



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

May 7, 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 Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Prehearing Conference Memorandum of the Bureau of Investigation and Enforcement 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/jfm
Enclosures

cc: The Honorable Christopher P. Pell, Deputy Chief ALJ (*via email* – cpell@pa.gov)
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	:	

**PREHEARING CONFERENCE MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE CHRISTOPHER P. PELL:

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) files this Prehearing Conference Memorandum in accordance with Section 5.222(d)(1) of the Commission’s regulations, 52 Pa. Code § 5.222(d)(1), in advance of the prehearing conference scheduled for May 14, 2024.

I. HISTORY OF THE PROCEEDING

On January 24, 2024, I&E filed a Formal Complaint against the Philadelphia Water Department (“PWD”), at Docket No. C-2024-3045798 in connection with a September 2, 2022, incident wherein PWD’s contractor working to install new water infrastructure struck a PECO electrical conduit while excavating with power equipment in the vicinity of 6951 Roosevelt Boulevard at the intersection with Tyson Avenue, Philadelphia, Pennsylvania. I&E alleges that PWD committed violations of the Underground Utility Line Protection Law (“UULPL” or “PA One Call Law”), Act of October 30, 2017, P.L. 806, No. 50, 73 P.S. § 176 *et seq.*

Specifically, I&E alleges that PWD violated the following:

- 1) Section 179(2) of the PA One Call Law by failing to submit a valid PA One Call final design ticket;
- 2) Section 179(3) by failing to show upon its drawings the position and type of each facility owner's lines;
- 3) Section 179(4) by failing to make a reasonable effort to prepare the construction drawings to avoid damage to and minimize interference with a facility owner's facilities in the construction area;
- 4) Section 181.1(3) by releasing a project to bid or construction until after the final design had been completed;
- 5) Section 181.1(1) by failing to utilize a sufficient Quality Level of SUE when designing its complex project. Respondent only utilized Quality Level C SUE when designing its complex project when a higher Quality Level was warranted; and
- 6) Section 184 by failing to use best efforts to comply with the Common Ground Alliance Best Practices as PWD did not adhere to Best Practice 2-3 instructing project owners and designers to indicate existing underground facilities on drawings during planning and design phases of projects.

Further, during excavation on the project for which PWD is alleged to have committed violations of the PA One Call Law, a worker for PWD's excavation contractor was injured.

In its Formal Complaint, I&E requested a total administrative penalty of \$50,000 for these violations.

On February 8, 2024, PWD requested an extension of time to file an Answer to the Complaint. PWD had previously contacted I&E to request the extension and I&E assented.

On February 15, 2024, the Commission granted PWD's request for an extension of time to March 22, 2024.

On March 22, 2024, PWD filed an Answer to I&E's Complaint with New Matter.

Also on March 22, 2024, I&E and PWD had a phone conversation wherein both parties indicated that they were receptive to settling the case. The parties agreed to continue communicating and work toward negotiating a mutually agreeable settlement.

On April 3, 2024, I&E filed its Reply to New Matter.

On April 5, 2024, I&E and PWD again discussed settlement of this case via telephone.

Since that time, because of the conflicting schedules of PWD's counsel and the undersigned I&E prosecutor, no further substantive discussions have been held. Although as of the date of this Prehearing Conference Memorandum, no agreement has been reached, it is I&E's understanding that settlement negotiations will continue in the near future.

A. Proposed Plan and Schedule of Discovery

I&E does not expect to deviate from the rules governing discovery at 52 Pa. Code § 5.321 *et seq.*

B. Possibility of Settlement

Both Parties have indicated to each other that they are open to a settlement. Two discussions regarding settlement have already taken place. Although there has yet to be a settlement agreement, and further discussion has not taken place recently due to conflicting schedules, I&E expects that settlement discussion will resume shortly.

C. Issues

Because the parties are actively negotiating settling this case, I&E is not currently proposing any issues to be addressed prior to an evidentiary hearing.

D. Amount of Hearing Time

Because the parties are actively negotiating settling this case, I&E does not currently have an estimated amount of time needed for a hearing.

E. Witnesses

Because the parties are actively negotiating settling this case, I&E does not currently have a list of witnesses.

F. Schedule for Submission of Testimony, Hearings, and Briefs

Because the parties are actively negotiating settling this case, I&E is not currently offering a schedule for the submission of testimony, hearings, or briefs.

However, I&E would suggest that the parties apprise the court of the status of the case every 30 days.

Respectfully submitted,



Grant Rosul
Prosecutor
PA. Attorney ID No. 318204

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Date: May 7, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

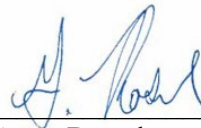
Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
v. : Docket No. C-2024-3045798
Philadelphia Water Department :

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
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Counsel for Philadelphia Water Department



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Dated: May 7, 2024