BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of a Repository Docket for Materials Relating to the Underground Facility Damage Prevention Project.	)))	Case No. GW-2010-0120

COMMENTS OF MISSOURI UTILITIES
ON POTENTIAL CHANGES TO CHAPTER 319 RSMO

At the recent Roundtable held in the above-captioned proceeding, the Staff of the Missouri Public Service Commission (Staff) requested that interested participants provide comments regarding potential changes to the provisions of Chapter 319 RSMo. To that end, Laclede Gas Company (Laclede), Empire District Electric Company (Empire), Kansas City Power & Light Company (KCP&L), and Kansas City Power & Light Greater Missouri Operations Company (KCP&L GMOC) (hereinafter the "Missouri Utilities") submit the following comments.

Damage prevention background and Missouri Utilities' involvement

Laclede is the largest natural gas distribution utility in Missouri. Today, Laclede serves approximately 632,000 residential, commercial and industrial customers in the city of St. Louis and ten other counties in Eastern Missouri through approximately 16,000 miles of transmission, main and service pipelines. Empire is an investor-owned, regulated utility company, based in Joplin, Missouri, that provides electricity, natural gas (through its wholly owned subsidiary, The Empire District Gas Company), and water service, to approximately 215,000 customers in Missouri, Kansas, Oklahoma, and Arkansas. KCP&L and KCP&L GMOC serve more than 800,000 customers in Northwestern Missouri and Eastern Kansas, in 47 counties, operating approximately 2,500 miles of transmission lines, and over 26,000 miles of distribution lines.

Excavation related damage to underground utility facilities constitutes the single greatest threat to utility service and safety. This threat was considered so significant, that in 1998 the federal government passed and signed into law the Transportation Equity Act for the 21st Century (TEA 21). The intent of TEA 21 was to reduce damage to underground facilities during excavation and to reduce attendant risks to the public and the environment. Through TEA 21, the US Department of Transportation was authorized to undertake a study of damage prevention practices associated with existing one-call notification systems. In August 1999, this study resulted in the publication of a document entitled "Common Ground – Study of One-Call Systems and Damage Prevention Best Practices" (Common Ground). The Common Ground study launched national interest in damage prevention and fueled the formation of the Common Ground Alliance (CGA), the creation of CGA regional partners in many States (including Missouri) and a philosophy of shared responsibility which the Missouri Utilities have embraced.

The Missouri Public Service Commission (Commission) is no stranger to damage prevention. In fact, the Commission was one of the original 160 entities invited to participate in the above mentioned Common Ground study. The current effort being pushed by the PIPES Act of 2006 and other anticipated changes on the horizon (Pipeline and Hazardous Materials Safety Administration's rule on Distribution Integrity Management Program) makes it understandable why the Commission is trying to move the discussion forward.

The Missouri Utilities have been active participants in the damage prevention arena for many years and have established and successful programs in place. Not only are the Missouri Utilities major owners of underground facilities in the State, but are also significant excavators in their service territories as well. Accordingly, the changes suggested here would impact the Missouri Utilities from both perspectives. For these reasons, Missouri Utilities are uniquely

positioned to meaningfully comment on the Commission's proposed changes to Chapter 319. Overall, the Missouri Utilities support many of the changes suggested herein by the Commission. At the same time, the Missouri Utilities believe several proposed changes should be either rejected outright or deferred pending further consideration and analysis.

319.015 (ticket life)

Section 319.015 proposes to add a new definition "extended excavation project" which would automatically stamp a 15 day life on the ticket unless the caller claims the project constitutes an extended project, in which case a 30 day limit would be set on the ticket. Any extension to the life of the ticket needs to include language that places the onus upon the excavator that all locate markings are visible, unambiguous, and flags have not been removed or changed purposely or by vandalism. Establishing a life on a locate request is a good idea and a concept that the Missouri Utilities support. Currently, once a ticket is issued and marked in Missouri, an excavator may continue to work within the area described in the ticket for as long as the marks are visible. The concept of specifically designating a life on a locate ticket eliminates confusion by setting a definitive time period within which the project can be worked and, once that period ends, by requiring the excavator to call in a new ticket with more current project information and modified descriptions. In jurisdictions that have a "ticket life" designation, the life is normally set at or around 28 to 30 calendar days. This time span is long enough to capture most projects and short enough where the marks on the ground will still be useable. When projects that need more time to complete are encountered, an extension can be provided for. An example of ticket life language and a procedure to extend the timeframe on a given ticket can be found in Illinois One Call Law at www.illinois1call.com.

319.026 (excavator notification that project is complete)

The Commission's proposed change to section 319.026 requires that excavators notify the call center when the excavation project is complete and for the call center to issue a notification to all facility owners of that fact that received the original ticket. This activity is unnecessary, costly, and extremely unlikely to contribute to enhanced safety. It should therefore be rejected. For example, in CY08, Laclede called in over 13,300 locate requests to the Missouri One Call System Inc (MOCS). This proposed change would require that Laclede, as an excavator, track an additional task associated with each of these 13,300 projects; establish criteria of when a project would be considered complete; assign someone the responsibility to notify MOCS; document and archive the fact that MOCS was contacted; and potentially perform other administrative activities; all with no obvious safety benefit.

In CY08, as a facility owner, Laclede received over 190,000 locate requests to be marked. The proposed change would basically double the number of routine locate requests received by facility owners and consequently increase ticket costs significantly without any perceived benefit. Besides the cost issue, facility owners would have to do "something" once the notification is received, which brings in additional administrative/operational issues and process changes.

319.030 (positive response of facility owner that facility is marked)

This is an unnecessary activity and it should be rejected. Statewide, in CY08, facility owners in Missouri responded to approximately 3.4 million tickets. The current system already requires that a positive response be provided to an excavator if a facility owner has "no facilities" within the scope of the ticket. If facilities are present, the facility owner must mark its facilities within a prescribed timeframe or contact the excavator and work out a mutually agreeable time. Provisions already exist in the law which state that if the excavator does not see locate marks

from a facility owner at the designated project site and they have not been contacted with a "no-facilities" call, they must make a "no response" call to MOCS and wait 2 hours for a response before beginning to dig safely in the area. There is no need to mark the facilities and then call the excavator that you did it. The evidence of the marks on the ground should be enough to indicate that the job was completed. The extra step in notifying the excavator ultimately will add time to each locate and force some tickets to be tardy or cause additional manpower to be directed to the locate function.

319.032 (identification and location of sewer laterals)

The proposed addition to section 319.032 is a helpful change and the Missouri Utilities support the concept to the extent it can be reasonably implemented.

319.040 (rebuttable presumption of negligence)

While this section appears to be an attempt to balance an existing rebuttable presumption of negligence caused by an excavator's failure to give notice to excavate, this proposed change creates a vague concept of a facility owner's "failure…to respond to a notice". If a facility owner marks everything within the scope of a ticket but misses a single item that ultimately gets hit, will that be considered "failure to respond to a notice"? If an excavator begins digging before the facility owner gets a chance to mark its facilities, will that be considered a "failure to respond to a notice"? If the Commission wants to create a balance, then it must precisely define what specific activity or thing a facility owner will be held to when negligence is asserted. The existing rebuttable presumption of negligence to which excavators are held is easy to establish--either they have a locate ticket or they don't. Absent a clearer definition of "failure to respond" by facility owners, this change should be rejected.

319.046 (assumption of enforcement authority by the Commission)

The Missouri Utilities strongly support efforts to enforce the provisions of existing law that are designed to prevent damage to underground facilities. As operators involved in the damage prevention process for some time, the Missouri Utilities have great appreciation for what an effective enforcement element could bring to reducing damages and damage prevention in general. The Missouri Utilities believe that any legislative changes should be aimed at making enforcement an every day reality – something that has been missing to date. To that end, the Missouri Utilities support a plan where there is an active enforcement presence and where excavators and facility owners alike are held to a standard and where chronic abusers of the system are held accountable. Missouri Utilities would support the current governmental agency charged with enforcing the provisions of Chapter 319 becoming more active in this area or, alternatively, giving the Commission authority to seek penalties in Circuit Court for facility owners and excavators that are not already subject to its regulatory jurisdiction. Such a plan is further discussed in our comments in section 319.065.

319.055 (need for miscellaneous damage related data)

KCP&L and GMO believe that on an annual basis, data provided responsive to Chairman Clayton's August 17, 2009, request for annual Underground Utility Damage Information Survey is sufficient in meeting the expressed goals of identifying opportunities for improvement in management of underground utility rules and procedures. For their part, Laclede and Empire would note that for over the past 10 years or so, the CGA has developed various data collection tools and analytical reports to use in addressing damage related issues. Much work has already been done and the result of this effort is being used by regulators and other stakeholders across the country. Accordingly, instead of crafting special rules and creating unique Missouri damage data collection requirements, the Missouri Utilities believe the Commission should use the data

set that has already been developed—at least as a starting point. The CGA's Damage Information Reporting Tool (DIRT) could provide the Commission with the basic type of information they may want. Also, since DIRT is used nationally, performance comparisons and program effectiveness could be measured more easily. More information on DIRT is available at www.cga-dirt.com

319.060 (locate service quality assurance review and criteria)

This proposed change should be rejected since it proposes to unnecessarily broaden the Commission's regulatory oversight and control. The Commission already has the opportunity to review the adequacy of various aspects of regulated pipeline operations. Specifically, it can review an operator's internal locate standards for adequacy, timeliness and other performance measures. Some operators may out-source their locate function to outside firms. Quality assurance, training, performance issues, etc. are often negotiated issues and contractually set between operator management and the locating firm. The Commission may be able to review those contracts but they should not dictate the level of performance, quality, etc that should be worked out by the two contracting parties.

Missouri Utilities are uncomfortable with a broader notion, requiring changes to existing contracts among owners and contractors. As a general principle, and specifically as it relates to §319.060, any proposed revision to the statute should mitigate the potential for abrupt changes in contractual language and relationships between contracting parties. Such sudden changes create pricing uncertainty and contractors will address the greater risk by increasing the underlying cost of service. The cost of locate services to facility owners will unfavorably be impacted, increasing operation and maintenance expense for the utility.

In light of this concern, the Missouri Utilities suggest that if any additional statutory language is pursued in this area, it should encourage more deliberate and measured contractual changes between locate services and facility owners, thereby allowing sufficient time for contracts to terminate naturally in the course of business. Then any new contracts can reflect operational and/or procedural realignment to address Commission concerns.

319.065 (creation of an underground facility damage prevention review board)

The Missouri Utilities believe that the creation of a completely independent underground facility damage prevention compliance board would be a step in the right direction. Like the review board envisioned by the Commission, the Missouri Utilities believe that such a body should be comprised of a cross-section of stakeholder experts from the excavation, gas, electric, telephone, locator and cable industries, the call center and other appropriate groups that have a vital interest, that is appointed by the Governor and empowered to mediate and resolve chapter 319 compliance issues. In addition, the Missouri Utilities recommend that such a board also be empowered to make recommendations to the Commission, and petition the Missouri Attorney General's Office, the Commission, or whatever governmental entity is ultimately charged with enforcement of Chapter 319 to take specific action against an offending party if it deemed necessary. We believe that peer pressure and cooperation, together with these additional measures, will produce positive results in not only excavator and operator attitudes, but also in voluntary compliance with chapter 319.

319.070 (need for all new facilities installed to be locatable)

The practice of installing new facilities and ensuring that they are locatable (either electronically or by measurement) has been a gas industry practice for years. The Missouri Utilities therefore have no objection to formally codifying this practice in this section.

Suggested addition to enhance public and facility safety

The Missouri Utilities believe that an effective program for reducing the number and severity of excavation damages should include a mandatory "hand-dig" requirement. Currently such a requirement is limited in section 319.037 to those situations involving trenchless excavations. Experience has shown that this requirement has been significantly effective in preventing or at least minimizing the number of excavation damages. Further, many states in the country make hand-digging a mandatory requirement to confirm the horizontal and vertical location of marked facilities in the path of the planned excavation prior to using power operated equipment. This is an additional and effective requirement that the Missouri Utilities would encourage be included in any future changes to Chapter 319.

KCP&L and GMO support the goal of the intended legislation to reduce personal injury and property damage from excavation accidents. Hand-digging around electric facilities comes with additional risk. In light of that risk, KCP&L and GMO strongly advocate for additional language requiring utilities and excavators to establish criteria and safe practices for hand-digging around electric facilities, require qualified persons to perform this task, perform periodic review of such criteria and practices, and maintain records of initial and refresher training of personal that are required to hand-dig near electric facilities.

Respectfully submitted,

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