

Prepared Testimony of
Stephen M. DeFrank
Chairman
Pennsylvania Public Utility Commission,
before the

House Consumer Protection, Technology, and Utilities
Committee

September 17, 2024



Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120
Telephone (717) 787-4301
<http://www.puc.pa.gov>

Introduction

Good morning, Chairman Matzie, Chairman Marshall, and members of the House Consumer Protection, Technology & Utilities Committee. I am Stephen DeFrank, Chairman of the Pennsylvania Public Utility Commission (Commission or PUC). I appreciate the opportunity to offer testimony on behalf of the PUC as you continue the important process of considering the reauthorization of Act 50 of 2017, which established the Underground Utility Line Protection Law, commonly referred to as the PA One Call Law.

The PA One Call Law seeks to protect public health and safety by preventing excavation, demolition, and design work from damaging underground lines and facilities used to provide essential utility service. Among the key changes implemented through the enactment of Act 50 was the transfer of enforcement authority of the PA One Call Law from the Pennsylvania Department of Labor and Industry to the Commission, as such enforcement authority is consistent with the PUC's regulatory functions.

As you are aware, Act 50 expires on December 31, 2024. Based on our nearly seven years of enforcement experience, the Commission emphasizes the importance of reauthorizing the PA One Call Law to achieve the public safety goal of further reducing the instances of underground damaged facilities. Line hits are best prevented when all parties involved – facility owners, designers, excavators, and project owners – adhere to the PA One Call Law.

The Committee asked the Commission to discuss the proposed amendments to the PA One Call Law set forth in House Bill 2189, sponsored by Chairman Matzie. To start this conversation, I will provide an overview of the Commission's enforcement processes related to the PA One Call Law. I will then discuss several amendments proposed by House Bill 2189 that the Commission welcomes, as well as three priorities that the Commission hopes the General Assembly will address in the reauthorization of the PA One Call Law.

Overview of the Commission's Enforcement Process of the PA One Call Law

The PA One Call Law created a Damage Prevention Committee, or DPC, consisting of members from the Pennsylvania Department of Transportation, the One Call System, utilities, excavators, municipalities, and municipal authorities. As Chairman, I am authorized to designate a representative from the Commission's professional staff to serve as a member of the DPC. The Commission's

representative is Terri Cooper Smith, who is an experienced pipeline safety supervisor in the PUC's Bureau of Investigation and Enforcement.

The PUC's Bureau of Investigation and Enforcement has established a One Call section that is staffed with five damage prevention investigators and one supervisor. The One Call section reports to the manager of Pipeline and Electric Safety, the Director of the Bureau of Investigation and Enforcement, and ultimately, the Commission's Executive Director. The section reviews alleged violations of the PA One Call Law and compiles findings and recommended actions for the DPC. The damage prevention investigator may recommend issuance of a warning letter, issuance of an informal determination that imposes an administrative penalty, or completion of damage prevention educational requirements. The DPC considers the investigators' recommendations and acts upon them at regularly scheduled meetings.

A person who is subject to an informal determination of the DPC may accept or reject the result. If rejected, the informal determination is returned to the damage prevention investigator for further action, if appropriate. Such action may include a referral to Commission prosecutory staff, which is also a part of the PUC's Bureau of Investigation and Enforcement.

If prosecutory staff determine that violations of the PA One Call Law are substantiated, staff will either attempt to resolve the matter through settlement negotiations and present a settlement agreement to the Commission or file a formal complaint. Upon the filing of a formal complaint, the matter is referred to the Commission's Office of Administrative Law Judge for litigation. For alleged violations involving injury or death, the Commission's prosecutory staff is authorized to file a formal complaint without the DPC first considering the alleged violation.

The PUC Commissioners ultimately consider the settlement agreement or decision of the presiding Administrative Law Judge, if the matter is litigated. The PA One Call Law authorizes the Commission to enter orders that impose administrative penalties on stakeholders who violate the Law. An administrative penalty may not exceed \$2,500 per violation. However, if the violation results in injury, death, or property damage costing \$25,000 or more, the Commission may impose an administrative penalty not to exceed \$50,000. A person aggrieved by a Commission order may seek judicial review of the Commission's decision by the Commonwealth Court.

House Bill 2189

Now that I have presented an overview of the Commission's enforcement process of the PA One Call Law, I would like to discuss several specific amendments proposed by House Bill 2189 that the Commission views as important to clarify the existing law and enhance damage prevention efforts.

First, House Bill 2189 would amend the definition of "alleged violation" and add a definition of "violation" to distinguish an alleged violation from a violation that has been adjudicated by the Commission. The current definition of "alleged violation" indicates in a conclusory manner that a person has failed to fulfill an obligation of the PA One Call Law. The proposed amended definition of alleged violation, however, more accurately describes the stage of the process where the term "alleged violation" is used. Namely, alleged violations are set forth in reports issued by damage prevention investigators. Persons subject to alleged violation reports have the option to either not contest them by paying an administrative penalty and acknowledging the findings or present their position before the DPC. At the procedural stage where the term "alleged violation" is used, the violations are assertions that have not been proven. House Bill 2189 makes this distinction.

Next, House Bill 2189 proposes to eliminate an exemption for a reporting requirement for facility owners. Currently, facility owners are required to submit a report of an alleged violation through the One Call System not more than thirty days after receipt of notice of damage. This reporting requirement does not apply to facility owners, however, if the cost to repair the damage is less than \$2,500, except when the same person damaged the facility owner's lines two or more times within a six-month period. House Bill 2189 proposes to remove the exemption, which would hold facility owners to the same reporting requirements as all other stakeholders. Ensuring that all damage is reported, regardless of the repair cost, is a step in the right direction towards preventing line hits.

Lastly, House Bill 2189 would grant authority to the Commission to impose additional administrative penalties if a party fails to timely pay an administrative penalty set forth in an informal determination of the DPC that has not been rejected by the alleged violator. House Bill 2189 would further authorize the Commission to impose administrative penalties if a party fails to timely attend and successfully complete a damage prevention educational program. The ability to impose additional administrative penalties as a consequence for non-compliance with previously issued penalties and educational requirements is essential to deter future violations of the PA One Call Law. This is especially true with repeat offenders.

Commission Priorities when Reauthorizing the PA One Call Law

Next, I would like to take this opportunity to highlight three recommendations that the Commission views as priorities when considering amendments to the PA One Call Law that are not included in House Bill 2189.

Amending the definition of “excavation work”

First, the current definition of “excavation work” set forth in the law excludes certain earth moving operations that may nevertheless lead to facility damage. Specifically, the definition exempts activities that are conducted without the use of powered equipment or explosives, such as hand tools. It also exempts digging methods using soft excavation technology, such as vacuum and high pressure air or water.

Not only could these exempted activities lead to line hits, but they may also conflict with federal regulations. As a condition of receiving federal funding to support the Commonwealth’s One Call damage prevention program, the Commission must demonstrate compliance with the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) regulations. Among the criteria used to evaluate the effectiveness of the Commission’s damage prevention program is whether an excavator who causes damage to a pipeline facility: (1) reports the damage to the operator of the facility at the earliest practical moment; and (2) reports damage resulting in the escape of PHMSA regulated natural gas or hazardous liquid to emergency officials. 49 CFR § 198.55(a)(6)(iii).

Currently, the exempted activities are not subject to reporting requirements even if they cause damage or result in the release of product. Section 180(7) of the PA One Call Law directs excavators performing “excavation work” to report immediately to the facility owner any break or leak on its lines, or any dent, gouge, groove, or other damage to such lines or to their coating or cathodic protection, made or discovered in the course of the excavation or demolition work. 73 P.S. § 180(7). Additionally, Section 180(8) directs excavators performing “excavation work” to call 911 and the facility owner if the damage results in the escape of any flammable, toxic or corrosive gas or liquid that endangers life, health or property. 73 P.S. § 180(8). Given the definition of “excavation work,” there are certain earth moving activities that are not required to comply with the reporting requirements in Sections 180(7) and 180(8) of the PA One Call Law, even if they result in damage

or a release of product. The exemptions prevent the Commission from fully enforcing the federal reporting requirements, which may jeopardize the ability to receive federal funding to support the Commonwealth's damage prevention program.

House Bill 2189 seeks to amend the definition of "excavation work" by including the performance of routine maintenance of a depth less than eighteen inches. It further proposes to include incidental, or *de minimis*, excavation associated with 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. The Commission is concerned that the inclusion of these activities in the definition of "excavation work" will lead to increased One Call tickets and locate requests without a commensurate increase in the potential for damage. The rationale for these exemptions is that utility facilities are buried at a sufficient depth to permit shallow excavations to go forward without locating and marking facilities. For this reason, the Commission recommends retaining this portion of the definition of "excavation work" and retaining the definition of "minor routine maintenance," as currently enacted.

Removing the limitation to report a release only if it endangers life, health or property

Second, Section 180(8) of the PA One Call Law requires excavators to immediately notify 911 and the facility owner if damage results in the escape of any flammable, toxic or corrosive gas or liquid *which endangers life, health or property*. 73 P.S. § 180(8) (emphasis added). The language awards discretion to excavators for determining what might, or might not, endanger life, health or property. Excavators may not possess the expertise needed to know or understand the dangers of a release of a flammable, toxic or corrosive product.

Additionally, the PHMSA regulation for reporting excavation damage, 49 CFR § 198.55(a)(6)(iii)(b), which I testified about previously, does not recognize a qualification that the damage must endanger life, health or property. Rather, a state's damage prevention requirements must show that excavators notify 911 or other emergency authorities if damage results in the escape of PHMSA regulated natural gas and other gas or hazardous liquid. To align with the federal regulation and in the interest of public safety, the Commission recommends that the qualifying language of endangering life, health or property be eliminated from the notification requirement when there is a release of gas or liquid.

Adding a statute of limitations

Presently, the PA One Call Law lacks a statute of limitations establishing the time limit in which an action can be brought. The Commission recommends that the PA One Call Law define the maximum amount of time in which a formal complaint may be filed, as this will provide certainty to all stakeholders.

The Public Utility Code utilizes a three-year statute of limitations at Section 3314(a). A three-year statute of limitations is likely sufficient to timely address alleged violations of the PA One Call Law and preserve the integrity of evidence.

Conclusion

I thank the Committee for holding this hearing and engaging in a thorough review of the PA One Call Law as it considers its reauthorization. The Commission fully supports reauthorization of the Law, because it has proven to reduce damage to underground facilities. Enabling safe construction around utility infrastructure, particularly natural gas given its combustible nature, is vital to the Commonwealth. Reauthorization of the PA One Call Law will mitigate the number of underground line hits, which are a threat to the safety of workers and the public, and can impact the cost and reliability of utility service.

Reauthorizing the PA One Call Law is especially important at this time when federal funding has been awarded to plan and construct utility infrastructure projects. From broadband deployment to replacing aging pipelines and building out electric transmission lines, One Call tickets are likely to increase.

The Commission encourages consideration of its proposals when reauthorizing the law – including the elimination of certain exemptions in the definition of “excavation work,” and requiring excavators to notify of all instances of damage resulting in the escape of gas or liquids. These proposals are consistent with PHMSA’s regulations, which the Commission is obligated to enforce. The Commission further recommends adding a statute of limitations so that a clear time limit is established for bringing forth an action under the Law.

The Commission stands ready to continue to assist you in any way on the reauthorization of this important law. I’ll be glad to answer any questions you may have. Thank you.