



**Testimony of
JOHN F. COLEMAN JR., COMMISSIONER
On behalf of the
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Before the House Consumer Affairs Committee
On House Bill 284/Senate Bill 242
June 5, 2017**

**John F. Coleman, Jr., Commissioner
Public Utility Commission
Commonwealth of Pennsylvania
3rd Floor, Commonwealth Keystone Building
Harrisburg, PA 17105
(717) 772-0692**

Chairman Godshall, Chairman Caltagirone, and members of the House Consumer Affairs Committee, I am Commissioner John Coleman with the Pennsylvania Public Utility Commission. Thank you for the opportunity to testify today about the provisions of House Bill 284 and Senate Bill 242. The bills transfer enforcement authority of the Underground Utility Line Protection Law, more commonly known as the PA One Call Law, from the Department of Labor and Industry (L&I) to the Pennsylvania Public Utility Commission (PUC). This transfer of authority is a Commission legislative priority and we support both bills. We would also like to thank Representative Matt Baker and Senator Lisa Baker for their steadfast support of this initiative and introduction of HB 284 and SB 242.

The Commission began exploring this enforcement authority transfer in 2011. Then Secretary Hearshway of L&I and the Governor's Office were consulted early in this process. It was determined that transferring this responsibility from L&I to the PUC would be consistent with our current regulatory functions. We welcome the opportunity to accept this responsibility. It is important to note that this legislation only transfers enforcement jurisdiction to the Commission. The PA One Call System would continue its role in providing an efficient and effective communications network for facility owners, excavators, designers and project owners.

Many utilities with underground lines are already regulated by the PUC. The transfer of One Call enforcement authority is a logical extension of those responsibilities. The transfer of this function is also consistent with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) recommendation encouraging state utility commissions to enforce One Call laws. In

other states where the regulatory agency provides this enforcement, the number of both reportable incidents and damage to underground facilities has been reduced. Based on the experience in other states, the Commission believes increased enforcement will reduce underground line hits, increase public safety, and reduce costs associated with line hits for utilities, excavators and ultimately utility customers.

In preparing these bills for introduction, the Commission worked closely with the PA One Call System and met with multiple interest groups and associations including the Pennsylvania Department of Transportation (PennDOT), the Pennsylvania Emergency Management Agency (PEMA), municipal trade associations, utilities, excavators, the American Petroleum Institute of Pennsylvania (API-PA), the Marcellus Shale Coalition (MSC) and the Pennsylvania Independent Oil and Gas Association (PIOGA). Many recommendations taken from these meetings were incorporated into the legislation.

In addition to the transfer of enforcement authority, the bills propose several other important changes. These changes include the elimination of exemptions, mandatory reporting of all line hits, and a requirement for excavators to take additional steps if they discover that facilities have not been marked as requested.

Presently, the law has several exemptions from the requirement to notify the One Call system for the purpose of locating and marking underground facilities before performing excavation. Those exempted from this general rule include:

- A person doing an excavation to extract natural resources;
 - Municipalities performing routine maintenance up to a depth less than 18 inches;
- and

- PennDOT performing excavation within the right-of-way of a state highway up to a depth of 24 inches.

The rationale for these last two exemptions is that utility facilities are buried at sufficient depth to permit shallow excavations to go forward without locating and marking facilities.

Separately, some facility owners are exempt from the requirement to mark their underground facilities. For example, PennDOT is not required to mark any of its underground facilities when an excavator is working in the vicinity of their underground assets. Additionally, some operators of natural gas production and gathering lines are not required to mark their facilities when other parties are excavating near them. Over the past several years, many new natural gas gathering pipeline networks have been built to support unconventional natural gas development. These pipelines may be of large diameter and operated at high pressures than existing networks, and present an unquestionable danger if damaged during excavation work. Additionally, even small diameter pipelines operated at low pressures pose a danger to excavators and nearby homes if damaged.

HB 284 and SB 242 removes these exemptions from the law, and the Commission continues to believe removal of the exemption for crude oil or natural gas production and gathering lines or facilities is necessary to truly enhance safety and protect the public. Also, PHMSA has noted that any exemption in state law must be supported with data showing that such an exemption is reasonable and does not pose a substantial safety risk. It is important to note that exemptions may adversely impact a

portion of the Commission's federal pipeline safety grant, if Pennsylvania's enforcement program is found to be inadequate.

The removal of the exemption for political subdivisions and PennDOT has changed in recent weeks after continuing discussions with PennDOT and PHMSA. PennDOT has argued that the removal of its exemptions in the One Call Law would cost tens of millions of dollars in compliance costs. In response, PHMSA has stated that the problematic language in the PA One Call law is the explicit exemption for "political subdivisions" and "employees of the Department of Transportation performing within the scope of their employment." Removal of that language, while retaining the work done by municipalities and the state, would be sufficient for PA to receive its One Call grant funding from PHMSA.

The next important change in the law is mandatory reporting of all line hits and alleged violations. Currently, the Underground Utility Line Protection Law requires facility owners and excavators to report line hits only when they result in personal injury or property damage to parties other than the facility owner or excavator. In order for the Commission to enforce the law fairly and consistently, as part of the overall goal of reducing the total number of hits by 50%, it is essential that all hits and alleged violations are reported. Currently, more than 6,000 line hits are reported each year to the PA One Call System. The Commission's objective would be to conduct 1,600 investigations of reported violations and underground line damages per year. Again, the Commission's goal is to reduce line hits through consistent and broad enforcement and education programs for those persons violating the law.

HB 284 and SB 242 will also improve the current law by requiring excavators to

contact One Call if facilities have not been marked as requested. Under the current law, excavators may immediately begin excavation work even when a facility owner failed to mark the location of its underground lines. These bills provide for additional steps to be taken to ensure lines are located prior to excavation. If an excavator discovers that underground lines are not marked, or believes the lines are incorrectly marked, the facility owner will be required to directly communicate the location of its underground lines to the excavator, and, where possible, to respond to the work site to mark the lines. Excavators must allow three hours for facility owners to accomplish the line location before excavation is permitted.

Previous enactments of the One Call Law did not require the location and mapping of natural gas and crude oil production and gathering lines which were not subject to safety regulation under federal pipeline safety laws. The bills acknowledge the increased development of these lines in Pennsylvania, as well as a recent tragic incident which involved one of these facilities, by including production and gathering lines within the scope of the law. The bills require new installations of these lines to be marked and located beginning with the effective date of the Act.

However, the bills acknowledge the existence of lines which were not subject to One Call requirements when installed, while also noting the increase in safety which will occur when more underground lines are located. In a reasonable compromise, the bills do not permit the One Call System to require location and mapping of existing lines unless the facility owner has existing maps which meet the requirements of the One Call System's Member Mapping Solutions.

Turning to implementation issues, both bills establish a Damage Prevention Committee (DPC) to review alleged violations. The DPC would be comprised of members representing facility owners, the One Call System, excavators, municipalities and the Commission. Also, PennDOT has requested a seat on the DPC, and the Commission supports that request. Action taken by the DPC is binding on the Commission and may result in a violator paying an administrative penalty and/or being required to attend a training/educational program about the requirements of the One Call Act. However, any violation resulting in injury or death would not be addressed by the Committee. Rather, those violations would be prosecuted by the PUC's Bureau of Investigation & Enforcement. This administrative process is similar to what is used by the Commonwealth of Virginia in managing its One Call enforcement responsibilities. We believe that this structure and process will prove to be efficient, effective and fair.

Funding for enforcement activities under the legislation has changed since its original introduction in 2013. Parties criticized the funding mechanism in previous session bills because the Commission was beholden to a nonprofit organization, namely the One Call System, to cover the Commission's enforcement costs. The bills this session, similar to last session, propose an 80/20 split in the dollars collected for PUC enforcement. Regulated public utilities are 80% of the workload for One Call, so the PUC would assess 80% of its One Call enforcement costs on public utilities, and One Call would cover the remaining 20% obtained from its members, except facility owners that are public utilities. Also, the Commission's costs would be offset by federal and state funds, including administrative penalties collected through the DPC.

It should be noted that the Commission's estimated costs for the first year of operation is \$1.2 million, which includes updated personnel costs and an estimated \$600,000 for the acquisition of necessary processing software. Once those initial start-up costs have been addressed, operating expenses for subsequent years will be lower.

Finally, HB 284 contains a sunset provision of December 31, 2022. SB 242 has a sunset date of December 31, 2024. A thorough review of the effectiveness of any change to the One Call Law will occur prior to this date.

Again, thank you for holding this hearing. The Commission fully supports the transfer of enforcement authority for the PA One Call Law from L&I to the PUC as it is consistent with our current regulatory functions. We also support the proposed changes that are designed to strengthen the protections provided by the law.

The Commission stands ready to assist you in any way on this issue. I'll be glad to answer any questions you may have. Thank you.