

**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
John F. Coleman, Jr., Statement, Dissenting
Ralph V. Yanora, Dissenting

Bureau of Investigation & Enforcement

C-2025-3053287

v.

MK Hauling LLC

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Erin L. Gannon, issued on September 2, 2025, dismissing the Formal Complaint (Complaint) filed by the Commission's Bureau of Investigation and Enforcement (I&E) against MK Hauling LLC (MK Hauling) in the above-captioned proceeding. No Exceptions to the Initial Decision have been filed. However, we shall exercise our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa.C.S. § 332(h). For the reasons

stated below, we shall: (1) reverse the Initial Decision; and (2) sustain, in part, and deny, in part, I&E's Complaint, consistent with this Opinion and Order.

I. History of the Proceeding

On February 6, 2025, I&E filed its Complaint against MK Hauling. The Complaint was served on MK Hauling the same day. In its Complaint, I&E alleged that MK Hauling violated the Pennsylvania One Call Law in connection with an incident where an excavator struck a gas line operated by National Fuel Gas Distribution Corporation (NFG) in front of 3148 Bethel-Wilmington Road in Shenango Township, Mercer County, Pennsylvania, on August 31, 2023.¹

Specifically, in its Complaint, I&E alleged that MK Hauling violated four requirements of the PA One Call Law, as follows:

In Count 1, I&E alleged that MK Hauling violated Section 180(2.1) of the PA One Call Law (PA One Call Law or the Act), 73 P.S. § 180(2.1), when it began excavation work at 3148 Bethel-Wilmington Road in Shenango Township, Mercer County, without first submitting a locate request (or "One Call ticket") for the work site through the One Call System. Complaint ¶ 39.

In Count 2, I&E alleged that MK Hauling violated Section 180(8) of the PA One Call Law, 73 P.S. § 180(8) when it failed to notify 911 when it struck a gas service line while excavating, which resulted in a gas leak. Complaint ¶ 40.

In Count 3, I&E alleged that MK Hauling violated Section 180(16) of the PA One Call Law, 73 P.S. § 180(16) when it failed to submit an Alleged Violation Report to the

¹ At the hearing, counsel for I&E stated that the date of the incident was July 31, 2023, and not August 31, 2023. Tr. at 8-9.

PA One Call System to inform the Commission of the line strike. Complaint ¶ 41.

In Count 4, I&E alleged that MK Hauling violated Section 180(17) of the PA One Call Law, 73 P.S. § 180(17) when it failed to comply with a May 21, 2024 request by I&E's Damage Prevention Section for "detailed information," including pictures, videos, and a written summary of the line strike incident. Complaint ¶ 42.

As relief, I&E requested that the Commission: (1) find MK Hauling to be in violation of the Pennsylvania One Call Law, as alleged; (2) impose a cumulative administrative penalty on MK Hauling in the amount of \$10,000 (comprised of \$2,500 per violation); (3) order MK Hauling to attend online compliance training through the Pennsylvania One Call System for excavators and provide proof of compliance to the Commission; and (4) order such other remedies as the Commission may deem appropriate. Complaint at 12.

On February 15, 2025, Mr. Mark Kotch, the Owner of MK Hauling, filed an unverified answer to I&E's Complaint.² In the answer, Mr. Kotch admitted or denied the various averments in the Complaint. In particular, Mr. Kotch admitted that he owned the excavating equipment that struck the gas line, but he averred that MK Hauling was not involved with the project. Mr. Kotch denied that MK Hauling was responsible for violating the Pennsylvania One Call Law or that administrative penalties against MK Hauling were warranted.

On February 26, 2025, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for April 15, 2025, at 10:00 a.m. On March 10, 2025, ALJ Gannon issued a prehearing order (*Prehearing Order*), setting forth various rules that would govern the evidentiary hearing,

² No verification to the answer was filed, as required by 52 Pa. Code § 1.36.

MK Hauling, as a limited liability company (LLC), was required to have an attorney licensed to practice in the Commonwealth of Pennsylvania enter an appearance on its behalf by 4:00 p.m. on April 3, 2025. *Prehearing Order* at 2. MK Hauling was further informed that its failure to have an attorney's appearance entered, as directed, would result in its waiver of the opportunity to participate in the hearing, as well as its prohibition thereafter to reopen the disposition of matters accomplished at the hearing. *Id.* (citing 52 Pa. Code § 5.245(a)).

On March 17, 2025, Mr. Kotch filed a revised answer to the Complaint, which was not verified.

On March 31, 2025, I&E filed a motion for continuance of the April 15, 2025 hearing. Counsel for I&E represented that Mr. Kotch of MK Hauling objected to the request for a continuance. By Interim Order (*Interim Order*) issued on April 9, 2025, ALJ Gannon granted the continuance because it was I&E's first request, the request was timely, and the request was made because I&E's primary witness was not available. *Interim Order* at 5. As further good cause to grant a continuance, the ALJ considered that MK Hauling failed to have an attorney enter an appearance, as required, and that, without an attorney, MK Hauling could not participate in the hearing scheduled on April 15, 2025. *Id.* at 4, 5-6.

The *Interim Order* further addressed the Commission statutes and precedent that require attorney representation in adversarial proceedings. MK Hauling was notified again that it would not be permitted to participate in the hearing without an attorney. Specifically, the *Interim Order* indicated that:

Unless represented by an attorney licensed to practice law in Pennsylvania, the Respondent will not be permitted to file and respond to pleadings, provide testimony and exhibits,

cross-examine I&E witnesses, or otherwise participate in the hearing or litigation of the Complaint.

Interim Order at 4 (footnote omitted). MK Hauling was also notified that “if an attorney does not enter their appearance for MK Hauling LLC, the Bureau of Investigation & Enforcement may have the opportunity to proceed with its evidence at the rescheduled hearing without participation by MK Hauling LLC.” *Interim Order* at 6.

On April 11, 2025, the Commission issued an initial telephonic hearing notice cancelling and rescheduling the call-in telephonic hearing for this matter for May 20, 2025 at 10:00 a.m.

On April 30, 2025, ALJ Gannon issued a *Second Prehearing Order*. In paragraphs 4 and 5 of the *Second Prehearing Order*, MK Hauling was again given notice that limited liability companies must be represented by an attorney and that failure to be represented would be deemed a waiver of the opportunity to participate in the hearing. *Second Prehearing Order* at ¶¶ 4-5. Specifically, the *Second Prehearing Order* indicated, *inter alia*, that:

MK Hauling LLC: MK Hauling LLC will be deemed to have waived the opportunity to participate in the proceeding if an attorney licensed to practice in the Commonwealth of Pennsylvania does not enter an appearance to represent you at the hearing. MK Hauling LLC will not be permitted thereafter to reopen the disposition of matters accomplished at the hearing.

Id. at ¶ 5 (footnote omitted) (citing 52 Pa. Code § 5.245(a)).

The telephonic evidentiary hearing was held on May 20, 2025, as scheduled. I&E was represented by Grant Rosul, Esquire, who presented the testimony of Sara Locke, Damage Prevention Supervisor, of I&E’s Damage Prevention Section

(DPS). Tr. at 9-29. Mr. Rosul also presented six exhibits which were all admitted into the record.³ *Id.* at 29. Mr. Kotch, the owner of MK Hauling, was present. MK Hauling was not represented by counsel and was not permitted to participate in the hearing. *Id.* at 4-7; I.D. at 4.

On June 3, 2025, ALJ Gannon issued an order closing the record. On September 2, 2025, the Commission issued ALJ Gannon's Initial Decision, which dismissed I&E's Complaint.

As previously noted, no Exceptions to the Initial Decision have been filed

II. Discussion

A. Legal Standards

1. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, I&E, as the Complainant, is the party seeking relief; therefore, I&E must show that MK Hauling is responsible or

³ I&E's six admitted exhibits consisted of the following: I&E Exh. 1: an Alleged Violation Report (AVR) filed by NFG, dated August 7, 2023; I&E Exh. 2: Emails between the DPS and NFG regarding a gas leak and 911 call dated May 23, 2024 and June 7, 2024; I&E Exh. 3: Emails between Mark Kotch and DPS following receipt of the DPS investigator's report dated August 21, 22, and 23, 2024; I&E Exh. 4: Emails between Mark Kotch and DPS regarding damage prevention committee meeting dated October 15 and October 16, 2024; I&E Exh. 5: a DPS letter to MK Hauling requesting that MH Hauling submit an AVR dated May 21, 2024; and I&E Exh. 6: Emails between Mark Kotch and DPS regarding DPS' request for MK Hauling to submit an AVR dated May 22, 2024.

accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlt. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by MK Hauling. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to the Company. If the evidence presented by MK Hauling is of co-equal weight, the Complainant has not satisfied its burden of proof. The Complainant now has to provide some additional evidence to rebut that of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlt. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlt. 2001).

2. Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlt. 1984). Due process is satisfied when the parties are

afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (citing *Township of Middleton v. The Institute District of the County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), *aff'd*, 299 A.2d 599 (Pa. 1973)).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002).

As established by the Commission's Regulation at 5.245, *Failure to appear, proceed or maintain order in the proceedings*, after receiving notice of the proceeding, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: (1) [b]e deemed to have waived the opportunity to participate in the conference or hearing; (2) [n]ot be permitted to reopen the disposition of a matter accomplished at the conference or hearing; and (3) [n]ot be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a) (emphasis added).

3. Attorney Representation

The Commission's Regulation at 52 Pa. Code § 1.21(b) provides that persons in adversarial proceedings, except for individuals representing themselves, shall be represented by an attorney admitted to practice in the Commonwealth of Pennsylvania. The regulation at 52 Pa. Code § 1.8 defines an adversarial proceeding as one that is contested and which will be decided on the basis of a formal record. 52 Pa. Code § 1.8. Once a respondent to a complaint files an answer, all persons other

than individuals, including corporations, must be represented by an attorney because the answer contesting the complaint renders the matter before the Commission an adversarial proceeding. *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Order entered June 24, 2009).

The Commission's regulations requiring attorney representation in adversarial proceedings are consistent with Pennsylvania court decisions holding that a corporation must have counsel in order to proceed in any legal action because a corporation cannot represent itself. *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994). Pennsylvania courts have ruled that a corporation can only act through its agents and that an agent representing it in court must be an attorney admitted to practice. *Walacavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super 1984).

4. The PA One Call Law

The PA One Call Law empowers the Commission to issue orders requiring compliance with the One Call Law and to levy an administrative penalty for violations of this law. *See* 73 P.S. § 182.10. Specifically, the PA One Call Law authorizes the Commission to enforce the Act's provisions and to, *inter alia*, hear and determine complaints arising from the rejection of an informal determination issued by the Pennsylvania Damage Prevention Committee against excavators for violations of the PA One Call Law. 73 P.S. §§ 182.8(c)-(d), 182.10. Additionally, the PA One Call Law authorizes the Commission's prosecutorial staff (*i.e.*, I&E) to bring a formal complaint against entities subject to the PA One Call Law. 73 P.S. § 182.8(c)(2).

Of particular relevance to the specific violations alleged by I&E, the PA One Call Law establishes the following requirements for excavators, in pertinent part:

It shall be the duty of each excavator who intends to perform excavation or demolition work within this Commonwealth:

...

(2.1) 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. No work shall begin earlier than the lawful start date which shall be on or after the third business day after notification. The lawful start date shall exclude the date upon which notification was received by the One Call System and notification received on a Saturday, Sunday or holiday, which shall be processed on the following business day. In the case of a complex project, notification shall not be less than ten business days in advance of the beginning of excavation or demolition work.

...

(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.

...

(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.

...

(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, 180(2.1), (8), (16), (17).

B. Initial Decision

ALJ Gannon made forty-nine (49) Findings of Fact and reached thirty-five (35) Conclusions of Law. I.D. at 5-11, 25-31. 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.

In the Initial Decision, ALJ Gannon found that I&E did not supply the evidence necessary to establish a *prima facie* case and sustain its Complaint. I.D. at 23. Specifically, ALJ Gannon determined that I&E failed to establish that MK Hauling was an “excavator” as defined by the PA One Call Law. *Id.* at 21.

Because the ALJ determined that I&E did not meet its burden of proof on the threshold issue of establishing that MK Hauling was an “excavator,” the ALJ found that I&E failed to supply the evidence necessary to establish a *prima facie* case and sustain its Complaint. Based on these conclusions, the ALJ did not find that MK Hauling was responsible for complying with the PA One Call Law requirements; therefore, she explained that she could not find that any violations thereof occurred. I.D. at 23.

Finally, although ALJ Gannon did not find that MK Hauling violated the PA One Call Law, in the event that the Commission disagreed with her determination, she identified the factors set forth in the statute for determining what level of civil penalty is appropriate and also addressed record evidence that may bear on that determination. I.D. at 24. Specifically, the ALJ indicated that Section 182.10(b)(2) of the Act directs the Commission and the Damage Prevention Committee to consider the following factors in determining the administrative penalty to be assessed:

- (i) The history of the party's compliance with the act prior to the date of the violation.
- (ii) The amount of injury or property damage caused by the party's noncompliance.
- (iii) The degree of threat to the public safety and inconvenience caused by the party's noncompliance.
- (iv) The party's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations.
- (v) The degree of the party's culpability.
- (vi) Other factors as may be appropriate considering the facts and circumstances of the incident.

Id. at 24 (citing 73 P.S. § 182.10(b)(2)).

The ALJ also explained that where the violation did not result in injury, death or property damage of \$25,000 or more, Section 182.10(b)(1) caps the amount of penalty at \$2,500 per violation. I.D. at 24-25 (citing 73 P.S. § 182.10(b)(1)). In this case, the ALJ noted that NFG estimated that the cost to repair its damaged line was between \$1 and \$1,000 and reported no injuries, death, or other property damage. I.D. at 25.

Finally, the ALJ provided her analysis of several factors that the Commission may consider if it determined that MK Hauling violated the PA One Call Law warranting assessment of an administrative penalty. With respect to the second and third factors regarding the amount of injury or damage, threat to public safety and inconvenience caused by the incident, 73 P.S. §§ 182.10(b)(ii)-(iii), the ALJ considered that “it appears that the excavation was 10 feet long.” Additionally, the ALJ cited to NFG’s AVR, which indicated that service was interrupted for less than one hour, the homeowner was the only NFG customer affected, that, in addition to no injuries or death, there was no evacuation or stopped traffic. I.D. at 25. With respect to MK Hauling’s compliance history with the PA One Call Law and indicators of future compliance, the ALJ points to counsel for I&E’s assessment of the Respondent’s compliance, based only on his contacts with DPS regarding the instant matter, which occurred via email exchanges for May, August and October 2024. I.D. at 25 (citing I&E Exhs. 3, 4, 6). The ALJ also indicated that I&E witness Ms. Locke testified that in the referenced email exchanges, Mr. Kotch was dismissive of the investigator’s requests to submit an AVR, call 911, or pay penalties for non-compliance of the Act based on his position that MK Hauling was not responsible for the project or excavation. I.D. at 25.

C. Disposition

We note that any argument that we do not specifically address 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*, 625A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Upon review of the evidence and applicable law, we shall: (1) reverse the Initial Decision; (2) sustain, in part, and deny, in part, I&E’s Complaint; and (3) assess a \$1,000 administrative penalty upon MK Hauling, consistent with this Opinion and Order.

We 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 July 31, 2023 incident.⁴ The competent 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. I&E Exh. 6 at 1. The friend paid Mr. Kotch \$100 for fuel. *Id.* 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.” I&E Exh. 3 at 1. The AVR submitted by NFG identifies MK Hauling as the excavator. Tr. at 16; I&E Exh. 1 at 3.

An excavator is defined as “any person who or which performs excavation or demolition work for himself or for another person.” 73 P.S. § 176. 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.” *Id.* 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.

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

⁴ We note that during the evidentiary hearing, I&E clarified that while the Complaint erroneously indicated that the incident occurred on August 31, 2023, the actual date of the incident was July 31, 2023. Tr. at 8-9.

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.⁵ *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) (“[s]imple 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”).

Therefore, I&E met its burden of proof⁶ in establishing sufficient evidence to make a prima facie case that MK Hauling is responsible for the excavation work,⁷ 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,

⁵ See I&E Exh. 3 at 4. We 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, we believe the facts supporting that MK Hauling is the excavator for this project outweigh the facts suggesting otherwise. Given the broad definition of “excavator” and the PA One Call Law’s intention of preventing facility hits, we conclude MK Hauling to be the excavator in the circumstances.

⁶ As explained, *supra*, such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 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).

⁷ “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.

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.⁸

Having found that MK Hauling was the excavator for the project, we 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.⁹

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. *See* I&E Complaint at 6-7; *see also* Tr. at 15. 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. 73 P.S. § 180(2.1).

⁸ As explained, *supra*, MK Hauling was: (1) afforded notice and the opportunity to appear and to be heard in this proceeding; and (2) informed in writing, on multiple occasions, that as a limited liability company, it needed to be represented by counsel and of the consequences if it failed to do so despite these notifications, MK Hauling did not have an attorney enter an appearance as directed. Thus, although Mr. Kotch attended the evidentiary hearing, as a limited liability company, MK Hauling remained unrepresented.

⁹ 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.

It is also uncontested that neither MK Hauling nor the operator called 911 once the gas line was struck.¹⁰ As the release of gas poses a danger to the life or health of the individuals near the excavation 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. *See* I&E Complaint at 7; *see also* Tr. at 23-24, 26 (May 20, 2025); I&E Exh. 6. 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), we 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. 73 P.S. § 182.10(b)(2). 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 imposition of a higher administrative penalty.

¹⁰ *See, generally*, I&E Exh. 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 Exh. 2.

III. Conclusion

Based on our review of the ALJ's Initial Decision and the applicable law, we shall: (1) reverse the Initial Decision; (2) sustain, in part, and deny, in part, I&E's Complaint; and (3) assess a \$1,000 administrative penalty upon MK Hauling, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Erin L. Gannon, issued on September 2, 2025, is reversed, consistent with this Opinion and Order.
2. That 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 Opinion and Order.
3. That 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. That MK Hauling LLC shall, within thirty (30) days of a Final Order, pay an administrative penalty of \$1,000. This payment shall be made by

certified check or money order payable 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

5. A copy of the Final Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

6. That 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. That after MK Hauling LLC remits the administrative penalty set forth in Ordering Paragraph No. 4 above, the Complaint filed on February 6, 2025 in this proceeding, at Docket No. C-2025-3053287, be marked closed.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: November 6, 2025

ORDER ENTERED: December 17, 2025