



Legal Authority of Municipalities Regarding Public Utility Service and Facilities

QUESTIONS AND ANSWERS

1. In general, how are public utilities regulated in Pennsylvania?

Under the state Public Utility Code, public utilities are subject to comprehensive regulation by the Public Utility Commission (PUC). The law grants the PUC “general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth.” Specifically, the PUC has authority to assure that utility rates are “just and reasonable” and that utility service and facilities are “adequate, efficient, safe, and reasonable.”¹

2. May municipalities regulate the placement of utility facilities by, for example, exercising their zoning powers?

No. The courts have held in numerous cases stretching back over a century that the Public Utility Code and its predecessor law were intended to establish a statewide, uniform system of regulation of public utilities that preempts municipal regulation.²

3. Do public utilities have a right to place facilities in streets and other public rights-of-way within municipalities?

Yes. The state Business Corporation Law, which grants public utilities *eminent domain* authority, also empowers utilities to place facilities in streets, highways, etc. within municipalities.³

4. Do municipalities have any authority over the activities of public utilities in opening municipal streets to maintain, replace, or extend utility facilities?

Yes. The Business Corporation Law cited above authorizes municipalities to establish requirements for street opening and restoration provided the requirements are reasonable.

¹ 66 Pa. C.S. Sections 501, 1301, 1501.

² See, *York Water Co. v. York*, 95 A. 396 (Pa. 1915), *Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A. 2d 287 (Pa. 1954), *City of Lancaster v. PPL Electric Utilities Corp.*, 125 A. 3d 837 (Pa. Cmwlth. 2015).

³ 15 Pa. C.S. Section 1511 (e), *Penn. Power Co. v. Twp. Of Pine*, 926 A. 2d 1241 (Pa. Cmwlth. 2007).

5. What determines whether permit fees and road restoration requirements are “reasonable?”

The courts have held that in order to be reasonable, permit fees must be designed to recover costs incurred by the municipality in regulating an activity and these fees may not be designed to subsidize general municipal operations.⁴ While there are not currently court decisions addressing what constitutes reasonable street restoration requirements, using the reasoning of the courts regarding permit fees, restoration requirements must be designed to restore the streets to their original condition and not to improve the pre-existing condition of the streets.

6. Are utilities subject to PUC scrutiny of the costs of complying with municipal requirements?

Yes. In reviewing utility rate filings and infrastructure replacement plans, the PUC has at times raised questions and required additional documentation regarding escalating costs incurred by public utilities in complying with municipal requirements. These costs are a concern for both utilities and the PUC because every dollar spent complying with these requirements is one less dollar available for replacing old infrastructure in order to maintain safe and reliable service. In the case of gas utilities, these costs may hinder economic development by making it too expensive to extend gas lines to serve new customers. As a result, utilities have a responsibility to object to unreasonable municipal requirements.

7. Is there anything a municipality can do if it has concerns about the service or facilities of a public utility?

Yes. Public utilities recognize the importance of maintaining goodwill in the municipalities they serve and will try to reach amicable resolutions of any concerns with their service or facilities. Municipalities should first raise concerns with the utility. If this does not lead to an agreement, municipalities may submit a complaint to the PUC.

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⁴ *City of Lancaster*, note 2 above, *M & D Props, Inc. v. Borough of Port Vue*, 893 A. 2d 858 (Pa. Cmwlth. 2006).