

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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

**COMMENTS OF MISSOURI-AMERICAN WATER COMPANY  
ON PROPOSED CHANGES TO CHAPTER 319 RSMO**

COMES NOW Missouri-American Water Company (Missouri American) and submits, at the invitation of the Staff of the Missouri Public Service Commission, its comments regarding Staff's proposed changes to the Missouri One-Call Law (Chapter 319 RSMo).

**Introduction**

Water and wastewater service is critical to the quality of life of Missourians and essential to public health. Missouri American, founded in 1879 and now the largest investor-owned water utility in the state, provides high-quality and reliable water and/or wastewater service to more than 1.5 million people in the following districts: Brunswick, Jefferson City, Jefferson County, Joplin, Mexico, Platte County, St. Charles, St. Louis, St. Joseph, Warren County and Warrensburg.

More than 700 Missouri American employees operate 11 treatment plants and maintain more than 5,000 miles of water mains and 35,000 fire hydrants. A major underground facility owner and an excavator, Missouri American received more than 146,000 locate requests in 2008 through the Missouri One-Call center as an owner and made more than 6,000 locate requests as an excavator.

Missouri American thanks the Commission for this opportunity to comment on the proposed legislative changes to Chapter 319 RSMo.

### **319.015(6) and 319.026(6) – “Extended Excavation Projects”**

Together, these provisions would require that an excavation be completed within 15 working days after the expected start date indicated on the notice, unless the notice designates the excavation as an “extended excavation project.” Extended excavation projects must be completed within 30 days.

Missouri American supports these provisions, which would reduce the “stale ticket” problem experienced by many facility owners. Requiring an excavator to get new locates if a project is not completed within 15 days (or 30 days for an extended project) would reduce damage to facilities and would help eliminate disputes over whether locates were visible at the time damage occurred. (Missouri American foresees, however, that many excavators will tend to automatically designate their projects as “extended excavation projects” in order to extend the life of their notices – the 30-day exception would then swallow the 15-day rule. Perhaps further definition of the elements of an “extended excavation project” would be appropriate.)

### **319.026(9) – Notice by excavator upon completion of excavation**

Requiring an excavator to notify the One-Call center upon completion of a project, and requiring facility owners to track completion reports, would not add any obvious safety benefit to underground facilities but would clearly increase the administrative cost and burden to excavators and owners – and ultimately to customers. Having called in more than 6,000 requests as an excavator and received more than 146,000 requests as an owner in 2008, Missouri American would be particularly hard hit by this requirement on both ends. Missouri American does not support this proposal.

### **319.030(9) – Notice by facility owner upon completion of marking**

It seems unnecessary to require facility owners – in addition to marking facilities in response to a locate request (or notifying an excavator if there are no facilities in the locate area) – to contact the excavator upon completion of marking. This again would only increase costs for facility owners with no obvious benefit to facility safety. Current law adequately protects safety; it requires a facility owner to respond within two hours to an excavator’s notice that an area is unmarked without any “clear” notification.

### **319.032 – marking of customer sewer laterals**

Missouri American strongly objects to requiring a utility to mark customer-owned sewer laterals or other utility types of service lines. Such lines are not owned or maintained by the utility, and are therefore by definition not the utility’s responsibility. Furthermore, the location of such customer-owned lines is often no better known by the utility than by the excavator. In addition, there is no real safety issue involved in damaging a sewer lateral, as there would be in damaging a gas or electric line.

This proposal would substantially increase the cost to facility owners and the frequency of litigation. The proposal’s inclusion of a safe harbor for a sewer system’s “good faith” attempt to locate laterals is no comfort – it would only increase litigation and discovery regarding whether the sewer system acted in good faith.

### **319.040 – presumption of negligence by facility owner**

Extending the rebuttable presumption of negligence to facility owners for “failure” to respond to a notice “in accordance with the provisions of sections 319.010 and 319.070” is a

vague proposal not supported by Missouri American. The current law, which provides for such a presumption against excavators, is clear and unambiguous because an excavator's failure is simple to establish – it arises from an excavator's simple failure to request a locate. On the other hand, a facility owner has countless responsibilities under the One Call law; presuming negligence for the arguable breach of every minor responsibility of an owner unfairly favors the excavator. In fact, a presumption of negligence could have the unintended consequence of causing increased damage to facilities, because excavators would be less cautious in their work if they could point to a minor breach by a facility owner and therefore impose a presumption of negligence.

#### **319.046 – enforcement by Public Service Commission**

Missouri American is not opposed in concept to a shift of enforcement responsibilities from the Attorney General's Office to the Public Service Commission, especially if this were to help reduce damage caused by consistently offending excavators. However, Missouri American would like to see proposed rules before providing more detailed comment.

#### **319.055 – reporting of facility damage information**

As a facility owner, Missouri American is not opposed in concept to the reporting of facility damage information to the Public Service Commission, although the administrative burden and cost of such reporting is not clear.

On the other hand, as an excavator, Missouri American is wary that erroneous owners' reports identifying offending excavators might be improperly used against excavators – either

in civil litigation or as grounds for enforcement action by the Public Service Commission. Safeguards against these potentialities should be included.

#### **319.060 – standards for locating services**

Missouri American currently performs all its own locates and does not contract for locating services.

#### **319.065 – facility damage prevention review board**

Missouri American supports this provision generally, although the source of funding is unclear. The cost should be borne not only by investor-owned utilities but also by other entities, such as cooperatives and municipal utilities, that would be subject to Commission enforcement under this revised Chapter 319.

#### **319.070 – locatable underground facilities**

Missouri American's newly installed underground facilities are all locatable at the time of installation. Missouri American supports this provision, provided it is clear (as the current draft appears to be) that "locatability" be assessed at the time of installation – not time of damage – since tracer wires can sometimes be broken, detached or moved off a plastic pipe after installation through no fault of the owner.

Respectfully submitted,

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