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April 9, 2021

**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 Reply 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.

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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.	:	
	:	

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

**TO ADMINISTRATIVE LAW JUDGE STEVEN HAAS:**

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## **I. INTRODUCTION**

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby submits this Reply Brief in response to the Main Brief of Bryan Tate (“Complainant”), which was filed with the Pennsylvania Public Utility Commission (“Commission”) on March 20, 2021. Columbia’s Reply Brief is limited to addressing any arguments or issues raised in the Complainant’s Main Brief that were not specifically addressed in the Company’s Main Brief. As more fully explained herein and in the Company’s Main Brief, the Formal Complaint should be dismissed with prejudice because the Complainant has failed to meet his burden of proof that Columbia’s actions related to locating his gas meter and pressure regulator constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order.

## **II. LEGAL STANDARD & SCOPE OF PROCEEDING**

Complainant’s Main Brief argues that Columbia’s meter and regulator location practices in historic districts violate the Pennsylvania Constitution. As explained below, Columbia is not a state actor and cannot be found to be in violation of the Pennsylvania Constitution. Moreover, the scope of this proceeding is whether the Company violated a provision of the Public Utility Code, or a Commission regulation or order. Columbia submits that the arguments raised in Complainant’s Main Brief are outside the scope of this proceeding and should be rejected.

### **III. REPLY ARGUMENT**

#### **A. Complainant's Constitutional Challenges are Without Merit**

1. The constitutional challenge to Section 59.18 should be rejected because it is outside of the scope of the instant complaint proceeding and the argument that the Commission granted NGDC's "absolute, unfettered discretion" regarding the placement of meters in historic districts is without merit.

In his Main Brief, Section A, Complainant argues that Section 59.18 of the Commission's regulations grants NGDC's with "absolute, unfettered discretion" regarding the location of gas meters in historic districts, and as such, Section 59.18 is unconstitutional. At the outset, Columbia notes that this issue – whether Section 59.18 constitutes an improper sub-delegation of legislative authority to private entities and is therefore unconstitutional – is currently pending before the Commonwealth Court in the case of *City of Lancaster, Borough of Carlisle, and Borough of Columbia v. PUC*, at Docket Number 251 M.D. 2019. Oral argument was held on December 9, 2020, and as of the time of filing this Reply Brief, no decision has been issued.

Complainant's constitutional challenge should be rejected because it is outside of the scope of this proceeding. The instant action is a complaint against the Company, and the scope of this proceeding is limited to whether Columbia has violated a provision of the Public Utility Code, a Commission regulation or a Commission order. *See* 66 Pa. C.C. §§ 322(a), 701. Specifically, the Complainant has alleged that Columbia's conduct relating to the relocation of the gas meter and the installation of a regulator located at Complainant's property violated Section 59.18 of the Commission's regulations. Complainant's constitutional challenge is essentially a request for a declaration regarding the validity of Section 59.18 of the Commission's regulation, and is a question of law that is not dependent on whether Columbia's conduct is found to be reasonable or

unreasonable in the instant proceeding. As the Commonwealth Court has made clear, public utilities do not have “a right or interest regarding the validity of the regulations,” but instead “merely apply the law in effect.” *Hommrich v. Pennsylvania Public Utility Commission*, 2017 Pa. Commw. Unpub. Lexis 555, \*22 (unreported). *See also, City of Lancaster v. PUC*, 224 A.3d 460 (Pa. Cmwlth. 2020) (unpublished memorandum opinion). Here, the record evidence demonstrates that Columbia’s actions in relocating the meter that served the Complainant’s property and installing a regulator were undertaken to comply with the Commission’s regulations, and whether the Company’s conduct indeed complied with Section 59.18 is the proper issue to be adjudicated in this proceeding.

In terms of the merit of Complainant’s constitutional challenge to the regulation, Columbia submits that this complaint proceeding, in which the Commission is reviewing whether Columbia’s decision to relocate a gas meter to an exterior location servicing a historic building, completely undermines Complainant’s argument that the Commission has granted NGDCs “absolute, unfettered discretion” in locating meters.

For the foregoing reasons, Columbia submits that Complainant’s argument that Section 59.18 of the Commission’s regulation is unconstitutional be rejected.

2. Complainant’s assertion that Columbia is in violation of the Section I of the Pennsylvania Constitution fails to recognize that Columbia is not a state actor and ignores the record evidence in this case that demonstrates the Company acts to preserve the aesthetic value of historic buildings.

Section B of Complainant’s Main Brief carries forward the argument that the Commission improperly shifted its Constitutional obligations under the Environmental Rights Amendment, Article I, Section 27 of the Pennsylvania Constitution (“ERA”) to

private utility companies and, as such, Columbia is now in violation of the ERA for not implementing procedures to protect historic properties. As an initial matter, Columbia notes that to state a claim for a constitutional violation, the complainant must allege a state action. *See Western Pa. Socialist Workers v. Connecticut General Life Insurance Co.*, 485 A.2d 1 (Pa. Super. 1984), *aff'd*, 515 A.2d 1331, 1335-36 (1986). Columbia is not a state actor, and therefore its actions cannot be held to violate the ERA. The Pennsylvania Supreme Court has stated that the Declaration of Rights contained in Article I of the Pennsylvania Constitution is a limitation on the power of state government, and does not govern the relationship of private individuals. *See Western Pa. Socialist Workers v. Connecticut General Life Insurance Company*, 515 A.2d 1331, 1335-36 (1986). Thus, if Columbia is not a state actor, the Company cannot be found to be in violation of the Pennsylvania Constitution. However, Complainant, in making its argument that Columbia has violated the ERA, failed to assert that the Company is a state actor, and did not set forth any argument in the Main Brief to establish that Columbia is a state actor.

Review of federal and state case law shows that Columbia, a private entity, does not convert to a state actor merely because it is a regulated entity that carries out duties established by the Commission. In *Jackson v. Metropolitan Edison Co.*, the United States Supreme Court found that a Pennsylvania public utility company (Met-Ed) did not constitute a state actor simply because the utility's actions were carried out under procedures authorized and approved by the Pennsylvania Public Utility Commission. 419 U.S. 345, 351-53 (1974). The Court stated:

All of petitioner's arguments taken together show no more than that Metropolitan was a heavily regulated, privately owned utility, enjoying at least a partial monopoly in the providing of electrical service within its territory, and that it elected to terminate service to petitioner in a manner which the Pennsylvania Public Utility Commission found permissible under

state law. Under our decision this is not sufficient to connect the State of Pennsylvania with respondent's action so as to make the latter's conduct attributable to the State for purposes of the Fourteenth Amendment.

Id. at 358. Similarly, the Commonwealth Court has held that the actions of a private corporation are not required to comport with the United States Constitution simply because the private corporation is licensed and regulated by the state, and “the fact that a private party follows a procedure outlined in a statute does not convert the private action into state action.” *Staino v. Pennsylvania State Horse Racing Commission*, 512 A.2d 75, 77 (Pa. Cmwlth. 1986). The Commonwealth Court has also found that the analysis that applies to the Fourteenth Amendment of the United States Constitution also applies to Article I of the Pennsylvania Constitution. *See Professional Insurance Agents Association v. Chronister*, 625 A.2d 1314, 1318 (Pa. Cmwlth. 1993). Although Columbia is responsible for locating and installing its gas meters and regulators in compliance with Section 59.18, such action does not constitute a state action or convert Columbia into a state actor. Columbia is merely acting in its capacity as a NGDC to locate and install its gas facilities in a safe location that complies with Commission regulations.

With that said, the record in this case demonstrates that Columbia’s meter and regulator locating practices include procedures to protect the aesthetic value of historic properties. Columbia witness Andrew Tubbs testified that Columbia takes the fact that a building has been marked as a historic building or is eligible to be on the historic register very seriously. Tr. at 169-170. When locating a meter and regulator for historic buildings, Columbia sends 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 location 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. Tr. at 169-170. Regarding Complainant's property specifically, Columbia followed this process but determined that there were no other feasible locations to locate the meter and regulator, and the Complainant rejected the Company's offer to paint the meter and regulator to match the building, and also rejected Columbia's offer to cover the gas equipment with a decorative screen. Tr. at 201-202.

B. Complainant's argument that Columbia is required to obtain a Certificate of Appropriateness from the City of York's HARB before installing a meter and regulator along the front of the property is erroneous and should be rejected.

In Section C of the Main Brief, Complainant asserts that Columbia is required to obtain a Certificate of Appropriateness from the City of York's Board of Historical Architectural Review ("HARB") prior to installing gas facilities along the front facades of historic buildings. Complainant MB at 19-22. Complainant argues that the City of York's Article 1731 is not preempted by the Commission's regulation, specifically Section 59.18, because Article 1731 "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," and does not expressly prohibit gas meters and regulators from being placed along the front façade of historic buildings. Complainant's MB at 21. As explained in Columbia's Main Brief, at pages 22-25, Article 1731 is preempted by Section 59.18 of the Commission's regulations because Article 1731, if applicable to Columbia in the context of locating and installing meters and regulators, would provide the City of York and HARB the ability to *deny* Columbia from installing meters and regulators along the front facades of historic buildings. Columbia will not restate its full argument here, but will address Complainant's argument that

Article 1731 is not preempted by Section 1731 because the ordinance does not expressly prohibit the Company from locating meters and regulators along the front façade of historic buildings, and instead “merely” requires the Company to go through the HARB review process to obtain a Certificate of Appropriateness prior to installing the meter and regulator.

Complainant’s characterization of Article 1731 is misleading in that it suggests that Article 1731 simply requires Columbia to submit to a review process, and does not acknowledge that Article 1731 provides the City of York with absolute discretion to deny Columbia’s request to install a meter and regulator along the front of a historic building. In other words, although Article 1731 does not expressly prohibit meters and regulators from being installed along the front of historic building, it does provide the City of York with the ability to *expressly* prohibit Columbia from installing meters and regulators along the front of historic building at the conclusion of the HARB review process. Thus, Article 1731 does indeed conflict with the Section 59.18 of the Commission’s regulations, which places the discretion of locating meters with the NGDCs, not municipalities, and is therefore preempted and inapplicable to Columbia. *See PECO Energy Co. v. Twp. Of Upper Dublin*, 922 A.2d 996, 1005 (Pa. Cmwlth. 2001) (local ordinance that limited tree pruning was preempted where it conflicted with Commission’s vegetation management requirements near transmission lines).

C. Complainant’s Argument that Columbia Abused its Discretion and Acted Arbitrarily Because it Applied Section 59.18 Unconstitutionally ignores the Record Evidence in This Proceeding

Section D of Complainant’s Main Brief asserts that Columbia is obligated to prohibit the degradation, diminution and depletion of Pennsylvania’s public natural resources under the Pennsylvania Constitutions. Complainant MB at 22. As explained in

Section III.A.2 above, Columbia is not a state actor and its actions are not required to comport with the Pennsylvania Constitution. Despite this, Columbia recognizes the value and benefits of preserving historic buildings throughout the Commonwealth, and its conduct relating to locating and installing meters and regulators in historic districts reflects its commitment to preserve the historic nature of these building. Columbia's Main Brief, at pages 11-12, addresses Columbia's meter and regulator location practices for historic buildings, and pages 12-15 of its Main Brief addresses Columbia's actions specific to Complainant's property. These portions of Columbia's Main Brief illustrate Columbia's commitment and efforts to preserve the historic and aesthetic value of historic properties while complying with Section 59.18, and respond to the claims raised in Section D of the Complainant's Main Brief. Upon review of the record evidence, it is clear that Complainant has not sustained his burden of proof that Columbia has abused the discretion that the Commission has bestowed upon NGDCs to locate and install gas meters and regulators, or has acted in an arbitrary manner towards the Complainant.

Columbia also notes that while Complainant attempts to project his objection to having the meter located along the front façade of his property to all owners of historic properties in the York Historic District, the record does not include evidence that the other property owners in the York historic district who have had their meters and regulators installed outside share Complainant's opposition to Columbia's meter and regulator location practices. To the contrary, the record is clear that the Complainant is the only property owner that is objecting to Columbia installing meters and regulators outside in the York Historic District. As explained at the hearing by Columbia witness Raymond Brumley, Complainant's property 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. Tr. at 241. Mr. Brumley testified that, with the exception of Complainant's property, Columbia has relocated all meters connected to this infrastructure improvement project outside. Tr. at 241. And as testified by Columbia witness Tubbs, no other property owners have filed a formal complaint against Columbia relating to this work. Tr. at 180. Although Complainant can bring a complaint action against the Company on behalf of himself, he cannot bring a complaint action on behalf of his neighbors or on behalf of the City of York.

## **VI. RESPONSE TO COMPLAINANT'S PROPOSED FINDINGS OF FACT**

Complainant's Main Brief included 69 "Proposed Findings of Facts." Columbia requests that the Proposed Findings of Facts included as Appendix A of its Main Brief be adopted and that the Complainant's Proposed Findings of Fact be rejected. Columbia specifically identifies the following proposed findings of facts offered by Complainant as being unsupported by the record, or as mischaracterizing the record developed in this proceeding.

**Proposed Finding of Facts No. 4:** Neither the record nor the Complainant's Main Brief supports a finding that a wheelchair ramp, if installed at the property's front door, would need to be 12 feet long. As acknowledged in Complainant's Main Brief at page 26, an ADA compliant ramp must have a 1:12 ratio between height and length (2010 ADAA § 405.2), meaning that if the Complainant's porch is 36 inches high, that the length of the ramp would need to be 36 feet. Section 405.2 specifically prohibits a slope steeper than a 1:8 ratio. Thus, assuming the Complainant would install a ramp with a ratio of 1:8, meaning that for every inch of height, the ramp would be 8 inches in length, this would result in a ramp of 24 feet. It appears that Complainant's assertion that a 1:4 ratio is acceptable comes from a commercial website cited on page 26 of the Main Brief. This is

not evidence and cannot be used to support a finding of fact. As such, Proposed Finding of Fact No. 4 should be rejected.

**Proposed Finding of Fact No. 5:** Neither the record nor the Complainant's Main Brief demonstrate that a wheelchair ramp can even be installed at the Complainant's front door. As stated above, the ADA prohibits a ramp to have a slope steeper than a 1:8 ratio, meaning that the Complainant's ramp would need to be at least 24 feet long. However, as Complainant testified, the property is only about 14 to 15 feet wide from corner-to-corner, and only 9 feet 10 inches from steps to the right, front corner. Tr. at 15. Thus, a finding that the meter or regulator being installed at the front corner of the property would be the prohibitive factor preventing the installation of a ramp is inaccurate. Complainant will be unable to install a ramp that complies with the ADA or the York Fair Housing Ordinance regardless of whether a meter and regulator are installed at the front corner of the property. As such, Proposed finding of Fact No. 5 should be rejected.

**Proposed Finding of Fact No. 56:** There is no support in the record that Columbia has agreed to keep any gas meter inside with a regulator outside, or that Columbia has only installed a regulator outside, leaving the meter inside. Complainant testified that he observed that Columbia had installed regulators outside of two properties, and even submitted a photograph into the record of one of the properties (Tr. at 50-52; Tate Exhibit-8), but Columbia witness Raymond Brumley testified that Complainant had misidentifying a gas riser as a regulator (Tr. at 239-240), and that Columbia has relocated all meters connected to this infrastructure improvement project outside. Tr. at 241. As such, Proposed Finding of Fact No. 56 should be rejected.

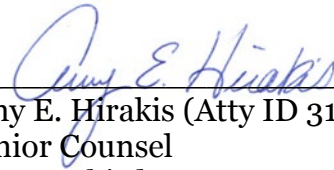
**V. CONCLUSION**

WHEREFORE, Columbia Gas of Pennsylvania respectfully requests that the Administrative Law Judge Steven Haas recommend that the Pennsylvania Public Utility Commission dismiss the Formal Complaint of Bryan Tate with prejudice.

Respectfully submitted,

COLUMBIA GAS OF PENNSYLVANIA, INC.

By:



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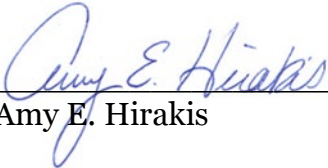
**CERTIFICATE OF SERVICE**

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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