

## **Proposed Changes to Missouri Revised Statutes, Chapter 13**

**To:** Missouri Public Service Commission

**From:** Gaya Boyers, Corporate Counsel USIC

**Date:** October 30, 2009

**Re:** USIC's Comments re Proposed Changes to Missouri Revised Statutes, Chapter 13

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USIC Locating Services, Inc (d/b/a SM&P Utility Resources) leads the industry both in the quality of underground locate work it does for utilities and in the extent of its business. Headquartered in Carmel, Indiana, USIC has approximately 500 utility customers in twenty states. Because USIC is committed to the safekeeping of the public, our employees, our customers' facilities, and the excavating community, we support and encourage the intent to revise Missouri Revised Statutes, Chapter 13 in furtherance of the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006. After reviewing the proposed changes to the statute, attending the Roundtable Discussion on October 21<sup>st</sup> and considering the comments generated during that discussion, USIC offers the comments below for the Missouri Public Service Commission's consideration.

### **DISCUSSION**

#### **319.046: Civil Penalties**

Because USIC locates multiple facilities and multiple excavation sites, it shoulders a disproportionate burden with respect to the Civil Penalties provision. On average, USIC performs over 200,000 locates a month in the state of Missouri. In other words, in Missouri alone on a monthly basis, USIC has over 200,000 opportunities to protect its customers' facilities. USIC also considers this statistic in another way – USIC has over 200,000 opportunities a month for locator or dispatcher error. Although our employees undergo thorough training and perform their jobs to the best of their abilities every day and USIC diligently works to remain damage-free, mistakes can occur. In our business, we worry about unintentional mistakes occurring at several different points in the life cycle of a ticket. A mistake could occur:

- When a dispatcher dispatches his/her ticket
- When a locator reads his/her prints
- When a locator performs his/her locate

Currently, these errors can prove to be extremely costly for USIC in that USIC bears 100% of the cost to repair our customers' facilities when those facilities are damaged due to locator error. If the Civil Penalty provision remains as it is currently drafted, USIC could, in effect, be penalized

twice for the same damage. Actively pursuing civil penalties against USIC in the amount of \$10,000 per violation per day will have a significant negative impact on our business, particularly with respect to our Missouri employees.

USIC asks the Commission to reconsider the amount and application of the Civil Penalties provision. Indiana's Damage to Underground Facilities Statute (IC 8-1-26) includes a Civil Penalties provision not to exceed \$1,000 per violation. In practice, if a penalty is applied, it is typically \$100 per violation

Finally, USIC strongly urges the Commission to consider drafting language for inclusion in this provision that specifically addresses the abuse of the "Emergency" ticket. While many legitimate emergencies do exist, there are some who unscrupulously abuse this emergency provision of the statute by calling in a locate as an "emergency" that does not fall within the definition of an emergency. This abuse, which at its core is no more than illegitimately pushing oneself to the front of the line, is very disruptive for those who have carefully planned their excavation work. We believe there should be a specific penalty for those who abuse the emergency locate system. Such penalties are currently included in other states' One Call legislation. USIC supports implementation of strong penalties against those who misrepresent an emergency excavation and demolition.

### **319.060: Performance Measures and Quality Assurance Programs for Locating Services**

In September 2008, the Department of Transportation Pipeline and Hazardous Materials Safety Administration published a document titled, "Damage Prevention Assistance Program: Strengthening State Damage Prevention Programs." This publication offered guidance on incorporating the "Nine Federal Elements" into State Damage Prevention Programs. USIC understands this provision is intended to further Element #3 of the nine elements. The publication had the following useful interpretative guidance: "Element 3 is better stated as a process for reviewing the adequacy of *any operator's* internal performance measures regarding persons performing locating services and quality assurance programs."

Based on our reading of the guidance provided in this publication and our consideration of the provision, USIC believes the objective of this element can be met by creating a partnership between the Commission and Locating Companies to:

- Verify that Locating Companies have training programs in place that further the Commission's and the Company's objective of damage prevention.
- Verify that the Locating Companies execute their training programs as planned.
- Verify that the Locating Companies have processes and procedures in place for regular review of employee performance.
- Verify that the Locating Companies have progressive discipline programs in place to correct or re-train employees as needed.

- Verify that Locating Companies establish, track, evaluate and utilize performance metrics data in the furtherance of damage prevention.

USIC creates and implements its processes and procedures with an eye both on its customers and state laws. In order to remain competitive, USIC must meet or exceed its customer's expectations. In order to comply with the law, USIC must meet the expectations established by state lawmakers. Because USIC best understands the efficiencies, challenges, strengths and weaknesses of the locating industry, USIC is in the best position to create and implement the most effective processes and procedures. USIC takes pride in its extensive training program (four weeks of classroom and field training), the processes and procedures it has developed to ensure we provide the best possible locating service to our customers and our industry-leading damage ratio.

We would welcome the opportunity to share information related to these performance and quality measures with the Commission as required. To that end, USIC urges the Commission to consider drafting changes to this provision subsection (1) by replacing the language regarding "granting the authority to promulgate rules" with language such as "granting the authority to review processes and procedures" and striking the remaining language in the subsection.

### **Consideration of the Common Ground Alliance (CGA) 2008 DIRT Report**

On their website, the CGA recently announced 2008 findings from its comprehensive Damage Information Reporting Tool (DIRT). Their findings included a study of buried utility damage root causes. The report concluded:

*Of the total number of incidents reported in 2008, more than half (73,152) had a known root cause, and were identified as follows:*

- *Notification not made 37 percent*
- *Excavation practices not sufficient 37 percent*
- *Locating practices not sufficient 22 percent*
- *Notification practices not sufficient 3 percent*
- *Miscellaneous root cause 1 percent*

USIC believes the CGA report supports USIC's position that although errors can and do occur at excavation sites due to locate practices, the vast majority are not caused by locator error.

## **CONCLUSION**

Although USIC generally supports the legislative changes suggested for Missouri Revised Statute, Chapter 13, we believe the comments and suggestions we have made in this memo will lead to a better result and a fair application of the statute for all stakeholders.

USIC appreciates the opportunity to present its comments to the Commission and invites further discussion of not only the topics mentioned in this memo but also any topics that further the objective of damage prevention.