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VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Bryan Tate v. Columbia Gas of Pennsylvania, Inc.
Complaint
Docket No. C-2020-3018966**

Dear Secretary Chiavetta:

Enclosed for filing in the above referenced matter, please find Columbia Gas of Pennsylvania, Inc.'s Main Brief.

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

Very truly yours,

A handwritten signature in blue ink that reads "Amy E. Hirakis". The signature is written in a cursive, flowing style.

Amy E. Hirakis
Counsel for
Columbia Gas of Pennsylvania, Inc.

Enclosure

Cc Honorable Steve Haas (sthaas@pa.gov)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bryan Tate	:	
v.	:	
	:	Docket No. C-2020-3018966
Columbia Gas of Pennsylvania, Inc.	:	
	:	

**MAIN BRIEF OF
COLUMBIA GAS OF PENNSYLVANIA, INC.**

TO ADMINISTRATIVE LAW JUDGE STEVEN HAAS:

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Date: May 19, 2021

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I. STATEMENT OF THE CASE

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) is a regulated public utility company that provides natural gas distribution service to approximately 436,000 customers in 26 counties in the western and central portions of Pennsylvania, including the City of York located in York County. Columbia is under the jurisdiction of the Pennsylvania Public Utility Commission (“Commission”).

In 2014, the Commission amended Section 59.18 of its regulation governing the locations of gas meters, regulators and service lines to require 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). Section 59.18 permits natural gas distribution companies (“NGDC”) to keep inside meters for buildings in historic districts, provided that the regulator and shut-off valve are installed outside. 52 Pa. Code § 59.18(d)(1)(ii), (2), (3). Section 59.18 was adopted by the Commission to reduce the dangers from gas leaks. Final Rulemaking Order, 44 Pa. B. 5835-36, 5838 (2014) (stating that “[s]pecifying mandatory requirements for meter, regulator and service line locations is necessary to protect the safety of the public” and that “[w]hile it appears from the data that the inside meter and regulators were not always the primary factor for accidents, locating meters and regulators inside certainly contributed to these incidents through a release of natural gas”). NGDCs are required to comply with Section 59.18 when installing new meters, regulators and service lines, and when replacing existing meters, regulators and service lines. 52 Pa. Code § 59.18(g)(1), (2). NGDCs have until 2034 to bring their system into compliance with this regulation. 52 Pa. Code § 59.18(g)(3). Columbia, as a regulated entity under the Commission’s jurisdiction, is required to comply with Section 59.18.

In 2019, Columbia was performing an infrastructure improvement project in the City of York that involved replacing 2,000 feet of a cast iron main that operated at low-pressure with approximately 1,440 feet of new 2-inch plastic main that will operate at medium pressure. Tr. at 226-227. The portion of main being replaced served 61 customers. Tr. at 227. The change in gas pressure required that Columbia install new meters, regulators and customer service lines to the impacted customers. Id. In July 2019, Columbia posted notices on the properties identified as needing new meters, regulators and service lines, notifying the occupants of the infrastructure improvement project and the fact that their property would need a new meter, regulator and service line installed. Tr. at 196. This notice also advised that gas service would be temporarily interrupted during the installation of the new meter, regulator and service line. See Columbia Hearing Exhibit No. 1. On July 31, 2019, Columbia participated in a public meeting¹ hosted by the City of York to communicate with residents and customers regarding the work Columbia was performing in the city. Tr. at 177-178. Following this meeting, a Company representative, Russell Bedell, saw a social media message from Bryan Tate (“Complainant”) stating that he had reached out to the Company about the infrastructure improvement project, but that the Company had not responded. Tr. at 199. Mr. Bedell had no record of Complainant reaching out to the Company, and he proactively contacted the Complainant via email. Tr. at 200.

In August 2019, Columbia mailed copies of the notice to the owners of the properties that the Company identified as rental properties. Tr. at 198. A copy of the

¹ In addition to representatives from the City of York and Columbia, representatives from the Commission’s Safety Division and the Office of Consumer Advocate attended this public meeting.

notice was mailed to Complainant relating to the property he owned located at 52 South Pine Street (hereinafter, “the property”). Tr. at 199.

In the fall of 2019, Columbia personnel, including Mr. Bedell, met with Complainant at the property twice. Tr. at 34, 200-201. The property is located in a local historic district and is eligible to be designated a historic building. Tr. at 22. The purpose of the meeting was to discuss Columbia’s proposed location of the meter and regulator at the property. Tr. at 34-35, 200-203. Columbia had proposed locating the meter and regulator at the front-right corner of the property. Columbia Hearing Exhibit No. 11 is a photograph of the property and a white X marks the spot where Columbia would install the meter and regulator. Complainant advised the Company that he was opposed to a meter and regulator being installed along the front of the property. Complainant requested that the Company locate the meter and regulator in the rear of the property or in an alley located along the north side of the property. Tr. at 200-202. Company personnel explained to Complainant that the meter and regulator could not be located in the rear of the property because the gas main servicing the property was in front of the property, and no gas main was in the rear of the property. Tr. at 201. Company personnel also explained to Complainant that the alley along the north side of the property was too narrow for the meter and regulator to be located there. Tr. at 201. Company personnel also advised Complainant that the Company could paint the gas equipment to match the property and install a decorative screen to go over the meter, also painted to match the house. Tr. at 201-202.

Following this meeting, the Company had several more communications with Complainant, including another meeting at the property, regarding the location of the meter and regulator. Tr. at 203-206. These communications did not resolve

Complainant's objections to locating the meter and regulator to the front-right of the property. In December 2019, Columbia informed Complainant that it planned to move forward with the relocation of the meter and installation of the regulator. Tr. at 207-208; Columbia Hearing Exhibit No. 3.

On December 13, 2019, Complainant filed an Informal Complaint against Columbia. On January 23, 2020, the Commission's Bureau of Consumer Services issued a letter to Complainant stating that the Informal Complaint had been closed without a decision. Columbia Hearing Exhibit No. 7. On February 28, 2020, Complainant filed a Formal Complaint ("Complaint") against Columbia, challenging Columbia's proposed location of the gas meter at the property and alleging that Columbia treated him in a discriminatory manner. Complainant further alleged that Columbia could not install a meter or regulator along the front of the property unless the Company went through the Historic Architectural Review Board ("HARB") process outlines in Article 1731 of the City of York's Codified Ordinance. On March 23, 2020, Columbia filed an Answer denying the material allegations of the Complaint.

Evidentiary hearings were held on November 10 and 12, 2020. Administrative Law Judge Steven Haas presided over the hearings in this matter.

II. QUESTIONS PRESENTED

1. Whether the Complainant has sustained his burden of proof that Columbia's proposed relocation of the gas meter servicing the premises located at 52 South Pine Street, York, Pennsylvania violates the Public Utility Code, a Commission regulation or order, or another applicable legal standard.

Suggested answer: *in the negative.*

2. Whether Columbia is exempt from Article 1721 of the City of York's Codified Ordinance.

Suggested answer: *in the affirmative.*

III. LEGAL STANDARD

A complainant must demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order. *See Frompovich v. PEOC Energy Co.*, 2018 Pa. PUC LEXIS 160, at *16 (Order entered May 3, 2018) (citing 66 Pa. C.S. § 701). Section 332(a) of the Public Utility Code (“Code”), 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). In this case, because the Complaint was filed by Mr. Culbertson, he has the burden of proving his case by a preponderance of the evidence.

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Vet. Med.*, 960 A.2d 864, 874 (Pa.

Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted). Bald assertions, personal opinions, or perceptions do not constitute evidence. *Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

If the complainant has established a *prima facie* case, the burden of persuasion shifts to the utility to rebut with evidence that is at a minimum co-equal. *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980). If the utility presents a sufficient rebuttal, the burden of persuasion then shifts back to the Complainant to rebut the utility's evidence by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95. However, the burden of proof remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa Cmwlth. 2001).

Here, the Complainant has failed to produce credible evidence in support of his contentions. As demonstrated below, however, Columbia has produced evidence that, at all times, it acted lawfully and complied with the Code, Commission regulations and orders. The Complaint should be denied.

IV. SUMMARY OF THE ARGUMENT

The Complainant has failed to sustain his burden of proof that Columbia has violated a provision of the Public Utility Code, a Commission regulation or order, or any other relevant law. The record developed in this proceeding demonstrates that Columbia has complied with the provisions of Title 52 of the Pennsylvania Code that relate to the location of meters and regulators, including the customer notification provisions. The

record also demonstrates that Columbia's proposed location for the gas meter and service regulator is safe and in compliance with 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) (adopted by 52 Ps. Code § 59.33). Further, the record demonstrates that the Complainant's claim that Columbia has treated him and his property in a discriminatory manner is without merit. Indeed, the record evidence is clear that it was the result of the Complainant's own misidentification of gas facilities located on other properties in the City of York that caused his confusion.

With regard to Complainant's argument that the Company is required to obtain approval from a local historical architectural review board before locating any gas facilities to the front exterior of the property, this argument should be rejected because Columbia is exempt from local ordinances that attempt to regulate the location of utility facilities.

As explained herein, the Complaint should be denied with prejudice.

V. ARGUMENT

A. Complainant failed to sustain his burden of proof that Columbia violated a provision of the Public Utility Code, a Commission regulation or order, or any other applicable legal standard.

The Complainant has failed to sustain his burden of proof that Columbia has violated any provision of the Public Utility Code, a Commission regulation or a Commission order. See 66 Pa. C.C. §§ 322(a), 701. The primary issues in this proceeding are whether Columbia's conduct relating to the gas meter located at 52 South Pine Street violated Section 59.18 (the Commission's meter relocation regulation) and whether Columbia treated the Complainant in a discriminatory manner. Specifically, the Complainant alleges that the Columbia violated Section 59.18 by not providing him with proper notice of the relocation of the meter and installation of a gas regulator, by denying

his request to keep the meter located inside the property, and by proposing to relocate the meter to an outside location that presents safety concerns. Complainant further alleges that the Company treated him in a discriminatory manner because the Company has permitted two other properties located within the City of York's Historic District to keep meters inside.

The record developed in this proceeding demonstrates that Columbia's conduct to notify the Complainant and its attempts to relocate the meter at the property were reasonable and consistent with Section 59.18. Indeed, the record shows that Columbia attempted to work with Complainant throughout 2019 to address his concerns. The record also shows that Columbia attempted to find another possible location for the meter besides the front of the property. The record, however, is void of any credible evidence that Columbia's proposed outside location is unsafe or that Columbia discriminated against Complainant.

1. Columbia's Customer Notices Comply with Section 59.18

Regarding the adequacy of the customer notices that Columbia provided to Complainant and the occupants of the property, Complainant alleges that Columbia's notice that the meter was being relocated outside was deficient because Columbia provided the notice to the occupants of the property instead of to him, the owner of the property, and the notice did not include information regarding historic districts.

Section 59.18 directs the manner and content of the notices a NGDC must issue prior to relocating a meter, regulator or service line, and provides as follows:

§ 59.18. Meter, regulator and service line location.

(a) *General requirements for meter and regulator location.*

(2) Except in the case of an emergency, a utility shall provide written notice to a utility customer by first class mail or by personal delivery at least 30 days prior to relocating and subsequently installing a meter or regulator outside the customer's building. The notice must request that if the customer is not the owner of the building, the customer shall forward the written notice to the owner of the building. If the utility knows the current address of the owner of the building, notice shall also be mailed or delivered to that address.

(3) The written notice must inform the customer and building owner of the equipment that the utility proposes to relocate, the planned new location and how to contact the utility to provide supplemental information that the utility may not have, such as the building's historic status. The written notice must include contact information for the Commission's Bureau of Consumer Services.

52 Pa. Code § 59.18.

The notices that Columbia provided to Complainant and the occupants of 52 South Pine Street are included in the record as Columbia Hearing Exhibit Nos. 1 and 2. Columbia Hearing Exhibit No. 1 is a copy of Columbia's 30-day Notice, which is a two page document that states at the top "IMPORTANT NOTE: YOUR GAS METER WILL BE MOVED OUTSIDE NO SOONER THAN 30 DAYS." A review of Columbia's 30-day Notice shows that the notice complies with the requirements set forth in Section 59.18(a), as the notice provides the following information:

- notification that the customer's meter will be relocated outside in the near future, but no sooner than 30 days;
- notification that the gas service to the premises would need to be temporarily interrupted when the meter relocation is performed;
- notification that the customer can request an exception if the property is located within a historic district and instructions to contact the Company should the customer/property owner want to request an exception;

- instructions to forward the notice to the property owner if different from the occupant;
- information on identifying a Company representative;
- a commitment to restore landscaping or other disruptions to property as soon as weather permits; and
- contact information for the Company and the Commission's Bureau of Consumer Services.

See Columbia Hearing Exhibit No. 1.

As testified by Columbia witness Russell Bedell², the 30-day Notices were hand-delivered to the properties that had been identified as requiring meter relocations due to the infrastructure improvement project in July 2019. Tr. at 198. Mr. Bedell also testified that, in August 2019, Columbia mailed the 30-day notice to the property owners of premises that Columbia identified were rental properties. Tr. at 198. Columbia Hearing Exhibit No. 2 is the cover letter that accompanied the 30-day Notice mailed to property owners in August 2019, including the Complainant. Tr. at 198-199.

2. Columbia's determination to locate the meter at the front-right exterior of the property is reasonable, and consistent with Section 59.18 and the Company's tariff

Complainant argues that Columbia is in violation of Section 59.18 of the Commission's regulations because the Company denied his request to keep the gas meter located inside the basement, despite his property being located within a locally designated historic district. The Complainant further argues that Columbia

² Russell Bedell testified that he is a Communications Manager for Columbia and is responsible for providing internal and external communications for the Company, including media relations, emergency communications, regulatory support and community relations; and that he provided communication support for the infrastructure improvement project that took place in the South Pine Street neighborhood. Tr. at 195-196.

unreasonably rejected the two alternative exterior locations that he suggested to the Company.

Section 59.18 of the Commission's regulation requires that NGDCs locate all meters and regulators outside, and may only consider an inside meter under very limited circumstances. One circumstance that permits a NGDC to use an inside meter location is that 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." 52 Pa. Code § 59.18(d). Columbia acknowledges, and has never disputed, that the Complainant's property is located within a designated historic district. While the Commission's regulation addresses meter location, it does not provide the Company with any discretion in regard to the location of the regulator. Regulators must be located outside³.

Further, Columbia's tariff also provides that the location of a meter is determined by the Company. Columbia Hearing Exhibit No. 10. Page 40a of Supplement No. 259, Rule 4.6.1.2 states that "the Company shall have the right to determine the locations of its meters, which must be places where they will easily be accessible for meter reading, inspection, repairs, testing, changing and operation of the gas shut-off valve [...]. Columbia witness Andrew Tubbs⁴ testified that Page 40a of Supplement No. 259 (Columbia Hearing Exhibit No. 10) was revised after the Commission amended Section 59.18 to reflect the Commission's changes to that regulation. Tr. at 173. It is well

³ As explained by Columbia witness Raymond Brumley, it is necessary for the Company to install a new meter, regulator and service line because the property is being upgraded to a medium pressure gas main. Tr. at 227-228.

⁴ Andrew Tubbs testified that he is Vice President of External and Customer Affairs for Columbia. He testified that in this role he oversees all regulatory activities for the Company and manages compliance with the Company's tariff. Tr. at 162-163.

established that a Commission approved tariff has the full effect of law. *PECO Energy Co. v. Twp. Of Upper Dublin*, 922 A.2d 996, 1004 (Pa. Cmwlth. 2007).

With that said, Columbia did not determine the proposed location of the meter arbitrarily or without regard to Complainant's concerns. As Mr. Tubbs testified, the fact that a building has been marked a historic building is eligible to be on the historic register is taken very seriously by the Company, and the Company did consider the option of leaving the meters inside those buildings, but ultimately declined this option because it is safer to have the meters located outside of a building than inside a building. Tr. at 169-170. For historic buildings, Columbia does send out personnel to view the property and speak with customers regarding the meter location. Tr. at 169. If a customer informs Columbia that he/she has concerns or objections over the relocation of the meter, the Company investigates alternative locations, and if an alternative location is not feasible, the Company offers options that address the aesthetics of the meter, such as painting the meter, covering the meter with a screen, or planting greenery around the meter.

Regarding the meter at 52 South Pine Street, upon becoming aware of Complainant's objection to having the meter located at the front-right of the property, the Company attempted to resolve his objection by meeting with him at the property and assessing whether there was a suitable alternative location. Alternative locations assessed by the Company were the rear of the property (i.e., along the back of the property) and the north side of the building, where an alley is located.

The Complainant testified that at the meeting, Columbia told him the meter could not be placed along the rear of the building nor along the north side of the building in the alley. Tr. at 78. The Complainant further testified that he disagrees with Columbia's determination that neither of those alternative locations are feasible.

With regard to the rear of the property, Complainant stated that “there is a perfect location beside the back door where it would sit perfectly.” Tr. at 35. Columbia witness Ray Brumley⁵ testified, however, that placing a meter along the rear of the property is not feasible because the gas meter that serves the property is located on South Pine Street. Tr. at 230. Witness Brumley testified that there is not a gas main at the rear of the building to which a meter and service line could be connected. Tr. at 230. Thus, for the meter to be located at the rear of the property, Columbia would either need to construct a new gas main behind the property or extend a service line from the main located on South Pine Street through the breezeway to the rear of the property. Tr. at 185. The option of constructing a new gas main along the rear of the property is not reasonable due to the expense of constructing mains, particularly when the main is not necessary to provide service to any customer, and the path of any new main would involve right-of-way issues. Tr. at 232.

Complainant has presented no evidence to support his claim that Columbia did not assess the rear of the property as a possible location for the meter. To the contrary, Complainant’s testimony that this option was discussed at the meeting that occurred between him and Company personnel at the property demonstrates that this alternative location was evaluated. Tr. at 34-35. Further, Mr. Brumley’s testimony demonstrates that the Company decision to not locate the meter at the rear of the property, as proposed by Complainant, was and remains reasonable.

With regard to placing the meter along the north side of the property, inside the alley, this option is not feasible due to the dimensions of the breezeway. Tr. at 249. At

⁵ Raymond Brumley testified that he is manager of construction services for Columbia, and in this role he oversees the Company’s construction program, including the installation of pipelines and services. Mr. Brumley testified that he has been employed by the Company for 29 years. Tr. at 225.

the hearing, Complainant testified that he disagreed with Columbia's determination that the breezeway was too narrow, stating that "there is plenty of space" for the meter to be located here. Complainant testified that the alley is "five feet wide and as tall as I am. I'm six two. So six feet tall, five feet wide." Tr. at 11. He also testified that he owns half of the alley, with his neighbor owning the other half of the alley. Tr. at 15-16. Mr. Brumley testified, however, that "the width of that grocer's alley is just under 30 inches. So it's not feasible to locate a meter there. There will not be enough space to work on the meter or pass through that area, so it is quite small." Tr. at 230.

Due to the discrepancy between the testimony of Complainant and Mr. Brumley, the ALJ directed Columbia to measure the alley and submit the measurements as Columbia Exhibit 12. Tr. at 252. Pursuant to this directive, Columbia had personnel measure the alley on November 11, 2021, and photographed the measurements. These photographs were entered into the record as Columbia Hearing Exhibit No. 12 on the second day of hearings. Columbia Hearing Exhibit No. 12 consists of two pages, with the first page being a photograph of the width of the alley being measured and the second page being a photograph of the height of the alley being measured. Columbia Hearing Exhibit No. 12 shows that the width and height of the alley is 30 inches by 68 inches, with Complainant owning 15 inches of the alley. Based on the width of the alley being 30 inches wide, Complainant's counsel stated on the record: "as a result of that measurement we are taking off of the table our position that a meter can be placed in the alley." Tr. at 282.

Based on Columbia Hearing Exhibit No. 12, Complainant's testimony regarding the measurements of the alley is not credible evidence to support his claim that the meter and regulator can be located in the alley and that the Company has unreasonably denied locating the gas facilities in the alley. Columbia submits that the record evidence in this

proceeding supports a finding that the Company assessed the alley as an alternative location for the gas facilities and that Columbia's determination not to locate the meter in the alley is reasonable.

To resolve Complainant's concerns about the aesthetics of the meter, Columbia also offered the Complainant the option of having the meter painted and having a screen installed to shield the view of the meter. Tr. at 201-202. Mr. Tubbs testified that these options are available to customers at no additional expense. Tr. at 171. Mr. Tubbs also testified that Columbia works with Sherwin Paint to match the paint color to the building. Tr. at 171. Columbia Gas Hearing Exhibit No. 12 shows a meter painted gray to match the color of the building. Complainant declined both options.

3. The proposed meter location complies with Section 59.18(a)(5) and Section 192.353(a) of the Code of Federal Regulations

Section 59.18(a)(5) provides that "when selecting a meter or service regulator location, a utility shall consider potential damage by outside forces." 52 Pa. Code § 59.18(a)(5). Section 192.353(a) of the Code of Federal Regulations requires that "each 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 C.F.R. § 192.353(a). The Complainant alleges that Columbia's proposed location for the meter is unsafe and violates both Section 59.18(a)(5) and Section 192.353(a). Specifically, the Complainant alleges that Columbia's proposed location for the meter puts the meter at risk of being hit by vehicles; exposes the meter to snow, ice and corrosion; creates the opportunity for trash and rubbish to get trapped beneath and behind the meter; and

creates the opportunity for the meter to be vandalized. Complainant also appears to dispute that an outside meter is safer than a meter located inside of a building.

At the hearing, the Complainant testified that he is concerned that a vehicle could hit and damage the meter if it is placed at the front-right corner of the property. The Complainant testified that a vehicle crashed into a building located at 13 Market Street, and that he is concerned that if a meter is installed along the front of the property at 52 South Pine Street, that a vehicle could hit that meter as well. Tr. at 64. Columbia submits that Complainant's concern that a vehicle could hit the meter is unwarranted. Further, the fact that a vehicle hit a building located on another street is not evidence to support a finding that a meter located along the front of the property is at risk for being hit by a vehicle, or that Columbia's meter location practice is in violation with Section 59.18(a)(5) and Section 192.353(a).

Indeed, Complainant's testimony suggests that it would be rather difficult for a vehicle to hit a meter located at the front-right the corner of the property. Complainant testified that South Pine Street is a one-way, one lane street, with traffic flowing north⁶. He also testified that cars usually park on the street, along the sidewalk. Tr. at 17. He further testified that the property has a front stoop that extends out four feet from the property towards the street (located at the left-front corner of the property) and has a tree planted at the front of the property. Tr. at. 10, 19, 74. The stoop and tree can be seen in the photograph marked Columbia Hearing Exhibit No. 11. Based on Complainant's description of South Pine Street and the property, for a vehicle to hit a meter located at the front-right corner of the property, a vehicle would have to travel over the sidewalk

⁶ If facing the property, traffic would be moving left to right.

(likely through at least one parked car), between the stoop and tree, at just the right angle, to hit the meter. Mr. Brumley testified that it is Columbia's practice to assess the likelihood of a vehicle hitting an exterior meter and regulator prior to this equipment being installed, and that this assessment was performed for this property. Tr. at 235. Mr. Brumley also testified that the meters being installed on Columbia's medium pressure system have an excess flow valve, which is a design feature that shuts off the flow of gas from the meter immediately if the meter would be damaged by being hit by a vehicle. Tr. at 235. Further, Complainant testified that in the 30 years that he has owned the property, no vehicle has struck the property. Tr. at 73.

Complainant also testified that he is concerned about the meter being exposed to snow and ice, and the potential for corrosion. However, Mr. Brumley's testimony demonstrates that Complainant's concerns are unwarranted because the meters are designed to withstand rain, ice and snow. Tr. at 235-236. He explained that the page on Columbia's website that recommends that customers remove snow and ice from around a meter is so that the meter remains visible and accessible. Tr. at 236. He also testified that a meter is designed to withstand corrosion. Tr. at 237.

Complainant also testified that he is concerned that trash or leaves could get trapped under the meter. Tr. at 60. Mr. Brumley testified that trash and leaves under a meter is not a safety concern, and would not cause a fire or an explosion. Tr. at 237.

Complainant testified that he believes that locating a meter along the front of the property creates a risk for the meter being vandalized. Tr. at 36-37. Mr. Brumley responded to this concern by testifying that he does not share Complainant's concern about vandalism because vandalism of a gas meter is not common, and that he is not aware of any occasion where a Columbia meter was vandalized. Tr. at 234.

In terms of the overall safety of meters, the record demonstrates that meters are safe, but that locating a meter outside is safer because it allows gas to flow outside and not inside if a meter were to be damaged, and allows for quick and easy access to Company personnel and emergency responders if an emergency would arise. Tr. at 166, 170. Complainant's testimony regarding his concerns with vehicle hits, weather, corrosion, and fires/explosions caused by trash and leaves is unwarranted and does not detract from the well-established fact that exterior meters are safe in general and safer than putting a meter inside a building.

4. Columbia has not discriminated against the Complainant

The Complainant alleges that Columbia has treated him in a discriminatory manner because the Company is denying his request to have an inside meter while permitting two other customers to have their meters located inside. The Complainant alleges that Columbia kept the gas meter servicing the property located at 257 East Market Street inside the basement of the property, installing only a pressure regulator outside the front of the property. Tr. at 50-52. At the hearing, Complainant testified that he has personally observed that Columbia performed work at the property located at 257 East Market Street and that at the conclusion of the work, the property only had a regulator in the front of the property and that "there is not a meter outside of the building anywhere." Tr. at 52. The Complainant referenced a photograph marked as Tate Exhibit-8 (second and third pages), which he testified was a photograph of the property at 257 E. Market Street, and that the photograph showed that only a regulator was located outside of that property. Tr. at 50-52. He testified that he believed that Columbia is discriminating against him by denying his request to keep the meter at the 52 South Pine Street property

located inside but permitting the meter located at 257 E. Market Street to remain inside the property. Specifically, Complainant testified that:

And that is part of my concern, that I'm being discriminated against in this way, that 500 feet from my property somebody else, a well-known lawyer in the community, gets to have just a regulator, but I have to have a meter.

Tr. p. 53.

Complainant also testified that he noticed that Columbia only installed a regulator to the outside of a property referred to as "Central Market," another property that is located in the York Historic District and served by Columbia. See Tr. at 54-55. The Complainant did not offer a photograph of the Central Market property as an exhibit.

Columbia denies that it has treated the Complainant in a discriminatory manner. In order to support a claim for service discrimination, the Complainant must demonstrate that Columbia has granted an unreasonable preference or disadvantage to another customer or that Columbia has subjected him to an unreasonable prejudice or disadvantage. 66 Pa.C.S. § 1502. In order to establish a violation of Section 1502, Complainant needs to establish that he is similarly situated to other customers who enjoy an advantage over him. The Complainant has failed to carry his burden.

Complainant's property located at 52 South Pine Street is part of an infrastructure improvement project that involves upgrading 61 properties receiving gas service from a low pressure main to a medium pressure main. Mr. Brumley testified that aside from the Complainant's meter located at 52 South Pine Street, Columbia has relocated all meters connected to this infrastructure improvement project outside. Tr. at 241. In regards to the Complainant's claim of service discrimination, Mr. Brumley rebutted Complainant's

testimony that he has noticed two other properties located within the York Historical District that were permitted to have the meters remain located inside.

First, in regard to 257 East Market Street, Mr. Brumley testified that this property was not part of the infrastructure improvement project that involved upgrading customers to a medium pressure main and, at this time, the property is serviced by a low pressure main. Tr. at 238. In terms of the work performed at this property, it was an isolated job that involved replacing a section of the customer's service line. Tr. at 238-239. So, while the record establishes that Columbia moves meters outside in conjunction with main replacement projects that involve the installation of medium pressure mains, the record further establishes that such activity has not occurred in relation to 257 East Market Street. Since 257 East Market Street is, therefore, not similarly situated to the premises that is at issue in the case at hand, Complainant's claim of service discrimination is not supported by the record.

Further, Mr. Brumley examined the photograph marked Tate Exhibit-8 and testified that the piping shown in the photograph was not a regulator, as stated by the Complainant, but was actually a gas riser. Tr. at 239-240. Mr. Brumley explained that the riser is part of a service line that extends above ground that has a shut-off valve attached. He testified that the white plastic pipe that is shown in the photograph is a sleeve, and that the sleeve provides an escape route for gas should there be an underground leak, which prevents the gas from entering the building. Tr. at 239-240.

Complainant's testimony regarding the Central Market property is not credible and should be disregarded. As demonstrated above in relation to Complainant's misinterpretation of the gas equipment at 257 East Market Street depicted in Tate Exhibit-8, his identification of gas equipment cannot be relied upon as an accurate

interpretation of what he has observed at the Central Market property. Also, Complainant's own testimony establishes that he does not have any training regarding gas equipment. Tr. at 71-72. Further, Columbia had no opportunity to respond to this specific claim because Complainant did not reference the Central Market property in his Complaint or offer photographs of the property's gas equipment at the hearing, as was done with the 257 East Market Street property.

Columbia submits that Complainant's has not provided credible evidence that Columbia has treated him in a discriminatory manner, and to the extent that the Complainant provided evidence on this issue, Columbia adequately rebutted this evidence through the testimony of Mr. Brumley.

5. Other issues

Complainant also argues that locating the meter at the front-right of the property is unreasonable because it may prevent him from one day installing an ADA-compliant ramp and because it would negatively impact the market value of the property. The Complainant's arguments are speculative, but also fails to note that his concern would remain even if he were successful in this proceeding.

In regard to the ramp, Complainant testified that if a ramp were installed along the front of the property, that the ramp would need to extend as far as the alley, where the meter and regulator would be located. Assuming for argument that Complainant's ramp measurements are accurate, and that the meter were not located at the front-right corner of the property, a ramp would still be hindered by the outdoor regulator that must be installed at the front-right corner of the property. Section 59.18 requires that regulators be located outside, and the record evidence demonstrates that the only location a regulator can be installed at this property is along the front. Thus, Columbia, after

exploring but unable to identify any other suitable location on the Complainant's property, must locate the regulator along the front of the property. Moreover, as the installation of a ramp is speculative at this time, it is of no moment to whether Columbia's proposed location for the meter and regulator is reasonable and consistent with Section 59.18 of the Commission's regulations.

In terms of the possibility that an outdoor meter may negatively impact the market value of the property, this too is speculative. Complainant offered the testimony of a real estate agent, Mike Wheeler, in support of the argument that the market value would be negatively impacted by a meter being located along the front of the property, but as Mr. Wheeler testified, he did not do a market value analysis for the property and was unable to say what he would value the property at today, without the gas facilities, and could not say what he would value the property with the gas facilities installed. Tr. at 112-115. Further, the impact to a property's market value is not a factor that NGDCs are directed consider under Section 59.18. As such, the possibility that the property's market value will be negatively impacted should not be a consideration to whether Columbia's proposal to locate the meter and regulator at the front-right corner of the property is reasonable and consistent with Section 59.18 of the Commission's regulations.

B. Columbia is exempt from Article 1721 of the City of York's Codified Ordinance.

Complainant alleges that Columbia is required to go through the Historical Architectural Review Board ("HARB") process set forth in Article 1721 of the City of York's Codified Ordinance ("Article 1721") before installing a meter and regulator anywhere along the front exterior of the property. He testified that this process involves HARB making a recommendation to the York City Council on whether a proposed project should

be approved, and then the City Council votes on whether the project may move forward. Tr. at 66-68. He further testified that he knows that “everybody has to go through this process.” Tr. at 129.

It is well-established that the Commission has exclusive authority to regulate public utilities’ facilities. *See e.g. Cnty.of Chester v. Phila. Elec. Co.*, 218 A.2d 331, 332-333 (Pa. 1966); *Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287, 291-293 (Pa. 1954); *PECO Energy Co. v. Twp. Of Upper Dublin*, 922 A.2d 996, 1005 (Pa. Cmwlt. 2001); *UGI Utils., Inc. v. City of Reading*, 179 A.3d 624, 629-630 (pa. Cmwlt. 2017). “[T]he Legislature has vested in the Public Utility Commission exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utility facilities.” *County of Chester*, 218 A.2d at 333; *PPL Electric Utilities Corp.*, 125 A.3d at 846; *UGI Utils., Inc.*, 179 A.3d at 630 (quoting *County of Chester*). The Commission’s exclusive jurisdiction also extends to issues relating to the reasonableness, safety, adequacy and sufficiency of those facilities. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980); 66 Pa. C.S. § 1501. Local ordinances that conflict with the Commission’s regulations are preempted and cannot be applied to a regulated public utility company. *UGI Utils., Inc.*, 179 A.3d at 629. *See also PECO Energy Co.*, 922 A.2d at 1005 (local ordinance that limited tree pruning was preempted where it conflicted with Commission’s vegetation management requirements near transmission lines).

Here, Complainant argues that Columbia must comply with Article 1721 before the Company installs a meter and regulator along the front of the property. Article 1721 established the historic district in the City of York known as “Historic York” and established a Historical Architectural Review Board. Art. 1731.01 & 1731.04. HARB is

charged with “giv[ing] counsel to the City Council regarding the advisability of issuing any certificates required to be issued [...]” Art. 1731.05(b). Article 1731 further requires that all exterior work that can be seen from the “public way” must be reviewed and approved by HARB before the work begins, and if a building permit is required, one will not be issued unless City Council has issued a certificate of appropriateness. Specifically, Article 1731.07 provides as follows:

1731.07 PRIOR COUNCIL APPROVAL OF PERMIT ISSUANCE.

The Building Official shall not issue a permit for any erection, reconstruction, alteration, restoration, demolition or razing of a building in this historic district which will affect the exterior historic or architectural features or nature of the building, until Council has issued a certificate of appropriateness.

(a) Any 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.

(1) The following projects, but not limited to the list below, shall require a Certificate of Appropriateness:

- A. All new construction and additions.
- B. Siding.
- C. Replacement windows or modifications.
- D. More than 32 sq. ft. of exterior cumulative patching.
- E. All exterior work done by a contractor not specifically exempted.
- F. Any and all roofing that is more than an ordinary repair with like materials.
- G. Door replacement or modifications.
- H. Removal of any facade fixtures or trim that is not an in-kind repair/ replacement.
- I. Fences.
- J. Detached accessory structures.
- K. Water tanks supported directly upon grade if the capacity exceeds 100 gallons.
- L. Window awnings.
- M. Replacement of existing gutters/gutter system.
- N. Painting

Art. 1731.07.

Article 1731 is not applicable to regulated public utility companies, specifically NGDCs, because it is preempted by Section 59.18 of the Commission’s regulations.

Section 59.18 regulates the locations where a NGDC may install a meter and regulator, and provides a NGDC with discretion as to the ultimate location for a meter and regulator. Article 1731, if applicable to NGDCs, would provide HARB and City Council the power to override the NGDCs determination to locate its gas facilities along the front of a historic building. This puts Article 1731 in direct conflict with Section 59.18 of the Commission's regulations, as only the Commission has the authority to determine whether the NGDC's meter and regulator location are proper and reasonable.

As such, Article 1731 is preempted by the Section 59.18 and Columbia is exempt from complying with the provisions of Article 1731.

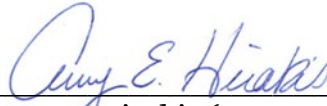
Columbia also notes that there is no record evidence that HARB or the City of York has tried to enforce Article 1731 against Columbia, suggesting that neither entity share Complainant's view that Article 1731 applies to the installation of gas facilities.

VI. CONCLUSION

Complainant, Bryan Tate, has failed to carry his burden of proof in this proceeding. Therefore, Columbia Gas of Pennsylvania, Inc. requests that Administrative Law Judge Haas and the Pennsylvania Public Utility Commission deny the above-captioned Complaint of Bryan Tate, with prejudice.

Respectfully submitted,

COLUMBIA GAS OF PENNSYLVANIA, INC.

By: 

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March 19, 2021

Appendix A - Proposed Findings of Fact

1. Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) is a regulated public utility company that provides natural gas distribution service to approximately 436,000 customers in 26 counties in the western and central portions of Pennsylvania, including the City of York located in York County.
2. In 2019, Columbia was performing an infrastructure improvement project in the City of York that involved replacing 2,000 feet of a cast iron main that operated at low-pressure with approximately 1,440 feet of new 2-inch plastic main that will operate at medium pressure. Tr. at 226-227.
3. The portion of main being replaced served 61 customers. Tr. at 227.
4. The change in gas pressure required that Columbia install new meters, regulators and customer service lines to the impacted customers. Tr. at 227.
5. In July 2019, Columbia posted notices on the properties identified as needing new meters, regulators and service lines, notifying the occupants of the infrastructure improvement project and the fact that their property would need a new meter, regulator and service line installed. This notice also advised that gas service would be temporarily interrupted during the installation of the new meter, regulator and service line. Tr. at 196. Columbia Hearing Exhibit No. 1.
6. In August 2019, Columbia mailed copies of the notice to the owners of the properties that the Company identified as rental properties. Tr. at 198.
7. Complainant owns the property located at 52 South Pine Street, York, Pennsylvania, which is one of the 61 properties being impacted by Columbia’s infrastructure improvement project. This property is located in a historic district and is eligible to be designated a historic building. Tr. at 22.
8. Complainant requested that the Company keep the meter located inside, or locate the meter and regulator in the rear of the property or in an alley located along the north side of the property. Tr. at 200-202.
9. Columbia met with Complainant twice and had several communications with Complainant regarding the location of the meter and regulator. Tr. at 203-206.
10. The meter and regulator cannot be located in the rear of the property because the gas main servicing the property is in front of the property, and no gas main is located at the rear of the property. Tr. at 201.
11. The alley that runs along the north side of the property is 30 inches wide, with Complainant only owning half of the alley. Tr. at 15-16. Columbia Hearing Exhibit No. 12.
12. The meter and regulator cannot be located in the alley because the alley is not wide enough.
13. Columbia offered the Complainant the option of having the meter painted and having a screen installed to shield the view of the meter. Tr. at 201-202.

14. It is Columbia's practice to assess the likelihood of a vehicle hitting an exterior meter and regulator prior to this equipment being installed, and that this assessment was performed for this property. Tr. at 235.
15. The meters being installed on Columbia's medium pressure system have an excess flow valve, which is a design feature that shuts off the flow of gas from the meter immediately if the meter would be damaged by being hit by a vehicle. Tr. at 235.
16. In the 30 years that he has owned the property, no vehicle has struck the property. Tr. at 73.
17. The meters are designed to withstand rain, ice and snow. Tr. at 235-236.
18. The meter is designed to withstand corrosion. Tr. at 237.
19. Vandalism of a gas meter on Columbia's system is not common.
20. Locating a gas meter outside is a safe practice for NGDCs.
21. Outside meters allow gas to flow outside and not inside if a meter were to be damaged, and allows for quick and easy access to Company personnel and emergency responders if an emergency would arise. Tr. at 166, 170.
22. Columbia's tariff, Page 40a of Supplement No. 259, Rule 4.6.1.2, provides that the location of a meter is determined by the Company. Columbia Hearing Exhibit No. 10.
23. The property located at 257 East Market Street was not part of the infrastructure improvement project that involved upgrading customers to a medium pressure main and, at this time, the property is serviced by a low pressure main. Tr. at 238.
24. It is necessary for the Company to install a new meter, regulator and service line because the property is being upgraded to a medium pressure gas main. Tr. at 227-228.
25. Columbia did not determine the proposed location of the meter arbitrarily or without regard to Complainant's concerns

Appendix B - Proposed Conclusions of Law

1. Under Section 332(a) of the Public Utility Code (“Code”), 66 Pa.C.S. § 332(a), the party seeking a rule or order from the Commission has the burden of proof. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
2. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999).
3. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).
4. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008).
5. Bald assertions, personal opinions, or perceptions do not constitute evidence. *Mid-Atlantic Power Supply Ass’n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).
6. A complainant must demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order. *See Frompovich v. PEOC Energy Co.*, 2018 Pa. PUC LEXIS 160, at *16 (Order entered May 3, 2018) (citing 66 Pa. C.S. § 701).
7. In 2014, the Commission amended Section 59.18 of its regulation governing the locations of gas meters, regulators and service lines to require 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).
8. Section 59.18 was adopted by the Commission to reduce the dangers from gas leaks. Final Rulemaking Order, 44 Pa. B. 5835-36, 5838 (2014) (stating that “[s]pecifying mandatory requirements for meter, regulator and service line locations is necessary to protect the safety of the public” and that “[w]hile it appears from the data that the inside meter and regulators were not always the primary factor for accidents, locating meters and regulators inside certainly contributed to these incidents through a release of natural gas”).
9. Section 59.18 permits natural gas distribution companies (“NGDC”) to keep inside meters for buildings in historic districts, provided that the regulator and shut-off valve are installed outside. 52 Pa. Code § 59.18(d)(1)(ii), (2), (3).
10. Section 59.18(a)(5) of the Commission’s regulations requires a natural gas utility “to consider potential damage by outside forces” when it is “selecting a meter or service

regulator location.” 52 Pa. Code § 59.18(a)(5).

11. Under 49 C.F.R. § 192.353(a), “[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.”

12. NGDCs are required to comply with Section 59.18 when installing new meters, regulators and service lines, and when replacing existing meters, regulators and service lines. 52 Pa. Code § 59.18(g)(1), (2).

13. NGDCs have until 2034 to bring their system into compliance with this regulation. 52 Pa. Code § 59.18(g)(3).

14. Public utilities’ tariffs have the force and effect of law and are binding on the utilities and their customers. *PECO Energy Co. v. Twp. Of Upper Dublin*, 922 A.2d 996, 1004 (Pa. Cmwlth. 2007).

15. In order to support a claim for service discrimination, the Complainant must demonstrate that Columbia has granted an unreasonable preference or disadvantage to another customer or that Columbia has subjected him to an unreasonable prejudice or disadvantage. 66 Pa.C.S. § 1502.

16. The Complainant has failed to sustain his burden of proof that Columbia’s proposed outside meter location for the property would constitute unsafe or unreasonable service in violation of any provision of the Public Utility Code, a Commission order, or a Commission regulation. *See* 66 Pa. C.S. §§ 332(a), 701, 1501.

17. The Complainant has failed to sustain his burden of proof that Columbia, when determining the location of the meter, failed to “consider potential damage by outside forces,” to place the meters “[w]hen feasible and practical to do so aboveground in a protection location,” and to protect the meters “from corrosion and other damage,” including “vehicular damage that may be anticipated,” in violation of 52 Pa. Code § 59.18(a)(5) and (b)(1) and 49 C.F.R. § 192.353(a) (incorporated by 52 Pa. Code § 59.33).

18. The Complainant has failed to sustain his burden of proof that Columbia has granted an unreasonable preference or disadvantage to another customer or that Columbia has subjected him to an unreasonable prejudice or disadvantage. *See* 66 Pa. C.S. §§ 332(a), 1502.

19. The Commission has exclusive authority to regulate public utilities’ facilities. *See e.g. Cnty.of Chester v. Phila. Elec. Co.*, 218 A.2d 331, 332-333 (Pa. 1966); *Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287, 291-293 (Pa. 1954); *PECO Energy Co. v. Twp. Of Upper Dublin*, 922 A.2d 996, 1005 (Pa. Cmwlth. 2001); *UGI Utils., Inc. v. City of Reading*, 179 A.3d 624, 629-630 (pa. Cmwlth. 2017).

20. Local ordinances that conflict with the Commission's regulations are preempted and cannot be applied to a regulated public utility company. *UGI Utils., Inc. v. City of Reading*, 179 A.3d 624, 629-630 (pa. Cmwlth. 2017).
21. Article 1721 of the City of York's Codified Ordinance, if applicable to public utilities, would provide the York City Council the power to override an NGDC's determination to locate its gas facilities along the front of a historic building.
22. Article 1721 of the City of York's Codified Ordinance conflict with Section 59.18 of the Commission's regulations because only the Commission has the authority to determine whether the NGDC's meter and regulator location are proper and reasonable.
23. Article 1721 of the City of York's Codified Ordinance is preempted by the Section 59.18 of the Commission's regulations.
24. Columbia is exempt from complying with the provisions of Article 1721 of the City of York's Codified Ordinance.

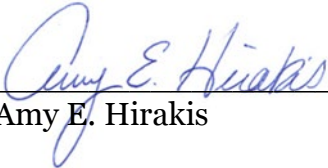
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, via E-mail:

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Date: March 19, 2021



Amy E. Hirakis