PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held October 10, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Bryan Tate C-2020-3018966

v.

Columbia Gas of Pennsylvania, Inc.

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Bryan Tate (Mr. Tate or Complainant) on January 19, 2022, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Steven K. Haas, issued on December 30, 2021, in the above-captioned proceeding. The Initial Decision dismissed the Formal Complaint (Complaint), which was filed by the Complainant on March 2, 2020, against Columbia Gas of Pennsylvania, Inc. (Columbia or Company). For the reasons stated below, we will grant the Exceptions, in part, deny them, in part, and adopt the Initial Decision, as modified, which dismisses the Complaint, consistent with this Opinion and Order.

I. History of Proceeding

In his Complaint, Mr. Tate challenged Columbia's decision to move a gas meter from inside his property to the outside front of the structure. Mr. Tate alleged that the Company failed to consider the historic exemption contained in the Commission's regulations by demanding that the meter be relocated to the outside of the building located in an historic district in the City of York, Pennsylvania (City of York or City). The Complainant further alleged that Columbia failed to adequately communicate information about the meter replacement project in the street in front of the Complainant's property and that moving the meter to the outside front of the building will create a safety hazard. For relief, Mr. Tate requested 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 the Complaint averring that it informed Mr. Tate about the beginning of its infrastructure improvement project to upgrade the gas main and lines serving 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 the allegation of inadequate communication with property owners in the City of York prior to relocating meters to the outsides of properties. Accordingly, Columbia requested that Mr. Tate's Complaint be denied.

Telephonic hearings convened on November 10 and November 12, 2020. The Complainant appeared and was represented by counsel, who presented the testimony of 7 witnesses and offered 35 exhibits, which were admitted into the record. *See*, Tr. at 2-4, 275-76. Columbia appeared and was represented by counsel, who presented the testimony of 3 witnesses and offered 11 exhibits which were admitted into the record. *Id*. The hearings produced a transcript of 295 pages.[1]

Thereafter, main briefs and reply briefs were filed and the record was closed on August 30, 2021. By Initial Decision issued on December 30, 2021, ALJ Haas dismissed the Complaint, finding that Mr. Tate failed to prove that the Company violated a statute, regulation, or order over which the Commission has jurisdiction.

[1] References to the transcript herein are to the version received by the Commission on April 6, 2021. As discussed by the ALJ in the Initial Decision, there were delays in receiving acceptable versions of the transcripts and hearing exhibits. I.D. at 3. For expediency reasons, the ALJ and the Parties agreed to use a version of the transcript prior to the April 6, 2021 version received by the Commission. As a result, any discrepancies in citations referenced in the Initial Decision, the Exceptions, and the Replies from those referenced in this Opinion and Order are due to the delays in receiving the final transcript.

As noted, above, the Complainant filed Exceptions on January 19, 2022. On January 31, 2022, Columbia filed Replies to Exceptions.[2]

II. Background[3]

Mr. Tate owns the property at issue in this proceeding, which is a single-family dwelling located on Pine Street, in York, Pennsylvania. The property resides in an historic district in York and is eligible to be designated as an historic building. Mr. Tate's gas meter is currently located in the basement and 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. 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.

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. 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. The grocer's alley is 30 inches wide and

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[2] The Commission did not initially act upon the Exceptions filed in this matter due to the intervening appellate court proceedings in *City of Lancaster, et al. v. Pa. PUC*, 284 A.3d 522 (Pa. Cmwlth. 2022), *rev'd*, 313 A.3d 1020 (Pa. 2024) (*City of Lancaster*). In *City of Lancaster*, the Commonwealth Court found that the Commission's regulation at Section 59.18, 52 Pa. Code § 59.18 – which is at issue in this proceeding – improperly vested absolute discretion in natural gas distribution companies (NGDCs), and thus was an unconstitutional delegation of legislative authority. The Commission appealed that decision, and on April 25, 2024, the Pennsylvania Supreme Court reversed the Commonwealth Court decision and remanded the decision for further proceedings consistent with the decision. *City of Lancaster*, 313 A.3d at 1031. On October 2, 2024, the Petitioners in the *City of Lancaster* matter filed a Praecipe to Discontinue the matter before the Commonwealth Court and on October 3, 2024, the Commonwealth Court marked the matter discontinued and closed the matter. Thus, this matter is now ripe for consideration and disposition.

[3] The Background is summarized from the uncontested Findings of Fact contained in the Initial Decision at 4-7 (citations omitted).

approximately 6 feet tall. 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.

In 2019, Columbia was performing a facilities improvement project involving the replacement of approximately 2,000 feet of low-pressure, cast-iron gas main along Pine Street in front of Mr. Tate's house with approximately 1,440 feet of new, medium-pressure, two-inch plastic main pipe. The portion of the main being replaced serves 61 customers. 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.

In order to safely accommodate the increased pressure in the new main, the service lines to the 61 customers need to be replaced. Of the 61 service laterals served from the main in Pine Street, 60 have already been replaced and connected. 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.

III. Discussion

A. Legal Standards

As a preliminary matter, any argument or Exception not specifically delineated shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that Columbia is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by Columbia. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to Columbia. If the evidence presented by Columbia is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to rebut that of Columbia. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Safe, Adequate, and Reasonable Service

Section 1501 of the Code, 66 Pa. C.S. § 1501, 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. 66 Pa. C.S. § 1505.

3. Gas Meter Location

Generally, our regulations (Regulations) at 52 Pa Code § 59.18(a)(1) require all gas meters to be placed outside and above ground. 52 Pa. Code § 59.18(a)(1). However, our Regulations permit a utility to consider placing a meter inside when a building resides in an historic district:

> (d) Inside meter locations.
>
> (1) Inside meter locations shall be considered only when:
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> * * *
>
> (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 Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—11202) or a municipal home rule charter.
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> (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.

52 Pa. Code § 59.18(d).

With respect to customer notice, Section 59.18(a)(2)-(3) of our Regulations provides as follows:

> (a) General Requirements for meter and regulator location. Inside meter locations.
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> * * *
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> (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)(2)-(3).

B. ALJ's Initial Decision[4]

In his Initial Decision, ALJ Haas made sixty Findings of Fact and reached ten Conclusions of Law. I.D. at 3-10, 29-30. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

1. Application of Historic Exemption in 59 Pa. Code § 59.18

Mr. Tate first argued that the Commission's Regulation at Section 59.18 is unconstitutional because it contains no standards, guidelines, or procedures for NGDCs

[4] As an initial matter, the ALJ addressed the Complainant's allegation that Columbia failed to adequately communicate its intentions and information about the project. The ALJ explained that the record evidence showed that the Company provided proper notice of the project to the Complainant. *See*, I.D. at 13-14. The Complainant did not file Exceptions challenging the ALJ's determination about the notice provided by Columbia. Finding the ALJ's reasoning to be supported by substantial evidence in the record, we shall adopt it, without modification.

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 argued that under Pennsylvania's Environmental Rights Amendment, Pa. Const. Art. I, § 27 (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 Art. I, § 27 apply to the Legislature, local governments, and Commonwealth agencies such as the Commission. I.D. at 14.

In response, Columbia argued that this issue is beyond the scope of this proceeding. It argued that this case simply involves a complaint against a natural gas utility and is limited to the issue of whether Columbia violated the Code, a Commission regulation or a Commission order. I.D. at 15.

The ALJ agreed with Columbia that Mr. Tate's constitutional challenge is beyond the scope of this proceeding. Reasoning that Mr. Tate was challenging the legality of Section 59.18 of our Regulations, the ALJ summarized the Commission's process of promulgating the Regulation. 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 had adopted. *See Rulemaking Re Amendment to 52 Pa. Code § 59.18 Meter Location: Final Rulemaking Order*, Docket No. L-2009-2107155 (Final Rulemaking Order entered May 23, 2014). The ALJ explained that the proposed rules and regulations were printed in the *Pennsylvania Bulletin* for public comment, and were reviewed by the Independent Regulatory Review Commission, the House Consumer Affairs Committee, the Senate Consumer Protection and Professional Licensure Committee, the Attorney General's Office, and the Governor's Budget Office. At this stage in the regulatory process, the ALJ determined that all interested parties already had an opportunity to comment on and challenge the proposed Regulations if they so desired. I.D. at 15-16.

The ALJ further reasoned that Section 59.18 of our Regulations was drafted by Commission personnel and submitted for regulatory review and comment by interested parties and reviewing government agencies and offices. However, the ALJ explained, Columbia had no role in the promulgation or ultimate approval of the regulation. According to the ALJ, Mr. Tate raised his constitutional challenge in this Complaint proceeding, essentially requiring that Columbia defend the Commission's promulgation and adoption of the regulation. The ALJ concluded that Columbia is clearly not the proper party for that role and that any constitutional challenge to the legality of a Commission regulation must be brought in the proper forum and with the participation of the proper parties. I.D. at 16.[5]

Mr. Tate next argued that Columbia's meter location determination was improper because the Company is required to first obtain a Certificate of Appropriateness from the City of York's Historical Architectural Review Board (HARB). Mr. Tate cited Section 1731.04 of the Codified Ordinances of York, Pennsylvania, which 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. According to Section 1731.07 of the Codified Ordinances, "[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 argued 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. I.D. at 16-17.

[5] The ALJ noted that Mr. Tate's constitutional challenge was not raised in his Complaint and was raised for the first time in his main brief filed on March 19, 2021. I.D. at 16. However, Commission records indicate that Mr. Tate filed a prehearing Memorandum of Law on July 7, 2020, setting forth similar constitutional arguments.

Mr. Tate further argued that Article 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, Mr. Tate contended, 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. I.D. at 17.

In response, Columbia contended that Section 59.18 of the Commission's Regulations preempts the City's ordinance. It argued that Section 59.18 addresses and regulates where NGDCs may install gas meters and regulators, including in historic districts. According to the Company, this regulation provides NGDCs with the discretion to determine the location of meters and regulators. In contrast, the Company asserted, the City's Article 1731 gives HARB and the City Council the power to override an NGDC's meter location determination in historic districts and is in direct conflict with Section 59.18. Accordingly, Columbia argued that the City's ordinance is preempted by the Commission regulation. I.D. at 17.

On review, the ALJ determined that the City's Article 1731 is preempted by Section 59.18 of the Commission's Regulations, emphasizing the well-settled principle of the Commission's exclusive jurisdiction to regulate public utilities and their facilities. I.D. at 17 (citing, *County of Chester v. Phila. Elec. Co.*, 218 A.2d 331 (Pa. 1966) (*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."); *UGI Utils., Inc. v. City of Reading*, 179 A.3d 624 (Pa. Cmwlth. 2017) (*UGI Utils.*)).

The ALJ further discussed the well-established ruling that local ordinances that conflict with the Commission's regulations are preempted and cannot be applied to regulated public utility companies. I.D. at 17-18 (citing, *UGI Utils.*, 179 A.3d at 629). Moreover, the ALJ stated 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, the ALJ concluded, it is in direct conflict with Section 59.18 of the Commission's Regulations, which gives NGDCs the discretion to locate gas meters and regulators, subject to exclusive oversight by the Commission. I.D. at 18.

Further, the ALJ explained 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. According to the ALJ, it is undisputed 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 ALJ continued, the meters of the 60 other properties involved in Columbia's main replacement project have already been moved to the outside of those properties. I.D. at 18 (citing Tr. at 178, 241).

The ALJ stated that there is no record evidence that either HARB or the City of York tried to enforce Article 1731 against Columbia. Rather, the ALJ reasoned that Mr. Tate's allegations are an apparent attempt to have the Commission-alone enforce a local ordinance on behalf of the City of York despite the City's decision not to enforce it. I.D. at 18.

2. Impact of Meter Relocation

a. Property Value

Mr. Tate argued that placing the meter on the outside of his house will have a negative impact on the value of his property. In support, he presented the testimony of Mr. Michael Wheeler, a real estate sales agent in York County, who opined that the meter relocation may cause a reduction in the property's value of between $5,000 and $10,000. The ALJ stated that, on cross examination, Mr. Wheeler acknowledged that he did not perform a market value analysis of the property to determine its current value. Further, the ALJ noted Mr. Wheeler's inability to say how he would value the property now, if the meter were relocated to the outside front of the property. I.D. at 18-19 (citing Tr. at 112-15).

As a result, the ALJ found Mr. Tate's evidence on this issue to be speculative because it provided no basis on which to conclude that relocating the meter to the outside of the property would be improper. Here, the ALJ highlighted the lack of testimony about the current value of the property and the absence of an estimate of what the value of the property would likely be following the meter relocation. Additionally, the ALJ highlighted that sixty (60) other neighboring properties were involved in the meter relocation but that no record evidence was presented to show that those neighboring property values were negatively impacted by the project. According to the ALJ, Mr. Wheeler merely opined that the value of Mr. Tate's property would decrease. I.D. at 19.

The ALJ further agreed 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 of the Commission's Regulations to be considered by NGDCs in

determining the proper location of gas meters. Rather, the ALJ reasoned that the safety of the property owner and the public is the focus of this regulation. I.D. at 19.

b. Aesthetic Value of Property of Neighborhood

Mr. Tate also argued 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, 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. All of these witnesses argued 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. I.D. at 19-20.

In response, Columbia presented rebuttal testimony that the Company considers a property's designation as an historic property when making meter location decisions. Columbia's witness, Mr. Andrew Tubbs, testified that upon receiving an objection to, or concern about, a proposed meter location in a historic district, the Company will send a representative to the location to discuss those concerns and the proposed meter location with the property owner. According to the Company, Columbia will consider alternative locations, but if 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. The ALJ acknowledged the testimony of Mr. Tubbs, who stated that Columbia had these discussions with Mr. Tate and determined that there were no feasible alternate locations to the one chosen by Columbia. According to the testimony, Mr. Tate rejected the Company's offers to either paint or otherwise cover the meter. I.D. at 20 (citing Tr. at 169-70, 201-02).

Regarding safety considerations implicated by the placement of gas meters, the ALJ cited the testimony of Columbia's witness, Mr. Ray Brumley, Manager of Construction Services. Mr. Brumley testified 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, Mr. Brumley stated that outside meters are, for obvious reasons, more easily accessible by Company personnel or emergency responders in the event of an emergency, than are inside meters. I.D. at 20-21 (citing Tr. at 166, 170).

In considering this testimony, the ALJ reasoned that 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. However, the ALJ found that this evidence is outweighed by the safety considerations expressed by Columbia. The ALJ determined that in the event of a gas meter developing 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. I.D. at 21.

Additionally, the ALJ found Mr. Tate's argument about the diminution of his home's aesthetic appeal and historical significance due to the relocation of his meter to the outside to be 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 outside locations. According to the ALJ's rationale, 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 ALJ stated that the significance of such an impact is greatly minimized by the fact that the 60 other neighboring structures already have meters placed on the outside of

their properties. The ALJ found it unlikely that moving the last of 61 meters to the outside would have much, if any, additional negative impact on the aesthetic and historical appeal of the neighborhood. According to the ALJ, 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. I.D. at 21.

c. Accessibility

Mr. Tate argued 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. I.D. at 22 (citing Tate M.B. at 26; York Fair Housing Ordinance, § 183.03(a)). Mr. Tate asserted that he is currently renting his property on a month-to-month basis to a family for use as a single-family dwelling. According to Mr. Tate, if a person who needs a wheelchair wanted to lease the house from him, he would have to install a ramp to comply with the ordinance. Mr. Tate argued that the Americans with Disabilities Act (ADA) has certain slope requirements for ramps that could be affected by limited space availability for such ramps. Initially, Mr. Tate acknowledged that the ADA guidelines apply to places of public accommodation, and not to individually owned or leased housing in the private sector, including single family homes such as Mr. Tate's property. However, Mr. Tate argued 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. Specifically, Mr. Tate asserted that the City of York adopted construction standards for ramps which contain references to slope ratios for ramps along with width requirements similar to ADA requirements. I.D. at 22 (citing Tate M.B at 27, n.8).

In reply, Columbia argued that Section 59.18 of our Regulations requires that gas pressure regulators must be installed on the outside of properties. For Mr. Tate's property, the Company contended that 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 argued 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. I.D. at 23 (citing Columbia M.B. at 21).

In reviewing the record evidence, the ALJ found it unlikely that Mr. Tate would be able to build a ramp at the location at issue that would comply with the City ordinance and building codes, regardless of whether a gas meter was placed in a location other than in front of Mr. Tate's property. Here, the ALJ referenced the space limitations in front of Mr. Tate's property in relation to the City's slope ratio requirements cited by the Complainant. In conclusion, the ALJ determined 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 the City ordinance and applicable building codes if he was required to install a ramp. Rather, the ALJ reasoned, the record evidence more accurately demonstrates that Mr. Tate would be unable to install any compliant ramp in the location at issue even if there were no meter or regulator located there. *Id*. at 24.

d. Safety Issues

Next, Mr. Tate made four arguments that the installation of the meter on the outside of his property would create safety concerns. First, he contended 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. Second, he asserted that this shortened distance 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.

Third, he argued that outside meters are susceptible to damage from the elements, including ice and snow buildup. Fourth, he proffered that outside gas meters are unsafe because they are subject to vandalism and tampering. I.D. at 24-25, 26, 27 (citing Tate M.B. at 28-30, 33; Tr. at 19-20, 35, 60, 73, 74, 79, 233, 235).

Regarding the first argument pertaining to the reduction in distance between the curb and the façade, Mr. Tate argued that the meter would make it more difficult for disabled neighbors and other citizens to safely pass by. The ALJ concluded that the record evidence did not support this allegation, citing Columbia's testimony that the meter would extend from the house outward a distance of approximately 14 inches. The ALJ explained that this would leave a distance of approximately 8 feet, 5 inches between the meter and the curb. According to the ALJ, there was no record evidence proving that 8 feet, 5 inches is an unsafe width for the safe passage of pedestrians or disabled persons. Additionally, the ALJ noted the evidence that the existing steps leading to Mr. Tate's front door extend out from the house toward the curb approximately 4 feet. Accordingly, the distance between the outer edge of the steps and the curb is approximately 5 feet, 7 inches. The ALJ indicated that this distance is a much narrower width than would exist between an outside meter and the curb. However, the ALJ found no suggestion or record evidence showing this width to be unsafe. Thus, the ALJ concluded that the record evidence simply does not support Mr. Tate's allegation that the meter would result in an unsafe sidewalk width. I.D. at 24-25.

As to the second safety-related argument, Mr. Tate indicated 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. The ALJ highlighted, however, Mr. Tate's testimony acknowledging 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. Further, the ALJ noted Mr. Brumley's testimony 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. According to the ALJ, this feature greatly mitigates risks associated with damaged meters. Thus, the ALJ found Mr. Tate's argument, that the meter would be susceptible to vehicle damage due to its proximity to the street location, to be speculative and unsupported by the record evidence. I.D. at 25.

Regarding the third safety-related argument, Mr. Tate averred that outside meters are susceptible to damage from the elements, including ice and snow buildup, citing his testimony that such exposure renders 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. Mr. Tate argued that Columbia, in providing these cautionary instructions, recognizes the dangers involved with outside meters. The Complainant further testified that outside meters trap leaves, trash, and other debris, thereby creating potential fire hazards and increasing the risk of an explosion. I.D. at 25 (citing Tate M.B. at 29-30; Tr. at 44-45, 60).

In response, Columbia acknowledged that it provides instructions on its website on how to safely clear snow and ice from its meters, which the Company indicated should be kept clear of ice and snow for visibility and access purposes. According to Columbia, its website guidelines 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. Its witness, Mr. Brumley, further testified that the Company's meters are designed to withstand corrosion. In addition, the Company emphasized Mr. Brumley's testimony 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. As further support, Columbia referenced Mr. Brumley's testimony that accumulated leaves and debris near a meter do not cause or create a risk of fire or explosion. I.D. at 26 (citing Tr. at 44-45, 236, 237).

The ALJ determined that the evidence offered by Mr. Tate merely constituted speculation about what he believes could potentially happen due to exposure of outside meters to the weather elements or trash and other debris. According to the ALJ, Mr. Tate provided no evidence about actual harm or damage to actual meters caused by such exposure. The ALJ explained that, in contrast, Columbia presented evidence indicating that exposure to outside elements and other influences simply does not create the significant safety hazards alleged by Mr. Tate. I.D. at 26.

In his fourth argument pertaining to safety concerns due to vandalism or tampering, Mr. Tate 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. He stated these incidents involved actions such as vandalism, traffic problems, and harassment and testified to having decorations stolen from two properties that he owns. According to Mr. Tate, crime and vandalism in the area pose a real danger and risk to property and could adversely affect outside gas meters. I.D. at 26 (citing Tate M.B. at 30; Tr. at 26).

In response, Columbia cited Mr. Tubbs' testimony that in the six years he has been with Columbia, he has never heard of a situation where one of the Company's meters has been vandalized. Although acknowledging that such vandalism could happen, he testified that it is not something that is prevalent with gas meters. I.D. at 26 (citing Tr. at 177).

In evaluating the evidence regarding vandalism in the neighborhood presented by Mr. Tate, the ALJ found that it does not include any examples of actual damage to gas meters. In contrast, the ALJ determined that Columbia presented evidence specific to gas meters that demonstrates that vandalism to a gas meter is not prevalent. Thus, the ALJ found that the record evidence does not support Mr. Tate's argument that meter vandalism is a significant safety concern. I.D. at 26-27.

e. Feasible Alternatives

Mr. Tate argued that Columbia failed to consider feasible alternatives that would have protected the historic character of his house and the neighborhood. According to the Complainant, Columbia could have chosen to locate the new meter at the back of the house or could have kept the meter inside and just installed a regulator on the outside front of the property. Specifically, Mr. Tate asserted there was a suitable location in the back of the house near the back door. I.D. at 27 (citing Tate M.B. at 33; Tr. at 35).

Columbia responded that it took seriously the fact that Mr. Tate's house has been designated an historic building and that it resides in an historic district. The Company asserted that it met with Mr. Tate at his house to discuss and consider alternatives. In particular, Columbia met with Mr. Tate at his house and looking at the front and back of the property, as well as the grocer's alley, in considering suitable locations for the meter. Columbia cited the testimony of Mr. Tate who ultimately acknowledged that a meter could not be located in the grocer's alley next to his house due to space limitations. Moreover, Columbia asserted that after discussions with the Complainant and consideration of proposed alternatives, the Company concluded that the best and safest option was to locate the meter on the outside front of the house. I.D. at 27 (citing Tr. at 167, 170, 282).

Regarding the request for relocating the meter to the rear of the property, Columbia argued that it was not a feasible location. In support, the Company cited to the testimony of its witness, Mr. Brumley, who explained that there is no gas main running behind Mr. Tate's house from which to connect a service line. Mr. Brumley testified that to connect a service 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. I.D. at 27 (citing Tr. at 185, 230).

Although it did not provide cost estimates for such a rear-property placement of the meter, Columbia averred that constructing and installing a new gas main behind Mr. Tate's house for the purpose of serving just one customer would be unreasonable due to the added expense. The Company further argued that such a rear-property placement would first involve installing a much longer service line to reach a meter in the back of the house. According to Columbia, it would not be 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 continued that such a project alternative would likely require it to obtain right-of-way agreements from multiple parties, all of which would involve added expenses. In its evaluation, Columbia argued that it considered 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, similar to the sixty other properties in the project area. I.D. at 27-28 (citing Columbia M.B. at 11-12; Tr. at 169-70, 232).

In evaluating the arguments about the feasibility of alternative locations, the ALJ cited to Columbia's tariff pertaining to the right to determine the location of its gas meters. Under Tariff Rule 4.6.1.2, "[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. . .." I.D. at 28 (citing Supplement No. 259 to Tariff Gas – Pa. P.U.C. No. 9). According to the ALJ, Columbia's denial of Mr. Tate's request, by itself, does not mean that the Company failed to consider indoor placement consistent with Section 59.18 of the Commission's Regulations. The ALJ reasoned that this regulation does not require a utility to place a meter indoors, even in historic districts. Additionally, the ALJ found that the Complainant failed to satisfy his burden of proof that Columbia violated the

regulation. Moreover, the ALJ determined that 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. I.D. at 28.

C. Exceptions, Replies, and Dispositions

Mr. Tate filed nineteen (19) Exceptions to the ALJ's Initial Decision challenging numerous Findings of Fact (FOFs) and several legal conclusions.[6] These Exceptions are discussed, in detail, below.

1. Application of Historic Exemption in 59 Pa. Code § 59.18

a. Exceptions and Replies

In his twelfth Exception, Mr. Tate objects to the legal conclusion that he failed to satisfy his burden of proof to show that Columbia committed an abuse of discretion and acted arbitrarily by failing to implement standards, guidelines, and procedures to protect historic properties. Specifically, Mr. Tate raises constitutional objections to Section 59.18 of our Regulations, citing, in part, Art. I, § 27 and alleging failures of the Commission and Columbia to implement any standards, guidelines, and procedures to protect historic properties when considering such issues as meter replacement. Exc. at 12-16.

[6] We note that the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires each exception to be numbered. 52 Pa. Code § 5.533(b). Pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), we will disregard this procedural defect and number them in the order as they appear in the Complainant's document. However, for clarity, we will address them pursuant to the order of issues as outlined in the Initial Decision as summarized above.

Mr. Tate argues that the Pennsylvania Constitution imposes upon the Commission "a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether those harms might result from direct state action *or from actions of private parties*." Exc. at 13 ((citing Art. I, § 27) (emphasis in original by Mr. Tate)). According to Mr. Tate, historical sites and buildings such as his are considered a part of Pennsylvania's public natural resources for purposes of Art. I, § 27. Mr. Tate contends that the Commission failed to address these constitutional considerations by granting unfettered authority and discretion to NGDCs – under Section 59.18 of our Regulations and Commission-approved tariffs – without any standards, guidelines, or procedures in place to regulate the conduct of utility companies and to protect historic assets from arbitrary and capricious decision making, all in violation of 66 Pa.C.S. § 501(b). Exc. at 15.

Mr. Tate avers that, although Columbia contended that it considers alternative locations when an historic exemption is raised, there is no evidence of Columbia implementing any standards, guidelines, and procedures to actually protect historic properties such as Mr. Tate's home. In support of this contention, Mr. Tate states that Columbia made clear through testimony that it has a clear preference to have outside meters and that it will not consider viable alternatives because it involves too much work. Exc. at 14.

Mr. Tate argues that these circumstances are the result of the Commission improperly delegating its constitutional obligations to private entities such as Columbia, who are isolated from the political process and shielded from political accountability, all

in violation of the clear mandate of Art. I, § 27 and local ordinances such as Article 1731 of the City of York's Codified Ordinances. Exc. at 15.[7]

In its replies to Mr. Tate's constitutional objections, Columbia argues that it is not a state actor and, therefore, its actions cannot be held to violate the Pennsylvania Constitution. R. Exc. at 13 (citing *Western Pa. Socialist Workers v. Connecticut General Life Insurance Company*, 515 A.2d 1331, 1335-36 (Pa. 1986) (*Western Pa. Socialist Workers*) (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)). Thus, Columbia contends, if it is not a state actor, the Company's actions cannot be found to be in violation of the Pennsylvania Constitution. Further, Columbia argues that its status does not convert from a private entity to a state actor merely because it is a regulated entity that carries out duties established by the Commission. R. Exc. at 13 (citing *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-53 (1974) (*Jackson*) (Pennsylvania public utility company did not constitute a state actor simply because the utility's actions were carried out under procedures authorized and approved by the Commission); and *Staino v. Pennsylvania State Horse Racing Commission*, 512 A.2d 75, 77 (Pa. Cmwlth. 1986) (*Staino*) ("[T]he fact that a private party follows a procedure outlined in a statute does not convert the private action into state action.")).

Columbia proffers that, although it is responsible for locating and installing its gas meters and regulators in compliance with Section 59.18 of our Regulations, such

[7] In his thirteenth Exception, Mr. Tate makes general overlapping constitutional objections that Columbia applied Section 59.18 unconstitutionally by refusing to protect against the actual or likely degradation, deterioration and impairment of Mr. Tate's property, a natural resource. Exc. at 16. He adds five additional sub-arguments pertaining to Property Value, Aesthetic Value, Compliance with ADA and York Fair Housing Ordinance, Safety Issues, and Placement of Meter in Rear of Property. Exc. at 16-24. We will address these sub-arguments as separate Exceptions, below.

action does not constitute a state action or convert it into a state actor. Columbia argues that it is merely acting in its capacity as a NGDC to locate and install its gas facilities in a safe location that complies with Commission regulations. As applied to this case, Columbia contends that the ALJ properly recognized that there is substantial evidence that the Company'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 the Complainant's meter outside. As such, Columbia argues that the Complainant's Exception should be denied. R. Exc. at 14 (citing I.D. at 20-21).

In his nineteenth Exception, Mr. Tate objects to the conclusion that he failed to satisfy his burden of proof to show that Columbia should have obtained a Certificate of Appropriateness from the City's HARB. Specifically, Mr. Tate finds fault with the holding that although Article 1731 of the City's Codified Ordinance "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 … from installing meters in the front of historic properties following HARB review process." Exc. at 25 (citing I.D. at 18).

According to Mr. Tate, Article 1731 does not expressly prohibit gas meters from being placed along the façade of buildings within the historic sections of York but merely mandates a Certificate of Appropriateness before engaging in exterior work following a consideration of historical values by HARB and the City Council. Mr. Tate submits that Article 1731 fills the empty void in Section 59.18, which contains no guidance to utility companies as to what factors should be considered to protect public natural resources. Mr. Tate avers that Article 1731 helps protect Pennsylvania's public resources as required by Art. I, § 27 and caselaw. Thus, Mr. Tate proffers that the Initial Decision improperly failed to hold that Columbia should have obtained a Certificate of Appropriateness from HARB. Exc. at 26.

In reply to the nineteenth Exception, Columbia argues that it is well-established that the Commission has exclusive authority to regulate public utilities' facilities. R. Exc. at 15 (citing *Cnty. of Chester v. Phila. Elec. Co.*, 218 A.2d 331, 332-333 (Pa. 1966) (*County of Chester*); *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) (*PECO Energy*); *UGI Utils., Inc. v. City of Reading*, 179 A.3d 624, 629-630 (Pa. Cmwlth. 2017) (*UGI Utils*.)).

Columbia argues that Article 1731 is not applicable to regulated public utility companies, specifically NGDCs, because it is preempted by Section 59.18 of our Regulations. The Company asserts that 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. According to Columbia, Article 1731, if applicable to NGDCs, 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. Columbia contends that this puts Article 1731 in direct conflict with Section 59.18 of our Regulations, as only the Commission has the authority to determine whether the NGDC's meter and regulator location are proper and reasonable. As such, Columbia asserts that the ALJ's determination that Article 1731 is preempted by Section 59.18 of our Regulations, and that Columbia is exempt from complying with the provisions of Article 1731, is proper. R. Exc. 16-17.

b. Disposition

In the twelfth and thirteenth Exceptions, Mr. Tate essentially raises three constitutional objections to the Initial Decision. First, Mr. Tate argues that the Commission, in promulgating Section 59.18, improperly delegated constitutional obligations under Art. I, § 27 to private NGDCs such as Columbia, which are isolated from the political process and shielded from political accountability. Second, Mr. Tate

asserts that both the Commission and Columbia violated Art. I, § 27 by failing to implement any standards to protect Pennsylvania natural public resources such as the Complainant's historic property when considering meter placements. Third, Mr. Tate argues that Columbia applied Section 59.18 of our Regulations in an unconstitutional manner to his property. Exc. at 15-16.

We find that all three of the constitutional objections lack merit.

Regarding the first argument pertaining to improper delegation, the Pennsylvania Supreme Court recently determined that the Commission, in promulgating Section 59.18, did not unconstitutionally delegate unfettered authority to NGDCs to determine the location of gas meters in historic districts. *City of Lancaster*, 313 A.3d at 1029. Rather, the regulation is merely a regulatory act under the Commission's authority limiting placement of gas meters in certain locations for the safety of the public. The Supreme Court determined that "the location of gas meters in historic districts is subject to NGDCs' – not the [Commission's] – discretion in their role as public utilities." *Id*.

The *City of Lancaster* decision is also applicable to the second argument regarding the alleged failure of the Commission to implement any standards to protect Pennsylvania natural public resources. As noted above, the discretion to locate gas meters in historic districts remains with an NGDC and not with the Commission. *Id*. Thus, Mr. Tate's contention that the Commission committed a constitutional violation by failing to implement location standards for gas meters in historic districts over which it does not have discretion to do so lacks legal support.

Moreover, to the extent that Mr. Tate is challenging the legality of Section 59.18 of our Regulations, this complaint proceeding is not the proper forum to do so. In the Initial Decision, the ALJ correctly reasoned that: "[b]y raising his

constitutional challenge in this complaint proceeding, Mr. Tate is essentially requiring that Columbia defend the legality of 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 allegation that its regulation is unconstitutional, not Columbia." I.D. at 16 (citing *Hommrich v. Pa. PUC*, 2017 WL 3203437 (Pa. Cmwlth. 2017) (Unreported Memorandum Opinion) (Public utilities do not have "…a right or interest regarding the validity of the regulations," but rather "merely apply the law in effect.")).[8]

Mr. Tate's additional argument that Columbia itself violated Art. I, § 27 by failing to implement such location standards is also without merit. Here, Columbia is not a state actor and, therefore, its actions cannot be held to violate the Pennsylvania Constitution. *See Western Pa. Socialist Workers*, 515 A.2d at 1335-36. Moreover, the Company's status does not convert from a private entity to a state actor merely because it is a regulated entity that carries out duties established by the Commission. *Jackson*, 419 U.S. at 351-53. *See also*, *Staino*, 512 A.2d at 77.

The Complainant's third contention, that Columbia unconstitutionally applied Section 59.18, likewise fails because the Company is not a state actor. Therefore, Columbia cannot be deemed to have committed a constitutional violation by its application of standards pertaining to the placement of meters pursuant to Section 59.18. Finding no support for allegations contained in the twelfth and thirteenth Exceptions, we shall deny them.

[8] An unreported opinion of the Commonwealth Court may be cited for its persuasive value, and not as binding precedent. 210 Pa. Code § 69.414.

Regarding the nineteenth Exception pertaining to Columbia's failure to obtain a Certificate of Appropriateness from HARB, we find no error in the Initial Decision determination on this issue. That is, we agree with the ALJ's rationale that the City's Article 1731 conflicts with Section 59.18 of our Regulations, which gives NGDCs the discretion to locate gas meters and regulators subject to the exclusive oversight of the Commission.

Mr. Tate argues that Article 1731 does not directly conflict with Section 59.18, but serves to fill in the void in the regulation to provide guidance to NGDCs on how to protect historic resources. A local ordinance such as Article 1731, however, cannot serve such a gap-filling role particularly when it implicates the approval of the location of public utility facilities. It is evident that if Article 1731 were applicable to NGDCs, it would provide HARB and the York City Council with the power to authorize and to potentially override a utility company determination of where to locate its utility facilities. Pennsylvania caselaw is clear that such local action is preempted by the Commission's jurisdiction in such matters.[9] Accordingly, we shall deny the nineteenth Exception and adopt the ALJ's conclusion that Article 1731 is preempted by Section 59.18 of our Regulations.

[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. Additionally, the Commission's exclusive jurisdiction also extends to issues relating to the reasonableness, safety, adequacy and sufficiency of those facilities. *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 the Commission's vegetation management requirements near transmission lines).

2. Impact of Meter Relocation

a. Property Value

(1) Exceptions and Replies

In his fifth Exception, Mr. Tate objects to FOF No. 36, which provided that installation of a gas meter outside his property "may have a negative impact on its resale value." Exc. at 4 (citing I.D. at 7). Mr. Tate argues that this FOF is not in accord with the uncontroverted testimony of his witness, Mr. Wheeler, who stated that having an outside meter placement would significantly reduce the attraction of the property and would reduce the value by $5,000 to $10,000. Exc. at 4-5 (citing Tr. at 108-09).

The Complainant contends that Mr. Wheeler did not do a market analysis to determine the property's current list value, but that the absence of such an analysis would not impact his testimony as to the reduction in value and attractiveness of the property. Thus, Mr. Tate argues that FOF No. 36 is inaccurate and should be disregarded. Exc. at 5.

In his fourteenth Exception, Mr. Tate also argues that the ALJ improperly discounted Mr. Wheeler's testimony as to property value as being too speculative. He further objects to the conclusion in the Initial Decision stating that safety of the property owner is the focus of meter replacement in 52 Pa. Code § 59.18, not a decrease in property value. Exc. at 16-17 (citing I.D. at 19).

Although Mr. Tate concedes that consumer safety is important to any decision relative to meter placement, he asserts that the protection of public natural resources, such as his property, as guaranteed by Art. I, § 27, is also important. According to Mr. Tate, a utility such as Columbia could merely cite to safety as

conclusive to any challenge to a meter location involving an historic property and the historic exemption under Section 59.18 would be eviscerated. Moreover, Mr. Tate contends that there will be safety issues wherever the meter is ultimately placed and that it would not be unsafe to leave the meter in his basement. Thus, Mr. Tate argues that the reasoning in the Initial Decision as to property value is flawed and in error. Exc. at 17-18.

In its replies to these Exceptions, Columbia contends that the Complainant's issue with FOF No. 36 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. Columbia argues, however, that the Initial Decision does indeed address the evidence submitted by the 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. R. Exc. at 5 (citing I.D. at 19).

The Company contends that the Initial Decision correctly noted that Mr. Wheeler's testimony acknowledged 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, Columbia submits that the ALJ did not disregard the Complainant's evidence; rather, the Columbia argues that the ALJ assessed the evidence and determined that it was speculative. Accordingly, the Company contends that the finding as to property value was reasonable and supported by the record. R. Exc. at 5.

Columbia also argues that the ALJ properly recognized that 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 the safety considerations are a valid consideration for locating the Complainant's meter

outside. As such, Columbia contends that the Complainant's Exceptions should be denied. R. Exc. at 14.

(2) Disposition

Upon review, we find that FOF No. 36 is supported by substantial evidence in the record. Considering the absence of any market analysis to support Mr. Wheeler's testimony, it was appropriate for the ALJ to make the findings, as described in FOF No. 36. The ALJ gave proper weight to Mr. Wheeler's unsupported opinion testimony and to do otherwise, as requested by Mr. Tate – that is, to make a definitive finding of negative impact on resale value – could be subject to reversal on any further appeal of such a decision. Accordingly, we shall deny the fifth and fourteenth Exceptions.

b. Aesthetic Value of Property of Neighborhood

(1) Exceptions and Replies

In his first, fourth, and sixth Exceptions, Mr. Tate objects to FOFs pertaining to the size of the meter to be relocated to the front of his property. Exc. at 1-2, 4-5 (citing I.D. at 6-8, FOF Nos. 28, 35, and 46). Mr. Tate's third Exception also objects to the FOF pertaining to references of other complaints in his neighborhood. Exc. at 2 (citing I.D. at 7, FOF No. 33). Mr. Tate proffers further objections based on aesthetic value concerns impacting his property and his neighborhood in his fifteenth Exception. Exc. at 18-19.

In his first Exception, Mr. Tate argues that FOF No. 28, which stated that pressure regulators need to be installed, and FOF No. 35, which stated that Columbia wants to install a certain size meter, are flawed and incomplete. The Complainant asserts that, although regulations require installation of a regulator and the Code generally

requires meters to be installed outside, the ALJ failed to clarify that there is no particular size requirement for meters. According to Mr. Tate, Columbia could install a low-profile meter to accommodate the nature of his property. Exc. at 1-2.

In response to the first Exception, Columbia argues that FOF Nos. 28 and 35 are well-supported by the record. In this regard, Columbia asserts that its witness, Mr. Brumley, 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, and the need for a regulator being installed was not challenged by the Complainant. Mr. Brumley also testified as to the approximate size of the meter Columbia would install at the property. R. Exc. at 2 (citing Tr. at 228 and 233). Additionally, Columbia contends that the Complainant, during the hearing, offered no evidence that Columbia has low-profile meters to install, or even that such meters exist. According to Columbia, the Complainant's offer to accept a low-profile meter was raised by the Complainant's counsel at the close of the hearing, and again in the Complainant's Main Brief and Reply Brief. Columbia argues that this does not constitute evidence, nor does it warrant finding FOF Nos. 28 and 35 "flawed and incomplete." R. Exc. at 2.

Regarding his fourth Exception, Mr. Tate objects to FOF No. 35, which stated that the proposed meter would measure 24 inches high, 14 inches wide, and approximately 14 inches from the house wall. The Complainant argues that this is inaccurate and misleading because it refers to a typical size meter and does not refer to the size of the meter Columbia is proposing to use at his property. According to Mr. Tate, he was told by Columbia that the meter it proposed to install at his property was similar to the one installed at other properties in his neighborhood. Mr. Tate testified that his measurements of a meter or meters in his neighborhood were 24 inches high, 24 inches wide, and 18 inches from the house. Thus, the Complainant argues that his testimony is more credible because he measured a meter or meters near his property. Exc. at 4.

In reply to the fourth Exception, Columbia argues that 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 Company asserts that the ALJ's apparent decision to disregard the Complainant's meter measurement is supported by the record. Columbia notes that the Complainant testified, himself, that he is not trained in identifying gas facilities, such as meters and regulators, and other measurements Mr. Tate offered into evidence during the hearing pertaining to the size of the grocer's alley next to his property were later proven to be inaccurate. R. Exc. at 4-5 (citing Tr. at 71-72).

As to the sixth Exception, Mr. Tate objects to FOF No. 46, which stated that the Complainant seeks to have his meter remain in the basement or be placed at the rear of the property. Mr. Tate states that this FOF is incomplete and inaccurate because he also expressed at the hearing his willingness to accept a low-profile meter at the front of his property. Exc. at 5.

In response to the sixth Exception, Columbia proffers arguments similar to its reply to Mr. Tate's allegations in his fourth Exception, *supra* – that the Complainant offered no evidence about low-profile meters. Rather, the Company contends that Mr. Tate's counsel only raised the issue of low-profile meters at the close of the hearing and during briefing, which does not constitute evidence. Thus, Columbia argues that the sixth Exception should also be denied. R. Exc. at 6.

Moving to the third Exception, Mr. Tate objects to FOF No. 33, which stated that none of the owners of the 60 other properties included as part of the main replacement project filed formal complaints. According to Mr. Tate, this FOF was based on misleading testimony of Columbia's witness, Mr. Tubbs, who stated that there were no formal complaints other than the Complainant's. Mr. Tate argues such a finding based on this testimony is incomplete, misleading, and inaccurate because Columbia's other

witness, Mr. Russell Bedell, testified that multiple Columbia customers complained about an outside front meter placement. In support, Mr. Tate avers that Mr. Bedell had to create a complaint form for other customers to use. Additionally, the Complainant contends that testimony from other entities, such as Preservation Pennsylvania and HARB, received numerous complaints from homeowners complaining about the outside property meter installations. Exc. at 3.

In its reply, Columbia submits that the Complainant's third Exception should be denied because there is no error or inconsistency in the testimony of the Company's witnesses. In support, Columbia explains that Mr. Beddell's testimony 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." R. Exc. at 3 (citing Tr. at 204). Whereas Mr. Tubbs testified that the Company had been successful with resolving the concerns of the other property owners, "but Mr. Tate is the only property owner or customer in York that we have yet to address their concern." R. Exc. at 3 (citing Tr. at 169). The Company adds that when Mr. Tubbs was asked specifically how many formal complaints besides Mr. Tate's were filed with the Commission, Mr. Tubbs responded that there were "no formal complaints." R. Exc. at 4 (quoting Tr. at 180). Moreover, Columbia explains that Mr. Beddell did not use the word "complaint" nor reference formal complaints, so the Complainant's allegations lack support. R. Exc. at 3.

Regarding the fifteenth Exception, Mr. Tate objects to the ALJ's holding that although 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…" Exc. at 18 (citing I.D. at 21).

Mr. Tate further contends that the ALJ improperly held that the impact on the aesthetic appeal and historic significance is greatly minimized by the 60 other neighboring structures already having meters placed on the outside. Exc. at 18. Mr. Tate finds this conclusion objectionable based on the testimony of Columbia's witnesses, who stated that some of the 60 meters were installed in locations other than the outside front of locations. For example, Mr. Tate cites to Mr. Bedell's testimony confirming that some of the meters were installed in locations other than the front of the properties including the breezeway between buildings. Additionally, Mr. Tate cites to the testimony of Mr. Tubbs, who acknowledged that the meters are not attractive pieces of equipment. *Id*. at 18-19 (citing Tr. at 165 and 204).

In its response, Columbia asserts that the Complainant's fifteenth Exception should also be denied because the record contains substantial evidence in support of its meter relocation practices. R. Exc. at 14.

(2) Disposition

Upon review, we shall deny the first, fourth, and sixth Exceptions which object to specific findings by the ALJ. In each of these findings – FOF Nos. 28, 35, and 46 pertaining to the size and location of the meters and the need for regulators, the ALJ's determinations were sufficiently supported by the evidentiary record citing to the testimony of Columbia's witness, Mr. Brumley. *See, e.g.*, Tr. at 228 and 233. The fact that the ALJ adopted the testimony of Columbia's witness as to the size of the proposed meter and declined to accept Mr. Tate's testimony does not render the FOF invalid. In this instance, it was within the ALJ's discretion to reject the Complainant's testimony given Mr. Tate's admission that he is not trained in identifying gas facilities, such as meters and regulators, and the fact that the Complainant offered evidence about the size of his grocer's alley next to his property that was later determined to be inaccurate. Thus, we reject Mr. Tate's contention that FOF Nos. 28 and 35 are "flawed and incomplete."

Likewise, Mr. Tate's objection to FOF No. 46, based on his argument that he requested a low-profile meter be installed in the front of his property as an alternative meter location, does not render the finding as faulty or lacking substantial evidence in the record. As explained by the Company, Mr. Tate offered no evidence about low-profile meters during the evidentiary hearing. There being no evidence to support Mr. Tate's allegation, it was proper for the ALJ to make FOF No. 46, as described, without reference to the alleged, but unsupported, existence of such a low-profile meter.

We shall also deny the third Exception, which objected to FOF No. 33. Based on our review, this finding accurately stated that none of the other 60 properties included as part of the main replacement project filed formal complaints. We read this finding as referring to the absence of formal complaints filed with the Commission. *See*, Tr. at 180. We reject Mr. Tate's argument that this finding is somehow inaccurate due to assertions that some of the other 60 property owners may have voiced objections to the meter relocation outside of the context of a Commission proceeding.

In the Initial Decision, ALJ Haas discussed the evidence pertaining to Columbia's procedures when evaluating meter location decisions involving properties with historic designations and its interactions with Mr. Tate as follows:

- 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. at 170.
- The Company will consider alternative locations. Tr. at 170-71.
- 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. at 170-73.

- Columbia had discussions with Mr. Tate and determined that there were no feasible alternate locations to the one chosen by Columbia. Tr. at 170.
- Mr. Tate rejected the Company's offers to either paint or otherwise cover the meter. Tr. at 201-204.

See, I.D. at 20.

The ALJ further evaluated the safety considerations in favor of outside meter locations in the event of a gas leak. In such a situation, gas would leak into the atmosphere rather than accumulating inside a structure. According to the ALJ, outside meters are more easily accessible by Company personnel or emergency responders in the event of an emergency. I.D. at 21 (citing Tr. at 167 and 171).

> 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.

I.D. at 21.

We agree. The Company has provided sufficient evidence to show that it evaluated Mr. Tate's historic and aesthetic concerns pertaining to the relocation of the meter and considered alternatives proposed by the Complainant, but ultimately concluded that the proposed meter placement was more appropriate for safety reasons. Accordingly,

we find that Columbia has provided enough evidence to rebut the Complainant's allegations about the meter relocation practices and shall deny the fifteenth Exception.

c. Accessibility

(1) Exception

In his sixteenth Exception, Mr. Tate objects to the ALJ's conclusion pertaining to compliance with Federal and local disability laws. Specifically, the Complainant takes exception to the the ALJ's conclusion 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." Exc. at 19 (citing I.D. at 23). According to Mr. Tate, this conclusion disregarded substantial evidence in the record and is in error. Exc. at 20.

In support of this allegation, Mr. Tate submits that "many ramp contracting businesses state that a 1:6 or 1:4 slope ratio is acceptable for residential purposes" due to space limitations. Exc. at 19 (citing Tate M.B. at 26-27). Mr. Tate contends that applying the same calculation utilized by the ALJ, a 1:4 slope ratio would result in a ramp length of approximately 12 feet, which would fit at Mr. Tate's 14-15-foot-long property. Exc. at 19.

Additionally, Mr. Tate argues that the ALJ failed to discuss ramp width requirements in the Initial Decision. According to Mr. Tate, 36 inches is the standard width requirement for ramps and that by using a full-size meter, as proposed by Columbia, the usable ramp width would be reduced to 30 to 34 inches which is out of code. In support, Mr. Tate references his testimony that placing a meter near the front of the property would reduce the already small sidewalk size and width of nine feet,

seven inches, thereby making it difficult for transit by neighbors or citizens with disabilities. Exc. at 19-20 (citing Tr. at 19-20, 38).

The Complainant contends the record evidence establishes that a full-size meter would not permit compliance with the York Fair Housing Ordinance, but that use of a regulator only would be acceptable because it would only be eight to ten inches away from the house. Exc. at 20.[10]

(2) Disposition

Upon review, we shall deny the sixteenth Exception, finding no error in the ALJ's conclusion pertaining to the unlikelihood of installing a ramp which complies with local ordinances or building codes. The record does not support the Complainant's argument that a wheelchair ramp, if installed at the property's front door, would only need to be 12 feet long. As previously acknowledged by the Complainant, an ADA compliant ramp must have a 1:12 ratio between height and length, meaning that if Mr. Tate's porch is 36 inches high, the length of the ramp would need to be 36 feet. Tate M.B. at 26. Even assuming that it would be permissible to install a ramp with a ratio of 1:8, meaning that for every inch of height, the ramp would need to be 8 inches in length, the resulting ramp length would be 24 feet. In his Exception, the Complainant references his Main Brief arguments in support. However, Mr. Tate's assertion that a ratio of as little as 1:4 would be acceptable appears to be from a commercial website. *See*, Tate M.B. at 26. This is not evidence that has been admitted into the record and cannot be used to support the arguments proffered in his Exception.

Mr. Tate also states that the ALJ did not reference ramp widths in his Initial Decision. Citing to his Main Brief, Mr. Tate asserts that 36 inches is the standard width

[10] Columbia did not directly address these arguments in its Replies to the Exceptions.

requirement and argues that using a full-sized meter, as proposed, would reduce the useable ramp width to 30-34 inches, which he proffers is "out of Code." Exc. at 19 (citing Tate M.B. at 26-27). This purported violation, however, is premised on a proposed ramp width of four feet, or 48 inches, as testified by Mr. Tate, and not the ADA required 36 inches, as argued in his Exceptions.[11] It is unclear from the record why a ramp width of 36 inches could not be utilized in such a hypothetical circumstance that an ADA compliant ramp would be required. Given the disparity in the purported ramp widths requirements proffered by Mr. Tate – both three feet and four feet, we find no support for his argument that the ALJ committed error by failing to acknowledge the arguments pertaining to ramp widths.

d. Safety Issues

(1) Exceptions and Replies

In his seventh, eighth, and ninth Exceptions, Mr. Tate objects to FOFs pertaining to safety issues and the proposed relocation of the meter. Exc. at 5-10 (citing I.D. at 9, FOF Nos. 53-55). Mr. Tate raises similar safety issue arguments in his seventeenth Exception, *infra*. Exc. at 20-23.

Regarding the seventh Exception, Mr. Tate contends that FOF No. 53 – which notes that, in the 30 years during Mr. Tate's period of ownership, there has never been an accident where a vehicle has run into the area where Columbia is proposing to locate the meter – is misleading. According to Mr. Tate, this FOF is inaccurate because there were no meters in the vicinity of his property during his period

[11] Mr. Tate testified that he spoke with his mason, who stated that the ramp would be four feet in width. Tr. at 76. This appears to constitute hearsay, but there was no objection raised. Nonetheless, unobjected to hearsay cannot form the basis of a finding of fact unless it is corroborated by competent evidence in the record. *Walker v. Unemployment Comp. Bd. of Rev.*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976).

of ownership, and that they were only recently installed in the neighborhood. Mr. Tate further argues that the distance from the curb to the proposed meter location is short, 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 his property and smashed into a nearby commercial building on another street in the City of York. Exc. at 6.

Mr. Tate proffers that if Columbia were to seriously consider the possibility of vehicular damage and traffic – as required by 49 CFR § 192.353 and 52 Pa. Code § 59.18(c)(1)(ii) – it would have fully considered relocating the meter to the rear location of the property where vehicular traffic would not be an issue. Exc. at 6-7.

In response to the seventh Exception, Columbia argues that FOF No. 53 is supported by substantial evidence in the record. The Company contends that to the extent that the 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, such an argument lacks evidentiary support. Further, Columbia asserts that the suggestion of an outside meter being more likely to result in a vehicle crash into the Complainant's property is being made for the first time in the Exceptions. Nevertheless, Columbia submits that the Complainant's argument disregards substantial record evidence. R. Exc. at 7.

Specifically, Columbia proffers that it would be rather difficult for a vehicle to hit a meter located at the front-right corner of the property. In support, the Company cites to Mr. Tate's testimony that the roadway is a one-way, one lane street, with traffic flowing north. Columbia also emphasizes the Complainant's testimony that cars usually park on the street, along the sidewalk. R. Exc. at 7 (citing Tr. at 17). Moreover, Columbia references Mr. Tate's testimony that the property has a front stoop that extends 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. R. Exc. at 7 (citing Tr. at. 10, 19, 74). Columbia submits that based on the 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. R. Exc. at 7.

Further, Columbia argues that the record includes the testimony of its 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 assessment was performed for this property. R. Exc. at 7-8 (citing Tr. at 235).

As to his eighth Exception, Mr. Tate objects to FOF No. 54, which provided that Columbia's meters are designed to withstand rain, snow, ice, and corrosion. The Complainant argues that Columbia's website contradicts this finding because it 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. Additionally, Mr. Tate references his testimony about Columbia's website regarding potential dangers when shoveling snow and ice around a meter. Specifically, Mr. Tate highlights Columbia's website advice that meters should be visible at all times and to never let snow cover the meter, to use caution when using a shovel, snowblower or plow around a meter and to never kick or hit the meter or its piping to break away built-up snow or ice. Exc. at 7 (citing Tr. at 44-45).

Mr. Tate also objects to the ALJ's determination that the Complainant merely speculated that damage is possible and provided no evidence of actual damage. In support, Mr. Tate argues that under the Code, Columbia is required to consider such potential damage because the purpose of safety requirements is to prevent accidents or damage before they happen. Exc. at 8 (citing 52 Pa. Code § 59.18(a)(5)).

According to the Complainant, Columbia failed to fully consider a meter location in the rear of the property where the meter would be protected from the elements. Mr. Tate contends that this allegation is fully supported by his uncontroverted testimony that the rear location would be out of the elements and the testimony of Columbia acknowledging its failure to investigate easements and rights-of-way potentially impacting a rear location placement. As such, Mr. Tate proffers that FOF No. 54 should be disregarded. Exc. at 8 (citing Tr. at 35, 257-58).

In reply to the eighth Exception, Columbia argues that Mr. Tate fails to acknowledge that this FOF is supported by record evidence. Specifically, Columbia contends that its witness, Mr. Brumley, testified at the hearing that Columbia's meters are designed to withstand rain, ice snow, and corrosion. Further, Columbia contends that the ALJ properly found no evidence of meters being damaged by exposure to the elements. Thus, Columbia submits that the Exception should be denied because this finding is directly supported by record evidence. R. Exc. at 8 (citing Tr. at 235-37; I.D. at 25).

In his ninth Exception, Mr. Tate contends that FOF No. 55, which provides that vandalism of gas meters is not a common problem, is also misleading and constitutes an abuse of discretion by the ALJ. According to the Complainant, this FOF is based on the testimony of Columbia's witness, Mr. Tubbs, who stated 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 it's certainly not something that's prevalent to gas meters." Exc. at 9 (citing Tr. at 177).

According to Mr. Tate, Mr. Tubbs' testimony was general in nature and did not pertain to York County or the area of the property at issue. The Complainant argues that such testimony constitutes vague and unreliable hearsay, and the Initial Decision should not rely on it. Moreover, Mr. Tate contends that the ALJ disregarded uncontroverted testimony by the Complainant that there have been more than

120 incidents of crime within a one-block radius of his property, including vandalism, traffic problems and harassment. Mr. Tate also cites his testimony that his property was the subject of vandalism when decorations were stolen, and he has called the police to remove individuals involved in harassing behavior. Exc. at 9-10.

Mr. Tate further submits that it was improper to make this finding based on whether gas meters were actually vandalized, as opposed to considering the risk of vandalism to all forms of personal property. As such, Mr. Tate requests that FOF No. 55 be disregarded. Exc. at 10.

In its replies to the ninth Exception, Columbia contends that FOF No. 55 accurately described the lack of evidence supporting a finding that meter vandalism is a significant safety concern. Columbia proffers that the Initial Decision explained Mr. Tubbs' testimony, wherein he stated 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. I.D. at 26-27. Additionally, Columbia argues that this testimony is supported by another witness, Mr. Brumley, who also addressed the Complainant's vandalism concern at the hearing, testifying that he does not share Mr. Tate'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. R. Exc. at 8-9 (citing I.D. at 26-27; Tr. at 234).

In response to the Complainant's claim that FOF No. 55 is based on the hearsay testimony of Mr. Tubbs, Columbia contends that no hearsay objection was asserted by the Complainant's counsel during the hearing, and thus it is improper for Mr. Tate to raise hearsay in his Exceptions as a basis for disregarding a witness's testimony. Regardless, Columbia argues that 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. R. Exc. at 9 (citing Tr. at 177).

In his seventeenth Exception, Mr. Tate makes additional safety related arguments which substantially reiterate arguments made in the prior Exceptions. *See*, Exc. at 20-23.

(2) Disposition

Upon review, we find that FOF Nos. 53, 54 and 55 are supported by substantial evidence in the record. Accordingly, we shall deny the Complainant's seventh, eighth, and ninth Exceptions as to these findings.

Regarding FOF No. 53 pertaining to the absence of a vehicle accident in the area of the proposed meter location over the past 30 years, this is derived from the admission of Mr. Tate. *See*, Tr. at 74. We do not find this finding to be misleading or inaccurate in any respect; rather, it simply reflects the Complainant's answer to the question posed to him during the hearing.

As to FOF No. 54 regarding Columbia's meters being designed to withstand rain, snow, ice, and corrosion, this finding is supported by the testimony of Columbia's witness, Mr. Brumley. Tr. at 235-38. Columbia's website advice pertaining to recommendations related to removal of heavy or hard packed snow and ice on a gas meter does not, in our view, render this finding on the design of the meter as being unsupported by the evidentiary record. Indeed, Mr. Brumley explained the rationale for this recommendation for visibility and access purposes. *See*, Tr. at 237. Rather, FOF No. 54 is properly limited in scope to an acknowledgment of the design features of the meters.

Additionally, we disagree with Mr. Tate's argument that FOF No. 55, which states that vandalism of gas meters is not a common problem, disregarded substantial evidence in the record. The absence of any record evidence pertaining to instances of meter vandalism, joined with the testimony of Columbia's witness, Mr. Tubbs, provided sufficient basis for this finding. See Tr. at 178. Additionally, although not cited in FOF No. 55, this finding is further bolstered by an additional Columbia witness, Mr. Brumley, who testified that he was not aware of any occasions in which a Columbia meter was vandalized. Tr. at 235.

In the seventeenth Exception, Mr. Tate raises objections to three of the ALJ's holdings pertaining to safety concerns. First, he argues that the ALJ improperly determined that the evidence did not support Mr. Tate's "speculative allegation that the new meter would be particularly susceptible to vehicle damage due to its proximity to the street in front of his house." Exc. at 20 (citing I.D. at 25). In support of the first objection, Mr. Tate reiterates arguments similar those he raised in the seventh Exception. Exc. at 20.

Second, Mr. Tate proffers that the ALJ improperly found the Complainant's testimony as to potential damage to outside meters caused by exposure to the elements from the accumulation of leaves, trash, and other debris to be speculative. Exc. at 21 (citing I.D. at 25). In support, Mr. Tate makes arguments substantially similar to those raised in his eighth Exception. Exc. at 21-22.

Third, the Complainant objects to the ALJ's rationale that the evidence regarding vandalism in the neighborhood presented by Mr. Tate does not include examples of any actual damage to meters. Exc. at 22 (citing I.D. at 26). Here, the Complainant provides arguments previously raised in his ninth Exception, *supra*. Exc. at 22-23.

Upon review of these arguments, we find that the ALJ's rationale as to the safety related concerns is supported by substantial evidence in the record. More specifically, we find that Columbia has provided sufficient evidence that the Company evaluated the proposed outside meter location at the property to assess the safety concerns and that Columbia satisfied its safety related evaluation obligation pursuant to Section 59.18(a)(5) of our Regulations.[12] Support for this holding, in addition to those discussed above pertaining to FOF Nos. 53-55, includes the following:

- The Complainant's testimony indicates that it would be difficult for a vehicle traveling on the one-way, one lane street, with traffic flowing north (from left to right if facing the property) to hit a meter located at the front-right corner of the property. Based on Mr. Tate's description of the property, a vehicle would have to travel over the sidewalk probably through at least one parked car, between the front stairway, which extends out four feet from the property towards the street, and a tree, at just the right angle to hit the meter. *See* Tr. at 11, 18, 20, and 74-75.
- 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 assessment was performed for this property. *See* Tr. at 236.
- The meters being installed on Columbia's medium pressure system have an excess flow valve, which is a design feature that shuts off the flow of gas from the meter immediately if the meter would be damaged by being hit by a vehicle. *See* Tr. at 236.

[12] Section 59.18(a)(5) provides that "when selecting a meter or service regulator location, a utility shall consider potential damage by outside forces." 52 Pa. Code § 59.18(a)(5). Section 192.353(a) of the Code of Federal Regulations also requires that "each meter and service regulator, whether inside or outside a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated." 49 C.F.R. § 192.353(a). The record evidence supports a finding that Columbia has satisfied its evaluation requirements, as required by these provisions.

- The Complainant testified that in the 30 years that he has owned the property, no vehicle has struck his property. *See* Tr. at 74.
- The meters are designed to withstand rain, ice and snow, and corrosion. *See* Tr. at 236-37.
- Columbia provided testimony that trash and leaves under a meter is not a safety concern and would not cause a fire or explosion. *See* Tr. at 238.
- Columbia also provided testimony, as discussed above, that vandalism of meters is not a common concern. *See* Tr. at 235.

Accordingly, we shall deny the seventeenth Exception.

e. Feasible Alternatives

(1) Exceptions and Replies

In his second and eleventh Exceptions, Mr. Tate objects to FOFs pertaining to the outside relocation of meters and the feasibility of alternative locations. Exc. at 2, 10-12 (citing I.D. at 6 and 10, FOF Nos. 31 and 60). Likewise, the Complainant's eighteenth Exception pertains to the alternative argument of relocating the meter to the rear of his property. Exc. 23-24.

In the second Exception, Mr. Tate objects to FOF No. 31, which provided that the new meters to the 60 properties that have had their service laterals replaced have all been located on the outside of the properties. Complainant challenges this FOF as incomplete and misleading because Columbia's witness, Mr. Bedell, testified that some meters were not installed at an outside front location. Exc. at 2 (citing Tr. at 54-55, 204). Thus, Mr. Tate argues that this FOF leads to an erroneous legal conclusion in the Initial Decision which indicated that Mr. Tate's property was being treated by Columbia in a

non-discriminatory manner the same as the Company treated every other property located within the upgrade project. Exc. at 2 (citing I.D. at 21).

In its reply, Columbia argues that the second Exception should be denied because FOF No. 31 is based on record evidence. Specifically, the Company asserts that the testimony of Columbia's witness, Mr. Brumley, that the infrastructure replacement project Columbia is performing, and which the 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. R. Exc. at 2-3 (citing Tr. at 241). Thus, Columbia argues that to the extent that the Complainant asserts that this FOF leads to an erroneous legal analysis and conclusion in the Initial Decision, the Complainant fails to provide any argument to support this claim. R. Exc. at 3.

In the eleventh Exception, Mr. Tate argues that FOF No. 60 improperly states that Columbia considered all possible options in selecting locations to install the new meter on the property. The Complainant objects to this finding because it contends that Columbia admitted to not conducting an investigation as to the feasibility of a rear placement location of the meter. According to Mr. Tate, Columbia unreasonably focused on relocating the meter to the front of the property without investigating the existence of any rights-of-way or easements and advising Mr. Tate that installing a meter via an extension of a service line to the back of the property would be "too much work." Exc. at 10-11.

Further, Mr. Tate argues that Columbia's witness, Mr. Brumley, never testified to any credible reason why a service line could not feasibly be extended to the rear of the property. Moreover, the Complainant asserts that he requested the alternative of a low-profile meter, which could include the right-front location of the property, as an alternative to the basement and rear-property locations. Instead, Mr. Tate proffers that Columbia has insisted on installing a full-sized recycled meter. Accordingly, Mr. Tate

contends that FOF No. 60 is inaccurate, an abuse of discretion, and disregards substantial evidence in the record. Exc. at 12.

In its replies, Columbia argues that 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 asserts that its 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. Further, Columbia cites to Mr. Brumley's testimony, which explains that there is not a gas main at the rear of the building to which a meter and service line could be connected and that, 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. According to Columbia, 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. R. Exc. at 10 (citing Tr. at 185, 230, and 232).

Columbia also argues that Mr. Tate has presented no evidence to support his claim that the Company did not assess the rear of the property as a possible location for the meter. To the contrary, Columbia insists that the Complainant's testimony that this option was discussed at the meeting between him and Company personnel at the property demonstrates that this alternative location was evaluated. In response to the Complainant's statement that Columbia advised Mr. Tate that it would be "too much work" to install the meter at the rear of the property, Columbia argues that Mr. Tate misattributes this as a quote from one of Columbia's witnesses. R. Exc. at 11.

In his eighteenth Exception, Mr. Tate makes substantially similar arguments to those raised in the second and tenth Exceptions. Additionally, Mr. Tate proffers that the ALJ disregarded the lack of cost estimates as to the outside rear property location of the meter and determined that Columbia has the right under its tariff to determine the location of its meters. Mr. Tate contends that, although Columbia has the right to determine its meter locations, historic properties are protected under Pennsylvania law from degradation, diminution, depletion, deterioration, and impairment, which the Complainant asserts will occur with the location proposed by the Company in this case. Exc. at 23-24.

In response, Columbia argues that the record evidence supports a determination that its meter and regulator locating practices include procedures to protect the aesthetic value of historic properties. Additionally, the Company contends that the record supports a conclusion that in this proceeding, Columbia followed this process but determined that there were no feasible locations for the meter and regulatory. R. Exc. at 11-12.

(2) Disposition

We shall deny the second Exception. The evidentiary record supports the statement in FOF No. 31 that the new meters to the 60 properties in the meter replacement project, that have been completed, have all been located on the outside of the properties. *See*, Tr. at 242. Mr. Tate argues that this conflicts with other testimony which suggests some of the meters were relocated to locations other than the front of the property. However, FOF No. 31 does not address where on the outside of the properties the meters were relocated; it only states that all 60 were relocated on the outside of each of the premises. Thus, we find the Complainant's argument, that FOF No. 31 is misleading, to be without merit.

In the eleventh Exception, Mr. Tate objects to FOF No. 60, which stated that Columbia considered all possible options in selecting locations to install the new meter on the property. As summarized above, the Complainant contends that the Company did not conduct an investigation about the feasibility of a rear property location or consider a low-profile meter for the front of the property. The eighteenth Exception makes substantially similar arguments.

Regarding the issue of a rear property location, Columbia provided testimony regarding its determination that such a location was not feasible. Columbia's witness, Mr. Brumley, who is the manager of construction services and oversees the installation of pipelines and services, testified that placing a meter along the rear of the property is not feasible because there is not a gas main at the rear of the property to which the meter and service line would be connected. Tr. at 231. In order for a meter to be located at the rear of the property, Columbia would be required to construct a new gas main behind the property or extend a service line from the main located on South Pine Street, in front of the property, through the breezeway to the rear of the property. Tr. at 185-86.

Columbia did not present cost estimates of either constructing a new main behind the property or for extending the service line through the breezeway. However, Mr. Brumley testified that such expenses would not be reasonable in that their undertaking would involve right of way issues. Tr. at 232. Moreover, Mr. Brumley indicated that the service extension option through the grocer's alley would not be feasible due to the narrowness of the alley, which is 30 inches wide. Tr. at 259-60.[13] In its Reply Exceptions, Columbia also argues that the cost for implementing such a rear

[13] The record further shows that Mr. Tate owns half of the grocer's alley toward his house, which is only 15 inches; and the height of the alley is approximately six feet. Tr. at 12, 16-17, 231, 245-46.

property alternative would not be reasonable because it would not be necessary for providing service to any customer. R. Exc. at 10.

Upon review, we find that Columbia has provided sufficient evidence to rebut the Complainant's allegation that the Company failed to investigate the feasibility of a rear-property location for the meter. Rather, Columbia has shown that given the unique physical characteristics of the property and the existing location of the main in the front of the property, it was reasonable for Columbia to determine that a rear property relocation of the meter was not feasible.

Regarding Mr. Tate's additional allegation that Columbia failed to consider the alternative of a low-profile meter, we have already addressed and rejected this argument in our disposition of the sixth Exception pertaining to FOF No. 46, *supra*. As discussed above, Mr. Tate offered no evidence about low-profile meters during the evidentiary hearing and, thus, there is no evidence supporting the existence of such an alternative.

Accordingly, we shall deny the eleventh Exception, as well as the eighteenth Exception which proffers similar arguments.

As a final matter, Mr. Tate argues in his tenth Exception that FOF Nos. 58 and 59 are inaccurate and disregarded substantial evidence in the record. The Complainant contends that in these findings the ALJ incorrectly referenced a street address as being "257 East Main Street, York PA," whereas the testimony indicates that the address is "257 East Market Street in York." Exc. at 10. In its replies, Columbia agrees that the reference in the FOFs is not correct but that such an error does not constitute a disregard of substantial evidence, and that the Complainant's Exception should be denied. R. Exc. at 10.

Upon review of the transcript, Mr. Tate is correct that the reference to the address should be "257 East Market Street" and not "257 East Main Street." Tr. at 239. Because of this apparent error, we shall modify FOF Nos. 58 and 59 to conform with the record testimony to properly state the address as "257 East Market Street, York PA." Accordingly, we shall grant the tenth Exception, in part. To the extent that Mr. Tate seeks to have the Commission disregard these FOFs in their entirety, such Exception is denied.

D. Conclusion

Based upon our review of the record and the applicable law, we shall grant the Exceptions of the Complainant, in part, and deny them, in part, and adopt the ALJ's Initial Decision, as modified, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

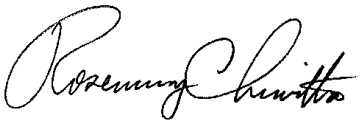
1. That the Exceptions, filed by Bryan Tate on January 19, 2022, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Steven K. Hass, issued on December 30, 2021, is adopted, as modified, consistent with this Opinion and Order.

3. That the Formal Complaint of Bryan Tate filed on March 2, 2020, against Columbia Gas of Pennsylvania, Inc., is denied.

4. That this proceeding, at Docket No. C-2020-3018966, be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 10, 2024

ORDER ENTERED: October 10, 2024