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 THE MISSOURI UTILITIES
ON POTENTIAL CHANGES TO CHAPTER 319 RSMO

At the March 9, 2010 Roundtable held in the above-captioned proceeding, the Missouri Public Service Commission (Commission) requested that interested participants provide: (1) comments regarding the Commission's proposed changes to Chapter 319 RSMo; (2) comments/suggestions on matters not addressed by the Commission; and, (3) comments/ideas regarding the structure and form of enforcement. To that end, Laclede Gas Company (Laclede), Missouri Gas Energy (MGE), and Union Electric Company d/b/a AmerenUE (AmerenUE) (hereinafter collectively referred to as the "Missouri Utilities") submit the following comments and suggestions. Please note that our proposed changes to Chapter 319 language are based off the currently existing language, not as modified by the Commission.

Damage prevention and the Missouri Utilities' involvement

The Missouri Utilities have been active members and notification center participants for many years. As both facility owners and excavators, the Missouri Utilities are aware of the benefits that can be derived from safe excavation practices and attention to damage prevention. Their proactive damage prevention programs have yielded many positive results, but in order to achieve the type of results currently being experienced elsewhere in the country, changes to Missouri's damage prevention statute need to be made and measures put in place to encourage compliance with the law. The Missouri Utilities support many of the changes suggested by the Commission and applaud the Commission's effort to move the process forward. At the same

time, the Missouri Utilities believe there are other changes that could make the process better and more effective. To that end, we offer the following comments and suggestions.

319.015 (ticket life and sewer system definitions)

According to a summary of One-Call center practices compiled by Infrastructure Resources and published in their 2010 Excavation Safety Guide & Directory, of the 62 One-Call centers listed nationally, 53 notification centers (85%) indicated that they had some form of ticket life in their state's statute. The Missouri Utilities support the concept of establishing a life on a locate request. Establishing a specific timeframe during which a ticket is valid forces excavators to update everyone on the status of their projects (if not completed within the initial time period) and allows facility owners to update their markings for any existing and/or new facilities that may have been installed in the interim since the last request. The purpose of ticket life is to clearly state how long that ticket can remain open and be valid. The 45 days suggested by the Commission however falls considerably outside the normal timeframe used in most jurisdictions. The most common timeframe appears to be in the range of 10 business days to 30 calendar days. We suggest that a ticket life of 30 calendar days is reasonable since under most circumstances, many excavation projects can easily be completed within 30 days.

The Missouri Utilities are supportive of the Commission's efforts to address the cross-bore damage issue and to develop ways to get needed information and assistance from sewer system owners and operators. Obtaining better locate information of sewer facilities will help the excavating community in avoiding damage to these underground facilities.

319.015(6) (mandatory marking standards)

Marking methods and symbols represent a common language between facility owner and excavator. There is no more important element in damage prevention than making sure we are all communicating on the same level. Facility owners need to convey to excavators what

facilities they are trying to protect and excavators need to understand what those markings and symbols mean. To make sure that we all communicating on the same level, it is critically important that we all agree to follow the same set of communication rules.

After a number of years of effort, the Common Ground Alliance (CGA) assembled a series of locating and marking best practices for both excavators and facility owners (this was published in Appendix B of the CGA's Best Practices). Those best practices were modified in September 2006 by the Missouri Common Ground Steering Team to accommodate Missouri law, distributed and discussed statewide, and ultimately submitted to the Missouri One Call System (MOCS) Board of Directors for consideration.

In November 2006, the MOCS Board of Directors adopted that set of marking guidelines and encouraged their voluntary use by the excavating community. These guidelines have been distributed statewide in handout form and incorporated into the MOCS "Excavator Manual" for the past 3 years. To our knowledge, no negative feedback or issues have surfaced regarding the use of these standards. We believe there is value in adhering to a universal set of marking standards and we therefore suggest that it is time to move them from voluntary to mandatory status.

To accomplish this, we propose that the definition of "Marking" in 319.015(6) be revised and expanded to graphically incorporate the "Missouri Marking Standards" as adopted by the MOCS Board of Directors and as may be revised from time to time.

319.026.2 (type of excavation work, mode and ticket size)

Many people rely on the accuracy, clarity and content of information contained in a locate ticket. Having a clearly and accurately described dig area is important to locators in getting the job done promptly and efficiently. If an excavator goes beyond the scope of their ticket, it becomes clear to everyone that he is digging without a valid ticket in that area. It is

equally as important that the planned work, mode of excavation or excavation depth not materially change once the ticket is issued. Once any of these elements change from what was recorded on the initial locate request, that ticket should not be allowed to remain valid. Facility owners screen locate requests for specific activities and they rely on this information to effectively monitor and protect their facilities. If excavators are allowed to deviate from what they originally state on their locate requests, damage prevention will not be well served. A ticket should entitle the excavator to work within a specified area and only do the type of work in a known excavation mode stated on the ticket. Once any of those elements change, the ticket should be considered invalid and require the excavator to secure a different ticket that more accurately portrays the work being done before continuing.

Locate ticket size has always been a difficult issue to deal with. Informally MOCS has set a policy on how large an area can be placed on a single ticket: (1) 1 mile in the county on the same road; (2) ½ mile within city limits on the same street; and, (3) 10 individual addresses per 100 block, all having the same marking instructions. These areas are far too large for any locator to mark within the timeframe given and in most cases, arrangements must be made to pare the tickets to more manageable and workable pieces to get the job done. Excavators should be allowed to only request an area that can be reasonably worked during the life of a ticket. To address this issue, we propose that areas be limited to the smaller of 500 feet on the same road, or 150 foot radius of a single intersection, or a single address. The draft changes to 319.026 to correct these deficiencies are as follows:

2. Notices of intent to excavate given pursuant to this section shall contain the following information and shall not change during the ticket's life in order to remain valid:
(1) The name and telephone number of the person filing the notice of excavation, if the telephone number is different than that of the excavator, and the name, address, telephone number of the excavator and whether the excavator's telephone is equipped with a recording device;

(2) The date the excavation activity is expected to commence, the depth of planned excavation and, if applicable, that the use of explosives is anticipated on the excavation site, and the type of excavation being planned, including whether the excavation involves trenchless excavation;
(3) The facsimile number, e-mail address, and cellular telephone number of the excavator, if any;
(4) The name of the person primarily responsible for conducting the excavation or managing the excavation process, and if any of the information stated in subdivision (1) or (3) of this subsection is different for the person primarily responsible for the excavation, the notice shall also state the same information for that person;
(5) A detailed description accepted by the notification center sufficient for the location of the excavation, limited in size to the smaller of 500 feet along the same road, or 150 foot radius of a single intersection, or a single address, by any one or more of the following means: by reference to a specific street address, or by description of location in relation to the nearest numbered, lettered, or named state or county road or city street for which a road sign is posted, or by latitude and longitude including the appropriate description in degrees, minutes, and seconds, or by state plane coordinates;

319.026.5 (mandatory hand dig requirement)

According to the same Infrastructure Resources summary referenced earlier, of the 62 One-Call notification centers nationally, 49 notification centers (79%) indicated that their state damage prevention statutes contain a mandatory hand-dig requirement. If Missouri were to follow suit in making it mandatory to expose all located facilities within the marked tolerance zone that are in the path of the proposed excavation prior to using power operated equipment, any facility that was inaccurately marked initially would be revealed (and reported to MOCS) before excavating equipment is used. This could potentially create an opportunity for avoiding many dig-in damages. In fact, according to the CGA's 2008 Damage Information Reporting Tool (DIRT) Annual Report, the top three root causes of dig-in damages were reported as (1) Excavation Practices Not Sufficient at 37%, (2) Notification Not Made at 37%, and (3) Locating Practices Not Sufficient at 22%. By just implementing this one change, the state of Missouri has the potential of reducing dig-in damages by 22%.

Also by requiring hand digging, depth issues should be resolved since excavators will know how deep (or shallow) a facility is before using power operated equipment. This too will reduce the number of damages. To enable this requirement, the following addition to subsection 5 of Section 319.026 is suggested:

5. The excavator shall not use power-driven equipment within the marked approximate location of such underground facilities until the excavator has made careful and prudent efforts by the use of hand tools or soft dig methods to expose and confirm the horizontal and vertical location of the marked facilities in the vicinity of the proposed excavation. If in the course of excavation the person responsible for the excavation operations discovers that the owner or operator of the underground facility who is a participant in a notification center has incorrectly located the underground facility, he or she shall notify the notification center which shall inform the notification center participant. If the owner or operator of the underground facility is not a participant in a notification center prior to the January 1, 2003, effective date for mandatory participation pursuant to section 319.022, the person responsible for the excavation shall notify the owner. The person responsible for maintaining records of the location of underground facilities for the notification center participant shall correct such records to show the actual location of such facilities, if current records are incorrect.

319.026.6 (clearly not allow marking by non-facility owners)

Occasionally excavators need to refresh or update locate marks that have been placed on the ground by facility owners. While the current law states how such renewals are to be done it does not specifically prohibit non-facility owners from marking facilities. When non-facility owners take it upon themselves to "refresh" or spray-over someone else's marks they are potentially putting others at risk because they do not really know where those facilities are. Marks refreshed this way create a potential litigation problem on whose fault it is if something that is not marked correctly initially is sprayed-over by a non authorized agent. To eliminate any confusion, that statute should plainly state and clarify that locate marks placed on the ground by the facility owner or its authorized agents shall not be sprayed-over or refreshed by anyone other than the facility owner or its authorized agent. The following change to subsection 6 of Section 319.026 is an attempt to provide the needed clarification:

6. When markings have been provided in response to a notice of intent to excavate, excavators may commence or continue to work within the area described in the notice for so long as the markings are visible. If markings become unusable due to weather, construction or other cause, the excavator shall contact the notification center to request remarking. In no event may an excavator refresh the marks provided by a facility owner or its authorized agent. Any renewal ~~Such~~ notice shall be given in the same manner as original notice of intent to excavate, and the owner or operator shall remark the site in the same manner, within the same time, as required in response to an original notice of intent to excavate. Each excavator shall exercise reasonable care not to unnecessarily disturb or obliterate markings provided for location of underground facilities. If remarking is required due to the excavator's failure to exercise reasonable care, or if repeated unnecessary requests for remarking are made by an excavator even though the markings are visible and usable, the excavator may be liable to the owner or operator for the reasonable cost of such remarking.

319.032 (information regarding sewer service connections)

The Missouri Utilities support the Commission's effort in developing a reasonable way to obtain needed information on the identification and approximate location of sewer facilities and connections.

391.037.2 (clarify trenchless excavation)

The current language in this section needs to be clarified to prevent "blind" boring and to ensure that the boring device is visually observed as it crosses the identified underground facilities. There is a concern that some excavators may rely on electronic depth readings to establish the vertical position of a facility and then based on that information, proceed with a "blind" bore. In other situations, a crew may open a hole to confirm the location of existing facilities, log the horizontal and vertical measurements and then close the hole. Some time later, the excavator's boring crew arrives on site to perform the actual bore and relies on the other crew's logged measurements and data for guidance. We believe that the only way to confirm the location of facilities is to physically open the hole, find the facility and once you confirm the horizontal and vertical location of the facility, keep the hole open to visually observe that the bore head safely passes the underground facilities. To eliminate any ambiguity that may exist in

this section for the reasons mentioned above, we propose that subsection 2 of Section 319.037 be modified as follows:

2. The excavator shall not use power-driven equipment for trenchless excavation, including directional drilling, within the marked approximate location of such under-ground facilities until the excavator has excavated a hole and made careful and prudent efforts to confirm the horizontal and vertical location thereof in the vicinity of the proposed excavation through methods appropriate to the geologic and weather conditions, and the nature of the facility, such as the use of ~~electronic locating devices,~~ hand digging, pot holing when practical, soft digging, vacuum methods, use of pressurized air or water, pneumatic hand tools or other noninvasive methods as such methods are developed. Such methods of confirming location shall not violate established safety practices. Once the horizontal and vertical location of such underground facilities is established, the hole(s) shall remain open during the boring process to enable the boring device to be visually observed by the excavator as it safely crosses the identified underground facilities. ~~Nothing in this subsection shall authorize any person other than the owner or operator of a facility to attach an electronic locating device to any underground facility.~~ For excavations paralleling the underground facility, such efforts to confirm the location of the facility shall be made at careful and prudent intervals. The excavator shall also make careful and prudent efforts by such means as are appropriate to the geologic and weather conditions and the nature of the facility, to confirm the horizontal and vertical location of the boring device during boring operations. Not withstanding the foregoing, the excavator shall not be required to confirm the horizontal or vertical location of the underground facilities if the excavator, using the methods described in this section, excavates a hole over the underground facilities to a depth two feet or more below the planned boring path and then carefully and prudently monitors the horizontal and vertical location of the boring device in a manner calculated to enable the device to be visually observed by the excavator as it crosses the entire width of the marked approximate location of the underground facilities.

319.040 (rebuttable presumption of negligence)

Instead of creating clarity and balance to this section in its most recent revision, the Commission has created an overly broad and all encompassing presumption of negligence for facility owners. If balance and simplicity is what the Commission is looking for here (similar to an excavator's failure to give notice to excavate) we suggest that the Commission limit the rebuttable presumption to the failure of an underground facility owner to be a notification center participant. There is no vagueness or generality in these two presumptions—you either are a member or you are not; you either have a ticket or you do not.

319.046 (enforcement authority issue)

The Missouri Utilities strongly support the Commission's efforts to pursue effective change and enforcement options to Missouri's underground facility safety and damage prevention law. We believe that a fair, consistent and active enforcement approach is critically important to damage prevention. During the course of these proceedings, we have participated in two roundtables and have discussed a number of technical changes to Chapter 319. Unfortunately, the single most important issue on everyone's mind has not been fully explored or discussed, i.e. enforcement. The participants to this proceeding need more information and candid discussion of what enforcement options may realistically exist in today's regulatory climate. The Attorney General has stated that his office is open to the possibility of sharing concurrent jurisdiction, and he does not believe that completely repealing the Attorney General's enforcement authority would best serve the citizens of the state. It is difficult for this docket's participants to know what concurrent enforcement options may exist without more information and discussion.

It was suggested at the March 9 roundtable that a small workgroup be established to identify and explore the various enforcement options or combinations that may be available. With the active participation of the Attorney General's Office, Commission and a cross-section of interested stakeholders, we believe such a workgroup could identify realistic options and recommendations that a larger audience could then review and consider.

319.050 (emergency locate requests)

One of the more frustrating parts of responding to emergency locate requests is having to respond to situations that may not be truly emergencies as defined in the law. Having facility owners to respond to these requests within 2 hours knowing that the excavating party will not begin work for up to several days on this "emergency" request makes this truly frustrating. It

seems that if a situation is truly an emergency that the excavating party would already be on site ready to work on it or would be there in a matter of several hours to work on it. Excavators that obtain extended start dates and times on emergency tickets are potentially gaming the system, using it to compensate for poor planning/scheduling and potentially drawing attention and resources from more critical activities.

In an effort to place balance into this section, we propose that the Commission consider placing a reasonable timeframe within which work must begin on an emergency ticket. This would help the call center in determining whether a call meets the emergency criteria. Also, if it turns out that a call is later determined to be not an emergency as defined in the law or the emergency excavation did not commence within the claimed timeframe, the offending party not only pay the direct costs associated with the emergency locate but also be subject to a $10,000 fine for falsely claiming an emergency situation.

What timeframe to use is a matter of common sense. It would seem that if a facility owner is expected to effectively "jump through hoops" on an immediate basis to respond to such requests, that the excavator making the request be expected to begin work within a reasonable timeframe of 4 hours. Draft changes to 319.050 are shown below designed to address this issue:

> The provisions of sections 319.025 and 319.026 shall not apply to any excavation when necessary due to an emergency as defined in section 319.015. An excavation may proceed regarding such emergency, provided all reasonable precautions have been taken to protect the underground facilities. In any such case, the excavator shall give notification, substantially in compliance with section 319.026, as soon as practical and commence excavation activities within four hours of contacting the notification center, and upon being notified that an emergency exists, each underground facility owner in the area shall, within two hours after receiving such notice, provide markings or contact the excavator with any information immediately available to assist the excavator and shall inform the excavator if not able to mark within the two hours of when the underground facility will be marked at the site of the emergency. The excavator shall~~may~~ be liable to the owner or operator for costs directly associated with the locating of any such underground facility relating to a notification of an emergency that does not meet the definition of emergency as stated in section 319.015 as well as any penalties pursuant to 319.045.

319.055 (reporting damage data and real-time reporting)

In comparing the type of data that the Commission is requesting to be reported in subsection 1 to the data fields of the DIRT report in subsection 2 where the Commission is asking the requested data to be submitted, it is apparent that the two do not match up at all. It may be that the Commission was just broadly outlining the process it envisions as opposed to stating the actual data that will be collected/reported. Even if that is the case, the Commission should carefully evaluate the type of information it may need and reveal to facility owners how such data would be used to lower damages before going too much further. Leaving these types of decisions to rulemakings may yield many unwanted or unexpected results. In our view, it would be more reasonable to establish from the very beginning what data will be collected, where it will be aggregated and how it will be used. The CGA's DIRT mechanism represents a known, established and ready tool used nationwide by countless entities across the country. Adopting DIRT will allow Missouri to move along the process of lowering damages sooner. If unique situations develop, adjustments to DIRT data and/or analysis could be made.

The need for real-time reporting of damage information and purported non-compliance with Chapter 319 continues to be unclear. What purpose would this serve? What does the Commission envision will be done with these reports? How will this draw on the Commission's resources and the resources of member utilities? The Commission already has an established complaint process where infractions to Commission rules and regulations are addressed. Will this real-time reporting process be melded into the complaint process? Absent a clearer demonstration or explanation for its need, this element should be rejected.

319.060 (locate service quality assurance review and criteria)

The Missouri Utilities have no objection in allowing individual facility owners the right to develop and implement their own locate performance measures and to develop and implement

their own quality assurance programs to ensure that their stated performance measures are met. These are managerial, operational and contractual issues we have dealt with as underground facility owners for some time. The one question we have is, why is there a need for a rulemaking to establish this requirement? Couldn't 319.060 be rewritten in such a way so as to state that facility owners will perform these activities? If the Commission would want to verify that such measures have been addressed, the Commission could request those documents through its general regulatory authority.

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

The enforcement option or mode that is ultimately selected and pursued will greatly influence whether a review board is needed or not. If it is determined that a review board is needed, then we will need to focus on the purpose and function of such a board so as not to duplicate other efforts and to ensure prompt, fair and consistent treatment of participants to the process.

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

As stated in earlier comments, installing new facilities so that they are locatable electronically or by measurement has been a gas industry practice for years. The Missouri Utilities have no objection to formally codifying this practice.

(general information regarding depth of facilities)

Based on comments made at the roundtable regarding depth of facilities, the Missouri Utilities would like to state that there is no need to set out depth requirements in this chapter because depth at time of installation is already established for most types of utilities regulated by the Commission.

Natural gas operators must install their facilities to standards stated in 4CSR 240.40.030. Generally speaking, mains must be installed with at least twenty-four inches (24") of cover

pursuant to 4CSR 240-40.030(7)(N)2. 4CSR 240-40.030(8)(G)1 requires that service lines be installed with at least eighteen inches (18") of cover.

The Commission has promulgated a host of rules affecting telecommunications companies. Of special interest, related to the safe design, installation and maintenance of telecommunications facilities are rules 4CSR 240-18.010 and 4CSR 240-32.060. Chapter 18 establishes the safety standards and Chapter 32 addresses the design/construction aspects of telecommunications companies. In a nutshell, rule 4CSR 240-32.060(15)(A) states that buried telephone feeder and distribution cables shall be placed at a minimum depth of twenty-four inches (24") and paragraph (B) states that buried drop cables shall be buried at a minimum depth of twelve inches (12").

Through 4CSR 240-18.010, the Commission prescribed that the National Electrical Safety Code (NESC) be used in setting the minimum safety standards of electric companies. Depending on a variety of factors (such a type, size, location, etc. of the facility being installed) the NESC sets out minimum installed depths from eighteen inches (18") to forty-two inches (42") of cover.

Respectfully submitted,

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ON BEHALF OF MISSOURI UTILITIES

Certificate of Service

I hereby certify that copies of the foregoing have been sent by electronic mail, fax, hand delivery, or regular mail, postage prepaid, to all counsel of record in this case on this 16th day of April, 2010.

/s/ Gerry Lynch