

**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.

Chairman– Chairman of the Pennsylvania Public Utility Commission or his/her designee from the Commission’s professional staff.

Commission – The Pennsylvania Public Utility Commission.

Damage Prevention Investigator (DPI)– An employee of the Commission tasked with reviewing and investigating an alleged violation reported to the Commission under sections 2(10), 4(8), 5(16) and 6.1(7) of the Law and offering recommendations to the Committee to address the alleged violation in the form of a warning letter, administrative penalty or participation in an educational program established by the Commission.

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, 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 related to the industry represented.

## **ARTICLE V – MEMBERSHIP TERMS**

### Section 1: Terms of Appointment:

Except for the terms of the Commission Chairman and the POCS President, an appointment to the Committee shall begin January 1 and shall be for a term of three years. Members serving under Article IV, Section 1 (iii), (iv), (v) and (vi), may serve additional three-year terms upon approval and reappointment by the Commission. The Member appointed under Article IV Section 1(ii) may serve additional three-year terms as long as the Secretary of Transportation so designates.

## **ARTICLE VI – OFFICERS**

### Section 1: Officers of the Committee:

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

### Section 2: Election of Officers:

The Committee shall elect a Vice Chairman and Secretary from the Committee membership at the first Committee meeting. 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 or roll-call vote at a regular meeting.

### Section 3: Removal of an Officer:

The Vice Chairman 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: Chairman:

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

Section 2: Vice Chairman:

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

Except as provided for herein, members shall attend each meeting in person. 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. Committee members may remotely attend one meeting per calendar year without cause and with notice having been given to, and approved by, the Committee Chairman no less than five (5) days in advance of the meeting. Committee members may remotely attend one additional meeting per calendar year in the event of an unforeseen emergency, provided that notice is given to, and approved by, the Committee Chairman as soon as practicable. Members attending a meeting remotely shall be visible via camera and record their vote both audibly, and in the meeting chat. The Committee Chairman shall notify the Commission if a member of the 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 [in Title 66 Chapter 3]"; and (a)(7) "Disqualify [themselves] from proceedings in which his [or her] impartiality might be reasonably questioned."

Section 4: Stay-out:

Members who terminate their employment with a stakeholder company shall refrain from discussion and voting for a period of one (1) year in instances where their previous employer is a listed stakeholder. Such abstention shall be reported in the meeting minutes for said vote. A member abstaining from discussion and vote pursuant to this Section may request of the Chairman, 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 Chairman.

**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 (a member shall be considered as having "attended" if attending remotely under Article VIII Section 2); 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 Chairman or scheduled for a later date due to a holiday. In such cases, the meeting will be rescheduled for the following day, or, in the event that is unworkable, 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 Chairman.

Section 2: Special Meetings:

Upon request of the Commission, and upon notice to the Committee members, the Chairman 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 (vote without modification), and cases scheduled for Full Session (discussion and vote).
- (ii) 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 (iii) and (iv) below.

- (iii) 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. 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.
- (iv) 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).
- (v) 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.
- (vi) 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 Chairman. Any additional representatives may address the Committee if the Chairman determines that such presentations will assist the Committee without unduly lengthening the meeting. Representation shall be in person.
- (vii) 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 a report of an alleged violation of the Law and DPI findings concerning the basis or root cause of the alleged violation reported and recommendations proposed to address the alleged violation;

- (ii) Issue warning letters to persons, as deemed appropriate by the Committee or as recommended by the DPI;
- (iii) Issue an informal determination that imposes an administrative penalty;
- (iv) Require persons to attend damage prevention education programs; and
- (v) Issue an informal determination that modifies or dismisses a recommendation of the DPI;
- (vi) The Committee shall only have the powers and duties enumerated in this Section if the Committee completes its review of an alleged violation and issues an informal determination within two hundred seventy (270) days of the occurrence of the alleged violation pursuant to Section 182.8 (d.1) of the Law.
- (vii) Notwithstanding the provisions of Article XI Section 3 and Article XII Section 4, herein, willful delay of the AVR review and determination process by any stakeholder will result in the matter being expedited to the next regularly scheduled Committee meeting, or by special meeting as provided for in Article XI Section 2 herein.

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 Protection, Technology and Utilities of the House of Representatives. The report shall include relevant metrics to demonstrate how the Committee's actions advance the goal of minimizing the occurrence of line hits and enhance public safety.

Section 3: Administrative Penalties:

- (i) Penalties shall be imposed according to Section 182.10(b) and (c) 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.
- (ii) A person or entity violating the Law must pay an administrative penalty to the Commission within sixty (60) days of issuance of the informal determination, unless the person or entity subject to the informal determination rejects the informal determination within thirty days in accordance with Section 7.8(c)(2) of the Law and Article XII Section 6(ii) herein.
- (iii) The Commission shall assess an additional administrative penalty of one hundred dollars (\$100) per day, not to exceed a total of five thousand dollars (\$5,000), for an administrative penalty not paid within the period specified under paragraph (ii) above.
- (iv) A person or entity subject to an informal determination of the Committee requiring a damage prevention educational program under Section 7.8(b)(4) of the Law shall successfully complete the program within sixty (60) days of issuance of the informal determination. The Commission shall assess an additional administrative penalty of one hundred dollars (\$100) per day, not to exceed a total of five thousand dollars (\$5,000), on a person or entity that fails to comply with this clause.

Section 4: Stakeholder Rights:

- (i) Within twenty (20) 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 acknowledgement of the stakeholder's obligation to pay any administrative penalty amount invoiced in the notice. Pursuant to Article XII section 3(ii) and (iv) above, the administrative penalty and required educational training (if applicable) shall be paid/completed within 60 days of issuance of the Informal Determination. Failure to make payment or complete the required educational training within 60 days will result in additional penalties being imposed under Article XII Section 3(iii) and (iv) above.

- (iii) If a stakeholder does not respond within (20) 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*.
- (iv) The power and duties of the Committee to review a report of an alleged violation and issue an informal determination against a stakeholder shall apply only insofar as the Committee completes its review of an alleged violation and issues the informal determination within two hundred seventy (270) days of the occurrence of the alleged violation.
- (v) Notwithstanding the provisions of Article XI Section 3 and Article XII Section 4, herein, willful delay of the AVR review and determination process by any stakeholder will result in the matter being expedited to the next regularly scheduled Committee meeting, or by special meeting as provided for in Article XI Section 2 herein.

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 Chairman, 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 Chairman.

Except as provided for in Article VIII Section 2 (relating to remote attendance), 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 Omnibus or Full Session, 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 shall 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 referred to the Commission prosecutor staff for an action resulting in a formal complaint before the Commission. An action resulting in a formal complaint before the Commission must be brought by Commission prosecutor staff within the time limits specified under 66 Pa.C.S. § 3314(a) (relating to limitation of actions and cumulation of remedies).
- (iii) When a written rejection of an informal determination under paragraph (ii) above results in a formal complaint before the Commission, the Commission shall review the alleged violations anew (*de novo*). In such cases, the informal determination of the Committee shall not be binding upon the Commission.
- (iv) 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.
- (v) 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 Chairman’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.