



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

December 13, 2023

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.
TSE, Inc.
Docket No. C-2021-3024955
Joint Stipulation of Facts

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement and TSE, Inc. Joint Stipulation of Facts in the above-captioned proceeding.

Copies are being served on 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, appearing to read 'G. Rosul', written over a light blue horizontal line.

Grant Rosul
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318204
(717) 783-5243
grosul@pa.gov

GR/ac
Enclosures

cc: As per Certificate of Service
Michael L. Swindler, Deputy Chief Prosecutor, Enforcement (*via email* - mswindler@pa.gov)
Administrative Law Judge Eranda Vero (*via email* - evero@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3024955
	:	
TSE, Inc.,	:	
Respondent	:	

**BUREAU OF INVESTIGATION AND ENFORCEMENT
AND TSE, INC. JOINT STIPULATION OF FACTS**

Pursuant to the direction of the Honorable Eranda Vero, Administrative Law Judge, the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E" or "Complainant") and TSE, Inc. ("TSE," "Company," or "Respondent") hereby submit this Joint Stipulation of Facts, and state that the agreed-upon facts of the case are as follows¹:

1. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to, *inter alia*, enforce compliance by excavators and other stakeholders pursuant to Section 182.10 of the PA One Call Law, 73 P.S. § 182.10.

2. I&E 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

¹ TSE, Inc. has authorized I&E to state that it approves the Joint Stipulation of Facts.

Offices, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E), including actions to enforce compliance with the PA One Call Law.

3. TSE is an “excavator,” as that term is defined at 73 P.S. § 176 as it “performs excavator or demolition work for himself or for another person.”

4. TSE, as an excavator, is subject to the power and authority of the Commission pursuant to Section 182.10 of the PA One Call Law, 73 P.S. § 182.10, which requires project owners to comply with the PA One Call Law.

5. On May 14, 2018, while performing excavation work, TSE hit and damaged a marked, underground UGI Utilities, Inc. (“UGI”) pipeline with powered equipment in Dunmore, Pennsylvania (hereinafter referred to as “incident”).

6. Subsequently, TSE and UGI submitted alleged violation reports (“AVRs”) with the Pennsylvania One Call System (“POCS”) reporting the incident.

7. On April 15, 2018, a Damage Prevention Investigator (“DPI”) of I&E's Damage Prevention Section prepared a DPI Report citing the Company for failing to exercise due care and to take all reasonable steps necessary to avoid injury to or otherwise interfere with all lines where positions have been provided to the excavator by the facility owner and for failing to provide support and mechanical protection for known facility owner's lines at the work site during excavation in violation of 73 P.S. §§ 180(4) and (6)(ii), respectively.

8. On November 7, 2018, TSE appeared before the Pennsylvania Damage Prevention Committee (“DPC”) to present its position on the matter.

9. That same day, the DPC issued an informal determination finding TSE to be in violation of 73 P.S. §§ 180(4) and (6)(ii) and imposing a total administrative penalty of One

Thousand Five Hundred Dollars (\$1,500) on the Company.

10. On December 26, 2018, TSE submitted a rejection of the DPC's informal determination.

11. Consequently, on or about July 2, 2020, I&E's Damage Prevention Section referred the matter to I&E for the purpose of issuing a formal complaint.

12. After conducting a *de novo* review of the matter, I&E filed a Complaint with the Commission on April 1, 2021 at Docket No. C-2021-3024955. I&E's Complaint included allegations that:

- a. On April 24, 2018, TSE placed an excavation routine ticket ("routine ticket") with the POCS at Serial No. 20181143788 to conduct an excavation with powered equipment;
- b. The purpose of the excavation was to install a water line for Pennsylvania-American Water Company;
- c. The routine ticket identified the work site as Butler Street between the Butler Street intersections with Wheeler Avenue and Sixth Street in Dunmore, Pennsylvania 18512;
- d. UGI is the facility owner of gas lines and facilities that run underground in the vicinity of the work site;
- e. An underground gas line is a "line" or "facility" as defined in 73 P.S. § 176;
- f. On April 26, 2018, UGI responded "FIELD MARKED" to TSE's routine ticket through the POCS indicating that UGI had located and marked its underground lines at the work site;

- g. At all material times hereto, TSE was an “excavator” as defined in Section 73 P.S. § 176;
- h. TSE located and exposed UGI's line at the work site;
- i. On May 14, 2018, TSE damaged UGI's exposed line at the work site with a backhoe during backfilling;
- j. After damaging UGI's line, TSE submitted an AVR with the POCS, pursuant to 73 P.S. § 180(16);
- k. The purpose of an AVR is to report to the Commission through the POCS an alleged violation of the PA One Call Law that has been committed in association with excavation or demolition work;
- l. In its AVR, TSE describes the type of alleged violation as an “Excavator Issue” and admits that the reason for the AVR is that TSE “[f]ailed to plan the excavation or demolition work to avoid damage or minimize interference with a facility owner's facilities in a construction area §5(6)(i);”
- m. TSE further admitted in its AVR that while it was “performing [its] compaction of [the] trench for the day a rock pushed against the gas line” and that there was “[r]eally nothing [TSE] could of [sic] done to prevent this matter;”
- n. “Compaction of trench” is a part of the backfilling process; and
- o. After damaging UGI's line, TSE did not submit a damage emergency notification with the POCS.

13. In the Complaint, I&E requested that the Commission impose a cumulative administrative penalty upon TSE in the amount of Four Thousand Dollars (\$4,000.00) and direct TSE to perform each of the corrective actions detailed in the Complaint.

14. On April 19, 2021, TSE, through counsel, filed an Answer to I&E's Complaint at the above-referenced docket. In its Answer, TSE asserted that a large piece of non-visible rock, embedded in the embankment at the work site in question, dislodged from the vibration of distant compaction activities and pushed against UGI's gas line, severing the line.

15. Thereafter, settlement discussions between the Parties commenced.

16. On October 24, 2022, the Parties reached a Settlement in Principle.

17. On October 31, 2023, the Parties submitted a Joint Petition for Approval of Settlement, proposed ordering paragraphs, and a Joint Statement in Support.

The undersigned state that these facts, which are derived from the Joint Petition for Approval of Settlement, are the Joint Stipulation of Facts upon which the Settlement now before the Court is based.

Respectfully submitted,



Grant Rosul
Prosecutor
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
grosul@pa.gov

Date: December 13, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3024955
	:	
TSE, Inc.,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Stipulation of Facts** dated December 13, 2023, 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:

Frank J. Tunis, Jr., Esq.
Tunis Law
347 R. Main Street
Dickson City, PA 18519
gunnytun@yahoo.com
frank@ftunislaw.com
Counsel for TSE, Inc.



Grant Rosul
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318204
(717) 783-5243
grosul@pa.gov