Good morning, Chairman Godshall, Chairman Caltagirone, and members of the House Consumer Affairs Committee. Thank you for the opportunity to testify today regarding House Bill 284, which amends the Underground Utility Line Protection Law.

Since 1996, the Department of Labor and Industry has been statutorily charged with enforcing the Underground Utility Line Protection Law. Since approximately 2002, the Department’s enforcement responsibilities have been executed by the Bureau of Labor Law Compliance (BLLC).

Secretary Manderino and I convened meetings with a number of stakeholder groups in the early days of our tenure, after which it became readily apparent that the Department needed to improve its enforcement of this law to ensure the health and safety of the general public, as well as the individuals engaged in digging activities.

We have taken steps to do just that, and that increased enforcement is demonstrated in the Department’s results. The Department retrained its investigators, and rebuilt relationships in the stakeholder community. Bureau staff actively participate in, and make educational presentations at, “safety day” programs sponsored by utility companies or PA One Call. The Bureau of Labor Law Compliance developed a protocol
for which line hits required an immediate, on-site presence. The Department is cross-training a select group of inspectors in our Bureau of Occupational and Industrial Safety (BOIS) to respond to urgent line hits. This collaboration essentially doubles the number of available staff resources, and enables the Department to have someone respond to a utility line hit within 30 to 45 minutes anywhere in the Commonwealth. This rapid response effort preserves the integrity of the investigation, and enables the Department to collect valuable information in real time.

These efforts have yielded results. In 2015, we investigated a record number of cases (1,463). In 2016, the Department collected $96,850, a record number in fines and penalties.

I am here today to share the Department’s experiences in enforcing this important law, and to offer those insights in the context of House Bill 284, not to inject the Department into a jurisdictional battle. Determinations of which regulatory agency will enforce a law is up to the collaborative wisdom of the legislature and the Governor. This bill proposes moving enforcement responsibilities for the Underground Utility Line Protection Law from the Department of Labor and Industry to the Pennsylvania Public Utility Commission (PUC), and the Governor supports that transfer. Therefore, the Department stands ready to work diligently to ensure a smooth transition for enforcement activities, and to protect public health and safety.

Among the reasons the administration supports the transfer include the response to a 2010 Auditor General’s report, in which the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) called for a change in Pennsylvania’s “unique” situation, noting that “[i]t is our experience that States having one-call enforcement in the PUC generally have the most success in reducing damages and improving safety.” Moreover, the PUC proposes to have six investigators devoted to utility line hit enforcement. While the Department’s enforcement has increased
significantly in the last two years, both BLLC and BOIS have a much larger enforcement mandate that just utility line strikes. Moving enforcement of this law to the PUC will enable BLLC investigators to pursue more labor law enforcement; however, because no positions with the Department are specific to Underground Utility Line Protection Law enforcement, the move would not reduce General Fund expenses.

In order to facilitate this transition, I would like to make a few suggestions that we believe would improve this bill and enhance enforcement in this arrangement.

First, currently facility owners and contractors must provide the Department with notice of damage to a third party’s lines, and do so within 10 business days. The legislation before this committee expands that reporting period to 30 days, which will add unnecessary delays to the enforcement process. More concerning, however, is that the bill will now require information of alleged violations from facility owners, designers, excavators, and project owners to be provided to the enforcement agency through the One Call System. Based on the Department’s enforcement experience, I strongly urge the Committee to consider changing the language to enable the PUC to receive information from original sources.

As mentioned earlier, in 2015, the Department far surpassed the number of cases typically investigated because, in August of that year, the Department sought damage reports from PA One Call System. I discovered this was a regular practice that had been used, but was discontinued about four years earlier. Thus, we resumed the practice, and based on the information provided, the Department received 855 incident reports, and followed up with investigations.

Subsequent requests for damage reports, however, went unanswered by PA One Call System. Despite a series of telephone calls, e-mail exchanges, personal requests, and a two-on-two negotiation between principals and attorneys, PA One Call System
never responded to similar requests for information to enable the Department to fully perform its enforcement function. Therefore, it is imperative that the legislation empowers the PUC to receive accurate and thorough reports from PA One Call System, to ensure active enforcement.

Moreover, the legislation requires PA One Call System to provide the PUC with information per a memorandum of understanding. Based on the Department’s experiences, I would respectfully recommend that PA One Call System should be statutorily mandated to provide the enforcement agency with all relevant information in its possession in regular intervals, such as monthly or quarterly.

In addition to the information flow, I also wanted to mention the enforcement mechanism created in House Bill 284, and ask the Committee to consider the issue further in its deliberations. As I understand the language, a PUC investigator will conduct an investigation, and then submit its findings and recommendations to a Damage Prevention Committee for resolution. Some members of the Damage Prevention Committee which makes those enforcement determinations are members of the regulated community. In addition, the Committee must consult with PA One Call System to draft the bylaws. I have seen firsthand the importance of stakeholders and members of the regulated community serving in an advisory capacity. They provide unique insights and invaluable guidance. However, having members of the regulated community writing an enforcement agency’s foundational document and serving on a committee that adopts, rejects, or recommends enforcement action could present the potential for conflicts.

Based on the Department’s past experiences with poor information flow, I respectfully ask this committee to carefully consider this increased role for PA One Call.

We all share the goal of ensuring the health and safety of those engaged in digging activities, as well as the general public. As previously noted, the Governor supports
moving enforcement to the PUC to further that goal, and I stand ready to assist in that transition. However, I raise the aforementioned concerns to ensure that those legislative efforts will provide the PUC with the appropriate and necessary tools to carry out its enforcement responsibilities.

Again, Chairman Godshall, Chairman Caltagirone, and Committee Members, thank you for the opportunity to testify today. I look forward to working with you to further the goals of improved public safety and damage prevention.