

**Before the
House Consumer Protection, Technology & Utilities Committee
Public Hearing re:
House Bill 2189
September 17, 2024**

**Testimony of
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Good Morning Chairman Matzie, Chairman Marshall, and members of the House Consumer Protection, Technology & Utilities Committee. I am Donna Clark, VP and General Counsel of the Energy Association of Pennsylvania (“EAP” or “Association”), a trade association comprised of electric and natural gas utilities—also known as electric and natural gas distribution companies (EDCs and NGDCs)—operating in Pennsylvania. Collectively, EAP’s members deliver energy to more than 8.7 million residential, commercial, and industrial customers. EAP advocates for its members before the General Assembly, the Pennsylvania Public Utility Commission and other state agencies, assists its members by facilitating sharing of information and best practices, and provides educational opportunities for employees of its members and others through its operations and consumer services conferences. Safety is of paramount importance to EAP and its member distribution companies; members are committed to improving safety for their customers and in the workplace. Safety issues are regularly included on the agendas of EAP Board of Directors meetings and at our electric and gas operations conferences. EAP has an Accident Prevention Committee that recognizes superior performance by members with annual safety awards. EAP’s members support the goals of Pennsylvania’s Underground Utility Line Protection Law and are active participants in the PA One Call System, serving on its Board of Directors and actively contributing within its committee structure. EAP also attends meetings of the Board and is a regular exhibitor in the System’s “Safety Days” programs which take place each year throughout

the Commonwealth. Thank you for this opportunity to testify regarding reauthorization of Pennsylvania's Underground Utility Line Protection Law, commonly referred to as the "One Call Law."

Established more than 40 years ago as a "call before you dig" communications service in Southwestern Pennsylvania, "PA One Call" was designed to protect underground utility facilities from damage resulting from excavation projects. After becoming law in 1974, the "One Call" concept continued to expand throughout the Commonwealth (and beyond) to provide for a single nationwide toll-free telephone number (811) whereby excavators, designers, or other persons could notify facility owners thorough a central third-party entity of their intent to "dig" in an area which may (or may not) include underground facilities, i.e. pipes and wires. In turn, the facility owners would then be afforded the opportunity to mark the underground facility to avoid damage during the planned excavation or demolition process.

In Pennsylvania, a series of legislative amendments made participation in the One Call system mandatory for most underground facility owners and operators. This legislation also defined and identified the duties, requirements and notification responsibilities of the various parties involved in the One Call system; determined the composition, staffing and leadership of the third-party entity that operates the system; and delegated enforcement authority and established penalties and fines to be levied in the event of a violation and/or damage resulting from a violation. Today, the Pennsylvania Public Utility Commission ("Commission" or "PUC") enforces the requirements of the One Call Law, which ideally protects both the excavator and the underground facility from harm which can occur when an underground pipeline, conduit or wire is hit and damaged. Agency oversight was moved from the Department of Labor & Industry in 2017; at that time, the General assembly established a Damage Prevention Committee ("DPC") comprised of representatives of various stakeholder groups identified in the One Call Law (the Chairman of the

PUC; the Pennsylvania Secretary of Transportation; the President of the One Call System; one representative of certain non-municipally owned utilities, including electric, natural gas or petroleum pipelines, telephone, water or wastewater utilities and cable television; three excavator representatives; one representative of municipal governments; one representative of municipal authorities). The primary function of the DPC is to review a report of an alleged violation of the One Call Law along with the findings and recommendations of a damage prevention investigator; to issue a warning letter to an alleged violator as deemed appropriate by the DPC or as recommended by the investigator; to issue an informal determination that imposes an administrative penalty; to require an alleged violator to attend a damage prevention educational program; and/or to issue an informal determination that modifies or dismisses a recommendation of the committee staff, i.e., damage prevention investigator. Thus the 2017 amendments to the One Call Law created via legislation a volunteer committee within the Public Utility Commission to review alleged violations and make recommendations following an initial internal PUC staff conducted investigation of an alleged violation of the statute. The 2017 amendments further direct the DPC, with input from the One Call System, to develop bylaws, which are then approved by the Commission, establishing a schedule for regular meetings and detailing the Committee's practice and procedure pursuant to the One Call Law as well as duties established via PUC orders and regulations.

EAP and its member utilities support the timely reauthorization of the One Call Law. One Call remains essential to ensure that underground utility facilities are marked before any excavation begins to avoid damage, and to investigate and timely address violations in order to prevent future line hits and damages. The One Call Law aims to prevent injuries, property damage, and unnecessary utility outages.

We appreciate the efforts to date to address various stakeholder positions, however EAP remains concerned that some of the proposals contained in HB 2189 add statutory language that

will be costly to implement and does not improve safety, or add language that creates prescriptive statutory requirements that may be better resolved via a rulemaking process.

For example, the current One Call Law requires project owners to use sufficient quality levels (A, B, C, D) of subsurface utility engineering (“SUE”) or other similar technique whenever practicable to properly determine the existence and positions of underground facility when designing known complex projects having an estimated cost of \$400,000 or more. Current law is written so that the project owner/utility working with its engineers and subject matter experts has the discretion to determine the level of SUE sufficient for a particular complex project. This may mean that the design/construction drawings used in the bid process include one level of SUE information that can be adjusted during the post-bid/construction phase based on subsequent site visits by the utility and contractor.

HB 2189 proposes amendments to the One Call Law that require the highest quality level of SUE information during the design phase of the project which may prove unnecessary, adding substantial and unnecessary cost to the overall project. Rather than attempting to prescribe a certain quality level of SUE at the design phase in all complex projects, EAP suggests that the statutory language remain as is and that the PUC consider a regulatory process to promulgate guidelines or rules specifying the use of a certain quality level of SUE during the design phase of a complex project. This would ensure that the impact of proposed changes, their costs and benefits, had been fully vetted and considered by the Commission via diverse stakeholder input prior to the establishment of rules.¹

EAP supports proposals contained in HB 2189 which clarify and improve the procedure and processes followed by the PUC and the DPC to resolve alleged violations of the One Call Law. EAP suggests the establishment of a statute of limitations for the filing of a formal complaint by the

¹ See, HB 2189 at p. 8, lines 24 - 30

Commission's prosecutorial staff following the report of an alleged violation. Currently, no timeframe exists and an alleged violation report can be pending before the DPC for a period of twelve to eighteen months after the damage or violation occurred, lessening the impact of any remedy recommended by the Committee. Adding a statute of limitations will focus the investigation on the basis or root cause of the damage to the facility AND reduce the backlog of reported violation.

EAP supports amendments in HB 2189 which require DPC members to maintain employment within the represented industry and to have expertise in the operation of the One Call Law.² EAP further supports changes to the current One Call Law which would require:

- Additional representation of the natural gas utilities and pipeline operators on the DPC (from one to two members) to assure industry expertise and representation during Committee discussions determining whether a natural gas utility or pipeline operator violated the One Call Law based on the report of an alleged violation;
- A time limit (180 days from the occurrence of the alleged violation) for the DPC to act on a report of an alleged violation to assure that any remedy or penalty recommended by the Committee is timely and impactful;
- New statutory language that clarifies that the role of the DPC is akin to an advisory board and that its recommendation, once timely rejected by the alleged violator, has no binding effect and is not to be considered an adjudication; and
- The PUC to promulgate regulations establishing the process and procedure of the DPC and the rules governing the actions and timeframes for alleged violators appearing before the DPC.

² See, HB 2189 at p. 12, lines 20 – 21

Thank you for the opportunity to testify on behalf of our members and I would be happy to address any questions.