BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Bryan Tate	:	
	:	
v.	:	C-2020-3018966
	:	
Columbia Gas of Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

The owner of a home located in an historic district filed a formal complaint against a natural gas distribution company (NGDC) challenging the utility's decision to move the gas meter from inside the property to the outside front of the structure. The property owner alleges that the utility failed to consider the historic exemption contained in the Commission's regulations in insisting that the meter be relocated to the outside of the building. The complaint is dismissed because the Complainant failed to prove that the utility violated a statute, regulation, or order over which the Commission has jurisdiction.

HISTORY OF THE PROCEEDING

On or about February 28, 2020, the Complainant, Bryan Tate, filed a formal complaint against Columbia Gas of PA, Inc. (Columbia) with the Pennsylvania Public Utility Commission (Commission or PUC) in which he challenges Columbia's insistence that the gas meter at a property owned by him and located in an historic district in York, Pennsylvania be moved from the basement to the outside front of the building. The meter relocation is part of an

infrastructure improvement project undertaken by Columbia that involves replacing 2,000 feet of low-pressure cast-iron main in the street in front of Complainant's house with approximately 1,440 feet of new 2-inch plastic main that will operate at medium pressure. The new main will serve 61 customers, including the Complainant. The change in gas pressure requires that Columbia install new meters, regulators, and service lines for each of the 61 customers. The gravamen of Mr. Tate's complaint is that Columbia failed to recognize and consider the historic exemption contained in the Commission's regulations in insisting that the meter be moved to the outside. In addition, the Complainant alleges that Columbia failed to adequately communicate its intentions and information about the project to the Complainant and that moving the meter to the outside front of his property will create a safety hazard. As relief, the Complainant requests that the Commission uphold the historic exemption and allow him to keep the meter in the basement of the property or, alternatively, locate the meter at the rear of the property.

On March 23, 2020, Columbia filed an answer to Mr. Tate's complaint. In its answer, Columbia admitted that it informed Mr. Tate it was beginning an infrastructure improvement project to upgrade the gas main and lines that serve his property and that, as part of this project, it would relocate his meter to the outside of his property. Columbia denied that relocating the meter to the outside would create a safety hazard. It further denied that it did not adequately communicate with property owners in the City of York prior to relocating meters to the outsides of properties. Columbia requests that Mr. Tate's complaint be denied.

By hearing notice dated April 29, 2020, the Commission assigned this proceeding to me and scheduled a telephonic hearing for May 27, 2020, beginning at 10:00 a.m.

On May 18, 2020, a Notice of Appearance was filed by Niles S. Benn, Esquire and Terence J. Barna, Esquire on behalf of Mr. Tate.

At the request of the parties, the May 27, 2020, telephonic hearing was canceled and, by notice dated May 19, 2020, it was rescheduled to July 15, 2020. On June 27, 2020, I issued a prehearing order in which I provided certain instructions to the parties for participation in the telephonic hearing.

The July 15, 2020, hearing was subsequently canceled to give the parties additional time to discuss the complaint and possible settlement terms. Settlement efforts were ultimately unsuccessful and, by notice dated September 21, 2020, the hearing was rescheduled for November 10 and 12, 2020.

The telephonic hearing convened as scheduled on November 10, 2020, and concluded on November 12, 2020. The Complainant appeared and was represented by attorneys Niles Benn, Esquire and Terence Barna, Esquire. Complainant presented the testimony of 7 witnesses and offered for admission exhibit numbers 1-17, 18-1, 18-2, 18-3, 18-4, 18-5, 18-6, 18-7, 18-8, 18-9, 18-10, 18-11, 18-12, 18-13, 18-14, 18-15, 18-16, 18-17, 18-18, 18-20, 18-21, 19, 20 and 21, all of which were admitted into the record. Columbia appeared and was represented by Amy Hirakis, Esquire. Columbia presented the testimony of 3 witnesses and offered for admission exhibit numbers 1-12, all of which were admitted into the record.

Following the hearing, an original briefing schedule was established whereby main briefs were due by December 21, 2020, and reply briefs were due by January 12, 2021. However, due to issues with receiving correct versions of the transcripts and hearing exhibits from the court reporting company, the deadline for main briefs was extended to March 19, 2021, and the deadline for reply briefs was extended to April 9, 2021. Both parties filed main and reply briefs by the respective deadlines. There continued to be ongoing issues with receiving acceptable versions of the transcripts and hearing exhibits. Entries in the Commission's document management system reflect that final, acceptable versions of the hearing transcripts and exhibits were not received by the Commission until August 30, 2021. It was on that date when the record in this case officially closed.

FINDINGS OF FACT

1. The Complainant is Bryan Tate.

2. The Respondent is Columbia Gas of PA, Inc., a jurisdictional public utility.

3. The property at issue in this proceeding is a single-family dwelling located at 52 Pine Street, York, Pennsylvania. Tr. 8.

4. This property is owned by Mr. Tate. Tr. 8.

5. The property is in an historic district in York and is eligible to be designated a historic building. Tr. 16, 21-22.

6. The historical architecture in York's historic district has resulted in distinctive, renovated buildings that preserve the historic character of the area. Tr. 121, 128-129; Tate Exs. 18-15, 18-21.

7. York's historical architecture is a draw for tourism and attracts businesses to the area. Tr. 143-144; Tate Ex. 18-10.

8. The gas meter at Mr. Tate's property is currently located in the basement. Tr. 14.

9. The existing gas main that serves the property is a low-pressure cast-iron line that runs along Pine Street, in front of the property. Tr. Tr. 14, 227-228; Columbia Ex. 11.

10. The current service line that serves the property runs from the main in Pine Street under the front steps to the meter in the basement. Tr. 14; Columbia Ex. 11.

11. Pine Street in front of the property is a one-way street with parking only on the side of the street on which Mr. Tate's property sits. Tr. 16-17.

12. There is an alleyway between Mr. Tate's house and the house to its immediate right, called a grocer's alley, that runs from the front of the properties to the rear. Tr. 11.

13. The grocer's alley is 30 inches wide and approximately 6 feet tall. Tr. 11, 230, 244, 249, 282; Columbia Ex. 12.

14. Mr. Tate owns the half of the grocer's alley toward his house, or 15 inches, and the neighbor to the right of the property owns the half of the grocer's alley toward his house, also 15 inches. Tr. 15.

15. There are steps located on the left side of the house leading from the sidewalk to the front door of the property. Tate Ex. 1; Columbia Ex. 11.

16. The distance from the bottom of the front steps to the left edge of the grocer's alley is approximately 9 feet, 10 inches. Tr. 15.

17. The total width of Mr. Tate's house is approximately 14-15 feet. Tr. 15.

18. The distance from the curb on Mr. Tate's side of Pine Street to his house is approximately 9 feet 7 inches. Tr. 19-20.

19. The stairway leading from the sidewalk to Mr. Tate's front door extends out from the house toward the curb approximately 4 feet. Tr. 74, 79.

20. If a handicap ramp were to be installed from Mr. Tate's front door to the sidewalk, the landing at the top of the stairs would have to be raised to the height of the front door threshold, or to a total height of approximately 3 feet from the sidewalk. Tr. 74.

21. There is a tree planted in a tree well in front of the property to the right of the stairs. Tr. 19; Tate Ex. 1.

22. The tree well is approximately 3 feet wide. Tr. 19.

23. The distance from the tree well to Mr. Tate's house is approximately 6 feet 8 inches. Tr. 19.

24. In 2019, Columbia was performing a facilities improvement project involving the replacement of approximately 2000 feet of low-pressure, cast-iron gas main along Pine Street in front of Mr. Tate's house with approximately 1440 feet of new, medium-pressure, two-inch plastic main pipe. Tr. 226-227.

25. The portion of the main being replaced serves 61 customers. Tr. 227.

26. The service lateral lines of the 61 customers served by the main being replaced will be transferred from the old cast-iron pipe to the new medium-pressure plastic pipe, including the line into Mr. Tate's house. Tr. 227.

27. In order to safely accommodate the increased pressure in the new main, the service lines to the 61 customers need to be replaced. Tr. 227.

28. The new medium-pressure main requires that pressure regulators be installed for each of the 61 service connections. Tr. 228.

29. The new regulators will reduce the pressure flowing from the new main into each house. Tr. 228.

30. Of the 61 service laterals served from the main in Pine Street, 60 have already been replaced and connected. Tr. 267.

31. The new meters to the 60 properties that have had their service laterals replaced have all been located on the outside of the properties. Tr. 241.

32. Mr. Tate's service lateral is the last one included in the project that must be replaced before the old, cast-iron main can be abandoned and the new, medium-pressure main activated. Tr. 267.

33. None of the owners of the 60 other properties included as part of Columbia's main replacement project filed formal complaints against Columbia challenging the relocation of their meters to the outside of their structures. Tr. 180.

34. As part of the project, Columbia is insisting that Mr. Tate's gas meter be moved from his basement to the outside front of his house.

35. The gas meter Columbia is proposing to install on Mr. Tate's property is approximately 24 inches high, 14 inches wide, and would come out from the wall of the house approximately 14 inches. Tr. 233.

36. Installation of a gas meter on the outside front of Mr. Tate's house may have a negative impact on its resale value. Tr. 108-109, 113-114.

37. In July of 2019, Columbia posted notices on the properties identified as needing new meters, regulators and service lines notifying the occupants of the project and the facts that the property would need to have a new meter, regulator and service line installed. Tr. 196; Columbia Ex. 1.

38. The posted notice also stated that gas service would be temporarily interrupted during the installation of the new meters, regulators, and service lines. Tr. 196; Columbia Ex. 1.

39. In August 2019, Columbia mailed copies of the July 2019 notice to the owners of the properties that were identified as rental properties. Tr. 198; Columbia Ex. 2.

40. Columbia personnel have met with Mr. Tate twice at the property and have had several other communications with him regarding the project and the location of the new meter and regulator. Tr. 203-206.

41. Columbia representatives met with York City officials and local residents on July 22, 2019, to discuss the project. Tr. 196.

42. A public meeting was held on July 31, 2019, at which the facilities improvement project was discussed. Tr. 196.

43. Mr. Tate objected to relocating his gas meter to the outside of his house. Tr. 33; Columbia Ex. 4.

44. Mr. Tate completed and submitted to Columbia a Meter Relocation Reconsideration Form wherein he objected to the relocation of his gas meter to the outside front of the house. Columbia Ex. 4.

45. Mr. Tate's request for reconsideration was denied by Columbia. Tr. 43; Columbia Ex. 5.

46. Mr. Tate seeks to have the meter remain located inside the house or, alternatively, that it be located at the rear of the property. Tr. 200-202.

47. There is not enough room in the grocer's alley for the new meter. Tr. 230, 282.

48. There is no gas main behind Mr. Tate's house to which a service line could be connected and run to a meter located at the rear of the house. Tr. 201.

49. In order to install the new meter in the rear of Mr. Tate's house, Columbia would have to either install a new gas main behind his house or run a service line from the new Pine Street main in front of the house through the grocer's alley to the rear of the house. Tr. 174.

50. Columbia has offered to paint the new meter to match the façade of the house and to install a screen around the meter to shield its view. Tr. 201-202.

51. Columbia offered to locate the new meter near the left side of the grocer's alley in order to provide maximum distance between the front stairs and the meter. Tr. 202.

52. It is Columbia's practice to assess the likelihood of a vehicle striking a meter as part of the determination of where to locate the meter. Tr. 235.

53. In the 30 years Mr. Tate has owned the property on Pine Street, there has never been an accident where a vehicle has run into the area where Columbia is proposing to locate the new meter. Tr. 73.

54. Columbia's meters are designed to withstand rain, snow, ice, and corrosion. Tr. 235-237.

55. Vandalism of gas meters is not a common problem. Tr. 177.

56. Outside gas meters allows escaping gas to vent to the outside, rather than inside a home, in the event of a gas leak. Tr. 166, 170.

57. It is easier for gas company personnel and emergency responders to access outside located gas meters than inside located gas meters. Tr. 166-167, 170.

58. The property located at 257 East Main Street, York, PA was not part of the infrastructure improvement project involving Mr. Tate's house. Tr. 238.

59. The property located at 257 East Main Street, York, PA is still served from a low pressure main. Tr. 239.

60. Columbia considered all possible options in selecting a location near the grocer's alley for the installation of a new meter at Mr. Tate's house. Tr. 259.

DISCUSSION

Legal Standards

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.[1] A person seeking affirmative relief from the Commission has the burden of proof.[2]

In this matter, the Complainant is the party seeking affirmative relief from the Commission; therefore, he has the burden of proof. This means that he must establish a material fact by a preponderance of the evidence. Specifically, he must show that the company has violated the Public Utility Code or Commission orders and regulations over which the Commission has jurisdiction.[3]

The Complainant is challenging Columbia's decision to relocate the gas meter at his property located in an historic district in York, Pennsylvania, from the basement to the outside front of the building. As noted above, the gravamen of the complaint is that Columbia failed to recognize and consider the historic exemption contained in the Commission's

[1] 66 Pa.C.S. § 701.

[2] 66 Pa.C.S. § 332(a).

[3] Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854 (Pa. 1950); Feinstein v. Phila. Suburban Water Co., 50 Pa. PUC 300 (1976).

regulations in insisting that the meter be moved to the outside. In addition, the Complainant alleges that Columbia failed to adequately communicate its intentions and information about the project to the Complainant and that moving the meter to the outside front of his property will create a safety hazard. Mr. Tate requests that the Commission uphold the historic exemption and allow him to keep the meter in the basement of the property or locate the meter at the rear of the property. After a careful review of the testimony and exhibits, I conclude that the Complainant failed to prove that Columbia violated the Public Utility Code or a Commission regulation or order.

Section 1501 of the Code,[4] mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.[5]

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service.[6] Further, the Commission has stated that a utility is not mandated to furnish perfect service:

> [Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.[7]

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4 66 Pa.C.S. §1501.

5 66 Pa.C.S. §1505.

6 W. Penn Power Co. v. Pa. Pub. Util. Comm'n, 478 A.2d 947 (Pa. Cmwlth. 1984).

7 *Re Metro. Edison Co.*, 80 Pa. PUC 663, 672 (1993).

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness.[8] This is the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities.[9]

The Complainant argues that he is entitled to indoor placement of his meter because his property is located in a historic district. Alternatively, he requests that the new meter be located at the rear of the property.

As a general rule, all gas meters are required to be placed outside. 52 Pa. Code § 59.18(a)(1). However, the regulation permits a utility to consider placing a meter inside when a building is located in a historic district:

> (d) Inside meter locations.
>
> (1) Inside meter locations shall be considered only when:
>
> (ii) A meter is located in a building that meets one of the following criteria:
>
> (A) A building is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the building is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.
>
> (B) A building is located within a historic district that is listed in the National Register of Historic Places or the customer or building owner notifies the utility that the historic district is eligible to be listed in the National Register of Historic Places and the eligibility can be readily confirmed by the utility.
>
> (C) A building has been designated as historic under the act of June 13, 1961 (P. L. 282, No. 167) (53 P. S. §§ 8001—8006), known as the Pennsylvania Historic District Act, the

[8] *Thurby v. W. Penn Power Co.*, C-2011-2254048 (Order April 4, 2013) (*Thurby)*; *Bertsch v. PPL Elec. Utils. Corp.*, C-2011-2251784 (Final Order April 2, 2012); *Scherich v. Verizon Pa. Inc.*, PUC Docket No. C-2008-2061244 (Final Order January 28, 2010).

[9] Thurby.

> Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—11202) or a municipal home rule charter.
>
> (D) A building is located within a locally designated historic district or is eligible for the listing, or a building is individually designated under a local ordinance as a historic landmark or is eligible for the listing.

With respect to customer notice, section 59.18 provides as follows:

> 1. 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 shows 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(a).

The record evidence shows that Columbia provided proper notice of the project to the Complainant. Columbia Ex. 1 is a copy of a 30-day notice that was hand delivered to the properties involved in the main replacement project in July 2019. Tr. 198. This notice contained the information required by Section 59.18. Subsequently, in August 2019, the notice was mailed to the property owners in the project area whose properties, including Mr. Tate's, were identified as rental properties.[10] Tr. 198; Columbia Ex. 2. In addition, Columbia held a public hearing on

[10] Mr. Tate is a property owner and landlord of several properties including the property at issue in the present case.

July 31, 2019, in York, PA, in which interested parties were invited to attend and during which Columbia discussed the project and addressed various concerns raised by attendees. Tr. 165. Attendees of the meeting included company personnel, and representatives from the Pennsylvania Office of Consumer Advocate, York's Historical Architectural Review Board (HARB), the York City Mayor Helfrich and individual property owners. Tr. 178. This public meeting followed several other meetings between company personnel and local city officials during which the project was discussed. Tr. pp. 177-178, 196.

The Complainant alleges in his formal complaint that Columbia failed to recognize and consider the historic exemption contained in the Commission's regulations in insisting that the meter be moved to the outside, and that moving the meter to the outside front of his property will create a safety hazard. In addition to these arguments, which are addressed below, Mr. Tate raised in his main brief several other arguments in challenging Columbia's decision to locate the meter on the outside of the property. He argues that Section 59.18 of the Commission's regulations, 52 Pa. Code § 59.18, is unconstitutional because it contains no standards, guidelines, and procedures to protect Pennsylvania's historic buildings and architecture. He further challenges Columbia's decision by arguing that the company failed to obtain a Certificate of Appropriateness from the City of York's Historical Architectural Review Board (HARB). Finally, Mr. Tate argues that Columbia applied Section 59.18 unconstitutionally by refusing to protect against likely degradation, deterioration and impairment of the property, a public natural resource.

Mr. Tate first argues that the Commission's regulation at Section 59.18 is unconstitutional because it contains no standards, guidelines and procedures for NGDCs to follow to protect the Commonwealth's historic buildings and architecture, and because it impermissibly delegates to NGDCs all authority regarding the placement of gas meters. He argues that under Pennsylvania's Environmental Rights Act (ERA), Pa. Const. Art. I, § 27, citizens have a right to clear air, pure water and the preservation of natural, scenic, historic and esthetic values of the environment, and that the duties and obligations inherent in the ERA apply to the Legislature, local governments and Commonwealth agencies such as the PUC. Tate Main Brief, pp. 11-12.

Tate argues that in enacting Section 59.18:

> The PUC, acting on behalf of the Legislature, failed to address these important Constitutional considerations by granting unfettered authority and discretion to private gas utility companies – under Section 59.18 and PUC approved Tariffs – to, among other things, account for and protect environmental features of affected locales as required by the ERA, with no standards, guidelines and procedures in place to regulate the conduct of utility companies and protect Pennsylvania's historic assets from arbitrary and capricious decision making, in violation of 66 Pa. C.S.A. § 501(b).

Tate Main Brief, p. 14.

In response, Columbia argues that this issue is beyond the scope of this proceeding. It argues that this case involves simply a complaint against a natural gas utility and is limited to the issue of whether Columbia violated the Public Utility Code, a Commission regulation or a Commission order. Columbia Reply Brief, p. 2.

I agree with Columbia that Tate's constitutional challenge is beyond the scope of this proceeding. Tate is challenging the legality of Section 59.18 of the Commission's regulations. The Commission amended its meter location regulations, effective September 13, 2014, to address meter placement and location and general requirements for new service lines and to coincide with the federal standards that the Commission has adopted.[11] *See Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location: Final Rulemaking Order (Final Rulemaking Order*), Docket No. L-2009-2107155 (Order entered May 23, 2014). As acknowledged by Mr. Tate in his main brief, proposed rules and regulations are printed in the Pennsylvania Bulletin for public comment, and are reviewed by the Independent Regulatory Review Commission, the House Consumer Affairs Committee, Senate Consumer Protection and Professional Licensure Committee, Attorney General's Office, and Governor's Budget Office.

[11] Pursuant to 52 Pa. Code § 59.33(b), the Commission adopted as its "minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth … the pipeline safety laws as found in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199, including all subsequent amendments thereto."

Tate Main Brief, p. 8. At this stage in the regulatory process, all interested parties have an opportunity to comment on and challenge the proposed regulations if they so desire.

Here, Section 59.18 was drafted by Commission personnel and submitted as described above for review and comment by interested parties and reviewing government agencies and offices. Columbia had no role in the promulgation or ultimate approval of the regulation. This case involves Mr. Tate as the Complainant and Columbia as the Respondent. By raising his constitutional challenge in this complaint proceeding, Mr. Tate is essentially requiring that Columbia defend the Commission's promulgation and adoption of the regulation. Columbia is clearly not the proper party for that role. If Mr. Tate wishes to pursue his constitutional challenge to the legality of a Commission regulation, he may do so in the proper forum and with the participation of the proper parties. The Commission is the proper party to defend against Mr. Tate's allegations that its regulation is unconstitutional, not Columbia. As noted on page 3 of Columbia's main brief, the Commonwealth Court has held, public utilities do not have ". . . a right or interest regarding the validity of the regulations," but rather "merely apply the law in effect." *Hommrich v. Pa. Pub. Util. Comm'n.,* 2017 Pa. Cmwlth. Unpub. Lexis 555, *22 (unreported).

I further note that Mr. Tate's constitutional challenge was not raised in his formal complaint, nor was it addressed during the evidentiary hearings. The allegations in his complaint involve the issues of notice of Columbia's project and whether the company violated Section 59.18 in its meter location determination. His constitutional challenge was raised for the first time in his main brief, filed on March 19, 2021. Accordingly, even if Columbia were required to defend the legality of Section 59.18, its only opportunity to do so would have been in its reply brief, which was due on April 9, 2021, an obviously unfair result that will not be imposed here.

Mr. Tate next argues that Columbia's meter location determination was improper because the company is required to first obtain a Certificate of Appropriateness from the York City HARB. As explained by Mr. Tate in his main brief, Section 1731.04 of the Codified Ordinances of York, Pennsylvania established a seven-member Board of Historical Review, whose mission is to review planned work affecting historic properties in historic York and to

make recommendations to the York City Council relative to the same. Tate Main Brief, p. 20. Section 1731.07 of the Codified Ordinances requires, "[a]ny exterior work that can be seen from the public way must be approved by HARB prior to the start of work whether a building permit is required or not." Mr. Tate argues that, pursuant to this ordinance, Columbia must first obtain a Certificate of Appropriateness from the City to locate a gas meter in front of Mr. Tate's house.

Mr. Tate further argues in his main brief that Section 1731 of the City of York's ordinance is not preempted by Section 59.18 of the Commission's regulations because the ordinance does not expressly prohibit gas meters from being placed along the front façade of buildings located in an historic district. Rather, the ordinance merely requires that those performing exterior work first obtain a Certificate of Appropriateness from the York City Council following consideration of historic values by HARB. Tate Main Brief, pp. 20-21.

Columbia argues on pages 22-24 of its main brief that Article 1731 of the Codified Ordinances of York is not applicable to regulated public utilities because it is, in fact, preempted by Section 59.18 of the Commission's regulations. It argues that Section 59.18 addresses and regulates where NGDCs may install gas meters and regulators, including in historic districts. This regulation provides NGDCs with the discretion to determine the location of meters and regulators. Columbia argues that, since the City's Article 1731 gives HARB and the City Council the power to override an NGDC's meter location determination in historic districts, it is in direct conflict with Section 59.18 and, accordingly, is preempted by the Commission regulation.

I agree with Columbia that the City's Article 1731 is preempted by Section 59.18. It is well settled that the Commission has exclusive jurisdiction to regulate public utilities and their facilities. *See e.g. County of Chester v. Phila. Elec. Co.,* 218 A.2d 331 (Pa. 1966) (*County of Chester*); *UGI Utils., Inc. v. City of Reading,* 179 A.3d 624 (Pa. Cmwlth. 2017) (*UGI Utils.*). As noted in *County of Chester,* "the 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. It is also well established that local ordinances that conflict with the

Commission's regulations are preempted and cannot be applied to regulated public utility companies. *UGI Utils.*, 179 A.3d at 629.

I agree with Columbia that, although the City's Article 1731 does not expressly prohibit the placement of gas meters in front of historic properties, it does, nonetheless, effectively give the City power to prohibit Columbia, or other NGDCs, from installing meters in the front of historic properties following the HARB review process. As such, it is in direct conflict with Section 59.18, which gives NGDCs the discretion to locate gas meters and regulators, subject to exclusive oversight by the Commission.

I note further, as described above, that representatives from HARB attended a public hearing on July 31, 2019, in York, PA, during which Columbia discussed the main replacement project and addressed various concerns raised by attendees. Tr. 178. It is not disputed, therefore, that HARB was fully aware of the project and Columbia's intentions to locate gas meters in the front of the subject properties since the inception of the main replacement project. In addition, the meters of the 60 other properties involved in Columbia's main replacement project have already been moved to the outside of those properties. Tr. 241. There is no record evidence that either HARB or the City of York tried to enforce Article 1731 against Columbia. It appears, therefore, that Mr. Tate is attempting to have the Commission alone enforce a local ordinance on behalf of the City of York that the City has chosen not to enforce itself. I will not do so here.

In addition to the arguments addressed above, Mr. Tate challenges Columbia's position on several other grounds related to the alleged impact of the meter relocation on the monetary, historic and aesthetic value of his property, as well as safety and accessibility concerns. I address these arguments below.

Property Value

Mr. Tate argues that placing the meter on the outside of his house will have a negative impact on the value of his property. He presented the testimony of Michael Wheeler, a

real estate sales agent in York County. Mr. wheeler opined that the meter relocation may cause a reduction in the property's value of between $5,000 and $10,000. Tr. 59, 108-109. On cross examination, however, Mr. Wheeler acknowledged that he did not perform a market value analysis of the property to determine its current value. Further, he stated he was unable to say how he would value the property now if the meter were relocated to the outside front of the property. Tr. 112-115.

I agree with Columbia that Mr. Tate's evidence on this issue is speculative and provides no basis on which to conclude that relocating the meter to the outside of the property is improper. Mr. Wheeler was unable to provide the current value of the property, nor did he offer an estimate of what the value of the property would likely be following the meter relocation. Additionally, although the 60 other neighboring properties affected by Columbia's facilities upgrade project have already had their meters relocated to the outside of those properties (Tr. 241), there is no record evidence of the extent, if any, to which the values of those properties were impacted by the project. Mr. Wheeler merely opined that the value of Mr. Tate's property would decrease.

I further agree with Columbia that the possibility of a property's market value being negatively impacted by the relocation of a gas meter is not a factor under Section 59.18 to be considered by NGDCs in determining the proper location of gas meters. The safety of the property owner and the public is the focus of this regulation.

Aesthetic Value of Property of Neighborhood

Mr. Tate next argues that gas meters are unsightly and unattractive, and that locating them on the outside of properties in York's historic district will negatively affect the character of the neighborhood. In support of this allegation, he presented the testimony of a number of witnesses representing various York area economic and historical organizations, all of whom argued against locating Mr. Tate's meter on the outside of his property. The statements of some of these witnesses are described on pages 23-25 of Mr. Tate's main brief and are further reflected in the various statements that make up Tate Exhibit 18.

By way of examples, Silas Chamberlain, Vice President of Economic & Community Development for the York County Economic Alliance, testified about the importance of a distinctive and aesthetically pleasing downtown to such goals as business development, public safety and reducing vandalism in York. Tr. 143-144; Tate Ex. 18-10. Similarly, Eric Menzer, Chairman of Better York, testified that maintaining architectural standards has helped create distinctive and attractively renovated buildings in the downtown area. He argues that outside gas meters detract from that environment. Tr. 121; Tate Ex. 18-15. Additionally, Craig Zumbrun, Chairperson of the City of York's Historical Architectural Review Board, testified that, despite representations by Columbia that it would try to avoid street front incursion of new meters, when possible, it did not consider feasible alternatives to front property meter locations in Mr. Tate's neighborhood. Tr. 131-133; Tate Ex. 18-18. All of these witnesses argue that outside gas meters detract from the historical and architectural characteristics of the properties in the York historical district which, in turn, can have negative economic impacts in downtown York.

Columbia witness Andrew Tubbs testified that the company does, in fact, consider a property's designation as a historic property when making meter location decisions. He testified that, upon receiving an objection to or concern about a proposed meter location in a historic district, Columbia will send a representative to the location to discuss those concerns and the proposed meter location with the property owner. Tr. 169. He testified that the company will consider alternative locations. Tr. 169-170. If the company determines that there are no suitable or feasible alternative locations, it will work with the property owner to attempt to address aesthetic concerns by, for example, painting the meter to match the décor of the building, covering the meter with a screen or planting shrubs around the meter. Tr. 169-170. Mr. Tubbs testified that Columbia had these discussions with Mr. Tate and determined that there were no feasible alternate locations to the one chosen by Columbia. He stated that Mr. Tate rejected the company's offers to either paint or otherwise cover the meter. Tr. 201-202.

With respect to safety considerations implicated by the placement of gas meters, Columbia witness Ray Brumley, Manager of Construction Services, explained that, although meters located inside are generally safe, locating meters on the outside of a structure is safer

because if a meter were to sustain leak-causing damage, the leaking gas would flow out into the atmosphere, rather than accumulating inside of the structure. Additionally, outside meters are, for obvious reasons, more easily accessible by company personnel or emergency responders in the event of an emergency than inside meters. Tr. 166, 170.

While the record does contain evidence suggesting that gas meters located on the outside of historic structures, or structures located in historic districts, may have a negative impact on the aesthetic and historical significance and characteristics of those structures and neighborhoods, I find that it is outweighed by the safety considerations expressed by Columbia. In the event that a gas meter, for whatever reason, develops a leak, it appears obvious that it would be much safer for the leaking gas to be released directly to the outside atmosphere rather than to the inside of an enclosed structure, where it could quickly build up to dangerous levels.

Additionally, I find that Mr. Tate's argument about the diminution of his home's aesthetic appeal and historical significance that would result from moving his meter to the outside is greatly minimized by the fact that the remaining 60 neighboring structures included in Columbia's facilities upgrade project have already had their meters relocated to the outside of the structures. Tr. 267. Mr. Tate's meter is the only one of the 61 meters that has not yet been moved outside. To the extent that outside meters do, in fact, detract from a structure or a neighborhood's aesthetic or historic appeal, the fact that the 60 other neighboring structures already have meters placed on the outside greatly minimizes the significance of these considerations relative to Mr. Tate's property. It is unlikely in my view, that moving the last of 61 meters to the outside will have much, if any, of an additional negative impact on the aesthetic and historical appeal of the neighborhood. Mr. Tate's property is merely being treated by Columbia in a non-discriminatory manner the same as the company treated every other property located within the facilities upgrade project.

Compliance with Americans with Disabilities Act

Mr. Tate argues that York's Fair Housing Ordinance, in relevant part, makes it unlawful for a property owner to refuse to sell, lease or rent a dwelling to a person because of a

handicap or disability. Tate Main Brief, p. 26; York Fair Housing Ordinance, § 183.03(a). He is currently renting his property on a month-to-month basis to a family for use as a single-family dwelling. Tr. 9, 39. He argues that if a disabled, wheelchair bound person wanted to lease the house from him, he would have to install a ramp to comply with the ordinance. Tate Main Brief, p. 26.

As noted by Mr. Tate in his main brief, the Americans with Disabilities Act (ADA) requires a slope ratio of 12:1 for ramps. This means that for every horizontal span of 12 inches, there is a drop of 1 inch. Mr. Tate sites to Section 405.2 of the 2010 ADA Accessibility Guidelines (ADAAG), which requires that to be ADA compliant, permanent ramps must be constructed so that they have a slope not steeper than 12:1. Tate Main Brief, p. 26. He notes, however, that the ADA guidelines apply to places of public accommodation, and do not apply to individually owned or leased housing in the private sector, including single family homes such as Mr. Tate's. Title III of the ADA, definition of "Public accommodation," 42 U.S.C § 12181.

Mr. Tate argues that, although the technical requirements of the ADA are not applicable to his property, he must still comply with the York Fair Housing Ordinance and applicable Pennsylvania or local construction codes requirements. Mr. Tate explains in a footnote in his main brief:

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

Tate Main Brief, p. 27, footnote 8.

According to the information presented above by Mr. Tate, the ramp slope ratio that is applicable to his property is either 12:1 or 8:1. There is no record evidence of any allowable steeper ramp slopes under the ordinances and codes cited above. He argues, however, that if Columbia places his gas meter at the right front edge of his house just to the left of the grocer's alley, there will not be enough room for him to install a ramp, thereby causing him to be in violation of city ordinances and applicable building codes in the event a disabled person wants to occupy his house. Tate Main Brief, p. 28.

Columbia argues in its main brief that Section 59.18 requires that gas pressure regulators must be installed on the outside of the house. For Mr. Tate's house, the regulator must be placed at the front right corner of the property, as this outside location has been determined to be the only suitable location. Columbia Main Brief, p. 21. It argues that, even if the meter were located inside, as sought by Mr. Tate, the regulator would still have to be placed at the same outside location, thereby raising the same issues concerning the installation of a ramp.

In reviewing the record evidence, it appears unlikely that Mr. Tate would be able to build a ramp at the location at issue that would comply with the ordinances and building codes cited above, regardless of whether or not a gas meter was placed beside the grocer's alley. As noted, the ordinances and building codes cited by Mr. Tate in the above quote contemplate a ramp slope ratio of either 12:1 or 8:1.

The record evidence indicates that the distance from the bottom of the stairs in front of Mr. Tate's house to the left side of the grocer's alley is approximately 9 feet, 10 inches. Tr. 15. If a ramp were to be installed, the height from the sidewalk level to the top of the ramp would be approximately 36 inches. Tr. 74. The record does not show the horizontal distance from the top of the steps to the bottom step at sidewalk level. In reviewing Tate Exhibit 1, however, it appears that the horizontal distance of the steps is approximately 2 feet. Accordingly, if a ramp were installed, the total length of the ramp, from the highest point at front door level to the left edge of the grocer's alley, would be approximately 12 feet.

If a 12:1 ramp slope ratio was used, the total length of the ramp would be approximately 36 feet. This is calculated by multiplying 36 inches (the height of the steps) by 12 inches (the amount of horizontal span allowed for each inch of drop), for a total length of 432 inches, or 36 feet. If an 8:1 ramp slope ratio was used, the total length of the ramp would be approximately 24 feet. This is calculated by multiplying 36 inches (the height of the steps) by 8 inches (the amount of horizontal span allowed for each inch of drop), for a total length of 288 inches, or 24 feet. In either case, the length of the ramp would greatly exceed the approximately twelve-foot distance between the top of the ramp and the edge of Mr. Tate's property, thereby precluding his ability to install a ramp. Even using a steeper ramp slope ratio of 6:1 would result in a ramp length of approximately 18 feet (36 inches x 6 inches = 216 inches, or 18 feet), still much too long for Mr. Tate's property.

I conclude that the record evidence does not support Mr. Tate's argument that placement of the meter at the right front of his property would cause him to be in violation of York City ordinances and applicable building codes if he was required to install a ramp. The record evidence more accurately demonstrates that he would be unable to install a compliant ramp in the location at issue even if there were no meter or regulator located there.

Safety Issues

Mr. Tate next argues that installation of the meter on the outside of his property would create several safety concerns. First, he argues that an outside meter would reduce the distance from the curb in front of his house to the façade of the house, a distance of approximately 9 feet, 7 inches. Tr. 19-20. He argues that the meter would make it more difficult for disabled neighbors and other citizens to safely pass by. Tate Main Brief, pp. 28-29. The record evidence does not support this allegation. First, Columbia witness Brumley testified that the meter would extend from the house outward a distance of approximately 14 inches. Tr. 233. This would leave a distance of approximately 8 feet, 5 inches between the meter and the curb. There is no record evidence proving that 8 feet, 5 inches is an unsafe width for the safe passage of pedestrians or disabled persons. Additionally, the evidence indicates that the steps leading to Mr. Tate's front door extend out from the house toward the curb approximately 4 feet. Tr. 74,

79. Accordingly, the distance between the outer edge of the steps and the curb is approximately 5 feet, 7 inches. This is a much narrower width than would exist between an outside meter and the curb. There is no suggestion or record evidence showing that this width is unsafe. The record evidence simply does not support Mr. Tate's allegation that the meter would result in an unsafe sidewalk width.

Mr. Tate next argues that the short distance of 9 feet, 7 inches between the front of his house and the curb would make the meter vulnerable to being hit and damaged by cars driving over the curb and onto the sidewalk. Tate Main Brief, p. 29. On cross examination, however, Mr. Tate acknowledged that in the thirty years he has owned the property, there has never been an incident where a vehicle hit the area where the meter would be located. Tr. 73. Further, Mr. Brumley testified that the meters used by Columbia have an excess flow valve that immediately shuts off the flow of gas if a meter is damaged or sheared off. This feature greatly mitigates risks associated with damaged meters. Tr. 235. The record evidence simply does not support Mr. Tate's speculative allegation that his meter would be particularly susceptible to vehicle damage due to its proximity to the street in front of his house.

Mr. Tate next argues that outside meters are susceptible to damage from the elements, including ice and snow buildup. Tate Main Brief, pp. 29-30. He testified to his belief that outside meters are exposed to the elements, such as ice and snow, rendering them susceptible to corrosion and other damage. In support of this allegation, he testified about information on Columbia's website instructing customers to use care in keeping meters clear of ice, snow and other debris. Tr. 44-45. He argues that Columbia, in providing these cautionary instructions, recognizes the dangers involved with outside meters. Tate Main Brief, p. 29. He further testified that outside meters trap leaves, trash, and other debris, thereby creating potential fire hazards and increasing the risk of an explosion. Tr. 60. Notably, however, Mr. Tate offered no evidence of actual damage or harm to any actual gas meters allegedly caused by exposure to the elements, or from the accumulation of leaves, trash or other debris. He merely speculates that such damage is possible.

In response, Columbia explained that it provides instructions on its web site on how to safely clear snow and ice from its meters. Mr. Brumley testified that meters should be kept clear of ice and snow for visibility and access purposes. Tr. 236. The guidelines on the company's website instruct customers to carefully clear the meters of snow and ice by using a broom when possible, or carefully shoveling snow away from the meter. Tr. 44-45, 236. Mr. Brumley further testified that the Company's meters are designed to withstand corrosion. Tr. 237. In addition, he testified that when the Company paints its meters to match the structure's façade, the Sherwin-Williams paint it uses provides an additional level of corrosion protection. Tr. 237. Finally, Mr. Brumley testified that accumulated leaves and debris near a meter do not cause or create a risk of fire or explosion. Tr. 237. Again, the evidence offered by Mr. Tate merely constitutes speculation about what he believes could potentially happen as a result of exposure of outside meters to the weather elements or trash and other debris. He has provided no evidence about actual harm or damage to actual meters caused by such exposure. Columbia, on the other hand, presented evidence indicating that exposure to outside elements and other influences simply does not create the significant safety hazards alleged by Mr. Tate.

Mr. Tate finally argues that outside gas meters are unsafe in that they are subject to vandalism and tampering. Tate Main Brief, p. 30. To support this argument, he testified about incidents of crime in his neighborhood. He stated that in the past two-plus years, there have been more than 120 incidents of crime within a one to two-block radius of his property. Tr. 26. He stated these incidents involved actions such as vandalism, traffic problems and harassment. Tr. 26. He also testified that he has had decorations stolen from two properties that he owns. Tr. 26. He argues that crime and vandalism in the area pose a real danger and risk to property and could adversely affect outside gas meters. Tate Main Brief, p. 30.

In response, Mr. Tubbs testified that in the 6 years he has been with Columbia, he has never heard of a situation where one of the company's meters has been vandalized. Tr. 177. While acknowledging that it may happen, he testified that it is not something that is prevalent with gas meters. Tr. 177. The evidence regarding vandalism in the neighborhood presented by Mr. Tate does not include any examples of actual damage to gas meters. To the contrary, Columbia presented evidence specific to gas meters that demonstrates that vandalism to a gas

meter is not prevalent. The record evidence does not support Mr. Tate's argument that meter vandalism is a significant safety concern.

Mr. Tate finally argues in his main brief that Columbia's decision constitutes a failure of the company to comply with its obligation to protect natural resources such as Tate's historic property. Tate Main Brief, p. 33. He argues that there were feasible alternatives that could have been selected by Columbia that would have protected the historic character of his house and the neighborhood. Columbia could have chosen to locate the new meter at the back of the house, or it could have kept the meter inside and just installed a regulator on the outside front of the property. Tate Main Brief, p. 33. Mr. Tate stated there was a suitable location in the back of the house near the back door. Tr. 35.

Mr. Tubbs testified that Columbia did take seriously the fact that Mr. Tate's house has been designated an historic building and that it is located in an historic district. Tr. 169. He explained that Columbia personnel met with Mr. Tate at his house to discuss and consider alternatives. Mr. Brumley met with Mr. Tate at his house and looked at the front and back of the property, as well as the grocer's alley in considering suitable locations for the meter. As noted, Mr. Tate ultimately acknowledged that a meter could not be located in the grocer's alley due to space limitations. Tr. 282. After these discussions and consideration of proposed alternatives, Columbia concluded that the best and safest option was to locate the meter on the outside front of the house. Tr. 170.

Columbia concluded that it was not feasible to locate the meter at the back of the house. First, Mr. Brumley explained that there is no gas main running behind Mr. Tate's house from which to connect a service line. Tr. 230. Accordingly, in order to connect a line to a meter located at the back of the house, Columbia would have to either install a new gas main behind his house or install an extended service line from the new main in front of the house through the grocer's alley to the rear of the property. Tr. 185, 230. Although the record contains no cost estimates, Columbia argues that constructing and installing a new gas main behind Mr. Tate's house for the purpose of serving just one customer is unreasonable due to the added expense. The Company further argues that because it would first involve installing a much longer service

line to reach a meter in the back of the house, it is also not feasible to run an extended service line from the new main in front of the house through the grocer's alley to the back of the house. Columbia also argues that the company would likely have to obtain right of way agreements from multiple parties, all of which would involve added expense. Tr. 232. Columbia argues that it did, in fact, consider several alternate locations for the placement of the new meter and concluded that the best, safest and most feasible option was the outside front of the property, as was the case with the sixty other properties in the project area. Columbia Main Brief, pp. 11-12; Tr. 169-170.

Under its tariff, Columbia possesses the right to determine the location of its gas meters. Rule 4.6.1.2 states, "[t]he Company shall have the right to determine the locations of its meters, which must be places where they will be easily accessible for meter reading, inspection, repairs, testing, changing and operation of the gas shut-off valve. . . ." Supplement No. 259 to Tariff Gas – Pa. P.U.C. No. 9; Columbia Ex. 10.[12]

The denial of Mr. Tate's request, by itself, does not mean that Columbia failed to consider indoor placement consistent with Section 59.18. This regulation does not *require* a utility to place a meter indoors, even in historic districts. The burden of proof is on the Complainant to demonstrate that Columbia violated the regulation. He has not done so. The record evidence supports Columbia's position that it considered alternate locations for the placement of the new meter and reasonably concluded that the outside front of Mr. Tate's house is the best, safest location.

In conclusion, the Complainant failed to prove that Columbia violated the Public Utility Code, the Commission's regulations or an order of the Commission. Therefore, the formal complaint filed by Mr. Tate is dismissed.

[12] A Commission approved tariff has the full force and effect of law. *PECO Energy Co. v. Twp. of Upper Dublin,* 922 A.2d 996 (Pa. Cmwlth. 2007).

CONCLUSIONS OF LAW

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

2. The Complainant bears the burden of proof. 66 Pa.C.S. § 332.

3. In order to carry his burden of proof, the Complainant must prove the material elements of his complaint by a preponderance of the evidence. *Se-Ling Hosiery, Inc. v. Margulies,* 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.,* 50 Pa. PUC 300 (1976).

4. Public utilities are required to render reasonable customer service. 66 Pa.C.S. § 1501.

5. As a general rule, gas meters must be located outside. 52 Pa. Code § 59.18(a)(1).

6. A public utility may consider, but is not required to direct, indoor placement of a meter when a building is located in an historic district. 52 Pa. Code § 59.18(d)(1).

7. Under its tariff, Columbia ". . . shall have the right to determine the locations of its meters, which must be places where they will be easily accessible for meter reading, inspection, repairs, testing, changing and operation of the gas shut-off valve. . . ." Supplement No. 259 to Tariff Gas – Pa. P.U.C. No. 9.

8. The Commission has exclusive jurisdiction to regulate public utilities and their facilities. *See e.g. County of Chester v. Phila. Elec. Co.,* 218 A.2d 331 (Pa. 1966); *UGI Utils., Inc. v. City of Reading,* 179 A.3d 624 (Pa. Cmwlth. 2017).

9. "[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.

10. A Commission approved tariff has the full force and effect of law. *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Bryan Tate against Columbia Gas of Pennsylvania, Inc. at Docket No. C-2020-3018966 is dismissed.

2. That the Secretary mark the proceeding at Docket No. C-2020-3018966 closed.

Date: December 30, 2021

/s/
Steven K. Haas
Administrative Law Judge