

THE STATE OF NEW HAMPSHIRE

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October 1, 2008

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, New Hampshire 03301

Re: Notice No. 2008-154
Puc 800, Underground Utility Damage Prevention Program
Commission Docket No. 08-091
Final Proposal

Dear Mr. Eaton:

On July 31, 2008, the Commission voted pursuant to RSA 541-A to initiate a Readoption with Amendment of Puc 800, Underground Utility Damage Prevention Program. A rulemaking notice form required by RSA 541-A:6 was filed with the Office of Legislative Services on August 6, 2008. The Notice scheduled September 15, 2008 as the date for the public hearing on the proposed Readoption with Amendment.

The hearing was held as scheduled, and comment was received from the parties involved. Staff incorporated the public comment into the rules with the agreement of the Parties. On October 1, 2008, the Commission voted to approve that document as the Final Proposal for the Readoption with Amendment of Puc 800, Underground Utility Damage Prevention Program.

The Commission asks that the JLCAR consider this proposal for Approval.

As required by the Rulemaking Manual, you will find enclosed two copies of the following:

- A completed Appendix II-G, Cover Sheet for Final Proposal;
- A copy of the full text of the statutory rulemaking authority for the rule;
- The established text of the final proposed rule as the "Final Proposal—Fixed Text";

DRM 08-091
Puc 800, Underground Utility Damage Prevention Program
Final Proposal
October 1, 2008

- The cross reference table relative to implementation of statutes; and
- The established text of the final proposed rule as the “Final Proposal—Annotated Text.”

Please let me know if you have any questions.

Thomas B. Getz
Chairman

Enclosures

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2008-154 Rule Number Puc 800

Agency Name & Address:

**NH Public Utilities Commission
21 S. Fruit St Suite 10
Concord NH 03301-2429**

2. RSA Authority: RSA 374:50,
RSA 365:8

3. Federal Authority: _____

4. Type of Action:

- Adoption
- Amendment
- Repeal
- Readoption
- Readoption w/amendment

5. Short Title: **Rules for Underground Utility Damage Prevention Program**

6. Contact person for copies and questions:

Name:	Suzanne Amidon	Title:	Staff Attorney/Hearings Examiner
Address:	NH Public Utilities Commission 21 South Fruit Street, Suite 10 Concord NH 03301-2429	Phone #:	603-271-2431

7. Yes No Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on August 15, 2008

**SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET
AND 2 COPIES OF THE FOLLOWING:
(and numbered correspondingly)**

9. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

10. The full text of the RSA passage granting rulemaking authority.

11. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

The agency shall then indicate, by checking the appropriate box on Item 7, whether it is requesting that it receive and respond to comments of the Committee legal counsel prior to the Committee meeting that is at least 28 days, but not more than 60 days, after the proposal is filed. In effect, this would be a request for postponement of Committee action. See RSA 541-A:12, I-a and Section 2.14 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules (Manual).

In Item 8 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

Items 9 through 13 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE 2 COPIES OF EVERYTHING SUBMITTED. NUMBER THEM ACCORDINGLY. Items 9 and 10 are required in every filing, and therefore are listed without a check-box. Items 11 through 13 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 9. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 10. The full text of each RSA passage that grants rulemaking authority for the rules contained in the proposal. See RSA 541-A:12, II(c).
- Item 11. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

TITLE XXXIV PUBLIC UTILITIES

CHAPTER 374 GENERAL REGULATIONS

Underground Utility Damage Prevention System

Section 374:50

374:50 Rulemaking. – The commission shall adopt rules, pursuant to RSA 541-A, relative to:

- I. Minimum requirements for the operation of the system, including notification procedures.
- II. Procedures for the investigation of complaints relating to this subdivision.
- III. Emergency situations for which prior notice of excavation pursuant to RSA 374:51, II is not required.

Source. 1983, 294:1, eff. Aug. 17, 1983. 2007, 25:6, eff. May 11, 2007.

TITLE XXXIV PUBLIC UTILITIES

CHAPTER 365 COMPLAINTS TO, AND PROCEEDINGS BEFORE, THE COMMISSION

Proceedings Before the Commission

Section 365:8

365:8 Rulemaking Authority. – The commission shall adopt rules, pursuant to RSA 541-A, relative to:

I. The conduct of its hearings, including alternative processes in hearings and other forms of alternative dispute resolution.

II. Standards and procedures for streamlined review or other alternative processes to enhance the efficiency of the commission and respond to the needs of the utility's ratepayers and shareholders.

III. Standards and procedures for the creation, monitoring and evaluation of alternative forms of regulation.

IV. Standards and procedures for the handling of confidential information, in accordance with RSA 91-A.

V. Standards and procedures for filing requirements for tariffs, engineering, accounting, and other commission matters.

VI. Standards and procedures for franchise terms and conditions, including extended area telephone service.

VII. Standards and procedures for safe and reliable utility service and termination of service subject to RSA 363-B.

VIII. Standards and procedures for matters related to the proper administration of RSA 366 relative to utility relations with affiliates.

IX. Standards and procedures relative to a reasonable amount of the short-term notes, bonds or other evidences of indebtedness based upon the amount of the utility's respective plant investment which each utility shall not exceed without first obtaining the approval of the commission pursuant to RSA 369:7.

X. Standards and procedures for determination and recovery of rate case expenses.

XI. Standards and procedures for the conduct of investigations authorized under this title.

XII. Procedures necessary to provide for the proper administration of and to further the purposes of this title.

XIII. Standards and procedures by which those electricity suppliers and utilities that choose to offer renewable energy options will provide information to customers who take such service of the fuel source or sources and emissions associated with the electrical service that they take and to inform such customers of the resource mix and emissions associated with the electricity generated and sold in the New England region as a whole.

Source. 1911, 164:2. PL 238:9. RL 287:9. 1951, 203:11 par. 8. RSA 365:8. 1981, 220:4. 1994, 193:1, eff. July 23, 1994. 2005, 102:1, eff. June 15, 2005.

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

1. Name of Agency. **New Hampshire Public Utilities Commission**
2. Person who has reviewed the material to be incorporated into the agency's rules:

Name:	Randy Knepper	Title:	Director of Safety Division
Address:	21 South Fruit Street, Suite 10 Concord, NH 03301	Phone #:	603-271-2431

3. Specific rule number where the material is incorporated: **Puc 804.03**

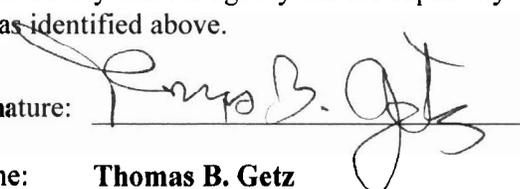
****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) and the title of the entity that created or promulgated the material.
5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.
6. How the material incorporated can be obtained by the public (include cost and the address of the out-of-state agency which published the material).
7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: October 1, 2008

Signature:  _____

Name: Thomas B. Getz

Title: Chairman

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

APPENDIX II-H - INCORPORATION BY REFERENCE STATEMENT
ADDENDUM

PUC 800, UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM
NOTICE NO. 2008-

Puc 804.03

4) The National Utility Locating Contractors Association is an organization of contract locators, facility owners, one-call centers, excavators, and industry suppliers that share a common interest in safety and damage prevention. NULCA establishes and maintains high standards and practices in underground utility contract locating industry and partners with regulatory agencies in taking the lead role for elimination of underground facility damage. NULCA published the NULCA Locator Training Standards and Practices (See Attached) which are adopted standard by NULCA which became effective December 21, 2001.

5) The PUC added Puc 804.03(a) and (b) provision to its existing Puc 800 rules which states that:

(a) Locators shall be trained in accordance with National Utility Locating Contractors Association (NULCA) standards, including the competencies as described in (b) below.

(b) To meet the requirements of (a), training programs for locators shall include, at a minimum, the following competencies:

- (1) Electromagnetic locating;
- (2) Instruction in the use of transmitters and receivers;
- (3) Procedures for marking underground facilities;
- (4) Training in the identification of facilities;
- (5) Safety procedures;
- (6) Operator map and record reading; and
- (7) Familiarity with the rules in this chapter.

The competencies are summarized in the rules and detailed in the NULCA packet attached to this form.

6) The NULCA Locator Training Standards and Practices can be obtained on the NULCA website free of charge at: [http://www.nulca.org/associations/7786/files/Standards CompetencyStandards.pdf](http://www.nulca.org/associations/7786/files/Standards%20CompetencyStandards.pdf), by telephone at 850-531-8352, or by contacting NULCA at the following address:

National Utility Locating Contractors Association
2563 Capital Medical Boulevard
Tallahassee, FL 32308

7) The Commission chose not to reproduce the incorporated materials because the document is voluminous and is protected by copyright© and any agency incorporating the standards in its rules are required by NULCA to notify NULCA in writing in advance, which the Commission has done on August 1, 2008. (See copy of attached letter after NULCA packet).

Notice

All questions or other communications relating to this document should be sent only to NULCA headquarters addressed to the attention of the committee responsible for the document.

Users of this document should consult Federal, State, Provincial, local and Company regulations. NULCA does not, by the publication of this document, intend to urge action, which is not in compliance with applicable laws. This document may not be construed as doing so.

NULCA

www.nulca.org

**2563 Capital Medical Blvd.
Tallahassee, Fl. 32308**

Phone: 850-531-8352

NULCA Mission Statement

The mission of NULCA is to define, establish and maintain standards and practices performed by the underground utility locating industry. Our highest priority is the safety of the general public, excavators and our employees in the protection of North America's underground infrastructure. As an Association, we will accomplish our mission by partnering with utility owners, excavators, one-call centers, suppliers and regulatory agencies, as well as other interested parties determined to provide a leadership role in the reduction of underground facility damages.

Origin and Development of NULCA Standards

The National Utility Locating Contractors Association (NULCA) was formed in 1995 to maintain standards and practices that contribute to improved performance and quality within the contract locating industry. NULCA members include representatives from the contract locating industry, utility companies, excavators, equipment suppliers and others dedicated to the protection of the utility infrastructure.

From its beginnings NULCA members recognized the need for a common set of standards and practices directing the training and development of contract utility locators. With this need in mind, the NULCA Board of Directors mandated the original NULCA training standards in 1995. Representatives from the contract locating industry, one call system, utility companies and others involved in the damage prevention process were involved. In 1996 NULCA published the *NULCA Locator Training Standards and Practices*. This formed the basis for the training programs currently in use by NULCA members performing contract locates.

In 1998 the NULCA Board requested a review and evaluation of the existing *NULCA Locator Training Standards and Practices*. It was determined that industry and regulatory changes within the industry dictated the need for a new revised training standards for contract utility locators. A committee was formed to develop the new training standards in 1999. As a result of these efforts the following document was drafted and adopted by NULCA in 2001 and publicly presented in February 2002.

Limitations on Use

Adoption by reference – Regulatory agencies and other are urged to reference this document in laws, ordinances, regulations, administrative orders or similar instruments. Any deletions, additions and changes desired by the adopting authority must be noted separately. Those using this method are required to notify NULCA in writing in advance of any such use.

NULCA has no power or authority to police or enforce compliance with the contents of this document and any certification of products stating compliance with requirements of this document.

These schedules are adopted effective December 21, 2001. NULCA has no responsibility to update or mail revision of this document to any party.

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NULCA

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**NULCA Standard 101:
Professional Competence
Standards for Locating
Technicians
2001 First Edition**

Chapter 1 Administration

1 General

Scope. This standard identifies the basic level of competence required of Locator Technician 101. It specifically covers the competencies for basic level locators who are involved in buried facility locating. The locator must demonstrate knowledge and understanding of the practices and procedures through formal closed book examination, obtaining a passing grade, together with demonstrating in actual or simulated scenarios and demonstrating the ability to use locating equipment effectively and efficiently.

Purpose. The purpose of this standard is to specify the minimum competencies for those individuals who will respond to the request for the location of facilities which are below the surface of the ground. It is not the intent of this standard to restrict any jurisdiction from exceeding those minimum requirements.

The purpose of these competencies is assist in safer excavation practice, with the goal of minimizing the possibility of causing damage to underground facilities.

1-2 Definitions

Authority Having Jurisdiction. The “authority having jurisdiction” is the organization, office or individual responsible for “approving” equipment, procedure, legislation or regulation.

CFR 191.614(b)(5). Subpart of US DOT Pipeline Safety Rule that addresses locating pipelines.

Color Code. System of colors used for marking and recognition of various types of facilities located below the ground.

Competence. Possessing knowledge, understanding, skill and judgement needed to perform specific tasks and/or objectives satisfactorily, with little or no supervision.

Electromagnetic Location. Detection of Electromagnetic fields emitted by buried metallic facilities.

Element of Competence. What individuals have to do to demonstrate or prove the Unit of Competence.

Facility. Any structure buried below the surface of the ground.

Facility Locating Technician. An individual competent in the activity of locating buried facilities.

Hertz. Unit of measuring an alternating current.

Locating. The practice of identifying and designating the position of a facility buried below the surface of the ground.

Manhole. Entry points to a vault and/or space below the surface of the ground.

Must. Indicates a mandatory requirement.

NULCA. National Utility Locating Contractors Association

Performance Criteria. Precisely describes the Element of Competence.

Range Statement. Describes under what circumstance the performance criteria needs to be satisfied.

Receiver. Equipment that receives a detectable signal for the purpose of identifying a buried facility.

Shall. Indicates a mandatory requirement.

Should. Indicates a recommendation or that which is advised but not required.

S.U.E. “Subsurface Utility Engineering” pre-project planning to determine the physical position and identity of buried facilities prior to project commencement.

Transmitter. Equipment that transmits a detectable signal for the purpose of identifying an underground facility.

Unit of Competence. A key area, which has to be carried out if the key purpose is to be achieved.

Chapter 2 Competencies For Locator Technician 101

2 General

Introduction. The Locator Technician 101 shall be trained to meet Federal, State, Provincial and local health occupation and safety regulatory requirements, whichever are appropriate for their jurisdiction.

Definition. Locator Technicians 101 are those persons who, in the course of their normal duties will be required to identify and designate the appropriate horizontal position of buried facilities, subject to the applicable tolerance zone under applicable law. Locator Technicians 101 are expected to identify and indicate the position of buried facilities, protect the general public and themselves from harm, and call for support when necessary.

Goal. The key purpose of the Units of Competence at the 101 level is to provide Locators with the Skill, Knowledge and Understanding to complete the following tasks and activities safely and professionally.

Range Statement. The Locator Technician shall satisfy the performance criteria of all Elements and Units of Competence outlined in 101 by

using locating equipment to locate a minimum of one or all of the various buried facilities (in rural or urban settings as it pertains to a geographical area of responsibility) under actual or simulated conditions such as:

1. Electrical Systems (electric power lines, cables, conduit, & Lighting Cables)
2. Gas, oil, steam, petroleum, or gaseous materials
3. Communication systems (alarm or signal lines, cables, or conduit)
4. Potable water
5. Reclaimed water, irrigation, and slurry lines
6. Sewer and draw lines
7. Other underground structures

The Locator must demonstrate the knowledge and understanding in the Units of Competency for every type of facility the Locate technician is required to Locate.

Correctly demonstrate knowledge and understanding thorough formal and informal questioning.

2-2 Competencies

Units of Competence.

1. Theory of Electromagnetic Locating
2. Use of the Transmitter
3. Use of the Receiver
4. Marking Procedures
5. Knowledge of Facilities
6. Visual Observation Skills
7. Safe Work Practices and Regulations
8. Locate Request Procedure, Documentation, & Mapping

9. Federal, State, Provincial and Local Regulations
10. Customer Interaction
11. Locating Pipelines (US)

Unit 1 Theory of Electromagnetic Theory – Locator Technician

101. The Locator shall, given various simulated or actual site situations or by diagram, demonstrate competency in the knowledge of Electromagnetic Locating Theory.

Elements of Competence

- 1.1 Demonstrate through knowledge and understanding of circuits.
- 1.2 Demonstrate a knowledge and understanding of frequency application.

Performance Criteria

- 1.1a Correctly form a location circuit in actual or simulated setting
- 1.1b Demonstrate ability to recognize cause and effects of signal distortion in actual or simulated setting
- 1.2a Demonstrate knowledge and understanding of conductor types and their effects on signal and signal strength.

Unit 2 Use of the Transmitter -

Locator Technician 101. The Locator shall, given various simulated or actual site situations with different buried facilities, identify and indicate the position of those facilities correctly using their equipment as per the manufacturer's instructions, accessing all other reference material available and in an

effective and safe manner. The Locator shall be able to:

Elements of Competence

- 2.1 Demonstrate skill in proper transmitter operation.
- 2.2 Demonstrate knowledge and understanding of principles of electromagnetic theory as it applies to the transmitter.
- 2.3 Demonstrate proper equipment maintenance.

Performance Criteria

- 2.1a Correctly place transmitter and make all connections correctly including grounding if applicable.
- 2.1b Correctly use direct connect/induction or clamp methods to locate pre-selected buried facilities, and correctly answer written and verbal questions.
- 2.1c Select correct power output as required.
- 2.1d Correctly select and identify the most effective frequency as required.
- 2.2a Demonstrate the ability to ensure that correct grounding has been achieved.
- 2.2b Demonstrate knowledge and understanding of proper transmitter use by accurately indicating the presence of pre-selected buried facilities..

2.3a Correctly demonstrate a proper function test as per the manufactures instructions.

2.3b Demonstrate proper storage, maintenance and cleaning of the transmitter as per the manufacturer and/or company instructions.

2.3c Have knowledge of the power source and demonstrate proper battery test (if applicable).

Unit 3 Use of the Receiver - Locator

Technician 101. The Locator shall, given various simulated or actual site situations with different buried facilities, identify and designate the position of those facilities correctly, use locating equipment as per the manufacturer's instructions, accessing all other reference material available in an effective and safe manner. The Locator shall be able to:

Elements of Competence

- 3.1 Demonstrate skill in proper receiver operation.
- 3.2 Demonstrate knowledge and understanding of the principles of electromagnetic theory as it applies to the receiver.
- 3.3 Demonstrate proper equipment maintenance procedures.

Performance Criteria

- 3.1a Correctly use direct connect/induction or clamp methods to locate the buried facilities, and correctly answer written and verbal questions.

- 3.1b Correctly use circle sweep, tracing or blind sweep methods to designate the position of buried facilities.
- 3.1c Adjust frequency, sensitivity, and/or gain, to allow for best possible facility designation.
- 3.1d Select the appropriate antenna (peak or null) for the best possible facility designation..
- 3.1e Correctly operate equipment as supported by the manufacturer's instructions.
- 3.2a Answer verbal and/or written questions to confirm knowledge and understanding of electromagnetic location principles as it applies to the receiver.
- 3.2b Demonstrate the ability to place the receiver at the required distance from the transmitter to avoid air coupling when blind sweeping.
- 3.2c Demonstrate knowledge and understanding of proper receiver use by accurately designating several buried facilities..
- 3.3a Correctly demonstrate a proper function test as per the manufacture instructions.
- 3.3b Demonstrate proper storage, maintenance and cleaning of the receiver as per the manufacturer and/or company instructions.
- 3.3c Have knowledge of the power source and demonstrate proper battery test (if applicable).

Unit 4 Marking Procedures - Locator Technician 101. The Locator shall, given various simulated or actual site situations with different buried facilities, mark their position on the surface of the ground using the most appropriate method for the specific task after referencing any Federal, State, Provincial or local requirements or regulations concerning such activities. The Locator shall be able to:

Elements of Competence

- 4.1 Correctly indicate the location of buried facilities.
- 4.2 Demonstrate knowledge and understanding of different marking systems.

Performance Criteria

- 4.1a Correctly demonstrate the ability to mark the designation of buried facilities with required Federal, State, Provincial and local regulatory requirements.
- 4.1b Correctly demonstrate the ability to mark the designation of facilities as per the facility owner's standards, which may exceed Federal, State, Provincial and local regulatory requirements.
- 4.1c Correctly demonstrate the placement of marks /markers within the required distances as per the Federal, State, Provincial, local regulatory requirements, or to the facility owners more stringent standards.

- 4.2a Demonstrate knowledge and understanding of Federal, State, Provincial and local color codes.
- 4.2b Demonstrate knowledge and understanding of the different types of marking devices and proper application methods for their use.
- 4.2c Demonstrate the ability to recognize and understand industry symbols used to denote buried and above ground facilities.

Unit 5 Knowledge of Facilities - Locator Technician 101. The Locator shall, given various simulated or actual site situations with different buried facilities, correctly identify those facilities and select the most appropriate method of locating such a facility. The Locator shall be able to:

Elements of Competence

- 5.1 Demonstrate the knowledge and understanding of differing types of above ground and or accessible facilities.

Performance Criteria

- 5.1a Correctly identify buried facilities should they be exposed and visible.
- 5.1b Select the best possible method to locate buried facilities, taking into consideration the above ground observation.
- 5.1c Correctly identify proper isolation and or bonding/un-bonding procedures, taking into

consideration the above ground observation.

Unit 6 Visual Observation Skills - Locator Technician 101. The Locator shall, given various simulated or actual site situations with different buried facilities, correctly identify visible indicators that would lead to the possibility of the existence of an underground facility. The Locator shall be able to:

Elements of Competence

- 6.1 Correctly identify different utility equipment features.
- 6.2 Correctly identify different visual evidence of buried facilities being present.

Performance Criteria

- 6.1a Recognize different utility plant features (i.e. utility poles, pedestals, gas meters, manhole covers etc.).
- 6.1b Recognize facility right of ways (i.e. cut lines etc.).
- 6.2a Recognize areas where previous excavations may have been taken place.
- 6.2b Recognize trench or excavation scars in paved roadways or highways.

Unit 7 Safe Work Practices and Regulations – Locator Technician 101. The Locator shall, given various simulated or actual site situations with different buried facilities, create safe working environments for

the general public, excavators, themselves and others at the work site, following Federal, State, Provincial and local health safety and environmental regulations and practices. The Locator shall be able to:

Elements of Competence

- 7.1 Demonstrate knowledge and understanding of safe work practices.
- 7.2 Demonstrate knowledge and understanding of Federal, Provincial, State and local regulations.
- 7.3 Demonstrate knowledge and understanding of the emergency response requirements.

Performance Criteria

- 7.1a Protect themselves at the work site location, protect the general public in and around the work site location, and protect the work area.
- 7.1b Have knowledge and understanding of the right to refuse and work that is unsafe to themselves or others present at the worksite.
- 7.1c Have knowledge and understanding of the obligation to stop any work that is unsafe to themselves or others present at the worksite.
- 7.1d Enter any manhole and vault safely following the required entry policies and regulatory requirements.

- 7.1e Manage and channel traffic so to minimize the disturbance and inconvenience to the general public, within the Federal, State, Provincial and local regulatory requirements.
- 7.1f Be able to demonstrate the ability to identify hazardous environments and practice safe work methods to ensure the safety of the Locator and others
- 7.1g Recognize and handle the general public, with emphasis on customer relationships and conflict management.
- 7.1h Have knowledge and understanding of hazardous situations (animals, natural occurrence) and be able to demonstrate the necessary steps to protect themselves.
- 7.2a Identify and wear all personal protective equipment as required by Federal, State, Provincial or local regulatory requirements, or more stringent company standards.
- 7.2b Have knowledge and understanding of how and where to quickly access required emergency information when necessary.
- 7.2c Be able to demonstrate the ability to activate the emergency response for the geographical area they locate in.

Unit 8 Locate Request Procedure, Documentation, and Mapping - Locator Technician 101. The Locator shall, given various simulated or actual site situations

demonstrate the ability to effectively find their way around the geographic location they are responsible for, comprehension of the procedures involved with locating requests, together with the knowledge and understanding of excavation practices and procedures, demonstrate sound knowledge and understanding for all location documentation practices by understanding the land survey systems, regulations and requirement of that geographical area. The Locator shall be able to:

Elements of Competence

- 8.1 Demonstrate knowledge and understanding of Locating documentation.
- 8.2 Demonstrate knowledge and understanding of map reading.
- 8.3 Understand Locate request terminology to allow for satisfactory locating to be undertaken.
- 8.4 Demonstrate knowledge and understanding of locate requests

Performance Criteria

- 8.1a Demonstrate capability to create an accurate plot plan in relation to the locate performed.
- 8.1b Demonstrate knowledge and understanding of plot plan/ as-built/ customer maps.
- 8.1c Demonstrate knowledge and understanding of customer specific facility symbol identification.

- 8.2a Effectively read street maps.
- 8.2b Access and reference land survey systems in their geographical area of responsibility.
- 8.2c Demonstrate sound knowledge and understanding of the land survey system for a geographical area of responsibility.
- 8.2d Effectively read facility owner maps and drawings to identify and recognize approximate location of buried facility.
- 8.3a Be able to demonstrate through written exam, the understanding of all key words on the Locate request documents, city maps and client plot plans for the geographical area of responsibility.
- 8.4a Demonstrate knowledge and understanding of “One-Call” and/or Locate request documentation in their geographical area of responsibility.
- 8.4b Fully understand the Locate request documentation process and how to complete any associated documentation (request forms, plot plans, site drawings etc.).

Unit 9 Federal, State, Provincial and Local Regulations - Locator Technician 101. The Locator shall, given various simulated or actual site situations, access the most relevant Federal, State, Provincial or local regulations pertinent to the location and site situation. The Locator shall be able to:

Elements of Competence

- 9.1 Demonstrate knowledge and understanding of Federal, State, Provincial and local regulations.

Performance Criteria

- 9.1a Demonstrate thorough knowledge and understanding of all regulatory requirements as it pertains to their geographical area of responsibility.
- 9.1b Reference and access regulatory specific information necessary as it pertains to the geographical area of responsibility.

Unit 10 Customer Interaction – Locator Technician 101. The Locator shall, given various simulated or actual site situations, interact with customers and others in a professional and effective manner. The Locator shall be able to:

Elements of Competence

- 10.1 Promote positive working relationships with the parties involved.
- 10.2 Communicate effectively with the parties involved.

Performance Criteria

- 10.1a Demonstrate and Fully understand the nature and scope of work being undertaken.
- 10.1b Complete the requirements of the request to the fullest satisfaction possible of the customer, within relevant Federal, State, Provincial, local, company or owner regulations/policies. including

- 10.2a Fully understand the Locate request documentation process and how to complete any associated documentation.
- 10.2b Recognize customer sensitivities to the work being undertaken.
- 10.2c Communicate timely and effectively with all concerned parties.

Unit 11 Locating Pipelines (US)- Locator Technician 101.

The Locator shall, if locating pipelines in the U.S., comply with CFR 192.614(b)(5).

Elements of Competence

Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as possible, the activity begins.

Locating Pipeline Steps

1. Perform equipment operation check
2. Verify scope of locate request
3. Visually inspect locate area
4. Locate and mark the facility(ies)
5. Recognize and react to Abnormal Operating Conditions

Step 1: Perform equipment operation check

Abnormal Operating Conditions

(None Identified)

Evaluation Criteria

The individual will, before the first locate, be able to:

- a. Perform equipment operation check in accordance with manufacturer instructions,
- b. Verifying battery strength, if required
- c. Initiate corrective action for equipment out of specification

Step 2: Verify scope of locate request

Abnormal Operating Conditions

(None Identified)

Evaluation Criteria

The individual will be able to utilize maps/records and engage in discussion with the excavator to:

1. Determine type of pipe being located
2. Verify location of job site
3. Verify extent of locate request

Step 3: Visually inspect locate area

Abnormal Operating Conditions

Damaged pipe
Damaged pipe coating
Excavation activities (including blasting) started prior to locating

Evaluation Criteria

The individual will be able to:

- a. Identify facilities that may affect locate
- b. Compare records to existing conditions and identify and communicate discrepancies

Step 4: Locate and mark the facility(ies)

Abnormal Operating Conditions

Damaged pipe

Damaged pipe coating
Excavation activities (including blasting) started prior to locating
Missing or broken tracing wire
Unable to locate pipeline

Evaluation Criteria

The individual will be able to:

- a. Select type of locating method:
 1. Conductive
 2. Inductive
 3. Measurement
- b. Operate locate equipment in accordance with manufacturer instructions
- c. Initiate action if signal is lost or insufficient
- d. Locate within scope of the request
- e. Mark (paint, flag or stake) the location of the facilities:
 1. Mark changes in direction
 2. Place marks so there is no doubt about the location of facilities
- f. Compare records to existing conditions and identify and communicate discrepancies

Step 5: Recognize and react to Abnormal Operating Conditions

Abnormal Operating Conditions

(None Identified)

Evaluation Criteria

The individual will be able to:

- a. Recognize Abnormal Operating Condition(s) that may be encountered while performing the task
- b. React to the Abnormal Operating Condition(s) by:
 1. Initiating remedial action
 2. Reporting for analysis by:

National Utility Locating Contractors Association Standards Committee

- i. Determining if remedial action is required
- ii. Determining a remedial action to correct the Abnormal Operating Condition(s)
- c. Describe the Abnormal Operating Condition(s) that an individual could reasonably expect to encounter while performing this covered task(s)
- d. Describe the response required for each Abnormal Operating Condition

NULCA

NATIONAL UTILITY LOCATING CONTRACTORS ASSOCIATION STANDARDS COMMITTEE (2001)

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Global Training Center

Dave Blount, *Vice-Chairperson*
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August 1, 2008

National Utility Locating Contractors Association
NULCA Headquarters
2563 Capital Medical Boulevard
Tallahassee, Florida 32308

Dear Sirs:

The New Hampshire Public Utilities Commission will be referencing your standards in our PUC Underground Damage Prevention Rules, specifically ***Puc 804.03 Training of Locators*** which states as follows:

"Locators shall be trained in accordance with National Utility Locating Contractors Association (NULCA) standards or equivalent."

It is anticipated this will go into effect in 2009.

Please find this written notification of our intent to reference your standards to be compliance with your Limitations on Use clause by notifying you in writing in advance of such use.

If you have any questions or need any further information, please feel free to contact our office at (603) 271-6022.

Sincerely,

Randall S. Knepper
Director, Safety Division

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CHAPTER Puc 800 UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM

PART Puc 801 APPLICATION OF RULES

Readopt Puc 801.01 – 801.02, effective 8-16-08 (Document # 9226) to read as follows:Puc 801.01 Purpose.

(a) The purpose of Puc 800 is to protect the public, operators, and excavators from physical harm, damages, and interrupted service resulting from damage to underground facilities.

(b) Puc 800 establishes procedures and requirements relative to:

- (1) Minimum requirements for the operation of the system, including notification procedures;
- (2) The investigation of complaints;
- (3) Emergency situations for which notice of excavation is not required;
- (4) The prevention of damage relating to underground facilities;
- (5) Enforcement; and
- (6) Record keeping.

Puc 801.02 Application.

(a) Each operator, as defined in Puc 802.12, shall:

- (1) Comply with Puc 800 and RSA 374:48-56; and
- (2) Maintain membership with the notification center.

(b) Any person, including any person who owns or operates an underground facility in New Hampshire but who is not an operator, as defined in Puc 802.12, may become a member of the notification center.

(c) Any member of the notification center who is not an operator but who owns or operates an underground facility shall comply with Puc 800.

PART Puc 802 DEFINITIONS

Adopt Puc 802.01 to read as follows:

Puc 802.01 “Blasting” means “blasting” as defined in RSA 374:48, VIII, namely, “excavation by means of explosives.”

Readopt and renumber Puc 802.01 – 802.03, effective 8-16-08 (Document # 9226), as Puc 802.02-802.04 to read as follows:

Puc 802.02 “Commission” means “commission” as defined in RSA 374:48, I, namely, “the public utilities commission.”

Puc 802.03 “Damage” means any impact or exposure that results in the need to repair an underground facility due to the weakening or the partial or complete destruction of the underground facility, including, but

not limited to, the protective coating, lateral support, corrosion control, or the housing for the line, device, or underground facility.

Puc 802.04 “Emergency situation” means a sudden or unexpected occurrence involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

Readopt and renumber Puc 802.04, effective 5-29-03 (Document # 7900), as Puc 802.05 to read as follows:

Puc 802.05 "Excavation" means "excavation" as defined in RSA 374:48, III, namely, “any operation conducted on private property or in a public way, right-of-way, easement, public street, or other public place, in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence or sign post installation, pile driving, wrecking, razing, rending or moving any structure or mass material, but does not include the tilling of soil for agricultural purposes, landscaping and maintenance of residential property performed with non-mechanized equipment, landscaping activities performed with mechanized equipment that are intended to cut vegetation, including lawn edging, aeration, and de-thatching, excavations permitted or grand fathered under RSA 155-E, or replacement of department-of-transportation-installed delineator posts in the same location.”

Readopt and renumber Puc 802.05 – 802.07, effective 8-16-08 (Document # 9226), as Puc 802.06 - 802.08 to read as follows:

Puc 802.06 “Excavator” means "excavator" as defined in RSA 374:48, IV, namely, “any person performing an excavation.”

Puc 802.07 “Extraordinary circumstances” means events or conditions other than normal operating conditions which exist and make it significantly impractical or impossible for an underground facility owner or member owning and/or operating an underground facility to comply with the provisions of Puc 800, including, but not limited to, hurricanes, tornadoes, floods, ice or snow, and acts of God.

Puc 802.08 “Hand digging” means any excavation involving non-mechanized tools or equipment and includes, but is not limited to, digging with shovels, picks, and manual post hole diggers.

Adopt Puc 802.09 – 802.10 to read as follows:

Puc 802.09 “Holiday” means any legal holiday pursuant to RSA 288:1 or, when such holiday falls on a Sunday, the following day pursuant to RSA 288:2.

Puc 802.10 “Locator” means a person acting on behalf of an operator to identify and mark the locations of underground facilities in accordance with Puc 806.

Repeal Puc 802.08 – 802.09, effective 8-16-08 (Document # 9226) as follows:

Readopt and renumber Puc 802.10, effective 8-16-08 (Document # 9226), as Puc 802.11 to read as follows:

Puc 802.11 “Notification center” means the entity that performs the primary function of the system, is open to all operators within the state of New Hampshire, maintains a data base of its members and operators and the specific geographic areas in which each of its members and operators desires to receive notice of proposed excavation, and which has the capability to transmit notices of proposed excavation to its members and operators by teletype, telecopy, personal computer, telephone, or other comparable means.

Readopt with amendment and renumber Puc 802.11, effective 5-29-03 (Document # 7900) as Puc 802.12 to read as follows:

Puc 802.12 “Operator” means “operator” as defined in RSA 374:48, IV-a, namely, “any public utility as defined in RSA 362:2 or RSA 362:4 and any cable television system as defined in RSA 53-C:1, and any liquefied petroleum gas company operating any jurisdictional facility or facilities as defined by the Natural Gas Pipeline Safety Act (49 U.S.C. chapter 601) that owns or operates underground facilities.”.

Readopt and renumber Puc 802.12 – 802.15, effective 8-16-08 (Document # 9226), as Puc 802.13 – 802.16 to read as follows:

Puc 802.13 “Person” means “person” as defined in RSA 374:48, V, namely, “any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body.”

Puc 802.14 “Premark” means identifying the perimeter of the proposed site of an excavation by marking the perimeter in an appropriate manner in white paint, stakes or other suitable white markings on non-paved surfaces.

Puc 802.15 “System” means “system” as defined in RSA 374:48, I, namely, “the underground utility damage prevention system referred to in RSA 374:49”.

Puc 802.16 “Tolerance zone” means an area surrounding an underground facility which is 36 inches wide, measured horizontally and equidistant from the centerline of the underground facility, plus the width of the underground facility itself.

Readopt and renumber Puc 802.16, effective 5-29-03 (Document # 7900), as Puc 802.17 to read as follows:

Puc 802.17 “Underground facility” means “underground facility” as defined in RSA 374:48, VII, namely, “any private property or property which is buried, placed below ground, or submerged on a public way, right-of-way, easement, public street, or other public place and is being used or will be used for the conveyance of cable television, electricity, gas, sewerage, steam, telecommunications or water.”

PART Puc 803 SYSTEM REQUIREMENTS

Readopt with amendment Puc 803.01, effective 8-16-08 (Document # 9226) to read as follows:

Puc 803.01 Procedures and Operation of Notification Center.

- (a) The system shall operate a notification center, as contemplated by RSA 374:49.
- (b) The notification center required by (a) above shall:
 - (1) Receive notification from excavators about intended excavation activities;
 - (2) Provide to excavators who give notice of an intent to engage in an excavation activity the names of potentially affected operators and members owning or operating underground facilities to whom the notification center shall transmit notice;

- (3) Promptly transmit to potentially affected operators and members the information received from excavators about intended excavation activities;
- (4) Provide the excavator at the time of initial contact a registration number confirming the notification of intended excavation activity;
- (5) Create a record, which shall include the material included in (6) below, of each notification of intent to engage in an excavation activity and related communication;
- (6) Create, pursuant to (5) above, a record of each proposed excavation, including the following:
- a. The name of the person notifying the notification center;
 - b. The name, address and telephone number of the excavator;
 - c. The specific location, starting date, and description of the intended excavation activity;
 - d. The name(s) of any sub-contractor or other person or entity who the excavator indicates may excavate at the intended excavation site on behalf of the excavator making the notification;
 - e. The date and time of the notification;
 - f. The confirmation or registration number;
 - g. The identity of potentially affected members and operators that the notification center contacts to inform of the intended excavation activity;
 - h. The date and time the notification center transmitted notice of the intended excavation activity to each potentially affected member and operator; and
 - i. The date and time the notification will expire in accordance with Puc 805.01 (b)
 - j. As to any material follow-up communication relating to the proposed excavation activity directed to the communications center:
 1. The party or parties involved in the communication;
 2. The content of the communication;
 3. The date and time of the communication; and
 4. The date, time and recipient of any transmittal of the communication; and
- (7) Maintain the record required to be kept by (5) and (6) above for a period of a minimum of 3 years from the date of the last communication.
- (c) The current toll-free telephone numbers of the notification center for reporting proposed excavations and otherwise communicating with the notification center shall be, 888-“DIG-SAFE”, which is, 888-344-7233 or 811.
- (d) The notification center shall also maintain an internet-based system for proposed excavations at www.digsafe.com.
- (e) Operators and members of the notification center shall use communications equipment that shall be compatible with the notification center.

(f) The notification center shall develop and implement procedures and use communication equipment which are adequate to acknowledge calls within 20 seconds.

(g) The notification center shall staff its operation a minimum of 10 hours each day, 5 days each week, excluding Saturdays, Sundays, and holidays, to respond to both routine and emergency calls.

(h) During the hours that the notification center is not operated by staff, the notification center shall provide at a minimum for an answering service capable of responding to an emergency notification request 24 hours per day, 7 days per week.

(i) The training provided by the notification center shall direct the public to make emergency calls to 911.

(j) The notification center shall be capable of responding to a request for emergency notification and shall transmit the information as provided in (k)(3) below.

(k) The notification center shall transmit information as follows:

(1) Notices of proposed excavation activities to potentially affected members and operators by 5:00 p.m. on the date of receipt;

(2) Routine messages by 5:00 p.m. on the date of receipt; and

(3) Messages relating to emergency situations, as described in Puc 805.03, to any potentially affected member, operator or excavator, as applicable, as soon as possible, but not later than 10 minutes following receipt.

Readopt Puc 803.02, effective 8-16-08 (Document # 9226) to read as follows:

Puc 803.02 Education and Training.

(a) The notification center shall assure that the toll-free telephone number shall be prominently displayed in telephone directories state-wide.

(b) The notification center shall:

(1) Make available literature describing the notification center;

(2) Assure the distribution of such literature to the public; and

(3) Make such literature available for purchase and distribution by requesting parties.

(c) The notification center shall, upon request, provide training to its members regarding the operations of the notification center.

(d) The notification center shall provide all members and interested persons with a brochure explaining the notification center's objectives, procedural guidelines, and opportunities for member participation.

PART Puc 804 DUTIES OF OPERATORS

Readopt with amendment Puc 804.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 804.01 Reporting Requirements for Operators of Underground Facilities.

(a) Each operator shall file monthly, including any month in which there are no violations to report, with the commission, on or before the 15th day of the following month, written reports of probable violations of Puc 800, damage to underground facilities, or both.

(b) Each operator shall file reports required by (a) above on Form E-26.

(c) Each operator shall include the following in Form E-26:

- (1) The date the incident was reported;
- (2) The date the incident occurred;
- (3) The name and address of the person reporting;
- (4) The reporter's name and phone number;
- (5) The location of the damage, violation, or both;
- (6) A description of the property damaged, if any;
- (7) A description of the facility, including:
 - a. Details of the facility such as the type, size, material, pressure, voltage, or both; and
 - b. Type of facility by ownership, such as, customer-owned, municipal-owned or utility-owned.
- (8) A description of damage to the facility, if any;
- (9) Cost estimate of damage, if any, and whether the excavator has been billed;
- (10) A description of personal injuries, if any;
- (11) The excavator's name, address, and phone number;
- (12) The excavator's employer, if applicable;
- (13) A description of the incident;
- (14) The type of marking used at the location, if any;
- (15) Details fully describing whether:
 - a. The situation was an emergency;
 - b. The notification procedure was or was not followed as prescribed;
 - c. The notification was completed and, if so, provide the registration number and date of notification;
 - d. The notification was completed and the location was not premarked;
 - e. The notification was completed and the location was not marked;
 - f. The notification was completed but markings were not maintained;
 - g. The notification was completed, the location was marked, but markings were incorrect;
 - h. The notification was completed and the location was marked but damage occurred; and

i. The notification procedures were not followed and damaged occurred.

(d) If there are no reportable incidents during a month the operator shall file a one page notification report using Form E-26, on or before the 15th day of the following month, identifying the owner or operator and stating that no reportable incident of damage or a violation occurred during the month.

(e) The operator shall send the reporting form required by this section to the New Hampshire public utilities commission, safety division, at its mailing address as provided on the E-26 form or electronically as specified on the commission's web site.

Readopt with amendment Puc 804.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 804.02 Notification Requirements.

(a) Any operator who owns, operates, or both, an underground facility used in the transportation of gas or hazardous liquids and subject to the federal pipeline statute, 49 U.S.C. §§ 60101 to 60137, shall:

(1) Maintain a current list of the names and contact information of persons who normally engage in excavation activities in the area in which any underground facility is located, which is owned by that operator, and is used in the transportation of gas or hazardous liquids and subject to the federal pipeline statute.

(2) Notify abutters of the existence of an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline statute, owned by that operator; and

(3) Notify persons who normally excavate in the area in which an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline statute owned by that operator, as often as needed to make them aware of the notification center, including:

a. The notification center's existence and purpose; and

b. How to learn the location of underground facilities before excavation activities begin.

(b) An affected operator may complete the notification required by Puc 804.02(a)(2) above by:

(1) Distributing fliers;

(2) Informational mailings

(3) Placing line markers;

(4) Signage; or

(5) Other reasonable public education outreach consistent.

(c) An affected operator may complete the notification required by Puc 804.02(a)(3) above by means including but not limited to distributing informational mailings, conducting informational sessions, or both.

(d) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator. Underground facilities which the owner shall not be required to locate shall include, but shall not be limited to, facilities running from a house to a garage or other outbuilding.

(e) When no underground facility is within the area of a proposed excavation, an owner or operator receiving notification of the proposed excavation shall so advise the excavator by:

(1) Marking the non existence of facilities within the premarked area of intended excavation in accordance with Puc 806;

- (2) Participating in a meeting where details of the job site are discussed and documented; or
- (3) Communicating with the operator via e-mail, fax, telephone or other electronic communication, provided that the excavator confirms receipt of such communication.

Adopt Puc 804.03 to read as follows:

Puc 804.03 Training of Locators.

(a) Locators shall be trained in accordance with National Utility Locating Contractors Association (NULCA) standards, including the competencies as described in (b) below.

(b) To meet the requirements of (a), training programs for locators shall include, at a minimum, the following competencies:

- (1) Electromagnetic locating;
- (2) Instruction in the use of transmitters and receivers;
- (3) Procedures for marking underground facilities;
- (4) Training in the identification of facilities;
- (5) Safety procedures;
- (6) Operator map and record reading; and
- (7) Familiarity with the rules in this chapter.

PART Puc 805 DUTIES OF AN EXCAVATOR

Readopt Puc 805.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.01 Notification Required Prior to Excavation.

(a) Excavators shall, pursuant to RSA 374:51 notify the notification center:

- (1) Not less than 72 hours prior to a proposed excavation, not including Saturdays, Sundays and legal holidays; and
- (2) Not more than 30 days prior to a proposed excavation is to be made.

(b) The excavator's notification, required by (a) above, shall be valid for 30 calendar days from the date and time the notification center confirms the notification.

(c) When an excavator contacts the notification center as described in (a) above, it shall provide the following:

- (1) The name of the person notifying the notification center;
- (2) The name, address and telephone number of the excavator;

(3) The name of each sub-contractor or other person or entity who might excavate at the intended excavation site on behalf of the excavator making the notification; and

(4) The specific location, starting date, and description of the intended excavation activity.

(d) Prior to complying with the notification requirements of RSA 374:51, II and (a) above, an excavator shall, pursuant to RSA 374:51, IV, premark the area of proposed excavation by identifying the perimeter of the proposed site of the excavation.

(e) The excavator shall premark in a way that does not interfere with traffic or pedestrian control and is not misleading to the general public.

(f) An excavator shall not be required to premark any continuous excavation that is over 100 feet in length, or any pole replacement that is within 5 feet of an existing location.

(g) If an excavation is over 100 feet in length or a pole replacement is within 5 feet of an existing location, the excavator shall communicate the perimeter of the excavation to any potentially affected operator, member of the notification center who owns or operates an underground facility, or both by:

(1) Providing a detailed description of the site area;

(2) Providing detailed construction plans;

(3) Holding an on-site meeting with potentially affected operators; or

(4) Providing other suitable means of communicating the perimeter of the excavation to any potentially affected operator, member, or both, of the notification center who owns or operates an underground facility.

(h) Once an owner or operator of an underground facility has marked the location of its underground facility in the area of an excavation, pursuant to RSA 374:53 and Puc 805.02, the excavator, and any subcontractor, employee or agent of the excavator performing work on behalf of the excavator at the site, shall be responsible for maintaining the markings during the excavation.

(i) No person or entity not an employee of the excavator shall excavate on behalf of an excavator as a subcontractor or otherwise without separately complying with the notification requirements of this section, unless the excavator has notified the notification center of the identity of that person or entity as provided in (c)(3) above.

(j) A subcontractor of the excavator or other entity may excavate pursuant to the excavator's notification to the notification center if the subcontractor or entity:

(1) Performs excavation at the location specified in the notification;

(2) Has a contract to perform this excavation with the excavator;

(3) Does the excavation work specified in the notification;

(4) Is listed with the notification center, as provided in (c) (3) above; and

(5) Otherwise complies with Puc 800, RSA 374:48-56 and other applicable law.

(k) No person shall misuse the intent of the notification center by making a request for marking of an underground facility for other than excavating activities, such as for conducting an engineering design without intending to excavate at the site in question within 30 days.

Readopt with Amendment Puc 805.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.02 Excavation That Affects the Tolerance Zone.

(a) Any person conducting excavation activity that affects the tolerance zone surrounding an underground facility shall exercise at all times such reasonable care as is necessary to protect the underground facility from damage.

(b) Except as provided in (c) below, in order to locate and identify an underground facility, the excavator shall excavate by methods limited to:

- (1) Hand digging
- (2) Pot holing;
- (3) Soft digging;
- (4) Vacuum excavation
- (5) Other mechanical methods with the approval of the underground facility owner or operator; or
- (6) Other methods accepted in the industry consistent with the alternatives listed in (1) through (5) above, which clearly will not affect the integrity of the underground facility.

(c) For pavement removal an excavator shall not be limited to hand digging and the other non-invasive methods cited in (b) above.

(d) For parallel type excavations, such as excavation along an existing underground facility at an approximately equal distance when measured periodically, the excavator shall expose the existing underground facility at intervals as often as necessary to avoid damage.

(e) For trenchless excavations, such as horizontal drilling, boring, pneumatic jacking, tunneling and pavement reclamation, reasonable care for purposes of Puc 805.02(a) shall include determining the exact depth of the underground facility and clearances required by the operator and incorporating location details into the trenchless excavation procedure so as to avoid any potential damage of the underground facility.

Readopt with amendment Puc 805.03 effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.03 Emergency Situations.

(a) If necessary to respond in an emergency situation, an excavator may begin an excavation without notifying the notification center prior to excavation as required by Puc 804.01, but shall notify the notification center at the earliest practicable moment.

(b) In notifying the notification center of excavation or intended excavation in an emergency situation, the excavator shall specifically identify the dangerous condition involved.

(c) While an excavator who excavates in an emergency situation shall not be liable on that basis for a failure to notify the notification center as required by Puc 804.01, nothing in this section shall relieve the excavator from liability if:

- (1) The excavator damages an underground facility which has been properly marked or which has not been marked; or
- (2) The excavation does not qualify as an emergency excavation.

(d) No excavator shall indicate to the notification center or to an operator or member of the notification center that owns or operates an underground facility that an event constitutes an emergency

situation unless the excavator believes in good faith that the circumstances do constitute an emergency situation.

(e) If the parties request, pursuant to Puc 200, a determination by the commission as whether a situation is, or was, an emergency situation, the commission shall make such a determination based on a review of the facts of the situation and the definition of emergency situation.

Adopt Puc 805.04 – 805.05 to read as follows:

Puc 805.04 Blasting.

(a) When an excavator determines that blasting will be required during an excavation, the excavator shall inform the notification center when providing notice of the excavation.

(b) If an excavator determines during the effective term of the excavator's notification that blasting is required within the area premarked in accordance with Puc 805.01 (d), the excavator shall notify the notification center of the need to blast. Notification shall be made at least 24 hours prior to any blasting, not including Saturdays, Sundays, and holidays.

(c) When unanticipated obstructions prevent further excavation without blasting, the excavator shall provide separate notice of such blasting not less than four hours in advance of such blasting, not including the hours of 4:00 p.m. to 6:00 a.m. weekdays, or all of Saturdays, Sundays, and holidays.

Puc 805.05 Damage to an Underground Facility.

(a) When an excavator causes any damage to an underground facility not owned or operated by the excavator, the excavator shall:

(1) Call 911 when:

(a) A gas underground facility is damaged and there is a release of gas,

(b) An electric underground facility is damaged and an excavator determines that a person may have received an electric shock, or

(c) Any other facility is damaged and public safety is affected;

(2) Evacuate nearby structures if necessary;

(3) Contact the facility owner or operator;

(4) Attempt no repairs, unless directed to by the facility owner or operator;

(5) Call 811 or 888-DIG SAFE (Notification Center); and

(6) Report the damage to the commission.

PART Puc 806 MARKING THE TOLERANCE ZONE

Readopt Puc 806.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.01 Tolerance Zone.

(a) An operator shall use one of the following marking methods to mark the tolerance zone of an underground facility:

(1) The corridor marking method which shall be the practice of placing markers at either boundary of the tolerance zone, such that the markers will be 18 inches plus one-half the width of the facility away from the facility centerline;

(2) The centerline marking method which shall be the practice of placing markers directly over the centerline of the facility establishing boundaries at points located 18 inches plus one-half the width of the facility from the markers; or

(3) The offset marking method which shall be the practice of locating the centerline of the facility and placing markers at locations which parallel the facility.

(b) Any operator shall use the offset marking method only when it is impractical to use either the corridor or centerline methods, such as in marking in the traveled portion of an unpaved roadway.

(c) When marking an underground facility an operator shall mark the underground facility consistent with the color code for the utility type of the underground facility, as set forth in Puc 806.02.

(d) In the event an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation activity, and the corridor marking method is to be applied, the operator may mark one tolerance zone.

(e) When an operator marks 2 or more underground facilities as described in (d) above:

(1) The operator shall establish the boundaries of the tolerance zone by use of the corridor marking method by locating the boundaries of each separate underground facility and placing markers at the outer boundaries of the multiple underground facilities; and

(2) When the marking results in one area being marked, the operator shall inform the excavator of the marking of each of the separate underground facilities within the marked boundaries, either verbally or by appropriate single markings pursuant to Puc 806.01.

(f) When an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation and the centerline marking method is to be applied, the operator shall place markers, conforming with Puc 806.01(a)(2), over the centerline of each facility.

(g) In the event the operator or member who owns and/or operates an underground facility is unable to designate the location of the underground facility due to extraordinary circumstances, the operator or member shall notify the notification center and provide an estimated completion date. The notification center shall then document on the existing notification ticket, utilizing an attachment message, that the utility is unable to designate the location of the underground facility. The operator shall notify the excavator who called the notification center that it is unable to designate the location of the underground facility due to extraordinary circumstances.

Readopt with amendment Puc 806.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.02 Markers.

(a) Within 72 hours after receipt of notice from a proposed excavator or from the notification center of a proposed excavation, but not including Saturdays, Sundays and holidays, an operator or member of the notification center who owns or operates an underground facility, shall

(1) Mark the location of its underground facility in the area of the proposed excavation; or

(2) If no underground facility is within the area of the proposed excavation, so notify the excavator pursuant to Puc 804.02(e).

(b) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator. Underground facilities which the owner shall not be required to locate shall include, but not be limited to, facilities running from a house to a garage or other outbuilding.

(c) An operator shall mark underground facilities by the use of paint, stakes, flags, or by any other means that clearly indicates the location of the underground facility.

(d) An operator shall consider the physical characteristics in the area of the proposed excavation in determining the type of marker to be used.

(e) Operators shall mark underground facilities according to the following color code:

(1) Red shall be used for underground facilities conveying electric power, electric cable conduits or lighting cables;

(2) Yellow shall be use for underground facilities conveying gas, oil, steam, petroleum, or gaseous materials;

(3) Orange shall be used for underground facilities used for communications, alarm, signal, communications cables, or communications conduit;

(4) Blue shall be used for underground facilities conveying water or used for irrigation or slurry lines; and

(5) Green shall be used for underground facilities conveying sewer or used for drain lines.

(f) Excavators shall use the color white for the pre-marking of the boundaries of a proposed excavation, except as provided in (g) below.

(g) Excavators shall use pink for pre-marking when snow conditions would render white premarking not clearly visible.

Readopt with amendment Puc 806.03, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.03 Identification.

(a) When an operator marks its underground facility it shall indicate:

(1) The width of the underground facility for all facilities greater than 1 inch nominal diameter;

(2) The specific owner or operator of the underground facility; and

(3) The function of the underground facility.

(b) For purposes of Puc 806.03 (a)(3) functions shall be marked by using:

(1) The letter E for underground facilities conveying electricity;

(2) The letter G for underground facilities conveying gas;

(3) The letters PP for underground facilities conveying oil;

(4) The letters ST for underground facilities conveying steam;

- (5) The letters CH for underground facilities conveying chemicals;
- (6) The letter T for underground facilities containing telephone wires or cable;
- (7) The letters CATV for underground facilities conveying cable television signals;
- (8) The letters TC for underground facilities conveying traffic control information or signals;
- (9) The letters FA for underground facilities conveying fire alarm information or signals;
- (10) The letter W for underground facilities conveying water;
- (11) The letters RW for underground facilities conveying reclaimed water;
- (12) The letter S for underground facilities conveying sewage;
- (13) The letters SS for underground facilities conveying storm sewage; and
- (14) The letters SD shall be used for underground facilities used for storm drainage.

(c) An operator shall identify with markings any changes in direction or terminations occurring within the immediate area of the proposed excavation with arrows or other appropriate indicators.

Readopt Puc 806.04, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.04 Emergency Procedures.

(a) Each operator and member of the notification center who owns, operates underground facilities, or both, shall develop internal practices and procedures to:

- (1) Receive and respond to emergency notifications; and
- (2) Mark the location of facilities in emergency situations.

Adopt Puc 806.05 to read as follows:

Puc 806.05 Marking Certain Newly Installed Underground Facilities.

(a) Upon completing the installation of new underground facilities within an area that has been subject to excavator notification and premarking pursuant to Puc 805.01, an operator shall make reasonable efforts to communicate the existence of such facilities if they are covered with soil or other material that impairs their visibility.

(b) For purposes of (a) above, reasonable efforts shall include:

- (1) Marking the tolerance zone in accordance with 806.01, 806.02, 806.03, and 806.04;
- (2) Contacting the excavator with information regarding the presence of the newly constructed facilities, or
- (3) Leaving a tag or marker clearly indicating the presence of the newly constructed facilities with contact information.

PART Puc 807 ENFORCEMENT PROCEDURES

Readopt Puc 807.01 – 807.07, effective 5-29-03 (Document # 7900) to read as follows:

Puc 807.01 Investigation of Complaints.

- (a) The notification center shall institute procedures to receive and resolve complaints of excavators, operators, owners or operators of underground facilities, members, and the general public.
- (b) Owners and operators of underground facilities shall institute procedures to receive and resolve complaints of excavators and the general public.
- (c) The commission staff shall consider and decide unresolved complaints pursuant to the procedures established in Puc 200.
- (d) An unresolved dispute relating to Puc 800 which is appealed in writing to the commission shall be handled as follows:
 - (1) The matter shall be treated as a request for an adjudicatory proceeding; and
 - (2) The parties to the dispute shall have a right of appeal by petition to the New Hampshire Supreme Court pursuant to RSA 541:6.

Puc 807.02 Notice of Probable Violation.

- (a) In the event the commission staff determines that a probable violation of RSA 374:48-56, Puc 800, or both, has occurred, staff shall issue a written notice of probable violation (NOPV) to the party alleged to have committed the violation.
- (b) The commission staff shall send information regarding the NOPV by certified mail to the party regarded as in violation.
- (c) The NOPV shall include the following:
 - (1) A description of the probable violation and reference to the rule or statute regarded as violated;
 - (2) The date and location of the probable violation;
 - (3) A statement notifying the party or parties involved that civil penalties might be imposed pursuant to RSA 374:48-56, in the event of unfavorable judgment;
 - (4) Statutory rights of the respondent as enumerated in RSA 374:48-56; and
 - (5) Procedures for resolving the complaint.
- (d) Any owner or operator of an underground facility involved in the NOPV shall provide a representative for any informal conference or hearing scheduled pursuant to Puc 800.

Puc 807.03 Alternative Responses to Notice of Probable Violation.

- (a) Upon receipt of the NOPV the respondent shall either:
 - (1) Submit to the commission within 30 days, in writing, evidence refuting the probable violation referenced in the NOPV;

(2) Request in writing within 30 days, an informal conference with commission staff to examine the basis of the probable violation; or

(3) Execute a consent agreement with the commission resolving the probable violation.

(b) If the respondent requests an informal conference pursuant to (a)(2) above, the commission staff shall set a date and time for the informal conference.

Puc 807.04 Notice of Violation.

(a) If the commission or commission staff involved in the damage prevention program, after reviewing evidence and testimony obtained in writing or conferences, determines that a violation of RSA 374:48-56, Puc 800, or both, has occurred, the commission or commission staff involved in the damage prevention program shall issue a notice of violation (NOV) to the respondent pursuant to RSA 374:55, VII.

(b) The NOV so issued shall include:

(1) The factual and statutory basis for the unfavorable preliminary determination;

(2) A description of factors relied upon by commission staff in making its determination, such as the gravity of the violation, history of prior violations, degree of culpability of the respondent, how quickly the respondent took action to rectify the situation, cooperativeness of respondent, and any other factors which would tend to either aggravate or mitigate the violation;

(3) The civil penalty, if any, proposed to be imposed;

(4) Procedures for remitting penalty; and

(5) Statutory rights of the respondent as enumerated in RSA 374:48-56.

Puc 807.05 Response to Notice of Violation.

(a) Within 10 days from receipt of the NOV, the respondent shall either:

(1) Sign a consent agreement and remit the civil penalty; or

(2) File a request in writing for a hearing before the commission.

Puc 807.06 Commission Action.

(a) The commission shall act upon Staff's recommendation unless the respondent requests a hearing pursuant to Puc 807.05(a)(2). Upon such hearing request, the commission shall provide the respondent with notice and an opportunity for a hearing, held pursuant to Puc 200. At the hearing, the respondent may show by a preponderance of the evidence why the commission or designated commission staff determination should be changed.

Puc 807.07 Civil Penalties.

(a) If the commission or designated commission staff within the division of safety finds reason to issue an NOV, the commission or designated commission staff shall propose to assess a civil penalty pursuant to RSA 374:55.

(b) In determining the assessment, the following factors shall be considered:

(1) The severity of the consequences resulting from the violation such that the more severe the consequences, the higher the civil penalty, the gravity of the violation, degree of culpability of the

respondent, cooperativeness of respondent, history of prior violations, and other factors which would tend to aggravate fault; and

(2) Mitigating circumstances, such as how quickly the excavator took action to rectify the situation, how much control the excavator had over the situation, and other circumstance which would tend to lessen fault.

APPENDIX

Rule	Statute
Puc 801.01	RSA 374:50; RSA 374:55,VII
Puc 801.02	RSA 374:50
Puc 802.01	RSA 374:50; RSA 374:48,VIII
Puc 802.02	RSA 374:50; RSA 374:48,I
Puc 802.03	RSA 374:50
Puc 802.04	RSA 374:50
Puc 802.05	RSA 374:50; RSA 374:48,III
Puc 802.06	RSA 374:50; RSA 374:48,IV
Puc 802.07	RSA 374:50
Puc 802.08	RSA 374:50
Puc 802.09	RSA 374:50; RSA 288:1; RSA 288:2
Puc 802.10	RSA 374:50
Puc 802.11	RSA 374:50
Puc 802.12	RSA 374:50; RSA 374:48,IV-a
Puc 802.13	RSA 374:50; RSA 374:48,V
Puc 802.14	RSA 374:50; RSA 374:51,IV
Puc 802.15	RSA 374:50; RSA 374:48,I
Puc 802.16	RSA 374:50
Puc 802.17	RSA 374:50; RSA 374:48,VII
Puc 803.01	RSA 374:50, I; RSA 374:49, RSA 374:52
Puc 803.02	RSA 374:50,I
Puc 804.01	RSA 374:50
Puc 804.02	RSA 374:50; RSA 374:49; RSA 374:52
Puc 804.03	RSA 374:50
Puc 805.01	RSA 374:50, I; RSA 374:51
Puc 805.02	RSA 374:50
Puc 805.03	RSA 374:50; III; RSA 374:51,I
Puc 805.04	RSA 374:50; RSA 374:51,VII
Puc 805.05	RSA 374:50; RSA 374:54
Puc 806.01	RSA 374:50; RSA 374:53
Puc 806.02	RSA 374:50; RSA 374:53
Puc 806.03	RSA 374:50; RSA 374:53
Puc 806.04	RSA 374:50,III
Puc 806.05	RSA 374:50; RSA 374:53
Puc 807.01	RSA 374:50,II
Puc 807.02	RSA 374:50; RSA 374:55,VII
Puc 807.03	RSA 374:50; RSA 374:55
Puc 807.04	RSA 374:50; RSA 374:55,VII
Puc 807.05	RSA 374:50; RSA 374:55
Puc 807.06	RSA 374:50; RSA 374:55,VII
Puc 807.07	RSA 374:50; RSA 374:55

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CHAPTER Puc 800 UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM

PART Puc 801 APPLICATION OF RULES

Readopt Puc 801.01 – 801.02, effective 8-16-08 (Document # 9226) to read as follows:Puc 801.01 Purpose.

(a) The purpose of Puc 800 is to protect the public, operators, and excavators from physical harm, damages, and interrupted service resulting from damage to underground facilities.

(b) Puc 800 establishes procedures and requirements relative to:

- (1) Minimum requirements for the operation of the system, including notification procedures;
- (2) The investigation of complaints;
- (3) Emergency situations for which notice of excavation is not required;
- (4) The prevention of damage relating to underground facilities;
- (5) Enforcement; and
- (6) Record keeping.

Puc 801.02 Application.

(a) Each operator, as defined in Puc 802.12, shall:

- (1) Comply with Puc 800 and RSA 374:48-56; and
- (2) Maintain membership with the notification center.

(b) Any person, including any person who owns or operates an underground facility in New Hampshire but who is not an operator, as defined in Puc 802.12, may become a member of the notification center.

(c) Any member of the notification center who is not an operator but who owns or operates an underground facility shall comply with Puc 800.

PART Puc 802 DEFINITIONS

Adopt Puc 802.01 to read as follows:

Puc 802.01 “Blasting” means “blasting” as defined in RSA 374:48, VIII, namely, “excavation by means of explosives.”

Readopt and renumber Puc 802.01 – 802.03, effective 8-16-08 (Document # 9226), as Puc 802.02-802.04 to read as follows:

Puc 802.02 “Commission” means “commission” as defined in RSA 374:48, I, namely, “the public utilities commission.”

Puc 802.03 “Damage” means any impact or exposure that results in the need to repair an underground facility due to the weakening or the partial or complete destruction of the underground facility, including, but

not limited to, the protective coating, lateral support, corrosion control, or the housing for the line, device, or underground facility.

Puc 802.04 “Emergency situation” means a sudden or unexpected occurrence involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

Readopt and renumber Puc 802.04, effective 5-29-03 (Document # 7900), as Puc 802.05 to read as follows:

Puc 802.05 "Excavation" means "excavation" as defined in RSA 374:48, III, namely, “any operation conducted on private property or in a public way, right-of-way, easement, public street, or other public place, in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence or sign post installation, pile driving, wrecking, razing, rending or moving any structure or mass material, but does not include the tilling of soil for agricultural purposes, landscaping and maintenance of residential property performed with non-mechanized equipment, landscaping activities performed with mechanized equipment that are intended to cut vegetation, including lawn edging, aeration, and de-thatching, excavations permitted or grand fathered under RSA 155-E, or replacement of department-of-transportation-installed delineator posts in the same location.”

Readopt and renumber Puc 802.05 – 802.07, effective 8-16-08 (Document # 9226), as Puc 802.06 - 802.08 to read as follows:

Puc 802.06 “Excavator” means "excavator" as defined in RSA 374:48, IV, namely, “any person performing an excavation.”

Puc 802.07 “Extraordinary circumstances” means events or conditions other than normal operating conditions which exist and make it significantly impractical or impossible for an underground facility owner or member owning and/or operating an underground facility to comply with the provisions of Puc 800, including, but not limited to, hurricanes, tornadoes, floods, ice or snow, and acts of God.

Puc 802.08 “Hand digging” means any excavation involving non-mechanized tools or equipment and includes, but is not limited to, digging with shovels, picks, and manual post hole diggers.

Adopt Puc 802.09 – 802.10 to read as follows:

Puc 802.09 “Holiday” means any legal holiday pursuant to RSA 288:1 or, when such holiday falls on a Sunday, the following day pursuant to RSA 288:2.

Puc 802.10 “Locator” means a person acting on behalf of an operator to identify and mark the locations of underground facilities in accordance with Puc 806.

Repeal Puc 802.08 – 802.09, effective 8-16-08 (Document # 9226) as follows:

Readopt and renumber Puc 802.10, effective 8-16-08 (Document # 9226), as Puc 802.11 to read as follows:

Puc 802.11 “Notification center” means the entity that performs the primary function of the system, is open to all operators within the state of New Hampshire, maintains a data base of its members and operators and the specific geographic areas in which each of its members and operators desires to receive notice of proposed excavation, and which has the capability to transmit notices of proposed excavation to its members and operators by teletype, telecopy, personal computer, telephone, or other comparable means.

Readopt with amendment and renumber Puc 802.11, effective 5-29-03 (Document # 7900) as Puc 802.12 to read as follows:

Puc 802.12 “Operator” means “operator” as defined in RSA 374:48, IV-a, namely, “any public utility as defined in RSA 362:2 or RSA 362:4 and any cable television system as defined in RSA 53-C:1, and any liquefied petroleum gas company operating any jurisdictional facility or facilities as defined by the Natural Gas Pipeline Safety Act (49 U.S.C. chapter 601) that owns or operates underground facilities.”.

Readopt and renumber Puc 802.12 – 802.15, effective 8-16-08 (Document # 9226), as Puc 802.13 – 802.16 to read as follows:

Puc 802.13 “Person” means “person” as defined in RSA 374:48, V, namely, “any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body.”

Puc 802.14 “Premark” means identifying the perimeter of the proposed site of an excavation by marking the perimeter in an appropriate manner in white paint, stakes or other suitable white markings on non-paved surfaces.

Puc 802.15 “System” means “system” as defined in RSA 374:48, I, namely, “the underground utility damage prevention system referred to in RSA 374:49”.

Puc 802.16 “Tolerance zone” means an area surrounding an underground facility which is 36 inches wide, measured horizontally and equidistant from the centerline of the underground facility, plus the width of the underground facility itself.

Readopt and renumber Puc 802.16, effective 5-29-03 (Document # 7900), as Puc 802.17 to read as follows:

Puc 802.17 “Underground facility” means “underground facility” as defined in RSA 374:48, VII, namely, “any private property or property which is buried, placed below ground, or submerged on a public way, right-of-way, easement, public street, or other public place and is being used or will be used for the conveyance of cable television, electricity, gas, sewerage, steam, telecommunications or water.”

PART Puc 803 SYSTEM REQUIREMENTS

Readopt with amendment Puc 803.01, effective 8-16-08 (Document # 9226) to read as follows:

Puc 803.01 Procedures and Operation of Notification Center.

- (a) The system shall operate a notification center, as contemplated by RSA 374:49.
- (b) The notification center required by (a) above shall:
 - (1) Receive notification from excavators about intended excavation activities;
 - (2) Provide to excavators who give notice of an intent to engage in an excavation activity the names of potentially affected operators and members owning or operating underground facilities to whom the notification center shall transmit notice;

- (3) Promptly transmit to potentially affected operators and members the information received from excavators about intended excavation activities;
- (4) Provide the excavator at the time of initial contact a registration number confirming the notification of intended excavation activity;
- (5) Create a record, which shall include the material included in (6) below, of each notification of intent to engage in an excavation activity and related communication;
- (6) Create, pursuant to (5) above, a record of each proposed excavation, including the following:
- a. The name of the person notifying the notification center;
 - b. The name, address and telephone number of the excavator;
 - c. The specific location, starting date, and description of the intended excavation activity;
 - d. The name(s) of any sub-contractor or other person or entity who the excavator indicates may excavate at the intended excavation site on behalf of the excavator making the notification;
 - e. The date and time of the notification;
 - f. The confirmation or registration number;
 - g. The identity of potentially affected members and operators that the notification center contacts to inform of the intended excavation activity;
 - h. The date and time the notification center transmitted notice of the intended excavation activity to each potentially affected member and operator; and
 - i. The date and time the notification will expire in accordance with Puc 805.01 (b)
 - j. As to any material follow-up communication relating to the proposed excavation activity directed to the communications center:
 1. The party or parties involved in the communication;
 2. The content of the communication;
 3. The date and time of the communication; and
 4. The date, time and recipient of any transmittal of the communication; and
- (7) Maintain the record required to be kept by (5) and (6) above for a period of a minimum of 3 years from the date of the last communication.
- (c) The current toll-free telephone numbers of the notification center for reporting proposed excavations and otherwise communicating with the notification center shall be, 888-“DIG-SAFE”, which is, 888-344-7233 or 811.
- (d) The notification center shall also maintain an internet-based system for proposed excavations at www.digsafe.com.
- (e) Operators and members of the notification center shall use communications equipment that shall be compatible with the notification center.

(f) The notification center shall develop and implement procedures and use communication equipment which are adequate to acknowledge calls within 20 seconds.

(g) The notification center shall staff its operation a minimum of 10 hours each day, 5 days each week, excluding Saturdays, Sundays, and holidays, to respond to both routine and emergency calls.

(h) During the hours that the notification center is not operated by staff, the notification center shall provide at a minimum for an answering service capable of responding to an emergency notification request 24 hours per day, 7 days per week.

(i) The training provided by the notification center shall direct the public to make emergency calls to 911.

(j) The notification center shall be capable of responding to a request for emergency notification and shall transmit the information as provided in (k)(3) below.

(k) The notification center shall transmit information as follows:

(1) Notices of proposed excavation activities to potentially affected members and operators by 5:00 p.m. on the date of receipt;

(2) Routine messages by 5:00 p.m. on the date of receipt; and

(3) Messages relating to emergency situations, as described in Puc 805.03, to any potentially affected member, operator or excavator, as applicable, as soon as possible, but not later than 10 minutes following receipt.

Readopt Puc 803.02, effective 8-16-08 (Document # 9226) to read as follows:

Puc 803.02 Education and Training.

(a) The notification center shall assure that the toll-free telephone number shall be prominently displayed in telephone directories state-wide.

(b) The notification center shall:

(1) Make available literature describing the notification center;

(2) Assure the distribution of such literature to the public; and

(3) Make such literature available for purchase and distribution by requesting parties.

(c) The notification center shall, upon request, provide training to its members regarding the operations of the notification center.

(d) The notification center shall provide all members and interested persons with a brochure explaining the notification center's objectives, procedural guidelines, and opportunities for member participation.

~~(e) Any operator who owns and/or operates an underground facility used in the transportation of gas or hazardous liquids and subject to the pipeline safety laws, 49 U.S.C. 60101, shall:~~

~~(1) Maintain a current list of the names and contact information of persons who normally engage in excavation activities in the area in which any underground facility used in the transportation of gas or hazardous liquids and subject to the pipeline safety laws, 49 U.S.C. 60101, owned by that operator is located;~~

- ~~(2) Notify the public in the vicinity of any underground facility used in the transportation of gas or hazardous liquids subject to the pipeline safety laws, 49 U.S.C. 60101 owned by that operator; and~~
- ~~(3) Notify persons who normally excavate in the area in which an underground facility used in the transportation of gas or hazardous liquids subject to the pipeline safety laws, 49 U.S.C. 60101 owned by that operator, as often as needed to make them aware of the notification center, including:

 - ~~a. The notification center's existence and purpose; and~~
 - ~~b. How to learn the location of underground facilities before excavation activities are begun.~~~~
- ~~(f) An affected operator may complete the notification required by (e)(2) above by:

 - ~~(1) Distributing fliers;~~
 - ~~(2) Informational mailings;~~
 - ~~(3) Placing line markers;~~
 - ~~(4) Signage; and/or~~
 - ~~(5) Other reasonable public education outreach consistent with (1) through (4) above.~~~~
- ~~(g) An affected operator may complete the notification required by (e)(3) above by means including but not limited to distributing informational mailings and/or conducting informational sessions.~~

PART Puc 804 DUTIES OF OPERATORS

Readopt with amendment Puc 804.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 804.01 Reporting Requirements for Operators of Underground Facilities.

- (a) Each operator shall file monthly, including any month in which there are no violations to report, with the commission, on or before the 15th day of the following month, written reports of probable violations of Puc 800, damage to underground facilities, or both.
- (b) Each operator shall file reports required by (a) above on Form E-26.
- (c) Each operator shall include the following in Form E-26:
 - (1) The date the incident was reported;
 - (2) The date the incident occurred;
 - (3) The name and address of the person reporting;
 - (4) The reporter's name and phone number;
 - (5) The location of the damage, violation, or both;
 - (6) A description of the property damaged, if any;
 - (7) A description of the facility, including:
 - a. Details of the facility such as the type, size, material, pressure, voltage, or both; and

b. Type of facility by ownership, such as, customer-owned, municipal-owned or utility-owned.

(8) A description of damage to the facility, if any;

(9) Cost estimate of damage, if any, and whether the excavator has been billed;

(10) A description of personal injuries, if any;

(11) The excavator's name, address, and phone number;

(12) The excavator's employer, if applicable;

(13) A description of the incident;

(14) The type of marking used at the location, if any;

(15) Details fully describing whether:

a. The situation was an emergency;

b. The notification procedure was or was not followed as prescribed;

c. The notification was completed and, if so, provide the registration number and date of notification;

d. The notification was completed and the location was not premarked;

e. The notification was completed and the location was not marked;

f. The notification was completed but markings were not maintained;

g. The notification was completed, the location was marked, but markings were incorrect;

h. The notification was completed and the location was marked but damage occurred; and

i. The notification procedures were not followed and damaged occurred.

(d) If there are no reportable incidents during a month the operator shall file a one page notification report using Form E-26, on or before the 15th day of the following month, identifying the owner or operator and stating that no reportable incident of damage or a violation occurred during the month.

(e) The operator shall send the reporting form required by this section to the New Hampshire public utilities commission, safety division, at its mailing address as provided on the E-26 form or electronically as specified on the commission's web site.

Readopt with amendment Puc 804.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 804.02 Notification Requirements.

(a) Any operator who owns, operates, or both, an underground facility used in the transportation of gas or hazardous liquids and subject to the the federal pipeline statute-safety laws, 49 U.S.C. §§ 60101 to 60137, shall:

(1) Maintain a current list of the names and contact information of persons who normally engage in excavation activities in the area in which any underground facility is located, which is owned by that operator, and is used in the transportation of gas or hazardous liquids and subject to the federal pipeline statute-safety laws, ~~owned by that operator is located;~~

- (2) Notify abutters of the existence of an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline ~~statute-safety laws~~, owned by that operator; and
- (3) Notify persons who normally excavate in the area in which an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline ~~statute-safety laws~~ owned by that operator, as often as needed to make them aware of the notification center, including:
- a. The notification center's existence and purpose; and
 - b. How to learn the location of underground facilities before excavation activities begin.
- (b) An affected operator may complete the notification required by Puc ~~803.02(e)(2)~~ 804.02(a)(2) above by:
- (1) Distributing fliers;
 - (2) Informational mailings
 - (3) Placing line markers;
 - (4) Signage; or
 - (5) Other reasonable public education outreach consistent.
- (c) An affected operator may complete the notification required by Puc ~~803.02(e)(3)~~ 804.02(a)(3) above by means including but not limited to distributing informational mailings, conducting informational sessions, or both.
- (d) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator. Underground facilities which the owner shall not be required to locate shall include, but shall not be limited to, facilities running from a house to a garage or other outbuilding.
- (e) When no underground facility is within the area of a proposed excavation, an owner or operator receiving notification of the proposed excavation shall so advise the excavator by:
- (1) Marking the non existence of facilities within the premarked area of intended excavation in accordance with Puc 806;
 - (2) Participating in a meeting where details of the job site are discussed and documented; or
 - (3) Communicating with the operator via e-mail, fax, telephone or other electronic communication, provided that the excavator confirms receipt of such communication.

Adopt Puc 804.03 to read as follows:

Puc 804.03 Training of Locators.

(a) Locators shall be trained in accordance with National Utility Locating Contractors Association (NULCA) standards, ~~or equivalent.~~ including the competencies as described in (b) below.

(b) To meet the requirements of (a), training programs for locators shall include, at a minimum, the following competencies:

- (1) Electromagnetic locating;

(2) Instruction in the use of transmitters and receivers;

(3) Procedures for marking underground facilities;

(4) Training in the identification of facilities;

(5) Safety procedures;

(6) Operator map and record reading; and

(7) Familiarity with the rules in this chapter.

PART Puc 805 DUTIES OF AN EXCAVATOR

Readopt Puc 805.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.01 Notification Required Prior to Excavation.

- (a) Excavators shall, pursuant to RSA 374:51 notify the notification center:
- (1) Not less than 72 hours prior to a proposed excavation, not including Saturdays, Sundays and legal holidays; and
 - (2) Not more than 30 days prior to a proposed excavation is to be made.
- (b) The excavator's notification, required by (a) above, shall be valid for 30 calendar days from the date and time the notification center confirms the notification.
- (c) When an excavator contacts the notification center as described in (a) above, it shall provide the following:
- (1) The name of the person notifying the notification center;
 - (2) The name, address and telephone number of the excavator;
 - (3) The name of each sub-contractor or other person or entity who might excavate at the intended excavation site on behalf of the excavator making the notification; and
 - (4) The specific location, starting date, and description of the intended excavation activity.
- (d) Prior to complying with the notification requirements of RSA 374:51, II and (a) above, an excavator shall, pursuant to RSA 374:51, IV, premark the area of proposed excavation by identifying the perimeter of the proposed site of the excavation.
- (e) The excavator shall premark in a way that does not interfere with traffic or pedestrian control and is not misleading to the general public.
- (f) An excavator shall not be required to premark any continuous excavation that is over 100 feet in length, or any pole replacement that is within 5 feet of an existing location.
- (g) If an excavation is over 100 feet in length or a pole replacement is within 5 feet of an existing location, the excavator shall communicate the perimeter of the excavation to any potentially affected operator, member of the notification center who owns or operates an underground facility, or both by:

- (1) Providing a detailed description of the site area;
- (2) Providing detailed construction plans;
- (3) Holding an on-site meeting with potentially affected operators; or
- (4) Providing other suitable means of communicating the perimeter of the excavation to any potentially affected operator, member, or both, of the notification center who owns or operates an underground facility.

(h) Once an owner or operator of an underground facility has marked the location of its underground facility in the area of an excavation, pursuant to RSA 374:53 and Puc 805.02, the excavator, and any subcontractor, employee or agent of the excavator performing work on behalf of the excavator at the site, shall be responsible for maintaining the markings during the excavation.

(i) No person or entity not an employee of the excavator shall excavate on behalf of an excavator as a subcontractor or otherwise without separately complying with the notification requirements of this section, unless the excavator has notified the notification center of the identity of that person or entity as provided in (c)(3) above.

(j) A subcontractor of the excavator or other entity may excavate pursuant to the excavator's notification to the notification center if the subcontractor or entity:

- (1) Performs excavation at the location specified in the notification;
- (2) Has a contract to perform this excavation with the excavator;
- (3) Does the excavation work specified in the notification;
- (4) Is listed with the notification center, as provided in (c) (3) above; and
- (5) Otherwise complies with Puc 800, RSA 374:48-56 and other applicable law.

(k) No person shall misuse the intent of the notification center by making a request for marking of an underground facility for other than excavating activities, such as for conducting an engineering design without intending to excavate at the site in question within 30 days.

Readopt with Amendment Puc 805.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.02 Excavation That Affects the Tolerance Zone.

(a) Any person conducting excavation activity that affects the tolerance zone surrounding an underground facility shall exercise at all times such reasonable care as is necessary to protect the underground facility from damage.

(b) Except as provided in (c) below, in order to locate and identify an underground facility, the excavator shall excavate by methods limited to:

- (1) Hand digging
- (2) Pot holing;
- (3) Soft digging;
- (4) Vacuum excavation
- (5) Other mechanical methods with the approval of the underground facility owner or operator; or

(6) Other methods accepted in the industry consistent with the alternatives listed in (1) through (5) above, which clearly will not affect the integrity of the underground facility.

(c) For pavement removal an excavator shall not be limited to hand digging and the other non-invasive methods cited in (b) above.

(d) For parallel type excavations, such as excavation along an existing underground facility at an approximately equal distance when measured periodically, the excavator shall expose the existing underground facility at intervals as often as necessary to avoid damage.

(e) For trenchless excavations, such as horizontal drilling, boring, pneumatic jacking, tunneling and pavement reclamation, reasonable care for purposes of Puc 805.02(a) shall include determining the exact depth of the underground facility and clearances required by the operator and incorporating location details into the trenchless excavation procedure so as to avoid any potential damage of the underground facility.

Readopt with amendment Puc 805.03 effective 5-29-03 (Document # 7900) to read as follows:

Puc 805.03 Emergency Situations.

(a) If necessary to respond in an emergency situation, an excavator may begin an excavation without notifying the notification center prior to excavation as required by Puc 804.01, but shall notify the notification center at the earliest practicable moment.

(b) In notifying the notification center of excavation or intended excavation in an emergency situation, the excavator shall specifically identify the dangerous condition involved.

(c) While an excavator who excavates in an emergency situation shall not be liable on that basis for a failure to notify the notification center as required by Puc 804.01, nothing in this section shall relieve the excavator from liability if:

(1) The excavator damages an underground facility which has been properly marked or which has not been marked; or

(2) The excavation does not qualify as an emergency excavation.

(d) No excavator shall indicate to the notification center or to an operator or member of the notification center that owns or operates an underground facility that an event constitutes an emergency situation unless the excavator believes in good faith that the circumstances do constitute an emergency situation.

(e) If the parties request, pursuant to Puc 200, a determination by the commission as whether a situation is, or was, an emergency situation, the commission shall make such a determination based on a review of the facts of the situation and the definition of emergency situation.

Adopt Puc 805.04 – 805.05 to read as follows:

Puc 805.04 Blasting.

(a) When an excavator determines that blasting will be required during an excavation, the excavator shall inform the notification center when providing notice of the excavation.

(b) If an excavator determines during the effective term of the excavator's notification that blasting is required within the area premarked in accordance with Puc 805.01 (d), the excavator shall notify the notification center of the need to blast. Notification shall be made at least 24 hours prior to any blasting, not including Saturdays, Sundays, and holidays.

(c) When unanticipated obstructions prevent further excavation without blasting, the excavator shall provide separate notice of such blasting not less than four hours in advance of such blasting, not including the hours of 4:00 p.m. to 6:00 a.m. weekdays, or all of Saturdays, Sundays, and holidays.

Puc 805.05 Damage to an Underground Facility.

(a) When an excavator causes any damage to an underground facility not owned or operated by the excavator, the excavator shall:

(1) Call 911 when:

(a) A gas underground facility is damaged and there is a release of gas,

(b) An electric underground facility is damaged and an excavator determines that a person may have received an electric shock, or

(c) Any other facility is damaged and public safety is affected;

(2) Evacuate nearby structures if necessary;

(3) Contact the facility owner or operator;

(4) Attempt no repairs, unless directed to by the facility owner or operator;

(5) Call 811 or 888-DIG SAFE (Notification Center); and

(6) Report the damage to the commission.

PART Puc 806 MARKING THE TOLERANCE ZONE

Readopt Puc 806.01, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.01 Tolerance Zone.

(a) An operator shall use one of the following marking methods to mark the tolerance zone of an underground facility:

(1) The corridor marking method which shall be the practice of placing markers at either boundary of the tolerance zone, such that the markers will be 18 inches plus one-half the width of the facility away from the facility centerline;

(2) The centerline marking method which shall be the practice of placing markers directly over the centerline of the facility establishing boundaries at points located 18 inches plus one-half the width of the facility from the markers; or

(3) The offset marking method which shall be the practice of locating the centerline of the facility and placing markers at locations which parallel the facility.

(b) Any operator shall use the offset marking method only when it is impractical to use either the corridor or centerline methods, such as in marking in the traveled portion of an unpaved roadway.

(c) When marking an underground facility an operator shall mark the underground facility consistent with the color code for the utility type of the underground facility, as set forth in Puc 806.02.

(d) In the event an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation activity, and the corridor marking method is to be applied, the operator may mark one tolerance zone.

(e) When an operator marks 2 or more underground facilities as described in (d) above:

(1) The operator shall establish the boundaries of the tolerance zone by use of the corridor marking method by locating the boundaries of each separate underground facility and placing markers at the outer boundaries of the multiple underground facilities; and

(2) When the marking results in one area being marked, the operator shall inform the excavator of the marking of each of the separate underground facilities within the marked boundaries, either verbally or by appropriate single markings pursuant to Puc 806.01.

(f) When an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation and the centerline marking method is to be applied, the operator shall place markers, conforming with Puc 806.01(a)(2), over the centerline of each facility.

(g) In the event the operator or member who owns and/or operates an underground facility is unable to designate the location of the underground facility due to extraordinary circumstances, the operator or member shall notify the notification center and provide an estimated completion date. The notification center shall then document on the existing notification ticket, utilizing an attachment message, that the utility is unable to designate the location of the underground facility. The operator shall notify the excavator who called the notification center that it is unable to designate the location of the underground facility due to extraordinary circumstances.

Readopt with amendment Puc 806.02, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.02 Markers.

(a) Within 72 hours after receipt of notice from a proposed excavator or from the notification center of a proposed excavation, but not including Saturdays, Sundays and holidays, an operator or member of the notification center who owns or operates an underground facility, shall

(1) Mark the location of its underground facility in the area of the proposed excavation; or

(2) If no underground facility is within the area of the proposed excavation, so notify the excavator pursuant to Puc 804.02(e).

(b) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator. Underground facilities which the owner shall not be required to locate shall include, but not be limited to, facilities running from a house to a garage or other outbuilding.

(c) An operator shall mark underground facilities by the use of paint, stakes, flags, or by any other means that clearly indicates the location of the underground facility.

(d) An operator shall consider the physical characteristics in the area of the proposed excavation in determining the type of marker to be used.

(e) Operators shall mark underground facilities according to the following color code:

(1) Red shall be used for underground facilities conveying electric power, electric cable conduits or lighting cables;

- (2) Yellow shall be use for underground facilities conveying gas, oil, steam, petroleum, or gaseous materials;
 - (3) Orange shall be used for underground facilities used for communications, alarm, signal, communications cables, or communications conduit;
 - (4) Blue shall be used for underground facilities conveying water or used for irrigation or slurry lines; and
 - (5) Green shall be used for underground facilities conveying sewer or used for drain lines.
- (f) Excavators shall use the color white for the pre-marking of the boundaries of a proposed excavation, except as provided in (g) below.
- (g) Excavators shall use pink for pre-marking when snow conditions would render white premarking not clearly visible.

Readopt with amendment Puc 806.03, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.03 Identification.

(a) When an operator marks its underground facility it shall indicate:

- (1) The width of the underground facility for all facilities greater than 1 inch nominal diameter;
- (2) The specific owner or operator of the underground facility; and
- (3) The function of the underground facility.

(b) For purposes of Puc 806.03 (a)(3) functions shall be marked by using:

- (1) The letter E for underground facilities conveying electricity;
- (2) The letter G for underground facilities conveying gas;
- (3) The letters PP for underground facilities conveying oil;
- (4) The letters ST for underground facilities conveying steam;
- (5) The letters CH for underground facilities conveying chemicals;
- (6) The letter T for underground facilities containing telephone wires or cable;
- (7) The letters CATV for underground facilities conveying cable television signals;
- (8) The letters TC for underground facilities conveying traffic control information or signals;
- (9) The letters FA for underground facilities conveying fire alarm information or signals;
- (10) The letter W for underground facilities conveying water;
- (11) The letters RW for underground facilities conveying reclaimed water;
- (12) The letter S for underground facilities conveying sewage;

(13) The letters SS for underground facilities conveying storm sewage; and

(14) The letters SD shall be used for underground facilities used for storm drainage.

(c) An operator shall identify with markings any changes in direction or terminations occurring within the immediate area of the proposed excavation with arrows or other appropriate indicators.

Readopt Puc 806.04, effective 5-29-03 (Document # 7900) to read as follows:

Puc 806.04 ~~Emergency~~ Emergency -Procedures.

(a) Each operator and member of the notification center who owns, operates underground facilities, or both, shall develop internal practices and procedures to:

- (1) Receive and respond to emergency notifications; and
- (2) Mark the location of facilities in emergency situations.

Adopt Puc 806.05 to read as follows:

Puc 806.05 Marking Certain Newly Installed Underground Facilities.

(a) Upon completing the installation of new underground facilities within an area that has been subject to excavator notification and premarking pursuant to Puc 805.01, an operator shall make reasonable efforts to communicate the existence of such facilities if they are covered with soil or other material that impairs their visibility.

(b) For purposes of (a) above, reasonable efforts shall include:

- (1) Marking the tolerance zone in accordance with 806.01, 806.02, 806.03, and 806.04;
- (2) Contacting the excavator with information regarding the presence of the newly constructed facilities, or
- (3) Leaving a tag or marker clearly indicating the presence of the newly constructed facilities with contact information.

PART Puc 807 ENFORCEMENT PROCEDURES

Readopt Puc 807.01 – 807.07, effective 5-29-03 (Document # 7900) to read as follows:

Puc 807.01 Investigation of Complaints.

(a) The notification center shall institute procedures to receive and resolve complaints of excavators, operators, owners or operators of underground facilities, members, and the general public.

(b) Owners and operators of underground facilities shall institute procedures to receive and resolve complaints of excavators and the general public.

(c) The commission staff shall consider and decide unresolved complaints pursuant to the procedures established in Puc 200.

(d) An unresolved dispute relating to Puc 800 which is appealed in writing to the commission shall be handled as follows:

- (1) The matter shall be treated as a request for an adjudicatory proceeding; and
- (2) The parties to the dispute shall have a right of appeal by petition to the New Hampshire Supreme Court pursuant to RSA 541:6.

Puc 807.02 Notice of Probable Violation.

(a) In the event the commission staff determines that a probable violation of RSA 374:48-56, Puc 800, or both, has occurred, staff shall issue a written notice of probable violation (NOPV) to the party alleged to have committed the violation.

(b) The commission staff shall send information regarding the NOPV by certified mail to the party regarded as in violation.

(c) The NOPV shall include the following:

- (1) A description of the probable violation and reference to the rule or statute regarded as violated;
- (2) The date and location of the probable violation;
- (3) A statement notifying the party or parties involved that civil penalties might be imposed pursuant to RSA 374:48-56, in the event of unfavorable judgment;
- (4) Statutory rights of the respondent as enumerated in RSA 374:48-56; and
- (5) Procedures for resolving the complaint.

(d) Any owner or operator of an underground facility involved in the NOPV shall provide a representative for any informal conference or hearing scheduled pursuant to Puc 800.

Puc 807.03 Alternative Responses to Notice of Probable Violation.

(a) Upon receipt of the NOPV the respondent shall either:

- (1) Submit to the commission within 30 days, in writing, evidence refuting the probable violation referenced in the NOPV;
- (2) Request in writing within 30 days, an informal conference with commission staff to examine the basis of the probable violation; or
- (3) Execute a consent agreement with the commission resolving the probable violation.

(b) If the respondent requests an informal conference pursuant to (a)(2) above, the commission staff shall set a date and time for the informal conference.

Puc 807.04 Notice of Violation.

(a) If the commission or commission staff involved in the damage prevention program, after reviewing evidence and testimony obtained in writing or conferences, determines that a violation of RSA 374:48-56, Puc 800, or both, has occurred, the commission or commission staff involved in the damage prevention program shall issue a notice of violation (NOV) to the respondent pursuant to RSA 374:55, VII.

(b) The NOV so issued shall include:

- (1) The factual and statutory basis for the unfavorable preliminary determination;
- (2) A description of factors relied upon by commission staff in making its determination, such as the gravity of the violation, history of prior violations, degree of culpability of the respondent, how quickly the respondent took action to rectify the situation, cooperativeness of respondent, and any other factors which would tend to either aggravate or mitigate the violation;
- (3) The civil penalty, if any, proposed to be imposed;
- (4) Procedures for remitting penalty; and
- (5) Statutory rights of the respondent as enumerated in RSA 374:48-56.

Puc 807.05 Response to Notice of Violation.

(a) Within 10 days from receipt of the NOV, the respondent shall either:

- (1) Sign a consent agreement and remit the civil penalty; or
- (2) File a request in writing for a hearing before the commission.

Puc 807.06 Commission Action.

(a) The commission shall act upon Staff's recommendation unless the respondent requests a hearing pursuant to Puc 807.05(a)(2). Upon such hearing request, the commission shall provide the respondent with notice and an opportunity for a hearing, held pursuant to Puc 200. At the hearing, the respondent may show by a preponderance of the evidence why the commission or designated commission staff determination should be changed.

Puc 807.07 Civil Penalties.

(a) If the commission or designated commission staff within the division of safety finds reason to issue an NOV, the commission or designated commission staff shall propose to assess a civil penalty pursuant to RSA 374:55.

(b) In determining the assessment, the following factors shall be considered:

- (1) The severity of the consequences resulting from the violation such that the more severe the consequences, the higher the civil penalty, the gravity of the violation, degree of culpability of the respondent, cooperativeness of respondent, history of prior violations, and other factors which would tend to aggravate fault; and
- (2) Mitigating circumstances, such as how quickly the excavator took action to rectify the situation, how much control the excavator had over the situation, and other circumstance which would tend to lessen fault.

APPENDIX

Rule	Statute
Puc 801.01	RSA 374:50; RSA 374:55,VII
Puc 801.02	RSA 374:50
Puc 802.01	RSA 374:50; RSA 374:48,VIII
Puc 802.02	RSA 374:50; RSA 374:48,I
Puc 802.03	RSA 374:50
Puc 802.04	RSA 374:50
Puc 802.05	RSA 374:50; RSA 374:48,III
Puc 802.06	RSA 374:50; RSA 374:48,IV
Puc 802.07	RSA 374:50
Puc 802.08	RSA 374:50
Puc 802.09	RSA 374:50; RSA 288:1; RSA 288:2
Puc 802.10	RSA 374:50
Puc 802.11	RSA 374:50
Puc 802.12	RSA 374:50; RSA 374:48,IV-a
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