



MPUA

Missouri Public Utility Alliance

December 2, 2010

Steven C. Reed, Secretary
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65101

RE: Case No. GW-2010-0120
Repository Docket - Underground Facility Damage Prevention

Dear Mr. Reed:

This letter is provided in response to the Commission's request for comments relating to Underground Facility Damage Prevention. The Commission has held a series of Stakeholder Roundtables on suggested changes to Chapter 319 RSMo.

On behalf of the Missouri Association of Municipal Utilities (MAMU) – an association of more than 110 member cities with municipal-owned gas, electric, wastewater, water, and broadband utilities, we submit this letter of comment.

It has been our understanding that the primary focus of the Commission's discussion has been to enhance the state's enforcement authority to aid in underground damage prevention. As locally-regulated, consumer-owned utilities, municipal utilities can use their own unique authority to enforce proper excavations. An example of such a current ordinance is attached.

MAMU supports efforts to hold excavators accountable who dig without a locate request from the State notification center, otherwise known as "Missouri One Call." However, we do not support efforts to expand enforcement beyond what is required under existing Chapter 319 RSMo statutes or through municipal ordinance. Further, we oppose any efforts to limit local control of our city-owned utilities by adding an additional and unnecessary layer of oversight to our utilities beyond that of our locally-elected and publicly-appointed officials.

Thank you for the opportunity to provide testimony on this important issue to municipal-owned utilities. We appreciate your consideration of our views. If you have any questions, please do not hesitate to contact me.

Sincerely,

MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES
Ewell Lawson
Manager of Government Affairs

EL:tb

cc: Robert M. Clayton, III
Missouri One Call
Dale Johansen, MPSC

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Serving Municipal Utilities

Missouri Association of Municipal Utilities
Missouri Joint Municipal Electric Utility Commission
Missouri Gas Commission of Missouri



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ARTICLE XV. OFFENSES CONCERNING STREETS AND SIDEWALKS

SECTION 215.710: EXCAVATIONS

A. No individual, firm, corporation or public utility shall make or begin any excavation in any public street, road or alley, right-of-way dedicated to the public use or utility easement of record or within any private street or private property within the City of Higginsville without first, when necessary to determine proximity to underground facilities, giving notice to and obtaining information concerning the possible location of any underground facilities which may be affected by said excavation from each and every owner and operator of underground facilities whose name appears on the current list of the Recorder of Deeds in and for the County in which the excavation is to be made. An excavator shall serve notice of intent to excavate to the State notification center at 1/800/344-7483 and individual non-participants, owners or operators at least two (2) but not more than ten (10) working days before commencement of activity. All notices by an excavator shall comply in all respects with Section 319.026, RSMo., and as amended.

B. For the purpose of this provision, "*excavation*" shall mean: any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, backfilling, grading, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving and demolition of structures, except that the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry, the use of high-velocity air to disintegrate and suction to remove earth, rock and other materials, and the tilling of soil for agricultural or seeding purposes shall not be deemed excavation. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation.

C. Any violation of this provision is subject to punishment pursuant to the Higginsville Code of Ordinances.

D. In addition to any criminal penalty, any individual, firm, corporation or entity that violates the provisions of this Section shall be liable to the owners of any underground facility damaged by the unlawful excavation for the fair and reasonable expenses incurred in repairing or replacing the damaged facilities. In addition, they shall be liable to the owners of any other underground facilities for the costs incurred incidentally due to repair of the damaged facilities, including, without limitation and by way of example, only emergency locates, overtime compensation and excavation. An action for damages under this provision may be filed in any court of competent jurisdiction. (R.O. 2009 §215.445; Ord. No. 2124 §1, 6-6-05)