

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2024-3051975
	:	
Dugan Construction	:	

**INITIAL DECISION**

Before  
Chad L. Allensworth  
Administrative Law Judge

**INTRODUCTION**

This decision grants Complainant’s Motion for Default Judgment and sustains the Formal Complaint against Respondent for failure to file an Answer or otherwise plead to alleged violations of the Underground Utility Line Protection Law. Accordingly, the allegations of the Formal Complaint are deemed admitted, Default Judgment will be entered, and a civil penalty is imposed upon Respondent.

**HISTORY OF THE PROCEEDING**

On November 5, 2024, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E” or “Complainant”) filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against Dugan Construction (“Respondent”). The complaint alleges that Respondent struck and damaged an unmarked one-inch plastic gas service line belonging

to The Peoples Natural Gas Company (“Peoples”) while excavating to install a new curb for the sidewalk near 306 N. St. Clair Street, Pittsburgh, Pennsylvania. Complaint ¶ 17. The complaint further alleged that the gas line began to leak due to Respondent’s action, Respondent failed to alert emergency responders of the damage, and Respondent did not submit a routine excavation ticket to Pennsylvania One Call System (“POCS”) prior to beginning excavation. Complaint ¶¶ 18-23. The complaint averred that Respondent violated the following sections of the Underground Utility Line Protection Law (“PA One Call Law”): 73 P.S. §§ 180(2.1), 180(8), 180(16), 180(17) and 184. Complaint ¶¶ 33-37.

On November 5, 2024, the Commission served the complaint to Respondent by certified mail sent to 76 Steen Hollow Road, Oakdale, PA 15071. This mailing was unclaimed and returned to the Commission on December 17, 2024.

On December 23, 2024, the Commission re-served the complaint to Respondent by certified mail sent to 76 Steen Hollow Road, Oakdale, PA 15071. This mailing was unclaimed and returned to the Commission on January 27, 2025.

On February 1, 2025, the Commission served the complaint to Respondent by publication in the *Pennsylvania Bulletin* at 55 Pa.B. 1208 (Feb. 1, 2025). The publication included a Notice advising Respondent that it must file an answer within 20 days of service of the complaint.

Respondent failed to answer or otherwise plead to the complaint.

On April 1, 2025, Complainant filed a Motion for Default Judgment (“motion”) with the Commission. The motion was served on Respondent by both First-Class Mail sent to 76 Steen Hollow Road, Oakdale, PA 15071 and electronic mail. The motion included a Notice advising Respondent to file a written response within 20 days of service of the motion.

Respondent failed to answer or otherwise plead to the motion.

On May 6, 2025, the Commission served a Motion Judge Assignment assigning the case to me. The record is now closed.

This decision grants Complainant's Motion for Default Judgment.

### FINDINGS OF FACT

1. Complainant is the Commission's Bureau of Investigation and Enforcement. Complaint ¶ 1.
2. Respondent is Dugan Construction, with a main mailing address of 76 Steen Hollow, Road, Oakdale, PA 15071. Complaint ¶ 2.
3. Respondent is an excavator as defined in Section 176 of the PA One Call Law, 73 P.S. § 176. Complaint ¶ 5.
4. On September 30, 2022, Ori Plumbing submitted a Routine Excavation Ticket to excavate along N. St. Clair Street between Rural Street and Wedin Street in the City of Pittsburgh, Pennsylvania. Complaint ¶ 20.
5. The lawful start date for excavation was October 5, 2022 and was valid for excavation work through October 17, 2022. Complaint ¶ 21.
6. On November 23, 2022, Respondent was excavating to install a new curb for the sidewalk near 306 N. St. Clair Street, Pittsburgh, Pennsylvania when it struck

and damaged an unmarked one-inch plastic gas service line belonging to Peoples. Complaint ¶ 17.

7. As a result of Respondent's line strike, the gas service line began leaking gas. Complaint ¶ 18.

8. Respondent did not submit a Routine Excavation PA One Call Ticket to POCS prior to beginning its excavation in the vicinity of 306 N. St. Clair Street, Pittsburgh, Pennsylvania. Complaint ¶¶ 22-23.

9. On September 1, 2024, Respondent was mailed a letter requesting that it submit an Alleged Violation Report ("AVR") to POCS providing detailed information about the incident. Complaint ¶ 24.

10. Respondent failed to provide the requested information. Complaint ¶ 25.

11. On January 1, 2024, Respondent was mailed a copy of the report prepared by the Damage Prevention Investigator ("DPI") informing Respondent that it was in violation of multiple sections of the PA One Call Law. Complaint ¶ 26.

12. On March 15, 2024, Respondent rejected the findings in the DPI's report and requested to present its case before the Damage Prevention Committee ("DPC"). Complaint ¶ 27.

13. On June 11, 2024, Respondent attended the DPC meeting, but Respondent did not present its case due to being disconnected. Complaint ¶ 29.

14. The DPC voted on Respondent's case and upheld the DPI's report and proposed penalty. Complaint ¶¶ 29-30.

15. On June 12, 2024, Respondent was mailed a copy of the DPC's Informal Determination and advised it had 30 days to reject the determination. Complaint ¶ 30.

16. On June 12, 2024, Respondent submitted an email response rejecting DPC's Informal Determination. Complaint ¶ 31.

17. On November 5, 2024, I&E filed a complaint against Respondent.

18. On November 5, 2024, the Commission attempted to serve the complaint on Respondent by certified mail sent to 76 Steen Hollow Road, Oakdale, PA 15071.

19. On December 17, 2024, the complaint was returned to the Commission as unclaimed.

20. On December 23, 2024, the Commission attempted to re-serve the complaint on Respondent by certified mail sent to 76 Steen Hollow Road, Oakdale, PA 15071.

21. On January 27, 2025, the complaint was returned to the Commission as unclaimed.

22. On February 1, 2025, the Commission served the complaint on Respondent by publication in the *Pennsylvania Bulletin* at 55 Pa.B. 1208 (Feb. 1, 2025),

which included a Notice requiring Respondent to file an answer or otherwise plead within 20 days of service of the complaint.

23. Respondent did not answer or otherwise plead to the complaint.

24. On April 1, 2025, I&E filed a Motion for Default Judgment with the Commission, which was served on Respondent by First-Class Mail sent to 76 Steen Hollow Road, Oakdale, PA 15071 and by electronic mail.

25. The motion included a Notice requiring Respondent to answer or otherwise plead to the motion within 20 days.

26. Respondent did not answer or otherwise plead to the motion.

## DISCUSSION

### **Jurisdiction and Authority**

I&E is the Commission's bureau established to take enforcement actions against public utilities and other entities subject to the Commission's jurisdiction. 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

The Commission has authority to hear and determine complaints against excavators for violations of the PA One Call Law and to enforce the provisions of the PA One Call Law pursuant to Sections 182.8(c)-(d) and 182.10. Section 182.8 provides in pertinent part as follows:

**§ 182.8. Damage prevention Committee**

(c) The following shall apply to alleged violations:

(1) A person determined, in a report issued by a damage prevention investigator, to have committed an alleged violation shall do one of the following:

(i) Provide a written acknowledgment of the findings and administrative penalty contained in the report issued by the damage prevention investigator to the committee.

(ii) Appear before the committee to present its position.

(2) A person who is subject to an informal determination of the committee may accept or reject the result. If a person who is subject to an informal determination opts to reject the informal determination, the person shall reject the informal determination in writing within thirty days of the date when the informal determination is made by the committee and the matter shall be referred to the commission prosecutor staff for an action resulting in a formal complaint before the commission. An action resulting in a formal complaint before the commission must be brought by commission prosecutor staff within the time limits specified under 66 Pa.C.S. § 3314(a) (relating to limitation of actions and cumulation of remedies).

(3) When a written rejection of an informal determination under clause (2) results in a formal complaint before the commission, the commission shall conduct a de novo review of the alleged violation. The informal determination of the committee shall not be binding upon the commission.

(d) Except for alleged violations involving injury or death, the provisions of subsection (c) shall be applied in advance or instead of filing a formal complaint against a person determined, in a report issued by a damage prevention investigator, to have committed an alleged violation. An informal determination of the committee shall be binding on the commission unless the person rejects the informal determination.

73 P.S. § 182.8(c)-(d). Section 182.10 provides as follows:

**§ 182.10. Compliance orders; administrative penalties**

(a) The commission may issue a warning and order requiring compliance with this act and may levy an administrative penalty for a violation of this act. A warning, order or penalty shall be served on the person or entity violating this act at the person's last known address. A party aggrieved by the imposition of an order or administrative penalty imposed by the commission may appeal the order or penalty as provided under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(b) The following shall apply:

(1) A person or entity violating this act may be subject to:

(i) an administrative penalty of not more than two thousand five hundred dollars (\$2,500) per violation; or

(ii) if the violation results in injury, death or property damage of twenty-five thousand dollars (\$25,000) or more, an administrative penalty of not more than fifty thousand dollars (\$50,000).

(2) The commission and committee shall consider the following factors in determining the administrative penalty to be assessed:

(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.

(vi) Other factors as may be appropriate considering the facts and circumstances of the incident.

(c) The following shall apply:

(1) An administrative penalty recovered under this section shall be payable to the commission and collected in the manner provided for by law.

(2) A person or entity violating this act must pay an administrative penalty to the commission within sixty days of issuance of the informal determination, unless the person or entity subject to the informal determination rejects the informal determination within thirty days in accordance with section 7.8(c)(2).

(3) The commission shall assess an additional administrative penalty of one hundred dollars (\$100) per day, not to exceed a total of five thousand dollars (\$5,000), for an administrative penalty not paid within the period specified under paragraph (2).

(4) A person or entity subject to an informal determination of the committee requiring a damage prevention educational program under section 7.8(b)(4) shall successfully complete the program within sixty days of issuance of the informal determination. The commission shall assess an additional administrative penalty of one hundred dollars (\$100) per day, not to exceed a total of five thousand dollars (\$5,000), on a person or entity that fails to comply with this clause.

(d) This act shall not affect a civil remedy for personal injury or property damage, except as provided for under this act.

(e) The commission may issue a subpoena, on application of an attorney responsible for representing the Commonwealth in actions before the commission, for the purpose of investigating an alleged violation of this act. The commission shall have the power to subpoena witnesses and compel the production of books, records, papers and documents.

(f) No provision of this act shall be construed or interpreted to do any of the following:

(1) Affect the ability of a district attorney or the Attorney General to investigate or file a claim for the same conduct.

(2) Deprive a governmental agency, including a law enforcement agency, the Auditor General and a district attorney, of any jurisdictional power or duty.

(g) A facility owner may petition a court of competent jurisdiction to enjoin excavation or demolition work conducted in violation of this act. Local law enforcement or emergency management personnel may, in the interest of public safety, order an excavator on a work site to stop further excavation if the excavation is being conducted in violation of this act.

73 P.S. § 182.10.

### **Motion for Default Judgment**

Commission regulations provide that a Respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the pleadings may be deemed admitted. 52 Pa.C.S. § 5.61(c); *see also Pa. Pub. Util. Comm'n v. Glenn's Inc.*, Docket No. C-2014-2413366 (Opinion and Order entered Aug. 3, 2015) (“*I&E v. Glenn's Inc.*”). The Commonwealth Court has also upheld the

Commission's authority to sustain complaints that are not answered within twenty days. *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

In the current case, the Commission unsuccessfully attempted to serve Respondent with the complaint by certified mail on two separate occasions at 76 Steen Hollow Road, Oakdale, PA 15071. Thereafter, on February 1, 2025, the Commission served Respondent with the complaint via publication in the *Pennsylvania Bulletin* at 55 Pa.B. 1208 in accordance with 52 Pa. Code § 1.53(e). The publication included a notice advising Respondent that it must file an Answer within 20 days of service of the Complaint.

As Respondent failed to file an answer or otherwise plead to the complaint or the motion, the Motion for Default Judgment will be granted and the averments in the complaint are deemed to be admitted by Respondent. 52 Pa.C.S. § 5.61(c).

### **Disposition**

Among the relevant facts deemed admitted is that Respondent is an excavator<sup>1</sup> subject to the authority of the Commission pursuant to Sections 182.8 and 182.10 of the PA One Call Law, 73 P.S. §§ 182.8, 182.10. It is also deemed admitted that: (1) on November 23, 2022, Respondent struck and damaged Peoples' one-inch plastic gas line while excavating to install a new curb for the sidewalk near 306 N. St. Clair Street, Pittsburgh, Pennsylvania, (2) Respondent's actions resulted in a gas leak, (3) Respondent did not call 911 to alert emergency responders of the line strike and damage,

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<sup>1</sup> "Excavator" is defined as any person who or which performs excavation or demolition work for himself or for another person." 73 P.S. § 176. "Excavation work" is defined as "the use of powered equipment or explosives in the movement of earth, rock or other material, and includes, but is not limited to, anchoring, augering, backfilling, blasting, boring, digging, ditching, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling." *Id.*

(4) Respondent did not submit a One Call Ticket requesting the location and type of facility owner lines prior to beginning the excavation, (5) Respondent did not submit a report of the alleged violation(s) to the Commission through the One Call System within ten business days of the striking People's gas service line, and (6) Respondent did not submit an AVR to POCS providing detailed information about the incident after receiving a request for that information. Complaint ¶¶ 17-25.

Section 180 of the PA One Call Law, 73 P.S. § 180, imposes the following pertinent duties on excavators:

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(2.1) To submit a locate request to identify the location and type of facility owner lines at each work site by notifying the facility owner through the One Call System. Notification shall be not less than three nor more than ten business days in advance of beginning excavation or demolition work. No work shall begin earlier than the lawful start date which shall be on or after the third business day after notification. The lawful start date shall exclude the date upon which notification was received by the One Call System and notification received on a Saturday, Sunday or holiday, which shall be processed on the following business day. In the case of a complex project, notification shall not be less than ten business days in advance of the beginning of excavation or demolition work.

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(8) To immediately notify 911 and the facility owner if the damage results in the escape of any flammable, toxic or corrosive gas or liquid. The excavator shall take reasonable measures, based on its knowledge, training, resources, experience and understanding of the situation, to protect themselves and those in immediate danger, the general public, the property and the environment until the facility owner or emergency responders have arrived and completed their assessment and shall remain on the work site to convey any pertinent information to responders that may help them to safely mitigate the situation.

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(16) To submit a report of an alleged violation to the commission through the One Call System not more than thirty days after striking or damaging a facility owner's line during excavation or demolition or if the excavator believes a violation of this act has been committed in association with excavation or demolition work. The report of an alleged violation shall be in a form and manner as required by the commission.

(17) To comply with all requests for information by the commission relating to the commission's enforcement authority under this act within thirty days of the receipt of the request.

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73 P.S. §§ 180 (2.1), (8), (16), (17).

Additionally, Section 184 of the PA One Call Law provides that, “[e]xcept as otherwise provided for by this act, persons shall use their best efforts to comply with the Common Ground Alliance (“CGA”) best practices.” 73 P.S. § 184. In pertinent part, the CGA Best Practice 5-25 provides that “[i]f the damage results in the escape of any flammable, toxic, or corrosive gas or liquid, or endangers the life, health or property, the excavator responsible immediately notifies 911 and the facility owner/operator.” CGA Best Practices Manual 19.0, Best Practice § 5-25 (April 2023).

By failing to submit a One Call Ticket requesting the location and type of facility owner lines prior to beginning its excavation, Respondent violated 73 P.S. § 180 (2.1). I&E proposed an administrative penalty of \$2,000 for this violation.

By failing to immediately notify 911 after damaging Peoples’ gas line during excavation resulting in a gas leak, Respondent violated 73 P.S. § 180(8). I&E proposed an administrative penalty of \$2,000 for this violation.

By failing to submit an AVR to report its strike of Peoples' gas line at any time even after being requested to do so by the Commission on September 1, 2023, Respondent violated 73 P.S. § 180(16). I&E proposed an administrative penalty of \$1,000 for this violation.

By failing to comply with the DPI's September 1, 2023 request for detailed information within 30 days of the receipt of the request, Respondent violated 73 P.S. § 180(17). I&E proposed an administrative penalty of \$500 for this violation.

By failing to notify emergency personnel of the gas leak, Respondent failed to use its best efforts to comply with CGA Best Practice 5-25 Notification of Emergency Personnel thereby violating 73 P.S. § 184. I&E proposed an administrative penalty of \$2,000 for this violation.

### **Administrative Penalty**

As noted earlier under 73 P.S. § 182.10, the statute in assessing the administrative penalty, there are a number of factors to consider regarding the party's noncompliance: (1) the history of the party's compliance with the act prior to the date of the violation; (2) the amount of injury or property damage caused by the party's noncompliance; (3) the degree of threat to the public safety and inconvenience caused by the party's noncompliance; (4) the party's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations; (5) the degree of the party's culpability; and (6) other factors as may be appropriate considering the facts and circumstances of the incident.

In considering these factors, I find that the cumulative administrative penalty of \$7,500 is appropriate. Specifically, as to the first two factors, there were no

facts presented pertaining to Respondent's compliance history nor the amount of injury or property damage. As for the third factor, it is axiomatic that the gas leak caused by Respondent posed some level of threat to public safety and its noncompliance with the PA One Call Law caused some level of inconvenience. As for the fourth and fifth factors, Respondent has not filed any pleadings in this matter and thereby has not proposed any modification to its internal practices and procedures to ensure future compliance nor expressed any degree of culpability. For these reasons, I find that the cumulative administrative penalty of \$7,500 is appropriate.

Accordingly, for the reasons set forth above, the motion shall be granted. Furthermore, the allegations of the complaint are deemed admitted and a Default Judgment against Dugan Construction will be entered.

#### CONCLUSIONS OF LAW

1. The Commission has authority to hear and determine complaints against excavators for violations of the PA One Call Law and to enforce the provisions of the PA One Call Law. 73 P.S. §§ 182.8(c)-(d), 182.10.

2. Commission regulations provide that a Respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the pleadings may be deemed admitted. 52 Pa.C.S. § 5.61(c); *Pa. Pub. Util. Comm'n v. Glenn's Inc.*, Docket No. C-2014-2413366 (Opinion and Order entered Aug. 3, 2015).

3. The Commission has authority to sustain complaints that are not answered within twenty days. *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A. 2d 794, 797 (Pa. Cmwlth. 1978).

4. Respondent is deemed to be in default by failing to answer or otherwise plead to the complaint and the relevant facts therein are deemed admitted. 52 Pa.C.S. § 5.61(c).

5. The PA One Call Law imposes specific duties on excavators, including the requirements that excavators: (a) request the location and type of facility owner lines prior to excavating, (b) immediately notify 911 when a damaged line results in the escape of flammable, toxic, or corrosive gas or liquid which endangers life, health or property, (c) submit an Alleged Violation Report upon request and (d) submit detailed information of the line strike when requested. 73 P.S. §§ 180 (2.1), (8), (16), (17).

6. The PA One Call Law requires persons to use their best efforts to comply with the Common Ground Alliance Best Practices. 73 P.S. § 184.

7. The facts deemed admitted support that Respondent violated multiple provisions of the PA One Call Law. 73 P.S. §§ 180 (2.1), (8), (16), (17), 184.

8. The Commission may issue a warning and order requiring compliance with this act and may levy an administrative penalty for a violation of the PA One Call Law. 73 P.S. § 182.10.

9. The Commission considers the following factors in determining the administrative penalty: (a) the history of the party's compliance with the act prior to the date of the violation; (b) the amount of injury or property damage caused by the party's noncompliance; (c) the degree of threat to the public safety and inconvenience caused by the party's noncompliance; (d) the party's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations; (e) the degree of the party's culpability; and (f) other factors as may be appropriate considering the facts and circumstances of the incident. 73 P.S. § 182.10.

10. A cumulative administrative penalty of \$7,500 is reasonable and appropriate. 73 P.S. § 182.10.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Default Judgment filed by the Commission's Bureau of Investigation and Enforcement against Dugan Construction at Docket No. C-2024-3051975 is granted.

2. That the Formal Complaint filed by the Commission's Bureau of Investigation and Enforcement against Dugan Construction at Docket No. C-2024-3051975 is sustained.

3. That, within thirty (30) days of the entry date of this Opinion and Order, Dugan Construction shall remit \$7,500.00, payable by certified check or money order, to "Commonwealth of Pennsylvania" and sent to:

Matt Homsher, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

