STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2015-00296

PUBLIC UTILITIES COMMISSION
December 15, 2015

Amendments to Underground Facility Damage Prevention Requirements (Chapter 895)

ORDER ADOPTING
RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

VANNOY, Chairman; MCLEAN and WILLIAMSON, Commissioners

I. SUMMARY

In this Order, the Commission adopts amendments to our rules regarding underground facility damage prevention requirements (Chapter 895) pursuant to recently enacted legislation. P.L. 2015, ch. 213.

II. BACKGROUND

On June 16, 2015, An Act To Correct an Inconsistency in the So-called Dig Safe Law, was enacted and signed by the Governor (Act). P.L. 2015, ch. 213. The law became effective on October 15, 2015. This was a Committee bill to implement the Commission’s recommendation in its January 10, 2015 Dig Safe Report to correct an inadvertent inconsistency in the Dig Safe statute. This inconsistency regards the timeframe for excavators to notify the Dig Safe System prior to beginning excavation and the timeframe for re-notifying the Dig Safe System if an excavation is ongoing (remains active) beyond a certain number of days. The Act clarifies that an excavation must commence within 30 days after notification by an excavator to the Dig Safe System of an intended excavation and requires that if work is not completed within 60 calendar days of that notification, the excavator must again notify the Dig Safe System.

The Act directs the Commission to amend Sections 4(B)(1)(a) and 4(B)(1)(d) of Chapter 895 to be consistent with the statutory changes made in the Act. Section 2 of

1 During the 2014 session, the Legislature enacted L.D. 1647, An Act To Make Changes to the So-called Dig Safe Law. P.L. 2013, ch. 557. Section 3 of the Act stated that the Commission could submit a report with recommended changes to the Dig Safe law to the Committee by January 10, 2015, and that the Committee could report out a bill relating to the Commission’s report to the First Regular Session of the 127th Legislature. This language in the Act related to a possible statutory inconsistency in the Dig Safe statutes regarding the timeframe for excavators to notify the Dig Safe System prior to beginning excavation and the timeframe for re-notifying the Dig Safe System if an excavation is ongoing (remains active) beyond a certain number of days. On June 23, 2014, the Commission issued a Notice of Inquiry, Docket No. 2014-00192, to solicit comments from interested stakeholders on the Commission’s recommendation to address this issue as well as other issues identified in other sections of P.L. 2013, ch. 557 (these other issues were addressed in a subsequent major substantive rulemaking proceeding, Docket 2014-00248). The Dig Safe System and the Telecommunications Association of Maine (TAM) filed comments supporting the Commission’s recommendation to address the statutory inconsistency. These were the only comments filed in the docket. The Commission submitted its report and recommendation to the Legislature on January 9, 2015 and discussed the issue with the Committee during the 2015 session. The Committee introduced L.D. 1444 to implement the Commission’s recommendation and the bill subsequently became law. P.L. 2015, ch. 213.
the Act further provides that notwithstanding Title 23, section 3360-A, subsection 13, which provides that the Dig Safe rules are major substantive, rules adopted pursuant to this section of the Act are routine technical as defined in Title 5, chapter 375, subchapter 2-A.

III. RULEMAKING PROCESS

On October 7, 2015, the Commission opened a Notice of Rulemaking (NOR), Docket No. 2015-00296, and proposed rule changes pursuant to the Act. Consistent with rulemaking procedures, the Commission held a public hearing on November 13, 2015 to allow interested persons to comment on the proposed rule. No one provided public comments at the hearing. Written comments were due on November 24, 2015. No written comments were submitted.

IV. DISCUSSION AND DECISION

A. Notification to the Dig Safe System (Section 4(B)(1)(a)):

Title 23 § 3360-A(3)(E), as amended by P.L. 2015, ch. 213, states that the excavation must commence within 30 days of notification to the Dig Safe System of an intended excavation and deletes repetitive language requiring the excavator to re-notify the Dig Safe System for each successive 60-day period. The amended rule makes Section 4(B)(1)(a) of Chapter 895 consistent with the statute. No one commented on this provision and it is unchanged from the proposed rule.

B. Renotification (Section 4(B)(1)(d)):

Title 23 § 3360-A(3)(E), as amended by P.L. 2015, ch. 213, states that if the proposed excavation or blasting is not completed 60 calendar days after notification, or the excavation or blasting will be expanded outside the location originally specified in the notification, the excavator shall re-notify the Dig Safe System. The amended rule makes Section 4(B)(1)(d) of Chapter 895 consistent with the statute. No one commented on this provision and it is unchanged from the proposed rule. As a result, the Commission adopts the rule as proposed.

Accordingly, the Commission

ORDERS

1. That the attached amendments to Chapter 895, Underground Facility Damage Prevention Requirements, are hereby adopted;

2. That the Administrative Director shall file the adopted amendments and related materials with the Secretary of State;
3. That the Administrative Director shall notify the following of the adoption of the rules:
   a. Dig Safe System, Inc.;
   b. the Office of the Public Advocate;
   c. the Associated General Contractors of Maine;
   d. the Associated Builders and Contractors of Maine;
   e. the service list for 2014-00192;
   f. Senator David Woodsome;
   g. all persons who have filed with the Commission within the past year a written request for notice of rulemakings;

4. That the Administrative Director shall send this Order and the attached rules to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115.

Dated at Hallowell, Maine, this 15th day of December, 2015.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
Harry Lanphear
Administrative Director

COMMISSIONERS VOTING: Vannoy
McLean
Williamson
NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 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 11(D) 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. Any petition not granted within 20 days from the date of filing is denied.

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. § 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. § 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.