

Maine Public Utilities Commission

**Report Regarding the Propane Stakeholder Group
Discussions Pursuant to Resolves 2023, chapter 47**



**Submitted to the Joint Standing Committee on Energy,
Utilities and Technology**

December 6, 2023

I. Introduction

During the First Special Session of the 131st Legislature, [Resolves 2023, chapter 47](#)¹ (Resolve) was enacted requiring the Maine Public Utilities Commission (Commission) to convene a stakeholder group to discuss matters relating to liquefied propane gas (LPG). Specifically, the Resolve requires the group to discuss:

1. The amendment to then-existing law in [Public Law 2019, chapter 592, section 1](#);
2. The options available to the Commission to ensure that the safety measures established by the underground facility damage prevention system are maintained while reducing the administrative requirements for membership and participation in the system that are applicable to LPG distribution systems that have an underground tank or pipe; and
3. Any additional considerations that the stakeholder group determines are relevant related to the participation in the underground facility damage prevention system of LPG distribution systems that have an underground tank or pipe.

The Resolve specifies the membership of the stakeholder group and includes the following:

1. One or more representatives from the Maine Energy Marketers Association;
2. One or more representatives from the Propane Gas Association of New England;
3. One or more individuals who own or operate a liquefied propane gas distribution system of various sizes that has an underground tank or pipe;
4. One individual representing the Department of Environmental Protection;
5. One individual representing the Maine Fuel Board;
6. One individual representing the Office of the State Fire Marshal;
7. One individual representing the interests of property and casualty insurers;
8. One individual representing the Maine chapter of the Associated General Contractors of America; and
9. Any other person that the commission determines necessary to ensure that all interests regarding the discussion in section 1 are represented fairly.

A listing of all members that participated in the stakeholder group discussions can be found in Appendix A.

In total, the group met three times (September 6, 2023, September 19, 2023, and October 30, 2023). Meetings were held both in person at the Commission’s office and virtually. The meeting agendas can be found in Appendix B. The Resolve requires that the Commission submit a report to the Joint Standing Committee on Energy, Utilities and Technology by December 6, 2023, that includes a summary of the discussions related to the treatment of LPG distribution systems with underground facilities under the “Dig Safe” law along with any recommended legislation and provides the Committee with the authority to report out legislation based on the report.

A draft of this report was provided to members on November 27, 2023, and members were provided with 7 days to provide written comments on the report. Written comments submitted by members can be found in Appendix C.

¹ LD 1479

The stakeholder group agreed to the following three recommendations:

1. Exempt from the definition of “underground facility” found in 23 M.R.S. § 3360-A(1)(E), LPG distribution systems that have underground pipes located on a residential lot, if that system is connected to no more than one structure, the structure contains no more than two dwelling units, and the propane tank is located 25 feet or less from the structure;
2. Clarify the definition of “underground facility” as it relates to LPG; and
3. Initiate a rulemaking to amend the Commission’s Rule, Chapter 895: Underground Facility Damage Prevention Requirements to reduce the number of Dig Safe tickets generated that do not result in a need to mark facilities by an owner or operator.

II. Stakeholder Meeting Summaries

The stakeholder group met three times (September 6, 2023, September 19, 2023, and October 30, 2023). Meetings were held both in person at the Commission’s office and virtually. The agenda for each meeting can be found in Appendix B. A detailed summary of each meeting is provided below.

September 6, 2023 Meeting

Once stakeholder membership was established, the Commission scheduled the first meeting. The first meeting agenda was crafted to provide a consistent, general understanding of the Dig Safe law and the 2019 amendment for all participants, as some members of the stakeholder group did not have a background in issues related to LPG under the “Dig Safe” law. The first part of the meeting consisted of an overview of the Resolve and a presentation by the Commission on the history of the definition of “underground facility” and that definition’s treatment of LPG distribution systems with underground facilities both under state and federal law. During the second part of the meeting, the propane industry participants provided an overview of the issues they have faced participating in the Dig Safe program and their goals for the future.

It was clear from these discussions that there is a difference of opinion on the whether non-jurisdictional LPG was captured under the definition of “underground facility” both in the current law as well as the original version of the law. Due to this difference in interpretation, the Commission has included an overview of the federal oversight of LPG and the legislative history provided at the first meeting of the stakeholder group for some context.

Federal Oversight of LPG – Jurisdictional Versus Non-Jurisdictional LPG Distribution Systems with Underground Facilities

The Commission is a certified agent for the U.S. Department of Transportation’s Pipeline and Hazardous Material Safety Administration (PHMSA), working to ensure that intrastate natural gas transmission and distribution systems comply with federal pipeline safety standards and corresponding state regulations through operator inspections. The Commission also enforces safety standards for approximately 590 LPG distribution facilities that are subject to PHMSA regulations that provide LPG service to multi-unit housing complexes, commercial buildings, and other facilities where LPG system failures would likely impact large numbers of people. These facilities are commonly referred to as “jurisdictional facilities.” Under federal law, these

facilities are required to be a member of Dig Safe. All LPG distribution facilities that are not considered jurisdictional facilities are commonly referred to as “non-jurisdictional” facilities.

Legislative History

Prior to Second Regular Session of the 125th Legislature, the definition of “underground facility” was as follows:

E. “Underground facility” means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground. This definition shall not include highway drainage culverts or under drains.²

The Commission had interpreted and enforced this language to include both jurisdictional facilities and non-jurisdictional LPG facilities.

Following the recommendation of the Dig Safe Work Group³ this definition was amended by [Public Law 2011, chapter 588](#) as follows:

E. “Underground facility” means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, swage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground. This definition ~~shall~~ does not include liquified propane gas distribution systems that are not included within the scope of 49 Code of Federal Regulations, Part 192 and highway drainage culverts or under drains.

This change clearly exempted all non-jurisdictional LPG distribution systems with underground facilities from required participation in the Dig Safe program. When this occurred, the Commission had concerns regarding safety associated with the exemption of these facilities and attempted in both the 126th and 128th Legislature to introduced bills⁴ to include some of the non-jurisdictional LPG facilities. Both of these attempts were unsuccessful.

Following the tragic explosion of a non-jurisdictional LPG facility in Farmington in 2019, the Commission again introduced legislation⁵ to require non-jurisdictional LPG distribution systems with underground facilities to participate in the Dig Safe program. [Public Law 2019, chapter 592](#) was ultimately enacted as an emergency measure, which requires all LPG distribution systems with underground facilities (both jurisdictional and non-jurisdictional) to participate in the Dig

² Public Law 1979, chapter 362

³ The Dig Safe Work Group was established in [Public Law 2011, chapter 72](#)

⁴ [LD 1647](#) and [LD 405](#)

⁵ [LD 1892](#)

Safe program. This is the law that is currently in effect and was the topic of conversation during the stakeholder group discussions.

In addition to the question of whether non-jurisdictional LPG was captured under the revised definition of “underground facility” as discussed above, some members of the propane industry expressed that they did not interpret the current law to include LPG distribution systems with underground facilities that are located on private property. This interpretation essentially would “exempt” almost all non-jurisdictional LPG facilities from the current law. While the Commission does acknowledge that the actual law defining “underground facility” is a little confusing, a portion of the emergency preamble as detailed below, to Public Law 2019, chapter 592 (Appendix D) clearly indicates the legislative intent in enacting LD 1892 was to capture all LPG distribution systems with underground facilities regardless of location, especially since the Farmington facility was located on private property.

“Whereas, this legislation must take effect before the expiration of the 90-day period to address, as soon as possible, this significant safety risk by making liquefied propane gas distribution systems that have underground pipes subject to the so-called dig safe law; and”

In order to provide greater clarity, Appendix E contains proposed amendments to the definition of “underground facility” to not only provide that clarity, but to also address the recommendation to exclude certain LPG distribution systems with underground facilities located on residential properties.

Propane Industry Concerns

At this first meeting, the propane industry participants shared their perspective on the required inclusion of LPG distribution systems with underground facilities under the Dig Safe law. As stated above, some participants expressed that they did not feel LPG distribution systems were subject to the required participation in the Dig Safe system under both the original law and current law and that the change to the definition of underground facility during the 125th Legislature in 2011 was to voluntarily comply in state law with the federal requirement that jurisdictional facilities are Dig Safe participants and not meant to exclude non-jurisdictional propane systems. In addition to this viewpoint on the law, specific members had the following comments.

Leslie Anderson, PGANE

During this meeting Leslie Anderson expressed that the propane industry was surprised by the introduction of LD 1892 during the 129th Legislature, which resulted in the current law, as prior to this the Commission and the propane industry had worked together and discussed proposed changes. The industry’s priority is and always has been safety; however, the Dig Safe law is more well suited for public utilities as the utilities have captive customers and are better positioned to know the location of underground utility facilities, especially those facilities located on private property. Additionally, if excavation is occurring near underground LPG

facilities, the tank can easily be turned off and a leak check can be performed, unlike natural gas lines, which are handled differently.

Additionally, the number of tickets received from Dig Safe is alarming and many times the tickets received are not valid as there are no LPG underground facilities located in the excavation area. This is extremely burdensome and costly to the industry, which raises costs for everyone, including customers. Many companies are refusing to take jurisdictional facility accounts because all the requirements including Dig Safe participation is simply too financially burdensome. It is also difficult to comply with requirements when the propane company does not own the underground lines as these lines are often altered or modified and customers can easily switch from company to company, so no one propane company may have served a particular property and may be completely unaware of the location of underground lines.

Safety solutions need to be balanced and the focus narrowed in order to reduce the burden to the industry. Ms. Anderson also noted that there needs to be increased education and outreach to excavation contractors and property owners as even if LPG distribution systems were subject to the Dig Safe law, the Farmington explosion would have still likely occurred because the excavator failed to notify Dig Safe of the excavation.

Michael McCormack, Downeast Energy

Mr. McCormack agreed with the comments expressed by Ms. Anderson and also expressed that it might be helpful if the definition was narrowed and that more clarity was provided to eliminate the confusion and the differences of opinion on the treatment of LPG distribution systems under the Dig Safe law. He suggested that since larger propane tanks pose higher risks to safety, that perhaps the law could be crafted to limit participation in Dig Safe based on the size and location of tanks, similar in some respects to what the Commission proposed in LD 405 during the 128th Legislature.

Sue Waltz, Waltz and Sons Propane

Sue Waltz represents a small propane company and is one of the few propane companies that has non-jurisdictional facilities registered with Dig Safe. Ms. Waltz explained that she has 668 registered facilities with Dig Safe and in the last 60 days of this meeting had received 435 tickets, none of which required the marking of facilities. She has also experienced multiple calls from contractors about sites for which she has already expressed that there are no registered facilities in the vicinity of the excavation. For a company as small as Waltz and Sons, complying with the Dig Safe law is resource intensive and accounts for 25% of a single employee's time per day.

Ms. Waltz stated that it would be easier if the propane customer who is having excavation work done on their property called their propane company directly. They would have no issue going out to the site to ensure safety and this would alleviate getting unnecessary tickets.

Peter Black, Dead River Company

Mr. Black agreed with the comments made by others in the propane industry. He also liked the idea put forth by Mr. McCormack to have a size and location requirement. He reiterated that the Dig Safe concept is better suited for public utilities because propane represents small private systems with unique configurations that are subject to frequent changes.

After the presentations by both the Commission and the propane industry, members discussed the concerns raised, asked questions and a couple of members offered some perspective based on work in other departments and industries.

September 19, 2023 Meeting

For the second meeting of the propane stakeholder group, the Commission requested that the propane industry bring forth specific solutions to address issues raised at the September 6th with the inclusion of LPG distribution systems under the current law, aside from a blanket exemption from the law for non-jurisdictional facilities. There was also time provided for questions and discussion from all members on the solutions put forward by the industry. Prior to the meeting Sue Waltz provided a written document with an overview of her company's experience with Dig Safe along with observations⁶ and Leslie Anderson provided the stakeholder group with testimony⁷ provided by Dead River Company in opposition to LD 1892 along with the following possible solutions from propane operators:

- Require facilities with a Fire Safety Analysis Plan (over 4,000 gallons water capacity) to register with Dig Safe;
- Do not require the inclusion of residential locations;
- Do not require sites with short runs less than 25 feet from the building as these are often generators, or obvious underground or aboveground tanks;
- Require a leak check be performed prior to putting the tank back into service if digging is conducted within 10 feet of an underground line on commercial property regardless of tank ownership;
- Require Dig Safe to only notify propane companies of tickets if digging is occurring in the public way.

In discussing the solutions offered, the industry reiterated some points it made at the prior meeting, including the issue with managing all the tickets they receive from Dig Safe and further specified that it is impossible for the industry to comply with the rule on private property. They also noted that marking lines on new accounts during the winter months presents challenges as you often cannot locate the underground lines.

There was in depth discussions on the idea that instead of being required to participate in Dig Safe, the propane industry would be willing to be contacted by a customer if excavation was occurring on their property, the propane company would go to the site and shut off the tank and

⁶ See Appendix F

⁷ A link to all testimony on LD 1892, including that from the Dead River Co. can be found here - https://legislature.maine.gov/legis/bills/display_ps.asp?LD=1892&snum=129#

prior to putting the tank back into service a leak check would be performed. The industry offered that they could put conspicuous labels on the tanks directing people to call the company.

Some concerns were raised with this idea. The Commission was concerned that having a different notification process for excavators and homeowners to follow for jurisdictional facilities versus non-jurisdictional facilities would be confusing and more likely to result in the necessary notifications not to occur. Further, excavators, contractors, and the public are very familiar with the notification process for Dig Safe and safety would likely be compromised if a different notification process is used for non-jurisdictional LPG facilities. Additionally, Matt Marks, who served on the group as a representative for general contractors specified concerns with timing for marking facilities and that any different notification process for non-jurisdictional propane facilities would still need to mirror the timing processes required under Dig Safe.⁸

However, Dale Hersey, acknowledged that a label would be an ideal way to address the difficulty faced by the industry with facilities located on private property. He stated the propane industry has a duty to warn the public and could do so with tank labels and pamphlets that directed people what actions they should take when digging around propane lines.

The Commission also had additional concerns with aspects of the solutions proposed by the propane industry. The requirement that propane operators would only be notified by Dig Safe for excavation occurring in the public way would essentially be meaningless, as very few LPG distribution systems are located in the public way. Additionally, smaller tanks can pose a significant risk to the public; however, the proposed solutions would only require very large facilities to register with Dig Safe. For example, the LPG facility that caused the explosion in Farmington was a 500-gallon tank. As stated earlier, many of these solutions would severely fragment the treatment of propane which could compromise public safety. In fact, under the proposal put forward by the industry, some jurisdictional facilities required under federal law to be registered with Dig Safe would be exempted under state law.

Towards the end of the meeting, the Commission asked if it would be helpful to invite someone from Dig Safe to the next meeting to better understand the ticketing process and tools that were available to reduce the number of tickets, while acknowledging that ticketing was not the only issue the propane industry had with participation in Dig Safe. Members generally agreed that it would be helpful to make that invitation.

October 30, 2023 Meeting

As stated above the Commission invited representatives from Dig Safe to attend the third and final meeting of the stakeholder group. Robert Finelli, President, Dig Safe System, Inc., along with Lisa Powers and Amy Worden also from Dig Safe System, Inc. attended the meeting virtually to provide information and answer questions from stakeholder group members. Mr. Finelli stated that in 2022 a total of 77,000 tickets were issued to Maine underground facility owners and operators and of that 6,000 were for propane operators. Mr. Finelli also explained that the Dig Safe System screened out 79% of the ticket requests for propane operators where Dig Safe was aware that the propane facilities were not located in area of the planned excavation.

⁸ Pursuant to Maine’s “Protection of Underground Facilities Law,” Title 23, §3360-A, an owner or operator of an underground facility has 72 hours upon receipt of a notice of excavation (Dig Safe ticket) to mark the location of an underground facility located in the proposed excavation area.

Mr. Finelli explained that not every ticket generated is actually sent to operators as screening does occur. Mr. Finelli also demonstrated the mapping tools available on the Dig Safe site.

Mr. Finelli explained that the Dig Safe Board requires that there is a 500-foot buffer around a dig site in order to ensure safety because oftentimes an excavation contractor is not providing an exact site for excavation. Members of the stakeholder group questioned whether this buffer could be reduced to decrease the number of unnecessary tickets, but Mr. Finelli specified the Board was unlikely to take this action because safety is a priority. In addition to the mandatory, 500-foot buffer, Dig Safe places a second, discretionary buffer around the planned excavation to further add safety to the mandatory buffer. This discretionary buffer is a default amount of 500 feet. Thus, if an operator does not specify a different discretionary buffer amount, the total buffer area will be 1,000 feet on all sides of the underground facility. Mr. Finelli also explained that underground facility operators and owners can reduce the 500-foot discretionary buffer down to 20 feet, for a total buffer of 520 feet on all sides of the underground facility. Reducing the discretionary buffer would significantly reduce the number of dig safe tickets an operator or owner receives. The Commission questioned whether operators were utilizing the discretionary buffer option, and Mr. Finelli specified not all operators are taking advantage of this option.

Mr. Finelli asked the group if a cost waiver to participate in Dig Safe would help to soften the impact to operators, but the consensus was that the bigger burden was the time spent addressing tickets, and not necessarily the ticket costs.⁹

Once the discussion with Dig Safe System, Inc. concluded, the Commission provided the group with the Commission's recommendations to address the issues discussed over the course of the three meetings. There appeared to be consensus among those present that the Commission's recommendations were acceptable. While the propane industry would like to see a more aggressive approach to reducing that industry's participation requirements in Dig Safe, the recommendations suggested by the Commission were an acceptable first step.

III. Recommendations

As stated above the three recommendations that resulted from stakeholder discussions are as follows:

1. Exempt from the definition of "underground facility" found in 23 M.R.S. § 3360-A(1)(E), LPG distribution systems that have underground pipes located on a residential lot, if that system is connected to no more than one structure, the structure contains no more than two dwelling units, and the propane tank is located 25 feet or less from the structure;
2. Clarify the definition of "underground facility" as it relates to LPG; and
3. Initiate a rulemaking to amend the Commission's Rule, Chapter 895: Underground Facility Damage Prevention Requirements to reduce the number of Dig Safe tickets issued to operators and owners of underground facilities where the facilities are not located in the area of the planned excavation.

⁹ Propane owners and operators are required to pay Dig Safe \$1.00 for each ticket issued to them.

It is the Commission’s opinion that the suggested exemption that would remove the required participation in Dig Safe for LPG distribution systems that have underground pipes located on a residential lot, if that system is connected to no more than one structure, the structure contains no more than two dwelling units and the propane tank is located 25 feet or less from the structure, would significantly reduce the number of tickets issued to owners and operators of propane facilities without sacrificing safety. Oftentimes in these configurations the location of underground facilities associated with propane are obvious and do not pose the same level of risk when excavations occur as other properties that have LPG onsite. This exception is more narrowly tailored than what the Commission had proposed in LD 1647 during the 126th Legislature after non-jurisdictional propane was exempted from the definition of underground facility with the enactment of Public Law 2011, chapter 588.¹⁰

The second recommendation to clarify the definition of underground facility as it relates to LPG is necessary to alleviate the differing interpretations of this section. The current language in law is unnecessarily cumbersome; therefore, the Commission has included in Appendix E, draft legislation to amend that definition of “underground facility” under 23 M.R.S. § 3360-A(1)(E) to address both recommendations 1 and 2 above.

Lastly, in 2024, the Commission is willing to initiate a rulemaking to propose amendments to its Chapter 895 rule to require that contractors provide GPS coordinates to define a planned excavation area or use the “draw function”¹¹ in Dig Safe’s ticketing system. Several years ago, the Commission, during a previous rulemaking, had considered requiring that excavation contractors provide GPS coordinates for planned excavations, but at that time some commenters disagreed with this requirement. However, with the technological advancement of cellular telephones and other portable technology and their current day ubiquitous use, the provision of GPS coordinates is likely to not pose the same obstacles it posed several years ago. In Appendix E, the Commission has also proposed draft legislation to direct the Commission to initiate rulemaking to address the ticket issue and to allow that rulemaking to be routine technical. Currently, rules adopted pursuant to 23 M.R.S. § 3360-A(13) are considered major substantive rules. This exception for this singular purpose would allow this process to occur more quickly and provide some relief from the administrative burdens associated with Dig Safe for all operators, not just those propane operators.

IV. Conclusion

The recommendations included in this report represent a narrowly tailored solution that could greatly reduce the administrative burdens associated with participation in the Dig Safe system without compromising safety. The Commission appreciates the participation of all members of the stakeholder group and is impressed with the attendance of members over the course of these meetings and the willingness of members to discuss these complicated, but important issues. We recognize that at times participation in Dig Safe for both operators and excavators can be administratively burdensome; however, those burdens need to be measured against ensuring the highest level of public safety. The Commission believes the recommendations in this report

¹⁰ As explained in the legislative history section of this report, the propane industry does not agree with this interpretation related to Public Law 2011, chapter 588.

¹¹ The “draw function” allows an excavator to define the planned excavation area by drawing the planned excavation on the same maps that Dig safe uses to issue tickets.

strike the right balance between the burden of compliance with the need to protect public safety in an efficient and effective manner.

Appendix A:

Stakeholder Membership

Resolves 2023, chapter 47 Stakeholder Membership

1. One or more representatives from the Maine Energy Marketers Association (MEMA);
 - Charlie Summers, President, MEMA
2. One or more representatives from the Propane Gas Association of New England (PGANE);
 - Leslie Anderson, President/CEO, PGANE
3. One or more individuals who own or operate a liquefied propane gas distribution system of various sizes that has an underground tank or pipe;
 - Sue Waltz, Waltz and Sons Propane
 - Michael McCormick, Vice President, Downeast Energy
 - Peter Black, Vice President/General Counsel, Dead River Company (Replaced by Mark Anderson, Safety, Compliance & Fleet Manager, Dead River Company)
4. One individual representing the Department of Environmental Protection;
 - Chris Fournier, Division Director, Oil, Petroleum Management, Maine DEP
5. One individual representing the Maine Fuel Board;
 - Dale D. Hersey, Senior Compliance Officer
6. One individual representing the Office of the State Fire Marshal;
 - Richard McCarthy, State Fire Marshall
7. One individual representing the interests of property and casualty insurers;
 - Andrew “Andy” Nadeau, Senior Loss Control Consultant, Patriot Ins. Co.
8. One individual representing the Maine chapter of the Associated General Contractors of America; and
 - Matt Marks, Cornerstone Government Affairs
9. Any other person that the commission determines necessary to ensure that all interests regarding the discussion in section 1 are represented fairly.
 - Additional members were not invited.

Appendix B:

Meeting Agendas

Stakeholder Group Regarding Liquified Propane Gas Systems and the Dig Safe Law

[Pursuant to Resolves 2023, chapter 47](#)

Meeting #1

Wednesday, September 6, 2023

10:00 a.m. to noon

Location: In Person: Simpson Room, 26 Katherine Drive, Hallowell /
Remote via Microsoft Teams

Agenda

- | | |
|-------------------|---|
| 10:00 a.m. | Introductions |
| 10:15 a.m. | Overview of Resolves 2023, chapter 47 |
| 10:30 a.m. | Overview of current and past law relating to propane and Dig Safe |
| 11:00 a.m. | Overview from propane industry on issues with the current law; goals for the future |
| 11:30 a.m. | Next steps; future meeting date |
| Noon | Adjourn |

Stakeholder Group Regarding Liquified Propane Gas Systems and the Dig Safe Law

[Pursuant to Resolves 2023, chapter 47](#)

Meeting #2

Tuesday, September 19, 2023

11:00 a.m. to 1:00 p.m.

Location: In Person: Simpson Room, 26 Katherine Drive, Hallowell /
Remote via Microsoft Teams

Agenda

- 11:00 a.m.** Introductions
- 11:05 a.m.** Discuss from the propane industry on specific solutions to address issues with the inclusion of propane under the current law
- 12:05 p.m.** Questions/Discussion on propane industry solutions
- 12:30 p.m.** Next steps
- 1:00 p.m.** Adjourn

Stakeholder Group Regarding Liquified Propane Gas Systems and the Dig Safe Law

[Pursuant to Resolves 2023, chapter 47](#)

Meeting #3

Monday, October 30, 2023

2:00 p.m. to 4:00 p.m.

Location: In Person: Simpson Room, 26 Katherine Drive, Hallowell /
Remote via Microsoft Teams

Agenda

- 2:00 p.m.** Introductions
- 2:05 p.m.** Overview and Discussion of the Dig Safe System – Robert Finelli, President, Dig Safe System, Inc.
- 3:05 p.m.** Discussion: Where things are at; additional input; and next steps.
- 4:00 p.m.** Adjourn

Appendix C:

Comments Received by Members on the Report

December 1, 2023

**Re: Maine Public Utilities Commission
Report Regarding the Propane Stakeholder Group
Discussions Pursuant to Resolves 2023, Chapter 47**

On behalf of the Propane Gas Association of New England (PGANE), which represents propane marketers, suppliers and equipment manufacturers across Maine and the other five New England States, we appreciate the opportunity to provide comment regarding the PUC Propane Stakeholder Group Report. Our members provide clean-burning and critical energy to residential, commercial, industrial, and agricultural customers across the Pine Tree State.

PGANE would like to express our appreciation to the PUC and the stakeholder members who participated in this group's meetings. We were pleased to sit down and work together again with the industry and the agency representatives to discuss solutions as we had always done before in the past, with the one exception being the introduction of LD 1892 during the 129th Legislature. We believe it is better for safety and consumers when both the regulated community and the regulators come together to discuss regulations and propose statutes.

As reflected in the Industry Concerns section of the report, there has been a fundamental difference between the PUC and propane industry's historical perspective of Dig Safe requirements. One call programs across our nation apply in general only to utilities. Propane companies are not utilities and we do not have control over underground lines. In many cases, the propane supplier did not install the propane underground line on the property and does not know the exact location of the line.

When the definition of underground facilities was first amended in Public Law 2011, chapter 588, I was a member of the taskforce that met to discuss the language change and it was clear at this time that the industry included this language to clarify that we would voluntarily take on one call notification requirements only for jurisdictional federally regulated propane facilities. The definition was clarified solely to apply to these facilities only, and this was the point at which propane companies first joined Dig Safe and began to register underground facilities. It should be noted that Maine is the only state that has proposed expansion of propane underground line registration beyond those jurisdictional federally regulated facilities.

There is a key difference between propane systems and large utilities. From a safety perspective, propane systems are small contained systems with limited volumes and most importantly, the immediate ability to turn off the system by simply turning off the valve on the propane tank. We are very concerned about safety and think that it is important to note that the change made to the statute after the tragic explosion in Farmington in 2019, would not have prevented the incident from occurring. During the stakeholder meetings, we believe a reasonable compromise was made between the Commission and the industry that will further safety and allow safety resources to be used to a higher advantage.

The stakeholder group agreed to the following three recommendations:

1. Exempt from the definition of "underground facility" found in 23 M.R.S. § 3360- A(1)(E), LPG distribution systems that have underground pipes located on a residential lot, if that system is connected to no more than one structure, the structure contains no more than two dwelling units, and the propane tank is located 25 feet or less from the structure;

2. Clarify the definition of “underground facility” as it relates to LPG; and

3. Initiate a rulemaking to amend the Commission’s Rule, Chapter 895: Underground Facility Damage Prevention Requirements to reduce the number of Dig Safe tickets generated that do not result in a need to mark facilities by an owner or operator.

As an industry, we believe that section one of the proposed recommendations should apply to both residential and commercial locations, however, we are willing to move forward in support of the narrowly tailored recommendations as written in an effort to facilitate the timeliness of improving the Dig Safe ticket system.

We fully support the Commission’s proposal to draft legislation to allow for routine technical rulemaking on Chapter 895 to require that contractors provide GPS coordinates and define a planned excavation area or use the “draw function” in DigSafe’s ticketing system. This change would make a tremendous reduction in the number of tickets that our industry currently receives from Dig Safe. As a reminder, over 95% of the tickets received currently are not applicable to our facilities and are a tremendous burden on our small companies and their staff. As noted by Sue Waltz, owner of a small propane company in Buxton, in the last 60 days prior to our third stakeholder meeting, her company received 435 tickets, none of which required any marking of facilities, but which was an enormous administrative burden to a small business. We welcome this change and are pleased to be back at the table working with the PUC.

Again, we would like to express our appreciation to the members of the stakeholder group for their time and contributions to this important topic. We would also like to thank the staff of the PUC for their understanding and willingness to hear from our industry and understand the concerns of our companies and small businesses.

Sincerely,

Leslie Anderson
President
Propane Gas Association of New England

Appendix D:

Public Law 2019, chapter 592

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY

H.P. 1358 - L.D. 1892

An Act To Make Changes to the So-called Dig Safe Law

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the September 16, 2019 explosion in Farmington demonstrates the tragic consequences that can result from unmarked underground liquefied propane gas pipes; and

Whereas, the exemption of certain underground liquefied propane gas facilities from the so-called dig safe law poses a clear danger to excavators and the public; and

Whereas, this legislation must take effect before the expiration of the 90-day period to address, as soon as possible, this significant safety risk by making liquefied propane gas distribution systems that have underground pipes subject to the so-called dig safe law; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §3360-A, sub-§1, ¶E, as amended by PL 2011, c. 588, §2, is further amended to read:

E. "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground. ~~This definition~~ Except for liquefied propane gas distribution systems that have underground pipes, "underground facility" does not include liquefied propane gas distribution systems that are not included within the scope of 49 Code of

Federal Regulations, Part 192 and. "Underground facility" does not include highway drainage culverts or under drains.

Sec. 2. 23 MRSA §3360-A, sub-§6-C, as amended by PL 2011, c. 588, §9, is further amended to read:

6-C. Penalties. In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty on any person who violates this subsection. The administrative penalty may not exceed ~~\$500~~ \$1,000, except that, if the person has been found in violation of this subsection within the prior 12 months, the administrative penalty may not exceed ~~\$5,000~~ \$10,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. Before imposing any penalties under this subsection, the commission shall consider evidence of the record of the violator, including, to the extent applicable, the number of successful excavations undertaken by the violator or the number of locations successfully marked by the violator during the prior 12 months. The commission may require a person who violates any provision of this section to participate, at the expense of the violator, in an educational program developed and conducted by the system.

The Public Utilities Commission may impose administrative penalties for any of the following violations:

- A. Failure of an excavator to give notice of an excavation as required under subsection 3, except to the extent the excavator is exempt from the provisions of subsection 3 pursuant to other provisions of this section;
- B. Excavation by an excavator in a reckless or negligent manner that poses a threat to an underground facility;
- C. Excavation by an excavator that does not comply with the requirements of subsection 4-C, except to the extent the excavator is exempt from the provisions of subsection 4-C pursuant to subsection 5-C;
- D. Failure of an underground facility operator to mark the location of the operator's underground facilities within the time limits required by subsection 4;
- E. Marking by an underground facility operator of the location of an underground facility in a reckless or negligent manner; or
- F. Failure of an excavator to comply with the requirements of subsection 5-C, 5-D, 5-E, 5-I or 5-J.

The commission shall establish by rule standards for when and at what level penalties must be assessed under this subsection. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Appendix E:

Draft Bill Based on Recommendations

Proposed Draft Legislation Pursuant to Resolves 2023, chapter 47

Title: An Act To Clarify the Definition of “Underground Facility” and Reduce Administrative Burdens Under The So-called “Dig Safe” Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §3360-A, sub§ 1, ¶E is amended to read:

E. "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas, liquified propane gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground. ~~Except for liquefied propane gas distribution systems that have underground pipes, "underground facility" does not include liquefied propane gas distribution systems that are not included within the scope of 49 Code of Federal Regulations, Part 192.~~ "Underground facility" does not include: ~~highway drainage culverts or under drains.~~

(1) Highway drainage culverts or under drains; and

(2) Liquefied propane gas distribution systems that have underground pipes located on a residential lot if:

(a) The residential lot has no more than one structure connected by underground pipes to a liquified propane gas distribution system;

(b) The structure that is connected by underground pipes to a liquified propane gas distribution system contains no more than two dwelling units; and

(c) The propane tank is located 25 feet or less from that structure.

Sec. 2. 23 MRSA §3360-A, sub§1, ¶F is amended to read:

F. "Underground facility operator" means the owner or operator of any underground facility, other than an underground oil storage facility as defined in Title 38, section 562-A, subsection 21 or an airport aviation fuel hydrant piping system, used in furnishing electric, telephone, telegraph, gas, petroleum transportation, liquified propane gas or cable television service. "Underground facility operator" does not include a municipality or a public utility with fewer than 5 full-time employees or fewer than 300 customers or a person that owns underground facilities on its own property for commercial or residential purposes.

Sec. 3. Public Utilities Commission; rules. The Public Utilities Commission shall initiate a rulemaking to amend its Chapter 895: Underground Facility Damage Prevention Requirements rules to reduce the administrative burdens for underground facility operators as defined under the Maine Revised Statutes, Title 23, section 3360-A, subsection, paragraph F. Notwithstanding the Maine Revised Statutes, Title 23, section 3360-A, subsection 13, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill does the following:

1. It clarifies that liquified propane gas with underground pipes is considered an “underground facility;”
2. It exempts from the definition of “underground facility” liquified propane gas distribution systems that have underground pipes when that system is located on a residential lot that has no more than one structure connected by underground pipes to the liquified propane gas distribution system, that structure has no more than two dwelling units, and the propane tank is located 25 feet or less from the residential structure;
3. It clarifies that the owner or operator of any underground facility furnishing liquified propane gas is considered and “underground facility operator;” and
4. It directs the Public Utilities Commission to amend its Chapter 895 rules to reduce the administrative burdens for underground facility operators under the So-called “Dig Safe” law and specifies that rules adopted for these purposes are considered routine technical rules.

Appendix F:

Overview and Observations Provided by Sue Waltz for September 19,
2023 Meeting

Waltz & Sons Overview:

We have 668 registered geocodes with Dig Safe. We have been a member of Dig Safe since September of 2020. Our original list was 422 sites, and that has steadily increased, mainly due to generator installations. We are due to update our list which will add another 200 or so sites. We do not register Customer Owned tank/underground lines.

Originally, it took us weeks to implement our geocode list, as we had to manually look up each address where there were underground lines. Also, the requirements to create and maintain the accepted format for Dig Safe is labor intensive. It took almost 4 months of going back and forth with Dig Safe to get our initial file loaded as we had a manual paper delivery card system. Also, it took us weeks to visit each and every account and note if there were underground lines. From April of 2021, we can now extract the geocode information from our Cargas system, however, updating the list is still labor intensive and we do not have an IT department to do this.

Our geocode registration list indicates the minimum acceptable facility buffer of 20 feet.

We received 1915 tickets in 2022. Of these tickets, we marked 6 sites (.01%). We have received 2425 tickets through September 12th, 2023. Of these tickets we have marked 1 site. The one site we went to mark out, the contractor had already completed the job! Wasted trip and one that we needed to pull a tech from a paying job to do.

Each ticket must be reviewed, researched, and answered. This takes approximately 10-15 minutes per ticket. Therefore, in the winter our CSRs take a minimum of an hour a day. In the Summer, this increases to two or more hours a day. This does not include tickets that require management review, and possible scheduling for dig safe marking. These numbers have increased significantly each year as we increase our geocode registrants. An hour or two a day may seem insignificant; however, it truly impacts us as we only have 3 CSRs, and this doesn't account for holidays, vacations, and sick days.

In addition to the time it takes to manage the dig safe tickets on a day to day basis, there are impacts on our other staff as well. Our outside staff, technicians and drivers, must note if an account has an underground line and ensure that information is noted on the paper delivery card, and ensure the updated card is conveyed to our service manager. The Service manager then takes time to notate and update the customer's account on our CRM system.

In order to update the geocode registration list with Cargas, it needs to be in an acceptable format to upload to them. The Dig Safe system DOES NOT have a way to enter individual information regarding accounts, rather, you have to send a file to the IT Department of Dig Safe and they have to review and load the file. This is very cumbersome and costly. Dig Safe charges \$150/hr for their IT services which are required to load registration data. Unfortunately, this means, when we lose a customer that has an underground line registered, we still get tickets as it's too costly to have Dig Safe remove it.

As we are a company with 15 employees, the hours we spend on responding to Dig Safe Tickets have a major impact on our business.

Observations and bullet points.

1. A **minimum** 60 % of dig safe tickets received are for Public Land. ie CMP, MDOT, CATV, Pole Anchors, trenching sides of public roads, etc. During the Winter, and busiest season, this goes up towards 80-90%.
2. Lack of contractor training on how to create tickets using DigSafe system result in large “buffer zones” and non-conformity. Shaw Brothers regularly enters Dig Safe tickets covering over 5 miles of highway.
3. Each and every ticket creates a minimum 500 foot buffer (Derek mentioned this is actually 1000) regardless of data entered therefore creating more tickets. This is the biggest issue with Dig Safe tickets.
4. Multiple companies, both natural gas and propane, are identified as “service areas” on a single ticket.
5. Homeowners calling in tickets to install birdfeeders, hydrangeas, mailbox posts and party tents. I understand that to install these items require digging, but a simple call to your propane company would be better than calling digsafe.
6. Emergency Tickets must be answered within ½ hour regardless of the time of day. ALL emergency tickets since we’ve registered with Dig Safe has been on Public land, ie water main, emergency pole, etc
7. 3-day window to respond to emails, and mark property if required.
8. Requires maintenance of a geocode registration list which is labor intensive and costly to update with Dig Safe.
9. Customers who own their own tanks are unaware that they are responsible for marking any underground lines on their property, and if they choose to have a propane company mark them, it is a chargeable labor fee.
10. Since poly pipe is now acceptable to run for underground lines, we have found instances where they do not have or incorrectly installed the caution/detection tape and tracer wire.
11. Dig Safe CSRs are offering our company as a name to put on Dig Safe tickets due to the fact that we are a registered company even if it is not our tank.