

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	C-2024-3047887
v.	:	
	:	
Landmark Fence	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Motion for Default Judgment filed by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (I&E) and sustains the penalty-related Formal Complaint. This Decision further orders the Respondent to pay a total administrative penalty of \$4,000 and directs the Company to attend an education program for excavators through the Commission’s Damage Prevention Committee.

**HISTORY OF THE PROCEEDING**

On March 27, 2024, I&E filed a Formal Complaint (Complaint) against Landmark Fence (Landmark or Respondent) in which it alleged several violations of Pennsylvania’s Underground Utility Line Protection Law, commonly known as the PA One Call Law, Act of October 30, 2017, P.L. 806, No. 50; 73 P.S. § 176–186. More

specifically, I&E alleged in its Complaint that Landmark violated the PA One Call Law by (1) failing to place a valid, routine locate request ticket through the PA One Call System (POCS) prior to excavating, (2) failing to plan its excavation work to avoid damage to or interference with a facility owner's facilities, and (3) failing to use best efforts to comply with the Common Ground Alliance Best Practices Manual when it improperly placed an emergency excavation ticket after the damaged line had been repaired when there was no longer an emergency situation. For relief, I&E requested that the Commission: (1) find Landmark in violation of Sections 180(2.1), 180(i) and 184 of the PA One Call Law, (2) impose a total administrative penalty of \$4,000, and (3) order Landmark to attend an educational program for excavators through the Commission's Damage Prevention Committee within 90 days of a final Commission Order.

The Complaint was served on Landmark by certified mail to the address that had been provided to the Commission by Landmark and which had been used by the Commission to correspond with Landmark prior to the filing of I&E's Complaint. Attached to the Complaint was a Notice advising Landmark to file an Answer within twenty days of the date of service of the Complaint. Landmark never filed an Answer to I&E's complaint.

On November 13, 2024, I&E filed a Motion for Default Judgment (Motion) against Landmark in which it requested that the Commission sustain the Complaint due to the Respondent's failure to file an Answer to the Complaint. The Motion was properly endorsed with a Notice to Plead, which informed the Respondent that it had 20 days from the date of service of the Motion to file a written response. A response was due on or before December 3, 2024. Landmark never filed a written response to the Motion.

By Motion Judge Assignment Notice dated December 18, 2024, I was assigned Motion Judge for this proceeding. For the reasons stated below, I&E's Motion is granted, its Complaint is sustained, and the relief requested is granted.

### FINDINGS OF FACT

1. The Complainant is the Commission's Bureau of Investigation and Enforcement.

2. The Respondent is Landmark Fence.

3. Landmark is an excavator, as that term is defined in Section 176 of the PA One Call Law, 73 P.S. §176. Complaint, ¶ 6.

4. On March 27, 2024, I&E filed a Formal Complaint with the Commission against the Respondent. In its Complaint, I&E alleged that Landmark violated Sections 180(2.1), 180(i) and 184 of the PA One Call Law by (1) failing to place a valid, routine locate request ticket through the PA One Call System (POCS) prior to excavating, (2) failing to plan its excavation work to avoid damage to or interference with a facility owner's facilities, and (3) failing to use best efforts to comply with the Common Ground Alliance Best Practices Manual when it improperly placed an emergency excavation ticket when there was no longer an emergency situation.

5. Attached to I&E's Complaint was a Notice instructing Respondent that it had twenty (20) days to file an Answer to the Complaint. The Notice further instructed Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the requested administrative penalty and other relief sought in the Complaint.

6. Respondent did not file an Answer to I&E's Complaint.

7. On November 13, 2024, I&E filed and served the Respondent with a Motion for Default Judgment wherein I&E requested that the Commission sustain the Complaint due to the Respondent's failure to file an Answer to the Complaint.

8. The Motion was properly endorsed with a Notice to Plead, which informed the Respondent that it had 20 days from the date of service of the Motion to file a written response to the Motion.

9. The Respondent did not file a response to the Motion.

10. On April 5, 2023, Landmark used a power auger to install fence posts and fencing on a property at 217 Victor Street, Gettysburg, PA. Complaint, ¶16.

11. Landmark did not place a One Call location request ticket with the POCS prior to commencing the excavation work. Complaint, ¶17.

12. Since a One Call ticket had not been placed, owners of utility facilities in the vicinity did not mark the locations of their underground facilities prior to the commencement of excavation work by Landmark. Complaint, ¶17.

13. While excavating, Landmark struck a 1-inch plastic gas service line owned by Columbia Gas. Complaint, ¶18.

14. After the line was struck, Landmark called 911 and also notified Columbia Gas. Complaint, ¶19.

15. Columbia Gas promptly responded to the notification and repaired the damaged line. Complaint, ¶20.

16. After the line had been repaired by Columbia Gas, Landmark placed an emergency ticket with the POCS. Complaint, ¶22.

17. Since the emergency ticket had been placed by Landmark after the damaged line had been repaired by Columbia Gas, there was no longer an emergency condition and, consequently, an emergency ticket was not warranted. Complaint, ¶23.

### DISCUSSION

As noted, the Respondent did not file an answer to either I&E's Complaint or Motion for Default Judgment. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an answer to a Complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code § 5.61(c). The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within 20 days. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978) (*Fusaro*).

The undisputed facts demonstrate that Landmark began excavation work at the subject property with a power auger without having first submitted a utility facilities location request ticket to the POCS. As a result, utilities with facilities in the vicinity did not come out to mark the locations of their facilities prior to the commencement of the work by Landmark. While excavating, Landmark struck a gas line owned by Columbia Gas. Landmark immediately called 911 and Columbia Gas to report the damaged line. Columbia responded and repaired the damaged line. Subsequent to the repair having been made, Landmark placed an emergency ticket with the POCS, which determined

that, because the line had already been repaired, an emergency condition no longer existed.

Under Section 180(2.1) of the PA One Call law, excavators are required to place a routine locate request ticket through the POCS between three and ten days before the start of excavation work. 73 P.S. §180(2.1). Landmark failed to do this. Further, Section 180(6)(1) of the PA One Call law requires that excavators properly plan their work to avoid damage to or interference with facility owners' facilities. 73 P.S. §180(6)(1). Here, Landmark was required to properly plan the project to avoid damaging the gas line belonging to Columbia Gas, yet it failed to submit a ticket prior to the excavation work to give Columbia Gas an opportunity to mark its lines. Finally, Section 184 of the PA One Call law requires that excavators use best efforts to comply with Common Ground Alliance Best Practices related to the performance of excavation projects. 73 P.S. §184. Best Practice 5-26 allows for immediate excavation work to be performed in emergency situations without the need to observe the standard three-day waiting period applicable to routine excavation locate requests. Here, by placing an emergency ticket after the damaged gas line had been repaired, Landmark unnecessarily caused facility owners to quickly respond to an emergency when, in fact, the emergency condition no longer existed. As Landmark did not file an Answer or otherwise respond to the allegations in I&E's Complaint, the allegations are deemed admitted. 52 Pa. Code § 5.61(c); *Fusaro*.

The PA One Call law provides for the imposition of administrative penalties for violations of its various provisions. Specifically, Section 182.10, 73 P.S. § 182.10, allows for penalties of up to \$2,500.00 per violation. Here, I&E is requesting the imposition of administrative penalties totaling 4,000.00, composed of the following: (1) \$2,000.00 for violation of 73 P.S. § 180(2.1), for failure to place a locate request ticket through POCS prior to beginning excavation work, (2) \$1,000.00 for violation of 73 P.S. § 180(6)(i), for failure to plan the excavation work to avoid damage to or interference

with a facility owner's facilities, and (3) \$1,000.00 for violation of 73 P.S. § 184, for failure to use best efforts to comply with the Common Ground Alliance Best Practices by placing an emergency ticket with POCS after the damaged line had been repaired and there was no longer an emergency condition.

The PA One Call law provides further guidance for determining appropriate administrative penalties. The following factors are to be considered when making such a determination:

- i. The history of the party's compliance with the act prior to the date of the violation;
- ii. The amount of injury or property damage caused by the party's noncompliance;
- iii. The degree of threat to the public safety and inconvenience caused by the party's noncompliance;
- iv. The party's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations;
- v. The degree of the party's culpability; and
- vi. Other factors as may be appropriate considering the facts and circumstances of the incident.

73 P.S. § 182.10(b).

After consideration of the six above factors, I agree with I&E that an administrative penalty in the total amount of \$4,000.00 is appropriate here. First, there is no evidence in the record about Landmark's compliance with the PA One Call law prior to the incident that is the subject of this proceeding, so this factor will not be considered. Second, the amount of injury or property damage caused by the incident was minimal. No one was injured and the only property damage was to the gas line, which was

promptly repaired. This factor warrants a low penalty. Next, the degree of threat to public safety was potentially very significant. Although, as noted, there were no personal injuries and property damage was minimal, the potential threat to public safety by not first causing the location of utility facilities to be identified prior to excavation work was very high. It is very fortunate that the damage was not much greater and that no one was injured. The potential threat caused by this incident warrants a penalty toward the upper end of the \$2,500.00 per incident range. Next, while there is no record evidence about proposed modifications to Landmark's internal procedures to ensure future compliance with the PA One Call law, I&E is requesting, and I am so ordering, that Landmark attend an educational program for excavators through the Commission's Damage Prevention Committee within 90 days of a final Commission Order. This should help ensure future compliance by Landmark with all applicable rules and regulations. Finally, the degree of Landmark's culpability for the actions that led to this incident is high. Landmark is fully responsible for failing to submit a location request ticket prior to beginning its excavation work, which resulted in damage to Columbia's facilities. This factor warrants a higher penalty.

Having considered the six factors identified above, and the undisputed record evidence, I will grant the Motion for Default Judgment filed by I&E and sustain the penalty-related Formal Complaint. I further order Landmark to pay a total administrative penalty of \$4,000. Finally, I direct Landmark personnel to attend an education program for excavators through the Commission's Damage Prevention Committee within 90 days of a final Commission Order.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701; 73 P.S. §§ 176–186.

2. The Commission has the power, and the duty, to enforce the requirements of the Pennsylvania Underground Utility Line Protection Law (PA One Call law). Act of October 30, 2017, P.L. 806, No. 50, 73 P.S. §§ 176–186.

3. A respondent who fails to file an answer to a complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

4. The Commission has authority to sustain complaints that are not answered within 20 days. *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978).

5. Landmark violated 73 P.S. §180(2.1) by failing to place a routine locate request ticket through the POCS between 3 and 10 days before the start of excavation work.

6. Landmark violated 73 P.S. §180(6)(1) by failing to plan its work to avoid damage to or interference with facility owners' facilities.

7. Landmark violated 73 P.S. §184 by failing to use best efforts to comply with Common Ground Alliance Best Practices related to the performance of excavation projects, by placing an emergency ticket after the damaged gas line had been repaired, unnecessarily causing facility owners to quickly respond to an emergency when, in fact, the emergency condition no longer existed.

8. The PA One Call law provides for the imposition of administrative penalties of up to \$2,500.00 per violation on excavators who violate the law's provisions. 73 P.S. § 182.10.

9. The following six factors are to be considered by the Commission in determining appropriate administrative penalties for violations of the PA One Call law:

- i. The history of the party's compliance with the act prior to the date of the violation;
- ii. The amount of injury or property damage caused by the party's noncompliance;
- iii. The degree of threat to the public safety and inconvenience caused by the party's noncompliance;
- iv. The party's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations;
- v. The degree of the party's culpability; and
- vi. Other factors as may be appropriate considering the facts and circumstances of the incident.

73 P.S. § 182.10(b).

10. An administrative penalty in the total amount of \$4,000.00 is appropriate in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Default Judgment filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Landmark Fence at Docket No. C-2024-3047887, is granted.

2. That the Formal Complaint filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Landmark Fence at Docket No. C-2024-3047887, is sustained.

3. That within 30 days of the entry date of the Commission's final Order in this matter, Landmark Fence shall remit \$4,000.00 payable by certified check or money order, to the "Commonwealth of Pennsylvania" with the docket number of this proceeding listed thereon, and sent to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

4. That, if Landmark Fence fails to make the payment required by Ordering Paragraph No. 3 above within 30 days of the entry date of the final Order of the Commission, the Bureau of Administrative Services, Assessment Section, shall refer this

matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

5. That Landmark Fence personnel attend an educational program for excavators through the Commission's Damage Prevention Committee within 90 days of a final Commission Order.

6. That, after Landmark Fence remits \$4,000.00 as required by Ordering Paragraph No. 3, the Secretary's Bureau shall mark this proceeding at Docket No. C-2024-3047887 closed.

Date: February 21, 2025

\_\_\_\_\_/s/\_\_\_\_\_  
Steven K., Haas  
Administrative Law Judge