



**Testimony of
JOHN F. COLEMAN JR., VICE CHAIRMAN
On behalf of the
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Before the House Consumer Affairs Committee
On House Bill 1607
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Chairman Godshall, Chairman Daley, and members of the House Consumer Affairs Committee, I am John Coleman, Vice Chairman of the Pennsylvania Public Utility Commission. Thank you for the opportunity to testify today about the provisions of House Bill 1607. HB 1607 transfers enforcement authority of the Underground Utility Line Protection Law, more commonly known as the PA One Call Law, from the Department of Labor and Industry (L&I) to the Pennsylvania Public Utility Commission (PUC). This transfer of authority is a Commission legislative priority; and we fully support HB 1607. We would also like to thank Representative Matt Baker for his steadfast support of this initiative and introduction of HB 1607.

The Commission began exploring this enforcement authority transfer over a year ago. Secretary Hearshway of L&I and the Governor's Office was consulted early in this process. It was determined that transferring this responsibility from L&I to the PUC would be consistent with our current regulatory functions. We welcome the opportunity to accept this responsibility. It is important to note that this legislation only transfers enforcement jurisdiction to the Commission. The PA One Call System would continue its role in providing an efficient and effective communications network for facility owners, excavators, designers and project owners.

Many utilities with underground lines are already regulated by the PUC. The transfer of One Call enforcement authority is a logical extension of those responsibilities. The transfer of this function is also consistent with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) recommendation encouraging state utility commissions to enforce One Call laws. In other states where the regulatory agency provides this enforcement, the number of both reportable incidents and damage to underground facilities is lower. Based on the experience in other states, the Commission believes increased enforcement will reduce underground line hits, increase public safety, and reduce costs associated with line hits for utilities, excavators and ultimately utility customers.

In preparing this bill for introduction, the Commission worked closely with the PA One Call System, including its Executive Director, Bill Kiger, and Counsel, Bill Boswell. We are happy to report that the One Call Board of Directors voted to support this legislation. Likewise, the Commission met with multiple interest groups and associations including the Pennsylvania Department of Transportation (PennDOT), the Pennsylvania Emergency Management Agency (PEMA), municipal trade associations, utilities, excavators, the American Petroleum Institute of Pennsylvania (API-PA), the Marcellus Shale Coalition (MSC), and the Pennsylvania Independent Oil and Gas Association (PIOGA) to discuss the transfer. Many recommendations taken from these meetings were incorporated in the legislation.

In addition to the transfer of enforcement authority, the law proposes several other important changes. The changes include the elimination of exemptions, mandatory reporting of all line hits, and a requirement for excavators to take additional steps if they discover that facilities have not been marked as requested.

Presently, the law has several exemptions from the requirement to notify the One Call system for the purpose of locating and marking underground facilities before performing excavation. Those exempted from this general rule include:

- A person doing an excavation to extract natural resources;
- Municipalities performing routine maintenance up to a depth less than 18 inches; and
- PennDOT performing excavation within the right-of-way of a state highway up to a depth of 24 inches.

The rationale for these last two exemptions is that utility facilities are buried at sufficient depth to permit shallow excavations to go forward without locating and marking facilities. However, due to natural erosion and other circumstances, the level of soil covering underground facilities may diminish over time. The PUC is aware of underground lines being struck that were found to be just a few inches beneath the surface of the soil or roadway.

Separately, some facility owners are exempt from the requirement to mark their underground facilities. For example, PennDot is not required to mark any of its underground facilities when an excavator is working in the vicinity of their underground assets. Additionally, some operators of production and gathering lines are not required to mark their facilities when other parties are excavating near them. Over the past several years, a network of new gas gathering pipelines has been installed to support the recovery of Marcellus Shale gas. These pipelines may be of large diameter and operated at high pressures, and present an unquestionable danger if damaged during excavation work. Additionally, even small diameter pipelines operated at low pressures pose a danger to excavators and nearby homes if damaged.

HB 1607 removes these exemptions from the law. While others may suggest limited exemptions are appropriate, the Commission believes removal is necessary to truly enhance safety and protect the public.

It is also important to note that both the Federal Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, and the Pipeline Safety, Regulator Certainty and Job Creation Act of 2011 require PHMSA to determine the adequacy of a state's One Call law, including whether exemptions for excavators are provided for, and if so, to determine if the exemptions should be a factor in grant eligibility. Potentially, the existing exemptions may adversely impact a portion of the Commission's federal pipeline safety grant, which provided approximately \$900,000 for the 2012 calendar year. In addition, the PUC would be ineligible for federal One Call grants of \$45,000 per year.

The next important change in the law is mandatory reporting of all line hits and alleged violations. Currently, the Underground Utility Line Protection Law requires facility owners and excavators to report line hits only when they result in personal injury or property damage to parties other than the facility owner or excavator. The Commission

will need to know about all line hits and alleged violations in Pennsylvania to enforce the law fairly and consistently. More than 6,000 line hits are reported each year to the PA One Call System. The Commission's objective would be to conduct 1,600 investigations of reported violations and underground line damages per year. Again, the Commission's goal is to reduce line hits through consistent and broad enforcement and education programs for those persons violating the law.

HB 1607 will also improve the current law by requiring excavators to contact One Call if facilities have not been marked as requested. Under the law as it is now, excavators may immediately begin excavation work even when a facility owner failed to mark the location of its underground lines. HB 1607 provides for additional steps to be taken to ensure lines are located prior to excavation. If an excavator discovers that underground lines are not marked, or believes the lines are incorrectly marked, the facility owner will be required to directly communicate the location of its underground lines to the excavator, and, where possible, to respond to the work site to mark the lines. Excavators must allow three hours for facility owners to accomplish the line location before excavation is permitted.

Turning to implementation issues, HB 1607 establishes a Damage Prevention Committee to review alleged violations. The Damage Prevention Committee would be comprised of members representing facility owners, the One Call System, excavators, municipalities and the Commission. Action taken by the Committee is binding on the Commission and may result in a violator paying an administrative penalty and/or being required to attend a training/educational program about the requirements of the One Call Act. However, any violation resulting in injury or death would not be addressed by the Committee. Rather, those violations would be prosecuted by the PUC's Bureau of Investigation & Enforcement. This administrative process is similar to what is used by the Commonwealth of Virginia in managing its One Call enforcement responsibilities. We believe that this structure and process will prove to be efficient, effective and fair.

Administrative penalties collected through the Damage Prevention Committee would be used to fund the enforcement program. Similarly, grant monies would also be used for the enforcement program with the One Call System members covering the balance of enforcement costs.

Finally, the bill contains a sunset provision of December 31, 2021. A thorough review of the effectiveness of HB 1607 will occur prior to this date.

Again, thank you for holding this hearing. The Commission fully supports the transfer of enforcement authority for the PA One Call Law from L&I to the PUC as it is consistent with our current regulatory functions. We also support the proposed changes that are designed to strengthen the protections provided by the law. The Commission stands ready to assist you in any way on this issue and looks forward to further deliberations. I'll be glad to answer any questions you may have. Thank you.