

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2023-3043744
	:	
Municipal Authority of Hazle Township	:	

**MODIFIED SETTLEMENT ORDER**

On October 24, 2023, the Pennsylvania Public Utility Commission’s (Commission) Bureau of Investigation and Enforcement (I&E) filed a formal complaint against the Municipal Authority of Hazle Township (MAHT). In its formal complaint, I&E alleges that MAHT violated the Pennsylvania One Call Law in connection with an issue regarding the marking of sewer line lateral connections by an excavator while they were performing excavation work on July 30, 2020, for a sewer line replacement project on Winters Avenue near Autumn Lane in Hazle Township, Luzerne County. I&E requests that the Commission find MAHT to be in violation of the Pennsylvania One Call Law; impose a cumulative administrative penalty on MAHT in the amount of \$1,500; order MAHT to attend an educational program for facility owners through the Damage Prevention Committee (DPC) and provide proof of compliance to the Commission; and order such other remedies as the Commission may deem appropriate.

On November 29, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for January 17, 2024 at 10:00 a.m. and assigned me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on November 20, 2023 setting forth various rules that would govern that proceeding.

On December 4, 2023, I&E filed a motion for default judgment. I&E’s motion requested that, because MAHT did not file an answer to its formal complaint, the Commission enter a default order against MAHT that would direct MAHT to pay a cumulative administrative penalty of \$1,500 and direct MAHT to attend an education program for facility owners through the DPC and provide proof of compliance to the Commission.

On December 8, 2023, the initial telephonic hearing notice was returned to the Commission by the United States Post Service (USPS), indicating that the address where the initial telephonic hearing notice was sent did not exist.<sup>1</sup> On December 12, 2023, the formal complaint was returned by the USPS, indicating that the address where the formal complaint was sent did not exist.<sup>2</sup>

On December 22, 2023, the Commission re-served the formal complaint on MAHT at a corrected address.

On December 27, 2023, the Commission issued a notice converting the January 17, 2024 hearing to a prehearing conference.

On January 11, 2024, MAHT filed an answer to I&E’s formal complaint. In its answer, MAHT admitted or denied the various averments in the formal complaint. In particular, MAHT denies that it violated the Pennsylvania One Call Law and that administrative penalties are warranted.

On January 17, 2024, a prehearing conference was held. Counsel for I&E, Grant Rosul, and Jeffrey A. Rockman, counsel for MAHT, participated in the prehearing conference. During the prehearing conference, parties agreed that a rescheduled evidentiary hearing would be set for February 28, 2024.

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<sup>1</sup> Specifically, USPS indicated “return to sender – no such number – unable to forward”.

<sup>2</sup> Specifically, USPS indicated “return to sender – no mail receptacle – unable to forward”.

On January 17, 2024, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for February 28, 2024 at 10:00 a.m. In anticipation of that hearing, I issued a prehearing order on January 17, 2024 setting forth various rules that would govern that proceeding.

On February 22, 2024, I&E filed a motion for continuance of the February 28, 2024 hearing. On February 23, 2024, I issued an order granting the continuance request. Also on February 23, 2024, the Commission issued a telephonic hearing cancellation/reschedule notice, cancelling the February 28, 2024 hearing, and setting March 29, 2024 as the date for the rescheduled hearing.

On March 13, 2024, MAHT filed a motion for continuance of the March 29, 2024 hearing. On March 14, 2024, I issued an order granting the continuance request. Also on March 14, 2024, the Commission issued a telephonic hearing cancellation/reschedule notice, cancelling the March 29, 2024 hearing, and setting May 10, 2024 as the date for the rescheduled hearing.

On May 7, 2024, I received an e-mail from counsel for I&E, stating that I&E and MAHT have come to a tentative settlement, and requesting cancellation of the May 10, 2024 evidentiary hearing. On May 7, 2024, I responded to parties by e-mail, stating that the May 10, 2024 hearing would be cancelled. I also stated that June 14, 2024 would be the date by which parties should file settlement documents and, if settlement documents are not filed by June 14, 2024, parties should provide a status report. On May 8, 2024, I issued a settlement order, directing parties to file either a joint petition for settlement or status report by June 14, 2024.

On May 17, 2024, I received an e-mail from counsel for I&E, copying counsel for MAHT, requesting that the settlement in this proceeding be allowed to occur through filing of a certificate of satisfaction pursuant to Section 5.24 of the Commission's regulations, rather than through filing a joint petition for settlement. On May 20, 2024, I responded to counsel for I&E by e-mail, inquiring into other instances when I&E has settled One Call complaints through use of a certificate of satisfaction. On May 24, 2024, I received a further e-mail from counsel for

I&E, copying counsel for MAHT, further explaining as follows the basis for requesting that a settlement proceed through filing a certificate of satisfaction:

There are many reasons that justify the application of 52 Pa. Code § 5.24 (Section 5.24), including, but not limited to, the relative simplicity of such outcomes, the parties involved, and the distinctiveness of the PA One Call Law in comparison to the Public Utility Code.

PA One Call Law cases are referred to I&E in a manner different from cases brought pursuant to the Public Utility Code and its attendant regulations. I&E believes that this process, laid out in the PA One Call Law, affords Respondents ample due process protections. Parties to PA One Call Law matters are advised of an investigation by the Damage Prevention Investigator. If the party ultimately disagrees with the findings in the Damage Prevention Investigator's report, they may present their case to the Damage Prevention Committee (DPC) at its monthly meeting. Should they reject the informal determination of the DPC, the case is returned to the Damage Prevention Investigator who may then refer the case to I&E Enforcement for the purpose of filing a formal complaint. By the time I&E is referred a PA One Call Law matter, it has been considered by the Damage Prevention Section twice and the Damage Prevention Committee once, with the Respondent given the opportunity to present its case in a quasi-judicial forum. Once referred to I&E, the assigned I&E prosecutor conducts a *de novo* review, which results in either the filing of a complaint or the closing of the case without further action. If I&E files a complaint, I&E is always open to a resolution of the case in accordance with the Commission's policy favoring settlements. However, if a Respondent does not wish to resolve the matter, I&E proceeds to a hearing.

The use of Section 5.24(a) is conducive to judicial and administrative efficiency. The majority of the PA One Call Law matters referred to I&E for enforcement action involve small, technical violations of the PA One Call Law. In terms of the administrative penalty, the difference between the administrative penalty sought in the complaint and the administrative penalty agreed to in reaching a resolution of the case is usually minimal. Moreover, these matters do not include complex, non-monetary remedial measures to be addressed by the Respondent, as would be typical in non-PA One Call Law settlements that go before the Commission for adoption.

Many of the Respondents in PA One Call Law matters are excavators or other small business entities that are not jurisdictional to the Commission. Further, in many cases, they will proceed pro-se. I&E is concerned that a complicated and

drawn out process to resolve and close a case may result in Respondents abandoning the settlement process.

There is nothing that prohibits the use of Section 5.24(a) to resolve PA One Call Law complaints. In fact, the text of that Section compels its usage where a Respondent has indicated that they will satisfy the conditions sought by I&E in the Complaint. Where the case involves a straightforward PA One Call Law violation and I&E seeks a relatively small administrative penalty – and sometimes the completion of a short, online PA One Call Law education course as recommended in the original DPC determination – Section 5.24(a) is a suitable way to dispose of a case. As examples, *I&E v. Matcon Diamond, Inc.* (C-2023-3044238), *I&E v. Froman Excavating* (C-2023-3043980), and *I&E v. Larson Design Group* (C-2023-3044822) are all PA One Call Law matters which were resolved and then closed by way of the filing of a Certificate of Satisfaction pursuant to 52 Pa. Code § 5.24. Analogous cases that involve jurisdictional utilities would be motor carrier enforcement cases and assessment cases, which I&E also typically closes by way of Certificate of Satisfaction. Additionally, the PA One Call Law provides its own factors for “determining the administrative penalty to be assessed,” 73 P.S. Sec. 182.10(b)(2)(i)-(vi) and does not rely on the *Rosi* factors as in non-PA One Call Law settlements.

Finally, I&E does not anticipate that every single PA One Call Law matter that is resolved will utilize Section 5.24(a). Cases that involve a fatality, injury, or extensive property damage where the PA One Call Law statute provides for an exponentially larger administrative penalty, or where there are remedial measures for which compliance must be monitored, are more likely to be resolved by the filing of a Joint Petition for Approval of Settlement.

For the expeditious resolution of standard PA One Call Law matters where the parties have reached an amicable resolution involving the payment of a nominal administrative penalty, it is I&E’s position that Section 5.24 is clearly a proper and efficient manner for resolving and closing these cases.

On May 28, 2024, I responded to counsel for I&E by e-mail, copying counsel for MAHT, stating that, based on counsel’s explanation, I was fine with letting this proceeding conclude through filing a certificate of satisfaction. I further stated that I would issue an order modifying the May 8, 2024 settlement order to remove reference to a joint petition for settlement, and, if the certificate of satisfaction is not filed by June 14, 2024, the parties shall provide a status report by June 14, 2024. In my e-mail, I requested that counsel for MAHT

inform me by May 30, 2024 if it had any objection to concluding this proceeding through filing a certificate of satisfaction. No objections have been received.

Section 5.483 of the Commission's regulations provides presiding officers with the authority to regulate the course of proceedings. 52 Pa.Code § 5.483(a). Presiding officers are required to conduct fair and impartial hearings and maintain order. 52 Pa.Code § 5.485(a). Although I&E did not present its request as a written motion pursuant to 52 Pa.Code § 5.103, no party objected to my modifying the May 8, 2024 settlement order, and the Commission's regulations are to be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding and the presiding officer may, at any stage, disregard an error or defect of procedure which does not affect the substantive rights of parties. 52 Pa.Code § 1.2(a). The purpose of this order is to modify the ordering paragraphs provided in the May 8, 2024 settlement order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That all ordering paragraphs in the May 8, 2024 settlement order in this proceeding are superseded by the below ordering paragraphs;
2. That the evidentiary hearing scheduled for May 10, 2024 is cancelled;
3. That, if parties finalize a settlement, a Certificate of Satisfaction shall be filed;
4. That if a Certificate of Satisfaction is not filed by June 14, 2024, parties shall provide me a status report by June 14, 2024.

Date: May 31, 2024

/s/

John M. Coogan

Administrative Law Judge

**C-2023-3043744 - BUR OF INVESTIGATION & ENFORCEMENT v. MUNICIPAL  
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