to be placed.
19. Almost five months passed without any update from Columbia Gas on the restoration of the damage to the Subject Properties. On or about July 1, 2019, yet another phone call was made on behalf of Morgan to Columbia Gas Customer Service to inquire regarding the delay with the latest restoration order from February 6, 2019. On that call, Columbia Gas indicated

that an expedited restoration order was to be placed and that Columbia Gas would contact Morgan with an update within three days.

20. On or about July 3, 2019, another phone call on behalf of Morgan was made to Columbia Gas Customer Service regarding the status of the expedited restoration order. On that call, Columbia Gas Customer Service indicated that the expedited restoration order was sent to Columbia Gas's contractor; however, neither Columbia Gas nor its contractor contacted Morgan regarding the expedited restoration order.

21. Additionally, Columbia Gas Customer Service indicated that the expedited restoration order information would be sent to a Columbia Gas supervisor as well as the contractor's supervisor. Columbia Gas Customer Service indicated once again that contact from a Columbia Gas supervisor and the contractor's supervisor would follow within three days.

22. Still on July 3, 2019, at Morgan's instruction, a call was placed to the PUC to report Columbia Gas's lack of responsiveness to the 2018 Landslide and the corresponding restoration. An informal complaint at case number 3715174 was initiated.

23. Still on July 3, 2019, Columbia Gas finally initiated a telephone call with Morgan and indicated that Columbia Gas would have someone look into the issue regarding the 2018 Landslide.

24. On or about July 10, 2019, a message to Columbia Gas was left on behalf of Morgan requesting a return call regarding the status of the restoration of the Subject Properties to their condition prior to the damage caused by Columbia Gas.

25. Columbia Gas eventually denied liability.

26. On or about August 6, 2020, Morgan initiated this action with the Pennsylvania Public Utility Commission.

27. This dispute is subject to the jurisdiction of the PUC in that this dispute involves, among other things, Columbia Gas facilities as well as its violation of 66 Pa. C.S.A. § 1501.

28. 66 Pa. C.S.A. § 501 provides that the Commission has a duty to enforce, execute and carry out, by its regulations, orders and otherwise all the provisions of the Code.

29. 66 Pa. C.S.A. § 2205(b)(3) provides that disputes concerning facilities shall be subject to the jurisdiction of the commission and may be initiated by the filing of a complaint under section 701 by the commission or any interested party.

30. 66 Pa. C.S.A. § 701 provides that any person having an interest in the subject matter may file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or any regulation or order of the commission.

31. Morgan and Dolfi have an interest in the damage done to the Subject Properties by Columbia Gas's previously described failure to furnish and maintain an adequate, efficient, safe, and reasonable Gas Line, and/or Columbia Gas's failure to make all such repairs, changes, alterations, substitutions, extensions, and/or improvements in or to the Gas Line as shall be necessary and or proper for the accommodation, convenience, and safety of Morgan and Dolfi.

32. Morgan and Dolfi have an interest in the damage done to the Subject Properties by Columbia Gas's previously described failure to return the Subject Properties to its original condition prior to the Gas Line Installation, failure to properly repair the damage done to the Subject Properties by the Columbia Gas caused 2018 Landslide, and failure to properly perform the Gas Line Installation.

Columbia Gas Violated 66 Pa. C.S.A. § 1501 as to Morgan and Dolfi

33. Morgan and Dolfi hereby incorporate by reference the averments contained in all prior paragraphs of the within Amended Complaint as if set forth in full.

34. 66 Pa. C.S.A. § 1501 provides that Columbia Gas has the duties to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

35. As previously provided above, Columbia Gas breached its duties to Morgan and Dolfi and violated 66 Pa. C.S.A. § 1501 by failing to maintain adequate, efficient, safe, and reasonable facilities and by failing to make all proper repairs, changes, alterations, substitutions, extensions, and/or improvements regarding the Gas Line Installation and the 2018 Installation and by failing to restore the Subject Properties to their previous condition by properly repairing the damage done to the Subject Properties caused by Columbia Gas.

36. Restoring the Subject Properties to their previous condition and removing any old lines on the Subject Properties is necessary and proper for the accommodation, convenience, and safety of Morgan and Dolfi.

37. As a direct and proximate result of Columbia Gas's negligent conduct as set forth herein, Columbia Gas has caused damages to Morgan and Dolfi.

WEREFORÉ, Complainants Stephen Morgan and Brian Dolfi respectfully request the Public Utility Commission order Columbia Gas to restore the Subject Properties to their condition prior to the Gas Line Installation by properly repairing the damage done to the Subject Properties caused by Columbia Gas including, but not limited to the damage from the 2018 Landslide:

38. Morgan and Dolfi reserve the right to seek a transfer to the proper Pennsylvania Court of Common Pleas, pursuant to law including, but not limited to 42 Pa C.S.A. § 5103, of any

and all claims against Columbia Gas for money damages including, but not limited to any claims for negligence and/or trespass.

Notice to Plead

To: Columbia Gas of Pennsylvania, Inc.:

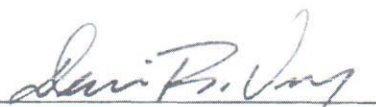
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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120

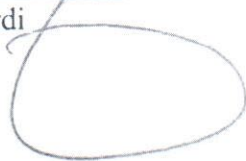
A copy of your response must also be mailed to the undersigned.

Respectfully Submitted,

Cafardi Ferguson Wyrick Weis + Gabriel llc

By: 

Christopher A. Cafardi
Pa. I.D. NO. 90904
Dennis R. Very
Pa. I.D. No. 76489



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Fax: (412) 515-8901
ccafardj@cfwwg.com
dvery@cfwwg.com


Date: November 24, 2020

Counsel for Complainants, Stephen Morgan and
Brian Dolfi

VERIFICATION

I, Stephen D. Morgan, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

Date: November 23, 2020



VERIFICATION

I, Brian P. Dolfi, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

Date: November 23, 2020

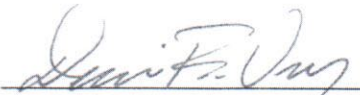
Brian P. Dolfi

CERTIFICATE OF SERVICE

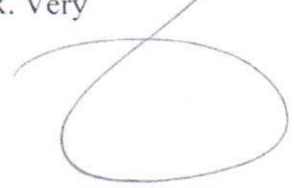
I hereby certify that I have this day served a true copy of the following document by electronic service pursuant to Emergency Order at Docket No. M-2020-3019262, upon the participants listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

Larry R. Crayne, Esquire
lrcrayne@comcast.net
(*Counsel for Columbia Gas*)

Emily I. DeVoe, Administrative Law Judge
edevoe@pa.gov



Dennis R. Very



November 24, 2020