

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF AMENDING THE PIPELINE )  
SAFETY EXCAVATION DAMAGE PREVENTION ) Case No. 21-00224-PL  
RULE 18.60.5 NMAC )**

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**PETITION TO OPEN A RULEMAKING DOCKET AND FOR  
THE ISSUANCE OF A NOTICE OF PROPOSED RULEMAKING**

**THE PIPELINE SAFETY BUREAU** ("Staff") of the Transportation Division of the New Mexico Public Regulation Commission (the "Commission") hereby petitions the Commission to open a docket for the purpose of initiating a rulemaking proceeding and issuing a notice of proposed rulemaking regarding amendments to the Pipeline Safety Excavation Damage Prevention Rule, Rule 18.60.5 NMAC (the "Rule"). The statutory authority for a rulemaking regarding the Rule is NMSA 1978, 8-8-4, 62-14-7.1, 62-14-10, 70-3-4, and 70-3-1

As grounds for this petition, Staff states as follows:

1. The provisions of the Rule apply whenever a request is made to locate underground utility lines.
2. Under the existing Rule, New Mexico is 48 hour "clock state", meaning that requests to locate pipelines are due to be completed exactly 48 hours on the second business day from the time when utility line location requests are submitted by an excavator.
3. A "clock state" status causes inefficiencies that result not only in fewer locates being completed on time, but simply in fewer locates being completed. By way of example, and this is particularly true due to New Mexico's geography, if a locator/utility owner is coming from the south and proceeding to complete a locate at an excavation site that is an hour away to the north, the locator may pass by multiple other locates that are not due until the next day just to

ensure the locate further north is completed within that 48-hour window. These inefficiencies indirectly lead to additional problems including:

- (a) difficulty for the utilities, locators, and excavators in tracking response deadlines (all tickets are due at different times);
- (b) more late tickets; and
- (c) unnecessary communication and unpredictability for excavators in trying to track when their locate requests will be completed.

4. Staff requests a rulemaking to convert New Mexico from being a "clock state" into what is termed in the industry as a "midnight state", meaning that requests to locate utility lines are due to be completed at midnight on the second business day after the request, rather than at the exact 48 hour increment under the current Rule.

5. If New Mexico were to become a "midnight state," the locator could simply complete all locates in sequential order as he or she drives from south to north, and all locate procedures would be timely.

6. Converting into a "midnight state" would allow more time for utility line locating activities. "Midnight state" locates allow the locator to complete more locates far more efficiently as he or she travels north to south without fear that the one farthest north would be late; all locates would be completed timely and, notably, the locates that the locator would have passed by in under the "clock state" scenario would actually result in being completed far earlier. "Midnight state" locates ultimately lead to overall better service, more locates being completed for the excavation community, serves to keep projects on track, gives more predictability on the deadlines with everyone involved being afforded better planning opportunities.

7. Being a "midnight state" often has little negative effect on the excavators despite the slight lengthening of the location deadline, and makes it easier to track the time a ticket is due to be completed because the deadline is always midnight instead of a different time for each locate request ticket.

8. Prior to the filing of this Petition, Staff has engaged in discussions with representatives from the pipeline safety excavation industry including excavators regarding a possible rulemaking to convert New Mexico from being a "clock state" into a "midnight state". Excavators have generally been supportive of this change.

9. The statutory provisions governing this rulemaking are codified as NMSA 1978, §§62-14-5 (Marking of facilities), 62-14-7.1 (One-call notification system) and 62-14-10 (Rulemaking).

10. The Commission Rule to be amended is codified as 18.60.5 NMAC (Pipeline safety excavation damage prevention).

11. To enable the "midnight state" scenario in New Mexico, Staff urges the Commission to amend rule Paragraphs 18.60.5.13 (B) (2) and (4) NMAC, rule Paragraph 18.60.5.15 (A) (1) NMAC, and rule Subsection 18.60.5.17 (H) NMAC

12. A copy of the proposed amended language is attached to this Petition as Exhibit A.

**WHEREFORE**, Staff respectfully requests that the Commission open a rulemaking docket and issue a notice of proposed rulemaking for the purpose amending Rule 18.60.5 NMAC to change the procedures in New Mexico from being a "clock state" into becoming a "midnight state" while preventing damage to underground utilities.

Respectfully submitted,

Pipeline Safety Bureau  
of the Transportation Division  
New Mexico Public Regulation Commission

/s/ David Black

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*electronic signature per 1.2.2.7(E)(2) and 1.2.2.10(E)(4) NMAC*

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