

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION, BUREAU OF</b>	:	
<b>INVESTIGATION AND ENFORCEMENT,</b>	:	
	:	<b>NO. C-2025-3056912</b>
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>NYCE CONSTRUCTION SERVICES, INC.,</b>	:	
	:	
<b>Respondent.</b>	:	

**REPLY MEMORANDUM OF LAW SUBMITTED ON BEHALF OF  
RESPONDENT NYCE CONSTRUCTION SERVICES, INC.**

**I. INTRODUCTION**

Pursuant to this Court’s Scheduling Order, principal Briefs of the parties were submitted on Wednesday, December 3, 2025, with Reply Briefs due by Friday, December 12, 2025.

This Reply Memorandum is being submitted on behalf of Respondent Nyce Construction Services, Inc. (“Nyce”), in support of dismissal of the Complaint filed against it in this proceeding.

**II. ARGUMENT**

A. This tribunal should reject BIE’s attempt to rewrite Section 180(2.1) of the One-Call Act, to expand information required to be included in connection with a One-Call Locate Request.

In its principal Brief, BIE wants this tribunal to rewrite the One-Call Act in a manner clearly not required by the legislature, all to justify this unwarranted proceeding brought against Nyce.

In that regard, BIE contends that a One-Call Locate Request is required to state with specificity the scope of the work to be performed within the area identified in the Ticket submitted, and in so contending, distorts the otherwise plain language of Section 180(2.1) on which it solely relies. Indeed, BIE is also unable to cite any other provisions of the Act, any regulations, or any case authority supporting its novel “matter of first impression” (BIE Brief, p. 16), that a Locate Request submitted by an excavator must identify the specific work of the excavating work to be performed, even though the section relied upon only requires the excavator “to identify the location and type of facility owner lines *at each work site,*” **not** the type of facility(ies) for which the excavation is intended to be used to install.

Clearly, the first sentence of Section 180(2.1) does not require the excavator to identify as part of its Locate Request the specific types of facilities *proposed to be installed*, contemplating that once the Locate Request is submitted, the owners of utility facilities “at each work site” would be notified through the One-Call System, so each could then mark its existing facilities at the site.

Further, the two One-Call Tickets in effect at the date of this incident (Respondent’s Exhibit Nos. 1 and 3) more than adequately notify the location of the excavation, so owners of utility facilities “at each work site” identified could visit the site and mark their lines accordingly.

4. On November 12, 2025, a hearing was conducted before the Honorable Administrative Law Judge Emily Ferran.

5. At that hearing, BIE presented one witness, Sarah Locke, who identified three exhibits to be offered into evidence, but had no firsthand knowledge of whatever had occurred at the property location which led to the issuance of the Notice of Violation and/or the subsequent Complaint filed.

6. At that hearing, Nyce presented one witness, Shawn Froshour, and offered eight exhibits into evidence without objection.

7. The parties then submitted post-hearing Memoranda, as well as Reply Memoranda.

8. The evidence presented at the hearing was largely uncontradicted, concerning the Locate Requests submitted prior to and in connection with the incident which occurred on October 10, 2024.

9. Nyce submitted two active One-Call tickets in connection with excavation and site work at a residential development, known as Hidden Meadows, Phase III, involving a *cul-de-sac* street on which 20 residential units were being constructed.

10. First, Nyce submitted a One-Call Locate Request on February 2, 2024, following which the lines were marked by utility companies, with that ticket identifying a one-year construction period, and asking that the recipients “[REMARK HIDDEN MEADOWS, PHASE III FOR WORK RESTART ENTIRE SITE WHICH WAS PREVIOUSLY DISTURBED]”.

subdivision,” which would include “all potentially applicable utility facilities being installed.

BIE’s attempt to rewrite Section 180(2.1) to require every One-Call Ticket to identify each and every facility which might be within the scope of the excavation work, is an unwarranted overreach which is respectfully submitted should not be approved by this tribunal. Further, given that theory is the only basis argued by BIE in its Brief in support of Nyce having somehow violated the Act, Count I of the Complaint should be dismissed.

- B. BIE’s attempt to rewrite Section 180.16 of the Act should be similarly rejected, as an Alleged Violation Report (AVR) is only required when there has been an actual violation of the Act, which, for reasons explained above, did not occur here.

As noted in Nyce’s principal Brief, BIE’s witness, Sarah Locke, admitted on cross-examination that an Alleged Violation Report (AVR) is required only when there has been a violation of the Act. Nonetheless, BIE now seeks to contradict its own witness’ testimony, by arguing that any line strike – even when it does not involve a violation of the Act – requires the submission of an Alleged Violation Report.

Further, BIE in its principal Brief completely ignores the definition of a “Report of Alleged Violation,” defined in Section 176 as “mean[ing] a recorded account *of an alleged violation*” (emphasis added). It could not however have been made more clear that the legislature intended an AVR be submitted only when there has been an “alleged violation” *which again, did not occur here.*

And BIE's attempted reliance on Section 180(16) is of no help, as its plainest and most logical reading is that an excavator is required to submit a report if there has been "an alleged violation," including: (i) "striking or damaging a facility owner's line during excavation or demolition," or (ii) "if the excavator believes a violation of this Act has been committed in association with excavation or demolition work."

Put another way, Section 190(16) identifies only two possible events for which an AVR would be required, i.e., "striking or damaging a facility owner's line during demolition or excavation" or if – regardless of whether there has been any striking or damaging of a facility owner's line -- the excavator still nonetheless believes there has been a violation of the Act in connection with excavation or demolition work, ***but both of these alternatives circumstances require there to have also been "an alleged violation."*** And again, no amount of contortionist reading can change the fact that the phrase "alleged violation" requires there to have been an actual violation of the Act, of which there was none here.<sup>2</sup>

### III. CONCLUSION

BIE's Complaint should be dismissed.<sup>3</sup>

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<sup>2</sup> BIE devotes the bulk of its Brief (pp. 6 through 15) to arguing the One-Call Tickets at issue were admissible in this proceeding. However, Nyce's counsel does not recall objecting per se to the One-Call Tickets, but instead the objection was to the fact that besides admitting those three documents into evidence, BIE failed to offer any direct personal firsthand knowledge testimony of whatever had happened on the date of the incident, and therefore it was unable to sustain its burden of proof in these proceedings.

<sup>3</sup> Nyce's counsel has taken notice that BIE filed Findings of Fact and Conclusions of Law, which Nyce did not understand were necessary, but only a Legal Memorandum. Nonetheless, attached hereto as Exhibit A is a basic set of proposed Findings of Fact and Conclusions of Law taken directly from Nyce's initial Brief submitted, but in a numbered paragraph format.

Respectfully submitted,

LAW OFFICES OF KEVIN T. FOGERTY

Date: December 12, 2025

By: -----

Kevin T. Fogerty, Esquire  
*Counsel for Respondent*

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Phone 610-366-0950  
Fax 610-366-0955  
PA Supreme Court I. D. No. 36667

**CERTIFICATE OF SERVICE**

I, Kevin T. Fogerty, Esquire, counsel for Respondent, Nyce Construction Services, Inc. in this proceeding, hereby state and certify that on Friday, December 12, 2025, I served, in the manner listed below, a true and correct copy of the foregoing REPLY MEMORANDUM OF LAW SUBMITTED ON BEHALF OF RESPONDENT NYCE CONSTRUCTION SERVICES, INC. upon the following:

**VIA EMAIL**

Administrative Law Judge Emily A. Farren  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**VIA EMAIL**

Grant Rosul, Esquire  
Commonwealth of Pennsylvania, Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
*Prosecutor*

Date: December 12, 2025

  
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Kevin T. Fogerty, Esquire

# **EXHIBIT A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION, BUREAU OF</b>	:	
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	:	
<b>v.</b>	:	
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<b>NYCE CONSTRUCTION SERVICES, INC.,</b>	:	
	:	
<b>Respondent.</b>	:	

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED ON  
BEHALF OF RESPONDENT NYCE CONSTRUCTION SERVICES, INC.**

**I. PROPOSED FINDINGS OF FACT**

1. This administrative proceeding was initiated by the Pennsylvania Public Utility Commission, Bureau of Investigation & Enforcement (“BIE”) against Respondent, Nyce Construction Services, Inc. (“Nyce”), by Complaint filed alleging two violations of the One-Call Act, 73 P.S. Section 176 et seq. (“the Act”).

2. BIE’s Complaint was premised on two theories, i.e., that Nyce had purportedly violated the Act by not timely and properly submitting a One-Call Locate Request (“the Ticket”), and that Nyce had failed to report an alleged violation of the Act.

3. After the Complaint in this proceeding was filed, Nyce timely filed an Answer denying liability.

4. On November 12, 2025, a hearing was conducted before the Honorable Administrative Law Judge Emily Ferran.

5. At that hearing, BIE presented one witness, Sarah Locke, who identified three exhibits to be offered into evidence, but had no firsthand knowledge of whatever had occurred at the property location which led to the issuance of the Notice of Violation and/or the subsequent Complaint filed.

6. At that hearing, Nyce presented one witness, Shawn Froshour, and offered eight exhibits into evidence without objection.

7. The parties then submitted post-hearing Memoranda, as well as Reply Memoranda.

8. The evidence presented at the hearing was largely uncontradicted, concerning the Locate Requests submitted prior to and in connection with the incident which occurred on October 10, 2024.

9. Nyce submitted two active One-Call tickets in connection with excavation and site work at a residential development, known as Hidden Meadows, Phase III, involving a *cul-de-sac* street on which 20 residential units were being constructed.

10. First, Nyce submitted a One-Call Locate Request on February 2, 2024, following which the lines were marked by utility companies, with that ticket identifying a one-year construction period, and asking that the recipients “[REMARK HIDDEN MEADOWS, PHASE III FOR WORK RESTART ENTIRE SITE WHICH WAS PREVIOUSLY DISTURBED]”.

11. Then on September 20, 2024, Nyce submitted a Locate Request because, as explained by its witness, Shaun Froshour, the previous markings had faded.

12. Nyce placed the September 20, 2024 ticket request between three to ten days before starting the excavation or demolition on the cul-de-sac street.

13. The February 2, 2024 Ticket confirms notifications were sent to Lehigh County Authority, Metropolitan Edison, PPL Electric, Service Electric Cable TV, UGI Utilities, TC-Astound, Verizon Eastern and Upper Macungie Township, there being no allegation that any utility provider was not properly notified for that marking.

14. Under the September 20, 2024 Ticket, notifications were sent by the One-Call system to the same utility providers, other than apparently Verizon Eastern.

15. PPL was notified on both occasions of these Locate Requests, and there was no evidence presented that its utilities were not properly marked.

16. The September 20, 2024 Ticket requested "remark all utilities in the right of way."

17. On October 10, 2024, an excavator, who had been previously schooled by Nyce on proper excavating technique, inadvertently struck a not-live electric conduit in an open joint trench, for both gas and electric, excavated the preceding day.

18. On October 10, 2024, the date of the incident involved here, there were two active One-Call Tickets applicable to Nyce's continued project work at the Hidden Meadows cul-de-sac development.

## II. PROPOSED CONCLUSIONS OF LAW

1. Neither 73 P.S. Section 180(2.1), or any other provision of the One-Call Act, requires a Locate Request to identify the specific utility facilities, and if there would even be any, intended to be installed.

2. 73 P.S. Section 176 defines a "Purported Alleged Violation" as "mean[ing] a recorded account of an alleged violation."

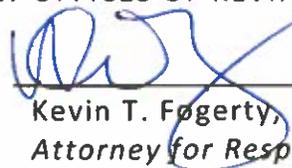
3. In this case, as an excavator, Nyce Construction properly submitted the Locate Request information required under Section 180(2.1) of the Act.

4. Because Nyce did not commit any violations of the Excavator Duties provision (Section 180) of the Act, it was not required to submit an Alleged Violation Notice.

5. Based on the foregoing, the Bureau of Investigation and Enforcement has failed to meet its burden of proving any violations by Nyce of the One-Call Act, as a consequence of which BIE's Complaint is dismissed.

Respectfully submitted,

LAW OFFICES OF KEVIN T. FOGERTY

By: 

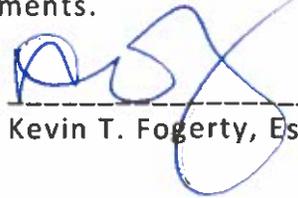
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PA Supreme Court I. D. No. 36667

**PUBLIC ACCESS POLICY CERTIFICATION**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: December 12, 2025

  
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Kevin T. Fogerty, Esquire

**CERTIFICATE OF SERVICE**

I, Kevin T. Fogerty, Esquire, counsel for Respondent, Nyce Construction Services, Inc. in this proceeding, hereby state and certify that on Friday, December 12, 2025, I served, in the manner listed below, a true and correct copy of the foregoing PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED ON BEHALF OF RESPONDENT NYCE CONSTRUCTION SERVICES, INC. upon the following:

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