

THE STATE OF NEW HAMPSHIRE

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September 5, 2008

Office of Legislative Services
Division of Administrative Rules
25 Capitol Street
State House Annex, Room 219
Concord, N.H. 03301-6312

Re: Doc. # 9226 (Interim)
Puc 801, 802.01-802.03, 802.05-802.10, 802.12-802.15 & 803

Dear Ms. Holahan:

Pursuant to RSA 541-A:15,I-a, I hereby certify that the enclosed rules are the same in substance as the rules originally filed with the Office of Legislative Services, Division of Administrative Rules.

I further certify that the enclosed rules, as edited for format by the Division of Administrative Rules, is the official version of these rules which this agency is required to publish in an 8 ½ X 11 inch loose-leaf format as part of the New Hampshire Code of Administrative Rules, under Chapter 5 of the New Hampshire Drafting and Procedure Manual for Administrative Rules and RSA 541-A:15, I.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Getz".

Thomas B. Getz
Chairman

Enclosure

STATE OF NEW HAMPSHIRE

CAROL J. HOLAHAN
DIRECTOR



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
CONCORD, NEW HAMPSHIRE 03301-4951

9/3/08

DOC. NO. 9226 (Interim)

CHAPTER/PART Various Sections of Puc 801, 802 + 803

Enclosed is the final copy of rules in camera-ready form which your agency may now proceed to publish in an 8 1/2" x 11" loose-leaf format, as described in Chapter 5 of the NH Drafting and Procedure Manual for Administrative Rules (Manual). Under RSA 541-A:15, I and Part 1 of Chapter 5 of the Manual, you are required to publish your rules in this format.

Also enclosed is a certification letter discussed in Section 2.5 of Chapter 5 of the Manual.

Please have the individual, or a member of the group of individuals, with rulemaking authority sign the enclosed letter, retyped on your letterhead, certifying that the substance of the rules has not been affected by the editing process. Pursuant to RSA 541-A:15, I-a, your agency must certify within 120 days of receiving the first edited text for proofreading. The first edited text was sent to you on

8/21/08

This certification letter will be kept in our files to explain the difference between the version originally filed and the camera-ready version, which will replace the as-filed version as the official version of the rule. Please send one copy of the rule with the certification letter to the Office of Legislative Services, Administrative Rules, 25 Capitol Street, Room 219, State House Annex, which will place the rule on the Administrative Rules website.

Also included as the first page of these rules is a standard request form which will simplify the supplementation process, as described in Section 2.6 of Chapter 5 of the Manual. When you publish your rules, you are required to print this form as the initial page.

Thank you.

Sincerely yours,

Carol J. Holahan, Director
Office of Legislative Services

Enc.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Puc 800 UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM

Statutory Authority: RSA 374:50

PART Puc 801 APPLICATION OF RULES

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.

Source. #2050, eff 6-13-82; ss by #2912, eff 11-26-84, EXPIRED: 11-26-90

New. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 801.02 Application.

(a) Each operator, as defined in Puc 802.10, 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 802.09, 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.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

PART Puc 802 DEFINITIONS

Puc 802.01 "Commission" means "commission" as defined in RSA 374:48, I, namely, "the public utilities commission."

Source. #2050, eff 6-13-82; ss by #2912, eff 11-26-84, EXPIRED: 11-26-90

New. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.02 "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.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.03 "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.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.04 "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."

Source. #7350, eff 8-23-00; ss by #7900, eff 5-29-03

Puc 802.05 "Excavator" means "excavator" as defined in RSA 374:48, IV, namely, "any person performing an excavation."

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

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Puc 802.06 "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.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.07 "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.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.08 "NOPV" means notice of probable violation.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.09 "NOV" means notice of violation.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.10 "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.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.11 "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, that owns or operates an underground facility." The term also includes operators of liquefied petroleum or LP systems.

Source. #7350, eff 8-23-00; ss by #7900, eff 5-29-03

Puc 802.12 "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."

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.13 "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.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

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Puc 802.14 "System" means "system" as defined in RSA 374:48, I, namely, "the underground utility damage prevention system referred to in RSA 374:49".

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.15 "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.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

Puc 802.16 "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."

Source. #7350, eff 8-23-00; ss by #7900, eff 5-29-03

PART Puc 803 SYSTEM REQUIREMENTS

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;

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- 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. 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 number of the notification center for reporting proposed excavations and otherwise communicating with the notification center shall be, "1-888-DIG-SAFE", which is, 1-888-344-7233.

(d) Operators and members of the notification center shall use communications equipment that shall be compatible with the notification center.

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

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

(g) 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.

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

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

(j) 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

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(3) Messages relating to emergency situations, as described in Puc 804.03, to any potentially affected member, operator or excavator, as applicable, as soon as possible, but not later than 10 minutes following receipt.

Source. #2050, eff 6-13-82; ss by #2912, eff 11-26-84, EXPIRED: 11-26-90

New. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

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. 6010, 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.

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(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.

Source. #2050, eff 6-13-82; ss by #2912, eff 11-26-84, EXPIRED: 11-26-90

New. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08, EXPIRES: 2-12-09

PART Puc 804 DUTIES OF OPERATORS

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.

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APPENDIX

Rule	Specific State or Federal Statutes which the Rule is Intended to Implement
Puc 800 (other specific statute provisions implemented by specific rules are listed below)	RSA 374:50, 374:55, V
Puc 801	RSA 374:50, 374:55, V
Puc 802.01 – 802.03	RSA 374:50, 374:55, V
Puc 802.05 – 802.10	RSA 374:50, 374:55, V
Puc 802.12 – 802.15	RSA 374:50, 374:55, V
Puc 803.01	RSA 374:50, I
Puc 803.02	RSA 374:50, II
Puc 804	RSA 374:50, III
Puc 805.06	RSA 374:55, V
Puc 806	RSA 374:50, II
Puc 806.07	RSA 374:55, V