



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 8, 2025

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
McClain Brothers Plumbing
Docket No. C-2024-3050015
I&E Exceptions

Dear Secretary Homsher:

Enclosed for electronic filing are the **Exceptions** of the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Rosul', is written over a light blue horizontal line.

Grant Rosul
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318204
(717) 783-5243
grosul@pa.gov

GR/ac
Enclosures

cc: Per Certificate of Service
Allison C. Kaster, Director, I&E (via email – akaster@pa.gov)
Carrie B. Wright, Deputy Chief Prosecutor, I&E (via email – carwright@pa.gov)
Administrative Law Judge F. Joseph Brady (via email – fbrady@pa.gov)
Office of Special Assistants (via email – ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-3050015
	:	
McClain Brothers Plumbing,	:	
Respondent	:	

**EXCEPTIONS OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Grant Rosul
Prosecutor
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: September 8, 2025

I. INTRODUCTION

On August 18, 2025, Administrative Law Judge F. Joseph Brady (“ALJ”) issued the Initial Decision in the instant proceeding. The Initial Decision grants the Formal Complaint filed on July 10, 2024, (“Complaint”) by the Commission’s Bureau of Investigation and Enforcement (“I&E”) but assessed an administrative penalty lower than that requested by I&E. The Initial Decision orders:

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.

These Exceptions are filed pursuant to 52 Pa. Code § 5.533. I&E does not take exception to the granting of the Complaint. In fact, that is the correct result. Rather, this exception is filed because the administrative penalty imposed upon Respondent is insufficient to penalize and deter violations of the Underground Utility Line Protection Act, 73 P.S. § 176 *et seq.*, also known as the PA One Call Law.

II. I&E EXCEPTIONS

1. **The Initial Decision erred in imposing an administrative penalty of only \$1,000.**

I&E respectfully submits that the Initial Decision erred in imposing an administrative penalty of only \$1,000. This amount is insufficient to penalize and deter Respondent, and to deter others who may wantonly ignore the requirements of the PA One Call Law, from so acting. The Initial Decision failed to take into account the totality of the circumstances of Respondent's violation, and Respondent's flouting of the law and the fact that it has ignored its duties under the law and the Commission at every turn. Given the seriousness of the violations by Respondent, and its actions in flagrantly ignoring the law, the Commission's Damage Prevention Section, I&E, and Office of Administrative Law Judge, the administrative penalty should be modified accordingly.

“On review of the initial decision, the Commission has all the powers which it would have in making the initial decision.”¹ The Commission, not the administrative law judge, is the ultimate fact finder in proceedings before it, and is charged with the responsibility of considering all relevant evidence and of determining the weight of the evidence, the

¹ 66 Pa.C.S. § 335(a).

credibility of witnesses, and the reliability of estimates and opinions.² Once exceptions are filed to an ALJ's Initial Decision, the Commission may review the ALJ's decision in its entirety without limit.³ Thus, the Commission has full authority to disregard the initial decision of the administrative law judge and overrule it if the Commission reaches a contrary result, even where the administrative law judge's decision is eminently reasonable.⁴

The Complaint was filed on, and initially attempted to be served on, July 10, 2024, by certified mail. However, the Complaint was never served on Respondent. It was subsequently discovered that Respondent's business address was different from that which it had used for correspondence with the Commission. On March 4, 2025, the Complaint was again served upon Respondent. On March 13, 2025, Respondent signed an electronic receipt acknowledging service of the Complaint via certified mail. Respondent failed to file an Answer. On May 19, 2025, I&E filed and served a Motion for Default Judgment upon Respondent.

In reaching the determination that an administrative penalty of only \$1,000 is an appropriate sanction to assess against Respondent, the Initial Decision took into consideration that there is no history of non-compliance with the PA One Call Law prior to the actions outlined in I&E's Complaint, that the amount of property damage caused by Respondent was unknown, and the degree of threat to the public safety and inconvenience caused was likewise unknown. The Initial Decision also found that "it can reasonably be

² *Hess v. Pennsylvania Pub. Util. Comm'n*, 107 A.3d 246 (Pa. Commw. Ct. 2014); *York Water Company v. Pennsylvania Pub. Util. Comm'n*, 414 A.2d 138 (Pa. Commw. Ct. 1980); *Pennsylvania Communities Organizing for Change, Inc. v Pub. Util. Comm'n*, 89 A.3d 338 (Pa. Commw. Ct. 2014).

³ *Romero v. Pennsylvania Pub. Util. Comm'n*, 154 A.3d 422 (Pa. Commw. Ct. 2017).

⁴ *AT & T Commc'ns of Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 568 A.2d 1362 (Pa. Commw. Ct. 1990) citing to *East Goshen Township v. Pennsylvania Pub. Util. Comm'n*, 486 A.2d 550 (Pa. Commw. Ct. 1985).

assumed that the Respondent has not proposed any modifications to its internal practices and procedures to ensure future compliance....”⁵

Although I&E did not proffer evidence regarding how much damage Respondent’s actions and inactions caused, nor proffer evidence regarding Respondent’s compliance history (I&E acknowledges that Respondent has not previously committed any violations of the One Call Law), those considerations should not move the scale when weighed against what is clear from Respondent’s actions and inactions during and after the excavation that resulted in the gas line strike.

Respondent excavated directly over a marked 1.25-inch plastic gas service line belonging to PECO Energy Company (“PECO”) with powered equipment.⁶ After striking the line, gas was released but Respondent failed to notify emergency services of the line strike and subsequent damage.⁷ During its investigation the Bureau of Investigation and Enforcement’s Damage Prevention Section (“DPS”) contacted Respondent and requested that it submit an Alleged Violation Report (“AVR”) to the Commission through the Pennsylvania One Call System (“POCS”).⁸ Respondent ignored this request. The requested information could also have been provided to the DPS via another means (such as an email). However, Respondent failed to provide the requested information at all.⁹

The Damage Prevention Committee imposed a \$10,000 total penalty, given the severity of an excavator using powered equipment to dig directly above a properly marked

⁵ *Pa. Pub. Util. Comm’n v. McClain Brothers Plumbing*, Docket No. C-2024-3050015, Initial Decision, p. 13 (Aug. 18, 2025) (hereinafter “Initial Decision”).

⁶ Initial Decision, Finding of Fact 5, 9-13 pp. 5-6.

⁷ Initial Decision, Finding of Fact 7 and 8, p. 5.

⁸ Initial Decision, Finding of Fact 14, p. 6.

⁹ Initial Decision, Finding of Fact 15, p. 6.

gas line, striking the gas line — which resulted in a gas leak— and then not calling emergency services. And then, on top of that, failing to assist the Commission in its investigation of the gas line strike by refusing to submit an AVR even after being requested to do so by Commission staff.¹⁰

It is the position of I&E that the administrative penalty for such behavior should be large enough to deter future violations. A \$1,000 penalty for multiple, intentional violations of the PA One Call Law may be seen by Respondent, and other excavators who may be in Respondent's position in the future, to see such a low fine as a cost of doing business. They may come to believe that not altering emergency services to a gas leak, not submitting an AVR, and not cooperating with the investigation of line strike incidents to be the economically optimal strategy for dealing with the Commission and its enforcement of the PA One Call Law.

Pursuant to Section 182.10(b)(2) of the PA One Call Law, “the [C]ommission and the [DPC] 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.

¹⁰ I&E Exhibit A (Notice of Informal Determination, McClain Bros. Plumbing, Nov. 15, 2023).

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

Regarding these factors, as I&E has mentioned above, Respondent does not have a history of non-compliance with the PA One Call Law. The amount of property damage was minimal. The degree of danger posed by the leaking gas line was high, although I&E acknowledges that Respondent contacted PECO, and workers from PECO arrived on scene to repair the line and make the area safe.¹¹

Respondent did not propose any internal modifications to its practices and procedures. In fact, Respondent proposed nothing because it chose to ignore the communications of the DPS and I&E.

As to culpability, Respondent was at fault for the line strike, and its irresponsible excavation activity was the proximate cause of the line strike. As ALJ Brady noted, “Respondent is solely culpable for this incident.”¹²

However, there is one factor that, while not explicitly enumerated in § 182.10(b)’s list of factors for consideration, is the penultimate factor justifying the imposition of the \$12,500 administrative penalty originally requested by I&E in its Complaint. That factor is Respondent’s refusal to engage with the Commission when the DPS was attempt to gather information and conduct its investigation. The Commission’s function in enforcing the PA One Call Law relies on parties, including excavators such as Respondent (which are not normally subject to Commission jurisdiction), truthfully and in good faith reporting when an underground utility line is struck and providing the details of such incidents.

¹¹ Initial Decision, Finding of Fact 6, p. 5.

¹² Initial Decision, p. 13.

The number of violations of the PA One Call Law should also be taken into consideration. It is not simply that Respondent was careless and “failed to exercise due care and take all reasonable steps necessary to avoid injury to or otherwise avoid interference with” underground lines.¹³ It is that Respondent failed to alert emergency responders about the gas leak, failed to submit an AVR to the Commission as required by law, failed to provide relevant information relating to the line strike when requested by Commission staff, and failed to adhere to additional CGA Guidelines which it is also required to follow pursuant to the PA One Call Law. A violation of only one of these provisions may have resulted in a lower administrative penalty requested by I&E, or even a warning letter in lieu of prosecution.

Additionally, Respondent’s violations were knowing and its noncompliance willful. Respondent knew it struck a gas line, knew it failed to alert emergency services, and knew it failed to submit an AVR to the Commission and to provide information requested by Commission staff. Respondent only participated in the statutorily-established proceedings for violations of the PA One Call Law by disputing the informal determination of the DPC. By doing so, Respondent triggered I&E’s review the case *de novo*, requiring a prosecutor to spend additional Commission resources investigating the incident and then drafting the Complaint. Respondent then abandoned the process and ignored the Complaint filed by I&E. The administrative penalty imposed, which is 8% of the requested penalty, is insufficient to act as a deterrent to such conduct. Therefore, I&E requests that the

¹³ Quoting 73 P.S. § 180(4).

Commission substitute its own judgment for that of the ALJ and impose an administrative penalty against Respondent in the amount of \$12,500.

III. CONCLUSION

For the reasons set forth above, I&E respectfully requests that the Commission adopt the Initial Decision's ultimate conclusion granting I&E's Formal Complaint but set aside the Initial Decision's \$1,000 administrative penalty and instead impose a \$12,500 administrative penalty.

Respectfully submitted,



Grant Rosul
Prosecutor
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 783-5243
grosul@pa.gov

Dated: September 8, 2025

I&E Attachment A



Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
 Harrisburg, PA 17105-3265
ADMINISTRATIVE PENALTY INVOICE

MCCLAIN BROS PLUMBING
 Attn: Excavation Supervisor
 353 MAIN ST
 TULLYTOWN, PA 19007

INVOICE DATE	INVOICE NUMBER
08-25-2023	033989-006252
FISCAL YEAR	
July 1, 2023 - June 30, 2024	

- **Carefully Read All Enclosed information**
- **Use Return Envelope Provided**
- **Make Check Payable to:**
Commonwealth of Pennsylvania

TO RECEIVE PROPER CREDIT FOR YOUR PAYMENT, REMOVE THE BOTTOM PART OF THIS INVOICE AT THE PERFORATION AND RETURN WITH YOUR REMITTANCE

MAIL PAYMENT TO:

PENNSYLVANIA PUBLIC UTILITY COMMISSION
 DAMAGE PREVENTION
 PO BOX 3265
 HARRISBURG, PA 17105-3265

FOLD AND CUT HERE

RETURN THIS PORTION WITH YOUR REMITTANCE

MCCLAIN BROS PLUMBING
 Attn: Excavation Supervisor
 353 MAIN ST
 TULLYTOWN, PA 19007

INVOICE DATE	INVOICE NUMBER
08-25-2023	033989-006252
FISCAL YEAR	
July 1, 2023 - June 30, 2024	

PAY THIS AMOUNT WITHIN 30 DAYS

\$10,000.00

Attn: Damage Prevention Section



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 COMMONWEALTH KEYSTONE BUILDING
 400 NORTH STREET, HARRISBURG, PA 17120

One Call Enforcement

November 15, 2023

MCCLAIN BROS PLUMBING
 Attn: Excavation Supervisor
 353 MAIN ST
 TULLYTOWN, PA 19007

Re: Notification of Damage Prevention Committee Informal Determination

To whom it may concern,

We are writing to inform you that MCCLAIN BROS PLUMBING was identified as a stakeholder in one or more cases that were discussed and voted upon by the Damage Prevention Committee (DPC) at a meeting on **November 14, 2023** regarding alleged violation(s) of the Underground Utility Line Protection Law, Act of October 30, 2017, P.L.806, No. 50 (hereinafter referred to as "Act 50"), 73 P.S. §§ 176 et seq.

During the meeting, the DPC voted on the following case(s):

- Case No. 033989 - Line strike in SPRINGFIELD TWP, MONTGOMERY County on **September 30, 2022** near 8209 MACARTHUR RD. The incident resulted in damage to an underground facility owned by PECO an Exelon Company. (Related PA One Call Ticket Nos.: 20222702109.)

The DPC specifically made the following informal determination(s) regarding the aforementioned case(s):

Section	Offense	Penalty	Factor	Factor Penalty	Total Penalty	
5 (4)	Excavator failed to exercise due care and employ prudent excavation techniques	1st Offense	\$2,500.00	0 %	\$0.00	\$2,500.00
Recommendation: Education required						
5 (8)	Excavator failed to immediately notify 911 and the facility owner when damage resulted in the escape of gas or liquid which may endanger life, health or property	1st Offense	\$2,500.00	0 %	\$0.00	\$2,500.00
Recommendation: Education required						
5 (16)	Excavator failed to submit an Alleged Violation Report within 10 business days of striking a line	1st Offense	\$2,500.00	0 %	\$0.00	\$2,500.00
Recommendation: Education required						
5 (17)	Excavator failed to comply with all requests for information from PUC staff within thirty days of the receipt of the request	1st Offense	\$2,500.00	0 %	\$0.00	\$2,500.00
Recommendation: Education required						
Total			\$10,000.00		\$0.00	\$10,000.00

In response to the DPC's informal determination(s), as set forth above, you must choose one (1) of the following options:

1. **Accept the DPC's informal determination by remitting payment of the administrative penalty using the enclosed invoice within thirty (30) days of the date of this letter. If the DPC's informal determination includes mandatory training, you will receive a separate letter with further instructions.**
2. **Reject the DPC's informal determination by informing the DPC in writing within thirty (30) days of the date of this letter by first class mail at the address provided below or by email at damageprevention@pa.gov. If you choose to reject the informal determination, the matter will be returned to the Damage Prevention Investigator for further action, if appropriate, including referring the matter to the Pennsylvania Public Utility Commission's (Commission) Bureau of Investigation and Enforcement for the purpose of issuing a formal complaint.**

If you fail to respond to the DPC's informal determination within thirty (30) days of the date of this letter, then the informal determination shall become final and binding on the Commission. Appeals from final action of the Commission shall be filed in the Commonwealth Court within thirty (30) days of the date the informal determination becomes final.

If you have any questions concerning this matter, please call 717-787-6489 or contact damageprevention@pa.gov

Sincerely,

A handwritten signature in black ink, appearing to read 'TCS', written in a cursive style.

Terri Cooper Smith, Chairperson
Damage Prevention Committee
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-3050015
	:	
McClain Brothers Plumbing,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Exceptions of the Bureau of Investigation and Enforcement** dated September 8, 2025, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served via First-Class Mail and Electronic Mail:

McClain Brothers Plumbing
5915 Bristol Emilie Road
Levittown, PA 19057
McClainPermits@gmail.com



Grant Rosul
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318204
(717) 783-5243
grosul@pa.gov