

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bureau of Investigation & Enforcement	:	
	:	
v.	:	C-2025-3053287
	:	
MK Hauling LLC	:	

**INTERIM ORDER
GRANTING MOTION FOR CONTINUANCE**

This Order grants a motion for continuance of hearing and reminds MK Hauling LLC of the requirement to be represented by an attorney to participate in the formal hearing process. MK Hauling will not be able to participate in the rescheduled hearing without an attorney.

On February 6, 2025, the Pennsylvania Public Utility Commission’s (Commission) Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint (Complaint) against MK Hauling LLC (MK Hauling or Respondent). In its Complaint, I&E alleges that MK Hauling violated the Pennsylvania One Call Law in connection with an incident where an excavator struck a gas line operated by National Fuel Gas Distribution in front of 3148 Bethel-Wilmington Road in Shenango Township, Mercer County, Pennsylvania, on August 31, 2023. I&E requests that the Commission find MK Hauling to be in violation of the Pennsylvania One Call Law; impose a cumulative administrative penalty on MK Hauling in the amount of \$10,000; order MK Hauling to attend online compliance training through the Pennsylvania One Call System for excavators and provide proof of compliance to the Commission; and order such other remedies as the Commission may deem appropriate.

On February 15, 2025, Mark Kotch filed an answer to the Complaint. No verification for the answer was filed as required by 52 Pa. Code § 1.36. Mr. Kotch identifies himself as Owner and sole employee of MK Hauling LLC. In the answer, Mr. Kotch admitted or

denied the various averments in the Complaint. In particular, Mr. Kotch admits that MK Hauling owns the excavator but denies that MK Hauling is responsible for violating the Pennsylvania One Call Law and that administrative penalties against MK Hauling are warranted.

On February 26, 2025, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for April 15, 2025 at 10:00 a.m. and assigned me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on March 10, 2025 setting forth various rules that would govern that proceeding. In paragraph 4 of the prehearing order, I directed MK Hauling LLC, as a limited liability company, to have an attorney enter an appearance on its behalf. The prehearing order specified:

MK Hauling LLC: You must have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance to represent you **no later than 4:00 p.m. on April 3, 2025**. MK Hauling LLC will be deemed to have waived the opportunity to participate in the proceeding if it is not represented at the hearing and will not be permitted thereafter to reopen the disposition of matters accomplished at the hearing.

On March 17, 2025, Mark Kotch filed a revised answer to the Complaint. The revisions were not substantive. The revised answer was not verified as required by 52 Pa. Code § 1.36.

On March 31, 2025, I&E filed a motion for continuance of the April 15, 2025 hearing. In its motion, I&E stated that its primary witness is unavailable on April 15, 2025, the date of the currently scheduled telephonic hearing, due to other Commission responsibilities.

Counsel for I&E represented that Mark Kotch of MK Hauling objects to the request for continuance.

I&E also represented that Mr. Kotch communicated by email on March 27, 2025 that he is waiting to see if his state representative will represent him in this matter. I&E averred that a continuance in this matter would “permit MK Hauling more time to obtain counsel and for

its counsel to review the case, as well as to permit the parties more time to potentially negotiate a settlement in this matter.” Motion ¶ 6.

The Commission’s regulations provide 20 days to file an answer to a motion, unless the period of time is otherwise fixed by the presiding officer. 52 Pa. Code § 5.103(c). In Paragraph 5 of my prehearing order issued March 10, 2025, I asked for requests for continuance to be filed at least five days before the scheduled hearing. Here, the motion was filed on March 31, 2025, or 15 days prior to hearing. Given the nature of the motion and considering that I&E contacted Mr. Kotch about its request a few days before filing, that MK Hauling does not have legal representation, and to provide the parties with ample notice of cancelation, I will rule on the motion without affording the full time for filing a written answer.

Consistent with the discussion below, I have determined to grant a continuance. I will first address the need for MK Hauling LLC to be represented by counsel, however, because it provides additional cause to continue the hearing.

Attorney Representation

The Commission regulation at 52 Pa. Code § 1.21(b) provides that persons in adversarial proceedings, except for individuals representing themselves, shall be represented by an attorney admitted to practice in the Commonwealth of Pennsylvania.¹ The regulation at 52 Pa. Code § 1.8 defines an adversarial proceeding as one that is contested and which will be decided on the basis of a formal record.

This proceeding became an adversarial proceeding as defined by 52 Pa. Code §1.8 when Mr. Kotch, owner of MK Hauling, filed an answer to the Complaint. Arguably, MK

¹ The Commission’s regulations requiring attorney representation in adversarial proceedings are consistent with Pennsylvania court decisions holding that a corporation must have counsel in order to proceed in any legal action because a corporation cannot represent itself. *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994). Pennsylvania courts have ruled that a corporation can only act through its agents and an agent representing it in court must be an attorney admitted to practice. *Walcavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super 1984).

Hauling, as a corporate entity, should have retained counsel to file an answer to the Complaint since filing an answer opposing I&E's Complaint made this an adversarial proceeding.²

Accordingly, in my prehearing order issued on March 10, 2025, I directed MK Hauling LLC to have an attorney enter an appearance on its behalf no later than 4:00 p.m. on April 3, 2025 and advised that MK Hauling LLC will be deemed to have waived the opportunity to participate in the proceeding if it is not represented at the hearing and will not be permitted thereafter to reopen the disposition of matters accomplished at the hearing.

To date, no attorney has entered an appearance on MK Hauling LLC's behalf as required by the Commission's regulations and my March 10, 2025 prehearing order.

Unless represented by an attorney licensed to practice law in Pennsylvania, the Respondent will not be permitted to file and respond to pleadings, provide testimony and exhibits, cross-examine I&E witnesses, or otherwise participate in the hearing or litigation of the Complaint.³ As discussed below, legal representation is not required for settlement discussions.

Motion for Continuance

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). Furthermore, 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

² *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009) (once an answer to a complaint is filed, a proceeding becomes adversarial and a corporation must be represented by an attorney).

³ Corporate complainants must be represented by counsel at all stages of Commission proceedings after those proceedings become adversarial. *Cars R Us c/o Holman Copeland v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered Feb. 4, 2010); *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered Feb. 2, 2010); *Hess Commercial Printing, Inc. v. Pennsylvania Power Co.*, Docket No. C-2014-2454999 (Order entered Jan. 28, 2016).

rights of parties. 52 Pa. Code § 1.2(a). Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests. 52 Pa. Code § 1.15(b). Only for good cause shown will requests for continuance be considered. *Id.*

Here, I&E's motion is the first continuance request and the request is timely. I&E's primary witness is not available on April 15, 2025. Also, a continuance would provide the parties with further opportunity to discuss settlement and Commission policy promotes settlements. 52 Pa. Code § 5.231(a).

It must also be considered that, without an attorney, MK Hauling cannot participate in the hearing currently scheduled for April 15, 2025.

Accordingly, I find good cause to grant a continuance of the hearing. The hearing scheduled on April 15, 2025 is canceled. The telephonic hearing will be rescheduled and the parties will be notified by separate notice.

As cited above, Commission policy promotes settlements. MK Hauling does not need an attorney to participate in settlement discussions. Moreover, if the parties reach an agreement on all issues, a formal hearing will not be necessary. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. To provide additional time for settlement discussions and for MK Hauling LLC to obtain counsel before the case proceeds to hearing, the hearing will be rescheduled no sooner than May 2025.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the telephonic evidentiary hearing scheduled for April 15, 2025 is canceled.
2. That the Bureau of Investigation & Enforcement's motion for continuance of the hearing in the matter captioned as Bureau of Investigation & Enforcement v. MK Hauling LLC at Docket No. C-2025-3053287 is granted.
3. That the scheduling staff of the Office of Administrative Law Judge shall reschedule the telephonic hearing and notify the parties in writing.
4. That, if an attorney does not enter their appearance for MK Hauling LLC, the Bureau of Investigation & Enforcement may have the opportunity to proceed with its evidence at the rescheduled hearing without participation by MK Hauling LLC.

Date: April 9, 2025

/s/
Erin L. Gannon
Administrative Law Judge

**C-2025-3053287 - BUREAU OF INVESTIGATION AND ENFORCEMENT v. MK
HAULING LLC**

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Served via eService April 9, 2025

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Served via USPS first-class mail and email April 9, 2025