

# Commonwealth Court Limits Municipal Authority to Impose Inspection Fees on Public Utilities for Street Opening Work



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*Pittsburgh, PA*

*Public Sector Alert*

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In *Columbia Gas of Pennsylvania, Inc. v. Menallen Township*, 351 A.3d 326 (Pa. Cmwlth. 2026), the Commonwealth Court struck down a township's variable street opening inspection fees as applied to a public utility. The Court held that the fees constituted impermissible utility regulation preempted by the Pennsylvania Public Utility Code, 66 Pa.C.S. § 101 *et seq.* (the "Code"). This decision has immediate practical consequences for every Pennsylvania municipality that charges public utilities permit or inspection fees for work in the public right-of-way.

## **The Dispute and the Decision**

Like most municipalities, Menallen Township (Township) maintained a street opening ordinance that imposed fees on anyone seeking to excavate or open a public roadway. The ordinance included a flat application fee of \$150. It also imposed variable inspection fees calculated on a per hour and per square foot basis, intended to fund the Township's inspection of the utility's pipe installation work and its monitoring of road conditions following the restoration. Columbia Gas of Pennsylvania, Inc. (Columbia Gas), a public utility regulated by the Public Utility Commission (PUC), challenged the variable fees after the Township assessed inspection charges that far exceeded the flat application amount. Columbia Gas filed a petition for review in the Commonwealth Court's original jurisdiction, arguing that the inspection fees were preempted under the field preemption doctrine established by the Pennsylvania Supreme Court in *PPL Electric Utilities Corp. v. City of Lancaster*, 654 Pa. 203, 214 A.3d 639 (Pa. 2019).

The Commonwealth Court left the \$150 flat application fee undisturbed, but notably held that the variable inspection fees crossed the line from permissible right-of-way management into impermissible regulation of utility facilities and operations. The Court's reasoning followed the analytical framework set out in *Waterford Township v. PUC*, 276 A.3d 301 (Pa. Cmwlth. 2022), which distinguished between two categories of municipal fees. On one side of the line are fees that regulate *access* to the right of way — permit fees, application fees, and similar charges that control when and how an applicant may open a street. Those remain permissible, even as applied to public utilities. On the other side are fees that regulate the *quality of the utility's work* — charges tied to the scope of inspection, the duration of monitoring, or the method of installation. Those fall within the PUC's exclusive regulatory field and are preempted.

The Court found that the Township's per hour and per square foot inspection fees were designed to fund the Township's own heightened inspection of the utility's construction methods and to monitor the utility's restoration work over time. That purpose, the Court concluded, placed the fees squarely within the preempted field. The Court noted that the dollar amount alone was not the dispositive factor. What mattered was the *regulatory purpose* the fees were designed to serve.

## **What This Means for Municipalities**

The *Columbia Gas* decision does not eliminate a municipality's authority to charge utilities for street opening permits. It does, however, constrain *how* those fees may be structured. Municipalities should keep three principles in mind:

1. **Flat permit or application fees remain on solid ground.** Municipalities own their roads and retain authority over their streets and rights-of-way. A municipality may charge a reasonable flat fee to process an application, issue a permit, and manage access to the right-of-way. The fee must relate to the administrative cost of regulating right-of-way access, not to the scope or duration of the utility's construction activity. This distinction is necessary to avoid allegations of preempted regulations.
2. **Variable fees related to the size of the excavation, the number of inspection hours, or the length of a monitoring period are vulnerable to preemption challenge when applied to PUC regulated utilities.** A municipality that calculates its fee based on the square footage of the cut or the hours its inspector spends watching and monitoring the utility's crew is, in the Commonwealth Court's view, regulating the utility's work — not managing access to the roadway. Such regulation impermissibly treads on the PUC's preemptive regulation of public utilities. Despite this decision, municipalities still retain their authority as road owners. The right to define the condition in which a road must be returned after an opening — through restoration standards set as conditions of right-of-way access — is grounded in the municipality's property interest in its own infrastructure, not in the regulation of utility operations. Assessing street opening fees in the wake of *Columbia Gas* requires careful structuring, but a municipality that works with its solicitor to think creatively about its ordinance and fee structure is not without recourse.
3. **Municipalities may still impose the full range of their existing fee structures on non-utility applicants — private contractors, developers, cable providers that are not certificated public utilities, and others.** The preemption doctrine applies only where the fee functions as a regulation of a PUC jurisdictional utility. The Commonwealth Court's decision does not apply to non-utility applicants, as the Code and its preemption do not apply to them. A two-tiered fee structure that distinguishes between utility and non-utility applicants is one way to preserve existing revenue from non-utility work while complying with the Court's holding.

## Recommended Steps

Municipalities that currently impose variable inspection or restoration monitoring fees on public utilities should review their street opening ordinances and fee resolutions promptly. In particular, a governing body should work with its solicitor to determine whether its fee structure, as applied to utilities, can withstand scrutiny under the *Columbia Gas* framework. Where variable fees are assessed against utilities, the municipality should consider whether an amendment to its fee resolution, its street opening ordinance, or both would better align with current law while still protecting the municipality's infrastructure investment.

Municipalities should also be prepared for utilities to cite *Columbia Gas* in correspondence challenging existing fee practices. Several utilities have already begun sending letters to municipalities across the Commonwealth requesting fee adjustments. A municipality that has already reviewed its ordinance and, if necessary, adopted a compliant approach will be able to respond to those inquiries from a position of strength.

If you have questions about the *Columbia Gas* decision and its implications for Pennsylvania municipalities, please contact Stephen L. Korbelt (412) 394-5627 or [skorbelt@babstcalland.com](mailto:skorbelt@babstcalland.com), Anna R. Hosack at (412) 394-5406 or [ahosack@babstcalland.com](mailto:ahosack@babstcalland.com), or Alexander O. Giorgetti at (412) 773-8718 or [agiorgetti@babstcalland.com](mailto:agiorgetti@babstcalland.com).

