

Johansen, Dale

From: Terry Briggs [tbriggs@sitestl.org]
Sent: Monday, November 02, 2009 11:34 AM
To: Johansen, Dale; Leonberger, Bob
Subject: Additional comments on proposed legislation
Importance: High
Attachments: ResponsetoPSCproposa09.doc

Gentlemen: The attached is a letter with our additional comments on the proposed legislation that was discussed at the October 21 meeting.

A hard copy of this letter will also be sent by mail to insure you receive it.

Thank you again for the meeting and the opportunity to comment on your proposed legislative changes.

November 2, 2009

Mr. Bob Leonberger
Mr. Dale Johansen
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Re: Proposed Changes to
Underground Facility Safety and Damage Prevention Act

Dears Mssrs. Leonberger and Johansen:

Thank you for the opportunity given to the SITE Improvement Association and its membership to offer comments on the proposed changes the Missouri Public Service Commission has drafted to Missouri's Underground Facility Safety and Damage Prevention Act. I did attend the meeting held October 21 and I am submitting these comments/questions/suggestions as requested.

SITE is pleased to see the interest you both have expressed in this very important law. Our organization has been involved in this legislation since the passage of the first bill in 1976 and the establishment of the "One Call" system in 1986. SITE continues to be involved in this law because of its importance to our members, the safety of their employees and the public's safety.

That being said our comments are a follows:

Section 319.015 (6) Definitions Extended excavation project SITE opposes this new definition on the basis we oppose a "Life of Ticket" concept in the law. Construction work, performed outside, is an imperfect industry in terms of time schedules. The weather can play havoc with excavation and cause unforeseen delays as can many other factors. Additional notification on the part of the excavator, as contained in the draft, is burdensome. Our members prefer the law the way it is currently written.

Section 319.015 (16) Definitions Trenchless Technology A question was raised by one of our members how "plowing-in cable, conduit or pipe" is considering trenchless since the ground is disturbed? Past interpretation of this law was that any construction activity breaking the surface of the ground is considered excavation, not trenchless.

Section 319.022 and Numerous other sections of the existing law Starting with this section of the current statute, reference is made, in a number of sections, to the “phasing-in” of underground facility owners into the notification center system (One Call). This language was drafted when the law was first introduced and approved to give facility owners time to prepare. Are these sections really needed now? Aren’t all underground facility owners required to become participants in the notification center?

Section 319.026 Notice of intent to excavate, form of—written record maintained—incorrect location of facility, duty of excavator—visible and usable markings necessary to continue work—notice of completion.

- (6) This relates back to the extended excavation project, which SITE has previously expressed its opposition to creating such a definition in the law.
- (7) Notice of Completion SITE members find this requirement burdensome and oppose it. What happens if the excavator fails to give notice of completion of the project? While this may be covered in the rules and regulations, we don’t know what those will be.

Section 319.030 Notice of underground facility, when, how—failure to provide notice to location, effect—notice of completion of facility marking.

- (8) SITE supports this provision requiring the underground facility owners to notify the excavator when the markings have been completed at a proposed excavation site. This type of information is extremely important for the excavator to know so that work can be scheduled and no delays incurred.

Section 319.032 Location of Sewer Laterals, when, how?

SITE supports this provision as an effort to avoid disruption of sewer service to the properties served by the laterals.

Section 319.040 Presumption of negligence, when, rebuttable

SITE supports this provision. Our membership believes if the excavator is not at fault, he/she should not be held liable for the damages or injuries that may occur if an underground facility is struck.

We do have additional language to propose in subsection two (2) concerning a requirement that all underground facility members should be notification center participants.

The failure of any underground facility owner to be a notification center participant as described in section 319.015 or for any underground facility owner to respond to a notice of intent to excavate in accordance with the provision of sections 319.010 through 319.070 shall be a rebuttable presumption of negligence on his or her part in the event that such failure shall cause injury, loss or damage. In addition to any penalties provided herein, liability under common law ~~may~~ shall apply.

Section 319.065 Underground facility damage prevention review board established, public service commission oversight, duties—members appointments, how, when, term of service—makeup of board—public service commission authority to establish operating parameters, rulemaking required.

Conceptually, SITE supports the creation of a damage prevention review board, and with it the authority to act as an arbitrator to resolve disputes relative to provisions of the law. Creation of such a board would hopefully expedite the resolution of a dispute and reduce costs on both sides by not having to take the issue into the court system.

SITE members do have concerns with the following provisions in 319.065(3)

- The review board make-up of 10 members is weighted toward the utilities. Could an excavator get a fair and impartial examination of the facts by the review board if it is primarily composed of utility representatives?
- Additionally, 10 members may be too large a group to handle review of disputes. Perhaps a subcommittee composed equally of utility and excavator members with a PSC member may be a more equitable method of review.
- Without knowing what the rules and regulations are that would govern the damage prevention review board, it is difficult to give total acceptance to this proposal.

319.70 Underground facilities to be located, when, how?

SITE would propose including in this section, a depth requirement for all underground facilities such that all new facilities must be installed at minimum depths.

Overview

The general premise of this proposed legislation is to take the authority from the attorney general's office and give it to the Missouri Public Service Commission, which regulates private utility operations in the state. What is the response from the attorney general's office to this proposal? Though this office has done very little in terms of enforcement actions for violators of this law, to take authority from one governmental body and give it to another may not be legislative possible unless that other body (the attorney general's office) is willing to surrender its authority.

SITE continues its support of legislation protecting the public's safety and effective enforcement of this law.

Again, thank you for the opportunity to present our comments on the draft legislation.

Sincerely,

Jay Schulteheinrich, Executive Director

Pc: Andy Ernst, SITE President