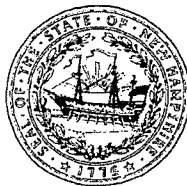


THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Graham J. Morrison
Clifton C. Below

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
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TDD Access: Relay NH
1-800-735-2964

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June 27, 2008

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, New Hampshire 03301

Re: Puc 800, Underground Utility Damage Prevention Program
Proposed Interim Rule
Commission Docket No. DRM -08-087

Dear Mr. Eaton:

Pursuant to the Rulemaking Manual, enclosed please find two copies of the following:

- 1) Interim Rulemaking Notice;
- 2) Proposed Interim Rule;
- 3) Cross Reference Table;
- 4) Explanation of Interim Status (this letter); and
- 5) Cover Sheet for Proposed Interim Rule.

We are submitting these Interim Rules to you today in order to continue Puc 801, Puc 802.01 through Puc 802.03, Puc 802.05 through Puc 802.10, Puc 802.12 through Puc 802.15 and Puc 803 rules which are currently due to expire on August 23, 2008, and would expire prior to the completion of readoption of new rules. These rules are not being filed solely to avoid the time periods imposed in RSA 541-A.

It is desirous to have the interim rulemaking notice published in the next Rulemaking Register for review at the next regularly scheduled meeting of JLCAR on July 17, 2008.

Please call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Getz", with a large, stylized flourish at the end.

Thomas B. Getz
Chairman

APPENDIX II-J

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number

Rule Number

**Puc 801, 802.01 through
802.03, Puc 802.05 through
802.10, Puc 802.12 through
802.15 and Puc 803**

<p>1. Agency Name & Address:</p> <p>New Hampshire Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, NH 03301</p> <p>5. Filing Date: June 27, 2008</p>	<p>2. RSA Authority: RSA 374:50, RSA 365:8</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption X _____</p> <p>Readoption w/amendment _____</p>
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6. Short Title: **Puc 800 - UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Donald M. Kreis**

Title: **General Counsel**

Address: **New Hampshire Public Utilities
Commission
21 South Fruit Street, Suite 10
Concord, NH 03301**

Phone #: **603-271-6006**

Fax#: **603-271-3878**

E-mail: **Donald.kreis@puc.nh.gov**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Summary explaining the effect of the rule: **Puc 800 sets forth the procedures and standards to be used by the PUC in implementing the Underground Utility Damage Prevention program, otherwise known as Dig Safe, which protects the public, operators, and excavators from physical harm, damages and interrupted service resulting from damage to underground facilities. This Rule also establishes procedures and requirements relative to: minimum requirements for the operation of the system; including notification procedures; the investigation of complaints; emergency situations for which notice of excavation is not required; the prevention of damage relating to underground facilities; enforcement; and record keeping.**

9. Listing of people, enterprises, and government agencies affected by the rule: **Persons or entities performing excavation activities and who own underground utilities. This also includes persons or entities that perform excavation on private property, public ways, rights-of-way, easements, public streets or any other public place.**

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement. **RSA 374:48-55.**

11. Summary of the effect upon the state if the rule were not adopted: **Much of the current Puc 800 Rules regarding Underground Utility Damage Prevention Program would expire, August 23, 2008, prior to the completion of Readoption, potentially placing the public at risk of damage to life and property. Puc 802.04, 802.11, 802.16, 804-807 are not expiring and are not included.**

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules: **July 17, 2008.**

13. The fiscal impact statement prepared by the Legislative Budget Assistant: **Not Applicable.**

APPENDIX II-I

COVER SHEET FOR PROPOSED INTERIM RULE

Proposed Interim Rule Number _____ Rule Number **Puc 801, 802.01 - 802.03,
802.05 - 802.10, 802.12 -
802.15 and 803**

1. Agency Name & Address: New Hampshire Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, NH 03301	2. RSA Authority: RSA 374:48-55 RSA 365:8 3. Federal Authority: _____ 4. Type of Action: Adoption <u> X </u> Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
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5. Short Title: **Puc 800 - UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM**

6. Contact person for copies and questions:

Name: **Donald M. Kreis**
 Address: **New Hampshire Public Utilities
Commission
21 South Fruit Street, Suite 10
Concord, NH 03301**

Title: **General Counsel**
 Phone #: **603-271-6006**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

7. An explanation of why the interim rule is necessary, including documentary evidence to prove that the agency is acting in accordance with RSA 541-A:19, I, and is not adopting an interim rule solely to avoid the time periods imposed in RSA 541-A.

8. A description of the people, enterprises, and government agencies affected by the rule.

9. The fiscal impact statement prepared by the Legislative Budget Assistant.

****PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the interim rule to the Division of Administrative Rules. The rule must include an appendix containing the same information about statutes or federal regulations as in Item 10 of Appendix II-J

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* hereby certify that the attached is an accurate statement explaining why an interim rule is necessary.

Date: June 27, 2008

Signature: 

Name: Thomas B. Getz

Title: Chairman, New Hampshire Public Utilities Commission

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

ATTACHMENT TO APPENDIX II-I

7. We are submitting these Interim Rules to you today in order to continue Puc 801, Puc 802.01 through Puc 802.03, Puc 802.05 through Puc 802.10, Puc 802.12 through Puc 802.15 and Puc 803 rules which are currently due to expire on August 23, 2008. If we did not file Interim Rules, these rules would expire prior to the completion of readoption of new rules and being without this program could potentially place the public at risk of damage to life and property. These rules are not being filed solely to avoid the time periods imposed in RSA 541-A.

Puc 802.04, 802.11, 802.16, 804-807 are not expiring and are not included in this filing.

8. The parties affected by this rule are: Persons or entities performing excavation activities and who own underground utilities. This also includes persons or entities that perform excavation on private property, public ways, rights-of-way, easements, public streets or any other public place.

9. No Fiscal Impact Statement is required per Section 3.3 of the Rulemaking Manual. However, a copy of the Interim Rulemaking Notice Form, the proposed Interim Rule and this Cover Sheet is being filed with the Legislative Budget Assistant today.

CHAPTER Puc 800 UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM

Statutory Authority: RSA 374:50

Readopt Puc 801, Puc 802.01 through Puc 802.03, Puc 802.05 through Puc 802.10, Puc 802.12 through Puc 802.15 and Puc 803, effective 8-23-00 (Document No. 7350), to read as follows:

PART Puc 801 APPLICATION OF RULES

Puc 801.01 Purpose.

(a) The purpose of Puc 800 is to protect the public, operators, and excavators from physical harm, damages and interrupted service resulting from damage to underground facilities.

(b) Puc 800 establishes procedures and requirements relative to:

- (1) Minimum requirements for the operation of the system, including notification procedures;
- (2) The investigation of complaints;
- (3) Emergency situations for which notice of excavation is not required;
- (4) The prevention of damage relating to underground facilities;
- (5) Enforcement; and
- (6) Record keeping.

Puc 801.02 Application.

(a) Each operator, as defined in Puc 802.11, shall:

- (1) Comply with Puc 800 and RSA 374:48-56; and
- (2) Maintain membership with the notification center.

(b) Any person, including any person who owns or operates an underground facility in New Hampshire but who is not an operator, as defined in Puc 802.09, may become a member of the notification center.

(c) Any member of the notification center who is not an operator but who owns or operates an underground facility shall comply with Puc 800.

PART Puc 802 DEFINITIONS

Puc 802.01 "Commission" means "commission" as defined in RSA 374:48, I, namely, "the public utilities commission."

Puc 802.02 "Damage" means any impact or exposure that results in the need to repair an underground facility due to the weakening or the partial or complete destruction of the underground facility, including, but not limited to, the protective coating, lateral support, corrosion control, or the housing for the line, device, or underground facility.

Puc 802.03 "Emergency situation" means a sudden or unexpected occurrence involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

Puc 802.05 "Excavator" means "excavator" as defined in RSA 374:48, IV, namely, "any person performing an excavation."

Puc 802.06 "Extraordinary circumstances" means events or conditions other than normal operating conditions which exist and make it significantly impractical or impossible for an underground facility owner or member owning and/or operating an underground facility to comply with the provisions of Puc 800, including, but not limited to, hurricanes, tornadoes, floods, ice or snow, and acts of God.

Puc 802.07 "Hand digging" means any excavation involving non-mechanized tools or equipment and includes, but is not limited to, digging with shovels, picks, and manual post hole diggers.

Puc 802.08 "NOPV" means notice of probable violation.

Puc 802.09 "NOV" means notice of violation.

Puc 802.10 "Notification center" means the entity that performs the primary function of the system, is open to all operators within the state of New Hampshire, maintains a data base of its members and operators and the specific geographic areas in which each of its members and operators desires to receive notice of proposed excavation, and which has the capability to transmit notices of proposed excavation to its members and operators by teletype, telecopy, personal computer, telephone, or other comparable means.

Puc 802.12 "Person" means "person" as defined in RSA 374:48, V, namely, "any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body."

Puc 802.13 "Premark" means identifying the perimeter of the proposed site of an excavation by marking the perimeter in an appropriate manner in white paint, stakes or other suitable white markings on non-paved surfaces.

Puc 802.14 "System" means "system" as defined in RSA 374:48, I, namely, "the underground utility damage prevention system referred to in RSA 374:49".

Puc 802.15 "Tolerance zone" means an area surrounding an underground facility which is 36 inches wide, measured horizontally and equidistant from the centerline of the underground facility, plus the width of the underground facility itself.

PART Puc 803 SYSTEM REQUIREMENTS

Puc 803.01 Procedures and Operation of Notification Center.

(a) The system shall operate a notification center, as contemplated by RSA 374:49.

(b) The notification center required by (a) above shall:

- (1) Receive notification from excavators about intended excavation activities;
- (2) Provide to excavators who give notice of an intent to engage in an excavation activity the names of potentially affected operators and members owning or operating underground facilities to whom the notification center shall transmit notice;
- (3) Promptly transmit to potentially affected operators and members the information received from excavators about intended excavation activities;
- (4) Provide the excavator at the time of initial contact a registration number confirming the notification of intended excavation activity;
- (5) Create a record, which shall include the material included in (6) below, of each notification of intent to engage in an excavation activity and related communication;
- (6) Create, pursuant to (5) above, a record of each proposed excavation, including the following:
 - a. The name of the person notifying the notification center;
 - b. The name, address and telephone number of the excavator;
 - c. The specific location, starting date, and description of the intended excavation activity;
 - d. The name(s) of any sub-contractor or other person or entity who the excavator indicates may excavate at the intended excavation site on behalf of the excavator making the notification;
 - e. The date and time of the notification;
 - f. The confirmation or registration number ;
 - g. The identity of potentially affected members and operators that the notification center contacts to inform of the intended excavation activity;
 - h. The date and time the notification center transmitted notice of the intended excavation activity to each potentially affected member and operator; and
 - i. As to any material follow-up communication relating to the proposed excavation activity directed to the communications center:
 1. The party or parties involved in the communication;
 2. The content of the communication;
 3. The date and time of the communication; and
 4. The date, time and recipient of any transmittal of the communication; and
- (7) Maintain the record required to be kept by (5) and (6) above for a period of a minimum of 3 years from the date of the last communication.

(c) The current toll-free telephone number of the notification center for reporting proposed excavations and otherwise communicating with the notification center shall be, "1-888-DIG-SAFE", which is, 1-888-344-7233.

(d) Operators and members of the notification center shall use communications equipment that shall be compatible with the notification center.

(e) The notification center shall develop and implement procedures and utilize communication equipment which are adequate to acknowledge calls within 20 seconds.

(f) The notification center shall staff its operation a minimum of 10 hours each day, 5 days each week, excluding Saturdays, Sundays, and legal New Hampshire holidays, to respond to both routine and emergency calls.

(g) During the hours that the notification center is not operated by staff, the notification center shall provide at a minimum for an answering service capable of responding to an emergency notification request 24 hours per day, 7 days per week.

(h) The training provided by the notification center shall direct the public to make emergency calls to 911.

(i) The notification center shall be capable of responding to a request for emergency notification and shall transmit the information as provided in (i)(3) below.

(j) The notification center shall transmit information as follows:

(1) Notices of proposed excavation activities to potentially affected members and operators by 5:00 p.m. on the date of receipt;

(2) Routine messages by 5:00 p.m. on the date of receipt; and

(3) Messages relating to emergency situations, as described in Puc 804.03, to any potentially affected member, operator or excavator, as applicable, as soon as possible, but not later than 10 minutes following receipt.

Puc 803.02 Education and Training.

(a) The notification center shall assure that the toll-free telephone number shall be prominently displayed in telephone directories state-wide.

(b) The notification center shall:

(1) Make available literature describing the notification center;

(2) Assure the distribution of such literature to the public; and

(3) Make such literature available for purchase and distribution by requesting parties.

(c) The notification center shall, upon request, provide training to its members regarding the operations of the notification center.

(d) The notification center shall provide all members and interested persons with a brochure explaining the notification center's objectives, procedural guidelines and opportunities for member participation.

(e) Any operator who owns and/or operates an underground facility used in the transportation of gas or hazardous liquids and subject to the pipeline safety laws, 49 U.S.C. 60101, shall:

(1) Maintain a current list of the names and contact information of persons who normally engage in excavation activities in the area in which any underground facility used in the transportation of gas or hazardous liquids and subject to the pipeline safety laws, 49 U.S.C. 60101, owned by that operator is located;

(2) Notify the public in the vicinity of any underground facility used in the transportation of gas or hazardous liquids subject to the pipeline safety laws, 49 U.S.C. 60101 owned by that operator; and

(3) Notify persons who normally excavate in the area in which an underground facility used in the transportation of gas or hazardous liquids subject to the pipeline safety laws, 49 U.S.C. 60101 owned by that operator, as often as needed to make them aware of the notification center, including:

a. The notification center's existence and purpose; and

b. How to learn the location of underground facilities before excavation activities are begun.

(f) An affected operator may complete the notification required by (e)(2) above by:

(1) Distributing fliers;

(2) Informational mailings;

(3) Placing line markers;

(4) Signage; and/or

(5) Other reasonable public education outreach consistent with (1) through (4) above.

(g) An affected operator may complete the notification required by (e)(3) above by means including but not limited to distributing informational mailings and/or conducting informational sessions.

APPENDIX

Provision of the Proposed Rule	Specific State or Federal Statutes or Regulations which the Rule is Intended to Implement
Puc 801	RSA 374:50, 374:55, V
Puc 802.01-802.03	RSA 374:50, 374:55, V
Puc 802.05-802.10	RSA 374:50, 374:55, V
Puc 802.12-802.15	RSA 374:50, 374:55, V
Puc 803.01	RSA 374:50, I
Puc 803.02	RSA 374:50, II