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Pennsylvania Supreme Court Strikes Down City Ordinance Attempting to Regulate Utilities' Use of Municipal Rights-of-Way.

The Pennsylvania (PA) Supreme Court issued its unanimous decision on August 20 in [*PPL Electric Utilities Corp. v. City of Lancaster*](#), invalidating a municipality's efforts to impose annual fees on utilities to occupy public rights-of-way and adopt inspection, supervision, and enforcement measures underpinning those fees. The PA Supreme Court affirmed that the Public Utility Code (Code) and the authority of the Pennsylvania Public Utility Commission (PUC) to apply and enforce the Code preempt the field on all matters that relate to the regulation of public utilities in the commonwealth. In doing so, the court upheld the longstanding principle that public utilities should be regulated by one statewide agency, namely the PUC.

The litigation culminating in the PA Supreme Court's decision arose from the 2013 enactment of a local ordinance that implemented a comprehensive program for management of municipal rights-of-way. The key provision of the ordinance at issue authorized the City of Lancaster (City) to impose perpetual, annual occupancy fees on utilities for their presence in municipal rights-of-way. The ordinance also included provisions purporting to grant the City authority to inspect public utility facilities located in the right-of-way, order the relocation of such facilities, and enforce the Code and the ordinance itself.

In 2014, PPL Electric Utilities Corp. (PPL) challenged the ordinance in the Commonwealth Court of Pennsylvania and asserted, among other things, that the Code preempted the ordinance. In an [opinion](#) issued on October 15, 2015, the Commonwealth Court agreed, holding, consistent with prior law, that the inspection, supervision, and enforcement provisions of the ordinance unlawfully intrude on the PUC's exclusive jurisdiction over public utility rates, service, and facilities. However, the Commonwealth Court upheld the City's authority to impose the occupancy fee, which it determined was an authorized exercise of the City's home-rule authority to seek reasonable compensation for maintenance expenses associated with rights-of-way used by utilities. The City and PPL both appealed to the PA Supreme Court.

The PA Supreme Court first addressed the City's appeal and held that the Code's comprehensive statutory framework for utility regulation reflects the General Assembly's clear intent "wholly to occupy the field of utility regulation at the state level." The PA Supreme Court explained that in a long line of cases dating back over a century, Pennsylvania has recognized the importance of having a single agency in charge of regulating public utilities so that the public welfare is not adversely affected by public utilities having to navigate different regulations for each locality. In light of that precedent, the PA Supreme Court concluded that Code compliance and enforcement plainly are entrusted to the PUC and the City lacked authority to "step into that domain, even gingerly." Therefore, notwithstanding the City's argument that the ordinance limits local authority by deferring to applicable Code provisions and PUC standards, the PA Supreme Court found that the Commonwealth Court correctly enjoined the City's inspection, supervision and enforcement measures.

On the other hand, the PA Supreme Court reversed the Commonwealth Court's opinion to the extent it allowed the City to impose occupancy fees on utilities. In the appeal, PPL, the PUC, and *amici* represented by Morgan Lewis, emphasized that the ordinance's occupancy fee would generate a local benefit but impose costs that are spread across utilities' multi-municipality customer base. The PA Supreme Court focused on this argument in its opinion and held the Code's preemptive effect applies to the occupancy fee because that fee is "materially congruent" to the state-level PUC assessment that is already reflected in utility rates. The court further reasoned that setting utility rates that reflect local occupancy fees is contrary to the fundamental intent of the Code to provide a "uniform regulatory framework that ensures a level playing field for all utilities and utility subscribers."

by Kenneth M. Kulak, Anthony C. DeCusatis and Brooke E. McGlinn

August 23 2019

Morgan Lewis & Bockius LLP

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