



Missouri Telecommunications Industry Association

RICHARD TELTHORST, CAE
President

FILED
Dec 09, 2010
Data Center
Missouri Public
Service Commission

December 10, 2010

Steven C. Reed, Secretary
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

RE: Case No. GW-2010-0120
Repository Docket – Underground Facility Damage Prevention

Dear Mr. Reed:

This letter is provided in response to a request by the Commission's Staff for comments regarding issues discussed at the December 6 Stakeholder Roundtable on proposed changes to Chapter 319 RSMo.

We appreciate the opportunity to participate in the roundtables and review the statutory changes presented by Commission staff. At this time, the association has not adopted a position on the proposed legislation and will not do so until a bill is introduced and reviewed by our legislative affairs committee and board of directors. We do, however, have specific concerns on some portions of the proposal as now drafted.

Section 319.040.2 The existing provision in Section 319.040 establishes a rebuttable presumption of negligence against an excavator who fails to give notice of proposed excavation activities to the One Call Center. This obligation is straightforward and compliance is readily verifiable, as the One Call Center (which is a neutral third party) will have a record of whether or not the excavator gave notice of the proposed excavation.

New subsection 2, however, proposes to establish a rebuttable presumption of negligence on the part of an underground facility owner if it fails "to inform an excavator of the approximate location of his or her facilities...". The standard "failure to perform" is ambiguous and, more importantly, compliance is not verifiable by an independent third party. There will be no bright line indication of a violation (such as failure to call before you dig) that is verifiable by an independent third party.

Section 319.055 This new provision would require facility owners to submit a report for each "reportable event" to a data base (Missouri Virtual Private DIRT) to be established by the Commission. Facility owners would also be required to submit quarterly reports regarding the number and type of excavation notifications received from the notification

center. The Commission would publish an annual report of aggregate information similar to the annual report prepared by the Common Ground Alliance.

Much of this information is already collected by the Missouri One Call System (MOCS) as part of its operational data base or could presumably be incorporated at a nominal cost. Consequently, the proposed provision would only add unnecessary costs to our members' operations, without discernible benefit. If the reporting of this data were deemed to be necessary, we would recommend that MOCS be delegated to prepare and submit the information on behalf of its members. We would point out that telecommunications carriers are already required to report damages to the Commission that result in a loss of service. (4 CSR 240-3.550(5)(D)).

We would also recommend that if a report is to be required that it be limited to reporting of the occurrence of damage to an underground facility and the number and types of notifications received. These are events that can be quantified. The proposed definition of "reportable event" (Section 319.015(15)) includes a "near miss" and "downtime" – information that may be difficult to collect, quantify or analyze.

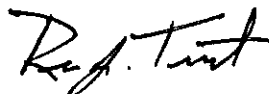
We would encourage the retention of provisions in this section that limit the Commission to reporting the information in the aggregate and that clarify that the submitted reports are not public information. This company-specific operational information is proprietary and should be appropriately protected in this way.

Section 319.060 This new section would require underground facility owners subject to the Commission's jurisdiction to implement performance measures applicable to all persons performing locating services for the owners, and implement a quality assurance program to ensure the measures are being met. First, this requirement only applies to facility owners that are subject to the Commission's jurisdiction and not all facility owners. There is no apparent reason to single out a subset of facility owners for this additional requirement.

Second, and more importantly, prudent managers of underground facilities already have such performance measures in place that apply to their employees or contract locators. It is in their self-interest to do so in order to adequately protect the physical assets they have buried. A government mandate requiring actions already in place by contract or company policy is not necessary.

Thank you for the opportunity to provide comments regarding this proposal. We appreciate your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich. Telthorst", written in a cursive style.

Richard Telthorst, CAE
President