

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BRYAN TATE :
 :
v. : **C-2020-3018966**
 :
COLUMBIA GAS OF PA INC. : **FILED ELECTRONICALLY**

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BRIEF OF COMPLAINANT, BRYAN TATE

I. STATEMENT OF THE CASE.

This case is about the proposed relocation of a gas meter from the basement of a historic property to the right front façade of the property. The property in question is located at 52 South Pine Street, York, Pennsylvania 17403 (hereinafter sometimes the “Property”), within the “Historic York” historic district created pursuant to the Pennsylvania Historic District Act of 1961, 53 P.S. §8001-8006, known as Act 167. Tr. 8, 21-22, 25; Tate Exh. No. 9.

On or about August 23, 2019, the Complainant-homeowner, Bryan Tate (“Tate”), received written notice from Respondent, Columbia Gas (“Columbia Gas”), under 52 Pa. Code 59.18(a), specifically acknowledging that the Property was located within the “Historical District of York”,¹ but advising of a project requiring relocation of the gas meter from inside of the home to the outside, “consistent with contemporary standards for gas meters”. Tr. 32-33; Tate Exh. No. 11 and Columbia Gas Exh. No. 2. The notice included a form letter that stated, in part:

a recently approved change to Section 59.18 of the [Pa] Code now requires that gas meters and pressure regulators be located outside. An exception may be granted if we can readily confirm that the building is, or is eligible to be, listed on the national register of historic places, or is located within a historic district that is listed in the national register of historic places. Please contact Columbia Gas using the contact information below as soon as possible if you believe that your home may qualify for an exemption from the PUC’s meter

¹ The letter stated that “Our records indicate you are the owner of a property located within the Historical District of York.” Tate Exh. No. 11, letter dated August 23, 2019.

relocation requirements.

Tate thereafter filed a “Columbia Gas Meter Relocation Reconsideration Form” with the utility. Tr. 33-34, 203-204; Tate Exh. No. 12, Columbia Gas Exh. No. 4. The Form requested an exemption on the following grounds: 1) the house is located in a designated historic district; 2) the house is located in an area where the homeowner has concerns that an outside meter is at a high risk of being subject to tampering or vandalism; and 3) the sidewalk is shallow on South Pine Street and the home’s porch and stairs are where gas enters the Property. Tr. 36; Tate Exh. No. 12, Columbia Gas Exh. No. 4.

On or about December 12, 2019, Columbia Gas denied the meter relocation reconsideration request by e-mail from Russell Bedell, Communications Manager of Columbia Gas of Pennsylvania and Maryland. Tr. 43; Tate Exh. No. 14, Columbia Gas Exh. No. 5. The email cited general safety concerns applicable to all gas meters and stated that “[w]e have not experienced tampering and vandalism on gas meters that have been moved outside as part of this safety program, and if a meter were accidentally damaged, the excess flow valve installed with the new service line would minimize or shut off the flow of gas. Additionally, the new service line and meter would be installed further away from the porch stairs than the current service line to address the shallow sidewalk concern.” Tate Exh. No. 14, Columbia Gas Exh. No. 5. The e-mail requested that Tate make arrangements to have the new meter and service line installed by December 16, 2019. Tate Exh. No. 14, Columbia Gas Exh. No. 5.

Importantly, the denial did not address the historic nature of the building or the historic values subject to protection in Pennsylvania. *See* Tate Exh. No. 14, Columbia Gas Exh. No. 5. Further, while the denial stated that Columbia Gas had not experienced tampering and vandalism with other meters “*that had been moved outside as part of this safety program*” (emphasis

added), the denial did not specify the location of these relocated meters or when the meters had been moved, or otherwise address the risk of tampering or vandalism *in the area of Tate's Property*. Tate Exh. No. 14, Columbia Gas Exh. No. 5.

Tate filed a timely Informal Complaint with the Pennsylvania Public Utility Commission ("PUC") on December 13, 2019. Tr. 47; Tate Exh. No. 15. Tim Clark, PUC Investigator, wrote to Tate on December 20, 2019 requesting that Tate call him within ten (10) days of December 20, 2019 to discuss the Informal Complaint. *Id.* Tate and Inspector Clark attempted to contact each other several times, but to no avail. Tr. 47. Nevertheless, by letter of January 23, 2020, Inspector Clark summarized the positions of Tate as follows:

The York City Historic Districts appear on the National Register of Historic Places. . . . Columbia Gas refuses to understand that one of the only economic opportunities that York City has is its historic properties and that by moving unattractive meters (in some cases many meters) to the fronts of properties it is destroying the historic nature of the property and the economic viability of the property. The Company has ignored citizen and York City concerns with outside meter placements blocking ADA passage on narrow sidewalks and safety issues in neighborhoods where criminals can easily tamper with meter shut offs. Residents of the City of York have requested Columbia Gas, in a meeting at City Hall last year, and again at a Town Hall Meeting set up by Mayor Helfrich this year, as well as during individual meetings by individual property owners, to either mirror UGI's work in Harrisburg's Historic District placing regulators only on the outside of Historic District properties with meters remaining in basements, or by placing new outside meters only on the side or rear of properties.

Tate Exh. No. 16, letter dated January 23, 2020, page 1; Columbia Gas Exh. No. 7.

Inspector Clark wrote that Columbia Gas "offered to locate the meter on the outside front right of the home. The company has offered to paint the meter to match the paint of the exterior of the home. The company has also offered to put a cage screening around the meter and paint the screen." Tate Exh. No. 16, letter dated January 23, 2020, page 1. The letter further indicated that the "company's position is that the relocation of meters as directed by the PUC at

the time of the company's pipeline upgrades is an important part of construction timeline. The location of the meter is at the determination of the utility company and Columbia believes that the location for the meter at 52 S Pine Street, York, PA is best located at outside front right."

Tate Exh. No. 16, letter dated January 23, 2020, page 2.

Mr. Clark did not indicate that Columbia Gas offered to move the meter to the side or rear of the Property or to place a pressure regulator outside the Property with the meter remaining in the basement. *See* Tate Exh. No. 16, letter dated January 23, 2020. Inspector Clark indicated that the PUC's Bureau of Consumer Services could not decide where a utility company should place their meter as long as the utility is not in violation of Pennsylvania law.

Accordingly, the Bureau of Consumer Services "cannot issue a legally binding decision on this complaint. Therefore, this informal complaint has been closed without a decision." Tate Exh. No. 16, letter dated January 23, 2020, page 2.

Tate subsequently received a letter, dated February 21, 2020, notifying him of Columbia Gas' intent to complete the meter relocation project by March 2, 2020. Tr. 57-58; Tate Exh. No. 17; Columbia Gas Exh. No. 8. The letter asked Tate to call to schedule the work on February 26, 27 or 28, 2020. *Id.* In response, Tate filed a Formal Complaint with the PUC, signed and dated February 28, 2020, through the PUC's e-filing system on February 28, 2020. Tr. 58. The Formal Complaint was also sent by certified mail to the PUC and was e-filed a second time. Tr. 58.

The Formal Complaint states that Columbia Gas is threatening to shut off the supply of gas to 52 South Pine Street, which Tate rents to a third party, and further that Columbia Gas seeks to move the gas meter at 52 South Pine Street to the front of the Property. "They said it must be moved, even though the PUC allows for an historic exemption, and my historic property

resides in the York City Historic District, which is on the National Register of Historic Places. I want my gas meter to remain in the basement of the property, which is safer for my tenants so that it is not tampered with, so that the gas is not turned off by a wrench, so that it is not sitting out on the sidewalk where cars regularly drive up over the curb and onto the sidewalk, and so it does not reduce the already small sidewalk size to violate ADA and block neighbors with disabilities from being able to pass.” Formal Complaint, Section 4, page 2.

The Complaint further argued that Columbia Gas should utilize the historic exemption contained in Code Section 59.18 so that Third Class Cities such as York can effectively combat issues such as concentrated poverty, struggling schools, a declining tax base, deteriorating infrastructure, the pension crisis, declining property values and the relocation of businesses away from Pennsylvania and its cities. Specifically, Tate wrote that “[t]he single greatest asset named regularly by visitors to third class cities across PA—beautiful historic architecture! Both institutional and residential! Yet Columbia Gas wants to ignore the PUC historic exemption and further degrade cities like York by moving hideous and unsafe gas meters to the front exterior of properties throughout nationally designated historic districts.” Formal Complaint, Section 5, page 3. The Complaint noted that Columbia Gas had installed front exterior gas meters at numerous prominent historic properties in downtown York City without providing homeowners the PUC regulations or information about the historic exemption. Id.

The Office of Administrative Law Judge, Presiding Officer Steve Haas, conducted a two-day hearing in this matter on November 10, 2020 and November 12, 2020. Judge Haas subsequently notified counsel of the Briefing schedule by e-mail on February 16, 2021.

II. STATEMENT OF QUESTIONS INVOLVED.

- A. Whether Section 59.18 is unconstitutional under Article I, §27 of the Pennsylvania Constitution?
- B. Whether Columbia Gas committed an abuse of discretion and/or acted arbitrarily by failing to implement standards, guidelines and procedures to protect Pennsylvania's historic resources, including Tate's Property?
- C. To the extent that Columbia Gas seeks to install a gas meter and/or pressure regulator at the right front façade of Tate's Property, whether Columbia Gas should be required to obtain a Certificate of Appropriateness from the City of York's Historical Architectural Review Board?
- D. Whether Columbia Gas committed an abuse of discretion and/or acted arbitrarily by applying Section 59.18 unconstitutionally to Tate and by refusing to offer to relocate Tate's gas meter to the rear of Tate's Property or to install a pressure regulator, only, or a smaller, low profile meter on the outside of Tate's Property?

III. SUMMARY OF ARGUMENT.

Public natural resources, including historic properties such as Tate's Property, are required to be protected under the Environmental Rights Amendment, Article I, §27 of the Pennsylvania Constitution. The Environmental Rights Amendment requires that all branches and levels of government, including Commonwealth agencies such as the PUC, act as trustee for the people to prevent and remedy the degradation, diminution or depletion of public natural resources such as historic buildings. Pa. Const. art I, §27; Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911 (Pa. 2017); Robinson Township v. Commonwealth, 83 A.3d 901 (Pa. 2013); City of Lancaster v. PUC, 224 A.3d 460 (Pa. Commw. 2020) (unpublished memorandum opinion). 52 Pa. Code §59.18 relating to meter, regulator and service line location is unconstitutional under the Environmental Rights Amendment. This is because there are no standards, procedures and guidelines in place to protect Pennsylvania's

historic natural resources and Section 59.18 and Columbia Gas's Tariff delegate all authority regarding the placement of gas meters to private, politically unaccountable gas utility companies such as Columbia Gas, thereby mandating that municipalities disregard and ignore their Pennsylvania Constitutional obligations under the Environmental Rights Amendment and applicable law.

Columbia Gas committed an abuse of discretion and acted arbitrarily for several reasons. First, Columbia Gas, similar to the PUC, has failed to implement standards, guidelines and procedures necessary for the protection of Pennsylvania's historic natural resources and structures. Second, Columbia Gas applied Section 59.18 unconstitutionally to Tate by refusing to consider and account for numerous visual and otherwise negative impacts to Tate's Property resulting from the placement of a full size gas meter at the right front of the façade, the effect of which would be to degrade, deteriorate and impair Tate's historic Property. Third, Columbia Gas is seeking to relocate Tate's full size gas meter to the right front façade of his Property even though there are several feasible alternatives to what has been proposed.

Finally, to the extent that Columbia Gas seeks to place a gas meter and/or pressure regulator at the right front of Tate's Property, Columbia Gas should have to obtain a Certificate of Appropriateness from the City of York's Historical Architectural Review Board and comply with the requirements of Article 1731 of York's Codified Ordinances prior to installing the equipment.

IV. ARGUMENT.

Introduction.

The Public Utility Code, 66 Pa. C.S.A. §101, et seq., “vests exclusive authority over the regulation of public utility facilities in the PUC.” UGI Utilities, Inc. v. City of Reading, 179 A.3d 624, 629 (Pa. Commw. 2017). Under Section 501 of the Code, the Pennsylvania Legislature delegated to the PUC the authority to “make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties”. (emphasis added). 66 Pa. C.S.A. §501(b). Relative to proposed rules and regulations, they are “printed in the Pennsylvania Bulletin for public comment and are reviewed by the Independent Regulatory Review Commission, House Consumer Affairs Committee, Senate Consumer Protection and Professional Licensure Committee, Attorney General’s Office, and Governors Budget Office.” www.puc.state.pa.us.

Columbia Gas takes the position that Pennsylvania regulations and Section 4.6 of its PUC approved Tariff (“Meter Location”) provide them with the sole and exclusive right to determine the location of its gas meters, including those located in protected historic districts. Tr. 164-165, 172-173; *see* Columbia Gas Exh. No. 10, §4.6.1.2. Moreover, the Pennsylvania Code, Section 59.18, provides that “[u]nless otherwise allowed or required in this section, meters and regulators must be located outside and aboveground.” 52 Pa. Code §59.18(a)(1); *see* Columbia Gas Exh. No. 10, §4.6.1.1 of the Columbia Gas Tariff effective June 5, 2017. Gas meters may be located inside a property pursuant to Section 59.18(d) and Tariff Section 4.6.2.

Section 59.18(d) provides, in applicable part, that:

(d) Inside meter locations.

(1) Inside meter locations shall be considered only when:

- (i) The service line pressure is less than 10 psig.
 - (ii) A meter is located in a building that meets one of the following criteria:
 - (A) A building is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the building is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.
 - (B) A building is located within a historic district that is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the historic district is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.
 - (C) A building has been designated as historic under the act of June 13, 1961 (P. L. 282, No. 167) (53 P.S. §§ 8001-8006), known as the Pennsylvania Historic District Act, the Pennsylvania Municipalities Planning Code (53 P.S. §§ 10101-11202) or a municipal home rule charter.
 - (D) A building is located within a locally designated historic district or is eligible for the listing, or a building is individually designated under a local ordinance as a historic landmark or is eligible for the listing.
 - (iii) Protection from ambient temperatures is necessary to avoid meter freeze-ups.
 - (iv) A utility determines that a meter is subject to a high risk of vandalism based on the utility's prior experience.
 - (v) A utility determines that an outside meter location is neither feasible nor practical.
- (2) Except for low pressure systems with service line pressure less than 10 psig, regulators must be located outside when a meter is located inside.
 - (3) Installed inside meters must be attached to an operable outside shut off valve.
 - (4) Meters installed within a building must be located in a ventilated place not less than 3 feet (914 millimeters) from a source of ignition or source of heat which may damage the meter.

52 Pa. Code §59.18(d). Thus, while a utility **must** consider locating gas meters inside of certain “historic” properties,² the Pennsylvania Code and Columbia Gas’s Tariff vest total, unfettered discretion in Columbia Gas as to the placement of same, with no established standards, guidelines and procedures specifically delineating how a utility must consider the values of historic preservation and the protection of historic properties from degradation, diminution, and depletion. As such, the regulation is “inconsistent with law” under 66 Pa. C.S.A. §501(b), unconstitutional under Pennsylvania’s Environmental Rights Amendment and as applied to Tate by Columbia Gas, and essentially treats historic properties the same as non-historic properties.

A. Section 59.18 Is Unconstitutional Because It Contains No Standards, Guidelines And Procedures To Protect Pennsylvania’s Historic Buildings And Architecture And Unconstitutionally Commands Municipalities Such As The City Of York To Ignore Their Pennsylvania Constitutional Obligations Under The Environmental Rights Amendment By Delegating All Authority Regarding The Placement Of Gas Meters To Private Gas Utility Companies.

Article II, Section 1, of the Pennsylvania Constitution states that the “legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.” Pa. Const. art. II, § 1. The Pennsylvania Legislature derives its power from Article III, Sections 1-27 of the Pennsylvania Constitution. To wit, “[t]he Constitution grants the General Assembly broad and flexible police powers embodied in a plenary authority to enact laws for the purposes of promoting public health, safety, morals, and the general welfare.” Robinson Township v. Commonwealth, 83 A.3d 901, 946 (Pa. 2013). The

² See City of Lancaster v. PUC, 224 A.3d 460 (Pa. Commw. 2020) (unpublished memorandum opinion) (the “mere fact that a structure has been designated under the [Historic District] Act as being a historical resource automatically and unconditionally mandates that the NGDC [Natural Gas Distribution Company] consider keeping the meter line inside”).

Legislature’s police power to legislate for the general welfare encompasses regulations that “promote the public convenience or the general prosperity.” *Id. quoting Best v. Zoning Board of Adjustment*, 141 A.2d 606, 611 (Pa. 1958).

The police powers are not absolute though. For example, all Article III powers are subject to those fundamental rights reserved for the people of Pennsylvania in Article I, “Declaration of Rights”, **including those contained in Article I, Section 27, commonly referred to as the “Environmental Rights Amendment”** (hereinafter sometimes the “ERA”). *Robinson Township*, 83 A.3d at 946-947. Such rights are “inviolable” and cannot be infringed upon. *See* Pa. Const. art. I, Preamble and § 25 (“To guard against transgressions of the high powers which we have delegated, we declare that everything in this article [I] is excepted out of the general powers of government and shall forever remain inviolable”).

The Environmental Rights Amendment, or ERA, provides the following:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Pa. Const. art. I, § 27.

The third clause of the ERA (“As trustee of these [public natural] resources, the Commonwealth shall conserve and maintain them for the benefit of all the people”) establishes the

Commonwealth’s duties and obligations as trustee with respect to public natural resources.

Under the ERA, the “Commonwealth is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary’s conduct. The explicit terms of the trust require the government to ‘conserve and maintain’ the corpus of the trust.” *Robinson Township v.*

Commonwealth, 83 A.3d at 957. Moreover, the “plain meaning of the terms conserve and

maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources.” Id.

Importantly, and crucial to the resolution of this case, the Pennsylvania Supreme Court has recognized historic and aesthetic resources, including historical sites, as “public natural resources” protected by the ERA and subject to the same Constitutional considerations as purely environmental resources such as rivers and streams. United Artists’ Theater Circuit v. City of Philadelphia, 635 A.2d 612, 620 (Pa. 1993), *quoting* Commonwealth v. National Gettysburg Battle Tower, Inc., 311 A.2d 588, 595 (Pa. 1973).

It is important to note that the ERA’s trustee clause does not name the Pennsylvania Legislature as trustee, but rather the “Commonwealth”. As a result, “all existing branches and levels of government derive constitutional duties and obligations with respect to the people” and the ERA. Robinson, 83 A.3d at 977. The Pennsylvania Supreme Court has held that:

The constitutional command respecting the environment necessarily restrains legislative power with respect to political subdivisions that have acted upon their Article I, Section 27 responsibilities: the General Assembly can neither offer political subdivisions purported relief from obligations under the Environmental Rights Amendment, nor can it remove necessary and reasonable authority from local governments to carry out these constitutional duties.

Id. Moreover, “all branches and levels of government [act as trustee] in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians.” Id. at 963. Thus, the duties and obligations inherent in the ERA apply to the Legislature, local governments and Commonwealth agencies such as the PUC. *See* City of Lancaster v. PUC, 224 A.3d 460 (Pa. Commw. 2020) (unpublished memorandum opinion).

In Robinson Township v. Commonwealth, 83 A.3d 901, 946 (Pa. 2013), the Pennsylvania Supreme Court addressed a citizens' challenge to the constitutionality of the Pennsylvania Oil and Gas Act, 58 Pa. C.S. §2301-3504, known as Act 13. One of the challenged provisions, Section 3303, provided that local ordinances regulating oil and gas operations were preempted by statewide environmental acts regulating oil and gas operations contained in the statute. The Supreme Court wrote that:

The Commonwealth, by the General Assembly, declares in Section 3303 that environmental obligations related to the oil and gas industries are of statewide concern and, on that basis, the Commonwealth purports to preempt the regulatory field to the exclusion of all local environmental legislation that might be perceived as affecting oil and gas operations. Act 13 thus commands municipalities to ignore their obligations under Article I, Section 27 [the ERA] and further directs municipalities to take affirmative actions to undo existing protections of the environment in their localities.

Id. at 978.

Moreover, the Court emphasized that “municipalities affected by Act 13 all existed before that Act was adopted; and most if not all had land use measures in place. Those ordinances necessarily addressed the environment, and created reasonable expectations in the resident citizenry.” Id. at 977. Act 13 “fundamentally disrupted those expectations”. Id. Accordingly, the Court held that the Legislature exceeded its police powers by failing to satisfy and address applicable Constitutional requirements in Section 3303, including the obligation of local municipalities to fulfill their Constitutional duties under the ERA.

As stated, the Commonwealth, including the Legislature and governmental agencies such as the PUC, have a Constitutional duty to “prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties.” City of Lancaster v. PUC, 224 A.3d 460 (Pa.

Commw. 2020) (unpublished memorandum opinion), *quoting Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911, 933 (Pa. 2017). The PUC, acting on behalf of the Legislature, failed to address these important Constitutional considerations by granting unfettered authority and discretion to *private gas utility companies*---under Section 59.18 and PUC approved Tariffs---to, among other things, account for and protect environmental features of affected locales as required by the ERA, with no standards, guidelines and procedures in place to regulate the conduct of utility companies and protect Pennsylvania’s historic assets from arbitrary and capricious decision making, in violation of 66 Pa. C.S.A. §501(b).

Notably, while the PUC and Columbia Gas have failed to implement any standards, guidelines and procedures to protect historic properties and buildings, the City of York did meet its responsibilities under the law with passage of Article 1731 on September 2, 2014, which, coincidentally, predated implementation of Section 59.18 by eleven days.³ Article 1731 of York’s Codified Ordinances addressed historic, public natural resource issues and “created reasonable expectations” in the residents of the “Historic York” historical district that their historic properties would be protected. By placing all discretion regarding the location of gas meters in historic districts into the hands of public utility companies such as Columbia Gas---the fox guarding the hen house, so to speak---Section 59.18 “fundamentally disrupted those expectations” and essentially eviscerated the City of York’s ability to protect its own public natural resources with the requirements set forth in Article 1731, in violation of the Supreme Court’s precedent in Robinson Township v. Commonwealth, *supra*.

³ The passage of Article 1731 predated the effective date of Section 59.18. Article 1731 was enacted on September 2, 2014 and Section 59.18 became effective on September 13, 2014. *See* Tr. 164. Moreover, the City of York was incorporated as a city on January 11, 1887, well before Section 59.18 came into existence. *See* www.phmc.state.pa.us and www.yorkcity.org.

Despite the clear mandate of the ERA, and despite the existence of Article 1731, the PUC delegated Pennsylvania Constitutional obligations to private entities such as Columbia Gas who are isolated from the political process and shielded from political accountability.⁴ See Protz v. Workers' Compensation Appeals Board, 161 A.3d 827, 837-838 (Pa. 2017). If that weren't enough, Section 59.18 "commands municipalities to ignore their obligations" under the ERA. The police power of the Legislature, "broad as it may be, does not encompass such authority to so fundamentally disrupt these expectations respecting the environment." See Robinson Township v. Commonwealth, 83 A.3d 901, 977-978 (Pa. 2013). If the General Assembly cannot legally offer political subdivisions purported relief from Constitutional obligations under the ERA, neither can the PUC provide such relief to Columbia Gas or other utility companies. Robinson at 977. In short, the Legislature's police powers are expressly limited by the Constitutional mandates of Article I, and the Commonwealth, via the Legislature and PUC, cannot transfer these Constitutional obligations away from itself and municipalities to private gas delivery companies with no standards, guidelines and procedures in place to protect historic resources.

As currently drafted, Section 59.18 contains no safeguards against the arbitrariness of ad hoc decision making on the part of Columbia Gas and other private, non-governmental natural gas utility companies. Unfortunately, Columbia Gas has made such an arbitrary, ad hoc decision relative to Tate's Property. Based on the foregoing, the Legislature's and PUC's grant of absolute, unfettered discretion to private public utility companies regarding the location of gas meters in historic districts, to the exclusion of the City of York and other municipalities obligated to act under the ERA and statutory law with regard to public natural resources, impermissibly

⁴ Columbia Gas is one of several utilities owned and operated by NiSource, Inc., a publicly traded company on the New York Stock Exchange.

and improperly exceeded the Legislature’s police powers and Section 59.18 should be rendered invalid.⁵

B. Columbia Gas Committed An Abuse of Discretion And Acted Arbitrarily By Failing To Implement Standards, Guidelines And Procedures In Order To Protect Historic Properties Such As Those Contained in Historic York And Other Locales.

Tate reiterates that the Pennsylvania Constitution’s “Declaration of Rights” protects Pennsylvanians from governmental actions that unreasonably cause actual or likely harm to public natural resources such as historic buildings. The Pennsylvania Supreme Court has held that the third clause of Article I, Section 27 “establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth is the trustee, and the people are the named beneficiaries.” Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911, 931-932 (Pa. 2017). The ERA’s trustee provisions are obligations of all agencies and entities of the Commonwealth government, both state and local, and impose a “fiduciary duty to act toward the corpus with prudence, loyalty, and impartiality.” Id. at 931, n. 13.

The Supreme Court described the ERA’s Commonwealth trust obligations as a “duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties”. Id. at 933; City of Lancaster v. PUC, 224 A.3d 460 (Pa. Commw. 2020) (unpublished memorandum opinion). The Commonwealth must act as a fiduciary, not an “arm’s length proprietor”, and must “exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own

⁵ It should be noted that there is a similar challenge currently pending before the Commonwealth Court in City of Lancaster v. PUC, 251 M.D. 2019, 224 A.3d 460 (Pa. Commw. 2020) (unpublished memorandum opinion) (Count II of a Declaratory Judgment action brought by the City of Lancaster and the Boroughs of Carlisle and Columbia argues that Section 59.18 constitutes an improper sub-delegation of legislative authority to private gas utility companies).

property.” *Id.* at 932. And when a government agency such as the PUC “acts, the action must, on balance, reasonably account for the environmental features of the affected locale” in order to pass constitutional muster. Robinson Township v. Commonwealth, 83 A.3d 901, 953 (Pa. 2013). The Commonwealth of Pennsylvania, via the Pennsylvania Legislature and the PUC, essentially shifted its Constitutional obligations under the ERA to private natural gas utility companies such as Columbia Gas. See Protz v. Workers’ Compensation Appeals Board, 161 A.3d 827 (Pa. 2017). This it cannot do without proper safeguards in place.

In the case *sub judice*, Columbia Gas has introduced no evidence indicating that it has implemented standards, guidelines and procedures necessary to protect Pennsylvania’s historic natural resources and structures. To the contrary, the witnesses of Columbia Gas made it abundantly clear that Columbia Gas prefers to install full size gas meters on the outside of properties⁶---despite the historic nature of such properties---and that Section 59.18 and their Tariff gives them the ultimate authority to do so. See Tr. 163-165, 170, 173, 182, 185-186; Tate Exh. No. 16 (“the location of the meter is at the determination of the utility company and Columbia believes that the location for the meter at 52 S Pine Street, York, PA is best located at outside front right.”). In short, Columbia Gas wants to do what’s best for Columbia Gas, even if that violates Article I of the Pennsylvania Constitution.

Having said that, there is no question that Pennsylvania utilities possess a right of self-management. Public Utility Commission v. Philadelphia Electric Company, 561 A.2d 1224, 1226-1227 (Pa. 1989). However, the Courts permit the PUC to intervene where a utility acts arbitrarily or abuses its discretion and, in this case, the PUC and Columbia Gas are obligated to prohibit the degradation, diminution and depletion of public natural resources. *Id.*; Robinson

⁶ Section 59.18(a)(1) does state that meters and regulators are to be located outside and aboveground, but historic properties are an exception to that rule. 52 Pa. Code §59.18(d).

Township v. Commonwealth, 83 A.3d 901, 957 (Pa. 2013); City of Lancaster v. PUC, 224 A.3d 460 (Pa. Commw. 2020) (unpublished memorandum opinion).

In Public Utility Commission v. Philadelphia Electric Company, 561 A.2d 1224 (Pa. 1989), a case involving a proposed rate increase by the Philadelphia Electric Company (“PECO”) due to various outages, the PUC denied the increase because it determined that the outages were PECO’s fault and the result of PECO’s own mismanagement. The Commonwealth Court reversed. On appeal to the Pennsylvania Supreme Court, the Court wrote that if the utility, PECO, “acted imprudently in failing to have appropriate maintenance and operating practices and as the result of that failure the power plants were unable to supply energy to its customers, management has acted arbitrarily and abused its discretion. Such additional costs would not therefore be just and reasonable”, and should not have been passed along to the consumer. Id. at 1227.

Similarly, Columbia Gas has failed to implement appropriate standards, guidelines and procedures required by the ERA to ensure the protection of historic resources in Pennsylvania and has further failed to account for the historic nature of Tate’s Property by seeking to install an unsightly, full size gas meter at the right front of 52 South Pine Street. The bottom line is that there are potential dangers to the public regardless of where the gas meter is ultimately placed--- either in the basement, on the outside front façade, in the rear of the Property, or elsewhere; however, the Pennsylvania Constitution mandates that historic natural resources, such as historic homes, be protected. *See* Tr. 192-193 (Andrew Tubbs testified that outside meters do suffer damage and gas service is easier to shut off from the outside). Accordingly, Columbia Gas has acted arbitrarily and abused its discretion, and Tate’s gas meter should be moved to the rear of

the Property, out of public view, or, in the alternative, kept in the basement with a pressure regulator, only, or lower profile meter outside.

C. To The Extent That Columbia Gas Seeks To Have A Gas Meter Placed At The Right Front of Tate's Property, Columbia Gas Should Have To Obtain a Certificate of Appropriateness From The City of York's HARB.

Although the PUC and Columbia Gas have unconstitutionally failed to implement specific standards, guidelines and procedures for the protection of historic properties in the City of York, such guidelines do exist---in Article 1731 of York's Codified Ordinances. As stated, while the ERA imposes upon the Commonwealth government and its agencies, such as the PUC, affirmative duties and obligations to account for and protect public natural resources and historic properties, the ERA imposes like duties and obligations upon all levels of government, including municipalities such as the City of York. We reiterate that "all existing branches and levels of government derive constitutional duties and obligations with respect to the people." Robinson Township v. Commonwealth, 83 A.3d 901, 977 (Pa. 2013).

In addition to State Constitutional considerations, municipalities such as the City of York are required to consider preservation of historic resources in zoning ordinances and comprehensive plans under the Pennsylvania Municipalities Planning Code ("MPC"). The City of York, as a Third-Class City in Pennsylvania, is governed by the MPC. 53 P.S. §10107. The MPC requires that "**Zoning ordinances shall provide for protection of natural and historic**

features and resources.” 53 P.S. §10603(g)(2).⁷ However, Section 59.18 impermissibly requires the City of York to ignore legal requirements embedded in the ERA, the MPC and other statutes addressing public natural resources.

There is no dispute that Tate’s Property is located within the City of York’s historic district, officially known as “Historic York”. Historic York was created under the auspices of Pennsylvania’s Historic District Act, 53 P.S. §8001-8006, Act 167 of 1961, pursuant to Article 1731 of the City of York’s Codified Ordinances. Section 1731.04 established a seven-member Board of Historical Architectural Review (“HARB”), with three alternates. Under Section 1731.07 of Article 1731, “[a]ny exterior work that can be seen from the public way must be approved by HARB prior to the start of work whether a building permit is required or not.” It is therefore the duty of HARB to review planned work affecting a historic property in Historic York and to make a recommendation to the York City Council relative to same. *See* Section 1731.11 (written report of HARB to City Council must contain 8 separate categories of information).

It is anticipated that Columbia Gas will argue that Article 1731 is preempted by Code Section 59.18. In UGI Utilities, Inc. v. City of Reading, 179 A.3d 624 (Pa. Commw. 2017), the Commonwealth Court held that Section 59.18 preempted a City of Reading Ordinance prohibiting gas meters from being placed in the front yards or along the facades of buildings within the Reading historic district. The Court wrote that “[l]ocal ordinances that conflict with PUC regulations or orders are preempted and cannot be applied to the regulated utility.” UGI,

⁷ York City maintains a Zoning Hearing Board governed by Articles IX (Sections 10901-10918, titled “Zoning Hearing Board and Other Administrative Proceedings”) and X-A (Sections 11001-a through 11006-a, titled “Appeals to Court) of the MPC.

179 A.3d at 629. However, the Court also wrote that the Reading Ordinance “does not merely impose historic district requirements of general applicability on utilities. It specifically regulates the very same subject regulated by the PUC, the location of gas meters, and provides for local enforcement of its restrictions by orders that gas meters be removed or altered and by imposition of penalties.” Id. at 630.

Conversely, the City of York’s Article 1731 does not expressly prohibit gas meters from being placed along the façade of buildings within Historic York, it merely mandates that those seeking to engage in exterior work must first obtain a Certificate of Appropriateness from the York City Council following consideration of historical values by HARB and the City Council. Importantly, while Section 59.18(d) requires utilities to consider keeping gas meters and regulators inside of historic properties, the regulations provide zero guidance to utilities as to what factors should be taken into account vis-à-vis the historic nature of a property. *See City of Lancaster v. PUC*, 224 A.3d 460 (Pa. Commw. 2020) (unpublished memorandum opinion). Fortunately, Article 1731 fills the void. During the review process, HARB is required to look at the following:

- (a) The effect of the proposed change upon the general historic and architectural nature of the district.
- (b) The appropriateness of exterior architectural features which can be seen from a public street or way only.
- (c) The general design, arrangement, texture, material and color of the building or structure and the relation of such factors to similar features of buildings or structures in the district.

Article 1731, Section 1731.09. The York City Council is required to consider the same factors following receipt of a report from HARB under Section 1731.11, and the City Council “shall not consider any matter not pertinent to the historical aspect and nature of the district.” Article 1731, Section 1731.12.

It should be noted that various types of work and construction are **not** subject to HARB review. These include “any work not visible from a public right-of-way (street or alley)” and “[u]tility work including telephone, water, gas, and electric lines and boxes unless the proposed location would adversely affect a building’s main façade.” (emphasis added). *See* HARB exemptions, www.yorkcity.org, “Types of HARB Reviews”. However, the installation of a gas meter at the right front of Tate’s historic Property would be visible from the street and “affect the building’s main façade”, and thus is inapplicable to Columbia Gas herein. *See* Tate Exh. No. 1 and Columbia Gas Exh. No. 11.

Accordingly, to the extent that Columbia Gas seeks to place a gas meter or other equipment at the right front of Tate’s Property, Columbia Gas should have to apply for a Certificate of Appropriateness from the York City HARB prior to moving forward with the project.

D. Columbia Gas Committed An Abuse Of Discretion And Acted Arbitrarily Because It Applied Section 59.18 Unconstitutionally To Tate By Refusing To Protect Against The Actual Or Likely Degradation, Deterioration And Impairment Of Tate’s Property, A Public Natural Resource.

Simply put, the PUC and Columbia Gas are obligated to prohibit the degradation, diminution and depletion of Pennsylvania’s public natural resources under the Pennsylvania Constitution. Robinson Township v. Commonwealth, 83 A.3d 901, 957 (Pa. 2013). In this case, there are numerous visual or otherwise negative impacts to Tate’s Property by placing a gas meter at the right front of the façade as proposed by Columbia Gas. The clear effect of such placement would be to degrade, deteriorate and impair Tate’s historic Property.

1. Tate's Property will suffer a decrease in value.

One such negative impact is the reduction in value to 52 South Pine Street. The uncontroverted testimony of Michael Wheeler, a real estate sales agent in York County for 37 years, established that installing a gas meter at the front of the Property would "significantly reduce the attraction of the property." Tr. 108. Based upon his professional experience and judgment, Mr. Wheeler testified that the Property would suffer a reduction in value of between \$5,000.00 to \$10,000.00. Tr. 59, 108-109, 114. No reduction in value would occur were the gas meter be relocated to the rear of Tate's Property.

2. The aesthetic value of Tate's Property and the surrounding neighborhood would be negatively affected.

It goes without saying that a gas meter is unsightly and unattractive and will detract from the historic nature of Tate's Property, but installation of a gas meter will also negatively affect the character of the neighborhood in general. Tr. 62, 94, 121, 156. Tate's Formal Complaint argues that the City of York's greatest asset is its historic architecture; relocating unsightly, displeasing and visually and aesthetically objectionable gas meters to the front of Tate's Property and many other homes in the Historic York district---plainly visible from the street and affecting the façade of these homes---will negatively impact property values and result in declining tourism, thereby making it more difficult for York and other Third Class Cities to secure the revenues needed to grapple with increasingly common problems such as poverty, struggling schools, a shrinking tax base and a deteriorating infrastructure, to name a few. Formal Complaint, page 3. The testimony adduced on day 1 of the hearing supports such claims.

Silas Chamberlin, PhD, Vice President of Economic & Community Development for the York County Economic Alliance, testified that:

One of the key tenets of business improvement districts and Main Street programs, which is, of course a national model that's been around for several decades, is the importance of creating a distinctive sense of place. A key part of that, of course, are, you know, aesthetics, so the look and feel of the downtown, things like litter collection, avoiding vandalism, public safety. But the historic integrity of the downtown is really important. There's lots of communities that don't have an impact downtown with a lot of historic architecture. Fortunately the City of York, because of its Historic Architectural Review Board and, you know, the commitment of city council, the mayor and residents for decades have had a very well impacted historic district. And we see that as one of our main draws for tourism and one of our, you know, powerful elements that give us a distinctive downtown and attract businesses.

Tr. 143-144. *See* Tate Exh. No. 18-10.

Mr. Chamberlin went on to testify that the York County Economic Alliance believed that gas meters

should not be placed on the front of buildings if there is any other alternatives, even if that alternative is more expensive than placing it at the front. Because, you know, we spend considerable public funds and private funds to maintain a sense of place, streetscapes are safe and are attractive, historic buildings that over decades and in some cases centuries have been protected. There's been a lot of effort and funding gone into maintaining the look and feel of downtown York and its historic integrity.

So certainly we welcome improvements to infrastructure, because that's great for our residents and businesses. But if it comes at the cost of assets that its taken decades to protect, we certainly don't think that that's positive for our downtown.

Tr. 147-148. In this case, there are "other alternatives".

Eric Menzer, Chairman of Better York, testified that the City of York "had attempted to get Columbia Gas to take a different approach to the meters but that they had declined to do so."

Tr. 120. Moreover, similar to the testimony of Mr. Chamberlin, Mr. Menzer stated that:

the city's downtown and the city's architectural district has existed for many, many years. And the collective impact of that and of those historic architectural standards has been to create a very distinctive set of beautifully renovated buildings. And the city itself and other groups like ours have made significant investments in street trees and lights and curbs and sidewalks, all sorts of things that create a distinctive and aesthetically pleasing environment. And the new external meters detract from that environment.

Tr. 121; *see* Tate Exh. No. 18-15. *See also* Tr. 94 and Tate Exh. No. 18-4 (Mindy Crawford, Executive Director of Preservation Pennsylvania, testified that “it does affect the historic integrity of the [York Historic] district to have these gas meters, the full scale gas meters there.”)

Craig Zumbrun, Chair of the City of York’s Historical Architectural Review Board (“HARB”), testified that following HARB’s receipt of numerous complaints from homeowners in the historic district due to repair work that was undone by Columbia Gas’ installation of gas meters, a regional service representative of Columbia Gas met with HARB within the past 18 months. Tr. 131-133, 137. The Columbia Gas representative “advised that efforts would be made when possible to mitigate or otherwise eliminate street front incursion of new meters.” Tr. 131-132. Mr. Zumbrun further testified that HARB was led to believe that Columbia Gas “was going to be far [more] diligent in the [York] historic district to try to respect the district and the City’s goals for the preservation of those properties.” Tr. 133. *See* Tate Exh. No. 18-21.

While many York properties have fallen victim to such failed promises, in Tate’s case there are feasible alternatives to degrading and depleting historic assets built and maintained, at great cost, over decades in the City of York. *See* Tate Exh. No. 18-18.

3. **Tate would be unable to comply with the Federal Americans with Disabilities Act and other statutes.**

As stated, Tate's Property at 52 South Pine Street is located in the City of York. Tr. 8, 16. Tate currently leases the Property to another family as a single-family dwelling, with a month-to-month lease. Tr. 9, 39. In the event the current lessee vacates the Property, Tate would have to comply with the York Fair Housing Ordinance when leasing or selling to another individual or family. The City Human Relations Commission investigates and enforces the Fair Housing Ordinance. Article 183 York City Ordinances, §183.05. The Fair Housing Ordinance, among other things, makes it unlawful for an owner of a City property to refuse to sell, lease or rent a dwelling, or represent that the dwelling is not available for sale or lease when in fact it is available, because of a person's handicap or disability. York Fair Housing Ordinance, §183.03(a).

If a disabled, wheelchair bound individual entered into an agreement to rent 52 South Pine Street, Tate would have to install a ramp in order to comply with the City's Fair Housing Ordinance. Counsel for Columbia Gas stated during cross examination that the Americans with Disabilities Act required a 1:12 ratio for ramps. Tr. 75-76. Indeed, Section 405.2 of the 2010 ADA Accessibility Guidelines ("ADAAG") states that ADA compliant "permanent ramps must be constructed so that they have a 'running slope not steeper than 1:12,' meaning that for every inch the ramp is high, it must be twelve inches flat." Sabel v. Saint Lazarus Bar, 2019 WL 2754742 (E.D. Pa. 2019). However, Section 405.2 also states that "existing sites, buildings, and facilities" may install ramps with "running slopes steeper than 1:12 . . . where such slopes are necessary due to space limitations", such as at Tate's Property. 2010 ADAAG §405.2. This could include a slope of 1:8, and many ramp contracting businesses state that a 1:6 or 1:4 slope ratio is acceptable for residential properties. *See, e.g.*, John Burfield, www.lifewaymobility.com,

October 5, 2017; www.handiramp.com/ada-guidelines/ada-ramp-slope; www.phc-online.com/wheelchair-ramp-chart. Finally, the ADAAG requires that the clear width of a ramp be a minimum of 36 inches. 2010 ADAAG §405.5.

However, it should be noted that ADA standards for dwelling spaces apply solely to places of “public accommodation”; they do not apply to individually owned or leased housing in the private sector not used as a public accommodation, including single family homes such as Tate’s. *See* Title III of ADA, definition of “public accommodation”, 42 U.S.C. § 12181. So while the technical requirements of the ADA for public or commercial uses do not apply to 52 South Pine Street, Tate must still comply with the York Fair Housing Ordinance and any applicable Pennsylvania or local construction ordinances,⁸ and a wheelchair bound individual would require a ramp to lease the Property as his or her home.

In order for Tate to accommodate a disabled renter who uses a wheelchair or otherwise needs the assistance of a ramp, the existing porch in front of 52 South Pine Street would have to be raised with concrete up to the height of the existing stone threshold, to just under three feet, the ramp would be four feet in width, and the ramp be 12 feet long because that is the distance from the stone threshold to the end of the Property where the grocer’s alley is located. Tr. 40-41, 74-76. Thus, even if the strict ADA ramp requirements applied to Tate’s Property, the ramp would need to be longer, and it would be impossible to comply given the narrow 14-15 foot width of the historic Property built well before such building codes existed. Tr. 15.

⁸ The City of York adopted the BOCA National Building Code, fourteenth edition, 1999, in the year 2000, around the same time the BOCA Code was adopted as part of the Pennsylvania Uniform Construction Code (“UCC”). *See* York City Ordinances, Section 1701.01 and 35 Pa. C.S.A. §7210.301(a)(1). In 2018, the Commonwealth updated the UCC, adopting, among other things, the International Building Code of 2015 (“IBC”) and the International Residential Code of 2015 (“IRC”). 34 Pa. Code §403.21. These Codes have similar requirements to the ADAAG, referencing 1:12 and 1:8 slope ratios for ramps along with 36-inch ramp widths. *See* Section 1012 of the IBC and Section R311.8 of the IRC.

In any event, Columbia Gas herein seeks to place a full size gas meter on the outside of the Property, at the right front. Tr. 40-41; *see* Tate Exh. No. 1. This is in the only area where the 12-foot long ramp can be installed to access the front entrance of the home. Moreover, the proposed ramp can't be lengthened in the direction of 50 South Pine Street because of the shared grocer's alley and 52 South Pine Street shares a common wall with 54 South Pine. Tr. 10-11, 40-41. Raymond Brumley, Columbia Gas's Manager of Construction Services, admitted that the proposed location of the outside gas meter could be a problem. When asked whether the proposed meter location would hinder a ramp extending from the front door of the Property to the grocer's alley, Mr. Brumley stated "potentially it could". Tr. 261-262.

Of course the proposed location would hinder installation and use of a ramp. The gas meter proposed to be installed would be 14-18 inches from the building front. Tr. 20, 233. The ramp would be four (4) feet wide and, thus, a gas meter would take up approximately 14-18 inches of that space. Tr. 20, 75, 233. This would reduce the useable width of the ramp to 30-34 inches, which is outside of code under the ADAAG, the IBC and the IRC. Finally, having a gas meter located on or near a ramp would create a dangerous condition, as a wheelchair could easily make contact the meter due to the reduced width of the ramp. Tr. 109-110.

Accordingly, if installation of a gas meter in the front of the Property would not permit Tate to comply with the York City Fair Housing Ordinance, the only potential locations within which to place a gas meter would be the basement or the rear of the Property.

4. **An outside gas meter creates numerous safety concerns.**

Placing a gas meter near the right front of 52 South Pine would reduce the already small sidewalk size and width (nine feet, seven inches from curb to façade of Tate's Property),

thereby making it more difficult for disabled neighbors and other citizens to safely pass by. Tr. 19-20, 38. Importantly, Federal regulations require that “[e]ach meter and service regulator, whether inside or outside a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated.” 49 CFR §192.353. Tate testified that it is a very short distance from the curb to the area where the gas meter is proposed to be installed, only nine feet, seven inches. Tr. 19-20, 38, 64. Moreover, cars regularly drive up over the curb and onto the narrow sidewalk on South Pine, thereby increasing the possibility that a gas meter could be hit and cause an explosion or leak. Tr. 17-18, 64. In fact, a vehicle recently drove onto a sidewalk deeper and wider than the South Pine Street sidewalk, smashing into a nearby commercial building on East Market Street in the City. Tr. 63-64; Tate Exh. No. 7.

Outside gas meters would be exposed to the elements, including ice and snow buildup, and subject to the possibility of corrosion and other damage. Tr. 45. In fact, the website of Columbia Gas has an entire section relating to gas meter safety in snowy and icy conditions. It states, in part, that “[h]eavy or hard-packed snow and ice on a gas meter can present the condition that temporarily stops the flow of natural gas or creates indoor natural gas buildup. Stay safe by using these tips.” (emphasis added). Tr. 44-45. While the meter must always be visible for maintenance and emergency responders, residents must use

caution when using a shovel around your meter. Don't shovel snow up against your meter. Where possible, use a broom instead of a shovel to clear snow away from the meter. Take care using a snow blower or plow near your meter. Never kick or hit the gas meter or its piping to break away built-up snow or ice. Remove the snow or ice with your hands.

Tr. 45. Clearly, even Columbia Gas recognizes the dangers involved with an outside meter.

Gas meters also collect and trap leaves, trash and rubbish, creating a potential fire hazard and increasing the risk of an explosion. Tr. 60, 156. Finally, there exists a real danger that an outside gas meter---especially one located in downtown York City---would be tampered with, impacted, and/or vandalized, or the gas shut off with a wrench. Tr. 26, 37, 62-63. Columbia Gas even admitted as much, providing testimony that it is easier to shut off gas service with outside meters. Tr. 192-193. On this issue, Tate testified that as a City of York resident he regularly reviews the Police log on the City's website. Tr. 26.

Tate found that "even in the past two-plus years during this process with Columbia Gas there have been more than 120 incidents of crime just within a one to two-block radius of 52 South Pine Street, crimes that have to do with vandalism, traffic problems, harassment", all issues of concern involving safety and habitability for those residing in the South Pine Street neighborhood, including Tate and his tenants. *Id.* Tate testified that he has had decorations stolen from both of his City properties. *Id.* Moreover, "I've had vandalism to the [South Pine Street] property. I've had to call the police to have people removed, you know, harassing type people removed." (emphasis added). *Id.* Regardless of whether Columbia Gas recognizes the dangers presented by outside meters, the testimony establishes that the Property in question has *already* been vandalized and that crime and vandalism pose a very real danger and high risk to the Property and the surrounding neighborhood---and could adversely affect outside gas meters installed there. *See* 52 Pa. Code §59.18(d)(1)(iv).

Despite this mountain of aesthetic, safety and legal issues that will unreasonably cause actual or likely degradation, deterioration and impairment of historical values at Tate's Property, Columbia Gas has baldly taken the position that Tate's gas meter is "best located at outside front right". Tate Exh. No. 16; Columbia Gas Exh. No. 7. While Columbia Gas has certainly offered to

paint Tate's gas meter and regulator to match the exterior paint at the house (Tr. 170-171) and/or to install a screen or cage around the meter and paint the screen (Tr. 201-202), such measures would not adequately address the issue of aesthetics and Columbia Gas has simply ignored other viable concerns, including the issues of declining property value, crime and vandalism, snow and ice accumulation, equipment corrosion and the danger of vehicular damage. Importantly, Columbia Gas has admittedly accommodated other residents in the City. Russ Bedell, Communications Manager for Columbia Gas of Pennsylvania, testified that:

we did have multiple people reach out to us saying I don't want my meter outside in front of our house. And with some other people who had done that we were able to find locations that were not right in front of the house. There were people on Pine Street, in fact, where the meter could be, you know, on the side or in the breezeway between the buildings where there actually was a possibility.

Tr. 204. Moreover, the Manager of Construction Services for Columbia Gas testified that he did not believe that locating gas meters in the interior of a structure is unsafe. Tr. 263.

Thus, there are several safe possibilities in this case—relocate the gas meter to the rear of the Property, keep the gas meter in Tate's basement and install a pressure regulator, only, outside of the Property, or install a smaller, low profile meter outside of the Property.

Clearly, Columbia Gas has not reasonably accounted for the environmental features of Tate's Property and the "Historic York" historic district. Relocating Tate's full size gas meter from the basement to the right front façade of the Property will unreasonably cause actual or likely degradation, deterioration and impairment of a public natural resource—that of 52 South Pine Street. Accordingly, Columbia Gas has abused its discretion and acted arbitrarily by applying Section 59.18 unconstitutionally to Tate's Property and by ignoring other viable options to a right front gas meter placement.

E. Columbia Gas Committed An Abuse of Discretion And Acted Arbitrarily By Refusing To Offer To Relocate Tate's Gas Meter To The Back Of His Property And By Failing To Offer To Install A Regulator, Only, Or A Smaller, Low Profile Gas Meter At Tate's Property.

Tate's preferred option would be to relocate his gas meter to the rear of 52 South Pine Street given the legal, safety and aesthetic concerns present with a front meter placement, *supra*. Columbia Gas witnesses testified at hearing that Tate's gas meter could be placed in the rear of 52 South Pine Street either by installing a service line to the back or by installing an additional main⁹ in the back with a service line. Tr. 174, 201, 257. The nature and locations of easements would also have to be investigated, and the possibility of having to obtain rights-of-ways. Tr. 232, 257-258. Columbia Gas admitted that this investigation never took place, yet it somehow determined that to place a gas meter in the back of the Property was not "feasible". Tr. 232, 258. 52 Pa Code §59.18(d)(1)(v) references the term "feasible" in the placement of a gas meter, but the term is not defined in Chapter 59. *See* 52 Pa. Code §59.1. Merriam-Webster defines "feasible" as "capable of being done or carried out". www.merriam-webster.com.

In this case, Columbia Gas's decision to focus solely on relocation of a full size gas meter to the front of Tate's Property makes no sense given that it has not even investigated easements in the area. Tr. 258. Raymond Brumley, Manager of Construction Services, testified that utility easements can be shared with Columbia Gas, meaning that if there are utility easements, sharing agreements can be reached and running a service line to the back of 52 South Pine Street is certainly "capable of being done or carried out", or feasible. Tr. 257-258. It appears that Columbia Gas simply does not want to take the time to comply with the Pennsylvania Constitution and statutory law requiring the protection of historic properties; Columbia Gas advised Tate that it would be "too much work" to install a meter in the back of the Property. Tr.

⁹ Adding a main would be costly to Tate. Tr. 174-175.

78. The actions of Columbia Gas herein do not evidence compliance with its legal obligation to protect public natural resources such as Tate's Property and further do not evidence a willingness to cooperate with Tate relative to the location of his gas meter. *See* 52 Pa. Code § 59.18(a)(3) and City of Lancaster v. PUC, 224 A.3d 460 n. 12 (Pa. Commw. 2020) (unpublished memorandum opinion).

Accordingly, given the strong interest Pennsylvania has in protecting its historic properties and resources such as 52 South Pine Street, Columbia Gas acted arbitrarily and abused its discretion by failing to properly investigate installation of a gas meter in the back of the Property and offering to move Tate's gas meter to that more secluded location.

It should also be noted that Columbia Gas apparently ruled out installing a pressure regulator, only, or a lower profile meter at an outside location because such options have not been offered by Columbia Gas. Raymond Brumley testified that he had not seen Tate's basement, but that a pressure regulator outside and a gas meter inside was theoretically possible. Tr. 265. Importantly, use of a regulator would only take up 8 to 10 inches of space from the building, leaving 38-40 inches of width for a ramp, enough to satisfy ADAAG, IBC and IRC width requirements. *Id.* Based on the foregoing, Columbia Gas acted arbitrarily and abused its discretion by choosing to install a full-size gas meter at the right front façade of Tate's Property without proper consideration of an outside regulator, only, or smaller, low profile meter.

V. CONCLUSION.

The Tri-County Regional Planning Commission has written that “[h]istoric resources do more than just preserve the past; they provide a community a link with its heritage, promote a sense of community cohesion and can enhance property values. . . . Since 1961, Pennsylvania’s Historic District Act (Act 167) has enabled municipalities (including counties) to identify geographically bounded areas with unique or important historical value as Historic Districts.” www.tcrpc-pa.org/historic-preservation. One such district is Historic York. Tate has identified numerous economic, safety and legal reasons why relocating a full size gas meter to the right front of 52 South Pine Street will unreasonably cause actual or likely degradation, deterioration and impairment of his historic Property. Moreover, Section 59.18 improperly exceeds the Pennsylvania Legislature’s police powers by eliminating the City of York’s ability to protect its own public natural resources as required by Article I, Section 27 of the Pennsylvania Constitution and by applicable statutory law. There are simply no regulatory and other safeguards in place to protect against arbitrary, ad hoc decision making on the part of Columbia Gas.

Section 59.18(a)(3) of the Pennsylvania Code, which requires that gas utility companies provide certain information to homeowners---including how to contact the PUC’s Bureau of Consumer Services---implies that the utility and the homeowner will work together relative to relocation of a gas line “based upon subjective and intangible factors related to the aesthetic value of the building.” City of Lancaster v. PUC, 224 A.3d 460 n. 12 (Pa. Commw. 2020) (unpublished memorandum opinion). In that regard, Columbia Gas has accommodated the requests of other City property owners in Historic York and there is no reason why it can’t do the same at Tate’s Property.

Based on the foregoing, Columbia Gas should only install a gas meter and pressure regulator at the rear of 52 South Pine Street, or install a pressure regulator or smaller, low profile meter outside of the Property and leave the full size gas meter inside, where possible. Doing so will address safety concerns while simultaneously preserving the character, context, and architecture of a historic property within Historic York, as required by the Pennsylvania Constitution and statutory law. In the alternative, Columbia Gas should be required to seek a Certificate of Appropriateness from the York City Council prior to moving forward with the relocation of a gas meter to the front of Tate's Property.

VI. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS OF BRYAN TATE

Proposed Findings of Fact

1. The Complainant, Bryan Tate ("Tate"), resides at 377 East Market Street, York, PA 17401. Tr. 8.
2. Tate owns the property located at 52 South Pine Street, York, PA 17401 (the "Property"). Tr. 8.
3. Tate leases 52 South Pine Street out to another family as a single-family dwelling, with a month-to-month lease. Tr. 9, 39.
4. In order to accommodate a disabled renter who uses a wheelchair or otherwise needs the assistance of a ramp, the existing porch in front of 52 South Pine Street would have to be raised with concrete up to the height of the existing stone threshold, to roughly three feet, the ramp would be four feet in width, and the ramp would need to be 12 feet long, from the new porch down to the grocer's alley at the end of the Property. Tr. 40-41, 74-76.

5. If a gas meter were placed at the outside from of 52 South Pine Street where Columbia Gas wants to place the meter, a ramp would not be able to be installed to accommodate future disabled and handicapped renters as required by the York Fair Housing Ordinance. Tr. 41.
6. Installing a gas meter and equipment at the front of 52 South Pine Street as proposed by Columbia Gas would reduce the value of the Property by approximately \$5,000 to \$10,000, but it could be more than that. Tr. 108-109, 114-115.
7. 52 South Pine connects to 50 South Pine Street on the right by a shared brick firewall, and a grocer's alley separates 52 South Pine Street and 50 South Pine Street. Tr. 10-11.
8. The grocer's alley is sixty-eight inches high and 2.5 feet wide (30 inches) and it is owned 50-50 by Tate and the owner of 50 South Pine Street. Tr. 11, 15-16, 281; Columbia Gas Exh. 12.
9. The gas service line to 52 South Pine Street traverses under the sidewalk in from of the Property and comes into the Property about where the front door is located, under the steps, and the gas meter is currently in the basement. Tr. 14, 201.
10. Columbia Gas does not need to physically enter 52 South Pine Street in order to read the meter, it can do so from a vehicle outside of the Property. Tr. 14-15, 192.
11. The distance from the bottom step in front of 52 South Pine Street to the grocer's alley is 9 feet, 10 inches. Tr. 15.
12. The entire width of 52 South Pine Street is 14-15 feet. Tr. 15.
13. The existing porch is four feet from the railing to the house. Tr. 75.

14. There is a tree well on the sidewalk in front of 52 South Pine and it measures six feet, eight inches from the house. Tr. 19.
15. From the curb to the front of 52 South Pine Street is nine feet, seven inches. Tr. 19-20, 220.
16. South Pine Street is a one-way street with one lane of traffic in the Northerly direction, and measures 21 feet from curb to curb. Tr. 16-17.
17. Cars park on the side of the street on which 52 South Pine Street is located. Tr. 17.
18. Because of the narrow nature of South Pine Street, residents often pull up on the sidewalk to pick up, drop off and unload. Tr. 17-18.
19. Pulling up onto the sidewalk impedes pedestrian traffic. Tr. 18.
20. The sidewalks are already shallow at nine feet, seven inches, and with a tree well in the sidewalk, making it difficult for disabled individuals or individuals in a wheelchair to pass even without a gas meter outside. Tr. 19-20, 38.
21. The gas meters being installed by Columbia Gas outside homes are 2 feet tall, two feet wide and 14 inches to one and a half feet (18 inches) deep. Tr. 20, 233.
22. 52 South Pine Street is located in the York Historic District and is on the National Register of Historic Places by virtue of being in the York Historic District. Tr. 21-22; Tate Exh. No. 9.
23. 52 South Pine Street is located in what was the original York Historic District. Tr. 25.
24. 52 South Pine Street is also located within the City of York Historic Architectural Review Board District. Tr. 91.

25. The City of York's downtown area and historic architectural district for many years and the collective impact of same has been to create a very distinctive set of beautifully renovated buildings. Tr. 121; Tate Exh. No. 18-15.
26. Investors in the historic architectural district are encouraged to promote existing architectural features whenever doing renovations and to preserve the historic and architectural character of structures therein. Tr. 128-129; Tate Exh. No. 18-21.
27. The City of York's historic architecture is a main draw for tourism in the City and further creates a distinctive downtown and attracts businesses to the area. Tr. 143-144; Tate Exh. No. 18-10.
28. Considerable public and private funding, and effort, expended over a long period of time, has gone into maintaining the look and feel of downtown York and its historic integrity. Tr. 94, 147-148; Tate Exh. No. 18-10.
29. The installation of full size gas meters negatively impacts the historical integrity of the York Historic District. Tr. 94; Tate Exh. No. 18-4.
30. The City of York's Historical Architectural Review Board ("HARB"), consisting of seven regular members and three alternates, considers proposals by contractors and owners for work in the historic district and make formal recommendations to the York City Council relative to approval or disapproval of the proposed work affecting historic properties. Tr. 129; York Codified Ordinances, §1731.04.
31. A regional service representative from Columbia Gas attended a HARB meeting within the 18-month period prior to November 10, 2020 and advised the Board that efforts would be made when possible to mitigate or otherwise eliminate street front incursion of

- gas meters. The representative gave the Board examples of where gas meters had been moved to the side or rear of properties. Tr. 131-133, 136-137; Tate Exh. No. 18-21.
32. Columbia Gas has not at any time obtained, or sought or applied for, a Certificate of Appropriateness or other approval from HARB or the York City Council to place gas meter equipment at the right front façade of Tate's Property. Tr. 66-67.
33. Columbia Gas did not investigate whether or not any easements exist near Tate's Property for purposes of running a service line to the back of Tate's Property. Tr. 257-258.
34. Installing or leaving a gas meter inside of a property is not unsafe. Tr. 263.
35. Installing a pressure regulator, only, at the outside of Tate's Property is feasible. Tr. 265.
36. There have been more than 120 incidents of crime within a one to two block radius of 52 South Pine Street in the past two-plus years, including vandalism, traffic problems and harassment. Tr. 26.
37. Tate has had vandalism done to 52 South Pine Street (the Property), has had decorations stolen from the Property and has had to call the police to remove harassing type of individuals from the area. Tr. 26.
38. Tate first noticed construction and meter relocations to the front of homes in the neighborhood of 52 South Pine Street in June of 2018 and he was told that Columbia Gas was installing a new gas line. Tr. 27.
39. The new gas line would increase gas pressure but the increased pressure into properties can be reduced through the use of a regulator, only, outside a property, and a gas meter inside. Tr. 50; *see* Tate Exh. 8, page 1.

40. Other properties in the City of York serviced by Columbia Gas have had a regulator, only installed at their properties, with the gas meter inside. Tr. 54-55.
41. The first notice from Columbia Gas about the meter relocation project was taped to the front door of 52 South Pine Street. Tr. 28.
42. The meter relocation project requires installation of a new plastic medium pressure gas main in the street and new service lines and gas meters to 61 homes. Tr. 175, 207, 216, 226-227, 240.
43. The gas main being replaced is cast iron and low pressure. Tr. 227.
44. A gas regulator must also be installed at affected homes due to the medium pressure main upgrade, and regulators are eight to ten inches in depth from a house and eight to ten inches wide. Tr. 228, 265.
45. There have been conversations between representatives of the City of York, Columbia Gas and other organizations with the City about the relocation of gas meters since 2009. Tate Exh. 10.
46. Following the taping of a notice to the front door at 52 South Pine Street, Columbia Gas mailed a letter to 52 South Pine Street, dated August 23, 2019, with information about the meter relocation project in the neighborhood. Tr. 32-33. Tate Exh. 11 and Columbia Gas Exh. 2.
47. The August 23, 2019 letter states that the gas meter would not be moved for at least 30 days. Tate Exh. 11.
48. Tate initially objected to relocating his gas meter at 52 South Pine Street to the front of the house by filing a "Columbia Gas Meter Relocation Reconsideration Form" with

Russell Bedell, Communications Manager of Columbia Gas. Tr. 33-34, 203-204; Tate Exh. 12; Columbia Gas Exh. 4.

49. Tate's form indicated, among other things, that the house at 52 South Pine Street is located in a designated historic district, that the sidewalk is shallow on 52 South Pine Street, and that an outside meter installed at the Property is at a high risk of being tampered with or vandalized. Tr. 36; Tate Exh. 12; Columbia Gas Exh. 4.
50. Russell Bedell created the form for Columbia Gas because no such form existed for customers. Tr. 34, 168-169, 218.
51. Tate communicated with Russell Bedell on several occasions about his objections to relocating the gas meter to the front of 52 South Pine Street, by phone, e-mail and in person. Tr. 34-35, 78-79, 200.
52. Tate advised Russell Bedell, John Boldizar, Construction Specialist for Columbia Gas, and Columbia Gas work crew members that his preference would be to keep the gas meter in the basement, but if it had to be moved outside that either a regulator, only, be placed in the front of the house or that the meter be moved to the side of the house in the grocer's alley or to the rear of the Property. Tr. 35, 49, 70, 203.
53. Columbia Gas has not offered any option for relocation of Tate's gas meter other than installing and painting a gas meter with a painted cage at the right front of 52 South Pine Street. Tr. 48, 55-56, 69, 170-171, 201-203, 205, 216; Tate Exh. 1.
54. Columbia Gas advised Tate that it could not relocate the gas meter to the rear of the Property because it would take too much work and was not feasible and that it could not relocate the gas meter to the grocer's alley due to space issues. Tr. 78-79, 258.

55. Multiple homeowners other than Tate reached out to Columbia Gas complaining that they did not want a gas meter relocated to the front of their home. Tr. 204.
56. Columbia Gas did accommodate some of these homeowners to move the gas meter to other locations or keep the gas meter inside with a regulator, only, outside. Tr. 54-55, 204. *See* FOF #40.
57. There was a town hall meeting in the City of York City Hall building about the meter relocation project on or about July 31, 2019 in which the constant concern expressed by citizens was vandalism to outside meters and turning off the gas at properties by use of a wrench on the outside meter. Tr. 36-37, 98-99, 167-1.
58. Following submission of the Reconsideration Form to Russell Bedell, Tate received a third letter/notice, dated December 10, 2019, a day or two after December 10, and indicating that Columbia Gas intended to complete the gas meter relocation at 52 South Pine Street on December 18, 2019. Tr. 42; Tate Exh. 13, Columbia Gas Exh. 3.
59. Russell Bedell notified Tate that his request for reconsideration was denied, by e-mail dated December 12, 2019. Tr. 43; Tate Exh. 14, Columbia Gas Exh. 5.
60. The December 12, 2019 letter addresses safety issues but does not address aesthetics, the historic nature of the Property, a regulator only option or different locations outside the home. Tate Exh. 14.
61. The website of Columbia Gas states that heavy or hard packed snow and ice on a gas meter could present a condition that temporarily stops the flow of natural gas or creates indoor natural gas buildup and also includes the following tips: make sure the meter is visible at all times, never let snow completely cover the meter, use caution when using a shovel around the meter, don't shovel snow up against the meter, take care using a snow

- blower or plow near the meter and never kick or hit the meter or its piping to break away built-up snow or ice. Tr. 44-45.
62. Removal of ice and snow is also required for visibility and access. Tr. 236.
63. Leaves and garbage sometimes collect under gas meters. Tr. 60, 156; Tate Exh. 3.
64. Tate filed an Informal Complaint with the PUC, online, on or about December 13, 2019. Tr. 47, Tate Exh. 15.
65. PUC Investigator Tim Clark wrote Tate back about the Informal Complaint by letter dated December 20, 2019. Tr. 47; Tate Exh. 15.
66. Tate and Inspector Clark left several messages with each other but never spoke to exchange information. Tr. 47.
67. The Informal Complaint was closed by Inspector Clark by letter of January 23, 2020, without a decision, because the PUC's Bureau of Consumer Services cannot decide where a utility company should place a gas meter. Tr. 47-48; Tate Exh. 16, Columbia Gas Exh. 7.
68. Columbia Gas sent another letter/notice to Tate dated February 21, 2020 advising of its intent to relocate the gas meter at 52 South Pine Street on March 2, 2020. Tr. 57-58; Tate Exh. 17, Columbia Gas Exh. 8.
69. Tate filed a Formal Complaint with the PUC on or about February 28, 2020. Tr. 52, 58, 212.

Proposed Conclusions of Law

1. The Commission has jurisdiction over the subject matter of, and parties to, this proceeding. 66 Pa. C.S.A. §701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa. C.S.A. §332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).
4. If a complainant establishes a prima facie case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980) and Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).
5. The decision of the Commission must be supported by substantial evidence. 2 Pa. C.S.A. §704.
6. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Railway Company v. Pennsylvania Public Utility Commission, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corporation v. Unemployment Compensation Board of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Commonwealth, Department of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

7. If there has been an abuse of discretion or arbitrary action by a utility, the Commission is empowered to intervene. Curley v. Pennsylvania Electric Company, 2014 Pa. PUC Lexis 364 (2014); Public Utility Commission v. Philadelphia Electric Company, 561 A.2d 1224 (Pa. 1989).
8. Tate's property, located at 52 South Pine Street in the City of York, Pennsylvania (the "Property"), is located within the "Historic York" historic district created pursuant to the Pennsylvania Historic District Act of 1961, 53 P.S. §8001-8006.
9. Tate rents his Property to a third party, and, in doing so, must comply with the York Fair Housing Ordinance, which makes it unlawful for an owner of a City property to refuse to sell, lease or rent a dwelling, or represent that the dwelling is not available for sale or lease when in fact it is available, because of a person's handicap or disability. York Fair Housing Ordinance, §183.03(a).
10. A handicapped tenant might require a ramp, which according to the Americans with Disabilities Act ("ADA") and similar statutes requires a slope ratio between 1:8 and 1:12, and a ramp width of 36 inches.
11. Tate's Property does not fall within the definition of a "public accommodation" under the ADA. " 42 U.S.C. § 12181.
12. Tate obtained a proposal for installation of a ramp with the following dimensions: 3 feet in height, 4 feet in width and 12 feet long. Tr. 40-41, 74-76.
13. It would not be possible for Tate to comply with ADA ramp slope ratio requirements due to the narrow width of Tate's Property, which is only 14-15 feet, but the proposed width of the ramp Tate would install is 48 inches and legally complaint under the ADA and otherwise.

14. Tate's ramp would be 48 inches wide, and installation of a full size gas meter as proposed by Columbia Gas would reduce the useable width of the ramp to 30-34 inches, which is outside of code under the ADA and related statutes.
15. The rights contained in Article I of the Pennsylvania Constitution are inviolate and cannot be infringed upon by a statute, regulation, or otherwise. Pa. Const. art I, Preamble and §25.
16. Article I, §27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment, requires that all branches and levels of government, including agencies such as the Commission, act as trustee for the people to prevent and remedy the degradation, diminution and depletion of public natural resources such as historic buildings. Pa. Const. art I, §27; Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911 (Pa. 2017); Robinson Township v. Commonwealth, 83 A.3d 901 (Pa. 2013); City of Lancaster v. PUC, 224 A.3d 460 (Pa. Commw. 2020) (unpublished memorandum opinion); United Artists' Theater Circuit v. City of Philadelphia, 635 A.2d 612 (Pa. 1993); Commonwealth v. National Gettysburg Battle Tower, Inc., 311 A.2d 588 (Pa. 1973).
17. Statutes and regulations may not constitutionally command municipalities to ignore and disregard their obligations under the Environmental Rights Amendment. Robinson Township v. Commonwealth, 83 A.3d 901 (Pa. 2013).
18. As currently drafted, 52 Pa. Code §59.18 and Columbia Gas Tariff 4.6.1.2 grant Columbia Gas the sole discretion to determine the location of gas meters, regulators and service lines at historic properties.
19. The City of York enacted Article 1731 of its Codified Ordinances on September 2, 2014, prior to the effective date of Pa. Code Section 59.18, thereby establishing a seven-member

Historical Architectural Review Board (“HARB”) to review exterior work at historic homes in York City.

20. Article 1731 mandates that those seeking to engage in exterior work at a historic home in the City of York, and work affecting the façade of a historic building in the City of York, first obtain a Certificate of Appropriateness from the York City Council following consideration of historic values and Article 1731 requirements by HARB and the York City Council.
21. Section 59.18 and Columbia Gas’s Tariff unconstitutionally command municipalities such as the City of York to ignore and disregard their obligations under the Environmental Rights Amendment and other statutes such as the Municipalities Planning Code (“MPC”).
22. Third Class Cities such as the City of York are governed by the MPC and must provide for the protection of natural and historic features and resources. 53 P.S. §10107; 53 P.S. §10603(g)(2).
23. Columbia Gas has not at any time obtained, or sought or applied for, a Certificate of Appropriateness or other approval from HARB or the York City Council to place gas meter equipment at the right front façade of Tate’s Property. Tr. 66-67.
24. Section 59.18 contains no standards, guidelines and procedures to regulate the conduct of utility companies when considering the placement of gas meters, regulators and service lines at historic properties.
25. Columbia Gas has implemented no internal standards, guidelines and procedures to regulate its decision-making process and conduct relative to the placement of gas meters, regulators and service lines at historic properties.
26. Columbia Gas committed an abuse of discretion and acted arbitrarily by failing to implement standards, guidelines and procedures necessary for the protection of

Pennsylvania's historic natural resources and structures when determining the location of gas meters, regulators and service lines at historic properties.

27. Columbia Gas committed an abuse of discretion and acted arbitrarily, and acted in violation of the Environmental Rights Amendment, by refusing to consider and account for numerous visual and otherwise negative impacts to Tate's Property resulting from the placement of a full size gas meter at the right front of the façade, the effect of which would be to degrade, deteriorate and impair Tate's historic Property.
28. Columbia Gas committed an abuse of discretion and acted arbitrarily by requiring installation of a full size gas meter at the right front façade of Tate's Property when there are several feasible alternatives to what has been proposed by Columbia Gas.
29. Placement of a full size gas meter and regulator at the right front façade of Tate's Property would mean that Tate could not comply with the 36 inch wide ramp requirement under the ADA, the International Building Code of 2015 and the International Residential Code of 2015.
30. Tate has met his burden of proof to show that Columbia Gas has committed an abuse of discretion and acted arbitrarily, and violated the Pennsylvania Environmental Rights Amendment, in requiring installation of a full size gas meter and regulator at the right front façade of Tate's Property.

Proposed Ordering Paragraphs

1. The Formal Complaint filed by Bryan Tate against Columbia Gas of Pennsylvania, Inc., at Docket Number C-2020-3018966, dated February 28, 2020, is hereby sustained.

2. Columbia Gas shall investigate easements in the area of Tate's Property and use its best efforts to negotiate sharing agreements regarding any utility easements in the area, and thereafter shall install a gas meter and pressure regulator at the rear of Tate's Property.
3. Should it be impossible to place a gas meter and pressure regulator at the rear of Tate's Property due to the existence of exclusive easements and the inability to comply with legal requirements regarding distance from other utility lines, Columbia Gas shall leave Tate's full size meter in the basement pursuant to Section 59.18(d) and install a pressure regulator, only, at the right front of Tate's Property.

Respectfully submitted,
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CERTIFICATE OF SERVICE


I, Terence J. Barna, Esquire, hereby certify that on this 19th day of March, 2021, I served a true and correct copy of the foregoing "Brief of Complainant, Bryan Tate" that was filed electronically on the Commission's eFiling system to the following individual(s) via U.S. First Class Mail and E-Service through the Commission's eFiling system, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party):

Presiding Officer Steve Haas
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
400 North Street, Harrisburg, PA 17120

Amy E. Hirakis, Esquire
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**CERTIFICATION OF COMPLIANCE WITH SECTION 7.0 CONFIDENTIALITY
PROVISIONS**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.



Date: March 19, 2021

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