THE STATE OF NEW HAMPSHIRE

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EXECUTIVE DIRECTOR
Debra A. Howland

PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX (603) 271-3878

Website:
www.puc.nh.gov

September 9, 2016

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, NH 03301-6312

Re: Puc 800 – Underground Utility Damage Prevention Program Rules
NHPUC Docket No. DRM 16-508

Dear Mr. Eaton:

Based on comments received from your office on September 7, 2016, certain formatting revisions and related edits have been made to the Appendix II-C Rulemaking Notice Form and the Initial Proposal from the versions that were submitted on September 6, 2016. Revised versions of these documents in MS Word are included with this letter.

With respect to the Initial Proposal, these revisions delete the word "Approved" from the header, delete the footer entirely, delete all source notes, and do not show any tracked change annotations to Appendix A and Appendix B. No change has been made to the text of the rules included in the Initial Proposal.

Please include the revised Rulemaking Notice Form in the next available Rulemaking Register.

Thank you for your attention to this matter.

Sincerely,

David Wiesner

David K. Wiesner, Esq.
Staff Attorney

Enclosures

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____ Rule Number **Puc 800**

Public Utilities Commission **21 South Fruit Street, Suite 10** **Concord, NH 03301**	2. RSA Authority: **RSA 374:50; 365:8, XII** 3. Federal Authority: _____ 4. Type of Action: Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment **X**

5. Short Title: **Puc 800 – Underground Utility Damage Prevention Program**

6. (a) Summary of what the rule says and of any proposed amendments:

The Commission intends to readopt with amendments its Puc 800 rules. Puc 800 sets forth the procedures and standards to be used by the Commission in implementing the Underground Utility Damage Prevention Program, otherwise known as "Dig Safe," which protects the public, operators, and excavators from physical harm, property damages, and interrupted service resulting from damage to underground facilities. These rules also establish procedures and requirements relative to: minimum requirements for the operation of the system, including notification procedures; the investigation of complaints including enforcement; emergency situations for which notice of excavation is not required; and minimum standards of marking the tolerance zone. The existing rules are scheduled to expire on November 8, 2016, but are subject to extension pursuant to RSA 541-A:14-a.

Amendments to the existing rules include minor word changes and updates throughout; adding, clarifying and modifying terms in the definition section; updating location specific information requirements; updating telephone information; updating reporting requirements and timeframes for reporting; updating notification requirements; and adding excavator specific instructions.

6. (b) Brief description of the groups affected:

These rules affect persons or entities performing excavation activities and those who own underground utility facilities. This also includes persons or entities that perform excavations on private property, public ways, rights-of-way, easements, public streets, or any other public place.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

STATUTORY CROSS-REFERENCE TABLE

Rule	Statute
Puc 801.01	RSA 374:50; RSA 374:55,VII
Puc 801.02	RSA 374:50
Puc 802.01	RSA 374:50; RSA 374:48,VIII
Puc 802.02	RSA 374:50; RSA 374:48,I
Puc 802.03	RSA 374:50
Puc 802.04	RSA 374:50
Puc 802.05	RSA 374:50; RSA 374:48,III
Puc 802.06	RSA 374:50; RSA 374:48,IV
Puc 802.07	RSA 374:50
Puc 802.08	RSA 374:50
Puc 802.09	RSA 374:50; RSA 288:1; RSA 288:2
Puc 802.10	RSA 374:50
Puc 802.11	RSA 374:50
Puc 802.12	RSA 374:50; RSA 374:48,IV-a; RSA 362:2, II; RSA 362:7, III(e)
Puc 802.13	RSA 374:50; RSA 374:48,V
Puc 802.14	RSA 374:50; RSA 374:51,IV
Puc 802.15	RSA 374:50; RSA 374:48,I
Puc 802.16	RSA 374:50
Puc 802.17	RSA 374:50; RSA 374:48,VII
Puc 803.01	RSA 374:50, I; RSA 374:49, RSA 374:52
Puc 803.02	RSA 374:50,I
Puc 804.01	RSA 374:50
Puc 804.02	RSA 374:50; RSA 374:49; RSA 374:52
Puc 804.03	RSA 374:50
Puc 805.01	RSA 374:50, I; RSA 374:51
Puc 805.02	RSA 374:50
Puc 805.03	RSA 374:50; III; RSA 374:51,I
Puc 805.04	RSA 374:50; RSA 374:51,VII
Puc 805.05	RSA 374:50; RSA 374:54
Puc 806.01	RSA 374:50; RSA 374:53
Puc 806.02	RSA 374:50; RSA 374:53
Puc 806.03	RSA 374:50; RSA 374:53
Puc 806.04	RSA 374:50,III
Puc 806.05	RSA 374:50; RSA 374:53
Puc 807.01	RSA 374:50,II
Puc 807.02	RSA 374:50; RSA 374:55,VII
Puc 807.03	RSA 374:50; RSA 374:55
Puc 807.04	RSA 374:50; RSA 374:55,VII
Puc 807.05	RSA 374:50; RSA 374:55
Puc 807.06	RSA 374:50; RSA 374:55,VII
Puc 807.07	RSA 374:50; RSA 374:55

APPENDIX II-C (Continued)

RULEMAKING NOTICE FORM - Page 2

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

Name:	**David K. Wiesner, Esq.**	Title:	**Staff Attorney**
Address:	**Public Utilities Commission** **21 South Fruit Street, Suite 10** **Concord, NH 03301**	Phone #:	**603-271-6030**
		Fax#:	**603-271-4033**
		E-mail:	**David.Wiesner@puc.nh.gov**
		TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)	

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **October 14, 2016**

☒Fax ☒E-mail ☐Other format (specify):

9. Public hearing scheduled for:

Date and Time: **October 6, 2016 at 10:00 a.m.**

Place: **N.H. Public Utilities Commission**
21 South Fruit Street, Suite 10
Concord, NH 03301

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **FIS 16:172** , dated **August 26, 2016**

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision of the State of New Hampshire, and therefore do not violate Part I, Article 28-a of the N.H. Constitution by necessitating additional local expenditures by a political subdivision.

Readopt with amendments Chapter Puc 800, effective 11-8-08 (Document #9318), to read as follows:

CHAPTER Puc 800 UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM

Statutory Authority: RSA 374:50

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 including enforcement;

(3) Emergency situations for which notice of excavation pursuant to RSA 374:51, II, is not required; and

(4) ~~The prevention~~Minimum standards of ~~damage relating to underground facilities;~~marking the tolerance zone.

~~(5) Enforcement; and~~

~~(6) Record keeping.~~

Puc 801.02 Application.

(a) Each operator, as defined in Puc 802.12, 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 802.12, 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 "Blasting" means "blasting" as defined in RSA 374:48, VIII, namely, "excavation by means of explosives."

Puc 802.02 "Commission" means "commission" as defined in RSA 374:48, I, namely, "the public utilities commission."

Puc 802.03 "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 802.04 "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 "Excavation" means "excavation" as defined in RSA 374:48, III, namely, "any operation conducted on private property or in a public way, right-of-way, easement, public street, or other public place, in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence or sign post installation, pile driving, wrecking, razing, rending or moving any structure or mass material, but does not include the tilling of soil for agricultural purposes, landscaping and maintenance of residential property performed with non-mechanized equipment, landscaping activities performed with mechanized equipment that are intended to cut vegetation, including lawn edging, aeration, and de-thatching, excavations permitted or grand fathered under RSA 155-E, or replacement of department-of-transportation-installed delineator posts in the same location."

Puc 802.06 "Excavator" means "excavator" as defined in RSA 374:48, IV, namely, "any person performing an excavation."

Puc 802.07 "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 802.08 "Hand digging" means any excavation involving non-mechanized tools or equipment and includes, but is not limited to, digging with shovels, picks, probing bars, and manual post hole diggers.

Puc 802.09 "Holiday" means any legal holiday pursuant to RSA 288:1 or, when such holiday falls on a Sunday, the following day pursuant to RSA 288:2.

Puc 802.10 "Locator" means a person acting on behalf of an operator to identify and mark the locations of underground facilities in accordance with Puc 806.

Puc 802.11 "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 database 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 "Operator" means "operator" as defined in RSA 374:48, IV-a, namely, "any public utility as defined in RSA 362:2 or RSA 362:4 ~~and~~, any cable television system as defined in RSA 53-C:1, and any liquefied petroleum gas company operating any jurisdictional facility or facilities as defined by the Natural Gas Pipeline Safety Act (49 U.S.C. chapter 601) that owns or operates underground facilities~~."~~," and "operator" shall also include any rural electric cooperatives for which a certificate of deregulation is on file

with the commission pursuant to RSA 362:2, II, and any VoIP and IP-enabled service provider pursuant to RSA 362:7, III (e),

Puc 802.13 "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 802.14 "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. Pink markings may also be used when winter conditions would render white premarking not clearly visible.

Puc 802.15 "System" means "system" as defined in RSA 374:48, ~~I~~VI, namely, "the underground ~~utility~~facility damage prevention system referred to in RSA 374:49".

Puc 802.16 "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~~ equal to the width of the underground facility ~~itself~~plus 18 inches measured horizontally on either side of the underground facility.

Puc 802.17 "Underground facility" means "underground facility" as defined in RSA 374:48, VII, namely, "any ~~private property or~~ property which is buried, placed below ground, or submerged on a public way, private property, right-of-way, easement, public street, or other public place and is being used or will be used for the conveyance of cable television, electricity, gas, sewerage, steam, telecommunications or water."

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 the 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, including information such as:

1. latitude and longitude coordinates;
2. two cross street locations;
3. notable landmarks;
4. utility pole numbers that are verifiable in the field; or
5. mile markers;

d. The starting date for the proposed excavation;

e. The most current and accurate~~, and~~ description of the intended excavation activity, to include information regarding any blasting or any trenchless excavation methods;

f~~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;

g~~e~~. The date and time of the notification;

h~~f~~. The confirmation or registration number;

i~~g~~. The identity of potentially affected members and operators that the notification center contacts to inform of the intended excavation activity;

j~~h~~. The date and time the notification center transmitted notice of the intended excavation activity to each potentially affected member and operator;

k~~i~~. The date and time the notification will expire in accordance with Puc 805.01(b); and

i~~j~~. 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 numbers of the notification center for reporting proposed excavations and otherwise communicating with the notification center shall be, 811 or 888-"DIG-SAFE", which is, 888-344-7233~~ or 811~~.

(d) The notification center shall~~ also~~ maintain an internet-based system for proposed excavations at www.digsafe.com.

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

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

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

(h) 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.

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

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

(k) 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 805.03, 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.

PART Puc 804 DUTIES OF OPERATORS

Puc 804.01 Reporting Requirements for Operators of Underground Facilities.

(a) Each operator shall file monthly, including any month in which there are no violations to report, with the commission, on or before the 15th 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. puch.nh.gov/forms.

~~(c) Each operator shall include the following in Form E-26~~

(c~~The date the incident was reported;~~

~~(2) The date the incident occurred;~~

~~(3) The name and address of the person reporting;~~

~~(4) The reporter's name and phone number;~~

~~(5) The location of the damage, violation, or both;~~

~~(6) A description of the property damaged, if any;~~

~~(7) A description of the facility, including:~~

~~a. Details of the facility such as the type, size, material, pressure, voltage, or both; and~~

~~b. Type of facility by ownership, such as, customer-owned, municipal-owned or utility-owned.~~

~~(8) A description of damage to the facility, if any;~~

~~(9) Cost estimate of damage, if any, and whether the excavator has been billed;~~

~~(10) A description of personal injuries, if any;~~

~~(11) The excavator's name, address, and phone number;~~

~~(12) The excavator's employer, if applicable;~~

~~(13) A description of the incident;~~

~~(14) The type of marking used at the location, if any;~~

~~(15) Details fully describing whether:~~

~~a. The situation was an emergency;~~

~~b. The notification procedure was or was not followed as prescribed;~~

~~c. The notification was completed and, if so, provide the registration number and date of notification;~~

~~d. The notification was completed and the location was not premarked;~~

~~e. The notification was completed and the location was not marked;~~

~~f. The notification was completed but markings were not maintained;~~

~~g. The notification was completed, the location was marked, but markings were incorrect;~~

~~h. The notification was completed and the location was marked but damage occurred; and~~

~~i. The notification procedures were not followed and damaged occurred.~~

~~(d~~) 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 15th 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.

(~~e~~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 ~~the~~Form E-26 ~~form~~ or electronically, including other pertinent information as attachments to Form E-26 as specified on the commission's web site.

(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.

(f) The operator shall maintain records of all existing underground facility locations identified pursuant to (e) above and of all underground facilities abandoned in place after December 31, 2016.

Puc 804.02 Notification Requirements.

(a) Any operator who owns, operates, or both, an underground facility used in the transportation of gas or hazardous liquids and subject to the federal pipeline statute, 49 U.S.C. §§ 60101 to 60137, 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 is located, which is owned by that operator, and is used in the transportation of gas or hazardous liquids and subject to the federal pipeline statute;

(2) Notify abutters of the existence of an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline statute, 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 federal pipeline statute 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 begin.

(b) An affected operator ~~may~~shall complete the notification required by Puc 804.02(a)(2) above by:

(1) Distributing fliers;

(2) Informational mailings;

(3) Placing line markers;

(4) Signage; or

(5) Other reasonable public education outreach ~~consistent~~actions.

(c) An affected operator ~~may~~shall complete the notification required by Puc 804.02(a)(3) above by ~~means including but not limited to~~ distributing informational mailings, conducting informational sessions, or ~~both~~other means of effective communication.

(d) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator~~. Underground facilities which the owner shall not be required to locate shall include~~, including, but ~~shall~~ not ~~be~~ limited to, any such underground facilities running from a house to a garage or other_ outbuilding.

(e) When no underground facility is within the area of a proposed excavation, an owner or operator receiving notification of the proposed excavation shall so advise the excavator by:

(1) Marking the non~~-~~-existence of facilities within the premarked area of intended excavation in accordance with Puc 806;

(2) Participating in a meeting where details of the job site are discussed and documented; or

(3) Communicating with the ~~operator~~excavator via e-mail, fax, telephone or other electronic communication, provided that the excavator confirms receipt of such communication.

Puc 804.03 Training of Locators.

(a) Locators shall be trained in accordance with the National Utility Locating Contractors Association (NULCA) ~~standards~~Professional Competence Standards for Locating Technicians, Fourth Edition, as adopted on ~~December 21, 2001,~~_____, including the competencies as described in (b) below.

(b) To meet the requirements of (a), training programs for locators shall include, at a minimum, the following competencies:

(1) Electromagnetic locating;

(2) Instruction in the use of transmitters and receivers;

(3) Procedures for marking underground facilities;

(4) Training in the identification of facilities;

(5) Safety procedures;

(6) Operator map and record reading; and

(7) Familiarity with the rules in this chapter.

PART Puc 805 DUTIES OF AN EXCAVATOR

Puc 805.01 Notification Required Prior to Excavation.

(a) No person shall perform an excavation within 100 feet of an underground facility, except in an emergency situation pursuant to 805.03, without first giving notification in accordance with this section.

(b~~a~~) Excavators shall, pursuant to RSA 374:51 notify the notification center~~:~~

(1) Not less than 72 hours prior to ~~a~~the proposed excavation, not including Saturdays, Sundays and legal holidays; and

(2) Not more than 30 days prior to ~~a~~the proposed excavation~~ to be made.~~.

(c~~b~~) The excavator's notification, required by (a) above, shall be valid for 30 calendar days from the date and time the notification center confirms the notification.

(d~~c~~) When an excavator contacts the notification center as described in (a) above, it shall provide the following:

(1) The name of the person notifying the notification center;

(2) The name, address and telephone number of the excavator;

(3) The name of each sub-contractor or other person or entity who ~~might~~is expected to excavate at the intended excavation site on behalf of the excavator making the notification; and

(4) The specific location, including information such as:

a. latitude and longitude coordinates;

b. two cross street locations;

c. notable landmarks;

d. utility pole numbers that are verifiable in the field; or

e. mile markers;

(5) The starting date for the proposed excavation; and

(6) The most current and accurate~~, and~~ description of the intended excavation activity, to include information regarding any blasting or any trenchless excavation methods.

(e~~d~~) Prior to complying with the notification requirements of RSA 374:51, II and (a) above, an excavator shall, pursuant to RSA 374:51, IV, premark the area of proposed excavation by identifying the perimeter of the proposed site of the excavation.

(f~~e~~) The excavator shall premark in a way that does not interfere with traffic or pedestrian control and is not misleading to the general public.

(g~~f~~) An excavator shall not be required to premark any continuous excavation that is over 100 feet in length, or any pole replacement that is within 5 feet of an existing location.

(h~~g~~) If an excavation ~~is over 100 feet in length or~~for a pole replacement is within 5 feet of an existing location, the excavator shall communicate the perimeter of the excavation to any potentially affected operator, member of the notification center who owns or operates an underground facility, or both~~ by~~, by any one of the following methods:

(1) Providing a detailed description of the site area;

(2) Providing detailed construction plans;

(3) Holding an on-site meeting with potentially affected operators; or

(4) Providing other ~~suitable~~effective means of communicating the perimeter of the excavation to any potentially affected operator, member, or both, of the notification center who owns or operates an underground facility.

(i) If an excavation is over 100 feet in length, the excavator shall communicate the perimeter of the excavation to any potentially affected operator, member of the notification center who owns or operates an underground facility, or both, by any two of the following methods:

(1) Providing a detailed description of the site area;

(2) Providing detailed construction plans;

(3) Holding an on-site meeting with potentially affected operators; and

(4) (hProviding other effective means of communicating the perimeter of the excavation to any potentially affected operator, member, or both, of the notification center who owns or operates an underground facility.

(j) Once an owner or operator of an underground facility has marked the location of its underground facility in the area of an excavation, pursuant to RSA 374:53 and Puc 805.02, the excavator, and any subcontractor, employee, or agent of the excavator performing work on behalf of the excavator at the site, shall be responsible for maintaining the markings during the excavation.

(ik) No person or entity not an employee of the excavator shall excavate on behalf of an excavator as a subcontractor or otherwise without separately complying with the notification requirements of this section, unless the excavator has notified the notification center of the identity of that person or entity as provided in (ed)(3) above.

(jl) A subcontractor of the excavator or other entity may excavate pursuant to the excavator's notification to the notification center if the subcontractor or entity:

(1) Performs excavation at the location specified in the notification;

(2) Has a contract or other written authorization to perform thisthe excavation withfor the excavator;

(3) Does the excavation work specified in the notification;

(4) Is listed with the notification center, as provided in (ed)(3) above; and

(5) Otherwise complies with Puc 800, RSA 374:48-56 and other applicable law.

(km) No person shall misuse the intent of the notification center by making a request for marking of an underground facility for other than excavating activities, such as for conducting an engineering design, or without intendinga present intention to excavate at the site in questionsubject to the request within 30 days.

Puc 805.02 Excavation That Affects the Tolerance Zone.

(a) Any person conducting excavation activity that affects the tolerance zone surrounding an underground facility shall exercise at all times such reasonable care as is necessary to protect the underground facility from damage.

(b) Except as provided in (c) below, in order to locate and identify an underground facility, the excavator shall excavate by methods limited to:

(1) Hand digging;

(2) Pot holing;

(3) Soft digging;

(4) Vacuum excavation;

(5) Other mechanical methods with the approval of the underground facility owner or operator; or

(6) Other methods accepted in the industry consistent with the alternatives listed in (1) through (5) above, which clearly will not affect the integrity of the underground facility.

(c) For bituminous pavement and concrete travel surface removal an excavator shall not be limited to hand digging and the other non-invasive methods cited in (b) above.

(d) For parallel type excavations, such as excavation along an existing underground facility at an approximately equal distance when measured periodically, the excavator shall expose the existing underground facility at intervals as often as necessary to avoid damage.

~~(e~~ (e) For perpendicular type excavations in which the markings are completed in accordance with 806.01 (a) (2), the excavator shall expose the existing underground facility using methods listed in (b) above within the defined tolerance zone. In the event the excavator exposes what appears to be the underground facility that is offset from the centerline:

(1) The excavator shall not assume there are no other underground facilities having the same function within the tolerance zone; and

(2) The excavator shall continue using methods listed in (b) above through remainder of the tolerance zone unless the verification of the existence or non-existence of underground facilities is determined by the operator.

(f) For trenchless excavations, such as horizontal drilling, boring, pneumatic jacking, tunneling and pavement reclamation, reasonable care for purposes of Puc 805.02(a) shall include determining the exact depth of the underground facility and clearances required by the operator and incorporating location details into the trenchless excavation procedure so as to avoid any potential damage of the underground facility.

Puc 805.03 Emergency Situations.

(a) If necessary to respond in an emergency situation, an excavator may begin an excavation without notifying the notification center prior to excavation as required by Puc ~~804~~805.01, but shall notify the notification center at the earliest practicable moment.

(b) In notifying the notification center of excavation or intended excavation in an emergency situation, the excavator shall specifically identify the dangerous condition involved.

(c) ~~While a~~An excavator who excavates in an emergency situation shall not be liable ~~on that basis~~ for a failure to notify the notification center as required by Puc ~~804~~805.01.~~,~~

(d) N~~n~~othing in this section shall relieve the excavator from liability if:

(1) The excavator damages an underground facility which has been properly marked;~~ or~~

(2) The excavator damages an underground facility which has not been marked; or

(3~~2~~) The excavation does not qualify as an emergency excavation.

(c~~d~~) No excavator shall indicate to the notification center or to an operator or member of the notification center that owns or operates an underground facility that an event constitutes an emergency situation unless the excavator believes in good faith that the circumstances do constitute an emergency situation.

(f~~e~~) If the parties request, pursuant to Puc 200, a determination by the commission as whether a situation is, or was, an emergency situation, the commission shall make such a determination based on a review of the facts of the situation and the definition of emergency situation.

Puc 805.04 Blasting.

(a) When an excavator determines that blasting will be required during an excavation, the excavator shall inform the notification center when providing notice of the excavation.

(b) If an excavator determines during the effective term of the excavator's notification that blasting is required within the area premarked in accordance with Puc 805.01 (d), the excavator shall notify the notification center of the need to blast~~. Notification shall be made~~ at least 24 hours prior to any blasting, not including Saturdays, Sundays, and holidays.

(c) When unanticipated obstructions prevent further excavation without blasting, the excavator shall provide separate notice of such blasting not less than four hours in advance of such blasting, not including the hours of 4:00 p.m. to 6:00 a.m. weekdays, or all of Saturdays, Sundays, and holidays.

Puc 805.05 Damage to an Underground Facility.

(a) When an excavator causes any damage to an underground facility not owned or operated by the excavator, the excavator shall:

(1) Call 911 when:

a. A gas underground facility is damaged and there is a release of gas;

b. An electric underground facility is damaged and an excavator determines that a person may have received an electric shock; or

c. Any other facility is damaged and public safety is affected.

(2) Evacuate nearby structures if necessary;

(3) Contact the facility owner or operator;

(4) Attempt no repairs, unless directed to by the facility owner or operator;

(5) Call 811 or 888-DIG SAFE (Notification Center); and

(6) Report the damage within 72 hours excluding weekends and holidays to the commission~~.~~ electronically on Form SNU-0401 dated 12/2014 and available at the commission website at www.puc.nh.gov/forms.

PART Puc 806 MARKING THE TOLERANCE ZONE

Puc 806.01 Tolerance Zone.

(a) An operator shall use one of the following marking methods to mark the tolerance zone of an underground facility:

(1) The corridor marking method which shall be the practice of placing markers at either boundary of the tolerance zone, such that the markers will be 18 inches plus one-half the width of the facility away from the facility centerline;

(2) The centerline marking method which shall be the practice of placing markers directly over the centerline of the facility establishing boundaries at points located 18 inches plus one-half the width of the facility from the markers; or

(3) The offset marking method which shall be the practice of locating the centerline of the facility and placing markers at locations which parallel the facility.

(b) Any operator shall use the offset marking method only when it is impractical to use either the corridor or centerline methods, such as in marking in the traveled portion of an unpaved roadway.

(c) When marking an underground facility an operator shall mark the underground facility consistent with the color code for the utility type of the underground facility, as set forth in Puc 806.02.

(d) In the event an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation activity, and the corridor marking method is to be applied, the operator may mark one tolerance zone.

(e) When an operator marks 2 or more underground facilities as described in (d) above:

(1) The operator shall establish the boundaries of the tolerance zone by use of the corridor marking method by locating the boundaries of each separate underground facility and placing markers at the outer boundaries of the multiple underground facilities; and

(2) When the marking results in one area being marked, the operator shall inform the excavator of the marking of each of the separate underground facilities within the marked boundaries, either verbally or by appropriate single markings pursuant to Puc 806.01.

(f) When an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation and the centerline marking method is to be applied, the operator shall place markers, conforming with Puc 806.01(a)(2), over the centerline of each facility.

(g) In the event the operator or member who owns and/or operates an underground facility is unable to designate the location of the underground facility due to extraordinary circumstances~~, the~~:

(1) The operator or member shall notify the notification center and provide an estimated completion date~~.~~;

(2) The notification center shall ~~then~~ document on the existing notification ticket, utilizing an attachment message, that the utility is unable to designate the location of the underground facility~~. The operator shall notify the excavator who~~ ; and

(3) The operator shall notify the excavator who called the notification center that it is unable to designate the location of the underground facility due to extraordinary circumstances.

Puc 806.02 Markers.

(a) Within 72 hours after receipt of notice from a proposed excavator or from the notification center of a proposed excavation, but not including Saturdays, Sundays and holidays, an operator or member of the notification center who owns or operates an underground facility, shall

(1) Mark the location of its underground facility in the area of the proposed excavation; or

(2) If no underground facility is within the area of the proposed excavation, so notify the excavator pursuant to Puc 804.02(e).

(b) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator~~. Underground facilities which the owner shall not be required to locate shall include~~, including, but not ~~be~~ limited to, any such underground facilities running from a house to a garage or other outbuilding.

(c) An operator shall mark underground facilities by the use of paint, stakes, flags, or by any other means that clearly indicates the location of the underground facility.

(d) An operator shall consider the physical characteristics in the area of the proposed excavation in determining the type of marker to be used.

(e) Operators shall mark underground facilities according to the following color code:

(1) Red shall be used for underground facilities conveying electric power, electric cable conduits or lighting cables;

(2) Yellow shall be ~~use~~used for underground facilities conveying gas, oil, steam, petroleum, or gaseous materials;

(3) Orange shall be used for underground facilities used for communications, alarm, signal, communications cables, or communications conduit;

(4) Blue shall be used for underground facilities conveying ~~water or used for irrigation or slurry lines; and~~potable water;

(5) Green shall be used for underground facilities conveying sewer or used for drain lines~~.~~; and

(6) Purple shall be used for underground facilities conveying reclaimed water such as used for irrigation or slurry lines.

(f) Excavators shall use the color white for the pre-marking of the boundaries of a proposed excavation, except as provided in (g) below.

(g) Excavators shall use pink for pre-marking when snow conditions would render white premarking not clearly visible.

Puc 806.03 Identification.

(a) When an operator marks its underground facility it shall indicate:

(1) The width of the underground facility for all facilities greater than 1 inch nominal diameter;

(2) The specific owner or operator of the underground facility; and

(3) The function of the underground facility.

(b) For purposes of Puc 806.03 (a)(3) functions shall be marked by using:

(1) The letter E for underground facilities conveying electricity;

(2) The letter G for underground facilities conveying gas;

(3) The letters PP for underground facilities conveying oil;

(4) The letters ST for underground facilities conveying steam;

(5) The letters CH for underground facilities conveying chemicals;

(6) The letter T for underground facilities containing telephone wires or cable;

(7) The letters CATV for underground facilities conveying cable television signals;

(8) The letters TC for underground facilities conveying traffic control information or signals;

(9) The letters FA for underground facilities conveying fire alarm information or signals;

(10) The letter W for underground facilities conveying water;

(11) The letters RW for underground facilities conveying reclaimed water;

(12) The letter S for underground facilities conveying sewage;

(13) The letters SS for underground facilities conveying storm sewage; and

(14) The letters SD shall be used for underground facilities used for storm drainage.

(c) An operator shall identify with markings any changes in direction or terminations occurring within the immediate area of the proposed excavation with arrows or other appropriate indicators.

Puc 806.04 Emergency Procedures.

(a) Each operator and member of the notification center who owns or operates underground facilities, or both, shall develop internal practices and procedures to:

(1) Receive and respond to emergency notifications; and

(2) Mark the location of facilities in emergency situations.

Puc 806.05 Marking Certain Newly Installed Underground Facilities.

(a) Upon completing the installation of new underground facilities within an area that has been subject to excavator notification and premarking pursuant to Puc 805.01, an operator shall make reasonable efforts to communicate the existence of such new facilities if they are covered with soil or other material that impairs their visibility.

(b) For purposes of (a) above, reasonable efforts shall include:

(1) Marking the tolerance zone in accordance with 806.01, 806.02, 806.03, and 806.04;

(2) Contacting the excavator with information regarding the presence of the newly constructed underground facilities; or

(3) Leaving a tag or marker clearly indicating the presence of the newly constructed underground facilities with contact information.

PART Puc 807 ENFORCEMENT PROCEDURES

Puc 807.01 Investigation of Complaints.

(a) The notification center shall institute procedures to receive and resolve complaints of excavators, operators, owners or operators of underground facilities, members, and the general public.

(b) Owners and operators of underground facilities shall institute procedures to receive and resolve complaints of excavators and the general public.

(c) The commission staff shall consider and decide unresolved complaints pursuant to the procedures established in Puc ~~200.~~807.02 through 807.07.

(d) An unresolved dispute relating to Puc 800 which is appealed in writing to the commission shall be handled as follows:

(1) The matter shall be treated as a request for an adjudicatory proceeding pursuant to the procedures established in Chapter Puc 200; and

(2) The parties to the dispute shall have a right of appeal by petition to the New Hampshire Supreme Court pursuant to RSA 541:6.

Puc 807.02 Notice of Probable Violation.

(a) In the event the commission staff determines that a probable violation of RSA 374:48-56, Puc 800, or both, has occurred, staff shall issue a written notice of probable violation (NOPV) to the party alleged to have committed the violation.

(b) The commission staff shall send information regarding the NOPV by certified mail to the party ~~regarded as~~noticed in the probable violation.

(c) The NOPV shall include the following:

(1) A description of the probable violation and reference to the rule or statute regarded as violated;

(2) The date and location of the probable violation;

(3) A statement notifying the party or parties involved that civil penalties might be imposed pursuant to RSA 374:48-56, in the event of unfavorable judgment;

(4) Statutory rights of the respondent as enumerated in RSA 374:48-56; and

(5) Procedures for resolving the complaint.

(d) Any owner or operator of an underground facility involved in the NOPV shall provide a representative for any informal conference or hearing scheduled pursuant to Puc 800.

Puc 807.03 ~~Alternative~~ Responses to Notice of Probable Violation.

(a) Upon receipt of the NOPV the respondent shall either:

(1) Submit to the commission within 30 days, in writing, evidence refuting the probable violation referenced in the NOPV;

(2) Request in writing within 30 days, an informal conference with commission staff to examine the basis of the probable violation; or

(3) Execute a consent agreement with the commission resolving the probable violation.

(b) If the respondent requests an informal conference pursuant to (a)(2) above, the commission staff shall set a date and time for the informal conference.

Puc 807.04 Notice of Violation.

(a) If the commission or commission staff involved in the damage prevention program, after reviewing evidence and testimony obtained in writing or conferences, determines that a violation of RSA 374:48-56, Puc 800, or both, has occurred, the commission or commission staff involved in the damage prevention program shall issue a notice of violation (NOV) to the respondent pursuant to RSA 374:55, VII.

(b) The NOV so issued shall include:

(1) The factual and statutory basis for the unfavorable preliminary determination;

(2) A description of factors relied upon by commission staff in making its determination, such as the gravity of the violation, history of prior violations, degree of culpability of the respondent, how quickly the respondent took action to rectify the situation, cooperativeness of respondent, and any other factors which would tend to either aggravate or mitigate the violation;

(3) The civil penalty, if any, proposed to be imposed;

(4) Procedures for remitting penalty; and

(5) Statutory rights of the respondent as enumerated in RSA 374:48-56.

Puc 807.05 Response to Notice of Violation.

(a) Within 10 days from receipt of the NOV, the respondent shall either:

(1) Sign a consent agreement and remit the civil penalty; or

(2) File a request in writing for a hearing before the commission.

Puc 807.06 Commission Action.

(a) The commission shall act upon staff's recommendation unless the respondent requests a hearing pursuant to Puc 807.05(a)(2).

(b) Upon ~~such~~receipt of a hearing request under Puc 807.05(a)(2), the commission shall provide the respondent with notice and an opportunity for a hearing, held pursuant to Chapter Puc 200.

(c) At ~~the~~any hearing held under (b) above, the respondent may show by a preponderance of the evidence why the commission or designated commission staff determination should be changed.

Puc 807.07 Civil Penalties.

(a) If the commission or designated commission staff within the division of safety finds reason to issue an NOV, the commission or designated commission staff shall propose to assess a civil penalty pursuant to RSA 374:55.

(b) In determining the assessment, the following factors shall be considered:

(1) The severity of the consequences resulting from the violation such that the more severe the consequences, the higher the civil penalty, the gravity of the violation, degree of culpability of the respondent, cooperativeness of respondent, history of prior violations, and other factors which would tend to aggravate fault; and

(2) Mitigating circumstances, such as how quickly the excavator took action to rectify the situation, how much control the excavator had over the situation, and other circumstance which would tend to lessen fault.

APPENDIX A

Rule	**Statute**
Puc 801.01	RSA 374:50; RSA 374:55,VII
Puc 801.02	RSA 374:50
Puc 802.01	RSA 374:50; RSA 374:48,VIII
Puc 802.02	RSA 374:50; RSA 374:48,I
Puc 802.03	RSA 374:50
Puc 802.04	RSA 374:50
Puc 802.05	RSA 374:50; RSA 374:48,III
Puc 802.06	RSA 374:50; RSA 374:48,IV
Puc 802.07	RSA 374:50
Puc 802.08	RSA 374:50
Puc 802.09	RSA 374:50; RSA 288:1; RSA 288:2
Puc 802.10	RSA 374:50
Puc 802.11	RSA 374:50
Puc 802.12	RSA 374:50; RSA 374:48,IV-a; RSA 362:2, II; RSA 362:7, III(e)
Puc 802.13	RSA 374:50; RSA 374:48,V
Puc 802.14	RSA 374:50; RSA 374:51,IV
Puc 802.15	RSA 374:50; RSA 374:48,I
Puc 802.16	RSA 374:50
Puc 802.17	RSA 374:50; RSA 374:48,VII
Puc 803.01	RSA 374:50, I; RSA 374:49, RSA 374:52
Puc 803.02	RSA 374:50,I
Puc 804.01	RSA 374:50
Puc 804.02	RSA 374:50; RSA 374:49; RSA 374:52
Puc 804.03	RSA 374:50
Puc 805.01	RSA 374:50, I; RSA 374:51
Puc 805.02	RSA 374:50
Puc 805.03	RSA 374:50; III; RSA 374:51,I
Puc 805.04	RSA 374:50; RSA 374:51,VII
Puc 805.05	RSA 374:50; RSA 374:54
Puc 806.01	RSA 374:50; RSA 374:53
Puc 806.02	RSA 374:50; RSA 374:53
Puc 806.03	RSA 374:50; RSA 374:53
Puc 806.04	RSA 374:50,III
Puc 806.05	RSA 374:50; RSA 374:53
Puc 807.01	RSA 374:50,II
Puc 807.02	RSA 374:50; RSA 374:55,VII
Puc 807.03	RSA 374:50; RSA 374:55
Puc 807.04	RSA 374:50; RSA 374:55,VII
Puc 807.05	RSA 374:50; RSA 374:55
Puc 807.06	RSA 374:50; RSA 374:55,VII
Puc 807.07	RSA 374:50; RSA 374:55

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

RULE	TITLE/CITATION (DATE)	SOURCE
Puc 804.03(a)	National Utility Locating Contractors Association (NULCA) Professional Competence Standards for Locating Technicians, Fourth Edition, adopted on _____	Published by National Utility Locating Contractors Association, 1501 Shirkey Avenue, Richmond, MO 64085 Hard copy or electronic copy can be purchased for $_____ at: [website reference]