

**BYLAWS  
OF  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION  
DAMAGE PREVENTION COMMITTEE**

**ARTICLE I – NAME AND AFFILIATION**

Section 1: Name

This Committee shall be known as the “Damage Prevention Committee” (Committee).

**ARTICLE II – AUTHORITY AND PURPOSE**

Section 1: Authority

The Committee is established by the Pennsylvania Public Utility Commission pursuant to Section 182.8 of the Underground Utility Line Protection Law (Law), 73 P.S. § 182.8, and the Commission’s Order entered on March 15, 2018 at Docket No. M-2018-3000261, to assist in the enforcement efforts of the Commission and in matters related to damage prevention of underground facilities and the Law.

Section 2: Purpose

The purpose of the Committee is to review reports of alleged violations of the Law (AVR) and the findings and recommendations contained in the reports prepared by Damage Prevention Investigators (DPI), and to make informal determinations related to the disposition of those alleged violations. The Committee may also make recommendations to the Commission relevant to such violations as well as make recommendations with regard to public education and awareness programs that further public safety by the reduction of damage to the underground utility facilities in the Commonwealth. The Committee shall meet regularly and perform all the duties set forth in Article XII.

**ARTICLE III – DEFINITIONS**

Alleged Violation Report (AVR) - the report of an alleged violation of the Law.

Chairperson– Chairperson of the Pennsylvania Public Utility Commission or his/her designee.

Commission – The Pennsylvania Public Utility Commission.

Damage Prevention Investigator (DPI)– A Commission staff member assigned to investigate an AVR and who prepares a report that contains findings and recommendations for consideration by the Committee.

Designer – As the term is defined at 73 P.S. § 176, and any future amendments thereto.

DPI Report – The report of the Damage Prevention Investigator.

Excavator – Any person who or which performs “excavation work” or “demolition work” as defined at 73 P.S. § 176 (and any future amendments thereto) for himself or for another person.

Executive Director – The Executive Director of the Commission.

Facility Owner – As the term is defined at 73 P.S. § 176, and any future amendments thereto.

Law – The Underground Utility Line Protection Law, 73 P.S. §§ 176, *et seq.*

PennDOT – The Pennsylvania Department of Transportation.

Pennsylvania One Call System (POCS) – The communication system established within the Commonwealth to provide a single, nationwide toll-free telephone number – or 811 number – for excavators or designers or any other person covered by the Law to call facility owners and to notify them of their intent to perform excavation, demolition or similar work as defined in the Law. The Pennsylvania One Call System is incorporated and operated as a nonprofit corporation. POCS processes all AVRs and submits them to the Commission in accordance with Section 3 clause (3) of the Memorandum of Understanding.

Person – A homeowner, individual, partnership, corporation, political subdivision, municipal authority, the Commonwealth and its agencies and instrumentalities or any other entity.

Project Owner - As the term is defined at 73 P.S. § 176, and any future amendments thereto.

Stakeholder – Any person subject to an AVR or otherwise part of an incident resulting in an AVR including, but not limited to, facility owners, designers, project owners, ~~and~~ excavators and homeowners.

## **ARTICLE IV – COMMITTEE MEMBERSHIP**

### Section 1: Members

The Committee shall consist of the Commission Chairman or his or her designee, and the following 12 voting members:

- (i) The President of the POCS, or his or her designee from the POCS professional staff.
- (ii) The PennDOT Secretary or his or her designee.
- (iii) Five representatives of non-municipally owned or affiliated facility owner industries. There shall be one representative from each of the following industries: (1) electric; (2) natural gas or petroleum pipelines; (3) telephone; (4) water or wastewater; and (5) cable television.
- (iv) Three representatives of excavators.
- (v) One representative of municipal governments.
- (vi) One representative of municipal authorities.

### Section 2: Nominations and Recommendations

The Committee members shall be appointed by the Commission in accordance with Section 182.8(a)(1) of the Law, 73 P.S. § 182.8(a)(1). Candidates for membership under Article IV, Sections 1 (iii), (iv), (v) and (vi) shall be nominated from each of the respective categories of entities or affiliated organizations. Such nominations shall be forwarded to the Secretary of the Commission. The Executive Director shall provide recommended candidates to the Commission for approval.

### Section 3: Expertise

Individuals appointed to the Committee shall have expertise with the operations covered by the Law.

## **ARTICLE V – MEMBERSHIP TERMS**

### Section 1: Initial Terms

- (i) For representatives appointed under Article IV, Section 1(iii), two shall serve for three years, one shall serve for two years and two shall serve for one year.
- (ii) For representatives appointed under Article IV, Section 1(iv), one shall serve for three years, one shall serve for two years and one shall serve for one year.
- (iii) The representative appointed under Article IV, Section 1(v) shall serve for two years.

- (iv) The representative appointed under Article IV, Section 1(vi) shall serve for three years.

Section 2: Terms of Appointment

Except for the terms of the Commission Chairman, POCS President, the Secretary of Transportation, and except for the Initial Terms under Article V, Section 1, an appointment to the Committee shall begin January 1 and shall be for a term of three years. Members are appointed under Article IV, Section 1 (iii), (iv) (v), and (vi), may serve additional terms upon approval of the Commission.

**ARTICLE VI – OFFICERS**

Section 1: Officers of the Committee

The officers of the Committee shall be a Chairperson, a Vice Chairperson and a Secretary. The Commission Chairman or his or her designee shall serve as the Chairperson of the Committee and shall be a non-voting member, except if the Chairperson’s vote is necessary to break a tie. The Vice Chairperson and Secretary shall be selected by a majority vote of the Committee members.

Section 2: Election of Officers

The Committee shall elect a Vice Chairperson and Secretary from the Committee membership at the first Committee meeting. Except for the initial terms addressed in Article V, terms of the officers shall be for three years. All officers will follow the expectations listed in the bylaws, including the duties, responsibilities and limitations of the officers. Members will be requested to indicate their interest in being nominated for a particular office and their ability to fulfill all of the obligations of that office, if elected. All members who express interest will be placed on the slate provided they are in compliance with these bylaws and can meet the term commitments of the office they seek. Votes for the election will be cast by ballot vote at a regular meeting.

Section 3: Removal of an Officer

The Vice Chairperson or Secretary may be removed from office for just cause. Discussions of motions to censure or remove such officers shall take place during a regularly scheduled Committee meeting; censure or removal requires a two-thirds majority vote of the Committee members present. The vote shall be by a roll call vote.

## **ARTICLE VII – EXPECTATION OF OFFICERS**

### Section 1: Chairperson

The Chairperson shall preside, direct and coordinate activities at all Committee meetings. The Chairperson shall be a nonvoting member, except if such vote is necessary to break a tie. The Chairperson shall perform such other duties as may be imposed by action of the Committee or as set forth in these bylaws. Also, the Chairperson or his or her designee shall establish agendas for each Committee meeting. The Chairperson shall establish such subcommittees as shall occasionally be necessary to carry out the duties and responsibilities of the Committee.

### Section 2: Vice Chairperson

The Vice Chairperson shall serve in the absence of the Chairperson and shall perform such other duties as may be imposed by action of the Chairperson, the Committee or as set forth in these bylaws. When serving in the absence of the Chairperson, the Vice Chairperson shall be a non-voting member, except as necessary to break a tie.

### Section 3: Secretary

The Secretary shall serve in the absence of the Chairperson or Vice Chairperson and shall perform such other duties as may be imposed by action of the Committee or as set forth in these bylaws. The Secretary shall be responsible for recording the actions of the Committee. Minutes of the Committee meetings shall be recorded with the assistance of Commission staff and shall be approved by a majority vote of the Committee at the subsequent meeting.

### Section 4: Ethics

Officers shall conform to the standard of conduct expressed in the Commission’s Code of Ethics as codified at 66 Pa. C.S. § 319(a)(1): “avoid impropriety and the appearance of impropriety in all activities;” (a)(2): “perform all duties impartially and diligently;” (a)(3): “avoid all *ex parte* communications prohibited [in Title 66 Chapter 3]”; and (a)(7) “Disqualify [themselves] from proceedings in which his [or her] impartiality might be reasonably questioned.”

## **ARTICLE VIII – EXPECTATION OF MEMBERS**

### Section 1: Compensation

Members of the Committee and/or any subcommittee members shall serve without compensation. Nothing contained in this section shall be construed to prevent any sponsoring organization from compensating their representative for salary, expenses, or other compensation considered as a condition of their employment.

Section 2: Attendance

A roll call shall be taken by the Secretary at the beginning of each meeting and a record of those members in attendance shall be kept as part of the records of the actions of the Committee. To remain in good standing, a member must attend a minimum of 75 percent of all meetings conducted in a calendar year. A member may be removed for unexcused absence from 25 percent or more of the regularly scheduled meetings in a calendar year. Excused absences may include medical appointments or sickness, and unavoidable travel complications. Other absences, including business conflicts, must be excused in advance of any regularly scheduled meeting. The Committee Chairperson shall notify the Commission if a member of its Advisory Committee has failed to attend a majority of the Committee's regularly scheduled meetings for the Commission to evaluate whether removal and replacement is warranted.

Section 3: Ethics:

Members shall conform to the standard of conduct expressed in the Commission's Code of Ethics as codified at 66 Pa. C.S. § 319(a)(1): "avoid impropriety and the appearance of impropriety in all activities;" (a)(2): "perform all duties impartially and diligently;" (a)(3): "avoid all *ex parte* communications prohibited [in Title 66 Chapter 3]"; and (a)(7) "Disqualify [themselves] from proceedings in which his [or her] impartiality might be reasonably questioned."

**ARTICLE IX – REMOVAL**

Section 1: Any member of the Committee may resign, be removed at any time by the Commission or be removed by majority vote of the Committee and the concurrence of the Commission. A member may be removed for failure to attend 75 percent of the scheduled meetings in a calendar year; actions not consistent with the Law; a violation of the Commission's Code of Ethics as specified in Article VII Section 4 and Article VIII Section 3, or a change in employment which removes the person from his/her position with the entity he/she was appointed to represent.

**ARTICLE X – VACANCIES**

Section 1: Any vacancy occurring on the Committee shall be filled as soon as practical by appointment by the Commission. Should a list of candidates for the position be unavailable, the Commission may appoint a person to fill the vacancy based on a recommendation by the remaining Committee members and consistent with Article IV of these bylaws. The term of such appointment under this section shall be for the remainder of the unexpired term.

## ARTICLE XI – MEETINGS

### Section 1: Regular Meetings

Regular meetings of the Committee shall be held monthly. Meetings will be held on the second Tuesday of each month unless suspended by the Chairperson. In such cases, the meeting will be rescheduled on a day agreed upon by the majority of the committee. If a scheduled meeting is cancelled for any reason, the meeting may be rescheduled or combined with the next regularly scheduled meeting. A meeting agenda will be made available on the Commission's website prior to the meeting. Meetings of the Committee shall be open to the public; however, those attending who are not Committee members or have not been called by the Committee shall be allowed to speak only at the discretion of the Chairperson.

### Section 2: Special Meetings

Upon request of the Commission, and upon notice to the Committee members, the Chairperson may call special meetings of the Committee to advise the Commission on matters related to prevention of damage to underground facilities under the Law, or other matters related to the functions of the Committee. Such notice shall be as far in advance as practical, but not less than three business days. Such meetings may be held at a time and place established by the notice. Special meetings may be by conference call or by other telecommunications means approved by the Committee.

### Section 3: Meeting Rules and Procedures

- (i) Agendas for regular meetings will be posted on the Commission's website prior to the meeting and will list cases to be voted upon in Omnibus Fashion, cases scheduled for Full Session (discussion and vote), and cases scheduled for Committee Review (discussion purposes without vote).
- (ii) Prior to each meeting, the DPI Supervisor and Committee members may individually review the scheduled cases for the purposes of assigning certain cases for Committee Review. Cases may be chosen for Committee Review based upon the following criteria:
  - a. Impact on the public (service outage or interruptions),
  - b. Significance to the public (potential safety issues or hazardous conditions),
  - c. Controversial issues or conflicting evidence, and/or
  - d. Other relevant factors.
- (iii) In the event the DPI Supervisor or a Committee member chooses a case for Committee Review, the stakeholder will be advised in writing that its case has been scheduled for Committee Review and may appear before the

Committee to present its case. The stakeholder will also be provided a written copy of the DPI Report absent any proposed administrative penalty.

- (iv) When the DPI Supervisor or a Committee member chooses a case for Committee Review, no formal vote will be taken. The purpose of the discussion will be for Committee members to gather more facts, receive more information from the Stakeholder(s), and to recommend an administrative penalty, if any, to the DPI Supervisor.
- (v) Stakeholders will then receive a revised DPI Report with a proposed administrative penalty, if any, which the stakeholder may then accept or reject as set forth in Article XI Section 3 (vii) and (viii) below. After the stakeholder either accepts or rejects the findings in the report and the administrative penalty, if any, the case may be scheduled for the next available meeting date for final vote of the Committee and issuance of an informal determination under Article XII Section 6 herein.
- (vi) In all other cases not chosen for Committee Review by the DPI Supervisor or a Committee member, stakeholders will receive a written copy of the DPI Report with a proposed administrative penalty and may accept or reject the findings as set forth in Article XI Section 3 (vii) and (viii) below.
- (vii) When a stakeholder chooses to provide the Committee with written acknowledgement of the findings and administrative penalty contained in the DPI Report and remits payment of the administrative penalty, pursuant to Article XII Section 4(i)(a) and (ii) herein, such cases may be voted upon by the Committee in Omnibus Fashion or closed out by the DPI Supervisor. The Committee may reduce, mitigate, or eliminate the administrative penalty when voting on omnibus cases, but in no way shall such administrative penalty be enhanced, nor may required education be added.
- (viii) When a stakeholder advises the Committee in writing of its intent to appear before the Committee to present its position, pursuant to Article XII Section 4(i)(b) herein, such cases will be scheduled for Full Session (discussion and vote).
- (ix) Stakeholders will be notified by mail and by email no less than ten (10) days prior to the meeting that a Full Session case will be on the meeting agenda. Per Article XI Section 1 herein, the meeting agenda will be made available on the Commission's website prior to the meeting. If a Full Session case is removed from the meeting agenda, the Committee shall notify the affected stakeholder as soon as practicable.



- (x) Except as the Committee may otherwise request, stakeholders shall have only one representative of its choosing present its case before the Committee. Legal representation is permitted for the purposes of advising the stakeholder representative only, but attorneys shall not address the Committee directly unless authorized by the Chairperson. Any additional representatives may address the Committee if the Chairperson determines that such presentations will assist the Committee without unduly lengthening the meeting. Representation shall be in person.
- (xi) Presentation of cases should be limited as near as practicable to fifteen (15) minutes per case or unless and until Committee members have completed questioning and discussion.

## **ARTICLE XII – ACTIONS AND POWERS**

### Section 1: General Duties

The Committee shall regularly meet to carry out the following duties:

- (i) Review AVRs and DPI Reports that contain findings and recommendations concerning an AVR;
- (ii) Issue warning letters to persons, as deemed appropriate by the Committee or as recommended by the DPI;
- (iii) Issue informal determinations that impose administrative penalties;
- (iv) Require persons to attend damage prevention education programs; and
- (v) Issue informal determinations that modify or dismiss a recommendation of Commission staff.

### Section 2: Additional Duties

The Committee, or its designee, shall have the following additional duties:

- (i) Submit an annual report containing relevant damage prevention data to the Commission, the Committee on Consumer Protection and Professional Licensure of the Senate and the Committee on Consumer Affairs of Consumer Protection and Professional Licensure of the Senate and the Committee on Consumer Affairs of the House of Representatives.

### Section 3: Administrative Penalties

- (i) Penalties shall be imposed according to Section 182.10(b) of the Law. Aggravating and mitigating factors used in determining penalty amounts can be found at Section 182.10(b)(2) of the Law and are as follows:
  - (a) The history of the party's compliance with the act prior to the date of the violation.
  - (b) The amount of injury or property damage caused by the party's noncompliance.
  - (c) The degree of threat to the public safety and inconvenience caused by the party's noncompliance.
  - (d) The party's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations.
  - (e) The degree of the party's culpability.
  - (f) Other factors as may be appropriate considering the facts and circumstances of the incident.

Section 4: Stakeholder Rights

- (i) Within thirty (30) days of receipt of a DPI Report, a stakeholder shall do one of the following:
  - (a) Provide to the Committee a written acknowledgement of the findings and the administrative penalty contained in the DPI Report, or
  - (b) Advise the Committee in writing of the stakeholder's intent to appear before the Committee to present its position.
- (ii) A written acknowledgment of the findings shall include payment of any administrative penalty amount invoiced in the notice.
- (iii) If a stakeholder does not respond within thirty (30) days of receipt of a DPI Report, then the case may be placed on the meeting agenda and voted upon by the Committee, *in absentia*.

Section 5: Votes of the Committee

A simple majority vote of those voting shall be deemed to be the position of the Committee. Members who cannot attend meetings shall not be allowed to send an alternate representative. When a DPI Report is brought before the Committee and the employer, sponsor of a Committee member, or any association upon which a Committee member is an officer, is a stakeholder listed in the DPI Report, that member may not speak on the issue before the Committee. Such member also

shall abstain from voting on the DPI Report, and such abstention shall be reported in the meeting minutes for such vote. A member abstaining from discussion and vote may request of the Chairperson, by Point of Clarification, to clarify issues of fact relative to his/her area of expertise. Permission to clarify will be granted solely at the discretion of the Chairperson.

Each member shall vote in person. No member shall be allowed to vote by proxy or allow his/her vote to be cast by another. The Committee may vote on and adopt policies to be used as guidelines to the Committee during its review and recommendation process relative to DPI Reports. Such policies may serve as guidelines to the Committee as described above but do not represent a general order, rule or regulation of the Commission.

Section 6: Informal Determinations of the Committee

- (i) Once a case is voted upon by the Committee whether by Omnibus Fashion or after a Full Session case, an informal determination will be drafted and mailed to the stakeholder against whom a violation of the Law has been found. The informal determination shall be dated and state, at a minimum, the meeting date that the vote took place, the violation(s) of law determined, the penalty imposed, instructions for paying administrative penalties, and a notice of rights as set forth in Article XII Section 6(ii)-(iv) below.
- (ii) A stakeholder who is subject to an informal determination of the Committee may accept or reject the result. A rejection of an informal determination must be made in writing and submitted to the Committee or its designee no later than thirty (30) days from the date of the determination. If an informal determination is rejected, the matter shall be returned to the DPI for further action, if appropriate, including referring the matter to the Commission prosecutorial staff for the purpose of issuing a Formal Complaint.
- (iii) If a stakeholder does not reject the informal determination within thirty (30) days, an informal determination of the Committee shall be final and binding on the Commission.
- (iv) Appeals from final action of the Commission shall be filed in the Commonwealth Court within thirty (30) days of the date the informal determination becomes final.

**ARTICLE XIII – QUORUM**

Section 1: At any meeting of the Committee, at least seven members who are present shall constitute a quorum for the transaction of business. Actions by a majority of the

quorum shall be deemed to represent the actions of the entire Committee. The Chairperson's attendance shall not be counted to establish a quorum.

#### **ARTICLE XIV – AMENDMENTS**

Section 1: These bylaws may be amended by a two-thirds majority vote of the members of the Committee present at any regular meeting, if such amendment is first read and approved by a two-thirds vote of the members present at the prior regular meeting of the Committee. However, such amendment shall not be adopted until approved by the Commission.

#### **ARTICLE XV – IMMUNITY**

Section 1: Except for willful misconduct, members of the Committee shall be immune, individually and jointly, from civil liability for an act or omission done or made in performance of the members' duties while serving as members of the Committee.