



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

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March 7, 2017

Honorable David C. Woodsome, Senate Chair
Honorable Seth A. Berry, House Chair
Energy, Utilities and Technology Committee
100 State House Station
Augusta, Maine 04333

Re: LD 405, An Act to Make Changes to the So-called Dig Safe Law

Dear Senator Woodsome and Representative Berry:

The Public Utilities Commission (Commission) testifies in support of LD 405, An Act to Make Changes to the So-called Dig Safe law. The bill would make larger liquefied propane gas (LPG) distribution systems, those with a cumulative tank capacity of over 2,000 gallons, subject to the Dig Safe law.

Background:

A. Dig Safe Law

Title 23, Section 3360-A, commonly referred to as the Dig Safe law, establishes procedures that must be followed by excavators and underground facility operators before and during excavation to ensure the protection of underground facilities. In addition, Section 3360-A also establishes procedures for the Commission to implement and enforce these requirements. Pursuant to the law and Chapter 895 of the Commission's rules, anyone planning to excavate near underground facilities must follow certain safety procedures and must notify facility owners of the planned excavation. Most facility operators, such as large utilities (electric, gas, telephone and cable) are notified using the Dig Safe System.¹ Excavators must also notify facility operators who are not members of the Dig Safe System such as municipalities and smaller utilities (e.g., water utilities and sewer districts), as well as owners of underground facilities located on private property. To help excavators

¹ The Dig Safe System is a not-for-profit clearinghouse that notifies member utility companies in ME, NH, VT, MA & RI and which is funded by member utilities.

identify the non-member operators that own underground facilities near their intended excavation site, the Commission maintains what is known as the OKTODIG program, a database of non-member operators. The database helps facilitate non-member notifications thereby enhancing public safety. Once informed of a pending excavation, utilities have an obligation to locate and mark their underground facilities in accordance with the Dig Safe law so that excavators will be sufficiently aware of their location when they dig. To notify owners of underground facilities located on private property, excavators typically leave door hangers that notify the private facilities' owner of the planned excavation and the need for them to mark their facilities.

Possible violations of the Dig Safe law must be reported to the Commission, which then investigates and determines the appropriate enforcement action, if any. To increase awareness of the requirements of the Dig Safe law, the Commission performs regular training programs and provides public education material to improve awareness of the importance of preventing damage to underground facilities.

Large Non-Jurisdictional LPG Distribution Systems

During the 2012 session,² the Legislature amended the definition of underground facility to exempt what are referred to as non-jurisdictional LPG distribution systems.³ Non-jurisdictional LPG distribution systems are often small systems that serve fewer than 10 customers and are not located in a public place or that serve a single customer. However, this definition also includes larger underground facilities serving single customers including, for example, the Augusta Civic Center and large retail stores (e.g., Walmart) that are located in a public place.

The Commission understood the exemption was being crafted to address a short underground line from a propane tank to a camp or residence. The Commission agreed that it made sense to exempt this type of situation; however, the language that was enacted also exempts larger underground systems as described above.

Prior Legislation

The Commission believes that the exemption of these larger LPG systems from the Dig Safe law may pose a danger to excavators and the public. For that reason, the Commission proposed making these systems again subject to the law during the 2014 session (LD 1647, An Act To Make Changes to Maine's Dig Safe Law).

Propane operators opposed this change. First, they argued the bill would subject a very large number of systems to the Dig Safe law. The Commission has tried to address that issue by targeting systems with a cumulative tank capacity of over 2,000 gallons, to ensure that only larger systems where an incident could have a significant impact on the public are covered.

² See PL 2011, ch. 588 § 2.

³ The systems not included are "[a]ny pipeline system that transports only petroleum gas or petroleum gas/air mixtures to – (i) [f]ewer than 10 customers, if no portion of the system is located in a public place; or (ii) [a] single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place). 49 CFR, Part 192 § 192.1(b)(5)₂

Propane operators also raised the issue of excavators not being specific enough regarding the location of their planned excavation when they call Dig Safe which often resulted in Dig Safe tickets being issued to operators when they didn't have facilities near the planned excavation. They pay for each ticket and argued that they were spending resources marking facilities that didn't need to be marked. They advocated for addressing this ticket issue before making a change to the law that might bring more propane systems under the Dig Safe law. In the view of operators, this would further increase the number of tickets to which they needed to respond. The Commission agreed that it was reasonable to try to address the ticket issue first and proposed amending the Dig Safe rules to require excavators to use GPS coordinates and/or cross street references when calling in tickets. The Legislature ultimately removed this section from the bill language. The Commission subsequently conducted a rulemaking.⁴ Commenters in the rulemaking (and preceding Inquiry⁵) supported the Commission's approach to addressing this issue.⁶

LD 405

The Commission continues to believe that continued exemption of these larger LPG systems from the Dig Safe law may pose a danger to excavators and the public. For that reason, the Commission proposes to make large non-jurisdictional LPG distribution systems (those with a cumulative tank capacity of over 2,000 gallons) subject to the Dig Safe law. Certainly, the Commission seeks to reduce the impact on businesses to the extent possible and believes, given the history described above, that this is a proper step.

The Commission looks forward to working with the Committee on LD 405 and I would be happy to respond to any questions the Committee has at this time. The

⁴ *MPUC Amendments to Underground Facility Damage Prevention Requirements (Chapter 895)*, Order Adopting final Rule, Docket No. 2014-00248 (May 22, 2015).

⁵ *MPUC Notice of Inquiry Into the Commission's Underground Facilities Damage Prevention Program in Anticipation of Upcoming Chapter 895 Rulemaking Proceeding*, Notice of Inquiry, Docket No. 2014-00192 (June 24, 2014).

⁶ The Commission amended Section 4(B)(1)(e)(ii) of its Dig Safe rules, Chapter 895, to encourage, but not require, the use of GPS coordinates when excavators notify the Dig Safe System of the excavation location. In addition, the Commission required that if the excavator does not, or is unable to, provide GPS coordinates, the excavator must give more specific information regarding the excavation location (e.g., the name of the city or town; and the street, way, or route number where appropriate; and the name of the streets at the nearest intersection; and the number of the buildings closest to the excavation and/or any other description, including landmarks, utility pole numbers or other information which will accurately define the location of the excavation and the date and location of any blasting. This language was virtually identical to what MA required). The Commission sought comment on requiring the use of GPS coordinates; commenters indicated that GPS coordinates should not be required (e.g., the Dig Safe System stated that it gets calls from many non professional excavators like homeowners who do not have the ability to provide this information. In addition, the Dig Safe System stated that it cannot refuse an excavator a Dig Safe ticket for lack of information. Dig Safe will always err on the side of caution by transmitting the ticket and letting the utility member decide if they have facilities in the proposed excavation area. The Telephone Association of Maine (TAM) stated that the Commission should incentivize but not require use of GPS. the Maine Energy Marketers Association (MEMA) recommended requiring GPS coordinates and stated that the Commission's proposed changes would significantly help the problem, and supported the proposed rule).

Commission will also be present at the work session should the Committee have any additional questions in its consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Paulina McCarter Collins". The signature is fluid and cursive, with the first name being the most prominent.

Paulina McCarter Collins, Esq.
Legislative Liaison

cc: Energy, Utilities and Technology Committee Members
Deirdre Schneider, Legislative Analyst