

# STATE OF NEW HAMPSHIRE

## Inter-Department Communication

**DATE:** April 22, 2019  
**AT (OFFICE):** NHPUC

**FROM:** William Ruoff, Damage Prevention Specialist *WR 4/22/2019*  
**SUBJECT:** Docket DT 19-076, Century Link  
Request for a Waiver of NH Code Admin Rule Puc 804.01(a)-(e)  
**Staff Recommendation**  
**TO:** Commissioners  
Debra A. Howland, Executive Director  
**CC:** David K. Wiesner, Legal Division Director  
Randy Knepper, Director, Safety Division  
Katy Mullholand, Director, Regulatory Innovation & Strategy Division

### I. OVERVIEW

On April 8, 2019, CenturyLink, on behalf of its affiliates Broadwing Communications, LLC, CenturyLink Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., Level 3 Communications, LLC, Level 3 Telecom Data Services, LLC, and WilTel Communications, LLC, filed a request for waiver of NH Code Admin Rules Puc 804.01 (a) - (e).

Puc 804.01 (a) - (e) sets forth reporting requirements for operators of underground facilities, as follows:

- (a) Each operator shall file monthly, including any month in which there are no violations to report, with the commission, on or before the 15<sup>th</sup> day of the following month, written reports of probable violations of Puc 800, damage to underground facilities, or both.
- (b) Each operator shall file reports required by (a) above on Form E-26 dated 12/2014 and available at the commission website at [www.puc.nh.gov/forms](http://www.puc.nh.gov/forms).
- (c) If there are no reportable incidents during a month the operator shall file a one-page notification report using Form E-26, on or before the 15<sup>th</sup> day of the following month, identifying the owner or operator and stating that no reportable incident of damage or a violation occurred during the month.
- (d) The operator shall send the reporting form required by this section to the New Hampshire public utilities commission, safety division, at its mailing address as provided on Form E-26 or electronically, including other pertinent information as attachments to Form E-26 as specified in Form E-26.
- (e) After December 31, 2016, upon exposure of previously unrecorded or inaccurately recorded underground facilities in the course of excavation the operator shall verify and modify the existing records as necessary.

The definition of “operator” in Puc 802.12 includes public utilities that own or operate underground facilities. Puc 802.17 defines “underground facility” in pertinent part as property used for the conveyance of telecommunications that is buried, placed below ground or submerged. CenturyLink is an operator of such underground facilities.

CenturyLink states that it has less than two miles of underground network in New Hampshire, and, to date, has had no damage to those facilities. CenturyLink contends that the requirement to make monthly “no-damage” reports is onerous and it proposes instead to file reports if and when damage has occurred. CenturyLink states that Puc 201.05 permits such a waiver when it serves the public interest, taking into account that compliance with the rule is onerous, inapplicable given the circumstances, or the purposes can be satisfied by an alternative method.

## II. RECOMMENDATION

The purpose of the Puc 800 rules for Underground Damage Prevention program is to protect the public, operators and excavators from physical harm, damages, and interrupted service resulting from damage to underground facilities. *See* Puc 801.01 (a). The requirement to report damage to facilities on a monthly basis has been in place since the underground damage prevention rules were promulgated in 1982.

All operators of underground facilities must be registered with the One Call center also known as DigSafe, and the Commission ensures compliance with that requirement by maintaining its own records of operators of underground facilities.

The Safety Division does not necessarily agree that the monthly reporting requirement is “onerous”, as a negative report only requires a single checked box on an E-26 form and completing date of report once the contact information of the company is filled in.

Staff also recognizes that Governor Sununu’s regulatory reform initiative initiated in January 2017 and by Executive Order 2017-02 encourages review of any burdensome regulation that is not essential to public safety. Staff believes this request of waiver fits within the parameters outlined even though it is contained within a safety related regulation. Staff believes that the Commission should grant a partial waiver of 804.01.

- Staff does recommend granting a partial waiver of 804.01 (a), that would no longer require negative reports to be filed by the 15<sup>th</sup> of the month but would still keep the requirement of reporting by the 15<sup>th</sup> of damages to Century Link’s underground facilities.
- The Safety Division recommends waiving 804.01 (c) for filing negative reports on a monthly basis.
- The Safety Division recommends maintaining all other requirements of 804.01.

- Lastly, the Safety Division recommends that “negative reports” required by 804.01 be reviewed by the Commission for inclusion of those already submitted to the Governor’s office as part of the regulatory reform initiative associated with Executive Order 2017-02.

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