

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement
v.
MK Hauling LLC**

**Public Meeting held November 6, 2025
3053287-ALJ
Docket No. C-2025-3053287**

MOTION OF VICE CHAIR KIMBERLY M. BARROW

Before the Commission is the Formal Complaint of the Commission’s Bureau of Investigation and Enforcement (I&E) against MK Hauling LLC (MK Hauling) filed on February 6, 2025. The Formal Complaint alleges violations of the PA One Call Law¹ in connection with an August 31, 2023 incident where a gas line operated by National Fuel Gas Distribution (NFG) was struck during excavation work in front of 3148 Bethel-Wilmington Road in Shenango Township, Mercer County, Pennsylvania. Of note, Mark Kotch, the owner of MK Hauling, filed an unverified Answer to the Formal Complaint and did not retain the services of an attorney.² An Initial Decision was issued on September 2, 2025 dismissing the Formal Complaint after finding that I&E did not establish a prima facie case. In rendering the decision, the Administrative Law Judge did not consider Mr. Kotch’s Answer or attachments, deemed the averments in the Formal Complaint as admitted, and did not allow Mr. Kotch to testify at the hearing.³

I disagree that I&E failed to establish a prima facie case that MK Hauling was an excavator under the PA One Call Law for the August 31, 2023 incident. The record evidence demonstrates that Mr. Kotch was asked by a friend to dig a ten-foot ditch to connect a line for a new septic system.⁴ The friend paid Mr. Kotch \$100 for fuel.⁵ In communications with I&E’s Damage Prevention Section, Mr. Kotch admitted that he supplied his friend with an excavator and “a guy to operate it for a couple of hours.”⁶ The Alleged Violation Report (AVR) submitted by NFG identifies MK Hauling as the excavator.⁷

An excavator is defined as “any person who or which performs excavation or demolition work for himself or for another person.”⁸ The PA One Call Law separately defines “operator.” An “operator” is defined as “any individual in physical control of powered equipment or explosives when being used to perform excavation or demolition work.” 73 P.S. § 176. Recognizing that there are two different definitions for “excavator” and “operator,” and applying the plain language meaning of “performs” in the definition of “excavator,” an excavator can be a different person from an operator in physical control of powered equipment in that an excavator can facilitate the completion of excavation work, which is what MK Hauling did here by supplying an excavator and “a guy” to operate it.

¹ The Underground Utility Line Protection Law, also known as the PA One Call Law, Act of October 30, 2017, P.L. 806, No. 50, 73 P.S. §§ 176 *et seq.* amended by P.L. 1106, No. 127, § 1 (2024).

² Answers are required to be verified pursuant to 52 Pa. Code § 1.36 and limited liability companies must be represented by a licensed attorney in adversarial proceedings pursuant to 52 Pa. Code § 1.21.

³ Initial Decision, pg. 19 (Sept. 2, 2025).

⁴ I&E Exhibit 6, pg. 1.

⁵ *Id.*

⁶ I&E Exhibit 3, pg. 1.

⁷ Tr. 12; I&E Exhibit 1, pg. 3.

⁸ 73 P.S. § 176.

In his communications with I&E's Damage Prevention Section, Mr. Kotch disputes that the excavator equipment that was present at the job was titled to MK Hauling. However, Mr. Kotch was precluded from offering first-hand testimony at the hearing. His written statement that "[m]y excavator was there not titled to MK Hauling" was not corroborated by other competent evidence of record.^{9,10}

Therefore, I&E met its burden of proof¹¹ in establishing sufficient evidence to make a prima facie case that MK Hauling is responsible for the excavation work,¹² which resulted in the strike to NFG's line. The burden then shifted to MK Hauling to introduce competent evidence to balance or rebut I&E's evidence. However, MK Hauling failed to rebut I&E's evidence because MK Hauling did not secure legal counsel and was therefore unable to participate in the hearing.

Having found that MK Hauling was the excavator for the project, I now turn to I&E's averred violations. I&E alleges violations of Section 180(2.1)(relating to submitting a locate request to the PA One Call system); Section 180(8) (relating to immediately notifying 911 when the damage results in the escape of any flammable, toxic or corrosive gas or liquid which endangers life, health or property); Section 180(16) (relating to submitting an AVR after striking or damaging facilities during excavation); and Section 180(17) (relating to complying with requests for information from the Commission's enforcement authority) of the PA One Call Law.¹³

It is uncontested that the Damage Prevention Section did not find any Routine Excavation PA One Call Tickets submitted for the August 2023 excavation work.¹⁴ MK Hauling also admitted in the various email exchanges, submitted to the record by I&E, that it did not place a One Call Ticket in the system. As Section 180(2.1) of the PA One Call Law requires excavators to submit a locate request through the One Call system, I&E has met its burden of proof.¹⁵

It is also uncontested that neither MK Hauling nor the operator called 911 once the gas line was struck.¹⁶ As the release of gas poses a danger to the life or health of the individuals near the excavation

⁹ See *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976), cited by *Catherine J. Frompovich v. PECO Energy Company*, Docket No. C-2015-2474602 (Order entered May 3, 2018). Simple hearsay evidence may support an agency's finding of fact so long as the hearsay is admitted into the record without objection and is corroborated by competent evidence in the record."

¹⁰ I acknowledge that Mr. Kotch repeatedly stated in the email correspondence that he was just helping a friend, was not present during the excavation activity, and was not operating as a business when he provided the excavator and operator to the neighbor. However, after reviewing all competent record evidence, I believe the facts supporting that MK Hauling is the excavator for this project outweigh the facts suggesting otherwise. This fact pattern does not appear to be your typical helping a friend situation, and the intention of the One Call Law is to prevent facility hits and warrants a higher scrutiny.

¹¹ 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 complainant can meet that burden if they present evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹² "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, dredging, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling. . . ." 73 P.S. § 176.

¹³ 73 P.S. §§ 180(2.1), 180(8), 180(16), and 180(17). It should be noted that Section 180(8) had been modified through the reauthorization of the PA One Call Law on October 29, 2024, and the prior version which was in effect at the time of the incident included "which endangers life, health, or property." See generally Act 50 of 2017 and Act 127 of 2024.

¹⁴ See I&E Formal Complaint, pgs. 6-7; see also Hearing Transcript, pg. 15 (May 20, 2025).

¹⁵ 73 P.S. § 180(2.1).

¹⁶ See generally I&E Exhibit 3 (Mr. Kotch stating that calling 911 was not necessary and that it is for real emergencies and people who don't know what to do. He also stated that he wouldn't have called 911 unless an ignition source was nearby.); see also I&E Exhibit 2.

site, especially if powered equipment is operating and caused the release of the flammable gas, I&E has met its burden of proof for a Section 180(8) violation.

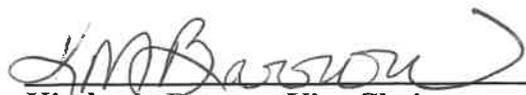
During the hearing, I&E presented witness testimony that MK Hauling did not submit an AVR after the incident and did not provide the information requested by the Damage Prevention Section.¹⁷ Accordingly, I&E has met its burden of proving a violation of Section 180(16) and Section 180(17).

Having found that MK Hauling violated the PA One Call Law, it is appropriate to assess an administrative penalty in this matter. In reviewing the record and Section 182.10(b)(2),¹⁸ I find that a \$250 per violation administrative penalty, totaling \$1,000, and a requirement to complete a damage prevention educational program for excavators is warranted in this matter. The record reflects that this appears to be MK Hauling's first offense, that only one homeowner was affected, that the amount of damage was minimal, and that service was interrupted for less than one hour. However, failing to utilize the One Call system and submit a locate request, which is the first line of defense against line strikes, and failing to call 911 after the line was struck are serious violations. Of note, the record does not indicate a willingness by MK Hauling to modify internal procedures or practices, and thus this also supports the higher administrative penalty.

THEREFORE, I MOVE THAT:

1. The Initial Decision of Administrative Law Judge Erin L. Gannon issued on September 2, 2025 is reversed, consistent with this Motion.
2. The Formal Complaint filed by the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement against MK Hauling LLC, is sustained, in part, and denied, in part, consistent with this Motion.
3. MK Hauling LLC shall, within thirty (30) days of a Final Order, attend Online Compliance Training through the Pennsylvania One Call System for excavators, if not already completed, and provide proof of completion to the Secretary's Bureau for inclusion on the docket.
4. MK Hauling LLC shall, within thirty (30) days of a Final Order, pay an administrative penalty of \$1,000.
5. A copy of the Final Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.
6. If MK Hauling LLC fails to make the payment as required by Ordering Paragraph No. 4 above, 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.
7. The Office of Special Assistants draft an Opinion and Order consistent with this Motion.

November 6, 2025



Kimberly Barrow, Vice Chair

¹⁷ See I&E Formal Complaint, pg. 7; see also Hearing Transcript, pgs. 23-24, 26 (May 20, 2025); I&E Exhibit 6.

¹⁸ 73 P.S. § 182.10(b)(2).