

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held November 6, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss, Statement
John F. Coleman, Jr.
Ralph V. Yanora

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

C-2024-3050015

v.

McClain Brothers Plumbing

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions (Exceptions) of the Commission's Bureau of Investigation and Enforcement (I&E), filed on September 8, 2025, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) F. Joseph Brady, which was issued on August 18, 2025, in the above-captioned proceeding. No replies were filed. For the reasons stated below, we shall grant the Exceptions filed by I&E and modify the Initial Decision, consistent with this Opinion and Order.

I. History of Proceeding

On July 10, 2024, I&E filed a Formal Complaint (Complaint) with the Commission against McClain Brothers Plumbing (McClain Brothers or Respondent). In the Complaint, I&E alleged that McClain Brothers violated several provisions of the Underground Utility Line Protection Law, Act of October 30, 2017, P.L. 806, No. 50, 73 P.S. § 176 *et seq.* (PA One Call Law), in connection with a strike on a 1.25-inch gas service line owned by PECO Energy Company - Gas Division (PECO), while excavating on September 30, 2022, near 8209 MacArthur Road, Springfield Township, Montgomery County, Pennsylvania. For relief, I&E requested that McClain Brothers be ordered to pay an administrative penalty of \$12,500 for five counts of violations of the PA One Call Law with respect to this incident, and attend an educational program through the Pennsylvania One Call System (POCS) for excavators. Complaint at 1, 10; I.D. at 1-2.

On July 11, 2024, and again on August 30, 2024, the Commission's Secretary attempted to serve the Complaint, along with a Notice explaining how to respond to the Complaint, on McClain Brothers by certified mail at 353 Main Street, Tullytown, PA 19007, the last known mailing address provided by the Respondent which had been used to correspond with the 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. I.D. at 2.

On January 14, 2025, I&E filed an updated Complaint (Amended Complaint), which included an updated address for McClain Brothers. Amended Complaint at 2.¹ I&E stated that further research utilizing an internet search engine

¹ The Complaint filed on July 10, 2024, and the Amended Complaint filed on January 14, 2025, will hereinafter be referred to in this Opinion and Order as “the Complaint.”

uncovered that McClain Brothers' address had changed to 5915 Bristol Emilie Road, Levittown, PA 19057. I.D. at 3 (citing Motion for Default Judgment (Motion) at 3, ¶ 11).

On January 15, 2025, the Commission's Secretary made a third attempt to serve the Complaint, along with a Notice explaining how to respond to the Complaint, on McClain Brothers by certified mail at 5915 Bristol Emilie Road, Levittown, PA 19057. However, 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. I.D. at 3; Motion at 3.

On March 4, 2025, the Complaint, along with a Notice explaining how to respond to the Complaint, was re-served on the Respondent by certified mail at 5915 Bristol Emilie Road, Levittown, PA 19057. On March 13, 2025, McClain Brothers signed for the Complaint, along with the attached Notice. I.D. at 3.

McClain Brothers did not file an Answer to the Complaint, which was due no later than April 3, 2025. I.D. at 3.

On May 19, 2025, I&E filed its Motion, wherein it requested that the Commission sustain the Complaint due to McClain Brothers' failure to file an Answer to the Complaint. Motion at 4. The Motion included: (1) a Notice to Plead, which informed McClain Brothers that it had twenty (20) days from the date of service of the Motion to file a written response to the Motion; and, (2) a Certificate of Service indicating that the Motion was being served on McClain Brothers at 5915 Bristol Emilie Road, Levittown, PA 19057, as well as via electronic mail. The Respondent did not file a response to the Motion.

On August 18, 2025, the Commission issued the Initial Decision of ALJ Brady, in which he granted, as modified, I&E’s Motion and imposed an administrative penalty of \$1,000 on McClain Brothers. I.D. at 1, 17.

As noted, *supra*, I&E filed Exceptions on September 8, 2025. No replies were filed.

II. Background

On September 27, 2022, McClain Brothers submitted a New Excavation Emergency Ticket² at approximately 10:58 AM to repair a sewer line at 8209 MacArthur Road, Springfield Township, Montgomery County, Pennsylvania. I.D. at 4 (citing Complaint ¶ 18). PECO responded the same day that its facilities in the area were “field marked.” I.D. at 4 (citing Complaint ¶ 19). While excavating with a backhoe on September 30, 2022, McClain Brothers struck and damaged a properly marked 1.25-inch plastic gas service line owned by PECO. I.D. at 5 (citing Complaint ¶ 20). After striking the gas service line, McClain Brothers contacted PECO via its customer service phone number to inform it of the line strike and subsequent damage. I.D. at 5 (citing Complaint ¶ 21). A gas leak on the 1.25-inch gas service line resulted from the line strike. I.D. at 5 (citing Complaint ¶ 22). McClain Brothers did not call 911 to alert emergency responders of the line strike and subsequent damage. I.D. at 5 (citing Complaint ¶ 23).

On March 27, 2023, I&E mailed a letter to McClain Brothers requesting that it submit an Alleged Violation Report (AVR) to the POCS providing “detailed

² A “New Excavation Emergency Ticket” is a Ticket or Locate Request submitted through the POCS when an excavator needs to urgently excavate to repair a line or facility and cannot wait the three days required under a Routine Ticket. I.D. at 4, n. 2.

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.” The Respondent failed to provide the requested information. I.D. at 14 (citing Complaint ¶¶ 29, 30).

On August 25, 2023, a copy of the report prepared by the Commission’s Damage Prevention Investigator (DPI) was mailed to McClain Brothers stating that McClain Brothers was in violation of the PA One Call Law by: (1) failing to exercise due care and employ prudent excavation techniques; (2) failing to call 911 when damage to a line results in the escape of any flammable, toxic, or corrosive gas or liquid which endangers life, health, or property; (3) failing to submit an AVR; and (4) failing to comply with all requests for information from Commission Staff within thirty (30) days of receipt of the request. McClain Brothers was further informed that it could either accept the findings in the DPI’s report or reject them and present its case to the Damage Prevention Committee (DPC). Complaint at 6.

McClain Brothers rejected the findings in the DPI’s report and requested to present its case before the DPC, which it did at the DPC’s meeting on November 14, 2023. On November 15, 2023, DPC’s Informal Determination accepting the DPI’s report and proposed penalty was mailed to McClain Brothers, explaining that McClain Brothers could either accept the DPC’s Informal Determination or reject it in writing within thirty (30) days of the date of the notification letter. The DPI’s report further informed McClain Brothers that, if rejected, then the case may be sent to I&E Prosecutory Staff for the issuance of a formal complaint. On December 1, 2023, McClain Brothers informed the DPI via electronic mail that it would reject the DPC’s Informal Determination. Complaint at 6-7.

Subsequently, in its Complaint, I&E alleged the following five (5) counts of violations of the PA One Call Law by McClain Brothers:

- (1) failure to exercise due care and employ prudent excavation techniques when excavating within the tolerance zone of a properly marked line, in violation of Section 180(4) of the PA One Call Law, 73 P.S. § 180(4);
- (2) failure 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, in violation of Section 180(8) of the PA One Call Law, 73 P.S. § 180(8);
- (3) failure to submit an AVR, in violation of Section 180(16) of the PA One Call Law, 73 P.S. § 180(16);
- (4) failure to comply with all requests for information from Commission Staff within thirty (30) days of receipt of the request, in violation of Section 180(17) of the PA One Call Law, 73 P.S. § 180(17); and
- (5) failure to use best efforts to comply with the Common Ground Alliance Best Practices, in violation of Section 184 of the PA One Call Law, 73 P.S. § 184.

Complaint at 7-9. As relief, I&E requested that the Respondent be ordered to pay an administrative penalty of \$2,500 for each count, resulting in a cumulative administrative penalty of \$12,500. In addition, I&E requested that McClain Brothers be directed to attend an educational program for excavators through the DPC within ninety (90) days.

Id. at 9-10.

III. Discussion

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

1. Motion for Default Judgment

The Commission's Regulations permit parties to file motions. 52 Pa. Code § 5.103. Pursuant to Section 5.61(c) of the Commission's Regulations, 52 Pa. Code § 5.61(c), a respondent who fails to answer a complaint within the twenty-day response period may be deemed in default, and the relevant facts stated in the complaint may be deemed admitted. *See Hickory Hollow Farms c/o Lamar Harnish v. Liberty Power Holdings LLC and United Energy Alliance LLC*, Docket No. C-2016-2559494 (Final Order entered August 31, 2017). The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty (20) days. *See Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978) (*Fusaro*).

2. PA One Call Law

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.

McClain Brothers is an “excavator,” as defined in Section 176 of the PA One Call Law, 73 P.S. § 176.³ Thus, McClain Brothers 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.

Moreover, 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.
- (iii) The degree of threat to the public safety and inconvenience caused by the party's noncompliance.

³ “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.*

- (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).

B. ALJ's Initial Decision

In his Initial Decision, ALJ Brady made twenty-three Findings of Fact and reached seventeen Conclusions of Law. I.D. at 4-7; 14-17. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ: (1) granted, as modified, I&E's Motion; (2) deemed I&E's allegations in the Complaint admitted; (3) sustained, as modified, the Complaint; and (4) directed McClain Brothers to pay an administrative penalty of \$1,000. The ALJ found that McClain Brothers 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 ALJ further noted that McClain Brothers was advised that if it failed to file a timely Answer to the Complaint, then I&E would request that the Commission issue an Order imposing the penalties set forth in the Complaint. I.D. at 1, 14, 17.

The ALJ specifically addressed each of the five counts of violations of the PA One Call Law alleged by I&E in the Complaint. With respect to Count I, the ALJ agreed with I&E that McClain Brothers' failure to exercise due care and employ prudent

excavation techniques when striking, damaging, and causing a leak to PECO's properly marked gas service line when excavating a trench within the tolerance zone of the gas line is a violation of 73 P.S. § 180(4). On Count II, the ALJ agreed with I&E that McClain Brothers violated 73 P.S. § 180(8) when it failed to immediately notify 911 when it damaged a gas service line while excavating with a backhoe which resulted in a gas leak. Regarding Count III, the ALJ concurred with I&E that McClain Brothers failed to submit an AVR to report its strike on PECO's 1.25-inch gas service line, violating 73 P.S. § 180(16). Turning to Count IV, the ALJ agreed with I&E that McClain Brothers violated 73 P.S. § 180(17) when it failed to comply with and respond to all requests from Commission Staff for detailed information, including pictures, videos, and a written summary of the line strike incident, within thirty days of receipt of the request. Finally, on Count V, the ALJ concurred with I&E that McClain Brothers failure to comply with the Common Ground Alliance (CGA) Best Practices, and specifically, the requirement to immediately notify 911 if damage results in the escape of gas or endangers life, health, or property, is a violation of 73 P.S. § 184. I.D. at 9-11.

Next, the ALJ addressed Section 182(10) of the PA One Call Law, 73 P.S. § 182(10), and the Commission's authority to impose administrative penalties for violations of the PA One Call Law. After explaining the \$2,500 administrative penalty limit for each violation, or an administrative penalty limit of \$50,000, if the violation results in injury, death, or property damage of \$25,000 or more, *see* I.D. at 12 (citing 73 P.S. § 182(10)(b)(1)(i)-(ii)), the ALJ discussed the factors that are to be considered by the Commission in determining an administrative penalty amount. I.D. at 12-13 (citing 73 P.S. § 182.10(b)(2)).

In reviewing the Complaint and Motion, the ALJ stated that I&E neither provided any argument to support its prayer for the Commission to impose a penalty in the amount of \$12,500, nor addressed any of the factors at 73 P.S. § 182(10)(b)(2) in its pleadings. Therefore, the ALJ concluded that he must make a determination as to the

appropriate amount of an administrative penalty based on the claims in the Complaint, which were deemed admitted. Accordingly, the ALJ found that there is no evidence regarding the history of McClain Brothers' compliance with PA One Call Law prior to the date of the violations, and the amount of property damage caused by the Respondent, and highlighted that the degree of threat to the public safety and any inconvenience caused, is unknown. Inasmuch as McClain Brothers failed to respond to I&E's requests for detailed information, the ALJ found that 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. Furthermore, the ALJ determined that McClain Brothers is solely culpable for this incident based on the facts deemed admitted from the Complaint. Moreover, the ALJ found that I&E did not set forth any other factors to consider. Based on this "limited evidence," the ALJ justified the imposition of a \$200 administrative penalty for each violation, resulting in a total administrative penalty of \$1,000 to be assessed against McClain Brothers for its violations of the PA One Call Law. The ALJ anticipated that the \$1,000 administrative penalty will serve as a sufficient deterrent against future violations by McClain Brothers. I.D. at 13-14.

C. I&E's Exceptions

In its Exceptions, I&E initially states that it does not take exception to the granting of the Complaint because, it argues, that is the correct result. Rather, I&E argues that the Initial Decision erred in imposing an administrative penalty of only \$1,000 upon McClain Brothers. I&E avers that this amount is insufficient to penalize and deter the Respondent, as well as others who ignore the requirements and commit violations of the PA One Call Law. I&E argues that the Initial Decision did not consider the totality of the circumstances and seriousness of the violations, including McClain Brothers ignoring its duties under the law, as well as the Commission's Damage

Prevention Section (DPS), I&E, and the Office of Administrative Law Judge, and that the administrative penalty should be modified accordingly. Exc. at 2.

I&E admits that it did not proffer any evidence regarding the amount of damage caused by McClain Brothers or the Respondent's compliance history;⁴ however, I&E contends that those considerations should not affect the conclusion when considering McClain Brothers' actions and inactions during and after the excavation that resulted in the gas line strike. I&E avers that gas was released after the Respondent struck the gas service line with a backhoe, but the Respondent failed to notify emergency services of the line strike and subsequent damage. Also, I&E states that McClain Brothers ignored I&E's DPS' request for an AVR.⁵ Exc. at 4.

Furthermore, I&E contends that the administrative penalty for McClain Brothers' behavior should be large enough to deter future violations, and a low fine of \$1,000 penalty for multiple, intentional violations of the PA One Call Law may be viewed by the Respondent, and other excavators who may be in a similar position in the future, as simply a cost of doing business. I&E is concerned that a \$1,000 penalty may cause McClain Brothers, and other excavators, to believe that not alerting emergency services to a gas leak, not submitting an AVR, and not cooperating with an investigation to be the economically optimal strategy for dealing with the Commission and its enforcement of the PA One Call Law. Exc. at 5.

⁴ I&E acknowledges that McClain Brothers has not previously committed any violations of the PA One Call Law. Exc. at 4.

⁵ I&E notes that the DPC imposed a \$10,000 penalty upon McClain Brothers due to: (1) its use of power equipment to dig above a properly marked gas line; (2) striking the gas line and causing a gas leak; (3) not calling emergency services; and (4) failing to assist the Commission in its investigation by refusing to submit an AVR at the request of Commission Staff. Exc. at 4-5.

Finally, I&E addresses the factors set forth at Section 182.10(b)(2) of the PA One Call Law, 73 P.S. § 182(10)(b)(2), that are to be considered by the Commission in determining an administrative penalty amount for violations of the PA One Call Law. I&E notes that McClain Brothers does not have a history of non-compliance with the PA One Call Law and that the amount of property damage from the gas service line strike was minimal. I&E avers that the degree of danger posed by the leaking gas line was high. I&E further states that McClain Brothers did not propose any internal modifications to its practices and procedures after the incident. I&E argues that McClain Brothers' excavation activity was the proximate cause of the gas service line strike, and as the ALJ noted, was solely culpable for this incident. Ultimately, I&E submits that the most significant factor justifying the imposition of its requested \$12,500 administrative penalty is McClain Brothers' refusal to engage with the Commission when the DPS attempted to gather information and conduct its investigation. Exc. at 6.

Moreover, I&E contends that the number of violations of the PA One Call Law should also be taken into consideration. I&E reiterates that McClain Brothers failed to: (1) alert emergency responders about the gas leak; (2) submit an AVR to the Commission as required by law; (3) provide relevant information relating to the gas service line strike when requested by Commission Staff; and, (4) adhere to additional CGA Guidelines that are required to be followed pursuant to the PA One Call Law. I&E argues that the Respondent's "violations were knowing and its noncompliance willful" because it "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 [S]taff." I&E submits that McClain Brothers' only participation in the proceedings established for violations of the PA One Call Law was to dispute the informal determination of the DPC, which triggered I&E's review of the case by a prosecutor who spent Commission resources investigating the incident and drafting the Complaint. I&E notes that McClain Brothers then abandoned the process and ignored I&E's Complaint. I&E avers that the administrative penalty imposed by the ALJ is only

eight percent of the requested penalty, which is insufficient to act as a deterrent to such conduct. Therefore, I&E requests that the Commission adopt the Initial Decision conclusion granting the Complaint but that it set aside the Initial Decision's imposition of a \$1,000 administrative penalty and instead impose an administrative penalty against McClain Brothers in the amount of \$12,500. Exc. at 7-8.

D. Disposition

At the outset, in reviewing the instant case, we put McClain Brothers on notice that we will not hesitate to invoke our authority under the PA One Call Act to ensure strict and timely compliance with the requirements and provisions set forth therein.

Next, we note that I&E filed its Motion because McClain Brothers did not file an Answer to I&E's Complaint. Consequently, the ALJ deemed the relevant facts alleged in the Complaint to be admitted by McClain Brothers and noted that the Commission may sustain complaints that are not answered within twenty days. I.D. at 8 (citing 52 Pa. Code § 5.61(c); *Fusaro*). In doing so, the ALJ found that McClain Brothers committed five violations of the PA One Call Law, as alleged by I&E, and therefore, granted, as modified, I&E's Motion, and sustained, as modified, I&E's Complaint. In addition, for the reasons set forth in the Initial Decision and described, *supra*, the ALJ imposed a total administrative penalty of \$1,000, which is lower than requested by I&E. *Id.* at 1, 14, 17.

Upon review, we agree with the ALJ's conclusion that, based on the relevant facts alleged by I&E in the Complaint being deemed admitted due to the Respondent's failure to answer the Complaint, McClain Brothers committed various violations of the PA One Call Law. However, as we further address, *infra*, we disagree

with the ALJ's conclusion regarding the administrative penalty to be imposed upon McClain Brothers.

Upon review, we agree with the ALJ that McClain Brothers committed five violations of the PA One Call Law. First, McClain Brothers violated Section 180(4), 73 P.S. § 180(4), which states, as follows:

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

73 P.S. § 180(4). McClain Brothers failed to exercise due care and employ prudent excavation techniques when it used a backhoe to excavate a trench within the tolerance zone of PECO's properly marked 1.25-inch gas service and caused a gas leak by striking and damaging the gas service line. *See* Complaint at 5-6.

Second, McClain Brothers violated Section 180(8) of the PA One Call Law, 73 P.S. § 180(8), 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). Although McClain Brothers contacted PECO regarding the line strike, damage, and gas leak, it failed to immediately notify 911 to alert emergency responders when it damaged the gas service line while excavating with a backhoe resulting in a gas leak. Complaint at 5.

Third, McClain Brothers violated Section 180(16) of the PA One Call Law, 73 P.S. § 180(16), which states, as follows:

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). McClain Brothers failed to submit an AVR to report its strike on PECO's 1.25-inch gas service line after I&E's DPS requested the submittal of an AVR with detailed information about the incident. Complaint at 6.

Fourth, McClain Brothers violated Section 180(17) of the PA One Call Law, 73 P.S. § 180(17), 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). As discussed above, with respect to the violation of 73 P.S. § 180(16), McClain Brothers failed to respond to and comply with I&E's request for detailed information, pictures, videos, and a written summary of the gas service line strike incident within thirty days of receipt of the request. Complaint at 6.

Fifth, McClain Brothers violated Section 184 of the PA One Call Law, 73 P.S. § 184, which states, as follows:

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. CGA Best Practice 5-25 provides that:

If 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). McClain Brothers failed to use best efforts to comply with the CGA best practices by not immediately notifying 911 of the damage it caused to the gas service line and resultant gas leak when it excavated and struck a gas service line with a backhoe. Complaint at 5.

Accordingly, for the reasons set forth, *supra*, we agree with the ALJ that McClain Brothers failed to: (1) exercise due care when it excavated with a backhoe within the tolerance zone of a properly marked gas service line; (2) immediately notify 911 when the damaged line resulted in a gas leak; and (3) comply with all requests for information from Commission Staff within the required timeframe. Consequently, we conclude that McClain Brothers committed five violations of the PA One Call Law, as discussed, *supra*.

Turning to the amount of administrative penalty to be imposed on McClain Brothers for its five violations of the PA One Call Law, pursuant to 73 P.S. § 182.10(b)(1)(i)-(ii), and the subject of I&E's Exceptions, we disagree with the ALJ's conclusion that the amount imposed upon McClain Brothers in the instant case should be \$200 per violation, for a total of \$1,000. Rather, upon consideration of the factors set forth at Section 182(b)(2) of the PA One Call Law, 73 P.S. § 182(b)(2), we find that the appropriate administrative penalty for the Respondent's violations of the PA One Call Law should be \$2,500 for each violation, for a total penalty of \$12,500.

Section 182.10(b)(2) of the PA One Call Law sets forth six factors that the Commission must consider in determining the amount of the administrative penalty to be assessed for violations of the PA One Call Law. Those factors include:

- (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).

The first factor considers the history of the Respondent's compliance with the PA One Call Law prior to the date of the violation. 73 P.S. § 182.10(b)(2)(i). With respect to this factor, we agree with the ALJ that there is no evidence regarding the history of McClain Brothers' compliance with the PA One Call Law prior to the date of the violations. In fact, I&E concedes that the Respondent does not have a history of non-compliance with the PA One Call Law. Exc. at 6. This factor weighs in support of a lower administrative penalty amount.

The second factor considers the amount of injury or property damage caused by the Respondent's noncompliance. 73 P.S. § 182.10(b)(2)(ii). Again, we agree with the ALJ that there was no injury as a result of this incident and the amount of property damage caused by the Respondent is unknown.⁶

The third factor is the degree of threat to the public safety and inconvenience caused by the Respondent's noncompliance. 73 P.S. § 182.10(b)(2)(iii). Again, based on I&E's Complaint, the degree of threat to the public safety and any inconvenience caused appears to be unknown.⁷ Accordingly, the second and third factors weigh in support of a lower administrative penalty amount.

⁶ In its Exceptions, I&E states that the amount of property damage was minimal. Exc. at 6.

⁷ In its Exceptions, I&E states that the degree of danger posed by the leaking gas line was high. Exc. at 6.

The fourth factor to be considered is the Respondent's proposed modifications to internal practices and procedures to ensure future compliance with statutes and regulations. 73 P.S. § 182.10(b)(2)(iv). Regarding this factor, we agree with the ALJ that it can reasonably be assumed that McClain Brothers has not proposed any modifications to its internal practices and procedures to ensure future compliance with statutes and regulations simply based upon its lack of response to any of I&E's requests for information. *See* I.D. at 13. Accordingly, this factor weighs in favor of a higher administrative penalty amount.

The fifth factor to be considered relates to the degree of McClain Brothers' culpability. 73 P.S. § 182.10(b)(2)(v). Here, we agree with the ALJ's conclusion that McClain Brothers is solely culpable for this incident. *See* I.D. at 13. McClain Brothers' excavation activity with heavy duty equipment caused the gas line strike and leak. Complaint at 4-6. Therefore, this factor weighs in favor of a higher administrative penalty amount.

The sixth factor consists of other factors that may be appropriate, considering the facts and circumstances of the incident. 73 P.S. § 182.10(b)(2)(vi). In determining the types of additional factors that may be appropriate for consideration, we need not look any further for guidance than the Commission's Statement of Policy regarding factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations. *See* 52 Pa. Code § 69.1201 (*Rosi* factors). The *Rosi* factors are utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate.

52 Pa. Code § 69.1201(a). Upon review, we find several of the *Rosi* factors relevant and worthy of consideration in the instant matter.⁸

Regarding whether the conduct at issue was of a serious nature, the Respondent's conduct, as described, *supra*, included: (1) excavation with a backhoe within the tolerance zone of a properly marked 1.25-inch plastic gas service line belonging to PECO, which resulted in the gas service line being struck and damaged, and causing a gas leak; (2) the failure to call 911 to alert emergency responders of the line strike and damage; and, (3) the failure to submit an AVR to POCS with detailed information about the incident. Complaint at 5-6. Considering the totality of these circumstances, we find this conduct to be of a serious nature, which supports a higher administrative penalty amount.

With respect to whether the resulting consequences of the Respondent's conduct were of a serious nature, we recognize that, thankfully, no injury resulted from this incident, and any property damage or inconvenience caused by the Respondent is unknown. However, the Respondent's conduct damaged a natural gas service line and caused a gas leak, which could have had the potential to result in dangerous and serious consequences. Accordingly, this factor weighs in favor of a higher administrative penalty amount.

Next, whether McClain Brothers cooperated with the investigation in this matter is a significant factor to be carefully considered here. Quite simply, McClain Brothers did not cooperate. McClain Brothers failed to respond to the request of I&E's DPS to submit an AVR through POCS with details of the incident. By doing so, the

⁸ See 52 Pa. Code § 69.1201(c)(1), (2), (7), and (8). We note that the *Rosi* factors at 52 Pa. Code § 69.1201(c)(4), (5), (6), and (10) are similar to certain of the factors set forth at 73 P.S. § 182.10(b)(2), which have already been considered and discussed, *supra*.

respondent ignored requests and refused to engage with the Commission Staff's attempt to gather information and conduct an investigation. By choosing to ignore these requests, the Respondent also failed to propose any internal modifications to its practices and procedures to ensure future compliance with the PA One Call Law.⁹

The behavior and inaction demonstrated by McClain Brothers in the instant case is unacceptable. In enforcing the PA One Call Law, this Commission must rely on the parties to participate and report in good faith the details of incidents when an underground utility line is struck. Let us be very clear that this Commission will not sit idly by and allow a party subject to our jurisdiction under the PA One Call Law to willfully and flagrantly ignore and disregard the requirements of the law. The potentially grave dangers that can result from gas service line strikes demand a zero-tolerance policy. Therefore, ignoring requests for information and failing to cooperate with an investigation will not be tolerated by this Commission. Accordingly, we conclude that McClain Brothers' refusal to cooperate with the investigation into this matter and ignore Commission Staff requests to provide detailed information regarding this incident supports a higher administrative penalty amount.

Finally, regarding the appropriate administrative penalty amount to deter future violations of the PA One Call Law, we conclude that, considering the specific circumstances of this proceeding, an administrative penalty totaling \$1,000 for multiple, intentional violations of the PA One Call Law is not sufficient to deter future violations. We agree with I&E that such a low fine for significant and intentional violations of the PA One Call Law will not serve as an effective deterrent and could simply be viewed as a

⁹ We note that the Respondent's only participation in this proceeding occurred when it disputed the informal determination of the DPC to assess a \$10,000 administrative penalty. Complaint at 6. In addition to McClain Brothers' lack of participation in this matter, as described herein, it is noteworthy that the Respondent also neither filed Exceptions to the Initial Decision nor did it file any reply to I&E's Exceptions.

cost of doing business. *See* Exc. at 5. Rather, we find that the severity of the Respondent's actions when it dug above and struck a properly marked gas service line causing a gas leak, failed to call 911, and refused to submit information about the incident at Commission Staff's request, warrant an administrative penalty in an amount that will help to deter future violations of the PA One Call Law by McClain Brothers as well as others who ignore the requirements and commit violations of the PA One Call Law. Accordingly, this factor weighs in favor of a higher administrative penalty amount.

Upon consideration of the factors discussed above, we disagree with the ALJ that an administrative penalty of \$200 for each violation, totaling \$1,000, is appropriate in this instance. Under the circumstances of this case, we find that an administrative penalty set at that level is insufficient to deter the Respondent from failing to comply with the requirements of the PA One Call Law. Rather, the severity of the Respondent's digging with a backhoe directly above a properly marked gas service line, striking the gas line and causing a leak, the failure to call 911, and especially, the refusal to submit information about the incident at Commission Staff's request, resulted in numerous violations of the PA One Call Law and warrant an administrative penalty in an amount that will deter future violations by McClain Brothers.¹⁰ We find that the totality of the circumstances in the instant matter support this result. Therefore, we conclude that the appropriate administrative penalty to be imposed upon McClain Brothers under the circumstances in the instant matter should be \$2,500 for each of the five violations of the PA One Call Law, resulting in a total administrative penalty of \$12,500.

¹⁰ We note that the DPC proposed a total administrative penalty of \$10,000 against McClain Brothers for its violations of the PA One Call Law. *See* note 5, *supra*, (citing Exc. at 4-5); Exc., I&E Att. A.

For all of the foregoing reasons, we shall grant I&E's Exceptions and modify the ALJ's Initial Decision in this matter to require McClain Brothers to pay an administrative penalty totaling \$12,500.

IV. Conclusion

Based upon our review of this matter, we shall grant the Exceptions of I&E, and modify the ALJ's Initial Decision, consistent with this Opinion and Order;
THEREFORE,

IT IS ORDERED:

1. That the Exceptions of the Commission's Bureau of Investigation and Enforcement, filed on September 8, 2025, to the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on August 18, 2025, at this docket, are granted, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on August 18, 2025, at this docket, is modified, consistent with this Opinion and Order.

3. That the Motion for Default Judgment filed by the Commission's Bureau of Investigation and Enforcement on May 19, 2025, at this docket, is granted, consistent with this Opinion and Order.

4. That the allegations in the Commission's Bureau of Investigation and Enforcement's Formal Complaint, filed on July 10, 2024, and amended on January 14, 2025, at this docket, are deemed admitted, and said Formal Complaint is hereby sustained, consistent with this Opinion and Order.

5. That within thirty (30) days of the entry date of this Opinion and Order, McClain Brothers Plumbing shall remit an administrative penalty in the amount of \$12,500, payable by certified check or money order, to “Commonwealth of Pennsylvania,” with the docket number of this proceeding listed, and sent to:

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

6. That the administrative penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

7. That, within thirty (30) days of the entry date of this Opinion and Order, McClain Brothers Plumbing shall attend Online Compliance Training through the Pennsylvania One Call System for excavators and provide proof of compliance to the Commission.

8. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

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

10. That a copy of this Opinion and Order shall be served upon the Bureau of Investigation and Enforcement for the purpose of monitoring this matter for compliance.

11. That upon payment of the amount referenced in Ordering Paragraph No. 5 above, and proof of compliance referenced in Ordering Paragraph No. 7 above, the Secretary's Bureau shall mark this docket as closed.

12. That, if McClain Brothers Plumbing fails to make the payment required by Ordering Paragraph No. 5 above, within thirty (30) days of the entry date of this Opinion and Order, 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.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: November 6, 2025

ORDER ENTERED: November 6, 2025