

March 8, 2006

MAINE PUBLIC UTILITIES COMMISSION
Underground Facility Damage Prevention
Requirements (Chapter 895)

ORDER
MODIFYING WAIVER

ADAMS, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

We modify our February 10, 2006 Order Reinstating Waiver to eliminate the 1,000 foot facilities buffer and instead allow Member Operators, until April 1, 2007, to elect to instruct the Dig Safe System[®] (DSS) to default to the municipal level for purposes of notifying Member Operators of planned excavations. An operator who wishes to be notified on a more limited basis should review the DSS base maps to determine the size facility buffer that will be necessary to offset the degree of error the base maps contain for the areas in which the Member Operator has underground facilities. Member Operators should instruct the DSS of their notification preferences by April 1, 2006.

II. BACKGROUND

Chapter 895, Section 6(A)(1)(d) of our Rules requires operators who are members of the Dig Safe System[®] (DSS) to file detailed mapping information with the DSS. The language in this provision of the Rule, containing the specific mapping requirement that is now at issue, was agreed to by the DSS, its Maine members, and Staff, and was adopted by Legislative Resolve for effect on April 9, 2004.

On May 18, 2005, we granted a waiver of the original May 1, 2005 deadline, established by the Resolve, for filing specific location information until such time as DSS is prepared to use the data being prepared by its members. Order Granting Waiver to All Operators, Docket No. 2005-672 (May 18, 2005). We found that the DSS's underlying base mapping images did not consistently align with their actual geospatial locations and that these discrepancies were of such a magnitude that they overwhelmed the mapping specificity that Maine operators were required to provide the DSS under Chapter 895.¹ In our Order, we indicated that once these issues were resolved, operators would be informed of a new date by which they should provide the

¹ The degree of error was observed by Northern Utilities, Inc. to be, in at least one instance, approximately 800 feet.

necessary mapping information consistent with the specifications contained in Section 6(A)(1)(d).²

On January 23, 2006, we issued an Order Rescinding Waiver as communications from the DSS in late 2005 had indicated that the revised mapping was ready for implementation.³ This Order required operators to file the specific mapping data 30 days from the date of the Order, or February 22, 2006.⁴

On January 30, 2006, the DSS filed a letter stating that the MeGIS base maps were not yet adequate for implementation as doing so would present a risk to public safety. In addition, they argued that the mapping specifications of Chapter 895, Section 6(A)(1)(d) would create certain operational issues for the DSS which would "dramatically increase the risks to public safety and the Dig Safe System's potential liability."

On February 1 and 2, 2006, Staff met with the DSS and members to discuss the mapping issues and to attempt to collaborate on resolving the concerns raised by the DSS and its members.

On February 3, 2006, Staff issued a Proposed Order Reinstating Waiver for comment. The DSS, CMP, and MPS filed comments supporting reinstating the waiver. We issued our Order Reinstating Waiver on February 10, 2006.

² After discovering the error existing in the current DSS base maps, our Staff worked with the DSS and the Maine Office of Geographic Information Systems (MeGIS) to facilitate an upgrade of the DSS base mapping data to a degree of accuracy that will accommodate the data that Maine operators are required to provide by the rule to ensure greater efficiency and effectiveness in Maine's overall damage prevention efforts.

³ We issued a Proposed Order Rescinding Waiver for comment and received only one comment, from Central Maine Power Company (CMP), expressing its concern that it would be necessary to resolve the pending damage prevention rulemaking, Docket No. 2005-549, prior to rescinding the waiver.

⁴ Following the waiver rescission, CMP and Maine Public Service Company (MPS) approached Staff to request that we recommend that the Commission reinstate the waiver as they, and other operators, were not prepared to comply with this provision of the rule. They suggested that the requirements of Chapter 895, Section 6(A)(1)(d), should be changed or that waivers should be granted for each of them. In addition, they requested that Staff engage in discussions with the DSS and members to work collaboratively to clarify issues that had arisen concerning this provision of the rule, the DSS operations, and members' understanding of the mapping specification requirements. Staff engaged in discussions that were productive, and we trust that the Maine DSS membership will continue to work collaboratively with staff to resolve any remaining concerns.

III. ANALYSIS AND DECISION

A. Summary of Order Reinstating Waiver

On February 10, 2006, we reinstated the waiver of Section 6(A)(1)(d) based on information presented on February 1, 2006 by DSS member operator, Dan Cote, Vice President of Northern Utilities, that indicated that certain street names and locations were not correct on the MeGIS-supplied base maps in municipalities in which his company has facilities. Because inaccurate base maps could cause notification errors, we found good cause to reinstate the waiver of Section 6(A)(1)(d) for an additional limited period of time.⁵ We indicated that the waiver would be in effect until adequate revised maps, verified by Maine member operators, could be implemented by the DSS on a county by county basis.⁶

Our Order also allowed Maine DSS members to add a "buffer" to their underground facilities maps submitted to the DSS of up to 1,000 feet "to help assure that the degree of error that exists in the base mapping data currently being used by the DSS will not result in a notification failure by the DSS." Order at 4. We advised member operators to remove this buffer in any county in which the revised base mapping data was implemented because it would no longer be necessary. Finally, we invited member operators to seek a waiver from us if they believed that a buffer was necessary even after revised base maps were implemented.

B. Proposed Modifications

On further reflection, we have doubts that allowing Maine operators to add a 1,000 foot buffer to their facilities locations will always suffice to mitigate the error in the DSS base maps. If it does not, then it is possible that operators will not be notified of excavations in locations where they have facilities. This risk is unacceptable. Therefore, we modify our waiver to eliminate the 1,000 foot facilities buffer so that no operator will unjustifiably rely on this method to protect its facilities.

In addition, we no longer require operators to revert to the mapping specifications of Section 6(A)(1)(d) when accurate base maps are implemented by the DSS on a county-by-county basis. This is because the DSS will not be able to use this information for effective notification purposes until it has implemented its upgraded software in April 2007.

Instead, until April 1, 2007 when the DSS's upgraded software and accurate base maps are expected to be in place, we will allow Maine operators to direct DSS to default to the municipal boundaries when determining when to notify them of

⁵ We issued the waiver, pursuant to Section 12 of Chapter 895.

⁶ Staff and the DSS will develop specifications for the MeGIS mapping data to be suitable for use by the DSS.

planned excavations.⁷ While this may result in numerous over-notifications for many operators, we see no alternative that will ensure that underground facilities, and those who work around them, will not be placed at risk.⁸

Alternatively, if an operator wishes to provide the DSS with a more limited area in which to receive notifications of excavations, it should carefully review the DSS's existing base maps to determine what degree of error exists in the areas in which it has underground facilities. This information will inform the operator of the size of buffer it should add to the facility location data that it submits to the DSS. Until April 1, 2007, operators may add a facilities buffer on facilities data submitted to the DSS without our approval so long as that operator has conducted the necessary review of the DSS's existing base maps and has developed its buffer based upon information derived from that review regarding the maximum degree of error existing in its facilities area. We also recommend that any operator who chooses to add such a buffer confer with the DSS to be sure that it understands the limitations of the existing DSS procedures with regard to notifications involving "back yard" or "cross country" facilities and excavations.⁹

Finally, it is important that Maine DSS members understand that they are obligated to prepare to submit the specific mapping data required by Section 6(A)(1)(d) on April 1, 2007, by which time the DSS is expected to have implemented upgraded software and verified, accurate base maps should be in place. Operators who have not yet prepared detailed mapping data for their facilities as required by Section 6(A)(1)(d) should do so in time to submit it to the DSS by April 1, 2007. Any operator who believes an additional buffer is warranted for its system after that date should request approval of it (as a waiver) from us.

V. SUMMARY

Accordingly, we modify our waiver to eliminate the 1,000 foot facilities buffer and to allow Maine Member Operators, until April 1, 2007, to default to the municipality for DSS notification purposes to ensure that all necessary notifications are made to Maine Operators. Any operator who wishes to be notified by the DSS of excavations occurring within a more precise facilities, should carefully review the DSS's existing base maps to ensure that any buffer the operator adds to its facilities locations are large enough to mitigate the degree of error in the existing DSS base maps. This waiver will expire on April 1, 2007 at which time the provisions of Section 6(A)(1)(d) will take effect, requiring all Maine operators to submit detailed facility location data to the DSS.

⁷ By doing so, an operator should receive notification of every excavation in the municipality.

⁸ Many operators are using a municipal default currently so this provision will result in no change for them.

⁹ It is hoped that the DSS's software upgrade in April 2007 will remedy many of these limitations.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.