



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

April 11, 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.
West Penn Utilities
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
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-
	:	
West Penn Utilities	:	

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 West Penn Utilities (“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 West Penn Utilities with a main mailing address of 2085 Forest Grove Rd., Coraopolis, PA 15108.

5. Respondent is an “excavator” as that term is defined at 73 P.S. § 176 as it “performs excavation or demolition work for [itself] or for another person.”

6. “Excavation work” is defined as “the use of powered equipment or explosives in the movement of earth, rock or other material, and includes, but is not limited to,

anchoring, augering, backfilling, blasting, boring, digging, ditching, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling.” 73 P.S. § 176.

7. “Powered equipment” is defined as “any equipment energized by an engine or motor and used in excavation or demolition work.” 73 P.S. § 176.

8. “Complex project” is defined as “an excavation that involves more work than properly can be described in a single locate request or any project designated as such by the excavator or facility owner as a consequence of its complexity or its potential to cause significant disruption to lines or facilities and the public, including excavations that require scheduling locates over an extended time frame.” 73 P.S. § 176.

9. Respondent, as an excavator, 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.

10. 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.

11. 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.

12. 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

13. On April 20, 2020, at approximately 14:30 PM, while performing excavation work, West Penn Utilities (“West Penn” or “Respondent”) damaged an unmarked electrical line at or near Village Drive, Bethel Park Borough, Allegheny County. West Penn’s Alleged Violation Report (“AVR”) is attached hereto as I&E Exhibit 1.

14. Following the line strike, only then did Respondent determine the facility owner of the underground electrical line to be the Ashby at South Hills Village Station. *See* I&E Exhibit 1.

15. The line strike caused a 12–24-hour utility service disruption to more than 51 customers, damaged landscaping and trees nearby, resulting in an estimated total cost of damaged line and property repair between \$6,002 and \$30,000. *See* I&E Exhibit 1.

16. The AVR identified the work site as “Village Drive” at the nearest intersections with “Fort Couch Road” and “Washington Road” in Allegheny County, Pennsylvania. *See* I&E Exhibit 1.

17. The AVR identified the entire length of the excavation work to be “1,477 ft.” *See* I&E Exhibit 1.

18. The identified work site met the definition of “complex project” as that term is defined at 73 P.S. § 176 as it is “an excavation that involves more work than properly can be described in a single locate request . . . including excavations that require scheduling locates over an extended time frame.”

19. Respondent, as an excavator of a complex project, had the duty “to request the location and type of facility lines at each work site by notifying the facility owner through the [Pennsylvania] One Call System (POCS) . . . in the case of a complex project, notification shall not be less than ten business days in advance of the beginning of excavation or demolition work.” 73 P.S. § 180(2.1).

20. Respondent did not submit a Complex Project Ticket prior to the commencement of excavation through the POCS.

III. VIOLATION

21. Paragraphs 1-20 above are incorporated herein as if stated in their entirety.

22. Respondent failed to submit a Complex Project Ticket through the POCS at least ten (10) business days prior to commencing excavation, as Respondent failed to ever submit a Complex Project Ticket for the above-referenced work site.

If proven, this is a violation of Section 180(2.1) of the PA One Call Law, 73 P.S. § 180(2.1), requiring an excavator of a complex project to notify facility owners through the POCS at least ten (10) business days prior to commencing excavation.

The Bureau of Investigation and Enforcement’s proposed administrative penalty for this violation is \$2,500.

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. § 180(2.1);
- (b) Impose an administrative penalty upon Respondent in the amount of Two Thousand Five Hundred Dollars (\$2,500); 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: April 11, 2022

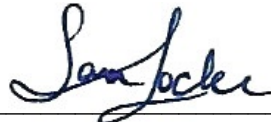
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2022-
	:	
West Penn Utilities	:	

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: April 11, 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 1

Alleged Violation Report

PA Act 287, as amended 73 P. S. § 176 et. seq.
Powered by Pennsylvania One Call System, Inc.

AVR Number AVR2020APR280010

AVR Version 1

First Name SCOTTMICHAEL **Last Name** DOWLING

Company Name WEST PENN UTILITIES

Address 2085 FOREST GROVE RD

City CORAOPOLIS

State PA

Zip Code 15108

Email WEST_PENN_UTILITIES@YAHOO.COM **Phone** 4122621661

Ext

Role

Submitter Role(s) (?)

- | | |
|---|---|
| <input type="checkbox"/> Facility Owner | <input type="checkbox"/> Designer |
| <input checked="" type="checkbox"/> Excavator | <input type="checkbox"/> Project Owner |
| <input type="checkbox"/> Locator | <input type="checkbox"/> Enforcement Agency |
| <input type="checkbox"/> Other | |

Are you representing a company other than your own? Yes No

What company or individual are you representing?

Alleged Violation Information

PUC Case Number (if known)

Related AVR Number (?)

Type of Alleged Violation (?) Facility Owner Issue

Reason Marked incorrectly §2(5)

When did the alleged violation occur? (?) 04/20/2020
02:30:00 PM

Was the One Call System notified? Yes No

Original Serial Number

Please enter the 11 digit One Call Serial Number under which work was taking place, which will populate the work site information of this alleged violation.

20200972506

Related Damage Serial Number, if applicable

20201112540

Other Related Serial Numbers (?)

20201112541

Was the excavation exempt from One Call notification? Yes No Unknown

Reason for Exemption

Event Information



County

ALLEGHENY

Municipality

BETHEL PARK BORO

Ward

0

Work Site

VILLAGE DR

Nearest Intersection

FORT COUCH RD

Second Intersection

WASHINGTON RD

Geolocation (?)

Affected Facility Information



Primary Right of Way Type

Public

Public Right of Way Type

Private Right of Way Type

Affected Operation

Electric

Facility Subtype Affected

Distribution

Facility Owner Company Name

WEST PENN POWER

Contact First Name

Last Name

Address

City

State

Zip

Email

Phone

Joint Trench? Yes No Unknown

Involve Cross Bore? Yes No Unknown

Measured Depth from Grade 18" - 36" / 46 - 91 cm

Exact Measured Depth from Grade Enter the inches or centimeters with number and measurement used

Work Information



Start Date of Excavation (?) 04/13/2020
07:00:00 AM

Excavation Activity INSTALLING UTILITIES

Excavator Company Name West Penn Utilities

Contact First Name ScottMichael Last Name Dowling

Address 2085 Forest Grove Rd

City Coraopolis

State PA

Zip 15108

Email

Phone

Marked in White Yes No Unknown

Method of Excavation DIRECTIONAL

Equipment Used What Equipment was used for excavation or demolition when the event occurred?
DIRECTIONAL DRILLING

Type of Excavator What is the type of excavator for whom the work was being done when the event occurred?
Utility

Did Excavator incur down time? Yes No Unknown

How much down time? 3+ hrs

Estimated cost of down time \$5,001-\$25,000

Was a response posted to the One Call System? Yes No Unknown

Was the design serial number on the plans/bid documents? Yes No Unknown

Were the lines shown on the plans/bid documents? Yes No Unknown

What level of subsurface utility engineering was utilized?

Estimated cost of the entire project Less than \$400,000

What was the length of the entire project? 1477 ft

Project Owner Company Name Comcast

Contact First Name Last Name

Address

City

State

Zip

Email Phone

Event Impact



Did Violation result in underground damage or near miss event? Damage

OSHA Report Filed? Yes No

OSHA Report Number

Was 911 called? Yes No

Name of 911 Caller Bill Grim

Fire Response Yes No

Police Response Yes No

Did the incident cause any injuries? Yes

Number of Injuries (?)

Did the incident cause any deaths? Yes

Number of Deaths

Was there an evacuation? Yes No

Number of people evacuated?

Traffic Stopped? Yes No

Service Interrupted? Yes No

Duration of Service Interruption? 12 - < 24 hrs

Exact Value of Service Interruption

Approximately how many customers were affected? 51 +

Exact Number of Customers Affected

Cost of Damaged Line Repair? \$5,001-\$25,000

Exact Cost of Damaged Line Repair

Was other property damaged? Yes No

What other property was damaged? Landscaping and trees

Cost of Other Property Repair \$1,001-\$5,000

Locator/Locate Information



Who was the facility line locator? Contract Locator

Locator Company USIC

Contact First Name Last Name

Address

City

State

Zip

Email Phone

Was the line marked? Accurately Inaccurately/Incompletely Not Marked
 Unknown

Were facilities marked according to APWA/CGA temporary marking color code (ANSI standard Z535.1)? Yes No Unknown

What types of marks were present? Paint
 Flags
 Stakes
 Other

Were offset markings used? Yes No Unknown

Condition of Marks

Was the line marked by the response due date or within the agreed upon locate schedule? (?) Yes No Unknown

Reason for Late Locate

Was the excavation within the tolerance zone? (?) Yes No Unknown

Was there an indication of underground facilities (clear evidence) in the excavation area? Yes No Unknown

What was the evidence? (meter/pedestal, pipeline marker, valve box, hydrant, manhole, etc.)

What method(s) were used to locate the facility?

- Electronic
- Visual
- Records
- Exposed

Did the excavator request payment under PennDOT Form 408 specifications for extra work performed on a force account basis?

- Yes
- No

Additional Locate Comments

We had called out USIC to make sure they marked all of the power lines three different times before in the previous two weeks to make sure all of the power lines were marked and they did not mark these lines that were hit until after they were damaged and the locator hooked up to the transformer they were fed from to finally locate where we hit it.

If this incident involved any locating/marketing errors, please include all records related to the locator's training and qualification (including training to meet UULPL standards as well as Operator Qualification).

Summary and Attachments

Provide a summary of the event

On Monday 4-20-20 at approximately 2:30 PM our crew while working on Village Dr, had the strike alert go off on our directional drill from a power hit. The apartment building at 1100 Village dr had a surge to their breaker when this happened and temporarily caused them to lose power. We immediately followed the protocol of alerting Pennsylvania One Call of a damaged electrical line. The nearest one call markings for power were 7 feet away. USIC, the locating company for West Penn Power arrived on site to try and determine what electrical line could of been hit. The locator, then at around 4:00 PM found electric facilities that he failed to mark previously. We have pictures of where the damage occurred before he marked the line that was damaged and after. At 6:30 West Penn Power finally arrived on site of the damage. The West Penn Power tech then stated that they are not responsible to repair the damaged line as they are secondary services. He then left the site while the damaged line was not repaired or a game plan could be developed. Our Directional drill was receiving approximately a voltage level of 400 from the hit line. We then had to stay over night to make sure no one would accidentally go near the drill to get a shock.

On Tuesday 4-21-20, We once again called West Penn Power to an outage/damage at the address of 1100 Village Dr. The tenants still had power at this time and our drill was still conducting current at this time. At approximately 7:30 AM West Penn Power returned to the site with different techs. They were able to open determine that the secondary line was damaged and proceeded to cut the power to the apartment building at approximately 8:30 AM. They then informed as that they are not responsible for the repairs again to the unmarked power that fed this apartment building and it was the property owners responsibility to get it repaired. The property owners are in Colorado and were in no place to get this repaired and are also stating that they do not own any of the electrical lines to their building. So we reached out to multiple Electricians to try and a get them out to the site to help get the electric line repaired. We began to dig up where the damage occurred since the power was cut and these tenants need to get back into service. At approximately 12:00 Pm we found the first and second damaged area. Then working with the electrician we were able to remove the damaged lines from the conduit that was hit and set up the apartment to get power back on with a limited power output. We have set up with the electrician to make permanent repairs to the conduit and pull in new electric lines to feed the damaged section.

I am attaching photos of the markings made by USIC for West Penn Power before and after the damage occurred, as well as pictures of the excavation of eight 4" inch conduits that fed the building.

If more space is needed, attach additional pages or documents.

Attachments

1.jpg	212.76KB
2.jpg	212.76KB
3.jpg	220.71KB
4.jpg	220.71KB
5.jpg	260.72KB
8.jpg	285.72KB
9.jpg	265.34KB
10.jpg	255KB

Attach pictures and additional documents

Submit Date 04/28/2020

Compliance Update

Research Result

- Listed tickets found
- Additional tickets found
- No tickets found

Additional Tickets Found

Additional Serial Numbers 20200972504

Ticket Attachment SN-20200972506-20200972504-
20201112540-20201112541-.pdf 5.52MB

Comments

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

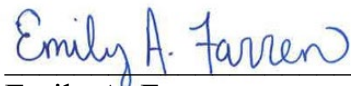
Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2022-
	:	
West Penn Utilities	:	

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

West Penn Utilities
ScottMichael Dowling
2085 Forest Grove Rd.
Coraopolis, PA 15108
s.dowling_westpennutilities@yahoo.com



Emily A. Farren
Prosecutor
PA Attorney ID No. 322910

Bureau of Investigation and Enforcement
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