



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 4, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Lower Heidelberg Township
Docket No. C-2022-
Formal Complaint

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Complaint in the above-referenced case on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Emily A. Farren'.

Emily A. Farren
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322910
(717) 783-6150
efarren@pa.gov

EAF/jfm
Enclosure

cc: Per Certificate of Service

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint.

The date of service is the date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code §1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, please serve a copy on:

Emily A. Farren, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17210
efarren@pa.gov

B. If you fail to answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the requested relief.

C. You may elect not to contest this Complaint by paying the administrative penalty within 20 days. Send only a certified check or money order made payable to the "Commonwealth of Pennsylvania," with the docket number indicated, and mail to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the requested relief set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2022-
	:	
Lower Heidelberg Township	:	

FORMAL COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by its prosecuting attorneys, and files this Formal Complaint (“Complaint”) against Lower Heidelberg Township (“Respondent”), pursuant to Sections 182.8(d) and 182.10 of the Underground Utility Line Protection Law, Act of October 30, 2017, P.L.806, No. 50 (hereinafter referred to as the “PA One Call Law”), 73 P.S. §§ 182.8(d) and 182.10.¹ In support of its Complaint, I&E respectfully represents the following:

I. COMMISSION JURISDICTION AND AUTHORITY

1. The Pennsylvania Public Utility Commission, with a mailing address of 400 North Street, Harrisburg, PA 17120, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to, *inter alia*, enforce compliance by facility owners and other stakeholders pursuant to Section 182.10 of the PA One Call Law, 73 P.S. § 182.10.

¹ The purpose of the PA One Call Law is to protect the public health and safety by preventing excavation or demolition work from damaging underground lines used in providing electricity, communication, gas, propane, oil delivery, oil product delivery, sewage, water or other service; imposing duties upon the providers of such service and persons and other entities preparing drawings or performing excavation or demolition work; and prescribing penalties.

2. Complainant is the Commission's Bureau of Investigation and Enforcement, which is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E), including actions to enforce compliance of the PA One Call Law.

3. Complainant is represented by:

Emily A. Farren
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
(717) 783-6150
efarren@pa.gov

Michael L. Swindler
Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

4. Respondent is Lower Heidelberg Township with a main mailing address of 720 Brownsville Road, Sinking Spring, PA 19608.

5. Respondent is a “facility owner” as that term is defined at 73 P.S. § 176 as it is a “municipality . . . which owns or operates a line.”

6. A “line” or “facility” is defined as “an underground pipe used in . . . sewage, water or other service to one or more . . . consumers or customers of such service and the appurtenances thereto, regardless of whether such line or structure is located on land owned

by a person or public agency or whether it is located within an easement or right-of-way.”
73 P.S. § 176.

7. Respondent, as a facility owner, is subject to the power and authority of this Commission pursuant to Section 182.10 of the PA One Call Law, 73 P.S. § 182.10, which requires facility owners to comply with the PA One Call Law.

8. Sections 182.8(d) and 182.10 of the PA One Call Law, 73 P.S. §§ 182.8(d) and 182.10, authorize the Commission to, *inter alia*, hear and determine complaints against facility owners for violations of the PA One Call Law and enforce the provisions of the PA One Call Law.

9. Section 182.10(a) of the PA One Call Law, 73 P.S. § 182.10(a), authorizes the Commission to impose administrative penalties on facility owners who violate the PA One Call Law. Section 182.10(b)(1)(i)-(ii) allows for the imposition of an administrative penalty not to exceed \$2,500 for each violation or if the violation results in injury, death, or property damage of \$25,000 or more, an administrative penalty not to exceed \$50,000.

10. Pursuant to the provisions of the applicable Commonwealth statutes, the Commission has jurisdiction over the subject matter of this complaint and the actions of Respondent related thereto.

II. FACTUAL BACKGROUND

11. On March 4, 2020, at approximately 08:54 AM, Grande Construction Company (“Grande Construction”) placed an Excavation Routine Ticket (“Routine Ticket”) with the Pennsylvania One Call System (“POCS”) at Serial No. 20200640767 to conduct an excavation with powered equipment. Routine Ticket attached hereto as I&E Exhibit 1A.

12. The Routine Ticket identified the work site as “40 Merganser Drive” at the nearest intersection with “Stella Drive” in Reading, Pennsylvania 19608. *See* I&E Exhibit 1A.

13. Respondent is the facility owner of sewer lines and facilities that run underground in the vicinity of the above-referenced worksite.

14. An underground sewer line and facility is a “line” or “facility” as defined in 73 P.S. § 176.

15. Seconds later, the notification was delivered to Lower Heidelberg Township through the POCS notifying Respondent of the excavation. The deliveries of the Routine Ticket attached hereto as I&E Exhibit 1B.

16. Lower Heidelberg Township’s response to Grande Construction’s routine ticket through the POCS was due by the end of the day on March 6, 2020. *See* I&E Exhibit 1A.

17. Lower Heidelberg Township did not respond to Grande Construction’s routine ticket through the POCS until March 10, 2020, at approximately 06:28 AM. The responses to the Routine Ticket attached hereto as I&E Exhibit 1C.

III. VIOLATION

18. Paragraphs 1-17 above are incorporated herein as if stated in their entirety.

19. Lower Heidelberg Township failed to respond to the Routine Ticket at Serial No. 20200640767 by the end of the second business day following receipt of the notification by the POCS.

If proven, this is a violation of Section 177(5)(v) of the PA One Call Law, 73 P.S. § 177(5)(v), requiring a facility owner to “respond to all notices through the One Call System .

. . not later than the end of the second business day following receipt of the notification by the One Call System, excluding the business day upon which the notification is received.”

The Bureau of Investigation and Enforcement’s proposed administrative penalty for this violation is \$500.

WHEREFORE, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Commission:

- (a) Find Respondent to be in violation of the PA One Call Law at 73 P.S. § 177(5)(v);
- (b) Impose an administrative penalty upon Respondent in the amount of Five Hundred Dollars (\$500); and
- (c) Order such other remedies as the Commission may deem appropriate.

Respectfully submitted,



Emily A. Farren
Prosecutor
PA Attorney ID No. 322910

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6150
efarren@pa.gov

Date: March 4, 2022

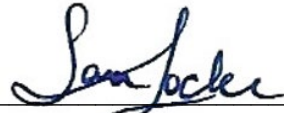
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2022-
	:	
Lower Heidelberg Township	:	

VERIFICATION

I, Sara Andrade-Locke, Damage Prevention Supervisor, Damage Prevention Section, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: March 4, 2022



Sara Andrade-Locke
Damage Prevention Supervisor
Damage Prevention Section
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

I&E

Exhibit 1A

CDC 00000 PCS MM/DD/YY TT:TT:TT 20200640767-000 NEW XCAV RTN

=====PENNSYLVANIA UNDERGROUND UTILITY LINE PROTECTION REQUEST=====

Serial Number--[20200640767]-[000] Channel#--[0851AWEB][0203][2019-08]
Message Type--[NEW][EXCAVATION][ROUTINE]

County--[BERKS] Municipality--[LOWER HEIDELBERG TWP]
Work Site--[40 MERGANSER DRIVE]
Nearest Intersection--[STELLA DRIVE]
Second Intersection--[STELLA DRIVE]
At Intersection--[N] Between Intersections--[Y] Site Marked in White--[N]
Subdivision--[GREEN VALLEY WEST]

Location Information--
[LOT 32]
Caller Lat/Lon--[]
Mapped Type--[P] Mapped Lat/Lon--
[40.331454/-76.046722,40.331730/-76.046227,40.331533/-76.046022,
40.331224/-76.046482]
Attachments--[http://www.pa811.org/attachments/20200640767]

Type of Work--[GAS SERVICE] Depth--[4 FEET]
Extent of Excavation--[STREET TO HOUSE] Method of Excavation--[DIGGING]
Equip Type--[TRAC HOE]
Street--[X] Sidewalk--[X] Pub Prop--[X] Pvt Prop--[X] Other--[]
Private Front--[X] Rear--[X] Left--[X] Right--[X]

Lawful Start Dates--[09-Mar-20] thru [18-Mar-20] Response Due Date--[06-Mar-20]
Scheduled Excavation Date--[09-Mar-20] Dig Time--[0700] Duration--[2 WEEKS]

Caller--[GREGORY KILPATRICK]
Caller Phone--[610-678-9925]
Excavator--[GRANDE CONSTRUCTION COMPANY]
Address--[2213 QUARRY DR]
City--[WEST LAWN] State--[PA] Zip--[19609]
FAX--[610-678-2810] Caller Type--[B]
Email--[KILPATRI@AOL.COM]
Work For--[GRANDE LAND LP]
Onsite Contact--[MARIO CEPEDA]
Onsite Contact Phone--[610-223-5051]
Best Time to Call--[8AM TO 5PM]
Onsite Contact Email--[KILPATRI@AOL.COM]

Prepared--[04-Mar-20] at [0854] by [GLK6262]

Remarks--
[LOT 32]

BX 0 BX =COMCAST CABLE CTI0 CTI=FRONTIER CTSI IA 0 IA =BUCKEYE PT ALTN
LO10 LO1=L HEIDELBERG T PQ 0 PQ =PPL ELEC LNTR STH0 STH=S HEIDELBERG T
UC 0 UC =PAW PENN WATER UK 0 UK =UGI READING WER0 WER=WERNERSVILLE MA
YI 0 YI =VERIZON EASTERN

Serial Number--[20200640767]-[000]
===== Copyright (c) 2020 by Pennsylvania One Call System, Inc. =====

I&E
Exhibit 1B

DELIVERIES for S/N 20200640767:

Ver	CDC	Name	To	Time	Seq	Type
0	BX	COMCAST CABLE COMMUNICATIONS	BX	03/04/2020 08:55:15	4	MAIL
0	CTI	FRONTIER COMMUNICATIONS CTSI	CTI	03/04/2020 08:55:15	29	MAIL
0	PQ	PPL ELECTRIC UTILITIES CORPOR	PQ	03/04/2020 08:55:16	45	MAIL
0	IA	BUCKEYE PARTNERS	IA	03/04/2020 08:55:17	59	MAIL
0	UC	PENNSYLVANIA AMERICAN WATER	UC	03/04/2020 08:55:22	1	MAIL
0	UK	UGI UTL READING	UK	03/04/2020 08:55:23	17	MAIL
0	YI	VERIZON PENNSYLVANIA LLC	YI	03/04/2020 08:55:25	192	MAIL
0	LO1	LOWER HEIDELBERG TOWNSHIP	LO1	03/04/2020 08:55:25	1	MAIL
0	STH	SOUTH HEIDELBERG TOWNSHIP	STH	03/04/2020 09:04:03	6	FM1
0	WER	WERNERSVILLE MUNICIPAL AUTHOR	WER	03/04/2020 09:04:19	6	FM1

I&E

Exhibit 1C

RESPONSES for S/N 20200640767:

Ver	CDC	Name	Response	Time	Respondent
0	BX	COMCAST CABLE COMMUNICATI	3-FIELD MARKED	03/06/2020 15:22:02	CLS-WEBSVC
0	CTI	FRONTIER COMMUNICATIONS C	3-FIELD MARKED	03/06/2020 15:22:01	CLS-WEBSVC
0	IA	BUCKEYE PARTNERS	1-CLEAR NO FACIL	03/04/2020 10:37:01	AAA-WEBSVC
0	LO1	LOWER HEIDELBERG TOWNSHIP	1-CLEAR NO FACIL	03/10/2020 06:28:14	MB-WEB
0	LO1	LOWER HEIDELBERG TOWNSHIP	9-NO RESPONSE**	03/07/2020 00:10:29	-KARL
0	PQ	PPL ELECTRIC UTILITIES CO	3-FIELD MARKED	03/06/2020 15:21:58	CLS-WEBSVC
0	STH	SOUTH HEIDELBERG TOWNSHIP	1-CLEAR NO FACIL	03/04/2020 12:27:47	LI-WEB
0	STH	SOUTH HEIDELBERG TOWNSHIP	1-CLEAR NO FACIL	03/04/2020 12:27:41	LI-WEB
0	UC	PENNSYLVANIA AMERICAN WAT	3-FIELD MARKED	03/04/2020 13:37:32	MOU-WEBSVC
0	UK	UGI UTL READING	1-CLEAR NO FACIL	03/06/2020 13:40:12	ATS-WEBSVC
0	UK	UGI UTL READING	2-CONFLICT. DCTF	03/04/2020 08:56:52	ATS-WEBSVC
0	WER	WERNERSVILLE MUNICIPAL AU	1-CLEAR NO FACIL	03/05/2020 10:15:48	BD -KARL
0	YI	VERIZON PENNSYLVANIA LLC	1-CLEAR NO FACIL	03/04/2020 09:01:02	PRA-WEBSVC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2022-
	:	
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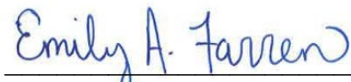
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Formal Complaint** in the manner and upon the parties listed below, in accordance with the requirements of 52 Pa. Code §§ 1.54 (relating to service by a party).

Served via Electronic Mail

Lower Heidelberg Township
720 Brownsville Road
Sinking Springs, PA 19608
office@lowerhbtwp.org

Pamela J. Stevens
Township Manager
pstevens@lowerhbtwp.org



Emily A. Farren
Prosecutor
PA Attorney ID No. 322910

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Date: March 4, 2022