



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

December 3, 2025

**Via Electronic Filing**

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

Re: Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement v.  
NYCE Construction Services, Inc.  
Docket No. C-2025-3056912  
**I&E Main Brief**

Dear Secretary Homsher:

Enclosed please find the Main Brief of the Bureau of Investigation and Enforcement in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should 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.

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As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2025-3056912
	:	
NYCE Construction Services, Inc.	:	
Respondent	:	

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**MAIN BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: December 3, 2025

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## **I. PROCEDURAL HISTORY**

On October 30, 2024, PPL Electric submitted an Alleged Violation Report (“AVR”) to the Commission through the Pennsylvania One Call System (“POCS”), alerting the Commission to a line strike that occurred on October 10, 2024, at a new construction housing development on Fountain View Circle in Upper Macungie Township, Lehigh County Pennsylvania.

Receipt of the AVR submitted by PPL triggered an investigation of the line strike by the Damage Prevention Section (“DPS”) of the Bureau of Investigation and Enforcement (“I&E”).<sup>1</sup>

On or about February 18, 2025, the DPS provided NYCE Construction Services, Inc. (“NYCE” or “Respondent”) with a copy of a report prepared by a Damage Prevention Investigator (“DPI”) by mail and email, informing Respondent that it was in violation of the Underground Utility Line Protection Law, also known as the PA One Call Law, for failing to submit a routine locate request to POCS and for failing to submit an AVR within 10 business days of a line strike incident, and further informing Respondent 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”).

On March 4, 2025, Respondent rejected the findings in the DPI’s report via an email to the DPI and requested to present its case before the DPC.

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<sup>1</sup> Investigations of strike on underground utility lines or potential violations of the PA One Call Law are required by statute.

On April 16, 2025, a copy of the DPC's Informal Determination accepting the DPI's report and proposed penalty was mailed to Respondent, informing NYCE that it could either accept the DPC's Informal Determination or reject it in writing within thirty (30) days of the date of the notification letter, and that if the Informal Determination is rejected the case may be sent to I&E prosecutory staff for issuance of a formal complaint.

On May 8, 2025, Respondent informed the DPI that it would dispute the informal determination of the DPC.

Upon receipt of NYCE's dispute of the DPC's informal determination, the matter was referred to I&E prosecutors pursuant to Section 182.8(c)(2) of the PA One Call Law, 73 P.S. § 182.8(c)(2).

On August 18, 2025, a Complaint was filed by I&E in this matter, alleging that Respondent violated the PA One Call Law when it failed to place a valid, routine locate request ticket through the Pennsylvania One Call System prior to digging the trench for the installation of the gas main line on Fountain View Circle and failed to file an AVR not more than ten business days after striking PPL's electric line.

On September 8, 2025, Respondent filed an Answer to the Complaint.

On September 19, 2025, an Initial In-Person Hearing Notice was issued, setting this matter for a hearing on November 12, 2025.

On November 12, 2025, a hearing was held in this matter, in which I&E proffered one witness, Sara Locke, the Supervisor of the DPS ("Supervisor Locke"), and the Respondent proffered one witness, the foreman of the job site where the line strike took place, Shaun Froshour.

I&E submits this Main Brief in accordance with the briefing schedule that was established at the conclusion of the evidentiary hearing.<sup>2</sup> Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs are attached as Appendix A, B and C, respectively.

## **II. STATEMENT OF THE CASE**

NYCE was installing new electric and gas lines along a trench as part of a new housing development when it excavated over top of and struck the electric line which had been installed the day prior. The PA One Call Ticket stated that the scope of work was to install electric lines, but on the day of the incident, the Respondent was excavating to install gas lines. Additionally, the Respondent belatedly submitted its AVR. I&E brought a Complaint, alleging two violations of the PA One Call Law. A hearing was held on the matter.

At the close of I&E's case, Respondent objected to the admission of the Pennsylvania One Call Tickets, arguing that they constitute hearsay. Respondent also argued that I&E did not make a *prima facie* case of a violation of the PA One Call Law.

## **III. BURDEN OF PROOF**

“[T]he proponent of a rule or order has the burden of proof.” 66 Pa.C.S. § 332(a). As the party bringing the complaint in the subject case, I&E has the burden of proof. Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Best Taxi, LLC and Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Good Cab, LLC, Docket

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<sup>2</sup> N.T. at 46.

Nos. C-2022-3029070 and C-2022-3029079 (Consolidated Cases) (Order Entered September 25, 2025).

I&E bears the burden to prove its case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990). This means that the evidence presented by I&E must be evidence must be more convincing, by even the smallest amount, than that presented by Respondent. Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854 (Pa. 1950).

#### **IV. SUMMARY OF ARGUMENT**

A *prima facie* case was made. I&E presented the testimony of the Supervisor of DPS, who keeps all records relating the investigations conducted by the DPS, including PA One Call tickets and AVRs. The testimony elicited was that the DPS receives the PA One Call tickets and maintains them as part of the ordinary course of business. Further, the PA One Call Tickets proffered as I&E Exhibits 1 through 3 (“Tickets”) were submitted by Respondent. The testimony was that the excavation ticket submitted by the Respondent for the excavation which took place on October 10, 2024, was to “install electric line.”

Respondent, in its Answer, admitted that it had submitted the Ticket identified as I&E Exhibit 3.<sup>3</sup> Further testimony was elicited that there had been no PA One Call Tickets found for any excavation work at the location and date of the October 10, 2024, line strike which would encompass installing gas lines within the scope of work. This is sufficient to support a *prima facie* case of a violation of Section 180(2.1) of the PA One

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<sup>3</sup> See Answer of Respondent NYCE Construction Services Inc., ¶ 15, (Sept. 8, 2025), *Pa. P.U.C., Bureau of Investigation and Enforcement v. NYCE Construction Services, Inc.*, Docket No. C-2025-3056912.

Call Law, as the work as stated on the Ticket indicated it was for the installation of electric lines but the work being performed on the day of the line strike was the installation of a gas line. Section 180(2.1) requires excavators to provide the proper scope of work on PA One Call Tickets.

Both the testimony by the Supervisor of DPS and the admission in Respondent's Answer that Respondent did not submit its AVR until December 19, 2024, support a finding that Respondent did not submit its AVR within the timeframe commanded by the PA One Call Law. Therefore, the proffered testimony and Respondent's Answer are sufficient to prove I&E's *prima facie* case that Respondent violated § 180(16) of the PA One Call Law.

Distinct from whether a *prima facie* case was made, this case presents two questions of law regarding the interpretation of the PA One Call Law. First, whether the requirement to describe the scope of work in order to allow utility companies that may own underground facilities to properly respond is applicable to a situation where the lines are being installed as part of a new development and are being installed simultaneously with a different type of utility line; and whether a line strike by itself is sufficient to trigger the statutory requirement of excavators to submit an AVR to the Commission.

It is I&E's position that a valid PA One Call Ticket must describe the entire scope of work being performed, and that any line strike by an excavator triggers the duty to submit an AVR to the Commission. I&E explains these arguments in detail *infra* in Sections F and G, respectively.

Regarding Respondent's objection to the admission of the PA One Call Tickets into evidence, the PA One Call Tickets are not hearsay because they are not being offered to prove the truth of anything contained therein. Rather, they are offered to show that they were made by Respondent and that the Respondent indicated to the Pennsylvania One Call System that it was excavating to install an electric line.

To the extent that this Court believes PA One Call Tickets are hearsay, hearsay evidence may generally be received and considered in an administrative proceeding. Additionally, even if the One Call Tickets were hearsay, they are admissible as they clearly fall within two different exceptions. The PA One Call Tickets would also be exempt from the rule against hearsay by 52 Pa. Code § 5.407, which permits the use of documents in Commission proceedings that were also previously used in other proceedings. Here, the Tickets were part of the DPC case and were relied upon by the DPC to render its informal determination.

## **V. ARGUMENT**

### **A. THE PENNSYLVANIA ONE CALL TICKETS OFFERED INTO EVIDENCE ARE NOT HEARSAY BECAUSE THEY WERE NOT OFFERED TO PROVE THE TRUTH OF THE INFORMATION CONTAINED WITHIN**

I&E offered its exhibits collectively to show that the Respondent placed several PA One Call Tickets. Each Ticket included the name and contact information of Respondent and a description of the scope of work, among other details. Respondent objected to the admission of I&E Exhibits 1 through 3 on the grounds that the PA One Call Tickets constitute hearsay.

Hearsay is “an out-of-court statement offered into evidence to prove the truth of the matter asserted.” Heddings v. Steele, 526 A.2d 349, 351 (Pa. 1987). In other words, “when an out-of-court statement is offered for a purpose other than to prove the truth of the matter asserted, the statement is not hearsay.” Palitti v. Dept. of Transportation, Bureau of Driver Licensing, 331 A.3d 96, 106 (Pa. Commw. 2024).

It stands to reason, then, that a statement offered merely to show that it was made, and not to assert the truth or falsity of the information contained therein, does not constitute hearsay. Testimony is not hearsay if “offered **not** to prove the truth of the statement made by the out-of-court declarant, but instead to prove that the statement was in fact made.” 425 Prop. Ass'n of Alpha Chi Rho, Inc. v. State Coll. Borough Zoning Hearing Bd., 223 A.3d 300, 307 (Pa. Commw. Ct. 2019) (quoting Duffy v. Dept. of Transportation, Bureau of Driver Licensing, 694 A.2d 6, 9 (Pa. Commw. 1997) (emphasis in original)). Similarly, “an out-of-court statement offered to explain a course of conduct is not hearsay.” Jerry v. Dept. of Corrections, 990 A.2d 112, 116 (Pa. Commw. 2010).

Here, the PA One Call Tickets are offered to show that the Respondent made the Tickets. They are not offered to prove any other assertion regarding the excavation. For instance, the PA One Call Ticket serial no. 20242642373, was placed for the purpose of “install[ing] electric service.” If the ticket was offered to prove that the Respondent did in fact install electric service, then it would be hearsay. However, here it is offered to show that Respondent submitted the Ticket for electric installation. Therefore, the PA

One Call Tickets are not hearsay and I&E Exhibits 1 through 3 should be admitted into evidence.

**B. HEARSAY MAY BE PERMITTED IN ADMINISTRATIVE PROCEEDINGS**

Even if the Court determines that PA One Call Tickets are hearsay, I&E Exhibits 1 through 3 should still be admitted into evidence because hearsay evidence is generally admissible in administrative hearings.

“It is well-settled that simple hearsay evidence, which otherwise would be inadmissible at a trial, generally may be received into evidence and considered during an administrative proceeding.” Catherine J. Frompovich v. PECO Energy Company, Docket No. C-2015-2474602 (Opinion and Order Entered May 3, 2018), citing D’Alessandro v. Pennsylvania State Police, 937 A.2d 404, 411 (Pa. 2007). All evidence that has a reasonable probative value may be admitted. 2 Pa.C.S. § 505.

In this case, and in most other cases involving the PA One Call Law, PA One Call Tickets are seminal evidence relied upon by the Damage Prevention Committee to render an informal determination and by I&E to take enforcement action. Because there are many provisions of the PA One Call Law relating to when and how to submit a Ticket or respond to one, the Ticket itself will be the only evidence needed. For instance, some cases involve a facility owner that fails to respond to a PA One Call Ticket. The PA One Call Ticket submitted by the excavator is needed to show the non-response by the facility owner (the Tickets show the facility owners’ responses to the Ticket). Some cases involve an excavator who submits a PA One Call Ticket but excavates outside of the statutorily permissible time frame (i.e., between three and ten days from the date of the

submission of the Ticket). The PA One Call Ticket is needed to show the time the Ticket is submitted to correctly calculate the statutorily permissible time for the excavation.

**C. PENNSYLVANIA ONE CALL TICKETS ARE RECORDS OF A REGULARLY CONDUCTED ACTIVITY OF THE COMMISSION**

A document that, if admitted, would constitute hearsay is still admissible as a record of a regularly conducted activity if: 1) the record was made at or near the time by — or from information transmitted by — someone with knowledge; 2) the record was kept in the course of a regularly conducted activity of a “business”; 3) making the record was a regular practice of that activity; 4) all these conditions are shown by the testimony of the custodian or another qualified witness; and 5) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness. Pa.R.E. 803(6). A “record” is “a memorandum, report, or data compilation in any form.” *Id.*

This exception is also referred to as the “business records exception.”

Government agencies are considered “businesses” for purposes of this exception. Bell-Atlantic Pennsylvania, Inc. v. Pa. Pub. Util. Comm’n, 763 A.2d 440 (Pa. Super. 2000).

(Commission access line reports based on industry data admissible as business records of the Commission).

Additionally, the Pennsylvania Uniform Business Records as Evidence Act was enacted to broaden the business records exception to the rule against hearsay “in circumstances where a record of an act, a condition or an event was made in the regular course of business, at or near the time of the act, condition or event, and where the sources of information, method and time of preparation were such as to justify its

admission.” 42 Pa.C.S. § 6108(b); Virgo v. W.C.A.B. (County of Lehigh-Cedarbrook), 890 A.2d 13, 20 (Pa. Commw. 2005).

“Under this exception, it is not essential to produce either the person who made the entries or the custodian of the record at the time the entries were made or that the witness qualifying the business records even has personal knowledge of the facts reported in the business record.” Virgo at 20 (citations omitted). So long as the witness can provide sufficient information relating to “the preparation and maintenance of the records to justify a presumption of trustworthiness of the business records of a company,” the exception is satisfied. Id.

“The basic justification for the business records exception to the hearsay rule is that the purpose of keeping business records builds in a reliability which obviates the need for cross-examination.” Williams v. McClain, 520 A.2d 1374, 1376 (Pa. 1987). “[I]n evaluating the trustworthiness of business records, the court will look to the sources of the information therein, method and time of preparation, and the qualifications of the custodial witness.” Sycamore Restaurant Group, LLC v. Stampf Hartke Associates, 174 A.3d 651 (Pa. Super. 2017) (quoting Commonwealth Financial Systems, Inc. v. Smith, 15 A.3d 492 (Pa. Super. 2011)).

Here, I&E’s witness testified as to DPS’s maintenance of the Tickets and how they are created when an excavator submits the information to the Pennsylvania One Call System. With respect to the Tickets offered by I&E as its Exhibits 1 through 3, the Respondent created those records when it submitted the information that is contained within them to the Pennsylvania One Call System. Those records are then transmitted to

the DPS when that Section of I&E investigates a line strike anywhere in the Commonwealth. I&E's witness, Supervisor Locke, testified that she maintains the records of PA One Call Tickets received, and that the Tickets proffered as I&E Exhibits 1 through 3 were true and correct copies of those Tickets. The Tickets were also made close in time by someone with knowledge of their contents — Respondent's employee.

There are no indicia that the Tickets themselves or the testimony of Supervisor Locke were unreliable. There was no cross examination of the Supervisor as to the reliability of the records. And because it was Respondent that made the record in the first place, the Respondent's witness could have testified to its reliability. In fact, Respondent admitted that it submitted Tickets to the Pennsylvania One Call System in preparation for excavation<sup>4</sup> and did not dispute that the Tickets proffered as I&E Exhibits 1 through 3 were what they claimed to be and did not provide testimony that said Tickets were otherwise unreliable or inaccurate.

Therefore, to the extent the Court believes that the Tickets are hearsay and that the rule against hearsay applies in the Commission's administrative proceedings, they should be admitted as they fall within the business records exception to that rule.

**D. THE PENNSYLVANIA ONE CALL TICKETS OFFERED INTO EVIDENCE CONSTITUTE A STATEMENT OF A PARTY OPPONENT**

The PA One Call Tickets at issue in this case were submitted to the Pennsylvania One Call System by the Respondent. The Respondent created the record, and the Commission's Damage Prevention Section maintains them for the purpose of

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<sup>4</sup> Answer of Respondent NYCE Construction Services Inc., ¶14(c), (Sept. 8, 2025), *Pa. P.U.C., Bureau of Investigation and Enforcement v. NYCE Construction Services, Inc.*, Docket No. C-2025-3056912.

investigating violations of and enforcing the PA One Call Law. In other words, the PA One Call Tickets offered into evidence in this matter were “made by the party in an individual or representative capacity,” and thus fall within an exception to the rule against hearsay. Pa.R.E. 803(25).

Generally speaking, if a party makes a statement, that statement can be offered against that party in court. For instance, in D’Alessandro v. Pennsylvania State Police, 937 A.2d 404 (Pa. 2007), Justice Saylor, in his concurring opinion, noted that a statement made by D’Allesandro to a police officer was admissible when offered against him by the Pennsylvania State Police in a hearing appealing the Pennsylvania State Police’s denial of his license to carry a firearm.

Therefore, to the extent the Court believes that the Tickets are hearsay and that the rule against hearsay applies in the Commission’s administrative proceedings, they should be admitted as they fall within the exception to that rule as a statement of a party opponent.

**E. THE PENNSYLVANIA ONE CALL TICKETS OFFERED INTO EVIDENCE CONSTITUTE RECORDS OF A PRIOR PROCEEDING BEFORE THE COMMISSION**

The Commission’s Rule 5.407 provides that “[w]hen a portion of the record in another proceeding before the Commission is offered in evidence and shown to be relevant and material to the instant proceeding, a true copy of the record shall be presented in the form of an exhibit....” 52 Pa. Code § 5.407.

This Rule generally allows documents filed with the Commission or used in past Commission proceedings to be admitted into evidence. See Capital City Cab Service, Inc. v. Susquehanna Area Regional Airport Authority, Docket No. C-20043019 (Opinion and Order entered February 13, 2006) (ALJ properly relied upon documents from a separate docket number to establish taxi company's Certificate of Public Convenience).

Damage Prevention matters before the Commission are unique in that their process is delineated entirely by the PA One Call Law itself, 73 P.S. § 176 *et seq.*, a statute separate and apart from the Public Utility Code. There are no Commission regulations covering One Call matters, either to clarify how the Commission will interpret the statute or to clarify the process of adjudicating such matters. However, Chapters 1, 3, and 5 governing procedures before the Commission are still applicable, as they would be in any other formal complaint.

Except for cases involving injury or death, the Damage Prevention complaints filed by I&E have already been reviewed and adjudicated by the Damage Prevention Committee. The Damage Prevention Committee has the authority to “[i]ssue an informal determination that imposes an administrative penalty.” 73 P.S. § 182.8(b)(5). A person, including a corporation, that is identified in a report issued by a Damage Prevention Investigator from the Damage Prevention Section to have committed an alleged violation must either pay the assessed administrative penalty or request, in writing, to present their case to the Damage Prevention Committee. Id. § 182.8(c)(1).

A person, including a corporation, that is subject to a Damage Prevention Committee informal determination may accept or reject the result. If the informal

determination is not rejected, it becomes final and binding on the Commission by operation of law. Id. § 182.8(d). If the informal determination is rejected, it must be done within 30 days and must be in writing. Id. § 182.8(c)(2). The matter is then referred to Commission’s prosecutory staff — I&E — “for an action resulting in a formal complaint before the [C]ommission.” Id.

Because PA One Call Tickets are almost always a part of the DPI’s investigation, any such matter that is before the Damage Prevention Committee will necessarily rely upon the PA One Call Tickets related to that matter. It would not make sense to allow PA One Call Tickets to form the basis of, or even be used in, proceedings before the Damage Prevention Committee only to disallow use of the same documents for evidentiary purposes at a formal hearing. Were that to be the case, every such party subject to an adverse determination by the Damage Prevention Committee would reject the informal determination knowing that key evidence cannot be used against them.

To circumvent such situations, the Commission implemented Rule 5.407 to permit the use of documentary evidence from other Commission proceedings — including, ostensibly, proceedings before the Damage Prevention Committee — in other proceedings where it is relevant and material.

Here, the PA One Call Tickets are relevant and material. The Tickets show when Respondent submitted them and the scope of work for each one. They were created by Respondent when it submitted the information contained therein to the Pennsylvania One Call System to request utilities to locate and mark their facilities, in accordance with its duties under the law as an excavator. Respondent had an opportunity to dispute the

findings of the Damage Prevention Investigator and present its case before the Damage Prevention Committee. And Respondent had the opportunity to cross-examine I&E's witness regarding the PA One Call Tickets at the hearing in this case. Therefore, the PA One Call Tickets in this case should be admitted as documents from a prior Commission proceeding pursuant to 52 Pa. Code § 5.407.

**F. EXCAVATORS ARE REQUIRED BY STATUTE TO SPECIFY THE SCOPE OF WORK ON A PA ONE CALL TICKET**

Section 180(2.1) of the PA One Call Law, 73 P.S. § 180(2.1), requires excavators:

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).

Additionally, the PA One Call Law specifically provides that “[i]f, after receiving information from the One Call System or directly from a facility owner, the excavator decides to change the location, scope or duration of a proposed excavation, the obligations imposed by this section shall apply to the new location.” 73 P.S. § 180(13). In other words, if the location, scope, or duration of the excavation work change during the course of the work, the excavator must submit a new Ticket.

Reading Sections 180(2.1) and 180(13) together, it is clear that the “location, scope, or duration” of work is an important characteristic of a PA One Call Ticket. Whether an excavator is installing an electric line, installing a gas main, repairing a water main, or repaving a road is an important aspect defining the “work site.” A facility owner would want to have that information to determine, for instance, whether to mark lines

beyond the immediate excavation site, hold a preconstruction meeting, or be on site during the excavation work taking place around its facilities.

The witness for I&E explained that, after searching the DPS database for PA One Call Tickets associated with the date and location of the October 10, 2024 excavation at issue in this case, there were four PA One Call Tickets<sup>5</sup> associated with this excavation. Of them, none indicated that the scope of work included excavating for a gas main line.

Further, Respondent does not dispute that it did not place a separate PA One Call Ticket for the gas main installation. Respondent's point of contention is that it complied with the PA One Call Law's requirement to submit a Ticket before excavating, notwithstanding that it did not include the gas main installation within the scope of work on the Ticket. In other words, Respondent, in its Answer and in its statement at the close of the November 12, 2025, evidentiary hearing, put forth the legal argument that the excavation for the gas main installation taking place on October 10, 2024, was sufficiently covered by PA One Call Tickets that the Respondent had placed earlier.

This is a question of statutory interpretation and a matter of first impression for the Commission. There are no Commission opinions or appellate court cases interpreting this specific provision of the PA One Call Law.

Given that the "location, scope, or duration" of the excavation work is an important characteristic of a PA One Call Ticket, a PA One Call Ticket was required for the excavation for the installation of the gas main.

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<sup>5</sup> One of the Tickets dated from 2023 and was not offered by I&E as an exhibit. It was offered by Respondent as Respondent Exhibit 4.

**G. EXCAVATORS ARE REQUIRED BY STATUTE TO REPORT ANY AND ALL LINE STRIKES TO THE COMMISSION**

Section 180(16) of the PA One Call Law, 73 P.S. § 180(16), provides, in relevant part, that it is the duty of an excavator to:

[S]ubmit 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) (emphasis added).

A plain reading of this language would indicate that an excavator must submit an AVR when one of the following occurs: 1) The excavator strikes or damages a facility owner's line during excavation or demotion; or 2) the excavator subjectively believes that a violation of the PA One Call Law has occurred.

Respondent has admitted in its Answer that it struck the electric line it had installed the previous day.<sup>6</sup> However, Respondent also disputes that the electric line it had struck is a "line" as defined by the PA One Call Law. Respondent argued in its Answer and during its closing statement at hearing that because the electric line was not connected, and the trench was not completely covered, that it does not meet the definition of a "line" under the statute.<sup>7</sup>

Under the statute, a "line" is defined in relevant part as "an underground conductor or underground pipe or structure used in providing electric or communication service."

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<sup>6</sup> Answer of Respondent NYCE Construction Services Inc., ¶¶ 8, 21, (Sept. 8, 2025), *Pa. P.U.C., Bureau of Investigation and Enforcement v. NYCE Construction Services, Inc.*, Docket No. C-2025-3056912.

<sup>7</sup> *Id.*

73 P.S. § 176. Thus, the PA One Call Law is only applicable to underground lines that are “used in providing ... service.”

The electric line at issue here was both underground and used to provide service. With respect to whether the line was underground, the definition of a “line” in the PA One Call Law does not depend on the degree to which the line is buried. Here, the line was at least partially buried in a trench. Even if it was not buried at all, it would still constitute an “underground line” because, as it lays in the trench, it is obscured from view by those standing on the surface of the ground, and it lays below the surface of the Earth. Further, it is clear from the placement of the electric line into a trench that the line was being undergrounded; in other words, it was going to be an underground line and was not going to be an electric line that would be carried on poles above ground.

Moreover, regarding service issue, the electric line here, while not energized or connected to the grid at the time of the line strike, was going to provide electricity to the new development under construction. There is nothing in the statute to suggest that a line must be active to be qualified for protection under the PA One Call Law. In fact, even abandoned lines — lines which are no longer in service — receive protection under the PA One Call Law. For instance, Section 180(15) of the PA One Call Law, 73 P.S. § 180(15), requires excavators to locate abandoned or unclaimed lines.

Further, the word “service” can be defined as a “supplier of utilities or commodities.”<sup>8</sup> Where the word service is used in Section 176, it should be read not to limit the facilities in question to only those actively being used, but rather to limit the

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<sup>8</sup> Dictionary.com, “service,” <https://www.dictionary.com/browse/service>.

applicability of the definition to those lines which belong to or are operated by utility providers. This language is exclusive of “underground conductor[s], ... pipe[s], or structure[s]” that are not “providing service” or intended to, such as French drains or a shallowly buried extension cord in a yard.

The statute required that an AVR be submitted to the Commission within 10 business days of a line strike. Respondent did not submit its AVR to the Commission until December 19, 2024 — well after the statutory deadline for submission.<sup>9</sup>

Respondent admitted this fact in its Answer and only challenges the application of § 180(16) on the grounds that the electric line it struck was not technically an underground line as defined in the PA One Call Law and that it did not otherwise have a duty to report the line strike as there was no violation to report. However, for the reasons described above, § 180(16) of the PA One Call Law is applicable to lines which have not yet been placed into service by a utility and the PPL electric line involved here qualifies as an “underground line.” Further, this provision requires that an AVR be submitted to the Commission when there is **either** a line strike **or** the excavator believes a violation of the PA One Call Law has occurred.

## VI. CONCLUSION

I&E respectfully requests that presiding ALJ Farren and the Commission find that I&E Exhibits 1 through 3 are admissible as evidence in this matter, that the testimony of Supervisor Locke is credible and supports the admission of the exhibits, and that the Respondent violated §§180(2.1) and 180(16) of the PA One Call Law by not submitting a

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<sup>9</sup> Answer of Respondent NYCE Construction Services Inc., ¶ 27, (Sept. 8, 2025), *Pa. P.U.C., Bureau of Investigation and Enforcement v. NYCE Construction Services, Inc.*, Docket No. C-2025-3056912.

Ticket to the Pennsylvania One Call System covering the excavation work related to the installation of the gas main on Fountain View Circle on October 10, 2024, and by not submitting AVR to the Commission after the strike on the electric line, respectively.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Rosul", with a long horizontal flourish extending to the right.

Grant Rosul  
Prosecutor  
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
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Dated: December 3, 2025

**PROPOSED FINDING OF FACTS**

1. On February 2, 2024, Respondent submitted to the Pennsylvania One Call System a locate request, or “Ticket,” Serial No. 20240333036, described the scope of work as being for a “NEW HOUSING SUBDIVISION,” with excavation to commence on February 7, 2024, and that the scheduled excavation was stated to last one year in duration.

2. On March 20, 2024, Respondent submitted to the Pennsylvania One Call System a locate request, or “Ticket,” Serial No. 20240801491, described the scope of work as being for the installation of a new water main, with excavation to commence on March 25, 2024, and that the scheduled excavation was stated to last two weeks.

3. On September 25, 2024, Respondent submitted to the Pennsylvania One Call System a locate request, or “Ticket,” Serial No. 20242642373, described the scope of work as being “INSTALL ELECTRIC SERVICE,” with excavation to commence on September 25, 2024, and that the scheduled excavation was stated to last two weeks.

4. The Ticket, Serial No. 20242642373, was a “renotify” ticket, which is a category of Ticket submitted by an excavator when facility owners do not mark or insufficiently mark their lines in response to an earlier-placed Ticket by an excavator.

5. A “Ticket” is a locate request placed with the Pennsylvania One Call System.

6. A Ticket includes information pertinent to an excavation that may interfere with underground lines, such as the scope of work, the location of work, the status of the

party placing the Ticket (e.g. an excavator), and the duration of work, among other details.

7. On October 10, 2024, Respondent was excavating on Fountain View Circle in Upper Macungie Township, Lehigh County, Pennsylvania, to install a gas main as part of the new housing subdivision being constructed there.

8. During the course of this excavation, Respondent struck an electric line that had been installed by Respondent the day prior.

9. Respondent did not submit a separate Ticket for the installation of the gas main, nor did Respondent include installing the gas main within the scope of work on Ticket Serial No. 20242642373.

10. The electric line that was struck was not live and had not yet been connected to the grid.

11. The electric line that was struck was laying in a trench and partially covered over with soil.

12. Respondent did not submit an Alleged Violation Report to the Commission through the Pennsylvania One Call System until December 19, 2024.

13. I&E's Damage Prevention Section maintains, as part of its regular course of business in investigation alleged violations of the PA One Call Law, One Call Tickets submitted to the Pennsylvania One Call System by excavators, facility owners, project owners, and designers.

14. I&E's Damage Prevention Section maintains, as part of its regular course of

business in investigating alleged violations of the PA One Call Law, Alleged Violation Reports (“AVR”) submitted to the Commission.

15. On February 18, 2025, a copy of the report prepared by the Damage Prevention Investigator (“DPI”) from the Damage Prevention Section was mailed and emailed to NYCE informing Respondent that it was in violation of the PA One Call Law for failing to submit a routine locate request to POCS and for failing to submit an AVR within 10 business days of a line strike incident, and further informing Respondent 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”).

16. On March 4, 2025, Respondent rejected the findings in the DPI’s report via an email to the DPI and requested to present its case before the DPC.

17. On April 16, a copy of the DPC’s Informal Determination accepting the DPI’s report and proposed penalty was mailed to Respondent, informing NYCE that it could either accept the DPC’s Informal Determination or reject it in writing within thirty (30) days of the date of the notification letter, and that if the Informal Determination is rejected the case may be sent to I&E prosecutory staff for issuance of a formal complaint.

18. On May 8, 2025, Respondent informed the DPI that it would reject the DPC’s Informal Determination.

19. Upon rejecting the DPC’s Informal Determination, the matter was referred to I&E for review pursuant to Section 182.8(c)(2) of the PA One Call Law, 73 P.S. § 182.8(c)(2).

20. On August 18, 2025, I&E filed a Complaint against Respondent, alleging violations of the PA One Call Law.

21. On September 19, 2025, an Initial In-Person Hearing Notice was issued, scheduling an evidentiary hearing in this matter for November 12, 2025.

22. On November 12, 2025, an evidentiary hearing was held in this matter as scheduled.

**PROPOSED CONCLUSIONS OF LAW**

1. The Pennsylvania Public Utility Commission (“Commission”) has jurisdiction over the subject matter of and the parties to this proceeding.<sup>1</sup>
2. Respondent meets the definition of an “excavator” under the Underground Utility Line Protection Law, Act of October 29, 2024, P.L. 1106, No. 127, also known as the PA One Call Law.<sup>2</sup>
3. Section 180 of the PA One Call Law, 73 P.S. § 180, imposes duties on excavators.<sup>3</sup>
4. Specifically, Section 180(2.1) of the PA One Call Law, 73 P.S. § 180(2.1), requires excavators to “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.”<sup>4</sup>
5. Section 180(2.1), which requires an excavator to submit a PA One Call Ticket, also requires that the information provided include the scope of the excavation work being performed.
6. Section 180(16) of the PA One Call Law, 73 P.S. § 180(16), requires excavators to “submit a report of an alleged violation to the Commission through the One

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<sup>1</sup> 73 P.S. § 182.10.

<sup>2</sup> 73 P.S. § 176.

<sup>3</sup> 73 P.S. § 180.

<sup>4</sup> 73 P.S. § 180(2.1).

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”.<sup>5</sup>

7. Section 180(16) of the PA One Call Law requires that an Alleged Violation Report be submitted whenever a line is struck or the excavator subjectively believes that the PA One Call Law has been violated.

8. A “line” is defined 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.”<sup>6</sup>

9. The electric line being installed by Respondent and which it struck on October 10, 2024, constituted a “line” as defined by the PA One Call Law.

10. The electric line being installed by Respondent and which it struck on October 10, 2024, was “underground” for the purpose of meeting the definition of a “line” as an “underground conductor” of “electric...service.”

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<sup>5</sup> 73 P.S. § 180(16).

<sup>6</sup> 73 P.S. § 176.

11. Hearsay is “an out-of-court statement offered into evidence to prove the truth of the matter asserted.”<sup>7</sup>

12. A document offered to show it was made, and not to prove the truth of the information in the document, is not hearsay.<sup>8</sup>

13. The PA One Call Tickets offered into evidence are not hearsay because they were offered only to show that they were made and that Respondent made them.

14. To the extent that PA One Call Tickets were offered for hearsay purposes in the November 12, 2025, evidentiary hearing in this matter, they fall into the exception for records of regularly conducted activity, also known as the business records exception,<sup>9</sup> as well as the statement of party opponent exception to the rule against hearsay.<sup>10</sup>

15. PA One Call Tickets offered by I&E as Exhibits 1 through 3 are accepted into the record as they are material and relevant to the case at bar.<sup>11</sup>

16. As the party bringing the complaint, the Commission’s Bureau of Investigation and Enforcement (“I&E”) bears the burden of proving, by a preponderance of evidence.<sup>12</sup>

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<sup>7</sup> Heddings v. Steele, 526 A.2d 349, 351 (Pa. 1987).

<sup>8</sup> Palitti v. Dept. of Transportation, Bureau of Driver Licensing, 331 A.3d 96, 106 (Pa. Commw. 2024).

<sup>9</sup> Pa.R.E. 803(6); 42 Pa.C.S. § 6108(b); Virgo v. W.C.A.B. (County of Lehigh-Cedarbrook), 890 A.2d 13, 20 (Pa. Commw. 2005).

<sup>10</sup> Pa.R.E. 803(25); D’Alessandro v. Pennsylvania State Police, 937 A.2d 404 (Pa. 2007).

<sup>11</sup> 52 Pa. Code § 5.401.

<sup>12</sup> 66 Pa.C.S. § 332(a); Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600 (Pa. Cmwlth. 1990).

17. “A preponderance of the evidence means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.”<sup>13</sup>

18. I&E has met its burden of proof as to the violations of 73 P.S. §§ 180(2.1) and 180(16) by Respondent, and its Complaint shall be sustained.

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<sup>13</sup> Energy Conservation Council of Pennsylvania v. Pa. P.U.C., 995 A.2d 465, 478 (Pa. Cmwlth. 2010).

**PROPOSED ORDERING PARAGRAPH**

1. The objection by Respondent to I&E Exhibits 1 through 3 on the grounds that they constitute hearsay IS OVERRULED.
2. The Complaint of I&E is SUSTAINED, as Respondent has violated the PA One Call Law at 73 P.S. §§ 180(2.1) and 180(16).
3. A cumulative administrative penalty of \$3,500 is hereby imposed upon Respondent.
4. If payment of the administrative penalty is not made as set forth, this matter shall be referred to the Pennsylvania Office of the Attorney General for appropriate action.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2025-3056912
	:	
NYCE Construction Services, Inc.	:	
Respondent	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Service by Electronic Mail:**

Kevin T. Fogerty, Esq.  
Law Offices of Kevin T. Fogerty  
1275 Glenlivet Drive, Suite 150  
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Dated: December 3, 2025