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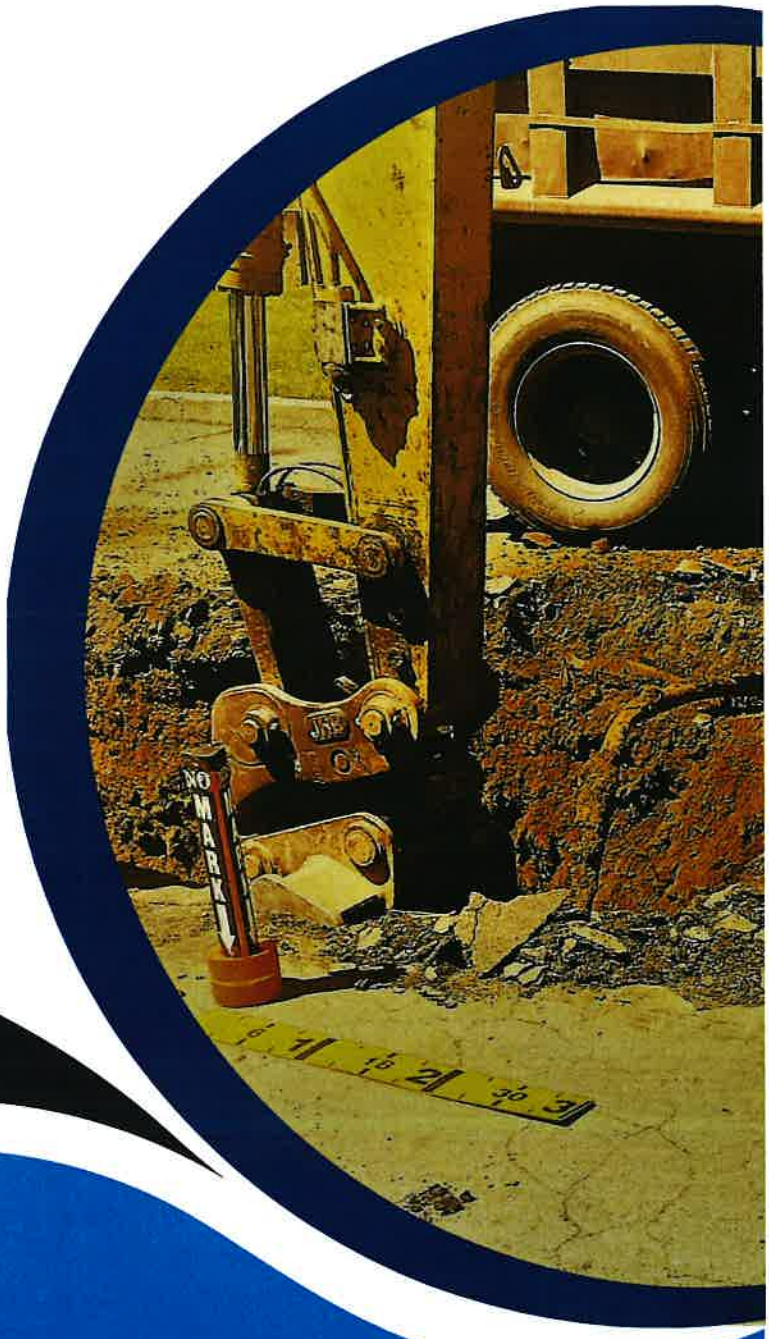
PENNSYLVANIA UTILITY CONTRACTORS ASSOCIATION

HB 2189 TESTIMONY

September 17, 2024



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TESTIMONY OF THE
PENNSYLVANIA UTILITY CONTRACTORS ASSOCIATION
House Bill 2189 PN 2859 (UULP)

Thank you for the opportunity to speak on House Bill 2189. The Pennsylvania Utility Contractors Association (PUCA) is a coalition of contractors, suppliers, and engineers committed to advancing the utility construction and excavation industry through safety, education, advocacy, and fostering industry relationships. Our members are involved in projects across water, sewer, gas, electric, and telecommunications sectors, including treatment plants and site development.

A significant portion of these projects requires extensive underground excavation and infrastructure work, often utilizing heavy equipment—massive machines capable of quickly digging and moving large amounts of earth.

As you are aware**, this work is inherently dangerous**, not only **due to the use of such powerful equipment** but **even more so because of the hidden hazards beneath the surface.** The risks extend beyond the workers operating the machinery to the consumers whose homes and businesses rely on the power and gas lines buried underground.

Let me emphasize PUCA's primary concern, along with that of all stakeholders—and indeed the General Assembly—regarding the One Call Act

is, and should always be, safety. Every comment we make must be considered through this lens, as our operators and laborers work in the closest proximity to the danger zone.

House Bill 2189 amends the Underground Utility Line Protection Act, commonly known as the PA One Call law to provide for damage prevention in the excavation industry.

The Pennsylvania Utility Contractors Association **(PUCA) supports the majority of the new provisions within HB 2189; however, we believe the bill can do more to provide improved safety measures for the public and the excavation industry.**

PUCA's Key concerns revolve around the following issues:

PUC Enforcement Issues
Service Lines
Shallow Depth Lines
Designer Drawing Details
Project Owner SUE Clarification
Enforcement – DPC Board Composition
Downtime - Self Enforcement
Jurisdiction of Judicial Proceedings
Nuisance lawsuits

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THE ELEPHANT IN THE ROOM - PUC ENFORCEMENT ISSUES

Please do not mistake our honesty below for complete disenchantment with PUC Enforcement. On the contrary, PUCA was the organization that initially advocated for PUC Enforcement over the Department of Labor and Industry. We firmly believe that PUC Enforcement represents a significant step in the right direction, particularly with the inclusion of AVRs being filed by all stakeholders. Our goal is simply to ensure that enforcement remains fair and balanced for everyone involved. With that in mind, we present the following three concerns:

FACILITY OWNER BOUNTY PROGRAMS

A. Over recent years, several facility owners have instituted a Bounty program incentivizing utility employees to report Alleged Violation Reports (AVRs) even when no damage occurs. These employees actively patrol communities, particularly targeting homeowners conducting yard work. In this program, facility owners compensate these employees

with monetary rewards (bounties) for filing AVRs. Once filed, these AVRs are reviewed by the PUC Damage Prevention Committee for adjudication.

Since the introduction of PUC's Enforcement, there has been a notable increase in AVRs filed against homeowners for non-damage incidents. Conversely, AVRs filed by excavators against facility owners for other non-damage issues do not receive the same level of scrutiny from PUC Enforcement. Members of PUCA have filed numerous AVRs in such cases, often resulting in no action taken against facility owners. This disparity raises concerns about perceived favoritism within the enforcement process, which should be avoided to maintain fairness for all stakeholders.

PUC 2017 DOWNTIME PROMISE TO EXCAVATORS

B. In 2017, PUC Commissioner Coleman requested that PUCA allow the PUC Enforcement a few years to improve the issues of mis-marks and

late locates (no marks). If enforcement failed to substantially improve in this area, the PUC would consider Downtime language.

While PUCA acknowledges that overall compliance with the One Call law has improved, our primary concern remains unaddressed, even six years after the implementation of Act 50 of 2017. PUC Enforcement was expected to address the excavation industry's issues with late locates and mis-marked facility lines, which would lead to reduced downtime for excavators. However, the expected improvements in facility owner damage prevention measures have not materialized to the extent necessary to enhance the safety of our crews.

STATISTICAL COMPARISION ANALYSIS OF ANNUAL REPORT

C. The PUC is required to "submit an annual report containing relevant damage prevention data to the commission, the Senate Committee on Consumer Protection and Professional Licensure, and the House Committee on Consumer Affairs." While the PUC has complied with this

legal requirement, they have not conducted statistical analyses comparing violations between excavators and facility owners. Based on data available from the PUC website or obtained through Right-to-Know requests, PUCA has determined that facility owners violate the law almost twice as often as excavators. PUCA has made this claim for many years, and the evidence now supports it. A different pattern is seen in the Common Ground Alliance (CGA) DIRT reports, where the statistics are skewed in favor of facility owners, as reporting to the DIRT database is not mandatory for all stakeholders. The majority of CGA reports are submitted by locators and facility owners, often placing blame on excavators, even in cases where the excavator was not at fault. The PUC's mandatory reporting for all stakeholders has been crucial in highlighting the primary violators of Pennsylvania's One Call law. PUCA recommends adding language that requires the PUC to annually prepare a statistical analysis comparing violations between excavators and facility owners. The analysis should be published on the

PUC website for public review and serve as a tool to help the PUC adjust its enforcement efforts to target the biggest offenders.

1. SERVICE LINES – need clarification

Section 1 Definitions, and Section 2 Facility Owner

Service Lines should be added to the definitions and be a requirement for facility owners to mark private service lines running directly from the main to the building connection.

Reasoning for service lines to be marked: PUCA firmly believes the relevant definitions within existing law require these lines to be marked, but because of the current language within the law it is not clearly stated for facility owners to understand their responsibilities.

Several states have taken the issue before their courts and won their cases for service lines to be marked because facility owners have an operational responsibility to mark lines they utilize to provide their product to the end user, regardless of its ownership of public or private. (**See References in the**

CGA Best Practices v 20.0, Section 4-21 Service Lines

https://bestpractices.commongroundalliance.com/New-in-Version-200).

You may find it noteworthy that Pennsylvania is specifically mentioned in this Reference Section as one of the states that mark service lines. Yet, many stakeholders ignore Pennsylvania's technically written law thereby rejecting the requirement to mark all service lines, public or private.

Quote from the CGA Best Practices 4-21

> **Practice Statement:** *A service line is marked in response to a locate request to the operator (facility owner) who uses the service line to pursue a business that derives revenue by providing a product or service to an end-use customer via the service line. A service line is marked in response to a locate request to a governmental entity that provides a product or service to an end-use customer via the service line.*

References Section:

- South Dakota Attorney General's official opinion (8/11/08)
- *Minnesota DPS Rule Ch 7560 (5/31/05)*
- *Colorado appellate court case: Wycon Construction Co. v. Wheat Ridge Sanitation District, 870 P.2d 496 (Ct. App. Col. 1994)- Leon County, FL, County Court Case No. 03-SC-6827, Mitchell Properties, Ltd. v. Cornerstone of North Florida, Inc. v. City of Tallahassee- Oregon PUC Ruling (5/1/98)*
- ***State One Call laws:** AZ, GA, MN, OH, **PA***

Given these precedents and the CGA language, it's difficult to understand why the marking of service lines shouldn't be clarified. The idea that homeowners and business owners should be responsible for marking their private lines is problematic for several reasons:

1. **Inability to Meet Timeframes:** Home and business owners typically cannot meet the required 3-day mark-out timeframe for each locate request (ticket) under current law. Facility owners, on the other hand, can contract third-party locators at reduced rates compared to what an individual homeowner or business owner would have to pay.

2. **Lack of Expertise and Equipment:** Most home and business owners lack the necessary knowledge, experience, or proper equipment to accurately locate their lines, which is critical for ensuring the safety of both the excavator and the surrounding community.

3. **Facility Owners' Responsibility:** Many Facility Owners have long utilized private service lines without taking responsibility for the private lines they rely on, despite the fact that current law requires them to mark service lines. These lines are essential for delivering their services or products to home and business owners, and these owners often spend thousands of dollars on their service line's installation and maintenance. If service lines are damaged due to a Facility Owner's negligent marking, the resulting damages should be covered by the Facility Owner's liability as an operational responsibility for the use of the private line in delivering their product/services through the private home or business line. Conversely, if an excavator damages a service line within the tolerance zone, the excavator should be held responsible for the damages.

Suggested language from 4-21 of the CGA Best Practices v 20.0

Section 1. Definition
A service line is a type of underground facility that is connected to a main facility. The service line is used by the following entities:

- An operator who provides a product or service within a right-of-way, an easement, or an allowed access to or through private property while pursuing a business that generates revenue by providing a product or service to an end-use customer (other than another operator of like kind or themselves).

- A governmental entity that provides a product or service via that service line.

Section 2. (i.2) Facility Owners – PUC language

(i.2) To identify the location of a known service line connected to its facilities through which the facility owner uses the service line to pursue a business that derives revenue by providing a product or service to an end-use customer via the service line, regardless of whether the service line is owned or operated by the facility owner.

[2]**APPRNDIX B** – PUCA (NUCA OF PENNSYLVANIA) collective reply to Answers and Protests filed by Interveners on PUC DOCKET NO P-2019-3009889

[3]**APPENDIX C** – Other state cases

2. LINE DEPTH – SECTIONS 1, 2 and 5

PUCA is requesting the inclusion of language that mandates facility owners to indicate in inches the depth of the underground facility. Over time, an increasing number of lines are not being maintained at the proper depths as

required by **49 CFR 192.36 (see below),** which exposes excavation crews and the public to potential property damage and injuries. The occurrence of shallow-depth lines has been on the rise in recent years, with our crews encountering them in sidewalks, pavement, yards, roadways, and other areas.

As excavators, we are required to use careful techniques within the tolerance zone. However, shovels are ineffective for removing hard materials like concrete and asphalt. Instead, we use diamond blade saws set to an appropriate depth to cut sections that can then be lifted away with heavy equipment. In doing so, we frequently find electric, gas, and fiber lines buried within or just under these hard materials that are damaged as the material is lifted for removal. While we make every effort to avoid any facilities within the tolerance zone, no one anticipates encountering a dangerous line within the first 1-10 inches. Excavators should be informed of known line depth. The Federal Code of Regulations specifies installation depths on private property and in streets and roads under **Federal Regulation 49 CFR 192.351 et seq.**

49 CFR 192.36

§ 192.361 Service lines: Installation.

(a) ***Depth.*** *Each buried service line must be installed with at least 12 inches (305 millimeters) of cover in private property and at least 18 inches (457 millimeters) of cover in streets and roads. However, where an underground structure prevents installation at those depths, the service line must be able to withstand any anticipated external load.*

We also reference the following United States District Court, Middle District of Pennsylvania court decision on facility owner lines being maintained at the depths required by Federal Regulation in 49 CFR 192.361. *Here the court disagreed with "UGI's argument that the duty established by 49 CFR Section 192.36 regarding the depth of service lines extends only to the installation of service lines, and does not create a continuing obligation on the part of the facility owner to maintain the service line at a particular depth as the surface grade changes over time. UGI's internal operating procedures in effect when the service line was installed states that buried lines must have a minimum of 24 inches or as much as 36 inches of cover, depending on the composition of*

the surrounding ground." The court held UGI to the standard depths in this case.

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[4]2012 WL 5949213

United States District Court, M.D. Pennsylvania.

FEDERAL INSURANCE COMPANY *as subrogee of Fulton Financial Corporation, Plaintiff*
v. ***HANDWERK SITE CONTRACTORS, UGI Corporation, and UGI Utilities, Inc.****, Defendants.*

Civil Action No. 1:10–cv–617.
Nov. 28, 2012.

At a recent PA One Call System Legislative Task Force meeting, PUCA's initial proposal on shallow depth utility lines was voted down by the facility owners. In response, PUCA requested the group to find a solution for shallow lines. A representative from PECO suggested that New York's law could provide a model. This led PUCA to discover that New York's 811 Law specifically addresses the issue of shallow depth utility lines. Our research also revealed that NY 811 not only addresses shallow lines, but they also require facility

owners to indicate the depth of their lines in inches at the stake or marking point.

For many years, Pennsylvania facility owners have not been required to indicate line depths, but this practice is no longer justifiable with the advanced locating technologies available today that can measure depth. To support the transition to digital mapping of underground facilities for security reasons, providing line depth in inches would not only improve the accuracy of GIS mapping but also enhance safety for excavators and the community.

SUGGESTED LANGUAGE UNDER SECTION 1, 2 AND 5:

Section 1. Definitions

"Excavation work" means 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. The term does not include soft excavation technology such as vacuum, high pressure air or water, tilling of soil for agricultural purposes to a depth of less than eighteen inches, saw cutting and jack hammering six inches below the bottom of the pavement or masonry in connection with pavement removal or restoration of an initial or previous excavation where only the pavement or masonry is involved, [performing minor routine maintenance up to a depth of less than eighteen inches measured from the top of the edge of the cartway or the top of the outer edge of an improved shoulder, in addition to the performance of incidental de minimis excavation associated with the routine maintenance and the removal of sediment buildup, within the right-of-way of public roads or work up to a depth of twenty-four inches beneath the existing surface within the right-of-way of a State highway,] work performed by persons whose activities must comply with the requirements of and regulations promulgated under the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine
Subsidence and Land Conservation Act, or the act of September 24, 1968 (P.L.1040, No.318),

Continued. . .

known as the Coal Refuse Disposal Control Act, that relate to the protection of utility facilities or the direct operations on a well pad following construction of the well pad and that are necessary or operations incidental to the extraction of oil or natural gas.

Section 2 (5)(i)

(i) To mark, stake, locate or otherwise provide the position of the facility owner's underground lines at the work site within eighteen inches horizontally from the outside wall of such line in a manner so as to enable the excavator, where appropriate, to employ prudent techniques, which may include hand-dug test holes, to determine the precise position of the underground facility owner's lines. This shall be done to the extent such information is available in the facility owner's records or by use of standard locating techniques [other than excavation]. Standard locating techniques shall include, at the utility owner's discretion, the option to choose available technologies suitable to each type of line or facility being located at the work site, topography or soil conditions or to assist the facility owner in locating its lines or facilities, based on accepted engineering and operational practices. Facility owners shall make reasonable efforts during the excavation phase to locate or notify excavators of the existence and type of abandoned lines. Each stake and surface marking shall indicate in inches the depth of the underground facility at that point, if known. If staking or marking are not completed to indicate the location of an underground facility, the operator shall designate such location in accordance with the following:

(1) By exposing the underground facility or its encasement to view within the work area in a manner sufficient to allow the excavator to verify the type, size, direction of run and depth of the facility; or
(2) By providing field representation and instruction to the excavator in the work area.

Section 5.

5. (4(i) Powered or mechanized equipment may be used in the tolerance zone after verification of the location of the marked facilities.

5. (4) (ii) Prior to the verification of the location of facilities within the tolerance zone, powered or mechanized equipment may be used for the removal of pavement or masonry to whichever is greater:

(a) to the depth of 18 inches; or

(b) six inches below the bottom of the pavement or masonry

In our neighboring state of New York, depth must be indicated in inches. This requirement also enhances safety for excavation crews and the public. If a facility owner is unable to accurately indicate the line's location, they are required to follow one of two specific safety measures.

3. DESIGNER CLARIFYING LANGUAGE - Section 4

To ensure consistency in Bid Drawings and enhance the bid process for underground infrastructure projects, it is crucial to gather the necessary information for future digital mapping of our underground assets. The following language provides clear guidance to Designers preparing bid drawings, establishing required standards for as-built digital information to facilitate ongoing updates of our infrastructure digital maps.

Suggested language:

(4.1) To depict lines or facilities with the appropriate quality levels based on the complexity of the design and construction activities obtained through the SUE process in the planning and design phases, including test hole data sheet details for lines, service lines, or facilities crossing existing lines, service lines or facilities per the American Society of Civil Engineers (ASCE) most recently published standard CI/ASCE 38.

4.2) In the event that as-builts are required during the construction phase, to prepare the as-builts in accordance with the most recently published standard of CI/ASCE 75.

4. DOWNTIME – Section 2 Facility Owner, and Section 5. Excavator

Under current Pennsylvania law the Economic Loss Doctrine prevents a contractor from holding the facility owner liable for financial damages ("economic" damages), unless someone is personally injured, or property is damaged. Mis-marked lines and late marks are increasing over the years costing project owners considerable dollars for excavators to dig prudently to locate unmarked lines or costing the consumer in repair costs for mis-marked lines.

Let me re-state and re-phrase that, because it may be hard to believe, and it's certainly counter-intuitive: Unless someone is killed or physically injured, or there is a vehicle, a piece of equipment or a building damaged or destroyed, the facility owners cannot be held accountable for mis-marked or late markings on the required three-day locate request.

A few years ago, the Pennsylvania Supreme Court addressed this very issue in the case Excavation Technologies, Inc. v. Columbia Gas Co. of Pennsylvania, 985 A.2d 840 (Pa. 2009). The court ruled that facility owners could not be held liable, effectively shielding negligent facility owners from liability unless there was a significant disaster involving physical injuries or property damage. Instead of creating an exception to the Economic Loss Doctrine, the Court suggested that this was a public policy matter best addressed by the legislature. This is why we are proposing the inclusion of downtime language currently adopted by several other state 811 laws. This clause directly addresses the 2009 Supreme Court decision in Excavation Technologies vs. Columbia Gas.

In a more recent case from 2018, the Supreme Court of Pennsylvania, Western District, in DITTMAN vs. UPMC, held that negligence claims for economic losses are not barred. Had Excavation Technologies pursued a negligence claim instead of a negligent misrepresentation claim, the outcome might have favored the excavator. As a result, PUCA is advocating for a private

cause of action for economic losses due to negligence, as recognized by the Supreme Court in the DITTMAN vs. UPMC case.

PUCA also believes that holding facility owners accountable for downtime costs would enhance public safety more effectively than relying solely on PUC enforcement. By allowing for self-enforcement, mis-marked and late locate enforcement cases would likely decrease, as facility owners prioritize avoiding the loss of profit, thereby reducing the burden on the PUC's Damage Prevention Committee Agenda.

For too many years, excavators have suffered economic losses without any recourse to recover damages caused by facility owners' failure to properly or timely locate their lines. The proposed waiver clause would prevent facility owners from contracting with their prequalified excavators in a way that includes an economic loss clause to circumvent negligence provisions under the law.

RECENT DOWNTIME CASE ON POINT:

Orange marks placed after renotifying facility owner several times

These two pictures show a recent excavation by an Excavator in the Northeast region. The Excavator's crew uncovered AT&T marker tape. There were no communication mark outs on the roadway, and AT&T was not listed on the original One Call ticket for having facilities in the area. After discovering the safety tape, the Excavator had to stop and submit a renotify. Even though AT&T

was included on the updated ticket, they failed to respond. The Excavator eventually had to go directly to AT&T's local office to request their involvement. They finally came out, marked the line, and mentioned that it was a critical line requiring their presence during the hydro excavation. This delay caused hours of downtime for the Excavator. **As of the date of this testimony, AT&T has yet to officially respond to the One Call.**

Suggested language Section 2 and 5 :

2(17) (c) If a facility owner of a subsurface installation has failed to comply with the provisions of Section 2(5)(i), the facility owner shall be liable to the excavator, who has complied with the terms of this act and was not otherwise negligent, for damages, costs, and expenses resulting from the facility owner's failure to comply with these specified requirements to the extent the damages, costs, and expenses were proximately caused by the facility owner's failure to comply. The Loss of Profit doctrine goes against public safety and therefore is null and void under this Act. A provision in a contract, public or private, which attempts to limit the rights of excavators under this subclause shall not be valid for any reason. An attempted waiver of this subclause shall be void and unenforceable as against public policy, and the attempted waiver shall be reported to the commission.

5 (15)(i) If a facility owner of a subsurface installation has failed to comply with the provisions of Section 2(5)(i), the facility owner shall be liable to the excavator, who has complied with the terms of this act and was not otherwise negligent, for damages, costs, and expenses resulting from the facility owner's failure to comply with these specified requirements to the extent the damages, costs, and expenses were proximately caused by the facility owner's failure to comply. The Loss of Profit doctrine goes against public safety and therefore is null and void under this Act. A provision in a contract, public any reason. An attempted waiver of this subclause and shall be void unenforceable as against public policy, and the attempted waiver shall be reported to the commission.

5. SECTION 6.1. Project Owner - SUE

The existing language in Section 6.1 (1) requires clarification, as many Project Owners have circumvented the intent of the 2006 amendment by selectively opting for the lowest two levels of subsurface utility engineering. This approach only provides the same information already available through the Pennsylvania One Call System's 811 Call, hindering progress towards the goal of digital mapping. As a result, Pennsylvania has been set back 18 years in achieving our statewide underground infrastructure mapping objective. To address this issue, PUCA proposes the following revised language.

SUGGESTED LANGUAGE FOR SECTION 6.1 (1) PROJECT OWNER

The language under 6.1 (1) should remove the ambiguity on the levels of SUE needed.

To utilize a sufficient [quality levels of] subsurface utility engineering process or other similar techniques, [whenever practicable] based on the complexity of the design and construction to properly determine the existence and positions of underground facilities when designing known complex projects having an estimated cost of four hundred thousand dollars ($400,000) or more. (See Definitions Section for Subsurface Utility Engineering)

6. ENFORCEMENT - DPC Board- Section 7.8

In the discussions preceding the passage of SB 242 in 2017, Commissioner Coleman and PUC staff assured PUCA that five (5) seats would be designated for excavators on the Damage Prevention Committee (DPC), aiming to create a more balanced representation compared to the One Call Board. However, this number was unexpectedly reduced to THREE (3) as part of a deal with facility owners. Now, as the rewrite process begins again, facility owners are seeking additional seats, but the excavators deserve to receive the TWO (2) extra seats that were originally promised. In our view, a promise is a promise.

PUCA believes that the president or their designee from the One Call System should serve as a neutral advisory entity to the PUC DPC rather than as a voting member. Given that the majority of the One Call System designee's salary is funded primarily by facility owners, who are the largest stakeholders in the system, this position should be filled by a Subsurface Utility Engineering (SUE) practitioner. The new appointee should bring fresh energy and a commitment to utilizing ASCE-38-22 and ASCE-75 standards. Currently, the DPC lacks an expert in the SUE field.

7. Jurisdiction of judicial proceedings - Section 8 (1) & 8 (2)

The PUC should hold original jurisdiction over cases that fall within its legislated authority. PUCA believes that the PUC is better equipped to handle violation and claim cases, as opposed to leaving these matters to 60 Common Pleas Courts and numerous Minor Courts. These courts generally lack the specialized expertise that the PUC possesses.

SUGGESTED NEW LANGUAGE:

8 (1) The Public Utility Commission (Commonwealth Court) shall have original jurisdiction involving all actions and claims under the Pennsylvania Underground Utility Line Protection Law.

8 (2) Damage Complaints

a) For an investigation that the board undertakes as a result of a complaint of a violation of Section 5, the complainant shall not file an action in court for damages based on those violations until the investigation or appeals process is exhausted, during which time, applicable statutes of limitation shall be tolled only for two years.

(b) If a complainant files an action in court against a person for damages based upon violations of Section 5, after the completion of a board investigation and the appeals process is exhausted and the person was found not to have violated the article, the complainant shall be barred from filing an action in court for damages. Any complaints filed with a court of jurisdiction that has not been heard before the PUC Damage Prevention Committee shall be rejected by the court of jurisdiction and sent to the PUC Enforcement for further action.

(c) This section only applies to a claim for damages to a subsurface installation.

(d) This section shall become operative on January 1, 2025.

8. NUISANCE LAWSUITS – New Section 8 (3)

Facility Owners have deep pockets and often file frivolous lawsuits even when the excavator is not at fault. The excavator is often pressed to make a business decision to pay the claim just to avoid the hassle and extra cost to defend against the lawsuit. Insurance companies then pay these claims into the billions of dollars. These payouts result in higher premiums for businesses and homeowners.

PUCA had a member who successfully defended their case before the PUC Damage Prevention Committee, winning his case based on the evidence presented. The facility owner, however, chose not to attend the DPC hearing or file an appeal with the PUC. Instead, the facility owner, who employed a third-party damage claims vendor, solicited local attorneys to file a lawsuit against the contractor for alleged damages to their facility, valued at $486,000. Over the next three years, the case proceeded to the Court of Common Pleas,

where depositions were taken, and a judge eventually ruled in favor of the contractor in September 2022.

Despite this decision, the facility owner filed a Post-Trial Motion for Judgment Notwithstanding the Verdict, which was denied. The case was then appealed to the Superior Court of Pennsylvania, which issued a decision in favor of the contractor on March 28, 2024. No further appeal to the Supreme Court was filed, and the contractor's legal battle finally came to an end.

Here's the kicker: defending the lawsuit cost the contractor and their insurance provider around $286,000, despite the outcome being the same as the PUC Damage Prevention Committee's ruling. This kind of abuse of the judicial system happens all too often. Contractors are frequently forced to make tough business decisions—either pay nuisance repair invoices for damages they didn't cause or face the threat of a costly lawsuit. This kind of manipulation of the legal system is not only unjust but also deeply concerning, as consumers ultimately bear the cost of these legal battles.

As a result, PUCA is advocating for legislative relief from nuisance lawsuits by incorporating language from other state One Call laws who have resolved their nuisance lawsuits using the following language.

SUGGESTED NEW LANGUAGE:

8 (2) (a) For an investigation that the board undertakes as a result of a complaint of a violation of Section 5, the complainant shall not file an action in court for damages based on those violations until the investigation or appeals process is exhausted, during which time, applicable statutes of limitation shall be tolled only for two years.

(b) If a complainant files an action in court against a person for damages based upon violations of Section 5, after the completion of a board investigation and the appeals process is exhausted and the person was found not to have violated the article, the complainant shall be barred from filing an action in court for damages. Any complaints filed with a court of jurisdiction that has not been heard before the PUC Damage Prevention Committee shall be rejected by the court of jurisdiction and sent to the PUC Enforcement for further action.

(c) This section only applies to a claim for damages to a subsurface installation.

(d) This section shall become operative on January 1, 2025.

8 (3)) A court or arbitrator shall award reasonable attorney's costs and fees, including expert witness fees, to an excavator if either of the following apply:

(1) The court or arbitrator determines that an excavator is not liable for damages to a subsurface installation in accordance with section 5(12)(i).

(2) The excavator makes an offer to settle the matter that is not accepted and the plaintiff fails to obtain a more favorable judgment or award.

CONCLUSION

In conclusion, PUCA has proposed several additional amendments to the Underground Utility Line Protection Law, known as the Pennsylvania One Call law. These suggested changes have been submitted to the Chairs of the Senate and House committees. The proposed language is drawn from similar laws in other states. PUCA respectfully requests that our compilation of proposed changes be included by reference in our written testimony.

Thank you once again for your attention to our testimony. We urge you to consider our positions as vital safety measures that can be implemented through your actions in this legislative session.

[1]**APPENDIX A** – PUCA's Proposed 811 Law Changes – Link to Document

[2]**APPENDIX B** – PUCA Advisory Opinion and Reply to Answers and Protests on Service Lines

[3]**APPENDIX C** – South Dakota & Colorado Court Case on Service Lines

[4]**APPENDIX D – 2012 WL 5949213,** U.S. District Court, M.D. Pennsylvania on Shallow Lines