

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Erin L. Gannon
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement against MK Hauling LLC for violations of the Pennsylvania One Call Law, 73 P.S. §§ 176 *et seq.* relating to a gas service line that was struck during excavation activities on July 31, 2023.

HISTORY OF THE PROCEEDING

On February 6, 2025, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) filed a Formal Complaint (Complaint) against MK Hauling LLC (MK Hauling, Respondent, or LLC). 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, 2023.¹ 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 to the answer was filed as required by 52 Pa. Code § 1.36. Mr. Kotch identified himself as the 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 he owns the excavating equipment that struck the gas line but avers that MK Hauling was not involved with the project. He 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**

¹ At the hearing, counsel for I&E stated that the date of the incident was July 31, 2023, and not August 31, 2023. This is addressed below.

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. Counsel for I&E represented that Mark Kotch of MK Hauling objected to the request for a continuance. By interim order issued on April 9, 2025, I granted the continuance because it was I&E's first request, the request was timely, and the request was made because I&E's primary witness was not available. As further good cause to grant a continuance, I considered that MK Hauling had not had an attorney enter an appearance and that, without an attorney, MK Hauling could not participate in the hearing scheduled on April 15, 2025.

The interim order addressed the Commission statutes and precedent that require attorney representation in adversarial proceedings. MK Hauling was notified again that it would not be permitted to participate in the hearing without an attorney. Specifically, it was noticed that:

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.

Interim Order at 4 (footnote omitted). MK Hauling was also notified 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.”

On April 11, 2025, the Commission issued an initial telephonic hearing notice cancelling and rescheduling the call-in telephonic hearing for this matter for May 20, 2025 at 10:00 a.m.

I issued a second prehearing order on April 30, 2025. In paragraphs 4 and 5 of the prehearing order, MK Hauling LLC was given notice that limited liability companies must be represented by an attorney and that failure to be represented would be deemed a waiver of the opportunity to participate in the hearing. In paragraph 5, I stated:

MK Hauling LLC: MK Hauling LLC will be deemed to have waived the opportunity to participate in the proceeding if an attorney licensed to practice in the Commonwealth of Pennsylvania does not enter an appearance to represent you at the hearing. MK Hauling LLC will not be permitted thereafter to reopen the disposition of matters accomplished at the hearing.

Second Prehearing Order ¶ 5 (footnote omitted) (citing 52 Pa. Code § 5.245(a)).

The evidentiary hearing was held on May 20, 2025, as scheduled. I&E was represented by Grant Rosul, Esquire, who presented the testimony of Sara Locke, a Damage Prevention Supervisor in the Damage Prevention Section of I&E. Mr. Rosul also presented six exhibits which were all admitted into the record. Mr. Mark Kotch, owner of MK Hauling, was present. MK Hauling was not represented by counsel and was not permitted to participate in the hearing.

The record closed on June 3, 2025 when the transcript for the evidentiary hearing was filed.

FINDINGS OF FACT

1. MK Hauling LLC is a limited liability company. Tr. 5.
2. Mark Kotch is the owner of MK Hauling LLC. Tr. 4-5.
3. MK Hauling had notice of the requirement to be represented by counsel in order to participate in the hearing. Tr. 6-7.
4. No attorney entered an appearance on behalf of MK Hauling in this matter. Tr. 5.
5. Mark Kotch was present for the evidentiary hearing on May 20, 2025. Tr. 4-5.
6. Sara Locke is a Damage Prevention Supervisor employed by the Damage Prevention Section (DPS) of the Bureau of Investigation and Enforcement. Tr. 10.
7. Ms. Locke's duties include supervising the DPS damage prevention investigators and their investigations. Tr. 10.
8. On July 31, 2023, a backhoe/trackhoe struck a gas service line located at 3148 Bethel-Wilmington Road, Shenango Township, Mercer County, Pennsylvania (work site). Tr. 8-9, 12, 25, 16; I&E Exhibit 1.
9. The Pennsylvania One Call Law requires excavators to submit a locate request (dig ticket) to identify the location and type of facility owner lines at each

work site by notifying the facility owner through the Pennsylvania One Call System (POCS). Tr. 14.

10. Dig tickets are searched by the address of the work site. Tr. 27-28.

11. The dig ticket search for the address also brings up dig tickets for addresses that are in the immediate vicinity of the work site. Tr. 28.

12. There is no record of any Pennsylvania One Call dig tickets being submitted for a July 31, 2023 excavation at 3148 Bethel-Wilmington Road. Tr. 15; I&E Exhibit 1 at 6.

13. On August 7, 2023, an Alleged Violation Report (AVR) was submitted through the Pennsylvania One Call System. Tr. 15-16; I&E Exhibit 1 at 6.

14. The AVR was submitted on behalf of National Fuel Gas Distribution (NFG). Tr. 15-16; I&E Exhibit 1 at 1.

15. The AVR states that the line strike incident occurred on August 31, 2023. Tr. 9; I&E Exhibit 1 at 2.

16. In the AVR, NFG named MK Hauling LLC as the excavator. Tr. 12; I&E Exhibit 1.

17. In the AVR, NFG alleged that the “Excavator” failed to “request the location and type of facility owner through the One Call System in advance of beginning excavation or demolition work §5(2.1).” I&E Exhibit 1 at 1.

18. The AVR states that service was interrupted and the duration of the interruption was less than one hour. I&E Exhibit 1 at 4 (“Event Impact”).

19. The AVR states that approximately one customer was affected. I&E Exhibit 1 at 4 (“Event Impact”).

20. The AVR states that the cost of damaged line repair was between \$1 and \$1,000. I&E Exhibit 1 at 5 (“Event Impact”).

21. Other fields to enter information about “Event Impact” in the AVR are blank, including injuries, death, evacuation, stopped traffic, and other property damage. I&E Exhibit 1 at 5.

22. On May 21, 2024, a DPS investigator emailed a courtesy letter requesting MK Hauling file an AVR about the line strike through the Pennsylvania One Call System. Tr. 17; I&E Exhibit 6 at 3.

23. In the courtesy letter, DPS identified the date of the line strike as August 31, 2023. I&E Exhibit 5 at 1; I&E Exhibit 6 at 3.

24. In the courtesy letter, DPS asked MK Hauling to provide detailed information about the line strike incident including “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.” Tr. 24; I&E Exhibit 6 at 3.

25. On May 22, 2024, Mark Kotch responded to the request for AVR by email, in which he stated that his friend, homeowner Jerry McGeehan, was doing the project, the project was not “for hire” and his friend gave him \$100 for fuel. Tr. 25; I&E Exhibit 6 at 1.

26. MK Hauling did not submit pictures, videos, or supporting documentation regarding the line strike event as requested by DPS in its May 21, 2024 correspondence. Tr. 24; I&E Exhibit 6 at 1.

27. On May 23, 2024, a DPS investigator emailed NFG to ask if the line strike caused a release of gas and whether 911 was called. Tr. 16-17; I&E Exhibit 2 at 2.

28. There was a release of gas from the damaged NFG line at the work site on July 31, 2023 (gas leak). Tr. 16-17; I&E Exhibit 2.

29. When a party calls 911 to report a gas line strike, 911 contacts that local gas department to make sure that they are aware of the line strike and that there is a leak on their line. Tr. 17.

30. No calls were made to 911 for the gas leak that occurred at 3148 Bethel-Wilmington Road. Tr. 16-17; I&E Exhibit 2 at 1.

31. When the DPS investigation was completed, DPS sent MK Hauling the report by the damage prevention investigator, which included the provisions of the One Call law that DPS identified the company as having violated. Tr. 17-18.

32. On August 21, 2024, Mark Kotch sent an email to the DPS investigator in response to receiving the investigator's report and proposed fine. Tr. 17; I&E Exhibit 3 at 5.

33. On August 22, 2024 and August 23, 2024, the DPS investigator sent emails to Mark Kotch to advise that he could provide new information about the line strike incident until September 6, 2024. I&E Exhibit 3 at 3-4.

34. On August 22, 2024, Mark Kotch sent an email to the DPS investigator stating that MK Hauling's business is hauling gravel and its excavation work "primarily is spreading gravel and 20% of my small business." I&E Exhibit 3 at 4.

35. In the email sent August 22, 2024, Mr. Kotch stated that "my machine and a guy who helps me was there," "[m]y excavator was there not titled to MK Hauling," and "I have never been to the property." Tr. 19; I&E Exhibit 3 at 4.

36. In the email sent August 22, 2024, Mr. Kotch stated: "I wasn't there first of all but even if I was I wouldn't have called 911 unless there was an ignition source close by." Tr. 19-20; I&E Exhibit 3 at 4.

37. In an email sent to MK Hauling on August 23, 2024, the DPS investigator specified the information requested:

I am asking about detailed information explaining how it was that you decided to borrow your excavator to your friend. Please include his name and any other details about this transaction. Please include any details from the incident. Did your friend contact you when the line was hit? I will reach out to One Call and ask if they can search again for any tickets placed for this address. If you or your friend have a docket number, that would ensure we include the information into this case. Who called the gas company to repair the line?

I&E Exhibit 3 at 1.

38. On August 23, 2024, Mark Kotch sent emails to DPS, stating that he did not have details, dates, picture evidence or invoices, because he was not the contractor or project owner, did not do the work, and was never at the work site. Tr. 18-19; I&E Exhibit 3 at 1-2.

39. In an August 23, 2024 email, Mark Kotch identified Jerry McGeehan as the homeowner and project owner, that Mr. McGeehan was in the investigator's report and DPS should get details from him. I&E Exhibit 3 at 1.

40. In an August 23, 2024 email, Mark Kotch stated that he supplied the project owner with "an excavator and a guy to operate it for a couple of hours." Tr. 18; I&E Exhibit 3 at 1.

41. In an August 23, 2024 email, Mark Kotch stated that "[c]alling 911 was not necessary that's for real emergencies and people who don't know what to do." Tr. 19-20; I&E Exhibit 3 at 1.

42. AVRs submitted to POCS are searched by street name and not by a specific address. Tr. 28.

43. In October 2024, the DPS searched AVRs by the street name and also by variations of "MK Hauling," "MK," and Mr. Kotch's name. Tr. 23-24, 28.

44. The DPS found no record that a Mark Kotch or MK Hauling submitted an AVR to POCS for the July 31, 2023 line strike. Tr. 23-24.

45. On October 15, 2025, Mark Kotch sent an email to DPS stating that he could not attend the Damage Prevention Committee meeting in Harrisburg, would not be paying a fine and would appeal, close the hauling business or go to jail. Tr. 21; I&E Exhibit 4 at 2.

46. On October 16, 2025, DPS sent an email to MK Hauling stating that the case had been moved out of the Damage Prevention Committee’s discussion queue and would be voted on omnibus. Tr. 21; I&E Exhibit 4 at 2.

47. In its October 16, 2024 email, DPS told Mark Kotch that he could have attended the Damage Prevention Committee meeting online. I&E Exhibit 4 at 2.

48. On October 16, 2025, Mark Kotch sent an email to DPS stating that the fines being assessed to him and the homeowner for “my little 10 ft long trench” was out of line with fines that DPS has charged for huge and expensive projects. Tr. 21-22, 25; I&E Exhibit 4 at 1.

49. In its Complaint, I&E asks the Commission to assess the maximum penalty available under the Pennsylvania One Call Law for each of the four alleged violations, which is a total civil penalty of \$10,000. Tr. 26-27; Complaint ¶¶ 16, 39-42 (citing 73 P.S. § 182.10(b)(1)(i)).

DISCUSSION

Attorney Representation

The Commission’s 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. 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 an answer to the Complaint was filed. *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).

Corporate entities must be represented by counsel at all stages of Commission proceedings after those proceedings become adversarial. *Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered Feb. 4, 2010) (*Cars R Us*); *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered Feb. 2, 2010) (*Torino*); *Hess Com. Printing, Inc. v. Pa. Power Co.*, Docket No. C-2014-2454999 (Opinion and Order entered Jan. 28, 2016). Specifically, the Commission has found that a corporate entity must be represented by counsel to participate in an evidentiary hearing including, without limitation, presenting testimony, introducing exhibits, and cross-examination of witnesses. *Cars R Us*; *Adams Cnty. Realty v. Metro. Edison Co.*, Docket No. C-2015-2473562 (Final Order entered Dec. 3, 2015).

Consistent with Commission precedent, MK Hauling LLC was specifically directed to have an attorney enter an appearance on its behalf by April 3, 2025, in advance of the evidentiary hearing initially scheduled for April 15, 2025. Prehearing Order ¶ 4 (issued Mar. 10, 2025). In that order, MK Hauling was advised that, if not represented at the hearing “MK Hauling LLC will be deemed to have waived the opportunity to participate in the proceeding... and will not be permitted thereafter to reopen the disposition of matters accomplished at the hearing.” *Id.*

MK Hauling did not meet that deadline. Following continuance and rescheduling of the hearing to May 20, 2025, MK Hauling was notified that without an attorney, it would not be able to “provide testimony and exhibits, cross-examine I&E witnesses, or otherwise participate in the hearing or litigation of the Complaint.” Interim Order at 4 (issued Apr. 9, 2024) (footnote omitted). MK Hauling was also notified 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.” *Id.* at 6 (Ordering ¶ 4). Additional notice regarding the need for attorney representation was provided in the hearing notices issued on April 11, 2025 and the second prehearing order issued on April 30, 2025. All of the hearing notices and prehearing orders stated that: “You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”

The Respondent had ample and repeated notice of the need for attorney representation and the consequences of not being represented. Although Mark Kotch appeared at the evidentiary hearing convened on May 20, 2025, as a non-attorney, he was not permitted to represent MK Hauling LLC. Tr. 4-5. Moreover, MK Hauling LLC “failed to be represented” at the hearing, for purposes of 52 Pa. Code § 5.245. That regulation provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing.

(2) Not be permitted to reopen the disposition of a matter accomplished at the conference or hearing.

(3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a). Thus, the evidentiary record in this matter is limited to the testimony of I&E’s witness and six exhibits that were admitted into the record (listed chronologically):

Exhibit	Content	Date
I&E Exhibit 1	Alleged Violation Report filed by NFG	Aug. 7, 2023
I&E Exhibit 5	DPS letter to MK Hauling requesting MK Hauling submit an AVR	May 21, 2024
I&E Exhibit 6	Emails between Mark Kotch and DPS regarding DPS request for MK Hauling to submit an AVR	May 22, 2024
I&E Exhibit 2	Emails between DPS and NFG regarding gas leak and 911 call	May 23, 2024 June 7, 2024
I&E Exhibit 3	Emails between Mark Kotch and DPS following receipt of the DPS investigator's report	Aug. 21, 2024 Aug. 22, 2024 Aug. 23, 2024
I&E Exhibit 4	Emails between Mark Kotch and DPS regarding damage prevention committee meeting	Oct. 15, 2024 Oct. 16, 2024

Tr. 10-29; 33-34.

PA One Call Violations

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation, or claimed violation, of any law which the commission has jurisdiction to administer. 66 Pa.C.S. § 701. I&E has the burden of proof in this proceeding as the party seeking relief. 66 Pa.C.S. § 332(a).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the respondent. If a respondent does not rebut that evidence, the complainant will prevail. If the respondent rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the respondent's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Comp. Appeal Bd.*, 612 A.2d 434 (Pa. 1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984). "[O]pinions and conclusions cannot be relied upon as substantial evidence in a decision by this agency." *Norman v. Phila. Gas Works*, Docket No. C-2018-2640719 at 30 (Opinion and Order entered Oct. 7, 2021) (*Norman*).

I&E's Complaint

I&E alleges that MK Hauling LLC violated four requirements of the PA One Call Law (the Act).

In Count 1, I&E alleges that MK Hauling LLC began excavation work at 3148 Bethel-Wilmington Road in Shenango Township, Mercer County without first submitting a locate request (or “One Call ticket”) for the work site through the One Call System. Complaint ¶ 39. If proven, this is a violation of Section 180(2.1) of the PA One Call Law, 73 P.S. § 180(2.1), which requires an excavator to request the location and type of facility owner lines at each work site by notifying the facility owner through the One Call System. I&E proposes a \$2,000 administrative penalty for this violation.

In Count 2, I&E alleges that MK Hauling LLC failed to notify 911 when it struck a gas service line while excavating, which resulted in a gas leak. Complaint ¶ 40. If proven, this is a violation of Section 180(8) of the PA One Call Law, 73 P.S. § 180(8), which requires excavators to immediately notify 911 when a damaged line results in a leak of flammable, toxic or corrosive gas which endangers life, health or property. I&E further alleges that Respondent later informed investigators that “calling 911 was not necessary” because “that’s for real emergencies and people who don’t know what to do.” I&E proposes a \$2,500 administrative penalty for this violation.

In Count 3, I&E alleges that MK Hauling LLC failed to submit an Alleged Violation Report to POCS to inform the Commission of the line strike. Complaint ¶ 41. If proven, this is a violation of Section 180(16) of the PA One Call Law, 73 P.S. § 180(16), which requires excavators to submit an AVR within ten business days after striking or damaging a facility owner’s line during excavation. I&E contends that the Respondent did not comply with that deadline and also failed to submit an AVR to report the line strike at all, even after a request to do so from the Commission in mail and email correspondence sent May 22, 2024. I&E submits further that Respondent attempted to disclaim or dismiss the request by stating that “811 wants to try to get money for nothing. It was the home owners [sic] project.” I&E proposes a \$2,500 administrative penalty for this violation.

In Count 4, I&E alleges that MK Hauling LLC failed to comply with a May 21, 2024 request by DPS for “detailed information” including pictures, videos, and a written summary of the line strike incident. Complaint ¶ 42. If proven, this is a violation of Section 180(17) of the PA One Call Law, 73 P.S. § 180(17), which requires Respondent 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.” I&E proposes a \$2,500 administrative penalty for this violation.

Relevant Statutory Provisions

The PA One Call Law authorizes the Commission to enforce the Act’s provisions and to, *inter alia*, hear and determine complaints arising from the rejection of an informal determination issued by the Pennsylvania Damage Prevention Committee against excavators for violations of the PA One Call Law. 73 P.S. §§ 182.8(c)-(d), 182.10. Additionally, the PA One Call Law authorizes the Commission’s prosecutorial staff to bring a formal complaint against entities subject to the PA One Call Law. 73 P.S. § 182.8(c)(2).

Relevant to the specific violations alleged by I&E, the PA One Call Law establishes the following requirements for excavators, in relevant part:

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

...

(2.1) To request 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.

...

(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 which endangers life, health or property. 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.

...

(16) To submit a report of an alleged violation to the commission through the One Call System not more than ten business 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.

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

Analysis

As discussed above, MK Hauling was not represented by counsel for any part of the investigation or formal Commission proceeding. Mr. Kotch did not testify on the record. However, I&E introduced email exchanges between DPS and Mr. Kotch to demonstrate its investigation and as evidence to support its claims that MK Hauling LLC violated the Pennsylvania One Call. *See* I&E Exhibits 2, 3, 4, 6. Thus, I find it appropriate and necessary to consider the statements relied on by I&E in the full context of those email exchanges to determine what was “admitted” by Mr. Kotch regarding MK Hauling’s responsibility under the Act.

It is noted that Mr. Kotch attached materials to his Answer, including additional email exchanges, the Damage Prevention Investigator Report and the Notification of Damage Prevention Committee Informal Determination. That information was not made part of the record in this matter and their content is not considered here. Nor is the substance of the Answer considered – beyond the fact that the Complaint was answered and contested – because the Answer was not verified, as required by 52 Pa. Code § 1.36.²

As discussed above, MK Hauling LLC is a limited liability company. Mark Kotch is owner and principal of MK Hauling LLC.

The basis for the Complaint is that MK Hauling LLC violated four duties of the PA One Call Law applicable to “Excavators.” Therefore, as a threshold matter, it is

² An answer must be personally verified if, as here, the answer contains an averment of fact not appearing of record or contain a denial of fact. 52 Pa. Code § 1.36.

necessary for I&E to show that MK Hauling LLC is an excavator, as defined by the statute. This definition is provided in Section 176 of the Act:

“Excavator” means any person who or which performs excavation or demolition work for himself or for another person.

73 P.S. § 176 (Definitions).

According to I&E, MK Hauling performed the excavation work. I&E does not allege that Mr. Kotch was in physical control of the equipment used to perform the excavation or that he was personally present at the work site. I&E presented the following support for its claim that MK Hauling LLC performed the excavation:

1. National Fuel Gas identified MK Hauling as the excavator in the Alleged Violation Report.

As stated by I&E, the AVR identifies MK Hauling as the excavator. I&E Exhibit 1. I&E’s witness testified that the information that the facility owner includes in the AVR “is required to be truthful and accurate to the best of the submitter’s knowledge.” Tr. 14 (Locke). There is no evidence in the record explaining how NFG identified MK Hauling as the excavator.

2. Statements by Mark Kotch bearing on “ownership” of the project.

I&E alleges that Mark Kotch admitted that MK Hauling equipment and an employee were on site conducting the excavation for the property owner at 3148 Bethel-Wilmington Road. In its Complaint, DPS Supervisor Locke’s testimony, and Mr. Rosul’s closing statement, I&E points to statements by Mr. Kotch that:

▪ “I supplied him an excavator and a guy to operate it for a couple of hours.” Complaint ¶ 24 (citing I&E Exhibit 3); Tr. 19 (Locke), 30 (Rosul).

▪ “my little 10 ft. long trench for a friend.” Complaint ¶ 26 (citing I&E Exhibit 4); Tr. 21-22 (Locke), 30 (Rosul).

▪ “he [property owner] asked me to dig a 10 ft ditch to connect his line. He gave me \$100 for fuel not my project.... It wasn’t my job literally dug a 10 ft ditch.” Complaint ¶ 30 (citing I&E Exhibit 6 at 1); Tr. 25 (Locke).

I agree with I&E that, based on the submitted email exchanges, Mr. Kotch admitted that excavating equipment that he owns was used in the excavation that struck NFG’s line. Mr. Kotch states, “My excavator was there not titled to MK Hauling.” I&E Exhibit 3 at 4. Ownership of excavating equipment itself, however, does not create any compliance responsibilities under the PA One Call Law. The Act specifies that the excavator “performs” the work. 73 P.S. § 176.

Again, I&E does not contend that Mr. Kotch was at the work site or that he performed the excavation himself. Accordingly, for MK Hauling LLC to be an “excavator” as defined by the Act, there must be a relationship between (1) the LLC and the person who operated the excavating equipment (the “operator” under the PA One Call Law) and/or (2) the LLC and the person for whom the work was performed (the “project owner”).

The Act defines “operator” and “project owner” as follows:

“Operator” means any individual in physical control of powered equipment or explosives when being used to perform excavation or demolition work.

“Project owner” means any person who or which engages an excavator for construction or any other project which requires excavation or demolition work.

73 P.S. § 176 (Definitions).

There is almost no information in the record about the operator. I&E contends that Mark Kotch admitted that an MK Hauling “employee” conducted the excavation based on Mr. Kotch’s statement: “I supplied him an excavator and a guy to operate it.” Complaint ¶ 24 (citing I&E Exhibit 3) (emphasis added); Tr. 19 (Locke), 30 (Rosul). Mr. Kotch also refers to the operator as “a guy who helps me.” I&E Exhibit 3 at 4-5. While Mr. Kotch admits that he supplied an operator, I do not find these statements sufficient to prove that the operator was an employee or agent of MK Hauling, through which the LLC has responsibility as an “excavator” under the Act. I&E provided no evidence that the operator was paid by MK Hauling. There is no information whether the DPS investigator communicated with the operator.

Regarding the project owner, there is also very little information in the record. To establish that the LLC performed the work or was “engaged” for the excavation project, I&E points to Mr. Kotch’s email response to the DPS courtesy request for MK Hauling to submit an AVR. Complaint ¶ 30; Tr. 25. The full text of Mr. Kotch’s email is provided below:

This a bit [sic] ridiculous. This wasn’t a for hire project. Friend Jerry McGeehan home owner [sic] was doing the project. He had a new septic system installed which he said they called 811. Shortly after he asked me to dig a 10ft ditch to connect his line. He gave me \$100 for fuel not my project. Home owner [sic] claimed all responsibility and paid the gas company fee. The gas company keeps harassing me. It wasn’t my job literally dug a 10 ft ditch. The gas company charged their fee now 811 wants to try to

get money for nothing. It was the home owners [sic] project.

I&E Exhibit 6 at 1 (May 22, 2025). I&E did not present any information about the DPS investigator communicating with the homeowner.

On its face, Mr. Kotch admits that the homeowner paid him \$100 and Mr. Kotch provided the machine. However, I&E presented other statements by Mr. Kotch that this was not a “for hire” project and the excavating equipment is titled to Mr. Kotch individually. There is no showing that any payment was made to the person who operated the excavator and, further, no evidence was introduced from the operator or the homeowner. Given this, I do not find that the homeowner’s payment to Mr. Kotch is sufficient to establish that the LLC performed the excavation work.

Based on the foregoing, I&E has not supplied the evidence necessary to establish a *prima facie* case and sustain its Complaint. Considering the information provided for the record, I do not find that a preponderance of evidence shows that MK Hauling LLC was an “excavator” under the Act, for the project at issue.

As I&E has not met its burden of proof on this threshold matter, I do not find that MK Hauling LLC was responsible for complying with the PA One Call Law requirements. Therefore, on this record, I cannot find that MK Hauling violated the provisions of the Act that form the basis of this Complaint.³

³ Notwithstanding my decision that MK Hauling is not an excavator, I have made extensive findings on the record evidence relevant to I&E’s alleged violations of the Act.

Civil Penalty

Because I do not find that the Respondent violated the Pennsylvania One Call Law, there is no statutory ground to assess a civil penalty. 73 P.S. § 182.10(a). Nonetheless, for the sake of completeness of Commission review, in the event that the Commission disagrees with my finding and finds that MK Hauling LLC was an “excavator” and thus responsible for complying with the Pennsylvania One Call Law regarding the July 31, 2023 line strike, I will identify the factors set forth in the statute for determining what level of civil penalty is appropriate and also address record evidence that may bear on that determination.

Section 182.10(b)(2) directs the Commission and the Damage Prevention Committee to 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.

73 P.S. § 182.10(b)(2). Further, Section 182.10(b)(1) caps the amount of penalty at \$2,500 per violation where the violation did not result in injury, death or property damage

of \$25,000 or more. Here, NFG estimated that the cost to repair its damaged line was between \$1 and \$1,000 and reported no injuries, death, or other property damage.

Bearing on the second and third factors regarding the amount of injury or damage, threat to public safety and inconvenience caused by the incident, 73 P.S. §§ 182.10(b)(ii)-(iii), it appears that the excavation was 10 feet long. According to NFG's AVR, service was interrupted for less than one hour, the homeowner was the only NFG customer affected by the incident and that, in addition to no injuries or death, there was no evacuation or stopped traffic.

Regarding the history of the party's compliance with the Pennsylvania One Call Law and indicators of future compliance, 73 P.S. §§ 182.10(b)(i), (iv), counsel for I&E indicated that its assessment of the Respondent's compliance was based on his contacts with DPS regarding the instant matter (only). The record evidence about those conversations is based on the email exchanges for May, August and October 2024 that are provided in I&E Exhibits 3, 4 and 6. As testified to by witness Locke, in those exchanges, Mr. Kotch was dismissive of the investigator's requests to submit an AVR, call 911, or pay penalties for non-compliance of the Act based on his position that MK Hauling was not responsible for the project or excavation.

CONCLUSIONS OF LAW

Commission Authority

1. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate, *inter alia*, excavators, within the Commonwealth pursuant to the PA One Call Law, Act of October 30, 2017, P.L. 806, No. 50, 73 P.S. §§ 176 *et seq.*

2. 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, arising from the rejection of an informal determination issued by the Pennsylvania Damage Prevention Committee, 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.

3. Section 182.8(c)(2) of the PA One Call Law, 73 P.S. § 182.8(c)(2), authorizes the Commission's prosecutorial staff to bring a formal complaint against entities subject to the PA One Call Law. 73 P.S. § 182.8(c)(2).

Burden of Proof

4. The burden of proof in this proceeding is upon the Complainant, Bureau of Investigation and Enforcement. 66 Pa.C.S § 332(a).

5. A complainant must show that the respondent is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976).

6. Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

7. A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. The offense must be a violation in violation, or claimed violation, of any law which the commission has jurisdiction to administer. 66 Pa.C.S. § 701.

9. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. § 704.

10. The decision of the Commission must be supported by substantial evidence or evidence that a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Comp. Appeal Bd.*, 612 A.2d 434 (Pa. 1992).

11. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984). As the Commission explained, "opinions and conclusions cannot be relied upon as substantial evidence in a decision by this agency." *Norman v. Phila. Gas Works*, Docket No. C-2018-2640719 at 30 (Opinion and Order entered Oct. 7, 2021) (*Norman*).

12. The Complainant failed to sustain its burden of proof.

Representation by Counsel

13. The Commission regulation at Section 1.21(b) of the Pennsylvania Code 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. 52 Pa. Code § 1.21(b).

14. This proceeding became an adversarial proceeding as defined by 52 Pa. Code § 1.8 when an answer to the Complaint was filed. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered June 24, 2009).

15. Corporate entities must be represented by counsel at all stages of Commission proceedings after those proceedings become adversarial. *Cars R Us c/o Holman Copeland v. Phila. 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 Com. Printing, Inc. v. Pa. Power Co.*, Docket No. C-2014-2454999 (Opinion and Order entered Jan. 28, 2016).

16. Specifically, the Commission has found that a corporate entity must be represented by counsel to participate in an evidentiary hearing including, without limitation, presenting testimony, introducing exhibits, and cross-examination of witnesses. *Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered Feb. 4, 2010); *Adams Cnty. Realty v. Metro. Edison Co.*, Docket No. C-2015-2473562 (Final Order entered Dec. 3, 2015).

17. As a limited liability company, MK Hauling LLC was required to be represented by counsel to participate in formal proceedings in this matter, including presenting testimony, introducing exhibits and cross-examining witnesses at the evidentiary hearing.

Alleged PA One Call Violations

18. Section 180 of the PA One Call Law, 73 P.S. § 180, imposes duties on excavators who perform excavation or demolition work in the Commonwealth. 73 P.S. § 180.

19. “Excavator” is defined in the PA One Call Law as “any person who or which performs excavation or demolition work for himself or for another person.” 73 P.S. § 176.

20. “Excavation work” is defined in the PA One Call Law 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.” 73 P.S. § 176.

21. A gas service line is a “facility” or “line,” as those terms are defined in Section 176 of the PA One Call Law, 73 P.S. § 176.2

22. “Facility” or “line” is defined in relevant part in the PA One Call Law as “an underground conductor or underground pipe or structure used in providing electric or communication service, or an underground pipe used in carrying, gathering, transporting or providing natural or artificial gas, petroleum, propane, oil or petroleum and production product, sewage, water or other service to one or more transportation carriers, consumers or customers of such service and the appurtenances thereto, regardless of whether such line or structure is located on land owned by a person or public agency or whether it is located within an easement or right-of-way.” 73 P.S. § 176.

23. Excavators are subject to the authority of this Commission pursuant to Section 182.10 of the PA One Call Law, 73 P.S. § 182.10, which requires excavators to comply with the PA One Call Law. 73 P.S. § 182.10.

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

25. MK Hauling LLC did not perform the excavation work for the project that resulted in the July 31, 2023 line strike and, therefore, was not the “excavator” as that term is defined in Section 176 of the PA One Call Law, 73 P.S. § 176.1.

26. As MK Hauling LLC was not the “excavator,” it was not responsible to comply with PA One Call Law requirements for excavators regarding the project that resulted in the July 31, 2023 line strike. 73 P.S. § 180 (Excavator, duties).

27. Section 180(2.1) of the PA One Call Law requires an excavator 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.” 73 P.S. § 180(2.1).

28. Section 180(8) of the PA One Call Law requires an excavator to “immediately notify 911 and the facility owner if the damage results in the escape of any flammable, toxic or corrosive gas or liquid which endangers life, health or property.” 73 P.S. § 180(8).

29. Section 180(16) of the PA One Call Law requires that an excavator “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.” 73 P.S. § 180(16).

30. Section 180(17) of the PA One Call Law requires that an excavator “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).

31. Section 180(21) of the PA One Call Law requires an excavator to “make a locate request to the One Call System prior to excavation or demolition work and to pay the applicable fee for the request.” 73 P.S. § 180(21).

Request for Penalty

32. Section 182.10 of the PA One Call Law authorizes the Commission to issue a warning and order requiring compliance with the Act and levy an administrative penalty for a violation of the Act. 73 P.S. § 182.10(a).

33. The maximum administrative penalty is up to \$2,500 per violation where the violation does not result in injury, death or property damage of twenty-five thousand dollars (\$25,000) or more. 73 P.S. § 182.10(b)(1).

34. The July 31, 2023 line strike did not result in injury, death or property damage of twenty-five thousand dollars (\$25,000) or more.

35. Section 182.10 of the PA One Call Law also sets forth statutory factors that the Commission is required to consider in determining the administrative penalty to be assessed. 73 P.S. § 182.10(b)(2).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against MK Hauling LLC at Docket No. C-2025-3053287, is dismissed.
2. That the Secretary's Bureau shall mark this proceeding at Docket No. C-2025-3053287 closed.

Date: September 2, 2025

/s/
Erin L. Gannon
Administrative Law Judge