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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 6, 2016 - 10:12 a.m.
Concord, New Hampshire

RE: DRM 16-508
ALL UTILITIES - RULEMAKING:
Puc 800, Underground Utility Damage
Prevention Program (DigSafe).

NHPUC OCT21 '16 PM 2:27

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: (No Appearances taken)

Court Reporter: Steven E. Patnaude, LCR No. 52

**CERTIFIED
ORIGINAL TRANSCRIPT**

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I N D E X

PAGE NO.

STATEMENTS BY:

Mr. Wiesner	5, 10
Mr. Knepper	6, 9
Mr. Fossum	11
Mr. Cody	12

QUESTIONS BY:

Chairman Honigberg	7, 11
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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: Good morning,
3 everyone. We're here this morning in Docket
4 DRM 16-508, which is a rulemaking proceeding
5 regarding the 800 section of our rules, which
6 are about Underground Utility Damage Prevention
7 Program. Normally, I don't read from the Order
8 of Notice, but I will in this instance.

9 On August 19th, the Commission voted,
10 pursuant to RSA 541-A, to initiate a formal
11 rulemaking of the New Hampshire Code of
12 Administrative Rules Part 800, Underground
13 Utility Damage Prevention Program, otherwise
14 known as "DigSafe". The Commission's initial
15 proposal represents a complete readoption of
16 the existing Puc 800 rules, with amendments.

17 The 800 rules contain procedures and
18 standards to be followed by operators and
19 excavators when preparing for and conducting
20 excavating activities in and around underground
21 facilities. The rules define the duties of
22 operators and excavators, outline procedures
23 for locating and marking underground
24 facilities, and the notification and

1 investigation of complaints, including
2 enforcement. The rules also implement
3 procedures for education and training. The
4 proposed amendments to these rules include
5 certain language changes and updates that
6 clarify and modify terms and improvements based
7 on technological advances to improve the
8 notification and communication procedures and
9 achieve greater improvements in safety. Upon
10 completion of the formal rulemaking process,
11 the proposed amended rules will replace the
12 current version of Puc 800.

13 A notice of rulemaking as required by
14 RSA 541-A was filed with the Office of
15 Legislative Services on September 6th and has
16 been sent to all persons who have made a timely
17 request for advance notice of these
18 proceedings. The notice establishes a public
19 hearing to be held today, and a deadline for
20 the submission of written comments on
21 October 14th, 2016. The notice was published
22 in the New Hampshire Rulemaking Register, as
23 was shown in our Order of Notice. And,
24 pursuant to our rules, this Order of Notice was

1 published on the Commission's website.

2 So, this morning, as I said, we're
3 here to receive public comment, and that
4 there's a deadline for written comment on
5 October 14th.

6 Mr. Wiesner, before turning to our
7 list, which has no one who says they wish to
8 speak, is there anything else we need to do to
9 set the scene?

10 MR. WIESNER: No, Mr. Chairman. You
11 gave a very good overview of the process, where
12 we are in the process, and what the next steps
13 will be.

14 I will just note that, even though
15 none of the parties here today wish to speak to
16 these rules, Staff has identified one further
17 change that it would propose to make in the
18 rules before the final proposal is adopted and
19 filed for JLCAR consideration. And we would
20 like to just outline that for the Commission
21 this morning.

22 CHAIRMAN HONIGBERG: Why don't we do
23 that then.

24 MR. WIESNER: Let's do it now. I

1 will turn the mike over to Randy Knepper, who
2 is the Director of the Safety Division, to
3 describe that change for you.

4 CHAIRMAN HONIGBERG: Mr. Knepper.

5 MR. KNEPPER: If you look at the
6 rules, on Page 12, Section 805.05, "Damage to
7 an Underground Facility", -- yours is Page 14?

8 CHAIRMAN HONIGBERG: On the redline
9 version that shows all the changes, it's
10 Page 14.

11 MR. KNEPPER: All right. Go to
12 Page 14. Under Section (a)(3), we propose
13 adding some verbiage at the end of (a)(3). The
14 verbiage that we're looking to add is "at the
15 earliest practical moment following discovery
16 of the damage". And we will file these
17 comments in writing later, I guess, probably
18 the next week.

19 But the reason for that change is,
20 one, it adds clarity to RSA 374:54, which is
21 "Notification of Damage", and, in that law, it
22 says "immediately". And, so, I think it's
23 consistent with that. And, then, the second
24 thing is the proposal would make use of

1 consistent language that's used by the federal
2 government in 49 C.F.R. 198.55(a)(6)(iii)(A),
3 which we'll give you a copy of as well, and
4 give it to anybody else in the room. And, in
5 determining -- that helps us, when they
6 evaluate and determine the effectiveness of the
7 Commission's administrative rules regarding
8 underground damage prevention.

9 So, I think it's a minor change. I
10 think it only enhances and helps with the
11 clarity.

12 CHAIRMAN HONIGBERG: All right.
13 Thank you, Mr. Knepper. Mr. Wiesner, is 805.05
14 one of those rules that has an (a) and no (b)?

15 MR. WIESNER: Yes, it is.

16 CHAIRMAN HONIGBERG: Has it always
17 been like that?

18 MR. WIESNER: I believe it's always
19 been like that. That's why it's not shown
20 as -- I believe it's always been like that.

21 CHAIRMAN HONIGBERG: And our friends
22 at Legislative Services hasn't seized on that
23 one?

24 MR. WIESNER: No. We received

1 comments from them the other day, and I wanted
2 to mention that most of those are editorial in
3 nature, as is typical, and we will address
4 those as well in the Final Proposal. Quite
5 often, those are in the nature of formatting
6 changes, semicolon, quotes in different places.

7 And, here, I mean, in the language
8 that Mr. Knepper just outlined, it's possible
9 that OLS is going to question the use of a
10 phrase like "earliest practical" -- "earliest
11 practical moment", but that is the language
12 that comes right out of the federal regulation.
13 And, so, I think that would be a grounds for
14 defense, if they were to question that.

15 But, yes. That's a stray (a), if you
16 will, in 805.05. And I do believe that's in
17 the current rules.

18 CHAIRMAN HONIGBERG: If Legislative
19 Services is concerned about the lack of
20 precision, would a reference to the rule that
21 contains the phrase, without -- not
22 incorporation, but a reference to it, might
23 that satisfy a concern that they would accept
24 in that regard?

1 MR. WIESNER: A reference, a specific
2 reference --

3 CHAIRMAN HONIGBERG: As --

4 MR. WIESNER: -- "as provided in"?

5 CHAIRMAN HONIGBERG: Yes.

6 MR. WIESNER: Yes. Right. And they
7 may want that to be noted as an "incorporation
8 by reference", yes.

9 CHAIRMAN HONIGBERG: All right.

10 MR. WIESNER: But we will respond to
11 that. Or we could just highlight that in the
12 cover letter to the OLS, but it's probably
13 better to include it in the rules. So, we'll
14 make that determination, and a recommendation
15 regarding that will be in the letter that's
16 filed with the Commission next week.

17 CHAIRMAN HONIGBERG: Okay. All
18 right. Is there -- yes, Mr. Knepper, sorry.

19 MR. KNEPPER: And I don't want to
20 have any more changes, but I did want to call
21 attention to Section 804.03, which is on Page
22 10. We have an (a) and a (b) there, so we
23 should be okay. But there is a -- kind of a
24 blank spot when it references the Fourth

1 Edition of the proposed reference. And the
2 reason is is because we're looking -- we keep
3 contacting the association, they're telling us
4 they're going to add it to our website. And,
5 when they do, we will fill that in. We believe
6 that will happen before it ends up for the
7 Final Rules that go to JLCAR.

8 If not, we're go to back up, we'll go
9 to the Third Edition that is available and
10 reference that. Contentwise, it makes no
11 difference. It's just that we'd like to use
12 the most recent edition.

13 CHAIRMAN HONIGBERG: Anything else?

14 MR. KNEPPER: That's it for me.

15 MR. WIESNER: And just to summarize
16 where we go from here. Written comments, as
17 you noted, are due by next Friday, the 14th.
18 After that time, it would be in order for the
19 Commission to consider any comments submitted,
20 including Staff's proposed changes. And then
21 adopt a Final Proposal, that will be filed with
22 the Office of Legislative Services for further
23 proceedings in the JLCAR process, and we
24 continue to target a November JLCAR date for

1 the meeting at which these rules would be
2 considered and hopefully approved by the
3 Legislative Committee.

4 CHAIRMAN HONIGBERG: All right. Last
5 call for those who are here, if anybody would
6 like to provide oral comments at this time?

7 Mr. Fossum raises his hand. Yes,
8 Mr. Fossum.

9 MR. FOSSUM: Thank you. I don't have
10 any substantive comment on the rules, except
11 perhaps to say that I don't believe Eversource
12 would have any issue with the amendment that's
13 just been offered by the Staff.

14 I just simply wanted to take a moment
15 to say that I appreciate that, as difficult and
16 troublesome as rulemakings can be, they're
17 painful, generally speaking, for everybody
18 involved. This one, however, I think was run
19 quite smoothly. I think both the lack of
20 turnout in the room today, the lack of need to
21 speak to the Commissioners about any specific
22 concern, I think is an indication that the
23 parties did have an opportunity, the folks
24 affected by these rules had a meaningful

1 opportunity to interact with Staff as this was
2 going on.

3 And I wanted to just take a moment on
4 the record to commend the Staff for how this
5 particular rulemaking has gone.

6 CHAIRMAN HONIGBERG: Thank you,
7 Mr. Fossum. I know that we appreciate how hard
8 the process is for Staff. It is difficult on
9 many people on many levels, and we appreciate
10 your comments and recognition of Staff's work
11 on this.

12 Anyone else care to offer any oral
13 comments?

14 Yes, sir.

15 MR. CODY: Leo Cody, with Liberty
16 Utilities.

17 *[Court reporter interruption.]*

18 CHAIRMAN HONIGBERG: Off the
19 record --

20 MR. CODY: Leo Cody, with Liberty
21 Utilities. Certainly, we echo the comments of
22 Mr. Fossum. And we support the proposed
23 amendments to the 800 rules, including the
24 amendments made this morning.

1 CHAIRMAN HONIGBERG: Thank you,
2 Mr. Cody. We appreciate that.

3 Anyone else? It seems like there's a
4 bit of momentum building up here.

5 *[No verbal response.]*

6 CHAIRMAN HONIGBERG: All right.
7 Well, then, if there's nothing else, we will
8 close this session, and invite people to
9 provide any written comments by next Friday,
10 October 14th.

11 And, over than that, we'll adjourn.
12 Thank you all.

13 ***(Whereupon the hearing was***
14 ***adjourned at 10:24 a.m.)***

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