

**BEFORE THE
HOUSE CONSUMER PROTECTION,
TECHNOLOGY AND UTILITIES COMMITTEE**

Testimony of

Patrick M. Cicero
Consumer Advocate
Pennsylvania Office of Consumer Advocate

Regarding
HB1655

Harrisburg, Pennsylvania
September 6, 2023

555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048 - Office
(717) 783-7152 - Fax
Email: pcicero@paoca.org
4890-9740-4030.v1

Good morning Chairman Matzie, Chairman Marshall, and Members of the House Consumer Protection, Technology and Utilities Committee. My name is Patrick Cicero. I have the privilege of serving as Pennsylvania's Consumer Advocate. Thank you for the opportunity to provide the utility consumer perspective concerning House Bill 1655.

My office, the Pennsylvania Office of Consumer Advocate (OCA), serves as the statutory advocate for Pennsylvania consumers before the Public Utility Commission (PUC) on all matters that are properly before the PUC. This, of course, includes the rates charged by public utilities. As a part of rate cases, my office scrutinizes, among other things, the expenses incurred in the historic test period and projected to be incurred in the future and fully projected future test periods for the purpose of determining the appropriate level of rate recovery by a utility. Utility expenses that are not reasonably and prudently incurred or that are unnecessary to the provision of utility service may be removed from the cost of service and from rates. However, when a utility reasonably and prudently incurs an expense, those expenses are recoverable in the rates charged to consumers. The bill at issue – HB 1655 – deals with an area where we have seen a growth in costs (expenses for ratemaking purposes) for street resurfacing and curb repairs. These costs, when prudently incurred, are ultimately passed on to consumers through higher rates.

To be clear at the outset, our office's position is and remains that reasonable and prudent street and curb restoration is a necessary expense by utilities when they are required to maintain, repair, modify, remove, or otherwise disturb the street and public ways to provide utility service. It is legitimate and reasonable for municipalities to impose street permitting and restoration requirements, including in some cases, compliance with all federal requirements for curb cutouts needed to meet federal and state accessibility standards.

However, in recent years, we have heard from utilities that many municipalities have ordinances that have increased the municipal restoration requirements. These changes vary by municipality and are often unique to the requirements of the municipality, but in many cases the restoration requirements have increased significantly over the years and have become key cost drivers for increases in infrastructure repair and replacement projects that are passed through rates or through the utility's Distribution System Improvement Charge. It is very difficult to demonstrate that costs are not prudently incurred where a utility is following a local ordinance requiring more expansive street restoration and resurfacing requirements than would strictly be necessary to restore the streetscape to the status quo. The requirements of local governments can also present challenges for utilities who cover broad geographic areas where they may have to contend with the unique requirements of several hundred different municipalities and boroughs.

The OCA supports a more uniform approach such as that which is outlined in HB 1655 to the restoration requirements imposed on utilities and ultimately paid for by ratepayers. The bill would cap both the permit fees and restoration standards of municipalities to those adopted by PennDOT. Standardization matters not only for predictability of costs, but it would also enable appropriate comparisons over time and between utilities. This would facilitate an appropriate prudency review by the PUC and our office in assessing the reasonableness of costs that should be allowed for ratemaking purposes.

While our office supports HB 1655, vigilance by the PUC and our office will still be required to ensure that utilities are properly coordinating with municipal officials on the municipality's own resurfacing, street paving, and sidewalk, curb cutout replacement schedule so that costs can be shared, and public disruption of streets minimized. In addition, utilities will still need to do inter-utility coordination to ensure that when a streetscape is opened that all

underground utility work is performed during the disruption and that costs are shared and allocated appropriately to each utility impacted.

Thank you for the opportunity to submit testimony on these critical issues. I appreciate and support the intent of HB 1655 and I am available to respond to any questions you have about my testimony.



**TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF
TOWNSHIP SUPERVISORS**

**BEFORE THE
HOUSE CONSUMER PROTECTION, TECHNOLOGY
& UTILITIES COMMITTEE**

ON

PROPOSED HB 1655

PRESENTED BY

**JOSEPH H. GERDES III
DIRECTOR OF GOVERNMENT RELATIONS**

**SEPTEMBER 6, 2023
HARRISBURG, PA**

4855 Woodland Drive Enola, PA 17025-1291 Internet: www.psats.org

PSATS Pennsylvania Township News Telephone: (717) 763-0930 Fax: (717) 763-9732

Trustees Insurance Fund Unemployment Compensation Group Trust Telephone: (800) 382-1268 Fax: (717) 730-0209

Good afternoon, Chairman Matzie, Chairman Marshall, and members of the House Consumer Protection, Technology, & Utilities Committee. My name is Joe Gerdes and I am the Director of Government Relations at the Pennsylvania State Association of Township Supervisors (PSATS). Thank you for allowing me the opportunity to present remarks on behalf of the 1,454 townships of the second class represented by our association.

PSATS is a nonprofit, nonpartisan organization committed to preserving and strengthening township government and securing greater visibility and involvement for townships in the state and federal political arenas. Townships of the second class cover 95% of Pennsylvania's land mass and represent more residents — 5.7 million Pennsylvanians — than any other type of municipality in the commonwealth.

Townships are responsible for managing and maintaining all local roads that they own. This was the original purpose for creating townships, so that roads could be better maintained for the traveling public. Townships do have liability under the Political Subdivision Tort Claims Act for maintaining township-owned streets. This includes dangerous conditions on township-owned streets. As such, townships have the responsibility to ensure that their roads are kept in good repair.

While utilities have the right under state law to occupy township rights-of-way, townships have the right and responsibility to require all facilities within its rights-of-way to comply with permit conditions, restrictions, and regulations adopted by township for facilities within the road and on the road under Section 2322 of the Second Class Township Code. This is a critical tool for townships to maintain the safety of their roads.

The proposed HB 1655 would require that all local governments follow the state Department of Transportation's Highway Occupancy Fee schedule in Section 459.4 of Title 67 of the Pennsylvania Code, restrict local regulations for restoration of streets after a utility cut to be no more stringent than PennDOT's regulations in Section 459.8 of Title 67 of the Pennsylvania Code, and restrict regulations for aboveground utilities, including pole placement, to no more stringent than Section 459.9 of Title 67 of the Pennsylvania Code.

We must oppose the legislation as written. First, townships are generally directed to follow PennDOT's HOP fee schedule in Section 2322 of the Second Class Township Code. However, we believe that this fee schedule should not be used as the standard or as a ceiling as it is woefully outdated and was last revised in 1989. Clearly, costs and prices have risen since 1989. The \$50 permit application fee should be \$121.21 according to the Bureau of Labor Statistics Consumer Price Index calculator simply to adjust for inflation. PennDOT attempted to adjust these fees in the early 2000s but additional proposed changes to Chapter 459 would have imposed onerous responsibilities on townships for drainage facilities on state roads. As such, we opposed that change.

It should also be noted that the current language does allow PennDOT to impose additional application and inspection fees based on the actual costs to review the permit application and perform necessary inspections after notification of applicant of the additional fees and reimbursement agreement.

According to the Pennsylvania Code, Sections 459.8 and 459.9 both appear to have last been updated in 1989. While nearly everything else has changed in the last 34 years, this legislation would require that townships revert to standards last revised over 30 years ago. While some townships have very simple standards for roads reconstruction and repair after a utility cut, others have taken a more proactive approach in their attempts to preserve their roads and the enormous investment of taxpayer funds needed to upgrade and maintain roads for the traveling public. We do not believe it is appropriate to ask townships to revert to 1980s standards as an appropriate measure for maintaining roads or to ask their taxpayers to pay for damages caused by utility cuts.

It has been brought to our attention that the utilities have concerns over HOP standards and fees adopted and enforced by some municipalities. We are willing to sit down and discuss these concerns. However, to date, we have not been provided with specific examples or documentation of how a particular requirement is considered by the utilities to be particularly onerous.

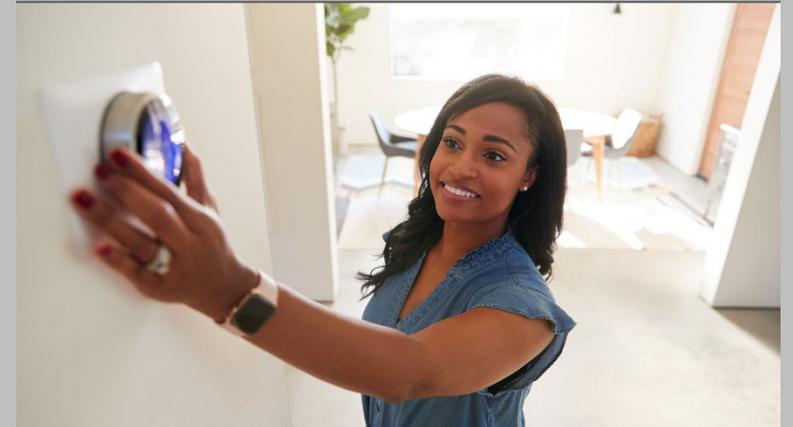
As always, we are willing to work with the sponsor, the committee, and the utilities on this issue.



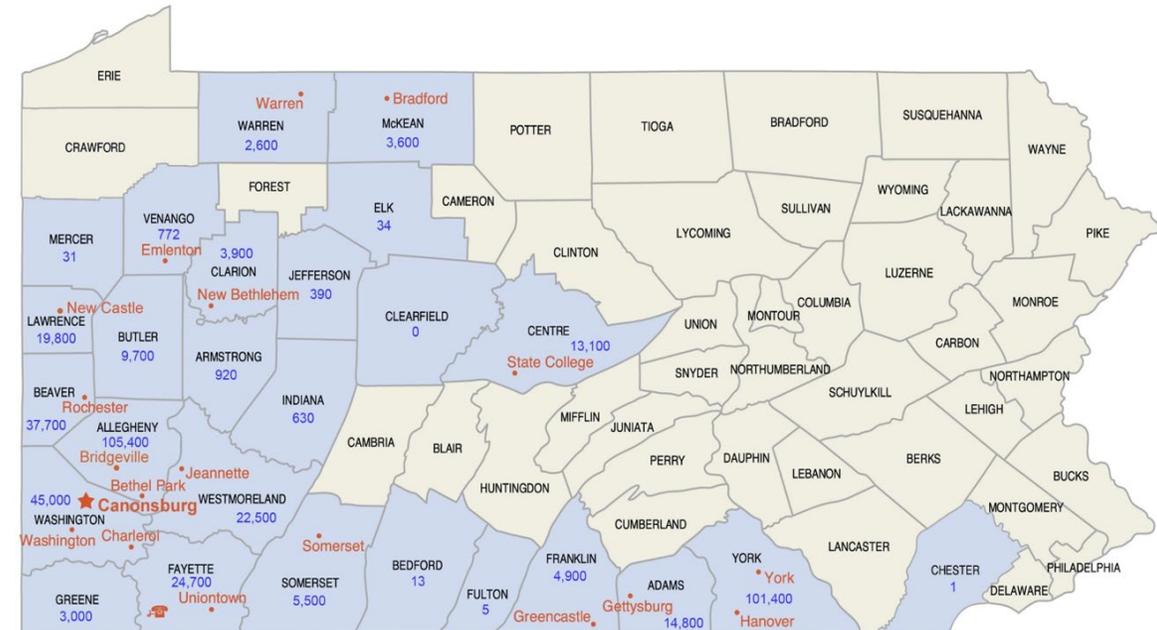
We exist to deliver safe, reliable energy that drives value to our customers

Testimony in Support of House Bill 1655

Before the Pennsylvania House Consumer Protection, Technology & Utilities Committee
September 6, 2023

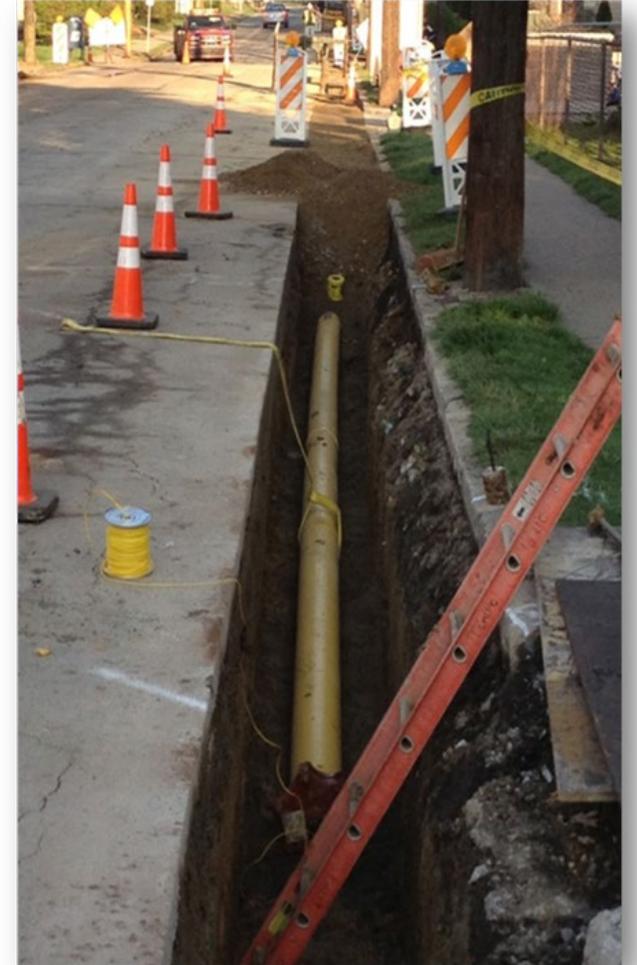


- Natural gas utility regulated by the Pennsylvania Public Utility Commission (PUC)
- Provides essential energy services to more than 442,000 customers in 26 Counties and 450 Municipalities
- Maintains more than 7,700 miles of pipe in service territory
- Since 2007 focused on expediting pipeline replacement to:
 - Enhance service & reliability
 - Reduce methane emissions
 - Invested more than \$2.4 billion to replace over 1,300 miles of bare steel and cast iron pipe



The Need For HB 1655

- Using a complex computer program that tracks leak history, proximity to schools and many other factors we determine year to year which pipes need to be replaced first. We then apply for permits in the municipality in which those pipes are located.
- In order for the municipality to recover the costs of reviewing our project specs, they are allowed by law to charge reasonable permit fees. Here in Pennsylvania, municipal permit fees are supposed to be limited to the costs associated with reviewing and administering permits.
- Local governments are not permitted to use such fees as a source of revenue. PA Courts have upheld this rule several times, including most recently in 2019 in Lancaster vs PPL.
- Unfortunately, multiple municipalities served by Columbia Gas are violating this court ruling.



The Need For HB 1655

- **The costs for Columbia Gas to replace pipe has grown significantly since we started expediting pipeline replacement in 2008.**
 - In 2008, our cost per foot was approximately **\$81**
 - In 2022, it has grown to **\$278** per foot
- **Some of the reasons for this are the same that we see in all areas of our economy.**
- **However, the biggest reason in multiple areas of our territory is the increase in permit fees and restoration requirements mandated by municipalities.**
- **PennDOT Permit Inspection Fees:**
 - 40 cents per linear foot in pavement
 - 20 cents per linear foot in shoulder
 - 10 cents per linear foot in grass/right of way
 - Possible additional inspection or compaction testing fees on a project



The Need For HB 1655

Examples of Municipal Permit Inspection Fees in Service Territory Exceeding PennDOT Fees

- **Brownsville Borough**, Fayette County – old ordinance \$6 per linear foot / new ordinance \$1 per linear foot
- **Canonsburg Borough**, Washington County, **Oakdale Borough and Stowe Township**, Allegheny County Street opening fee is \$1 per square foot with \$500 minimum; Curb cut fee is \$1 per linear foot with \$250 minimum; Sidewalk construction fee is \$1 per square foot with \$100 minimum; Plus \$100 flat fee for “public right-of-way disturbances. Basic operations work permit fees now average \$600 up to \$950 per permit. Pipeline replacement projects have cost between \$8,000+ and \$13,000+ per project based on size.
- **Charleroi Borough**, Washington County - \$8 per linear foot up to 100 feet; plus \$2 per linear foot after that
- **Dunbar Township**, Fayette County - \$250 application fee plus \$5 per square foot per opening plus engineering and inspection fees of \$75 to \$150 per hour
- **Irwin Borough**, Westmoreland County - \$80 for one to 15 square feet of excavation plus \$2.50 per square feet of excavation after

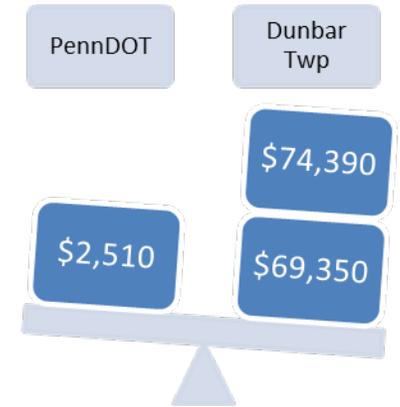


The Need For HB 1655

Examples of Municipal Permit Inspection Fees in Service Territory Exceeding PennDOT Fees

- **Luzerne Township**, Fayette County - \$6 per linear foot
- **Meade Township**, Clarion County – minimum \$600 permit fee for up to 60 square feet of an opening, plus an additional \$8 per square foot over 60 square feet. For roads less than five years old, \$800 minimum permit fee for up to 60 square feet of an opening, plus \$8 per square foot over 60 square feet.
- **Menallen Township**, Fayette County - \$150 application fee, plus \$75 per hour with 4 hour minimum engineering inspection fee = \$300, plus \$3.67 per square foot fee
- **Redstone Township**, Fayette County - \$150 application fee, plus \$75 per hour with 4 hour minimum engineering inspection and supervision fee = \$300, plus \$36.70 per square foot fee
- **Sewickely Township**, Westmoreland County – \$2 per square foot permit fee plus engineering and inspection fees. The ordinance states “All backfill and permanent pavement work must be performed under the continuous observation of a Township designated inspector/testing agency.”

The Need For HB 1655



Specific Example

Columbia Gas has proposed two pipeline replacement projects in Dunbar Township.

- Dickerson Run Project replacing 3,707 feet of two inch mainline pipe
 - PennDOT Permit Fee = \$1,450 plus compaction testing fees
 - Dunbar Township Permit Fee is \$250 per application plus \$5 per square foot = **\$74,390** plus engineering inspection fees
 - \$250 application fee plus 3,707 feet of pipe x 4 foot wide opening (2 foot trench with 1 foot cutbacks on each side) = 14,828 sq feet x \$5 = \$74,140
- Dewitt Ave Project replacing 2,764 feet of eight inch mainline pipe
 - PennDOT Permit Fee = \$1,060 plus compaction testing fees
 - Dunbar Township Permit Fee is \$250 application plus \$5 per square foot = **\$69,350** plus engineering inspection fees
 - \$250 application fee plus 2,764 feet of pipe x 5 foot wide opening (3 foot trench with 1 foot cutbacks on each side) = 13,820 sq feet x \$5 = 69,100
- **TOTALS FOR BOTH PROJECTS – PennDOT = \$2,510 Dunbar Township = \$143,740**

The Need For HB 1655

General PennDOT Road Restoration Standards – 67 PA Code Section 459.8

- Mill and overlay the traffic lane area in which an opening or openings were made – paving is 1.5 inches thick
- If four or more openings have been made within 100 linear feet, overlay the traffic lane(s) where the openings were made
- Transverse openings/ street crossings
 - If four or more openings are made within 100 linear feet, overlay the entire disturbed area. commonly referred to as curb to curb restoration
 - If road is less than five years old, if two or more openings are made overlay the lanes between the openings



The Need for HB 1655

Local Government Restoration Requirements Above PennDOT Standards

Regardless of size of opening – 3x5 cut or 5,000 feet pipeline replacement the local government demands significant rate payer paid paving in areas the company's work never disturbed.

- **Ambridge Borough**, Beaver County – tie together any cuts within 700 feet (over 1/10th of a mile) of each other
- **Bethel Park Borough**, Allegheny County – 3.5 inch thick mill and pave requirement
- **Brownsville Borough**, Fayette County – old ordinance curb to curb plus 20 feet on each side of a cut
- **Canonsburg Borough**, Washington County – curb to curb plus 25 feet on each side of a cut
- **Canton Township**, Washington County – contained within a required “Road Maintenance Agreement” to receive a permit, 100 feet of paving restoration on each side of a cut in a lane
- **Charleroi Borough**, Washington County – curb to curb paving if more than ten percent of the square area of any 50 foot length of roadway is opened
- **Chippewa Township**, Beaver County – curb to curb plus 25 feet on each side of a cut
- **Harmony Township**, Beaver County – curb to curb plus 15 feet on each side of a cut
- **Oakdale Borough**, Allegheny County – curb to curb plus 25 feet on each side of a cut

The Need for HB 1655

- **City of Pittsburgh**, Allegheny County – 3.5 to 4 inch paving thickness required on “major roads” and additional requirements to tie together prior openings (regardless of what company made them) and formulas requiring additional paving based on where work took place and size of project. Curb to curb paving required if road is less than five years old.
- **Sewickley Township**, Westmoreland County – Ordinance requiring curb to curb paving when one or more transverse opening are made within 25 feet of pavement (PennDOT is 100 feet). For “new roads” cuts totaling 90 square feet within a block requires curb to curb repaving of the ENTIRE BLOCK(S).
- **Stowe Township**, Allegheny County – curb to curb plus 25 feet on each side of a cut
- **West Brownsville Borough**, Washington County – curb to curb paving plus 10 feet on each side of a cut.



The Need For HB 1655



Specific Example

Canonsburg Borough – Restoration standard is curb to curb paving plus 25 feet on each side of a cut

- Columbia Gas conducted two pipeline replacement projects, Pitt Street and Smith Street projects, in 2022/23 in the borough.
- To restore/pave the roads impacted by Columbia's work during the two projects to the PennDOT restoration standards the estimated costs is \$260,000.
- **To restore/pave the roads impacted by Columbia's work during the two projects to the borough's curb to curb plus 25 feet standard is estimated at \$470,000 or an additional \$210,000.**
- Columbia's rate payers would be paving large sections of road in the borough where there was no damage, disturbance or work taking place.

The Need For HB 1655



Specific Example

West Brownsville Borough – restoration standard is curb to curb plus 10 feet on each side of a cut

- Columbia Gas has conducted 11 Operations procedures including disconnecting piping to abandoned buildings (safety mandate), leak repair (safety mandate) and new service installations (PUC requirement). Our work included road openings ranging from 3x5 feet, 5x5 feet or 7x7 feet.
- Columbia disturbed approximately 730 square feet of road surface during this work.
- The borough's curb to curb paving plus 10 feet would require the repaving of 5,970 square feet of road or more than 800% of the disturbed area.
- The cost to restore these operational road openings to the PennDOT standard is approximately \$4,500. **The cost to restore the openings to the borough's standard is more than \$32,000.**

The Need For HB 1655



A word about money...

- Money flows into a regulated public utility through two channels – investment and rates. The investment dollars are capital dollars and are paid back with interest.
- All of the cash that funds our operations comes from utility rates, as approved by the PUC.
- Customers pay for almost everything – and all our customers pay the same rates, regardless of the municipal ordinances or fees in a given area.
- This means that if a municipality in Allegheny County is overcharging the utility for permit or engineering fees, customers in York, State College and Warren are paying extra.
- We have considered the idea of having the costs for each municipality be reflected on customers bills, but this would cost money to administer and so we would prefer simply having a reasonable cap on what municipalities can charge.

The Need For HB 1655

- In conclusion, Columbia Gas believes that local municipalities deserve to be paid a fair and reasonable amount for the administration of government functions such as reviewing permits and appropriate inspection work that takes place in their streets.
- Columbia Gas also believes that some local governments are intentionally or unintentionally using utilities as a means of raising revenue.
- Columbia Gas customers have been forced to pay significantly more than the state standards – forcing the company into litigation, which we almost assuredly will win.
- Instead of battling one jurisdiction at a time and wasting thousands of dollars, Columbia requests the Committee move HB 1655, which puts a reasonable cap on what a local government can charge for permit and engineering fees and restoration, but still provides them with the ability and flexibility to set reasonable fees and standards to meet their individual needs.





Questions?

We exist to deliver safe, reliable energy that drives value to our customers

Columbia Gas of Pennsylvania | ColumbiaGasPA.com |    