

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2024-3050015
	:	
McClain Brothers Plumbing	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
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, sustains its Formal Complaint filed against a utility for violation of the Underground Utility Line Protection Law, known as the PA One Call Law, Act of October 30, 2017, P.L. 806, No. 50, 73 P.S. § 176 *et seq.*, and imposes an administrative penalty of \$1,000.00.

**HISTORY OF THE PROCEEDING**

On July 10, 2024, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) filed a Formal Complaint with the Commission against McClain Brothers Plumbing (Respondent). I&E alleged

that the Respondent violated the PA One Call Law by failing to exercise due care and employ prudent excavation techniques when excavating within the tolerance zone of a properly marked line, failing to immediately notify 911 when a damaged line resulted in the escape of flammable, toxic, or corrosive gas or liquid which endangers life, health, or property, failing to submit an alleged violation report, failing to comply with all requests for information from Commission staff within 30 days of the receipt of the request, and failing to use best efforts to comply with the Common Ground Alliance Best Practices.

For relief, I&E requested that the Respondent be ordered to pay an administrative penalty of \$12,500. Additionally, I&E requested that the Respondent be directed to attend Online Compliance Training through the Pennsylvania One Call System for excavators and provide proof of compliance to the Commission within thirty (30) days of the entry of a Final Commission Order. Further, I&E requested that the Bureau of Administration, Financial & Assessments Office, be directed to refer the matter to the Pennsylvania Office of Attorney General for collection of the total set forth in subparagraph (b), above, if McClain Brothers Plumbing fails to pay that total within thirty (30) days of the entry date of the Commission's Order.

On July 11, 2024, an attempt was made to serve the Complaint, along with a Notice to Plead, on the Respondent by certified mail at 353 Main Street, Tullytown, PA 19007, which was the last known mailing address that Respondent provided to the Commission, and which had been used to correspond with Respondent prior to the filing of the Complaint. However, the Complaint and Notice to Plead were returned to the Commission as unclaimed/unable to forward.

On August 30, 2024, a second attempt was made to serve the Complaint, along with a Notice to Plead, on the Respondent by certified mail at 353 Main Street, Tullytown, PA 19007. However, the Complaint and Notice to Plead were again returned to the Commission as unclaimed/unable to forward.

On January 15, 2025, a third attempt to serve the Complaint, along with a Notice to Plead, was made on the Respondent at 5915 Bristol Emilie Road, Levittown, PA 19057.<sup>1</sup> However, for reasons unknown to I&E, the certified mailing was not delivered to the Respondent and the tracking number provided by the United States Postal Service indicated that this mailing had been “moving through network” for approximately six weeks.

On March 4, 2025, the Complaint was re-served on the Respondent by certified mail at 5915 Bristol Emilie Road, Levittown, PA 19057. Attached to the Complaint was a Notice to Plead advising the Respondent that it must file an Answer within twenty (20) days of service of the Complaint. The Notice also advised that if the Respondent failed to answer the Complaint, I&E would request that the Commission issue an Order sustaining its Complaint and imposing the penalty set forth in the Complaint.

On March 13, 2025, the Respondent signed for the Complaint, along with the Notice to Plead.

The last day for the Respondent to timely file an Answer to the Complaint was April 3, 2025.

The Respondent did not file an Answer to the Complaint.

On May 19, 2025, I&E filed and served a Motion for Default Judgment (Motion), wherein I&E requested that the Commission sustain the Complaint due to the Respondent’s failure to file an Answer to the Complaint. The Motion was properly

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<sup>1</sup> The Complainant advised that after the second failed attempt to serve Respondent, further research revealed that Respondent’s address had changed to 5915 Bristol Emilie Road, Levittown, PA 19057. Motion for Default Judgment ¶ 11.

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

For the reasons discussed below, I&E's Motion will be granted, and its Complaint will be sustained.

### FINDINGS OF FACT

1. The Complainant is the Commission's Bureau of Investigation and Enforcement. Complaint ¶ 2.
2. The Respondent is McClain Brothers Plumbing, with a main mailing address of 5915 Bristol Emilie Rd., Levittown, PA 19057. Complaint ¶ 4.
3. On September 27, 2022, the Respondent submitted a New Excavation Emergency Ticket<sup>2</sup> at approximately 10:58 AM to repair a sewer line at 8209 MacArthur Road, Springfield Township, Montgomery County, Pennsylvania. Complaint ¶ 18.
4. At approximately 12:06 PM the same day, PECO responded to the New Excavation Emergency Ticket that its facilities in the area were "field marked." Complaint ¶ 19.

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<sup>2</sup> A New Excavation Emergency Ticket is a Ticket or Locate Request submitted through the Pennsylvania One Call System when an excavator needs to urgently excavate to repair a line or facility and cannot wait the 3 days required under a Routine Ticket.

5. On September 30, 2022, while excavating with a backhoe, the Respondent struck and damaged a properly marked 1.25-inch plastic gas service line belonging to PECO Energy Company (PECO). Complaint ¶ 20.

6. After striking the line, the Respondent contacted PECO via its customer service phone number to inform them of the line strike and subsequent damage. Complaint ¶ 21.

7. There was a gas leak from the 1.25-inch gas service line as a result of the line strike by the Respondent. Complaint ¶ 22.

8. The Respondent did not call 911 to alert emergency responders of the line strike and subsequent damage. Complaint ¶ 23.

9. A photograph of the jobsite taken on September 27, 2022, by United States Infrastructure Corporation (USIC) on behalf of PECO (September 27 Photograph) shows what the area looked like prior to excavation. Complaint ¶ 24.

10. The September 27 Photograph shows yellow paint marking the approximate location of PECO's buried 1.25-inch gas service line. Complaint ¶ 24.

11. Another photograph of the jobsite taken on September 30, 2022, by USIC on behalf of PECO (September 30 Photograph), shows a backhoe sitting directly behind a trench in the foreground, with the trench exhibiting walls that are angled at approximately 90 degrees perpendicular to the surface of the ground, along with tree or shrub roots that are torn and exposed, indicating the use of the backhoe to create the trench. Complaint ¶ 25.

12. Both photographs are taken at the same angle facing the same direction and showing a row of hedges on the left side. Complaint ¶¶ 26-27.

13. A comparison of the location of the row of hedges relative to the yellow paint marking and the trench in each photograph demonstrates that the Respondent excavated using the backhoe within the “tolerance zone”<sup>3</sup> of the PECO line as marked. Complaint ¶ 28.

14. On March 27, 2023, I&E mailed a letter to the Respondent requesting that it submit an Alleged Violation Report (AVR) to the Pennsylvania One Call System (POCS) providing “detailed information about the incident” that “includes pictures and videos, a very detailed summary of the incident which provides an exact recollection of the event as it unfolded, and any relevant supporting documentation.” Complaint ¶ 29.

15. The Respondent failed to provide the requested information. Complaint ¶ 30.

16. On July 10, 2024, I&E filed a Formal Complaint with the Commission against the Respondent alleging that the Respondent violated the PA One Call Law by failing to exercise due care and employ prudent excavation techniques when excavating within the tolerance zone of a properly marked line, failing to immediately notify 911 when a damaged line resulted in the escape of flammable, toxic, or corrosive gas or liquid which endangers life, health, or property, failing to submit an alleged violation report, failing to comply with all requests for information from Commission

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<sup>3</sup> ““Tolerance zone” means the horizontal space within eighteen inches of the outside wall or edge of a line or facility.” 73 P.S. § 176.

staff within 30 days of the receipt of the request, and failing to use best efforts to comply with the Common Ground Alliance Best Practices. Complaint ¶¶ 38-42.

17. On March 4, 2025, the Complaint was re-served on the Respondent by certified mail at 5915 Bristol Emilie Road, Levittown, PA 19057.

18. Attached to the Complaint was a Notice to Plead advising the Respondent that it must file an Answer within twenty (20) days of service of the Complaint and if the Respondent failed to answer the Complaint, I&E would request that the Commission issue an Order sustaining its Complaint and imposing the penalty set forth in the Complaint.

19. On March 13, 2025, the Respondent signed for the Complaint, along with the Notice to Plead.

20. The Respondent did not file an Answer to the Complaint.

21. On May 19, 2025, 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.

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

23. The Respondent did not file a written response to the Motion.

## DISCUSSION

### *Motion for Default Judgment*

The Respondent did not file an Answer to I&E's Complaint. As a result, I&E filed a Motion for Default Judgment seeking that its Complaint be sustained.

The Commission's regulations permit parties to file motions. 52 Pa. Code § 5.103. The Commission's regulations state that 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). Further, the Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978). Therefore, I deem the facts alleged in the Complaint admitted by the Respondent. 52 Pa. Code § 5.61(c).

### *PA One Call Law Violations*

The Pennsylvania Public Utility Commission is an agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code (Code), 66 Pa.C.S. §§ 101–3316. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11).

Section 182.10 of the PA One Call Law, 73 P.S. § 182.10, authorizes and obligates the Commission to execute and enforce the provisions of the PA One Call Law. Sections 182.8(c)-(d) and 182.10 of the PA One Call Law, 73 P.S. §§ 182.8(c)-(d) and

182.10, authorize the Commission to, *inter alia*, hear and determine complaints for violations of the PA One Call Law.

The Respondent is an “excavator,” as that term is defined in Section 176 of the PA One Call Law, 73 P.S. § 176.<sup>4</sup> Thus, the Respondent is subject to the authority of this Commission pursuant to Section 182.10 of the PA One Call Law, which requires excavators to comply with the PA One Call Law. 73 P.S. § 182.10.

I&E alleged five violations of the PA One Call Law in the Complaint. In the first Count, I&E states that the Respondent used a backhoe to excavate a trench within the tolerance zone of PECO’s 1.25-inch gas service line, and while doing so, the Respondent struck and damaged the gas service line, causing a gas leak. Section 180(4) of the PA One Call Law states:

It shall be the duty of each excavator who intends to perform excavation or demolition work within this Commonwealth:

(4) To exercise due care and to take all reasonable steps necessary to avoid injury to or otherwise interfere with all lines where positions have been provided to the excavator by the facility owners pursuant to section 2(5). Within the tolerance zone the excavator shall employ prudent techniques, which may include hand-dug test holes, vacuum excavation or similar devices to ascertain the precise position of such facilities. If insufficient information to safely excavate is available pursuant to section 2(5), the excavator shall employ like

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<sup>4</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.*

prudent techniques which shall be paid for by the project owner pursuant to clause (15).

73 P.S. § 180(4).

I&E alleges that the Respondent's failure to exercise due care and employ prudent excavation techniques when excavating within the tolerance zone of a properly marked line is a violation of Section 180(4) of the PA One Call Law. I concur.

In the second Count, I&E states the Respondent failed to immediately notify 911 when it damaged a gas line while excavating with a backhoe resulting in a gas leak. I&E alleges this is a violation of Section 180(8) of the PA One Call Law, which states:

It shall be the duty of each excavator who intends to perform excavation or demolition work within this Commonwealth:

(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.

73 P.S. § 180(8). I concur.

In the third Count, I&E states the Respondent failed to submit an Alleged Violation Report (AVR) to report its strike on PECO's 1.25-inch gas service line. I&E alleges this is a violation of Section 180(16) of the PA One Call Law, which states:

It shall be the duty of each excavator who intends to perform excavation or demolition work within this Commonwealth:

(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.

73 P.S. § 180(16). I concur.

In the fourth Count, I&E states that the Respondent failed to respond to its March 27, 2023, request for “detailed information” including pictures, videos, and a written summary of the line strike incident. I&E alleges the Respondent’s failure to comply with all requests for information from Commission staff within 30 days of the receipt of the request is a violation of Section 180(17) of the PA One Call Law, which states:

It shall be the duty of each excavator who intends to perform excavation or demolition work within this Commonwealth:

(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.

73 P.S. § 180(17). I concur.

In the fifth Count, I&E states that, as an excavator, the Respondent is required to use best efforts to comply with the Common Ground Alliance (CGA) Best Practices. I&E further states that, specifically, Best Practice 5-25 Notification of Emergency Personnel requires that an excavator immediately notify 911 if damage results

in the escape of flammable, toxic, or corrosive gas or liquid, or endangers life, health, or property.<sup>5</sup>

I&E alleges that Respondent's failure to comply with the CGA is a violation of Section 184 of the PA One Call Law, which states: "Except as otherwise provided for by this act, persons shall use their best efforts to comply with the Common Ground Alliance best practices." 73 P.S. § 184. I concur.

### *Administrative Penalties*

Section 182.10(a) of the PA One Call Law authorizes the Commission to impose administrative penalties for violations of the PA One Call Law. 73 P.S. § 182.10(a). Section 182.10(b)(1)(i)-(ii) allows for the imposition of an administrative penalty not to exceed \$2,500 for each violation or, if the violation results in injury, death, or property damage of \$25,000 or more, an administrative penalty not to exceed \$50,000. 73 P.S. § 182.10(b)(1)(i)-(ii).

Pursuant to Section 182.10(b)(2) of the PA One Call Law, the following factors shall be considered by the Commission 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.

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<sup>5</sup> 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).

- (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.

73 P.S. § 182.10(b)(2).

Here, I&E proposed an administrative penalty of \$2,500 for each violation for a total penalty of \$12,500. However, I&E did not explain or provide any argument to support its prayer for the Commission to impose a penalty in this amount. Poignantly, I&E did not address any of the above-listed factors set forth in 73 P.S. § 182.10(b)(2) in either the Complaint or the Motion for Default Judgment. As a result, I am relegated to making a determination as to the appropriate administrative penalty based solely on the claims stated in the Complaint which were deemed admitted *supra*.

Unfortunately, based on the Complaint, there is no evidence regarding the history of the Respondent's compliance with PA One Call Law prior to the date of the violation. Also, the amount of property damage caused by the Respondent is unknown. Likewise, the degree of threat to the public safety and any inconvenience caused is unknown. Based on the Respondent's failure to respond to any of I&E's requests for detailed information, it can reasonably be assumed that the Respondent has not proposed any modifications to its internal practices and procedures to ensure future compliance with statutes and regulations. Based on the facts deemed admitted from the Complaint, the Respondent is solely culpable for this incident. The Complainant did not set forth any other factors to consider.

Based on this limited evidence, I can only justify the imposition of a \$200.00 administrative penalty for each violation. Thus, the total administrative penalty to be assessed against the Respondent for its violations of the PA One Call Law shall be \$1,000.00. It is anticipated that this level of administrative penalty will serve as a sufficient deterrent against future violations by the Respondent.

In conclusion, the Respondent's Motion will be granted, as modified, and its Complaint sustained, in the Ordering paragraphs below. The Respondent was provided with adequate notice of the alleged violations against it and had the opportunity to respond and to request a hearing, which it did not. The Respondent was also advised that if it failed to file an Answer within twenty days to the Complaint, then I&E would request that the Commission issue an Order imposing the penalties set forth in the Complaint.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 501, 510, 701; 73 P.S. §§ 182.8, 182.10.
2. The Commission's regulations permit parties to file motions. 52 Pa. Code § 5.103.
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 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).

5. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction. 66 Pa.C.S. § 308.2(a)(11).

6. The Commission is authorized and obligated to execute and enforce the provisions of the PA One Call Law. 73 P.S. §§ 182.8(c)-(d), 182.10.

7. The Respondent is an "excavator," as that term is defined in the PA One Call Law, 73 P.S. § 176.

8. The Respondent is required to comply with the PA One Call Law. 73 P.S. § 182.10.

9. The Respondent's failure to exercise due care and employ prudent excavation techniques when excavating within the tolerance zone of a properly marked line is a violation of the PA One Call Law. 73 P.S. § 180(4).

10. The Respondent's failure to immediately notify 911 when it damaged a gas line while excavating is a violation of Section of the PA One Call Law. 73 P.S. § 180(8).

11. The Respondent's failure to submit an Alleged Violation Report of its strike on PECO's 1.25-inch gas service line is a violation of the PA One Call Law. 73 P.S. § 180(16).

12. The Respondent's failure to respond to I&E's request for "detailed information" including pictures, videos, and a written summary of the line strike incident is a violation of the PA One Call Law. 73 P.S. § 180(17).

13. The Respondent's failure to use best efforts to comply with the Common Ground Alliance Best Practices is a violation of the PA One Call Law. 73 P.S. § 184.

14. The Commission is authorized to impose administrative penalties for violations of the PA One Call Law. 73 P.S. § 182.10(a).

15. The PA One Call Law allows for the imposition of an administrative penalty not to exceed \$2,500 for each violation or, if the violation results in injury, death, or property damage of \$25,000 or more, an administrative penalty not to exceed \$50,000. 73 P.S. § 182.10(b)(1)(i)-(ii).

16. The following factors shall be considered by the Commission 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.

73 P.S. § 182.10(b)(2).

17. An administrative penalty of \$1,000.00 for the Respondent's violations of the Pa One Call Law is appropriate. 73 P.S. § 182.10(b)(1)(i)-(ii).

### ORDER

THEREFORE

IT IS ORDERED:

1. That the Motion for Default Judgment filed by the Commission's Bureau of Investigation and Enforcement on May 19, 2025, is granted, as modified, consistent with this Initial Decision.

2. That the allegations in the Commission's Bureau of Investigation and Enforcement's Formal Complaint are deemed admitted, and the Formal Complaint is hereby sustained as modified, consistent with this Initial Decision.

3. That within 30 days of the entry date of a Final Order in this matter, McClain Brothers Plumbing shall remit \$1,000.00 payable by certified check or money order, to "Commonwealth of Pennsylvania" with the docket number of this proceeding listed thereon, sent to:

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

4. That within 30 days of the entry date of a Final Order in this matter, McClain Brothers Plumbing shall attend Online Compliance Training through the Pennsylvania One Call System for excavators and provide proof of compliance to the Commission.

5. That a copy of this Initial Decision shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

6. That the Bureau of Administrative Services, Assessment Section, shall monitor this matter for compliance.

7. That, if McClain Brothers Plumbing fails to make the payment required by Ordering Paragraph No. 3 above, within 30 days of the entry date of the Pennsylvania Public Utility Commission's Final Order, it is further ordered that 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.

