

Root Cause of Energy Unaffordability -- Kabuki Theater in Public Utility Rate-Making – and Bad Decision-Making

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PAPUC Docket Number M-2026-3064953

In Governor Josh Shapiro's letter to Utility Leaders⁶ of April 29, 2026, ***"I believe the 20th century utility model is broken"***—he believes the Pennsylvania Public Utility Commission and Pennsylvania public utilities are using the 20th-century (1901 through 2000) profit-making model, and that **this model is broken**. This implies years of neglect of proper governance. Ratepayers are paying for that neglect with unaffordable, unjust, and unreasonable rates.

"Pennsylvania consumers should not be asked to pay a single dollar more than is needed to support a safe and reliable utility system."

The Governor's assessment should not be taken lightly and requires a serious assessment with appropriate immediate corrections and changes. The Biggest sin in asset management is procrastination. This is not time for the slow roll.

The PAPUC has encouraged public utilities to **spend on infrastructure as much as you want, and the profits will take care of themselves.** The Governor and customers want better money management from public utilities and the Pennsylvania Public Utility Commission.

Governor Josh Shapiro is right: the model is broken, and it has been broken since the 20th century. This article explores his claim, some root causes, and suggested fixes.

¹ <https://www.assetleadership.net/>

² <https://www.gao.gov/assets/gao-19-57.pdf> Page 49.

³ Current and longstanding leadership positions with international consensus standards organizations' asset management committees: ASTM International and ISO. Recently acted as Head of Delegation for ANSI at an ISO meeting in Kyoto, Japan. Previously, Lockheed Martin's leading subject matter expert in asset management, including contracts, policy, accounting, operations, process improvement, and compliance. Represented Lockheed Martin at the Aerospace Industries Association's Property Management Committee, served as the Committee's chair. About four decades of membership and leadership with the National Property Management Association. I am not a lawyer.

⁴ Participated in several utility rate cases of Columbia Gas of Pennsylvania, Peoples Gas, and Duquesne Light as a complainant or provided sworn public testimony.

⁵ Education: MBA from Pepperdine, Graduate of GE's Financial Management Program, certified in the transportation of radioactive solid waste, and certified as a Lean-Six Sigma Black Belt.

⁶ <https://s3.documentcloud.org/documents/28086151/2026429-jds-utility-ceos-letter-v2.pdf> ***I believe the 20th century utility model is broken—we can no longer simply prioritize corporate profitability to drive infrastructure development. Rather, we must be laser focused on delivering on the actual needs of our communities. As I stated clearly in my Budget Address in February, Pennsylvania consumers should not be asked to pay a single dollar more than is needed to support a safe and reliable utility system.***

Essentially, the Governor has condemned the PUC's operational structure as unreliable in producing just, reasonable, and affordable rates for customers.

The current ratemaking structure and process is unfit for ratemaking. Internal and external controls have been weak.

Time is of the essence to fix the workings of the Pennsylvania Public Utility Commission. Every day of delay could cost Pennsylvania ratepayers millions of dollars. Projected revenue of public utilities in Pennsylvania is about \$32 billion.⁷

In the normal course of business and government, when a major system is significantly broken and harmful, good management will order a stand-down. Stop production, identify weaknesses and deficiencies, make necessary corrections, and restart.

The PUC should order a stand-down in final ratemaking. Final rate adjustments must wait until the Commission and utilities can provide reasonable assurances that utility rates have been produced using effective internal controls in operations, reporting, and compliance. Good organizations do not knowingly produce bad products and services.

Currently, laws and regulations are generally adequate. Electric public utilities are subject to the Federal [Water] Power Act of 1920. Natural gas utilities are subject to the Natural Gas Act of 1938, which is patterned after the Federal Power Act.

Both of these laws and associated regulations 18 CFR 101 and 201 require: *All amounts included in the accounts prescribed herein for electric (or Gas) plant and operating **expenses shall be just and reasonable** and any payments or accruals by the utility in excess of just and reasonable charges shall be included in account 426.5, Other Deductions (reduction to income).* As a standalone requirement, this is inadequate.

In 1920, the management systems were immature, including internal controls, accounting, auditing, procurement, quality, and safety. Each of those areas has improved continuously over the years. Ratemaking for public utilities has been a laggard.⁸ I have been watching and, to some extent, participated in this industry since 1980, when I worked for GE Nuclear in San Jose (contract management accounting, contract billing and operations in Shippingport, PA, at the DOE Shippingport (Nuclear) Station Decommissioning Project⁹).

In utility ratemaking, just costs must be lawful costs. What constitutes lawful costs can change based on decisions of the Office of Management in the White House.

Regulations are included in provisions to receive Federal grants, such as 2 CFR 200 —UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT

⁷ <https://www.puc.pa.gov/about-the-puc/> PUC Funding and Budget

⁸ Diffusion of Innovations Theory, introduced in 1962 by Everett M. Rogers,

⁹ <https://www.osti.gov/biblio/5582144>

REQUIREMENTS FOR FEDERAL AWARDS.¹⁰ The Office of Management received this superior legal authority, for example, under the Chief Financial Officers Act of 1990.¹¹

Department of Energy Organization Act of 1977 established both the U.S. Department of Energy and the Federal Energy Regulatory Commission (FERC) as an independent commission within it.¹² Independence does not mean superior authority over Federal OMB responsibilities. The PUC must operate under the Federal Government's overall governance framework.

FERC and PAPUC use a cost-of-service model to establish rates. *"Under cost-of-service ratemaking, rates are designed based on a pipeline's cost of providing service, including an opportunity for the pipeline [operator] to earn a reasonable return on its investment."*¹³

In accounting and contracting, there is a principle: **financial substance over legal form**¹⁴ and the requirement of fair representation in financial documents.

The major element of the cost of service is the cost of capital for the utility's in-service infrastructure, mostly pipes and wire times a return on equity. (In standard accounting, assets less liabilities equals equity.) That type of arrangement is essentially, and in substance, the same as a cost-plus percentage-of-cost arrangement. Under 2 CFR 200.324, **the cost-plus-a-percentage-of-cost method of contracting is strictly prohibited** for federal grants and cooperative agreements. Government contract professionals know this type of arrangement is prohibited.¹⁵

This prohibition exists because the contractor's incentive is to spend money on infrastructure (increase assets) rather than run effective, efficient operations and satisfy customers.

Ultimately, utility rates must be just and reasonable for the consumer and the utility.

Major Considerations and Concerns:

I believe the PAPUC has weaknesses in required internal controls related to compliance with laws, regulations, and standards. This also includes preventing, detecting, and

¹⁰ <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>

¹¹ <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg2838.pdf>

"(c) The Office has a Deputy Director for Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director for Management shall be the chief official responsible for financial management in the United States Government."

¹² <https://www.congress.gov/crs-product/R48349>

¹³ <https://www.ferc.gov/natural-gas/general-information/cost-service-rate-filings>

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<https://fastercapital.com/content/GAAP-Compliance--GAAP-Compliance--The-Substance-Over-Form-Perspective.html>

¹⁵ FAR 16.102 Policies. (c) **The cost-plus-a-percentage-of-cost system of contracting shall not be used** (see 10 U.S.C. 3322(a) and 41 U.S.C. 3905(a)). ... **prohibit cost-plus-a-percentage-of-cost subcontracts.**

responding to waste, fraud, abuse, mismanagement, and unsafe conditions.¹⁶ A weakness in any one of these areas indicates a high likelihood of weaknesses in the other areas. The lack of care tends to be pervasive in poorly managed organizations.

Just and reasonable rates come from just and reasonable costs. The Office of Management and Budget issued 2 Code of Federal Regulations (CFR) 200 —UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS. The Cost Principles Subpart E—Cost Principles¹⁷ provide authoritative guidance on what is and is not a reasonable cost. In section 200.403 (a) – **costs must be necessary**.

FERC, the PA PUC, and public utilities must know and spend, for recovery purposes, only what is necessary.

Profit opportunities may come only from **actual legitimate costs**.¹⁸ The requirement of just and reasonable cost is technically a performance standard, as it specifies the desired outcome. Actual legitimate costs are determined with compliance with design standards – the type, features, and nature of the cost, and what costs are allowable and what are not. The OMB Cost Principles meet those requirements.¹⁹

Although the PA PUC receives substantial grants from the Federal Government, currently at \$8,110,000, it does not specifically recognize 2 CFR 200 as an applicable regulation to its operations. Without adequate understanding and supervision, there is a strong likelihood that **unallowable costs may be in the public utility's rate base**. This means ratepayers are probably obligated to pay for costs they should not have to.

Noncompliance with the Constitution of the Commonwealth of Pennsylvania, Art. VIII, § 10. Audit (Passed in 1968)

The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.

The PAPUC has not been audited since 1968 and does not audit public utilities to these standards.

Under the Government Auditing Standards, known as the GAO Yellow Book, audits must be independent and competent. Pennsylvania Government organizations must comply with 2 CFR Part 200, which requires annual audits. (See example: the Governor's Management Directive, Commonwealth of Pennsylvania, concerning Audits

¹⁶ A Framework for Managing Fraud Risks in Federal Programs
<https://www.gao.gov/assets/gao-15-593sp.pdf>

¹⁷ <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E>

¹⁸ 15 U.S.C. § 717e

¹⁹ FAR Part 31 and 2 CFR 200 Subpart E

325.08, amended: *“Nothing in this directive supersedes federal requirements outlined in the Uniform Guidance, 2 C.F.R. Part 200.”*²⁰

GAO’s Generally Accepted Government Auditing Standards, known as the Yellow Book, provides over three hundred pages of instructions and requirements for auditors of government organizations to conduct reliable audits designed to provide management, the legislature, the executive branch, stakeholders, and the public assurance that the organization complies with internal control standards. Audits expose performance and financial weaknesses and deficiencies. The audited organization can respond to the audit and typically promises to make the identified corrections and improvements.

No audits result in no public utility and public benefits from audits. Annual public accounting audits for traded utilities are not sufficient and reliable for ratemaking purposes.

For the current state, that means there is no reasonable assurance that the PUC’s internal controls are in place and effective. The PUC reviews management performance of some public utilities about once every eight years. This is certainly not sufficient to protect the public interest.

In Pennsylvania Public Utility ratemaking, rates are set without due diligence and without the benefit of independent audits of the utility’s expenditures and operations.

The PUC agrees oftentimes to **“black box”** settlements. These settlements are between the utility, complainants, and sometimes intervenors. Complainants do not have free access to the utility’s books and records. Complainants generally get what the utility chooses to give them. A black box settlement lacks the calculated structure of legal ratemaking—it is arbitrary and capricious. These settlements circumvent due diligence.

As a complainant in a rate case, I have always been excluded; my voice was silenced in settlement talks. The administrative law judge is excluded, and that is normal practice.

Without sufficient guidance, supervision, and audits, public utilities may do what they think they can get away with.

PUC Launches Review of Utility Ratemaking. Docket Number M-2026-3064953

Based on Governor Shapiro’s concerns and beliefs, the Commission took a step in the right direction to improve Pennsylvanians’ lives and find a more just and reasonable approach to ratemaking. *“PUC Launches Review of Utility Ratemaking to Address*

²⁰ https://www.pa.gov/content/dam/copapwp-pagov/en/oa/documents/policies/md/300/325_8.pdf

*Affordability, Transparency and Changing Economic Conditions*²¹

<https://www.puc.pa.gov/press-release/2026/puc-launches-review-of-utility-ratemaking-to-address-affordability-transparency-and-changing-economic-conditions-09102026>

A Ratemaking Work Group (RWG) or process improvement team is to address affordability and transparency.

The group should not focus on how to make the unaffordable affordable. It is better to focus on what contributes to making rates unaffordable. What costs are controllable and what are not controllable.

The group identified by the PUC Chairman is not appropriate and should not be expected to be effective, efficient, and successful.

- The proposed group is too large. This core group should be no larger than 4-7 people.
- Participants should not be invested in the status quo. There is a self-review threat – Adapted from the GAO Yellow Book. Definition: The risk that a participant will not properly evaluate their own previous work or judgments when making system improvements.
- Participants must have been faithful to their oath of office: *"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity."* That means they fulfilled their constitutional duties regarding audits.
- The group should not be focused on reinventing the wheel –but focus on using the required wheel. The wheel is described and identified as 2 CFR 200 —UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS. The PAPUC, by resolution, directive, or other means, is empowered to start complying with these Federal regulations now. Applicable portions must be flowed down to public utilities, especially the internal control requirements, including the OMB Cost Principles that identify unallowable costs in the rate base (capital assets).
- The group should be composed of 2 or 3 experts of the past (current state) and 3 or 4 experts of the future state, 2 CFR 200, with individual attributes of integrity, sense of duty, knowledge, competence, independence of mind, and availability.

Suggested members: Pennsylvania Consumer Advocate, Pennsylvania Small Business Advocate, PAPUC Deputy Executive Director, Expert from Baker Tilly Consulting in government operations, and an officer of the ASTM and ISO Consensus Standards Asset Management Committees. That should be me.

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<https://www.puc.pa.gov/press-release/2026/puc-launches-review-of-utility-ratemaking-to-address-affordability-transparency-and-changing-economic-conditions-09102026>

Utility management is all about asset management. I have been a top leader in Asset Management Consensus Standards for twenty-five years. The GAO identified me as one of the world's leading asset management experts (GAO-19-57).

*U.S. PL 104-113 – March 7, 1996, the National Technology Transfer and Advancement Act of 1995, (d) UTILIZATION OF CONSENSUS TECHNICAL STANDARDS BY FEDERAL AGENCIES; (Federal Law, per the U.S. Constitution, is law of the land – Pennsylvania is part of the land of the United States. (1) **In general.**— Except as provided in paragraph (3) ...all Federal agencies and **departments shall use** technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives ... (2) **Consultation; participation.** Federal agencies and departments **shall consult with voluntary, private sector, consensus standards bodies...***

The group must be empowered to fulfill their duties and not be under undue influence by superiors or others who have not fulfilled their oath of office.

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- Leading organizations employ Lean-Six Sigma to improve processes. A Lean-Six Sigma process improvement approach could include:
 1. First, defining the objectives including protecting the public trust;
 2. The diverse team defines and maps the current state.
 3. Identify applicable business rules, including order of precedence and CFR 200 —UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS
 4. Perform a gap analysis, which includes comparing applicable legal compliance requirements with the current state or practice. Identify weaknesses, deficiencies, and opportunities.

5. Keep top management, other experts, and stakeholders with a need to know apprised and accept comments. This includes the Legislature and the Governor.
6. Keep the larger team informed and accept comments.
7. Establish an implementation plan and seek approval from top management.
8. Improve policy
9. Follow the plan

Working Group Team members should probably be required to sign a nondisclosure agreement regarding the improvement proceedings.

Deliberations and findings should be made public according to the communications plan.

The team must act in the public's interest, not necessarily the PUC's interest.

Utility rate cases are like kabuki²² theater

After participating in PAPUC rate cases since about 2018, I realized rate cases seemed more like theater than a process to provide ratepayers with just and reasonable rates. I attended a kabuki theater performance this summer, in July, while in Tokyo, Japan. I thought, was I the first to realize ratemaking is like kabuki theater?

I asked my friend Google AI: ***“Are public utility rate cases similar to kabuki theater?”***

Google AI: *Yes, public utility rate cases are frequently compared to Kabuki theater. In energy law, journalism, and regulatory circles, the phrase "Kabuki dance" or "regulatory theater" is a common shorthand used to describe the highly predictable, ritualistic, and highly stylized nature of these proceedings. [1] (<https://academicworks.cuny.edu/clr/vol25/iss2/6/>), ...*

Why the Comparison Works: The Shared Elements		
Element	Kabuki Theater	Public Utility Rate Case
The Scripts & Roles	Actors fill rigid, traditional archetypes (the hero, the villain) wearing heavy makeup.	Parties play fixed institutional roles: The Utility plays the desperate provider; Consumer Advocates play the outraged protector; The Commission plays the wise arbiter.
The Plot / Opening Act	The plot follows a stylized, expected narrative trajectory.	The Utility requests an absurdly high rate increase (e.g., \$100 million). They fully expect to get less, but ask for the maximum to leave room for negotiation.

²² <https://en.wikipedia.org/wiki/Kabuki>

The Climax	<i>Dramatic battles and stylized poses take place on stage.</i>	<i>The parties engage in weeks of public posturing, "battle of the experts" testimony, and dramatic press releases decrying corporate greed or warning of grid failure.</i>
The Resolution	<i>The play concludes in an expected, heavily rehearsed manner.</i>	<i>A settlement is reached behind closed doors. The Utility is granted roughly half of what it asked for. [The black box settlement.]</i>
The Curtain Call	<i>Actors bow, having fulfilled their structural purpose.</i>	<i>Everyone claims victory. The Commission brags to voters that it "slashed" the utility's greedy request. The Utility quietly assures Wall Street that the new rates will comfortably cover its shareholder dividends.</i>

Initially, I didn't realize rate cases were kabuki theater. I was an unwelcome disruptor, was treated as such, and neutralized. Despite my ineffectiveness, the show went on.

Questionable Pennsylvania Public Utility Commission Decision Making

*Pennsylvania Public Utility Code Title 66 § 1510. Ownership and maintenance of natural and artificial gas service lines. -- When connecting the premises of the customer with the gas utility distribution mains, the public utility shall furnish, install and maintain the service line or connection according to the rules and regulations of the filed tariff. **A public utility shall not be authorized or required to acquire or assume ownership of any customer's service line.** ... Maintenance of service lines shall be the responsibility of the owner of the service line. (Mar. 7, 1984, P.L.104, No.22, eff. 60 days)*

The PAPUC ordered Peoples Gas to replace 52,000 customer's service lines on December 18, 2025, over five years. <https://www.puc.pa.gov/pcdocs/1906979.pdf>. If customer's service on average costs \$4,000. That is **\$208 million** that will be mischarged to the rate base that paying customers should not have to pay.

Peoples's Gas requested permission to spend \$3.3 billion, their capital budget over five years, and the Commission approved the same amount. *Customer owned service lines are customer's service lines.*

IT IS ORDERED: 1. *That the Petition of Peoples Natural Gas Company, LLC, for approval of its Third Long-Term Infrastructure Improvement Plan [2026- 2030] is approved, [\$3.3 billion], **consistent with this Order.***

Peoples Distribution
Long-Term Infrastructure Improvement Plan
January 1, 2026 through December 31, 2030

Third LTIIIP Appendix 4
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Projected Annual LTIIIP Expenditures

Type (in millions \$)	2026	2027	2028	2029	2030	5 year Total
Distribution Lines ^{1/}	\$539.5	\$561.1	\$583.6	\$606.9	\$631.2	\$2,922.3
Meter Replacement - Intelis	39.8	37.3	38.6	39.9	41.3	\$197.0
Meter Replacement - Other ^{2/}	6.4	6.5	6.5	6.5	6.7	\$32.7
M&R Station Upgrades	6.0	6.3	6.4	6.6	6.8	\$32.1
M&R OPP	14.8	15.2	14.1	13.1	13.5	\$70.7
Grand Total	\$606.6	\$626.4	\$649.2	\$673.1	\$699.5	\$3,254.8

^{1/} Includes Company & Customer Owned Services and Transmission Lines

^{2/} Includes Other Meters, Inside Meters and Meter Move Outs

Peoples Distribution
Long-Term Infrastructure Improvement Plan
January 1, 2026 through December 31, 2030

Third LTIIIP Appendix 3
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Projected Quantity of Property Improved

Category		2026	2027	2028	2029	2030	5 Year Total
Distribution Lines	miles	185	184	183	184	184	920
Transmission/Storage Lines	miles	1	2	3	2	2	10
Company Owned Services	count	13,700	13,700	13,700	13,700	13,700	68,500
Customer Owned Services	count	10,400	10,400	10,400	10,400	10,400	52,000
Meter Replacement - Intelis	count	124,000	124,000	124,000	124,000	124,000	620,000
Meter Replacement - Other ^{1/}	count	1,680	1,680	1,680	1,680	1,680	8,400
M&R Station Upgrades	count	76	76	76	76	76	380
M&R OPP Projects	count	270	274	218	100	100	962

^{1/} Includes Other Meters, Inside Meters and Meter Move Outs

What happened? Mass error, fraud, carelessness. Whatever, this should not have happened! Assume this is an ongoing practice. This is not only noncompliance by the PUC, but also by its staff, the utility, its staff, and the lawyer who submitted the petition. This should be a key performance indicator in the PUC's decision-making.

Those who processed this submission either knew or should have known that public utilities are not authorized to take private property, replace it, and charge the cost to other customers.

This type of misrepresentation should call the rest of the submission into question.
Falsus in uno, falsus in omnibus.

This issue is not complicated; it is fundamental. Federal law: 49 U.S. C. § 60113²³ and Pennsylvania law.²⁴ Federal law requires utilities to notify customers of their responsibilities, and the utilities do so.

In substance, the PUC ordered wrongdoing. A subgroup should be established to determine how many orders like this have been made.

A corrective action plan cannot come too soon.

Then, a few months ago, the Governor recognized this show must stop. Now we need the hard work to provide the framework to achieve actual just and reasonable public utility rates.

Immediately, the Commission must initiate audits of its entire operations while recognizing 2 CFR 200 2 CFR 200 —UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS as applicable to its operations.

The status quo in establishing utility rates harms ratepayers—we deserve better.

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²³ <https://www.law.cornell.edu/uscode/text/49/60113>; 49 CFR § 192.16 Customer notification;

²⁴ PA Title 66 § 102. Definitions. **"Customer's service line."** The pipe and appurtenances owned by the customer extending from the service connection of the gas utility to the inlet of the meter serving the customer.