

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

C-2022-3031862

v.

West Penn Utilities, LLC

MOTION FOR RECONSIDERATION

AND NOW, Comes Movant, West Penn Utilities, LLC, by and through undersigned counsel, and files the following Motion, and in support thereof avers as follows:

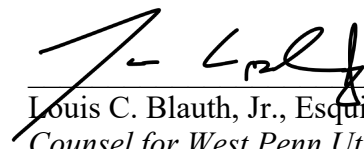
1. West Penn Utilities, LLC (Hereinafter “Movant”) respectfully requests reconsideration of the October 27, 2022 Opinion and Order pursuant to 52 Pa. Code §5.572.
2. Movant was served with the Complaint underlying this matter, by electronic means only, on or about 4/11/2022.
3. Service of the Complaint was done by email from Joanna McElroy, Legal Assistant, Bureau of Investigation and Enforcement, PAPUC.
4. The following day, 4/12/2022, Movant responded to the Complaint, *pro se*, by email directed to Ms. McElroy, the source of the Complaint, as well as Emily Farren, Prosecutor to whom they were referred to direct questions, see the attached Exhibit “A”.
5. Movant attached to their Response a statement that they had repeatedly asserted throughout the informal resolution process preceding the filing of the formal Complaint, see the attached Exhibit “B”.
6. *Pro Se* Movant believed this Response satisfied their Answering obligation and believed Bureau counsel and paralegal would accept their Response and act accordingly.
7. Instead, it appears a Motion for Default Judgement was prepared, filed and Granted. Movant does not recall having received the Motion for Default Judgement prior to entry.

8. Nevertheless and by way of background, the utility strike event underlying this action occurred on April 20, 2020.
9. Since that date, Movant repeatedly and adamantly disputed liability.
10. In fact, it appears an independent third party, USIC who was contracted by the power company to locate and mark the lines, accepted responsibility for the \$30,000.00 damage incurred, as they failed to locate mark the utility that was struck.
11. Indeed, it seems undisputed and this Honorable Commission found the line that was stricken was unmarked, Opinion and Order, page 11.
12. Movant acted properly under the Act at all times and was not otherwise negligent when they struck the unmarked line. No obligation or liability may therefore be assigned Movant pursuant to 73 P.S. §180(12)(i) and (ii).
13. The Bureau also alleges a red herring that Movant had a responsibility yet failed to submit a complex ticket, despite the Commission clearly indicating otherwise.
14. Indeed, the User Guide published by the Pennsylvania One Call System and adopted by the Board of Directors 10/27/21 states the obligations of the Movant as an excavator would be to “facilitate timely and accurate mark outs of the work site before you excavate, **the maximum location request size is 1000 feet, or intersection to intersection, whichever is greater, along the same road, within the same political subdivision**”, see the excerpt attached hereto as Exhibit “C”.
15. The one call request on the incident in question was **intersection to intersection**, not therefore requiring a complex ticket.
16. Nevertheless, Movant did in fact have multiple meetings and walk outs with all interested facility owners and locate companies for this job before beginning excavation and otherwise acted in conformance with 73 P.S. 180(3).
17. The complex ticket designation is a misdirected argument inasmuch as no matter the designation and all other precautions taken, the line that was eventually stricken would not have been discovered or marked in any instance. The line was old, privately owned and outside of the One Call system, problems which have since been remedied. Movant did in fact wait in excess of 10 days but no amount of time, meetings, care or diligence would have revealed this line pre-excavation.
18. The fact remains that Movant and its agents, servants and employees acted at all times in a proper workmanlike manner, without negligence of any sort, and in accordance with all applicable statutes, regulations, and best practice standards, including but not limited to the Pennsylvania One Call Act, 73 Pa.C.S. §176 et seq.

19. Movant fully complied with the notification requirements set forth in the Act before commencing any work at the aforementioned locations and requested all facility owners in the area respond and locate their underground lines.
20. Any purported damage complained of was solely caused by the facility owner's own failure, along with that of their contracted third-party locating company, to properly identify their facilities, despite proper notice to have done so.
21. No obligation may be found upon Movant for any purported losses under the Law, 73 Pa.C.S. §180(12)(i) and (ii).
22. Pursuant to Emergency Order Docket No. M-2020-3019262, the same Order authorizing service by e-mail only in this matter, the parties are encouraged to cooperate.
23. The Bureau of Investigation and Enforcement was fully aware of Movant's dispute at all relevant stages of these proceedings, yet apparently failed to inform either the Commission of their position or Movant that they needed to forward their Response to the Board.
24. Movant believes and hereby avers a fair and equitable outcome in this matter requires their opportunity to file a formal Answer and be heard.

WHEREFORE, Movant respectfully requests Reconsideration of the October 27, 2022 Opinion and Order and the opportunity to submit an Answer and substantively participate in these proceedings.

Respectfully Submitted,



Louis C. Blauth, Jr., Esquire
Counsel for West Penn Utilities, LLC

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VERIFICATION

I verify that although the language is not my own but that of my attorney's, the facts set forth in the forgoing Motion are nevertheless true and correct to the best of my information, knowledge and belief. This statement is made subject to the penalties set forth in 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

By:

10-31-22

Date


West Penn Utilities, LLC

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion upon the following on the date and in the manner indicated below:

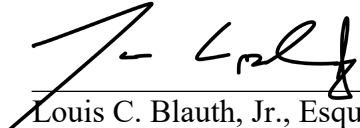
Emily A. Farren, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Front Street
Harrisburg, PA 17120


efarren@pa.gov

VIA ELECTRONIC MAIL ONLY

10-31-2022

Date


Louis C. Blauth, Jr., Esquire
Attorney for Movant

From: ScottMichael Dowling s.dowling_westpennutilities@yahoo.com 
Subject: Fw: West Penn Utilities - I&E Formal Complaint
Date: October 27, 2022 at 12:13 PM
To: Lou Blouth lou@blauthlaw.com

SD

[Sent from Yahoo Mail on Android](#)

----- Forwarded Message -----

From: "ScottMichael Dowling" <s.dowling_westpennutilities@yahoo.com>
To: "McElroy, Joanna" <joamcelroy@pa.gov>, "Dave Weaver" <west_penn_utilities@yahoo.com>
Cc: "Farren, Emily" <efarren@pa.gov>
Sent: Tue, Apr 12, 2022 at 8:33 AM
Subject: Re: West Penn Utilities - I&E Formal Complaint

To All parties,

I am attaching the letter submitted to the PUC disputing the claim that we failed to hold a complex meeting that lead to the damage of an electric line. The work was performed between two intersections. If work takes place between two intersections a complex ticket is not required. Also the damaged line was due to a party not being members of the PA 1 Call service. We worked with the locators throughout this project the entire way giving locators plenty of time to get sections of the work located. We performed our excavation with care and worked to minimize any damages. The cause of this issue was a facility owner not being a member of the one call system. If you have any questions, please feel free to contact me.

Thank you,
ScottMichael Dowling
West Penn Utilities
724-797-1739

On Monday, April 11, 2022, 08:58:55 AM EDT, McElroy, Joanna <joamcelroy@pa.gov> wrote:

Good Morning,

On behalf of the Bureau of Investigation & Enforcement (I&E) attached please find a courtesy copy of the **Formal Complaint** that was e-filed with the Secretary's Bureau this morning. The Secretary's Bureau will be serving an official copy with the assigned docket number.

If you have any questions, please contact Emily A. Farren, (717) 783-6150 or efarren@pa.gov.

Thank you,
Joanna McElroy
Legal Assistant

Exhibit A

Bureau of Investigation & Enforcement
(717) 214-2235
joamcelroy@pa.gov



PUC Case
014457.pdf



To Whom It May Concern,

I am writing this letter in response to PUC Case #014457, a line strike in Bethel Park Boro, Allegheny County on April 20, 2020. The PUC has made the informal determination that the Excavator failed to hold a preconstruction meeting prior to beginning a complex project.

First, during my training, by 811 officials for Comcast on Complex tickets back in 2018, we were informed that the complex ticket is not necessary if the project takes place entirely between two intersections and we communicate with all parties involved. In this situation, I have spoken verbally with all the locators involved throughout this job and met with them on site at various times to walk the job off. We did not rush into this on a three day turn around, but waited and allowed all locators time to get facilities marked. All locators involved were working together with us and us with them to help make this a smooth, safe project. So since this was all agreed upon with the locators while this work was taken place and they fact it was only between two intersections we did not create the complex ticket for this project.

I do routinely put in Complex tickets for our large projects as we do many of these for Comcast and have on site meetings as many times they include multiple streets or very large distances, and since we originally received this letter I have placed multiple complex ticket projects.

Second, the damage that occurred that cause an electric line to be hit while Directional boring, would not have been prevented by having the complex ticket in place. We worked with USIC who performed the locating of the power lines for West Penn Power. They were on site with us multiple times and we walked the job with them multiple times. They located and helped freshen paint were they knew and located their facilities. The Reason the damage occurred is that the records supplied to USIC for this area from West Penn Power did not show a major back feed from the transformer back down the street to an apartment building. They had no records of it and that is why it was never marked. They had markings in the area showing lines they had and knew they had that were marked correctly. Due to the fact that USIC had no records or markings, they ended up paying us for the repairs made to the damaged facilities and for our down time.

Because of these two points, I would like to request that the violation Section 5(3) and fine be removed as we worked with all the locators involved and met and walked the job with them and that the damage that caused this alert would not of been avoided if a documented complex meeting was uploaded and created as the lines that were damaged, were damaged because no records of them existing were present.

Thank you for your time,

ScottMichael Dowling

Supervisor

West Penn Utilities

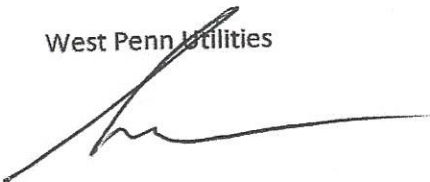


Exhibit B

excavation work themselves. A homeowner should not place a notification on behalf of their excavator because the excavator will not be protected by the notification.

- For demolition work, the person performing the demolition must make the notification. If the work is subcontracted, the subcontractor should make the notification. The only party protected by the notification is the person who notifies.
- Designers who work on project plans that include a work operation which involves the movement of earth with powered equipment as part of the project must place the notification.
- Project Owners, who or which engages the contractor for construction on any project which requires excavation or demolition work should ensure their designers and excavators notify the one call system.

When should you notify the One Call System?

- Designers are obligated to notify “not less than ten nor more than ninety business days before final design is to be completed”.
 - Designers may also choose to notify more than ninety business days in advance if they state that the work is preliminary.
- Excavators (including homeowners) are obligated to notify “not less than three nor more than ten business days in advance of beginning excavation or demolition work”, unless the project is complex, then additional requirements apply. Complex project notices require ten business days notice.

“Business day” means any day except a Saturday, Sunday or legal holiday prescribed by statute. A business day begins at 12:00:00 a.m. and ends at 11:59:59 p.m.

Example of calculating the three business day notice for excavation:

- The notice is made on Monday.
- The first business day is Tuesday.
- The second business day is Wednesday.
- Excavation work can commence on the third business day which is Thursday.
 - For a notification made on Thursday, the earliest lawful start date for when excavation can commence is the following Tuesday. (The first business day is Friday, Saturday is not a business day, Sunday is not a business day, Monday is the second business day and Tuesday is the third business day.)
- A legal holiday (defined below) may add one or two business days between the notification date and the date excavation can commence.

To facilitate timely and accurate mark-outs of the work site before you excavate, **the maximum Locate request size is 1000 feet, or intersection to intersection, whichever is greater, along the same road, within the same political subdivision.** Base your notifications on the resources you plan to use

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ORDER

AND NOW, this _____ day of _____, 2022 it is hereby ORDERED,
ADJUDGED AND DECREED that reconsideration of the Opinion and Order of October
27, 2022 Order is GRANTED and the matter shall proceed as follows:

_____.

BY THE COMMISSION,
