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January 31, 2022

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Enclosed for filing in the above referenced matter, please find Respondent's, Columbia Gas of Pennsylvania, Inc., Reply to the Exceptions of Complainant, Bryan Tate.

As indicated on the Certificate of Service, a copy has been served on Complainant's attorneys of record.

Should you have any questions, please do not hesitate to contact the undersigned at (717) 210-9625.

Very truly yours,

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

/kak

Enclosure

Cc ALJ Steve Haas (sthaas@pa.gov)
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Certificate of Service (w/enc)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO THE EXCEPTIONS OF COMPLAINANT, BRYAN TATE**

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January 31, 2022

I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”), pursuant to 52 Pa. Code 5.535, hereby respectfully submits the instant Reply to the Exceptions of Complainant, Bryan Tate. In the Initial Decision (“ID”), Administrative Law Judge Steven K. Haas (the “ALJ”) dismissed the Formal Complaint of Bryan Tate (hereafter referred to as “Mr. Tate” or the “Complainant”). Complainant, through counsel, filed Exceptions to the ID on January 19, 2022.

As explained below, the Complainant’s Exceptions are without merit and should be denied. Therefore, Columbia respectfully requests that the Commission deny the Complainant’s Exceptions and adopt the ID.

II. COLUMBIA’S REPLY TO EXCEPTIONS

A. COLUMBIA’S REPLY TO COMPLAINANT’S EXCEPTIONS TO FINDINGS OF FACTS

1. Complainant Exceptions to Finding of Fact 28 and 35

Finding of Fact No. 28: The new medium-pressure main requires that pressure regulators be installed for each of the 61 service connections. Tr. 228.

Finding of Fact No. 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 of the wall of the house approximately 14 inches. Tr. 233.

Complainant argues that these Findings of Fact are “flawed and incomplete” because the ALJ failed to find that there is no particular size requirement for meters.

Complainant's Exceptions, ¶ 2. The Complainant's Exception to these Findings of Fact should be denied because both findings are well supported by the record. Columbia witness Ray Brumley¹, manager of construction for the Company, testified that the new medium pressure main that will be serving Mr. Tate's property necessitates a regulator being installed (Tr. 228), and the need for a regulator being installed was not challenged by the Complainant. Mr. Brumley also testified to the approximate size of the meter Columbia would install at the property (Tr. 233). Complainant, during the hearing, offered no evidence that Columbia has "low-profile" meters to install, or even that such meters exist. It appears from the Complainant's Exceptions, paragraph 4, that Complainant's offer to accept a low-profile meter was raised by Complainant's counsel at the close of the hearing, and again in Complainant's Main Brief and Reply Brief. This does not constitute evidence, nor does it warrant finding Findings of Fact Nos. 28 and 35 "flawed and incomplete."

2. Complainant Exception to Finding of Fact 31

Finding of Fact No. 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.)

Complainant challenges this Finding of Fact as "incomplete" and "misleading," and asserts that it leads to an erroneous legal analysis and conclusion at page 21 of the ID. Complainant's Exception should be denied because Finding of Fact No. 31 is based on record evidence; specifically, the testimony of Columbia witness Raymond Brumley, who

¹ Mr. Brumley testified that he is manager of construction services for Columbia, and in this role he oversees the Company's construction program, including the installation of pipelines and services. Mr. Brumley testified that he has been employed by the Company for 29 years. Tr. at 225.

testified that the infrastructure replacement project Columbia is performing, and which Complainant's property is part of, consisted of 60 other properties, and that all of these properties have had their meters relocated to the outside. Tr. 241. To the extent that Complainant asserts that this Finding of Fact leads to an erroneous legal analysis and conclusion at page 21, Complainant fails to provide any argument to support this claim.

3. Complainant's Exception to Finding of Fact 33

Finding of Fact No. 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.

Complainant asserts that this Finding was based on the "misleading" testimony of Columbia witness Andrew Tubbs, who testified that Complainant was the only individual who filed a "formal complaint" against Columbia regarding the Company's relocation of inside meters to the outside. Complainant's Exceptions, ¶ 9. Complainant asserts that Finding of Fact No. 33 is inaccurate because Columbia witness Russell Beddell testified that other property owners complained about their meters being relocated, citing to page 204 of the hearing transcript. Complainant's Exceptions, ¶ 10. Columbia submits that Complainant's Exception should be denied because there is no error or inconsistency in the testimony of Columbia's witnesses. Whereas Mr. Beddell's testimony on page 2014 of the hearing transcript was referring to property owners who had *initially* reached out to the Company to say "I don't want my meter outside in front of our house"², Mr. Tubbs' testified that the Company had been successful with resolving the concerns of the other

² From Columbia's review of the transcript, Mr. Beddell does not use the word "complaint" nor references formal complaints, so it is unclear why Complainant asserts that Mr. Tubbs' testimony is misleading and conflicts with Mr. Beddell's testimony.

property owners, “but Mr. Tate is the only property owner or customer in York that we have yet to address their concern.” (Tr. 169). And when Mr. Tubbs was asked specifically by Company counsel how many formal complaints besides Mr. Tate’s was filed with the Commission, Mr. Tubbs responded “no formal complaints.” Tr. 180. Thus, Complainant’s assertion that this Finding of Fact is based on misleading testimony is meritless and inconsistent with the actual record in this case, and this Exception should be denied.

4. Exception to Finding of Fact 35

Finding of Fact No. 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 of the wall of the house approximately 14 inches. Tr. 233.

Complainant challenges this finding of fact as “inaccurate and misleading” because Complainant testified that he had measured a meter that Columbia installed in his neighborhood and it was a different measurement than the measurements provided by Columbia witness Brumley during testimony. Complainant’s Exceptions, ¶ 17. Complainant asserts that the ALJ abused his discretion by disregarding Mr. Tate’s testimony regarding the size of the meter Columbia would be installing, because Mr. Tate “actually measured a meter or meters used near the Property.” (Complainant’s Exceptions, ¶ 18.) The ALJ’s determination to adopt the meter measurements offered by Columbia, and reject the Complainant’s measurements, is within the discretion of the ALJ, as the finder of fact, and is not an abuse of discretion. Moreover, the ALJ’s apparent decision to disregard Complainant’s meter measurement is supported by the record. Complainant testified himself that he is not trained in identifying gas facilities, such as

meters and regulators, (Tr. 71-72) and other measurements Complainant offered into evidence during the hearing were later proven to be inaccurate.³ Thus, this Exception should be denied.

5. Complainant's Exception to Finding of Fact 36 (property value)

Finding of Fact No. 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.)

Complainant challenges this finding of fact as "inaccurate" and asserts that the finding disregards substantial evidence in the record. ((Complainant's Exceptions, ¶ 23.) It appears that Complainant's issue with this Finding of Fact stems from the use of the word "may," as opposed to a definitive finding that there would be a negative impact on the resale value of the property. ((Complainant's Exceptions, ¶ 21 & 22). However, the ID does indeed address the evidence submitted by Complainant on the issue of property value, and notes that the evidence was "speculative and provided no basis on which to conclude that relocating the meter to the outside of the property is improper. (ID at 19.) As the ID notes, Mr. Wheeler's testimony includes an acknowledgment that he did not perform a market value analysis of Mr. Tate's property and was unable to say how he would value the property if the meter were relocated to the outside of the property. Thus, the ALJ did not disregard Complainant's evidence; the ALJ assessed the evidence as part of the ID, and determined that it was speculative. Thus, a finding that the property value may be negatively impacted is reasonable and supported by the record. As such, Complainant's Exception to this Finding of Fact should be denied.

6. Exception to Finding of Fact 46

³ Mr. Tate testified that he measured the width of the grocer's alley as being 60 inches wide (Tr. 11), but as shown in Columbia Exhibit 12, the grocer's alley is 30 inches wide, not 60 inches.

Finding of Fact No. 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.

Complainant challenges this Finding of Fact as “incomplete and inaccurate” because Mr. Tate would also accept a low-profile meter. Complainant’s Exceptions, ¶ 25. Complainant, during the hearing, offered no evidence that Columbia has “low-profile” meters which can be installed at his property, or even that such meters exist. Nor did Complainant testify at the hearing that his concerns with locating a meter outside would be resolved if the Company installed a smaller meter. It appears from the Complainant’s Exceptions, paragraph 25, that Complainant’s offer to accept a low-profile meter was only raised by Complainant’s counsel at the close of the hearing, and again in Complainant’s Main Brief and Reply Brief. This does not constitute evidence, nor does it warrant a finding that Finding of Fact No. 46 is “incomplete and inaccurate.” Thus, Complainant’s Exception should be denied.

7. Exception to Finding of Fact 53

Finding of Fact No. 53: In the 30 years Mr. Tate has owned the property of 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.

Complainant challenges this finding of fact as “misleading.” Complainant’s Exceptions, ¶ 32. The Exception acknowledges that Complainant testified that no vehicles have crashed into the area where Columbia proposes to locate the meter, but seems to be suggesting that this 30-year history should be disregarded because “there were no meters in the vicinity of the Property because meters were only recently installed in the neighborhood.” Complainant’s Exceptions, ¶ 31. To the extent that Complainant is

arguing that the property is more likely to be struck by a vehicle once a meter is installed along the outside of the property, and thus the 30-year history of no vehicular strikes is irrelevant, this argument is not supported by any evidence in the record. Further, the suggestion that an outside meter will make it more likely that a vehicle will crash into Complainant's property is being made for the first time in Complainant's Exceptions.

The Complainant further asserts that this finding disregards substantial record evidence, in that Mr. Tate testified that that the short distance between the curb and the front of the property would make the meter vulnerable to being hit and damaged by vehicles. Complainant's Exceptions, ¶ 32. To the contrary, as explained in Columbia's Main Brief, Complainant's testimony suggests that it would be rather difficult for a vehicle to hit a meter located at the front-right the corner of the property. See Columbia's Main Brief at 16. Complainant testified that the street is a one-way, one lane street, with traffic flowing north. He also testified that cars usually park on the street, along the sidewalk. Tr. at 17. He further testified that the property has a front stoop that extend out four feet from the property towards the street (located at the left-front corner of the property) and has a tree planted at the front of the property.⁴ Tr. at. 10, 19, 74. Based on Complainant's description of the street and his property, for a vehicle to hit a meter located at the front-right corner of the property, a vehicle would have to travel over the sidewalk (likely through at least one parked car), between the stoop and tree, at just the right angle, to hit the meter. Further, the record includes the testimony of Columbia witness Mr. Brumley, who testified that it is Columbia's practice to assess the likelihood of a vehicle hitting an exterior meter and regulator prior to this equipment being installed, and that this

⁴ The stoop and tree can be seen in the photograph marked Columbia Hearing Exhibit No. 11.

assessment was performed for this property. Tr. at 235. Thus, Complainant's Exception should be denied because Finding of Fact No. 53 is supported by substantial record evidence.

8. Exception to Finding of Fact 54

Finding of Fact No. 54: Columbia's meters are designed to withstand rain, snow, ice, and corrosion. Tr. at 235-237.

Although Complainant's Exception asserts that this Finding of Fact is "misleading and disregarded substantial evidence," (Complainant's Exceptions, ¶ 44), the Exception fails to acknowledge that this Finding of Fact is supported by record evidence. Specifically, Columbia witness Mr. Brumley testified at the hearing that Columbia's meters are designed to withstand rain, ice snow, and corrosion. Tr. at 235-237. Further, as noted in the ID, Complainant offered no evidence of meters being damaged by exposure to the elements. ID at 25. Thus, the Exception should be denied because this finding is directly supported by record evidence.

9. Exception to Finding of Fact 55

Finding of Fact No. 55: Vandalism of gas meters is not a common problem Tr. 177.

Complainant challenges this Finding of Fact as "misleading", an "abuse of discretion" and a disregard of substantial evidence," asserting that the ALJ disregarded the evidence offered by Complainant and improperly relied on vague and unreliable hearsay to support this finding of fact. Complainant's Exceptions, ¶¶ 49 & 52. In terms of the evidence presented by Complainant, the ID explains that his evidence does not include any examples of actual damage to gas meters, and therefore there is no record evidence to support a finding that meter vandalism is a significant safety concern. ID at

26-27. The ID explains that Columbia witness Mr. Tubbs testified that in his six years with the Company, he had not heard of a single instance where a meter was vandalized, and that vandalism to meters is not prevalent. ID at 26-27. And although not referenced in the ID, Mr. Tubbs' testimony is supported by the testimony of Columbia witness Mr. Brumley, who also addressed Complainant's vandalism concern at the hearing, testifying that he does not share Complainant's concern about vandalism because vandalism of a gas meter is not common, and that he is not aware of any occasion where a Columbia meter was vandalized. Tr. 234. In response to Complainant's claim that the Finding of Fact is based on the hearsay testimony of Mr. Tubbs, no hearsay objection was asserted by Complainant's counsel during the hearing, and thus it is improper for Complainant to raise hearsay in his Exceptions as a basis for disregarding a witness's testimony. With that said, Mr. Tubbs' testimony on the subject of vandalism does not constitute hearsay as it consisted of his knowledge of whether meters are being vandalized and presenting a safety concern for the Company. Tr. 177.

Thus, Complainant's Exception to Finding of Fact No. 55 should be denied.

10. Exception to Finding of Fact 58 and 59

Finding of Fact No. 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.

Finding of Fact No. 59: The property located at 257 East Main Street, York, PA is still served from a low pressure main. Tr. 239.

Complainant Exception to these findings of fact is based solely on the findings having an error in the street name referenced (Main Street versus Market Street).

Such error does not constitute a disregard of substantial evidence, and Complainant's Exceptions to these two Findings of Fact should be denied.

11. Exception to Finding of Fact 60

Finding of Fact No. 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.

Complainant's Exception to this Finding of Fact asserts that the finding is "inaccurate, an abuse of discretion and disregarded substantial evidence because the record established that Columbia did not fully consider all alternative to the type of meters and locations being proposed. Complainant's Exceptions, ¶ 61. It appears that Complainant is specifically challenging whether Columbia considered installing the meter at the rear of the property. The record evidence supports the ALJ's finding that Columbia considered all possible locations for the meter, including locating the meter at the rear of the property. Columbia witness Mr. Brumley testified that placing a meter along the rear of the property is not feasible because the gas meter that serves the property is located on South Pine Street, which is at the front of the property. Tr. at 230. Witness Brumley testified that there is not a gas main at the rear of the building to which a meter and service line could be connected. Tr. at 230. Thus, for the meter to be located at the rear of the property, Columbia would either need to construct a new gas main behind the property or extend a service line from the main located on South Pine Street through the breezeway to the rear of the property. Tr. at 185. The option of constructing a new gas main along the rear of the property is not reasonable due to the expense of constructing mains, particularly when the main is not necessary to provide service to any customer, and the path of any new main would involve right-of-way issues. Tr. at 232.

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

In response to Complainant's statement that Columbia advised Mr. Tate that it would be "too much work" (Complainant's Exceptions, ¶ 57) to install the meter at the rear of the property, Columbia notes that despite the quotations around the words 'too much work,' this is not a quote from any of Columbia's witnesses.

Based on the foregoing, as well as those explained in the ID, Complainant's Exception to Finding of Fact No. 60 should be denied.

B. COLUMBIA'S REPLIES TO COMPLAINANT'S EXCEPTIONS TO DECISIONS AND LEGAL CONCLUSIONS

1. Complainant's Exception to Decision and Legal Conclusion that Mr. 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.

As indicated by the ID, at page 20, the record in this case demonstrates that Columbia's meter and regulator locating practices include procedures to protect the aesthetic value of historic properties. Columbia witness Andrew Tubbs testified that Columbia takes the fact that a building has been marked as a historic building or is eligible to be on the historic register very seriously. Tr. at 169-170. When locating a meter and regulator for historic buildings, Columbia sends out personnel to view the property and

speak with customers regarding the meter location. Tr. at 169. If a customer informs Columbia that he/she has concerns or objections over the location of the meter, the Company investigates alternative locations and, if an alternative location is not feasible, the Company offers options that address the aesthetics of the meter, such as painting the meter, covering the meter with a screen, or planting greenery around the meter. Tr. at 169-170. Regarding Complainant's property specifically, Columbia followed this process but determined that there were no other feasible locations to locate the meter and regulator, and the Complainant rejected the Company's offer to paint the meter and regulator to match the building, and also rejected Columbia's offer to cover the gas equipment with a decorative screen. Tr. at 201-202. Further, the ID also notes the testimony of Columbia witness Ray Brumley, who testified that locating meters on the outside of a structure is a safer practice than placing a meter inside, as outside meters permit any leaking gas to flow out into the atmosphere rather than accumulate inside a building, and are more easily accessible in event of an emergency. ID at 20-21. And although the ID does note that the record contains evidence that outside meters may have a negative impact on the aesthetics of historical buildings, the ID finds that the safety considerations presented by Columbia outweigh the aesthetic concerns of the Complainant. ID at 21. Complainant, however, offered no credible evidence that Columbia abused its discretion or acted arbitrarily in determining that the meter at his property should be located along the front of the property, or that Columbia's safety considerations are arbitrary or unwarranted.

2. Complainant's Exception to Decision and Legal Conclusion that Mr. Tate failed to meet his burden of proof that Columbia Gas committed an abuse of discretion and acted arbitrary because Columbia Gas applied Section 59.18 unconstitutionally to Mr. Tate by refusing to

protect against the actual or likely degradation, deterioration and impairment of Mr. Tate's property, a public natural resource.

In his Exceptions to the ID, Complainant asserts that the ALJ disregarded substantial evidence and committed an error of law by failing to find that Columbia committed an abuse of discretion and acted arbitrarily by applying Section 59.18 unconstitutionally by not implementing procedures to protect historic properties. Complainant's Exceptions, ¶ 119. As Columbia argued in its Reply Brief, pages 3-5, Columbia is not a state actor, and therefore its actions cannot be held to violate the Pennsylvania Constitution. The Pennsylvania Supreme Court has stated that the Declaration of Rights contained in Article I of the Pennsylvania Constitution is a limitation on the power of state government, and does not govern the relationship of private individuals. *See Western Pa. Socialist Workers v. Connecticut General Life Insurance Company*, 515 A.2d 1331, 1335-36 (1986). Thus, if Columbia is not a state actor, the Company's actions cannot be found to be in violation of the Pennsylvania Constitution.

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

All of petitioner's arguments taken together show no more than that Metropolitan was a heavily regulated, privately owned utility, enjoying at least a partial monopoly in the providing of electrical service within its

territory, and that it elected to terminate service to petitioner in a manner which the Pennsylvania Public Utility Commission found permissible under state law. Under our decision this is not sufficient to connect the State of Pennsylvania with respondent's action so as to make the latter's conduct attributable to the State for purposes of the Fourteenth Amendment.

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

With that said, as the ALJ properly recognized in the ID at page 20, and as discussed immediately above, the record in this case contains substantial evidence that Columbia’s meter and regulator locating practices include procedures to protect the aesthetic value of historic properties, and that Columbia’s safety considerations are a valid consideration for locating Complainant’s meter outside. ID at 20-21. As such, Complainant’s Exception should be denied.

3. Complainant's Exception to Decision and legal conclusion that Mr. 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 Historic Architectural Review

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

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

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

1731.07 PRIOR COUNCIL APPROVAL OF PERMIT ISSUANCE.

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

(a) Any exterior work that can be seen from the public way must be approved by HARB prior to the start of work whether a building permit is required or not.

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

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

Art. 1731.07.

Article 1731 is not applicable to regulated public utility companies, specifically natural gas distribution companies, because it is preempted by Section 59.18 of the

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

As such, the ALJ's determination that Article 1731 is preempted by the Section 59.18 and Columbia is exempt from complying with the provisions of Article 1731 is proper. ID at 18.

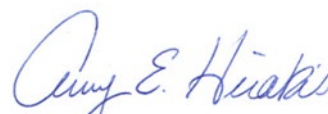
III. CONCLUSION

WHEREFORE, for all of the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Complainant and adopt the Initial Decision.

Respectfully submitted,

COLUMBIA GAS OF PENNSYLVANIA, INC.

By:



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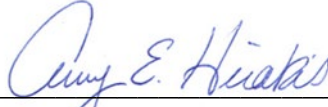
January 31, 2022

CERTIFICATE OF SERVICE

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

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Date: January 31, 2022



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