

**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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**EXCEPTIONS OF COMPLAINANT, BRYAN TATE**

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

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

**EXCEPTIONS OF BRYAN TATE TO INITIAL DECISION OF STEVEN K. HAAS,  
ADMINISTRATIVE LAW JUDGE, DATED DECEMBER 30, 2021**

**AND NOW**, this 19th day of January, 2022, comes Complainant, Bryan Tate (hereinafter referred to as “Tate”), by and through his undersigned counsel, the **BENNLAWFIRM**, and files the within Exceptions to the Initial Decision of Steven K. Haas, Administrative Law Judge (“ALJ”), pursuant to 52 Pa. Code §5.533, and in support thereof avers the following:

**EXCEPTION TO FINDINGS OF FACT 28 AND 35**

1. The Initial Decision of the ALJ states as Findings of Fact that pressure regulators need to be installed and that Respondent, Columbia Gas of PA, Inc. (hereinafter “Columbia Gas”), wants to install a particular size meter. Initial Decision at 6-7.
2. These Findings are flawed and incomplete because the ALJ failed to find that while the regulations require installation of a regulator and that, as a general rule subject to exceptions, the Pennsylvania Code requires that meters be located outside and aboveground, there is no particular size requirement for meters.
3. Accordingly, Columbia Gas could install a low-profile gas meter at Tate’s property, 52 South Pine Street (the “Property”), in order to accommodate the historic nature of the Property in question owned by Tate.

4. Tate requested in his Main Brief at pages 19, 31, 32, 33, 35 and in his Reply Brief at page 11 that Columbia Gas consider installation of a low-profile gas meter and counsel for Tate expressed to the ALJ during day 2 of the hearing that installing a low-profile meter at the front of the Property was acceptable to Tate. 11/12/20 Tr. (day 2) at page 286. To the knowledge of Tate, Columbia Gas has proffered no reason why a low-profile meter could not be installed at the Property.

#### **EXCEPTION TO FINDING OF FACT 31**

5. The Initial Decision of the ALJ states as a Finding of Fact that outside meters were installed at 60 properties served from the main in Pine Street. Initial Decision at 6.

6. This finding is incomplete, misleading and leads to an erroneous legal analysis and conclusion at page 21 of the Initial Decision, as it fails to acknowledge that some of these meters were not installed at the outside front of these 60 properties. *See* Tr. 54-55, 204 (Russell Bedell testified that some meters were not installed at an outside front location). All references in these Exceptions to the Transcript are to Day 1 of the hearing on November 10, 2020, unless otherwise noted.

7. Based on the foregoing, Finding of Fact 31 is incomplete, misleading and disregarded substantial evidence in the record as to the location of installed meters.

#### **EXCEPTION TO FINDING OF FACT 33**

8. The Initial Decision of the ALJ states as a Finding of Fact that none of the owners of the 60 other properties included as part of the main replacement project filed “formal complaints”. Initial Decision at 7.

9. This Finding was based on the misleading testimony of Columbia Gas witness Andrew Tubbs, who testified that there were no “formal complaints” other than Tate’s. Tr. 180.

10. Finding of Fact number 33 is incomplete, misleading and inaccurate as there was direct testimony by Columbia Gas witness Russell Bedell that multiple Columbia Gas customers complained about an outside front meter placement. Tr. 204.

11. Russ Bedell further testified that he had to create a complaint form for Tate because Columbia Gas had no such form, so other customers had no complaint form to use. Tr. 34, 168-169, 218.

12. Mindy Crawford, Executive Director of Preservation Pennsylvania, also testified, without contradiction from Columbia Gas witnesses, that she received a number of phone calls and emails enunciating complaints about outside meter placement by Columbia Gas and that these individuals “were not given the opportunity ahead of time to ask for accommodations.” Tr. 92. *See* Tate Exhibit No. 18-4.

13. Craig Zumbrun, Chairperson of the York Historical Architectural Review Board (“HARB”), stated in uncontroverted testimony, that HARB received numerous complaints from homeowners complaining about outside property front meter installation by Columbia Gas. Mr. Zumbrun further testified that he was not aware of an accommodation made by Columbia Gas for any of these property owners. Tr. 131-132. *See* Tate Exhibit No. 18-21.

14. Based on the foregoing, Finding of Fact 33 is inaccurate and disregarded substantial evidence in the record.

### **EXCEPTION TO FINDING OF FACT 35**

15. The Initial Decision of the ALJ states as a Finding of Fact that the proposed meter measures 24 inches high, 14 inches wide and would be approximately 14 inches from the house wall. Initial Decision at 7.

16. This finding is inaccurate and misleading as the testimony cited by the ALJ, at page 233 of the Transcript, merely contains testimony as to the “typical” size of a meter and is not competent testimony as to the size of the specific meter Columbia Gas is proposing to use at Tate’s Property.

17. Tate was told by Columbia Gas that the meter it proposed to install at his Property was similar to the one installed in other properties in his neighborhood. As a result, Tate measured a meter or meters installed in his neighborhood and it was 24 inches high, 24 inches wide and 18 inches from the house. Tr. 20.

18. Tate’s testimony is more credible regarding the meters to be installed in his neighborhood, the neighborhood of the Property in question, as he actually measured a meter or meters used near the Property.

19. Based on the foregoing, Finding of Fact 35 is inaccurate, an abuse of discretion and disregarded substantial evidence in the record.

### **EXCEPTION TO FINDING OF FACT 36**

20. The Initial Decision of the ALJ states as a Finding of Fact that installation of a gas meter outside of the Property “may have a negative impact on its resale value.” Initial Decision at 7.

21. This Finding of Fact is not in accord with the uncontroverted testimony of Michael Wheeler that having an outside front meter placement “**would** significantly reduce

the attraction of the property” and **would** reduce the value of the Property by \$5,000.00 to \$10,000.00. Tr. 108-109.

22. Mr. Wheeler testified that he did not do a market analysis to determine what the Property would be listed for today, but that would not impact his testimony as to the reduction in value and attractiveness of the Property, regardless as to the sales price or listing price for the Property.

23. Based on the foregoing, Finding of Fact 36 is inaccurate and disregarded substantial evidence in the record.

#### **EXCEPTION TO FINDING OF FACT 46**

24. The Initial Decision of the ALJ states as a Finding of Fact that Tate seeks to have his meter remain located in the basement of his Property or be placed at the rear of the Property. Initial Decision at 8.

25. This Finding of Fact is incomplete and inaccurate as Tate also requested, as an alternative to the basement and rear locations at the Property, the installation of a low-profile meter, which could include the right front location insisted upon by Columbia Gas. *See* Tate Main Brief at pages 19, 31, 32, 33, 35 and Reply Brief at 11.

26. Counsel for Tate also expressed at the hearing that installing a low-profile meter at the front of the Property was acceptable to Tate. 11/12/20 Tr. (day 2) at page 286.

27. Based on the foregoing, Finding of Fact 46 is inaccurate, an abuse of discretion and disregarded substantial evidence in the record.

#### **EXCEPTION TO FINDING OF FACT 53**

28. The Initial Decision of the ALJ states as a Finding of Fact that there has

never been an accident where a vehicle has run “into the area” where Columbia Gas is proposing to locate the new meter. Initial Decision at 9.

29. Federal law requires meters and regulators be protected from vehicular damage that may be anticipated. 49 CFR §192.353.

30. The Pennsylvania Code also requires that Columbia Gas consider “proper location” for meters, and consider, among other things, “vehicular traffic”. 52 Pa. Code §59.18(c)(1)(ii).

31. The Commonwealth Court has held that the Pennsylvania Public Utility Commission, “like any other agency, cannot ignore or fail to apply its own regulations, and those persons subject to the agency's regulation are also bound.” Popowsky v. PUC, 853 A.2d 1097, 1106-1107 (Pa. Commw. 2004). Columbia Gas must abide by 52 Pa. Code §59.18.

32. Finding of Fact 53 is misleading because while Tate did testify that during his period of ownership no vehicle had crashed into the area of the Property where Columbia Gas proposes to install his new meter (Tr. 73), there were no meters in the vicinity of the Property because meters were only recently installed in the neighborhood. *See* Tr. 27 (Tate first noticed construction around the Property in June of 2018). Tate also testified, without contradiction, that there is a short distance from the curb to the area where the gas meter is proposed to be installed, only nine feet, seven inches; that cars regularly drive up over the curb and onto the narrow sidewalk; and that a vehicle recently drove onto a sidewalk deeper and wider than in front of the Property and smashed into a nearby commercial building on East Market Street in the City of York. Tr. 17-18, 19-20, 38, 63-64, Tate Exhibit No. 7. Tate Main Brief at 28-31; Tate Reply Brief at 5.

33. If Columbia Gas were to seriously consider the possibility of vehicular damage and traffic, it would have fully considered and chosen the rear location of the Property where vehicular traffic would not be an issue. As such, Columbia Gas failed to comply with 52 Pa. Code §59.18(c)(1)(ii).

34. Based on the foregoing, Finding of Fact 53 is misleading and disregarded substantial evidence in the record.

#### **EXCEPTION TO FINDING OF FACT 54**

35. The Initial Decision of the ALJ states as a Finding of Fact that Columbia Gas's meters are designed to withstand rain, snow, ice and corrosion. Initial Decision at 9.

36. To the contrary, the website of Columbia Gas states that heavy or hard packed snow and ice on a gas meter could present a condition that temporarily stops the flow of natural gas or creates indoor natural gas buildup. Tr. 44-45; Tate Main Brief at 29-30; Tate Reply Brief at 5-6.

37. Clearly, stopping the flow of natural gas and the creation of indoor natural gas buildup is a dangerous situation affecting consumer safety caused by outside meters.

38. Columbia Gas' website also references potential dangers when shoveling snow and ice around the meter: make sure the meter is visible at all times, never let snow completely cover the meter, use caution when using a shovel around the meter, don't shovel snow up against the meter, take care using a snow blower or plow near the meter and never kick or hit the meter or its piping to break away built-up snow or ice. Tr. 44-45.

39. On this issue, the Pennsylvania Code requires Columbia Gas to "consider potential damage by outside forces" when selecting a meter or regulator location. (emphasis added). 52 Pa. Code §59.18(a)(5).

40. The Commonwealth Court has held that the Pennsylvania Public Utility Commission, “like any other agency, cannot ignore or fail to apply its own regulations, and those persons subject to the agency's regulation are also bound.” Popowsky v. PUC, 853 A.2d 1097, 1106-1107 (Pa. Commw. 2004). Columbia Gas must abide by 52 Pa. Code §59.18.

41. The ALJ wrote that Tate “merely speculates that such damage is possible” and provided no evidence of “actual damage”. Initial Decision at 25. However, under the Pennsylvania Code, Columbia Gas is required to consider “potential damage”, because the purpose of safety requirements is to prevent accidents or damage *before* they happen. 52 Pa. Code §59.18(a)(5).

42. Evidence of prior, “actual damage” in choosing a meter location is not required by the Pennsylvania Code. 52 Pa. Code §59.18(a)(5).

43. Columbia Gas failed to fully consider a meter location in the rear of the Property where the meter would be protected from the elements. Tr. 35 (uncontroverted testimony of Tate that a meter in the rear location “would sit perfectly” and “would be out of the elements”), 257-258 (testimony of Columbia Gas that it did not investigate easements and rights-of-way potentially impacting a rear location placement at the Property). As such, Columbia Gas failed to comply with 52 Pa. Code §59.18(a)(5).

44. Accordingly, Finding of Fact 54 is misleading and disregarded substantial evidence in the record.

#### **EXCEPTION TO FINDING OF FACT 55**

45. The Initial Decision of the ALJ states as a Finding of Fact that vandalism of gas meters is not a common problem. Initial Decision at 9.

46. This Finding is based on the testimony of the Vice President of External and Customer Affairs of Columbia Gas, Andrew Tubbs, who testified that he had never “heard of a situation where we’ve had vandalism to our meters.....It’s not to say it’s never happened, but its certainly not something that’s prevalent to gas meters.” Tr. 177.

47. Columbia Gas may consider an indoor meter location “only when” it is determined that “a meter is subject to a high risk of vandalism based on the utility’s prior experience.” 52 Pa. Code §59.18(d)(1)(iv).

48. The Commonwealth Court has held that the Pennsylvania Public Utility Commission, “like any other agency, cannot ignore or fail to apply its own regulations, and those persons subject to the agency's regulation are also bound.” Popowsky v. PUC, 853 A.2d 1097, 1106-1107 (Pa. Commw. 2004). Columbia Gas must abide by 52 Pa. Code §59.18.

49. To begin with, the testimony of Mr. Tubbs is vague, as he cites no statistical evidence relating to vandalism and admits that meter vandalism may have happened. In addition, Mr. Tubbs’ testimony is general in nature and does not pertain to York County or the area of the Property. An Initial Decision of the Public Utility Commission should not be based in part upon what a witness “heard”, as such testimony is vague and unreliable hearsay.

50. Moreover, the ALJ disregarded the uncontroverted testimony of Tate that there have been more than 120 incidents of crime within a one to two block radius of the Property location in the past two-plus years (Mr. Tubbs’ testimony was in November of 2020), including vandalism, traffic problems and harassment, and Tate further testified that he has had vandalism done to the Property, has had decorations stolen from the Property

and has had to call the police to remove harassing type of individuals from the area. In fact, Tate testified that “vandalism happens in this neighborhood constantly”. (emphasis added). See Tr. 26, 37; Tate Main Brief at 30; Tate Reply Brief at 6.

51. The issue under the Pennsylvania Code is not whether vandalism is a common problem to meters as found by the ALJ, the issue is whether there is a “high risk” of vandalism, and based on the uncontroverted testimony of Tate there is a high risk of vandalism to all forms of personal property in the neighborhood of the Property, including to gas meters. As such, Columbia Gas failed to comply with 52 Pa. Code §59.18(d)(1)(iv).

52. Accordingly, Finding of Fact 55 is misleading, an abuse of discretion and disregarded substantial evidence in the record.

#### **EXCEPTION TO FINDING OF FACT 58 and 59**

53. The Initial Decision of the ALJ states as Findings of Fact that the property at 257 East Main Street was not part of the project involving Tate’s house and is served by a low pressure main. Initial Decision at 9-10.

54. The testimony in the record did not pertain to “257 East Main Street” in York, it pertained to 257 East Market Steet in York. Tr. 238.

55. Accordingly, Findings of Fact 58 and 59 are inaccurate and disregarded substantial evidence in the record.

#### **EXCEPTION TO FINDING OF FACT 60**

56. The Initial Decision of the ALJ states as a Finding of Fact that Columbia Gas considered all possible options in selecting an option for installation of the new meter at the Property. Initial Decision at 10.

57. Columbia Gas witnesses testified at hearing that Tate’s gas meter could be

placed in the rear of the Property either by installing a service line to the back or by installing an additional main in the back with a service line. Tr. 174, 201, 257. The nature and locations of easements would also have to be investigated, and the possibility of having to obtain rights-of-way. Tr. 232, 257-258. Columbia Gas admitted that this investigation never took place, yet it somehow determined that to place a gas meter in the back of the Property was not “feasible”. Tr. 232, 258. 52 Pa Code §59.18(d)(1)(v) references the term “feasible” in the placement of a gas meter, but the term is not defined in Chapter 59. *See* 52 Pa. Code §59.1. Merriam-Webster defines “feasible” as “capable of being done or carried out”. [www.merriam-webster.com](http://www.merriam-webster.com).

In this case, Columbia Gas’s decision to focus solely on relocation of a full size gas meter to the front of Tate’s Property makes no sense given that it did not investigate rights-of-way or easements that might impact placement of a meter in the rear of the Property. Tr. 258. Raymond Brumley, Manager of Construction Services, testified that utility easements can be shared with Columbia Gas, meaning that if there are utility easements, sharing agreements can be reached and, therefore, running a service line to the back of the Property is certainly “capable of being done or carried out”, or feasible. Tr. 257-258. Columbia Gas advised Tate that it would be “too much work” to install a meter in the back of the Property and Columbia Gas witnesses confirmed this position, referencing the work that would need to be done to put a meter in the rear of the Property, i.e., an extension for the service line and investigation into rights-of-way and easements. Again, Columbia Gas never investigated the existence of any rights-of-way or easements; Columbia Gas needs to do the work necessary in order to attempt to preserve the historic nature of the Property required by the Pennsylvania Constitution and caselaw. Tr. 78, 232, 258-259.

58. It should be noted and clarified that Columbia Gas's Manager of Construction Services, Raymond Brumley, never testified to any credible reason why a service line couldn't "feasibly" be extended to the rear of the Property other than the possible existence of easements and/or rights-of-way, in which case agreements might have to be obtained. *See* Tr. 230, 232, 257-258. But again, this issue was not fully investigated by Columbia Gas. Tr. 257-258.

59. In addition, Tate has also requested, as an alternative to the basement and rear locations at the Property, the installation of a low-profile meter, which could include the right front location sought by Columbia Gas. *See* Tate Main Brief at pages 19, 31, 32, 33, 35 and Reply Brief at page 11. Instead, Columbia Gas has testified that it wants to install a full size recycled meter. Tr. 233, 240-241, 260-261.

60. Counsel for Tate expressed at the hearing that installing a low-profile meter at the front of the Property was acceptable to Tate. 11/12/20 Tr. (day 2) at page 286.

61. Based on the foregoing, Finding of Fact 60 is inaccurate, an abuse of discretion and disregarded substantial evidence in the record because the record establishes that Columbia Gas did not fully consider all alternatives to the type of meter and location being proposed.

**EXCEPTION TO DECISION AND LEGAL CONCLUSION THAT TATE FAILED TO MEET HIS BURDEN OF PROOF TO SHOW THAT COLUMBIA GAS COMMITTED AN ABUSE OF DISCRETION AND ACTED ARBITRARILY BY FAILING TO IMPLEMENT STANDARDS, GUIDELINES AND PROCEDURES TO PROTECT HISTORIC PROPERTIES SUCH AS TATE'S PROPERTY**

62. Tate incorporates paragraphs 1-61 herein by reference as if fully set forth.

63. Tate argued, among other things, that Columbia Gas committed an abuse of

discretion and acted arbitrarily by failing to implement standards, guidelines and procedures to protect historic properties such as the Property. *See* Tate Main Brief, pages 16-19.

64. The Environmental Rights Amendment (“ERA”) in the Pennsylvania Constitution, Article I, §27, imposes upon the Pennsylvania Public Utility Commission "a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties." (emphasis added). City of Lancaster v. Pennsylvania Public Utility Commission, 224 A.3d 460, p. 14 (Pa. Commw. 2020) (unpublished memorandum opinion), *citing* Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911, 933 (Pa. 2017).

65. Historical sites and buildings such as Tate’s Property are considered a part of Pennsylvania’s “public natural resources” for purposes of the ERA. City of Lancaster v. Pennsylvania Public Utility Commission, 224 A.3d 460, p. 14 (Pa. Commw. 2020) (unpublished memorandum opinion), *citing* United Artists’ Theater Circuit v. City of Philadelphia, 635 A.2d 612, 620 (Pa. 1993), *quoting* Commonwealth v. National Gettysburg Battle Tower, Inc., 311 A.2d 588, 595 (Pa. 1973).

66. Although Pennsylvania utilities possess a right of self-management, Public Utility Commission v. Philadelphia Electric Company, 561 A.2d 1224, 1226-1227 (Pa. 1989), the Courts permit the Pennsylvania Public Utility Commission (hereinafter sometimes the “PUC”) to intervene where a utility acts arbitrarily or abuses its discretion. Public Utility Commission, 561 A.2d 1224 (Pa. 1989); Curley v. Pennsylvania Electric Company, 2014 Pa. PUC Lexis 364 (2014). In this case, the PUC and Columbia Gas are

obligated to prohibit the degradation, diminution and depletion of public natural resources. City of Lancaster v. Pennsylvania Public Utility Commission, 224 A.3d 460, p. 14 (Pa. Commw. 2020) (unpublished memorandum opinion), *citing* Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911, 933 (Pa. 2017); Robinson Township v. Commonwealth, 83 A.3d 901, 957 (Pa. 2013).

67. The Commonwealth Court has held that the Pennsylvania Public Utility Commission, “like any other agency, cannot ignore or fail to apply its own regulations, and those persons subject to the agency's regulation are also bound.” Popowsky v. PUC, 853 A.2d 1097, 1106-1107 (Pa. Commw. 2004).

68. Columbia Gas essentially testified that when the historic exemption is raised, it will consider alternative locations. Tr. 169-170.

69. However, Columbia Gas also made clear through the testimony of its witnesses that if there is too much work involved it will not consider a potentially viable alternative and, further, that it has a clear preference for outside meters. *See* paragraphs 56-61 hereinabove, incorporated by reference, and Tr. 78 (Columbia Gas advised Tate that it was “too much work” to install a meter in the back of the Property), 170 (Andrew Tubbs testified that “Columbia has a clear preference to have the meter on the outside...”).

70. There is no evidence in the record that Columbia Gas has implemented any standards, guidelines and procedures to protect historic properties such as the Property.

71. Columbia Gas cannot say that it is safer to place the new meter in the front of the Property as opposed to the rear of the Property as both are outside meter locations and, in fact, there are advantages to the rear location such as protection from the elements and no issue with the potential for vehicular damage. Tr. 35.

72. It should be noted that Tate raised the constitutional infirmity of Section 59.18 so as to make clear that the PUC, acting on behalf of the Pennsylvania Legislature, failed to address important Pennsylvania Constitutional considerations by granting unfettered authority and discretion to *private gas utility companies such as Columbia Gas*---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). *See* Tate Main Brief, pages 10-16.

73. In his proposed ordering paragraphs, Tate did not ask that the ALJ declare Section 59.18 to be unconstitutional. *See* Tate Main Brief, pages 48-49. Moreover, Tate raised Constitutional issues in a Pre-Hearing Memorandum of Law filed on July 8, 2020, well before the Main Brief filed on March 19, 2021, so the ALJ's assertion that Constitutional issues were raised for the first time on March 19, 2021 is inaccurate. *See Initial Decision* at 16.

74. Despite the clear mandate of the ERA, and despite the existence of local ordinances enacted to provide protection for Pennsylvania historic properties (such as Article 1731 of the City of York's Codified Ordinances, *infra*), the PUC delegated Pennsylvania Constitutional obligations to private entities such as Columbia Gas who are isolated from the political process and shielded from political accountability.

75. Both the PUC and Columbia Gas have failed to implement any standards, guidelines and procedures to protect historic properties, such as the Property, when considering such issues as meter placement. Granting complete discretion to utility

companies such as Columbia Gas fails to adequately protect Pennsylvania natural public resources such as the Property.

76. Tate met his burden to show that Columbia Gas committed an abuse of discretion and acted arbitrarily by failing to implement standards, guidelines and procedures to protect historic properties such as the Property. *See* Tate Main Brief, pages 16-19. Based on the foregoing, the Initial Decision disregarded substantial evidence in the record and constituted an abuse of discretion and an error of law by failing to hold that Columbia Gas committed an abuse of discretion and acted arbitrarily by not implementing standards, guidelines and procedures to protect historic properties such as the Property.

**EXCEPTION TO DECISION AND LEGAL CONCLUSION THAT TATE FAILED TO MEET HIS BURDEN OF PROOF THAT COLUMBIA GAS COMMITTED AN ABUSE OF DISCRETION AND ACTED ARBITRARILY BECAUSE COLUMBIA GAS APPLIED SECTION 59.18 UNCONSTITUTIONALLY TO TATE BY REFUSING TO PROTECT AGAINST THE ACTUAL OR LIKELY DEGRADATION, DETERIORATION AND IMPAIRMENT OF TATE'S PROPERTY, A PUBLIC NATURAL RESOURCE**

77. Tate incorporates paragraphs 1-76 herein by reference as if fully set forth.

78. Tate argued, among other things, that Columbia Gas committed an abuse of discretion and acted arbitrarily because it applied Section 59.18 unconstitutionally to Tate by refusing to protect against the actual or likely degradation, diminution, depletion, deterioration and impairment of Tate's Property, a public natural resource protected under Pennsylvania law. *See* Tate Main Brief at 22-31.

**Property Value**

79. The Decision of the ALJ held that the evidence presented via the testimony of Michael Wheeler was "too speculative" and insufficient to render Columbia Gas's decision to utilize an outside front meter placement improper. Initial Decision at 19.

80. The record evidence adduced by Tate was not “speculative”. Michael Wheeler testified that having an outside front meter placement “**would** significantly reduce the attraction of the property” and **would** reduce the value of the Property by \$5,000.00 to \$10,000.00. Tr. 108-109; Tate Main Brief at 23; Tate Reply Brief at 8-9.

81. The Initial Decision also states that safety of the property owner is the focus of meter placement in 52 Pa. Code. §59.18, not a decrease in property value. Initial Decision at 19.

82. Tate concedes that consumer safety is important to any determination to be made by Columbia Gas relative to meter placement, but so is the protection of Pennsylvania public natural resources such as the Property, as guaranteed by the Pennsylvania Constitution and caselaw.

83. If a utility such as Columbia Gas could merely cite to “safety” as conclusive in any challenge to a meter location decision involving a historic property, the historic exemption in Section 59.18 would be eviscerated and rendered mere surplusage. Walker v. Eleby, 842 A.2d 389, 400 (Pa. 2004); 1 Pa. C.S.A. §1922(2). There will be safety issues wherever the meter is ultimately placed, even at the front or rear of the Property, and it is not unsafe to leave Tate’s gas meter in the basement. Tr. 263. Moreover, Columbia Gas never fully investigated the placement of a meter in the rear of the Property, where safety issues would mirror those present at the front of the Property. *See* Tate Reply Brief at 2-4; Tr. 263 (Raymond Brumley testified that it is not unsafe to leave a meter in the interior of a structure); *see* paragraphs 56-61 on the rear meter location, incorporated herein by reference as if fully set forth. In addition, Columbia Gas cannot ignore or fail to apply Section 59.18. Popowsky v. PUC, 853 A.2d 1097, 1106-1107 (Pa. Commw. 2004).

84. Accordingly, the reasoning of the Decision on the issue of property valuation is flawed and in error.

#### Aesthetic Value

85. As to the aesthetic value of the Property or the Property's neighborhood, the Decision of the ALJ held that while there is "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 [Gas]." Initial Decision at p. 21. Tate Main Brief at 23-25.

86. The Decision also held that the impact on the aesthetic appeal and historic significance is "greatly minimized" by the fact that 60 other neighboring structures already had meters placed on the outside. Initial Decision at p. 21.

87. Tate incorporates paragraph 83 herein by reference as if fully set forth.

88. As for citation in the record, the ALJ cited page 267 for the proposition that the other 60 meters were located "on the outside".

89. However, Transcript page 267, containing the testimony of Raymond Brumley, says nothing about the precise location of these 60 meters. And even if all 60 were located on the outside, there is no record evidence as to the precise location of these meters; some meters were, in fact, installed in locations other than the outside front—Columbia Gas witness Russell Bedell testified that "we were able to find locations that were not right in front of the house. There were people on Pine Street, in fact, where the meter could be, you know, on the side or in the breezeway between the buildings where

there actually was a possibility.” Tr. 204. Moreover, it should be noted that Columbia Gas witness Andrew Tubbs acknowledged that the meters are not attractive pieces of equipment. Tr. 165.

90. Accordingly, the reasoning of the Decision on the issue of aesthetic value is flawed and in error.

#### **Compliance with ADA and York Fair Housing Ordinance**

91. As to compliance with Federal and local disability laws, the Initial Decision of the ALJ states that “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...regardless of whether or not a gas meter was placed beside the grocer’s alley.” Initial Decision at 23.

92. Tate clearly stated that ADA standards do not apply to the Property. *See* Tate Main Brief at 27 and page 22 of the Initial Decision. Tate also clearly stated that “many ramp contracting businesses state that a 1:6 or 1:4 slope ratio is acceptable for residential properties” due to space limitations. Tate Main Brief at 26-27. Using the same calculation utilized by the ALJ, a 1:4 ratio would result in a ramp length of approximately 12 feet, which would fit at Tate’s 14-15 foot long Property.

93. The ADJ did not discuss ramp width requirements in his Initial Decision. *See* Initial Decision at pages 21-24. But Tate stated that 36 inches is the standard width requirement. Tate Main Brief at 26-27. Using a full-size meter as proposed by Columbia Gas would reduce the useable ramp width to 30-34 inches, which is out of Code. Tate Main Brief at 28. In that regard, Tate testified that placing a meter near the front of the Property would reduce the already small sidewalk size and width (nine feet, seven inches,

Finding of Fact 18), thereby making it difficult for disabled neighbors and other citizens to safely pass by. Tr. 19-20, 38; Tate Main Brief at 28-29.

94. Accordingly, the record evidence establishes that installation of a full size meter would not permit compliance with the York Fair Housing Ordinance. However, use of a regulator, only, would be acceptable because it would only be 8-10 inches away from the house. Tr. 265.

95. Accordingly, the reasoning of the Decision on the issue of the ADA, the York Fair Housing Ordinance and disability laws disregarded substantial evidence in the record and is flawed and in error.

#### **Safety issues**

96. On the issue of vehicle safety, the ADJ held that the evidence did not support Tate's "speculative allegation" that the new meter would be particularly susceptible to vehicle damage due to the meter's proximity to the street in front of the Property. Initial Decision at 25.

97. Tate incorporates paragraphs 28-34 herein by reference as if fully set forth.

98. As stated, Tate's uncontroverted testimony revealed that there is a short distance from the curb to the area where the gas meter is proposed to be installed, only nine feet, seven inches; cars regularly drive up over the curb and onto the narrow sidewalk; and a vehicle recently drove onto a sidewalk deeper and wider than in front of the Property and smashed into a nearby commercial building on East Market Street in the City of York. Tr. 17-18, 19-20, 38, 63-64, Tate Exhibit. No. 7; Tate Main Brief at 28-31; Tate Reply Brief at 5. Accordingly, the reasoning of the Initial Decision on the issue of vehicular damage disregarded substantial evidence in the record and is flawed and in error.

99. Next, on the issue of snow and ice safety, the ADJ held that Tate's testimony as to the potential for damage or harm to outside meters caused by exposure to the elements, or from the accumulation of leaves, trash and other debris, was speculative. Initial Decision at 25-26.

100. Tate incorporates paragraphs 35-44 herein by reference as if fully set forth. *See* Tate Main Brief at 29-30 and Tate Reply Brief at 5-6

101. As stated, Columbia Gas admits on its website that heavy or hard packed snow and ice on a gas meter could present a condition that temporarily stops the flow of natural gas or creates indoor natural gas buildup. Tr. 44-45. Moreover, with outside meters customers will not be able to smell gas if there is a leak.

102. Stopping the flow of natural gas and the creation of indoor natural gas buildup is a dangerous situation affecting consumer safety caused by outside meters.

103. Columbia Gas' website also references potential dangers when shoveling snow and ice around the meter: make sure the meter is visible at all times, never let snow completely cover the meter, use caution when using a shovel around the meter, don't shovel snow up against the meter, take care using a snow blower or plow near the meter and never kick or hit the meter or its piping to break away built-up snow or ice. Tr. 44-45.

104. On this issue, the Pennsylvania Code requires Columbia Gas to "consider potential damage by outside forces" when selecting a meter or regulator location. (emphasis added). 52 Pa. Code §59.18(a)(5).

105. Thus, requiring Tate to provide evidence of actual damage or harm to meters is an error of law and an abuse of discretion because proof of actual harm is not required by the Pennsylvania Code.

106. The evidence of Columbia Gas that meters should be kept free and clear of snow and ice and are designed to withstand corrosion does not detract from the potential dangers of outside meters caused by snow and ice buildup, which can never be prevented 100%, and caused by snow blower and shovel damage, as acknowledged by Columbia Gas on its website. Tr. 44-45.

107. Although disregarded by the ALJ, Tate did provide evidence of “potential damage” to outside meters using, in part, Columbia Gas’ own admissions. Accordingly, the reasoning of the Initial Decision on the issue of snow and ice safety disregarded substantial evidence in the record and is flawed and in error.

108. Next, as to vandalism, the ALJ wrote that 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 demonstrate that vandalism to a gas meter is not prevalent.” Initial Decision at 26-27.

109. Tate incorporates paragraphs 45-52 herein by reference as if fully set forth. *See* Tate Main Brief at 30 and Tate Reply Brief at 6.

110. The decision of the ALJ on the issue of vandalism is based entirely upon the testimony of Andrew Tubbs that he had never “heard of a situation where we’ve had vandalism to our meters.” Tr. 177. Initial Decision at 26.

111. As stated, the testimony of Mr. Tubbs is vague, as he cites no statistical evidence relating to vandalism and admits that meter vandalism may have happened. In addition, Mr. Tubbs’ testimony is general in nature and does not pertain to York County or the area of the Property. An Initial Decision of the Public Utility Commission should not

be based in part upon what a witness “heard”, which testimony is vague and unreliable hearsay.

112. Moreover, the ALJ disregarded the uncontroverted testimony of Tate that there have been more than 120 incidents of crime within a one to two block radius of the Property location in the past two-plus years (the testimony was in November of 2020), including vandalism, traffic problems and harassment, and Tate further testified that he has had vandalism done to the Property, has had decorations stolen from the Property and has had to call the police to remove harassing type of individuals from the area. Tr. 26. In fact, Tate testified that “vandalism happens in this neighborhood constantly”. (emphasis added). Tr. 26, 37.

113. The issue under the Pennsylvania Code is not whether vandalism is a common problem to meters as found by the ALJ, the issue is whether there is a “high risk” of vandalism, and in the neighborhood of the Property there is a high risk of vandalism to all forms of personal property, including meters. Accordingly, the reasoning of the Initial Decision on the issue of vandalism disregarded substantial evidence in the record and is flawed and in error.

#### **Placement of Meter in Rear of Property**

114. On the issue of a rear meter placement, Columbia admitted that a meter could be placed in the rear via installation of a new main with a service line or extension of a service line to the back. Tr. 174, 201, 257. Raymond Brumley admitted that Columbia Gas did not fully investigate the rear meter option because they failed to research the existence of easements and right-of-way. Tr. 257-258.

115. Moreover, Columbia Gas introduced no evidence as to the cost of the outside rear option. Of course, this is because Columbia Gas admittedly did not fully investigate and research issues surrounding the outside rear location. Tr. 257-258.

116. Despite this, the ALJ disregarded the lack of cost estimates in the record (Initial Decision at 27) and concluded that the decision of Columbia Gas to utilize the right from location is acceptable because Columbia Gas has the right under its Tariff to determine the location of its meters and because Tate allegedly failed to meet its burden of proof. Initial Decision at 28.

117. While the Tariff of Columbia Gas grants it the right to determine the location of its meters, historic properties are protected under Pennsylvania law and by the Pennsylvania Constitution from degradation, diminution, depletion, deterioration and impairment.

118. In this case, the actions of Columbia Gas, and the effect of the Initial Decision and placement of a full sized gas meter at the right front of the Property, will result in the unreasonable degradation, diminution, depletion, deterioration and impairment of a public natural resource, the Property. *See* Tate Main Brief, pages 22-31.

119. Based on the foregoing, Tate met his burden of proof and on this issue. The Initial Decision disregarded substantial evidence and constituted an abuse of discretion and error of law by failing to hold that Columbia Gas committed an abuse of discretion and acted arbitrarily by applying Code Section 59.18 unconstitutionally to Tate and by failing to protect the Property, a public natural resource.

**EXCEPTION TO DECISION AND LEGAL CONCLUSION THAT TATE FAILED  
TO MEET HIS BURDEN OF PROOF TO SHOW THAT COLUMBIA GAS  
SHOULD HAVE TO OBTAIN A CERTIFICATE OF APPROPRIATENESS FROM  
THE CITY OF YORK'S BOARD OF HISTORICAL ARCHITECTURAL REVIEW**

120. Tate incorporates paragraphs 1-119 herein by reference as if fully set forth.

121. The Decision of the ALJ holds that although Article 1731 of the City of York's Codified Ordinances "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 [Gas]...from installing meters in the front of historic properties following the HARB review process." Initial Decision at 18.

122. The ERA imposes upon the Commonwealth government and its agencies, such as the PUC, affirmative duties and obligations to account for and protect public natural resources and historic properties and the ERA imposes like duties and obligations upon all levels of government, including municipalities such as the City of York. We reiterate that "all existing branches and levels of government derive constitutional duties and obligations with respect to the people." Robinson Township v. Commonwealth, 83 A.3d 901, 977 (Pa. 2013).

123. The City of York's Article 1731 does not expressly prohibit gas meters from being placed along the façade of buildings within Historic York, where the Property is located, it merely mandates that those seeking to engage in exterior work must first obtain a Certificate of Appropriateness from the York City Council following consideration of historical values by HARB and the City Council.

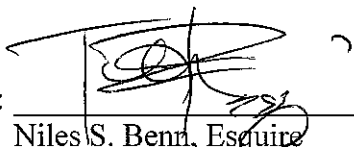
124. Because Pennsylvania's meter regulations, including Section 59.18, provide

no guidance to utility companies as to what factors should be considered in order to protect public natural resources, and because Columbia Gas has failed to implement any standards, guidelines and procedures to protect historic properties such as the Property, Article 1731 fills the empty void to help protect Pennsylvania's public natural resources as required by the Pennsylvania Constitution and caselaw. *See* Tate Main Brief at 19-22; Tate Reply Brief at 9-10.

125. Based on the foregoing, Tate met his burden of proof and on this issue. The Initial Decision disregarded substantial evidence and constituted an abuse of discretion and error of law by failing to hold that Columbia Gas should have to obtain a Certificate of Appropriateness from HARB.

**WHEREFORE**, based on the foregoing Exceptions, Tate respectfully requests that the Public Utility Commission sustain the foregoing Exceptions and sustain the Formal Complaint filed by Bryan Tate against Columbia Gas of Pennsylvania, Inc., at Docket Number C-2020-3018966, dated February 28, 2020.

Respectfully submitted,  
**BENNLAWFIRM**

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**CERTIFICATE OF SERVICE**

I, Terence J. Barna, Esquire, hereby certify that on this 19th day of January, 2022, I served a true and correct copy of the foregoing “Exceptions of Bryan Tate to Initial Decision of Steven K. Haas, Administrative Law Judge, Dated December 30, 2021” that was filed electronically on the Commission’s eFiling system to the following individual(s) via 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):

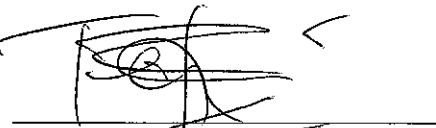
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Respectfully submitted,  
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By: \_\_\_\_\_



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