

**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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REPLY BRIEF OF COMPLAINANT, BRYAN TATE

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I. Introduction.

Columbia Gas argues that it has the sole discretion to determine the location of its meters pursuant to 52 Pa. Code §59.18 and its Tariff. Columbia Gas Brief at 10-12; Columbia Gas Exh. No, 10. Columbia Gas further argues that Article 1731 of York’s Codified Ordinances relating to the preservation of properties in Historic York is preempted by Commission (“PUC”) regulations. The Tariff of Columbia Gas does state that it shall have the right to determine the location of its gas meters. Columbia Gas Exh. No. 10. However, all Pennsylvania statutes and regulations, including those enacted by the PUC, and PUC approved tariffs having the full effect of law, are subject to the Pennsylvania Constitution and rights reserved to the people under Article I thereof. Simply put, the rights contained in Article I of the Pennsylvania Constitution are “inviolable” and cannot be infringed upon by a statute, regulation, or otherwise. Pa. Const. art I, Preamble and §25. One such inviolable right involves the protection of public natural resources, such as historic buildings, under the Environmental Rights Amendment (hereinafter sometimes the “ERA”), Article I, §27 of the Constitution. The “public trust” created by the ERA and applicable to the Legislature, local governments and Commonwealth agencies, cannot be broken and must be accounted for by Columbia Gas in this case. To this point, it has not.

II. Columbia Gas Committed An Abuse Of Discretion And Acted Arbitrarily In Determining And Proposing A Right Front Façade Meter Location For Tate's Property.

Columbia Gas argues that it did not “determine” the proposed right front façade meter location arbitrarily or without regard to Tate’s concerns. Columbia Gas Brief at 12. Tate argues, among other things, that Columbia Gas did act arbitrarily and committed an abuse of discretion by refusing to offer to relocate Tate’s gas meter to the back of 52 South Pine Street (hereinafter sometimes the “Property”) or to install a pressure regulator, only, outside of the Property.

To begin with, Columbia Gas states that it declined an inside meter option “because it is safer to leave the meters located outside of a building than inside a building.” Columbia Gas Brief at 12. This is taken from the testimony of Andrew Tubbs, Vice President of External and Consumer Affairs for Columbia Gas of Pennsylvania. Tr. 162, 169-170. Mr. Tubbs testified primarily about state statutes and regulations governing gas utility companies in Pennsylvania; he is not a construction or safety manager. When asked whether a gas meter is safer on the outside of a property the Columbia Gas Manager of Construction Services, Raymond Brumley, testified “Yes. In certain situations, yes.” (emphasis added). Tr. 262. Clearly, the issue of meter safety is not cut and dried; there are safety concerns with any location.

Regardless, the PUC regulation relating to historic properties does not require a utility to choose the “safest” location. If it did--and given Columbia Gas’s stated preference for outside meters (see page 17 of Tate’s Main Brief), a gas meter would likely *never* be kept or placed inside a building by Columbia Gas.¹ Tate does not claim that the “safest” location for his gas

¹ While the regulation does state that meters and regulators must be outside, 52 Pa. Code §59.18(a)(1), historic properties are a permitted exception to the outside meter rule. Mr. Tubbs testified that “[w]hile a regulator is something that’s been used in other areas, it’s up to each utility to decide what’s best for its operation. Columbia has a clear preference to have the meter on the outside . . .” (emphasis added). Tr. 170.

meter is in the basement of 52 South Pine Street, or at any other location on the Property. Selecting the "safest" location is not the issue---Section 59.18(d) does permit meters to be installed inside historic buildings. Tate *is* claiming that Columbia Gas should install his gas meter at a safe location that also conserves and maintains public natural resources as required by the Pennsylvania Constitution and relevant caselaw.

Tate emphasizes the testimony of Raymond Brumley, Columbia Gas's Manager of Construction Services. Mr. Brumley testified that it is not unsafe to leave a gas meter in the basement of a building Tr. 263. In that regard, Tate has owned the Property, 52 South Pine Street, since 1990.² His gas meter remains in the basement of the Property as it has for nearly 31 years, and the building still stands. The historic property exemption contained in section 59.18(d) simply does *not* require that a utility choose the safest location when considering the inside location of a gas meter at historic properties. The purpose behind Section 59.18(d) is to protect historic natural resources. However, such public resources will never be protected unless utility companies act in good faith by balancing historical preservation values---implicated by Article I, Section 27 of the Pennsylvania Constitution and applicable law---with consumer safety.

The Pennsylvania Courts have consistently held that "[e]very statute shall be construed, if possible, to give effect to all its provisions." 1 Pa. C.S.A. §1921(a). It is presumed "[t]hat the General Assembly intends the entire statute to be effective and certain." 1 Pa. C.S.A. §1922(2). Thus, no provision of a statute shall be "reduced to mere surplusage." Walker v. Eleby, 842 A.2d 389, 400 (Pa. 2004). Importantly, the Statutory Construction Act also applies to regulations published in the Pennsylvania Code. 1 Pa. C.S.A. §1502(a)(1)(ii). Courts must, therefore,

² Judge Haas may take judicial notice of this fact. 52 Pa. Code §5.408. Tate's 1990 Deed is recorded at York County Deed Book 106-Y, page 364, and Tate testified that he has owned the Property for 30 years. Tr. 9. *See Estate of Krasinski*, 188 A.3d 461, 474 (Pa. Super. 2018) (Courts may take judicial notice of public documents such as recorded Deeds).

construe regulations “so that each word is given effect and not treated as mere surplusage.” Sedgwick Claims Management Services, Inc. v. Bureau of Workers’ Compensation, 185 A.3d 429, 434 (Pa. Commw. 2018). If Columbia Gas is given unfettered discretion to determine the location of gas meters under Section 59.18 and its Tariff, with no standards, guidelines and procedures in place to protect public natural resources, Columbia Gas need only argue in any historic property dispute before the PUC---as it has in this case---that “it is safer” to leave a meter outside and no citizen could challenge that decision. If permitted, this conduct would effectively eviscerate the historic property exception contained in Section 59.18(d) and render it mere surplusage, something that the Pennsylvania Constitution and our Courts do not condone.

Next, Columbia Gas argues that it “investigates alternative locations” for feasibility. Columbia Gas Brief at 12. In this case, the record is clear that Columbia Gas has not fully investigated the back location at Tate’s Property. Columbia Gas admits that a service line can be extended to the back of the Property. Columbia Gas Brief at p. 13; Tr. 174, 201, 257. However, the nature and location of easements would have to be investigated, and Columbia Gas did not conduct this investigation. Tr. 232, 258. Easements can be shared, meaning that installing a gas meter in the rear of the Property is certainly “feasible”. Tr. 257-258. Accordingly, Columbia Gas has committed an abuse of discretion and acted arbitrarily by failing to comply with its Constitutional duty to prevent and remedy the degradation, diminution and depletion of public natural resources. *See* Pa. Const. art. I, §27 (the Environmental Rights Amendment or “ERA”); Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911 (Pa. 2017); Robinson Township v. Commonwealth, 83 A.3d 901, 957 (Pa. 2013).

III. Columbia Gas Committed An Abuse Of Discretion And Acted Arbitrarily By Failing To Comply With The Pennsylvania Constitution And Applicable Regulatory Law.

Federal and State Regulations.

Columbia Gas argues that the proposed front right meter location satisfies the Federal regulation relating to gas meter and regulator locations. Columbia Gas Brief at 15-18. The regulation, 49 CFR §192.353, requires, among other things, that gas meters must be: 1) installed in a readily accessible location and 2) protected from corrosion or other damage, including anticipated vehicular damage. *See also* 52 Pa. Code §59.33 (adoption of 49 CFR Parts 191-193, 195 and 199, including 49 CFR §192.353); 52 Pa. Code §59.18(a)(5) and (6), requiring consideration of potential meter damage and access. On the issue of vehicular damage, Columbia Gas essentially argues that it would be unlikely for a car to hit a gas meter installed near the front door of Tate's Property. Columbia Gas Brief at 16-17. However, while there is a stoop and a tree well 6 feet, 8 inches from the house (Tr. 19), Columbia Gas ignores Tate's testimony that cars regularly drive up over the curb and onto the narrow sidewalk on South Pine, thereby increasing the dangerous conditions caused by a right front meter location. Tr. 17-18, 64. Therefore, installing a gas meter in the proposed front façade location would not be protected from vehicular damage as well as it would if located in the back of the Property.

As to "corrosion and other damage", Columbia Gas argues that their meters are designed to withstand rain, ice, snow and corrosion. Columbia Gas Brief at 17. While that may be, the web page of Columbia Gas very clearly states 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. Locating the meter at the rear of the Property would clearly be safer and just as accessible. In that regard, Tate

testified that his electric meter is located in the rear of the Property and further that a meter “would sit perfectly” in that location and “would be out of the elements.” (emphasis added). Tr. 35. In addition, the back of the Property “is open completely. . . . anybody could get to it to read it if necessary.” Tr. 35. Thus, the rear location is safe and accessible and would comply with Federal and Commonwealth regulations. 49 CFR §192.353; 52 Pa. Code §59.18(a)(5) and (6).

On the issue of vandalism, Columbia Gas cites to the testimony of Raymond Brumley that vandalism to Columbia’s gas meters “is not common” and that he is not aware of any instances of Columbia Gas meters being vandalized. Columbia Gas Brief at 17; Tr. 234. It should be noted that Mr. Brumley had not been assigned responsibility for the York, Pennsylvania area until a week or two prior to October 2, 2020, so his testimony regarding the existence of vandalism or crime in the neighborhood of the Property carries little to no weight. Tr. 226, 242-243 (York added to his area of responsibility on or about October 2, 2020).³ Thus, while Mr. Brumley personally may not know of any Columbia Gas meters being vandalized, Tate testified that 52 South Pine Street and the surrounding neighborhood have seen numerous instances of crime, including vandalism. Tr. 26, 37 (“vandalism happens in this neighborhood constantly”). Importantly, Tate testified that “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.* And it is much easier to shut off gas service with a wrench applied to outside meter. Tr. 37, 192-193 (Andrew Tubbs testified that outside meters do suffer damage and gas service is easier to shut off from the outside).

³ It should also be noted that sixty-one (61) South Pine Street neighborhood properties only recently had their gas meters moved outside. Tr. 196 (notifications began in July of 2019), 240-241. An inside meter, such as Tate’s, cannot be vandalized.

The record is clear that Tate's gas meter would be protected from corrosion, the elements, vehicular damage and other types of damage such as vandalism, as required by regulation, if it were installed at the rear of the Property. Based on the foregoing, Columbia Gas would be in compliance with Federal and State regulations if Tate's gas meter were kept in the basement or installed at the rear of the Property, but not at the right front as proposed.

Pennsylvania Constitution.

The PUC and Columbia Gas are obligated to prohibit the degradation, diminution and depletion of Pennsylvania's public natural resources under the Pennsylvania Constitution. 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, 957 (Pa. 2013).⁴

Moreover, laws of the Commonwealth that unreasonably impair the right of the people to the "preservation of natural, scenic, historic and esthetic values of the environment" are unconstitutional. Robinson at 951. 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. *See* Tate's Brief, p. 10-16.

Tate's position is that Columbia Gas committed an abuse of discretion and acted arbitrarily by, among other things, refusing to protect against the actual or likely degradation, diminution and depletion of Tate's Property and failing to implement standards, guidelines and

⁴ In this case there is indirect State action through Columbia Gas because all authority regarding the placement of gas meters has been ceded to Columbia Gas and other utilities by the Commonwealth and the PUC, thereby mandating that municipalities disregard and ignore their Pennsylvania Constitutional obligations under the ERA and applicable law. *See* Tate's Brief, p. 10-19. Robinson Township v. Commonwealth, 83 A.3d 901, 957 (Pa. 2013).

procedures related thereto. By proposing to place Tate's gas meter at the right front of 52 South Pine Street, the Property will suffer a decrease in value, the aesthetic value of the house and the surrounding neighborhood would be negatively impacted, Tate would not be able to comply with handicap access laws and numerous safety issues would arise.

Columbia Gas argues that even if the gas meter were kept in the basement, a handicap ramp "would still be hindered by the outdoor regulator that must be installed at the front-right corner of the Property." Columbia Gas Brief at 21. Of course, this ignores the fact that the gas meter and pressure regulator could potentially be placed at the back of Tate's Property. Even if Columbia Gas equipment cannot be placed in the rear of the Property, an outside pressure regulator, only, would pose far less of an imposition—both aesthetically and dimensionally--- than a full size gas meter. A regulator would be 8-10 inches in depth and 8-10 inches wide while a gas meter would be 14-18 inches deep, 24 inches wide and 24 inches tall. Tr. 20, 233, 261, 265.⁵

Property Valuation.

Tate testified that he has invested multiple thousands of dollars improving and restoring the Property. Tr. 39. Tate wants the Property to "continue to be a great place in the York district." *Id.* However, moving the gas meter to the right front of the Property as proposed by Columbia Gas will clearly result in a diminution of the Property. On the issue of market value, Columbia Gas maintains that Tate's real estate valuation witness, Michael Wheeler, did not do a market analysis and "was unable to say what he would value the property at today, without the

⁵ It should be noted that Tate measured gas meters in his neighborhood and they were revealed to be two feet tall, two feet wide and 18 inches in depth. Tr. 20. Raymond Brumley testified more generally that meters "typically" are two feet tall, 14 inches in depth from the wall and 14 inches wide. Tr. 233, 260-261. Tate's testimony is more credible regarding the meters to be installed in his neighborhood as he actually measured gas meters used near 52 South Pine Street.

gas facilities, and could not say what he would value the property with the gas facilities installed.” Columbia Gas Brief at 22, citing Tr. 112-115. While Mr. Wheeler admittedly did not perform a market analysis, his testimony clearly establishes that installing a gas meter at the front of the Property would “significantly reduce the attraction of the property” and reduce the Property’s value by \$5,000-\$10,000 or more. Tr. 59, 108-109, 114.

This uncontroverted testimony is based upon Mr. Wheeler’s 37 years of experience as a real estate sales agent in York County. Tr. 106. Precise “before and after” valuations are not necessary for the disposition of this Appeal and, in any event, Mr. Wheeler would not be able to provide specific figures without seeing the completed project. Nevertheless, a reduction in value certainly constitutes an unreasonable diminution and impairment of Tate’s Property, a public natural resource, caused by 52 Pa. Code §59.18 and the Tariff of Columbia Gas.

IV. To The Extent That Columbia Gas Seeks To Place A Gas Meter 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.

Columbia Gas argues that it is exempt from Article 1731 of York’s Codified Ordinances. Columbia Gas Brief at p. 22-25. Tate relies on his Brief filed on March 19, 2021 for his response to this assertion. *See* pages 19-22 of Tate Brief. However, Tate emphasizes that Article 1731 does not expressly prohibit gas meters from being placed along the façade of historic buildings. To the contrary, 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 the Historical Architectural Review Board (“HARB”) and the City Council, as set forth in Section 1731.09 and Section 1731.12 of York’s Codified Ordinances. The criteria set forth in Article 1731 help to fill the void created by the failure of the PUC and Columbia Gas to establish and implement appropriate standards, guidelines and procedures required by the

Environmental Rights Amendment to ensure the protection of public natural resources in Pennsylvania.

Columbia Gas also argues 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.” Columbia Gas Brief at 25. This is nonsense. Article 1731 sets forth the historic property preservation requirements applicable to properties located in the Historic York historical district. HARB Board members do not walk up and down the street looking for construction projects; to the contrary, it is incumbent upon property owners in Historic York to comply with Article 1731. More importantly, the construction work has not begun at Tate’s Property and it is possible that Article 1731 may not even apply to the Property.

In that regard, HARB guidelines provide that certain types of work and construction are exempted from having to obtain a Certificate of Appropriateness. As stated in Tate’s Brief at p. 22, 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”. 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 such exemption is inapplicable to Columbia Gas herein. *See* Tate Exh. No. 1 and Columbia Gas Exh. No. 11. However, the installation of a gas meter at the rear of the Property would not be visible from the public right-of-way and would be exempt from the requirements of Article 1731.

V. Columbia Gas Has Installed Gas Meters At Historic Properties In Locations Other Than The Front Façade.

Columbia gas argues that it has not treated Tate in a discriminatory manner regarding the proposed placement of his meter. Columbia Gas Brief at 18-21. Tate did testify that he believed he was being discriminated against because he believed Columbia Gas installed a regulator, only, at a nearby property owned by an attorney. Tr. 53. However, the crux of Tate’s complaint is that while no gas meters have been left in the basement for the South Pine Street neighborhood project (Tr. 241), Russ Bedell testified that there were consumers on Pine Street where meters were placed in locations not affecting the front façade of the property involved. Tr. 204. In this case, there are several safe alternatives to the proposed right front location, i.e., 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.

VI. Conclusion.

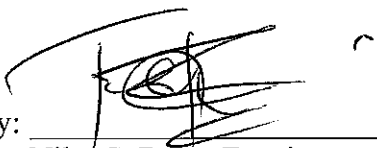
Tate recognizes that public safety is a weighty, legitimate state interest. But the protection of Commonwealth public natural resources is also a weighty, legitimate state interest, protected by the Pennsylvania Constitution and applicable law. The historic property exception contained in 52 Pa. Code §59.18 states that in order to utilize an interior meter location, an outside meter location “is neither feasible nor practical”. 52 Pa. Code §59.18(d)(1)(v). Columbia Gas’s proposed right front location at Tate’s house is neither feasible nor practical for several reasons.

To begin with, a right front location would run afoul of Article I of the Pennsylvania Constitution by failing to protect against the unreasonable degradation, diminution, depletion and

impairment of Tate's Property. 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, 951-957 (Pa. 2013). Specifically, the right front location would adversely affect the value of the Property, negatively impact the aesthetic value of the house and the surrounding neighborhood and create numerous safety issues. *See* Tate's Main Brief. Second, the proposed location is not feasible because it would foreclose Tate's compliance with housing access laws. *See* Tate's Main Brief, p. 26-28, 32-33. Third, the right front location would not be in compliance with Federal and State regulatory law. 49 CFR §192.353; 52 Pa. Code §59.18(a)(5) and (6).

Accordingly, the only feasible and practical options available to balance consumer safety with the protection of historical values would be to move the gas meter to the rear of the Property, or keep same in the basement with a pressure regulator, only, outside of the house.

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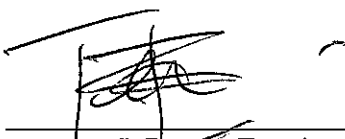
CERTIFICATE OF SERVICE

I, Terence J. Barna, Esquire, hereby certify that on this 9th day of April, 2021, I served a true and correct copy of the foregoing “Reply 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):

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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: April 9, 2021

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