



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

April 3, 2024

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.
Philadelphia Water Department
Docket No. C-2024-3045798
I&E Reply to New Matter

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply to New Matter of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced matter.

Copies are being served on the parties of record in accordance with the attached 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: Michael L. Swindler, Deputy Chief Prosecutor, I&E-Enforcement (*via email*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-3045798
	:	
Philadelphia Water Department	:	
Respondent	:	

**BUREAU OF INVESTIGATION AND ENFORCEMENT
REPLY TO NEW MATTER OF
PHILADELPHIA WATER DEPARTMENT**

NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”), Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorney, and files this Reply to New Matter of the Philadelphia Water Department (“Respondent”), pursuant to 52 Pa. Code § 5.63(a). The purpose of New Matter in response to a Complaint is to “set forth ... another material fact which is not merely a denial of the averments of the preceding pleading” or to raise affirmative defenses. 52 Pa. Code § 5.62(b). In support thereof, I&E avers as follows:

64. Denied. To the extent that Respondent attempts to incorporate any and all assertions made in paragraphs 1-63 of its Answer as “New Matter,” this is denied. Pursuant to 52 Pa. Code § 5.62(b), affirmative defenses must be set forth under the heading of “New Matter.” New Matter is limited to material facts that are not merely

denials of averments of the preceding pleadings. Respondent cannot simply incorporate by reference all paragraphs of its Answer as “New Matter.”

65. Denied. The averment that Respondent’s contractor, as an excavator, is obligated to update its PA One Call tickets is a legal conclusion to which no response is required. To the extent a response is required, it is denied. By way of further response, this averment does not constitute New Matter, as it is neither a material fact nor an affirmative defense.

66. Admitted in Part and Denied in Part. It is admitted that, to the extent of I&E’s knowledge, Philip Pio Construction was excavating under an expired PA One Call ticket at the time of the incident on September 2, 2022. It is denied, however, that this averment constitutes New Matter, as it is neither a material fact nor an affirmative defense.

67. Denied. Whether Respondent’s contractor, Philip Pio Construction, failed to exercise due care is a legal conclusion to which no response is required. To the extent a response is required, it is denied. By way of further response, this averment does not constitute New Matter, as it is neither a material fact nor an affirmative defense.

68. Denied. I&E is without sufficient information to verify what Respondent was or was not able to locate upon inspection of records. Further, the averment that the PA One Call Law compels disclosure or completion of a Damage Prevention Investigator report is a legal conclusion to which no response is required. To the extent a response is required, it is denied. By way of further response, this averment does not constitute New Matter, as it is neither a material fact nor an affirmative defense.

69. Denied. I&E is without sufficient information to verify what designs or design drawings were provided to its contractor, Philip Pio Construction. Further, to the extent averment 69 asserts that the design it provided to Philip Pio Construction is a final design as defined in 73 P.S. § 176, it is a conclusion of law to which no response is required. To the extent a response is required, it is denied. By way of further response, this averment does not constitute New Matter, as it is neither a material fact nor an affirmative defense. Designers must request the line and facility information from the POCS “not less than ten nor more than ninety business days before the final design is to be completed.” 73 P.S. § 179(2). Providing Philip Pio Construction with a final design is immaterial to whether Respondent failed to submit a final design ticket as required by 73 P.S. § 179(2), as alleged by I&E in its Complaint.

70. Denied. I&E is without sufficient information to verify Respondent’s use of the “Guaranteed Pavement Information System,” what this system does, or whether the project was “entered into” this system. By way of further response, this averment does not constitute New Matter, as it is neither a material fact nor an affirmative defense.

71. Denied. I&E is without sufficient information to verify the technical specifications, if any, provided to Phillip Pio Construction by Respondent. Strict proof thereof is demanded.

72. Admitted in Part and Denied in Part. It is admitted that the “plans show a PECO line through the area where excavation was occurring and [where] the incident occurred.” Any inference drawn from the plans or design drawings of Respondent is denied, however, as any plan or design drawing speaks for itself.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Office of Administrative Law Judge and the Commission reject the New Matter raised by the Philadelphia Water Department, dismiss Respondent's Answer, and sustain I&E's Complaint.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Rosul", written over a horizontal line.

Grant Rosul
Prosecutor
PA Attorney ID No. 318204

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Bureau of Investigation and Enforcement
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Date: April 3, 2024

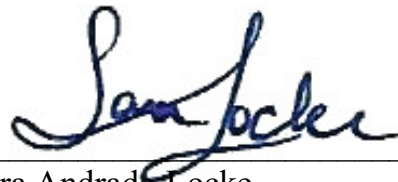
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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-3045798
	:	
Philadelphia Water Department	:	
Respondent	:	

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 that the Bureau of Investigation and Enforcement 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 3, 2024



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

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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CERTIFICATE OF SERVICE

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

Service by Electronic Mail

Alexandra Athanasiadis
Deputy City Solicitor
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Dated: April 3, 2024